

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 56 of 2018

IN THE MATTER OF:

Sanjay Goel

...Appellant

Versus

**Majestic Buildcon Pvt. Ltd.
& Ors.**

...Respondents

Present:

For Appellant : **Mr. Pawan Sharma and Ms. Arpita Yadav, Advocates**

For 1st Respondents: **Mr. Sumant Batra, Mr. Devendra Singh, Advocates**
 Mr. Karighna Jaiswal, CS

O R D E R

21.02.2018 This appeal has been preferred by the appellant (hereinafter referred to as the ‘petitioner’) against the order dated 30th November, 2017 passed by the National Company Law Tribunal, New Delhi Bench (hereinafter referred to as the ‘Tribunal’) in C.P. No. 70(ND)/2017 whereby and whereunder the application preferred by the petitioner under Section 241 read with Section 242 of the Companies Act, 2013 has been rejected on the ground of delay and also on merit.

2. Learned counsel appearing on behalf of the appellant submits that shares were transferred in the year 2007, 2009 and 2010 without following the substantive provision of Articles of Association. Reliance has been placed on Article 11 of Articles of Association, which reads as follows:

“Article 11

“Any member desiring to sell any of his shares must notify the Board of Directors of the number of shares, the fair value and the name of the proposed transferee and the Board must offer to the other shareholders the share offered at the fair value and if the offer is accepted, the shares shall be transferred to the acceptor and if the shares or any of them are not so accepted within one month from the date of notice to the Board the Members proposing transfers shall, at any time within three months afterwards, be at liberty, subject to Articles 12 and 13 hereof, to sell and transfer the shares to any persons at the same or at higher price.

In case of any dispute, regarding the fair value of the share it shall be decided and fixed by the Company’s Auditor whose decision shall be final.”

3. It is submitted that the Tribunal without calling for the relevant records relating to share transfer deeds and share certificate from the respondents and without taking into consideration the facts that there is a continuous cause of

action of alleged illegal transfer of shares dismissed the application on the ground of delay and on merit.

4. We have heard the learned counsel for the appellant and perused the record. Article 11 relates to a member desiring to sell any of his shares, which is required to be notified by the Board of Directors giving the number of shares, fair value and the name(s) of the proposed transferee etc. In the present case, it is alleged that transfer and acquisition of 50,000 shares of 3rd respondent and 90,000 shares of 5th to 9th Respondents in favour of 2nd respondent were illegal and were made without following the procedure. It is further alleged that non-transfer of plot of 300 sq. mt. by 2nd respondent to the 1st respondent company amounts to alleged siphoning of the funds to the said company.

5. It is not in dispute that the shares were transferred by 3rd respondent to 4th respondent in the year 2007. 3rd respondent also sold its share to 4th respondent on 1st June, 2007 as he was unable to pay the subscription money. Those shares subsequently transferred by 4th respondent to 10th to 12th respondents in the year 2009. The transfer of the shares by 3rd respondent to the 4th respondent in the year 2007 could have been objected to at the very threshold particularly when the annual returns were filed by the company for the year 2009, 2010 and 2011 on 5th January, 2012, 11th July, 2012 and 22nd February, 2013 respectively. Admittedly, no action were taken by the appellant and he raised the grievances after about 7 to 10 years of transfer of shares, that too by preferring an application under Section 241 read with Section 242 in the year 2017.

6. Section 433 of the Companies Act, 2013 relates to 'limitation' and reads as follows:

***“Limitation** – The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be.”*

7. In the present case as all the allegations have been made after more than 7 to 10 years of transfer of shares and there is no continuous cause of action, we hold that application under Section 241 read with Section 242 is barred by limitation. For the reasons aforesaid, we are not going into the merit of the allegation as made by the appellant. The appeal is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk