

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 208 of 2017

IN THE MATTER OF:

- 1. Nirakar Dash,**
S/o Late Nakul Chandra Dash,
R/o 20/15, Vidyapati Road (B-Zone),
Durgapur- 713205
- 2. Tulsi Rani Das,**
W/o Nitai Chandra Das,
R/o Q. No. -25/8, Joydev Avenue (B-Zone)
Durgapur- 713205
- 3. Sagarika Das,**
W/o Subhas Chandra Das,
R/o Q. No. 26 P.C. Road, (B-Zone),
Durgapur- 713205
- 4. Alok Ranjan Routh Roy,**
S/o Late Sachidananda Routh Roy,
R/o 13/6 Vidyapati Road, (B-Zone),
Durgapur- 713205
- 5. Ram Suresh Yadav,**
S/o Late Sitaram Prasad Yadav,
13/10 Vidyapati Road, (B-Zone),
Durgapur- 713205
- 6. Biswajit Nanda,**
S/o Kedarnath Nanda
R/o 6/15 Kriti Bash Road,
P.O.- Durgapur, Burdwan-713205
- 7. Gangadhar Ghosh,**
S/o Bani Kumar Ghosh,
R/o Village- Kalikapur,
Post- Pratappur, Durgapur-713204,
Burdwan, West Bengal.

...Appellants

Versus

1. **Durgapur Bio Garden Private Limited,**
Having its registered office at
4/2, Bidyapati Road, B-Zone,
Durgapur-713205
Burdwan, West Bengal
2. **Lina Paine,**
W/o Adhirendra Kumar Paine
3. **Adhirendra Kumar Paine,**
S/o Late Kanai Lal Paine,
4. **Achinta Paine,**
S/o Adhirendra Kumar Paine
5. **Ashanta Paine,**
S/o Adhirendra Kumar Paine
6. **Ananta Paine,**
S/o Adhirendra Kumar Paine

All are residing at 4/2, Bidyapati Road,
B-Zone, Durgapur- 713205
Burdawan, West Bengal

...Respondents

Present:

For Appellants: **Ms. Purti Marwaha, Ms. Henna George and
Shri Arvind Kumar Advocates**

For Respondents: **Shri S. Murarka, Shri A. Nagee, Shri S.
Sarkar, Shri Siddhartha, Shri Abhijit Nagee,
Company Secretaries.**

Judgement

(3rd November, 2017)

A.I.S. Cheema, J:

This Company Appeal has been filed against the impugned order dated
23rd March, 2017 passed by National Company Law Tribunal, Kolkata Bench

in Company Petition No. 57/2015, whereby the company petition filed by these Appellants was dismissed.

2. The Appellants claim to be shareholders of Respondent No. 1 Company-M/s Durgapur Bio Garden Private Limited. They claim to have been locked out of the Company (although they are still having in their possession their original shares) as the Respondents started claiming that as far as back in 2007, they had transferred their shares in favour of the Respondents.

3. The Appellants no. 1 to 6 (hereinafter referred as Petitioners/Appellants) filed Company Petition initially before the Company Law Board, Kolkata Bench, Kolkata and arrayed Respondents No. 1 to 6 and Appellant No. 7 as the Respondents therein. The Petitioners filed the original petition invoking Sections 111, 235, 397, 398, 402, 403, 406 and 407 of the Companies Act, 1956 (hereinafter referred to as '**Old Act**'). Sections 58, 59 & 201 of the Companies Act, 2013 (hereinafter referred to as '**New Act**') were also invoked. The Appellants claimed that the Respondents should be directed to rectify the Register of the Members of the Company by incorporating the name of the Petitioners as shareholders. They claimed oppression and mismanagement by the Respondents. Tracing the history, the Petitioners claimed that the Petitioners and Respondent no. 2,3 & 7 & Shri Utpal Mazumdar, Shri Kingshuk Mazumdar and Ms. Shikha Roy decided to carry out agricultural business in partnership. This led to the company being incorporated on 13.12.2002 with Petitioner nos. 1 to 5 and Respondent nos. 2,3 & 6 and Shri Utpal Mazumdar, Shri Kingshuk Mazumdar and Ms. Shikha Roy subscribing

