

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
COMPANY APPELLATE JURISDICTION

Company Appeal (AT) No. 176 and 177 of 2017

**(arising out of Order dated 20th March, 2017 passed by the
National Company Law Tribunal, New Delhi Bench, in
Company Petition No. 8/59/15)**

IN THE MATTER OF:

M/s. Eicher Motors Limited ... Appellant

Vs.

Adesh Kaur & Ors ... Respondents

**Present: For Appellants:- Mr Rajesh Ranjan, Mr Neeraj Matta
and Mr Joel, Advocates**

**For Respondent No. 1:- Mr S.M. Sundaram,
Advocate.**

For Respondent No.3:- Mr Sahil Khanna, Advocate.

These appeals have been preferred by the Appellant to set aside the order dated 20th March 2017 alongwith consequential orders passed by the National Company Law Tribunal (hereinafter referred to as Tribunal), New Delhi Bench, in Company Petition No. 8/59/15. By the impugned order the Tribunal ordered to record the shares in question in the name of the Respondent Mrs Adesh Kaur.

2. The Company Petition was preferred by the 1st Respondent – Mrs. Adesh Kaur – under Section 59 of the Companies Act, 2013.

praying for rectification of the Register of Members of Appellant company and to record her name in respect of 903 equity shares. Further prayer was made for recovery of all her entitlements such as dividends, rights issue, bonus shares or any similar entitlement etc., she has been deprived of.

3. The Tribunal by impugned order held that the Respondent/petitioner is entitled for rectification of Register of Shareholders and allowed the petition with following directions: -

"13. Given the facts of this, this Bench is of the opinion that the petitioner is entitled to rectification of Register of Shareholders maintained by the Respondent No.1 company in Folio No. 031308 registering her as the rightful owner of 903 shares, details of which are provided hereunder. -

Folio no.	Certificate no.	Distinctive Numbers		Number of equity shares
		From	to	
031308	058178	10591370	10591469	100
031308	058179	10591470	10591569	100
031308	058180	10591570	10591669	100
031308	058181	10591670	10591769	100
031308	058182	10591770	10591772	003
TOTAL				403

Folio no.	Certificate no.	Distinctive Numbers		Number of equity shares
		From	to	
031308	098712	19404859	19404958	100
031308	098713	19404959	19405058	100
031308	098714	19405059	19405158	100
031308	098715	19405159	19405258	100
031308	098716	19405259	19405358	100
TOTAL				500

14. The original of these certificates, in the physical form, are still in possession of the petitioner. The petitioner may take adequate steps to get

the same demated after due confirmation of the rectification of the Register having been carried out.

15. The petitioner would also be entitled to all dividends declared on the aforesaid shares which have not been passed on to her. She would also be entitled to any bonus shares or other benefits that may have accrued on these shares.

16. Petition stands allowed. No order as to costs."

4. Ld. Counsel appearing on behalf of the Appellant submitted that the petition under Section 59 was not maintainable as no name purported to be appearing in the Register of Members of the company. Reliance was placed on Hon'ble Supreme Court decision in "*M/s. Ammonia Supplies Corporation (P) Limited v. M/s. Modern Plastic Containers Pvt. Ltd. & Ors.*" (1998) 7 SCC 105. In the said case the Hon'ble Supreme Court deliberating on Section 155 of the Companies Act, 1956 held that if the Court should see for itself whether the documents are disputed and any documents are alleged to be forged whether it said to be so only to exclude the jurisdiction of the court or it is genuinely so. The Apex Court further observed while deciding such issue, *the Court should take into consideration the submissions of Respondents* to find out whether the dispute would come within the scope of rectification or not.

5. In the present case, the Appellant raised dispute before the Tribunal and pleaded that on 7th November 2012, the 2nd Respondent received a 'transfer deed' along with share certificates for 903 shares lodged by one Mr Vikas Tara Singh (8th Respondent

herein) to transfer the said shares in his favour. After verification and due diligence, 2nd Respondent transferred the said shares in favour of the 8th Respondent Mr. Vikas Tara Singh and transferred shares were sent to him in due course.

6. On 28th December 2012, the 2nd Respondent received a request from 8th Respondent Mr Vikas Tara Singh, for dematerialisation of the said 903 shares. After verification and due diligence on 4th November 2013, the demat request was confirmed by 2nd Respondent to the Depository Participant of 8th Respondent - Mr Vikas Tara Singh.

7. It was submitted that the 2nd Respondent by its e-mails dated 18th February 2013 and 28th February 2013 informed the 1st Respondent/Petitioner, Mrs Adesh Kaur, that duplicate share certificates have already been issued on her request dated 4th September 2012 after following the due process of law and completion of documentary formalities.

8. Subsequently, the Appellant received e-mail of 1st Respondent/Petitioner on 2nd June 2014 addressed to the erstwhile Director of the Appellant company and informed about issuance of duplicate shares when she was informed about issuance of duplicate share certificates in favour of 8th Respondent and dematerialisation of subject shares.

9. It is stated that the 1st Respondent/Petitioner by e-mail dated 2nd June 2014 suggested that a fraud had been played upon by her and documents had been fabricated, signature had been forged and that there was a possibility of impersonation.

10. According to Ld. Counsel for the Appellant, there being dispute about the fraud in respect of the ownership of the claim of the subjective shares and suspected impersonation of a shareholder and fabrication of documents and fraud played and as a complaint is pending with the Okhla Police, it was not open to the Tribunal to pass the order.

