

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, AT HYDERBAD**

**C.P.No.4/111A/CB/2015  
in  
(T.P.No.110/HDB/2016)**

**In the matter of**

**Between:**

Ms. Sri Rajarajeswari,  
W/o Mr. Kandimalla Bhaskar,  
6-188/5, Teachers Colony,  
Martur, Andhra Pradesh – 523 301.

... Petitioner

**Versus**

1. Amaravathi Textiles Private Limited,  
33-263, Kandimalla Road,  
Panduripuram, Chilakaluripet,  
Andhra Pradesh – 522 616.
2. Ms. K. Lakshmi Samrajyam,  
W/o Mr. K. Srinivasa Rao,  
3-1-2, Stambalagaravu (Brindavan Gardens),  
Ring Road, (Next to Chebrolu Hanumiah's House)  
Guntur, Andhra Pradesh – 522 006.
3. Mr. Dommalapati Mallaiah,  
S/o Mr. Ramadas,  
Murukipudi,  
Guntur District,  
Andhra Pradesh – 522 626.
4. Ms. Dommalapati Subbayamma,  
W/o Mallaiah, Murukipudi,  
Guntur District,  
Andhra Pradesh – 523 301.

... Respondents

**Judgement delivered: 09.08.2017**

**CORAM:**

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



CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

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**Counsel for the Petitioner:** Mr. S. Chidambaram,  
PCS

**Counsel for the Respondents:** Mr. V.S. Raju & V.B. Raju  
For R.1  
Mr. B.S. Sivaji, for R.2.  
Mr.R.Raghunandan Rao  
along with Mr.G. Bhupesh,  
For R.3 & R.4.

**Per: Ravikumar Duraisamy, Member (Technical)**

### **JUDGEMENT**

1. The Company Petition No.4 of 2015 was filed by the Petitioner Ms. Sri Rajarajeswari under Section 59 of the Companies Act, 2013, read with Companies (Removal of Difficulties) Order, 2013, dated 20.09.2013 questioning the transfer of 38,600 shares from Respondent No.3 and Respondent No.4 to Respondent No.2 on 18.11.2013, and sought the following reliefs:

“To set aside the purported transfer of 38,600 Equity share of Rs.10/- each from the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, the joint holders of the shares, to the 2<sup>nd</sup> Respondent allegedly on 18.11.2013, as being illegal and in violation of the Articles of Association of the 1<sup>st</sup> Respondent Company and consequently direct the 1<sup>st</sup> Respondent Company to rectify the Register of Members and direct that the cost of this Petition be awarded to the Petitioner; etc.

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)



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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 1<sup>st</sup> 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.2 without complying with the procedures stipulated under the Articles of Association of the Company purportedly purchased the shares.
5. The Petitioner further submits that she had knowledge of the purported transfer of aforesaid 38,600 shares from Respondents 3 and 4 to the 2<sup>nd</sup> Respondent recently during the month of September 2014. The Petitioner came to know about the transfer when the Petitioner attended the Annual General Meeting of the Company for the year ended 31.03.2014 on 15.09.2014. At the meeting the petitioner had the opportunity to inspect the Register of Members and the Share Transfer Register for the first time and the Petitioner came to know about the illegal transfers only upon inspecting the above mentioned Statutory Registers on the said date. No notice was received by the Petitioner for any of the AGMs the past and therefore the Petitioner did not have any opportunity to attend any AGM in the past and to inspect the Statutory Registers. For the AGM on 15.09.2014 the Petitioner for the first time received notice and the Petitioner therefore had the opportunity to attend the AGM and also to inspect some Statutory Registers and only after such inspection the Petitioner came to know about the aforesaid illegal transfer of shares. In view of the aforementioned the petition is well within the limitation period.



