

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COMPANY APPEAL (AT) NO. 379 of 2018

(Arising out of the Order dated 04th September, 2018 passed by the
National Company Law Tribunal, Allahabad Bench, in Company Petition
No.107/ND/2013)

IN THE MATTER OF:

1. Satori Global Limited

A Company incorporated under Laws of India,
Having its registered Address at:
Flat No.202, 3A/172, Azad Nagar,
Kanpur, Uttar Pradesh – 208002.

...Appellant No. 1.

2. Ujjwal Agarwal

S/o. Shri. Gopal Agarwal
R/o. 7/9/40 A, Gandhi Nagar Colony,
Faizabad – 224001.

...Appellant No. 2.

Versus

1. Ms. Shailja Krishna

R/o. C/o. Yash Papers Limited
Officers' Colony
Yash Nagar,
Darshan Nagar,
Faizabad – 224135,
Uttar Pradesh.

...Respondent No. 1.

2. Mr. Ved Krishna

S/o. Late Shri K.K. Jhunjhunwala
Mangalam Farms,
Post Kalyan Bhadarsha,
Faizabad – 224135
Uttar Pradesh.

...Respondent No. 2.

3. Mr. Nirupam Mishra

S/o. Shri Raghunath Prasad Mishra
R/o. 127, Jharkhandi,
Faizabad – 224001,
Uttar Pradesh.

...Respondent No. 3.

4. Mrs. Manjula Jhunjhunwala

W/o. Late Shri K.K. Jhunjhunwala
R/o. 1/13/1B, Civil Lines,
Faizabad – 224001,
Uttar Pradesh.

...Respondent No. 4.

5. Stocknet International Limited

A company incorporated under the Laws of India,
Having its registered address at:
4F2, Court Chambers 35,
New Marine Lines,
Mumbai – 400020
Maharashtra.

...Respondent No. 5.

Present

For Appellants: Mr. Arun Kathpalia, Sr. Advocate with Mr. Ujjal Banerjee, Ms. Aishwarya Mishra and Mr. Arnnav Tikku, Advocates.

For Respondent No. 1: Mr. Bimal Bhabhda, Ms. Yashika Sharma and Mr. Ankur Mittal, Advocates.

WITH

COMPANY APPEAL (AT) NO. 395 of 2018

(Arising out of the Order dated 04th September, 2018 passed by the National Company Law Tribunal, Allahabad Bench, in Company Petition No.107/ND/2013)

IN THE MATTER OF:

Mrs. Manjula Jhunjunwala

W/o. Late Shri K.K. Jhunjunwala,
R/o. 1/13/1B, Civil Lines,
Faizabad – 224001,
Uttar Pradesh.

...Appellant.

Versus

1. Ms. Shailja Krishna

R/o. C/o. Yash Papers Limited
Officer's Colony
Yash Nagar,
Darshan Nagar,
Faizabad – 224135,
Uttar Pradesh.

...Respondent No. 1.

2. Satori Global Limited

A Company incorporated under Laws of India,
Having its registered Address at:
Flat No.202, 3A/172, Azad Nagar,
Kanpur, Uttar Pradesh – 208002.

...Respondent No. 2.

3. Mr. Ved Krishna

S/o. Late Shri K.K. Jhujhunwala
Mangalam Farms,
Post Kalyan Bhadarsha,
Faizabad – 224135
Uttar Pradesh.

...Respondent No. 3.

4. Ujjwal Agarwal

S/o. Shri. Gopal Agarwal
R/o. 7/9/40 A, Gandhi Nagar Colony,
Faizabad – 224001.

...Respondent No. 4.

5. Mr. Nirupam Mishra

S/o. Shri Raghunath Prasad Mishra
R/o. 127, Jharkhandi,
Faizabad – 224001,
Uttar Pradesh.

...Respondent No. 5.

6. Stocknet International Limited

A company incorporated under the Laws of India,
Having its registered address at:
4F2, Court Chambers 35,
New Marine Lines,
Mumbai – 400020
Maharashtra.

...Respondent No. 6.

Present

For Appellants: **Mr. Arun Kathpalia, Sr. Advocate with Mr. Ujjal Banerjee, Ms. Aishwarya Mishra and Mr. Arnnav Tikku, Advocates.**

For Respondent No. 1: **Mr. Bimal Bhabhda, Ms. Yashika Sharma and Mr. Ankur Mittal, Advocates.**

J U D G E M E N T
(Through Virtual Mode)

[Per; Shreesha Merla, Member (T)]

1. Challenge in these Company Appeals viz. Comp. App. (AT) Nos. 379 & 395 of 2018 is to the Impugned Order dated 04.09.2018 passed by the National Company Law Tribunal, Allahabad Bench, in C.P. IB No.107/ND/2013, filed by the Petitioner Ms. Shailja Krishna under Sections 397 & 398 of the Companies Act, 1956, (hereinafter referred to as 'The Act').

By the Impugned Order, the NCLT has allowed the Company Petition with the following directions:

“46. *Petition filed by the Petitioner under Section 397 and 398 of the Companies Act, 1956 is allowed with cost. Resolution passed in the alleged Board meeting Dt. 15.12.2010 and 17.12.2010 are set aside. Petitioner is restored as Executive Director of the R 1 company with immediate effect. It is also declared that the Petitioner holds 39500 shares of the R1 company. The transfer of 39500 equity shares carried out by respondent no. 1 Dt. 18.11.2011 relying upon the instrument of transfer allegedly by Petitioner in favour of Respondent no. 5 is declared as null and void and of no consequence.*

47. *The respondent no. 1 is further directed to delete the name of the Respondent no. 5 as owner of 39500 equity shares from the register of shares and include the name of the Petitioner as the lawful and exclusive owner of 39500 equity shares issued by respondent no.1. Respondent no. 5 is further directed to handover the physical possession of the share certificates containing 39500 shares to the Petitioner within 15 days from date of order.*

