

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

% Judgment delivered on: 03.01.2013

+ WP(C) 668/2012 AND CM No.27/2013 (for directions) &
CM No.9851/2012 (for directions)

M/S. KLEN & MARSHALLS MANUFACTURERS
& EXPORTERS LTD. PETITIONER

Vs

UNION OF INDIA AND ORS. RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. Abhinav Vashisht, Sr. Advocate with
Mrs. Mohan M. Lal, Mr. Ankit Pahar and Mr.
Anuj Malhotra, Advocates
For the Respondents: Mr. Neeraj Chaudhari, CGSC, Mr. Ravjyot
Singh and Mr. Aditya Chandra, Advocates for
R-1 & R-2
Mr. Rajiv Nayar, Sr. Advocate with Mr. Manu
Nair and Mr. Sanjay Kumar, Advocates for
R-3

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

RAJIV SHAKDHER, J

1. By this writ petition, the following substantive prayers have been
sought :-

“(i). issue a Writ in the nature of mandamus directing
Respondent nos.1 and 2 to treat the filings made by
respondent no.3 under Registration No.F/202 as null and void
and de-register all such filings; and

(ii). Issue a Writ in the nature of mandamus directing Respondent Nos.1 and 2 to initiate prosecution under the Indian Penal Code against the respondent No.3, 4 and 5; and

(iii). Issue a writ in the nature of mandamus directing Respondent Nos.1 and 2 to initiate action against Respondent no.3 and / or its Directors / Representatives / Employees / Officials etc. including Respondent no.4 and 5 under Sections 628 and 629 of the Companies Act, 1956; and

(a). Pass any or other order(s) as this Hon'ble Court deems fit and proper in the facts and circumstance of the case..."

2. It may be noted, however, at the outset that this is a second round of litigation in this court and a fresh attempt made at dragging respondent no.3, which is a foreign company, carrying on banking business in India, after adjudication by the Karnataka High Court and the resultant dismissal of the special leave petition both on the grounds of delay as well as on merits.

2.1 Though it is sought to be argued before me that, the petitioner by pressing the reliefs sought for in the present writ petition was seeking to trigger a criminal action against respondent no.3 and in a sense espousing a public duty; it is quite clear that the purport and the intent has been to inveigle respondent no.3 in criminal proceedings, so that, in the recovery proceedings instituted against the petitioner, it can leverage some advantage.

2.2 Therefore, let me examine the issue raised in the present writ petition de hors the aspects raised before other courts and Tribunals. However, in order to appreciate the issues raised in the present writ petition, one would briefly have to touch upon the facts and circumstances which have both preceded and followed the institution of the captioned writ petition.

3. Respondent no.3, it appears, was initially incorporated under the name and style: Bank of Tokyo Limited, under the laws of Japan. In 1952, Bank of Tokyo Limited came to be registered as a foreign company with the Registrar of Companies [in short, ROC], (presently NCT, Delhi and Haryana). For this purpose, a registration certificate was issued bearing no.F-202.

4. It appears, in 1990, the petitioner was provided funds, on loan, by the Bank of Tokyo Limited, by taking recourse to bill discounting facility and by availing bank guarantees limits.

5. It appears that the business of the Bank of Tokyo Limited was restructured upon, its merger being brought about with another Japanese Bank i.e., Mitsubishi Bank Limited, which is also a company incorporated under the laws of Japan.

6. For the aforesaid purpose, a Merger Agreement dated 19.05.1995 was executed between the Bank of Tokyo Limited and the Mitsubishi Bank Limited. An application to seek approval of the concerned authority in Japan was also filed on 11.03.1996.

7. By an order dated 22.03.1996, approval was granted to the merger of The Bank of Tokyo Limited with the Mitsubishi Bank Limited by the Ministry of Finance, Government of Japan.

8. It is not in dispute that the merger of the aforementioned two entities, was given effect to from 01.04.1996.

9. Consequent to the approval, the erstwhile entity i.e., the Bank of Tokyo Limited ceased to exist and a new entity emerged by the name of: Bank of Tokyo – Mitsubishi Limited.

10. I may also note here that at some stage, yet another bank merged with The Bank of Tokyo – Mitsubishi Limited; which is a bank by the name of UFJ Bank Limited. I am informed that presently respondent no.3 is carrying on his business under the name and style: Bank of Tokyo – Mitsubishi UFJ Limited. This fact is only mentioned to bring to fore the current name under which respondent no.3 is carrying on its business.

