

BEFORE THE COMPANY LAW BOARD, MUMBAI BENCH, MUMBAI

**Present: Shri Ashok Kumar Tripathi,
Member (Judicial)**

C. P. No. 2 of 2012

**Under Sections 111 & 111(A) of
the Companies Act, 1956.**

In the matter of:

**Naresh N. Shah & Ors.
Versus
Larson & Toubro Ltd. & Ors.**

....Petitioners

.....Respondents

Petitioners:

1. Naresh N. Shah (P-1)
2. Biren N. Shah(P-2)
3. Nina Nilkesh Shah (P-3)
4. Nilesh N. Shah (P-4)

Respondents :

1. M/s Larson & Toubro Ltd. (R-1)
2. Dhawal H. Patel (R-2)
3. Ultratech Cement Limited (R-3)

Counsel appeared on behalf of the Parties :-

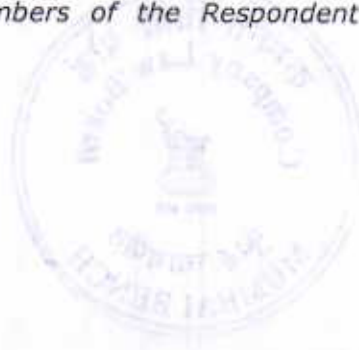
1. Mr. Dhiren R. Dave, PCS for the Petitioners.
2. Mrs. Shubha R. Mulakatte, Advocate for the Respondent No.1.

JUDGMENT

(Reserved on December 17, 2014)
(Delivered on January 2, 2015)

1. This is a Company Petition filed by the Petitioners under the provisions contained in Section 111 and 111A of the Companies Act, 1956 (hereinafter referred to as "the Act" in short) by the Respondent No.1 Company (hereinafter referred to as "the Company" in short) thereby seeking following orders:-

- a. To pass an order thereby directing the Company to enter the names of the Petitioners as Members in its Register of Members thereby restoring the status quo ante.
- b. To pass an order thereby directing the Company to enter the names of the Petitioners as Members in the Register of Members of the Respondent No.3



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Company as allottee of shares proportionately allotted to other shares holders of the Respondent No.1.

c. To pass an order thereby directing the Company to provide all accrued benefits in respect of the subject shares and also cost of the litigation.

2. The facts relevant for the purpose of the case may be summarized here as under :-

2.1 It is stated that the Petitioner Nos.1 and 2 jointly hold 100 shares in the Company. The Petitioner Nos.3 and 4 also jointly hold 50 shares in the Company. The said shares were registered in the name of the Petitioners since 30/04/1998 and since then they are the registered shareholders of the Company.

2.2 It is further stated that for convenience of dematerialization of the shares, the Petitioners decided to get the shares in a single name and, for the said purpose, on 18/02/1999 they sent to the Company the subject shares for transfer as under :-

a. 100 shares jointly held by the Petitioner Nos.1 and 2 to a single name of the Petitioner No.1, and

b. 50 shares jointly held by the Petitioner Nos.3 and 4 to a single name of the Petitioner No.3.

2.3 It is further averred that the above shares were not sent for sale but just for transfer from joint holding to single holding for the convenience of dematerialization only. It is stated that since the Petitioners did not receive back duly transferred shares in due course, on inquiry being made with the Company's Investor Relation Centre, the Petitioners received a letter dated 30/07/1999 communicating them that the relevant documents for transfer of share were intercepted in the Postal Transit, and thereafter, the shares were lodged by the Respondent No.2 and the same have been transferred in their respective names. It is alleged by the Petitioners that the Respondents have deliberately committed mischief and the Company, without seeking confirmation from the Petitioners, and without complying the guidelines issued by the Stock Exchange and SEBI from time to time, have illegally transferred the said shares to the name of the Respondent No.2. According to the Petitioners, their names were illegally removed from



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the Register of Members by the management of the Company in conspiracy hatched with the Respondent No.2.

2.4 It is further pleaded that on receipt of the letter dated 30/07/1999 from the Company, the Petitioners sent a reply dated 13/08/1999 to the Company informing the facts and requesting the Company to keep the transaction on hold. However, in reply to the said letter, the Company advised the Petitioners, vide its letter dated 17/09/1999, to settle the issue with the Respondent No.2 and showed their inability to hold the transaction. It is further stated that, thereafter, the Petitioners twice wrote letters to the SEBI ventilating their grievances therein, but could not get any positive result. It is further averred that, thereafter, the Petitioner No.1 filed a civil suit, being Civil Suit No.537 of 1999 before the Civil Judge, S.D., Surat, against the Company and Respondent No.2, which was dismissed by the said Court, vide order dated 8/03/2000, stating therein that the CLB is the proper forum for redressal of the grievances of the Petitioner No.1. It is further stated that against the said order of the Civil Judge, (Senior Division), Surat the Petitioner No.1 preferred an appeal, being Appeal No.68 of 2000, before the Appellate Court, which confirmed the order of the lower court vide its order dated 16/12/2005.

