

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH,  
MUMBAI

**Transfer Company Appeal No. 02/2014**

**CORAM:** B. S. V. Prakash Kumar, Member Judicial  
& V. Nallasenapathy, Member Technical

In the matter of Section 111A of the Companies Act 1956 and under  
Sections 58, 59 of the Companies Act, 2013.

Between

Mr. Sudhirkumar Gupta

..... Appellant

Versus

M/s. Visagar Polytex Ltd.

.... Respondent

**Present on behalf of the parties:**

1. Mr. Chirag Balsara, Advocate for the Appellant.
2. Dr. S.K. Jain, Practising Company Secretary for the Respondent.

**ORDER**

*(Heard on 10.11.2016)*

*(Dismissed on 29.11.2016)*

The Appellant filed this Company Appeal u/s. 58, 59 of the Companies Act, 2013, against the Respondent Company for directions to the company.

- a. that 9000 shares on Folio No. 786 & 788 showing in the name of Mr Madan Mohan Tekriwala and Mr Dwaraka Prasad Tekriwala as the members be registered in the name of the Appellant and to issue fresh share certificates basing on the reduction in the face value of the shares effected by the Company;
- b. that the company hand over the Appellant original share certificates and the dividend so far accrued over the shares any time after the date of transfer.

2. The case of the Appellants in brief is that this Appellant submitted vide letter dated 13.9.2013 to the Transfer Agent of the Company to register transfer of 9000 shares of the company in the name of the Appellant by annexing share transfer forms and Share Certificates reflecting Mr. Madan Mohan Tekriwala and Mr. Dwaraka Prasad Tekriwala executing Share Transfer Forms in favour of the Appellant. He said that the Share Transfer Forms are duly revalidated on 12.9.2013 by payment of fees to the Ministry of Corporate Affairs. The Share Transfer Forms were lodged for registration and duly received by the Transfer Agent, namely M/s. Adroit Corporate Services Pvt. Ltd. (in short "Adroit"). To which Adroit replied on 24.9.2013 informing the Appellant that the names Madan Mohan Tekriwala and Dwaraka Prasad Tekriwala do not appear in the data maintained by them showing them as registered Shareholder, in fact the record showing different names appearing against the said shares with the Folio No.788 and 786. On receipt of the said letter, the Appellant sought back to the transfer Agent stating that Adroit had verified its own record and duty bound to rectify the registers by showing the names with the Transferor and then the names of the Appellant in place of the above Tekriwalas. The Appellant further submits that as the original Share Certificates were admittedly tendered by the Appellant, the onus and burden lies upon the company not upon the Appellant. Therefore, the Appellant submitted a detailed submission to the Adroit on 16.10.2013. For the Company failed to register the shares in the name of the Appellant within two months from the date of lodgement, the Appellant called this Company Appeal seeking the reliefs as mentioned above. Since

the company has restructured its Share Capital making the face value of each share at ₹1, the Appellant is entitled for issue of Share Certificate for split shares and dividend accrued upon these shares from the date transferor transferred these shares to the Appellant.

3. The Respondent filed its reply stating that the present Appeal has been filed almost at the lapse of 20 years after alleged execution of Transfer Deed and the Appeal is hit by delay and lapses. Since the present Appeal entailed the disputed question of fact, this require adjudication by a Civil Court not before this Bench which originally decides the disputes basing on the Affidavit filed by either side. For these shares have already been dematerialized, and there being in circulation, section 111A will not have any jurisdiction to decide the issues in relation to the shares already dematerialized.

4. On perusal of this Company Appeal it is a fact that these Transferors from whom this Appellant allegedly claiming title are not being shown as registered Shareholders, that there being a fact, to prove that to these Transferors transferred valid title to the Appellant, these two Tekriwalas should have been made as parties to the proceeding but the Appellant has not done so. Likewise, since the Appellant made correspondence with Adroit for registration of these shares, this Appellant should have made the Transfer Agent as party to the proceedings for the cause of action for filing this Appeal triggered for the Transfer Agent failed to register these shares in the name of the Appellant. Therefore, this Appeal is liable to be dismissed for non-joinder of necessary parties. The Company further submits this Appeal is liable to be dismissed for the so-called Transfer Form filed by the Appellant is not reflecting date of acquisition of these 9000

