

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

T. Co. Appeal No. 22 of 2016

Under Section 58 & 59 of the CA, 2013

In the matter of

Smt. Usha Goyal	Petitioner No.1
Dr. Govind Goyal ...	Petitioner No.2

Vs.

Lupin Ltd.
Kalpataru Inspire
3rd Floor,
Off. Western Express
Highway
Santacruz (E),
Mumbai – 400 055 ...Respondent No.1.

Shri. Balkisan S. Chandak
Khaparde Garden,
Amravati - 444601
Maharashtra ...Respondent No.2

Order delivered on 15.01.2018

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

For the Petitioners: A. M. Bhat, Practising Company Secretary
A/w Riddhi M. Patel Practising Company Secretary

For the Respondents: P. S. Gupchup for R1
None present for R2

Per V. Nallasenapathy, Member (Technical)

ORDER

1. This Company Petition is filed by P1 stating that he is the owner of 100 equity shares of R1, along with P2, who claims that he is the power of attorney holder of P1, without enclosing the power of attorney,

praying for following reliefs under Section 58 and 59 of the Companies Act, 2013.

- a. Declaration that P1 is the owner of impugned 100 shares of R1.*
 - b. Declaration that P1 has absolute title over the impugned shares.*
 - c. Direction to R1 to rectify its Register of members by inserting the details of 1200 shares of R1.*
 - d. Direction to R1 to issue/release share certificates for 1200 shares of R1;
and*
 - e. For any other relief as the Tribunal may deem fit and proper.*
2. P1 is the owner of 100 shares of R1 bearing certificate no.51091 under folio No. LLS 038501 (the Petitioner has given the wrong Certificate No. and Folio No. whereas the correct Certificate No. is 52885 under Folio No. LLS 038652 as stated in the reply of R1) which is in the safe custody of P2, a medical Doctor. On 28.1.1996, P2 during his professional visit to a patient, carrying some original share certificates along with signed blank transfer forms including those of impugned in this petition, for discussion with this banker for availing bank finance by pledging them, lost them in his way. Since his search for the lost items in his home, nursing home and the place he travelled went in futile, he lodged a complaint on 26.3.1996 with Bhanwarkuna Police Station, Indore and FIR was registered.
3. P2 also informed R1 on 26.3.1996 about the loss of share certificates along with signed blank transfer forms. On 1.4.1996, R1 informed P2 to obtain an injunction order from appropriate authorities for enabling R1 to stop transfer of shares in case someone submits the impugned shares for transfer.

4. The Petitioners along with other family members whose share certificates and transfer deed were lost by P2, filed a civil suit (OA 96 of 1996) against R1 on the file of XII Additional District Court, Indore for issue of duplicate share certificates and for injunction not to transfer the impugned shares. The said suit was dismissed on 8.5.1996 on the ground that Civil Court has no jurisdiction. First Appeal No.109/1996 filed by the Petitioner before High Court of Madhya Pradesh Bench at Indore was also dismissed on 11.5.2011 with an observation that the plaintiffs have efficacious remedy to file necessary application before Registrar of Companies under Section 84 of the Companies Act, 1956.
5. Over a period of time in the correspondence the petitioner had with R1 Company, on 15.7.1996 itself, R1 informed P1 regarding the receipt of impugned shares along with transfer deed by them for effecting transfer. However, since the appeal was pending in the High Court and there being an injunction order not to transfer the impugned shares, R1 had not transferred the shares.
6. After the dismissal of appeal on 11.5.2011, the Petitioner filed this Petition before the erstwhile CLB on 3.5.2016.
7. R1 filed its reply on 13.12.2016, whereas R2 remained exparte in this proceedings.
8. R1 contended that the petition is not maintainable under Section 58 and 59 of the Companies Act, 2013; stating that it is true P1 is the registered holder of impugned shares; for P1 being the registered shareholder, on 2.10.1996, R1 sent a letter to the Hon'ble High Court of Madhya Pradesh Bench of Indore with a copy to P2, stating that share certificate No.23694 for 100 shares of R1 was lodged for transfer in favour of R2, but transfer has not been effected in view of the matter being subjudice. For the status quo be maintained until otherwise ordered by the Hon'ble High Court; R1 turned down the request for issue of duplicate share certificate demanded by the

Petitioner and his Counsel on the strength of injunction order passed by the Hon'ble High Court of Madhya Pradesh, Bench of Indore, because that the injunction is only for not to transfer the shares; and the issue raised by the petitioners not being decided, R submits that basing on the facts on record, the Petition shall be dismissed.

9. The Petitioner filed this Petition under Section 58 and 59 of the Companies Act, 2013. Section 58 (4) provides that *"If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal"*. Section 59 (1) provides that *"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 there from, 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 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 the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register"*.

10. The Section of law under which the petition is filed and the reliefs sought are totally different. The reliefs sought as stated in supra will not fall within the ambit of Section 58 or 59 as claimed by the Petitioner.

11. At the most, the relief of rectification of Register of members by inserting 1200 shares of R1 is related to Section 59. In view of the fact

R2 already submitted the transfer deeds in respect of original 100 shares, unless the title in respect of those shares are decided one way or other, this relief also cannot be extended/granted at this stage.

12. The P2 herein has filed CP Nos.20 of 2016; 21 of 2016; 23 of 2016 apart from this CP, relating to 400 shares of R1 company, on the same facts. The Respondent 2 in CP No.20 of 2016 has stated in the counter Affidavit that on 12.1.2016 Flora securities filed a suit before the Hon'ble XX Civil Judge, Class 2 Indore against the Respondents therein in respect of the 400 Shares of R1 impugned in these Four Company Petitions.
13. The proper course of action for the Petitioner is to file a Civil suit before appropriate forum, for establishing their title as held in the case of *Indian Bank Vs. Deepak Fertilisers & Petro Chemicals Corporation Ltd.* (1999) 35 CLA 389.
14. 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 the adjudication powers for deciding the question of title in whose favour the shares ought to be transferred is not available u/s. 58 of the Act.
15. 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.
16. Because of the mere fact that R2 remained exparte before this Tribunal, despite the fact that the jurisdiction to deal with the issue lies elsewhere, this Tribunal cannot not usurp the jurisdiction and pass orders. It is to be noted that R2 was not made as a party in the Civil Suit filed by the Petitioners even though as early as on 2.10.1996 R1 informed the Petitioners that impugned shares were lodged for

transfer. The fact that R2 already lodged the transfer deed along with original share certificate to R1 cannot be brushed aside by this Bench.

17. In view of the above discussion, the appeal is dismissed without costs, giving liberty to the petitioner to approach jurisdictional Civil Court by excluding the period from the date of filing of this appeal, i.e. 3.5.2016 to till date.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)