

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

**Company Appeal (AT) No. 322 of 2018**

[Arising out of Order dated 31<sup>st</sup> August, 2018 passed by the National Company Law Tribunal, Mumbai Bench in CP 32/59, 241-242/MB/MAH/2016]

**IN THE MATTER OF:**

**1. Dhananjay Krishnanath Gaikwad,**  
Plot No. 56, Krushna, Avdhoot Nagar,  
Baramati, Pune – 413102.

**2. Ms. Anita Krishnanath Gaikwad,**  
Plot No. 56, Krushna, Avdhoot Nagar,  
Baramati, Pune – 413102.

**3. Ms. Varsharani Dhananjay Gaikwad,**  
Plot No. 56, Krushna, Avdhoot Nagar,  
Baramati, Pune – 413102.

**...Appellants**

**Vs**

**1. Tulijabhavani Cold Storage Private Limited,**  
Plot No. 56, Krushna, Avdhoot Nagar,  
Baramati, Pune – 413102.

**2. Mr. Ramkrishna Narsingrao Mankari,**  
Resident of F-9, Harshvihar, S. R. N. 163/1+2A,  
2B/1A, D.P. Road, Aundh, Pune - 411007.

**....Respondents**

**Present:**

**For Appellants:** Mr. Rahul Chitnis and Mr. Aaditya Pande, Advocates.

**For Respondents:** Mr. Samrat Shinde, Advocate for Respondent No.1.

Mr. Kaushik Poddar and Mr. Santosh Mishra,  
Advocates for Respondent No.2.

## **J U D G M E N T**

### **BANSI LAL BHAT, J.**

This appeal is directed against impugned order dated 31<sup>st</sup> August, 2018 passed by the National Company Law Tribunal, Mumbai Bench (hereinafter referred to as the “Tribunal”) whereby and whereunder the petition filed by Respondent No. 2 – ‘Mr. Ramkrishna Narsingrao Mankari’ (hereinafter referred to as the “Petitioner”) under Section 59, 241-242, 246, 337 to 341 of the Companies Act, 2013 (hereinafter referred to as “the Act”) against Respondent No. 1 (hereinafter referred to as the “Company”) and the Appellants (hereinafter referred to as “Respondents No. 2 to 4”) alleging several acts of oppression/ mismanagement, came to be allowed with certain directions. The Appellants have assailed the impugned order primarily on the ground that the Tribunal erred in passing the impugned order in as much as the Petitioner had been repaid the entire consideration amount paid by him for the purchase of shares and the petition was barred by limitation.

2. A flashback of the events and the factual matrix bearing upon the case in hand, being inevitable, may briefly be noticed. The Company styled as ‘Tuljabhavani Cold Storage Private Limited’ was incorporated as a Private Limited Company on 30<sup>th</sup> June, 2003 with the main object of undertaking and carrying on provisions of cold storage and food processing, etc. with authorized paid up capital of Rs.5 Lakhs. Respondents No. 2 and 3 were the

Promoters of the Company holding 25% each of the paid up equity share capital of the Company with balance 50% held by other two Promoters viz. 'Dahairyasheel Gaikwad' and 'Sanjay Jadhav' in equal shares. Respondents No. 2 to 4 were the Directors and the Shareholders of the Company. There was no change in the authorized, issued, subscribed and paid up capital of the Company till filing of petition. According to Petitioner, Respondent No. 2 being in dire need of funds approached the Petitioner for investment in equity shares of the Company thereby persuading the Petitioner to purchase the majority shareholding of equity shares of himself and other Respondents in the Company, allegedly at a huge premium. Petitioner claimed to have purchased 25,500 equity shares representing 51% equity shares of the capital of the Company from Respondents No. 2 and 4 at Rs.275 per equity share as against face value of Rs.10 per share with Respondents No. 2 and 4 assuring the Petitioner that all documents would be executed for transfer of majority shareholding of the equity shares in the Company in favour of Petitioner and in this regard all legal formalities and compliances will be observed. Allegedly, Petitioner was also assured of being made a non-retiring Director on the Board of Directors of the Company vested with Veto Power besides being made a signatory to all the bank accounts. Respondents No. 2 and 4 executed the prescribed Share Transfer Forms in favour of the Petitioner for the transfer of 25,500 equity shares. Transfer of shareholding was placed before the Board of Directors of the Company on 4<sup>th</sup> February, 2013 which passed the unanimous resolution for approval of the transfer of shareholding as aforesaid favouring the Petitioner. The

