

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI****Company Appeal (AT) No.48 of 2017****IN THE MATTER OF:****Nextgen Dealers Pvt Ltd & Anr****...Appellants****Vs****Agarpara Company Ltd & Ors****...Respondents**

**Present:** **Mr. Virender Ganda, Senior Advocate with Ms Henna George, Ms Shelly Khanna and Mr. Tarun Mehta, Advocates for the Appellants.**  
**Ms Purti Marwaha Gupta, Advocate for Respondent No.1.**  
**Mr. Sandeep S. Deshmukh, Advocates for Respondents No.12,13,14 and 16.**  
**Mr. Neeraj Kumar, Advocate for Respondents No.17 and 18.**  
**Mr. Gaurav Kejriwal with Ms Indrani Mukherjee, Advocate for Agarpara Co Ltd (R-1).**  
**Mr Pranit Ray, Sr. Advocate with Mr. Atanu Mukherjee, Advocate for Respondent No.20 (AJML)**  
**Mr. A.K. Jain, advocate for Respondents No.7 to 11 and 21 to 28.**

**ORDER**

06.04.2017- This appeal has been preferred by the appellant against the order dated 9<sup>th</sup> January, 2017 passed by National Company Law Tribunal, Kolkata Bench, Kolkata (hereinafter referred to as the "Tribunal") in Company Application No.1815/2015 in Company Petition No.43/2014. The Tribunal on the basis of the facts and circumstances of the case held that the petition for

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oppression and mismanagement against 20<sup>th</sup> Respondent is not maintainable and dismissed the company petition as against the 20<sup>th</sup> Respondent.

Learned Counsel for the appellant submits that the 20<sup>th</sup> Respondent is a necessary party in view of the averments made in the company petition and relief sought therein. He highlighted the part of the statement as made in the company petition, which reads as follows:

*“xiii. The petitioners caused enquiries to be made from the MCA portal with regard to the affairs of the company sometime in January, 2014 and came to know of the following facts:*

- a) It appears that the annual Return and balance sheet for the year 2009 was filed with the Registrar of Companies on 5<sup>th</sup> July, 2011 and 6<sup>th</sup> July, 2011 respectively. From the filing, it also appears that an Annual General Meeting was shown to have been held on 29<sup>th</sup> September, 2009.*
- b) A purported balance sheet for the year 2010 was filed on 13<sup>th</sup> August, 2011. Two Annual Returns were filed for the year 2010. From the filing, it appears that the company has shown Annual General Meetings to have been held on the same year on two different dates i.e. 29<sup>th</sup> September, 2010 and 30<sup>th</sup> September, 2010. The balance sheet of 2010 has been filed with the Registrar of Companies with blank attachment.*
- c) The Annual Return has been filed for the year 2011 on 10<sup>th</sup> July, 2013. The filing shows that a purported Annual General Meeting to have been held on 29<sup>th</sup> September, 2011;*
- d) A further Annual Return has been filed in the year 2012 on the same date i.e. 10<sup>th</sup> July, 2013. From the filing it appears that a purported Annual General Meeting has been shown to have been held on 29<sup>th</sup> September, 2012.”*

2. It is submitted that the documents have been antedated and fabricated by the Respondents to create false record of the company. He also relied on the judgement of the Madras High Court in Company Appeal No.10/2009 dated 31.7.2009 to suggest that the question of maintainability should not be decided as the preliminary issue.

3. In the impugned judgement dated 9.1.2017, the Tribunal after going through the relevant facts and hearing of the parties observed as follows:

*“The petitioner in this petition has sought relief in para 8a, 8b, 8c, 8d, 8e, 8f, 8i, 8j, 8k, 8p, 8r and 8s against the respondent No.20 company but it is a clear fact that the petitioner does not hold a single share in respondent No.20 company on the date of presentation of the petition. Therefore, the petitioner lacks requisite qualification as given under Section 399 of the Companies Act, 1956 for presenting a petition against R-20 company. The petition has been filed against R-1 company but all the reliefs have been sought mainly against respondent No.20 company. It is also clear from the facts of the case that R-1 company is not holding company of R-20 company. Therefore, on this basis also, the petition does not get any right to file a petition of oppression and mismanagement against the respondent No.20 company It is also clear from the fact of the case that prior to the petitioner having allegedly acquired shares in R-1 company ceased to be a holding company of R-20. It is also a settled proposition of law that past transactions, particularly those, which have been concluded prior to the*

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*person acquiring a share of the company cannot be challenged by such person. On the above basis, it is clear that the petition is not maintainable against respondent No.20 company and company application deserves to be allowed.*

*Order*

*CA No.1815 of 2015 is allowed and the petition is dismissed as against respondent No.20. Consequential reliefs which have been sought against the respondent No.20 are also denied.”*

4. Heard Learned Counsel for the parties and perused the records. It is not in dispute that the appellant does not hold a single share in 20<sup>th</sup> Respondent company on the date of presentation of the petition. Therefore, the appellant lacks requisite qualification under Section 399 of the Companies Act, 1956 for presenting a petition against 20<sup>th</sup> Respondent Company.

It is also clear that 1<sup>st</sup> appellant company is not the holding company of the 20<sup>th</sup> Respondent company. Therefore, the appellant cannot maintain a petition of oppression and mismanagement against 20<sup>th</sup> Respondent company. In the facts and circumstances, we are not inclined to interfere with the impugned order. The appeal is accordingly dismissed.

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However, taking into consideration the facts that the matter is pending before Tribunal since long we direct the parties to cooperate with the Tribunal for early disposal of the company petition. The Tribunal in its turn is requested to decide the case expeditiously, without granting unnecessary adjournment preferably within a month.

(Justice S.J. Mukhopadhaya)

Chairperson

(Mr. Balvinder Singh)

Member (Technical)

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