

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 408 of 2018

[Arising out of Order dated 16.10.2018 passed by the National Company Law Tribunal, Bengaluru Bench, Bengaluru in C.P. No. 1 of 2016 (T.P. No. 96 of 2016)].

IN THE MATTER OF:

**M/s Vintage Hotels Private Limited
Rep. by its Managing Director,
No. 9, Mission Road,
Bangalore – 560027
Karnataka.**

...Appellant No. 1

**Mr. Kunhibi Layinchirapurakkal Saithumada
Managing Director,
M/s Vintage Hotels Private Limited
Padhoor House, Thekkil PO
Kasaragod,
Kerala – 671541.**

.....Appellant No. 2

Versus

**Mr. Ahamed Nizar Moideen Kunhi Kunhimahin
Flat No. M-77, 7th Floor,
Diamond District Apartments,
Old Airport Road,
Kodihalli, Bangalore
Karnataka – 560008.**

...Respondent

Present:

**For Appellant: Mr. M.S. Krishnan, Sr. Advocate with Mr. Mayilsamy.K.
Advocates**

For Respondent: Mr. Judy James, Advocate

J U D G M E N T

Venugopal M. J

Background

The Appellants have filed the present Company Appeal being aggrieved with the order dated 16.10.2018 passed by the 'National Company Law Tribunal', Bengaluru Bench, Bengaluru in C.P. No. 1 of 2016 (T.P. No. 96 of 2016] filed by the Respondent whereby and whereunder the Company petition was allowed by issuance of setting aside the letter dated 30.10.2015 and resultantly certain directions were issued.

2. The 'National Company Law Tribunal', Bengaluru Bench, Bengaluru while passing the impugned order dated 16.10.2018 after bearing in mind the facts and circumstances of the case and also by taking into consideration of Law came to the conclusion that the action of Appellants / Respondent in refusing to effect impugned shares in favour of the Respondent/ Petitioner was arbitrary and unjustifiable one and consequently allowed the Company Petition by issuing the following directions:-

*“1) We hereby set aside
letter dated 30.10.2015 directing the
respondents to register the transfer of
20,000 equity shares of Mr. T.Shahul*

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Hameed (Registered Folio No. 14) in the name of the Petitioner with effect from lodgement of share transfer request on 13.08.2015;

2) *Directed the respondents to rectify the register of shareholders by incorporating the name of the Petitioner in place of Mr. T. Shahul Hameed in respect of 20,000 equity shares (Registered Folio No. 14);*

3) *Directed the respondents to register the transfer of 12,500 equity shares of Mr. P.A. Ibrahim Haji (Registered Folio No. 06) in the name of the Petitioner with effect from lodgement of share transfer request on 13.08.2015);*

4) *Directed the respondents to rectify the register of shareholders by incorporating the name of the Petitioner in place of Mr. P.A. Ibrahim Haji in*

*respect of 12,500 equity shares
(Registered Folio No. 06), etc.”*

5) The Petitioner is directed to submit all necessary documents as sought by the Company, within a period of three weeks from the date of receipt of copy of this Order, and thereafter, the Company is directed to comply the directions as mentioned above, within a period of three weeks thereafter.

6) The petitioner is entitled for all consequential benefits by virtue of transfer of above shares.

7) No order as to costs.”

Appellant’s Contentions

3. The Learned Counsel for the Appellants submits that the impugned order passed by the ‘National Company Law Tribunal’, Bengaluru Bench, Bengaluru dated 16.10.2018 is bad in Law and further that the Tribunal had decided the matter erroneously without reference to the admitted documents and not taking into consideration of the pleadings of the case.

4. The Learned Counsel for the Appellants contends that the Tribunal had ignored the statutory provisions under Section 56 of the Companies Act, 2013, the mandatory requirement for a person to maintain a petition viz. that the duly executed 'Transfer Deed' is to be accompanied with the 'Original Share Certificate' while seeking transfer of shares. Moreover, inspite of such valid submission of documents, the company does not have power to register the transfer of shares.

5. It is the stand of the Appellants that the 'Transfer Form' submitted had not disclosed the '*share certificate no.*', '*folio no.*', '*distinctive numbers of the shares*' purportedly purchased. As a matter of fact, the 'Transfer Deed' had not mentioned the name and address of the 'Transferee'. Also, that the said Deed was not attested by any witnesses, being a mandatory requirement. In fact, 'Original Share Certificates' were not enclosed to the purported 'Share Transfer Form'. Even the purported affidavit said to have been executed by the 'Original Share Holder' does not contain the details of the '*share certificate no.*', '*folio no.*', '*distinctive numbers of shares*'.