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6. The Petitioner submits that she is the daughter-in-law of the 2<sup>nd</sup> Respondent. The Company is basically a family company. The Company is engaged in the business of Textile manufacturing. Shares cannot be transferred except to a person agreed to by a majority of the Directors as being a fit and proper person to hold such shares. This shall not apply where the holder of shares proposes to transfer the shares to any family member like his son or daughter, uncle or aunt, wife or husband, father or mother, grand-father or grand-mother, grand-son or grand-daughter or brother or sister subject to the limit set out in Article (12).
7. The main contention of the Petitioner is that Respondent No.2 is already a member of the Company holding 17,450 shares and R.3 and R.4 have transferred 38,600 shares to Respondent No.2 who is already a member of the said company, and the question of transfer of shares to a non-member does not arise.
8. 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-Parulekar (Smt) Vs. Sakal Papers (P) Ltd and other(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*



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*Thus in Hunter v. Hunter (1936) A.C. 222, the shareholders in a private company challenged the transfer of shares by another shareholder to 3<sup>rd</sup> parties without compliance with the provisions of Articles of Association. In terms of the articles a member could not 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 3<sup>rd</sup> party under Article 63 unless proper notice had been issued to the 2<sup>nd</sup> and 3<sup>rd</sup> 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....”*

9. The above decision makes 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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Submissions of Respondents:

10. The Respondent No.3 in his written submissions stated that the transfer of shares by the Respondents 3 & 4 to the 2nd Respondent were made fairly in accordance with the Articles of Association of the Company. The Respondent No.3 further stated that a reading of Article 11, 17, 18 & 19, would show that transfer of shares from a member to another member does not require to comply with the procedure set out in Article 17 to 19, and the savings 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, and the 2<sup>nd</sup> respondent being a director and shareholder of the Company, the transfer of 38,600 shares made to Respondent No.2 is fairly legal and justified.



11. The Respondent No.3 cited case laws stating that:

- a) The Hon'ble 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.
- b) 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.

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12. It was further submitted that the Petitioner herein is trying to relate back the identity of the 2nd respondent herein stating that he acquired shares on 11/3/2010 (subject matter of C.P.No.9 of 2015) and that he is an outsider. It is herein important to interpret the Articles of Association of the company. A reading of Article 11 would make it clear that where a member proposes to transfer shares to a non-member, such transfer will not be allowed unless no member is willing to purchase the same and unless there is no person selected by the director who is willing to purchase the same. It is very evident from the Articles of Association that a transfer can be made to a non-member who are selected by the Directors. In the present case, shares were transferred to a non-member who is selected by the Directors at their meeting held on 11-3-2010. Hence, the transfer is a proper transfer which does not require further intimation to any of the member. The transferors in C.P.No.9 of 2015 have not violated any of the procedure for transfer of shares and the said transfer was made in accordance to the Articles of Association only and there is no illegality in the said transfer. And so, it is not fair and just on part of the petitioner to state that the respondent No.2 herein is an outsider of the company. It is also not fair and just on part of the petitioner to state that the Register of Members of the Company has to be rectified as the transfer is allegedly null and void.



13. Further, the Respondent.3, submitted that the subject matter of C.P.No.9 of 2015 is already barred by limitation. CP.No.9 of 2015 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. & Others has very clearly and elaborately elucidated the aspect of limitation

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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 in C.P.No.9 of 2015, 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 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, when C.P.No.9 of 2015 itself is a frivolous case and being liable to be dismissed, the petitioner cannot claim relief in the present company petition relying on C.P.No.9 of 2015.

14. It is respectfully further submitted that the petitioner herein has referred to decision in Claude-Lila Parukekar (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 contemplated that the Memorandum and Articles of Company, when registered, become binding not only on 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 regulation 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.



15. Further, the petitioner herein tries to rely on the judgement in Hunter Vs. Hunter (1936) A.C. 222. If the said judgement is observed, it speaks about the transfer of shares by another shareholder to 3rd parties without compliance with the provision 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 judgement thus referred cannot be applied to the present case.
16. It is 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 , 72,000 and 67,600 shares were transferred to the husband of the petitioner from 3<sup>rd</sup> parties.
17. 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. The balance of convenience is very clearly in favour of the respondents herein.
18. First Respondent submitted that the transfer of the shares in favour of the respondent No.2 has validly taken place in accordance with the provisions of the Companies Act, 1956 read with Articles of Association of the 1<sup>st</sup> Respondent. 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 3<sup>rd</sup> parties were transferred to the petitioner's husband. The petitioner as well as the husband used to attend the Annual General Meetings every year as a shareholder and as a Director respectively. The present



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petition has been filed due to the disputes and differences between the family members and the petitioner is none else than the daughter-in-law of the 2<sup>nd</sup> respondent. The present petition is barred by limitation as she is quite aware of transfer of certain shares from the 3<sup>rd</sup> parties in the year 2007, 2008 and 2009 and hence the present petition is liable to be dismissed.

