

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

COMPANY APPEAL (AT)No. 14 of 2019

(Arising out of impugned order dated 11th December, 2018 passed by the National Company Law Tribunal, Chandigarh in Company Petition No.17/58/2013, RT CP No. 158/Chd/Hry/2017)

In the matter of:

1. DLF Ltd.
DLF Shopping Mall,
3rd Floor, Arjun Marg,
DLF City Phase-1
Gurgaon-122002

2. Rajdhani Investments & Agencies Private Limited
Registered Office: MC Shah House
1/B, FF, Avantika Society
Nr. Naranpura Railway Crossing, Naranpura,
Ahmedabad, Gujarat-380013

Appellant

Vs

1. Satya Bhushan Kaura
S/o Late Sh. Devki Nandan Kaura,
R/o C-15 New Krishna Park,
New Delhi-110018

2. Shri Subhash Chander Kaura,
S/o late Sh. Devki Nandan Kaura,
R/o B-49, New Krishna Park,
New Delhi-110018
Respondent

Present:

Mr. Dhruv Dewan, Mr. Rohan Sharma, Mr Sumit Malhotra and Ms Harshita Choubey, Advocates for Appellant.

Ms. Lakshmi Gurung, Advocate for Respondent No.1 Mr. Vivek Gaur alongwith Mr. Rohit Sehgal, Advocates for Respondent No.2.

J U D G M E N T
(13th January, 2020)

Mr. Balvinder Singh, Member (Technical)

The Appellant has preferred this appeal under Section 421 of Companies Act, 2013 against the order dated 11th December, 2018 passed by National Company Law Tribunal, Chandigarh Bench in Company Petition No.17/58/2013, RT CP No. 158/Chd/Hry/2017 vide which Appellant No. 1 was directed to register the transfer and the Respondent was directed to make payment for 60,000 shares at ₹2/- per share to Appellant No. 2. Respondent No.1 was also directed that on transfer of 60,000 shares in his name, he will execute the transfer deed to the extent of entitlement of Respondent No. 2 in accordance with terms of Letter of Administration issued by District judge vide order dated 31.01.2012 and 25.04.2012.

2. The brief facts of the case are that

- i) Late Shri Devki Nandan Kaura father of the Respondents held 150 equity shares of Rs. 10/- each of the Appellant No. 1 company vide Certificate No. 6340, 6341, 6342. The said 150 Equity shares of Rs 10/- each were subsequently converted into 6000 Equity Shares of ₹2 each after giving effect of split and bonus issue. Shri Devki Nandan Kaura had expired on 27.08.1987.
- ii) On 29.12.2005 Appellant No. 1 came out with the Rights issue opened during the period commencing from 29.12.2005 and was valid up to 18.1.2006. The offer was available to all existing

shareholders as on 18.11.2005. Subsequently Appellant No. 1 intended to take out Public Issue and as such filed its Red Herring Prospectus with ROC as well as SEBI in relation to the initial public offer and as a result thereof its share capital stood frozen and it could not make further allotment of shares in view of SEBI (DIP) Guidelines and the provision of Companies Act, 1956. Appellant No. 1 decided to give another opportunity to those shareholders, who did not apply earlier, to avail the offer of Rights Issue on or before 26.09.2007. Since the share capital of Appellant No. 1 was frozen, as such Appellant No. 1 entered into a special arrangement with one of its promoter group company i.e. Appellant No. 2, then being Haryana Electrical Udyog Private Limited, whereby the Appellant No. 2 agreed to transfer the shares held of Appellant No. 1 to the shareholders of Appellant No. 1 complying with the terms and conditions of limited time Rights Issue.

- iii) Respondents did not approach the Appellant No. 1 for transmission/transfer of original 150 shares, being 6000 shares of ₹2 each, held by Shri Devki Nandan Kaura in their favour as being his legal heirs nor informed the Appellant No. 1 of the demise for about 20 years. On 25.05.2007, for the first time the Respondent No. 1 vide his letter informed that his father had expired on 27.08.1987. Thereafter by his letter dated 01.06.2007 the Respondent No. 1, requested for transfer of 66000 Equity

shares. Appellant No. 1 in response the aforesaid letter of Respondent No. 1 dated 01.06.2007 informed the Respondent No.1 to submit the requisite documents including the succession certificate and Demand Draft of ₹1,20,000 on or before 26.09.2007 in order to be eligible for allotment of shares on Rights basis.

