

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
Company Application No.83 of 2014
IN
COMPANY PETITION NO.83/397-398/MB/2014
In the matter of Section 397- 398 of the Companies Act, 1956
AND
In the matter of Bridge Infomatics Private Limited

CORAM: SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

Mr. Bipinchandra Shreeram Gandhi
Residing at Snehsri, H. No.1570, Plot No.X-26,
Mirjole, MIDC
Ratnagiri-415639 Petitioner
Versus

1. BRIDGE INFOMATICS PRIVATE LIMITED, having its
Registered Office at H. No. 1065A, Udyam Nagar
Ratnagiri.

2. Mr. Vaijnath Eknath Jaushte,
Residing at Jagushte House, Ozare Road
Devrukh, Tal. Sangameshwar,
Dist. Ratnagiri – 415804

3. Mr. Nitin Manohar Khatu
Residing at House No.4, Tal. Sangmeshwar,
Dist. Ratnagiri – 415611

..... Respondents

PRESENT ON BEHALF OF THE PARTIES

Learned Company Secretary in practice
Mr.Sundaran Kathiresan & Mr. Vinayak Patil (C.A.) for the Petitioner

Learned Practising Company Secretary
Mr. Ajay Kumar for the Respondents

Date of Order 3rd May 2017

The petition under consideration was submitted before the erstwhile CLB, Mumbai Bench on 10th September 2014. On receiving the petition, the respondent has objected the maintainability of the petition through a reply submitted on 26-02-2015. The main reason for challenging the "maintainability" was on account of the allegation that the petitioner was not competent u/s 399 of the old Act to file this petition because not having requisite number of shares as mandatory on the date of filing of the petition i.e. 10-09-2014.

2. The petitioner in the petition has stated that the respondent company was incorporated on 30-01-2001 and the nature of business was to deal in designing, developing and installation of custom made software, patented software etc. However, as per the petitioner at present the company was engaged in the business of

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distribution of pharmaceutical products. As per the claim of the petitioner he is a shareholder by holding 75000 equity shares of Rs.10 each in the paid up share capital of the company, thus constituting 25% of the paid up share capital. Further narrating the background, the petitioner has stated that the petitioner along with the Respondent no.2 and 3 have acquired the company on 10th August 2005. The company was acquired from the then shareholders, names not necessary, having shareholding of 10,200 shares. The Petitioner along with R2 and R3 held equal percentage i.e. 33.3 percent by acquiring 3,400 shares each. On taking over the company (R1) the petitioner was appointed as a Director on 10th August 2005. The Petitioner was assigned to look after day to day operation of the company. The claim of the Petitioner is that he had devoted time and efforts towards the growth of the company. Another claim of the Petitioner is that he had contributed Rs.20 lakhs towards the share capital of the company, as against the contribution of R2 and R3 of Rs.5 lakhs each respectively. The contribution of the Petitioner was reflected in the accounts as "Share Application Money Account".

2.1 The allegation of the Petitioner is that while taking search in the year 2006 it had come to his notice that fresh 4,800 shares in total were allotted to the existing shareholders, as well as a new shareholder viz. Mrs. Hema Nivrutti More was introduced. The fresh allotment was stated to be in the following manner: -

Sr. No.	Name	Shares
1	Mr. Bipinchandra Shreeram Gandhi	350
2	Mr. Vaijnath Eknath Jagushte	350
3	Mr. Nitin Manohar Khatu	350
4	Mrs. Hema Nivrutti More	3,750
	Total	4,800

2.2 In the Petition the Petitioner has further stated that after the fresh share allotment the paid up share capital of the R1 Company had become Rs.1,50,000/- constituting 15,000 equity shares as per the following details: -

Sr. No.	Name	Shares	Percentage
1	Mr. Bipinchandra Shreeram Gandhi	3,750	25
2	Mr. Vaijnath Eknath Jagushte	3,750	25
3	Mr. Nitin Manohar Khatu	3,750	25
4	Mrs. Hema Nivrutti More	3,750	25
	Total	15,000	100

2.3 One of the allegation of the Petitioner is that for number of years his capital contribution of Rs.20 lakhs remained pending therefore, demanded the R1 company to

