

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, KOLKATA

CANO.1231/2015  
IN  
CP No. 151/2015

*In the matter of :*

*The Companies Act, 1956, Section  
397,398,399,402, 403 AND 406 of Companies  
Act, 1956*

*And*

*In the matter of "*

*Ravi Rajnish & Anr. - Petitioners*

*Vs.*

*M/s. Jain Link Private Limited & Ors.*

**JUDGMENT DELIVERED ON : 03-08-2017**

**Coram : Ms. Manorama Kumari, Member(Judicial)**

**For the Petitioners :**

Mr.Jishnu Chowdhury, Advocate  
Mr.Shaunak Mitra, Advocate  
Mr. Nikunj Berlia, Advocate

**For the Respondents :**

Mr. Pramit Kumar Ray, Sr. Advocate  
Mr.Aditya Kanodia, Advocate  
Mr. Anshumala Bansal, Advocate  
Mr. Avirup Mondal, Advocate

**Per Ms. Manorama Kumari, Member(Judicial)**

**O R D E R**

The Company Application bearing No.1231/2015 is filed by the Respondent No.1 to 3 under Regulation 44 of the Company Law Board Regulations, 1991, challenging the maintainability of the Company petition being No.151/2015 filed by the petitioner under sections 397,398,399, 402, 403 and 406 of the Companies Act, 1956 and under Sections 58 and 59 of the Companies Act, 2013.

On perusal of the Company petition filed by the petitioner, the following facts emerge :

1. The share certificates of the petitioners are stolen to which they filed an FIR on 28-01-2007 and asked the company to issue duplicate share certificates on 29-01-2007, but the same was not issued as alleged.
2. The illegal appointment of the Respondent No.3 as Director and as also illegal allotment of share to Respondent(s) some time in 2005 and 2006.
3. No notice of any meetings are issued to the petitioners since 2006 onward, etc.

The respondents, on receiving the Company petition, filed the instant application with prayer to dismiss the company petition on the point of limitation apart from the fact that the petition is filed on the self same cause of action in view of the fact that the petitioner allowed CP No.686/2010(filed by the father of the petitioner No.1) to get it abated even after filing the Company Application No.116/2012 on the death of his father, Mr. MP Sinha to implead him as party. It is also pertinent to mention herein that the same set of advocates is also representing the petitioner in the present company petition.

Before entering into the merit of the case, I find it expedient to first deal with the point of limitation i.e. whether the petition is barred by unreasonable delay and laches, as raised by the respondent in the instant application.

Admittedly, in paragraph No.13 of the petition, the petitioner left for Canada some time in October, 1997 and were in touch till 2007.

On perusal of the petition and the document annexed therein, it reflects that the allegation is of around 2005-2006, which is explained herein below in sequences :

(a) Annexure F-page 142 of the petition, reflects that the Respondent No.3 is appointed as Additional Director on 16-08-2005(which is one of the allegations of he petitioner No.1), whereas, admittedly, the petitioner was in touch of the company till 2007 but has never challenged the appointment of the Respondent No.3 and has

also never agitated with regard to the non-receipt of any notice of any meeting till the filing of the instant Company Petition.

(b) On perusal of the record, it reflects that the petitioner filed one FIR on 28<sup>th</sup> January, 2007 before the Officer-in-charge, Bidhan Nagar South Police Station, Salt Lake City, Kolkata with regard to the missing of share certificate for 10,000 equity shares from filing cabinet, which he assumed to be stolen from his possession (Annexure C of P-136 of the petition)

(c) Another application is filed by the petitioners to the Registrar of Companies, West Bengal on 4<sup>th</sup> May, 2010 from 792, Real Court Milton, Ontario, Canada with a request for helping in getting the duplicate share certificates from the Respondent No.1.

In the said letter, the petitioner admitted that he immigrated to Canada in 1997 and became Canadian Citizen in 2001 (Annexure – E – Page 140 of the petition).

