

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERBAD

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

C.P.No.5/111A/CB/2015
in
(T.P.No.111/HDB/2016)

In the matter of

Between:

Ms. Sri Rajarajeswari,
W/o Mr. Kandimalla Bhaskar,
6-188/5, Teachers Colony,
Martur,
Andhra Pradesh.

... Petitioner

Versus

1. Amaravathi Textiles Private Limited,
33-263, Kandimalla Road,
Panduripuram,
Chilakaluripet,
Andhra Pradesh – 522 616.
2. Mr. Chittineni Ramaiah
S/o. Mr. Seethaiah
Pusuluru, Guntur District,
Andhra Pradesh – 522 235.
3. Ms. Kavuri Geetha,
W/o Mr. Bhaskar Rao,
3-1-2, Stambalagaru (Brindavan Gardens),
Ring Road, (Next to Chebrolu Hanumiah's House)
Guntur District,
Andhra Pradesh – 522 006.

... Respondents

Judgement delivered: 09.08.2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittalana, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Counsel for the Petitioner:

Mr. S. Chidambaram,
PCS

Counsel for the Respondents:

Mr. V.S. Raju & V.B. Raju
for R.1
Mr.R.Raghunandan Rao
along with Mr.G. Bhupesh
for R.2 & R.3



:2:

Per: Ravikumar Duraisamy, Member (Technical)

JUDGEMENT

1. The Company Petition No.5 of 2015 filed by the Petitioner Ms. Sri Rajarajeswari, under Section 59 of the Companies Act, 2013, read with Companies (Removal of Difficulties) Order 2013, dated 26.09.2013 questioning the transfer of 15,000 shares from Respondent No.2 to Respondent No.3 on 11.03.2010, and sought the following reliefs:

“To set aside the purported transfer of 15,000 Equity share of Rs.10/- each from the 2nd Respondent to the 3rd Respondent allegedly on 11.03.2010, as being illegal and in violation of the Articles of Association of the 1st Respondent Company and consequently direct the 1st Respondent Company to rectify its Register of Members and direct that the cost of this Petition be awarded to the Petitioner”

2. The brief facts of the case are that the Company viz., Amaravathi Textiles Private Limited was initially registered as a private limited company on 20.08.1983. The Company was converted as a Public Company on 01.07.1996 and later on again reconverted as a Private Limited Company on 05.02.1997.
3. The main objects of the company are business of Textile Manufacturing etc., The Authorised Share Capital of the Company is Rs.1,70,00,000/- (Rupees One Crore Seventy Lakhs only) divided into 17,00,000 (Seventeen Lakhs) Equity Shares of Rs.10 each. The Issued, Subscribed and paid Up capital is Rs.1,60,00,000/- (Rupees One Crore Sixty Lakhs only) divided into 16,00,000 (Sixteen Lakhs) equity shares of Rs.10 each.
4. The Petitioner submits that she is a shareholder of the 1st Respondent Company since 1992 and presently holds 22,500 equity shares of Rs.10/- each constituting 1.40% of the paid up capital of the company. The Respondent No.3 without complying with the procedures stipulated under the Articles of Association of the Company purportedly purchased the said shares.



:3:

5. The Petitioner became aware about the illegal transfer only when the Petitioner attended the Annual General Meeting for the year ended 31.03.2014 held on 15.09.2014. Only at that meeting the petitioner had an opportunity to look at the register of members and share transfer register for the first time and the petitioner came to know the illegal transfer only upon inspecting the above mentioned statutory registers on the said date. No notice was received by the Petitioner for any of the AGMs in the past and therefor petitioner did not have an opportunity to attend the AGM in the past and inspect the members' register (which needs to be kept as per the provisions of the companies act). For the AGM on 15.09.2014 the petitioner for the first time received the notice and had an opportunity to attend the AGM and also inspect some of the registers. In view of the above mentioned facts the petitioner is well within the limitation period. The Petitioner most respectfully submits that there has been no wilful and intentional delay on her part in filing the present petition. This fact was mentioned in para 5.1 of the Petition and it is to be noted that the Respondent No. 1 Company has not disputed this fact in their counter and hence the petition is filed within limitation period of three years from the date of knowledge of the Petitioner.
6. As mentioned above only on 15.09.2014 the petitioner became aware that Respondent No. 2 without complying the procedures laid down in the articles of association of the company purportedly transferred 15,000 shares to R3 on 11.03.2010.
7. The Petitioner submits that the transfer of 15,000 shares on 11.03.2010 from R2 in favour of R3, R2 being transferor as per articles of the company should have given opportunity to the Petitioner to acquire the impugned shares, by giving transfer notice to the company and the company should have enquired from the members of the company their willingness to acquire the offered shares up on the proposal by the transferor (R2) at a fair price. The board as well as R2 having completely failed in complying regulation 12 of the Articles of Association thereby a grave irregularity has been committed by them. The board of directors without complying the articles with mala fide intention permitted surreptitiously the transfer from R2 to R3.



