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NATIONAL COMPANY LAW TRIBUNAL
DIVISIONAL BENCH
CHENNAI

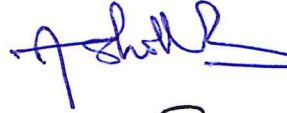


ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 23/03/2017 AT 10.30 AM

PRESENT: SHRI. K. ANANTHA PADMANABHA SWAMY, MEMBER – JUDICIAL
SHRI CH. MOHD SHARIEF TARIQ, MEMBER - JUDICIAL

APPLICATION NUMBER :
PETITION NUMBER : TCP/215/2016
NAME OF THE PETITIONER(S) : S. Martin
NAME OF THE RESPONDENT(S) : Akshaya Textiles Limited and another
UNDER SECTION : 111 A

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
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REPRESENTATION BY WHOM

1.	R. VIDHYA SHANKAR R. ASHOK KUMAR	Counsel for R-1	
2.	R. SRINIWAS .	Counsel for Petr .	
3.	B.A. Vijay Prasanna Anirudh Krishnan	Counsel for R2	

ORDER


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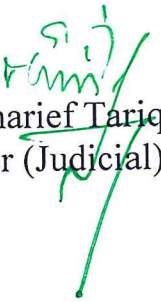
O R D E R

Counsel for Petitioner present. Counsel for R1 present. Counsel for R2 also present. Counsel for R2 has moved an application under Rule 39 of the NCLT Rules, 2016 for seeking permission to adduce evidence to prove the undue influence in relation to the transaction that has taken place on 19.11.2005 wherein 2nd Respondent's 5,45,000 shares were transferred to the petitioner. The counter has been filed by R2 wherein he has pleaded that his father acted in good faith and knowing fully well the nature of transaction has affixed his signatures on the Memorandum of Understanding dated 14.11.2005 followed by Sale agreement dated 19.11.2005 by which the shares of R2 including the shares of the others have been transferred in favour of the petitioner. The petitioner has paid consideration for all the shares by way of Demand Drafts and some of the DDs were also handed over to R2 directly and R2 has directly handed over the share certificates to the petitioner. The only objection that has been raised by R2 in this matter is the 'undue influence' stating that his father has been a party to the MoU and the Sale Agreement dated 19.11.2005 and due to his father's undue influence he transferred his shares to the petitioner. It is on record that R2, right from 14.11.2005 and 19.11.2005 has not taken any step to get the Sale Agreement dated 19.11.2005 set aside. This shows that he, by way of acquiescence, has agreed to the transfer of his shares as per the Agreement that has been entered into between his father and the petitioner on 19.11.2005. R2 has also admitted that he has received the DDs, but believing the same being repayment of the loan, has got those DDs encashed, but he did not explain anything about any loan. Moreover, in the counter filed by him in the present matter, he has not pleaded that there has been involvement of element of undue influence of his father pertaining to the transfer of his shares to the petitioner. Having heard both the sides and perusal of the records placed on file, we are not inclined to accept the application moved under Rule 39 of NCLT Rules 2016. For allowing R2 to prove

the element of 'undue influence' that is stated to have been made by his father in relation to the transaction in question, it is not possible for this Tribunal to try the petition filed under Section 111A of the Companies Act, 1956 as a regular suit, because the same can be done by the Civil court, if the petitioner desires so, but he never approached the civil court. Moreover, he has not pleaded the element of undue influence in his reply and belatedly moved the application under Rule 39 of NCLT Rules 2016, which stands rejected. If at all there would have been any grievance of R2 to the transaction under question, he had every right as an affected party to move the appropriate forum to get the Agreement in question set aside, but he has not chosen so.

In the light of the above discussions, we allow the petition filed under Section 111A of the Companies Act, 1956 and direct R1 to rectify the register of members by making the entry of the name of the petitioner in whose favour 5,40,000 shares have been transferred and remove the name of R2 therefrom. Accordingly, the petition is disposed of. Pronounced in the open court.


Anantha Padmanabha Swamy
Member (Judicial)


Mohd Sharief Tariq
Member (Judicial)