

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeals (AT) No.51 of 2017**

**IN THE MATTER OF:**

**South Asia Human Rights Documentation Centre Pvt Ltd & Or.**

**...Appellants**

**Vs**

**Suhas Chakma & Anr**

**...Respondents**

**Present: Shri Ashok Agarwal with Mr. Anuj Kapoor, Advocates for the Appellants.**

**Shri Nitesh Kumar Singh with Ms Neha, Advocates for Respondent Ni.1**

**ORDER**

17.04.2017- This appeal has been preferred by the appellants against the order dated 21.11.2016 passed by the National Company Law Tribunal, New Delhi Bench (hereinafter referred to as the 'Tribunal') in Company Petition No.4(ND) of 2012.

The 1<sup>st</sup> Respondent, Suhas Chakma filed the petition under Sections 397 and 398 read with Section 111 of the Companies Act, 1956 before the erstwhile Company Law Board alleging oppression and mismanagement by the appellants/respondents. It was alleged that the respondent illegally transferred 1<sup>st</sup> respondent's/petitioner's shares to 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent/petitioner prayed to declare the transfer of petitioner's share in favour of 2<sup>nd</sup> respondent as illegal, null and void and for restoration of his shares and for consequential rectification of register of the members of the company.

The Tribunal after hearing the parties and on perusal of the record came to the conclusion that transfer of shares of 1<sup>st</sup> respondent/petitioner in favour of 2<sup>nd</sup> respondent as fraudulent and sham.

The appellant has challenged the impugned order mainly on the ground that the finding of the Tribunal that the transfer of shares of 1<sup>st</sup> Respondent in favour of 2<sup>nd</sup> Respondent as fraudulent is not based on record and is perverse. Learned Counsel appearing on behalf of the appellant submitted that number of evidence were brought on record, including Annual Return filed with the Registrar of Companies, to show that the 50% share of the 1<sup>st</sup> respondent/petitioner was transferred in favour of the 2<sup>nd</sup> respondent as back as in May, 2003. It is further contended that inspite of the knowledge the 1<sup>st</sup> respondent/petitioner never assailed the transfer in favour of the 2<sup>nd</sup> respondent and moved before the Tribunal after long delay. According to the appellants, Annual Returns filed with the Registrar of Companies are documents supposed to be known to all the shareholders, and inspite of the knowledge of the same the 1<sup>st</sup> respondent never challenged the same.

Learned Counsel for the 1<sup>st</sup> respondent/petitioner opposed the stand taken by the appellant. The 2<sup>nd</sup> respondent, Mr.Vittal Rao, in whose favour it was alleged that the shares were fraudulently transferred has not appeared to oppose the judgement.

We have heard the Learned Counsel for the parties and perused the record. From the impugned order, we find that the Learned Tribunal discussing all

aspects in detail, by a well reasoned judgement decided the case as is evident from relevant portion of the judgement as quoted below:

*“The detail of the respondents and the averments contained in the counter are to the following effect and are material for the adjudication on this point:-*

*“The petitioner transferred his shares voluntarily to Mr Vittal Rao, i.e. Respondent No.2 herein and received a consideration of Rs.50,000/- in cash. It is submitted that the transfer of the shares had been done properly by the Respondent No.1 and recorded in the books in the ordinary course of business. Being a private limited closely held company with two shareholders, the Respondent Company, after a period of seven years of the transfer of the shares, has not preserved the said records as it was not required to under any statute to maintain the same for certain number of years. Hence, the attempt of the Petitioner to now claim rights based on the same and that too after an unexplained delay of about five years is clearly misconceived and deserves no consideration.”*

*Again in paragraph 6.28 at page 28 of the reply of the respondents as a counter to petitioner's allegations in paragraph 6.28 relating to the fraudulent and illegal transfer of shares of the petitioner, it is averred as follows:*

*“That the contents of corresponding para are wrong and denied. It is submitted that the Petitioner had voluntarily transferred his shareholding in the Respondent No.1 to Mr. Vittal Rao, the Respondent No.2. It is denied that there has been any falsification of the records or that the same has not been done with the sole intention and purpose of defrauding the petitioner or to deny him his rights as the 50% shareholder of the company or to get consequential control over the company's affairs, management, etc. It is denied that the conduct of the Respondents is prima facie mala fide, fraudulent or oppressive on the Petitioner or that the Petitioner continues to hold 50% shares of the company. That the contents of the Preliminary Objections and Submissions are reiterated herein.”*