2.5 It has been alleged by the Petitioners that the impugned shares of the Petitioners were transferred by the Company on the basis of forged documents and names of the Petitioners were removed without proper cause/documents/procedure and compliance of the guidelines and circular issued by the Department of Company Affairs and, hence this petition.

3. The Respondent No.1 Company appeared and filed its reply. In their reply, the Respondent No.1 Company (hereinafter referred to as "the Answering Respondent") has raised two preliminary issues/objections and sought dismissal of the Petition on those preliminary issues at the threshold stage. The first preliminary issue/objection raised by the Company is that the petition is bad for non-joinder of necessary party and second preliminary objection is that the C.P. is barred by law of limitation. On merits also, the Respondent No.1 denied all the allegations made by the Petitioners and prayed to dismiss this petition being frivolous and baseless.

4. In the reply filed on behalf of the Respondent No.1, it has been denied that the shares were intercepted in postal transit. According to the



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Answering Respondent, the Transfer Deeds were not destroyed in connivance with the Respondent No.2 as sought to be contended by the Petitioners, and, *prima facie*, the signatures on the TDs were not forged, and therefore, the answering respondent has rightfully transferred the subject shares in favour of the Respondent No.2 and, hence, no case is made out for grant of reliefs as prayed by the Petitioners.

5. The Respondent Nos.2 and 3, despite service of notice, neither appeared nor filed any reply to the Petition.

6. After the reply was filed by the Answering Respondent, a rejoinder came to be filed on behalf of the Petitioners on 8/06/2012. Thereafter, an additional affidavit on behalf of the Petitioner was filed on 21/07/2013, to which another reply was filed by the Respondent No.1 on 20/11/2013. Again, an Affidavit in rejoinder came to be filed on behalf of the Petitioners on 21/01/2014. Lastly, the Petitioners filed an Affidavit on 19/03/2014. Thereafter, the Answering Respondent filed one more reply on 22/10/2014. I have perused the entire pleadings. Heard the arguments and also examined the written submissions filed by the respective contesting parties. First, I would like to deal with the preliminary objections raised by the Answering Respondent.

7. As regards non-joinder of necessary party, it has been contended on behalf of the Answering Respondent, that the subject shares were transferred in the year 1999 in favour of the Respondent No.2 and those shares were dematerialized by him. According to the Ld. Counsel for Answering Respondent, the subject shares were in Demat form and, therefore, the NSDL is a necessary and proper party, in whose absence an effective and complete adjudication of this petition cannot be made in this petition. The Ld. Counsel pointed out that NSDL has not been impleaded as a Respondent by the Petitioners and, therefore, the petition deserves to be dismissed for non-joinder of necessary party.

8. Dealing with the first preliminary objection as to non-joinder of necessary party, it was contended on behalf of the Petitioners that as per Section 10 of the Depositories Act, the Depository (NSDL), as a registered owner, does not have any voting rights or any other rights in respect of dematerialized shares held in the depository system. According to the Ld. Authorized Representative of the Petitioners, NSDL is deemed to be a



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registered firm established for the purpose of effecting transfer of ownership of shares on behalf of the beneficiary owner. According to the Ld. Authorized Representative, the beneficiary owner has all the rights and benefits and is subject to all the liabilities associated with the shares held by the depository in its behalf. It is contended that the NSDL has no role to play in this matter, and the impleadment of NSDL as a party in this petition is not required for just and effective adjudication of the petition. It was, therefore, argued that the aforesaid first preliminary objection raised by the Answering Respondent deserves to be rejected being devoid of any substance.

9. I have considered the rival submissions. For the reasons stated by the Petitioners' Authorised Representative, in my opinion, the NSDL is neither a necessary party nor a proper party in this case. The said preliminary objection raised by the Answering Respondent is, therefore, rejected.

