

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL(AT) NO.358 OF 2017

(Arising out of order dated 07.07.2017 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata in CP No.426/2010.

IN THE MATTER OF:

Before NCLT Before NCLAT

- | | | |
|---|----------------------------|----------------------------|
| 1. Supriya Das
W/o Late Sujit Kumar Das
R/o 42 F, Babu Bagan Lane,
Dhakuria, Kolkata-700031. | 1 st Petitioner | 1 st Appellant |
| 2. Ashima Das ,
D/o Late Sujit Kumar Das,
R/o 42 F, Babu Bagan Lane,
Dhakuria, Kolkata-700031 | 2 nd Petitioner | 2 nd Appellant |
| 3. Amrita Das,
D/o Late Sujit Kumar Das,
R/o 42 F, Babu Bagan Lane,
Dhakuria, Kolkata-700031. | 3 rd Petitioner | 3 rd Appellant |
| Vs | | |
| 1. Sova Tea Company Pvt Ltd
4/22, Poddar Nagar,
Kolkata-700068. | 1 st Respondent | 1 st Respondent |
| 2. Mr. Anjan Kumar Das,
R/o Kailashahar,
Tripura
And also at
21 A, ram Krishna Ghosh Road,
Kolkata-700050. | 2 nd Respondent | 2 nd Respondent |
| 3. Supriya Das
R/o Kailashahar,
Tripura
And also at
21 A, Ram Krishna Ghosh Roadl,
Kolkata-7000050 | 3 rd Respondent | 3 rd Respondent |
| 4. Anupama Das (Through LRs) | 4 th Respondent | 4 th Respondent |

(a) Nitima Roy
21 A, Ram Krishna Ghosh Road,
Kolkata-700050

(b) Aruna Mukherjee
21 A, Ram Krishna Ghosh Road,
Kolkata-700050

(c) Sumita Sinha,
25 Nagendra Nath Road,
Ananda Vihar, Block-A,
Flat No.401,
Olkata-700028,

(d) Pampa Das,
A-E-654, Sector 1,
Flat No.401,
Salt Lake City,
Kolkata-700064

5. Indrajit Ray, 5th Respondent 5th Respondent
Working for gain
At
1B, Old Post Office Street,
Kolkata-700001.

Present: For Appellant:- Mr Abhijeet Sinha, Mr. Aditya Shukla, Mr. Akshay Chandna and Mr. Saikat Sarkar, Shri Sahmbo Nandy, Shri Arjit Mazumdar, Advocates.

For Respondents: - Mr. P.K. Ray, Mr. Dipak Chakraborty, Mr. Ajit Kumar Rari and Mr. Ujjwal Banerjee, Advocates.

JUDGEMENT

BALVINDER SINGH, MEMBER (TECHNICAL)

1. This appeal has been preferred by appellants under Section 421 of the Companies Act, 2013 against the impugned order dated 7th July, 2017 passed by the Hon'ble National Company Law Tribunal, Kolkata Bench, Kolkata in C.P. No.426(KB) of 2010. The appellants have sought the relief of setting aside, quashing and setting aside the impugned order dated 7th July, 2017.

2. The brief facts of the case are that 1st respondent is a company registered under the Companies Act, 1956 was incorporated on or around 15th day of September, 1989 and having its registered office at Kolkata.

3. 1st appellant is the widow of Sujit Kumar Das(deceased) and 2nd and 3rd appellants are the daughters of Sujit Kumar Das (deceased). 2nd respondent is the son of Ajit Kumar Das (deceased) who was the brother of Sujit Kumar Das (deceased). 3rd respondent is the wife of 2nd respondent. 4th respondent is the mother of 2nd respondent. The shareholding pattern of 1st respondent as on 31st March, 2002 is as under:

Late Sujit Kumar	1111 shares
Supriya Das(1 st appellant)	30 shares
Mr. Anjan Kumar Das (2 nd respondent)	1111 shares

The principal person in charge of the day to day affairs of the 1st respondent was Late Sujit Kumar Das. Late Sujit Kumar Dass suffered a cerebral attack in May, 2002 and was put under medical supervision but he never completely recovered and was rendered incapacitated to participate in the day to day affairs of 1st respondent. Ultimately Sujit Kumar Das died intestate on 21 December, 2007. Upon the death of Sujit Kumar Das, the appellants have 1141 shares (1111 shares of Late Sujit Kumar Das + 30 shares of 1st appellant) (Page No.150 and 159 of Paper Book).

