

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CA No.17/58,59/2016

Under Section 58, 59 of the
Companies Act, 2013 and Section
111(A)2 of Companies Act, 1956.

In the matter of

Manendra Lal Gupta
C/o Universal Finance Trades
119/4B, Mahavir Bhavan
Satna - 485 001
Madhya Pradesh

... Petitioner

Vs.

Lupin Limited ... Respondent 1

Mrs. Shantaben Ratilal
Ramani ... Respondent 2

Mr. Satish Ratilal Ramani
... Respondent 3

Ms. Shobha Kapoor ... Respondent 4

Mr. Chandrakanth
Pathak D. ... Respondent 5

Blue Sky Express ... Respondent 6

Order delivered on: 05.02.2018

Coram:

Hon'ble Mr. B.S.V. Prakash Kumar, Member (J)
Hon'ble Mr. V. Nallasenapathy, Member (T)

For the Petitioner: Mr. Rajesh Gaikwad

For the Respondent: Mr. P. S. Gupchup, Practising Company Secretary
Mr. Sunny Shah, Advocate

Per V Nallasenapathy, Member (Technical)

ORDER

1. The Petitioner filed this company Appeal under sections 58/59 of the Companies Act, 2013 for the following reliefs:

(a) Declaration that the Petitioner is the bonafide purchaser and owner in respect of share Certificate No.22985 bearing distinctive No.20301361 to 20301460 (100 shares).

- (b) To direct R1 to transfer the shares in the name of the Petitioner and also all Corporate benefits in the form of Rights, Bonus, Splits and Dividends solely in the name of the Petitioner and not in favour of R2 to R5 or to any other persons.
2. The Petitioner says that he had purchased 100 shares of R1 from Mr. Ajay Gupta for ₹11,575, vide delivery challan No.999, dated 11.8.1997 and Settlement Note dated 28.7.1997. The delivery challan enclosed to the Petition reveals that the impugned shares bears distinctive Nos.0020301361 to 460, certificate No.22985 and folio No.LLS43977. The Settlement Note dated 28.7.1997 issued by Mr. Ajay Gupta also reveals that the impugned shares were sold by him to the Petitioner for ₹11,575.
 3. The petitioner states that the shares were forwarded to Mr. Ajay Gupta on 4.8.1997 through R6 Courier but claims that the shares never reached Mr. Ajay Gupta, consequently the Petitioner lodged a complaint on 22.8.1997 to Investor's Service Cell of Stock Exchange, Bombay and also filed a police complaint on 9.8.1997 with police station at Omti, Jabalpur.
 4. The Petitioner states that he sent complaints dated 8.8.1997, 30.9.1997 and 27.2.1998 to the office of Universal Finance Traders complaining the loss of packets containing shares. The Petitioner further says that Mr. Ajay Gupta vide his letter dated 12.8.1997 and his personal visit to the office of R1 intimated that share certificates have been lost/misplaced from his custody and requested to stop transfer of shares. He added that R1 company by letters dated 19.8.1997 and 14.11.1997 advised the petitioner to approach a Court of Competent Jurisdiction to obtain prohibitory order to restrain R1 from making any transfer of the impugned shares.
 5. The Petition reveals that on 14.1.1998, R1 company received a share transfer request from R3 and R4 (actually R2 and R3 but wrongly given as R3 and R4), the same was declined by R1, since the signature of the transferor on the transfer deed does not match with the specimen signature of the transferor and R1 company promptly returned the original share certificate without effecting the transfer.

6. The petitioner filed civil suit No.17A of 1998 on the file of City Civil Court, Satna, Madhya Pradesh, wherein on 6.2.1998 an injunction restraining R1 from transferring the share was granted.
7. The petitioner further states on 29.1.2015 the suit was dismissed with an observation that under Section 84 of the Companies Act, 1956 the Registrar of Companies have power to take appropriate decision in this matter.
8. Then the Petitioner filed this Company Appeal. Respondents 1 and 5 filed their replies. Respondents 2 to 4 and Respondent 6 neither appeared nor filed any reply, hence they are set exparte.

Reply of Respondent 5.