10. Next preliminary issue/objection taken by the Answering Respondent is that the subject shares were admittedly transferred in the name of the Respondent No.2 in the year 1999 and, thereafter, the Petitioner No.1 filed a civil suit in the year 1999 before Civil Court at Surat for restraining the Company from transferring the subject shares and not to issue duplicate share certificates. However, the said suit was dismissed in the year 2000 for want of jurisdiction. Being aggrieved by the said order of the Civil Court, an appeal was preferred by the Petitioner No.1 before the Appellate Court and that appeal too was dismissed in the year 2005 confirming the Lower Court's order. However, the Petitioners did not bother to approach this CLB in the year 2005 and they approached this CLB only in the year 2012. Thus, this petition has been filed in the year 2012 i.e. after a period of 7 years. The Ld. Counsel appearing for the answering respondent further submitted that no cogent and convincing explanation has been offered by the Petitioners for this inordinate delay in filing the present petition, and therefore, this petition deserves to be dismissed on this ground as well.

11. Responding to the said submissions advanced on behalf of the Answering Respondent, it was argued by the Ld. Authorized Representative for the Petitioners, that there is no time limit provided in Section 111 of the Act for rectification in the Register of Members of a Company where a company without sufficient cause has omitted/removed the name of a



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registered shareholder from its Register of Members. To support his submissions, the Ld. Authorized Representative has placed reliance upon following two decisions viz. **Finolex Industries Ltd. vs. Anil Ramchandra Chhabaria**, and **Canara Bank vs. Nuclear Power Corporation of India Ltd.**, rendered by the Hon'ble Bombay High Court and Hon'ble Supreme Court, respectively:-

12. I have considered the rival submissions and perused the record. At the outset, I would like to reproduce the relevant extracts from the said two decisions as follows :-

(1) In the case of **Finolex Industries Ltd. vs. Anil Ramchandra Chhabaria**, Hon'ble Bombay High Court has held as follows:-

*"Is Sec.111 only applicable to Private Limited Companies in view of sub-sec. (14) ? As noticed earlier, the provisions of the Depositories Act are in addition to and not in derogation of the existing provisions of the law. Therefore, it cannot be held that by virtue of Sec.111(14) the provisions of sub-sections (1), (2) and (4) of Sec. 111 are not applicable to Public Companies. Sub-section (1) of Sec.111 make it incumbent on the Company to serve a notice of refusal of transfer within two months of the delivery of instrument of transfer or intimation of transmission. This provision is now incorporated in proviso to Sec.111A(2) of the Act. **But an additional benefit has been given to the shareholders is that no limit is provided for filing the appeal against the refusal or neglect of the company or the depository to transfer the shares.** For this reason Sec.111(3) has not been incorporated in Sec.111A(7) which provides the manner in which the applications are to be decided by the CLB under Sec.111A. Sub-section (14) of Sec.111 cannot exclude the application of sub-sections (1), (2) and (4) of Sec.111 to shares held in a Public Company as it would then be in conflict with Sec.28 of the Depositories Act. **Under this section, the law made under the Depositories Act is in addition to and not in derogation of any law which is/was in force at the time when the Depositories Act was enacted. Therefore, restriction contained in sub-sec. (14) of Sec.111 would not apply to transfer an ownership of the shares of the Public Company held in the form of share certificates.** Construed in this manner, the provisions of sub-sec. (1) of Sec.111A would clearly mean that the remedy of rectification of register on transfer provided in Sec.111A would not be applicable to Private Companies. For the Private Limited Companies, the remedies of appeal and rectification would remain under Sections 111(2), (3) and (4) of the Act. When an application is made under Sec.111 with regard to a Private Company, the CLB will deal with the same under the provisions of Sec.111. The limit of two months appeal as provided under sub-sec. (3) of Sec. 111 would still be applicable to the Private Companies."*

(2) In the case of **Canara Bank vs. Nuclear Power Corporation of India Ltd.**, Hon'ble Supreme Court has observed as under :-

"Now, under Section 111 of the Companies Act as amended with effect from 31.5.1991, the CLB performs the functions that were theretofore performed by courts of civil judicature under Section 155. It is empowered to make orders directing rectification of the company's register, as to



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damages, costs and incidental and consequential orders. It may decide any question relating to the title of any person who is a party before it to have his name entered upon the company's register; and any question which it is necessary or expedient to decide, it may make interim orders. Failure to comply with any order visits the company with a fine. In regard to all these matters it has exclusive jurisdiction (except under the provisions of the Special Court Act, which is the issue before us). In exercising its function under Section 111 the CLB must, and does, act judicially. Its orders are appealable. The CLB, further, is a permanent body constituted under a statute. It is difficult to see how it can be said to be anything other than a court, particularly for the purposes of Section 9-A of the Special Court Act."

13. I have examined the facts of the case in hand in light of the above stated law laid down in the said cases. It is an undisputed fact that the Petitioner No.1 had filed a civil suit in the Civil Court at Surat for an order of injunction restraining the Company from transferring, alienating the subject shares in favour of any person. Admittedly, this suit was dismissed by the said civil court holding that the Civil Court has no jurisdiction with respect to the suit filed by the Petitioner No.1. It is also not disputed that being aggrieved by the said order, the Petitioner No.1 preferred an appeal before the Appellate Court and that appeal also came to be dismissed in the year 2005 confirming the order of the Lower Court. The Petitioners have not given any cogent and convincing reason as to why they did not approach the CLB in the 7 years i.e. from 2005 to 2012. Assuming that the provisions of Limitation Act do not apply with respect to the petition filed under Section 111 of the Act, it is undisputed proposition of law that the doctrine of "delay" and "laches" applies to the proceedings filed under Section 111 of the Act. Despite having knowledge of dismissal of the Appeal and further not offering any explanation for delay of 7 years in filing the present Appeal, in my considered opinion, they are not entitled from any equitable and discretionary reliefs from this forum.

14. Now, looking to the issue as to limitation from the legal angle. From perusal of Section 111(4) of the Act, it is noted that the said provision although does not specifically provide the period of limitation, however, in my view, the provisions of the Limitation Act would apply in a petition filed under Section 111/ 111A of the Companies Act, 1956 as laid down in the case reported in **(2004) CLC 1094**. It is settled law that, if no limitation period is prescribed, in that case Article 137 of the Limitation Act shall be applicable. Therefore, in terms of Article 137 of the Limitation Act, 3 years period with effect from the date of cause of action would be available for an aggrieved party to approach the CLB for relief under Section 111/111A of



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the Act. In light of the above law, I have examined the pleadings as contained in the petition. On perusal of the pleadings, it is noted that the cause of action to file the instant Company Petition had arisen firstly in the year 2005 when the Petitioners' appeal was dismissed by the Appellate Court. Undisputedly, the petition came to be filed in the year 2012 which is obviously beyond prescribed period of 3 years. I, therefore, hold that the petition is hopelessly time barred and it deserves to be dismissed on this ground alone.

15. Now, I proceed to consider the case of the Petitioners on merits. In this regard, it was submitted on behalf of the Petitioners that there were two sets of Share Transfer Deeds, viz. one set of 3 share transfer deeds, by which the names of the Petitioners were entered in the Register of Members of the Company, and another set of 2 shares transfer deeds, by which the names of the Petitioners were removed from Register of Members of the Company.

16. It was further submitted that the Petitioners sent the first set of Share Transfer Deeds with the subject shares for transfer to the Company on 18/02/1999, and the second set of share transfer deeds, by which the Company removed the name of the Petitioners, were dated 19/02/1999, and therefore, it was not possible that the Petitioners could have executed and dispatched the share transfer deeds of the date subsequent to the dispatch of the shares. According to the Ld. Authorised Representative appearing for the Petitioners, the share transfer deeds, on the basis of which the Petitioners' names were removed from the Register of Members, were actually not executed by the Petitioners.

17. It is further submitted on behalf of the Petitioners that the Respondent No.2 is not traceable and his history is also getting reflected from the state of his residential address. According to the Petitioners, circumstantial evidence also goes to show that Respondent No.2 seems to have intercepted the Post by which the Petitioners have sent share transfer deeds for internal transfer of the shares. It is submitted that the Respondent No.2 after interception of Post with or without connivance of the Company seems to have destroyed old share transfer deeds of the Petitioners and he must have attached two new sets of share transfer deeds with forged signatures of the Petitioners with the original share certificates.



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18. In addition to the above, it is submitted on behalf of the Petitioners that, on perusal of the share transfer deeds, it can be seen that the Company has committed negligence in giving effect for transfer of the shares on the basis of set of share transfer deeds produced by the Respondent No.2. According to the Ld. Authorised Representative appearing for the Petitioners, the signatures on the forged transfer deeds did not match with the signatures of the Petitioners. Referring the Guidelines of "Good" and "Bad Delivery" of NSE and Department of Company Affairs, the Ld. Authorised Representative appearing for the Petitioners has further cited the following instances to substantiate the Petitioners' allegation that the Respondent Company failed to exercise due diligence before effecting the transfer of shares.

