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

% *Judgment reserved on: 16.10.2012*
Judgment delivered on: 19.10.2012

+ **CO.A(SB) 37/2010**

UNITECH LIMITED & ANR Appellants
Through: Mr. Arun Kathpalia and Mr. N.
Raja Singh, Advocates.

versus

GRIDHAR GOPAL SHARMA & ANR Respondents
Through: Mr. Hem C.Vashist, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This appeal under Section 10-F of the Companies Act has been filed against the order of the Company Law Board (CLB) dated 04.06.2010 wherein on an application filed by Gridhar Gopal Sharma (hereinafter referred to as respondent No. 1) under Section 111-A of the Companies Act, a direction had been given to M/s Unitech Limited (hereinafter referred to as the appellant) to rectify the register of members by substituting the name of respondent No. 1 in place of Lalit Kumar Goyal (hereinafter referred to as respondent No. 3) qua 100

shares and to issue duplicate shares to Respondent No. 1 or in the alternate to buy the shares from the open market and allot them to Respondent No. 1.

2. A petition under Section 111-A (3) had been filed by respondent No. 1 in the CLB. His contention was that he was the owner of 100 shares allotted to him by the appellant company. He had the physical possession of the said shares bearing share certificate No. 5998 and distinctive No. from 599701 to 599800 with folio No. 0005998. The petitioner was receiving dividends from time to time on the aforementioned shares. In the year 2006, the petitioner had changed his residence and shifted to Model Town; during transit, he misplaced some important documents including his share certificate along with share transfer deeds. On 28.02.2006, this information was given to the appellant who vide letter dated 23.03.2006 asked him to complete certain formalities for issuance of duplicate shares certificate. A complaint had been lodged in the concerned Police Station on 11.05.2006 which alongwith an indemnity bond and affidavit dated 31.10.2006 and a demand draft of Rs.1,000/- was sent to the appellant company along with a covering letter dated 13.11.2006 duly acknowledged by the appellant on the same

date.

3. Vide a subsequent letter dated 18.11.2006, the appellant company/the Share Transfer Agent (STA) wrote to respondent No. 1 informing him that his letter dated 13.11.2006 was deficient in many respects; signatures did not tally and the same be attested by a nationalized bank; the police complaint was unattested; the affidavit and the indemnity bond were also incomplete; copy of his ID proof duly attested was also required.

4. Respondent No. 1 however did not respond.

5. On 27.02.2008, the STA/appellant company wrote to respondent No. 1 informing him that they had received transfer deeds and share certificate for 100 equity shares from Respondent No. 3 a resident of Rohini; his mobile number also found mention in this letter. By this letter, the company further informed respondent No. 1 that if he had any objection to the transfer of the said shares, the company should be informed and a copy of the FIR regarding the loss of shares or a Court injunction for “a stop transfer” be furnished to the company within a period of 15 days.

6. In response to this letter dated 27.02.2008, respondent No. 1

within less than 12 days on 11.03.2008 wrote to the STA requesting them for some time to get the desired documents. Along with this letter dated 11.03.2008, a copy of the complaint lodged in connection with the loss of the shares was attached and a request was made to respondent No. 2 to stop the transfer process till 30.04.2008 in order that the requisite documents could be furnished in this intervening period.

7. On 31.03.2008, the appellant company registered the transfer of the aforementioned shares in favour of respondent No. 3. Legal notice dated 27.3.2008 had also been sent by respondent No. 1 to the appellant company requesting him to stop this transfer of shares wherein he had again appended a second set of documents in continuation of his earlier letter dated 11.03.2008; submission of respondent No. 1 being that the appellant company in contravention of all statutory provisions and guidelines had wrongly registered the shares in the name of respondent No. 3 for which the appellant company should be made liable.

8. The CLB had found favour with the arguments of respondent No. 1 and had passed the impugned order directing the appellant company to rectify their share register and allot the 100 shares which it had registered in the name of respondent No. 3 in favour of respondent No. 1

or in the alternate to buy the shares from the open market and allot 100 shares in favour of respondent No. 1.

9. Respondent No. 3 has supported the case of the appellant company. His submission is that this was a bonafide transfer which has been effected by respondent No. 1 in his favour and that is why the share transfer deeds were duly executed by respondent No. 1; there is no other reason as to why the transfer deeds would have been signed by the petitioner unless and until it was for the purpose for transfer of these shares by respondent No. 1 in favour of respondent No.3. The impugned order calls for no interference.

10. Before this Court, respondent No. 1 has been proceeded ex-parte. He has not chosen to address his submissions.

11. The present petition as noted supra has been filed under Section 111-A (3) of the Companies Act. Section 111(3) reads as under:-

“An appeal under sub-section (2) shall be made within two months of the receipt of the notice of such refusal or where not notice had been sent by the company within four months from the date on which the instrument of transfer, or the intimation of transmission, as the case may be was delivered to the company.”

12. An appeal against the order of the company refusing to register shares in favour of the appellant may be filed within two months of the

receipt of the notice or within four months from the date of the instrument of transfer.

