

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, CHENNAI

**TCP 225/2016**  
(No.12/111A/CB/2014)

Under Sections 111 and 111A of the Companies Act, 1956, and  
now under Section 59 of the Companies Act, 2013.

In the matter of

**Kamlesh Kalidas Shah,**  
**Vs.**  
**M/s. TVS Motors Ltd. & 10 Ors.**

*Order delivered on 21<sup>st</sup> of September, 2017*

CORAM

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)**  
**S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

*For Petitioner(s) : Mr. C. Ramasubramanian, PCS*  
*For Respondent 1&2 : Mr. AM. Sridharan, Counsel*

**ORDER**

Per : CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under adjudication is the Company Petition No.12/111A/CB/2014 that has been filed before the erstwhile Company Law Board (CLB) and after establishment of NCLT, the same has been transferred

to this Bench and renumbered as TCP No. 225/2016. The Petition has been filed under Section 111/111A of the Companies Act, 1956. The Petitioner is Kamlesh Kalidas Shah and the Respondents are M/s. TVS Motors Ltd. and 10 Ors. The Respondent Nos. 1 and 2 filed the counter, to which, a rejoinder has been filed by the Petitioner.

2. At the outset, it may be mentioned that, the Petitioner was directed to cause paper publication, based on which, the Respondent Nos. 3 to 10 were served but they did not appear before this Bench. The service on Respondent Nos.3 to 10 was held sufficient and they were proceeded *ex parte* on 25.01.2017. Respondent No.11 was represented by the Chartered Accountant. However, there has been settlement between the Petitioner and the Respondent No.11. Based on the settlement, a detailed Order came to be passed by this Bench on 13.06.2017 which reflects that the Respondent No.11 has transferred 1000

shares in the 1<sup>st</sup> Respondent company in favour of the Petitioner.

3. The Petitioner is seeking the reliefs against the Respondent Nos. 1 to 10 which are as follows:-

*A. The Petitioner be declared as owner of 450 shares of 10 paid up, now after split and bonus be declared owner of 8000 shares of Issuer Respondent No.1 whose details are set out herein above and Respondent No.1 be directed to rectify the Register of Members to effect the transfer of shares in the name of Petitioner without procuring the transfer deeds.*

*B. Respondent No1 be restrained to issue duplicate shares to Respondent Nos.3 to 10 or any other person and further be directed not to transfer the said 8000 shares or attached benefit to any other person until this Petition is finally disposed of.*

*C. Respondent No.1 be directed to maintain status quo of the shares along with attached benefit pending disposal of this petition.*

*D. The Petitioner be declared entitled to the benefits incidental and attached to the shares accrued by way of dividend, bonus and rights shares etc.*

*E. The Petitioner be declared for the rights, title and interest in the shares and ownership thereof along with all voting rights attached thereto from the date of its purchase.*

4. The brief facts which led the Petitioner to file the Petition are summarised as under:-

i. The Petitioner is a resident of Ahmedabad and working as share broker and investor. He claims that he purchased 450 shares of M/s. TVS Motors Limited (Indo Suzuki Motor Limited). The Registered Office of M/s. TVS Motors Limited is at Jayalakshmi Estate, No.8, Haddows Road, Chennai- 600 006. The Respondent No.1 Company is an issuer of the shares in question and the 2<sup>nd</sup> Respondent is a transfer agent of the 1<sup>st</sup> Respondent Company. The Respondent Nos. 3 to 10 are the transferors/sellers of the shares under



reference, the detail of which is given in tabular form under para iii herein below.

ii. The shares were held in the name of Respondent Nos. 3 to 10 which are delivered by the sellers with an instrument of transfer duly signed by the authorised signatory through their broker, and the Petitioner, being a share broker, as a business activity, sold these shares to Ahmadabad and Bombay Stock Exchange brokers. But, the 1<sup>st</sup> Respondent Company raised objection about the sellers' signatures and the transfer could not be effected. So, due to bad delivery, the Petitioner received shares back from the respective brokers and had paid consideration therefor to the respective buyer broker.

iii. The shares were acquired by the Petitioner during the year 1984-85 and he has taken steps to get the same transferred through their Advocate who requested to the transferors to sign the transfer deeds afresh. The details of the share certificates containing

Folio number, Certificate numbers, distinctive numbers and number of shares are given as follows:-

No. of shares	Folio No.	Certificate No.	Transferor's name
50	R 3085	40599	Ramesh Babu Agarwal
50	G0262	12433	R. M. Garg
50	P0549	33634	Parag Gupta
50	M4188	29164	Mukesh Malik
50	M3238	28149	Milan Shah
50	S3936	47621	Sharanbiharilal
50	R0965	38435	Rajendra Shantilal
50	P3807	37149	Pushpa Shah
50	M0675	25410	Mahaveerchand Ostwal

