

**BEFORE THE COMPANY LAW BOARD
PRINCIPAL BENCH, NEW DELHI**

COMPANY PETITION NO. 5(N.D.) OF 2012

IN THE MATTER OF:

SECTIONS 397, 398, READ WITH
402 AND 403 OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF

M/s Shree Lalit Fabrics Private Limited

IN THE MATTER OF

Sudevi Beriwal @ Shalini Beriwal
W/o Ajay Beriwal, 101, Bharat Nagar
II Floor, New Friends Colony
New Delhi

.....PETITIONER

VERSUS

M/s Shree Lalit Fabrics Private Limited
29, Krishna Market, Amritsar, Punjab
& Ors.

.....RESPONDENTS

MEMO OF PARTIES

1. Sudevi Beriwal @ Shalini Beriwal
W/o Ajay Beriwal, 101, Bharat Nagar
II Floor, New Friends Colony
New Delhi

...PETITIONER

Versus

1. M/s Shree Lalit Fabrics Private Limited
29, Krishna Market, Amritsar, Punjab
2. B.M. Khemka
Director and shareholder,
M/s Shree Lalit Fabrics Private Limited
29, Krishna Market, Amritsar, Punjab



**NATIONAL COMPANY LAW TRIBUNAL,
CHANDIGARH BENCH, CHANDIGARH.**

**CP No.5 (ND) OF 2012.
RT No.6/(Chd)/2016.
Date of Order: /7.03.2017.**

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL).
HON'BLE DEEPA KRISHAN, MEMBER (TECHNICAL).**

In the matter of

Sudevi Beriwal @ Shalini Beriwal
W/o Ajay Beriwal, 101, Bharat Nagar,
II Floor, New Friends Colony,
New Delhi.

....Petitioner.

Versus.

1. M/s Shree Lalit Fabrics Private Limited,
29, Krishna Market, Amritsar, Punjab.
2. B.M.Khemka,
Director and shareholder,
M/s Shree Lalit Fabrics Private Limited,
29, Krishna Market, Amritsar, Punjab.
3. Anurag Narayan Jha,
Director, M/s Shree Lalit Fabrics Private Limited,
29, Krishna Market, Amritsar, Punjab.

....Respondents.

**Petition under Sections 397, 398 read with Sections 402 and
403 of the Companies Act, 1956.**

**Present: Mr.Ashish Chopra, Ms. Rupa Pathania and
Ms. Niharika Sharma, Advocates for the petitioner.
Mr. Rakesh Kumar, Advocate for respondents.**

CP No.5 (ND) of 2012
RT No.6/(Chd)/2016



comprised of (i) S.K.Khemka (since deceased); (ii) Uma Devi Khemka wife of S.K.Khemka; (iii) Neel Mani Khemka son; (iv) petitioner the daughter; (v) B.M.Khemka (R-2) son; and (vi) Rakesh Khemka son. According to the petitioner, R-1 was incorporated as a family company as all the shares were held by the family members and as per the objective of the company, it was being run as per joint family traditions for the benefit of entire Khemka family.

3 The shareholding pattern of R-1 company at the time of its incorporation was as under:

Sl. No.	Folio No.	Name and address	Relation	No. of Shares	Amount (Rs)	% of the total equity share capital
1.		Shri Shrawan Kumar Khemka S/o Sh.Murli Dhar Khemka, 22, Maqbool Road, Amritsar.	Husband	2326	2,32,500	52.90
2.		Smt.Uma Devi Khemka W/o Sh S K. Khemka, 22, Maqbool Road, Amritsar	Wife	70	7,000	1.60
3.		Mr.Ban Mali Khemka S/o Sh.Shrawan Kumar Khemka, 22, Maqbool Road, Amritsar (R-2).	Son	1000	1,00,000	22.70
4.		Mr.Rakesh Khemka S/o Sh Shrawan Khemka, 22, Maqbool Road, Amritsar.	Son	1000	1,00,000	22.70
5.		Shri Varindabun Synthetics Pvt. Ltd. 22, Maqbool Road, Amritsar.	---	5	500	00.10
				4400	4,40,000	100.00%



came out of the liquidation. The copy of the petition filed by R-2 in the Hon'ble High Court is Annexure P-3.