:4:

8. The Petitioner submits that the reply filed by R1 Company is untenable. The stand of the company is that the transfer is between the members under article 11, being inter-se transfer between member to member. Every transfer should be preceded with the transfer notice under Article 12. Further the transfer price should be at a fair price. These two important critical compliances have not been adhered to. On this ground alone the impugned transfer should be set aside.
9. The Board of Directors are to strictly bound by the Articles of Association; the Board of Directors have no power to act contrary to Articles of Association. The decision of the Supreme Court in the leading case in **Claude-Lila Parulekar (Smt) Vs. Sakal Papers (P) Ltd and others (2005) 11 Supreme Court Cases 73**. The Supreme Court held:

“Section 36 of the Companies Act, 1956 makes the Memorandum and Articles of Company, when registered, binding not only on the company but also the members inter-se to the same extent as if they had been signed by the company and by each member and covenanted to by the company and each shareholder to observe all the provisions of the Memorandum and of the Articles. The Articles of Association constitute a contract not merely between the shareholders and the company but between the individual shareholders also. The Articles are a source of powers of the Directors who can as a result exercise only those powers conferred by the Articles in accordance therewith. Any action referable to the Articles and contrary thereto would be ultra vires.

Thus in Hunter v. Hunter (1936) A.C. 222, the shareholders in a private company challenged the transfer of shares by another shareholder to 3rd parties without compliance with the provisions of Articles of Association. In terms of the articles a member could not



:5:

transfer his shares until he had given notice to the Secretary offering to sell the shares at a price to be fixed by the auditor and until the Secretary had offered them to the other members. It was found that in violation of this article, one of the shareholders had sold the shares to nominees of a bank from which that shareholder had obtained loans. The application for rectification of the share register was resisted by the purchaser in whose favour the shares had already been registered with the company. The House of Lords came to the conclusion that the purchase was not in terms of the Article and that the transfer in violation of the Articles was inoperative. In our opinion the entire transaction of sale is riddled with illegalities

The notices issued in respect of the 93 and 3417 shares were not in keeping with the Articles as far as Articles 58 to 63 were concerned. As we have already observed, notices to willing members or to selected persons under Article 58 must succeed and not precede the actual operation of Article 57-A. The notices issued by the respondent Nos. 2, 3 and 4 also did not constitute the Directors as the transferor's agents for the purposes of selling the shares in terms of Article 59. There was, in the circumstances, no question of the transferors selling their shares to any 3rd party under Article 63 unless proper notice had been issued to the 2nd and 3rd category of persons if any. There was also no question of the transferor invoking Article 61 bypassing the right of a willing member or selected, if any, to negotiate a fair price....”

10. The above decision make it clear that board of directors are duty bound to comply strictly as per Articles of Association and any violation thereof would be an ultra vires transaction.



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11. In view of the above submission transfer between member to non member of 15000 shares on 11.03.2010 and approved by the Board of Directors in direct contradiction to the Articles of Association being illegal should be set aside and the members' register be rectified to that extent.
12. The Petitioner is willing to acquire the impugned 15,000 shares and this Hon'ble Bench may kindly direct the company to transfer the impugned shares to the credit of the Petitioner. The Petitioner is undertaking to pay the fair price for those shares as may be directed by the Hon'ble Tribunal.

13. Extract of Articles of Association 11 to 15:

"11. A share may be transferred by a member or other person entitled to transfer to any member selected by the transferor but save as afore said and save as provided by Articles 17, 18 and 19 hereof. No share shall be transferred to a person who is not a member so long as any member or any person selected by the Directors for membership is willing to purchase the same at its fair value.

12. Except where the transfer is made pursuant to Articles 11 and 17 hereof, the person proposing to transfer any share hereinafter called the "proposing transferor" shall give notice in writing (herein after called the 'transfer notice) to the company that he desires to transfer the same. Such notice may specify the sum he fixes as the sale value and shall constitute the company his agent for transferring the share to any member of the company or person selected as aforesaid at the price as fixed or at the option of the purchaser at the fair value to be ascertained hereunder. The transfer notice may include several shares and in such case, it shall operate as if it were a separate notice in respect to each. The transfer notice shall not revocable except with the sanction of the Board.



:7:

13. If the Company shall find a member or person selected as foresaid willing to purchase the share (hereinafter called "purchasing member") it shall give notice thereof to the proposing transferor within twenty-eight days after being served with the transfer notice and after being served with such notice, he shall be bound upon payment of the fair value to transfer the share for the purchasing member.

14. The company shall at its annual General Meeting determine the fair value of a share for this purpose as per the latest audited balance sheet and said fair value shall be in force till it is so fixed again and where it is not so fixed, the amount paid up on the share or share shall be fair value thereof.

15. If in any case the proposing transferor after having become bound as aforesaid make default in transferring the shares, the company may receive the purchase money and shall thereupon cause the name of the purchasing member to be entered in the Register as the holder of the shares and shall hold the purchase money in trust for the proposing transferor. The receipt of the company for the purchase money shall be good discharge to the purchasing member and after his name has been entered in the register in purported exercise of the aforesaid power the validity of such proceedings shall not be questioned by any person.

Submissions of Respondent No.3:

14. It is humbly submitted that the present petition was filed by the petitioner questioning the transfer of 15,000 shares from respondent No.2 to respondent No.3 herein on 11/3/2010. This transfer is questioned by the petitioner on the ground that the procedures laid down in the articles of association of the company were not followed. The said ground is untenable for the following grounds stated hereunder.

The manner of transfer of shares can be seen from the below diagram:

R2 (Member) —————> 15,000 shares to R3 (already a Member)



:8:

15. It can clearly be seen from the above diagram that R3 is already a member of the company being a Director and shareholder and R2 have transferred 15,000 shares to R3 who is already a member of the company
16. It is further submitted that in fact, the transfer of shares by the respondent No.2 to the 3rd respondent was made fairly in accordance with the Articles of Association of the Company. A reading of Article 11, 17, 18 & 19 would show that transfer of a share from a member to another member doesn't require to comply with the procedure set out in Article 17 to 19. The saving provision in Article 11 clearly saves transfer of shares from one member to another member from any restriction of transfer and can be done at the sole discretion of the transferor.
17. It is very evident from the Articles of Association that a transfer can be made to any of the member at the discretion of the transferor. And so, the 3rd respondent being a director and shareholder of the company, the transfer of shares made to her is fairly legal and justified.
18. **Supreme Court** in Para 6 of *V.B.Rangaraj Vs. VB Gopalakrishnan & others AIR 1992 SC 453* very clearly contemplated that **“Whether under the Companies Act or Transfer of Property Act, the shares are, therefore, transferable like any other movable property. The only restriction on the transfer of the shares of a company is as laid down in its Articles, IF ANY. A RESTRICTION WHICH IS NOT SPECIFIED IN THE ARTICLES IS, THEREFORE, NOT BINDING EITHER ON THE COMPANY OR ON THE SHAREHOLDERS. THE VENDEE OF THE SHARES CANNOT BE DENIED THE REGISTRATION OF THE SHARES PURCHASED BY HIM ON A GROUND OTHER THAN THAT STATED IN THE ARTICLES.**



:9:

19. Further, the Hon'ble Supreme Court in *Tett V. Phoenix Property and Investment Co. Ltd. and Ors. 1986 2 SCC 99* reiterated a view from *Re Swaledale Cleaners Ltd. (1968) 1 All ER 1132* that it is well established that a share in a company is an item of property freely alienable in the absence of express restrictions under the Articles.
20. In view of the aforesaid, it is clearly understood that the transfer of 15,000 shares from respondent No.2 to the respondent No.3 who is already a member is in accordance with the Articles of Association of the company and so is legal and justified.
21. Further, it is humbly submitted that the subject matter of the present company petition is already barred by limitation. The present company petition was filed by the petitioner herein after a lapse of 5 years. It is well established that the limitation period prescribed to approach this Hon'ble Tribunal is 3 years. Hon'ble National Company Law Tribunal, Principal Bench New Delhi in *M/s. Elan Professional Appliances Pvt. Ltd. & Ors.* has very clearly and elaborately elucidated the aspect of limitation period to knock the doors of the Hon'ble National Company Law Tribunals and has very strictly stated that the prescribed period of limitation is 3 years. Further, on the same subject matter litigation, the husband of the petitioner has already approached the Hon'ble CLB in the year 2011 vide Company Petition No.19 of 2011 which eventually got transferred to this Hon'ble Tribunal. In the meanwhile, the petitioner herein, tried to file same cases on the same subject matter litigation and filed the present case and with a fear of consequences of res subjudice and fear of consequences for running parallel proceedings in the same forum of law, the husband of the petitioner withdrew the Company Petition No.19 of 2011. It is herein important to note that the petitioner herein and her husband are residing in the same residence and therefore, the petitioner cannot claim that she came to know about the transfer of shares only on 15-9-2014. Thus, the present company petition is strictly barred by limitation and is liable to be dismissed.



:10:

22. It is respectfully further submitted that the petitioner herein has referred to decision in *Claude-Lila Parulekar (Smt) Vs. Sakal Papers (P) Ltd (2005) 11 SCC 73* and brings down the illustration of Section 36 of the Companies Act, 1956. It is herein important to note that Section 36 contemplates that the Memorandum and Articles of Company, when registered, become binding not only the company but also on the members. It is herein brought to the notice of the Hon'ble Tribunal that the respondents herein have duly acted as per the procedures and regulations prescribed by the Articles of Association of the company as stated supra. The decision referred to by the petitioner thus cannot be applied to the present case.

23. Further, the petitioner herein tries to rely on the judgment in *Hunter Vs. Hunter (1936) A.C. 222*. If the said judgment is observed, it speaks about the transfer of shares by another shareholder to 3rd parties without compliance with the provisions of Articles of Association. Here is a case, where the transfer of shares are done in due compliance with the provisions of Articles of Association as stated earlier. Therefore, the judgment thus referred cannot be applied to the present case.

24. It is humbly further submitted that the petitioner stays silent on her misdeeds. The petitioner herein does not speak about the share transfers made on 1-9-2007, 25-3-2008 and 18-7-2009 wherein 55,000 , 72,400 and 67,600 shares were transferred to the husband of the petitioner from 3rd parties.

25. In view of the aforesaid, it is very evident and clear that the petitioner has approached this Hon'ble Tribunal with malafide intentions and malafide motives to grab the entire shareholding of the respondent company. Further, the present company petition is strictly barred by limitation both on the grounds of cause of action and knowledge. The balance of convenience is very clearly in favor of the respondents herein.



:11:

26. In the said circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to pass orders dismissing the company petition with exemplary costs.

Submissions of Respondent No.1:

27. At the outset it is submitted that the transfer of the shares in favour of the respondent No.3 by Respondent No.2 has validly taken place in accordance with the provisions of the Companies Act, 1956 Read with Articles of Association of the 1st Respondent Company. The petitioner has filed the Company Petition who was aware of the transfer of the shares in the year 2007 since some of the shares held by the 3rd parties were transferred to the petitioner's husband. The present petition has been filed due to the disputes and differences between the family members and the petitioner who is none else than the sister-in-law of the 3rd respondent. The present petition is barred by limitation as the petitioner is quite aware of transfer of certain shares from the 3rd parties in the year 2007, 2008 and 2009 and hence the present petition is liable to be dismissed.

28. Further submit that as per the Articles of Association of the 1st respondent company the transfer of shares by respondent No.2 being share holder of the 1st respondent company are entitled to select any existing member and accordingly they have selected and transferred 15000 shares duly signed and executed in favour of the respondent No.3. The executed transfer forms were submitted with the respondent No.1 company and having found that shares are fully paid up and no lien on the said shares and the transfer being to an existing member, the Board of Directors at their meeting held on 11.03.2010 has agreed to transfer their shares in favour of the 3rd respondent who is fit and proper persons to hold their shares in the 1st respondent company. Further as per the Articles the shareholder can identify any member for selling their shares to any of the existing share holders at the discretion of the transferor and there are no restrictions on such transfer. Further it is submitted that as per the Articles, the 1st respondent company has got discretionary powers to transfer their shares vested with the Board of Directors of the company. Hence on transferring



