

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.97 of 2018

[Arising out of Order dated 27.03.2018 passed by National Company Law Tribunal, Chennai Bench in C.P. No.9 of 2016]

IN THE MATTER OF:

Synthite Industries Limited
Synthite Corporate House,
VIII 683-A, Kadayiruppu,
Kolenchery, Ernakulam – 682311

...Appellant
(Original Respondent No.1)

Versus

1. M/s Plant Lipids (P) Ltd.
Kadayirippu P.O.
Kolenchery
Ernakulam – 682311
(finance@plantlipids.com)

...Respondent No.1
(Original Petitioner)

2. C.V. Jacob
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3. Varghese Jacob
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4. Aju Jacob
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5. George Paul
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6. Mani Varghese
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7. Mr. Ninan Philip
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8. M.E. Nambudiri
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9. Mrs. Anjana Binu
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10. Beena George
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Kolencherry P.O.
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...Respondent Nos.2 to 10
(Original Respondent Nos.2 to 10 – Other Respondents)

With

Company Appeal (AT) No.98 of 2018

[Arising out of Order dated 27.03.2018 passed by National Company Law Tribunal, Chennai Bench in C.P. No.10 of 2016]

IN THE MATTER OF:

Synthite Industries Limited
Synthite Corporate House,
VIII 683-A, Kadayiruppu,
Kolenchery, Ernakulam – 682311

...Appellant
(Original Respondent No.1)

Versus

1. M/s Aromatic Ingredients (P) Ltd.,
Kadayirippu P.O
Kolenchery
Ernakulam – 682311
(finance@plantlipids.com)

...Respondent No.1
(Original Petitioner)

2. C.V. Jacob
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Independent Director
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9. Mrs. Anjana Binu
Former Independent Director
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10. C.J. George
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(accounts@plantlipids.com)

...Respondent Nos.2 to 10
(Original Respondent Nos.2 to 10 – Other Respondents)

For Appellant: Shri Arun Kathpalia, Sr. Advocate with Shri Goutham Shivshankar and Shri Shantanu Singh, Advocates

For Respondents: Shri Bechu Kurian Thomas, Sr. Advocate with Shri Enoch David Simon Joel and Shri A. Karthik, Advocates (Respondent No.1)

Shri Prasanna S., Advocate (Respondent Nos.2, 3, 4, 6, 7 & 9)

J U D G E M E N T

(6th November, 2018)

A.I.S. Cheema, J. :

1. By this common Judgement, we are disposing both these Appeals.

2. Company Appeal (AT) No.97 of 2018 is arising out of Impugned Order dated 27.03.2018 passed by National Company Law Tribunal, Chennai Bench ('NCLT', in short) under Section 58 of the Companies Act, 2013 (hereafter referred as 'Act') in C.P. No.9 of 2016. By such Impugned Order, NCLT directed the Appellant herein to register the transfer of 25 shares transferred by the 10th Respondent – Mrs. Beena George to the first Respondent transferee/original Petitioner.

3. Company Appeal (AT) No.98 of 2018 is arising out of Impugned Order dated 27.03.2018 passed by National Company Law Tribunal, Chennai Bench ('NCLT', in short) under Section 58 of the Companies Act, 2013 (hereafter referred as 'Act') in C.P. No.10 of 2016. By such Impugned Order, NCLT directed the Appellant herein to register the transfer of 10

shares transferred by the 10th Respondent – Mr. C.J. George to the first Respondent transferee/original Petitioner.

4. Aggrieved, the original Respondent No.1 which is the - Company in the two Company Petitions has filed these Appeals against the two Impugned Judgements and Orders.

5. Foundational facts of both the matters are similar and we will be referring to the pleadings and documents mainly from CA 97 of 2018 (except where we specifically refer to record from CA 98 of 2018). We will refer to the Appellant (original Respondent No.1) as “the Company” or Synthite Industries. Original Petitioners – M/s. Plant Lipids (P) Ltd. (in CA 97 of 2018) and M/s. Aromatic Ingredients (P) Ltd. (in CA 98 of 2018), we will refer as Petitioners or by their names as mentioned.

6. To put it in nutshell, the dispute in these matters relates to the question whether the Board of Directors of Synthite Industries, which at the time concerned was deemed public company and which was in the process of conversion into a private company, has had the power to refuse registration of transfer of shares in the Company to outsiders.

7. The Company was initially created as a private company under the name and style of Synthite Industrial Chemicals Private Limited on 23.07.1970. The name was subsequently changed to Synthite Industries Limited on 19.09.2008. The Company became a deemed public company

in view of Section 43A(1A) of the Companies Act, 1956 ('old Act', in short), in view of Companies (Amendment) Act, 1988 on 15.06.1988.

