

BEFORE THE COMPANY LAW BOARD, NEW DELHI BENCH,
NEW DELHI

CP No.25/111/2011,
CP No.26/111/2011
AND
CP NO.27/111/2011

PRESENT: SHRI DHAN RAJ
HON'BLE MEMBER

IN THE MATTER OF SECTION 111A OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF:

CP No.25/2001 & CP No.26/2011

Sh.Shrikant Mantri
R/o 601, Shanti Vimal Apartments,
Sir P.M.Road, Vile Parle (E),
Mumbai-400 057

VS.

.....Petitioner

1. M/s.Jindal Steel & Power Ltd.
Having its Registered Office at
O P Jindal Marg, Hissar-125 005
Haryana

.....Respondent-1

2. M/s.Alankit Assignments Ltd.
Registrar and Transfer Agent having office at
2E/21, Jhandewalan Extn.
New Delhi-110 055

..... Respondent-2

3. Mr.Jugal Kishore Agrawal
R/o 1/51, Nanak Niwas,
91, Warden Road,
Munmbai-400 026

..... Respondent-3

4. Mr.Mohammed Saifuddin Siddique
R/o 259, MLA Colony, Road No.12,
Banjara Hills, Hyderabad-34

.....Respondent -4



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5. Ms. Leena Bhavnani,
R/o 508, Sindhu Apartments, 5th Floor, Narayan Nagar,
Sion, Chunabhatti, Mumbai-400 022

.....Respondent -5

CP No.27/2011

Shri Shrikant Matri & Other

.....Petitioners

VS

M/s.Jindal Steel & Power Ltd. & Others

....Respondents

PRESENT ON BEHALF OF THE PARTIES

1. Shri Kamal Agrawal, Advocate for Petitioner
2. Ms.Kiran Jaisingh for Respondent No.3
3. Shri Amit Goel, Advocate for Respondent No.1

ORDER

(Date of final hearing : 2ND September, 2014)

In this case, Petition has been filed u/s 111A of the Companies Act, 1956 with the prayer to declare transfer of certificate of 80 shares and 74 shares of Rs.10/- each of Respondent No.1 Company from the name of the Petitioner to Respondent No.3 as null and void and to restore these 80 shares and 74 shares in the name of the Petitioner along with all benefits due thereon including bonus shares and the said Petition is under consideration for adjudication. Apart from this, CP No.25/2011 has also been filed with the prayer to direct the Respondent No.1 Company to issue share certificates for bonus shares in respect of the 406 shares of JSL and the same is also under consideration for adjudication. Precisely speaking, the Petitioner was a registered shareholder of 406 shares of M/s.Jindal Stripts Limited (JSL) under Folio No.65841 and the Petitioner neither sold 406 shares of JSL nor executed any transfer deed in favour of either Respondent Nos.3, 4 and 5 or in favour of any other person. In fact, the Certificates of the 404 shares of JSL were lost/misplaced from the Petitioner along with number of other shares of M/s.JSL and hence, the Petitioner had filed a police complaint with MRA Marg Police Station, Mumbai and the police officer has issued a certificate dated 6.12.2005 confirming registration of the complaint vide their register entry No.2539 of 2005. However, in the year 1998, M/s.JSL restructured its business and filed a Petition before the Hon'ble High Court for approval of the Scheme of Arrangement/Demerger and as per the approved Scheme, three new companies namely, M/s.Nalwa Sons Limited, M/s.Jindal Stainless Steel Limited and M/s.Jindal Steel and Power Limited (Respondent No.1 Company) came into existence. Consequently, the Petitioner being the shareholder of M/s.JSL was allotted 160 shares of



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Rs.10/- each of Respondent No.1 Company,,435 shares of Rs.10/- each of M/s.JSL/M/s.Nalwa Sons Limited and 33 shares of Rs.10/- each of M/s.Jindal Stainless Limited. However, certificates of the shares were not delivered to the Petitioner and the Petitioner has not surrendered the original certificates of M/s.JSL. Thus, after the Demerger, all original shares certificates of M/s/JSL lost their existence and they were not valid for the purpose of either trading or for the purpose of transfer of shares. Likewise, after the Demerger, M/s.JSL had also ceased to exist and there was no Board of Directors to accept any application for transfer of shares and/or approve transfer of shares.

