

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

**C.P. No. 11(ND)/111/2011**

**Present: B.S.V. Prakash Kumar, Member (Judicial)**

In the matter of:

Companies Act, 1956 Sections 111

And

In the matter of:

**Shri Arvind Mohan Johari and Another**

..... Petitioners

Versus

**M/s Carlton Hotels Pvt. Ltd. & Ors**

..... Respondents

Present:

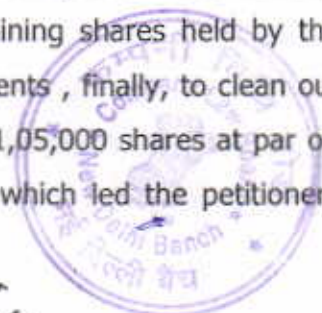
The counsel for the Petitioners: Shri Arvind Mohan Johri, (P-2) argued on behalf of the petitioners.

The counsel for the Respondents: Shri Virender Ganda, Sr. Advocate, Shri Rakesh Kumar, Shri Santosh Kumar Giri, Advocates,

**Order**

**(Pronounced on 13-5-2015)**

Basing on the order dated 29.4.2011 passed by this Bench in CP 76/2002, the petitioners filed this CP11/2011 seeking rectification of the register of members of R1 company u/s 111 of Companies Act 1956 (hereafter referred as "the Act") for having Respondents 2&3 omitted the names of the petitioners and their group company M/s Cyberspace Ltd (hereafter called Cyberspace) from the share register without sufficient cause. The petitioners acquired 100 shares each on 3.3.1997, thereafter the petitioner group company Cyberspace acquired 22,670 shares on 28.4.1997, and finally the petitioners and their father Late Gyanendra Nath Johari acquired 25,000 shares (8,500 each to the petitioners and 8,000 shares to their father) on 31.3.2000. Thereafter R2&3, on fraudulently showing 200 shares held by the petitioners transferred to R2 and forfeiting the remaining shares held by the petitioners and their company Cyberspace, these Respondents, finally, to clean out the petitioners from the company, allotted to themselves 1,05,000 shares at par on Rs 6.50/- paid up without any notice to the petitioners, which led the petitioners



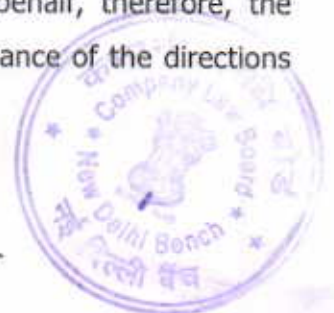
holding more than 50% to nil. Therefore for having these Respondents omitted the petitioners shareholding from the Share Register without sufficient cause and for these Respondents allotted 1, 05,000 shares to themselves without sufficient cause, the petitioners, on the liberty given to the petitioners to file this petition under section 111 of the Act 1956, filed this company petition.

**The averments of the petitioners in brief:**

2. The petitioners submit that they initially placed their grievance in CP 76/2002 u/s 397, 398 of the Act, on which, when the Respondents filed CA 98/2008 challenging maintainability of that CP, this Bench passed an order dated 24.9.2011, giving liberty to the petitioners to prove that they have shareholding in R1 Company as pleaded in CP 76/2002 by filing company petition u/s 111 of the Act, within a period of 4 weeks of receipt of the order dated 24-9-2011.

3. The Petitioners 1 & 2 are real brothers; third petitioner late Gyanendra Nath Johari in CP 76/2002 is father of them. Since their father passed away on 23-2-2010, they moved this CP seeking prayer for rectification of the register to the shares held by their father as well. These petitioners submit that Cyberspace is one of the group companies owned by the petitioners. Since Cyberspace has gone into liquidation, though they have not shown it as petitioner along with them. However, they have espoused the cause of Cyberspace, because R1 Company has shown as Cyberspace forfeited 22, 670 shares held by the petitioners through Cyberspace. Of course, a counsel, namely Mr Nagesh, appeared on behalf of Cyberspace on the authorisation given by the Official Liquidator.

4. The petitioners submit that the dispute being in relation to the shares of a company called Carlton Hotels Pvt. Ltd., the petitioners made it as R1. For having its directors (R2&3) alleged to have indulged, in causing tampering of the records of the company and the records R1 filed before RoC, Kanpur; in altering the share register without sufficient cause; they made them as R2&3. For R2&3 having allotted shares to the wife of R3, they made her as R4. Since Cyberspace, being in liquidation, it's directors cannot initiate proceedings on it's behalf, therefore, the petitioners made it proforma Respondent/ intervener in pursuance of the directions in the order dated 29-4-2011.



5. R1 Company owns a hotel called Carlton Hotel in a building spread in 6.48 lacs Sq Ft. This hotel is located in 8.89 acres of freehold commercial land situated in the heart of Lucknow City. In mid 1990s, when R1 was in heavy losses for it was being occupied by nearly 70 tenants on nominal rent for decades, R2 & R3, to come out of this tangle, approached P1 & P2 with an offer envisaging substantial investment for settlement of the long term tenants of the hotel because vacating tenants from the premises was necessary for the growth of hotel business. On negotiations, both the parties agreed that the petitioners group would solely hold more than 50% equity and constitute 50% in the Board of the company. On this agreement, P1 & P2 were invited to join the Board taking qualifying shares as stated under Article 76 of AoA of the company to become directors of the company. Accordingly, P1 & P2 acquired 10 shares of R. 100/- each for directorship in a board meeting held on 3.3.1997. In pursuance thereof, P2 was made additional director of R1 Company in the same meeting held on 3-3-1997, accordingly the company filed Form-32. In furtherance of their understanding, the petitioners, in April 1997, purchased 22,267 shares of Rs. 100/- each (Rs. 65 per share paid up) at a premium of Rs 900/- per share from R2 in the name of Cyberspace (in liquidation), for a price of Rs. 2,27,00,000/-, duly reflected in the Board Resolution dated 28.4.1997. In the same resolution, Board appointed P1 as Additional Director of R1 Company. When R1 Company held AGM on 30-9-1997, the company appointed both the petitioners as regular directors, ever since they continued as directors up to the year 2000. The petitioners submit that the certified copies of Directors Reports for the year 1998 and 1999 and copies of certified copies of Note on Accounts for the years 1999 and 2000 reflect that the petitioner had been continuing as directors of the company.

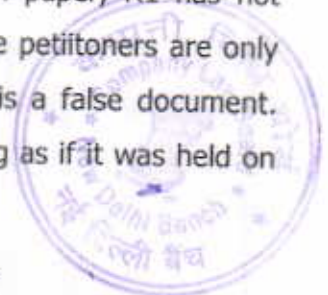
6. The petitioners submit that the Respondents agreed that they would make the petitioners majority in the company, provided the tenants stand vacated. Having the petitioners caused the tenants vacated hotel premises by making payments to them, R1 allotted 25,000 shares to the petitioners and their father on 31.3.2000 at the rate of Rs. 80/- per share (Rs 10 at face value, Rs 70/- at premium). In these 25,000 shares, P1 & P2 were allotted 8,500 shares each, whereas their father was allotted 8,000 shares. As to consideration, having the petitioners already made huge payments to the tenants for vacation of them from the premises, 25,000 shares were allotted to them at the rate of Rs 80/ per share. Out of total consideration, the



petitioners paid part consideration of Rs. 10,00,000/- at the rate of Rs. 40/- per share (Rs. 5/- towards face value and Rs. 35/- towards share premium) to the company in March 2000, which was reflected in the audited annual accounts of R1 for the year ended on 31.3.2000. The petitioners paid remaining 10 lacs to the company in August 2000 and these shares by this second payment have become fully paid. The tenants being vacated from the premises of the hotel by the petitioners, the company, for the first time, made profits in the years 1998, 1999 and 2000. When R1 Company was facing liquidity crunch in between 1997 and 2000, Cyberspace had paid Rs. 30, 00,000/- to R1 Company as advance for sponsorship vide three Account Payee cheques bearing serial No. 127007, 127008 to 127010 for Rs. 10 lacs each, which R1 reflected in Notes on Accounts annexed to its audited Annual Accounts for the year ending 31.3.1997.