6. According to the petitioner, Late Shri S.K.Khemka suffered a paralytic attack in the year 1990 and active control of affairs of the company was taken over by R-2 in the year 1995. However, Shri S.K.Khemka kept on guiding and controlling the affairs of R-1 company. Shri S.K.Khemka resigned from the Board of Directors on 13.02.1995 because of his ailment. It was averred that intention of R-2 became dishonest and in order to usurp the control and assets of the company he appointed himself as Managing Director and increased authorized share capital from ₹10,00,000 to ₹1,30,00,000/-. This was done by R-2 without notice of any Board meeting for increasing the authorized share capital and the said act is blatantly illegal. Anyhow, after the increase of share capital in the manner aforesaid, Shri S.K.Khemka was shown to be holding 1,10,325 shares constituting 98.15% of the shareholding in R-1 company, his wife 70 shares, R-2 and his brother Rakesh Khemka 1000 shares and Varindabun Synthetic Pvt. Ltd. 5 shares. This is apparent from the Annual Return for the financial year ending on 31.03.2005, in respect of which, the Annual General Meeting (AGM) was held on 30.09.2005. As per this Return Annexure P-4, Shri S.K.Khemka was also holding 820 preferential shares of ₹100/- each and his wife Uma Devi 430 such preferential shares. The aforesaid increase of share capital is stated to be a ploy of R-2 with

Handwritten signature

Handwritten signature

CP No.5 (ND) of 2012
RT No.8/(Chd)/2016



pendency of company Appeal No.16 of 2005, R-2 had submitted that Shri S.K.Khemka transferred his shares in favour of R-2 in the year 1995, but in the balance sheet for the year ending 31.03.2005, S.K.Khemka was still holding 1,10,325 shares. Reply in the form of affidavit of R-2 in CP No.43 of 2005 is Annexure P-5.

9. From the facts stated in the affidavit of R-2 in reply to CP No.43 of 2005, the version propounded by the respondent even in 2005 was that Shri S.K.Khemka tendered his resignation on 13.02.1995 on account of his illness and transferred his entire equity shares in favour of R-2. It was further stated in this affidavit that the promoters' unsecured deposit of ₹1.08 crores was converted into equity shares as per directions of BIFR.

10. The other ground of oppression and mis-management is that R-3 a servant of Khemka family was illegally appointed as Director with effect from the year 1994 by an ante dated Form 32, which was uploaded in the year 2006. To further strengthen this allegation, it was stated that in the scheme of revival of R-1 company, filed before the Hon'ble High Court, name of R-3 as a Director of R-3 company did not figure. Copy of Form 32 is at Annexure P-8. Learned counsel for the applicant referred to the columns of this form P-6, which contains the declaration statedly signed by Late Shri S.K.Khemka. It refers to the resolution of the Board of

CP No.5 (ND) of 2012
RT No.6/(Chd)/2016



thereafter R-1 company went into liquidation and, therefore, effect of transfer could not be made in the record of company. R-2 is said to have arranged financial resources and contributed substantial amount of ₹50,00,000/- for revival of the company. R-2 has also relied upon the order dated 19.02.1993 passed by BIFR (Annexure R-2), in which, it was observed that the capital base of the company is very low and Bankers will not be willing to extend the additional working capital finance due to the said reasons. It was further recorded that the Banks were insisting that the equity base of R-1 company should be improved. In view of the aforesaid observations that a decision to increase the authorized capital and thereafter allotment of additional shares was made.