48. *We have found that there is overwriting and manipulation in the share transfer form, copy of which is attached with Company Application no. 14/2016. We have also observed that the share transfer form was issued by Registrar of Companies on 1st October 2010 which was valid only up to 1st December 2010 but, the share transfer form was allegedly executed on 17.12.2010. We have also observed that Registrar of Companies was having no power to extend the validity of share transfer form under Section 108 (1-D) of the Companies Act, 1956, when the form was invalid on the date of execution of document itself. Under the above provision, validity could have been extended only in case where validity of the document has expired after execution of the document. It is also found that Form 7 C which was submitted before Registrar of Companies was incomplete. No particulars are given regarding the fees paid for extension of validity in column 10 of the Form 7 C, whereas it was a mandatory condition. It is also found that validity of the share transfer form was extended up to 12 November 2011, but date of passing the order is not clear from the signature and stamp of the ROC. The role of the then ROC/AROC who has extended the*

validity of the share transfer form upto 12 November 2011 has been found doubtful which needs inquiry by the Ministry of Corporate Affairs.

49. *Certified copy of the order may be issued to the Petitioner, respondent. Designated Registrar is also directed to send the copy of the order to Secretary Ministry of Corporate Affairs for taking appropriate action in this matter. Copy of the order may also be send to the Registrar of Companies for compliance of the order.”*

2. Since both these Appeals deal with common facts and issues, these Appeals are being disposed of by this Common Order.

3. Briefly put, the facts in the instant case are that M/s. Satori Global Limited (hereinafter referred to as ‘The Company’), was incorporated in the year 2006 and the Petitioner Ms. Shailja Krishna and her Husband Mr. Ved Krishna were the original Promoters and the only Shareholders of the said Company. The authorized Share Capital of the Company was Rs.2 Crs./- and the subscribed Paid-up Capital was Rs.3Lakhs/- as on 2006. Initially, Ms. Shailja Krishna subscribed to 5,000 Equity Shares and the remaining 25,000 shares were subscribed to Mr. Ved Krishna. While so, Mr. Ved Prakash resigned from the directorship of the Company which was accepted in the Board Meeting held on 01.02.2007, and in his place, Mr. Nirupam Mishra was inducted as Director of the Company. It is averred by the Petitioner that as on 25.09.2010, as per Form 20B, the Petitioner was holding more than 98% of the shareholding of the Company by way of 39,500 Equity Shares in her name and remaining 500 Shares were held by Mr. Nirupam Mishra. During 2010, there were matrimonial disputes between the Petitioner and her Husband Mr. Ved Krishna, as a result of which, it is averred that her Husband has obtained her signature on blank papers under the threat of coercion and subsequently Mr. Ujjwal Agarwal was inducted as an Independent Director vide

appointment dated 15.12.2010. It is averred by the Petitioner that she had never consented to the same and did not have any knowledge of the same. Using the blank signed documents of the Petitioner it was shown that the Petitioner had resigned from the Company on 17.12.2010. It is stated by the Petitioner that there was no occasion for her to resign from the Company and that the Resolution dated 17.12.2010 is fabricated. She had left for Kolkata on 16.12.2010 and had come back only on 01.02.2011 and therefore as on 17.12.2010 she was not even in station. It is stated by the Petitioner that as per the list of Shareholders filed by the Company under signatures of Mr. Ved Krishna and Mr. Ujjwal Agarwal the Petitioner was shown as s Shareholder holding 98% of the Equity Shares as on 24.09.2011.

4. It is submitted by the Petitioner in the Company Petition that no Notice of any Meeting whatsoever was given to her and on 24.09.2011, an allotment of 50,000 Equity Shares were made to Stocknet International Limited. The date of transfer of shares has been recorded as 18.11.2011. It is submitted that a Police Complaint was filed by the Petitioner on 30.08.2011, but the Police did not take any action. It is further stated that despite having been allotted 5,000 Equity Shares, which number further increased to 39,500 Shares to the Company never actually sent her the physical Share Certificates and they continued to be in the possession of the Company and her Husband Mr. Ved Krishna. It is also submitted that the Petitioner was wrongfully moved from the Board of Directors though she had held 39,500 Equity Shares out of 40,000 Equity Shares, but the entire Shareholding has been arbitrarily transferred to Mrs. Manjula Jhunjhunwala her Mother-in-Law, without any consideration and in contravention to Clause 16 of the Articles of Association of the Company. It was averred in the Company Petition that the Gift Deed

does not contained the appropriate Stamp Duty and was prepared only on purchased Stamp Paper. The alleged Resolution dated 15.12.2010 is in contradiction of Clause 53 of Articles of Association, which provides that the quorum necessary for the transaction of business at a Board Meeting shall be two. It is averred that this alleged Resolution was passed by Mr. Nirupam Mishra alone and therefore appointment of the third Respondent was *void-ab-initio*. On account of forfeiture of the Shares on 29.03.2009, the Membership again got limited to only two Members. The Company was allegedly converted into Public Company by EGM on 20.06.2011 and therefore on the relevant date on 17.12.2010, the Company was still governed by the Articles of Association adopted by the Company which forbids Transfer of Shares without any consideration vide Gift Deed to Mrs. Jhunjhunwala.

5. Based on the arguments put forth by both the sides, the NCLT framed the following issues:

“i. Whether the alleged act of Respondents 2-4 comes under the purview of ‘Oppression and Mismanagement’ under Section 397 and 398 of the Companies Act, 1956?

ii. Whether the Petitioner is not eligible to present this Petition under Section 397 and 398 of the Act in view of bar provided under Section 399 of the Companies Act, 1956?

iii. Whether the alleged transfer of 39500 equity shares dated 17th December 2010 by way of gift deed by the Petitioner to her mother-in-law, is valid?

iv. Whether the alleged resignation letter dated 17.12.2010 of the Petitioner from the post of Executive Director of Respondent No. 1 Company is valid?

v. Whether the alleged Board Resolution dated 17th December, 2010 regarding acceptance of the alleged resignation of the Petitioner from the post of Executive Director of the company is valid?”