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refund the whole amount capped as Unsecured Loan Account. The Respondents have assured him that the account of the Petitioner would be settled in due course of time. On the other hand, according to the Petitioner, it had come to his notice that on 01-12-2007, R1 company had allotted 2,13,750 equity shares of Rs.10/- each. The share capital of the company had increased to Rs.21,37,500/-. The allotment of the shares was made to the existing three shareholders as under:-

Sr. No.	Name	Shares
1	Mr. Bipinchandra Shreeram Gandhi	71,250
2	Mr. Vaijnath Eknath Jagushte	71,250
3	Mr. Nitin Manohar Khatu	71,250
	Total	2,13,750

2.4 According to the Petitioner, he was completely unaware of the allotment of the shares against the unsecured loan. The shares worth Rs.7,12,500/- were allegedly allotted to the Petitioner against the share application money of Rs.20 lakhs.

2.5 The Petitioner approached the bank for financial support but suddenly the Respondents have instructed the Petitioner to resign from the Office of the Director. Due to pressure and mental torture the Petitioner had resigned on 15-10-2008. It had also come to the notice while taking search that on 15-10-2008 the entire shareholding of the Petitioner of 75,000 shares were transferred although as per Petitioner no "share transfer deed" was ever executed by him. It is further alleged that no consideration was paid by R2 and R3 to the Petitioner on impugned transfer of 75,000 shares.

2.6 In the light of the above factual the ground, discussed supra in brief, the relief claimed by the Petitioner in the main Petition as under:

Relief(s) sought:

In view of the facts mentioned in paragraph 6 above, the Petitioners pray for the following reliefs:

The Petitioners humbly pray for an order that-

- i. *"Rectification of the register of members by cancelling the transfer for 75,000 equity shares;*
- ii. *Issue of share certificate for allotment of 71,600 shares;*
- iii. *appointment of an independent valuer to determine fair value of shares;*
- iv. *sale of business to either party at fair value determined by the independent valuer;*
- v. *such further or other orders be made or directions be given affording necessary relief to petitioner as in the premises of the Hon'ble Company Law Board may deem fit and proper."*

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3. A preliminary legal objection has been raised by the Respondents that in a situation when the entire shareholdings have been transferred by the Petitioner 15-10-2008, then the Petitioner had no legal right to file this Petition on 10th September 2014. By invoking the provisions of Sections 399 of the old Act the Respondents have challenged the "maintainability" of the Petition. While raising the legal objection through a reply submitted on 26-02-2015 the Respondents have confirmed that on 10-08-2005 the company was acquired and the Petitioner along with the two Respondents have been allotted 3,400 shares each. Thereafter in the year 2005 by a Board Resolution dated 15-11-2005, further 4,800 shares were allotted out of which the existing three shareholders were allotted 350 shares and a new shareholder was introduced by allotting her 3,750 shares. According to the Respondents, after the allotment of fresh 4,800 shares the original share certificates were cancelled and new share certificates were issued. The old share certificate no.3 of 3,400 shares, which was originally issued in favour of the Petitioner, was cancelled.

3.1 The Respondents have also confirmed that there was further allotment of 2,13,750 shares held on 01-12-2007. The pattern of the allotment and shareholding had already been reproduced in the foregoing paragraph.

3.2 In respect of the amount of Rs.20 lakhs contributed by the Petitioner, the Respondent has explained that as per the balance sheet drawn as on 31-03-2006 a sum of Rs.12,50,000/- was brought in by the Petitioner and a sum of Rs.2,50,000/- was brought in by his wife Mrs. Rucha Gandhi. It has also been clarified that HUF of the Petitioner had brought in a sum of Rs.5 lakhs on 31-03-2008 as unsecured loan, duly reflected in the balance sheet for the period 2007-08. Therefore, the Respondent has affirmed that the total of all the three deposits thus amounted to Rs.20 lakhs and further affirmed that it was an undisputed fact that the said amount was brought in by the Petitioner for the purpose of investing in the shares of the company. In support referred a correspondence dated 10-11-2005 made by the auditor of the company. In the reply the Respondent has also explained the delay in allotment of the fresh shares that the authorized share capital was only Rs.1,50,000/- which was increased during the year ended on 31st March 2007. As a consequence, 2,13,750 shares were allotted on 01-12-2007. Since the Petitioner had already deposited the capital contribution hence with his consent fresh 71,250 shares were allotted to him. Out of the outstanding balance of Rs.15 lakhs, an amount of Rs.7,12,500/- was used towards allotment of shares and balance amount of Rs.7,87,500/- was reflected in the accounts as per the balance sheet as on 31-03-2008 under the head Unsecured Loan.