8. It is the case of the Appellant that the company passed a unanimous Resolution on 25.09.2015 of the shareholders and decided to convert from public company to a private company. In the Resolution, Article 23A was included in the Articles of Association which restricted the right of transfer of the shares by members to non-members. The Company has stated that earlier when the Company became a deemed public company, it had option under the Companies (Amendment) Act, 2000 as per Sub-Section 2A and 11 to reconvert to private company but preferred to remain deemed public company as it had only 49 shareholders who are all family members and private company could have only 50 members. The Appeal refers to the coming into force of the Companies Act, 2013 and the fact that when the Act was enforced on 12.09.2013, Section 14 was not enforced but with the new Act coming into force, private limited company could now have 200 members. Except second Proviso to Sub-Section (1) and Sub-Section (2) of Section 14, the remaining provisions were notified on 01.04.2014. Sub-Section (1) of Section 14 dealt with requirement of ratification of the conversion by NCLT and at that time, this had not been enforced. On 25.09.2015, the shareholders of the Company unanimously resolved to convert into a private company and included Article 23A as mentioned above. As Sub-Section (1) of Section 14 had not been notified, the Company moved ROC as the Central Government had delegated

concerned powers to ROC. While that procedure was in process, the Respondent No.10 in these Appeals, namely Mrs. Beena George and Mr. C.J. George transferred 25 and 10 shares out of the shares held by them to the original Petitioners - M/s. Plant Lipids (P) Ltd. and M/s. Aromatic Ingredients (P) Ltd., who were outsiders to the Company. It is the case of the Appellant that such transferees – Petitioners moved the Company by sending letter on 1st September, 2016 to record transfers of shares to them. The second Proviso to Sub-Section (1) of Section 14 came into force with effect from 1st June, 2016. The Appellant filed application under Section 14 of the Act before NCLT on 20th September, 2016. On 28.09.2016, the Appellant Company informed M/s. Plant Lipids (P) Ltd. and M/s. Aromatic Ingredients (P) Ltd. that the transfer forms were not complete. These parties did the necessary compliance and the matter came up before the Board of Directors on 26.10.2016 and for reasons recorded, it was decided that it was not desirable to admit these transferees to membership of the Company. Accordingly, these Applicants (original Petitioners in the Company Petitions) were informed on 27.10.2016. Thereafter, the Petitioners filed Company Petitions challenging the refusal.

9. NCLT considered the Petitions filed and also took note of the defence put up by the Appellant Company. Copy of the Petition filed by M/s. Plant Lipids (P) Ltd. may be referred (Annexure A-13 – Page - 133). The petition referred to the Company becoming deemed public limited company under Section 43A of the old Act. Petition referred to the fact that

the authorized share capital was of 25,00,000 equity shares of Rs.100/- each and the issued subscribed and paid up share capital was 1,05,900 equity shares of Rs.100/- each. Petitioner claimed that it was transferee of 25 equity shares of Rs.10/- each from the Respondent No.10. Petitioner claimed that Respondent No.10 had transferred 25 equity shares of Rs.10/- of the Respondent No.1 Company in favour of the Petitioner on 01.09.2016. Share Transfer Forms had been executed and the Petitioner claimed to have paid Rs.12,50,000/- as consideration. Petitioner claimed that it lodged the shares with the Company on 01.09.2016 to register the transfer. The Petition referred to the fact of the Company refusing to register the shares vide letter dated 27.10.2016. The petition referred to the reasons set out in the letter for refusal. The Company had refused registration on the basis that it was in violation of its Article 23A. The Petition claimed that Article 3A and 23A were sought to be introduced contingent upon the company becoming a private company, which conversion was still pending. It claimed that the Company on the concerned date was still a public company and did not have any restriction on transferability of the shares in its Articles of Association. It claimed that the earlier Article 23 was deleted when the Company had become deemed public company and thus, there was no restriction on transferability of the shares. On such basis, the Petition claimed directions to the Company to rectify the Register and register the transfer of shares claimed by the original Petitioner.

10. In NCLT, the Appellant – Company filed counter (Annexure – A-14) and claimed that the promoters of the Petitioner held 12.69% equity shares of the Company and their actions demonstrate that they were inimical to the Company and its management. The Appellant – Company claimed in its counter that the Petitioner Company was major competitor of the Respondent Company. The counter traced the history to show as to how the Company came to be established and the competitor company - Plant Lipids (P) Ltd. was established by the promoters of the Company in 1979 to process cocoa beans and the said promoters had 64% shares in that Company - Plant Lipids (P) Ltd. till end of 1988. According to the Appellant Company, Plant Lipids (P) Ltd. was not established to do same kind of business as the Appellant Company. It is claimed in the counter that things were fine till 1988. The Appellant Company was manufacturing and exporting spices oils and oleoresins and Plant Lipids (P) Ltd. was processing cocoa beans. However, during that period Mr. C.J. George (Respondent No.10 in CA 98/2018) began to develop his own ambitions and increased his share capital in Plant Lipids (P) Ltd. without knowledge of the promoters of the Appellant Company and systematically diluted the shareholding of the Appellant Company in Plant Lipids (P) Ltd. to just 8% by March, 1996. The counter gives particulars as to how ultimately Mr. C.J. George started to step into the area of operations of the Appellant Company and began competing with it. The counter gave particulars as to how Mr. C.J. George was continuously impinging upon the business secrets of Appellant Company and poaching employees and cutting

