

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No. 21 of 2018**

**IN THE MATTER OF :**

**Shri Amit Triloknath Mishra**

**... Appellant**

**Versus**

**TAP Constructions & Technologies  
Pvt. Ltd. & Ors.**

**... Respondents**

**Present: Shri Aditya Pande and Shri Akshay Petkar, Advocates for the  
Appellant.**

**ORDER**

**19.01.2018** Heard the learned counsel for the appellant. Perused the impugned order.

2. Learned counsel for the appellant submits that the appellant had on 25.06.2013 resigned as Director but he did have shares and that the shares were never physically issued to him. According to him, for such reason, paragraph 21 of the Articles of Association could not have been relied on by the respondents. Learned counsel further points out his pleadings, which were made before the National Company Law Tribunal, New Delhi (hereinafter referred to as 'NCLT') and the reply filed by the respondents in paragraph 3.0 (iii). He submits that the respondents did accept that the appellant had shares and Respondents claimed that when he resigned from the Directorship, he relinquished his shares. According to him, this shows that the appellant did have shares, and Company Petition was wrongly disposed off.

3. In the impugned order, the learned NCLT observed in paragraphs 8 and 9 as under :

*“8. In the instant case, the Respondent did not produce any record evidencing misplacing/shares transferred to third party. Further, he has also not produced any evidence towards steps taken by him to obtain duplicate share certificates from the R1 Company. In the absence of any records to satisfy any of the requirements as specified under Section 244 especially any member or members holding not less than 1/10<sup>th</sup> of the issued share capital of the company. In the instant case since the Respondent in the MA 235/2017 does not provide any evidence of holding shares in R.1 Company like original share certificates, therefore, he does not fulfill the requirement as stated above. In the absence of any Share certificates currently held by the Respondent, he would not even qualify for considering the other two conditions under Section 244 i.e., not less than one hundred members of the company or not less than one-tenth of the total number of its members.*

9. *In view of the above facts and circumstances, observations of the Bench as discussed supra, the MA 235/2017 is admitted and we hold that the Respondent has failed to establish that currently he is the shareholder of TAP Construction & Technologies Pvt. Ltd. and holding more than 1/10<sup>th</sup> of the issued share capital to file a Company Petition under Section 241 of the Companies Act, 2013. No order as to cost.”*

4. Looking to the above, it is apparent that the appellant does not actually have shares in hand to show his rights. When the Companies Act requires holding of shares and none are shown, there is no reason why we should interfere with the impugned order.

The appeal is dismissed. There is no order as to costs.

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

[Justice Bansi Lal Bhat]  
Member (Judicial)