7. The petitioners submit R2&3 perhaps seeing the company making profits after the petitioners came in, R2&3 with the help of CA, V K Gupta, to get rid of the petitioners from the company, started doing mischief in the company – deleted the names of the petitioners, their father and Cyberspace as shareholders of the company. To achieve their oblique motive, R2&3, without any notice to the petitioners, deleted P1 & 2 holding 200 shares from the register of members without any transfer deeds from the petitioners. The reason given by R3 for removal of their names from register is that the petitioners sold these 200 qualification shares in the year 1999-2000 to R2; another reason they gave is that these 200 shares were transferred back to respondents on the failure of the petitioners to meet their obligations – both are inconsistent to each other.

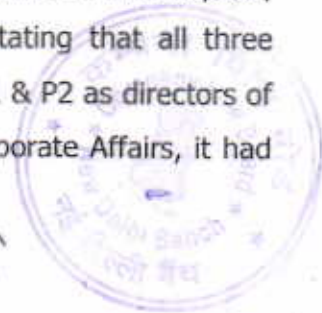
8. The petitioners submit that the Respondents have come up with a story that P2 and R2 & R3 entered into an MOU dated 27.3.2000 stating that the petitioners and their father acquired 25000 shares at the rate of Rs 1,000/- per share coupled with right of forfeiture. As to this MoU, the petitioners stated that it is a false document forged by R2 & R3 to create non-existent demand against the petitioners. The petitioners submit that this purported MoU is on a plain paper, R1 has not signed as a party to the same, the purported signatures of the petitioners are only on one page. He submits that CBI has found that this MoU is a false document. Apart from this, the respondents filed minutes of Board meeting as if it was held on



31.3.2000 prescribing the entire sum be paid latest by 27.3.2000 even if no calls are made. Contrary to above, it is said that call money shall be paid in 25 equal monthly instalments within 15 days from the date of receipt of call notice by the shareholders of these 25,000 shares. Therefore, it is clear that the receipt of call notice was a pre-condition for call become due. Whereas, Clause (iv) of MoU dated 27.3.2000 says that calls on these shares be made as and when need arose, in the same MoU, clause (vi) says that in any case, the entire call money should be paid within two years from the date of allotment. That various statements in the document itself are not in sync with each other, in fact, conflicting one clause against another within the document.

9. The petitioners submit that R2 & R3 annexed the minutes of Board meeting on which 25,000 shares held by the petitioner were allegedly forfeited. In CP 76/2002, the respondents claim that the shares were forfeited in a Board meeting held on 12.6.2001, whereas in a Revision u/s 482 CrPC before Hon'ble High Court of Allahabad, the same respondents stated that the very same shares were forfeited in a Board meeting held on 30.3.2001. Notwithstanding this inconsistency, these 25,000 shares were shown as continuing in the name of petitioners on 29.9.2001 as per Annual Return for the year 2001 filed by R1 with Registrar of Companies. Since Annual Return for the year 2001 is showing 25,000 shares in the name of the petitioners as on 29.9.2001, the actual date of forfeiture, if really happened, could be on some date only after 29.9.2001. When CBI seized original minute's books of the Board meeting of R1 Company, it appears that no Board meeting was held on 29.9.2001 in which these 25,000 shares have been shown as forfeited.

10. When the petitioners inspected the statutory file of R1 Company in the office of RoC, Kanpur, they were shocked to know that Annual Returns dated 30.9.1997; 20.9.1998 and 30.9.1999 have been tampered to show that P1 & P2 were not appointed as regular directors after 30.9.1997. On knowing the same, P1 complained to Ministry of Corporate Affairs for investigation on tempering of Annual Returns dated 30.9.1997, 30.9.1998 and 30.9.1999. In pursuance of the request, Deputy Director (Investigation) submitted a detailed report stating that all three Annual Returns have been tampered to remove the names of P1 & P2 as directors of R1 Company. On the investigation made by the Ministry of Corporate Affairs, it had



lodged an FIR with CBI to investigate the said matter, on which CBI on 12-1-2006 registered FIR against Mr V K Gupta and others under sections 120-B, 420, 467, 468, 471 & 477 IPC. When P1 inspected the statutory records of R1, it was revealed that a Board meeting of R1 has been falsely claimed to have been taken place on 2.12.2000 at which R2 & R3 have allegedly been allotted 1,05,000 shares of Rs. 10/- each to themselves and to Mrs. Kamini Singh, mother of R3, at par on paid up at the rate of Rs. 6.50/- per share. The petitioners submit that the said allotment is bad because no notice of the Board meeting dated 2.12.2000 was sent to P1 & P2 who were continuing as directors of the company, no offer for issue of further shares was made to P1, P2 or P3 or Cyberspace, who were the registered shareholders of R1 company and not only that, this allotment of 1,05,000 shares was made beyond the authorised capital of R1 company. Besides this, for having the Respondents admitted that R2&3 alone present in the Board Meeting held on 12-1-2000, it is ex facie bad in the eye of law because the quorum for any Board Meeting shall have not less than three directors under article 99 of the Articles of Association. The authorised share capital of R1 was in fact Rs. 10/- lacs as on 2.12.2000 and this allotment resulted to increase of subscribed capital above authorised share capital that was only Rs. 10/- lacs as on the date of allotment. Therefore, this allotment on many fronts is bad in the eye of law. That apart, these respondents did not pay cash for acquiring these 1, 05,000 shares. This was only a book entry made to acquire majority stake in the company to the detriment of the petitioners. The respondents made this allotment to their group at par whereas 25,000 shares allotted to the petitioners at the rate of Rs. 80/- per share just 8 months back after adjusting the amount paid by them to the tenants.

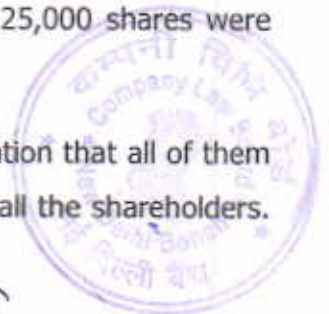
11. The petitioners further submit that this allotment of 1, 05,000 shares was shown in the records only three months after **29.8.2001**, therefore, the petitioners submit, allotment of 1,05,000 is ex facie bad in law and the company entered the name of persons against this allotment in the register without any sufficient cause, hence it warrants rectification of register of members of R1 company, by this allotment, the shareholding of respondents has gone up to 76.1% whereas the shareholding of the petitioners and their group company has gone down from 50.4% to 23.9%.



12. The petitioners further submit that the company has shown as Cyberspace forfeited 22670 shares held by it in a meeting allegedly held on 30.10.2002 i.e. five days after filing CP 76/2002. The Respondents forfeited the shares for non-payment of a paltry amount of Rs. 78,245/- as against the price of Rs. 2.27 Crores paid by Cyberspace. Thereby, when R1 itself owes Rs. 30/- lacs to Cyberspace towards refund of "advance for sponsorship" given to it in the year 1997, duly reflected in Notes on Accounts of 1997, the Respondents could have appropriated whatever balance remained payable by Cyberspace from the advance of Cyberspace pending with R1. They say it is understood that no call can exceed 1/4<sup>th</sup> of the nominal value of shares. For having R1 Company claimed to have called to Rs. 3.50 per share i.e. 35% of the nominal value of shares in a single call, said call is ex facie invalid, therefore, the petitioners seek rectification of the records by restoring the shareholding to Cyberspace.

13. The petitioners submit that no notice for holding Board meeting on 30.11.2002 was given to P1 & P2 who were then continuing as directors of R1 Company. The petitioners submit that CBI had seized the Minutes Book of the Board meetings, wherein call on 1,52,330 shares at the rate of Rs. 3.50/- per shares was shown as made in the Board meeting dated 18.10.2001, but whereas the audited Balance Sheet dated 31.3.2002 does not show any call on any of 1,52,330 shares. In the alleged Board meetings dated 10.4.2002, 4.9.2002 and 12.10.2002, it is stated that many reminders were issued to shareholders for payment of calls, however, the Annual Return for the year 2002 does not show any calls due on any of 1,52,330 shares. During the search of R2 & R3 office, CBI had seized the original file of the call notices containing copies of call notices issued by R1 Company. This call record does not contain any call notices issued to the petitioner or to Cyberspace in respect of shares held by them. Though CP 76/2002 was filed about nine years before filing this CP, till date, the respondents have not filed any copy of call notice allegedly sent to the petitioners in respect of calls on 25,000 shares held by them. Since the petitioners paid Rs. 10/- lacs at the time of allotment and thereafter, another Rs. 10/- lacs paid in August 2000 towards balance consideration, 25,000 shares were fully paid up, and therefore, their shares cannot be forfeited.

14. CBI, on seeing these call notices, has come to an observation that all of them are stereotyped letters printed by respondents at the behest of all the shareholders.

CBI had seized Members Register, registry receipts in respect of call notices purportedly sent to Cyberspace as well as to P1 & 2 and their father. These registry receipts bear the postal stamp of Chinhat Post Office in rural Lucknow and of Ramsagar Mishra PO in Lucknow.

15. The petitioners submit having their father Gyanaendra Nath Johari passed away on 23.2.2010, the petitioners being sole legal heirs of their father, since they are already parties to this petition; they need not be specially shown as representing their father because they only succeed to the estate of their father.

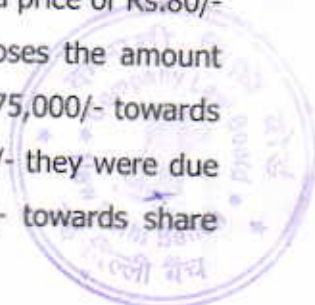
16. The petitioners further submit that these answering respondents entered into a compromise on 7.3.2004 for restoration of the petitioners as directors with  $3\frac{3}{4}$  shareholding, but unfortunately this compromise could not get through as the interim bail granted to the petitioners had in the meantime expired.

17. The petitioners, on these grounds, pray the reliefs on the grievances placed above.

#### **Reply by the Respondents**

18. Respondents in their reply stated that R1 allotted 25,000 shares to the petitioners and their father at the rate of Rs.1000/- per share (Rs. 10/- (Rupees ten towards face value and Rs.990/- towards share premium) aggregating to Rs.2, 50, 00,000/- (Rupees two Crores Fifty Lacs). To prove this contention, the respondents placed Balance Sheets as on dated 31<sup>st</sup> March, 2000 and 31<sup>st</sup> March, 2001, Copy of the Memorandum Of Understanding dated 27<sup>th</sup> March, 2000, Form – 2 (Return of allotment).

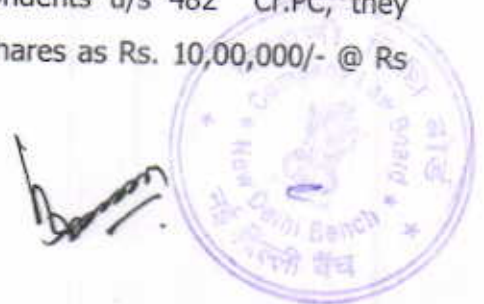
19. The respondents submit that R1 Company allotted these 25000 shares to the petitioners at the rate of Rs.1000/- in pursuance of Memorandum of Understanding dated 27<sup>th</sup> March 2000 entered between the petitioners and the respondents. Whereas the petitioners did not show any document or any evidence showing these 25,000 equity shares were allotted in their favour at a price of Rs.80/- per share. They further submit that MoU dated 27.03.2000, discloses the amount paid on application is Rs.1, 25,000/- towards face value and Rs.8, 75,000/- towards share premium. For having, the petitioners paid only Rs.10, 00,000/- they were due to pay Rs.1, 25,000/- towards face value and Rs.2, 38, 75,000/- towards share premium payable in equal instalments in two years.





20. The Respondents submit that the petitioners for the first time stated in this CP that the petitioners, for vacating tenants from the hotel premises, made payments to the said tenants and got them vacated from the premises, but they never made this statement in CP 76/2002. For having the petitioners not raised this plea in CP76/2002, they cannot now say that the price of equity shares of 25,000 equity shares was set at Rs.80/- per share as the petitioners made payments to the tenants. The respondents submit that the same petitioners, two years before allotment of 25000, paid Rs.1000/- towards per share when their group company Cyberspace purchased 2,267 equity shares for Rs.2,27,00,000/-, which were later converted into 22670 shares. Looking at the facts of CP 76/2002, this Bench held in the order dated 29<sup>th</sup> April, 2011 that the petitioners have to first apply for rectification of the Register of Members because the respondents have succeeded in making out a prima facie case based on the MoU dated 27.03.2000, Form 2 (Return of Allotment) showing allotment of 25000 equity shares @ Rs.1000/- (Rs.10 face value and Rs. 990/- Share Premium), Balance Sheets as on 31.03.2000 and 31.03.2001, acquisition of 22670 shares by Cyberspace Ltd. (under liquidation) @ Rs.1000/- per share that these 25,000 shares issued at Rs 1,000/- per share. The petitioners have not placed any kind of evidence showing that these 25000 equity shares were allotted to the petitioners at Rs.80/- per share and not at Rs.1,000/- per share as contended by the respondents.

21. As to 20,00,000/- (Rupees Twenty lacs) showing in the Balance Sheet as on 31.03.2001, the Respondents submit, had the Respondents or for that matter the petitioners utilised this twenty lacs to pay the tenants for vacation of the premises, they ought to have mentioned this fact in CP 76/2002, but they had not pleaded it in CP 76/2002. The petitioners, in CP 76/2002 stated that they were allotted 25,000 equity shares at the rate of Rs 80/- per share on making part payment of Rs.10,00,000/- @Rs.40/- per share (Rs.5/- towards face value and Rs.35 towards premium value). But in this CP, they changed their tack saying they had not only made part payment of Rs.10,00,000/- but had also paid remaining amount of Rs.10,00,000/- towards 25000 equity shares at the rate of Rs.80/- per share. Even in CRP 4553/2009 and 3069/2010 filed by the Respondents u/s 482 Cr.PC, they categorically referred entire consideration for these shares as Rs. 10,00,000/- @ Rs 40/-.



22. The respondents submit that another payment of Rs. 10, 00,000/- in the month of August 2000 was related to the payment deposited by Century Consultants now called Cyberspace (in Liq) against the outstanding deposit then pending with R1 Company. The onus of the petitioners is first to establish that 25,000 shares were allotted to them at Rs 80/- per share, by ignoring this fact, they cannot straight away impugn mode of forfeiture. Therefore, the respondents submit that the petitioners paid only Rs. 10, 00,000/- as part payment towards shares, the remaining unpaid consideration of Rs.2,40,00,000/- had not been paid, hence these 25,000 shares were forfeited.

23. The Respondents submit that these petitioners never raised a plea in CP76/2002 that they were appointed as Regular Directors in the AGM held in the year 1997; however, this contention is not relevant for disposal of this CP. Notwithstanding the fact of irrelevancy, the respondents stated that these petitioners went into judicial custody on 16.03.2001 for an offence of non - payment of deposits and embezzlement of large public funds through their company Cyberspace(in liq.), Century Cooperative Bank, and etc. For having these petitioners managed these companies as directors, the petitioners, by virtue of 274 (1) (g) of the Act, had automatically become disqualified for being disqualified as directors of Cyberspace. The petitioners being the directors had failed to repay deposits and interest thereon on due dates for a period exceeding one year, they would automatically get disqualified to continue as directors. These petitioners remained in judicial custody from 16.03.2001 to 22.05.2002 and further on cancellation of bail in 2004, again underwent into custody for more than one year. When they were not continuing as directors on the above grounds, there was no occasion for the petitioners to continue as directors in R1 Company.

24. The respondents, however for the reasons above stated, submit that non constitution of the valid board, lack of quorum or any other ground do not entitle the petitioners to have claim of 25000 equity shares @ Rs 80/-, which were allotted to them @ Rs.1000/- per share.

25. The Respondents submit that this Bench, while disposing of CA 98/2008 in CP 76/2002 made a proposition that Company Law Board u/s 111 of the Act has jurisdiction either to adjudicate by itself or relegate the parties to Civil Court. Therefore, the petitioners have to first establish contractual terms of the agreement,



showing shares were issued to them @ Rs.80/-. They further submit that already a direction is there from this Bench in the final order dated 29.04.2011 holding that the respondents have succeeded in making a prima facie case allotting 25000 equity shares @ Rs.1000 (Rs.10 face value and rs.990/- share premium) based on the MoU dated 27.03.2000, Form 2 (Return of Allotment), Balance Sheets as on 31.03.2000 and 31.03.2001, acquisition of 22670 shares by Cyberspace (under liquidation) @Rs.1000/- per share. When the allegation of tampering of Annual Returns for the year 1997, 1998, 1999 and investigation thereon is looked into, it is only in relation to the removal of the petitioners from the directorship. In those Returns, there is no reference to the issue of pricing of 25000 equity shares nor is there any allegation relating to any of the Balance Sheets. The petitioners have to establish independently their case showing these shares were issued @ Rs.80/- each per share. The respondents submit since the petitioners failed to prove that the shares allotted to them were priced @ Rs.80/- per share, this Bench, without going into procedure of forfeiture may decide this issue saying these petitioners failed to prove that these shares were allotted to them @Rs.80/- per share.

