

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

I.A. No. 351/2017

IN

Company Appeal (AT) No. 212 of 2017

IN THE MATTER OF:

Infotecnic India Ltd. & Ors.

...Appellants

Versus

Sanjiv Bhavnani & Ors.

...Respondents

Present: For Appellants : Shri Sachin Chopra, Shri Ashutosh Gupta, Shri Suraj Shukla, Advocates

ORDER

27.07.2017 The appellants have preferred an application for condonation of delay of 44 days in preferring the appeal. From the impugned order, we find that the order was pronounced on 23rd March, 2017 and certified copy of the order was prepared on 19th June, 2017. The appellant filed the appeal after the removal of the defects on 30th June, 2017. As per sub-section (3) of Section 421 of the Act, the appeal is to be filed within forty-five days from the communication of the order. As per the said provision, this Appellate Tribunal is empowered to condone delay beyond forty-five days, but not exceeding the period of another forty-five days. In this case, it has not been made clear as to when the impugned order was communicated to the appellants. However, if normal time of

communication is taken as week's time, we find that the appeal has been filed within the extended period of forty-five days. For the reasons aforesaid, the delay of forty-four days in preferring the appeal is condoned.

2. This appeal is directed against the order dated 23rd March, 2017 passed by the National Company Law Tribunal (hereinafter referred to as 'Tribunal'), whereby the application is preferred by the respondents – Sanjiv Bhavnani and others for rectification of the Register of the Shareholders of the 1st appellant company has been allowed with the following observations :

“11. Be that as it may, even assuming that the petitioner may have offered the shares as security, a fact vehemently disputed by them, the respondents did not give any notice to the petitioners to redeem the alleged security, but found it fit to appropriate the shares unto themselves.

12. The argument of the ld. Counsel for the petitioners merits consideration that in absence of compliance of the provisions of Section 108 of the Companies Act, 1956, no valid transfer could be effected. Ld. Counsel submits that there was neither a transfer deed executed, much less witnessed nor any stamp fees paid to support a valid transfer.

The respondents admit that the provisions of Section 108 were not complied with.

13. *There is no gainsaying that the provisions of Section 108 are mandatory to pass on a valid title. Assuming the respondent's case that the petitioner had offered these shares as security, it would have been prudent for them to have accepted the pledge of the shares accompanied by a duly executed transfer deed. The respondents' act of appropriating and transferring the alleged security without giving an opportunity to the petitioners to redeem their liability and without going through the legal process of appropriating the security has vitiated the entire transfer of shares with illegality.*
14. *Further there is no explanation as why the transfer of the immovable asset of Respondent No.1 Company could not be effected by those who took charge and control after petitioner no.1 relinquished his control and charge as the Director. Equally inexplicable is the transfer of the shares of Petitioners 2 & 3 without any authorization from their end and how they were liable to be deprived of the equity held in their personal names. The grievance of Mr. Peeyush Aggarwal and/ or any other person in charge of the affairs of the Respondent Company for non compliance under an agreement could have been enforced, if legally permissible, through specific performance but to transfer the shares, not only of Petitioner no.1, but also of Petitioners 2 & 3, was not in accordance with law. The fact that the shares have been transferred to Respondents 2 and 3, does not vest them with a valid title. The petitioners are therefore entitled to their equity in the Respondent no.1 Company i.e. Petitioner no.1 to the extent of*

2,75,948 shares. Petitioner no.2 to the extent of 23,500 shares and Petitioner no.3 to the extent of 9300 shares.

15. *The respondent no.1 company is directed to rectify its Register of Shareholders and reflect the petitioners as registered owners of their aforesaid shares within the statutory period. Respondent No.1 Company shall also issue requisite share certificate to the petitioners for their respective holdings in accordance with the provisions of law.*
16. *The petitioners would also be entitled to any benefits that may have accrued on their aforesaid equity including dividends, bonus etc. with effect from the date of filing of the petition till the rectification of the Register.”*

3. Learned counsel for the appellant submits that the company petition was time barred. From the impugned order, we find that no such stand was taken on behalf of the appellants before the Tribunal. There is nothing on record to show that the application was barred by limitation, when the company petition was preferred in 2010. In absence of specific pleadings made by the appellants, we cannot hold that there was any laches on the part of the respondents/petitioners and/or delay. For the aforesaid reason, we reject the submissions as made on behalf of the appellant.

4. Next, it is contended that with regard to the same very issue a case is pending before the Hon'ble High Court of Delhi but that cannot be a ground to stay the proceedings before the Tribunal, which is empowered to decide the petition for rectification of the register of the Company.

5. From the impugned order, we find that the learned Tribunal has noticed the relevant facts and dealt with all the arguments advanced by the appellants. We found no ground to differ with the finding given by the learned Tribunal. In the absence of any merit, the appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)