Further, on perusal of the documents filed by the Respondents in the Company Application at page No. 96, Annexure G, it reflects that the petitioner No.1 has transferred 10,000 Nos. of shares in favour of Smt. Shanti Sinha (now deceased) mother of petitioner No. 1 as well as Respondent No.1, some time on 15-09-1997. The Respondents/applicants further submitted that the petitioner No.2 had never been the shareholder of the company.

On meticulous perusal of the record, the basis on which the petitioner are claiming their shares, are Annual Return of 2006 and 2009, wherein their

share is reflected as 10,000 Nos. each which was, as per the version of the Respondents was filed by the petitioner in collusion and conspiracy with MP Singh, father (now deceased).

In this regard, it is pertinent to mention herein that he being the father of the Respondent No.2 as well as the petitioner No.1 (Late MP Singh) filed one CP bearing No. 686/2010 under Sections 235, 397, 398, 399, 402, 403 and 406 of the Companies Act, 1956 with Rule 9 and 14 of the Company Law Board Regulations, upon the Respondent No.2 and 3.

While filing the affidavit in reply, Smt. Shanti Sinha(now deceased), who was added as Respondent No.4 in CP 686/2010, specifically and categorically stated on affidavit that her husband MP Singh(now deceased) and Smt. Archana Singh(P2 of the CP 151/2015) were never the shareholders of M/s. Jain Link Pvt. Ltd. and as such the CP No. 686/2010, filed by MP Singh, was not maintainable as also the CA No.46/2011, filed by Archana Singh(Petitioner No. 2) was also not maintainable(Annexure D Page 74 para b of the CA No. 46/2011 arising out of the Company Petition No. 686/2010).

Even if it is taken from 2009, then even the petitioner cannot surmount the delay of over more than 5 years, whereas with regard to the illegal appointment of the Respondent No.3 which was around 2005, as alleged, the petitioner never challenged the appointment, when he himself admitted that though he was in Canada he was in touch with the Company, that means that he acquiesced the act of the Respondent Nos. 2 and 3.

On perusal of the petition, it is evident that the statements are self-contradictory.

Under such circumstances, the petitioner cannot turn back and invoke equitable jurisdiction at belated stage.

When the petitioner transferred his share to his mother on 15-09-1997(Annexure G, Page 96 of the application) and further the petitioner himself admitted, while addressing letter to the Board of Director on 29-01-2007, that "as already intimated in 1997, my residential status has changed to NRI and now I am a PIO card Holder with Candian citizenship"(Annexure D Page 138 and 139 of the petition).

With regard to the appointment of the Respondent No.2 in the year 2005, the petitioner himself acquiesced this act by not challenging till 2015, though in the petition he said that till 2007 he was in touch with the Company. **The probity demands that if there is any illegality then the person aggrieved must set it right. But the petitioner since 2005 never raised his voice, thereby acquiesced in these acts by his own act.**

The Applicants/Respondent(s) relied upon the following case laws :

- i) **TK Lathika Vs. Seth Karsandas Jamnadas(1999) 6 SCC 632**
- ii) **Noharlal Verma – Vs.- District Co-operative Central Bank Ltd. Jagadapur – JT(2008) 11 SC 621**
- iii) **Parveen Shankaralayam – Vs. – M/s. Elan Professional Appliances Pvt. Ltd. – Unreported**

- iv) M/s. Arbo technologies Pvt. Ltd. – Vs. – M/s. Delhi Warehousing Pvt. Ltd. & Ors – Unreported
- v) T Arivandandam Vs. TV Satyapal & Anr(1977) 4 SCC 467
- vi) Esquire Electronics Vs. Netherlands India Communications Enterprises Ltd. – Unreported
- vii) State of UP & Anr – Vs. – Synthetics and Chemicals Ltd. & Anr. (1991) 4 SCC 139
- viii) Jitendra Kumar Gupta Vs. Sukhbir Singh Saini – Manu/DE/3114/2012