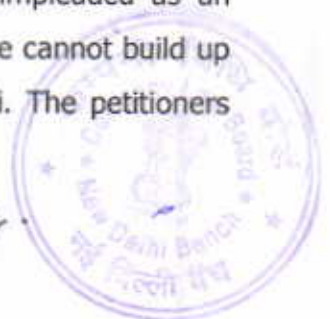
26. As to 200 qualification shares acquired by the petitioners on 03.03.1997, the respondents submit that there was no whisper in relation to 200 qualification shares when the petitioners filed CP76/2002. These petitioners, in their reply to CA 98/2008, for the first time have claimed their right over these 200 qualification shares after lapse of more than six years from the date of filing of CP 76/2002. These petitioners, to prove their case in CP 76/2002, relied upon Annual Returns of 2000 and 2001, which do not reflect these 200 shares in the name of them. In fact, these shares were transferred in favour of R2. Therefore, it cannot lie in the mouth of the petitioners to say that these 200 qualification shares were not transferred to the respondents. Had they really been continuing with those 200 shares as stated in their reply to CA 98/2002 in CP 76/2002, why had these petitioners not challenged the same when they filed CP in the year 2002? Now in the present petition, they tried to dispute omission of these 200 qualification shares in the name of the petitioners from the Register of Members by referring to minute's book of R1 Company. They also tried to refer UPCs dated 19.02.2000 and 02.09.2000, the Respondents annexed to the Reply of CP 76/2002, to say that the notices for the meetings were sent to the petitioners after transfer of the said shares.




27. The respondents submit that this Bench in the order dated 29.04.2011, categorically mentioned that the petitioners own claim is to shareholding aggregating to 47,670 - 22670 nos. lying in the name of the Cyberspace (under Liquidation) and 25000 shares lying in the name of the petitioners. This Bench categorically mentioned that there is no reference in CP 76/2002 that these petitioners hold 200 qualification shares or any claim over these shares in CP 76/2002 except in reply to CA 98/2008 - filed six years after filing CP 76/2002. It is the petitioners' own case that the list of shareholders annexed to Annual return 2001 does not contain these 200 shares in the name of P-1 and P-2 - now these petitioners say that they were surreptitiously removed from the list of shareholders. This Bench in the order dated 29.04.2011 had given liberty to the petitioners to file CP u/s 111 of the Act, in respect to 25000 equity shares forfeited by R1 company. It is nowhere said that the petitioners are even given liberty to claim over 200-qualification shares u/s 111 of the Act, as the same was not the case of the petitioners in CP 76/2002. Therefore, the petitioners can claim for only 25000-equity shares u/s 111 of the Act, but not for these 200 shares.

28. The respondents submit that there was no pleading in CP 76/2002 claiming their right over 200 shares despite knowing well that Annual returns for the years 2001-2002 filed by the petitioners along with their CP duly disclosing these 200 shares in the name of the respondents, which amount to abandonment of their rights to seek any relief over these 200 shares. Apart from this, they also submit that the relief seeking restoration of these 200 shares in the name of the petitioners in this CP is hit by Order II Rule 2 of CPC, for these petitioners failed to include this claim in the CP 76/2002, therefore these respondents pray this Bench to dismiss this relief against the petitioners.

29. The respondents submit that Cyberspace had gone into liquidation-proceedings pending before the Hon'ble High Court of Delhi in CP 354/2001. Since Cyberspace has gone into the liquidation, these petitioners, who continued, as directors do not have any right on any ground to continue as directors in any company, therefore now the Official Liquidator manages this company. This Bench even in the order dated 29.04.2011, held Official Liquidator is impleaded as an intervener, only to support or oppose the petition, and therefore, he cannot build up his own case for it is pending before Hon'ble High Court of Delhi. The petitioners



have no right whatsoever to agitate this issue before the Company Law Board in the present proceeding.

30. The respondents submit that the petitioners tried to dispute allotment of 1,05,000 equity shares in favour of R2 & R3 contending that the petitioners, since 1997 being Regular Directors, this allotment of 1,05,000 shares without any notice to the petitioners is invalid.

31. The respondents further submit since the petitioners were given liberty only to the extent of establishing that they are shareholders of R1 Company, they cannot stretch out this CP to impugn allotment of 1,05,000 shares to the Respondents is bad.

32. The respondents deny the allegation of the petitioners stating that R1 Company was in heavy losses in the year 1990's; that nearly 70 tenants had occupied the prime area of the hotel for decades on nominal rent; that the petitioners got evicted those tenants by making payments to the tenants; that the petitioners group holds slightly more than 50% equity and 50% on the Board of the R1 Company. They also deny the allegation of the petitioners that the Company appointed P1&2 as regular directors in the AGM held on 30.09.1997 and since then they continued as Regular Directors in the years 1998, 1999 and 2000. They further submit that the UPCs referred to by the petitioners in CBI case are not in respect of 200 qualification shares the petitioners already transferred to R2, therefore, the Minutes books said to have CBI seized during their investigation does not give any entitlement to the petitioners over the impugned 200 qualification shares transferred from them to R2.

33. The respondents submit that it is correct that an amount of thirty lacs of rupees was duly reflected in the Notes of Accounts annexed to its audited Annual Accounts for the year ended on 31.03.1997 received as advance against sponsorship, but the company received it from Cyberspace (in liquidation) for holding fairs at the premises of the hotel. They further submit that the Company duly returned this amount to Cyberspace, as on date, it is Cyberspace indebted a sum of Rs.18,75,425.00/- to the company. They say all these are appropriately mentioned in the account of the Company. They deny that the petitioners paid ten



lacs of rupees in addition to ten lacs already paid as share application money in respect of 25000 shares.

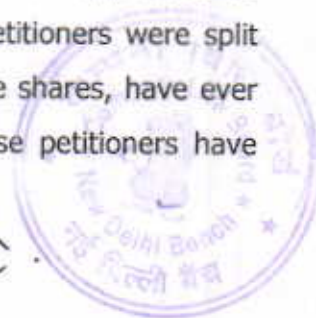
34. The Respondents submit that they never admitted before Hon'ble Allahabad High Court as alleged in para 15 of the Company Petition. The respondents submit that the petitioners have never made any payment towards any call before completion of two years from the date of allotment. They deny the allegation of the petitioners that 22,670 shares held by Cyberspace were forfeited for non-payment of Rs.78,245/- in spite of the fact that the Company owes thirty lacs to Cyberspace Limited towards refund of "Advance for sponsorship" given to it in the year, 1997. They further submit that there was no need to send any notices to the petitioners for the Board Meeting held on 02.12.2000 allotting 1,05,000 equity shares to the Respondents. They submit that the charge levelled against R2 & R3 before a criminal court stating they forged the records has no bearing on the present case. Therefore, they pray the Bench that this CP be dismissed with heavy costs.

**35. Now the points for consideration are:**

- 1) Whether the petitioners are entitled for rectification of share register of R1 Company showing 200 shares in the name of P1 & P2.
- 2) Whether the petitioners are entitled for rectification of share register of R1 Company showing 25000 shares in the name of P1 & P2.
- 3) Whether Cyberspace is entitled for rectification of share register of R1 Company showing 22,670 shares in the name of Cyberspace.
- 4) Whether the petitioners are entitled for rectification of share register of R1 Company by cancelling 1, 05,000 shares allotted in the name of R2 & R3.

**36. Point No 1: *Whether the petitioners are entitled for rectification of share register of R1 Company showing 200 shares in the name of P1 & P2.***

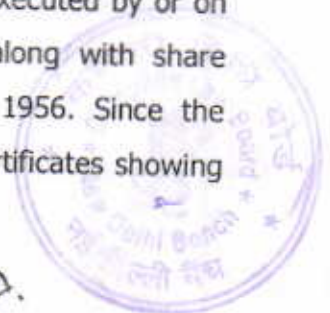
P1 submits that P1 & P2 were invited to join as directors in the Board of R1; to make them qualified as directors in accordance with Article 76 of Article of Association, the Respondents transferred 10 shares to each of the petitioners in a Board Meeting held on 03.03.1997. In the same meeting, P2 was appointed as Additional Director. Later ten shares each transferred to the petitioners were split into Rs.10/- each amounting to 100 shares each. P1 says these shares, have ever since not been transferred to anybody, much less to R2. These petitioners have

never executed any transfer deeds in favour of anybody. However, their names have stopped appearing in the share register since 2000 without any reasons to it. P1 submits that CBI seized Minutes Book of Board Meetings during its investigation in relation to the allegation of forgery made against R2 & R3. For having, CBI found that no resolution was passed authorizing transfer of these 200 shares out of the names of P1 & P2; therefore, transfer said to be made in favour of R2 is bad in law. In CP 76/2002, the answering respondents filed reply without any document to sustain their case of transfer of these 200 shares out of the names of the petitioners, therefore, transfer of shares without any Board resolution is ex-facie bad in law.

