

THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH, MUMBAI

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

Company Appeal No. 30 of 2014

CORAM:

M K SHRAWAT
MEMBER (JUDICIAL)

In the matter of Section 59 of the Companies Act, 2013

BETWEEN:

Mr. Kamlesh Kalidas Shah

... Petitioner

Versus

M/S Larsen & Toubro Ltd. and Ors.

... Respondents

PETITIONERS:

1. Mr. Kamlesh Kalidas Shah

RESPONDENTS

1. M/s Larsen & Toubro Ltd
2. Ultratech Cement Ltd.
3. Sharepro Services (India)
4. Mr. Ram Krishna Kapte

PRESENT ON BEHALF OF THE PARTIES:

1. Mr. A.A. Mali.- Advocate for Petitioners
i/b M/s Purohit & C

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Order

(Reserved on 15/9/2016)

(Delivered on 21/9/2016)

- 1) The Petition / Appeal had been filed U/s 59 of Companies Act 2013 (hereinafter referred as 'The Act ') seeking transmission of the share-in-dispute as also rectification of "Register of Members "of the Respondent No 1 viz. Larsen & Toubro.
- 2) Since inception of the proceedings no one appeared from the side of the Respondents, however, a written statement on behalf of the Respondent No. 1, 2, & 3 are on record and duly perused.
- 3) From the side of the Petitioner Ld. Advocate appeared who has placed reliance on the Petition filed and narrated the facts. Further in support of the claim as made in the Petition/ Appeal he has placed an order of C.L.B. passed U/s 111A of Companies Act 1956 dated 24.2.2016 pronounced in the Petitioner's own case titled as Mr. Kamlesh Kalidas Shah vs. M/s Larsen & Toubro Ltd. (C.P. No. 25 of 2013).
- 4) In the light of the above back ground the matter was heard as also the available record was considered.
- 5) Facts in brief, as emerged from the Petition, are as under: -
 - a) The claim as per the C.P. revolve around the transfer of 50 shares of R-1 along-with new shares issued of R-1 & R-2, stated to be due to demerger pursuant to the "Scheme of arrangement" dated 18/12/2003. The description of original 50 shares, claimed to have been purchased by the Petitioner from R-4, viz., Mr. Ram Krishna Kapte, is as under: -

No. of Shares	Distinctive No.	Certificate No.	Ledger Folio No.
20	077161699 To 077181718	2209839	03684130
10	131120594 To 131120603	3664693	03684130
20	158959294 To 158959313	4739418	03684130

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- b) Facts have further revealed that original 50 shares as detailed above, were purchased from R-4 Mr. Kapte through Ahmedabad Stock Exchange in the year 1994 by paying full consideration. As a consequence, the original shares certificates with the endorsement on the back side and duly signed 'Transfer Form' by R-4 were procured by the Petitioner.
- c) Thereafter, as a business activity, the Petitioner has sold the shares to Unit Trust of India through Bombay Stock Exchange Broker Mr. Samant M Dalal . Consequently, share certificates were forwarded for transfer to R-3 i.e. Sharepro Services (India) Pvt Ltd being Registrar & Transfer Agent of R-1 & R-2. But the share certificates were returned back under the objection of mis-match of signatures of R-4.
- d) Consequently, thereupon, the Petitioner had received back the share certificates. However, as per the laid down settlement procedure the Petitioner has paid back the consideration through Ahmedabad Stock Exchange.
- e) For the sake of completeness, one more allied fact is also to be mentioned that R-1 Company got demerged as per the 'Scheme of Arrangement' dated 18/12/2003, hence another company R-2 came into existence. The shareholders were accordingly offered equity shares of R-1 & R-2, need not to discuss further in detail the offer made by the said two companies to its shareholders. Those details are incorporated in the Petition, if needed, can be perused.
- f) The Petitioner had filed a Civil Suit on 21/06/2004 in the Civil Court at Ahmedabad (Civil Suit No 1709 of 2004) seeking injunction against R-1 & R-3 demanding not to prepare, issue and dispatch new certificate in the name of R-4. Injunction was granted vide order dated 28/7/2004 restraining R-1 & R-3, herein, not to prepare, issue and dispatch new share scripts to R-4 till the disposal of the suit. It is stated in the CP that the suit was pending for final disposal. It has also been stated that the said suit shall be withdrawn on disposal of this CP.
- g) Compilation consisted written statement / Reply of R-1, R-2, & R-3 placed on record. The fact that R-1 was demerged into Larsen & Toubro Ltd and Ultra Tech Cement Ltd. and on demerger issuance of new shares to the shareholders has been accepted. It has also been informed that on account of injunction granted in a Civil Suit the New Share Certificates were pulled out and not dispatched to R-4. Simultaneously in the Reply it has also been made clear that the Respondents Being Company has no vested interest in those shares. It has also been pointed out that being a neutral party, the Respondent Companies do not wish to contest or oppose the Petition under consideration.
- 6) In the light of the above factual matrix and the averments made in the petition it is proper to first consider the law applicable for the disposal of this C.P. In the present case the claim