13. The uniform guidelines to be followed by the RTI and STA which guidelines/instructions have issued pursuant to the powers conferred on the Securities and Exchange Board of India (SEBI) under Section 11 (b) of the SEBI Act, 1992 enjoined upon the company that where the signatures of the transferor tallies with the records of the company, the company/STA shall transfer the shares within 15 working days. When a request for 'stop transfer' is received by the company/STA from the previous registered holder, the company/STA must first verify the signatures of the registered holder on the stop transfer instructions with the specimen signatures on the records of the company/STA and if the signatures of the previous registered holder on the 'stop transfer' instructions is in order, the company/STA must record a caution immediately on the certificate involved. It must thereafter give notice to the registered holder to produce the copy of the FIR/a copy of a police complaint or an injunction order passed by a Court of competent jurisdiction along with an affidavit affirming that the involved shares have not been sold. It must also give notice to the last holder to

surrender the share certificates by registered A.D. letter within 21 days. If share certificates are not surrendered despite notice, to cancel these share transfer certificates after giving a final notice to the last holder. These guidelines find mention at serial No. 6.1.

14. Documentary evidence filed along with the petition shows that respondent No. 1 had first informed the company about the loss of his shares on 28.02.2006. On a letter being received by the company on 23.03.2006, respondent No. 1 had completed formalities, the complaint filed by him dated (11.05.2006) in the concerned Police Station along with an indemnity bond dated 31.10.2006 accompanied by a draft of Rs.1,000/- had been submitted to the appellant company on 13.11.2006. On 27.02.2008, the petitioner was informed by the appellant company that certain share transfer certificates along with signed transfer deeds had been received from respondent No. 3 for the transfer of the aforementioned 100 shares in his favour.

15. Respondent No. 1 responded immediately; on 11.03.2008, he wrote to the company enclosing the copy of the NCR which he had lodged on 11.05.2006 with the concerned Police Station alongwith a request to stop the transfer process till 30.04.2008; a request was made

to defer the transfer process till 30.04.2008 as respondent No. 1 was not in Delhi in this intervening period.

16. It is also not disputed that respondent No. 1 had already filed these documents in the year 2006 itself with the appellant company which included his NCR affidavit, indemnity bond as also his draft of Rs.1,000/- seeking transfer of shares in his name. Record also shows and it is also not disputed that the attested signatures of respondent No. 1 duly attested by Punjab National Bank had also been furnished by respondent No.1 to the appellant company. A perusal of the share transfer from (Annexure R3) even otherwise show that the signatures of respondent no.1 appear as Girdhar Sharma whereas in all other correspondences exchange between the respondent no.1 and the company, the respondent no.1 has always signed as Girdhar Gopal Sharma which is also his name; it is not Girdhar Sharma; Gopal has been omitted in the share transfer from. It is this form which has been relied upon by the company pursuant to which this hurried transfer was made in favour of respondent no.3.

17. In this factual scenario, the CLB has correctly noted that the appellant company appeared to be in great rush to transfer the shares in

favour of respondent No. 3; it had a caution note which it had to adhere to in the correct spirit and as per the SEBI guidelines/Instructions. This caution note enjoined upon the company to give notice to the registered holder (which it had done vide its communication dated 27.02.2008) which was duly replied to by respondent No. 1 on 11.03.2008 making a request to defer the transfer process only up to 30.04.2008 for reasons as explained in the said communication. Along with this letter, a second set of documents including NCR complaint dated 11.05.2006 and all other requisite documents were re-appended. This was in full compliance of the requirements of 6.22 of the SEBI guidelines/ Instructions.

18. The appellant company was duty bound not to transfer these shares once it was brought to its notice that the shares had been lost and a proper NCR had been lodged with the police. It was incumbent upon the company to give notice to the last holder i.e. respondent No. 3 to surrender his share certificates within 21 days mentioning the details of the claim made by the previous registered holder. These guidelines/ Instructions which were binding upon the company have not been adhered to.

19. Submission of the appellant that respondent No. 1 had slept over

his right for this intervening period of two years i.e. 13.11.2006 up to February, 2008 appears to be a mis-directed submission. The appellant company had itself on 27.02.2008 notified respondent No.1 that the transfer deeds for the said shares had been produced by one Lalit Kumar Goyal for which the objections had been sought from respondent No. 1 which were duly replied on 11.03.2008 and at the cost of repetition, a second set of documents including the NCR complaint was again filed along with this letter. The letter of 27.02.2008 had asked for a copy of the FIR regarding the loss of shares/injunction order for stop transfer; the SEBI Regulations postulate that either the FIR/copy or an acknowledged police complaint or a copy of the injunction order for stop payment had to be furnished. The requisite document i.e. copy of the acknowledged police complaint of 11.05.2006 was already with the company but it was again sent on 11.03.2008 with a request to stop the transfer up to 30.04.2008 (which was even otherwise not an unreasonably long period) to obtain the other necessary documents to establish the claim of the petitioner.

20. In this background, the impugned order holding that the appellant company is at fault and guilty of a wrong transfer suffers from no

infirmity.

21. Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

OCTOBER 19 , 2012

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