6. Submissions of the Learned Sr. Counsel appearing on behalf of the**Appellants:**

- Mr. Arun Kathpalia Learned Senior Counsel representing the Appellants submitted that the Company Petition filed by the Petitioner Ms. Shailja Krishna is not maintainable and she was not a Member of the Company as on the date of filing of the Petition under Sections 397 & 398 of the Act. It is contended that the statutory requirements for invoking jurisdiction under Sections 397 & 398 of the Act is that the Petitioner must be filed by a Member as provided for under Section 399 of the Act and the name of the first Respondent Ms. Shailja Krishna was not in the Register of Members of the Company at the time of the filing of the Petition and this is evident from the list of Shareholders filed along with Form – 20B and Form – 23AC before the Registrar of Companies ('RoC'), Uttar Pradesh for the Financial Year ending 31.03.2012. In support of this submission, Learned Counsel placed reliance on the Judgement of the Hon'ble Gujarat High Court in **'Gulabraaj Kalidas Naik & Ors.' Vs. 'Laxmidas Lallubhai Patel & Ors.'**¹, that the pre-requisites for invoking jurisdiction under Sections 397 & 398, the complainant must be a Member.
- The Petitioner/first Respondent was holding only 4.20% of the total Shares of the Company before the Registration of Transfer of Shares which falls less than the statutory requirements of minimum 10%. It is argued that Form 20B filed before RoC, Uttar Pradesh for the Financial Year ending 31.03.2008 onwards shows that out of the total issued

¹ (1975) SCC Online Guj 27

Shares of the Appellant Company of 9,40,000/- the first Respondent was holding only 39,500 Equity Shares which is equivalent to 4.20%.

- The averments of the Petitioner/first Respondent that the signatures were taken under threat or coercion required evidence and are complicated issues of facts which need to be adjudicated by a Civil Court. It is contended that questions of title, aspects of fraud or determination of validity or legality of documents cannot be adjudicated in summary jurisdiction and have to be relegated to a Civil Court.
- The signatures *per se* were never disputed on the Gift Deed and there is no finding in the Impugned Order and that the Gift Deed is invalid and therefore the consequential relief of invalidation of Transfer of Shares cannot be granted in view of the provisions of the Specific Relief Act.
- Learned Sr. Counsel placed reliance on the following citations in support of his submissions:
 - ‘CIT’ Vs. ‘Ramaswamy’².
 - ‘Killick Nixon Ltd.’ Vs. ‘Bina Popatlal Kapaida’³.
 - ‘Ammonia Supplies Corporation (P) Ltd.’ Vs. ‘Modern Plastic Containers Pvt. Ltd.’⁴.
 - ‘Jai Mahal Hotels’ Vs. ‘Raj Kumar Devraj’⁵.
 - ‘N. Ramji’ Vs. ‘Ashwath Narayan Ramji’⁶.
- It is argued that the Gift Deed, the Share Transfer Form and the Resignation Letter were signed at different places and as such the allegation that blank documents were signed by the first Respondent,

² 1983 SCC OnLine Mad 111

³ (1983) 54b Comp Cas 432

⁴ (1998) 7 SCC 105

⁵ CA No.7914/2015

⁶ CRP (PD) No.670/2017

who herself is a Law Graduate is without any merit. In one breadth, it is submitted by the first Respondent that signatures were obtained on Blank Papers under coercion and at the same time, it is argued that she had never signed any documents at all. These are contradictory stands being taken by the first Respondent.

- The Police Authorities, after filing of Complaint dated 16.05.2013, investigated the matter and submitted their final Report stating that no offence was proved. The first Respondent also filed a Protest Application on 27.05.2014 in case Crime No.105/2013 which was accepted by the Judicial Magistrate II of Faizabad and re-investigation was ordered on 30.06.2014, subsequent to which, the Police once again investigated the matter and submitted their final Report on 10.01.2015 stating that no offence was proved. Another Protest Application was filed and once more re-investigation was done on 17.11.2016, subsequent to which another Police Report was filed on 21.03.2017 stating that no offence was proved. The first Respondent filed a further Protest Application in case Crime No.105/2013 on 19.03.2018, but this time it was rejected by the Chief Judicial Magistrate of Faizabad stating that the investigation was carried out three times by different Investigating Officers and no offence was proved. Therefore, with respect to allegations of threat and coercion, it was concluded that there was no evidence of the same.
- It is submitted that FIR bearing No.332/2013 was filed by the fourth Respondent only on 01.06.2013 after the expiry of two years and six months from the date on which the said documents were signed by the first Respondent. Subsequent to voluntarily signing of the said

documents by the first Respondent, the relationship between the Husband and Wife had turned sour and the divorce has taken place in USA vide decree dated 06.11.2012 and thereafter this Petition was filed by the first Respondent before the NCLT on 20.06.2013 only as a counter blast to the FIR filed by the fourth Respondent on 01.06.2013.

- The first Respondent stopped receiving salary from the Company after she had resigned from the Directorship on December, 2010 and Form 32 which was filed before the RoC was very much in the public domain and therefore was aware of her resignation.
- The name of the first Respondent was removed from the list of Shareholders vide Board Resolution dated 10.11.2011 when the Gift Deed alongwith the original Share Certificates and duly revalidated Share Transfer Forms were submitted before the first Appellant Company by the fourth Respondent. Section 108(1)(b) of the Act provides that the Government has the power to extend the period for registration even after the expiry of the period for registration. This extension was granted by RoC, Uttar Pradesh which is on the left-hand side of the Share Transfer Form signed by Respondent No. 1.
- Article 16 of the Articles of Association of the Company is an enabling Article which permits Transfer of Shares in favour of uncle, niece, nephew or cousin, which clearly reflects the intention of the makers of the Articles that the said Article was intended to give an inclusive interpretation. As on the date of Transfer of Shares i.e., 10.11.2011, the Company had already been converted into a Public Limited Company and therefore there was no restriction on the said Registration of Transfer of Shares. It is submitted that the Articles do not bar any

Transfer of Shares. Even on an earlier occasion, the third Respondent without consideration, had transferred 24,500 Shares in favour of the first Respondent and 500 Shares in favour of Mr. Nirupam Sharma with the consent and approval of the first Respondent.

