

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

Date of Pronouncement: 23rd March , 2017

Company Petition No. 15(111) of 2010

In the matter of

The Companies Act, 1956 under sections 111

Sanjiv Bhavnani & Ors.

.....Petitioners

Versus

M/s Infotecnics India Ltd. & Ors

...Respondents

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

For Petitioner (s) Ms. Vasudha Sen, Mr. Vinod Kapoor and Ms. Srishti Kapoor, Advocates for Petitioners.

For Respondent(s) Mr. P. Nagesh, Ms. Suchi Sejwar and Mr. Sanskar Aggarwal, Advocates for the Respondents.

ORDER

The present petition is for rectification of the Register of the Shareholders of Respondent no.1 Company. The grievance of the Petitioner no.1 is in respect of the illegal transfer of his shares and those held by his wife and mother viz. Petitioners 2 & 3 respectively.

2. Brief background of the case, as per averments, is that the Petitioner no.1 started his business in the name of Infotecnics International as a proprietorship concern in 1991 to provide various IT related services. In July 1995, it was incorporated as the Respondent no.1 Company with

CP No.15/111/2010

Sanjiv Bhavnani & Ors. V. M/s. Infotecnics India Ltd. & Ors.

Page 1 of 8

✓

Petitioner no.1 as the main promoter. The main object of the company was to carry out the business of marketing of computers and peripherals and other related components, along with rendering services of cutting edge technology and consultancy in the IT related field. By the Financial Year ending March 1999, the authorised share capital of the Respondent no.1 Company was Rs.3 crores divided into 30 lacs equity shares of Rs.10/- each. The paid up capital was 2.183 crores divided into 21, 80,300 shares. Petitioner no.1 himself held 10,95,600 equity shares constituting more than 50% of the paid up share capital. This was apart from the shares controlled by him through his relatives and friends.

3. Various points have been raised in the pleadings which are not relevant for the purpose of rectification of the shareholders Registers. The confusion is sought to be created on grounds how Petitioner no.1 agreed to swap shares with shares of a company, M/s. MPS Technology, controlled by one Mr. Peeyush Aggarwal with the proposal of ultimately being allotted shares of another company viz. M/s. Vishesh International upon merger of M/s. MPS Technology with it. The Respondent no.1 company already had some interest in M/s. Vishesh International and was under an agreement for divesting its assets in its favour.

4. In August 2005, Petitioner no.1 transferred 8,19,652 shares in favour of Mr. Peeyush Aggarwal in exchange of shares of M/s. MPS Technosoft Ltd, which was later/ merged/re-constituted as M/s. Vishesh

✓

International and the petitioner was allotted the shares according to the approved swap ratio. The petitioner does not dispute this transfer of these shares. As per his allegations, his shares of 8,19,652 shares of Respondent no.1 company were swapped for 31,97,150 shares in M/s. MPS Technosoft which upon takeover by M/s. Vishesh International resulted in being allotted 23,97,863 equity shares of Vishesh.

5. On being provided with the shares of M/s. MPS Technosoft and subsequently of M/s. Vishesh International, petitioner no.1 relinquished his control of the Respondent no.1 company and was left with his remaining holding of 2,75,948 shares. It is the petitioner's case that these have been illegally and unauthorisedly transferred to Respondents 2 & 3. Similarly 23,500 and 9,500 shares of Petitioners 2 & 3 respectively have also been illegally and unauthorisedly transferred to the aforesaid Respondents. The petitioners' grievance therefore relates to being divested of their total holding of 14.7% in Respondent no.1, a company Petitioner no.1 had nurtured and grown. It is submitted that till 2005, their equity was correctly reflected in the balance sheets and other statements filed with the office of the RoC. It was only when the disputes arose and they inspected the website of the RoC that they learnt from the Balance Sheet of 2006 that their shares had been transferred.

6. Vide the present petition, the petitioners have therefore prayed for rectification of the Respondent Company's Register to record them as the

✓

Registered owners of the shares as on 29.08.2005 and consequently strike off the names of Respondents 2 & 3 as the registered owners of the shares in question. The petitioners also pray that the subsequent Annual Returns filed by the Respondents showing transfer of their shares in favour of Respondents 2 & 3 be declared as null and void.

7. The Respondents in their counter affidavit have denied these allegations. According to them, while transferring the equity, control and management of Respondent No.1 Company, the petitioner had offered his shares as security to ensure that an immovable property of Respondent No.1 Company, being an industrial shed allotted to Respondent no.1 by HUDA in the Electronic City Haryana, referred to as the Hartron property would be transferred to M/s. Vishesh International in due course. As the transfer of the property could not be effected, in terms of the agreement dated 25.06.2002, the security offered was appropriated and transferred in favour of Respondents 2 and 3. It is also submitted that the shares were also offered to offset the losses incurred in an overseas company viz. Opentech Thai Network Specialist (OTNS) on account of the petitioner's default, in which Respondent no.1 held 7200 shares.