customers by undercutting prices and creating unhealthy competition causing long standing injury to the business of the Appellant Company. The Appellant – Company pointed out in its counter in NCLT that shareholding of Mr. C.J. George and his family members in Appellant Company remained the same in the past four decades but the promoters of the Appellant Company who had majority of 64% in Plant Lipids (P) Ltd. had been rendered into a minority of 8% equities.

11. The Appellant in its counter in NCLT dealt with the Company Petition filed and mentioned in para – 3(g) as under:-

“(g) Adverting to paragraph 4.2, the averments regarding refusal to register the transfer of shares lodged in terms of Article 23A of the Articles of Association of the company is admitted as true and correct. The allegation that the company being a public company cannot and does not have any restriction on the transferability of shares in its Articles of Association is not admitted as true and correct. The refusal to transfer the shares is in terms of an article existing in the Articles of Association of the Company and even assuming without admitting that the company is a public limited company transfer of shares and registration for application for transfer of shares can be refused on justifiable grounds in the interest of the company. The allegation that Article 23A is not in force as on date and rejection on the basis that the transfer is not in line with Article 23A is denied as false and baseless. It is submitted that the petitioner is indeed a competitor of the respondent company and the purported acquisition of shares by way of transfer is not bonafide and is with the sole intention of causing prejudice to the interests of the respondent company. It is denied that the shares of the first respondent company are freely transferable. The further allegation that the entire conversion of the company from public to private is sought to be made for the purpose of attempting to prevent registration of transfer of shares

in favour of the petitioner is false, baseless and wholly unfounded. As earlier submitted, the formal resolution for reconversion into a private company was passed in the wake of the Companies Act, 2013 permitting a private company to have upto 200 shareholders. Such special resolution at the annual general meeting was passed much before the purported board resolution of the petitioner company dated 31st August 2016 produced by the petitioner regarding the intention to acquire 15,000 shares of the respondent company by purchase from existing members or by off-market transaction. It is the petitioner company knowing fully well that steps have been taken to reconvert the company into private company with malafide intention has acquired the shares with an intention to cause prejudice. Produced herewith are the filings made with the Registrar of Companies to show that a special resolution for conversion was passed much earlier [ANNEXURE C]. The allegation that the conversion of the company into private company is based on wrong principal, that the directors did not act in the general interests of the company and was made with the oblique motives of obtaining the entire control of the company are all false, baseless and wholly unfounded. Likewise, the allegation that the directors acted arbitrarily and that the collateral and group motives to keep their own group in control of the company is wholly baseless and unfounded.”

The Appellant Company claimed that the Directors of the Appellant Company had fiduciary duty to protect the interest of their Company and could not allow a competitor to become a shareholder. According to them, it was not a question of mere 25 (or 10) shares out of 1,05,900 shares but that the intention of the original Petitioner was to acquire 15,000 shares of the Respondent Company. The Appellant Company thus, defended its decision not to accept transfer of shares to entity inimical to the Company who had clearly shown intention to acquire sizable number of shares of the Appellant Company.

12. In the Rejoinder filed in NCLT by the original Petitioner - Plant Lipids (P) Ltd., claims made by the Appellant Company were countered and inter alia, it was pleaded as under:-

“The further allegation that the majority shareholders of the petitioner led by Mr. C.J. George have been continuously impinging upon the business of the Respondent Company and are poaching the key employees and undercutting the prices are not true and are hence denied. These are just frustrations of the 1st Respondent company who finds that a small company has now grown to be one of its biggest competitors. In fact, the 1st Respondent has poached numerous employees from Petitioner Company including senior level Officers like Head of Production, Production Manager etc. who are now heading the production team of the 1st Respondent.”

M/s. Plant Lipids (P) Ltd. then claimed that the transfer was only of 0.02% of the overall shareholding and there was no justification for apprehension of hostile takeover.

13. NCLT heard the parties and by the Impugned Judgements rejected the defence of the Appellant in both the matters and directed that the refusal by the Board of Directors was null and void and set aside the same. It directed the Appellant Company and Respondents 2 to 9 to register the transfer of shares in favour of the respective Petitioners.

14. The present Appeal takes exception to these Impugned Orders. We have heard Counsel for the Appellants in both these matters and the

Respondent No.1 – Original Petitioners, who are the main contesting Respondents.

