

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DB, CHENNAI

Arguments heard on 30.01.2017

Orders passed on, 10.02.2017

TCP No.229 of 2016
(C.P.No. 13 of 2015)

(Under Section 59 of the Companies Act, 2013)

Petitioners : The Oriental Insurance Company Ltd.
Rep by : Chartered Accountant Shri. Kamal Agrawal

Vs

Respondent-1 : M/s. MRF Ltd. and two others
R1 rep by : Senior counsel Shri T.K.Bhaskar

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

ORDER

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

1. Under adjudication is a company petition that came to be filed on 27.02.2015 before the CLB, Chennai, which stood transferred to NCLT and renumbered as TCP No.229 of 2016. The petition has been filed under Section 59 of the Companies Act, 2013 by "The Oriental Insurance Company Ltd." against Respondent No.1 M/s.MRF Ltd., Respondent No.2 M/s.Sanchit Financial and Management Services Ltd., and Respondent No.3 M/s.Morgan Stanley Asset Management Inc.

2. The petitioner is a company incorporated under the Insurance Act as a subsidiary of the General Insurance Corporation of India Ltd., a Government of India undertaking, having its Office in

Mumbai City. Respondent-1 is a company incorporated under provisions of the Companies Act, 1956 having its office at No.124, Greams Road, Chennai. Respondent-2 is a company incorporated under the provisions of the Companies Act, 1956, having its office at 381-A, Green Avenue, Amritsar, Punjab and is a member of the National Stock Exchange of India Ltd. (for short NSE) and registered with Stock Exchange Board of India (for short SEBI). Respondent-3 is a foreign institutional investment company registered with SEBI and operating in India through its Custodian-cum-Constituted Authority having its office at No.52/60, MG Road Post Box No.128, Mumbai-400001.

3. The petitioner contends that in the usual course of their broking business the insured R2, had executed a transaction for sale of 50 shares of Respondent No.1 on 22.02.1996 on behalf of their client namely M/s.Naresh Financial Consultancy through NSE trading terminal under Order No.82152 and Trade No.43723 under settlement No.9609 for settlement period from 28.02.1996 to 05.03.1996. M/s.Naresh Financial Consultancy delivered certificates of 50 shares of Respondent No.1 along with transfer deed executed by the transferor and the insured settled the payment. The contract note for sale of 50 shares of R1 issued by the insured R2 in favour of their client, M/s.Naresh Financial Consultancy, is attached with the company petition and marked as Exhibit 'A'. It has been stated in the petition that 50 shares of Respondent No.1 along with shares of other companies were to be delivered to NSE for pay-in-date 11.03.1996 but on 08.03.1996 the insured realised that the shares were missing from their Office. The insured by a letter dated 03.04.1996, intimated Respondent No.1 about the loss of 50 shares of Respondent No.1,

No.1, provided them details of the share certificates and requested for marking stop transfer. The insured lodged a complaint with Kalkaji Police Station, New Delhi on 08.04.1996 about the loss of shares of five companies including 50 shares of Respondent No.1. By a letter dated 30.05.1996, Respondent No.1 informed the insured that any request for stop transfer or issue of duplicate certificate would be entertained only on receipt of letter from Respondent No.3 since the shares were registered in their name and also an order from a competent court restraining Respondent No.1 from transferring the shares. Subsequently, the insured lodged an insurance claim against the petitioner. Thereupon, the petitioner appointed a surveyor to assess the losses. The petitioner, after completing their internal formalities and upon receipt of the report of the surveyor, made assessment of the losses suffered by the insured for the loss of 50 shares of Respondent No.1 and loss of number of other shares of other companies. After having this process completed, the petitioner intimated the insured that the assessment of losses for the claim lodged by the insured is at Rs.3,85,205/- and requested the insured to execute certain additional documents including a letter to Respondent No.1 and other companies to enable them to disburse the assessed losses. The claim of the insured has been settled by the petitioner and the insured on 8th September 1996, executed a subrogation-cum-special power of attorney in favour of the petitioner and transferred all the rights, title and interest in the shares covered therein including 50 shares of Respondent No.1 in favour of the petitioner. The insured has also written a letter on 4th September 1996 wherein Respondent No.1 was intimated with regard to the settlement of his claim by the petitioner. Based on these facts, the petitioner claims that he has acquired all rights, title and interest in

the said 50 shares of Respondent No.1 from the date of purchase and became entitled to obtain duplicate share certificates in lieu of the original share certificates lost and to get all the benefits like dividend, bonus shares and other benefits due on the said 50 shares of Respondent No.1 from the date of purchase till the date of issuance of duplicate certificates.

4. It is on record that the petitioner had filed a case in Suit No.3653 of 1997 before the High Court of Bombay as Plaintiff No.2 along with the insured as Plaintiff No.1. The High Court vide its order dated 21.04.1998 passed ad-interim order and restrained Respondent No.1 from transferring, alienating or dealing with 50 shares of Respondent No.1 in favour of any other person. The same was brought to the notice of Respondent No.1. The petitioner states that in the month of February 2015, he came to know that the said suit was transferred to the City Civil Court which came to be dismissed for default on 18.01.2014 for non-appearance of their advocate before the court.