4. Upto the death of Sh Sujit Kumar Das, a sum of Rs.20000/- every month was paid by the 2nd respondent to the appellant either in cash or by cheque from the funds of the 1st respondent (Page 37 of paper book). The said

allowance was stopped only in or around the end of 2008 which made the appellants suspect foul play. The last payment was received by the appellants from the 2nd respondent by way of a cheque No.804688 drawn on United Bank of India, Kailashnagar Branch (Page 70 of the Paper Book). Thereafter, the appellants confronted the 2nd respondent who stated that the appellants would not be entitled to receive any further amount. This made the appellants extremely suspicious and they caused enquires from Registrar of Companies and obtained copies of returns/documents filed on behalf of 1st respondent. From the enquiries it transpired that the authorised share capital of 1st respondent company was increased from Rs.5,00,000/- to Rs. 15,00,000/-on 28th July, 2003 for which no notice of AGM/EOGM was given to the appellants (Page 78-79). After increasing the authorised share capital of 1st respondent, 12718 shares were allotted on 20.1.2004 and issued to the 2nd, 3rd and 4th respondent. Registered office of the 1st respondent was also changed from 42F, Babu Bagan Lane, Kolkata to 6/23, Poddar Nagar, Kolkata and even the bank account of 1st respondent was changed and there were manipulation of the account and records of the 1st respondent.

5. The appellants filed IA No.231/2018 for bringing on record the legal heirs of 4th and 5th Respondent. The appellants stated that they are aware that the 2nd respondent is the son of 4th respondent and 4th respondent has four daughters but the appellants are not aware about the addresses of the daughters of the 4th respondent. The appellants stated that they have made legal heirs of 4th respondent as party to the appeal. The appellants further stated that 2nd respondent is also the legal heirs of 4th respondent but as 2nd

respondent is also a party, therefore, they have not shown it in column of legal heirs of 4th respondent.

6. The appellants stated that the 3rd respondent was co-opted as Additional Director on 30.4.2012 (Page 70 of reply). The appellant stated that 3rd appellant was co-opted as Additional Director on 28th October, 2002 (Page 71 of reply) and was removed as Director on 2nd December, 2007. In the said Meeting dated 2nd December, 2007, Sujit Kumar Das was also removed as Director.

7. The appellants (legal heirs and successors of Late Sujit Kumar Das) filed Company Petition 426/2010 before the NCLT, Kolkata Bench by invoking various provisions of the Companies Act under Sections 235, 397, 398, 399, 402, 403, 406 and 407 alleging certain acts of oppression and mismanagement in the affairs of the 1st Respondent company and sought various reliefs, but the main reliefs are as below:-

a) A Scheme of Administration of the Respondent No.1 be framed having consideration to the following:-

i) The petitioners are the majority shareholders of the company and they have the right to take control of the management.

ii) Alternatively, the petitioners would have an equal right to participate in the affairs of the company.

iii) To reconstitute the Board of Directors of the company in such a manner that the petitioners' rights as majority shareholders are restored.

iv) The company's assets and moneys are not utilized for the personal benefit of the respondent Nos 2 to 5 or any of them.

The cost and expenses of the company are duly accounted for.

b) Increased in authorised share capital of the Respondent No.1 from Rs.5,00,000/- to Rs.15,00,000/- and all forms/returns filed in this regard and all resolutions passed in this connection filed with the Registrar of Companies or otherwise be adjudged null, void and be delivered up and cancelled.

c) Direction for rectification of share register and register of members of the respondent No.1 by deleting all the allotment of shares recorded therein after May 2002 and by restoring the position prevailing prior thereto.

d) Injunction restraining the respondents from exercising and/or causing to be exercised any right in respect of the shares issued after May, 2002 including voting right, right to receive dividends, bonus shares, right shares etc.