15. It has been argued by the learned Counsel for the Appellant in these Appeals that Mr. C.J. George has a controlling presence in M/s. Aromatic Ingredients (P) Ltd. as well as M/s. Plant Lipids (P) Ltd. and both the Companies had passed Resolutions to buy 15,000 shares of the Appellant Company. The issued share capital of the Company being only 1,05,900 shares of Rs.100/- each, such Resolutions by these Companies clearly showed that they wanted to interfere with the running of the business of the Appellant Company. It has been argued that although the present 2 Company Petitions were filed for transfer only of 25 and 10 shares respectively, it was with the objective of lodging further claims by others so as to increase members at a time when the Appellant Company had already passed Resolution to convert into private limited company. It is argued that although the Appellant had moved NCLT for conversion of the Company into private limited company under Section 14 of the new Act, the Petition was being delayed by C.J. George and others on some pretext or the other. The learned Counsel submitted that in this design, the present transfers were made and the Company considered all necessary aspects and passed the Board Resolution dated 26.10.2016 recording reasons and also communicated the detailed reasons to the original Petitioners. The learned Counsel referred to the letter dated 27.10.2016 sent to Plant Lipids (P) Ltd. (Annexure A-12 – Page -131). The

argument is that there was sufficient cause for the Appellants to refuse to register the transfer of securities as the Petitioners were third parties and undesirable persons considering the fact that they were in competing business and the object was to create obstruction to the efforts of the Appellant Company to convert into a private limited company. The learned Counsel referred to Article 23A in the Articles of Association introduced in AGM dated 25.09.2015 which disallowed transfer of shares to non-members without prior Board sanction. The learned Counsel submitted that by the said Resolution in the Articles of Association, Section 3A had been introduced to the effect that the Company shall be private limited company. Vide Article 23A which was introduced, restriction on transfer of shares was provided. The learned Counsel submitted that although Article 3A may require approval of NCLT as it relates to conversion, Article 23A could not be said to be requiring such approval and the Company had immediate right to restrict transfer of shares. It was additionally submitted that irrespective of the arguments that may be submitted by the original Petitioners with regard to Article 23A, restricting Article 24 existed in the Articles of Association at all times which Article reads as under:-

“24. The Board of Directors may refuse to register any transfer of share (1) where the Company has a lien on the share or (2) where the Directors are of opinion that it is not desirable to admit the proposed transferee to membership.”

According to the learned Counsel for the Appellants, the original Petitioners in both these matters were non-members and Article 24 of the

Articles of Association always provided that the Board of Directors had the option to refuse to register any transfer where the Directors were of the opinion that it is not desirable to admit the proposed transferee to membership. Thus the Counsel submitted that in the facts of the present matter where C.J. George along with his family member Beena George and other family members was attempting to interfere in the business of the Appellant Company, the Board of Directors had a fiduciary duty to safeguard interest of the Company and rightly refused to record the transfers. The learned Counsel referred to Board Resolution of M/s. Plant Lipids (P) Ltd., copy of which is at Page – 120 of the Appeal to show that M/s. Plant Lipids (P) Ltd. had decided to buy 15,000 shares of the Appellant Company. [M/s. Aromatic Ingredients (P) Ltd. also had passed similar Resolution on the same date of 31.08.2016 as can be seen at Page – 106 of CA 98 of 2018.]

16. Learned Counsel for the Appellant referred to Judgement in the matters of **“Harinagar Sugar Mills Ltd. versus Shyam Sunder Jhunjhunwala and Others”** reported in (1962) 2 SCR 339, (2) **“Shree Krishna Agency Ltd. versus The Commissioner of Income Tax, Central, Calcutta”** reported in 1971 (3) SCC 377 and (3) **“Messer Holdings Limited v. Shyam Madanmohan Ruia and Others”** reported in 2010 SCC OnLine Bom 1284 (which differed from Judgement in the matter of **“Western Maharashtra Development Corpn. Ltd. versus Bajaj Auto Ltd.”** reported in 2010 SCC OnLine Bom 229 relied on by Petitioners) to

show as to how the law has evolved with regard to discretion vested in the Directors as regards refusal to register. The argument is that although in the Indian Companies Act, 7 of 1913, there were no provisions similar to Section 111 of the old Act of 1956, the Judgements under that Act and Act of 1956 show that the view held was that the Directors should not act arbitrarily or with improper motive and they are presumed to act honestly in the interest of the Company and to question their discretion, want of good faith would have to be shown. The learned Counsel submitted that the Directors cannot act arbitrarily and capriciously but they have a duty to act as trustees to protect the interest of the Company. It is argued that the latest Judgement of the Hon'ble Supreme Court in the matter of **“Mackintosh Burn Ltd. versus Sarkar and Chowdhury Enterprises Private Limited”** reported in 2018 5 SCC 575 crystallizes the legal position. Sub-Sections (2) and (4) of Section 58 which deals with refusal of registration and Appeal against refusal in matters like the present one, is relevant and the same reads as under:-

Section 58. Refusal of registration and appeal against refusal.

(1)

“(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.”

(3)

“(4) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.”

