

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION**

Company Appeal (AT) No. 82 of 2017

(arising out of Order dated 10th February 2017 passed by NCLT, Chennai Bench in T.C.P No229 of 229 in C.P.No. 13 of 2015)

M/s MRF Limited and Others

.....Appellants

Vs.

M/s Oriental Insurance Company Ltd. & Ors.

.....Respondents

Present: For Appellants: Mr. Arun Kathpalia, Sr. Advocate with Ms. Surekha Raman and Mr. Anuj Sarma, Advocates.

For Respondents: Mr. Kamal Agarwal, PCS

J U D G E M E N T

SUDHANSU JYOTI MUKHOPADHAYA,J.

Appellants have challenged the order dated 10th February 2017 passed by the National Company Law Tribunal (hereinafter referred to as the Tribunal), Chennai Bench whereby and whereunder the Tribunal disposed the petition preferred by respondent under section 59 of the Companies Act 2013 with following observations and directions: -

“12. It is otherwise a fact that Respondent-I suggested to seek indulgence of the court for obtaining appropriate order. It is also an admitted fact that the shares were in the name of 3rd Respondent, which by the process of trading has gone to Respondent-2 who insured the same with the petitioner and when the

shares were lost he has lodged a police complaint and made a claim against the petitioner. The petitioner, after following the procedure, has settled the claim and made the payment and obtained the subrogation-cum special power of attorney form Respondent-2. In the light of the law of subrogation, the petitioner seems to be entitled to have the shares registered in his name and removal of the name of 3rd Respondent, thereby he will be entitled to get duplicate share certificates with all consequential benefits accrued thereon.

13. *In the light of the above, the Respondent-I is directed to rectify the register of members by entering the name of the petitioner and deleting the name of Respondent-3, then to issue the duplicate share certificate in favour of the petitioner with all consequential benefits accrued thereon. The petitioner is directed to produce all the papers relevant to the case to the Respondent-I along with an indemnity bond within a period of three weeks. Thereafter, within ten days, Respondent-I shall comply with the order. Accordingly, the petition is disposed of.*

2. The relevant facts are as follows:-

The 2nd respondent Sanchit Financial and Management Services Limited claimed to have executed a transaction for sale of 50 shares of MRF

Limited (appellant herein) on 22.02.1996 on behalf of its client viz. Naresh Financial Consultancy through NSE Trading Terminal. The share certificates along with Transfer Deed executed by the Transferor (Rohit Kumar jointly with Ashwani Kumar) had been delivered to the said broker and were to be delivered to NSE for pay-in-dated 11.03.1996. The 2nd Respondent is stated to have realized that the said shares and the transfer deed were missing from their office.

3. 1st Appellant received documents dated 28.03.1996 for transfer of 50 shares contained in share Certificate No.193872 in favour of the 3rd Respondent-Morgan Stanley Asset Management Inc. and after verification, the transfer was put through and the shares were transferred in the name of the 3rd Respondent.

4. 1st Appellant thereafter received an undated letter from the 2nd Respondent stating that Share Certificate No. 193872 containing 50 shares has been lost and requesting the 1st appellant to stop the transfer of 50 shares, and further seeking issuance of duplicate share certificates.

5. The 2nd Respondent was informed by the 1st Appellant that any request for stop transfer or issuance of duplicate share certificates can be entertained only from the 3rd Respondent as the shares are already held in the name of the 3rd Respondent in the records of the 1st Appellant Company and without any appropriate order from a Court of Competent Jurisdiction, such stop transfer could not be entertained.

6. Thereafter, respondents filed a Suit No.3653/1997 in the High Court of Judicature at Bombay inter alia seeking a declaration that the Plaintiff No.2 therein 1st Respondent herein is absolute owner of the equity shares of the 1st

Appellant Company and is entitled to right, title and interest whatsoever in the said shares. An interim injunction to stay the transfer was made absolute. In the said suit a written statement was filed by the 1st Appellant who was 1st Respondent in the above said Suit.