to the shares as mentioned in the petition. The Petitioners then gave details as to how some of the members left the company and transferred shares. The petition gives details as to how the properties were acquired for the purpose of the company and things were normal till 31.03.2005. It is then claimed that sometime in December 2014, the Petitioners received notice dated 15.11.2014 from lawyers of ASREC India Ltd. informing that they had been substituted in place of Axis Bank in the proceeding pending before the Debt Recovery Tribunal – following the assignment of their debts by Axis Bank to their client. According to the Petitioners after such receipt of notice, when they looked into the affairs, they were not entertained by the Respondents who started claiming that they were no longer shareholders or directors of the company and that they had resigned from Board of the Company. The original Petitioners claimed that each of them had 5125 Equity Shares. They had not transferred any share to the Respondent nos. 2 to 6 and still were in custody of the original shares and they had not resigned. They hold 75% of valid, issued and subscribed and paid up share capital of the company.

4. Paragraph-6.29 of the original petition claimed that searches were made in the Register of the Companies after such developments and it was found that purported annual returns of the company for the year 31.03.2006 to 31.03.2012 had been filed on 17.04.2013. Audited balance sheet and accounts for the year ending 31.03.2006 and 31.03.2009 had been filed on 14.04.2010. The audited balance sheet and accounts for the financial year ending 31.03.2010 had been filed on 17.04.2013. The same

for year ending 31.03.2011 has been filed on 04.05.2013. The Petitioners claimed that the Respondent No. 2 had filed Form No. 32 on 07.01.2008 recording the purported appointment of the Respondent no. 4 as Director w.e.f. 07.01.2008. The Petitioners gave further details of mismanagement and claimed that they have not resigned as was being claimed by Respondents no. 2 to 6 who had perpetuated fraud on the company and fraudulent annual returns had been filed. The Respondents had behaved in oppressive manner and mismanaged affairs of the Company. The Petitioners inter alia prayed for declaration that the Board Meetings after 13.03.2013 be declared illegal and null and void and to declare that they were still shareholders having 30,750 shares and to declare that the Respondent nos. 3 to 6 were not shareholders. Further reliefs were also claimed.

5. Against this, the Respondents claimed that the Petitioners had no locus standi as they were not shareholders anymore and the petition was barred by limitation/delay and latches. The Respondents claimed that the Petitioners had resigned on 28.03.2007 and other allegations were also denied. The Respondents produced resignation letters, receipt of payment against the transfer of shares containing original signatures of the Petitioners.

6. The matter came up before learned National Company Law Tribunal, Kolkata (hereinafter referred to as '**NCLT**') and considering the rival claims, learned NCLT held that when the Petitioners are seeking direction to declare

all meetings after 2005 illegal, null & void, then why they kept silent so long. It referred and concluded that as prayer 9(d) was made in the petition to declare all general meetings held after 09.09.2005 as illegal, null and void (in which the Petitioners claimed they were not present) amounted to “admission” that the cause of action arose in 2005. It found that even if compliance of Section 108 of the ‘Old Act’ was wanting, when Petitioners were party to the alienation, they cannot claim that transfer of shares was bad in law when the signatures on the transfer forms are admitted. The NCLT picked up part of sentences from different parts of the petition and invoked Section 113 of the Limitation Act 1963, (which applies to suits) to hold that the matter was time barred. The NCLT reasoned that even if it was to be stated that Limitation Act did not apply, it would be a case of delay and latches. The NCLT went on to repeat that it was “admitted” that the date of knowledge was in 2005-06 and reliefs under Sections 397 and 398 of the ‘Old Act’ related to equitable jurisdiction and the Petitioners were not entitled to equity as according to the NCLT, the Petitioners had not come with clean hands. The NCLT went on to dismiss the petition.