13. Subsequent to R-1 company coming into liquidation before the Hon'ble High Court of Punjab and Haryana in CP No.114 of 1996, R-2 took care of the liquidation affairs in the capacity of its ex-management. It was only due to the efforts of R-2 that the debts of R-1 company stood discharged and it was revived. The petitioner was nowhere in the picture, while the company was in financial turbulence and facing liquidation proceedings. Even Rakesh Khemka brother of R-2 raised a claim over R-1 company in CP No.43 of 2005 in which settlement was reached during pendency of Company Appeal before the High Court. It was stated that in fact shareholding of Rakesh Khemka had already been transferred in favour of R-2. Shri S.K.Khemka was aware of the petition



family members in the house belonging to Shri S.K.Khemka and also a criminal complaint filed by Rakesh Khemka against R-2, but there is no need to discuss those facts as those do not have much bearing in the instant petition. It is, however, stated that the other family members of R-2, namely his brothers Neel Mani Khemka and Rakesh Khemka have also sworn in affidavits in February, 2013 in favour of R-2. Copies of these affidavits are Annexure 9 (Colly) attached with the reply. The petitioner is stated to have relied upon fabricated documents of transfer of preferential shares of her father and mother and the Form in respect of Uma Devi mother is not even signed by her. The original share certificates are, however, in possession of R-2. It is further averred that the petitioner in fact never applied for transfer of the preferential shares of R-1 company in her name.

15. With regard to the appointment of R-3 as a Director, it is averred that Late Shri S.K.Khemka himself appointed R-3 as the Director of R-1 company. It is also denied that the petitioner holds more than 10% of the total membership of R-1 company in order to qualify herself within the requirement of Section 399 of the Companies Act, 1956 for maintainability of the company petition under Sections 397 and 398 of the Act.

Page

Star

CP No.5 (ND) of 2012
RT No.6/(Chd)/2016



petition. It is averred that the respondent admits having not filed with the Registrar of Companies, Annual documents subsequent to the year 2006 till the filing of the petition in the year 2012. The respondent in fact has stated in the reply that he would file the same with Registrar of Companies in due course of time after getting the offence compounded for not filing the documents on time. It is denied that the petition suffers from delay and laches especially in the light of the fact that the parties are the family members.

19. The issues that arise for discussion can be summarised as under:-

- (i) Whether the petitioner is able to make out a case for oppression and mismanagement for seeking appropriate directions from the Tribunal?
- (ii) Whether the instant petition is barred on the ground of delay and laches? and
- (iii) Whether the petitioner holds requisite percentage of shareholding in R-1 company required by Section 399 of the Act and thus has locus-standi to file the instant petition?

20. We have heard learned counsel for the parties and perused the records with their able assistance and also the written submissions filed by them.

21. On issue No.1, it is alleged by the petitioner that in order to usurp the assets of R-1 company, R-2 increased the authorized share capital from ₹10,00,000/- to ₹1,30,00,000/- without any notice to the

CP No.5 (ND) of 2012
RT No.6/(Chd)/2018



Hon'ble High Court during pendency of CP No.85 of 2001. This compromise is signed by R-2, Late Shri S.K.Khemka and Uma Devi, wife of Late Shri S.K.Khemka. It was categorically stated in this compromise document in paragraph 4 that R-2 has filed the petition for revival of the company claiming himself to be holding more than 95% shares of R-1 company. Therefore, the petitioner cannot challenge the increase in the share capital of the company, for which there was a categorical plea in the CP No.85 of 2001 filed before the Hon'ble High Court, during pendency of which, the aforesaid compromise was entered.

23. R-2 has filed various original documents for establishing valid transfer of shares of Late Shri S.K.Khemka in his favour. He filed an application dated 19.08.2016 for placing on record certain additional documents, which was opposed by the petitioner on the ground that initially the respondent relied upon only on two documents, whereas now more documents cannot be permitted. After hearing learned counsel for the parties, the prayer of R-2 was allowed and original Memorandum of Understanding (MOU), dated 13.02.1995, declaration of gift dated 25.03.2006, two documents of declaration dated 29.03.2006, declaration of gift document dated 09.11.2011, affidavit of Rakesh Khemka dated 05.02.2012 and affidavit of Neel Mani Khemka dated 04.02.2013 were allowed to be taken on record subject to just exceptions, vide order dated 17.10.2016. The petitioner was granted time to file counter affidavit to

