

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**COMPANY APPEAL (AT) NO.132 OF 2017**

**In the matter of:**

**Prabhakar Processors Pvt Ltd & Ors**

**...Appellants**

**Versus**

**Kusumdevi Tibrewal & Ors**

**...Respondents**

**Present: Mr.Suryanarayan, Advocate with Ms Garima Bajaj,  
Advocate for the appellants.  
Mr. Ashok Mehta, PCS for respondents.**

**Order**

**27.04.2017-** The appellants have challenged the order dated 2<sup>nd</sup> January, 2017 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad (hereinafter referred to as the "Tribunal" for short) in T.P. No.27/397-398/NCLT/AHM/2016 (New), CP No.49/397-398/CLB/MB/2012(Old). Vide the impugned order the Tribunal decided the primary issue as to whether the respondents/petitioners are members of the Respondent company.

The main grievance of the appellants are that the Learned Tribunal while deciding the issue observed at paragraph 14 that the definition given in any enactment can be applied to the provisions in the Act or by analogy to other Acts but not to agreements between the parties in violation of provisions of the India Contract Act. It is contended that the Tribunal under Section 397 and 398 of the Companies Act, 1956 has no jurisdiction to give such declaration.

We have heard the Learned counsel for the appellant and perused the record. Appearance have also been filed on behalf of the contesting respondents.

From the impugned order it is clear that the appellants who were contesting respondents before the Tribunal raised the question of maintainability of petition under Section 397 and 398 of the Companies Act, 1956 on the ground that the respondents/petitioners are not the shareholders and, thereby, do not have the locus standi to file the petition. The said stand was taken by the appellants on the ground that one MOU was reached between the appellants and respondents (petitioners) on 16<sup>th</sup> April, 2011 pursuant to which they have already accepted money and, therefore, shares stands transferred.

From the impugned order we find that the Tribunal while discussing the stand taken by the parties on the question of transfer of shares made following observations:

*“13.The MOU dated 16.4.2011 is signed by Mr. Rakesh Agarwal, Mr. Mukesh Agarwal and Mr. Ashok Kumar Tibrewal on behalf of the Tibrewal group. Admitted, the signatures of petitioners are not there on MOU dated 16.4.2011. Although it is stated in MOU that the consent letters of all the shareholders have been attached, no such consent letters are there. No doubt there was resignation of Directors and revocation of Bank guarantees pursuant to MOU. M/s Bhaskar Silk Mills Pvt Ltd and Prabhakar Processors Pvt Ltd are two different corporate entities. Unless and until in pursuance of the MOU, shareholders in both the companies transfer their shares following the procedure laid down under the Act and Articles of Association, it cannot be said that Petitioners or for that matter any other shareholder who is not a signatory to MOU ceased to be a shareholder of the company. Had the petitioners been signatories to the MOU then the binding nature or otherwise of the MOU can be challenged in a Civil Court. When petitioners continue to be shareholders of the first respondent company and they are having required shareholding in the company it cannot be said that they are not entitled to file this petition for oppression and mismanagement etc.”*

*14.It is contended by Learned Advocate for Respondents that the close relatives of Petitioners signed on MOU dated 16.4.2011 and definition of “relative” in Section 2(41) read with Section 6 of Companies Act, 1956 can be applied to bind the Petitioners although they have not signed on the*



*MOU. This argument of learned counsel for respondents does not merit acceptance for the simple reason that definition given in any Enactment can be applied to the provisions in the Act or by analogy to other Acts but not to agreements between parties in violation of the Indian Contract Act.*

*It is obvious that the definition of "relative" in Section 2(41) of Companies Act 1956 is applicable to Section 299 of Companies Act, 1956."*

From the aforesaid findings it will be clear that to decide the question whether the respondents/petitioners have ceased to be shareholders or not, the Tribunal has not refused to rely on the MOU on the ground that any agreement against the provisions of Indian Contract Act cannot be noticed.

Having heard the learned counsel for the appellants and on perusal of the record, we are of the view that the observation made by the Tribunal at paragraph 14 of the impugned judgement cannot be treated to be a finding with regard to the validity of the MOU reached between the parties on 16.4.2011. It is merely a premise view to decide the question whether shares stood transferred.

Further, as admittedly the shares have not been transferred in favour of the appellants in accordance with law, i.e. no entry having made in the register of the company, we hold that the respondents/petitioners continue to be shareholders till their shares are registered in the name of other persons. For the reasons aforesaid we are not inclined to interfere with the impugned judgement dated 2.1.2017.

However, we make it clear that the order passed by the Tribunal or by Appellate Tribunal will not come in the way of the appellants in registering their name, if transfer is genuine and in accordance with law. The appeal stands disposed of with the aforesaid observations. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson  
(Mr. Balvinder Singh)  
Member (Technical)