11. Continuing with the narrative, it is the case of respondent no.3 that in accordance with the provisions of the laws of India, requisite filings were made before the concerned statutory authorities. It is the case of respondent no.3 that Form 49 was filed with the concerned Registrar of Companies (in short ROC) under section 593 of the Companies Act, 1956 (in short Companies Act), as also the requisite filing was made with the Reserve Bank of India (in short RBI), to bring on record the factum of change of name.

11.1 In so far as the RBI was concerned, by a Gazette Notification dated 27.04.1996, an amendment was made to the Second Schedule to the RBI Act, 1934 whereby, the alteration in the change of name of respondent no.3 was carried out. This change of name by the RBI was followed by order dated 14.08.1996, whereby respondent no.3 was authorised to open a branch in Bombay (now Mumbai) under the name and style: Bank of Tokyo – Mitsubishi Limited.

12. As regards the ROC, it is the case of respondent no.3 that Form 49, referred to above was filed on 05.08.1996. The petitioner disputes this fact and it is this issue which is at the heart of the matter.

13. It is the case of the petitioner that as a matter of fact no filing was made by respondent no. 3 with the ROC on 05.08.1996. It is the case of the petitioner that Form 49 was filed with the ROC by respondent no.3, only on 03.04.2002, and that too pursuant to an interlocutory application filed by respondent no.3 in the recovery proceedings taken out by it, before the Debt Recovery Tribunal at Bangalore under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short RDDBI Act).

14. It may, therefore, be pertinent to mention briefly the relevant facts pertaining to the recovery proceedings and the objection taken by the petitioner vis-à-vis the provisions of section 592, 593 read with section 599 of the Companies Act.

15. Respondent no.3 evidently has filed two petitions against the petitioner, under the RDDBI Act being OA No.326/2000 and 327/2000 before the Debt Recovery Tribunal, Bangalore (in short DRT). In the said petition, a preliminary objection was taken by the petitioner qua the maintainability of the recovery proceedings, on the ground that post the merger a “new bank” had come into existence – Bank of Tokyo – Mitsubishi Limited.

15.1 This according to the petitioner, had resulted in alteration in the name, charter, statute, memorandum, article of association and constitution, and consequently, required compliance with the provisions of section 593 of the Companies Act. Since, according to the petitioner, respondent no.3 had failed to comply with the provisions of Section 592, it could not be construed as a banking company within the meaning of section 5(c) and 5(d) of the Banking Regulation Act, 1949 read with

Section 591 of the Companies Act and section 2(d), 2(e) and 2(h) of the RDDBI Act.

15.2 In other words, the petitioner called upon the DRT to determine: whether respondent no.3 was a banking company, and thus, entitled to institute and maintain recovery proceedings before it. This application was filed in and around 21.01.2002. In the application, an averment is made to the effect that the objection raised was based on a search report furnished to it by its Chartered Accountant, on 27.11.2001.

15.3 I may only note that during the course of the arguments when it was put to the learned counsel for the petitioner as to when the petitioner had become aware of the alleged failure of respondent no. 3 in filing Form 49 with the ROC, an attempt was sought to submit that this information was available with them since 1999, a fact which was conveyed to respondent no.3 and therefore, steps were taken to cover up the lacuna by respondent no.3. Learned senior counsel for the petitioner, when probed further, conceded that there was no document on record which would establish the submission made at the bar.

16. Suffice it to say, the ROC appears to have issued two communications to respondent no.3 dated 05.09.2001 and 03.12.2001, wherein the non availability of the document which would show compliance with the provisions of section 593 of the Companies Act, was brought to fore.

17. It appears it was these communications which led to respondent no.3 filing a duplicate Form 49, with the ROC, on 03.04.2002.

18. It also appears that a second duplicate Form 49 was filed on 05.04.2004, which was received by the ROC, on 06.04.2004.

Importantly, in the said form, reference is given of a receipt bearing no.196989 dated 05.08.1996, whereby a sum of Rs.200/- was deposited for processing the request made, evidently, for change of name of respondent no.3; which is also incidentally the receipt to which reference is made in the first duplicate Form no.49, filed on 03.04.2002, with the ROC.