1.1 The Petitioner Advocate has further submitted that the Petitioner had not received delivery of certificates allotted in their name under the Scheme of Demerger approved by the Hon'ble High Court and hence, the Petitioner entered into the correspondence with the Share Department of M/s.JSL enquiring about non-receipt of shares allotted under the Scheme of Arrangement. Besides this, the loss of 406 shares of M/s.JSL was also reported with the request to stop transfer, and suggest the procedure, for issuing duplicate share certificates in lieu of original lost shares. In reply, the erstwhile Transfer Agent of Demerged entities by letter dated 18.3.2009 intimated the Petitioner that 400 old shares of M/s.JSL bearing Certificate No.56343, 56345, 200226 and 200227 were lodged for transfer by Respondent No.4. Apart from this, the Transfer Agent has also intimated the Petitioner that they had returned the certificates of 33 shares of M/s. NSIL and certificate of 435 shares of M/s.JSL to Respondent No.4 without giving effect to transfer of 400 shares of M/s.JSL. In addition, the Transfer Agent has even advised the Petitioner to retrieve the said certificates from Respondent No.4 with the help of legal remedies available. Similarly, as per the Transfer Agent of M/s.JSL, remaining 6 shares bearing certificate No.285571 were allegedly lodged by Respondent No.5 which were never received by M/s.JSL and hence, the Petitioner was advised to obtain NOC from Respondent No.5. Finally, the Transfer Agent informed the Petitioner that certificate of 160 shares of Rs.10/- each of Respondent No.1 Company were sent to the Company Secretary of Respondent No.1 Company and hence, the Petitioner was advised to get in touch with Respondent No.1 Company for releasing the same.

1.2 It has also been pointed out that in view of the facts mentioned in M/s.JSL's transfer agent's letter dated 18.3.2009, it is clear that certificates of 400 shares of M/s.JSL which were lodged by Respondent No.4 were retained by them and in lieu thereof, they had returned 33 shares of M/s.NSIL and 435 shares of M/s.JSL to Respondent No.4 along with objection memo without effecting transfer. It means that certificate of 400 shares of M/s.JSL were not in existence after lodgement by Respondent No.4 and certificate of 160 shares of Rs.10/- of Respondent No.1 Company were in the custody of the Company Secretary of Respondent No.1 Company. Here, it is relevant to mention that Respondent No.3 was not having possession of 200 shares of M/s.JSL at any point of time and therefore effecting transfer of 80 shares and 74



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shares of Respondent No.1 Company bearing certificate Nos.34172, 34173, 62768 and 62771 on the basis of forged transfer deed in respect of 200 shares of M/s.JSL bearing Nos.56345 and 56343 cannot be legal and shows the involvement of the officials of the company in fraudulently effecting transfer of shares in the name of Respondent No.3. Lastly, it has been pointed out that in view of Respondent No.2's letter dated 18.3.2009 and 30.3.2009, certificates of 180 shares of Respondent No.1 Company, which were allotted in the name of the Petitioner under the Scheme of Arrangement approved by the Hon'ble Court, were lying in the custody of the Company Secretary of Respondent No.1 Company and should not have been either delivered to any other person or transferred to third party. Further, the Respondent Nos.3, 4 and 5 have neither given any NOC nor taken any objection to the entitlement of the Petitioner over the shares allotted in his name under the Scheme of Arrangement. It has also been highlighted by the Petitioner Advocate that even otherwise being a buyer of Petitioner's stolen shares, Respondent Nos.3 to 5 cannot have any claim on Petitioner's shares as per the provisions of Sale of Goods Act.

