

**BEFORE THE COMPANY LAW BOARD, NEW DELHI BENCH
NEW DELHI
C.P. No. 23(111)/2011**

Present: Shri B.S.V. Prakash Kumar, Hon'ble Member (Judicial)

In the matter of:

Companies Act, 1956 Sections 111(4) (a) (i) read with Sections 402 & 403

And

In the matter of:

ARG Auto Components private Limited

..... Petitioner

Versus

Atlas Pet Plas Industries limited

.....Respondent

Present:

The counsel for the Petitioners: Ms.Mandakini Ghosh, Advocate, Ms.Swagatika Sanoo, Advocate, Mr.Anand k Ganesan, Advocate, Ms. Sneha V, Advocate, Mr.P.Nagesh, Advocate,

The counsel for the Respondents: Ms.Chandani Goyal, Advocate, Ms.Sonam Sharma, Advocate, Mr.Mukund Kumar Sing, Advocate, S.P.Verma, Advocate

**Order
(Heard and pronounced on 14.01.2015)**

The Petitioner filed CP 23/11 u/s 111 r/w section 402 and 403 of the Companies Act, 1956 against the Respondent for the rectification of the register of members of the respondent company for the petitioner being wrongfully shown as shareholder of the respondent company, adjusting the consideration paid by the petitioner towards earnest money for sale of the equity owned by the respondent as equity of the respondent company.

2. The substance of the CP is the respondent on 10.03.2006 entered into an agreement to sell an Industrial Plot admeasuring 8000 squares meters



bearing No. 95 & 96, (subsequently numbered as plot Nos. 177 & 178) situated at sector 3, Bawal Industrial Area to the petitioner for a total consideration of Rs. 1,75,00,000/-.

3. The petitioner further submits that the respondent received a total sum of Rs. 25,00,000/- as earnest money at the time the respondent entered into a sale agreement with the petitioner. The petitioner further submits that the payment of Rs. 25, 00,000/- to the respondent company is very much reflected in the agreement entered into on 10.03.2006. For the respondent company having failed to execute the sale deed as agreed in the agreement of sell, the petitioner initiated civil proceeding against the respondent company in the year 2009. Soon thereafter, on 25.03.2011, when the petitioner perused the filings of the respondent company on the MCA portal, it came to notice that the petitioner was shown as shareholder for a value of Rs. 20,00,000/- by way of allotment of 2,00,000 equity shares with a face value of Rs.10/- each at par to the petitioner.

4. The petitioner further submits that it has never agreed to become member of the respondent company and it has not even applied for any shareholding in the respondent company, it appears that the respondent company, to divert the merits in the civil case pending against it, has converted the earnest money received from the petitioner into shareholding in the name of the petitioner, which for the first time has come to its notice only when it was verified on MCA Portal. The petitioner submits that this allotment to the petitioner was illegally made without putting it to the notice of the petitioner.

5. The petitioner further submits that it came to know of it in the year 2011 that the name of the petitioner as shareholder of the respondent company has been appearing in the records since 2007-08.



6. In view of the same, the name of the petitioner company being wrongfully shown as the member of Respondent Company, the petitioner prays this Bench to set aside the allotment and direct the rectification of the register of members of the respondent company by deleting the name of the petitioner as a member and shareholder of the Respondent Company.

7. The respondent company filed reply denying the averments of the CP without annexing any single document showing as to how the petitioner was made shareholder of the company, the respondent company reply has run through denials to the CP filed by the petitioner instead of justifying as to how the petitioner has been made shareholder in the company.

8. When this petition come for hearing, the petitioner counsel made her submissions, as to the respondent side, the counsel on behalf of the respondent side said no instructions have come from the respondent company, therefore they could not file sur-rejoinder as directed by this Bench nor in a position to make submissions on behalf of the respondent company. Thereby on hearing of the submission of the petitioner counsel, this CP has been decided as follows:

9. On seeing the pleadings of the petitioner and the respondent, it appears that the respondent company is a Public Limited Company when rectification is in relation to the shares of a Public Limited Company, it is needless to say that section 111A is applicable to rectification of the share register on transfers of shares in a Public Limited Company therefore, it is clear, that sub-section 4 of section 111 of the Companies Act 1956 mentioned by the petitioner is not applicable to seek rectification to the share register. Since mentioning wrong provision of law in the CP is not fatal to the case of the party, Let us see whether section 111A of the



companies Act 1956 is applicable to say that allotment made to the petitioner is invalid or not.

"111A. Rectification of register of transfer.

(1) In this section, unless the context otherwise requires, "company" means a company other than a company referred to in sub-section (14) of section 111 of this Act.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable:

[Provided that if a company without sufficient cause refuses to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the [Tribunal] and it shall direct such company to register the transfer of shares].

[(3) The [Tribunal] may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992), or regulations made there under or the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), or any other law for the time being in force, within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of the transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records].



(4) The [Tribunal] while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the [Tribunal].

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the [Tribunal], of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended?

(7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 111 shall, so far as may be, apply to the proceedings before the [Tribunal] under this section as they apply to the proceedings under that section."

10. The allegation of the petitioner is that it has been illegally allotted shares of the Respondent company without notice to the petitioner; therefore, sought for rectification of register. The case of the petitioner is about allotment, but not on transfer as laid under sub-section 111A of the Companies Act. It is clear that there are two provisions under the Companies Act dealing with rectification of share register, one is section 111 of the Act 1956 deal with private limited companies, another is section 111 A of the Act 1956 deal with public limited companies. It is true subsection 4 of section 111 has not said rectification is limited transfer and transmission of the shares, whereas the heading of section 111A of the Act itself says rectification of register is on transfer, therefore



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an issue in relation to allotment in public limited companies will not fall within the ambit of section 111A of the Act 1956.

11. As to Section 111A (2), it says the shares are freely transferable, the proviso to sub-section 2 says, when the company refuses to register transfer of shares without sufficient cause, the aggrieved will get a right to appeal before CLB, it is pertinent to note, it talks of refusal of registering transfer of shares, therefore this proviso could be invoked in pre-registration of transfer, not in the case of allotment.

12. As to Section 111A (3), it speaks of post registration cases, but this provision is limited to where transfer or transmission is registered in violation of SEBI Act or SICA Act or any other law for the time being in force, but not in the cases of wrong allotment or fraudulent allotment.

13. There is no provision in section 111A analogous to subsection 4 of Section 111 of the Act 1956, therefore there being no provision under section 111A to go beyond transfer and transmission cases, I believe CLB is not conferred with jurisdiction under section 111A either to say allotment is invalid or valid.

14. In view of the same, this Bench is of the opinion that the issue being related to allotment of the shares to the petitioner, the impugned allotment of shares being in relation to the Public Limited Company, Company Law Board has no jurisdiction to adjudicate as to whether allotment made to the petitioner is valid or not. However the petitioner is at liberty to proceed before civil court over this issue of allotment of shares.

Accordingly, this CP 23/111/11 is hereby dismissed without cost.

New Delhi 21st Jan, 2015

प्रमाणित सत्य प्रतिलिपि
CERTIFIED TRUE COPY



(B.S.V. PRAKASH KUMAR)
Member (Judicial)

Vikram Singh
23/1/15
VIKRAM SINGH
Bench Officer
Company Law Board
Govt. of India
New Delhi