6. The plea taken on behalf of the Appellants is that the Tribunal had not considered the letter dated 30.10.2015 which was communicated to the Respondent by the Appellant mentioning non-receipt of share certificate, which is mandatory for 'transfer of shares'. Apart from that, the Tribunal failed to consider the Rule 6 of the Companies (Share Capital and Debentures) Rules, 2014 which speaks of 'issue of renewed or duplicate share certificate'.

7. In the absence of share certificate enclosed to the share transfer deed and the share transfer deed duly filled up which is a mandatory requirement under Section 56 of the Companies Act, 2013, the Company could by no stretch of imagination assume that any shares were transferred. In the present case, the share transfer form submitted is blank and does not disclose the description of the shares (distinctive nos., number of shares, folio no., name of the transferee and his address).

8. The Learned Counsel for the Appellants comes out with an argument that the Tribunal had failed to appreciate the law laid down in **'Muniyamma' V. 'Arathi Cine Enterprises Pvt. Ltd.'**, ILR, 1992, Karnataka page 1262 wherein it was observed that unless share transfer form duly stamped and executed by the transferor was submitted along with original share certificate, the transfer cannot be registered by the Company.

9. The Learned Counsel for the Appellants points out that in the decision of **Hon'ble Supreme Court** in **'Bajaj Auto Ltd.' V. 'N.K. Firodia'** 1971 41 **Company Cases at page 1** it is observed that "If the Articles permits the Directors to decline to register a transfer of shares without stating the reasons, the Court would not draw unfavourable inferences against the Directors because they had not given reasons. In other words, the Court will assume that the Directors acted reasonably and bonafide and those alleging to the contrary would have to prove and establish the same by evidence".

10. The Learned Counsel for the Appellants strenuously points out that the 'Transferor' in the present case, should have obtained duplicate share certificate as envisaged under Rule 6(2)(a) of the Companies (Share Capital and Debentures) Rules, 2014 and thereafter sold the shares.

11. The Learned Counsel for the Appellants takes a stand that the sole intention of the Respondent is to dismantle the Company as he was creating several problems for the Appellant Company and their Directors for number of years and that for the welfare of the Appellant Company, the letter dated 30.10.2015 was issued.

12. It is represented on behalf of the Appellants that the Tribunal had not considered Article 5 of the 'Articles of Association' of the Company and Section 56 of the Companies Act, 2013. Also, it is projected on the side of the Appellants that the impugned order is a perverse and arbitrary, biased one and also against the principles of natural justice. The interest of the Appellant Company and its shareholders had not been protected and that the impugned order had resulted in miscarriage of justice.

13. The Learned Counsel for the Appellants brings to the notice of this Tribunal that the 'transferor' had not reported about the loss of the original share certificate to the company at any point of time and in fact the 'transferor' had himself admitted the same in 'Share Purchase Agreement' dated 10.04.2015 and

30.06.2015. In fact, in the said ‘Share Purchase Agreement’ dated 30.06.2015 as well as in the said agreement dated 10.04.2015 it is mentioned as under: -

“the seller hereby declares that the original share certificate in respect of above-mentioned share has been lost and hereby requested to the Company to issue new share certificate in the name of the Purchaser.”

14. In this connection, the Learned Counsel for the Appellants submits that a reading in the aforesaid undertaking would categorically establish the fact that the “Transferor” had not earlier applied for issuance of duplicate share certificate with the Company nor informed the loss of the share certificate with the Company and indeed, he had entered into ‘Share Purchase Agreement’ without the ‘Original Share Certificate’ or ‘Letter of Allotment of Shares’ with the Respondent.

15. The Learned Counsel for the Appellants contends that a ‘Transferor’ had not lodged any police complaint regarding the loss of share certificate and even the paper publication was with respect to the alleged purchase made by the Respondent.

The Appellants Decisions

16. In the decision of **Hon'ble Supreme Court** in '**Manna Lal Khetan and Others' V. 'Kedar Nath Khetan and Others'** reported in 1977 2 Supreme Court cases at page 424 at special page 429 wherein in paragraph 16 it is observed as under: -

“16. The provision contained in Section 108 of the Act states that a company shall not register a transfer of shares.....unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee.....has been delivered to the company along with the certificate relating to the shares or debentures.....or if no such certificate is in existence along with the letter of allotment of the shares.

