

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

**I.A. 10/2016**

**IN**

**T.P.NO. 96/2016**

***PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL  
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL***

**IN THE MATTER OF THE COMPANIES ACT, 1956  
UNDER SECTION 235, 397/398 OF THE COMPANIES ACT, 1956  
AND UNDER SECTION 58 & 59 OF THE COMPANIES ACT, 2013.  
AND**

**IN THE MATTER OF AHAMED NIZAR MOIDEEN KUNHI KUNHIMAHIN  
Vs  
M/s VINTAGE HOTELS PRIVATE LIMITED**

**PARTIES PRESENTED:**

- 1) Sri B.T.Prasanna Kumar, Counsel the Petitioner.
- 2) Sri K.V. Sathish, Counsel for Respt. 1 & 2

**ORDER**

The Petitioner filed Company Petition CP 1/2016 under section 111 of the Companies Act, 1956 under Section 58 of the Companies Act, 2013 read with section 44 of the Company Law Tribunal Regulations. Along with company petition the petitioner filed separate application under Regulations 44 of the Company Law Board Regulations and under section 5 of Limitation Act with a prayer to condone the delay of 152 days in filing Company Petition. The Company petition is renumbered as T.P No. 96/16.

The contents of the Affidavit filed in support of the petition that:-

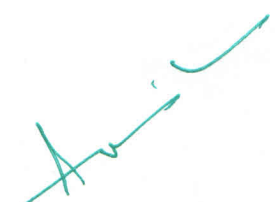

The petitioner had purchased 20,000 Equity shares of the 1<sup>st</sup> Respondent company from one Mr. Shahul Hameed on 10/04/2015, for a sum of Rs. 39,15,000/-. Again he purchased 12,500 Equity Shares of 1<sup>st</sup> Respondent Company from one Mr. PA Ibrahim Haji on 30/06/2015 for a sum of Rs 24,46,875/-. It is further averred in the affidavit that petitioner lodged the request with 1<sup>st</sup> Respondent Company on 13/08/2015 seeking transfer of above mentioned shares in his name and also to make necessary changes in the Registers and

records. The Respondent did not give reply nor affect transfer. He again issued reminders on 15/09/2015 and 29/10/2015 to the 1<sup>st</sup> Respondent Company to accept his request for transfer of shares, but there is no response. On the other hand he received a letter from the Company on 30/10/2015 by confirming that the request was received from him for transfer of shares, but company refused to accept the said transfer of shares request. On the other hand, he tried to convince the Directors/Members of the Board including Managing Director, the 2<sup>nd</sup> Respondent herein that he was entitled for transfer of shares in his name. He was informed orally that his request would be considered. Again he addressed letters on 19/11/2015 and 18/03/2016 to the Respondents to consider his request for transfer of shares. He was informed that an Appeal to be filed within 30 days from the date of refusal as per provisions of section 58(3) of the Companies Act, 2013.

It is stated in the affidavit that, since Members/Directors and Managing Director are his close relatives and he approached them personally and on their advice he represent the share transfer request. He was under impression that his request would be considered. The 2<sup>nd</sup> Respondent is no other than his mother. He invested a sum of Rs 63,61,875/- for purchasing 32,500 shares. Ultimately he filed an Appeal to the Tribunal with a delay of 152 days. Hence, he prayed to condone the delay.

Petitioner filed IA 05/2016 to amend petition by including Section 05 of Limitation Act under which the present petition is filed to condoned delay. The said petition was allowed.

Respondent filed detailed objections denying all the allegations in the affidavit filed in support of the petition. It is averred that Respondents are not aware that petitioner purchased 32,500 shares from Mr. Shahul Hammed and PA Ibrahim Haji. Only letter dated 15/09/2015 was received by the Company and letter dated 13/08/2015 was not received. No doubt company addressed a letter dated 30/10/2015 to the petitioner informing the grounds of rejection of transfer of shares. The petitioner has not approached the Tribunal with cleans hand. He





never approached Members of the Board and Managing Director nor did they give any verbal assurance. The alleged letters dated 19/11/2015 and 18/03/2016 alleged to have address to the respondents is denied. The petitioner failed to explain each days delay. No satisfactory explanation is given for condoning delay. Petition is liable to be dismissed.

Counsel for Petitioner relied on the following rulings in support of his contention.

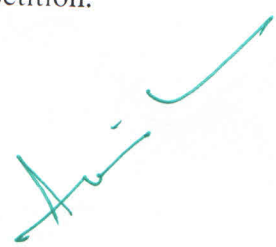

- 1) Case No. Civil Appeals Nos. 856 of 1974, 857 of 1974  
G.Ramegowda, Major & Others Versus Special Land Acquisition Officer.
- 2) The petitioner relied on the decision of Company Law Board Equivalent Citations: 1999 96 CompCas 555 CLB  
V.K.Gupta And Ors. Vs Auto Lamps Ltd., And Ors. On 12/02/1999.

