

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 279 of 2017

IN THE MATTER OF

Mr. Ombir Singh Panwar

... Appellant

Vs.

Himland Housing Private Ltd., & Ors.

... Respondents

Present: For Appellant: - Mr Nachiketa Joshi and Mr Ritwiz Rishabh, Advocates

ORDER

30.08.2017 — The Appellant has challenged the order dated 3rd July 2017 passed by National Company Law Tribunal (hereinafter referred to as Tribunal), New Delhi Bench in C.A No. 15/02/2016. By the impugned order the Tribunal rejected the petition preferred by Appellant under Section 59 of the Companies Act, 2013 for transfer of 3500 equity shares in his favour. The main plea taken by the Appellant is that the Tribunal accepted that the 4th Respondent has admitted that he has signed the Share Transfer Deed/Form and deposited the original share certificates with the company but the Tribunal on some ground dismissed the application under Section 59 of the Companies Act, 2013.

2. From the impugned order we find that the Tribunal noticed certain facts, relevant portion of which is quoted below: -

“11. By way of corroboration, this Bench had asked the petitioner for the receipt of the sale consideration given in cash towards the alleged purchase of shares. He has none. Further, he was asked to give details of the shares (distinctive nos.) and a photocopy thereof which he allegedly sent for transfer. He has none. It is highly unbelievable that the petitioner who is a Chartered Accountant and an Auditor by profession would not have retained photocopies of the share certificates alleged to have been submitted to the Respondent No. 1 company for recording the transfer. Equally unbelievable is the fact that he would not have taken a receipt towards the alleged sale consideration given in cash to Respondent No.4. Even a layman would have taken a

receipt and in this case it cannot be expected that an Accounting professional would not take a receipt evidencing payment. The petitioner lays his claim solely on a Transfer Deed which the Respondents claim was in his hands as he used to handle the work of the company till 2015. Respondent No. 4 submits he had signed the Transfer Deeds and had given them to Respondent No. 2. Petitioner has relied upon his own correspondence for asserting his submission of the share certificates which bear the stamp affixed by a Dak Clerk. However, in the absence of any specific acknowledgement by the Respondents, a mere receipt by the Dak Clerk cannot evidence that the Transfer Deed along with the share certificate was given by the Respondents as the petitioner continued to visit the office of the Respondent Company till 2015. As the blank Transfer Deed signed by Respondent No. 4 has also been filed, it becomes incumbent on the Bench to seek corroboration by way of payment etc. It cannot be ruled out that one such Transfer Deed or a photocopy thereof has been misused, nor can it form the sole basis of the prayer made herein."

3. Ld. Counsel appearing on behalf of the Appellant also accepted that the amount of Rs. 1,35,000/- have been paid in cash but no receipt has been taken. This apart, we find there is a dispute about the genuinity of the Share Transfer Deed/Form and the company has not supported the claim of the Appellant. In the aforesaid background, there being dispute, we are not inclined to interfere with the impugned order dated 3rd July 2017. However, keeping the facts and circumstances of the case and after hearing the Ld. Counsel for the Respondent, we are of the view that it was not a fit case to maintain. For the said reason, last portion of the impugned order whereby a cost of Rs. 20,000/- has been imposed is set aside. Rest of the part of the order is upheld. The appeal stands disposed of with aforesaid observations.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)