shares by the Appellant, not disclosing delivery of these Transfer Forms by the broker to the Appellant. No contract notes or bill of the Broker has been given in this Company Appeal. There is no proof regarding the payment allegedly made by the Appellant to Madan Mohan Tekriwala and Dwaraka Prasad Tekriwala. As to revalidation of Share Transfer Forms, the Appellant has deliberately not annexed Form 7C but whereas Form 7C and the listed Share Certificates and Folio Number in the other Company Appeal i.e. TCP 4 of 2012 reflects that these shares as lying in the name of their deceased father and the Appellant and also deceased father and his brother giving an impression that these shares were transferred in the name of their father and the Appellant, not solely in the name of the Appellant. The company further submits that it has already sent fresh Share Certificates with the face value of the shares of ₹1 each to the shareholders whose names appear on the Register of Members on the record date when the Company has restructured its share capital by changing the face of value of the shares from ₹10 each to ₹1 each hence the question issuing fresh shares to the Appellant does not arise. It is also further submitted that the company has been dispatching dividend warrant to the shareholders/ beneficial owners whose names appearing in the Register of Members or to the beneficial members or in case of demat shares. Hence the Appeal is liable to dismiss with exemplary costs.

5. The Appellant filed a rejoinder submitting that the purpose of the remedy provided u/s.58 & 59 of the Act, 2013 is to provide an efficacious and a speedy remedy to a transferee who is aggrieved by the denial and/or delay on the part of a company in transferring

shares in its favour. For the company has not refused to the fact that the Appellant lodging transfer form and Share Certificates with its Transfer Agent, it is to be deemed that the claim of the Appellant is in compliance of their rules, therefore, the Appellant is entitled to get the shares registered in the place of the Transferor against the impugned shares. The Appellant assailed the company stating that the company should not ask for contract notes, bill of broker, mode of payment as they are not prescribed anywhere under law. The Appellant submits that the limitation point raised by the company is devoid of any merit for these share transfer deeds were revalidated on 12.9.2013 since the claim has been made within one month from the date of revalidation, it is for all purposes has to be considered as it has filed within the prescribed period. As to the pages 72, 73 and 74 of TCP 4 of 2012, the Appellant submits that their internal documents prepared by staff of the company for internal records, therefore the same has no relevance in the present Appeal. The Appellant further submits that an obligation is cast upon the Respondent company to find out as to how these shares were transferred in the name of some other persons in the absence of original Share Certificates, therefore, the company is supposed to provide copies of all documents with regard to existing alleged onus of the shares. With this the Appellant prays this Bench to allow the claim prayed by him.

6. Both sides argued vehemently fortifying the stands taken by them.

7. The professional on the Respondent side relied upon *C. Mathews v. Cochin Stock Exchange Limited* [(1998) 91 Comp Cas 344 CLB], *Harbaksh Singh Batra v. M/s Larsen and Toubro Ltd. & Ors* to

say that this CP is liable to be dismissed on the ground of inordinate delay; relied upon *Shah Moolchand and Co. Ltd. V. Jawahar Mills Ltd.* [(1953) AIR 98 SC], *Vishnu Miglani & Anr v. Reliance Industries Ltd.* (judgement of Delhi High Court dated 18.12.2010 para 18), *Smt Krithika Mullengada v. Wipro Ltd* [(2004)52 SCL 564 CLB] to say that non joinder of parties fatal to the case.

8. On hearing the submissions of either sides, this Bench has noted the points for consideration as follows:

1. *Whether the Appeal is hit by limitations/delay and laches or not.*
2. *Whether non-joinder of transferors and the transfer agent is fatal to the case or not.*
3. *Whether this case maintainable u/s.108 of the Companies Act, 1956 or not.*
4. *Whether the Appellant has proved his case or not.*
5. *To what relief.*

Point 1 *whether the Appeal is hit by limitations/ delay and laches or not.*

9. On reading of the Company Appeal and by seeing the Transfer forms filed by the Appellant, it is apparent from the record that these transfer forms were presented before the prescribed authority on 24.6.1994 for all these 9000 shares, thereafter some shares were shown as transferred by Madan Mohan Tekriwala and some by Dwaraka Prasad Tekriwala, but nowhere it was shown as to when these shares were transferred to the Appellant. The date of transferring is missing in the Transfer Forms. On the back of this Transfer Form one ASP investment name is showing as delivery broker but no delivery date

is given in the column mentioned on the back of the transfer form. Normally when broker delivers the Share Transfer Forms to the investors/ client, they will be delivered by giving date on the delivery slips as well. But neither the delivery slip is annexed nor delivery date is given on the back of reverse side Transfer Form. If the date of presentation is taken into consideration, since this company is a listed company, this transfer form should have been lodged with the company within 12 months from the date of presentation. It was not done.