- The first Respondent is ignoring the fact that out of 29,500 Equity Shares, 24,500 Shares were gifted to her by her former Husband Mr. Ved Krishna. It is submitted that there is no case of 'Oppression and Mismanagement' made out by the Respondent and that the NCLT has erred in entertaining the Application and also in allowing the same under Sections 397 & 398 of the Act.
- Learned Sr. Counsel for the Appellant Mr. Arun Kathpalia has also referred to paras 9, 10 & 13 of the Judgement of Hon'ble Supreme Court in **'Naresh Chandra Sanyal' Vs. 'Calcutta Stock Exchange Ltd.'**⁷, in which it has been observed as follows:

"9. In Calcutta Stock Exchange Association Ltd. v. S.N. Nundy and Co. [ILR (1950) 1 Cal 235] Harries, C.J., after examining the provisions of the Companies Act, 1913, in great detail and reviewed the decisions of the Courts in England and of the High Court of Calcutta and observed that the Indian Companies Act as well as the English Companies Act contemplate, recognize and sanction forfeiture generally and not for non-payment of calls only; that a company may by its Articles lawfully provide for grounds of forfeiture other than non-payment of call, subject to the qualification that the Articles relating to forfeiture do not offend against the general law of the land and in particular the Companies Act and public policy; and that the forfeiture contemplated does not entail or effect a reduction in capital or involve or amount to purchase by the Company of its own shares nor does it amount to trafficking in its own shares. The Court in that case was concerned to determine the true effect of the Articles of the Exchange which fall to be interpreted in this case.

⁷ (1971) 1 SCC 50

10. This Court in *Sri Gopal Jalan and Company v. Calcutta Stock Exchange Association Ltd.* [AIR 1964 SC 250 : (1964) 3 SCR 698 : (1963) 2 SCJ 505] also considered whether forfeiture of shares resulted in reduction of capital contrary to the provisions of the Companies Act where power of forfeiture was given by the Articles for failure to carry out an undertaking or satisfy an obligation of the member to forfeit the shares. The Court in that case was interpreting the Articles which fall to be interpreted in this appeal. The Court held that the Exchange was not liable to file any return of the re-issued forfeited shares under Section 75(1) of the Indian Companies Act, 1956, when the shares were re-issued the Court observed that when a share is forfeited and re-issued, there is no allotment, in the sense of appropriation of shares out of the authorised and unappropriated capital, and approved the observations of Harries, C.J., in *S.N. Nundy* case [ILR (1950) 1 Cal 235], that “On such forfeiture all that happened was that the right of the particular shareholder disappeared but the share considered as a unit of issued capital continued to exist and was kept in suspense until another shareholder was found for it”. In the view of this Court, the shares so forfeited may not be allotted in the sense in which that word is understood in the Companies Act. The Court also pointed out that re-issue of forfeited shares is not allotment of the shares but only a sale, for, if it were not so the forfeiture even for nonpayment of call would be invalid as involving an illegal reduction of capital.”

...

“13. A forfeited share is, therefore, merely a share available to the Company for sale and remains vested in the Company for that purpose only. By forfeiting a share pursuant to the authority of the Articles of Association, no reduction of capital is achieved. We are unable to agree with counsel for Sanyal that forfeiture of shares is permissible only in cases expressly contemplated by Table A — Model Articles i.e. for non-payment of calls in respect of a share which is not fully paid up.”

- Learned Sr. Counsel for the Appellant also referred to paras 5, 9 & 10 of the Judgement of the Hon’ble Supreme Court in **‘Sri Gopal Jalan &**

Co.’ Vs. ‘Calcutta Stock Exchange Association Ltd.’⁸, in support of his submission that there can be no reduction in the Share Capital even if there is forfeiture of Shares:

“5. We agree with the learned Judges of the High Court that a re-issue of a forfeited share is not an allotment of share within Section 75(1). The word “allotment” has not been defined in the Companies Act either in our country or in England. But we think that the meaning of that word is well understood and no decision has been brought to our notice to indicate that any doubt has ever been entertained as to it. As Chitty, J. put it in In re Florence Land and Public Works Company [(1885) LR 29 Ch D 421, 426] , “What is termed ‘allotment’ is generally neither more nor less than the acceptance by the company of the offer to take shares. To take the common case, the offer is to take a certain number of shares or such a less number of shares as may be allotted. That offer is accepted by the allotment either of the total number mentioned in the offer or a less number, to be taken by the person who made the offer. This constitutes a binding contract to take that number according to the offer and acceptance. To my mind there is no magic whatever in the term ‘allotment’ as used in these circumstances. It is said that the allotment is an appropriation of a specific number of shares. It is an appropriation, not of specific shares, but of a certain number of shares.”

...