3.3 The Petitioner had demanded refund of his investment and final settlement of his account vide letter dated 28-07-2008 and dated 29-09-2008. As per the Respondents, the account of the Petitioner was finally settled on 15-10-2008, duly signed by the Petitioner. As per the settlement the Petitioner had resigned w.e.f. 15-10-2008. Form No.32 along with the letter of resignation was submitted to the Registrar of Companies.

The resignation was also accepted at the Board meeting held in 15-10-2008. The entire shareholding of 75,000 shares were transferred equally in favour of Respondent No.2 and Respondent No.3. The original share certificates along with transfer deeds were handed to the Board of Directors at the Board meeting, claimed to have been held on 15-10-2008. This is the main reason for the preliminary legal objection as raised by the Respondents that in a situation when the entire shareholdings have been transferred by the Petitioner, therefore, having nil share on the date when the impugned Petition filed, the Petitioner had no locus standi in the eyes of law to file the petition. The second prayer of the Respondent is that the Petition is vitiated by delay and laches. According to the Respondents there was a long delay of 6 years. The Petitioner had resigned in the year 2008, however, the Petition was filed in the year 2014, resulting into the delay of long six years.

4. From the side of the Respondent, learned A.R. Mr. Ajaykumar appeared and argued that the Petitioner had accepted the total allotment of 75,000 shares but deliberately challenging rest of the facts. The Respondents have sufficient evidence to demonstrate that the Petitioner had transferred the shares and in lieu received the consideration. If the Petitioner is acknowledging rest of the events such as allotment of 4,800 shares, out of which 350 shares were allotted to him then he is expected to admit rest of the facts as well. It is a normal procedure that if fresh shares are allotted then the old share certificates are generally cancelled. The Petitioner is misusing the cancelled share certificates. Those cancelled share certificates are in his possession now being mischievously used by the Petitioner to stake his claim in the R1 company. Likewise, the Petitioner was one of the Director when further allotment of 2,13,750 shares were allotted on 01-12-2007. Out of those allotted shares the Petitioner was allotted 71,250 shares. The Petitioner cannot deny those events being party of the decision.

4.1 Learned A.R. has drawn attention on a letter of 04th July 2016 wherein the Chartered Accountant has certified that he is in possession of balance sheet for 2005-06 which was signed by the two directors viz. Mr. Nitin Manohar Khatu and Mr. Bipinchandra S. Gandhi. Initially Rs.20 lakhs was shown in the books of accounts as "share application money", however, in the balance sheet drawn on 31st March 2006, it was bifurcated and a sum of Rs.12,50,000/- was shown as "share application money" in the name of Shri Bipinchandra S. Gandhi and Rs.2,50,000/- in the name of Mrs. Rucha Gandhi. The Petitioner was always part of the business decision and business correspondence as is evident from a letter dated 16-06-2008 addressed to Manager, Janata Sahakari Bank Ltd. My attention was drawn on the address mentioned of the company. According to the said letter administrative office of the company was stated to be at 1065, (A) Udyamnagar, Ratnagiri 415639 and the Registered Office address is SNEHASHRI, H. No.1570, Plot No.X-26, Mirjole, MIDC, Ratnagiri 415639. The Registered Office is duly communicated on Form No.32 and letters have also been

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signed by the Petitioner using the letter head of the company wherein the same address of the Registered Office was mentioned. The allegation that the Petitioner was not aware of all those events is baseless because he was not only involved but the office was also at his property hence having free access to the documents of the company.