The copies of the share certificates along with the transfer deeds are placed on record at pages 9 to 26 of the typed set <sup>✓</sup>of filed with the Petition.

iv. During February, 2002, the Petitioner requested the 1<sup>st</sup> Respondent company for the addresses of Respondent Nos.3 to 10. In response, the addresses of the sellers were provided to the Petitioner. Based on those addresses, notices have been sent for providing duly signed in new transfer deeds with the Bank attestation. Thereafter, the Petitioner received a Letter dated 25.02.2014 from the 1<sup>st</sup> Respondent company stating that complaint has been received from the Respondent No.6 ( Mr. Mukesh Malik) stating that he is not willing to sell his shares. In response to the same, the Petitioner stated that, the signature in the letter signed by the transferors was the same as signed in the transfer deed and the claim is not legally tenable.

v. It is also on record that the Petitioner filed Civil Suit for grant of injunction before City Civil Court,

Ahmadabad against the Respondent Nos.4, 6 and 8 and the Suit for grant of injunction was also filed against Respondent No.9. But, those Civil Suits either have been dismissed in default or pending disposal. However, it is worthwhile to mention that the Respondent Nos.3 to 10 have never filed any Police complaint for loss of their shares or even have not approached the Court, to make any claim therefor.

5. The Respondent Nos. 1 and 2 filed their reply to the Company Petition stating *inter alia* as under:-

i. The Petitioner should have filed different Petitions as the cause of action arose on different dates on the different number of shares held by different number of persons. So, the Petition is against the principle enunciated in Regulation 20 of the Company Law Board Regulations 1991, and the Petition deserves to be dismissed on this ground alone.

ii. In the reply, it has been admitted that the 1<sup>st</sup> Respondent company has allotted 50 number of shares



to each of the Respondent Nos. 3 to 10. The answering Respondents further stated in the counter that consequent upon the Scheme of Merger, during the year 1999, M/s. TVS Suzuki Limited was merged with M/s. Sundaram Auto Engineers (India) Limited under the Scheme of Arrangement sanctioned by Hon'ble High Court of Madras, under which the transferee company (formerly known as M/s. Sundaram Auto Engineers (India) Limited) has issued one equity share of Rs.10 each for every one equity share of Rs.10 each held by the shareholders in the erstwhile M/s. TVS Suzuki Limited (transferor company)

iii. The Respondents 1 and 2 have stated that as per the Scheme, the shares held by the shareholders in M/s. TVS Suzuki Limited (transferor company) shall be deemed to have been cancelled and be of no effect on or from such issue and allotment. The Respondents 1 and 2 submitted that the 1<sup>st</sup> Respondent company has not dispatched the split share certificates and the bonus share certificates to the Respondent Nos. 3 to 7

and 9 & 10. In relation to the Respondent No.8, the 1<sup>st</sup> Respondent company has dispatched the split share certificates but not the bonus share certificates as the Respondent No.8 has made necessary application for issue of split share certificates, because, the Petitioner has made rival claims against the shares covered by the share certificate.

iv. The answering Respondents further submitted that the Petitioner has not submitted till date any transfer deed along with the relevant share certificates duly evidencing that he is the transferee (buyer) of the shares sold by the Respondent Nos.3 to 10. Therefore, there is no cause of action for filing the Petition, and the same is liable to be dismissed.

v. It is also averred in the reply filed by the Respondents 1 and 2 that, the Petitioner acquired the shares from the buyer brokers and on return of the transfer deeds to the transferees/buyer brokers of the transferees, requested the transferor several times to

sign transfer deeds afresh. However, the Petitioner never lodged the transfer deed as the proposed transferee for the transfer of shares. Therefore, the Petitioner is not transferee of the shares held by the Respondent Nos.3 to 10, in the 1<sup>st</sup> Respondent company.

vi. It has also been placed on record by the Respondents 1 and 2 that the Respondent Nos.3 and 4, executed transfer deed in favour of UTI; Respondent No.5, executed transfer deed in favour of Manoharlal Mukundlal and Girdharlal; Respondent No.6, executed transfer deed in favour of UTI; Respondent No.7, executed transfer deed in favour of Mr. Kamlesh Shah; Respondent No.8, executed transfer deed in favour of Urvashi Anubhai Javeri, Harsh Anubhai Javeri and Ramnik Chamanlal Javeri and Respondent No.10, who has executed transfer deed in favour of Mr. Cyrus B. Darwala and Mrs. Hema C. Darwala, but their signatures were not matching with the specimen signatures available in the record of the 1<sup>st</sup> Respondent

company, so, the transfer deeds with share certificates were sent to the transferees along with the letters of the 1<sup>st</sup> Respondent company. But, the copies of letters sent to the Respondents are missing from the record of the 1<sup>st</sup> Respondent company.