10. The Appellant himself mentioned that these shares were issued by the company in its earlier name of the company called Barasia Holding & Trading Company Ltd., each share is of ₹10 face value. Thereafter this company changed into Visagar Polytex Ltd. on 27.11.2006. The Appellant further states that an issue 4,96,000 shares was made with the shares of ₹10 each on 22.04.2008 allotting them to existing Equity Shareholder in the ratio 2 Equity shares for one Equity Shares. On 08.01.2010, the shares of ₹10 each were split into 10 shares of the face value of ₹1 each. On looking at these facts the Share Certificate would have been exchanged to provide new such Share Certificates with the new name of the Company, thereafter when shares split took place, new Share Certificates would have been issued by the company with face value of ₹1 of each share, therefore, these undivided Share Certificate showing in the old name of the company would have either been cancelled or invalidated or even shredded when new split Shares were issued. Despite so many changes happened to the shares of the company since 2006 to 2010, these old share transfer form dated 24.06.1994 was simply revalidated

by the ROC on 12.9.2013 without realizing what repercussion would come in a listed company if the shares were already dematerialized. Though revalidation stamp has been obtained, this could not be seen as a validation to wipe out the transactions and changes come to these shares in almost 20 years of period since presentation of impugned transfer forms. In CP 4 of 2011 filed by the Appellant's brother, Form 7C was annexed to the Appeal signed by this Appellant claiming revalidation for the shares shown in CP 4 of 2012 stating that his father died in the year 2011, the Appellant only noticed existence of these shares only after the death of his father. Had it been so what prevented this Appellant to make a claim over these shares in the year 2011. In the same Company Petition, a list of shares was given as if these shares were transferred in the name of his father and this Appellant, but when this claim has been made, the Appellant has been shown as sole transferee to all these shares. Though the Appellant is entitled to take a cover of revalidation to elbow out the limitation point, this Bench still believes this Appeal is hit by delay and laches for the inordinate delay in making this claim.

11. This Bench has already stated in CP 4 of 2012 that when title to immovable asset itself will lose force after 12 years when adverse party continues in procession for immediate 12 long years before possession, this Bench cannot give a life to the 20 years old Transfer Form by looking at the revalidation mechanically given without taking into anything cognisance and this point has decided against the Appellant.

Point No.2 *Whether non-joinder of transferors and the transfer agent is fatal to the case or not.*

12. The test of fatality of non-joinder of the necessary party is always dependent on the facts of the case, sometimes it becomes fatal and sometimes it is not. We cannot see it as straight jacket formula either to dismiss the plea or to allow it. In the present case, the Appellant says the transferors are registered shareholders of the company, whereas the company says these shares have been showing in the name of some other persons. It is a disputed fact whether title to these shares lying with the alleged transferor or somebody else. This is a fact to be proved, therefore the Appellant at least to show that Transfer showing in his "Transfer form" as parties to the proceedings but the Appellant failed to joined them as parties to this proceeding. The Appellant must not get lost of the fact that these alleged transferors are not being reflected as registered shareholders as on the date of lodgement of the request for registration of these impugned shares in the name of the Appellant. The company categorically has mentioned that these shares have already been dematerialized, therefore, the company itself will not have any control over the shares moving the demat form. Once the shares are dematerialized, the identity of the physical shares will be lost because distinctive numbers and folio numbers which continued until they were in physical form would disappear. Therefore, the Appellant should have made these transferor as the Respondent or as the Appellant to this Company Appeal. The Appellant made the correspondents with the registered transfer agent Adroit until before this Company Appeal was filed, indeed cause of action to file this

Appeal arose only on the correspondence made with the Transfer agent but transfer agent was not even made a party. For the company's stand is that the shares have been dematerialized, unless transfer agent is made as a party, the information as to who filed physical Share Certificate for dematerialization would not come on record but this registered transfer agent is also not made as a party on the footing that all these burden lies upon the company to prove that these transferors do not have any title to transfer these shares in the name of the Appellant. Had the Appellant filed transfer instrument immediately after execution of it, had the transferors been continuing or registered shareholders, their name would have appeared in the Share Register. Here this Appellant filed this Company Appeal 20 years after execution of alleged transfer form. Therefore, the duty is cast upon the Appellant to prove the chain of change of title from person to person till the date of lodgement of his request, that has not been done.