1.3 The Petitioner Advocate has also averred that the Respondent No.1 Company had decided to split the denomination of share certificates of Rs.10/- each to Rs.5/-each and further to Re.1/- each. In addition, the Respondent No.1 Company has also decided to allot bonus shares in the ratio of 5:1 and fixed 19th September, 2009 as the record date to find the entitlement of the shareholders for the purpose allotment of bonus shares. However, the Respondent No.1 Company has failed to deliver the certificates of bonus shares to the Petitioner.3

2. The Advocate representing R-1 and 2 submitted that the Petitioner filed an FIR for loss of shares certificates in Mumbai and the same share certificates which were purportedly lost in Mumbai were lodged for transfer by three different persons, one of whom resides in Hyderabad and two others in different parts of Mumbai. The Respondent Company has bonafidely transferred shares to the rightful owners and can, by no stretch of imagination, be held to be in connivance with any of the Respondents. Further, it has been clarified that pursuant to Scheme of Arrangement as sanctioned by the Hon'ble High Court of Punjab and Haryana vide Order dated 25.2.1999 under Sections 391 to 394 of the Companies Act,1956, M/s.Jindal Strips Limited (JSL) demerged into two companies namely, M/s.Jindal Strips Limited (now M/s.Nalwa Sons Investments Limited i.e.NSIL) and M/s.Jindal Steel & Power Limited i.e. JSPL. Consequently, for every 5 shares of Jindal Strips, every shareholder of Jindal Strips became entitled to the allotment of 3 shares of Rs.10/- each of JSL/NSIL and 2 shares of Rs.10/- each of JSPL. Accordingly, an intimation was sent to all registered shareholders of JSL/NSIL, vide its Circular dated 1.7.1999 thereby, calling upon all the registered shareholders of Jindal Strips for surrendering their then existing original share certificates of Jindal Strips to JSL/NSIL so that in lieu thereof, new share certificates of JSL/NSIL and JSPL in the aforesaid ratio could be



issued. However, in response to the aforesaid Circular dated 1.7.1999, the Petitioner had not surrendered the original share certificates of JSL and hence, JSL/NSIL and JSPL were unable to issue to the Petitioner the said 244 equity shares of JSL/NSIL and 162 equity shares of JSPL under Folio No.65841. On the contrary, different persons claiming themselves to be the bonafide purchasers/holders of said 406 equity shares of Jindal Strips, lodged the said 406 equity shares for transfer in their favour on the basis of transfer deeds purportedly executed by the Petitioner. In fact, total 200 equity shares of Jindal Strips bearing distinctive number from 17092693-17092892 vice Certificate No.200226-27 were purportedly sent for transfer by Mr. M.Saifuddin Sadiq (R-4), PlotNo.259, MLA Colony, Road No.12, Banjara Hills, Hyderabad-34 with JSL/NSIL for transfer in his favour. These shares were returned to him by JSL/NSIL and Respondent No.1 without giving effect of transfer. However, before returning JSL/NSIL converted these shares into 120 equity shares of Rs.10/- each of JSL/NSIL and 80 and 74 equity shares of Rs.10/- of Respondent No.1 Company. The shares of JSL/NSIL were returned to Respondent No.4 by M/s.Abhipra Capital Limited (R & T Agent of JSL/NSIL) without effecting transfer and shares of the Respondent No.1 were returned to Respondent No.4 by the Respondent No.1 with objections without effecting transfer. In the same manner, 200 equity shares of Jindal Strips bearing distinctive number from 7144625-724 and 7144825-924 vide Share Certificate No.56343 & 56345 respectively were purportedly lodged by Mr. Jugal Agarwal (R-3), 1/51, Nanak Niwas, 91, Warden Road, Mumbai-400 026 with JSL/NSIL for transfer in his favour. Therefore, 120 equity shares of Rs.10/- each of JSL/NSIL were transferred in his favour by JSL/NSIL and 80 and 74 shares equity shares of Rs.10/- of Answering Respondent No.1 were transferred in his favour by the Answering Respondent No.1. In the same manner, 6 equity shares of Jindal Strips bearing distinctive number from 13812260-265 vide Share Certificates No.285571 were purportedly lodged by Ms.Leena Bhavnani (R-5), 508, 5th Floor, Sindhu Apartments, Narayan Nagar,Sion, Chunabhatti, Mumbai-400 022 with JSL/NSIL for transfer in her favour which were reportedly lost in transit.