Heard the counsel for petitioner and counsel for respondents. The point for consideration whether petitioner is able to establish sufficient cause for the condonation of delay in filing company petition?

The case of petitioner is that, he purchased shares totaling 32,500 of 1<sup>st</sup> Respondent Company from Mr. Hameed and PA Ibrahim Haji. The contention of Petitioner is that, he lodged request with the 1<sup>st</sup> Respondent Company on 13/08/2015. It is also his contention that Company did not respond. Again he issued reminders on 15/09/2015 and on 29/10/2015.

According to petitioner after lodging request with the company he allegedly issued 2 reminder letters. There is a controversy with regard to the alleged letters addressed to the company. However, company admitted giving reply to the request letter for transfer of shares.

It is an undisputed fact that company addressed a letter which was received by petitioner on 30/10/2015, informing him the ground for rejecting request for transfer of shares. Thus company refused to transfer the shares and same was communicated to the petitioner on 30/10/2015. The petitioner relied on the said letter which is referred as Annexure-P7 in the main petition.

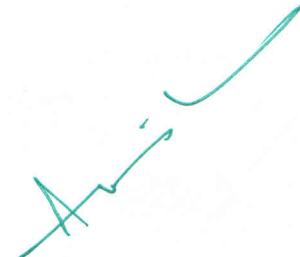



It is the contention of the petitioner after receiving letter from the company rejecting transfer of shares, he tried to convince his mother the Managing Director and other Members/Directors of the Board. It is his contention that, he resubmitted the request with the company for transfer of shares. However, Respondents denied that petitioner approached the Managing Director and other Directors in connection with registration of transfer of shares. There is close relationship between petitioner and Managing Director and other Board Members. The contention of the petitioner is that, he purchased the shares totalling 32,500 by investing Rs. 63,61,875/-. The contention of the learned counsel is that, there is no deliberate and willful default on the part of the petitioner. The counsel contended the delay occurred as petitioner was under impression that his request for transfer of shares would be acceded, otherwise there was no need for the petitioner to wait. The Counsel contended that, the 2<sup>nd</sup> Respondent is none other than the mother of petitioner who is Managing Director of the Company. So petitioner was under the hope that his request for transfer of shares will be considered. Thus delay was occurred in filing appeal. On the other hand, learned counsel for petitioner denied all the allegations made by the Petitioner. Learned Counsel contended the allegations are invented to overcome the delay. There is no material that petitioner approached Respondent on or after 30/09/2015. Learned Counsel contended delay is not properly explained and petition to be dismissed.

The petitioner relied on the decision of Company Law Board Equivalent Citations: 1999 96 CompCas 555 CLB

V.K.Gupta And Ors. Vs Auto Lamps Ltd., And Ors. On 12/02/1999.

Wherein the Company Law Board basing the facts and circumstances of the case came to conclusion that, there is no gross negligence or deliberate inaction or want of bona fides that could be imputable to the Appellant in approaching the Company Law Board belatedly.





Further it was observed as long as there is no gross negligence or deliberate inaction the delay can be condoned.

Learned Counsel for petitioner also relied on decision of the Apex Court – reported in CDJ 1988 SC 409

Case No. Civil Appeals Nos. 856 of 1974, 857 of 1974

G.Ramegowda, Major & Others Versus Special Land Acquisition Officer

For the proposition when substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

Apex Court further held the expression ‘sufficient cause’ in Section 5 of Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.

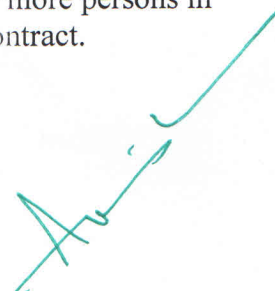
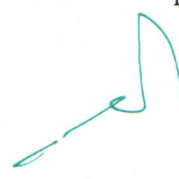
There is no dispute on the delay to be condoned is 152 days.

Section 58 (1) of the Companies Act, 2013 reads as follows:

“(1) if a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable.

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.



(3) the transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case maybe, was delivered to the company”.

Thus the appeal to the Tribunal lies within 30 days from the date of refusal. Accordingly to the Petitioners there was delay of 152 days in filing the petition/Appeal. Section 433 of the Companies Act, 2013 provides for application of provisions of limitation Act. Therefore, section 5 of Limitation Act is applicable. After going through the record, we are of the view the delay can be condoned.

In the circumstances, the petitioner is able to show sufficient cause for the delay. Therefore, the delay can be condoned. In the result petition is allowed and delay is condoned.

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

  
(ASITOK KUMAR MISHRA)  
MEMBER, TECHNICAL

DATED THIS THE 30<sup>th</sup> DAY OF SEPTEMBER 2016