7. Subsequently, by letter dated 5th March 2011 it was admitted by 1st respondent that the civil suit was dismissed for default. Later on suit was restored and transferred from the Hon'ble High Court of Bombay to the City Civil Court at Mumbai on account of valuation of Suit. However, as the Respondents, (Plaintiffs) did not choose to pursue, the suit was again dismissed for default in the year 2014.

8. After delay of about one year the copy of the Company Petition was served on the Appellants by the 1st Respondent stated that the same will be filed on 12.03.2015, but no petition was filed on the said date. Another notice dated 3.10.2015 for filing the petition on 12.10.2015 was once again served by the 1st Respondent but petition again not filed on the said date. Thereafter, The Company Petition was finally filed before erstwhile Company Law Board, Southern Bench seeking rectification Register of Members of the 1st Appellant by inserting the name of the 1st Respondent as a holder of 50 shares of Rs.10/- each by deleting the name of Morgan Stanley Asset Management Inc and issuance of new share certificates in the name of the 1st respondent by cancelling the original share certificates allotted in the Morgan Stanley Asset Management Inc. and to pay all withheld dividend.

9. The 1st respondent, Oriental Insurance Company Limited while claimed entitlement also taken similar plea that the 1st respondent sold an insurance to 2nd respondent and insured them. On 22nd February 1996,

the 2nd respondent executed a trade for sale of 50 shares of MRF Limited on behalf of its client and issued contract note No. NSE/96091. The 2nd respondent found that the said 50 shares are missing and hence filed a police complaint.

10. It was also claimed that by letter dated 3rd April 1996, the 2nd respondent intimated the 1st appellant of loss of shares and requested to stop transfer and to initiate procedure for duplicate shares. The 1st appellant in its turn by letter dated 28th May 1996 intimated the 2nd respondent that the said 50 shares of MRF Limited are standing in the name of Morgan Stanley Asset Management (3rd respondent) and a request for stop transfer and duplicate can be entertained only on receipt of letter from 3rd respondent.

11. Further case of 1st Respondent is that he settled the claim of 2nd Respondent and 2nd Respondent by a letter dated 4th September 1996 and by a Subrogation Form transferred all their rights, title and interest in respect of 50 shares of MRF Ltd. in favour of 1st Respondent. The 1st Respondent thereafter filed a suit for an order that 1st Respondent is owner of 50 shares of MRF Ltd and the company be directed to issue duplicate shares. Hon'ble Bombay High Court passed an injunction order dated 22nd October 1997 and the same was confirmed by the order dated 29th April 1998.

12. The 1st Respondent claimed that he got right and title over 50 shares of MRF Ltd. 1st Respondent by its advisor's letter dated 5th March 2011, requested the 1st Appellant for suggesting the procedure for duplicate shares. It was submitted that a request for duplicate share is a request for

rectification of Register of Members and u/s 59 of the Companies Act, 2013, no notice is required to be sent seeking rectification prior to filing of the Petition.

13. The stand of the 1st Respondent is that as per the 1st Appellant's own letter dated 28th May, 1996, they needed a request from 3rd Respondent/ Morgan Stanley Asset Management for issuance of duplicate share certificate and 3rd Respondent has confirmed their No Objection for transfer of shares in the name of 1st Respondent and therefore there is no real dispute between 1st respondent and 3rd Respondent and the 1st Appellant should have issued duplicate shares to 1st Respondent even without an order from the National Company Law Tribunal.

14. Ld. Counsel for the 1st Respondent submitted that ideally in the case of a petition u/s 58 and 59 of the Act for an order of rectification and transfer, the company (MRF Ltd. in the present case) is an informal party to implement the order of the Hon'ble Tribunal, as it is the claim by and between the transferor / original shareholder (3rd Respondent) and the buyer of shares/ Claimant (1st Respondent).

15. According to Learned Counsel for the 1st Respondent, in view of the above legal position and 3rd Respondent's confirmation of No Objection to 1st Respondent's claim through its CA's email dated 24th November 2015, the Appellants cannot have any grievance and the Appeal is liable to be dismissed.

16. Learned counsel for the appellants assailed the impugned order on the ground that the present case is not one of rectification but is in fact seeking declaration of title to shares and the 1st respondent, insurer of 2nd respondent

has no title to the shares in question and consequently the request for rectification was not maintainable.