7. When the Appellants came up before this Appellate Tribunal, the learned Counsel for the Appellants no. 1 to 6/ original Petitioners and original Respondent no. 7 who joined as Appellant here, submitted that the Appellants continued to hold original share certificates even today and the Respondents illegally claimed that the shares had been transferred to them. It is and even under section 108 of the Old Act it was necessary that the

original share certificate should be submitted along with transfer form in order to effect the transfer. The Counsel claimed that Section 108 of the 'Old Act' (now Section 56 of the 'New Act') had not been followed. The alleged share transfer forms and receipts produced by the Respondents are defective, incomplete and do not contain even the name of the Respondent no. 1-company nor folio numbers nor serial numbers nor the number of shares. It has been submitted that provision of Section 108 of the 'Old Act' were mandatory in order to protect the shareholders from fraudulent acts of clever operators. The Respondents were not able to produce even single share certificate. The Appellants are poor farmers and filed the Company Petition in 2015 challenging the various acts of oppression and mismanagement by the respondents. They came to know about the oppression and mismanagement from lawyers of ASREC India Ltd in 2014 and when they searched the MCA portal, the real facts were revealed. Form-32 had been filed regarding transfer of their shares and purported resignation from respondent No. 1- Company. Learned counsel for the Appellants pointed out from the records as to the manner in which the Respondents had prepared various forms which were incomplete but were being relied on in order to deprive the appellants of their rights as shareholders of the company. According to the learned counsel for the Appellants, the Respondents fabricated the resignation letters as well as annual returns and balance sheets. According to her, the period of limitation would run only from the date the fraud and illegalities came to the knowledge of Appellants keeping in view Section 17 of the Limitation

Act and thus, according to her, the NCLT erred in passing the judgment as it had done. It is claimed that this is case of oppression and mismanagement of the affairs of the Company and even Sections 206 and 207 of the New Act are required to be invoked to enquire into the affairs of the company.

8. Against this, the learned Counsel for the Respondents submitted that the original Company Petition no. 57 of 2015 was time barred. Referring to the memorandum of appeal, it has been submitted that if the Appellants were removed as Directors on 28.08.2009, the period of 3 (three) years of limitation would start running and the petition filed in 2015 was barred by limitation. According to him, the Appellants became aware of the affairs long back when they received notice from Axis Bank and ASREC India Ltd. on 24.07.2007 and on 01.08.2012. It was claimed that there was no forgery on the part of the Respondents. The Appellants accepted in the NCLT that the documents did bear their signature and except for the Appellant no. 1- Nirakar Dash, the date of cheques and date of money receipts was same i.e. 08.11.2007. It is argued that merely for want of compliance of Section 108 of the 'Old Act', the sale of shares does not become bad and the NCLT rightly held in this regard. According to the learned counsel for the Respondents original share certificates produced by the Appellants were fabricated and forged because they were signed by one or the other Appellant and although even the Respondents were original promoters and directors, none of the share certificates of the Appellants had signatures of Respondents. It is

argued, the Appellants claimed that the cheques had been received towards the refund of loan given to them by Respondent no. 1 but there is no record to show that they had repaid loan. It is argued that unlike Section 111(7)(a) of the Old Companies Act there was no enabling provision in Sections 58 and 59 of the New Companies Act for the NCLT to investigate into the title of shares. Reliance is placed on judgment in the matter of “**K. Ravi Reddy Vs. Alliance Business School**”, a copy of which has been filed at Annexure-A3 of the affidavit in reply of the respondents. The learned counsel for the Respondents claimed that the appeal should be dismissed.