With regard to these Sub-Sections, Hon’ble Supreme Court has observed in para – 13 of the Judgement in the matter of Mackintosh Burn Ltd. (supra) as under:-

“13. Under Section 58(2) of the Companies Act, 2013, the securities or interest of any member in a public company are freely transferable. However, under Section 58 (4), it is open to the public company to refuse registration of the transfer of the securities for a sufficient cause. To that extent, Section 58(4) has to be read as a limited restriction on the free transfer permitted under Section 58 (2). Section 10F of the Companies Act, 1956, provides that an appeal against an order passed by the Company Law Board can be filed before the High Court on questions of law. Right to refuse registration of transfer on sufficient cause is a question of law and whether the cause shown for refusal is sufficient or not in a given case, can be a mixed question of law and fact.”

[Emphasis supplied]

17. On such basis, the Counsel for Appellant argued that Articles of Association is a contract and that the Directors of the Appellant exercised their discretion in the interest of the Company and if the exercise is bona fide, it cannot be questioned on judicial side and the same could not have been doubted as has been done by the NCLT.

18. Against this, the learned Counsel for the Respondents referred to the case put up by the original Petitioners in NCLT and according to him, the Article 23A was incorporated in the Articles of Association by special Resolution dated 25.09.2015 wherein it was purported to be decided to convert itself into a private limited company. The argument is that under Section 14(1) of the Act, the conversion will take effect only when NCLT grants approval and there was no such approval available when the Respondent No.10 transferred the shares. The application for conversion was filed subsequent to the transfer in both these Appeals. On the date of transfer of the shares or refusal to register, Article 23A could not be said to be in force. The learned Counsel submitted that free transferability of the shares is the essence of the public limited company and the transfer can be refused “only on sufficient cause” as provided in Section 58(4). It is argued that there can be refusal if there is contravention of any provisions of Securities Contract Regulations Act, 1956 or provisions of SEBI Act or the Companies Act. Being competitor cannot be ground to reject the transfer. Looking to the small number of shares involved, it could not be said that there is attempt to hostile takeover. It is argued that M/s. Aromatic Ingredients (P) Ltd. could not be said to be in competing business also, although M/s. Plant Lipids (P) Ltd. was in same business as the Appellant. It is argued that C.J. George and his family members were already members in the Appellant Company and thus, the original Petitioners – being their Companies could not be said to be undesirable

persons. The learned Counsel referred to the Judgement in the matter of **“Bajaj Auto Ltd. versus Company Law Board and Others”** reported in (1998) 6 SCC 218 where Hon’ble Supreme Court dealt with transfer of shares of public limited company, Counsel for original Petitioners referred to para – 16 of that Judgement and submitted that in that matter, the Hon’ble Supreme Court with regard to Appellants therein observed that only because they wanted to increase the shareholding could not by itself be stated to be a ground in law for refusing to transfer the shares. The Counsel referred to para – 19 of that Judgement to submit that in the facts of that matter when Hon’ble Supreme Court considered fear of being regarded a dominant undertaking in the event to there being interconnection between the Appellants and Respondent – Company in that matter, the transfer of shares in that matter would have risen from 23.232 to 23.408% which was short of 25%. It is argued that in that matter the reason given was thus not found to be good enough reason to refuse.

19. Referring to observations of the Hon’ble Supreme Court, the Counsel submitted for Respondent No.1 – original Petitioners that the shares they sought to be transferred in their name were miniscule and it could not be said that there was any effort at hostile takeover. It is argued that the original Petitioners – Companies did resolve to buy 15,000 shares in the Appellant Company, and, if they had tendered such number of shares, there may be justification to refuse but there was no justification

to refuse the small number of shares which the original Petitioners had sought to be transferred in their names.

20. The learned Counsel for the Appellant argued referring to the pleadings (which we have already referred) to submit that there were admitted pleadings regarding hostility and that they were competitors and still the NCLT held that there was nothing on record to suggest that there has been any instance which goes to show that the Petitioner Company was competitor and had derived benefits which were otherwise to be enjoyed by the Company. The learned Counsel submitted that although there were similar allegations in the pleadings itself that there were efforts by the other side to poach employees and create unhealthy competition, the learned NCLT still recorded that there was no documentary proof in this regard. The Counsel submitted that when the pleadings themselves show a fact admitted, no further proof is required to show parties were competitors in unhealthy circumstances of allegations of poaching each other's employees.

20.1 Against this, the learned Counsel for the Respondent No.1 submitted that both parties were alleging against each other that the other party was poaching employees. However, according to the Counsel, such allegation alone did not mean anything.

21. At the time of arguments, in the ultimate, Counsel for both sides submitted that the NCLT had during the pendency of these Appeals

allowed the application of the Appellant Company to convert into a private limited company. It was also stated on behalf of the Respondent No.1 that Appeal against such Order has been filed.