37. P1 submits that the respondents in rejoinder to CA 98/2008 in CP 76/2002 had sworn that this transfer was affected in the year 1999-2000 whereas in reply to the instant petition they swore on oath that transfer of these 200 shares was made in the year 2000-2001. He further submits that the respondents in CA 98/2008 in CP 76/2002 had sworn that 200 shares belonging to the petitioners were transferred to R2, whereas, in reply to this petition, they had sworn that their transfer was actually affected in favour of R3. On the contrary, apart from these two contradictory stands, share register also does not show transfer of 200 shares in favour of either R2 & R3. He further submits that Annual returns for the years 2000, 2001, or 2002 do not disclose transfer of these shares to either R2 or R3. He further submits that in CA 98/2008, the respondents had sworn that they made no payment as sale consideration in respect of these 200 shares for they were transferred out of the petitioners' names upon their failure to fulfil their obligations. Whereas in reply to this petition, the Respondents have come out of earlier defence stating that these shares were transferred upon payment of cash by R2, but not supported by any document reflecting cash passing from R2 to P1 & P2.

38. In support of the petitioners' contention, P1 relied upon judgment in between **Maheshwari Khetan Sugar Mills vs. Ishwari Khetan Sugar Mills (AIR 1956) Allahabad, Page 135**, to say that company has no power to register transfer of shares unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor has been delivered to the company along with share certificates as contemplated u/s 108(1) of the Companies Act 1956. Since the respondents failed to place transfer deeds along with the share certificates showing



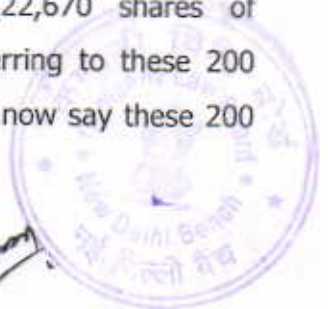
that the petitioners transferred their shareholding to R2, deletion of the petitioners' names for these 200 shares is bad in law, hence the petitioners are entitled for rectification.

39. P1 also relied upon **N.S.Nemura Consultancy vs. A.Devarajan 112 Comp Cases 434 CLB; Asia Properties Development v Juhu Beach Resorts Limited (2007) 1 Comp LJ 315 CLB**, to say that when transferee failed to place transfer deeds and share certificates as contemplated under section 108 of the Act 1956 for effecting transfer, such transfer is bad despite there is an approval of Board of Directors showing transfer effected. There being no transfer deed and no share certificates before Board at the time of approval for showing those shares in the name of R2, such entry in the share register is bad.

40. He also relied upon in **S. Rehana Rao v. Balaji Fabricators Private Limited (2004) Vol. 122 CC 804 and MS Madhusoodhanan v. Kerala Kaumude Pvt. Ltd (2003) 117 Comp Cases 19 (SC)**, to say that transfer of shares must be substantiated by production of minutes of the Board of Directors, mere filing of an Affidavit will not suffice to prove transfer has been effected.

41. He also relied upon **Shah Mulchand v Jawahar Mills Ltd 1953 AIR 98**, to say that mere waiver, acquiescence or laches do not amount to abandonment of his right over title of anybody or estoppel disentitling somebody claiming relief over the title in favour of them, it is fundamental that legal title to the property cannot pass from one person to another except in the ways legally recognized. As to these shares, there are two ways in foregoing rights over the title of shares, one- by way of forfeiture, another - by way of transfer. Therefore a man having legal title does not lose it by mere laches, or by mere standing over or even by saying that he has abandoned his right, unless there is something more, namely inducing another party by his words or conduct to believe the truth of that statement and to act upon it to his detriment.

42. To which, Senior counsel Shri Virender Ganda, appearing on behalf of the respondents submits that the very same petitioners and their father filed CP 76/2002 aggregating their shareholding as 47,670 equity shares (22,670 shares of Cyberspace plus 25,000 shares of the petitioners) without referring to these 200 impugned in this petition. The counsel submits these petitioners now say these 200

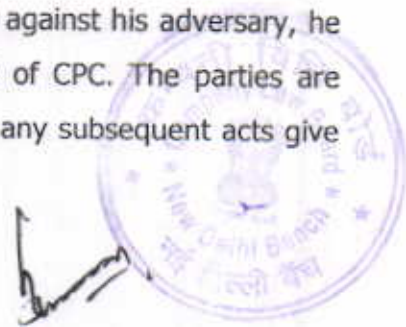


shares should have been continuing in their names as no transfer was made in favour of the respondents. These petitioners relied upon Annual Returns of 2000, 2001 in their CP 76/2002 in the year 2002. There it is an admitted fact these Annual Returns have not been disclosing these 200 shares in the name of the petitioners, but the petitioners consciously ignored the fact of these 200 shares not appearing in the name of petitioners, and claimed their share holding as 47, 670 (22,670+25,000) only. For having not raised any plea, any claim, or any relief for these 200 shares when they filed CP76/2002, they cannot raise this plea in this CP after more than a decade. This issue surfaced in a reply when the Respondents sought for dismissal of CP 76/2002 in CA 98/2008, which is six years after the petitioners filed CP 76/2002. For the reason afore stated, the respondents counsel prays this Bench to dismiss this plea raised by the petitioners.

43. On seeing the submissions, it is apparent on record that the petitioners do not raise in CP 76/2002 any pleading or any relief seeking restoration of those 200 shares in the name of the petitioners. They themselves filed Annual returns of years 2000 and 2001( not disclosing these 200 shares in their names) along with their CP 76/2002, the petitioners have not asked any relief in that CP, despite this fact staring at them in Annual Returns filed by them.

44. These petitioners could not be considered as innocent persons because P1 himself is a Chartered Accountant, he argued this case in person, moreover, he is a man running many other companies, therefore, had these shares really continuing in the name of these petitioners, he could have raised this plea when he filed CP76/2002, but these petitioners kept quiet for more than 6 years after filing CP76/2002.

45. No doubt, it is true, when transfer was made, the transferee must file transfer deeds along with share certificates for transfer of those shares in the name of transferee by the company. There is no dispute over this proposition. It is also pertinent to see that these petitioners did not raise this issue in CP 76/2002, till the respondents came up with a CA impugning maintainability of CP stating these petitioner had no right to continue as directors or shareholders in the company. It is known position of law, whenever any party initiates action against his adversary, he must make whole claim as stated under Order II Rule 2 of CPC. The parties are entitled to bring in new pleadings and new relief provided any subsequent acts give



new cause of action to seek a relief. Since the petitioners remained quiet for more than 6 years with knowledge that these 200 shares not showing in their name, could it be considered non-appearance of the petitioners' names to these 200 shares as cause of action subsequent to filing of CP76/2002? To my belief, it is not. Even under section 111, the parties seeking rectification are not permitted to seek relief as and when they feel right. If a person is in know of some action causing wrong to him, he must come before court of law within 3 years from the date of knowledge. Even in the case of suit for invalidating adverse possession over immovable properties, there is a limitation for seeking remedy. That being the case, the petitioners shall not permitted to challenge an action after lapse of 3 years from the date of acknowledgment of that action. The parties cannot take shelter saying limitation is not applicable to Companies Act, for every remedy there will be reasonable time to take action. Having the petitioners not sought this relief in CP76/2002; they are also not entitled to this remedy because Order 2 Rule 2 hits this relief. By seeing all these, it appears to me that these petitioners consciously did not seek any relief for these 200 shares when they filed CP though the Annual returns of 2000-2001 filed by them not disclosing these 200 shares in the name of the petitioners.

46. Order 2 Rule 2 says;

(1) Every suit shall include the whole of the claim, which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to sue within the jurisdiction of any Court.

