

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 292 of 2017

IN THE MATTER OF:

Shri Shiv Raj Singh

...Appellant

Vs.

**Kemty Konstruktion Private
Limited & Ors.**

...Respondents

**Present: For Appellant: - Mr. Manish Jain, Mr. Rakesh Wadhwa
and Mr. Siddharth Sharma, Advocates.**

**For Respondents: - Mr. Mukesh Sukhija, Advocate for
Respondent no.2.**

**Ms. Aparna Mudiam, Assistant Registrar of Companies
for Respondent no.5**

ORDER

06.10.2017-

I.A. No. 544 of 2017 :

An application for condonation of delay has been filed by the appellant to condone the delay of three days in preferring the appeal.

Having heard learned counsel for the appellant and learned counsel for 2nd Respondent and Assistant Registrar appearing on behalf of Registrar of Companies and on being satisfied with the grounds shown therein, the delay of 3 days in preferring the appeal is condoned.

I.A. No. 544 of 2017 stands disposed of.

Company Appeal (AT) No. 292 of 2017 :

This appeal has been preferred by the appellant against the order dated 10th July, 2017, passed by National Company Law Tribunal

(hereinafter referred to as "Tribunal") New Delhi Bench, whereby and whereunder the application preferred by the appellant under Sections 397 and 398 read with Sections 111, 402 and 403 of the Companies Act, 1956 (now Section 241 of the Companies Act, 2013) alleging 'oppression and mismanagement' has been rejected.

2. According to the appellant, action on the part of the 2nd Respondent-Shri Kamal Jain is oppressive to the appellant and the company. It is submitted that the 2nd Respondent was Chartered Accountant of the Company and having knowledge of all facts claimed to be Member/Director of the company without any basis. It is also submitted that the 'Memorandum of Understanding' of which the Tribunal has taken note of, is not in existence and the Tribunal failed to notice the aforesaid fact. It is also alleged that the 2nd Respondent misused his fiduciary relationship as Chartered Accountant and at his best 3rd and 4th Respondents were illegally inducted as the directors of the company, as shareholders. Later on based on alleged 'Memorandum of Understanding', the 2nd Respondent claimed to be 'shareholder' of the company and illegally shown his name in the record.

3. Learned Counsel appearing on behalf of the appellant also submitted that apart from the provisions of Sections 397 and 398, the petition was also filed under Section 111 read with Sections 402 and 403 of the Companies Act, 1956 and, therefore, the Tribunal was bound to decide the validity of shares issued in favour of the 2nd Respondent.

It is submitted that the alleged transfer of shares were not issued in its proper perspective.

4. Learned counsel appearing on behalf of the 2nd Respondent referring to paragraph no. 13 of the impugned order dated 10th July, 2017 submitted that Form-32 along with his resignation letter was duly uploaded with the Registrar of Companies and, therefore, the Tribunal rightly held that the application, at the instance of the appellant, was not maintainable because of suppression of Memorandum of Understanding.

5. In this regard, it is desirable to refer the observations made by the Tribunal in paragraph no. 13 of the impugned order, as quoted below: -

“13. From the pleadings on record, documents relied, and upon hearing arguments addressed by the Ld. Counsels, this Bench is of the opinion that the resignation of the petitioner cannot be opined as being fraudulent. His allegations of removal as a Director of the respondent company are also without any legs to stand upon. Form 32 along with his resignation letter was duly uploaded with the ROC. It is the easiest of the allegations to deny a document as being forged or the digital signatures being misused by any other person. This has to be

seen in conjunction with the other ancillary facts. There is no denial to the execution of the MOU which clearly acknowledges money being received by the petitioner with the understanding that upon failure to return the loan, respondent no. 2 would be entitled to transfer the same to himself. The petitioner has nowhere denied taking financial assistance, nor having executed the MOU. Further, he has not been able to show that he has failed to liquidate the loan. Under such circumstances, it cannot be said that the transfer of 998 shares was not for valuable consideration received. As per the Annual Return filed for the year 2007-2008, it has clearly been reflected that while Respondent no. 2 holds 998 shares, the petitioners shareholding is "zero". This return bears the digital signatures of the petitioner as well as the Company Secretary, Shri A. K. Popli."

6. Having heard learned counsel for the parties, while we are not inclined to interfere with the impugned order dated 10th July, 2017 for the reasons recorded below, we are of the view that the matter relating to transfer of shares can be decided independently, uninfluenced by any

observations made by Tribunal in the impugned order dated 10th July, 2017.

7. According to appellant, the 2nd Respondent is not a member of the company. He is not a shareholder. He was the Chartered Accountant of the company who has illegally introduced and brought on the Board of Directors the 3rd and 4th Respondents and taken various steps illegally oppressive to the members and the company. If the stand taken by the appellant that the 2nd respondent is not a member, the petition under Sections 397 and 398 (now Section 241 of the Companies Act, 2013) against the said Respondent is not maintainable. In so far as the question of legality and proprietary of share is concerned, we are of the view that such dispute cannot be decided in a petition under Sections 397 and 398 of the Companies Act, 1956. If the original shares are with the appellant and appropriate form of transfer has not been signed by him, or if signed, has lapsed, it is always open to the appellant to file an application separately under Section 59 of the Companies Act, 2013 for rectification of Register of Members by requesting the company to delete the name of 2nd or other Respondent(s), if recorded. In case of refusal, it was open to the appellant to move before the Tribunal against the order of refusal.

8. For the reasons aforesaid, while we are not inclined to interfere with the impugned order dated 10th July, 2017 passed by the Tribunal in Company Petition No. 104(ND)/2011, allow the appellant to file an

application under section 59 of the Companies Act, 2013 before the company for deletion of the name of the persons whose names have been wrongly included the 3rd and 4th Respondents. In such case, if the appellant prefers any application within three months before the company and the matter is not entertained or refused, it will be open to the appellant to move before the Tribunal against such order. On such petition, the Tribunal will consider the same on its merit after notice to the parties uninfluenced by the impugned order dated 10th July, 2017.

9. The appeal stands disposed of with the aforesaid observations and directions. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member (Judicial)

(Balvinder Singh)
Member(Technical)

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