22. We have gone through the record including the Impugned Order and heard Counsel for both sides. In the matter of Bajaj Auto Limited referred above, the Appellants therein were existing shareholder of Bajaj Tempo Limited which was public limited company. Bajaj Auto Limited purchased 50 shares of Bajaj Tempo Limited and Bajaj Auto Holdings Limited purchased 13,150 shares of the said Company. The transfer was rejected by the Board of Directors of Bajaj Tempo Limited giving reasons. The Hon'ble Supreme Court in the facts of that matter observed (in para – 16) that there was nothing placed on the record (in that matter) which can possibly persuade anyone to come to the conclusion, that the intention of the purchase of shares by the Appellants was with a view to destabilize the management of the Company or was with an ulterior motive. The other ground for refusal to register transfer by the Board of Directors, is that the matter did not find favour with the Hon'ble Supreme Court for reasons mentioned in para – 19 in the Judgement. Observations of the Hon'ble Supreme Court of India in para – 14 of the Judgement shows that the power of Board of Directors to refuse registration of transfer of shares must be in the interest of the Company and the General Body of shareholders. The observations show that the Board has to act bona fide and not arbitrarily and it has to act for the benefit of the Company as a whole. It

was also observed that the Court while examining the action of Board of Directors is not expected to exercise original Appellate Jurisdiction and sit in Appeal on question of fact. The judicial review while hearing in Appeal from decision of CLB would be limited to see whether there was a bona fide exercise of power by the Board of Directors while refusing to register the transfer of shares. Thus the Judgement of the Hon'ble Supreme Court considered facts of that matter to decide the same. Keeping the principles of law as appearing in that matter, we have to decide the present matter.

23. Judgement in the matter of Bajaj Auto Limited was under the old Act of 1956. Now the new Act of 2013 has been enforced. We have already reproduced Sub-Section (2) and (4) of Section 58 of the new Act. With reference to these new provisions, Judgement in the matter of "Mackintosh Burn Ltd. vs. Sarkar and Chowdhury Enterprises Private Limited" has been relied on by the learned Counsel for the Appellant. Para – 13 of that Judgement (reproduce earlier) makes it clear that the right to refuse registration of transfer of sufficient cause is a question of law and whether the cause shown for refusal is sufficient or not in a given case, can be a mixed question of law and fact. Keeping this in view, it would be appropriate to consider the facts of the present matter to arrive at a decision whether the refusal by the Board of Directors was justified.

24. We have already referred to pleadings of the parties as were put up before the NCLT. The Appellant – Company brought before the NCLT particulars as to how the Appellant – Company came to be incorporated

and how subsequently M/s. Plant Lipids (P) Ltd. was incorporated. There are particulars as to the manner in which C.J. George (Respondent No.10 - CA 98 of 2018) grew in the Company - M/s. Plant Lipids (P) Ltd. and the Company later on started competing in the same business as that of the Appellant Company. The Appellant has filed list of shareholdings in the Appellant Company of different persons. It is argued by the learned Counsel for the Appellant that C.J. George along with his family members as a group is already holding 12.69% shares in the Appellant Company. The argument is that in 1993, there was a cessation of Directorship in these cross-Companies and from 1993, C.J. George and group did not have directorship in the Appellant Company although they held shares.

24.1 The counter of Appellant (Annexure A-14 – Page 144) filed in NCLT in para – 2 has made various grievances against Mr. C.J. George and his group and, inter alia, alleged that Mr. C.J. George was continuously impinging upon the Appellant Company's business secrets, poaching key employees, etc. We have already reproduced the Rejoinder – para - 2 which shows admission of M/s. Plant Lipids (P) Ltd. being competitor. M/s. Plant Lipids (P) Ltd. retaliated in the pleadings claiming that it was rather the Appellant Company which had poached the employees of that Company. Thus, the pleadings show that M/s. Plant Lipids (P) Ltd. led by C.J. George group and the Appellant Company are competing in business with each other and both are making allegations regarding poaching against each

other. The pleadings thus make it clear that these Companies with similar business are competitors and are not having good relations as such.

25. In the above backdrop at Annexure – A-7, there are minutes of the AGM held by the Appellant Company on 25th September, 2015 under the Chairmanship of C.V. Jacob. At Page – 108 (Annexure – 6) is form MGT 14 for submission to ROC which refers to the list of attachment as “AGM Resolution – conversion to private” company and amendment of MOA and AOA. Resolution 6.2 Item No.6 resolved was as under:-

“Item No.6. Conversion of the Company into a Private Limited Company:

The Chairman read out the following motion:

RESOLVED THAT pursuant to the provisions of Section 13, 14, 18 and other applicable provisions, if any, of the Companies Act, 2013 read with the Companies (Incorporation) Rules, 2014 (including any statutory modification(s) or re-enactment thereof, for the time being in force) and subject to the required approvals and sanctions, the consent of the members be and is hereby given to convert the Company into a Private Limited Company.