e) Allotment of shares in favour of the Respondent No.2, 3 and 4 after 19th January, 2004 and Form 2 dated 10th February, 2004 filed with the Registrar of Companies be adjudged null, void and be delivered up and cancelled.

f) The change in the registered office of the respondent filed with the ROC in connection therewith be adjudged null, void and be delivered up and cancelled.

g) Allotment of 12,718 shares in favour of the respondent Nos 2, 3 and 4 in relation to 12000, 418 and 300 shares, respectively and all the documents and statutory forms filed in connection therewith the Registrar of Companies or otherwise existing be adjudged null, void and be delivered up and cancelled.

h) Opening of bank accounts of the respondent No.1 with United Bank of India, Garia Branch, Kolkata be adjudged null, void and be delivered up and cancelled and the amounts lying thereat be returned to the Respondent No.1.

i) Mortgage, if any, in respect of the assets of the respondent No.1 created after 31st March, 2006 be adjudged null, void and be delivered up and cancelled.

j) Injunction restraining the respondents, their men, agents or assigns from giving any effect or further effect to the increase in authorised share capital of the Respondent No.1 from Rs.5,00,000/- to Rs.15,00,000/- or in respect of allotment of 12,718 shares in favour of the Respondent Nos 2,3 and 4 in the ratio of 12,000, 418 and 300 shares respectively or in respect of change in the registered office of the respondent No.1 from 42F Babubagan Lane, Kolkata to 6/23, Paddar Nagar Kolkata in any manner whatsoever.

k) An order of injunction restraining the respondent No.2 from acting as a director of the company.

l) The Board of the respondent No.1 be suspended and reconstituted with independent Directors.

8. Respondents filed their reply to the company petition and after hearing the parties the Tribunal passed the following order:

“From the record, it reveals that the petitioners are agitating the transactions which were made during the life time of Sujit Kumar Das (since deceased). The petitioners have also failed to prove any ingredient of Sections 397 and 398. No relief under either of the Sections can be granted. If the petitioners/party acquiesced the act of the other side/respondents as in the instant case and on perusal of the record, it is found that the petitioners obtained the certified copies sometime in 2005, when Sujit Kumar Das (now deceased) was alive but since then the petitioners never bothered to agitate any of the alleged act of Respondents. Hence on the count of delay and laches the petition so filed is not maintainable.

Some of the shareholders’ action fail owing to their own actions which are self-destructive and termed as “unclean hands doctrine” a corollary of the “clean hand” doctrine. The statutory provisions do not contain any such limitation on the right of the shareholders who invoke company court’s jurisdiction under Section 397, nor does it restrict the company Court’s power of granting relief to the oppressed shareholder. However, since the jurisdiction of the company court under Section 397 is equitable jurisdiction, it pre-supposes such limitation.

The Court, therefore, exercising equity jurisdiction, cannot ignore the well known maxims of equity. Two such maxims are that he who seeks equity must do equity and he who comes into equity must come with clean hands. Another, equally well known maxim is that where both the parties to the litigation are at fault, the defendant’s position is stronger.

32. Whatever may have been the position in the past, the company was carrying on a profitable business and even if some bungling had taken of in keeping of accounts in the past, it may not justify the winding up matter when the Company is a sound profit making concern.

33. In the present case, petitioner has neither filed the share certificates nor they had provided any evidence to indicate that they were the shareholders of the company at the material time. However, as the respondents in their reply by way of affidavit had fairly admitted the shareholdings of the petitioners.

This Court being equity and considering the equities between the parties, I find that the equity is in favour of the respondents. More so, there is no rebuttal from the petitioner(s) to the factual position explained by the Respondents(s) Rather, it is the conduct of the petitioners as detailed above, which has been prejudicial to the interest of the functioning of the company. Therefore, it

would be highly unjust to grant the prayers sought by the petitioners without any cogent proof and substance.

34. Thus, there is no scope to grant any relief to the petitioner. The petition filed by the petitioners is also not maintainable on account of delay and laches as on their own admission they had acquired full knowledge sometime in 2002 itself.

35. Thus the petitioners not only acquiesced the alleged act of oppression and mismanagement, if any, but they have also failed to establish in the face of the uncontroverted contentions of the respondents in reply to their allegations.