CP No.5 (ND) of 2012
RT No.6/(Chd)/2016



document dated 13.02.1995 transferring his shareholding in favour of R-2. The original document dated 13.02.1995, which has been filed by R-2 along with other documents is Memorandum of Undertakings (MOU). In this MOU, a specific reference is made to the hearing held by BIFR on 23.01.1995, in which, it was directed that the sister concerns liability would be de-linked from SLF package and the promoters were directed to bring in promoters' contribution of ₹45,00,000/- in a no lien account within one month. It is further mentioned in paragraph 3 of this document signed by Late Shri S.K.Khemka and R-2 and witnessed by Uma Devi, that R-2 has offered to take over the charge of the company in the hearing of the BIFR as an alternative proposal stating that he can run the company and bring the necessary funds etc. In paragraph 4 (a) of this MOU, it is further stated that Late Shri S.K.Khemka withdraws from the management and his deposit of approximately ₹1,10,00,000/- would be converted into equity shareholding and subsequently transferred in the name of R-2 for a total consideration of ₹36,00,000/-, to be paid in three instalments.

26. Learned counsel for the petitioner vehemently contended that there is no evidence or circumstance for suggesting that this amount of ₹36,00,000/- was paid by B.M.Khemka to Shri S.K.Khemka. This contention cannot be of any help to the petitioner as Late Shri S.K.Khemka is also the signatory to the compromise document submitted before the



29. Learned counsel for the petitioner, however, contended that these documents cannot help the respondent, as there cannot be transfer of the shares without valid consideration and the amount of consideration was stipulated as per document of MOU dated 13.02.1995. To repel the above contention, learned counsel for the respondent referred to two declarations of gift dated 29.03.2006 executed by Late Shri S.K.Khemka, but the same was opposed on the ground that these documents were not relied upon. We find that the versions of respondent in the written reply was that the respondent is relying upon certain documents and out of the said documents, some of those were referred to in the written statement as Annexure 3 and Annexure 4. The important aspect is that there are other family members of Late Shri S.K.Khemka and none of them has come to support the petitioner's version to challenge the correctness of the version of R-2, especially the statement of facts reflected in the record of ROC in the year 2006. Even all the original share certificates are produced on record by R-2. The original of preferential share certificates bear endorsement made by Shri S.K.Khemka and his wife Uma Devi in favour of R-2. As already observed, Uma Devi has not filed intervention during pendency of proceedings of this case, to challenge the aforesaid record. Rather, R-2 has filed the affidavits of Neel Mani Khemka and Rakesh Khemka duly attested by the Executive Magistrate and Notary Public respectively admitting transfer of shares in favour of R-2.



the Court in relation to the affairs of the company. In this situation, it is necessary that the alleged illegality in the conduct of majority shareholders is pleaded and proved with sufficient clarity and precision. If, the pleadings and/or the evidence adduced in the proceedings remains unsatisfactory to arrive at a definite conclusion of oppression or mismanagement, the petition must be rejected.

33. The record relied upon by R-2 in support of his defence version would reveal that R-2 made all efforts to revive the sick company and further those proceedings were being pursued with the active participation of Late Shri S.K.Khemka.

34. The instant petition was filed only after the death of Shri S.K.Khemka and there cannot be any challenge on the ground of oppression or mismanagement on the basis of past and concluded acts. In **Palghat Exports Private Ltd. and P. Ramkumar Vs. T.V.Chandran and Ors, (1994) CompCas 213 (Kerala)**, Hon'ble Kerala High Court held as under:-

*"It is significant for the purpose of the case at hand that courts have held that past acts which have come to an end would not be taken for the purpose of invoking the court's jurisdiction under Section 397 of the Act. In **Chander Krishan Gupta V. Pannalal Girdhari Lal Pvt. Ltd. MANU/DE/0242/1981**, the Court held that stray*

Page 2



36. Learned counsel for R-2 relied upon the recent judgment of the Principal Bench of National Company Law Tribunal (New Delhi) in **Praveen Shankaralayam Vs. M/s Elan Professional Appliances Pvt. Ltd. & Ors, CP No.04 (ND)/2016, decided on 20.10.2016.** The facts of the said case were narrated as under:

"16. A perusal of various averments made in para 6 under the caption 'Facts of the Case' would reveal that the cause of action to the petitioner had arisen in the year 2009, 2010 or 2011. The present petition was filed first in October, 2015 and then re-filed on 07.09.2016. According to the averments made in para 6.2, the petitioner was appointed as one of the first directors of Respondent No.1 company on 19.05.2009 along with Respondents No.2 & 3. His share capital in the Respondent company was 33 per cent. On a later date, Respondent No.4 was appointed as director of the company on 30.07.2009 against the wishes of the petitioner. He did not ever express willingness freely and wilfully to appoint Respondent No.4 as the director. Therefore, the petitioner has prayed that appointment of Respondent No.4 as director on 30.07.2009 be declared illegal.



oppression and mismanagement without disclosing any other substantive additional facts. In para 6.14, general allegations of siphoning/misappropriation of funds have been levelled and there is no detail of any such facts. These are bald averments without any supporting facts. There are further allegations of non-payment of dividend.

37. The Hon'ble Principal Bench observed that for action like the one complained of by the petitioner, the period of limitation provided by the Limitation Act is three years. The petitioner acquired knowledge of all the facts as per his own showing by his reply sent to the Assistant Registrar of Companies on 23.02.2011. It was further observed that it would be profitable to refer to the facts disclosed in various paragraphs. It has been stated in para 2 that his shareholding was reduced from 33% to 1.91%. The aforesaid general assertion has been explained in para 6.5 of the petition. According to para 6.5, the allotment of shares by increasing the share capital was made on 06.10.2009, 19.09.2009, 22.01.2010 and 03.02.2012. The allegation is that the allotment of shares was made without his knowledge which he obviously acquired on 23.02.2011 and even that later increase has come to his knowledge. The allegation that the petitioner was not aware of the Board meetings held in 2009, 2010 or 2011 would pale into insignificance because on his own showing, the petitioner had the knowledge in 2011. The petitioner also had the



Vs. M/s Delhi Warehousing Pvt. Ltd. & Ors, CP No.41 (ND)/2016, decided on 22.12.2016. The petition was filed on 04.03.2016. In the said case, resolution passed by the EOGM increasing the authorized/paid up capital in the year 2006, 2007, 2008 and 2011 was sought to be challenged along with the allotment made of those shares in the year 2008 and 2011. It was held by the Hon'ble Principal Bench that such belated challenge cannot be gone into as third party rights have come into existence. It was further held by Hon'ble Principal Bench that there is no rule of law that a void order can be challenged at any time without requirement or complying with the principles covering delay and laches and thus can be ignored.

41. Learned counsel for petitioner, however, relied upon **Girdharilal Nathubhai Dalal Vs. K.C. Agro (P.) Ltd. and Others, 2015 (129) CorLA 395**, a judgment of the Mumbai Bench of the Company Law Board in CP No.121 of 2013, decided on 29.04.2015 for contending that an act of oppression is a continuous wrong until it is brought to end by passing an appropriate order. It was found that the acts complained of amounting to oppression have continuing effect, so the question of limitation does not arise. This judgment cannot be helpful to the petitioner in view of the latest principle of law as discussed above. The acts complained of in the instant petition are very old and those were reflected in the Annual Returns filed in the year 2006, but the instant petition has been filed after more than 5 ½ years. There is thus a huge delay and the

CP No.5 (ND) of 2012
RT No.6/(Chd)/2016



Annual Returns or if the transfer statedly made in the year 1995 was not reported to the Registrar of Companies till the year 2006, that will not provide any support to the petitioner's claim. As already observed, the petitioner claims to have inherited the estate of her father who himself did not challenge the transfer of his shareholding in the name of R-2.

44. In view of the aforesaid discussion, the challenge to the appointment of R-3 as a Director on the basis of a document filed with the Registrar of Companies under the signatures of Late Shri S.K.Khemka is a matter, which cannot be questioned by the petitioner. In case, the petitioner still has the right over the preferential shares, she may have a remedy before the Civil Court, but not in the summary proceedings before the Tribunal.

45. We thus, find no merits in the instant petition. Therefore, the petition stands dismissed. The pending miscellaneous applications, if any, shall also stand disposed of.

(Justice R.P.Nagrath)
Member (Judicial)

(Deepa Krishan)
Member (Technical)

March 17, 2017.
Astoria

CP No.5 (ND) of 2012
RT No.8/(Chd)/2016