RESOLVED FURTHER THAT the name of the Company be changed from Synthite Industries Limited to Synthite Industries Private Limited and thereby incorporating that change in the Memorandum of Association and Articles of Association of the Company.

RESOLVED FURTHER THAT the Articles of Association of the Company be altered by inserting following new Articles 3A and 23A before the existing Articles 4 and 24, respectively.

“3A. The Company shall be a Private Limited Company and accordingly-

(a) restricts the rights to transfer its shares in manner and to the extent hereinafter appearing;

(b) limits the number of its members to two hundred not including;

- persons who are in the employment of the company;
- persons who, having been formerly in the employment of the Company, were members of the Company while in that employment and have continued to be members after the employment ceased.

(c) prohibits any invitation to the public to subscribe for any securities of the Company.

For the above purpose, where two or more persons hold one or more shares of the Company jointly, they shall be treated as a single member”

“23A. Any member desiring to sell any of his/her share must notify the Board of Directors the number of shares, market price and the name of the proposed transferee. No transfer of shares shall be made or registered without the previous sanction of the Board of Directors, except when the transfer is made by any member of the Company to another member or to transferor member’s spouse or child or children or his/her heirs and the Directors may decline to give such sanction without assigning any reason, subject to the provisions of Companies Act.”

RESOLVED FURTHER THAT the Board of Directors be and is hereby authorised to undertake all such acts, deeds, matters and things which may be required to give effect to this resolution.”

Mr. Paolo George proposed the resolution as Special Resolution which was seconded by Mrs. Mini Varghese. The Resolution was put to vote on a show of hands and was declared as passed with all the members have given their consent.”

25.1 The Appellant has claimed in the Appeal (para – vii) that such Resolution was filed with the MGT – 14 Form referred above with Registrar

of Companies on 23.11.2015. Thus, at this stage, the Appellant Company had resolved to convert itself into a private limited company and amendments to Articles of Association as referred above were adopted. The argument of the learned Counsel for the Appellant is that Article 3A which was introduced would require approval of the NCLT but not Article 23A.

26. There is no dispute regarding the fact that whatever may be stated with regard to Article 23A, Article 24 always existed in the Articles of Association of Appellant Company. The Counsel for the Appellant has submitted that the Appellant Company is a public limited Company but it is not a listed company and is closely held between small groups. The decision to convert was taken in view of the Act of 2013 coming into force which would open the number of memberships beyond 50 which was earlier limit under the old Act.

27. At Page – 120 of the Appeal, there is extract of Resolution of the Board of Directors of M/s. Plant Lipids (P) Ltd. dated 31st August, 2016 which reads as under:-

“11. Investment in the shares of Synthite Industries Ltd.

1. **“RESOLVED** that consent of the Board of Directors be and is hereby given to the company making an investment up to the extent of 15000 Shares in the equity capital of M/s. Synthite Industries Ltd by purchasing the shares of the said company from open market or off market as the case may be and that the Director of the company Mr. John George Nechupadom be and

is hereby authorized to sign the Transfer Deeds as may be necessary to transfer the shares on behalf of the company.”

2. **FURTHER RESOLVED THAT** the specimen signature of the Authorized Signatory and a copy of this resolution be submitted to ‘M/s Synthite Industries Ltd duly certified by the Managing Director of the company.”

28. There is verbatim Resolution passed by the Company of Aromatic Ingredients (P) Ltd. also, which is of the same date with a gap of one hour deciding to invest up to the extent of 15,000 shares in the Appellant Company. Copy of that Resolution is at Page – 106 of CA 98/2018. Both the extracts show Mr. C.J. George certifying the same in the capacity of Managing Director. It is apparent that this Mr. C.J. George acting as Managing Director in both the Companies was behind both the Companies resolving to invest to the extent of 15,000 shares of the Appellant Company to buy the same from open market or off market. The learned Counsel for the Appellant has rightly submitted that such Resolutions passed by these Companies where Mr. C.J. George was having control, was clearly with an object of creating difficulties in the Appellant Company which is competing Company so as to interfere with the management. There is substance in the argument that the transfer of 25 and 10 shares in these Appeals is not the basis on which the intention to take hostile control of the Appellant Company should be inferred; but it is these Resolutions which are material and show the object of destabilizing the management of the Appellant Company by introducing outsiders in the Company where C.J. George is

having control. We find substance in the argument of the Counsel for Appellant that if the present 25 and 10 shares as transferred are accepted, more transfers would flow in as appearing from Resolutions of Petitioner Companies. Document at Page – 118 shows that on the same date of 31st August, 2016 when such a Resolution was passed by the original Petitioners, the Transfer Forms of shares were executed. At Page – 118, the date of execution of the Security Transfer Form is 31.08.2016 and Respondent No.10 lodged the share with the Appellant Company on 01.09.2016. The Appellant Company on 27.10.2016 vide Annexure – A-12 (Page 131) refused registration of the shares informing the original Petitioner as under:-