17. In this regard it was submitted that original shareholder was Rohit Kumar and Ashwani Kumar through one Naresh Financial Consultancy engaged the services of 2nd respondent as broker to effect transfer of their shares. The broker (2nd respondent) claims to have lost the shares and transfer deeds prior to them being delivered to NSE for pay in date and further claimed to have subrogated the right to such shares to 1st respondent. According to appellants the 1st respondent, Insurance Company after allegedly settled its claim for lost shares, but the 1st and 2nd respondents have failed to produce any communication from the original shareholders. Further, the insurance is in fact not with respect to the shares and transfer deeds, but merely "Stock Brokers Indemnity Insurance" for trading members of National Stock Exchange Limited.

18. Next it was contended by learned counsel for the appellants is that the respondents abandoned their claim of title as made in the suit which were dismissed for default twice and thereafter not restored. It was contended that after about 19 years of so-called loss of shares, the petition under section 59 of the Companies Act 2013 was filed by the respondents.

19. According to Learned counsel for the appellants the law of Limitation Act may not be applicable but Section 111 of the Companies Act 1956 is applicable whereunder a Limitation of two months has been prescribed. Learned counsel for the appellants also contended that if the Limitation Act is applicable then a petition under Section 14 of the Limitation Act could have been preferred by the respondents to show that with bonafide ground they

moved before a court having no jurisdiction. It was submitted that neither petition under Section 14 was filed by the respondents nor the aforesaid conditions were satisfied. 19 years of delay, otherwise has not been explained.

20. It was contended that the respondents had abandoned the claim of rectification as their claim to right, title and interest in shares in question by voluntarily abandoning the suit instituted by them and permitting the same to be dismissed for default. Therefore, the petition under Section 59 at the instance of 1st and 2nd Respondents were not maintainable.

21. According to Respondents, petition under Section 59 of the Act, 2013 can be filed by the persons aggrieved, any member of the company or the company. Counsel for the 1st Respondent further submitted that the aggrieved person's list can include: (i) a transferee whose transfer application is rejected by the company, (ii) a buyer of shares who could not lodge transfer of shares due to loss of shares/ theft, (iii) a share broker who gets possession of share certificate or transfer deed after settling bad delivery claim of client, and (iv) insurance company after settling claim of the client (including share broker).

22. It was further submitted that the Tribunal was only required to see whether such person has any prima facie ground for seeking rectification and can approach the Tribunal for such rectification. Ld. Counsel for the 1st Respondent submitted that 1st Respondent settled the insurance claim of 2nd Respondent for loss of 50 shares of MRF Ltd and the shares were not transferred due to loss of shares.

23. In so far as, dismissal of Suit qua filing of the application under Section 59 of the Companies Act 2013 is concerned, it was submitted that the Suit No. 3653/1997 was filed by 1st Respondent to declare the 1st Respondent as

owner of 50 original shares of MRF Ltd with further direction to transfer the said shares in the name of 1st Respondent. The suit was dismissed for default on 18th January, 2014 due to non-appearance of the Counsel. After dismissal of the suit, the 1st Respondent has two options either to apply for restoration of the Suit or to file an application before the Company Law Board/National Company Law Tribunal for an order of rectification. The 1st Respondent has opted for second alternative. It was further contended that there is no bar in filing a petition under section 111 of the Companies Act, 1956 for rectification, even during pendency of the suit. In that view of the matter, according to the 1st Respondent, the petition under Section 58 and 59 was maintainable even during the pendency of the Suit or after its dismissal.

24. In so far as limitation is concerned, learned counsel for the 1st Respondent submitted that there is no specific period of limitation provided under Companies Act, 1956. Section 433 of the Companies Act 2013 came into force on 1st June 2016, therefore, the said provision is not applicable to petitions filed before 1st June, 2016.

25. In so far as delay is concerned, it was contended that there is no delay and laches on the part of the Respondents. In view of the development that took place, the 1st Respondent moved before the High Court in 1997, which was dismissed finally for default on 18th January 2014.