There are two provisos to Section 108 of the Act. We are not concerned with the first proviso in these appeals. The second proviso states that nothing in this section

shall prejudice any power of the company to register as shareholder or debenture holder any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in, or debentures of the company has been transmitted by operation of law. The words “shall not register” are mandatory in operation of law. The words “shall not register” are mandatory in character. The mandatory character is strengthened by the negative form of the language. The prohibition against transfer without complying with the language is worded to emphasised by the negative language. Negative language is worded to emphasise the insistence of compliance with the provisions of the Act. (See State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga’: 1952 SCR 889, 988-989; K Pentiah v. Muddala Veeramallappa (1961) 2 SCR 295, 308

and unreported decision dated April 28, 1976 in Criminal Appeal 279 of 1975 and Additional District Magistrate, Jabapur v. Shivakant Shukla (1976) 2 SCC page 521 Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statutory provision imperative.”

17. In the decision of **Hon’ble Supreme Court** in **‘Claude-Lila Parulekar’ (SMT) V. ‘Sakal Papers (P) Ltd. and Ors.’** (2005) 11 Supreme Court Cases at page 73 at special page 74 it is observed that the ‘Articles of Association’ constitute a contract not merely between shareholders and company but between individual shareholders also and further that the ‘Articles’ are a source of power of Directors, who can as a result exercise only those powers conferred by the ‘Articles’ in accordance therewith and added further, any action referable to the ‘Articles’ and contrary thereto would be ultra vires.

18. Also, in the aforesaid decision, it is observed that Section 108 of the Companies Act, 1956 is of ‘mandatory nature’ and also at page 100 of the said decision at paragraph 58 it is observed as under: -

“58. The power to act by majority qua executors and authorizing someone to act as a shareholder on

another's behalf are distinct. There is no question of transferring shares by signature of a majority. Whatever the agreement between the executors was inter se, the agreement could not override the provisions of the Companies Act; and under Section 108 the Company is bound to recognise only those transfers for the purpose of registration which are executed in terms of that section. It is true that they were in fact executors, and that, with regard to the beneficiaries mentioned in the Will, they would be trustees of the stock, but the Company does not take notice of any trust, and must act in accordance with the Act of Parliament, under which it is constituted, with regard to placing persons upon the register. (See Barton v. London and North Western Rly. Co.) 16(1889)24QBD 77: 62 LT 164(CA)."

19. In the decision of **Hon'ble Supreme Court** in '**John Tinson & Co. Pvt. Ltd. & Ors.**' V. '**Surjeet Malhan (Mrs) and Another**' (1997) 9 Supreme Court Cases at page 651 at special page 654 wherein at paragraph 7 it is observed as under:-

“7. The next question is whether the transfer of the shares held by Mr B.K. Malhan is valid in law. In that behalf clause (8) of the Articles of Association is relevant. It is now a well-settled legal position that Articles of Association of a private company is a contract between the parties. Clause (8) reads that: “No transfer of any share in the capital of the company shall be made or registered without the previous sanction of the Directors....” It is an admitted position that no previous sanction has been obtained from the Directors for transfer of the shares held by Mr. Malhan. Shri Lekhi contends that Mr. Malhan being the only Director, since his father had already resigned and he had entrusted the shares

to the appellant, Bhagat, there is a resigned and he had entrusted the shares to the appellant, Bhagat, there is a transfer in the eye of law. We are unable to agree with the learned counsel. The concept of previous sanction of the Directors connotes that there should be a written resolution accepting the transfer from Mr. Malhan in favour of Bhagat and such previous sanction should be preceded by handing over of the shares. In this case, such an action was not done and, therefore, even the transfer of the shares held by Mr Malhan in favour of the appellant is not valid in law. The Division Bench of the High Court, therefore, was right in granting the decree as prayed for.”

Respondent's Submissions

20. The Learned Counsel for the Respondent contends that the Respondent purchased 20,000 and 12,500 shares from (i) Shahul Hameed and (ii) PA Ibrahim Hazi on 10.04.2015 for a total consideration of Rs. 39,15,000/- and on 30.06.2015 for a total consideration of Rs. 24,46,875/- respectively in accordance with Law. Further, the 'Transferors' on 10.04.2015 and 30.06.2015 through their respective

'Indemnity Bonds' given to the Respondent had requested the Board to issue 'Duplicate Share Certificates' and also affirmed that the 'Original Share Certificates' were confirmed to be lost and untraceable.

