

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**NEW DELHI**

**Company Appeal (AT) No. 90 of 2017**

**SN Santosh Kumar**

**.... Appellant**

**Vs.**

**S.Martin & Anr.**

**.... Respondents**

**Present: For Appellants: - Mr. Vipul Kumar, Advocate**

**For Respondents: Mr. Karan Khanna & Mr. Saurabh  
Kalia, Advocate for R-1  
Ms. Kataria, Advocate for R-2**

**07.04.2017-** The Petitioner/1<sup>st</sup> respondent, S.Martin filed petition under Section 111 A of the Companies Act 1956 before the erstwhile Company Law Board for direction to respondent Akshaya Textiles Limited (hereinafter referred to as 'Company' for short) to rectify the register of members by making the entry of the name of the petitioner/1<sup>st</sup> respondent in whose favour 5,40,000 shares had been transferred. Prayer was also made to remove the name of the 2<sup>nd</sup> respondent (appellant herein ).

2. After constitution of National Company Law Tribunal, (hereinafter referred to as the 'Tribunal'), case was transferred to Chennai Bench of the Tribunal

3. Before the Tribunal, the appellant moved an application under Article 39 of the NCLT Rules 2016 for seeking permission to adduce evidence to prove the 'undue influence' in relation to the transaction that had taken place on

19<sup>th</sup> November 2005 wherein the appellants 5,45,000 shares were transferred to the petitioner/1<sup>st</sup> respondent.

4. The Tribunal, by impugned judgement dated 23<sup>rd</sup> March 2017 in TCP/215/2016 disposed of the Company Petition rejecting the prayer of the appellant and allowing the petition in favour of the petitioner/1<sup>st</sup> respondent with following observations: -

*“The counter has been filed by R2 wherein he has pleaded that his father acted in good faith and knowing fully well the nature of transaction has affixed his signatures on the Memorandum of Understanding dated 14.11.2005 followed by Sale agreement dated 19.11.2005 by which the shares of R2 including the shares of the others have been transferred in favour of the petitioner. The petitioner has paid consideration for all the shares by way of Demand Drafts and some of the DDS were also handed over to R2 directly and R2 has directly handed over the share certificates to the petitioner. The only objection that has been raised by R2 in this matter is the 'undue influence' stating that his father has been a party to the MOU and the Sale Agreement dated 19.11.2005 and due to his father's undue influence he transferred his shares to the petitioner. It is on record that R2, right from 14.11.2005 and 19.11.2005 has not taken any step to get the Sale Agreement dated 19.11.2005 set aside. This shows that he, by way of acquiescence, has agreed to the transfer of his shares as per the Agreement that has been entered into*

*between his father and the petitioner on 19.11.2005. R2 has also admitted that he has received the DDS, but believing the same being repayment of the loan, has got those DDS encashed, but he did not explain anything about any loan. Moreover, in the counter filed by him in the present matter, he has not pleaded that there has been involvement of element of undue influence of his father pertaining to the transfer of his shares to the petitioner. Having heard both the sides and perusal of the records placed on file, we are not inclined to accept the application moved under Rule 39 of NCLT Rules 2016. For allowing R2 to prove the element of 'undue influence' that is stated to have been made by his father in relation to the transaction in question, it is not possible for this Tribunal to try the petition filed under Section 11 IA of the Companies Act, 1956 as a regular suit, because the same can be done by the Civil court, if the petitioner desires so, but he never approached the civil court. Moreover, he has not pleaded the element of undue influence in his reply and belatedly moved the application under Rule 39 of NCLT Rules 2016, which stands rejected. If at all there would have been any grievance of R2 to the transaction under question, he had every right as an affected party to move the appropriate forum to get the Agreement in question set aside, but he has not chosen so.*



*In the light of the above discussions, we allow the petition filed under Section 111A of the Companies Act, 1956 and direct R1 to rectify the register of members by making the entry of the name of the petitioner in whose favour 5,40,000 shares have been transferred and remove the name of R2 therefrom. Accordingly, the petition is disposed of. Pronounced in the open court.”*

5. Learned counsel appearing on behalf of the appellant took similar plea that by ‘undue influence’ of his father he had to sign in the form of transfer and the shares certificates. It is also submitted that the MOU was reached between his father and the petitioner/1<sup>st</sup> respondent who paid the consideration amount to his father. A suggestion is made that the appellant was not signatory to the MOU.

6. However, it is expected that appellant was one of the witness of the MOU.

7. Learned counsel for the appellant submits that his father earlier moved before District Court in ‘Suit No. OS No. 635/2009’ taking similar plea of ‘undue influence’ but it was dismissed by First Additional District Judge and Fast Track Court No. 1. It is further submitted that his father most probably had filed an appeal before the High Court, but the appellant has no specific knowledge. However, we do not intend to make any observation with regard to the judgement and decree passed by the Civil Court as we have no such jurisdiction.

8. Admittedly, the petition was filed by petitioner/1<sup>st</sup> respondent under Section 111 A of the Companies Act 1956, for directing the company to rectify

the register of the company. At the instance of the respondent of the company petition, the Tribunal had no jurisdiction to decide the issue whether there was any element of 'undue influence' in execution of the MOU reached between the parties in which appellant was the witness.

9. In the circumstances and in the absence of any merit we are not inclined to interfere with the impugned order. The appeal is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Mr. Balvinder Singh)  
Member(Technical)

sm