4.2 My attention was drawn on a bank account of the R1 company maintained in Janata Sahakari Bank Ltd., Pune wherein, vide two cheques bearing no.314572 and no.314571 amounts of Rs.4,04,195/- and Rs.7,50,000/- have been issued in favour of Shri Bipinchandra S. Gandhi, Petitioner on 17-10-2008. Learned A.R. has emphasized that the date 17-10-2008 is very important because on that date the consideration was passed and the formalities of resignation dated 15-10-2008 had also been completed.

4.3 My attention was drawn on English translation of Arbitration Report in Marathi language. As per this letter dated 08-07-2009, the Petitioner had tendered his resignation on 15-10-2008. This letter had communicated that the Petitioner had agreed for "exit" from the company and R2 and R3 have completed the final settlement with the Petitioner.

4.4 A vehement reliance has been placed by the learned A.R. on a settlement paper which was claimed to have been signed by the Petitioner on 15-10-2008 according to which the accounts have been finally settled and two cheques have been issued which was duly signed and accepted by the Petitioner. The said document as annexed in the pleadings by the Respondent is reproduced below for ready reference: -

"BIPINCHANDRA SHREERAM GANDHI final settlement as on 15/10/08

	BG	RG	SG
Total Investment	1250000	250000	500000
Less: paid on 9/8/08	0	250000	500000
Balance	1250000	0	0
Interest @ 12% from 1/4/08 to 15/10/08	81370		
Salary up to 25/7/08	45677		
Total due as on 15/10/08	1377047		
Less: Share money AIOCD Ltd.	50000	29/11/06	11250
Swapnil recovery	150000	1/5/2008	8250
Interest on above	19500		<u>19500</u>
	219500		
Net payable to BG	<u>1157547</u>		
Cheque	750000		
Cheque	407547		
	<u>1157547</u>		

*55000 already deposited in A/c.

CH. No.0314571 = Rs.7,50,000/- Dated : 15/10/08

0314572 = Rs.4,04,195/- " "

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5. In the rejoinder, the Petitioner has objected the claim of the Respondent that the shares have been transferred by him. According to him, the Petitioner was not aware of the issuance of additional 350 shares. The Petitioner has also denied of service of any Board meeting. According to him, he had never received any such notice, therefore, never attended the meetings. Likewise, the Petitioner has denied the issuance of additional 71,250 shares. Since he was not aware of the allotment of those shares hence there was no question of signing of any "share transfer form". Rather, according to the Petitioner number of reminders were issued such as letter dated 10-11-2005 asking to allot the shares. The Respondent had misinterpreted the said letter. The Petitioner has also denied of any final settlement. According to the arguments, the alleged settlement is simply on a piece of paper which appeared to be a forged document, pleaded by the learned A.R. of the Petitioner. Such piece of paper has no sanctity in the eyes of law. The learned A.R. has drawn attention on the annexures annexed with the rejoinder such as bank account with Bank of India of the Petitioner and one memorandum of understanding, a balance sheet drawn as on 31st March 2008. According to learned A.R. only through one cheque bearing no.314572 a sum of Rs.11,54,195/- was received, on the other hand, the Respondent is certifying that the said amount was received through two separate cheques. The Petitioner has also denied of having access on the documents of the company allegedly capped in the office situated at the residence of the Petitioner.

5.1 Learned A.R. of the Petitioner has submitted written arguments as well, are reproduced below:-

- 1 *The Counsel appeared for the Respondents argued on 27th January 2017 that the Petition is badly vitiated by delay. It is not so. The Petitioner had been pressurizing the Respondents for settling the balance issues from the date of resignation in October 2008. This was pursued by him till the first half 2014. The letter dated 19th April 2014 written in Marati sent to the Respondents asking for consideration of the value contribution made by the Petitioner in the form of investment which was 4 times more than that of R2 and 3 and the hard and sincere work done by him till 2008 and the mental agony gone through by him because of the forceful manner in which he was asked to leave the organization, was acknowledged and copy of the letter, its English Version and the postal acknowledgement are attached. Then the Petitioner went for public search in the ROC on August 5, 2014 and after that filed the Petition on September 10, 2014. The Challan copy is attached. As per the decisions in Vijayan Rajes Vs. MSP Plantations Pvt. Limited (2009) 151 Comp Cases 413 (Kar) and NS Nomura Consultancy India P Limited & Another Vs. A Devarajan (2010) 155 Comp Cases CA 175, the Petition is maintainable.*

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On 27th January 2017, the Counsel for the Respondents was asking for proof to prove that the negotiations were going on till 2014. The Petitioner is maintaining the stand that such negotiations were on and the Respondents 2 and 3 were involved in it. If they deny it, the Petitioner would like to beg the Honble Bench to order both R2 and 3 to undergo a Lie Detective Test. The truth will come out. The Petitioner is ready to reimburse the cost of such exercise.