However, considering equity, as also in view of the fact that succession cannot be kept in abeyance and the property of the deceased member vest in the legal representatives on the death of the deceased and they should be permitted to act for the deceased member for the purpose of transfer of share under Section 109 of the Act.

To do substantial justice between the parties, with a view to bringing an end to the matter complained off and to regulate the affairs of the company in future, I hereby direct the respondents to transfer the property in the form of shares left by deceased, Sujit Kumar Das in the company, apart from the shares admitted in the reply.”

Hence, the petition is hereby disposed of.”

9. Being aggrieved by the impugned order dated 7th July, 2017 the appellants have preferred the present appeal stating that the impugned order is illegal and liable to be quashed on the grounds stated. Respondents filed their affidavit in reply to the company appeal and the appellants filed rejoinder to the same.

10. The appellants have stated that No notice for holding AGM or EOGM was served on the appellants relating to the increase of authorised share capital of 1st respondent from Rs.5,00,000/- to Rs.15,00,000/-. The appellants have further alleged that pursuant to the illegal increase in the

authorised share capital of 1st respondent, 12718 shares were illegally allotted and issued to 2nd, 3rd and 4th respondent.

11. The appellants have further alleged that the registered office as well as the bank account of the 1st respondent was changed without their knowledge (Page 78, Vol. II). It has also been alleged by the appellants that the manipulation in the accounts and records of 1st respondent has been done by 2nd to 5th respondent in connivance with each other. (Page 79 to 81).

12. The appellants have stated that the Tribunal failed to consider that the acts of oppression and mismanagement were only discovered by the appellants at a later stage, as the Sujit Kumar Das suffered a cerebral attack on 11th May, 2002 and was fully incapacitated and bed ridden till his death on 21st December, 2007 and hence he could not have attended the board meeting held on 28th October, 2002 or any other meeting from 2002(Vol.1 Para V, Pg22: Minutes of Meeting Page 415, Vol.III).

13. The appellants have stated that failing to provide documents for filing Form 32 does not invalidate the appointment of appellant No.3 as director.

14. The appellants have further stated that the respondent have failed to show that the appellants had any knowledge of the acts complained of and, therefore, it could not be said that they have acquiesced to the actions of the respondents company in as much as the late Sujit Kumar Das was fully incapacitated since 11th May, 2002 upto his death on 21st December, 2007 (Vol I Para XI Pg 24).

15. The appellant has stated that the Tribunal failed to appreciate that the Respondents had filed documents purporting to be minutes, notices and postal receipts belatedly after a period of 4 years when the pleadings in the company petition were already complete and arguments had commenced. (Vol.IV Pg 685 also Page 744 -745).

16. The appellants stated that the Tribunal erred in holding that the purported agreement dated 6th May, 1998 is a concluded transaction as there is no record of giving effect to the alleged agreement, more specifically when the Respondent have themselves initiated arbitration for the enforcement of the agreement (Vol.I Para XII Page 24 and Page 302-313, Vol II). It is further stated that the agreement was subsequently terminated by the consent of the parties and such agreement is no longer binding upon the appellants. It is also stated that the 2nd respondent has conveniently relied upon few of the letters issued by Late Sujit Kumar Das and suppressed the other letters issued by him (Para 2(c) Page 4 of rejoinder).

17. The 1st, 2nd and 3rd respondent have filed their reply. Respondents have stated that the authorised share capital of 1st respondent was Rs.5 lacs but paid up capital being Rs.2,28,200/- and no financial institution or bank was ready and willing to give credit facilities to 1st respondent, which was required by it for proper carrying on its business and development, therefore, it was decided to increase the authorised share capital and all notices were duly served and all the meetings were duly held and minutes of such meeting were duly recorded in the relevant minutes book. (Page 697 of Volume IV and Page 78-80 of reply).

18. The Respondents have stated that Notice dated 5.12.2003 was duly sent to the appellants for change of registered office of 1st respondent. The respondents have also attached the postal receipt No.5794 dated 5.12.2003 to prove that the notice was duly sent by registered post to the appellants (Page No.706 and 707 of reply).