The Non-applicant(s)/ petitioner(s) relief upon the following case laws :

- i) (2003) 1 SCC 557 – Saleem Bhai & Ors Vs. State of Maharashtra & Ors.
- ii) [2009] 148 Comp Cas 756(CLB) – Raajratna Metal Industries Ltd. Vs. K and S Consulting Group P. Ltd. & Ors.
- iii) [2009] 149 Com Cas 678(CLB) – SVT Spinning Mills P. Ltd. & Ors Vs. M Palanisamy & Ors.
- iv) [2009] 151 Comp Cas 233(Mad) – SVT Spinning Mills Pvt. Ltd. & Ors. Vs. M Palanisami & Ors.
- v) AIR 1977 SC 536 – Mannalal Khetan & Ors. Vs. Kedar Nath Khetan & Ors.
- vi) (2005) 11 SCC 73 – Smt. Claude-Lila Parelekar Vs. Sakal Papers Pvt. Ltd. & Ors.

There is no dispute with regard to the case laws cited by either of the parties but I do not find any reason to reflect in detail all of them as each case turns to its own facts and circumstances.

This Court cannot preclude from dealing with the delay and laches on the part of the petitioner. Delay and laches do apply which starts from the date of knowledge. The doctrine of laches is based on equitable consideration and depends on general principle of justice and fair play. There is no presumption that the delay is deliberate. To be the laches delay should be such that it could be said that the petitioner is not entitled to relief on account of gross negligence or inaction or want of bona fide imputable to him or that he has given up (waived) his right by acquiescence or by his conduct or neglect. The petitioner has totally failed to explain his silence and inaction from 1981 till filing of the instant case.

Under such situation, even if I calculate as of 2005, the date of appointment of the Respondent No. 3 and 2009 on which date the petitioners' share was shown as 10,000 in the Annual Return, then even the petitioner has failed to surmount the delay of 6 years in bringing his claim.

Condoning the delay by this court would mean court is ignoring and superseding all laws of procedure and limitation.

It is a fundamental principal of administration of justice that the courts will aid those who are vigilant and who do not sleep on their rights. In other words, the



court would refuse to exercise their jurisdiction in favour of a party who moves them after considerable delay and is otherwise guilty of laches.

In this regard, reliance may be placed on seven judge judgement rendered in the case of state of M.P vs. Bhai lall Bhai and others, AIR 1964 SC 1006-----where the delay is more than the period prescribed by the limitation Act, then it would be appropriate for the court to hold that it is unreasonable, the court ought not ordinarily to lend its aid to a party guilty of delay.

MTNL vs. State of Maharashtra and others, 2013(9) SCC 92----- Hon'ble Supreme Court observed that in equitable jurisdiction, the maximum period of limitation can reasonably held to be the same as has been provided by the limitation Act and therefore a huge delay and laches cannot be surmounted.

Due to passage of time of about 6 years, the point of equity cannot be considered as because when litigant is not vigilant about rights and have acquiescent the act of the respondent(s) and he same is also relied in a case bearing No. 4/ND/2016 by the Division Bench consisting of the Hon'ble Chief Justice, President, Shri MM Kumar and the Hon'ble Member, Shri SK Mohapatra, wherein the point of delay/laches has been elaborately dealt with.

This principle embodied in the equity's maxim "Delay defeats Equity" and in the statute of limitation, is intended to discourage unreasonable delay in presentation of claims and enforcement of rights. Claims which have been delayed unreasonably in being brought forward may be rejected.

Having regard to the aforesaid facts and circumstances, it is noted that the case of the petitioner is not maintainable on account of inordinate and unexplained delay and inaction on the part of the petitioner.

Hence, the Company Application No. 1231/2015 filed by the respondents/applicants is allowed, consequent upon which the Company Petition No.151/2015 filed by the petitioner stands dismissed.

The Company application(s), if any, also stand disposed of

No order as to costs.

MANORAMA KUMARI  
MEMBER(J)