“9. Now it is quite clear that when a share is forfeited and re-issued it is not allotment in the sense of appropriation of share out of the authorised and, unappropriated capital so as to bring the shares into existence. In the present case both sides proceeded on the basis that the articles of the Company dealing with forfeiture of shares which we have earlier set out are valid articles. In other words, it has not been disputed that the Company may validly forfeit shares in terms of these articles. We accept that basis and proceed on the assumption that it is correct. In the High Court at Calcutta there was a difference of opinion as to the validity of these articles but the later view is that the articles are valid. The reason for the view has thus been put in the latest case in the Calcutta High Court, namely, Calcutta Stock Exchange Association Limited v. S.N. Nundy and Company [(1950) ILR Cal

⁸ (1964) 3 SCR 698

235] . Harries, C.J. dealing with the very articles with which we are concerned observed at p. 264, "In the present case, the articles relating to forfeiture do not, in my view, offend against the provisions of the Companies Act, as they do not contemplate a reduction of capital or a purchase of shares or a trafficking in shares". Now, obviously, if upon forfeiture, the shares had ceased to exist qua shares and become merged in the unissued capital of the Company, then there would have been a reduction of the capital and such a forfeiture would have been invalid. The reason why it was held that the forfeiture was valid was that on such forfeiture all that happened was that the right of the particular shareholder disappeared but the share considered as a unit of issued capital continued to exist and was kept in suspense until another shareholder was found for it : see *Naresh Chandra Sanyal v. Ramoni Kanta Ray* [(1945) 2 ILR Cal 105] . We have to examine the present case on this basis.

10. If, therefore, the shares which the Company forfeited have to be considered as shares already created and as continuing in existence as such in spite of the forfeiture, obviously they could not be allotted in the sense in which that word is understood in the Company law as we have earlier stated. In *Morrison v. Trustees Insurance Corporation* [(1899) 68 LJ Ch 11] the articles of the Company gave power to forfeit shares for non-payment of calls and further provided that "any share so forfeited shall be deemed to be the property of the Company and the directors may sell, re-allot or otherwise dispose of the same in such manner as they think fit". It was held that the Company could reissue the forfeited shares giving credit for the money already received in respect of them. The contention that the transaction amounted to the issue of a share at a discount was rejected. *Vaughan Williams, L.J.* observed, "I do not like the use of the word 'issue' with reference to the transaction with regard to these shares. If they were being issued, the argument for the appellant might possibly be right; but they are not being issued. When we look at the articles we see that what takes place on a forfeiture : of shares is that the power of transferring them passes from the original shareholders to the company and the Company can then transfer the shares subject to the same rights and liabilities as if they had not been forfeited". To the same effect are the observations of *Bacon V.C.* in *Ramwell case* [(1881) 50 LJ Ch (NS 827)] . Quite clearly, the view well accepted in company Courts has

been that issue of the forfeited shares was not allotment of them but only a sale. If it were not so, the forfeiture itself would be invalid as involving an illegal reduction of capital. If the re-issue of a forfeited share is only its sale, then it is not an allotment and that being so no question of filing any return in respect of such re-issue arises.”

7. Submissions of the Learned Counsel appearing on behalf of the first

Respondent:

- It is submitted that the Appellants had filed ‘Form-20B’ for the year 2011-12 with a missing page which contains the actual transfer date i.e., 18.11.2011, that the Appellants pleaded for the Share Transfer placed on 10.11.2011 which is a false statement. The Appellants are well aware that the actual transfer took place only on 18.11.2011 and have deliberately suppressed this fact before the NCLT. It is submitted that the EGM of the Company took place on 20.06.2011 at Kanpur, on which date, Mr. Ved Krishna was appointed as Director of the said Company, that in fact the said Mr. Ved Krishna was not even present in the India at the relevant time that was present in USA according to his own Affidavit filed before the Court at Idaho USA.
- Clause 16 of the Articles of Association of the Company allows the Transfer of Shares of a Member by way of gift, to a specific category of persons only being, ‘Members, Wife, Husband, Son, Daughter-in-law, Son-in-law, Father, Mother, Brother, Sister, Uncle, Nephew, Niece, or Cousin. Clause 2(c) of the Articles of Association states the Right to Transfer the Shares of the Company shall be and is restricted in a manner and to the extent hereinafter provided. Clause 16 of the Articles of Association must be read in the context of and along Clause 2(c) and cannot be read in isolation. The transfer in favour of the Mother-in-law

by way of 'gift' is not permitted under the Articles of Association of the Company. The Hon'ble Supreme Court in **'V.B. Rangaraj' Vs. 'V.B. Gopalakrishnan & Ors.'**⁹, has specifically stated that the Articles of Association are Regulation of the Company which are binding on the Company and Shareholders. It is submitted that Article 16 of the Articles of Association is not an enabling provision, but a restrictive provision. The Transfer of Shares to the Mother-in-law, Respondent 4, is invalid.

- A perusal of the dispatch register filed by the Appellants shows that the number of Shareholders increased from 2 Shareholders to a total of 7 Shareholders. 5 new Shareholders were added to the list without any mention of mode or permission of transfer. It is submitted that the Company was a Private Limited Company and Clause 2(d) of the Articles of Association states that any invitation or acceptance of deposits from persons other than its Members, Directors or their relatives is prohibited.
- It is submitted that the only instrument of Transfer under Section 108 of the Act is a Transfer Form as alleged Gift Deed is not an instrument of Transfer.
- Learned Counsel for R-1 vehemently argued that the first Respondent never attended any Board Meeting on 15.12.2010 and that no Notice of the alleged Board Meeting was ever given to them though Clause 53 of the Articles of Association provides with the quorum required for the Board Meeting is two, and on the said date no Minutes of any alleged

⁹ (1992) 1 SCC 160

Board Meeting has been produced. The first Respondent never tendered her resignation or even signed any Resignation Letter. There was no Board Meeting held on 17.12.2010 and no Notice of the alleged Board Meeting was given to the first Respondent. Even the Minutes have not been produced by them and moreover it is submitted that the first Respondent was not even present in the city of Faizabad on 17.12.2010 and therefore could not have attended any Board Meeting or tendered her resignation as on 17.12.2010. It is also contended that the first Respondent have left the city of Faizabad on 16.12.2010 for Kolkata and was not present on 17.12.2010 to execute the alleged Gift Deed before the notary public. The witnesses of the alleged Gift Deed namely Mr. Sachin Srivastava and Mr. S.N. Sharma are both employees of the second and fourth Respondents.