19. The respondents have further stated that the new bank account was opened in the same bank but with another branch. The resolution in respect of such change of bank account was duly signed by the appellant No.3 (Page 77 of reply, Annexure B-6 & Page 418-annexure R-9 of Vol.III).

20. The Respondents have stated that Sh Sujit Kumar Das entered into an agreement dated 6th May, 1998 with 2nd and 3rd Respondent for transfer of 941 shares out of total 1141 shares held by him including the 1st appellant at a total consideration of Rs.16 lakhs. The Respondents further stated that Rs.9 lacs were immediately paid by them to Sh Sujit Kumar Das and the balance of Rs.7 lac was to be paid within 36 months. It was also agreed to by and between the said Surjit Kumar Das and the Respondent No.2 that till full amount is paid, the said 941 shares shall be deemed to be under lien and/or mortgaged with the said Sujit Kumar Dass.

21. The Respondents have submitted that although 3rd appellant was appointed an Additional Director of 1st respondent on 28th October, 2002, but as she failed to submit with the company the necessary papers and documents as were required to be submitted, Form No.32 could not be submitted with the Registrar of Company.

22 We have heard the learned counsel for both the parties and perused the entire record.

23. During the course of arguments the appellants argued that No notice for holding AGM or EOGM was served on the appellants relating to the increase of authorised share capital of 1st respondent from Rs.5,00,000/- to Rs.15,00,000/-.

In reply the learned counsel appearing on behalf of 1st, 2nd and 3rd Respondents argued that the authorised share capital of 1st respondent was Rs.5 lacs but paid up capital being Rs.2,28,200/- and no financial institution or bank was ready and willing to give credit facilities to 1st respondent, which was required by it for proper carrying on its business and development, therefore, it was decided to increase the authorised share capital and all notices were duly served and all the meetings were duly held and minutes of such meeting were duly recorded in the relevant minutes book. Learned counsel for Respondents has drawn our attention to Page 697 of Volume IV and also Page 78-80 of reply to prove that the notices were sent and the minutes were duly recorded. Learned counsel for the respondent further argued that the allegation of the appellants is baseless. Learned counsel further argued that if the appellants are so worried about 1st respondent then they had should have offered to infuse the money in the company which they did not offer.

We are of the opinion that the interest of the company is paramount. When the company is in need of funds, the steps to increase the capital cannot be termed as unreasonable. As the notices has been given to the appellant

and the appellants has not expressed their inclination either to subscribe to the additional capital or even pleaded their willingness to acquire the proportionate shares, if offered, therefore we are satisfied that the action to increase the capital is justified.

24. Learned counsel for the appellants further argued that pursuant to the illegal increase in the authorised share capital of the 1st respondent, 12718 shares were illegally allotted and issued to the 2nd, 3rd and 4th respondent.

In reply to this, learned counsel appearing on behalf of the respondents argued that a Meeting of the Board of Directors was called on 20.1.2014 (Page 4 of Additional Affidavit) for which Notice dated 5.1.2004 was duly sent to the appellant (Page 5 of additional affidavit). In the said notice dated 5.1.2004, the agenda for the meeting had five items including to borrow money from M/s Parcon (India) Pvt Ltd, to issue of equity shares, to pledge equity shares of 1st respondent in the name of Sri Anjan Kumar Das to M/s Parcon (India) Pvt Ltd as security. Despite due notice sent to appellants, they did not attend the meeting. As the 1st respondent was in need of funds and 1st respondent was taking advance from M/s Parcon India (Pvt) ltd for ensuring season 2004-2005 and the said company M/s Parcon (India) Pvt Ltd asked for collateral security for the said advance in the form of shares as well as personal guarantee, therefore, in the said Meeting which was held on 20th January, 2004 (Page 6 of additional affidavit), it was resolved to allot 12000 equity shares of Rs.100/- each to Sri Anjan Kumar Das and 418 equity shares of Rs.100/- each to Smt Supriya Das (3rd respondent) and 300 shares of Rs.100/- to Smt Anupama Das. Learned counsel for the respondent argued

that the funds borrowed from the said company were utilised for the benefit and growth of the 1st respondent.