21. The Learned Counsel for the Respondent submits that the Respondent through request dated 13.08.2015 and reminders dated 15.09.2015 and 29.10.2015 requested the Board to register the transfer of shares in his name, in accordance with Law. Indeed, the Respondent in his correspondences sought the Board's intervention and further asked the Board to suggest any further legal compliances to effect the transfer of shares to which the Board never bothered to reply and that the Board refused to issue 'Duplicate Share Certificates' in accordance with Rule 6(2) of the Companies (Share Capital and Debentures) Rules, 2014 inspite of the requests made by the transferors.

22. According to the Respondent on 30.10.2015, the Board after considering the request of the Respondent mischievously rejected the request for transfer of shares by providing frivolous and vague reasons viz. that the Respondent had not attended certain Board Meetings, and that he had alleged allegations of criminal nature against the Directors of the Board and finally, Share Certificates were not enclosed with the 'Share Transfer Form' as required under Article 6 of the 'Articles of Association' dated 31.12.1991. In fact, the Board with a mischievous design had ignored the requests of the transferors made on 10.04.2015 and 30.06.2015 and rejected the request for transfer. The Board, has approached this Tribunal with an uncleaned hand.

23. The Learned Counsel for the Respondent brings to the notice of this Tribunal that the 'Articles of Association' was radically and materially altered and that a search report was directed by this Tribunal on 27.03.2019 and 16.05.2019 to be filed along with a copy of the 'Articles of Association'. From the search report, it came to light that the 'Articles of Association' never underwent any change and that the "Articles of Association" submitted in support of the present Appeal never existed and that the Appellants had no option but to admit that no such document ever existed.

24. According to the Respondent, the Board should have communicated the 'Notice of Refusal' to both the 'Transferor' or 'Transferee' in terms of ingredients of Section 58(1) of the Companies Act, 2013 read with Article 6 of the 'Articles of Association'. However, in the present case, no notice of refusal was ever communicated to the transferors and, therefore, the Appellants had partially admitted to the transfer of shares qua the transferor and in part refused to rectify the register of shares qua the Respondent which smacks of malafides. Also, that the Board had rejected the requests of transfer of shares without even investigating the evidence produced.

25. It is the contention of the Learned Counsel for the Respondent that the Board should have followed the procedure as per Rule 6(2)(a) of the Companies (Share Capital and Debenture) Rules in accordance with Law before refusing to register the shares in the name of Respondent by citing private disputes between the Respondent and his family members. Besides this, the specified procedure as per

Rule 6(2)(a) of the Companies (Share Capital and Debentures) Rules, 2014 for lost or destroyed share certificates mentions the following before issuance of a duplicate share certificate i.e. (i) furnishing supporting evidence and (ii) indemnity and (iii) payment of out of pocket expenses incurred by the company in investigating the evidence produced.

26. The Learned Counsel for the Respondent points out that the Respondent was deprived of his rightful share in the rental income (approx. Rs. 30 Lakhs per month received by the Company accrued in the past five years).

Bird's-Eye View

27. In every transfer of 'Shares' there is a change of owner of shares in all relevant records and it is necessary to complete the formalities relating to 'Shares Transfer' without which transfer is incomplete. In the decision 'Lyle & Scott Ltd.' (1960) 30 Company cases 30 (HL) the Court held that 'transferring a share involves series of steps (i) an Agreement to sell (ii) Execution of Deed and transfer and (iii) registration of transfer. 'Shares' are 'Goods' as defined in 'Sale of Goods Act' and can be transferred like any other movable property subject to the provisions contained in the 'Articles of Association' and the Companies Act. The word 'Transfer' employed in Section 108 of the Companies Act, 1956 Act refers to a transfer between persons pursuant to a voluntary act. Only when the 'transferee's' name is registered in Company's register, right to property is perfected.

28. A company can register the transfer on such terms as to the 'Indemnity' as the Board may consider fit. In case of undelivered instruments or lost instruments registration is possible if the 'Transferee' agrees to give 'Indemnity Bond' or security on such terms as the Board may decide. By getting his name registered in the 'Register of Members', the 'Transferee' only perfects his title to the shares and is entitled in his own right to claim all the privileges which were previously claimed by the 'Transferor' in his name as per decision '**Kellick Nixon Ltd.' V. 'Dhanraj Mills (P) Ltd.' (1983) 54 Comp cas 432 (Bom).**

29. At this stage, this Tribunal worth recalls and recollects the decision '**Colonial Bank' V. 'Hepworth' (1887) 36 ChD 36 at p 54** wherein it is observed that till the transfer of shares is actually registered, the transferee's title to the share is actually inchoate and the legal title remains vested in the transferor.