9. In this matter, the Respondents are claiming that the Appellants no. 1 to 6 transferred their shares on 28.03.2007. At the relevant time, Section 108 of the ‘Old Act’ was in force. Sub-section 1 and 1A of Section 108 of the ‘Old Act as relevant for our consideration reads as under:-

“108. Transfer not to be registered except on production of instrument of transfer – (1) A company shall not register a transfer of shares in, or debentures of, the company, 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 and specifying the name, address and occupation, if any, 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 or debentures:

Provided that where, on an application in writing made to the company by the transferee and bearing the stamp required for an instrument of transfer, it is proved to the satisfaction of the Board of directors that the instrument of transfer signed by or on behalf of the transferor and by or on behalf of the transferee has been lost, the company may register the transfer on such terms as to indemnity as the Board may think fit:

Provided further that nothing to this section shall prejudice 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.

[1A] Every instrument of transfer of shares shall be in such form as may be prescribed, and –

- (a) Every such form shall, before it is signed by or on behalf of the transferor and before any entry is made therein, be presented to the prescribed authority, being a person already in the service of the Government, who shall stamp or otherwise endorse thereon the date on which it is so presented, and*
- (b) Every instrument of transfer in the prescribed form with the date of such presentation stamped or*

otherwise endorsed thereon shall, after it is executed by or on behalf of the transferor and the transferee and completed in all other respects, be delivered to the company, -

- (i) in the case of shares dealt in or quoted on a recognised stock exchange, at any time before the date on which the register of members is closed, in accordance with law, for the first time after the date of presentation of the prescribed form to the prescribed authority under clause (a) or within [twelve months] from the date of such presentation, whichever is later;*
- (ii) in any other case, within two months from the date of such presentation.]”*

10. Keeping in view the above provision, at the time of arguments, the counsel for both the sides were asked to show how the share transfer forms were executed. A sample reference was made to page -511 of the paper book. If the said Form-7(b) “Share Transfer Form u/s 108(1A)” of Old Act is perused, it shows that the Registrar of Companies had put his seal on top of the share transfer form along with a seal of date recording “07.11.2007”. When the learned counsel for the Respondents was asked as to on what date this share transfer form was executed, he referred to this date.

However, this date is date of presentation under clause (a) of Sub-section 1A of Section 108. The learned counsel for the Appellants pointed out and rightly so, that the share transfer form does not bear date of execution; it does not bear even the name of the company nor number of shares which had been transferred, nor share Certificate number nor Reg. Folio No. of the shares. It is argued that it does not bear the stamp affixed on share transfer form which is mandatorily required to be stamped under Article 5(1)(a) of the Indian Stamp Act, 1899 as applicable in West Bengal. On the documents, there are names of transferors, signatures of the transferors and names of the transferees only written. At the foot of the documents there appear signatures of the Respondent no. 3- Adhirendra Kumar Paine. At the time of argument, it was further noticed that the receipt of cheques purported to have been executed also did not refer to number of shares transferred or share certificate number or Registered Folio Nos.

11. It is interesting to see that Respondents claimed that the Appellants were paid consideration for transfer of shares by cheque dated 08.11.2007 for which the receipts were issued, as can be seen at pages 501 to 512 of the paper book. The resignation letter however, is dated 28.03.2007 which was much before this dated of 08.11.2007. The letter of resignation dated 28.03.2007 can be seen at page 500 of the paper book. It purported to show that the Appellants had resigned from Board of Directors/Executive Body as well as they had w.e.f. that date transferred all holding of equity share individually on receipt of appropriate consideration. If such transfer had

been made, consideration paid and resignation tendered in 2007, it is surprising to find that the company in its annual returns and balance sheets for financial years 2010, 2011 and 2012 continued to show the Appellants as directors. For example, a copy of the annual return as at page 382 of the paper book can be seen. Learned counsel for the Appellants further pointed out copy of the Annual Return which is at page 350 of the paper book. In this Return “date of annual general meeting/due date” is 30.09.2006. Chart claiming details of share transfer since the date of last “AGM” is annexed to the Return at page 361. This chart shows shares have been transferred from the Appellants No. 1 to 7 in favour of Respondent nos. 2 to 6. Learned counsel for the Appellants pointed out that these details claim that the “date of registration of transfer of shares” by the Appellants was “5th May, 2006”. It is apparent that Respondents are relying on contradictory as well as incomplete and suspicious records coming from them, to support their claim of transfer of shares by Appellants.