*From the above it is clear that the respondents despite the claim of a valid transfer of shares by the petitioner has failed to substantiate the same with the production of shares transfer forms and the specified share certificates/letter of allotment in question and rather had tried to take shelter under the provisions of Section 163 of the Companies Act, 1956 and the Companies (Preservation and Disposal of Records) Rules 1966 to contend that the transfer of shares had been done properly by the Respondent No.1 and recorded in the ordinary course of business and that the respondent company being a private company, did not have onus to preserve documents other than those required by law to be so preserved by it."*

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*"In the instant case whether the respondents have fulfilled the burden of proof in support of the entries made in the Annual Returns in relation to the transfer of shares of the petitioner to the 2<sup>nd</sup> respondent, particularly when the said entries are under challenge, we are of the view that the respondents have not, for the following reasons:-*

- a) Prima facie, the Annual Returns on which they seek to rely, in the absence of other mandatory records to establish the transfer of 500 equity shares of the petitioner to the 2<sup>nd</sup> respondent, is in itself no conclusive about the actual date of transfer, as in the Annual Returns, despite being a column present, they have failed to give the actual date of transfer and hence no credence at all can be given to the Annual Returns as a document evidencing the share transfer as claimed by the respondents.*
- b) Neither the share transfer form duly executed by the petitioner in favour of the 2<sup>nd</sup> respondent and the share certificates/letter of allotment which are required to be submitted alongwith the share transfer form as mandated under the provisions of Section 108 of the Companies Act, 1956 as well as under Article 8 of the Articles of Association of the Company have been produced by the respondents to demonstrate conclusiveness of the alleged share transfer, which forces us to draw an adverse inference against the respondents about the transfer of shares of the petitioner as claimed by them;*
- c) Even though the transferee (namely the 2<sup>nd</sup> respondent herein) happens to have signed alongwith the other respondents and verified the reply statement including the averments of voluntary transfer by the petitioner to the 2<sup>nd</sup> respondent for valuable*

*consideration of Rs.50,000/- as is evident from the portions extracted in the paragraphs above, the 2<sup>nd</sup> respondent by way of an affidavit dated 28.07.2015 filed under the directions of the CLB subsequently has resiled from statements made in reply to the petitioner, thereby resulting in approbation and reprobation on the part of the 2<sup>nd</sup> respondent, rendering the entire transaction of transfer of shares itself into question and as a sham done for mala fide and ulterior motives;*

- d) *Further there is no proof produced for the payment of consideration of the alleged Rs.50,000/-even though it is claimed that the same had been paid in cash. However, no valid receipt has been produced obviously thereby the transfer, even if any as claimed by the respondents, being hit by Section 25 of the Contract Act particularly in the absence of any written agreement on the part of the petitioner.*

*The onus of proving that the shares have been indeed transferred by the petitioner for valuable consideration is on the respondents. We are really appalled by the attitude of respondents in claiming that in the absence of any statutory provisions, they are not required to maintain the relevant records when the company is a private limited company like the 1<sup>st</sup> respondent.”*

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*“The annual returns filed by the respondents for the year 2002-2003 is ought to be relied on as prima facie evidence as already seen, for the purpose of proving the share transfer which, however, does not provide the actual date of transfer, which is of the own making of the respondents themselves. Hence in the absence of a date of transaction alleged by the respondents to reckon the commencement of three year period, the date of knowledge becomes material and in the instant case it is contended by the petitioner that he became aware that he has not been shown as a shareholder, only from November/December, 2006 and that only in February 2007 of the alleged illegal and fraudulent transfers, after perusing the annual returns based on inspection. The respondents have not been able to rebut through any documentary evidence other than claiming that since the annual returns have been regularly filed it should be imputed that the petitioner had the knowledge of the transaction of share transfer in 2003 itself and hence should have come within the prescribed period which he had failed to do. We are unable to purchase the argument of the respondents*

*for the simple reason that in the absence of any definite date of transaction reflected even in their own record, namely the annual return or for that matter as rightly contended by the petitioner even in the pleadings, the date of knowledge becomes material for the purpose of reckoning the period of limitation and since the petitioner has been filed within 3 years from the date of knowledge i.e. in the year 2007 and as the instant petition is only a continuum of the earlier CP 67 of 2007, we hold that the petition has been filed within the period of limitation and hence maintainable.”*

In view of the specific and well reasoned judgement given by the Tribunal and in absence of any specific date of transfer of shares in favour of 2<sup>nd</sup> respondent, we find no ground to interfere with the impugned judgement. The appeal is dismissed. However, in the facts and circumstances there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Mr. Balvinder Singh)  
Member (Technical)