(2) Relinquishment of part of claim-Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs-A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

47. In this case, the petitioners raised allegations of various irregularities invoking jurisdiction under sections 397 & 398 of the Act, but the petitioners have not claimed any relief against deletion of these 200 shares in the name of the petitioners despite

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knowing Annual Returns annexed to CP 76/2002 are not showing these shares in their name. It is known proposition that for application of Order 2 Rule 2, earlier proceeding need not be adjudicated. When they failed to include this claim in the cause of action for invoking 397 & 398 proceedings, then they cannot have this relief in the later proceeding, moreover this Bench observed in the order dated 29-4-2011 that these petitioners had not taken this plea in CP 76/2002, therefore, this point is decided against the petitioners.

48. As to the citation **Shah Mulchand v Jawahar Mills Ltd. (Supra) 1953 AIR 98** dealing that waiver & acquiescence, it is not applicable in the present case because these petitioners did not ask remedy against this alleged wrong when they filed CP 76/2002.

**49. Point No 2: Whether the petitioners are entitled for rectification of share register of R1 Company showing 25000 shares in the name of P1 & P2.**

As to forfeiture of 25,000 shares, P1 submits that P1 & P2 and their father late Shri GN Johari were shown as members in the Register of Members of R1 Company in respect of 25,000 shares allotted to them on 31.03.2000, which is reflected in the Annual return for the year 2000. P1 submits that Form 2 filed by the company also shows the allotment of these 25,000 shares to the petitioners and their father.

50. P1 submits that there is a procedure under Article of Association for forfeiture of shares but R1 Company has not followed the procedure envisaged under Article 20, 21, 22 or 26 of the Company. He submits there is no evidence to show that any call on these 25,000 shares was made at any time. There is also no evidence to show that on which date these 25,000 shares were actually forfeited, because these respondents have cited three different dates in different proceedings. There is no Board Meeting showing these shares were forfeited.

51. He further submits that 42 notices seeking payment of call money is on record, when CBI investigated the matter, it has found out that the registry receipts in respect of purported call notices is fake, moreover, it is a matter of record that the shares allegedly forfeited do not even belong to the petitioners.

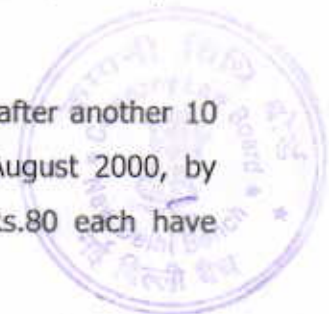


52. For substantiating his stand, P1 relied upon **Public Passenger Service vs. M.A.Khader [(1996) AIR 489 SC]** to say that a proper calling for payment towards part paid shares is a condition precedent to forfeiture, even the slight defect in the notice invalidates forfeiture, here, since there are various short falls in compliance of the procedure for forfeiture of shares, the ratio decided in the case SUPRA is applicable to invalidate forfeiture of the shares owned by the petitioners.

53. P1 relied upon **MS Madhusoodhanan v. Kerala Kaumudi Pvt. Ltd. [(2003) 117 Com Cases 19 (SC)]** to say that the absence of the notice raises a presumption against the respondents, here, there being no proper notice to the petitioner for call money, this proposition is squarely applicable to invalidate the forfeiture of shares in the present case.

54. P1 submits when CBI seized the minute's book of the Board Meetings, the minutes in the Minutes Books do not show any Board meeting held on 29.09.2001 indicating 25,000 shares are forfeited. P1 has further pointed out that the Respondents had sworn in three different petitions filed by them over two-year period before Hon'ble High Court and Hon'ble Apex Court that these 25,000 shares were forfeited in the Board Meeting on 30.03.2001. P1 also submits, the respondents before this Bench have repeatedly sworn that these 25,000 shares were forfeited in a Board Meeting held on 12.06.2001. P1 submits that the respondents pleaded that the date showing these shares were forfeited on 30.03.2001 is "typographical error" and the actual date of forfeiture was 12.06.2001, but whereas Annual Return dated 29.09.2001 is not showing any forfeiture, therefore the respondents cannot say these shares were forfeited some date before 29-9-2001. P1 submits that by the time i.e., 31-3-2000 these 25,000 shares allotted to the petitioners, the company already allotted 70,000 shares. But these 25 thousand shares forfeited bear distinctive numbers 47331 to 64330 as if they were allotted prior or in between allotment of 70 thousand shares, therefore, it is obvious that these shares being subsequently issued to 70,000 shares already allotted, these 25 thousand shares could have distinctive numbers from 70001 to 95,000, not 47,331 to 64,330.

55. P1 submits that petitioners paid 10 lac rupees initially; thereafter another 10 lac rupees paid towards balance payment over these shares in August 2000, by payment of these 20 lacs, these 25,000 shares at the rate of Rs.80 each have



become fully paid up. For having, the respondents not filed any kind of document showing forfeiture of those shares, no presumption could be drawn in favour of the respondents showing these shares were forfeited.

56. P1 relied upon **Satish Chandra Sanwalka v. Tinplate Dealers Association [(2001) (107) Comp Cases 98 CLB]** to say that strict compliance with the usual procedure is mandatory failing which the forfeiture is invalid.

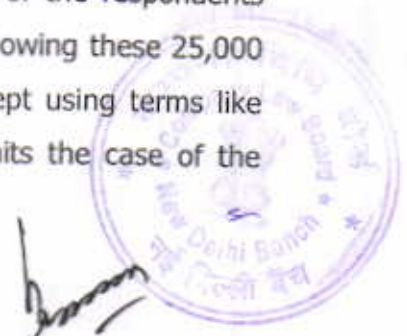
57. P1 relied upon **Smt. Laxmi Devi Newar v. East India Investment Company [(2007) 137 Comp Cases 617 CLB]** to say that non-production of the documents showing forfeiture of these shares only lead to an adverse presumption against respondents.

58. P1 further submits that Central Govt Department has already revealed that the Registry receipts annexed by respondents are fake and forged. In fact, these postal registry receipts include the registries allegedly sent on 30 February (a non-existent date) and 14 April (Sunday) patently indicates that these registry receipts are set up documents to show up some evidence in a bid to prove that notices were given to the petitioners for call money. Likewise, Senior Superintendent of Post Office also stated that these registry receipts are fake and forged and bear false stamp of the post offices and false signatures, therefore, there is no evidence to support the fact of despatch of any call notice prior to alleged forfeiture of these 25,000 shares.

59. P1 relied upon **Tapas Sinha v. Linkmen Services [(2008) (141) Comp Cases 568]** to say that in a case like this, it is essential to decide Question of Service of notice.

60. P1 relied upon **Bombay Dyeing & Mfg. Co. Ltd. v. Arun Kumar Bajoria [(2001) (107) Comp Cases 535 CLB]** to say that on seeing the affidavit, no cognizance should be taken into consideration unless it is supported by documentary evidence.

61. Senior counsel Mr. Virender Ganda appearing on behalf of the respondents submits that these petitioners have not placed any document showing these 25,000 equity shares were issued at the rate of Rs. 80 per share except using terms like "Agreed terms" and "Informal Agreement". The counsel submits the case of the



respondents is that 25,000 equity shares have never been issued at the rate of Rs.80/- per share and it was instead agreed to at the rate of Rs.1, 000/- per share.

62. To prove the same, he says that the Respondents placed MoU dated 27.03.2000, showing these 25,000 shares were allotted to the petitioners at the rate of Rs.10/- face value + 990 premium on the condition that these respondents should pay call money in 25 equal instalments of Rs.38.40 each at the rate of Rs.0.02 per share towards face value and Rs.38.20 per share towards share premium as required from time to time aggregating to Rs.960/- as call money per share within a period of 2 years. The initial amount of Rs.10 lac paid by the petitioners was taken into Rs.40 per share (Rs.5 towards face value and Rs.35 towards the premium) thereby as on 31.03.2001 calls in arrears remained as Rs. 1,05,60,000/-.

63. He further submits the petitioners themselves relied upon Balance Sheet of R1 Company as on 31.03.2000 and 31.03.2001 to substantiate their averments on the issue of making payments to the tenants, for infusing of Rs. 30 lacs by Cyberspace in R1Company. As per CP 76/2002, Cyberspace had in the year 1997 acquired 2,267 equity shares at a consideration of Rs. 2,27,00,000/- which comes to Rs.1,000/- per share of Rs.10/-. The petitioner counsel submits having the petitioners acquired these 22,670 shares at the rate of Rs.1000/- in the year 1997, how it could be possible in the year 2002, to provide 25,000 shares to the petitioners at the rate of Rs.80/- per share.