- 2 *The Representative of the Respondents had been repeatedly submitting to the Honble Bench that the Petitioner is not a shareholder and he quoted case laws and also stated that the Petitioner should have applied under Section 111 to prove that the transfer of shares was an oppressive act. The facts of this case is entirely different from whatever cases he cited. Here the Board Meeting (15th Oct 2008) did not happened at all as per the Compliance Certificate issued by the Company Secretary (a copy of the Certificate of the Practising Company Secretary is attached and this came to our knowledge only when the Petitioner got the document from the ROC which was subsequent to the filing of our Reply to the Rejoinder, the challan dated 21st July 2015m is attached). Share Transfer Deed was not signed by the Petitioner for transferring the 76000 shares. The claim made by the Respondents that all the shares were transferred and the Petitioner is not a shareholder does not hold good as the meeting did not happen, all documents like Minutes were forged and a story has been cook up by the Respondents. The case laws indicate that mere passing of resolution for transfer is not sufficient and it should be backed by Transfer Deed duly signed and lodged by the Transferor. (Supreme Court – Smt. Claude-Lila Parulelkar Vs. Sakal Papers Pvt Ltd & Others)2005) Vol 107(2) Bom LR 818 (SC), Mannalal Khetan & Ors Vs. Kedar Nath Khetan & Ors (1977) 2 Sec 424 and Prabhjit Singh Johar Vs. Johar Hotel P Letd.,)2010) 157 Comp Cases 98 (CLB). Hence the transfer of shares should be declared Null and Void and the Company should be instructed to bring this to the knowledge of the ROC.*
- 3 *The learned Counsel for the Respondents stated that the Transfer Deed continued to be in Registered Office which was the Petitioner's house even after the above said meeting. The Petitioner resigned from the Board, did not attend the meeting on October 15, 2008 and then how can we expect that the Respondents kept the documents in the Petitioner's house even after his resignation from the Board. If what the Counsel claims is true, the Transfer Deed should be with the Respondents. But they do not have such a document because it is nothing but an imaginary document created by the Respondents in the air.*
- 4 *A perusal of the copies of the Minutes of the Board meetings held on 15th November, 2005, 1st December, 2007 and 15th October, 2008 clearly indicate that these documents were subsequently prepared by the Respondents at one*

- stretch, just for the sake of creating records as they are 100% similar in the way of presentation.*
- 5 *The Minutes produced by the Respondents for the above said imaginary Board Meeting indicate that the Petitioner also attended. He did not attend the meeting at all as he resigned already. Just for the sake of showing that the Petitioner was involved in keeping the documents at this house, the respondents have added this point also, though the Petitioner did not attend.*
 - 6 *Being afraid of a claim from the Petitioner that in such a case how the Directors' Attendance Register. The Respondents have clearly admitted that the Respondent Company did not maintain Directors' Attendance Register. This is clear violation of the Companies Act.*
 - 7 *The Counsel for the Respondents claimed that all Board meetings were held only at the residence of the Petitioner since it was the Registered Office. Whereas the actual fact is that no Board Meeting was held in the Petitioner's house from day one. All meetings used to take place only at the Administrative Office which is the present Registered Office. Then the question of keeping all records like Share Certificates, Transfer Deeds, Minutes Book, etc in the house of the Petitioner does not arise as all activities happened only at the Admin Office which is under the control of the Respondents. This story is an after thought by the Respondents. If it is true, they would have asked for the documents long time back and they would not have kept quiet for so many years.*
 - 8 *Why the resolution for shifting of the Registered Office from the residence of the Petitioner to the Admin Office was not passed immediately after the Petitioner's resignation is a million dollar question. It can be presumed that the Respondents allowed it for the sake of putting forth arguments like this against the Petitioner as if the documents were with him and he did not return whereas the fact is different and all documents were only with the Respondents at the Admin Office.*
 - 9 *The original Share Certificate for 3400 shares is still with the Petitioner and it has not been affixed with Cancelled Seal. The Petitioner never requested for consolidation of shares. Whereas they say that Consolidated Share Certificate for 3750 shares were issued after cancelling the original 3400 share certificate. Without the Petitioner's request how could the Company consolidate his shares?*
 - 10 *The Counsel for the Respondents quoted that the Balance Sheet, etc were signed by the Petitioner as a Director along with Respondents. However the very same documents available at the ROC do not have the signature of any Director.*
 - 11 *As per the MOU Mr. J. S. Shinde should have been appointed as the Arbitrator. But actually the arbitration was done by one Mr. Umesh Shinde and who engaged him is not known as the MOU did not give authority to Mr. J. S. Shinde to delegate his power to some one else. The Respondents have not approached any court for*