Board of Directors further resolved to appoint the Petitioner as Additional Director of the Company to hold office till the conclusion of next Annual General Meeting. Transfer Share Certificates were issued in favour of the Petitioner for a consideration of Rs.70 Lakhs paid to Respondent No. 2 and Respondent No. 4 in the following proportion:-

- Respondent No. 2 – Rs.63,13,725/-
- Respondent No. 4 – Rs.6,86,275/-

Respondent No. 2 to 4 handed over the duly signed and endorsed equity share certificates to the Petitioner with assurance extended to Petitioner that the Register of Members and the Register of Transfers maintained by the Company were updated and necessary entries were effected therein. This led the Petitioner to believe that he had become a majority shareholder of the Company and also a Director on the Board of Directors of the Company. The Petitioner alleged that in fact he was defrauded as these events were never recorded by the Respondents in the record. The Petitioner further alleged that R-2 filed the balance sheet and annual return of the Company for the year ending 31<sup>st</sup> March, 2013 with ROC wherein the name of Petitioner was deliberately not reflected. However, this fact came to the notice of the Petitioner only in the year 2016 while making a search in the Ministry of Corporate Affairs website. Petitioner found that his majority stake was not reflected in the record for Financial Years 2012-13 and 2013-14 despite the fact that such statements and returns were prepared by R-2 to R-4 after the date of investments made by

the Petitioner. It is further alleged that no notice of the Annual General Meeting was issued to Petitioner despite he being a majority shareholder. Instead a meeting was held on 30<sup>th</sup> September, 2014 without the knowledge of the Petitioner. The Petitioner alleged that the aforesaid acts of Respondents 2 to 4 not only amounted to fraud but also oppression of the Petitioner and mismanagement of affairs of Company on the part of Respondents 2 to 4. Petitioner also alleged many irregularities in running the affairs of the Company by Respondents No. 2 to 4 and sought reliefs including disqualification of Respondents No. 2 to 4 from Directorship of the Company and cancellation of their Director Identification Number (DIN).

3. A glance at the record of the Tribunal brings it to fore that the Respondents did not file any reply despite several opportunities granted by the Tribunal. Thus, the allegations in the petition before the Tribunal stood un rebutted and uncontroverted.

4. The Tribunal found that the factum of investment of Rs.70 Lakhs by Petitioner towards purchase of 25,500 shares belonging to R-2 and R-4 has not been at all disputed and the controversy stems out of breach of promise on the part of R-2 qua transfer of shares and appointment of Petitioner as Director. The Tribunal also found that the Respondents never intimated through notice the board meeting thereby keeping the Petitioner in dark in regard to day to day functioning of the Company. The Tribunal also found that the Respondents had also failed to invite the Petitioner to assume charge as Director and manage the affairs of the Company being the

majority shareholder. The Tribunal was of the view that the Respondents conduct was questionable in as much as they received substantial money from the Petitioner on the pretext of transferring shares to him but defrauded him by not effecting transfer of shares in his name. Therefore, the Tribunal considered it necessary to pass a slew of directions for safeguarding the interest of Petitioner and managing the affairs of the Company in accordance with the mandate of law. The Tribunal held the Respondents guilty of oppression and mismanagement, declared the board meetings held after 04 February, 2013 as void, directed rectification of balance sheet drawn as on 31<sup>st</sup> March, 2013, rectification of registration of members, besides directing the Respondents to execute share transfer forms in favour of the Petitioner and complete all legal formalities for transfer of share certificates in the name of the Petitioner and also directed appointment of Petitioner as Director besides other directions incidental thereto culminating in constitution of new Board of Directors.

5. The impugned order has been assailed on the ground that the Company Petition was barred by limitation. It is contended that the Tribunal failed to give due weightage to the fact that the Petitioner had received back the entire consideration amount from Respondent No.4. It is further contended that the Respondents failure to file reply to the Company Petition was not on account of any lapse on their part but due to forfeiture of their right to file the reply by the Tribunal. It is contended that the Tribunal failed to address the material issues raised by the Respondents and erred in drawing conclusions which were not justified.

6. In his reply affidavit Petitioner has stated that several acts of oppression/ mismanagement by the Respondents detailed in the Company Petition form a part of continuous process of oppression and mismanagement continuing upto the date of filing of Company Petition, thus the Company Petition was within the period of limitation. It is further stated that the Petitioner paid Rs.70 Lakhs to the Respondent No. 2 and 4 towards consideration of 25,500 equity shares purchased by the Petitioner representing 51% equity shares as acquired by him in the Company and resolution for transfer of such shares was passed by the Board of Directors of the Company in the meeting held on 4<sup>th</sup> February, 2013. It is further stated that the Respondent No. 2 to 4 handed over the duly signed and endorsed equity share certificates to the Petitioner after effecting the transfer of 25,500 equity shares. However, these events were never recorded by Respondents in their records, thus, defrauding the Petitioner. It is further stated that the Petitioner was further persuaded by Respondent No.2 to advance him a loan of Rs.20 Lakhs for utilizing the same for payment of Service Tax of the Company. Petitioner, believing in good faith gave a loan of Rs.20 Lakhs to Respondent No. 2 as on 31<sup>st</sup> December, 2013 with the understanding that the same will be repaid by Respondent No. 2 within a period of two months. It is further stated that false documents were fraudulently filed by the Respondents with the Registrar of Companies to cheat the Petitioner who learnt about the true state of affairs only in year 2016 from the office of Registrar of Companies. It is further stated that after great persuasion the loan amount of Rs.20 Lakhs was repaid to Petitioner

on 7<sup>th</sup> August, 2015 i.e. after huge gap of more than one year and six months. It is further stated that the majority stake of the Petitioner was not reflected in the balance sheets and annual return filed by the Company for the Financial Year 2012-13, 2013-14. Incorrect and misleading information was provided to the Registrar of Companies. It is further stated that no notice of General Meetings of the Company after acquisition of majority shares by the Petitioner was given to Petitioner and no compliance was made with the legal provisions regarding holding of such General Meetings. It is stated that fraud has been played upon the Petitioner and the Respondents have filed false and misleading statements before the Registrar of Companies. It is further stated that the Respondents are diverting majority of the business and profit of the Company to another proprietorship of Respondent No.2 deceptively styled as 'Tuljabhavani Cold Storage', which is a clear example of siphoning of funds of the Company by the Respondents and mismanagement of Company by the Respondents. The acts of mismanagement by the Respondents are stated to have gravely affected the interests of the Petitioner. Grounds of appeal have been refuted and it is stated that the interests of the Petitioner have been greatly prejudiced.

7. In their rejoinder affidavit Appellants (Respondents 2 to 4 in Company Petition), while reiterating the grounds of appeal, stated that the Tribunal failed to deal with the issue of limitation raised in terms of Miscellaneous Application No. 236 of 2018 filed in the Company Petition. It is stated that since February, 2013 the Petitioner was aware that the Respondents 2 to 4



had not acted upon the allotment of shares and had not transferred the shares in the records of Company and hence the cause of action for filing the Company Petition arose in February, 2013, therefore, the Company Petition was barred by limitation.

8. It is contended on behalf of Appellants (Respondents 2 to 4 in Company Petition) that the Tribunal has failed and neglected to decide whether Company Petition No. 32 of 2016 was barred by limitation though M.A. No. 236 of 2018 was taken up for hearing alongwith Company Petition. It is further contended that the right to sue accrued to the Respondent No. 2 (Petitioner in the Company Petition) in February, 2013 and the period of limitation being three years, the Company Petition having been filed on 19<sup>th</sup> September, 2016 was barred by limitation. Learned counsel for Appellants submitted that the matter was required to be remanded back to the Tribunal to decide the Company Petition on the issue of limitation.