5. Respondent No.1 filed a preliminary counter to the present company petition which is otherwise a detailed counter by taking the following objections,

(i) the petitioner has approached this Hon'ble Bench with delay and laches;

(ii) the petitioner is guilty of forum shopping as they had already filed a civil case with respect to the same in Suit No. 3653 of 1997, which has been dismissed due to default by the petitioner;

(iii) the petitioner raised disputed and complicated questions as to the title of shares that cannot be decided by this Hon'ble Bench.

However, it has been admitted by Respondent-1 that a letter has been received from 2nd Respondent stating that Certificate No.193872 containing 50 shares have been lost and requested to stop transfer of the said 50 shares. It is also admitted that the 2nd Respondent is broking (brokerage) firm and claimed that in the normal course of business it detected that 50 shares of M/s MRF Ltd., are missing and sought for the formalities for issuance of duplicate certificates and in reply to 2nd Respondent, Respondent No.1 stated that the request for stop transfer or issuance of duplicate share certificates can be entertained only from 3rd Respondent as the shares are already held by 3rd Respondent. It has also been admitted that the Suit No.3653 of 1997 was transferred to City Civil Court on account of valuation of suit which has been dismissed on 18.01.2014 for default. It has been mentioned in the counter by Respondent-1 that the petitioner did not lodge any shares for transfer in its name, there is no default or delay by the Respondent No.1 in registering the transfer of any shares. Based on these reasons, the counsel for Respondent No.1 stated that the petition does not fall within the purview of Section 59 of the Companies Act, 2013. In this connection, it is undoubtedly clear that Respondent No.1 was approached for stopping the transfer of shares, but Respondent No.1 has desired that a competent court be approached for seeking injunction. This *per se* amounts to unnecessary delay made in entering the name of the claimant in the register. Therefore, the contention of Respondent No.1 is not tenable in the eyes of law. It has further been stated by the counsel for

Respondent No.1 that the petitioner is stopped from filing a fresh proceedings on the same cause of action on principle analogous to Order 2 Rule 2 of the Code of Civil Procedure, 1908. Respondent No.1 further took an objection that the petition suffers from non joinder of all necessary parties.

6. In the light of the above, the issues that could be framed are as follows :-

- (a) Whether the petitioner is guilty of forum shopping and the petitioner is barred under Order 2, Rule 2 of the Civil Procedure Code, 1908?
- (b) Whether the petitioner approached this Tribunal with delay and laches and the petition is barred by limitation?
- (c) Whether the petition is liable to be dismissed for non joinder of all necessary parties? and
- (d) Whether the petitioner has raised disputed and complicated questions as to the title of shares which cannot be decided by this Tribunal?

7. As can be seen from the facts stated in the pleadings, the petitioner in good faith had filed the case in Suit No.3653 of 1997 before the High Court of Bombay which was transferred to City Civil Court and ultimately dismissed for default on 18.01.2014. However, Counsel for Respondent No.1 referred a ruling given in Jacob Cherian Vs K.N.Cherian and Ors, (1971)86LW250, which lays down that in case the petition is withdrawn without seeking liberty to file fresh petition having the same cause of action, then as per Order 23, Rule 1 of Civil Procedure Code, 1908, the petitioner is precluded from instituting a fresh petition on the allegations upon which the earlier petition was founded. This case was pertaining to

Sections 397 and 398 of the Companies Act, 1956, wherein the petition was withdrawn and another petition was filed on the same set of facts and circumstances with same additional facts and events happened subsequently. But in the present matter, the civil suit was not withdrawn but was dismissed in default. The order of 'dismissed in default' cannot be considered to be the order on merits. Therefore, there is no bar for the petitioner to file the petition before this Bench.

8. Admittedly, Article 137 of the Limitation Act, 1963 applies to these proceedings, where no time limit is specified for filing the petition, the proceedings have to be initiated within three years from the date of the cause of action. In the present matter, the cause of action arose in February 1996. In November 1997, the suit was filed before the High Court of Mumbai after a lapse of 21 months from the date the cause of action arose. The said suit was transferred to the City Civil Court which was dismissed for default on 18.10.2014 and the petition was filed in February 2015. If we count three years from the date when the cause of action arose. The delay is of 21 months plus one year, then three year period does not seem to be over, because for the rest of the period the petitioner seems to have instituted the proceedings in the matter in good faith all along which has to be excluded under Section 14 of the Limitation Act. Therefore, the petition does not appear to be time barred. The case law that has been cited by the counsel for respondent is : *Amarjeeth Singh Vs Reliance Industries Ltd.* reported in MANU/CL/0070/2002; *Harbaksh Singh Batra Vs Larsen and Turbro Ltd.* (2010)4 CompLJ107(CLB); *Jagjit Rai Maini and Others Vs. Punjab Machinery Works (P) Ltd. & Ors.* reported in (2001)103 CompCas979(P4H). These rulings are not squarely applicable to the