- iv) It is further stated by the Appellant that Respondent No. 1, after the cut-off date (26.09.2007) for the first time vide its letter dated 16.10.2007 applied for Letter of Administration in respect of the will of Shri Devki Nandan Kaura and after the lapse of 5 years, vide its letter dated 01.06.2012 enclosed Letter of Administration granted by Ld. District Court (North) in respect of the Will of Shri Devki Nandan Kaura with respect to 150 shares of Appellant No. 1 sought transfer of shares from its one of the promoter, Appellant No. 2 in his favour. Appellant No. 1 vide its letter dated 17.09.2012 stated that special arrangement with Appellant No. 2 stood lapsed and the respondent No. 2 are only entitled to 6000 shares.
- v) Thereafter, the Respondent No. 1 issued a legal notice dated 24.12.2012 and on or about December 17, 2013 filed the petition purportedly under Section 58 of the Companies Act, 2013 read with Section 397 of Companies Act, 1956. Along with the petition, the original petitioner filed an application seeking condonation of 328 days of delay, after the expiry of 60 days from the date of

alleged refusal to transfer the shares, in filing the present petition. It is stated by the Appellant that the NCLT does not have jurisdiction to entertain and try the petition under section 58 (4) of the Act.

- vi) Appellant further submitted that to invoke section 58(4) of the Companies Act, 2013, there should have been an actual transfer of shares from transferor/deceased/predecessor in interest to the transferor/legal heirs and there should have been an involvement of the company in rejecting to recording of the transfer. The Tribunal did not decide the issue of maintainability by rendering any finding on the same, though the same issue was pressed by filing a separate application was directed to be decided along with the main petition.

3. Respondent filed their reply and rebutted in brief as under:-

- a) Late Mr Devki Nandan Kaura was admittedly a shareholder of Appellant No. 1 as on record date, i.e. 18.11.2005. He or his legal heirs was entitled to 60,000 shares on account of holding 150 shares. 150 shares become equivalent to 6,000 shares and 60,000 shares were the entitlement on these 6,000 shares. Therefore, the shareholders become entitled to get 66,000 shares and was to apply and submit relevant documents till 26.09.2007.
- b) Respondents stated that, on 25.05.2007 Respondent No. 1 applied to Appellant No. 1 for rights and entitlement of shares as well as all rights and benefits attached to the transmitted shares after reading

publication in the newspaper. Respondent No. 1 again wrote 01.06.2007 requesting the Appellant No.1 to issue 66,000 shares as per his entitlement which he became aware from the publication in the newspaper dated 14.05.2007 and expressed that he is ready and willing to abide by all requirements. The Appellant No. 1 vide letter dated 06.08.2007 replied Respondent No. 1 to procure Court order from competent court in his favour for succession certificate/probate of will/Letter of Administration and also asked Respondent No. 1 to execute Affidavit-cum-Indemnity Bond on stamp paper of ₹100/- duly signed and notarised along with demand draft for ₹1,20,000 being consideration for transfer of ₹2 per share of 60,000 shares. The proforma of Affidavit-cum-Indemnity was also provided by the Appellant No. 1 along with the letter dated 06.08.2007.

- c) The Respondents further stated that pursuant to this Respondent No. 1 complied with the instruction of Appellant No. 1. He approached the Hon'ble District Judge, Delhi under Section 276 of Indian Succession Act for grant of letter of administration with respect to the will dated 20.08.1980 executed by Late Devki Nandan Kaura. He also executed Affidavit-cum-Indemnity Bond (duly notarised) in favour of Appellant No. 1 as per proforma provided by the Appellant No. 1 and also signed the Share Transfer Form and submitted all above documents along with covering letter dated 19.11.2007 stating that he is ready and willing to pay consideration of ₹2/- per share as and when required. Finally, the Letter of Administration under Section 290 of the Indian Succession Act were granted vide decree dated 25.04.2012 in favour of the respondent

as per the Will dated 20.08.1980. The same was submitted along with the Judgement of the Hon'ble District Judge, North, Delhi to Appellant No. 1 vide dated 01.06.2012 and requested for transfer of shares.

