

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
CHENNAI

Arguments heard on 30.03.2017
Orders passed on 19.04.2017

CA No.69 of 2011
(Under Regulation 44 of the CLB Regulations 1991)

In

TCP No.66 of 2016 (C.P.No.15 of 2011)
(Under Sections 111A and 237(b) of the Companies Act, 1956)

M/s.Stanpro Pharmaceutical Limited *Applicant/Respondent*

Vs

John Mathews and three others *Respondents/Petitioners*

Applicant/Respondent rep. by : Counsel Mr.R.Vidhya Shankar and
Mr.R.Ashok Kumar,

Respondents/Petitioners rep by: Counsel Mr.Anand Merathia

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

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

1. Under adjudication is a Company Application No.69 of 2011 filed in C.P.No.15 of 2011. The Company Petition was filed before CLB that stood transferred to NCLT and renumbered as TCP No.66 of 2016.

2. The Applicant/Respondent company, in the above CA, has submitted that the company petition filed by Mr.John Mathews and 3 others through their Power of Attorney Mr. Mani P.Sam is for seeking directions to set aside certain transfers and rectification in the Register of Members. It is averred by the applicant/Respondent that the

Respondents/petitioners after executing the instruments of transfers in favour of Mr.Varghese George, the President of INAMCO and delivered the share certificates to him twice in the years 2004 and 2006. It has been submitted that Section 111A(3) bars filing of petition after two months, if the transfer process has already taken place. It has further been submitted that the Respondents/Petitioners are fully aware of the share transfer, after having obtained certified copies of the Annual returns for the year 2007 and other documents from ROC, but they filed the petition belatedly in 2011. It has been alleged that transferor and transferee(s) who are necessary parties have not been impleaded. Therefore, the applicant/respondent prayed to strike off or alternatively dismiss the petition as “not maintainable”.

3. Respondents/Petitioners have filed their counter in CA 69 of 2011 stating therein that an AGM was conducted on 09.03.2007 during which the accounts were finalised for the year 1997. In the list of shareholders annexed with Form 20B, their shareholding is shown as “zero”. Respondents/Petitioners raised an objection that if their shares were transferred in the year 2004 and 2006, the shareholder list for the year 1997 should have shown the actual number of shares held by them and not as “zero”. It is contended they were kept in dark as to whether their proposal was acted upon or not. They submitted that they visited India in January 2011 and only during their visit, they came to know that their shares have been transferred and immediately they approached the CLB

by filing the company petition No.15 of 2011. With regard to non-joinder of parties, the Respondents/Petitioners submitted that they do not know to whom their shares have been transferred and that the Applicant company has not claimed that all the shares have been transferred to Mr.Verghese George and further stated that Mr.Varghese George is no longer associated with the company and his whereabouts are not known.

4. For the purpose of convenience, it is necessary to state the brief facts contained in the main petition. Mr.John Mathews, Susan Mathews, Anitha Mathews and Kevin Mathews who are living in the USA through their Power of Attorney Mr.Mani P.Sam of Chennai have filed the petition against M/s.Stanpro Pharmaceutical Limited (for short Respondent Company). It has been stated that the brother of 1st petitioner Mr.J.Verughese along with other promoters incorporated the company. Petitioner-1 (John Mathews) is the largest shareholder in the said company, he has regularly invested and executed loans in favour of the company, the details of which are as follows :-

Description of investments	US Dollars	Indian Rupees
May 1990-August 1996 in shares	\$ 166,550	Rs. 75,00,000
October 1996-October 1997 loan at 10%	\$ 100,000	Rs. 45,00,000
December 2001-December 2002- Additional loan to revive 1 st Respondent company	\$ 60,000	Rs. 27,00,000
Interest on the above loans	\$ 162,000	Rs. 73,00,000
Total investments		Rs.2,20,00,000