2.1 It has further been stated that the lodging of 406 equity shares or Rs.10/- each of JSL for transfer by the aforesaid persons coupled with the claim of the Petitioner of issuance of duplicate shares of JSL on the ground of purportedly loss of shares, M/s.Abhipra Capital Limited (Registrar and Transfer Agent of JSL/NSIL) has informed the Petitioner vide letter dated 30.3.2009 about the particulars of the persons who had lodged the 406 equity shares of JSL for transfer and further advised the Petitioner for taking appropriate legal remedies. However, in the present Petition, the Petitioner is seeking declaration of his title based on disputed question of facts, which require detailed evidences and elaborate trial .

3. The Advocate for Respondent No.3 stated that transfer deed presented on 26.3.1997 was duly signed by Petitioner herein and the Answering Respondent for transfer of shares from the Petitioner (Transferor) to the Answering Respondent (Transferee) in consideration of ,



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Rs.3,000/- for transfer of shares bearing distinctive number 7144825 to 7144924/ Similarly, the transfer deed presented on 6.2.1997 was duly signed by Petitioner herein and the Answering Respondent for transfer of shares from the Petitioner (Transferor) to the Answering Respondent (Transferee) in consideration of Rs.3,000/- for transfer of shares bearing distinctive number 7144625 to 7144724. Both the aforesaid share transfer forms were also bearing signature of official of First Custodian Fund (India) Ltd. as a witness which a company owned by the Petitioner. Not only this, it has been emphatically stated that the share certificates are in possession of the Answering Respondent No.3 since 1999 and the Petitioner should be put to strict proof. In addition, the alleged certificate dated 6.12.2005 issued by the Police Department confirming the registration of the complaint of the Petitioner regarding alleged loss of certificates of 404 shares was got issued on 6.5.2012 i.e. the complaint was made after a long gap of 6 years from the date of the alleged loss whereas the letter requesting to "stop transfer" on the shares pertaining to Folio No.65941 was sent to the company by the Petitioner only on 29.8.2008 i.e. after a time gap of more than 2- ½ years.

4. In his reply, the Advocate representing Respondent No.4 has controverted that the Answering Respondent No.4 is the original owner of 200 shares of JSL and the same had been purchased by R-4 in the year 2005-06 from the Petitioner. In fact, the transfer deed pertaining to the aforesaid original shares has already been duly executed by the Petitioner in favour of Respondent No.4.

5. In the rejoinder, the Petitioner Advocate stated that there is no disputed question of facts involved in the present Petition. In fact, the case is very simple where the certificate of 80 shares and 74 shares of Rs.10/- each registered in the name of Petitioner lying in the possession of Respondent No.1 Company was handed over to Respondent No.3 and their transfer was effected on the basis of forged/fabricated transfer deed. Further, this Hon'ble Board has power to decide the question of validity of handing over possession of certificate of 80 shares and 74 shares of rs.10/- each by Respondent No.1 to Respondent No.3 and their transfer from the name of Petitioner to Respondent No.3 on the basis of forged transfer deed. The Petitioner Advocate has also pleaded that it is well settled law that in case of transfer of share, the cause of action starts for the purpose of filing the Petition from the date of knowledge of the Petitioner and the Hon'ble Board has taken a view that in case of transfer of shares on the basis of forged transfer deed, the limitation cannot be applied.

6. The Petitioner Advocate has argued that the Petitioner has filed the present Petition within time from the date of knowledge i.e. 22.5.2011 on transfer of 80 shares and 74 shares of Rs.10/- each in the name of Respondent No.3. It has been pointed out that the Respondent No.1 has approved transfer of the said 80 shares and 74 shares of Rs.10/- each on the basis of fabricated transfer deed. In fact, on the basis of Order of Hon'ble Punjab & Haryana High Court



in Demerger Scheme, the Respondent No.1 allotted 162 shares in the name of the Petitioner on 16.6.2009. However, the Respondent No.1 Company has failed not to deliver the certificates of the said 162 shares of Rs.10/- each to the Petitioner. On the contrary, the Respondent No.1 has handed over certificates of 80 shares to the Respondent No.3 in the month of September 1999 on the basis of purportedly allotment of 200 shares of JSL and the said delivery of shares certificates was not only contrary to Section 113 of the Companies Act, 1956 but was illegal and without any right and order. Apart from this, it has also been submitted that the Respondent No.1 has approved transfer of 80 shares and 74 shares of Rs.10/- each from the name of the Petitioner to the name of Respondent No.3 on the basis of fraudulently altered transfer deed which was allegedly executed by the Petitioner during 1997 in respect of 200 shares of JSL.

