

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI.**

Arguments heard on 10.04.2017

Orders passed on 10.04.2017

T.C.P.No.220 of 2016

(C.P.No.12 of 2013)

(Under Section 111 of Companies Act, 1956)

M/s. Manah Tradelink Private Limited .. Petitioner

Represented by : Mr.Anant Merathia, Advocate

Vs

M/s.Mercury Granites Pvt. Ltd & 6 Others .. Respondents

(now named "M/s.Alliance GraniMarmo Pvt Ltd")

Represented by : Mr.I.Vijaykanna and Mr.P.Eswaran, Advocates

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**ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ,
MEMBERS (JUDICIAL)**

ORDER

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL) :- (ORAL)

1. Under consideration is the C.P. No.12 of 2013 that came to be filed before the erstwhile CLB and stood transferred to NCLT and renumbered as C.P.No.220 of 2016. The counsels caused appearance on behalf of Respondent 1 to 7. Thereafter, on 08.02.2017 the right of filing counter was forfeited and on 17.03.2017 all the respondents were proceeded ex parte.

2. We have heard the counsel for petitioner and perused the pleading along with record placed on the file. The prayer made in the company petition is for seeking to direct the

1st Respondent i.e., Alliance Granimarmo Private Ltd., to allot 2,25,000 shares to the petitioner and consequentially rectify the register of its members showing his shareholdings as 2,25,000 equity shares of Rs.10/- each.

3. In the background, the counsel for petitioner has contended that in 2003 the petitioner i.e., Manah Tradelink Pvt Ltd. got allotment of 1,92,500 shares in Mercury Granites Private Ltd., which is also reflected in the Return of allotments (Form No.2) placed at Page 62 of the typed set. He further submitted that during 2004, the petitioner purchased 2,57,500 shares of Mercury Granites Pvt Ltd, from a company named M/s.Roshan Housing Projects Private Ltd., which is reflected in Annual returns available at Page 73. The shares certificates for the said 2,57,500 shares were duly lodged with Mercury Granites private Ltd., for registering the transfer. Though, the said 2,57,500 shares were transferred in the name of the petitioner, Mercury Granites Private Ltd failed to send the share certificates to the petitioner after the registration. Therefore, the petitioner is not in a position to ascertain the folio number, certificate number and distinctive number of the 2,57,500 shares. After the purchase of the said shares, the total

shareholding of the petitioner in Mercury Granites Private Ltd increased to 4,50,000 equity shares of Rs.10/- each.

4. The petitioner alleges that in 2004 and 2005, his entire shareholding has been transferred illegally to R2 to R6. Thereafter, during the financial year 2005-06, R2 to R6 transferred the shares illegally to M/s.Alliance GraniMarmo Private Limited, which he came to know only during 2012. On 27.12.2012, he sent a legal notice to M/s.Mercury Granites Private Limited, the copy of the notice is placed at Page 94 and 95. To the said notice, reply was given which is placed at Page 96. The allegations pertaining to allotment and transfers were denied in the reply and there was no further explanation in the reply to the notice. The petitioner further contended that in the scheme of arrangement of amalgamation that has been approved by the Hon'ble High Court of Madras vide order dated 13.12.2013 [the copy of the order is placed at Page 97]. The resulting company is M/s.Alliance GraniMarmo Private Limited, which has acquired all the assets and shares of the Transferor company, viz. Mercury Granites Private Limited. In the scheme of arrangement of Amalgamation, the said Mercury Granites Private Limited got merged with Alliance

GraniMarmo Private Limited, which was formerly known as Alliance Mineral Private Limited. As per clause 11.1 of the scheme, the ratio fixed for every two shares of the Transferor company is equal to one share allotted in the Transferee company (i.e. 2:1). Based on this, the petitioner claims that he holds 2,25,000 shares of Rs.10/- each in Alliance GraniMarmo Private Limited, which were cancelled as the Company could not allot shares to itself.

5. The counsel for petitioner further submitted that there is no compliance with the legal provisions, more particularly of the provisions of Section 108 of the Companies Act, 1956 for the purported transfer as the petitioner never executed any deed pertaining to the transfer of his shares, and there is no question of receiving any consideration at all.

6. The counsel for petitioner referred to the case law, the details of which are as follows :

1. Hon'ble High Court of Madras in *Mrs.E.V.Swaminathan Vs K.M.M.A.Industries and Roadways Private Ltd and Others* reported in MANU/TN/0085/1992
2. Hon'ble High Court of Bombay in *Jayanthilal Purshottamdas Patel Vs Gordhandas Desai Private Ltd. abd Anr.* reported in MANU/MH/0006/1966

3. Hon'ble High Court of Andhra Pradesh in *Manoj Kumar Kanuga Vs Marudhar Power Pvt. Ltd.* reported in [2013]179CompCas 504 (AP)
4. Company Law Board, Mumbai Bench in *Sheela Brij Kishore Sharma and Ors. Vs. Shri Bhavani Builders Ltd. and Ors.* reported in MANU/CL/0055/2014
5. Hon'ble High Court of Delhi *In Re: Tony Electronics Ltd.* reported in MANU/DE/6252/2012.

The gist of the above stated case law is that a Company cannot register transfer of shares unless a proper instrument of transfer duly stamped and executed on behalf of Transferor and Transferee is submitted to the company. Therefore, in the absence of the instrument of transfer, the transfer is contrary to the provisions of Section 108 of the Companies Act, 1956, and is therefore, held illegal.

7. In the light of the above facts, circumstances, legal provisions and case law discussed, we set aside the illegal transfer of said shares to R2 to R6 during the financial year 2004-05, and from R2 to R6 to M/s.Alliance GraniMarmo Private Limited during the financial year 2005-06, being contrary to the provisions of Section 108 of the Companies Act, 1956. We are satisfied that the petitioner is legally entitled to 2,25,000 shares of Rs.10/- each in M/s.Alliance

GraniMarmo Private Limited as per the scheme of amalgamation approved by the Hon'ble High Court of Madras on 13.12.2013. Therefore, we direct M/s.Alliance GraniMarmo Private Limited to allot 2,25,000 shares to the petitioner and consequentially rectify its register of members by entering the name of the petitioner so as to reflect the petitioner's shareholding of 2,25,000 equity shares of Rs.10/- each. The ~~counsel for~~ ^{the} petitioner is directed to coordinate with the management of M/s.Alliance GraniMarmo Private Limited by producing certified copy of this order and executing the required indemnity bond in favour of the said company. The whole process shall be completed within four weeks from the date, the order of this Bench is received/uploaded on the website of the NCLT, whichever is later. Accordingly, the Company petition is disposed of.

(ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

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