

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL(AT) NO.41 OF 2019

(ARISING OUT OF JUDGEMENT AND ORDER DATED 22.1.2019 PASSED BY THE ADJUDICATING AUTHORITY, NATIONAL COMPANY LAW TRIBUNAL, MUMBAI DIVISION –II IN CP 2440/241-242/MB/2018)

IN THE MATTER OF:

1. Hind Dyes Manufacturing Company Pvt Ltd
L 16, B-3 Sion Sindhi Colony,
Opp S.I.E.S.College, Sion (W)
Mumbai 400022
2. Dipti Umesh Barai
L 16, B-3 Sion Sindhi Colony,
Opp S.I.E.S.College, Sion (W)
Mumbai 400022
3. Rajiv Harendra Chandarana,
L 16, B-3 Sion Sindhi Colony,
Opp S.I.E.S.College, Sion (W)
Mumbai 400022

Appellants

Vs

1. Kanji Bhanji Shah,
6, Dadi House, 1st floor, Irla Society Road,
Vile Parle (W)
Mumbai 400 056
2. Vadilal Kunverji Gada,
301, A Wing, Prathamesh Residency
Dadabhai Road, Opp Bhavans College
Andheri (W),
Mumbai 400056

Respondents

Mr. Arun Kathpalia, Sr Advocate, with Mr. Abhinav Agarwal, Advocates for the appellant.

Mr. Shailendra Singh, Ms Muskaan Garg, Mr. Amit Singh, Mr Manish Malpani, Advocates for Respondent.

JUDGEMENT
(8th JANUARY, 2020)

DR. ASHOK KUMAR MISHRA, MEMBER (TECHNICAL)

This appeal has been filed by the appellant under Section 421 of the Companies Act, 2013 for being aggrieved by the order dated 22nd January 2019 of National Company Law Tribunal (NCLT in short), Mumbai Division II, Mumbai. They are basically aggrieved with the order of NCLT Mumbai in respect of “*not alienate any of the assets of the company until further orders in CP No.2440/241-242/MB/2018*”. Respondent in the present appeal Mr. Kanji Bhanji Shah and Mr. vadilal Kunverji Gada have approached NCLT Mumbai to grant multiple reliefs including not allowing any transfer of shares by the respondent in the main petition until final order is passed by the NCLT; to restore the post of directorship of the petitioner in the main petition (Respondent in appeal) and treat resignation letter dated 21.2.2012 as null and void; to direct the respondent in the main petition (appellant herein) to rectify the register of members, to instruct the respondents in the main petition/appellant, to allow petitioner for inspection of all records maintained by the Respondent Company and copies of the same be provided etc. NCLT have granted only two reliefs vide order dated 22nd January, 2019 and that too only for production of statutory records of the company to the petitioners in the main petition/Respondent for inspection and copy thereof be provided to them, if necessary and second not to alienate any of the assets of the company by the Respondent until further order.

2. The Respondent in the appeal has submitted that they were not provided for inspection of the statutory records of the company inspite of repeated requests by the Respondent in the main petition/appellant in the appeal inspite of various

letters/legal notices dated 11th April, 2018, 30th April, 2018 etc and were provided on 13.2.2019 with the Registry of NCLT Mumbai.

3. The appellant in appeal have stated that the Respondent are not the shareholders of the company and shares they have shown to NCLT Mumbai are forged shares, signature on some of the shares are forged signatures and no seal of the company. They are also alleging that the Tribunal have failed to appreciate that there was no share transfer agreement and there was no share transfer form signed by the Respondents and no consideration were passed. They are alleging for some forged signatures on some of the certificates Page 10 para L of the appeal. The appellants have also made their submission that the Respondent in the appeal, no doubt, were appointed as director of the appellant company in December, 2010 but resigned from the company in February, 2012 and they are not holding any qualifications shares and unable to get any shares within the prescribed time limit. It is also revealed that the Respondent in the appeal have filed a complaint before ROC on 22nd April, 2016 and the said complaint was closed by ROC on 6th November, 2017. It is also observed from the submissions made by the appellant that the disputed question of facts may be examined by the Civil Court and not by the Tribunal and have placed certain citation of Hon'ble Supreme Court of India and CLB.

4. Respondent in the appeal have submitted that application for transfer of shares dated 3.6.2011 was sent to the appellant No.1 company which was duly acknowledged as received on 4.6.2011 by the company representative alongwith rubber stamp. The Respondent in the appeal were never ever access to the records maintained at registered office of the company. The appellant have misguided and misrepresented the respondent for over four years and have taken their signatures

on various documents conveying respondent that they are still directors of the company and the respondent realised about this in 2016 about all this fraudulent act including removal as director from company. They filed a complaint to the ROC in 2016, not getting the disposition in his favour, have approached the Tribunal for redressal of their grievance. They were also carrying the original share certificates subject to verification by the Tribunal. The grievance is of continuous nature and hence being a continuous cause of action they have not gone out of the limitation period as prescribed under the law of limitation.

5. We have gone through the various documents furnished by the appellant and the respondent including various submissions made, citation provided and have observed following:-

- No doubt certain share certificates carries two directors signatures excluding authorised signatory and signatures on back side transfer of shares is also signed by one authorised signatory and sometime by two authorised signatories.
- In any case appellant itself is telling that some of the share certificates are forged, page 10 para L of the appeal.
- The Tribunal has not passed any final order in its order dated 22.1.2019 and has fixed next date of hearing also.
- We have also seen that they are complying with a criteria of Section 241 to 244 as they are holding shares.
- Any member of a company can redress their relief in cases of oppression vide Chapter XVI of the Companies Act, 2013. NCLT order not to alienate the assets of the company is till further order only.

6. Hence we do not find any need or merit to interfere with the order and the appellant are free to make their submissions before the NCLT. Hence the appeal is dismissed. No order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi

Bm/