As we have already held in the previous para, the increase in capital of 1st Respondent was justified and the appellants has not expressed their inclination either to subscribe to the additional capital or even pleaded their willingness to acquire the proportionate shares, therefore, it cannot be termed that the allotment was unjustified in the circumstances as explained by Respondents.

25. The appellants further argued that the registered office as well as the bank account of the 1st respondent was changed without his knowledge. It has also been further argued by the appellants that the manipulation in the accounts and records of 1st respondent has been done by 2nd to 5th respondent in connivance with each other.

Learned counsel for the respondent argued that Notice dated 5.12.2003 was duly sent to the appellants for change of registered office of 1st respondent. The respondent have shown the postal receipt No.5794 dated 5.12.2003 to prove that the notice was duly sent by registered post to the appellants (Page No.706 and 707 of reply). The respondents have further stated that the new bank account was opened in the same bank but with another branch. The resolution in respect of such change of bank account was duly signed by the appellant No.3 (Page 77 of reply, Annexure B-6 & Page 418-annexure R-9 of Vol.III). Learned counsel for the respondents further argued that the 2nd respondent was given exclusive power and authority to run the Tea Garden and Head Office in the Board Meeting held on 28th

October, 2002 in which Sujit Kumar Das was also present. Learned counsel for the Respondents further argued that earlier the registered office was being run from the residence of Mr. Sujit Kumar Das and as he was bed ridden, therefore, it was decided to change the registered office and also the bank account at a convenient place.

The appellants have already stated that Sujit Kumar Das suffered a cerebral attack on 11th May, 2002 and was fully incapacitated and bed ridden till his death on 21st December, 2007 and 2nd respondent was given exclusive power and authority to run the Tea Garden and Head Office at his sole discretion in Meeting dated 28th October, 2002 (Page 415 of Vol) in which Sujit Kumar Das was also present. Therefore, 2nd respondent was justified in shifting the registered office and bank account according to his convenience for smooth running of 1st respondent. Further the registered office has been shifted in the same city and the bank account has also been in the same bank but with another branch. Therefore, the shifting of the registered office and bank account cannot be treated as oppressive.

26. Learned counsel for the appellant argued that failing to provide documents for filing Form 32 does not invalidate the appointment of appellant No.3 as director. Learned counsel further argued that the Tribunal failed to take into account the fact that appellant No.3 was removed as Director of 1st respondent without showing any record of service of notice of Board Meetings to 3rd appellants.

Learned counsel for the respondent argued that the 3rd appellant attended the Board Meetings held on 22nd July, 2003, 20th August, 2003 and

5th November, 2003 but did not attend the subsequent consecutive 24 meetings held on various dates as mentioned in reply at Page 8. Learned counsel further argued that in spite of no request received from 3rd appellant for granting leave of absence, her leave of absence was granted. Learned counsel further argued that 3rd appellant did not submit DIN as was required under provisions of Section 266D of Companies Act, 1956 resultant to which no DIN 3 could be filed with the ROC which also debarred 1st respondent from filing form No.32. The same was the position in the case of Sh Sujit Kumar Das who also did not file DIN as per law. Learned counsel argued that in view of the above provisions in the Board Meeting held on 2nd December, 2007 (Page 73 of reply) considering about the consecutive absence of both Sujit Kumar Das and 3rd appellant and also their non-filing of DIN, it was resolved that pursuant to provisions of Section 283(1)(g) of the Companies Act, 1956, the position of Directors in the name of Sujit Kumar Das and 3rd appellant be vacated and the same will not be filled up.

As admitted by the parties that Shri Sujit Kumar Das was bed ridden and was incapable to perform the duties and was not attending the Board Meetings and that the 3rd appellant only attended three board meetings but did not attend the subsequent consecutive 24 meetings, after hearing the parties, we have come to the conclusion that the vacation of the position of the Directors of Sh Sujit Kumar Das and 3rd appellant is as per law.

27. Learned counsel for the appellant argued that upto the death of late of Sujit Kumar Dass as sum of Rs.20000/- p.m. was paid by the 2nd respondent

to the appellant out of the funds of the 1st respondent. The same were stopped only in the year 2008 which made the appellants suspect foul play.