- The fourth Respondent had registered an FIR No.332/2016 against the first Respondent and her mother that her jewellery was fraudulently taken on 17.12.2010 and therefore the alleged Gift Deed dated 17.12.2010 made out of love and affection cannot be believed. A copy of the letter issued by Axis Bank stating that the first Respondent opened and operated her Bank Locker in the said Bank on 15.12.2010 has also been filed here. It is strenuously argued that the Share Transfer Form was never signed by the first Respondent; that the said Share Transfer was revalidated by RoC up to 12.11.2011; that the Appellants transferred the said Shares to R-4 on 18.11.2011 and therefore the Share Transfer Form was invalid. Form-20B is an important document which is not intentionally placed in their record by the Appellants.

- The Company was converted into a Public Limited Company in September, 2011 and the new Articles of Association speak of issue of new Shares and therefore the Shares of the Private Limited Company could not have been transferred. It is also submitted that there is overwriting on the Share Transfer Form.
- The Share Certificates were never handed over to the first Respondent and that the first Respondent was a Shareholder as on 24.09.2011, which is signed by the second and third Respondents and therefore the Transfer of Shares of the first Respondent to the fourth Respondent has been shown without following proper procedure as laid down under Section 108 & 111 of the Act.
- The second Respondent Mr. Ved Krishna who is the Husband of the first Respondent has admitted in the Hon'ble District Court at Faizabad in matter **7782/2012** that the first Respondent had left Faizabad on 16.12.2010 and the same was admitted in his own diary.
- Learned Counsel vehemently contended that the first Respondent is 1/10 of the total number of Members of the Company and is entitled to file the present Petition under Section 399 of the Act and it is only due to the wrongful removal from the Board of Directors of the first Appellant Company that the number of Shareholders in the year 2010 was limited two namely the first Respondent having 39,500 Equity Shares and the third Respondent Mr. Nirupam Mishra holding 500 Shares. Even otherwise as per the list of Members on 24.09.2011 and on 24.09.2012, the number of Members has been restricted to 7 & 8 respectively. Therefore, the first Respondent has satisfied the criteria of

1/10th of the total number of Members and the present Petition is maintainable. As per Clause 38 of the Articles of Association, the person whose Share was forfeited ceases to be a Member and in these circumstances, the forfeited Shares cannot be considered for eligibility for maintainability under Section 399 of the Act. Learned Counsel for R-1 relied on the following decision in support of all his submissions:

- *'V.B. Rangaraj' Vs. 'V.B. Gopalakrishnan & Ors.'*¹⁰.
 - *'John Timson & Co. Pvt. Ltd. & Ors.'* Vs. *'Sujeet Malhn (Mrs.) & Anr.'*¹¹.
 - *'Dale & Carrington Invt. (P) Ltd. & Anr.'* Vs. *'P.K. Prathapan & Ors.'*¹².
 - *'Nirakar Das & Ors.'* Vs. *'Durgapur Bio Garden Pvt. Ltd. & Ors.'*¹³.
 - *'Shri Parmeshwari Prasad Gupta' Vs. 'The Union of India'*¹⁴.
- Learned Counsel for the Respondent submitted that the Appellant had made a false statement on oath and that the Annual General Meeting took place on 24.09.2011, the Respondent was not present in India and has placed reliance on the following Judgements in support of his contention that the transfer of shares was not valid in these circumstances, where fraud has been played:
 - *'K.D. Sharma' Vs. 'Steel Authority of India Ltd. & Ors.'*¹⁵.
 - *'S.P. Chengalvaraya Naidu (Dead) By Lrs.'* Vs. *'Jagannath (Dead) by Lrs. & Ors.'*¹⁶.

¹⁰ (1992) 1 SCC 160

¹¹ (1997) 9 SCC 651

¹² (2005) 1 SCC 212

¹³ (2018) 211 Comp Cas 61

¹⁴ (1973) 2 SCC 543

¹⁵ (2008) 12 SCC 481

¹⁶ (1994) 1 SCC 1

- *'A.V. Papayya Sastry & Ors.' Vs. 'Govt. of A.P. & Ors.'*¹⁷.
- *'MCD' Vs. 'State of Delhi & Anr.'*¹⁸.
- *'Dalip Singh' Vs. 'State of Uttar Pradesh & Ors.'*¹⁹.
- It is also the contention of the Learned Counsel for the Respondent that there is over writing apparent of the back of the Share Certificate and a date change from 18.11.2011 to 10.11.2011. Learned Counsel strenuously contended that a '**fraud**' has been played upon the Respondent by the Appellant.

Assessment:

8. At the outset, we address to the main issue of maintainability raised by the Learned Sr. Counsel appearing on behalf of the Appellant. It is the main case of the Appellant that for invoking jurisdiction under Sections 397 & 398 of the Act, which has been statutorily provided for in Section 399(1), the Complainant must be a 'Member' of the Company. It is contended that if the Petitioner is not a 'Member' or the Petitioner's entitlement to the 'Membership' is in dispute, they have to seek relief by filing appropriate Application for rectification of Register of Members. It is also strenuously contended by Learned Sr. Counsel Mr. Arun Kathpalia that if the 'Gift Deed' is not under challenge then the question of the Petitioner being a Shareholder does not arise as she had transferred all her Shares vide the Gift Deed and therefore is not a 'Member'. It is further the case of the Appellant that even the subject matter of the Gift Deed is 39,500 Shares which is less than 10% of the issued capital and in the context of the Gift Deed not being challenged, the title

¹⁷ (2007) 4 SCC 221

¹⁸ (2005) 4 SCC 605

¹⁹ (2010) 2 SCC 114

passes with the 'gift' and therefore, the Petition is not maintainable. As the Petitioner had only 4.02% shares, she lacks the locus for filing the Petition under Sections 397 & 398 of the Act. Sections 397 & 398 of the Act read as hereunder:

"397. APPLICATION TO TRIBUNAL FOR RELIEF IN CASES OF OPPRESSION

(1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the Tribunal is of opinion-

(a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up;

the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

398. APPLICATION TO TRIBUNAL FOR RELIEF IN CASES OF MISMANAGEMENT

(1) Any members of a company who complain –

(a) that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company; or

(b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken

place in the management or control of the company, whether by an alteration in its Board of directors or manager or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ; may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the Tribunal is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the Tribunal may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.”