- d) The learned counsel for the Respondents stated that when respondent No. 1 submitted the letter dated 19.11.2007 along with the Transfer Deed and Affidavit-Cum-Indemnity Bond, then appellant happily accepted the same, never stated that the entitlement was not heritable rather stated that the decision for transfer will be taken after Court order but never whispered that the shares proposed to be transferred in favour of respondent No. 1 are not heritable. It was further stated that appellant used the Affidavit-cum Indemnity Bond for submitting to various authorities as per Red Herring Prospectus to show that there are no grievances of shareholder but after five years denied the transfer of shares to Respondent No. 1 and did not comply with the Undertaking given in the Red Herring Prospectus. The rejection of transfer of 60,000 shares and non-transmission of 6,000 shares in favour of Respondents by the appellant is totally arbitrary, malicious and illegal.

4. After hearing the parties the NCLT, Chandigarh passed the order. The relevant portion of the order is as under: -

“37 In view of above discussion, we hold that the respondent No. 1 company without sufficient cause refused to register the transfer of shares consequent to the arrangement between the respondent no. 1 company and the erstwhile respondent no. 2 company whereby the father of the petitioner/his legal heirs were entitled to receive equivalent shares of respondent company No. 1 from respondent company No. 2. We also hold the petition is maintainable in law and the contentions raised by the respondent

No. 1 and 2 companies in respect of the maintainability of the petition cannot be accepted. The CA No. 06 of 2014 stands dismissed.

“38 Consequently, under the provision of Section 58 (5) of the Act, we direct that the transfer shall be registered by the respondent No. 1 company and the respondent No. 1 company shall comply with such order within a period of ten days or receipt of the order. For the purpose of enabling compliance of the order by the respondent No. 1 company, we direct the petitioner to make payment for the 60,000 shares at ₹2/- per share to the respondent no. 2 company within five days of the receipt of the order and also direct respondent No. 2 company to render necessary cooperation to the respondent No. 1 company in complying with the directions for the transfer of shares, as above.

“39 Further directions are issued to the petitioner that on transfer of 60,000 shares in his name, he will execute the transfer deed to the extent of entitlement of respondent No. 3 in accordance with the terms of Letter of Administration issued by the District Judge vide orders dated 31.01.2012 and 25.04.2012.

5. Being aggrieved by the impugned order the appellants have preferred this appeal. Respondents have filed their reply and the appellant have filed the rejoinder in rebuttal.
6. Having heard learned counsel for the parties we have perused the record.
7. It is not in dispute that Mr. Devki Nandan Kaura was a shareholder of appellant company holding 150 shares and after split of shares and bonus issue, his legal heirs are entitled for these 6000 shares.
8. The real controversy between the parties is with regard to entitlement of allotment of 60000 shares which were due to R1 (including R2) on right basis by the appellant company

9. The appellant raised the issue of limitation and argued that the Respondents are not entitled to allotment of these shares as they have approached the company after twenty years. Learned counsel for the Respondent argued that they applied on 25.5.2007 (Page 92) to the appellant for exchange of shares with new shares certificates. The Respondent argued that they again intimated the Respondent vide their letter dated 1.6.2007 (Page 94) regarding allotment of shares 66000 shares which he became aware from publication in the newspaper dated 14.5.2007 and expressed that he is ready and willing to abide by all requirement. Learned counsel for the Respondent further argued that the appellant company vide its letter dated 6.8.2007 (Page 95) directed the Respondent (being legal heir of Mr. Devki Nandan Kaura) to submit the necessary order from the court and also execute an Affidavit cum Indemnity Bond on stamp paper of Rs.100/- duly signed and notarized and also Demand Draft for Rs.120000/-favouring M/s Haryana Electrical Udyog Pvt Ltd. Learned counsel for the Respondent further argued that they vide their letter dated 19.11.2007 (Page 98) intimated the appellant company that when the appellant company vide its letter dated 9.11.1987 (Page 97) has accepted the Will of late MR. Devki Nandan Kaura and now asking for court order is uncalled for and unsustainable in law. Learned counsel for the Respondent further argued that they also intimated the company that they have applied for court order and to obtain letter of administration is time consuming and it was impossible to comply appellant's deadline date of 26th September, 2007. Learned counsel for the Respondent further argued that they sent the affidavit cum indemnity bond to the Respondent vide letter dated 19.11.2007 (Page 100). Learned counsel for the

Respondent further argued that appellant vide their letter dated 30.11.2007(Page 107) intimated the Respondent that “*since you have applied to the competent court of jurisdiction for grant of Succession Certificate/Probate/Letter of Administration, final decision for transfer of shares from HUPL in favour of the legal heirs of the deceased shareholders will be upon receipt of succession certificate/probate, Letter of Administration and subject to the Court direction in this regard.*”

Our Finding:

10. From the above correspondence exchanged between the parties we note that the appellant company have never intimated the Respondent that they have not approached the appellant within the limitation period. However, vide letter dated 30.11.2007 the appellant company has intimated the Respondent that final decision will be upon receipt of court direction in this regard. At this stage by raising the issue of limitation has no force. Once having represented to the Respondent to act upon certain course of action and he believing such representation bonafide and true acted upon it, the other party cannot resile back now from its stand. In other words, a party cannot approbate re-approbate at the same time.