- i) The Company failed to notice that the stock exchange always affixes its stamp of settlement no. in which the particular shares were traded and delivered. The share transfer deeds-in-question, however, do not speak on which stock exchange the shares were traded. Moreover, inspite of having share broker stamp, the Company failed to notice the said basic discrepancies.
- ii) The Company also failed to notice that the shares were not traded on the stock exchange as relevant portions of transfer deeds are blank, i.e. bearing no stamp of the stock exchange, settlement period, etc.
- iii) Further, on seeing the transfer deeds, it may be noted that in the forged transfer deeds, the Transferor is from Surat and the Transferee is from Mumbai and the witness is from Bangalore. Despite above mentioned discrepancies, the Company has shown abnormal hurry in removal of the Petitioners' name from the Register of Members of the Company, which led the Petitioners to believe the "connivance" of the Company with the Respondent No.2.
- iv) That, as per case of the Company, Transfer Deeds were submitted to them on 12/03/2009 for transfer of the shares and the same were transferred on 26/03/1999, but there is no inward stamp of the Company, on the transfer deeds, which is one of the basic requirement for the document handling.



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v) That, there were two Transfer Deeds, on the basis of one of which the Petitioners' names were removed, which are claimed as traded on stock exchange. Accordingly, the Company must have verified that, in any stock exchange transactions, normally, delivery of shares comes only in market lot of 50 shares. Whereas, when the names of the Petitioners were removed, one transfer deed consisted of 100 shares, which is not a market lot and hence the same should not have been accepted as a "Good Delivery". Had it taken minimum precautions, the Company could have noticed these lapses easily.

19. According to the Ld. Authorised Representative appearing for the Petitioners, it was not expected to over look all these conspicuous discrepancies by a Company, whose shares are highly traded in the market. It is further submitted that as per the erstwhile prevailing guidelines of "Good" and "Bad Delivery" issued by Stock Exchange, as well as Department of Company Affairs, these kind of deliveries are considered as "Bad Delivery". This, therefore, according of the Ld. PCS clearly shows connivance of the Company's officers with wrong doer i.e. the Respondent No.2.

20. It is further submitted that the Ministry of Corporate Affairs has issued Circular No.10 dated 13/08/1993 specifically instructing to the Companies that whenever they find inconsistency in signatures, etc. they must verify the sale transaction by writing a letter to the transferor about the genuineness of signatures. It is, therefore, contended that the Company has not complied with the said guidelines and hurriedly transferred the impugned shares in less than 15 days time in favour of the Respondent No.2.

21. It is further submitted that the names of the Petitioners in the covering letter for dispatch of the share transfer deeds executed by the Petitioners for transfer of the impugned shares from joint names to a single name were written through rubber stamp. According to the Ld. PCS, the Petitioners had practice to use rubber stamp only, as can be seen from the transfer deeds dated 4/09/1997 as well as covering letter sent to the Company, whereas on the forged transfer deeds names of the Petitioners are handwritten.



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22. Lastly, it has been contended by the Petitioners that none appeared for the Respondent Nos.2 and 3 throughout in these proceedings and, therefore, the allegations made against them should be accepted, being un rebutted.

23. Based on the above, it was submitted on behalf of the Petitioners that the Company, without sufficient cause has removed the name of the Petitioners from its Register of Members and hence, orders may be passed in terms of prayers made in the petition.

24. Having considered the rival submissions carefully and upon a critical examination of the material available on record, I have come to the conclusion that the Petitioners have failed to make out any case for grant of reliefs as sought for in the petition. The Answering Respondent has categorically denied that there was any difference of signatures on the Transfer Deeds. There is no reason to disbelieve the statement made by the Answering Respondent that there is no difference of signatures on the Transfer Deeds. In my view, the contention of the Petitioners as to non-appearance of the Respondent Nos.2 and 3 in the instant Company Petition also does not in any way help the Petitioner's case. Furthermore, the technical points raised by the Petitioners as to the non-compliance of guidelines for "Good /Bad Delivery" by the Respondent No.1 Company, and non compliance of the Circular of Ministry of Company Affairs do not have much substance. In my considered opinion, the Petitioners have failed to establish that their names were removed by the Company without sufficient cause. In conclusion, the Petition deserves to be dismissed being time barred and having no merits. The order is as follows:-

Order

- i. C.P. is dismissed.
- ii. No order as to costs.
- iii. Interim order, if any, stands vacated. Pending C.A., if any, stand disposed off.
- iv. Copy of the order be issued to the parties.

Sd/-

(A.K.Tripathi)
Member (Judicial)

Dated this January 2, 2015.

CERTIFIED TO BE TRUE COPY


U.P. PARMAR, ICL
Bench Officer
Company Law Board
Mumbai Bench

Dated:.....6/1/2015

