

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
COMPANY APPEAL(AT) NO.247 OF 2018

(ARISING OUT OF JUDGEMENT AND ORDER DATED 02.05.2018 PASSED BY THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH AT MUMBAI IN C.P.NO.45/111A/MB/2011).

IN THE MATTER OF:

Smt. Akula Nagalaxmi
W/o Gopuri Shankar
Archana Dresses, Subash Road,
Kamareddy Town, Nizamabad Distt
Andhra Pradesh- 503111

Appellant

Vs

1. M/s.Crompton Greaves Ltd
CG House, Dr.annie Besant Road,
Worli, Mumbai 400030
Represented by its Managing Director
Sri S.M.Trehan
2. Rupesh K Sanghvi
Broadway Avenue
A10/24 RNA Complex, Mira Road,
Mumbai 401107
3. M/s Zen Securities Ltd
101 Vijayasree Apartments
Nagarjuna Nagar Colony
Hyderabad 500007

Respondents

Present:

Mr. Narender Singh Yadav, Advocate for Appellant.
Mr Shankh Sengupta and Ms Jojongandha Ray, Advocates for R1.

JUDGEMENT

(30th January, 2020)

Dr. Ashok Kumar Mishra, Technical Member

The present appeal has been filed under Section 421 of the Companies Act, 2013 against the impugned order dated 02.05.2018 passed by National Company Law Tribunal, Mumbai Bench, Mumbai in CP No.45/111A/MB/2011. The relief sought by the Appellant is to set aside and/or quash the impugned order dated 02.05.2018 passed by the NCLT Mumbai; to direct the Respondent No.1 to register the transfer of 700 shares in the name of Appellant and also issue original share certificates in the name of the Appellant and also to rectify the Register of Members by entering the name of the Appellant with a holding of 700 shares in the Register of Members. The Appellant has further sought relief to pay and give all corporate benefits including all dividends accrued in the past and all such dues against the shares of the Appellant.

2. The brief history of the case what has been submitted by the Appellant are as follows:

3. The Appellant had purchased shares through M/s Zen Securities Ltd, Hyderabad both in her name and also in the name of her husband against bill No.3119 dated 23.4.1998, No.23080 dated 09.10.1997 and bill No.5207 dated 07.05.1998 through National Stock Exchange. Both husband Mr. Gauri Shankar and wife Mrs. Akula Nagalaxmi, the Appellant forwarded 1450 shares in the same envelop to Respondent No.1 through Sanchar Courier for transfer in the name of Appellant and her husband on 30.5.1998 vide Courier consignment Note No. L115288. Thereafter the Appellant sent several reminders to Respondent No.1 for transfer of shares in her name. Thereafter the Appellant

had issued a legal notice on 12th March, 1999. They have also submitted that similar case with her husband has happened where they originally transferred only 50 shares and thereafter the rest of the 700 shares have been transferred after going through several litigations from Company Law Board, Hon'ble High Court to Hon'ble Supreme Court. Thus 750 shares were transferred in the name of Appellant's husband. Mr. Gauri Shankar filed Company Petition No.69/2008 before Company Law Board, Mumbai and the same was disposed off in his favour and on 28th September, 2010 directing Crompton Greaves Limited i.e. Respondent No.1 to issue share certificates for 750 shares and also put a cost of Rs.25000/- on the Respondent to be paid to the petitioner. The cost was stayed at the superior court but in any case the matter travelled from Junior Civil Judge Kamareddy to Hon'ble High Court and thereafter to Hon'ble Supreme Court but finally the transfer has been effected.

4. Similarly in this case also the Appellant has filed Civil Suit in the court of Junior Civil Judge, Kamareddy, being OS No.73/1999 for declaration that the Appellant is the lawful owner of shares and for direction to effect transfer of shares in her name. The Appellant was decreed Ex-parte by the aforesaid court vide order dated 31st January, 2000. Thereafter Respondent No.1 filed petition to set aside the ex parte decree passed I.A No. 288 of 2006 in O.S No.73/1999 and the same was dismissed on the ground of delay 2611 days on 18th July, 2006 by the Principal Junior Civil Judge of Kamareddy. Whereas the Hon'ble High Court of Andhra Pradesh by an order in Civil Revision No.4758 of 2006 allowed the said CRP (Civil Revision Petition) and set aside the ex parte order passed on OS No.73/1999 and the Hon'ble Supreme Court dismissed the Special

Leave Petition filed by the Appellant against the order of Hon'ble High Court of Andhra Pradesh setting aside the ex parte decree.

5. The Appellant had also alleged that thereafter the matter was placed before the NCLT Mumbai as the case was transferred from Company Law Board and they have placed all the relevant orders in respect of her husband before the Learned Tribunal and they have considered the issue and dismissed the petition on the ground of limitation and complicated question of facts which can only be decided by Civil Court. Hence the Appellant has filed the present appeal.

6. We have gone through the facts of the case. It is being observed that the NCLT has basically dismissed the petition as the shares were dematerialised and it has been transferred in the name of number of persons whereas they have made only Respondent No.2 i.e. Rupesh.K.Sanghvi as party Respondent. The NCLT is also of the view that they should have made all the transferee as on the date as Respondents which result into misjoinder of parties. Hence accordingly NCLT considered the issue as of ownership of shares and hence decided that the proper forum for deciding the title to shares is only a Civil Court and not a Tribunal.

7. Respondent No.2 has not been represented in this case inspite of serving notice through newspapers and other way as confirmed by the petitioner on 21.1.2019. Thereafter the case was listed on several dates viz. 06.02.2019, 18.02.2019, 13.03.2019, 29.03.2019, 25.04.2019 01.05.2019, 07.05.2019 17.05.2019, 11.07.2019, 19.07.2019, 14.08.2019, 02.09.2019, 13.09.2019, 01.10.2019, 25.10.2019, 25.11.2019, 03.12.2019, 09.12.2019 & 09.01.2020 but the counsel for the Respondent No.2 has not appeared. The question is not

here relating to ownership of shares but relating to transfer of shares or its rejection.

8. The steps involved in this case was when the shares were purchased through Respondent No.3 i.e. M/s.Zen Securities Ltd., both by husband and wife were sent in the same envelop through courier and initially they have transferred only 50 shares in husband case and based on further orders Respondent No.1 have transferred the entire shares. In case the Respondent No.1 has not received those shares they should have responded to the Appellant at that very time during 1998 which has not been done by and 150 shares in the meantime they have put under "stop transfer". Now the individual who has purchased the shares is trying hard from 1998 to get the shares transferred and what has been raised by the NCLT that the matter to be adjudicated by appropriate Civil Court. Now NCLT is appropriate court and NCLAT is the appropriate Appellate Authority. This reflect the attitude of the Respondent No.1 by not intimating to the Appellant at least to provide the document if they have not received instead of approaching various courts and putting mental agony and hardship to the Appellant. The Appellant has provided the details of certificate numbers, registered folio of all these shares and the company should have responded immediately in 1998 if they have not received those shares. No action was taken by the company for few years and suddenly went into litigation in various courts. All this suggest that the individual has sent the shares for transfer and accordingly we direct the Respondent No.1 to transfer the shares to Appellant after taking requisite declaration, indemnity bond and relevant papers and thereafter to issue shares with consequential benefit in accordance with law.

9. With these observations the case is disposed off and no other relief is considered. No order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi
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