vii. In relation to the Respondent No.9, the transfer deed was signed in English and the specimen signature available with the 1<sup>st</sup> Respondent company was in Hindi. However, the original transferees did not lodge fresh transfer deed along with the share certificate with the company for transfer and the Petitioner also did not lodge any transfer deed with the company for transfer. Finally, the Respondents 1 and 2 submitted that the Respondents 3 to 10 have never sold their shares to the Petitioners. Therefore, the question of seeking rectification of Register of Members of the 1<sup>st</sup> Respondent company did not arise and prayed to dismiss the Petition.



6. The Petitioner has filed the rejoinder to the reply filed by the Respondents 1 and 2, wherein *inter alia* it is averred as under:-

i. The contentions raised by the Respondents 1 and 2 in the reply have been denied by stating therein that when there are same causes, one remedy and same prayer, then, for the sake of brevity, one Petition is very well maintainable. There is no violation of the principle enunciated in Regulation 20 of the Company Law Board Regulations, 1991.

ii. It has further been stated in the rejoinder that the Petitioner is a broker and received the share certificates along with the transfer deeds in due course of business transactions and cleared bad delivery by paying sufficient consideration. It has also been contended by the Petitioner that the registered holders being aware that they have sold the concerned shares, choose not to appear and also never informed to the company or to the Registrar of Companies about their objections on transfer of concerned shares to the Petitioner nor

requested to issue duplicate share certificates. It has further been repeatedly mentioned in the rejoinder that the concerned shares of the Respondent No.1 are still under 'Stop Transfer Mark' as has been admitted by the Respondent No.1. Based on this the Petitioner denied specifically that the Petition is barred by limitation as no provisions under the Companies Act, 1956, specifies the limitation period for filing Petition under Section 111A of the Companies Act, 1956. It is also placed on record that the Respondent No.1 has admitted that the share certificates and bonus certificates were not dispatched to the Respondent Nos.3 to 7 and 9 & 10 and also not informed as to why and when the split share certificate was sent to the Respondent No.8. It is alleged that the answering Respondents have not informed the proper facts with regard to the date of lodging of share certificates, when the same were lodged first time and whether the same were lodged again by anybody else. It is the fact that the Respondent Nos. 3 to 10 never lodged any complaint with the company for loss of share

certificates or made request for issuance of duplicate share certificate. At the end, it has been stated that the fact of selling of concerned shares can only be replied by the sellers and not by the answering Respondent who are not the privy to the transactions.

7. From the pleadings, the issues that emerge for consideration can be framed as follows :-

- 1) Whether the Petitioner approached this Tribunal with delay and laches and the Petition is barred by limitation.
- 2) If the answer to the above issue is in negative, then whether the Petitioner is entitled to the relief prayed for.

#### Issue No.1

8. It has been stated by the Petitioner that he tried to lodge the transfer deeds along with the original 450 equity shares of Rs.10/- each of the Respondent No.1 company. But the same was not accepted by

Respondent No.1 company on the ground that the signatures of the transferor are mis-matching. Therefore, he was asked to get fresh transfer deeds signed by the transferor. Based on this, the Petitioner submitted that the cause of action continues, so the Petition is within the period of limitation. This position has already been accepted by the Respondent Nos.1 and 2 in their counter. The Respondents in their counter submitted that the Petitioner was given the address of the transferor and was asked to get fresh transfer deeds. Pursuant to which, the Petitioner has written letters to the transferor/Respondent Nos. 3 to 10. But, there was no response from the Respondents for the reasons that they have already transferred the shares after getting due consideration, therefore were not interested to give any response to the letters sent by the Petitioner.

9. There are cases where the Petitions have been filed after the expiry of the period of limitation and the Board/Company courts have placed liberal



interpretation of the provisions of the Limitation Act so as to advance the cause of substantial justice, when no gross negligence or inaction or lack of bona fide is attributed to the party seeking the relief. One of such cases is **Smt. Nupur Mitra Vs Basubani Private Ltd.**, (1992)2Cal LJ264. In this case, the petition u/s 111 was filed after 50 years. The CLB dismissed the petition as 'time barred' which was set aside by the Hon'ble High Court of Calcutta and confirmed by the Hon'ble Apex Court. Another leading authority is **G.Ramagowda Vs Special Land Acquisition Officer, Bangalore** reported in AIR (1980)SC 893 wherein the Hon'ble Apex court held that the provisions of the Limitation Act, require application of liberal interpretation. It is also on record that this Bench ordered for substituted service on Respondents No.3 to 11, pursuance to which Respondents No.11 appeared and entered into compromise with the petitioner by selling 1000 shares to the petitioner in relation to the 1<sup>st</sup> Respondent company. The substituted service was effected by the petitioner by way of newspaper