26. We have heard the Ld. Counsels for the parties and perused the record.

27. The claim of 1st and 2nd Respondent is that 1st Respondent sold the shares to 2nd Respondent on 22nd February, 1996, who executed a trade for sale of 50 shares to MRF Ltd on behalf of its clients and issued contract no. NSE/96091, copy of which has been enclosed. Thereafter, the 2nd Respondent

having lost the shares, lodged complaint on 8th March, 1996. On 3rd April 1996, the matter was intimated to 1st Respondent and police complaint was filed on 11th April, 1996.

28. It has not been disputed, as pleaded by 1st Appellant Company that 50 shares certificates in question were already recorded in the name of 'Morgan Stanley Asset Management' (3rd Respondent). The 1st Appellant received the documents on 28th March 1996 for transfer of 50 shares, containing share certificate no. 193873 in favour of 3rd Respondent and after verification, the transfer was put through and the shares were transferred in the name of 3rd Respondent. The Appellants have specifically pleaded that an undated letter was received from 2nd Respondent stating that the share certificate no. 193872 containing 50 shares have been lost and to stop transfer of said 50 shares. On 28th May 1996, the 1st Appellant informed the 2nd Respondent that a request to stop transfer or issuance of duplicate share certificate can be entertained only from 3rd Respondent, as shares have been already transferred in the name of 3rd Respondent having entered in the records.

29. Though such intimation was given to 2nd Respondent, as back as on 28th May 1996, no challenge was made by 1st or 2nd Respondents against the transfer of shares in the name of 3rd Respondent. No petition was filed, even after 28th May, 1996, under Section 111 of the Companies Act 1956 for rectification of records. After more than one year, Suit No. 3653/1997 was filed by the 1st and 2nd Respondent for declaration that 1st Respondent (Plaintiff no.2) is absolute owner of equity shares of the 1st appellant and is entitled to interest whatsoever in the said shares and interim injunction of the said order passed which was made absolute on 21st April 2005. Prior to the

year 2011, the Suit was dismissed for default for the first time has also been accepted by the 1st Respondent (Plaintiff No.2) by a letter dated 5th March 2011. Later on the suit was restored and transferred from High Court of Bombay to Civil Court, Mumbai but again on account of non-appearance of Plaintiffs the suit was dismissed for default second time on 18th January 2014. Thereafter, 1st and 2nd Respondent, for more than one year did not choose to take any action and filed petition under Section 59 of the Companies Act, 2013 in February 2015.

30. It is true that the Limitation Act, 1963 or Section 433 of the Companies Act 2013 are not applicable in the petition filed under Section 59 prior to 1st June 2016. However, though time limit prescribed under Section 111 of the Companies Act, 1956, the petition was not filed within period prescribed therein. From the facts as pleaded, we find that the 1st Respondent (Plaintiff no.2) abandoned his claim as absolute owner of the equity shares as also his claim for entitlement of right, title and interest whatsoever, the Suit having been dismissed for non-prosecution. Once the claim of the 1st Respondent as the owner is abandoned, after 19 years of so called loss of the shares, the petition under Section 59 cannot be accepted being barred by delay and laches on the part of the 1st and 2nd respondents. The explanation of delay and laches given by 1st Respondent cannot be accepted as he had a right to file a petition for rectification of the record and transfer of the shares as back as in May 1996, when the 1st appellant company intimated that the same has been recorded in the name of 3rd Respondent but they failed to do so and sat tight over the matter for 19 years.

31. Learned Tribunal failed to appreciate that the 1st Respondent abandoned his claim of right and title over the 50 shares in question and there was 19 years' delay on the part of the 1st and 2nd Respondent in preferring the application without properly explaining the delay. Learned Tribunal also failed to appreciate that there was laches on the part of 1st and 2nd Respondent. Learned Tribunal also failed to notice the pleading and prayer as were made by 1st and 2nd respondent was not a pleading of rectification, but in the garb of seeking rectification of record, the respondent sought declaration of title over the shares.

32. For the reasons aforesaid, the impugned order cannot be upheld. We, accordingly, set aside the impugned order dated 10th February 2017 passed by Ld. Tribunal, Chennai Bench in C.P.No.13/2015. The appeal is allowed. 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
21st July, 2017
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