7. In his arguments, the Advocate for Respondent No.1 Company pleaded that the Petitioner had not surrendered the original share certificates in respect of 200 shares bearing Certificate No.56343 and 56345 of JSL in response to the Circular dated 1.7.1999. However, the original share certificates in respect of these 200 shares were lodged for transfer with JSL in September, 1999 by the Respondent No.3 along with duly signed completed and stamped transfer deed. Since the transfer deeds were complete in all respects and the signatures of the Petitioner on the transfer deed were matching with the specimen signatures of the Petitioner in the records of the Respondent No.1 Company, 120 shares of JSL and 80 shares as well as 74 shares of the Respondent No.1 Company were duly transferred in the name of Respondent No.3 in September, 1999. Accordingly, the name of the Petitioner was replaced with the name of the Respondent No.3 in the records of JSL in September, 1999 and thereafter, all correspondence relating to these 200 shares and also, dividend, split shares, bonus shares of the Respondent No.1 Company was issued only to the Respondent No.3. Thus, the Petitioner is seeking rectification of the register of the Respondent No.1 Company based on a transfer that was made as early as in September, 1999. Apart from this, it has been alleged that the Petitioner has fraudulently concealed the fact that he is not an ordinary investor but a well known stock broker of Mumbai Stock Exchange who has been a habitual defaulter and has been penalized by SEBI for violations of SEBI Takeover Code, SEBI (Prohibition of Insider Trading Regulations) Act and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations in numerous cases in the last more than 10 years. Not only this, the transfer deed shows that the signatures of the Petitioner on these transfer deeds are witnessed by "The First Custodian Fund (India) Ltd., Mumbai owned by the Petitioner and his relatives/associates. It has also been highlighted that the Petitioner has not prayed for his original 200 shares of JSL which he alleged to have been lost but only the split shares and bonus shares of the Respondent No.1 Company. This shows that the Petitioner never lost any shares and has in fact sold the shares in Market in 1997 but since the market price of the shares in 2008-09 have skyrocketed beyond imagination, his intention became dishonest. As a matter



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fact, the present Petition is based on disputed question of facts which requires detailed evidences and elaborate trial.

8. The Advocate for Respondent No.3 has pleaded that the Petitioner lodged police complaint in Mumbai Police Station for the alleged loss of shares on 6.12.2005 almost after 6 years of admitted transfer and sale of said shares. The Petitioner again chose not to initiate any action against the Respondents for more than two and half years of lodging the complaint with the police station for the alleged loss of the shares till 29.8.2008 when he wrote a letter of 'stop transfer' to the Respondent Company. Thus, the Petitioner did not do any correspondence with either JSL or the Respondent No.3 from September, 1999 i.e. when the transfer was made in favour of Respondent No.3 till 29.8.2008 when the Petitioner requested for issue of duplicate shares of JSL. As a matter of fact, the Petitioner is seeking declaration of his title based on allegedly disputed question of facts, which require detailed evidences and elaborate trial. In case of **Ammonia Plastic Corporation Vs. Modern Plastic Containers**, the Hon'ble Supreme Court has held that the complicated questions pertaining to title can be decided only in a Civil Court and not by the Company Law Board.