9. R5 states as below:

- (a) He has not transferred the shares to any person at any point of time, hence Petitioner could not have purchased the shares from Mr. Ajay Gupta and the said Ajay Gupta was not made as a party to the proceedings and hence the appeal is not maintainable for non-joinder of necessary parties.
- (b) The settlement note dated 28.7.1997 merely refers 100 shares of Lupin Laboratories Ltd, bereft of any details such as certificate number, folio number, etc.
- (c) The Courier Receipt dated 4.8.1997 merely shows that the Petitioner sent some document to Mr. Ajay Gupta by courier, it is surprising, as to from where the Petitioner got possession of share certificate and why the petitioner was sending back the share certificate to Mr. Ajay Gupta after allegedly purchased the shares from him.
- (d) The Petitioner's letter dated 8.8.1997 to Mr. Ajay Gupta refers to lost share certificate of different companies and the lost shares of R1's details such as Folio number, etc. were wrongly mentioned, hence lost share certificate is not related to the impugned shares, hence the entire claim is false.
- (e) The petitioner got the shares by delivery challan dated 11.8.1997 whereas the Petitioner claims to have sent the shares to Mr. Ajay

Gupta on 4.8.1997 which were lost by courier, hence the claim is devoid of merit.

- (f) The impugned shares were purchased by him in 1995 and transferred in his name but at the time of delivery of original share certificate has lost/misplaced by courier, lodged a police complain on 16.5.2016 and 23.5.2016 with Karkala Rural Police Station, Karkala - 574104, a request was made to R1 on 10.6.2016 to issue duplicate share certificate and received a reply from R1 on 24.6.2016 regarding the shares.
- (g) He was not made as a party to the proceedings before City Civil Court, Satana, Madhya Pradesh.
- (h) R1, on refusal of request for transfer by R4 due to mismatch of signature of transferor instead of sending back the original shares to R4, should have intimated it to him in whose name the shares are presently held.

Reply of R1

10. The reply of R1 reveals the following:

- (a) The impugned shares are held in R5's name.
- (b) A transfer request for 100 shares, certificate no.22985, was made by R2 and R3 and the same was returned with an endorsement that the signature of R5 in the transfer form does not tally with the specimen signature. The transfer request made by R4 is also returned for the same reason.
- (c) The dismissal of Suit No.19A/14 on 29.1.2015 on the file of 4th Civil Judge (Class II), City Civil Court, Satna on the ground that the said Court does not have jurisdiction.
- (d) The Petitioner was advised by a letter dated 17.3.2015 to approach ROC, Mumbai to file their application to obtain appropriate orders for transfer of shares in his favour.
- (e) It is for the Tribunal to decide whether the impugned shares can be directly transferred to the Petitioner.

Rejoinder of Petitioner to R5's reply

11. The following is the Rejoinder of Petitioner to R5's reply:

- a. The folio number 000414847 maintained by R5 is wrong and the correct one is LLS043977.
- b. R5's name continues to appear in the Register of Members of R1. R5 has to prove that he is the lawful owner of impugned shares and neither the Petitioner nor R2 to R4 have any right over the impugned shares.
- c. The delivery challan no.999 dated 11.8.1997 and settlement note dated 28.7.1997 establishes the purchase of shares by him from Shri Ajay Gupta.
- d. R5, after sending the shares to R1 for transfer in his favour in the year 1996, kept quiet until receipt of this petition in 2016, regarding the non-receipt of share certificates back to him from R1, hence R5 has to blame himself for inaction. However, the petitioner filed civil suit in City Civil Court, Satna.

Reply of R1 for the reply filed by R5.

12. The following is the reply of R1 to R5's reply:

- a. R5's name continued to appear in the Register of R1.
- b. R1 has not denied the entitlement to get duplicate share certificate by R5.
- c. R1 returned the share certificates along with transfer deed to R2 and R3, since the signature of the transferor differs from the specimen signature available with R1.
- d. R1 is not concerned with the non-inclusion of R5 as Respondent in the Civil Suit filed by the Petitioner before the City Civil Court, Satna.
- e. R5 did not enquire with R1 about the non-receipt of share certificates for 20 years and his contention that he was kept in dark about the development relating to the impugned shares is baseless.

Discussion:

13. The Petitioner initially in his appeal stated that he had purchased 100 shares of R1 from Ajay Gupta vide Settlement Note (bill) dated 28.7.1997, the same was forwarded to him by a delivery challan dated 11.8.1997 and the petitioner forwarded the shares back to Mr. Ajay Gupta on 4.8.1997. This Bench during the hearing, asked the Petitioner who was present, how could the shares delivered to him by Mr. Ajay Gupta on 11.8.1997 be sent back to Mr. Ajay Gupta on 4.8.1997? To which he told that actually the date in the delivery challan was inadvertently and wrongly noted as 11.8.1997 instead of 27.7.1997. Subsequently on 14.9.2017 he filed an affidavit explaining the same and enclosing the original settlement note dated 28.7.1997 and the delivery challan dated 11.8.1997, which he claims was wrongly dated as 11.8.1997 instead of 27.7.1997. In this changed situation also when the settlement note was dated 28.7.1997, how this settlement note dated 28.7.1997 can be sent by a delivery challan dt 27.7.1997, which is again improbable because the delivery challan could not have been issued prior to the date of sale. The petitioner is trying to put the horse behind the cart.