publication in and around the place where Respondents No.3 and 11 were residing. But, in spite of the newspaper publication, Respondents No.3 to 10 did neither appear before the court nor lodge any objection with the 1<sup>st</sup> Respondent company. Respondent Nos. 3 to 10 have never lodge any FIR or claimed dividend/bonus shares from the 1<sup>st</sup> Respondent company. In short, there has been no response from Respondents No.3 to 10 with regard to the Petition filed by the Petitioner for transfer of the shares to his name and entering his name in the register of members of the 1<sup>st</sup> Respondent company.

10. Further, the Petitioner has submitted that there was an investigation conducted by the Income Tax Department at the petitioner's office during the year 1993 whereby various shares held by the Petitioner were listed and scrutinised by preparing inventory which is placed on record and includes the shares of M/s. TVS Motors Ltd (old name of 1<sup>st</sup> Respondent company). The proof was submitted along with an

affidavit to this Bench. Thus, he is in possession of the original share certificates and transfer deeds relating to the shares claimed, the copies of which are placed on record and the originals have been shown to this Bench during the course of final arguments in the presence of the Counsel for the Respondents 1 and 2. It has further been placed on record by the Petitioner that the Petitioner is a share broker and he has received the share certificates along with transfer deeds in the course of business transactions. The shares, currently in question, got circulated and reached back to the petitioner due to signatures mismatch. The petitioner has received the shares back from respective brokers and paid consideration to the respective buyers/brokers. The Petitioner also submitted that the rectification is also available in the case of bad delivery. In this connection, we may refer to the ruling given in *Finolex India Vs Anil Chhabria* reported in 2000(3) BomCR64, wherein it has been held that the rectification is available in the cases of loss of shares, bad delivery, theft and forgery. The NCLT,

Bombay Bench, in *Oriental Insurance Company Ltd Vs Siemens Ltd and others* [C.A.No.24 of 2014], has decided the matter in favour of the petitioner having a similar set of facts and circumstances as are involved in this Petition. Therefore, in the circumstances, the Petition is not hit by the period of limitation and the objection raised by R1 and R2 with regard to the delay and laches in filing the petition stands rejected.

Issue No.2:-

11. The Respondent company, in the counter, has admitted that the 1<sup>st</sup> Respondent company has not despatched the split share certificates to R3 to R7, R9 and R10. In relation to R8, the 1<sup>st</sup> Respondent company has sent split share certificates but not the bonus share certificates, as R8 has made necessary application for issue of split share certificates. The 1<sup>st</sup> Respondent company, at certain point of time, has kept the shares in question under the category of “stop transfer mark”, on the basis of the request made by the petitioner for transfer of shares which was not accepted



due to mismatch of the signatures of the transferors. It is also on record that recently the 1<sup>st</sup> Respondent company has agreed to transfer 1000 shares held by R11 in favour of the petitioner. Therefore, the plea of R1 and R2 that the shares in question are cancelled is devoid of merits and stands rejected.

12. Since the issue Nos.1 and 2 stand decided in favour of the Petitioner, the Petitioner is held entitled to the reliefs claimed. Therefore, keeping in view the record placed on file and on hearing the rival contentions, we allow the company Petition and direct the 1<sup>st</sup> Respondent company to transfer 450 shares of Rs.10/- each, now after split, bonus shares 8000 in number in favour of the Petitioner and rectify the register of members to give effect to the said transfer. The Petitioner is also held entitled to the benefits incidental and attached to the shares accrued by way of dividend, bonus along with all voting rights attached thereto. The petitioner is directed to execute an indemnity bond and also bank guarantee to the satisfaction of R1 company in order to satisfy claim, if any,

made by third party in relation to 8000 shares to be transferred in the name of the Petitioner, within three weeks. Thereafter, the company shall make compliance with this order within two weeks.

13. In terms of above directions, TCP No.225 of 2016 stands disposed of. There is no order as to costs.

*S. Vijayaraghavan.*  
**(S.VIJAYARAGHAVAN)**  
MEMBER (TECHNICAL)  
PAM

*CH. MOHD. SHARIEF TARIQ*  
**(CH. MOHD. SHARIEF TARIQ)**  
MEMBER (JUDICIAL)