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implementation of the arbitration order so far. Hence the Arbitration process itself should be declared as Null and void.

12. *The Respondents in their Reply have mentioned that as per the Report of the Auditor Mr. Ravi Savant dated September 21, 2008, the Petitioner enjoyed certain un due benefits and caused loss to the Company. This claim is an after thought and based on manipulation of records in collusion with the statutory auditors. Based on this report, the Respondents pressurized the Petitioner to resign from the Board. The audit findings of fraud/mismanagement were not mentioned in the Auditors Report dated August 25, 2008 and the accounts were approved by the Board of Directors and by the members at the Annual General Meeting held in September 2008. Subsequent to this, the Respondents now claim that the Auditor had given a Report about the Petitioner. If the audit findings are so serious they would have been included in the Auditors Report submitted to the Annual General Meeting. The subsequent Report was addressed to one of the Respondent Directors only. This clearly indicate that Respondents 2 and 3 wanted to get rid of the Petitioner by hook or crook and hence they enacted a drama in connivance with the auditors.*
13. *The total amount invested by the Petitioner was Rs.20,34,000/- (Rs.34,000/- initial contribution as one of the 3 Promoters and Rs.20,00,000/- as decided by all the 3 for additional share capital). Though R2 and 3 brought only Rs.5,00,000/- each as against Rs.20,00,000/- of the Petitioner, they got the same number of Equity Shares equal to that of the Petitioner. The Counsel for the Respondents argued that the Petitioner was in charge of entire administration for more than 3 years. Whereas the Petitioner was not given any opportunity to enjoy profit consideration for such hard work. This is to be done. The Good will has not been valued at all. The initial investment should be returned with the Petitioner' share of good will of the Company as on date. The Petitioner should be compensated for the injustice done to him by way of transfer of equal number of shares to R 2 and 3 for the contribution made by each one of them amounting to Rs.5,00,000 as against the Petitioner's contribution of Rs.20,00,000/-. By introducing a fabricated Auditor's Report, the Respondents have asked for more than Rs.5,00,000 as the amount payable by the Petitioner. That should also be refunded. The mental agony gone through by the Petitioner should be adequately compensated.*
6. The Respondent, challenging the maintainability has placed reliance on the case laws discussed hereinbelow:-
- a) *Bhola Waman Khalkar and Anr. V/s. Laxman Waman Khalkar and Ors. [2014]118CLA 233 (CLB) for the legal proposition that having found that the Petitioner had transferred their shareholding voluntarily and the transfer was not illegal and having found that it was established that the Petitioner was*

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not holding share on the date of filing of the Petition, the Petition is not maintainable in terms of the provisions of Section 399 of the Act.