19. In so far as the interlocutory application of the petitioner is concerned, to which I have made a reference above, regarding maintainability of the recovery proceedings before the DRT, Bangalore, an order was passed, on 14.05.2003. By virtue of the said order, the application of the petitioner was dismissed. It is not in dispute that the order dated 14.05.2003 was carried in appeal before the Debt Recovery Appellate Tribunal at Chennai (in short DRAT). The DRAT by an order dated 19.10.2005, reversed the order of the DRT. As a matter of fact, the DRAT held that respondent no.3 had “incurred the disqualifications as provided under section 599 of the Act”, and hence, was incompetent to maintain an action before the DRAT.

20. Apparently, a review was filed before the DRAT, by respondent no.3, which was rejected on 07.08.2006.

21. Aggrieved by the decision of the DRAT, both in the appeal and in the review, two writ petitions being: WP No.12303/2006 and 12304/2006 were filed by respondent no.3, before the Karnataka High Court. By a judgment dated 02.07.2008, the said writ petitions were disposed of and the order of the DRAT dated 19.10.2005 as also its order in the review petition dated 07.08.2006, were set aside. A direction was issued to the DRT to expedite hearing in the recovery

proceedings and conclude the same expeditiously, at any rate within a period of six months of the said judgment.

22. It appears that a review petition being: RP No.492/2008 was filed qua the judgment dated 02.07.2008, which was dismissed as well on 23.07.2010. The petitioner filed a special leave petition being: CC No.21040-21042/2011 against the judgment of the Karnataka High Court, both in the writ petition as well as in the review petition, which were dismissed, on 05.01.2012. The Supreme Court noted that there was an initial delay of 700 days in filing the special leave petition followed by a delay of 410 days in re-filing qua which the explanation offered, was not found to be satisfactory. The order of the court went on to state that even on merits no case was made out to entertain the petitions, filed before it under Article 136 of the Constitution of India. Thus, the special leave petition was dismissed both on the ground of delay as well as on merits.

23. To complete the narration of facts, it may also be relevant to note that the petitioner had, in the interregnum filed a criminal complaint under section 156(3) of the Code of Criminal Procedure, 1973 (in short Cr.PC), for initiation of criminal proceedings after due investigation, under the provisions of section 120 (B), 465, 466, 468, 471 and 477-A of the Indian Penal Code, 1860 (in short IPC).

24. The Magistrate, apparently, had ordered investigation, not once, but twice into the allegations made by the petitioner. The investigation revealed that no cognizable offence was committed as alleged by respondent no.3 and / or its officers. Consequently, by an order dated 30.11.2010, the petitioner's application was dismissed by the Magistrate.

25. The petitioner challenged the order of the Magistrate dated 30.11.2010, by way of a criminal revision petition being: No.323/2011. By an order dated 05.09.2012, the Additional Sessions Judge, Greater Bombay dismissed the said revision petition with cost of Rs.5 Lakhs, out of which, Rs.4 Lakhs has been directed to be paid to respondent no.3, while Rs.1 Lakh was directed to be paid to the State Legal Aid Fund.

26. I may only note that, across the bar, the counsels for the petitioner informed me that a petition had been filed in the Bombay High Court qua the issue of cost as ordered to be paid by order dated 05.09.2012. The counsels for the petitioner, however, were not able to furnish any details with regard to any number having been accorded to the said petition and the date on which it was likely to come up for hearing before court.

SUBMISSIONS BY COUNSELS

27. In the background of these facts, it was sought to be argued by Mr. Vashisht, learned senior counsel for the petitioner, that the entire purpose of pressing the present writ petition was to bring to the notice of this court that a criminal offence had been committed by respondent no.3 and / or its officers in respect of which no action was being taken by respondent nos.1 and 2 i.e., the official respondents. The alleged non-compliance was restricted to the provisions of Section 593 of the Companies Act.

28. In this regard, Mr. Vashisht made the following submissions:-

(i). respondent no.3 had never filed Form no.49 with the ROC on 05.08.1996, as was contended by them before this court and various other authorities;

(ii). the falsity of this stand of respondent no.3 was apparent on examination of the duplicate Form no.49, which was filed on 03.04.2002. The fact that interpolations were made has been admitted by Sh. Brij Mohan Chhabra, the then Dy. General Manager of respondent no.3 in his reply dated 04.01.2005 to the application filed on behalf of the petitioner before the DRT, Bangalore taking an objection to the maintainability of the recovery proceedings. In this regard, specific reliance was placed on the assertions made in paragraph 8(ii) of the aforementioned affidavit of Sh. Brij Mohan Chhabra;

(iii). If what, respondent no.3 says is correct, which is that, a duplicate Form 49 was filed on 03.04.2002 then, where was the need to file a second duplicate Form no.49, on 05.04.2004. The complaints / representations made by the petitioner dated 23.04.2005, followed by a communication sent by its advocate dated 27.12.2005 to the ROC, raised issues concerning interpolation and fabrication of the duplicate Form no.49, filed on 03.04.2004, which was rejected in a summary manner by the Regional Director vide order dated 14.06.2006.