(Emphasis Supplied)

9. Section 399(1) stipulates as follows:

“399. RIGHT TO APPLY UNDER SECTIONS 397 AND 398

(1) The following members of a company shall have the right to apply under section 397 or 398;

(a) in the case of a company having a share capital, not less than one hundred members of the company or, not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.”

(Emphasis Supplied)

10. The root of the maintainability issue is the ‘Gift Deed’ which is said to have been executed on 17.12.2010. This ‘Gift Deed’ is strongly refuted by the

Counsel for the Respondent on the ground that the Gift Deed was never executed by the Petitioner/Mrs. Shailja Krishna and that she was out of town in Kolkata as on that date. It is also the case of the Respondent that as on 17.12.2010 an FIR was also lodged by her Mother-in-law, Mrs. Jhunjhunwala and therefore the question of executing the Gift Deed on the same date, with 'love and affection', does not arise.

11. We place reliance on the Judgement of the Hon'ble Gujarat Hight Court in '**Gulabrai Kalidas Naik & Ors.**' Vs. '**Laxmidas Lallubhai Patel & Ors.**'²⁰, while discussing the status of a Member of a Company has observed as follows:

“10. Prima facie, reading these sections together, it becomes clear that in order to acquire the status of a member of a company, name of the person seeking to be a member must be entered in the register of members, and only then he acquires the status of a member of a company. It is obligatory upon the company to maintain a register of its members. Now, if a person claims to be a member of the company, and either his name is not entered in the register, or having been once entered in the register, is, without sufficient cause, omitted therefrom, then the person aggrieved or any member of the company or the company may apply to the court for rectification of the register. Such an application can be made, either by a person aggrieved, or by any other member of the company, or company itself for rectification of the register under section 155. In such an application, the court will have the power to decide any question relating to the title of any person, who is a party to the application, to have his name entered in or omitted from the register, whether the question arises between the members or alleged members or between members or alleged members on the one hand and the company on the other hand and the court will generally have power to decide any question, which it is necessary or expedient to decide, in connection with the application for rectification. Section 155 thus provides a summary remedy to a person who complains that his name has not been entered or has been wrongly omitted. It also

²⁰ 1975 SCC OnLine Guj 27

enables the member to complain and seek rectification in respect of the name either wrongly entered or wrongly omitted in respect of some other person. It is true that when complicated question of title arises, it would be open to the company court to direct the parties to a civil suit to establish their title. But it would equally be open to the court having jurisdiction under the Companies Act to decide the question of title to a share, in order to ascertain, whether the person claiming to be a member is in fact a member or not and whether his name has been rightly entered or wrongly omitted. But till the name is entered, it could not be said that he can enjoy the powers of a member conferred by the Companies Act on the members of a company.

11. Now, section 399(1) provides that members, set out in clauses (a) and (b) of sub-section (1) thereof, alone have a right to apply under sections 397 and 398. Apart from the qualifying number for eligibility to maintain a petition, those who invoke court's jurisdiction, must indisputably be the members of the company and this is very natural because section 397(1) provides that any member of a company who complains that the affairs of a company are being conducted in a manner prejudicial to public interest or in any manner oppressive to any member or members, may apply to the court. One can thus complain of oppression or conduct prejudicial to public interest, if he is a member of the company. Similarly, section 398(1) provides that a member of a company, complaining of things set out in the section, may apply for relief to the court, and it is absolutely well-settled that for relief under sections 397 and 398, the oppression complained of must be in the capacity of members. The language of sections 397 and 398 leaves no room for doubt that the oppression complained of must not only be complained of by a member of the company, but oppression must be of some part of the members (including himself) in their capacity or his capacity as members or member of a company as such (vide *In re H.R. Harmer Ltd.*, [1958] 3 All ER 689 : [1959] 29 Comp Cas 305 (CA). Therefore, it is crystal clear that complaint must come forth from a member and it must be a complaint to be made to the court by a member. The prerequisite for invoking jurisdiction under sections 397 and 398, which has been statutorily provided for in section 399(1), is that the complaint must come forth from a member. One has to be a member before he can complain of oppression as a member of the company.”

(Emphasis Supplied)

12. In our considered opinion, the main question which requires to be decided is whether NCLT has jurisdiction to declare that the Gift Deed is valid or not. Since, the execution of the Gift Deed itself is strongly disputed by the first Respondent, the adjudication whether the Gift Deed is valid or not requires elaborate evidence and determination of validity of the legal documents. Further, the first Respondent has submitted that some signatures were taken on blank papers under coercion. We are of the earnest view that issues of fraud, manipulation and coercion cannot be decided in a summary jurisdiction as it requires examination of elaborate evidence. Additionally, cancellation of a Gift Deed is to be sought for under Section 31/34 of the Specific Relief Act, 1963 before the Civil Court and cannot be done by NCLT under summary jurisdiction. We are also conscious of the fact that the first Respondent has raised the question of entries in the diary presented before the Hon'ble District Court at Faizabad in matter **7787/2012**, in support of their contention that the Petitioner was not in town on 17.12.2010 and that Gift Deed was never executed by the Petitioner, though the signatures on the Gift Deed were never disputed. In this factual matrix, we are of the considered view that these complicated questions of fact require elaborate evidence as they deal with 'rights and title of Shares' and cannot be gone into in 'summary jurisdiction' by the NCLT, specifically keeping in view, the background that the Petitioner had never challenged the Gift Deed.

