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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CO. A. (SB) 43/2009

M/S. PADMINI
TECHNOLOGIES LTD.

Through

..... Appellant

Mr. P. Nagesh with Mr. Rishi
Sood, Advocates

versus

T.S. SAWHNEY AND ORS.

Through

..... Respondents

None

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Date of Decision: 22nd February, 2011**CORAM:****HON'BLE MR. JUSTICE MANMOHAN**

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T**MANMOHAN, J : (Oral)****CO. APPL. 1651/2009**

This is an application for condonation of delay in filing the appeal.

For the reasons stated in the application, the delay in filing the appeal is condoned.

Accordingly, the application stands disposed of.

CO. APPLS. 1652/2009, 1967/2010, 1968/2010, 1971/2010, 1972/2010

These applications have been filed seeking interim reliefs/directions.

As I plan to dispose of the main appeal today itself on merits, no further orders are called for in the present applications.

Accordingly, the present applications stand disposed of.

CO. APPL. 1969/2010

In this application, respondents have prayed for stay of proceedings initiated against them by third parties under Section 138 of the Negotiable Instruments Act, 1881.

In my opinion, no relief can be granted against third parties in the present application. Accordingly, the present application is dismissed.

CO. A. (SB) 43/2009

1. The present appeal has been filed under Section 10F of the Companies Act, 1956 (for short ‘the Act’) challenging the order dated 20th November, 2007 passed by the Company Law Board (for short ‘CLB’) in Co. Pet. 17/111/2000-CLB.

2. I may mention that this matter was partly heard yesterday and remaining arguments have been heard today. On both the occasions, none was present for the respondents. Accordingly, after hearing the arguments of learned counsel for the Appellant-Company, I am proceeding to dictate the judgment.

3. The relevant facts of the present case are that 63,700 shares of M/s. Padmini Technologies Ltd. were pledged by M/s. H.T. Ferro Alloys with the respondents with a clear undertaking authorizing the respondents to sell or transfer the said pledged shares. However, when the respondents presented the said shares for transfer with the Appellant-Company on 18th March, 1997, which was the record date for

issuance of bonus shares, the Appellant-Company refused to issue any shares to the respondents. Also, the Appellant-Company did not comply with the provisions of Section 206A of the Act.

4. The CLB in the impugned order has not only observed that the bonus shares were not issued to the respondents but on the contrary has also recorded that they were issued to M/s. Cherry Marketing Ltd. – a company managed and controlled by one of the directors of Appellant-Company. In fact, the CLB has opined that there was an illegal issue of bonus shares to M/s. Cherry Marketing Ltd. by the Appellant-Company.

5. Mr. P. Nagesh, learned counsel for Appellant-Company submits that as the name of respondent-company did not appear in the register of the members of Appellant-Company on the record date, that means, 18th March, 1997, the respondents were not entitled to bonus shares declared by the Appellant-Company in its Annual General Meeting held on 16th December, 1996.

6. Mr. Nagesh further submits that the petition preferred by the respondents before the CLB was barred by limitation as it had not been filed within a period of two months as mandated by Section 111(2) of the Act. Mr. Nagesh also submits that even if the respondents' petition were to be treated as having been filed under sub-section (4) of Section 111 of the Act, then also the period of limitation of three years had expired. In this connection, Mr. Nagesh relies upon a judgment of Kerala High Court in *Duroflex Ltd. Vs. Tommy Mathew and Ors.*, (2007) 137 Comp. Cas. 229 (Ker.).

7. Mr. Nagesh lastly submits that the CLB could not have granted the relief of transfer of bonus shares along with interest and costs quantified at the rate of Rs. 275/- per share, when the respondents themselves had sold the shares at Rs. 40/- per share.

8. Having heard Mr. Nagesh and having perused the papers, I am of the opinion that in view of the finding of the CLB of illegal issue of bonus shares by the Appellant-Company, the Appellant cannot take advantage of its own wrongful conduct. In my view, the respondents could have done nothing more but to lodge their shares for transfer on the record date of bonus shares, namely, 18th March, 1997. In fact, before the CLB, the Appellant-Company had taken up the plea that only those shares which had been lodged and received by closing day of 17th March, 1997 were entitled to be considered for bonus shares. Accordingly, what was urged before the CLB was that shares should have been lodged by 17th March, 1997 and not by 18th March, 1997. This defence, in my opinion, was rightly rejected by the CLB as the record date for bonus shares was 18th March, 1997 and not 17th March, 1997.

9. As far as the plea of limitation of two months under Section 111(2) of the Act is concerned, I am of the view that the present case falls under sub-section (4) and not under sub-section (2) of Section 111 of the Act. Sub-sections (2), (4) and (5) of Section 111 of the Act are reproduced hereinbelow:-

“111. Power to refuse registration and appeal against refusal

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(2) *The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the ²[Tribunal] against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in sub-section (1), either to register the transfer or transmission or to send notice of its refusal to register the same.*

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(4) *If-*

(a) *the name of any person-*

(i) *is without sufficient cause, entered in the register of members of a company, or*

(ii) *after having been entered in the register, is without sufficient cause, omitted therefrom; or*

(b) *default is made, or unnecessary delay takes place, in entering in the register the fact of any person having become, or ceased to be, a member [including a refusal under sub-section (1)],*

the person aggrieved, or any member of the company, or the company, may apply to the [Tribunal], for rectification of the register.

(5) *The [Tribunal], while dealing with an appeal preferred under sub-section (2) or an application made under sub-section (4) may, after hearing the parties, either dismiss the appeal or reject the application, or by order-*

(a) *Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within ten days of the receipt of the order; or*

(b) *Direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.*

(emphasis supplied)

10. Consequently, the limitation of two months as prescribed in sub-sections (2) and (3) of Section 111 are not attracted to the facts of the present case.

11. I am further of the view that in the present case the respondents are entitled to condonation of delay, if any, in filing the proceedings before CLB, as the CLB has found on facts that the respondents had made numerous representations from 1997 to 2000 addressed to Delhi Stock Exchange with copies to the Appellant-Company. Keeping in view the Appellant-Company's conduct of not even acknowledging the letters sent by respondents and of illegally issuing bonus shares to a company managed and controlled by one of its directors, I am of the opinion that the respondents are entitled to condonation of delay, if any, in filing the petition before the CLB.

12. I am also of the opinion that keeping in view the mandate of Sub-section (5)(b) of the 111 read with Section 206A of the Act, respondents are entitled to not only rectification of share register but also to damages.

13. Consequently, I uphold the CLB's direction to Appellant-Company to not only issue bonus shares but also pay compensation at the rate of Rs. 275/- for each bonus share as that was the highest price of Appellant-Company's shares after the record date of bonus shares, namely, 18th March, 1997.

14. As the admitted position is that the Appellant-Company had declared the bonus shares in the ratio of one bonus share for every two equity shares, respondents would be entitled to 31,850 bonus shares as well as compensation at the rate of Rs. 275/- for each of 31,850 bonus shares. However, keeping in view the prevalent rate of interest as well as the fact that the respondents have already been granted the highest

price of the bonus shares as compensation, I direct the Appellant-Company to pay simple interest at the rate of four percent on the said sum.

15. With the aforesaid observations, the present appeal stands disposed of.

MANMOHAN,J

FEBRUARY 22, 2011

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