14. The Petitioner says that he sent back the shares on 4.8.1997 to Mr. Ajay Gupta and it was lost but it is not explained why it was sent back to him. There is no occasion to send the shares back to Mr. Ajay Gupta.

15. The documents reveal that he is an investor in shares and it is not his case that the shares were sent to Mr. Ajay Gupta for onward transmission to the company for lodging it for registration of transfer.

16. Further, the petitioner says that he sent a complaint initially on 8.8.1997 itself to the office of Universal Finance Traders complaining the loss of packet containing the shares. When the shares were dispatched to Mr. Ajay Gupta on 4.8.1997 only, how come the Petitioner could give a complaint of loss of shares on 8.8.1997. The police complaint was given on 9.8.1997? Nothing is there on record to support that the petitioner was informed by Mr. Ajay Gupta that he has not received the parcel containing the share certificates sent by the petitioner.

17. The petitioner filed a civil suit on the file of 4th City Civil Court, Satna but R5 contended that he was not made as a party to proceedings in the Civil Suit, which was finally dismissed. R5 is the holder of impugned shares but not made as a party in the said civil suit, however, made as a party in this appeal filed on 7.4.2016.
18. In view of this, the petitioner failed to initiate any proceeding against R5 till filing of this appeal even though the impugned shares were purchased by him on 28.7.1997. The Petitioner being a regular investor knowing that the shares were in the name of R5, failed to make him as a party in the Civil Court proceedings.
19. Further, there was no proceeding initiated by the petitioner against R5 till 7.4.2016. There is an in-ordinate delay of around 19 years.
20. Further Mr. Ajay Gupta, who sent the transfer deed and share certificates, to whom the parcel containing the share certificates and transfer deed sent by courier was lost, is not made as a party to this proceeding. This appeal also fails for non-joinder of parties.
21. Section 58(4) of the Companies Act 2013 provides that if a public company refuses to register the transfer of shares without sufficient cause within a period of 30 days from the date on which the instrument of transfer was delivered to the company, the Transferee shall file an appeal within a period of 60 days from the date of refusal or within a period of 90 days where no intimation has been received from the company.
22. Section 59(1) of the Companies Act, 2013 provides that if the name of any person is without sufficient cause entered in the Register of Members 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 ceased to become 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.
23. The reading of the above provisions based on which this Petition is filed, clearly shows that the relief claimed does not fall under either of the provisions. The case of the Petitioner as discussed above, is crystal

clear that the original share certificate along with transfer deed was never lodged with R1 by the Petitioner, which is a pre-requisite to invoke the provisions of Section 58(4). Similarly, it is not the case of the Petitioner, that somebody else name is entered in the share Register maintained by R1 without sufficient cause or having entered the name of the Petitioner in the Share Register his name was removed without sufficient cause, so as to fall within the provisions of Section 59(1). However, this is clean case of dispute relating to the ownership of shares and only a Civil Court can decide the issue.

24.R5, the present owner of the shares seriously disputes the claim of the petitioner. Further already transfer documents were lodged by R2 and R3 and thereafter by R4, to R1, for transfer of shares, which was declined by R1.

25.Even though the Civil Court, Satna dismissed the suit filed by the petitioner stating that the petitioner has to approach only Registrar of Companies u/S 84 of the Companies Act, 1956, this Bench is of the view that since this is a claim in respect of title of shares, the right forum is the Civil Court as held in *Indian Bank Vs. Deepak Fertilisers & Petro Chemicals Corporation Ltd. (1999) 35 CLA 389*.

26.A Division Bench of Hon'ble High Court of Karnataka in the case of *K. Ravinder Reddy vs. Alliance Business School (2016) 72 173 SCL 314* held that if the question of title in whose favour the shares ought to be transferred adjudication power under Section 58 is not available to the Tribunal or CLB and the same was affirmed by the Hon'ble Apex Court in its order dated 10.3.2017.

27.The Hon'ble Apex Court in the case of *Jain Mahals Hotels Pvt. Ltd. Vs. Devraj Singh (2016) 1 SCC 423*, held that a seriously disputed question of title could be left to be decided by the Civil Court.

28.In view of the above discussion, the appeal is dismissed without costs, giving liberty to the petitioner to approach the Civil Court by excluding the period from the date of filing of this appeal, i.e. 7.4.2016 to till

date
Sd/-
V. NALLASENAPATHY
Member (Technical)

Sd/-
B.S.V. PRAKASH KUMAR
Member (Judicial)