5. It has been submitted that during 1990 the functions and operations of the company started dwindling and put to jeopardy when Mr.J.Verughese decided to leave the company in the year 2000. In 2001, 1st petitioner was introduced to Mr.Varghese George and Sam Kuzhikala, representative of INAMCO, a pharmaceutical company in New Jersey through a mutual friend, to find ways and means for revival of the Respondent company. Petitioner-1 could not manage the affairs of the company from the USA and entered into an understanding with Mr.Varghese George, the President if INAMCO. As per understanding, the Petitioner-1 would invest in the debentures of INAMCO which would channel the funds to Respondent company to pay off the outstanding loans to SBI, TIIC and tax dues to IT Department and revive the company. The 1st petitioner in the month of January 2002 arranged for a meeting and introduced Mr.George Varghese and Sam Kuzhikala to the auditors, bankers and the manager of operations of the Respondent Company in Coimbatore, so that the reasonable due diligence of the books of accounts and records of Respondent Company can be conducted. Mr.George Varghese and Mr.Sam Kuzhikala requested the petitioner to authorise them for dealing with the creditors and to sign the share transfer Forms stating that it would stand as conclusive proof of authorisation. The petitioners submitted that accordingly in 2004 blank transfer Forms were signed along with power of attorney in favour of Mr.Varghese George, President, INAMCO. The petitioner submitted that from December 2001

to March 2006, he subscribed the debentures of INAMCO to the tune of Rs.4 crores. In the year 2004-05 there arose enmity between George Varghese and Sam Kuzhikala and the former wanted to evict the latter from R1 company alleging mismanagement. But Sam Kuzhikala refuted the allegation and contended that Varghese George did not transfer the investments of the 1st petitioner to Respondent company and was misappropriating the funds at INAMCO, New Jersey. The petitioner further stated that Varghese George informed him that he is going to Coimbatore to personally take care of R1 company and asked to sign Share Transfer Forms once again. After Mr.Varghese George left for India with the share transfer forms, INAMCO went into bankruptcy and Mr.Varghese George could not be found and a claim was made by the petitioners against INAMCO.

6. The petitioners further submitted that he sent an e-mail dated 5.6.2007 to Respondent company asking the Secretary not to authorise Mr.Varghese George to make any attempt to transfer the shares. He effected a public notice dt.30.10.2007 that Mr.Varghese George committed fraud and was not the rightful owner of the shares of Respondent company. The petitioners came to know that Mr.Varghese George sold the shares of the petitioners to a third party for which the petitioners were never compensated. The petitioners also submitted that as per Regulation 10B of the Foreign Exchange Management (Transfer or issue of Securities by a person resident outside India) Regulations, 2000,

transfer by way of sale not covered by Regulation 9 by a person resident outside India of the shares/convertible debentures held by him to a person resident in India, shall require prior permission of the Reserve Bank of India. Where the shares of an Indian Company are not listed on stock exchange while considering the grant of permission, the Reserve Bank has laid down certain guidelines which were to be fulfilled. Apart from this, the petitioner has also submitted that the transfer ought to have been in accordance with the provisions of Section 108 of the Companies Act, 1956. The share transfer forms viz. Form 7B duly signed by Mr. John Mathews and three others ought to have been executed within a period of two months from the date of its presentation i.e. 13.01.2004 and 21.03.2006. In this background, the petitioners submitted that there is no limitation applicable and the petitioners have been kept in dark, as it was not known as to whether the proposal of the 1st petition has been acted upon or not after his last visit to India. As per the petitioners, they came to know this only during their visit in June 2011, from the records available with them and from the records available in public domain and they have approached the CLB immediately to file the company petition. In the light of the details stated above, the reliefs sought for by the petitioners are as follows :

- a) To order that the transfers were registered without duly complying with the FEMA Regulations with respect to valuation of shares and prior approval of RBI ;

- b) Direct an investigation by duly appointing competent persons as Inspectors to investigate the affairs of the company ;
- c) Direct the respondent to register the shares in the name of the petitioners and return the share certificates with due endorsement of Transfer ; and
- d) Direct the respondent to rectify the register of the company

7. We have heard both of the counsels and perused the pleadings along with records placed on file. The main issued raised by the Applicant/Respondents in C.A.69 of 2011 pertains to the period of limitation. It has been contended that under Section 111A(3) of the Companies Act, 1956, the application can be made by a depository company, participant or investor or the Security Exchange Board of India, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 or regulations thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 or any other law for the time being in force, within two months from the date of transfer of any shares or debentures or from the date on which the instrument of transfer or the intimation of the transmission was delivered to the company, as the case may be, after such enquiry as it thinks fit, direct any depository or company to rectify its register or records. Therefore, from the date of transfer of any share or debenture which is in contravention of the law, the application has to be filed within two months. But in this case, it is admitted by the

