

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

**Company Appeal (AT) No. 216 of 2017**

**IN THE MATTER OF :**

**Pawan Kumar & Ors.**

**... Appellants**

**Versus**

**Newtech Agro Products Pvt. Ltd. & Ors.**

**... Respondents**

**Present: For Appellants : Shri Rakesh Kumar, Advocate**

**For Respondents Nos. 1, 5, 6, 7 to 9 : Shri Arun Saxena,  
Ms. Nalini and Ms. Jayshree Dugar,  
Advocates**

**ORDER**

**23.08.2017** This appeal has been preferred by the Appellants/ Petitioners against order dated 21<sup>st</sup> April, 2017 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'Tribunal') in C.P. No. 11(ND) of 2010, RT No.20/Chd/Pb/2016. By the impugned order, the Tribunal dismissed the application preferred by the Appellants under Sections 397, 398 read with Sections 237, 402 and 403 of the Companies Act, 1956 with the following observations :

**"ACTS OF OPPRESSION AND MISMANAGEMENT**

*55. I will first of all deal with the allegation in respect of the allotment of the increased 10,000 equity shares. The fact that due to losses suffered*

*by the Company, the share capital was increased from 70,000 to 80,000 is admitted in the re-joinder, as already stated while discussing the facts of the case. The controversy requiring adjudication is with regard to allotment of the increased share capital and also the transfer of the shares of R-2 to R-4 in favour of the group of R-5 to R-7. So far as the transfer of shares by R-2 and Suman Bala of their 5000 shares each, in favour of R-8 is concerned, that happened in the year 2006, for which the remedy of challenge to the petitioners is time barred.*

56. *However, the transfer of shares by R-2 to R4 in the AGM dated 29.05.2008 in favour of the group of R-5 to R-7 is concerned, that can be a matter of serious challenge by the petitioners. R-2 to R-4 were holding 29,000 equity shares along with certain members of their family in the year 2006 and 2007 and entire 29,000 equity shares are shown to have been transferred in favour of six persons, out of whom, only Pawan Kumar Garg is respondent No.7 and rest of the five people namely Harish Mittal, Pankaj Garg, Hemant Mittal, Brij Bhushan Mittal and Sat Narayan are not parties to the instant petition nor any prayer was made to implead these*

*persons as necessary parties despite a specific stand taken by the contesting respondents in their written statement filed in February 2010. I am of the view that even if, the act of transferring these shares was illegal, the above transfer cannot be set aside as those persons, who are entered as shareholders cannot be condemned unheard.*

*57. An information was obtained from the office of ROC at the time of hearing of the case on 24.03.2017 and it has been clarified that the Annual Return for the year ending 31.03.2006 was filed on 11.05.2009 and Form 23AC and 23ACA relating to the financial year ending 31.03.2008 were filed with the Registrar of Companies on 16.03.2013 i.e. during the pendency of the instant petition. However, when there was a specific plea taken by R-5 to R-9 about the name of the persons having been allotted the shares by way of transfer from R-2 to R-4, they should have been impleaded as necessary parties. The petitioners should have been vigilant or even attempted to inspect the record of ROC for seeking appropriate relief. They could apply to the appropriate authority, CLB or by way of writ petition in the Hon'ble High Court, if so advised,*

*seeking a direction for the said purpose and to remove defects, if any, in the case.*

*58. Otherwise, I would find that when the petitioners have categorically stated that they were not served with any notice regarding the AGM meeting, dated 29.05.2008, it was duty of the respondents to place on record the documents to show that such notices were issued and also to place on record the copies of the minutes book of the said date. In the absence of such a material, the transfer of shares on the basis of the absence of such a material, the transfer of shares on the basis of meeting held on 29.05.2008 would be illegal and not binding upon the petitioners.*

*59. Further, transfer of shares without complying with the Articles of Association would be invalid as the Articles of Association are binding upon the members and the company. Articles 10 and 11 of Articles of Association, which are relevant for the purpose are reproduced as under :-*