11. Ld. Counsel for the Appellant further submitted that the shares have been dematerialised, and as the matter is with the Depository Authority, the question of rectification of Register under Section 59 of the Companies Act, 2013 does not arise.

12. Ld. Counsel appearing on behalf of the 1st Respondent/Petitioner relied on the impugned order and submitted that the Tribunal after taking into consideration the facts that fraud has been committed and Securities & Exchange Board of India (hereinafter referred to as SEBI) is verifying the matter has passed the impugned order.

13. On perusal of the impugned order we find that the Tribunal has given the following reasons to issue direction:

"4. In the reply filed by Respondent No. 1, they deny any liability and squarely lay it at the door steps of their Share Transfer Agents, Respondent No.2, duly approved by Respondent No. 3. Needless to say that Respondent No. 2 has found it convenient not to appear before this forum. Before this Bench, Respondent No. 1 has denied allegations of fraud, forgery and manipulation of the documents and has submitted that as the facts of the case are disputed, complex and complicated, it would be beyond the summary jurisdiction of this Tribunal to adjudicate in respect of the same. It is further submitted that being a listed company in terms of SEBI guidelines they were under the obligation to appoint a common agency (Registration-cum-share transfer agents), which in this case is Respondent No. 2. This work of maintaining the register and looking after transfer of shares, be it in the physical form or in the demat, was mandatorily required to be entrusted to the SEBI-approved agents, over whom they had to control. Having done so, they were no longer liable for maintaining the record of their shareholders or dealing with transfer of shares and issuance of duplicate certificates. It is further stated that as per the record the shares had been transferred and are presently registered in the name of Mr Vikas Tara Singh, Respondent No.8. It is also stated that their Share Transfer Agent had duly verified facts and after due diligence recorded the change of address of the petitioner in their records from Sangrur to Mumbai and later issued the duplicate shares. They, however, do not deny that the petitioner has been pursuing redressal of the fraudulent transfer relentlessly. It is also their case that a criminal complaint has been registered on their initiative which is pending with the EOW Cell at Mumbai.

5. Notice was also issued to SEBI Respondent No.3, the statutory organisation created to protect the interest of investors. Though the Ld. Counsel appearing on their behalf had filed an application for being dropped from the array of parties, it was found expedient to keep them in the loop and get necessary assistance as to what action is contemplated at their end in such cases of fraud. Ld. Counsel appearing for Respondent No. 3 submits that the petitioner had not lodged a complaint directly with them but with this Bench and since the matter was sub-judice, they have refrained from enquiring into the matter. It was only after specific directions of the Tribunal that Respondent No. 3 has initiated an enquiry in the alleged fraud perpetuated upon the petitioner. They have also apprised this Bench that in a similar complaint of one Mr Manoj Dharamdas Shah, they had initiated enquiry proceeding against Respondents 1 and 2 which culminated in a finding that shares of the complainant Mr Manoj Dharamdas Shah were fraudulently transferred to a third party. Directions were given for Respondent No. 1 to reinstate the 100 shares to him.

6. Respondent No. 1 has acknowledged that the petitioner is a victim of fraud. This is evident from the acknowledgement in their correspondence dated 11.7.2014 which is reproduced as under:

"It appears that some unscrupulous person(s) have allegedly impersonated your identity and misrepresented documents before MCS in order to obtain duplicate Share Certificates and subsequently transferred them to third parties.

EML is already enquiring from MCS further details in your case and would like to assure you that all documents and information available with MCS would be shared with you.

For your reference, the copies of the documents including the request letter dated 20th July, 2012 for the issuance of the duplicate Share Certificates, the indemnity bond, affidavit, copy of FIR, attested Vote ID Card, address proof and the signature verification letter issued by Bank are being provided to you for your reference and record.

This unfortunate instance therefore requires the cooperation and action by both the parties (i.e., yourself and EML) in tandem and we would like to assure you of our full cooperation to you.

We will proceed to file a complaint with the police and request them to investigate the matter."

14. From the aforesaid finding of the Tribunal, we find that the Appellant while acknowledged that the 1st Respondent/Petitioner may be a victim of fraud, the Tribunal noticed that certain procedure were not followed and that duplicate transfer shares had already been issued and transferred and dematerialised in favour of the 8th Respondent – Mr Vikas Tara Singh. Thus, there being an allegation of impersonation and forgery of signature and fraud lodged already levelled by the 1st Respondent/Petitioner in respect of which a criminal complaint has been lodged and is pending with the Economic Offences Wing Cell of Mumbai Police and the matter has also been brought to the notice of SEBI, in the light of the decision of the Hon'ble Supreme Court in "M/s.

Ammonia Supplies Corporation (P) Limited v. M/s. Modern Plastic Containers Pvt. Ltd. & Ors.” it was not a fit case for Tribunal to exercise its power under Section 59 of the Companies Act, 2013 solely on the ground that the original certificates are in the physical possession of the 1st Respondent/Petitioner.

15. For the reasons aforesaid, we set aside the impugned judgement passed by Tribunal in Company Petition No. 8/59/15 and dismiss the Company Petition preferred by the 1st Respondent/Petitioner.

16. However, this order will not come in the way of the 1st Respondent/petitioner to move before a Court of Competent Jurisdiction for appropriate relief, including declaration of title over the shares in question and/or for declaration that the transfer in favour of the 2nd Respondent or the 8th Respondent are illegal, being based on impersonation and fraud. Both the appeals are allowed with aforesaid observation. However, in the facts and circumstances of the case there shall be no order as to cost.

(Mr. Balvinder Singh)
Member (Technical)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI

29th August, 2017