“We hereby give notice that the Company has decided in this Board Meeting held on 26th October, 2016 to refuse registration of transfer of the aforesaid shares for the following reasons:

1. As per Article 23A of the Articles of Association of the Company “Any Member desiring to sell any of his/her shares must notify the Board of Directors the number of shares, market price and the name of the proposed transferee. No transfer of shares shall be made or registered without the previous sanction of the Board of Directors, except when the transfer is made by any member of the Company to another member or to transferor member’s spouse or child or children or his/her heirs and the Directors may decline to give such sanction without assigning any reason, subject to the provisions of Companies Act”. The lodgment of instrument of transfer is in violation of the said Article.
2. It is mentioned in Article 24(2) that the Board of Directors may refuse to register any transfer of

share where the directors are of opinion that it is not desirable to admit the proposed transferee to membership. The Board has perused this matter in details at its meeting held on 26.10.2016. The Board has reason to believe that the proposed transferee, Plant Lipids Private Limited is a major competitor of the Company and the Board is of the view that the admission of the proposed transferee to membership will not be in the interests of the Company and will in fact be prejudicial.

3. The resolution of Board of Directors of Aromatic Ingredients Private Limited, a Company under the same management of the proposed transferee company, which also lodged instrument of transfer of 10 equity shares to its name, authorized its director, Mr. John George Nechupadom to invest in the equity share capital of the Company to the extent of acquiring 15000 shares. The Board Resolution of the Proposed transferee Company has also authorized Mr. John George Nechupadom to invest in the equity share capital of the Company and acquire upto 15000 shares. It is apparent the intention of both the competitor companies is to gradually increase their stake in the company aimed at hostile takeover.

Therefore, it is felt that it is not in the interests of the Company to admit M/s Plant Lipids Private Limited as member of the Company.

The instrument of transfer, along with share certificates, is returned herewith.”

29. There is similar refusal in the matter of Aromatic Ingredients (P) Ltd. also. Thus, the Board of Directors of the Appellant informed the original Petitioners the Articles of Association on which they wanted to rely and that both the Companies had the object of acquiring 15,000 shares and that the intention was to gradually increase the stakes in the Appellant

Company aimed at hostile takeover. The learned Counsel for the Appellant has rightly submitted that when the Appellant Company has issued share capital of 1,05,900 shares of Rs.100/- each, the Companies Resolution passed by these 2 Companies each relating to acquiring 15,000 shares makes the object clear and the Board of Directors specifically referred to their Resolutions and in order to protect the interest of the Appellant Company and its shareholders, exercised discretion to decline the transfer.

30. Arguments have been raised before us whether Article 23A as amended on 25.09.2015, could be said to be in force as NCLT was yet to give concurrence to application (Page - 121) which was filed on 20.09.2016. We, however, find that even with or without Article 23A, admittedly Article 24 of the Articles of Association was existing as a contract between the Appellant Company and the respective Respondents 10. Apart from that, Sub-Section (4) of Section 58 of the Act, itself provides for an Appeal if the public company “without sufficient cause refuses to register the transfer of securities”. It is obvious that if there is sufficient cause, the transfer can be refused. In the facts and circumstances of the present matter, looking to the above discretion, we are satisfied that the Appellant Company had sufficient cause to apprehend that Respondents No.10 in these Appeals were acting with a design and the original Petitioners had not purchased the share with bona fide object of investment. Respondent No.10 – Beena George held 2,640 shares of Rs.100/- each in the Appellant Company but transferred just 25 shares.

The learned Counsel for Appellant submitted that this could not be said to have been done with the bona fide object of trading but is rather attempt at introducing outsiders in the Appellant Company to get control and to create obstruction in the process which had been initiated by the Appellant Company of converting itself back to private limited company from a public limited company. We find the reason recorded by the Company to refuse to record transfers is based on reasonable apprehensions recorded in the letters sent to Petitioner. We do not wish to impose our wisdom on that of the Board of Directors which cannot be said to be arbitrary or lacking in bona fides. The decision was in interest of Company.

31. Going through the reasons recorded by the learned NCLT for allowing the Company Petition, we do not find that the Impugned Orders are well reasoned. For reasons discussed above, we find that the Petitions deserve to be rejected.

32. We pass the following Order:-

1. Company Appeal (AT) No.97 of 2018

The Appeal is allowed. Impugned Order is quashed and set aside. The Company Petition filed by Respondent No.1 - original Petitioner in NCLT, Chennai Bench, Chennai is rejected. In the circumstances, no orders as to costs.

2. Company Appeal (AT) No.98 of 2018

The Appeal is allowed. Impugned Order is quashed and set aside. The Company Petition filed by Respondent No.1 - original Petitioner in NCLT, Chennai Bench, Chennai is rejected. In the circumstances, no orders as to costs.

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

[Balvinder Singh]
Member (Technical)

/rs/nn