30. This Tribunal aptly points out the decision '**Hindustan Dorr Oliver Ltd.' V. 'A.K. Menon' (1994) 80 Comp cas 384 (Bom)** wherein it is observed that an owner of shares can follow the shares even into the hands of a bonafide purchaser for value. The term 'transfer' is used in regard to inter vivos transfer as per decision '**Hemendra Prasad Barooah' V. 'Bahdur Tea Co. P. Ltd.' (1991) 70 Comp cas p 792 (Guwahati).**

31. Till the stage of execution of 'transfer' all that is made is to pass an equitable interest in the shares to the 'Transferee'. In reality, there is no completion of legal assignment. Even when the 'Board of Directors' accepts the transfer and passes it

for registration of transfers in records, the 'transfer' is not completed. Until the actual entry of transferee's name was effected in the company's register, the 'transferor' remains the legal holder of shares as per decision '**Copal Varnish Co. Ltd.**' In re reported in (1917) Ch.D 349.

Assessment

32. It comes to be known that the Respondent / Petitioner in C.P. No. 1 of 2016 (T.P. No. 96 of 2016] had averred that he is an existing shareholder and also one of the Directors of the First Appellant / First Respondent Company. It transpires from the contents of affidavit of 'T. Shahul Hameed' dated 10.04.2015 that he was holding 20,000 equity shares of Rs. 100/- each of the First Appellant (M/s Vintage Hotels P. Ltd.), Bangalore and that he had transferred the aforesaid shares to 'Mr. Ahamed Nizar Moideen Kunhi Kunhimahin' of Kerala and further that the 'Share Certificates' were lost or mislaid and were not in his possession.

33. Further, the deponent of 'Affidavit' (T. Shahul Hameed) had averred that he had searched or caused searches to be made for the said certificates, but even after careful and diligent search, he was unable to find out or trace the same and, therefore, made a request to the First Appellant / First Respondent to issue duplicate share certificates in lieu of the original share certificates in the name of 'Mr. Ahamed Nizar Moideen Kunhi Kunhimahin'.

34. Added further, the 'Share Purchase Agreement' executed on 10.04.2015 between 'Mr. Ahamed Nizar Moideen Kunhi Kunhimahin' (purchaser) and T. Shahul Hameed' (seller) shows that the seller being a shareholder of the First

Appellant / Company holding 20,000 equity shares of Rs. 100/- each presently valued at Rs. 195.75/- per share and he desired to sell his aforementioned shares and that the intention of the parties was that upon the consummation of the sale and the purchase of the shares pursuant to the agreement, the purchaser shall own the extent of share purchased in the share capital of the Company together with all the rights, economic value and benefits pertaining thereto. In fact, the covenant of the share purchase agreement dated 10.04.2015 proceeded to mention that the seller had agreed to sell to the purchaser and the purchaser had agreed to purchase from the seller the shareholding in the company for the purchase consideration. The purchase consideration was Rs. 39,15,000/- which was paid through cheque bearing No. 212425 drawn on Federal Bank, Kasaragod branch.

35. More importantly, the aforesaid share agreement specifies that the seller had agreed to submit to the First Appellant / First Respondent the share transfer form duly executed and stamped after the expiry of seven days from the date of execution of the agreement. It was declared that 'original share certificate' in respect of the above-mentioned shares were lost and it was requested to the company to issue new share certificate in the name of purchaser (Respondent / Petitioner). The purchaser had agreed to sign the transfer form enabling the seller to submit the same to the First Appellant / First Respondent.

36. It is brought to the fore that an 'Agreement' was executed on 30.06.2015 between the Respondent / Petitioner (purchaser) and 'P.A. Ibrahim Hazi' (seller)

towards the sale of 12,500 equity shares of Rs. 100/- each for a total consideration of Rs. 24,46,875/- which was paid through cheque No. 212432 dated 30.06.2015 drawn on Federal Bank, Kasaragod branch. Besides this, on 27.03.2015, an affidavit was executed by the transferor wherein a request was made for an issuance of duplicate share certificates in the name of the Respondent / Petitioner, since the original share certificates were lost or mislaid or not in possession and further that was unable to find out or trace the same.