:12:

the said shares, the name of the transferee i.e. 3rd respondent was entered in the register of members of the 1st respondent company. Hence the shares are being validly transferred does not require any rectification in the register of members of the company. It is submitted that the husband of the petitioner have got transferred 55,000 shares on 01.09.2007, 72,400 shares on 25.03.2008 and 67,600 shares on 18.07.2009 in his favour from 3rd parties. Having benefited by such transfers the petitioner cannot question the approval of the inter-se transfer of shares among the members as illegal. The petitioner by abusing the process of law has filed the present petition only due to the differences between the family members. There is duty cast on the respondent company when once legally executed the documents are filed, the respondent company has to transfer the shares.

29. Upon perusal of all the documents, written submissions filed by all the parties and the judgements referred to by the parties, the Bench made the following observations:

30. With regard to the limitation issue raised by the Respondents, the Petitioner clearly stated that she came to know about the transfer of 15,000 shares from R.2 to R.3 only subsequent to the inspection of documents carried out on 15-09-2014 i.e. during the Annual General Meeting, she had an opportunity to inspect the Register of Members and the Share Transfer Register for the first time. She also submitted that she did not receive any prior notice for AGM. The present petition was filed on dt.28-04-2015 before the Hon'ble Company Law Board, Chennai. The Respondents also did not furnish any proof establishing that the notice for AGM's was served on the petitioner. Therefore, we agree with the submissions of the petitioner and find no merit in the submission of the respondents.

31. The Respondents have also raised an issue stating that the petitioner was aware of the transfer of shares taken place in the year 2007,2008 and 2009 to her husband. Taking the plea that the transfer of shares to her husband



:13:

in the year 2007, 2008 and 2009 therefore she would have automatically know the alleged current transfer of 15000 shares to R.3 is not acceptable since facts of these transfers are not before this Tribunal therefore we cannot comment on the same. Both husband and wife are two separate individuals therefore it is not a must that all the transactions especially financial transactions come to the knowledge of the other person automatically. Therefore, the above submissions of the Respondents do not find merit.

32. Articles of Association of the R.1 Company prescribes certain procedures have to be followed regarding transfer of shares. The petitioner alleged that the transfer is without any transfer notice to the company as per Article 12 of R1 Company. Though the matter was previously reserved for orders in the absence of the documents / evidence submitted by either party, the case was again listed on 05-06-2017 and clarifications / documents were sought from the parties. However, it is observed that the Respondents once again just reiterated the submissions made during previous pleadings. Though in the Counter R3 submitted that she is already an existing member, however no documentary evidence were submitted in support of the same. As per the Articles of Association, transfer notice was not served on other shareholders including the petitioner. They have also not submitted the crucial document, i.e. Minutes of the Board of Directors Meeting held on 11.03.2010 wherein the 15,000 shares were transferred to R.3. In the absence of crucial evidence with regard to facts and circumstances, discretionary powers of Board considered while approval was given by the Board of Directors for the aforesaid transactions, and rules made in the General Meeting of R.1 Company with regard to the transfers, we are convinced that the above said transfer of shares are not in accordance with Articles of Association of R.1 Company, therefore the same is liable to be set-aside. Accordingly we hold that the transfer of above 15,000 shares in the name of Ms. Kavuri Geetha (R.3) is illegal and therefore we direct the R.1 Company to rectify the Register of Members within 10 days from the date of receipt of copy of this order and report compliance of the same to the Registry immediately.



:14:

33. With regard to the prayer of the petitioner, to direct the company to transfer the impugned shares to the credit of the petitioner, we hold that the same has to be dealt by the Transferor/Transferee/R-1 Company in accordance with the applicable provisions of Companies Act, Articles of Association of R-1 Company.

34. No order as to costs



Sd/-
RAVI KUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-
RAJESHWARA RAO VITTANALA
MEMBER (JUDICIAL)

Order Received by the Registry on 6.9.21

प्रमाणित प्रति
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केस संख्या
CASE NUMBER *C.P. No. 5/11A/CB/2015-FA*
निर्णय का तारीख
(*APP No. 111/HDB/2016*)
DATE OF JUDGEMENT *9.8.2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *6.9.2017*

for Dy. Regr./Ass. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

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