13. In view of the reasons aforementioned we are of the view that non-joinder of transferor and transfer agent as parties to the proceedings is fatal to the case, hence this point is decided against this Appellant.

Point No. *Whether this case maintainable u/s.108 of the Companies Act, 1956 or not.*

14. The Appellant filed this Company Appeal basing on Section 108 of the Companies Act, 1956, when such Appeal is filed, as per Section 108, the transferor means the person continuing as registered shareholder of the Company. This Transferor has not been continuing as a registered shareholder of the company as on the date of

lodgement of the request for registration of the share transfer. The Company normally verifies the signature of the transferor as and when the share transfer form is lodged with the Company. It is an admitted fact that the transferors shown in the transfer form are not continuing as the registered shareholders of the company. It is not even the case of the Appellant.

15. That apart the company submits that these shares were dematerialized on 25.02.2009 and there being split of shares subsequent to 2009 and there being corporate action, these 9000 shares of face value of ₹10 each have to be construed as cancelled or invalidated when these shares were split into shares with face value of ₹1 each. By the time this split taken place, according to the company these shares have already gone to demat account. When shares gone to demat account and physical shares being presumed as dematerialized, it is difficult to connect this case to bring under section 108 of the Companies Act, 1956. For this reason only Section 108(1D)(3) has been into existence saying that transfer in between two beneficial owners is not covered u/s. 108 of the Companies Act, 1956. Though the claim of the Appellant is based on physical Share Certificate, since these shares have been dematerialized long before i.e. in the year 2009 this case can't be said as squarely covered u/s.108 of the Companies Act, therefore, this point is decided against the Appellant.

Point No. 4 *Whether the Appellant has proved his case or not.*

16. For the Appellant desired this Tribunal to allow his claim basing on a transfer made by Madan Mohan Tekriwala and Dwaraka Prasad Tekriwala, for these persons not continuing as registered

shareholders as on the date of lodgement, then burden lies upon the Appellant to prove that the transferor has title over the shares which allegedly transferred in the name of the Appellant. The Appellant claim being stale, the burden become more upon the Appellant to prove that these transferors alone continuing as registered shareholder and the company fraudulently or otherwise made somebody else title holder to these shares. Since the shares have admittedly dematerialized, it is essential to see what happened at the time of dematerialization.

17. When an investor wants to get his shares dematerialized, he will submit his physical shares along with demat request form to the depository participant intimate the same to the depository then this lot of shares and form got to the transfer agent to compare with the signatures and the details given after the said verification it would come back to the depository then to come to depository participant from there demat shares would come to investor account. Here this process is monitored by the depository participant and transfer agent, therefore, once the shares are shown dematerialized it has to be presumed that physical shares have been submitted to the DP then through DP to the transfer agent, therefore, unless and until the entire process is rebutted by the person making claim over the impugned shares it has to be presumed as valid dematerialization. Here what the Appellant has done is held out share transfer form of 20 years old and share certificates in the old name of the company and assailing that the burden is cast upon the company to dislodge the claim of the Appellant by proving that those alleged transferors are not the title holders of those shares. Since the burden of proof cannot be reversed

or as long as the scale is not tilted in favour of the Appellant, the Appellant considered to have failed to discharge the burden of proving his case. In view of the same this Bench holds that the Appellant deserves no merit, hence this point is decided against the Appellant.

Point No. 5 *To what relief.*

18. For the reasons stated above, this Bench hereby holds that this Appeal deserves no merit, it is a frivolous attempt throwing vexatious litigation on the company giving pain to this Tribunal to carry this vexatious litigation this far and spending its time in vain over this misconceived Appeal, hence the same is dismissed with exemplary costs of ₹ 50,000/- payable to NCLT Mumbai within 15 days hereof.

sd/-

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

sd/-

**V. NALLASENAPATHY**  
Member (Technical)