11. Learned counsel for the appellant argued that the respondent was clearly intimated that the outer limit for submission of the requisite documents was by the close of working hours of 26.9.2007 and no relaxation in the date was possible as per the declaration given in the Red Hearing Prospectus. Learned counsel for the Appellant further argued that consideration amount was also not deposited within the time period i.e. by

26.9.2007. Therefore, the Respondents are not entitled for 60000 shares. Learned counsel for the Respondent argued that the appellant vide their letter dated 9.11.1987 (Page 97) accepted the Will executed by Late Mr. Devki Nandan Kaura but later on insisted for Court order alongwith affidavit cum indemnity bond, and obtaining the letter of administration is time consuming. Learned counsel for the Respondent argued that Hon'ble District Judge granted letter of administration vide letter dated 31.1.2012 to the Respondent and the letter of administration under Section 290 of the Indian Succession Act were granted vide decree dated 25.04.2012 in favour of Respondent as per Will dated 20.08.1980 and requested vide letter dated 1.6.2012 to the appellant for transfer of shares as per Respondent's entitlement and Respondents are ready to pay the transfer consideration upon confirmation by the Appellant. Learned counsel for the Respondent argued that the appellant for the first time vide letter dated 17.9.2012 stated that neither the Respondent No.1 nor Respondent No.2 both being sons and legal heir of deceased shareholder can claim 60000 shares in lieu of convertible debentures issued on right basis with respect to 150 shares held by deceased shareholder on the ground that convertible debentures on rights basis are not heritable. Learned counsel for the Respondent further argued that the appellant vide letter dated 17.9.2012 (Page 128-129) further directed to furnish an indemnity bond indemnifying the company against any legal action by Respondent No.2. Learned counsel for the Respondent argued when the letter of Administration was submitted to the company by Respondent No.1, there was no need to ask for Affidavit and Indemnity Bond from any of the Respondents. Learned counsel for the Respondent further argued that on

earlier occasion also the appellant company vide letter dated 6.8.2007 asked for court order alongwith affidavit and indemnity bond just to harass the Respondents.

12. We have heard the parties on this issue. Appellant company in their correspondence with the Respondent has already accepted to issue shares to the Respondents as per their entitlement on production of court orders, affidavit and indemnity bond and on payment of Rs.120000/- being the consideration amount of 60000 shares. During the course of arguments when we asked learned counsel for the appellant when the Letter of Administration has been submitted by the Respondent then why did you insist for affidavit and indemnity bond. When Letter of Administration has been issued, it means that the Appellants are discharged from their liability. On this, the learned counsel for appellant apologised. We note that the appellant is a listed company in real estate and is very well aware of legal formalities. By insisting affidavit and indemnity bond again and again inspite of Letter of Administration issued clearly establish that the Appellants are harassing the poor investors. The act of the appellants deserves some penal action. We also note that the Respondents are entitled for 60000 shares as per entitlement on payment of consideration.

13. In view of the foregoing discussions and observations the impugned order dated 11th December, 2018 is upheld and the following further directions are issued:

- i) Respondent will make payment of consideration to the appellant company within 15 days from the date of receipt of this order and he

shall be entitled to the benefit of the membership from the date of payment.

ii) Appellant company will transfer/arrange for transfer 60000 shares to the Respondent within 30 days from the date of receipt of payment.

iii) Respondent on transfer of 60000 shares in his name, will execute the transfer deed to the extent of entitlement of Respondent No.2 within 30 days.

iv) Interim order, if any, passed by this Tribunal is vacated.

v) A sum of Rs.5,00,000/- costs is imposed on appellants to be deposited with National Defence Fund within 15 days from the date of this order. Proof of depositing the same will be submitted to the Registrar of this Appellate Tribunal within a week thereafter.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi
Bm