13. At this juncture, we find it relevant to rely on the Judgement of the Hon'ble Apex Court in '**Jai Mahal Hotels Pvt. Ltd.' Vs. 'Raj Kumar Devraj**

& Ors.²¹, in which the Hon'ble Apex Court in paras 16, 17 & 18 has noted as follows:

“16. In *Ammonia* [(1998) 7 SCC 105] , the scope of jurisdiction of the Company Court to deal with an issue of rectification in the Register of Members maintained by the Company was considered. Following *Public Passenger Service Ltd. v. M.A. Khadar* [AIR 1966 SC 489] , it was held that jurisdiction under Section 155 was summary in nature. If for reasons of complexity or otherwise, the matter could be more conveniently decided in a suit, the Court may relegate the parties to such remedy. Subject to the said limitation, jurisdiction to deal with such matter is exclusively with the Company Court. It was observed: (*Ammonia* case [(1998) 7 SCC 105] , SCC p. 122, para 31)

“31. ... It cannot be doubted that in spite of exclusiveness to decide all matters pertaining to the rectification it has to act within the said four corners and adjudication of such matters cannot be doubted to be summary in nature. So, whenever a question is raised the court has to adjudicate on the facts and circumstances of each case. If it truly is rectification, all matters raised in that connection should be decided by the court under Section 155 [**Ed.:** Corresponding to Section 111 of the present Act, before its amendment by Act 31 of 1988.] and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by a civil court. Unless jurisdiction is expressly or implicitly barred under a statute, for violation or redress of any such right the civil court would have jurisdiction.”

17. Thus, there is a thin line in appreciating the scope of jurisdiction of the Company Court/Company Law Board. The jurisdiction is exclusive if the matter truly relates to rectification but if the issue is alien to rectification, such matter may not be within the exclusive jurisdiction of the Company Court/Company Law Board.

18. In *Standard Chartered Bank* [(2006) 6 SCC 94] , scope of Section 111(7) was considered. It was observed that jurisdiction being summary in nature, a seriously disputed question of title could be left to be

²¹ (2016) 1 SCC 423

decided by the civil court. It was observed: (SCC p. 115, para 29)

“29. ... The nature of proceedings under Section 111 is slightly different from a title suit, although, sub-section (7) of Section 111 gives to the Tribunal the jurisdiction to decide any question relating to the title of any person who is a party to the application, to have his name entered in or omitted from the register and also the general jurisdiction to decide any question which it is necessary or expedient to decide in connection with such an application. It has been held in Ammonia Supplies Corpn. (P) Ltd. v. Modern Plastic Containers (P) Ltd. [(1998) 7 SCC 105] that the jurisdiction exercised by the Company Court under Section 155 of the Companies Act, 1956 (corresponding to Section 111 of the present Act, before its amendment by Act 31 of 1988) was somewhat summary in nature and that if a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, which was the more appropriate remedy for investigation and adjudication of such seriously disputed question of title.”

(Emphasis Supplied)

14. From the aforementioned ratio, it is clear that the Hon’ble Apex Court in a catena of Judgements has observed that the jurisdiction under Section 155 was summary in nature and the matter ought to be decided in a Suit and a Court may relegate the matter to such remedies. At the cost of repetition, it is the case of the Respondent that signatures were obtained on blank papers, and on Share Transfer Form under threat and coercion, that the first Respondent had never signed the said documents and that the said documents are forged and fabricated. The signatures on the Gift Deed, Share Transfer Forms and the Resignation Letter has been disputed before this Tribunal. It is the case of the Appellant that a contradictory stand has been taken in their Affidavit filed by the Respondent. We also take into consideration that Protest Application has been filed by the Petitioner Mrs.

Shailja Krishna on 27.05.2014 in Crime No. 105/2023 and that Police submitted their final Report on 10.01.2015, stating that no offence was proved; that another Protest Application was filed and the Police once again investigated the matter and submitted the Report on 21.03.2017 stating that no offence was proved; that one important Protest Application was filed on 19.03.2018 which was rejected by the Chief Judicial Magistrate of Faizabad on the ground that investigation was carried out three times by the different Investigating Officers and no offence was proved. It is the case of the first Respondent that as on that date, the Petitioner had boarded the train from Kanpur whereas it is the case of the Appellant that the said reservation was in waiting list and therefore cannot be considered as conclusive piece of evidence.

15. We are conscious of the fact that the 'Gift Deed' was not challenged which is of significance more so when the 'title of Shares' is relevant to decide the issue of the maintainability. At the cost of repetition, any dispute with respect to issues relating to 'fraud', 'manipulation', and 'coercion', and false statements cannot be decided in a summary jurisdiction. The contentions of the Learned Counsel for the Respondent that there is 'over writing on the certificates', signatures were taken on blank forms, there is mala fide suppression of some documents all require examination of evidence and hence cannot be decided by the NCLT in a summary fashion.

16. For all the foregoing reasons, we hold that the Petition is not maintainable as we are of the considered view that for satisfaction of the criteria as stipulated under Section 399 of the Act, the question whether the 'Gift Deed' is valid or not is the crux of the matter and keeping in view the facts of the attendant case on hand, we are of the earnest view that the NCLT

has no jurisdiction to decide the validity or otherwise of the 'Gift Deed' more so when 'fraud' and 'coercion' is alleged. Having held that the Petition is not maintainable, the other issues raised regarding the Articles of Association and the conversion from the Private Limited to a Public Limited Company and whether the forfeiture of Shares amounts to reduction of Shares, is not being delved into.

17. For the aforementioned reasons, these Appeals are allowed and the Order of the NLCT is set aside and all consequential reliefs granted by NCLT are set aside. No costs.

[Justice Anant Bijay Singh]
Member (Judicial)

[Mrs. Shreesha Merla]
Member (Technical)

**Principal Bench,
New Delhi
02nd June, 2023**

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