8. Though the point involved is limited, it has been confounded with confusion and has lingered on since 2010. It has been riddled with complexities bringing in arrangement with other entities. The short point for consideration is whether the respondents have rightly transferred the

L

shares and removed the names of the petitioners from the register of shareholders in respect of their remaining shares. Ld. Counsel for the petitioner has drawn the attention of this Bench to the balance sheet filed by the respondents for the financial year ending 2005. It reflects and records 2,75,948 shares held in the name of Petitioner no.1, and 23,500 and 9300 shares held in the name of Petitioners 2 & 3 respectively. Further, it is argued that this statement was filed by the respondents when admittedly Petitioner no.1 had relinquished all control in his company Respondent no.1 and had resigned as a director of the Respondent no.1 Company. However, the balance sheet of 2006 did not reflect the petitioners as the shareholders. This came to their knowledge in 2010. It is then that they realized that their shares had been illegally and unauthorisedly transferred, necessitating filing of the present petition.

9. The respondents deny the story of 8,19,652 of petitioner no.1 being swapped with shares of M/s. MPS Technosoft and subsequently resulting in allotment of shares in Vishesh. It is their contention that in such an event the certificates should have been split. It is their case that all the shares were given by way of security as the Hartron property was not transferred. The respondents rely upon agreement dated 25.06.2002 which provides for the period of the transfer of the property by 30.09.2005. Since the immovable asset of the respondent company was not



transferred, the security was duly appropriated and transferred to Respondents 2 & 3.

10. The petitioners deny that the shares were pledged with the respondents. The aforesaid property was in the name of Respondent no.1 company and Petitioner no.1 was no longer in charge of its affairs and therefore the personal stake of Petitioner no.1 and that of his wife and mother, Petitioners 2 & 3 could not be appropriated against the liability of the company. Under such circumstances, the manipulation in respect of the transfer of the shares and entries in the register of shareholders was effected fraudulently. Ld. Counsel for the petitioner has laid stress on the fact that the Respondent no.1 Company being the creation of Petitioner no.1, it was never his intention to divest himself completely of all equity in his venture. They had never sold conveyed, transferred or created any interest in favour of Respondents 2 & 3. It is further contended that the Annual Returns reflect the shares of Petitioner no.1 as 2,75,948 which in itself records the split of his holding.

11. Be that as it may, even assuming that the petitioner may have offered the shares as security, a fact vehemently disputed by them, the respondents did not give any notice to the petitioners to redeem the alleged security, but found it fit to appropriate the shares unto themselves.

12. The argument of the ld. Counsel for the petitioners merits consideration that in absence of compliance of the provisions of Section

CP No.15/111/2010

Sanjiv Bhavnani & Ors. V. M/s. Infotecnics India Ltd. & Ors.

Page 6 of 8

✓

108 of the Companies Act, 1956, no valid transfer could be effected. Ld. Counsel submits that there was neither a transfer deed executed, muchless witnessed nor any stamp fees paid to support a valid transfer.

The respondents admit that the provisions of Section 108 were not complied with.

13. There is no gainsaying that the provisions of Section 108 are mandatory to pass on a valid title. Assuming the respondent's case that the petitioner had offered these shares as security, it would have been prudent for them to have accepted the pledge of the shares accompanied by a duly executed transfer deed. The respondents' act of appropriating and transferring the alleged security without giving an opportunity to the petitioners to redeem their liability and without going through the legal process of appropriating the security has vitiated the entire transfer of shares with illegality.

14. Further there is no explanation as why the transfer of the immovable asset of Respondent No.1 Company could not be effected by those who took charge and control after petitioner no.1 relinquished his control and charge as the Director. Equally inexplicable is the transfer of the shares of Petitioners 2 & 3 without any authorization from their end and how they were liable to be deprived of the equity held in their personal names. The grievance of Mr. Peeyush Aggarwal and/or any other person in charge of the affairs of the Respondent Company for non compliance

CP No.15/111/2010

Sanjiv Bhavnani & Ors. V. M/s. Infotecnics India Ltd. & Ors.

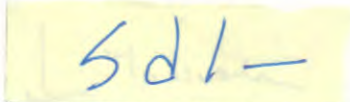
Page 7 of 8

under an agreement could have been enforced, if legally permissible, through specific performance but to transfer the shares, not only of Petitioner no.1, but also of Petitioners 2 & 3, was not in accordance with law. The fact that the shares have been transferred to Respondents 2 & 3, does not vest them with a valid title. The petitioners are therefore entitled to their equity in the Respondent no.1 Company i.e Petitioner no.1 to the extent of 2,75,948 shares, Petitioner no.2 to the extent of 23,500 shares and Petitioner no.3 to the extent of 9300 shares.

15. The respondent no.1 company is directed to rectify its Register of Shareholders and reflect the petitioners as registered owners of their aforesaid shares within the statutory period. Respondent No.1 Company shall also issue requisite share certificates to the petitioners for their respective holdings in accordance with the provisions of law.

16. The petitioners would also be entitled to any benefits that may have accrued on their aforesaid equity including dividends, bonus etc with effect from the date of filing of the petition till the rectification of the Register.

17. Petition stands allowed. No order as to costs.


(Ina Malhotra)
Member Judicial