- b) Jiwan Mehta V/s. Emmbros Metals (P.) Ltd. & Ors. [2008] 84 CLA 206 (CLB) for the legal proposition that having found the Petitioner had deliberately concealed the factum of the M.O.U. from CLB, the Petitioner had not come with clean hands.
- c) Srikanta Datta Narasimharaja Wadiyar V/s. Sri Venkateswara Real Estate Enterprises (P.) Ltd. And Ors. [1992] 7 CLA (Snr.) 19 (Kar) for the legal proposition that if a litigant moves a Petition to the court for equitable relief then must come with a clean record. For this legal proposition also placed reliance on the decision of Smt. Poonam Sharma and Another V/S. Professional Biotech (P.) Ltd. And Ors. [2007] 80 CLA 414 (CLB).
- d) Pearson Education Inc. V/s. Prentice Hall of India (P.) Ltd. [2005] 64 CLA 177 (CLB) for the legal proposition that the Petitioner remained silent for a long time, however, on the other hand, the company is asserting that the notices for all the meetings have been sent, the allegation of the Petitioner was held as a bald allegation.
- e) Mrs. M.R. Shah V/s. Vardhman Dye-Stuff Industries (P.) Ltd. and Ors. [2005] 65 CLA 302 (CLB) for the legal proposition that the petitioner on one hand is approaching the Arbitration on the other hand filing Petition was nothing but indulging in forum shopping.

7. From the side of the Petitioner few case laws have been cited, in brief discussed herein below: -

- a) PETITIONER: Smt. Claude – Lila Parulekar, RESPONDENT: M/S. Sakal Papers Pvt. Ltd. & Ors. Appeal No. (Civil)698-700 of 1995, Supreme Court Order dated 18-03-2005 for the legal proposition that compliance of the provisions of Section 108 is mandatory as held in the case of Mannalal Khaitan (1977) 2 SCC 424. In the absence of proper transfer by a deed of transfer, such alienation is prohibited. The violation of Section 108 cannot be ratified by the Board of Directors and the Board never had the legal capacity to direct the registration of shares invalidly transferred.
- b) Prabhjit Singh Johar And Another – Petitioners Versus Johar Hotels P. Ltd. And Others – Respondents (C.P. No. 47 of 2004. D/d. 10.7.2009) for the legal proposition that if the transfer was made with mala fide motive must not be impugned in a Petition under section 111 and to be agitated as an act of oppression.
- c) M/S. N.S. Nemura Consultancy ... vs A. Devarajan on 9 February, 2010, Civil Miscellaneous Appeal (NPD) No.2304 of 2004 dated 09.02.2010 Madras High Court for the legal proposition that in a situation when there is no knowledge

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of alleged transfer of share there is no question of application of Limitation Act and such Petition cannot be treated as barred by limitation.

8. FINDINGS:-

Arguments respectively of both the sides have been heard at length in the light of the case laws cited. The pleadings have been carefully perused and the evidences annexed have been taken into consideration. The main prayer of the Petitioner and the relief sought was that a direction be given to rectify the "Register of Members" in respect of 75,000 equity shares by cancelling the transfer. On the other hand, the preliminary objection of the answering Respondent is that the Petitioner has no legal right to file this petition because of the reason that the entire shareholding had been transferred by him. Facts as discussed hereinabove were that the shareholding of the Petitioner was transferred on 15-10-2008. It is not in dispute that after acquiring the company in the year 2005 on three occasions the shareholding pattern of the members/directors had modified and finally increased from 3,400 shares, stated to be acquired on 10th August, 2005, to 75,000 shares. In between first an additional allotment of 350 shares and later on further allotment of 71,250 shares to the Petitioner was made, thus constituting total holding of 75,000 shares. One more fact is not in dispute that the Petitioner and his family member have invested Rs.20 lakhs in R1 company. The Petitioner had demanded the said amount because in the books it was treated as unsecured loan although according to the Petitioner it was towards capital contribution in the R1 company. The explanation of the Respondents is that on 01-12-2007, equity was increased hence 2,13,750 equity share in total were issued out of which 71,250 shares were allotted to the Petitioner. Because of the said reason an amount of Rs.7,12,500/- was adjusted against the outstanding balance in the name of the Petitioner which was Rs.15 lakhs. After the adjustment of the amount of share allotment balance remained in the books amounted to Rs.7,87,500/-. This figure was reflected in the balance sheet drawn as on 31-03-2008 under the head "Unsecured Loans".