19. Further, submitted that as per the Articles of Association of the 1<sup>st</sup> respondent company, the transfer of shares by respondents Nos. 3 and 4 being shareholders of the 1<sup>st</sup> respondent company are entitled to select any existing member and accordingly they have selected and transferred 38,600 shares duly signed and executed in favour of the respondent No.2. The executed transfer forms were submitted with the respondent No.1 company and having found that share 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 18.11.2013 have agreed to transfer their shares in favour of the 2<sup>nd</sup> respondent who is fit and proper persons to hold their shares in the 1<sup>st</sup> respondent company. Further as per the Articles the shareholder can identify any member for selling their shares to any of the existing shareholders at the discretion of the transferor and there are no restrictions on such transfer. Further, submitted that as per the Articles, the 1<sup>st</sup> respondent company has got discretionary powers to transfer their shares vested with the Board of Directors of the company. Hence on transferring the said shares, the name of the transferee i.e. 2<sup>nd</sup> respondent was entered in the register of members of the 1<sup>st</sup> 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



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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 3<sup>rd</sup> 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 due to the disputes and 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, and requested that the reply filed by this respondent may kindly be taken as part and parcel of these written submissions.

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

21. With regard to the limitation issue raised by the Respondents, the Petitioner clearly stated that she came to know about the transfer of 38,600 shares from R.3, R.4 to R.2 only subsequent to the inspection of documents carried out on 15-09-2014 i.e. during the Annual General Meeting and 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 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.

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



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2007, 2008 and 2009 therefore she would have automatically know about the alleged transfer of 38,600 shares is not acceptable since facts of these transfers are not before this Tribunal therefore we cannot comment on the same. Further husband and wife are two separate individuals, therefore it is not a must that all the transactions, especially financial transactions should come to the knowledge of the other person automatically. Therefore, the above submissions of the Respondents do not find merit.

23. Articles of Association of the R.1 Company prescribes certain procedures which have to be followed regarding transfer of shares. Though the matter was earlier reserved for orders in the absence of the documents/ evidence submitted by either party, mainly relating to Rules framed in General Body Meeting, Board's Approval, 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. They have not submitted the crucial document, i.e. Minutes of the Board of Directors meeting held on 18-11-2013 wherein the alleged 38,600 shares were transferred to R.2. In the absence of crucial evidence with regard to facts and circumstances, discretionary powers of Board considered while approval was granted by the Board of Directors for the aforesaid transfer, 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 above 38,600 shares transferred in the name of Ms K. Lakshmi Samrajyam (R.2) from R.3 and R.4 is illegal



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therefore, we direct the R.1 Company to rectify the Register of Members within 10 days from the date receipt of copy of this order, and report compliance of the same to the Registry immediately.

24. Since the respondents have referred to C.P. No.9 of 2015, it is also added that even in that Company Petition the Bench passed a separate Order holding that the transfer of shares from R.2&R.3 to R.4-Ms. K. Lakshmi Samrajyam as illegal and directed to set-aside the above said transfer. In view of the same, even in the present Company Petition, R.2- Ms. K. Lakshmi Samrajyam should be treated as non-member / outsider of R.1 Company.

25. No order as to costs.



*Sd/-*  
RAVI KUMAR DURAISAMY  
MEMBER (TECHNICAL)

*Sd/-*  
RAJESHWARA RAO VITTANALA  
MEMBER (JUDICIAL)

*Order Received by the Registrar*  
प्रमाणित प्रतिलिपि  
6.9.2017

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केस संख्या  
CASE NUMBER *C.P.No. Hyderabad*  
निर्णय का तारीख  
DATE OF JUDGEMENT *9.8.2017*  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON *6.9.2017*

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

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