37. That apart, on 13.08.2015 the Respondent / Petitioner addressed a communication to the Board of Directors of the First Appellant / First Respondent where a plea was made to transfer shares of 20,000 (regd. Folio no. 14) purchased from T. Shahul Hameed' and 12,500 equity shares purchased from 'P.A. Ibrahim Hazi' (Regd. Folio No. 06) by duly enclosing the completed share transfer form in Form No. SH-4 together with share transfer agreement etc. and later reminders dated 15.09.2015 and 29.10.2015 were issued.

38. There is no two opinion of the fact that Article 5 of the 'Articles of Association' enjoins that 'Original Share Certificates' is to be enclosed with 'Share Transfer Form'. At the same time, it cannot be brushed aside that the 'Transferors' had furnished 'Sworn Affidavits' / Indemnity Bonds mentioning in clear cut terms that the 'Original Share Certificates' were lost and that a plea was made to the company for issuance of duplicate share certificates directly to the Respondent / Petitioner.

39. It is to be pointed out that the power to issue 'Duplicate Shares' is with the Board of Directors of the Company and the same may be issued if such certificate is established to have been lost or destroyed or torn or mutilated or was defaced and is surrendered to the Company. Further, the refusal order of the Board of a Company to issue 'Duplicate Shares' can be assailed before the Tribunal when the powers of the Board was improperly exercised, although there is absence of provision in the Companies Act for a 'Tribunal' to issue necessary directions to the Board of a Company to issue the 'Duplicate Shares' in question.

40. It cannot be forgotten that Section 46 of the Companies Act provides that the 'Register of Members' is the *prima facie* evidence of any matters that the Law directs or authorises to be entered in the Register. Further, the Companies Act treats the 'Register of Members' only as prima facie evidence and not the conclusive evidence of the entries therein as per decision '**Reese River Silver Mining Co. Ltd.' V. 'Smith' (1869) LR HL 64.**

41. In the decision '**Ramdas Chakrabati' V. 'Official Liquidator, Cotton Ginning Company' reported in ILR 1887(9) All 366** it is held that a 'Register' may not be considered conclusive evidence, particularly if other papers filed by the plaintiff contradict the 'Register', even though the defendant does not let in any evidence.

42. In this connection, it is worth to point out that Section 88 of the Companies Act, 2013 enjoins that every Company shall keep and maintain register of members for each class of equity and preference shares, the register of debenture

holders and register of any other security holders. According to Rule 3(1) of the Management Administration Rules, 2014 every Company limited by shares shall, from the date of registration, maintain a register of its members in Form No. MGT-1.

43. The First Appellant / First Respondent/Company through its communication dated 30.10.2015 addressed to the Respondent / Petitioner had rejected the request for transfer of the shares in question specifying reasons: -

(i) that the Respondent / Petitioner, as one of the Directors of the Company have a fiduciary duty to act in accordance with the best interest of the company and further that created all kinds of hurdles in the working of the company and indented flimsy excuses and avoided attending Board meeting even though some of these board meetings had been postponed based on his express requests; and

(ii) that the Respondent / Petitioner had made serious allegations of criminal nature against the Company's other Directors and in such circumstances

acquiring additional shares is deemed detrimental to the interests of the Company. Furthermore, it was mentioned that the share certificates were not enclosed with the share transfer form as required under Article 6 and as such the right of the transfer to make the transfer is yet to be established and by exercising the power conferred under 'Articles of Association' of the Company, the request to register the transfer of share was declined.

44. It is to be noted that the power to refuse registration of shares can be exercised by the Directors of the Company if the 'Articles of Association' do contain specific powers for such refusal. However, the rider is the reasons for refusal to register the shares must be legitimate, notwithstanding the fact that 'powers of refusal' are conferred in the 'Articles of Association'.

45. It is to be borne in mind that if the Directors had assigned reasons for their refusal to register 'Transfer of Shares' then, the Tribunal is empowered to evaluate / scrutinise as to whether the said reasons are legitimate and that

where the Directors had committed mistake(s) and in fact, their action(s) can be displaced / set at naught to avoid serious miscarriage of justice.