9. Having considered the Company Petition, replies, rejoinder and arguments (oral and written) , it is undoubtedly clear that the Petitioner was the shareholder of erstwhile Jindal Strips Limited (JSL) and upon demerger, the Petitioner was entitled to get certain shares of the Respondent No.1 Company as per the scheme approved by the High Court at Chandigarh. However, the Respondent No.1 Company received transfer deed duly executed by the Petitioner and the purchaser (Respondent No.3) duly witnessed by "The First Custodian (India Ltd.) at Mumbai" (owned by the Petitioner and his relatives/associates) in September, 1999. Based on these transfer deeds along with original share certificates, the said 80 shares and 74 shares were transferred in the name of the Respondent No.3 and the name of the Petitioner was replaced with the name of Respondent No.3 and further correspondence for split shares, bonus shares, dividend etc. was made with the Respondent No.3. But, in the present Petition, the Petitioner has alleged that he lost the aforesaid 80 shares as well as 74 shares and the same were in the possession of the Company Secretary of Respondent No.1 Company whereas the Respondent No.3 states that he was in the possession of the share certificates. Further, the Petitioner has taken unreasonable time of around 5 years to file police complaint in 2005 for the loss of share certificates for impugned aforesaid 80 shares and took further around 3 years to write to the company to 'stop transfer'. Over these years, the Petitioner could not surrender the original share certificates of JSL in compliance to the Circular dated 1.7.1999 so that in lieu thereof, new share certificates of JSL/NSIL and JSPL in the ratio specified in the approved scheme could be issued. Not only this, the Petitioner has also not made correspondence with the Respondent Company for notice of meetings of shareholders, dividend, bonus shares, etc. On the contrary, the Respondent Company has been making regular correspondence with



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Respondent No.3 for split shares, dividend, bonus shares, etc. Furthermore, the Petitioner has not taken any action against Respondent No.3 despite the letter dated 30.3.2009 sent by M/s.Abhipra Capital Ltd.(Registrar and Transfer Agent of JSL/NSIL) whereby the Petitioner was informed the particulars of persons who had lodged the impugned shares of JSL for transfer and was also advised to take appropriate legal remedies.

9.1 It is also observed that the transfer of 80 shares and 74 shares of Rs.10/- each has taken place in 1999 based on the transfer deeds presented on 26.3.1997 & 6.2.1997 and third party interest has been created in favour of the Respondent No.3. Here, the suspicion arises as to why the aforesaid shares were transferred in September, 1999 when the Circular dated 1.7.1999 was sent to the registered shareholders to surrender the original share certificates of JSL to obtain the share certificates of Demerged entities. As a matter of practice, the shares of demerged entities ought to have been issued on surrender of the original shares certificates of JSL by the registered shareholder(s) as per the entitlement specified in the approved scheme of demerger and thereafter, the transfer deed (s) along with the share certificates of the Respondent No.1 Company should have been annexed to the duly executed transfer deed(s). Apart from this, the consideration as per the market value for the transfer of shares and the contract notes are also not clear. Besides this, the reasons and circumstances for inordinate delay in filing of police complaint for loss of shares and making correspondence with the Respondent No.1 Company for 'stop transfer' as late as in 2008 require detailed examination and trial. Thus, the determination of title of share certificates may involve various other documents for examination/cross-examination of different persons/witnesses. The said determination of the title to the shares will also lead to decide the entitlement of the bonus shares issued by the company. In view of this, I am of the considered opinion that there is involvement of complicated and controversial questions of facts and detailed trial is imperative. Therefore, I rely on the ratio of the judgment given by the Hon'ble Supreme Court of India in the case of **Ammonia Plastic Corporation Vs. Modern Plastic Containers** whereby the title of shares with complicated and controversial facts is to be decided by the Court with detailed trial. As such, no relief as prayed in the Petitions is allowed and hence, in the interest of justice, the Petitioner(s) is/are hereby allowed liberty to take up the matter in the appropriate Civil Court.

10. CP No.25/2011, CP No. 26/2011 & CP No.27/2011 are hereby disposed of accordingly. Interim stay, if any, is hereby vacated.

11. No orders as to cost.

Under Regulation 29(4) of
the CLB Regulations, 1991

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07.02/07/2015

Place: New Delhi

Dated: 24th April, 2015

DHAN RAJ
MEMBER

Prem Chand 9

प्रेमचन्द / Prem Chand
न्यायपीठ अधिकारी / Bench Officer
कम्पनी विधि बोर्ड / Company Law Board
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