*“10. No share be transferred to any person, who is not a member of the Company so long as any member is willing to*

*purchase the same at a valuation to be determined as provided hereinafter.*

11. *The person proposing to transfer the share (hereinafter called the transferring member shall give notice in writing to the Company of his intention to sell his share. Every such notice shall specify the distinctive number of shares proposed to be sold and shall constitute the Company as his agents for the sale of such shares to any members of the Company at a fair value to be determined by the Board. The Company shall communicate the notice of sale to each of its members. No notice of intended transfer once given shall be withdrawn except with the sanction of the Directors."*

60. *The respondents should have placed on record the documents for showing the compliance of the aforesaid Articles of Association before accepting the transfer of shares in favour of Pawan Garg respondent and others, but such observations will*

*not help the petitioners in the absence of impleading the other transferees of the shares as necessary parties.*

61. *Learned counsel for the petitioners, however relied upon "V.B. Rangaraj Vs. V.B. Golpalakarishnan and others" (1992) 1 SCC 160. The Hon'ble Supreme Court held that the Articles of Association of the Company are the regulations of the Company binding on it and the shareholders. There cannot be any quarrel with the above proposition of law and that being the settled principle. Otherwise, the plea of the respondents that the petitioners should have filed a case for rectification of the register of members is without substance because the present is a case based on the challenge about the fraudulent transfer of shares and not rectification of the register, though the petitioners may not have been successful in the challenge made by them.*

62. *As already observed that in the absence of the necessary parties, this Tribunal would not be able to set aside the transfer made by R-2 to R-4. There is absolutely no reason forthcoming as to why all the*

*transferees of the shares from R-2 to R-4 have not been impleaded as party despite the objections to this effect taken in the written reply filed in February, 2010 by R-1 and R-5 to R-9. List of the shareholders as on 29.05.2008 are given at page 65 and 66 of the reply of contesting respondents, which is in consonance with the plea taken in paragraph 6 (g) of the written statement.*

*63. In view of the findings on various issues, as discussed above, I find no merit in the instant petition, which is hereby dismissed. In view of the facts and circumstances of the case, the parties are left to bear their own costs.”*

2. Learned counsel appearing on behalf of the appellants/petitioners submits that the appellants have no grievance with regard to the first part of the observations made by the Tribunal at paragraph 55. However, according to the appellants, the Tribunal having found ‘oppression and mismanagement’ for various acts on the part of the respondents, ought to have granted appropriate relief under Sections 402 and 403 of Companies Act, 1956 (now Section 241/242 of the Companies Act, 2013).

3. We have heard learned counsel for the appellants/petitioners and the learned counsel for the respondents.

4. From the impugned order, we find that certain activities on the part of the respondents, alleged to be 'oppressive' are based on the facts brought to the notice of the Tribunal by the Registrar of Companies, Chandigarh ('ROC' for short). The appellant has not pleaded any such acts nor impleaded such persons as party respondents. The company petition was pending since 2009 and after about 7½ years, it was decided in April, 2017. In such a case, in absence of any prayer made by the appellants in respect of affected parties, the Tribunal rightly passed the order.

5. In so far as the finding relating to the delay and laches is concerned, as finding of the Tribunal is not perverse, this Appellate Tribunal is not inclined to interfere with the impugned order on such ground.

6. After the matter was heard and order was dictated in the open Court. Learned counsel for the appellants submits that the appellants having 37.45% of the total share capital be allowed to 'exit' from the Company, as the parties are in loggerheads. In absence of such finding and deliberation by the Tribunal, we are not expressing any opinion, but we allow the appellants to negotiate with the respondents



and other shareholders for 'exit' from the company. If such offer is given by the appellants, the respondents and other shareholders may consider the same and may provide an honourable 'exit' based on appropriate value of shares and the assets and goodwill of the company.

8. The appeal stands disposed of with the aforesaid observations. However, in the facts and circumstances of the case, there shall be no order as to costs.

[ Justice S.J. Mukhopadhaya ]  
Chairperson

[ Balvinder Singh ]  
Member (Technical)