Learned counsel for the respondent argued that registered office of 1st respondent was at the residence of Sujit Kumar Das, in addition to Director's remuneration at the agreed rate of Rs.12000/- p.m., a consolidated sum of Rs.8000/- used to be paid to Sujit Kumar Das on account of rent, electricity and telephone charges totalling a sum of Rs.20000/- p.m. The remuneration payable to Sujit Kumar Das was made payable during the life time of Sujit Kumar Das, who died on 21st December, 2007, till his removal from directorship. Learned counsel argued with the change of registered office, an amount of Rs.8000/- which was being paid as rent etc was stopped. The remuneration of Rs.12000/- on account of Director's remuneration was, however, continued to be paid, the arrears of which was, however, paid to 1st appellant after death of Sujit Kumar Dass. Learned counsel for the respondent argued that inspite of knowledge of the same the appellants have falsely contended and alleged that the appellants were being paid a sum of Rs.20000/- p.m. as maintenance. Learned counsel for Respondents further argued that the appellants having due knowledge about the same, deliberately, intentionally and falsely contended on oath that they had been receiving monthly maintenance @ Rs.20000/-.

After hearing the parties, we have come to the conclusion that it will not be legitimate expectation that the company will continue to pay the fee after the director has died/removed. Further when the registered office has also been shifted then there arises no question that the rent will be paid.

28. Learned counsel for the appellants argued that that the Tribunal erred in holding that the purported agreement dated 6th May, 1998 is a concluded transaction as there is no record of giving effect to the alleged agreement, more specifically when the Respondent have themselves initiated arbitration for the enforcement of the agreement. Learned counsel further argued that the agreement was subsequently terminated by the consent of the parties and such agreement is no longer binding upon the appellants. Learned counsel also argued that that the 2nd respondent has conveniently relied upon few of the letters issued by Late Sujit Kumar Das and suppressed the other letters issued by him.

Learned counsel for the respondents argued that Sh Sujit Kumar Das entered into an agreement dated 6th May, 1998 with 2nd and 3rd Respondent for transfer of 941 shares out of total 1141 shares held by him including the 1st appellant at a total consideration of Rs.16 lakhs. The Respondents further argued that Rs.9 lacs were immediately paid by them to Sh Sujit Kumar Das and the balance of Rs.7lac was to be paid within 36 months. Respondents argued that it was also agreed to by and between the said Sujit Kumar Das and the Respondent No.2 that till full amount is paid, the said 941 shares shall be deemed to be under lien and/or mortgaged with the said Sujit Kumar Dass.

We have heard the parties and perused the record including the Agreement dated 6.5.1998. Clause 7 of the said agreement says as under:

“That if any time hereafter it is found that payment of the balance consideration money of Rs.700001/- (Rupees Seven lakh and one) only or any part thereof has not been paid within the

stipulated period of aforesaid, the shares in proportion to the outstanding amount, as may be during the relevant point of time shall be treated as not transferred and the said shares shall be treated as standing in the name of First Party.”

It is noted that in the agreement it is stated that if Rs.700001/- or any part amount has not been paid within the stipulated period then the shares in proportionate to the outstanding amount will be treated as not transferred. Since the 2nd respondent has not paid the remaining consideration amount of Rs.700001/-, therefore, 2nd respondent is not entitled for 412 shares (941-529 shares). Further, we find that the respondents have complied the orders dated 7.7.2017 of the Tribunal and have sent the shares certificate No.27, 28 and 29 in the name of Sujit Kumar Das to the appellants (Page 103-109 of reply)

29. After hearing the learned counsel for the parties we have come to the conclusion that the appellants have failed to establish the act of oppression and mismanagement.

30. In view of the foregoing discussions, the conclusion drawn by the Tribunal are justified and reasonable. The appellant has failed to establish his case. The appeal is dismissed. The order dated 7th July, 2017 by the National Company Law Tribunal, Kolkata Bench, Kolkata passed in Company Petition No.426/KB/2010 is upheld. No order as to costs.

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

(Mr. Balvinder Singh)
Member (Technical)

Date: 27 -7-2018
New Delhi.