9. Per contra it is contended on behalf of Respondent No. 2 (Petitioner) that the Appellants (Respondents No. 2 to 4) are trying to reopen the case and raise issues which have already been decided. It is further submitted that the plea raised by Respondents No. 2 to 4 that cause of action arose on 4<sup>th</sup> February, 2013 when the documents pertaining to transfer of shares in favour of Petitioner were executed and same were approved by the Board of Directors in the Board Meeting held on the same date is misleading as the issue of limitation is a mixed question of law and facts and as a matter of fact Petitioner got knowledge of wrong doings of Respondents No. 2 to 4 only

after doing a search with the Registrar of Companies in February, 2016 and the Company Petition was filed on 19<sup>th</sup> of September, 2016. It is submitted that these facts stand unrebutted and uncontroverted as the defense of Respondents No. 2 to 4 had been struck off. Company Petition was filed on 19<sup>th</sup> September, 2016 well within the period of three years prescribed as limitation, which would commence from the date of knowledge of misconduct of Respondents No. 2 to 4 viz. 2<sup>nd</sup> February, 2016 and subsequently, confirmed from the Annual Report of the Financial Year ending 31<sup>st</sup> March, 2016. It is further submitted that even if the petitioner could have got knowledge of the Annual Report when the Annual General Meeting was held on 30<sup>th</sup> September, 2013, which he did not attend due to non-intimation, still the Company Petition was within the prescribed period of limitation.

10. Heard learned counsel for the parties and perused the record. After wading through the record of the Tribunal, we find that during hearing before the Tribunal on 7<sup>th</sup> April, 2017 a mutual settlement was recorded by virtue whereof a payment of Rs.1.33 crores was to be made by Respondent No. 2 to the Petitioner. In terms of undertaking the payment was to be made by 30<sup>th</sup> April, 2017. The record further lays bare that on 1<sup>st</sup> May, 2017 two post-dated cheque respectively of Rs.69,86,275/- dated 07<sup>th</sup> June, 2017 and Rs.63,13,725/- dated 20<sup>th</sup> May, 2017 were delivered to the Petitioner with the understanding that the share transfer applications would be signed only after encashment of cheque. However, as recorded on 19<sup>th</sup> June, 2017, both cheque bounced. On a cause shown to the Tribunal, fresh

cheque in the same amount were issued by Respondent No. 2 favouring the Petitioner with an understanding that the cheque would be encashed on or before 31<sup>st</sup> July, 2017. The cheque issued could not be encashed. Despite extending the deadline in lieu of costs, Respondent No. 2 failed to abide by the settlement and the right of Respondents to file reply was forfeited. Consequently, the allegations in the Company Petition regarding oppression and mismanagement remained uncontroverted and unrebutted. The facts asserted by the Petitioner and the allegations constituting oppression and mismanagement largely owe their genesis to the investment of Rs.70 Lakhs by Petitioner which were paid to the Respondent No. 2 and 4 towards consideration of 25,500 equity shares purchased by the Petitioner representing 51% equity shares acquired by him in the Company. A resolution for transfer of such shares was passed by the Board of Directors of the Company in the meeting held on 4<sup>th</sup> February, 2013 approving the transfer of 25,500 equity shares of the Company at a price of Rs.275 per share for a total amount of Rs.70 Lakhs. Respondent No. 2 to 4 handed over the duly signed and endorsed equity share certificates to the Petitioner after effecting the transfer of 25,500 equity shares. There is no specific denial in regard to these facts which has the effect of admission on the part of Respondents No. 2 to 4. Plea raised before this Appellate Tribunal that the consideration amount of the transferred equity shares was refunded to Petitioner is a bald assertion which has neither been raised before the court of first instance nor is the same supported by record. This is apart from the fact that refund of consideration after completing the transaction of transfer

would be of no consequence and would not invalidate the transfer of shareholding effected in favour of the Petitioner. This bald assertion emanating from the Appellant has to be outrightly rejected.