46. In Law, a Company has no inherent power to refuse the transfer of shares and its registration so as to leave the matter in the hands of Company or its Directors at will. To put it succinctly, the discretionary power to refuse 'Transfer of Shares' is not to be resorted to in a deliberate, arbitrary, fraudulent, ingenious or capricious fashion. As a matter of fact, the Directors are to exercise their discretion in good faith and to act in the interest of company. The Directors are to give due weightage to shareholder's right to transfer his share.

47. The 'Tribunal' has wide powers in dealing with an 'Appeal' to refuse to register the transfer of shares. Section 58(5) of the Companies Act, 2013 says that the Tribunal may, after hearing the parties, may dismiss or order directing the transfer or transmission shall be registered by the Company and the Company shall comply with such order within ten days. Further, the 'Tribunal' has power to direct rectification of the register or direct the Company to pay damages to any party 'aggrieved'.

48. The specific case of the Appellant is that in the 'Share Transfer Form' SH-4 furnished by the Respondent, the distinctive number of the share was not mentioned, corresponding certificate numbers were not mentioned, witness signature and name was not found, the Transferee's details was not mentioned. Further, the 'Allotment Letter' or the 'Original Share Certificate' was not enclosed

with the share transfer form. Continuing further, the Transferor signature is to be attested by the 'Notary Public' and in the present case the same is absent.

49. On the side of Respondent, it is contended that the Board of Directors had not issued the duplicate share certificates even though request was made by the transferors on 10.04.2015 and 30.06.2015. Further, the Respondent cannot have details without the original certificates and the notice of refusal was given only to transferor and not to both the 'Transferor' and 'Transferee'.

50. It is the version of the Respondent that the Appellants' 'Grounds of Appeal' and the 'Questions of Law' are based on non-existent 'Articles of Association' dated 18.02.1992 which is a forged and fabricated document with a view to mislead this Tribunal in reversing the findings of the impugned order. For the fraudulent acts committed by the Company and its Directors an investigation is to be ordered and a direction for filing of criminal complaint under the provisions of the Companies Act is to be issued, in the interest of justice.

51. In the instant case the Respondent had furnished the Indemnity Bonds / Sworn Affidavit to the effect that they had lost the original share certificates and that the first Appellant / Company was requested for issuance of 'Duplicate Share Certificates' to the Respondent / Petitioner since the shares were sold. When the original share certificates were lost / mislaid / untraceable, it is not prudent for the Appellants to insist upon the production of original share certificates in question to effect the transfer of shares, as opined by this Tribunal. Besides this, the other reasons projected on behalf of the Appellants that just

because the Respondent / Petitioner had filed numerous criminal / civil cases and that he was not attending the 'Board Meetings' and he would create problems for smooth functioning of affairs of the Company will not hold water and they are unworthy of acceptance in the considered opinion of this Appellate Tribunal.

52. Even after the requests made on 10.04.2015 and 30.06.2015, the Board of Directors of the Company had not issued the 'Duplicate Share Certificates' and this is clearly an adverse circumstance which goes against the Appellants. The non-reporting of the loss of the share certificates by the 'Transferor' either with the First Appellant / Company or to the concerned police before the transfer of shares to the Respondent will not affect the case of the Respondent / Petitioner.

53. Be that as it may, in view of the foregoing discussions and taking into consideration of the facts and circumstances of the present case in a holistic fashion, especially in the teeth of rejection of transfer of shares through letter dated 30.10.2015 mentioning two reasons therein, this Tribunal without any simmering doubt holds that they are clearly unsustainable in the eye of Law and hence, the said letter dated 30.10.2015 was set aside in the impugned order, by the National Company Law Tribunal, Bengaluru Bench, Bengaluru. In short, the impugned order of the Tribunal dated 16.10.2018 whereby and whereunder the directions issued as mentioned in para 2 of this judgement is free from legal infirmities. Consequently, the Appeal fails.

Result

In fine, the Appeal is dismissed. No costs. I.A. No. 2017/2018 is closed.

54. The Respondent / Petitioner is directed to furnish all necessary / relevant documents required by the First Appellant / Company within three weeks from the date of receipt of copy of this judgement. Subsequently, the First Appellant / Company is directed to fulfill with the directions issued in the impugned order of 'National Company Law Tribunal', Bengaluru Bench, Bengaluru in C.P. No. 1 of 2016 (T.P. No. 96 of 2016) within three weeks thereafter.

**[Justice Venugopal. M]
Member (Judicial)**

**[Dr. Alok Srivastava]
Member (Technical)**

NEW DELHI

12th November, 2020

SS