64. On seeing all these facts, this Bench in CP 76/2002 passed an order dated 29.04.2011, observing that the records of the company showing the issue price of these 25,000 shares is reflecting at the rate of Rs.1, 000/- per share.

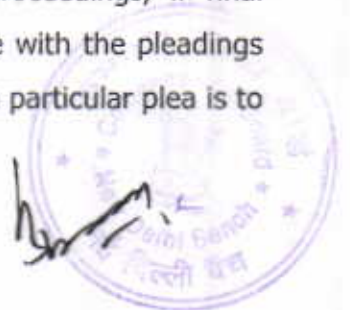
65. The counsel submits the petitioner tried to place on record selective pages of Register of Members, the petitioners have not placed on record pages 40 to 42 and 43 to 45 referring to the shares of the petitioners in R1 Company. It would thus infer that the petitioners are in possession of the Register of members, but deliberately produced only selective pages of the Register without placing on record their own folios, because it would expose their true shareholding in the company.

66. The counsel submits that these petitioners filed an Affidavit on 05.08.2013, seeking adjudication considering the issue of pricing at the rate of Rs.1, 000/- per

share, exactly at the rate as mentioned in the MOU entered in between the parties. When the petitioners could not wriggle out from the context about issue price at Rs.1,000 per share, at the fag-end of the case, they conceded issue price as Rs.1,000/- per share.

67. Now the stand of the petitioners with respect to the pricing of shares from Rs.80/- to Rs.1,000/- per share has changed the nature of the petition. These petitioners initially took up their case saying these shares were allotted at the rate of Rs 80/- per share, and run this case for more than a decade, then when it was about to wrap up for orders, the petitioners changed their tack conceding share price as Rs 1000/- giving go by to their case they run for more than 12 years, where the Respondents set up their defence on the ground shares were allotted at Rs 1000/-, therefore the Respondents remained waiting all along that court would dismiss the claim of the petitioners for they run their case on falsity saying share value at Rs 80/- per share. Perhaps, the respondents have not taken any defence except this, believing that since the petitioners set up false case mentioning price as Rs 80/-, their case would fall on its own. First step in sale or allotment is price determination, then the remaining procedural aspects, here it has to be inferred that the petitioners have thrown googly saying they are ready to pay Rs 1000/- per share, which is not their case for more than 12 years. It is trite that the petitioners shall run their case as pleaded by them as laid under Order VI Rule 7 of CPC. These petitioners held on to plea that shares were issued at the rate of Rs 80/- for more than 12 years, P1 must know that a party cannot change their stand to their convenience.

68. It is settled proposition that a party can be permitted to adduce evidence based on the case pleaded by him in his pleading and he cannot set up a case inconsistent with his pleadings. No amount of proof can substitute pleadings, which are the foundation of the claim of litigating party. The purpose is twofold; (i) to appraise the opposite party, distinctly and specifically, of the case called upon to answer, so that he may properly prepare his defence and may not be taken by surprise; (ii) to maintain an accurate record of the cause of action as a protection against a second or subsequent proceeding founded upon the same litigation. It will also introduce a great amount of uncertainty into judicial proceedings, if final determination of causes is founded upon inferences, at variance with the pleadings of the parties. Of course, a deviation to the proposition is when a particular plea is to



be decided taking the pleading as a whole and where parties are aware of the controversy and go to trial with full knowledge that a particular question is at issue, absence of pleading is mere irregularity.

69. Therefore, it goes without saying that the pleadings of the parties form the foundation of their case and it is not open to them to give up the case set out in the pleadings and propound a new and different case.

70. Having now realized their stand would not take them anywhere, they surprised the respondents stating that the procedure of forfeiture adopted by the respondents in the CP be adjudicated taking the price of these shares at the rate of Rs.1,000/- per share. If this stand is taken into consideration and allow this relief in favour of the petitioners, the respondents, who all along run their case saying issuing price in the year 2000 was at Rs.1, 000/- per share would remain defenceless. Any party who asserts allegation against adverse party must run its case on definite stand, so that other side set up their defence against the definite allegation made against them, but if the party asserting a definite allegation simply make their case upside down and say he is ready to accept the case of the adverse party, then he has to accept the entire defence of the adverse party, he cannot make a selective agreement with the case of the defenders and make the defenders defenceless, and if such u-turn is allowed, then it cannot be called fair play. Now, these petitioners changing their case saying they are ready and willing to pay the remaining balance in one thousand per share, that was agreed in the year 2000, it couldn't become justice, because the rates in real estate changes from morning to evening, then how could these petitioners get right over this property by paying balance in 2015? Now the value of this hotel spread in several acres in the heart of Lucknow city will be multi-fold high to the value around 2002, therefore allowing these petitioners today to get these shares at the rate of Rs 1000/- just by seeing ten lacs come into the company in the year 2000, is not equity. Since the petitioners 10 lacs come into the company for allotment, the company shall show that ten lacs of rupees as share capital by allotting equal number of shares to P1 and P2 at the rate of Rs 1,000/-. Accordingly, this point is decided against the petitioners.

**71. Point No 3: Whether Cyberspace is entitled for rectification of share register of R1 Company showing 22,670 shares in the name of Cyberspace.**



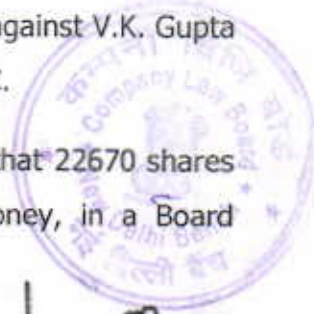


The Official Liquidator filed CA on Cyberspace behalf to direct R1 company to rectify its register of Members and to re-enter the name of Cyberspace as the shareholder of 22670 shares and also to direct R1 company to rectify its register of members and to remove the names of allottees of 1.05 lacs shares pursuant to an allotment of shares made at a purported Board meeting dated 02-12-2000. He submits that Cyberspace was ordered to be wound up by the Hon'ble High Court of Delhi, provisionally on 12.10.2004 and finally on 14.9.2005. Therefore, the Liquidator is competent to represent the interest of Cyberspace, when P1 filed CA before the Hon'ble High Court of Delhi informing about the pendency of CP 76/2002, the Hon'ble High Court of Delhi held on 16.2.2009 directing the applicant i.e. the Official Liquidator, to take immediate steps to represent the interest of Cyberspace. In pursuance thereof, the Official Liquidator filed CA 310/2009 in CP 76/2002 for intervention in the Company Petition. In this CP, he filed another CA seeking the reliefs as stated above.

72. On hearing the submissions, this Bench on 30.8.2010 passed an order allowing the applicant to be impleaded as Intervener to claim the reliefs sought by him qua the Respondent Company. In view of the order passed by CLB, the applicant has been arrayed as a Proforma Respondent/Intervener in the instant petition for rectification of register of members in respect of its claim as member of R-1 Company. It is evident that Cyberspace purchased 2267 shares of Rs. 100/- each (Rs. 65 per share paid up) for a price of Rs. 2,27,00,000/- in April, 1997. The Respondents admit making such a payment to the company towards 2267 shares through a Board meeting dated 28.4.1997. The Annual Returns of R-1 Company of years 30.9.1997, 29.9.1998 and 30.9.1999 disclose that these shares were lying in the name of Cyberspace.

73. When the petitioner came to know Mr. V.K. Gupta tampered the Annual Returns of R-1 company made up to 30.9.1997, 29.9.1998 and 30.9.1999, on report, CBI, in its investigation, has come out that all these three Annual Returns have been tampered so as to remove the names of P1 & P2 as directors of R-1 company. In pursuance of this investigation, C.B.I. registered FIR against V.K. Gupta and others on 12.1.2006 u/s 120-B, 420, 467, 468, 471 & 477A IPC.

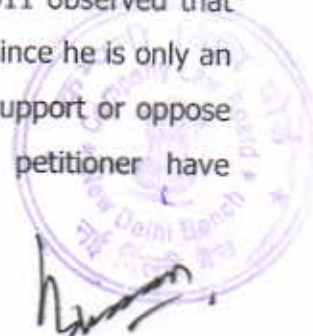
74. For having the petitioner and this applicant came to know that 22670 shares held by Cyberspace were forfeited for non-payment of call money, in a Board



meeting allegedly held on 30.11.2002 i.e. five days after filing of CP 76/2002. The Respondents resolved that the petitioners forfeited 22, 670 shares for they had not paid Rs 78,245/- as against the price of Rs. 2,27,00,000/- paid by Cyberspace for acquiring these 22670 partly paid shares. Though R-1 Company owes Rs. 30/- lacs to Cyberspace towards refund of advance for sponsorship given to it in the year 1997, duly reflected in the Notes on Accounts of 1997, without adjusting it against the loan given to the company by the petitioners, simply forfeited the shares held by Cyberspace.