11. The unrebutted and uncontroverted factual matrix placed before the Tribunal as also forming the bedrock of the matter in issue before this Appellate Tribunal leads to no other conclusion than the one that the factum of transfer of majority shareholding in favour of Petitioner by Respondents 2 to 4 and approval of the transfer of 25,500 equity shares of the Company in favour of the Petitioner for a consideration amount of Rs.70 Lakhs by the Board of Directors remains undisputed and stands proved. The subsequent events including holding of Annual General Meeting by Respondents 2 to 4 on 30<sup>th</sup> September, 2013 for approving the Balance Sheet and Annual Report for financial year ending 31<sup>st</sup> March, 2013 without notice to Petitioner, filing of Form 23AC and Form 23ACA with Ministry of Corporate Affairs on 19<sup>th</sup> October, 2013 followed by filing of Form 20B on 13<sup>th</sup> November, 2013 before Ministry of Corporate Affairs by Respondents 2 to 4, as borne out by record, amply demonstrate that the Petitioner was deceitfully entrapped, made to invest a huge amount of Rs.70 Lakhs with false promise of catapulting him to the status of majority equity shareholder with 51% stakes and a false belief induced to induct him as a non-retiring Director. This conclusion is clearly deducible from the fact that these events were never recorded by Respondents in their records, thus, defrauding the Petitioner. The majority stake of the Petitioner was not reflected in the balance sheets and annual return filed by the Company for the Financial

Years ending March 2013 and March, 2014 thereby justifying the conclusion that incorrect and misleading information was provided to the Registrar of Companies by filing false and fabricated statements. On facts no conclusion incompatible with the one arrived at by the Tribunal is possible. Keeping in view the aforesaid facts duly supported by record and not controverted by Respondents No. 2 to 4 it can safely be stated that while Respondents No. 2 to 4 derived pecuniary advantage by effecting the transaction of transfer of shareholding of majority stakes in the Company in favour of the Petitioner, they jeopardized his legal rights and exposed his legitimate interests to peril by not giving effect to the transaction, despite approval by Board of Directors, by indulging in acts of omission and commission in regard to statutory compliances and holding of Annual General Meetings causing grave prejudice to Petitioner who was kept in dark about the true state of affairs. Tables were turned on the Petitioner when he discovered from the record of Registrar of Companies somewhere in February, 2016 that the factum of transfer of shares in his favour had been suppressed by Respondents No. 2 to 4. In the given circumstances, no fault can be found with the finding that Respondents No. 2 to 4 have been conducting the Company's affairs prejudicial to the Petitioner as also to the interests of the Company justifying the directions slapped in terms of the impugned order.

12. The only question for consideration is the issue of limitation raised by the Appellants (Respondents 2 to 4 in Company Petition) through the medium of a Miscellaneous Application while their right to file reply to the

Company Petition stood forfeited. It is the dictum of law that the issue of limitation should be alive to the mind of the court dealing with the lis and has to be looked into irrespective of the fact that such an issue has not been raised by the Defendant/ Respondent. Section 3 of the Limitation Act, 1963 eloquently speaks of this legal position which is profitably reproduced hereinbelow:-

**“3. Bar of limitation.-***(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.”*

Therefore, Appellants (Respondents 2 to 4 in Company Petition) would be within their rights to legitimately raise the issue of limitation notwithstanding the fact that their right to file defense stood forfeited. Unless the lis/ appeal falls within the exceptions enumerated under Sections 4 to 24 of the Limitation Act, 1963, the mandate of law enshrined in Section 3 cited above renders it imperative upon the Court/ Tribunal hearing the suit/ appeal to dismiss the lis filed or preferred after the prescribed period of limitation. Thus, no exception can be taken to such issue being raised by the Appellants (Respondents 2 to 4 in Company Petition). The Tribunal appears to have overlooked the issue of limitation despite the same having been raised and brought to the notice of the Tribunal. Ordinarily, the matter would be remanded to the Tribunal for

determining this issue. However, since we concur with the finding of Tribunal as regards oppression of Petitioner justifying the slew of directions passed in terms of the impugned order, we deem it appropriate to deal with the issue of limitation in these very proceedings.