(iv). Reliance was also placed on the letter dated 22.07.1996 apparently accompanying the purported original Form no.49 dated 23.03.1996, which clearly indicated that the filing if at all made, sought to inform the ROC with regard to the changes relevant under section 593 (d) and (c) of the Companies Act. It was contended that a perusal of the said document itself would show that respondent no.3 was seeking to

inform the ROC with regard to the changes made qua its Board of Directors. In other words, there was no reference to the provisions of section 593 (a) of the Companies Act, which would have been so, if the filing related to the change in name, as is now sought to be contended.

29. On the other hand, Mr. Nayar, learned senior counsel for respondent no.3 argued that the petitioner was seeking to re-agitate the issue once again which was barred by the principles of res judicata in view of the fact that these very issues were raised before the Karnataka High Court, which were rejected by the said court vide its judgment dated 02.07.2008. Mr. Nayar in order to support his submission drew my attention, specifically to, paragraphs 59 to 62, 67 and 72 of the said judgment.

29.1 In order to support the aforesaid contention, he also referred to paragraph 5.14 of the special leave petition filed by the petitioner, wherein there is a specific averment to the alleged fraud committed by respondent no.3, by carrying out interpolations in the duplicate form filed.

30. Mr. Nayar further contended that, the present proceedings were a gross abuse of the process of court and the entire purpose in maintaining the present petition was to somehow impede the recovery proceedings. In this context, Mr. Nayar also drew my attention to the fact that the petitioner on an earlier occasion had filed a writ petition, on identical grounds, to which I have already made a reference, being WP (C) No.4745/2008, which was dismissed as withdrawn on 01.08.2008; albeit with a liberty to re-file a fresh petition. Mr. Nayar submits that the petitioner though given liberty has chosen to move this court after a

delay of nearly four (4) years and hence, guilty of gross delay and latches.

31. Mr. Chaudhary, learned counsel who appeared for the official respondents has brought to court the photocopies of the original record, alongwith the original record, as directed by this court. Mr. Chaudhary argued that there was no interpolation or fabrication as contended by the petitioner. Since, the original record of the respondent no.3 was lost, was not available in the record of the ROC, the said respondent was called upon by letters issued by it in September and December of 2001, to comply with the provisions of section 593 of the Companies Act. It is at this point in time that the petitioner had placed on record the relevant documents to establish that it had filed Form 49, with relevant enclosures including the amended articles of association, which adverted to the change in name. Since the petitioner had filed a criminal complaint with the Magistrate, the matter was investigated by the Economic Offences Wing of the Crime Branch, CID, Mumbai on two occasions. Pursuant to the investigation, the police authorities had come to the conclusion that no case was made out, based on which the Magistrate had dismissed the criminal complaint on 30.11.2010. The said order was confirmed, in revision, by the Additional Sessions Judge, by dismissing the petitioner's revision petition on 05.09.2012.

33. Mr. Chaudhary submitted that, as far as the official respondents are concerned i.e., respondent nos.1 and 2, they had indicated their view in the communication dated 14.06.2006, which is that, no action was required qua the complaint of alleged forgery made by the petitioner. I

34. In rejoinder, learned senior counsel for the petitioner sought to lay emphasis, once again, on the affidavit filed by Sh. Brij Mohan Chhabra;

a copy of which has been filed by the petitioner alongwith CM No.9581/2012. Apart from this, submissions already made, in the opening by the learned senior counsel for the petitioner, were reiterated.

REASONS

34. To be noted, there are two interlocutory applications filed by the petitioner. The first one being: CM No.9851/2012 by which certain additional documents were sought to be brought on record. Even though six documents were filed, learned senior counsel for the petitioner sought to place reliance, during the course of the arguments, on two documents. The first one was the affidavit filed by Sh. Brij Mohan Chhabra. I have already made a reference to the said document, during the course of my narrative above. The other application being : CM No.27/2013, is filed to seek discovery and production of documents, which are in possession of the official respondents i.e., respondent nos. 1 and 2. At the very outset, in so far as, the second application is concerned, it was fairly conceded by the learned senior counsel for the petitioner that it had worked itself out, as the original record had been brought to court by the official respondents. As a matter of fact, the counsels for the petitioners were given photocopies of the original record, which was shown to me, during the course of arguments by Mr. Chaudhary.