- 8.1 The controversy began when the Petitioner demanded to refund the entire amount invested by him and his family members. As per the Respondents when the Petitioner had demanded the refund of the said amount, it was decided to settle the account of the Petitioner, which was finally settled on 15-10-2008. As per the settlement the Petitioner had resigned w.e.f. 15-10-2008. According to the Respondents the entire shareholding of 75,000 shares was also transferred equally in favour of Respondents. Reason for the controversy is that whether the Petitioner had transferred entire

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shareholding of 75,000 shares on 15-10-2008 when he has also resigned on that very date from the directorship.

- 8.2 There is a piece of evidence, claimed by the Respondent as a settlement paper dated 15-10-2008, already extracted above, according to which two cheques of Rs.7,50,000/- and Rs.4,07,547/-, totalling Rs.11,57,547/- were issued in favour of the Petitioner. Evidences on record have demonstrated that the cheque amount was deposited in the bank account maintained in Bank of India duly deposited by the Petitioner. A flimsy objection was raised by the Petitioner that in his bank account only one entry had been made of Rs.11,57,547/- instead of two separate entries although two cheques were issued by the Respondent. However, the objection of the Petitioner is not very convincing, reason being the other corroborative evidence such as accounts of the Respondent and details of the cheques were not doubtful. It could be a case of an inadvertent entry made by Bank of India.
- 8.3 A serious question is that why the Petitioner had received the said sum of Rs.11,57,547/-, undisputedly deposited in his bank account? Neither in the pleadings nor during the course of argument any convincing reply was tendered by the Petitioner. The said document, although on a piece of plain paper was dated 15-10-2008 and the said date have become important due to the date of resignation claimed to have been communicated to ROC. Thereafter on number of occasions the Petitioner himself has referred the said date as the date of his exit from R1 company. In this regard a letter of the Petitioner dated 08-07-2009 is worth mentioning. From the side of the Petitioner written arguments have been submitted and carefully perused but nowhere specifically rebutted the factum of money transaction held on 15-10-2008, credited in the account on 17-10-2008. The pleadings of the Petitioner mainly revolved around the issuance of additional shares which were allegedly not in the notice of the Petitioner. Likewise, the Petitioner has also denied the execution of share transfer deed. On this legal point the Petitioner had placed reliance on few decisions viz. Smt. Claude-Lila Parulekar (supra), Kedarnath Khetan (supra) and Prabhjit Singh Johar (supra) for the legal proposition that the provisions of section 108 are mandatory in character hence transfer of share must be executed through a proper transfer deed. On the contrary they are equally forceful decisions favouring the Respondent that in a situation when the Petitioner had transferred his shareholding voluntarily and there was no illegality established as also there is no evidence of holding the shares by the Petitioner on the date when the Petition was filed, then the Petition held as not maintainable.

MMS

- 8.4 The entire issue in this case revolved around the corroborative evidences and surrounding circumstances. After the exit of the Petitioner lot of water had flowed under the bridge. On number of occasions the Petitioner had expressed in different letters to various authorities his non-involvement in the affairs of the company. Once he had already exited then after lapse of number of years it is not justifiable to rake up this issue. The Petitioner undisputedly remained silent for number of years. Such an attitude has not been approved by the Hon'ble courts as held in the case of Pearson Education (supra).
- 8.5 The existence of this settlement among the rival parties is a vital piece of evidence because thereafter number of steps were taken by the R1 company and other Respondents. After an inordinate delay of more than six years it is not possible for the Respondents to reverse the cycle of events. Something already done cannot be undone merely on the basis of bald claims. Certain events such as signing of balance sheet by the respective parties, submission of information before the ROC, an Arbitration judgement dated 08-07-2009 acknowledging the final settlement dated 15-10-2008 are such examples of fait accompli of the settlement. *M/S*
9. In the light of the factual matrix of the case and after due consideration of all the case laws/precedents referred by both the sides, I am of the considered opinion that the Petitioner was not holding the requisite number of shares on the date of filing of the Petition, therefore failed to accomplish the legal requirement prescribed under section 399 of the old Act. Legally, the Petitioner is not entitled to file this Petition. It is hereby held that the Petition is not maintainable, hence dismissed in-limine. No order as to costs. To be consigned to records.

Date : 03.05.2017

Sd/-
(M.K. SHRAWAT)
MEMBER (JUDICIAL)