12. The Appellants then pointed out Form 32 at page 452 which claims that the Respondent no. 4 - Achinta Paine, was appointed Director on 07.01.2008 but surprisingly, he was signing Director’s Report even for the year ending 31.03.2006 as can be seen from page -407. Learned counsel for the Appellants thus is right in her submissions that the Respondents are unlawfully keeping out the Appellants and when the Appellants are still holding the original shares, they are being deprived of right to participate

into the affairs of the company in an oppressive manner and the Respondents are mismanaging the affairs of the company.

13. We do not find any substance in the arguments of the Respondents that there was delay in filing of the petition. To consider limitation or delay on laches, the Original Petition would be relevant. In present set of facts limitation is continuous cause of action for the Appellants who are still holding original shares and are being deprived from participating in the affairs of the company as Respondents are taking baseless pleas of transfer of shares relying on documents which do not inspire confidence and are seriously suspect. We find that the NCLT has not looked into any of these details which are apparent on the face of the record and misread the petition to claim that it was barred by limitation. Without looking into the documents, NCLT assumed that the Appellants/Petitioners who are basically agriculturist, had come with unclean hands. The contradictions in the documents being relied on by Respondents are glaring as can be seen from the above. The act of Respondent No. 2 amounts to oppression of the Appellants and mismanagement of the affairs of the Company Respondent No. 1. She has tried to shut out the Appellants to bring in her family members Respondents No. 3 to 6. There is no substance in the arguments for the Learned Counsel for the Respondents expressing doubts on the original share Certificates held by the Appellants by claiming that they bore signatures of one or the other of the Appellants. The Respondents, and more particularly Respondent No. 2, has not come forward to show her shares in

order to demonstrate as to signatures of whom it was bearing. Similarly, the arguments that NCLT cannot investigate into the title of shares also has no substance because the present matter is being considered not to decide the title of the shares but the question for consideration has been whether the Respondent No. 2 with the support of the other Respondents is unlawfully keeping the Appellants away from the Company claiming that they have transferred their shares leaving them high and dry although they are showing the original shares in hand for their claims. Such acts of oppression cannot be permitted.

14. We find substance in the submissions of the learned counsel for the Appellants that their signatures were taken by Respondent No. 2 for the purpose of negotiating with the bank to arrive at one-time settlement of the company accounts and the same have been misused. Documents relied on by the respondents to claim that appellants resigned from the Board of Directors and transferred their shares are suspicious documents and unreliable. We find that there is no substance in the arguments being raised by the learned counsel for the respondents, in the facts and circumstances of this matter.

15. Although the learned counsel for the appellants submitted that there should be inquiry under Sections 206 and 207 of the Companies Act, 2013, we are not giving any directions on this count as no such prayers were made in the company petition and the aspect has not been dealt with in the impugned order.

- 16.(A) For the above reasons, the appeal is allowed. The impugned judgement & order of NCLT is quashed and set aside.
- (B) It is declared that there has been no transfer of shares from the appellants to the Respondents Nos. 2 to 6 as is being claimed by these respondents.
- (C) The forms submitted by Respondent No. 2 on 25.08.2009 and 02.05.2014 to Registrar of Companies recording resignations of Appellants Nos. 1 to 6 from the Board of Directors and that they had transferred their shareholdings, shall stand quashed and set aside.
- (D) The respondents are restrained from obstructing the appellants from taking part in the affairs of the company on the basis of their shareholding.
- (E) The Respondents Nos. 3 to 6 are restrained from interfering in the working of the company-Respondent No. 1.
- (F) There shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Balvinder Singh]
Member (Technical)