35. Upon hearing arguments of learned counsels for the parties and perusing the records, what clearly emerges is, as follows :-

(i). The official respondents, in particular, the ROC seem to have no record of filings made by respondent no.3, as contended on 05.08.1996;

(ii). The fact that there was no compliance with the provisions of section 593 of the Companies Act, was brought to the notice of respondent no.3, by the office of the ROC vide letters dated 05.09.2001 and 03.12.2001.

(iii). Respondent no.3 on receiving the aforementioned communication realized that filings made in the record of the ROC, were missing. Consequently, the officers of respondent no.3 attempted to reconstruct the record of the ROC after satisfying the ROC that it had in fact originally filed Form no.49, on 05.08.1996. For this purpose, the following documents were filed by respondent no.3 :- (i). a forwarding letter dated 22.07.1996 addressed to the ROC. To be noted, this letter apparently enclosed a copy of the original Form 49 dated 23.07.1996; (ii). A copy of the receipt by which fee of Rs.200/- was paid for registration of the said document. The said receipt evidently bore the following number i.e., 196989. A photocopy of the said document has been placed on record by respondent nos.1 and 2. The aforementioned receipt clearly indicates that there were two separate filings made on the said date for which two separate sets of fee of Rs.200/- each, was paid in cash. The first filing was of Form no.49, while the other was of Form no.54; and (iii). Respondent no.3 had also filed a letter dated 17.05.1996, addressed to the ROC informing the ROC with regard to the change in name.

36. This apart, reliance was also placed on the approval granted by the RBI, on 10.04.1996.

37. Based on the aforesaid, it appears that an office copy of Form no.49 was filed by respondent no.3, with the ROC. It appears that in the

office copy, information under seriatim A was not filled-in. Seriatim A reads as follows :-

“..(A). Charter, Statute, Memorandum or Articles of Association or other instrument constituting or defining the constitution of the company.

A brief description of the alteration is given hereunder :-

“At an Extraordinary / General Meeting of the shareholders of the company held Tokyo (Japan) on 29th day of June, 1995 ordinary/special resolution was passed authorizing Change of Name / Articles of Association. Certified copy of the resolution and / or the copy of the amended document should be enclosed. If the resolution or document is not in the English language, a certified translation thereof must accompany this return)” w.e.f. 1st April, 1996...”

38. Evidently, the underlined part was written by hand by Sh. Brij Mohan Chhabra. In the affidavit filed before the DRT, this aspect is admitted by Sh. Chhabra. He, however, also avers with regards to other aspects, which is, the steps taken to satisfy the ROC that the original Form 49 had been filed, on 05.08.1996. Apart from anything else, Mr. Brij Mohan Chhabra in his affidavit of 04.01.2005, referred to the letters dated 17.05.1996 and 22.07.1996, to establish that a filing had been made on 05.08.2006.

38.1 As indicated above, admittedly, a receipt for a filing made qua Form no.49, was generated on the said date. Mr. Brij Mohan Chhabra in his affidavit also adverts to the fact that respondent no.3 had issued communication on 01.03.1996, to all its customers informing them about the change in name. That apart, a reference is also made to a communication dated 22.03.1996, addressed to the respondent no.3's

Clearing House about the change in name. Similarly, there is a reference to the information carried in the Economic Times dated : 06.04.1996, vis-a-vis the change in name.

38.2 Based on the above, Mr. Brij Mohan Chhabra had averred that there was no fabrication, which was, in a sense accepted by the DRT, while dismissing the petitioner's application.

38.3 Having regard to the averments made in the affidavit of Mr. Brij Mohan Chhabra and the documents placed on record, there is nothing to suggest that respondent no.3 had not filed Form no.49, as contended by it, on 05.08.1996.

38.4 Mr. Vashisht sought to contend that the said filing was not the one made to inform the ROC about the change in name but was made to inform the ROC about the change in the constitution of the Board of Directors. For this purpose, he sought to place on the covering letter dated 22.07.1996 filed by respondent no.3. It may be relevant to note the contents of the letter which reads as under :-

“The Bank of Tokyo – Mitsubishi, Ltd.

(Incorporated in Japan)

(Formerly the Bank of Tokyo Ltd.)