13. It is well settled that a plea of limitation is a mixed question of law and fact. Reference in this regard may profitably be made to the judgment of Hon'ble Apex Court rendered on 11<sup>th</sup> July, 2006 in Civil Appeal No. 4766 of 2001 titled '**Ramesh B Desai & Ors. Vs. Bipin Vadilal Mehta & Ors.**' reported in (2006) 5 SCC 638 (para 19). It is not in dispute that in regard to matters falling within the purview of Section 241-242 of the Companies Act, 2013, the Limitation Act does not specifically provide for a period of limitation. In terms of Article 137, which is applicable to matters for which no period of limitation is specifically provided, the period of limitation is three years from the date when the right to apply accrues. Unless there is a continuing cause of action, the right to apply will have to be construed as having accrued when the first violation of right occurs or is discovered. Successive violation of right will not give rise to a fresh cause of action. In the instant case, the Appellants have not controverted the factum and validity of transfer of 25,500 equity shares of Company in favour of Respondent No. 2 (Petitioner) against consideration of Rs.70 Lakhs when the relevant documents in regard to the transfer of shares were executed on 4<sup>th</sup> February, 2013 and the transfer of shares was approved by the Board of Directors in its meeting held on the same date. However, no notice was issued to Respondent No. 2 in regard to Annual General Meeting held on

30<sup>th</sup> September, 2013 to approve the Balance Sheet and Annual Report for Financial Year ending March 2013. Appellants have subsequently filed compliances in the prescribed format on 19<sup>th</sup> October, 2013 and 13<sup>th</sup> November, 2013, respectively. According to Respondent No.2, he gained knowledge about suppressing of factum of transfer of majority shareholding in his favour on search of documents filed with Registrar of Companies, thereby gaining knowledge firstly on 2<sup>nd</sup> February, 2016 and subsequently from the Annual Report of Financial Year ending March, 2016 filed with the Registrar of Companies, which revealed that the Appellants had fraudulently not disclosed the Respondent No. 2 as the majority shareholder of the Company. These facts stand unrebutted and uncontroverted. While each filing of statutory compliances suppressing the material facts in regard to majority shareholding of Respondent No. 2 with fraudulent intention on the part of Appellants would constitute a continuing cause of action, computation of period of limitation even from 30<sup>th</sup> September, 2013 (when the Annual General Meeting was held) would bring the Company Petition within the period of limitation in as much as the Company Petition was filed on 19<sup>th</sup> September, 2016 though knowledge cannot be imputed to Respondent No. 2 as he had no notice of the Annual General Meeting and it was only on 2<sup>nd</sup> February, 2016 that he claims to have gained knowledge of the misconduct on the part of the Appellants after searching through the record of Company and the Annual Report for Financial Year ending March, 2016 available with the Registrar of Companies. The allegations in the Company Petition being unrebutted and uncontroverted and there being



nothing on record to dislodge the version of Respondent No. 2 (Petitioner before the Tribunal) placed before the Tribunal, the Company Petition cannot be held to be barred by limitation.

14. Having considered the matter in its proper perspective and the proposition of facts emerging from unrebutted Company Petition further corroborated by the sequence of events encompassing the settlement reached between the parties followed by issuance of cheques favouring the Respondent No. 2 herein which subsequently bounced followed by eventual back out after protracting the matter considerably which lends further credence to the allegations of oppression emanating from the Petitioner, the slew of directions in terms of the impugned order cannot be termed harsh or uncalled for. The Appellants appear to have not only taken the petitioner for a ride by making him part with huge money of Rs.70 Lakhs under garb of inducting him as a majority shareholder and non-retiring Director having effective control over management of the Company but also dragged their feet even in honouring their commitments under the mutual settlement, thus indulging in unwarranted acts jeopardizing the legitimate interests of the Respondent No. 2 (Petitioner) and causing him grave prejudice. This appeal is yet another brazen attempt to further prolong perpetuation of the acts of oppression against the Respondent No. 2 (Petitioner) without there being any substance in the appeal, which in the context of breach of undertakings given to Tribunal pursuant to mutual settlement, can safely be termed as frivolous.

15. For the reasons recorded hereinabove, the appeal is dismissed, as the impugned order does not suffer from any legal infirmity and the Company Petition is not barred by limitation. Considering the fact that the appeal is frivolous, we impose total costs of Rs.1.00 Lakh (Rupees One Lakh Only) upon the Appellants, which shall be deposited with the 'Ministry of Corporate Affairs' in the form of a Demand Draft within 30 days.

[Justice Bansi Lal Bhat]  
Member (Judicial)

[Balvinder Singh]  
Member (Technical)

**NEW DELHI**

**25<sup>th</sup> July, 2019**

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