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of the Petitioner is that although he had been a bonafide purchaser of the shares but the Companies have not recorded his name in the 'Register of Members'. The relevant provision of The Act is as under: -

Companies Act' 2013-Section 59: Rectification of Register of members.

- (1) If the name of any person is without sufficient cause, entered in the register of members of a company or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or cease to be a member, the person aggrieved or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal or to a competent court outside India specified by Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.*
 - (2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct the company to pay damages, if any, sustained by the party aggrieved.*
- 7) As per common knowledge the shares of a Public company are tradable and freely transferable. If the transfer or transmission is not incorporated in the 'Register of Members', then the person aggrieved has been granted a legal remedy in Sec. 59 of the The Act. In the circumstance if the name of any person is, without sufficient cause, delayed or refused in entering in the Register of Members may appeal to the Tribunal for rectification of the register. The Tribunal after being satisfied direct to register the transfer in the Register of Members. When once completed documents for transfer of shares have been lodged with the company the transferee becomes entitled to be registered, unless it is found that the claim is not bonafide. In a situation when the company has given a reason for non-transfer of shares in its register then the onus is on the transferee to rebut the objection. At this juncture it may not be unjustified to make an observation that the trivial issues, such as difference in signatures or improper adhesive stamps, can be resolved by the Company on its own on one hand and the transferee on the other hand, instead of litigating the trivial issue before the Court/ Tribunal.
- 8) In addition to what is expressed in the foregoing paragraph it is equally worth to clarify that otherwise there is no legal infirmity in a public company refusing to accept a transfer of shares where the signature of the transferee on the transfer form does not tally with the

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specimen signature in the records of the Company. But each case has to be viewed on its own facts, especially when the confrontation is depending upon the appreciation of facts of the matter. As far as this case is concerned, there is no allegation of any one that the claim of lodging of shares in question involves forgery, misrepresentation or manipulation. In this situation when prima facie the claim appears to be bonafide then the genuineness can be accepted on the face of it.

- 9) Another important fact is that the transferor Mr. Ram Krishna Kapte has not at any stage challenged the claim of the Petitioner or the correctness of the impugned Transfer Form, claimed to have been signed by the said transferee. Earlier this matter was not only before the C.L.B but also contested before the Civil Court and on both the occasions the Transferee had been made the party by due service of notice, still he had never responded what to say about raising any objection. Law in general otherwise also accept this doctrine that silence is a tacit acceptance.
- 10) As a result, under the totality of the facts and circumstances on due consideration of the evidences on record as also in the light of the foregoing discussions, I am of the conscientious view that the petition deserves to be allowed. Direction is as follows: -

Order

- A) Respondent No 1 and Respondent No. 2 are directed to transfer the impugned 50 shares, details whereof given supra, so far in the name of Respondent No. 4 in favour of the Petitioner. The transfer in the 'Register of Members' can be incorporated subject to furnishing of Indemnity Bond by the Petitioner to the satisfaction of the Respondent No.1 & 2. The Respondents are also free to ask the petitioner to give an undertaking against any future loss or any other document required to be executed with respect to such recording of transfer. The register so prescribed shall be corrected by the respondents within the time prescribed after due service of this order. The Respondents No1 &2 shall also grant consequential benefits accrued on the impugned shares, stated to be on account of demerger, during the pendency of the suit/claim.
- B) No order as to cost. Petition stands disposed. Let copy of order be circulated to the concerned.

sd/-

Dated: 21/09/2016

Shri M.K. Shrawat
Member (Judicial)