

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION

Company Appeal (AT) No. 53 along with Company Appeal (AT) No.
54 of 2017

Mr. Ashwinkumar Gupta	.Appellant
Vs	
Visagar Polytex Ltd.	Respondent

With

M/s. Sudhirkumar Gupta	.Appellant
Vs.	
Visagar Polytex Limited	Respondent

Present: **For Appellant - Mr. Rahul Chitnis and Mr. Aaditya Pande, Advocates.**

For Respondent- Mr. Kamal Ahuja and Ms. Surbhi Sharda, Advocates.

ORDER

08.05.2017- In both the appeals as common question of law involved and almost similar order(s) passed by the National Company Law Tribunal, Mumbai Bench, Mumbai, in two different sets of Company Petition(s) filed under section 111-A of the Companies Act, 1956, are under challenge, we have heard the cases together and dispose of by this common order.

2. The Appellant(s) preferred their respective Company Petition(s) under section 111-A of the Companies Act, 1956, against Respondent M/s. Visagar Polytex Ltd. (hereinafter referred to as the 'Company') for directing them to issue fresh share certificates on the basis of reduction in face value of shares effected by the Respondent Company with regard to number of shares with folio number submitted by them and also to

direct the company to rectify the Register of Members showing the Appellant(s) as holder of respective shares in place of the original shareholders. The Ld. Tribunal rejected the prayer on different grounds including ground of limitation as the prayer for transfer of shares were made after 17 years in one case and 20 years in another case.

3. The main plea taken by the Appellant(s) is that the Limitation Act is not applicable in a petition under section 111-A of the Companies Act, 1956, which was filed before the erstwhile Company Law Board. It is also submitted that the provisions of Section 433 of the Companies Act, 2013, having come into force on ^{1st} June, 2016, is not applicable to the cases which were preferred prior to the said date.

4. Ld. Counsel appearing on behalf of the Respondent opposed the prayer and also raised question of genuinty of share certificates including the signature(s) of the original shareholders.

5. We have heard Ld. Counsel for the Appellant(s) and Ld. Counsel for the Company. Having noticed the facts that the share certificates purported have been transferred about 17 years to 20 years back, we are of the view that on the basis of the consent given by the original shareholder 17 to 20 years ago, the transfer cannot be effected at this belated stage. In this circumstances, without deciding the question whether the case is barred by limitation or there was delay and latches on the part of Appellant(s), we are of the view that the company should return the share certificates submitted by the respective Appellant(s) within one month. On receipt of such share certificates, if one or the

other Appellant intend to get the shares transfer in their respective name, they may take fresh consent from the original shareholder in the proper format and may renew the prayer for transfer of share(s) in their respective names. However, we were agree with the submissions made on behalf of the Appellant(s) that these were not the cases where cost should have been imposed as has been imposed by the Tribunal. We, accordingly, set aside the part of the respective order(s) by which the Tribunal imposed cost on the Appellant(s).

6. In view of the aforesaid observation and order as recorded above, Ld. Counsel for the Appellant(s) sought permission to withdraw the appeals to enable the Appellant(s) to file fresh application for transfer of share after obtaining consent from original shareholders. Prayer for withdrawal is allowed.

Both the appeals stand disposed of with the aforesaid observations.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member(Technical)

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