facts and circumstances involved in the present case. There are cases where the petitions have been filed after the expiry of the period of limitation with applications for condoning the delay. The term “sufficient cause” used in Section 5 of the Limitation Act has been interpreted by placing a liberal construction, 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 condonation of delay. Some of such cases are *Smt. Nupur Mitra Vs Basubani Private Ltd.* (1992)2Cal LJ264. In this case, the petition under Section 111 was filed after 50 years, CLB dismissed the petition as time barred which was set aside by Calcutta High Court and confirmed by the Apex Court. Another leading authority is *G. Ramagowda Vs Special Land Acquisition Officer, Bangalore* reported in AIR (1980)SC893 wherein the Apex Court held that Section 5 of the Limitation Act, must receive liberal interpretation. However, we do not see that any gross negligence or inaction or lack of bona fide is attributable to the petitioner. Hence, it is fairly concluded that there is no delay or laches and the company petitioner is not barred by limitation.

9. The third issue pertains to the non joinder of the parties but from the pleadings and prayers, only the Petitioner and three Respondents are involved in the matter. The order of this Tribunal dated, 22.09.2016 goes to show that Respondent No.2 and No.3 have been set ex parte. The reason, as to why they have not shown interest in the matter is that a claim amounting to Rs.3,85,205/- was settled by the petitioner in favour of the Insured R2 and the Insured executed a subrogation-cum-special power of attorney on 8th September 1996 in favour of the petitioner, thereby transferring the rights, title and interest in respect of the shares of Respondent-1 company covered

under the claim including 50 shares of Respondent No.1. Respondent No.2 vide his letter dated 4th September 1996 intimated R1 that their claim has been settled by the petitioner. As regards Respondent-3, NOC has been given to Respondent No.1 for issuance of duplicate share certificates to the Petitioner. It is otherwise a fact that if Respondent-3 would have any interest in the matter, he would have appeared to contest the petition but he has chosen not to appear for the reason stated. Therefore, due to non-appearance he was proceeded ex parte.

10. The last issue that has been raised by the counsel for respondent is that the claim of shares by the petitioner is a complicated issue and needs to be decided by a civil court and not by this Tribunal, which follow only a summary procedure. However, in the facts and circumstances of the case, we do not see that any complicated issue is involved pertaining to the claim of the shares by the petitioner. Respondent-2 has been insured, his claim has been settled, he has executed subrogation-cum-special power of attorney in favour of the petitioner including all the rights, title and interest in respect of 50 shares of Respondent-1. It is a clear and undisputed issue which need not be referred to a civil court, because there is nothing, which could be stated to be of complicated nature. Therefore, the contention of the counsel for Respondent-1 does not appear to be plausible.

11. It is on record that the Respondent-1 company in a similar matter accepted the order of the court in the matter of *Oriental Insurance Company Ltd. Vs MRF Ltd.*, reported in (2007) 78 SCL 124(CLB-Chennai). In another case where subrogation-cum-special power of attorney was given, the order came to be passed in favour

of the petitioner in C.P.No.19/59/2014 (CLB-Delhi) titled *Oriental Insurance Company Ltd. Vs.Nestle*. In another ruling given in the matter of *Finolex Ind Vs Anil Chhabria* reported in 2000 (3) BomCR64, it has been held that the rectification is available in the cases of loss of shares; bad delivery, theft and forgery. Thus, the rectification is available to all kinds of shares held in public company. In a recent case titled *Oriental Insurance Company Ltd Vs. Siemens Ltd and others*, the NCLT, Bombay Bench in CA No.24 of 2014 has decided the matter in favour of the petitioner having a similar set of the facts and circumstances, as are involved in this petition.

12. It is otherwise a fact that Respondent-1 suggested to seek indulgence of the court for obtaining appropriate order. It is also an admitted fact that the shares were in the name of 3rd Respondent, which by the process of trading has gone to Respondent-2 who insured the same with the petitioner and when the shares were lost he has lodged a police complaint and made a claim against the petitioner. The petitioner, after following the procedure, has settled the claim and made the payment and obtained the subrogation-cum-special power of attorney form Respondent-2. In the light of the law of subrogation, the petitioner seems to be entitled to have the shares registered in his name and removal of the name of 3rd Respondent, thereby he will be entitled to get duplicate share certificates with all consequential benefits accrued thereon.

13. In the light of the above, the Respondent-1 is directed to rectify the register of members by entering the name of the petitioner and deleting the name of Respondent-3, then to issue the duplicate share certificate in favour of the petitioner with all consequential benefits

accrued thereon. The petitioner is directed to produce all the papers relevant to the case to the Respondent-1 along with an indemnity bond within a period of three weeks. Thereafter, within ten days, Respondent-1 shall comply with the order. Accordingly, the petition is disposed of.


K.ANANTHA PADMANABHASWAMY
MEMBER (JUDICIAL)


CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)