Respondents/petitioners that they have signed the forms for transfer of shares along with the Power of Attorney in the years 2004/2006. The petitioners informed the Respondent company that Mr.Varghese George is no longer representing their interest and his attempt to transfer shares should not be authorised by the Secretary. The said communication has been made through e-mail dated 5.6.2007 and the 1st petitioner also gave a public notice dated 30.10.2007 regarding the fraud committed by Varghese George stating that he is not the rightful owner of the shares of Stanpro Pharmaceutical Limited, Coimbatore. This shows that the Respondents/petitioners were having full knowledge of the transfer of their shares during 2007. In this connection, they obtained certified copies of Annual Returns and various other materials in 2007. But filed the company petition only in 2011 much after the lapse of the time period prescribed under Section 111A(3) of the Companies Act, 1956. The counsel for Applicants/Respondent has referred to decision of the Apex Court in Civil Appeal No.1166/2016 given in *Balwant Singh (Dead) Vs Jagdish Singh and Ors.* wherein it has been held that it is necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The Apex Court further observed that the proof of “sufficient cause” is a condition precedent for the exercise of the discretionary jurisdiction vested in the court under Section 5 of the Limitation Act, and if sufficient cause is not proved nothing further has to be done.

8. It is interesting to note that the petitioners at the time of filing the petition during 2011 have not made any application showing 'sufficient cause' for the condonation of delay or even during the course of arguments no such explanation has been made. Thus, the counsel for Respondents/petitioners have neither shown "sufficient cause" for the prolonged delay, nor payed for condonation of delay in the matter in hand. However, he made a reference to the ruling of the CLB given in *S.Kanthimathy and Others Vs Woodlands Estate Ltd., and Others*, reported in (2008)144 CompCas 830(CLB). In the said case, under para 22, it has been observed that it is a settled law that delays in bringing the appeals are required to be condoned in the interest of justice, where no gross negligence or deliberate inaction or lack of bona fide is imputable to the party seeking condonation of delay and in the said matter the legal heirs were engaged in resolving the dispute before approaching the CLB and the CLB had taken the ground of their being engaged in resolving the disputes as "sufficient cause" for condonation of ten months' delay. But in this case, Respondents/petitioners have never given any explanation with regard to the delay caused in filing the company petition. Therefore, this ruling is not applicable to the facts and circumstances of the present case, as the facts in this matter are distinguishable from that of the facts stated in the ruling referred above. From 2007 to 2011 there is a lapse of four years which is abnormal delay in filing the petition. Therefore, the present petition is barred by delay and laches. In support, the counsel for

Applicant/Respondent referred to the case of *Rajkumar Gupta and others Vs R.Gupta and others* reported in [2009] 147 Comp Cas 690 (CLB), wherein it has been held that even though the provisions of Limitations Act, are not applicable to the proceedings before the CLB there is an abnormal delay in bringing the matter before the CLB. The petition was dismissed on the ground of delay and laches. Therefore, this ruling is squarely applicable to the facts and circumstances of the present case.

9. It is worthwhile to mention that the petitioners have transferred their shares in favour of Mr.Varghese George by signing the share transfer Forms along with the Power of attorney during 2004/2006, so the only grievance of the petitioners could be non-payment of the consideration. This grievance reflects from Para IV(2) of the petition that states, “No consideration has been paid to Mr.John Mathews & 3 Others for the so called transfers”. Therefore, the petitioners could have ventilated their grievance before the court (civil) of the competent jurisdiction by filing a suit against Mr.Varghese George for recovery of the sale consideration of their shares sold. This view is fortified by the ruling given in *Heeral Constructions P. Ltd and another Vs. Blue Pearl Developments P. Ltd and others* reported in [2009] 150 Comp Cas 234 (CLB), wherein under para 27, it has been observed that the petitioners, if at all, have any grievance for non-payment of the agreed sale consideration as per the agreement, at best, may ventilate their grievances before the competent civil court having jurisdiction over the matter. Besides the above, the

petition is also liable to be dismissed for non-joinder of necessary and ^{proper} ~~appropriate~~ parties because the Respondents/ petitioners have not arrayed Mr.Varghese George and other transferees in the company petition.

10. In view of the factual and legal position discussed above, the C.A.No.69 of 2011 is allowed and the company petition T.C.P.No.66 of 2016 (CP No.15 of 2011) along with C.A.No.171 of 2011 stands dismissed. The interim order, if any, is also vacated. There is no order as to cost. The file may be consigned to record after due completion.


K.ANANTHA PADMANABHASWAMY
MEMBER (JUDICIAL)


CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)