75. He further submits that no notice was given to P1 & P2 when company forfeited the shares held by Cyberspace in a Board meeting held on 30.11.2002. The applicant says, the respondents has shown that the shares of Cyberspace have been forfeited without holding any Board meeting and without giving any notice to P1 & P2, who were directors in R-1 Company at the relevant time. He further submits, R1 & R3 annexed copies of registration receipts of letters purportedly sent to Cyberspace with an affidavit dated 3.5.2008 filed in CP 76/2002, but these registration receipts bear postal stamps of Chinhat Post Office in rural Lucknow and of Ram Sagar Misra Nagar Post Office. This is not a place close to the registered office of the company. The petitioners apprehend that the Respondents sent these from the said post offices where they could procure these receipts, as they wanted them, because they are manual based. The CBI authorities have found that the registry receipts are fake and forged. He further submits that by the information provided by ex Director of Cyberspace (company in liquidation) it transpires that Ld. Trial Court has taken cognizance of the offence against R2 & R3 and their accomplice Shri V.K. Gupta vide a speaking order dated 2.4.2010. There being no Board meeting and there could not be a Board meeting without a quorum, it is evident that Board meeting for issuing calls and Board meeting seeking to forfeit the shares held by Cyberspace (in liquidation) are fake and forged. Accordingly, this applicant prays this Bench to rectify the share register showing 22670 shares in the name of M/s Cyberspace Ltd.

76. In a reply, the respondents submit, this Bench on 29.4.2011 observed that the Official Liquidator had not made any additional representation since he is only an Intervener, he cannot become a petitioner himself. He can only support or oppose the petitioner but he cannot build up his own case. The petitioner have



mischievously added the Official Liquidator as proforma respondents/intervener in array of parties of the present petition and mischievously sought relief qua the Official Liquidator. The respondents submit that since the petitioner, as Director of Cyberspace or as a shareholder, cannot take up the case of Cyberspace, when company is in liquidation; therefore, this application is liable to be dismissed.

77. On seeing the submissions of either side, it appears that the petitioners as directors of Cyberspace paid around Rs. 2, 27, 00,000/- as consideration to the shares purchased from respondents. Out of this amount, only Rs. 78,245 left payable to the company but the respondents herein, taking advantage of the petitioner being in judicial custody, made an attempt to show the shares as forfeited. It is evident that the petitioners wanted to take advantage of the technicalities to ensure 25,000 shares allotted to the petitioners on payment of Rs 10,00,000/- should come to them. Likewise, the respondents also tried to ensure Cyberspace shares forfeited for not paying sum of Rs. 78,245/- left to be paid by Cyberspace. Both the petitioners as well as the Respondents wanted to take mileage out of the procedural defects in this litigation. The fact of the matter is, the petitioners want to grab 25,000 shares worth of more than Rs. 2,50,00,000/- by making payment of miniscule amount of Rs. 10/- lacs, before making this allotment. The same petitioners through Cyberspace purchased 22670 shares at the rate of Rs. 1000/-. The petitioners, since 2002, run their case all through pleading that allotment was made to the petitioners at the rate of Rs. 80/-. However, at the end of their hearing, P1 filed an affidavit on August 5, 2013 mentioning that without prejudice to the rights and contentions of the respondents, he would be ready and willing to pay call money at the rate of Rs. 1,000/- per share. Then it is an inferential fact that petitioners has no grievance to purchase 25,000 shares at the rate of Rs. 1000/- per share amounting to Rs. 2,50,00,000/-. Likewise, it is not right from the Respondents side showing forfeiture of 22,670 shares held by Cyberspace just because a paltry amount of Rs 78,245/- out of Rs 2,27, 60, 000 left unpaid by the petitioners. Therefore, forfeiture of Cyberspace shares by showing a notice sent to the company especially when P1 remained in judicial custody is bad; since he was in Jail, it could not be assumed service has been effected against the persons in the management of Cyberspace, therefore, the respondents could not have forfeited the shares when the petitioner remained in judicial custody.

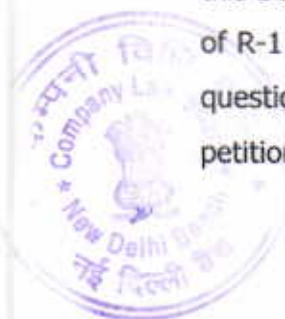


78. The main contention of the respondents is, since the petitioner could not ask a relief on behalf of Cyberspace and this Bench for having permitted the Official Liquidator only to act as intervener, the Official Liquidator too could not have asked this relief against these shares. I must say that the substratum of CPC is applicable to quasi-judicial authority, but it is obviously not bound by nitty-gritty of CPC, therefore, this Bench goes by equities and pass orders accordingly. Here, it is evident that Cyberspace paid almost the total amount that was payable to the shares purchased except Rs. 78,245/-. Moreover, Cyberspace money of Rs. 30/- lacs is still lying with the company. The company could have appropriated the call money from the money of Cyberspace, already lying with the respondents. However, on the contrary, the respondents wrote off the shareholding of Cyberspace under the cover of forfeiture. Though the petitioner could not ask a relief in this Company Petition for rectification of share register to the shares held by Cyberspace, since Official Liquidator filed an application seeking rectification of register to the shares already purchased by Cyberspace, this Bench can pass orders invalidating the forfeiture of these 22,670 shares held by Cyberspace.

79. The petitioners initiated this litigation in the year 2002, now we are in the year 2015. This litigation has been dragging on and on for the last 13 years without any outcome. Therefore, on seeing Cyberspace paid 99% consideration for the shares purchased by them, the respondents company forfeiting shares stating that since Cyberspace has not responded to calls for payment of Rs. 78245/- cannot become a ground to forfeit its shares. Moreover, there was no chance for the petitioner to know a call came to him because he was held up in judicial custody at that point of time. In view of the same, forfeiture of 22670 shares held by Cyberspace is hereby held as invalid.

**80. Point No 4:** Whether the petitioners are entitled for rectification of share register of R1 Company by cancelling 1, 05,000 shares allotted in the name of R2 & R3.

The petitioners claim that they filed this CP in furtherance of orders passed by this Bench on 28.4.2011 directing the petitioners to prove that they are shareholders of R-1 Company, but this order has not said anywhere that they are given liberty to question the shareholding shown as allotted to the respondents. Since the petitioners already raised this point in CP 76/2002, which is still pending before this



Bench, the petitioners could not ask in this CP for rectification of share register on allotment of 1.05 lacs shares to the respondents. Since the petitioners already impugned this allotment in CP 76/2002, they could not ask this relief in CP u/s 111 where his rights are only limited to establish his shareholding in the company. However, the petitioners and Cyberspace is at liberty to seek this relief in CP 76/2002 pending before this Bench. As this Bench has already held that the petitioners could get equal shares at the rate of Rs 1000/- per share to Rs 10 lacs stuck in allotment of 25,000 shares, this Bench hereby holds that these petitioners can also agitate against the allotment of 1,05,000 shares allegedly allotted to the respondents at par, when shares in the past were sold and allotted at the rate of Rs 1000/-. In this peculiar situation, I hereby hold that these petitioners or Cyberspace can proceed with the old cause of action; they need not show any new cause of action to proceed with relief in CP 76/2002. Therefore, it is hereby held that the petitioner has no right to seek relief over the allotment made to the respondents when that relief is already pending in CP 76/2002 before this Bench. Accordingly, the petitioners are not entitled to the relief for rectification of shares register in relation to the allotment of 1.05 lacs shares allotted to the respondents.

81. Accordingly, this Company Petition is hereby disposed of.

New Delhi

*Vikram Singh*  
19-5-15.  
विक्रम सिंह / VIKRAM SINGH  
न्याय पीठ अधिकारी / Bench Officer  
कम्पनी विधि बोर्ड / Company Law Board  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

*(Signature)*  
**(B.S.V. PRAKASH KUAMR)**  
**Member (Judicial)**  
(signed on 19-05-2015)



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

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