JEEVAN PRAKASH, SIR P. MEHTA ROAD, FORT. P.O. BOX No.1762, MUMBAI – 400 001 (INDIA)

Telephone : 288084, 288 0081, 288 2881, 288 0179, 288 2003 Tel: 011-82155 & 011-85008 Fax : 266-1787

BB/ADM/645

IN REPLY PH AB QUOTE

Date: 22nd July 1996

The Registrar of Companies, Delhi and Haryana,

Kanchanganga Building, 9th Floor,

18, Barakhamba Road,

New Delhi- 110 001.

Dear Sirs,

Re: Change of Board of Directors as on 30th June, 1996

Under Section 593(d)(c) of the Indian Companies Act, 1956, we beg to submit herewith Form No.49 duly completed for changes in the set of our Board of Directors which please kindly acknowledge.

Thanking you,

Yours faithfully,

(K. KASHIMA)
ASSISTANT GENERAL MANAGER..”

38.5. A perusal of the aforesaid would show that the changed name was already reflected in the said letter. The reference to clause (d) of section 593 of the Companies Act was obviously a mistake; perhaps an inadvertent one, which is ascribable to the fact that the covering letter was obviously signed by a person who was not obviously instructed in law. The mistake seems to have occurred on account of language of clause d of section 593, which reads as follows :-

“..593. Return to be delivered to Registrar by foreign company where documents, etc., altered – if any alteration is made or occurs in –

(a). the charter, statutes, or memorandum and articles of a foreign company or other instrument constituting or defining the constitution of a foreign company; or

(b). x x x

(c). The directors or secretary of a foreign company; or

(d). the name or address of any of the persons authorized to accept service on behalf of a foreign company; or

(e). the principal place of business of the company in India, the company shall, within the prescribed time, deliver to the

registrar for registration a return containing the prescribed particulars of the alteration..”

38.6. It is possible that author of letter dated 22.07.1996 read first part of clause (d) of section 593 in a manner, which was disjunct from the latter part of clause (d). As would be noticed, the first part refers to the "**name**" and the second part refers to "**address**". It is possible that the author of the letter was of the view that apart from the change in the constitution of Board of Directors which came within the ambit of the provision of clause (c) of section 593, the intimation with regard to the change in name fell within the first part of clause (d) of section 593. Admittedly, there was no change in the address of the entity, which was entitled to accept service on behalf of respondent no.3, which is a foreign company within the meaning of the Companies Act. Consequently, the reference ought to have been to clause (a) of section 593 and not clause (d) of the section 593. This was an obvious error, which was sought to be explained by Sh. Brij Mohan Chhabra in his affidavit of 04.01.2005. In my view, the averment to the effect, made by Sh. Chhabra that this was a typographical error can be accepted having regard to the aforesaid aspects. That apart, the accompanying documents, to which reference has been made i.e., the receipt by which fee was deposited dated 05.08.1996, the letter addressed to the ROC dated 17.05.1996 and the permission granted by the RBI in April, 1996 is demonstrable of the fact that there was no good reason for respondent no.3 not to furnish requisite information of change of name to the ROC. There is no denying that respondent no.3 had also intimated this very information to its customers, its clearing agents and world at large between March and April, 1996. Therefore, in my opinion, even if it is assumed that information in the duplicate Form 49, which was filed on

03.04.2002, was inserted on the said date, will not, in my view, take away the body of material placed before me by the official respondents i.e., respondent nos.1 and 2 as also by respondent no.3, to establish that the original Form 49 was filed on 05.08.1996.

39. This brings me to the last aspect of the matter i.e., the argument as to why yet another Form was filed on 05.04.2004. The conduct of respondent no.3 in this regard is explained by reference to ROC's letter dated 26.03.2004, whereby they were advised to file a revised duplicate Form by an authorised person to rectify the objections. It is quite possible that having received the said communication, respondent no.3 filed yet another Form on 05.04.2004. Therefore, in my view, as long as there is nothing to suggest that the original Form 49 was not filed on 05.08.1996, the subsequent filings would not carry the matter any further in so far as the petitioner is concerned. It is not as if the ROC cannot allow rectification or curing deficiencies, if any, in the information supplied by the applicant companies, to it. This power is available to the ROC and therefore, that by itself cannot further the cause of the petitioner unless one could come to a conclusion that there was no filing made in the first instance by respondent no.3.

40. Having regard to the discussion above, I am unable to come to a conclusion that any of the prayers made in the petition ought to be granted. The petition is devoid of merits and is accordingly dismissed with cost of Rs.1 Lakh. Rs.50,000/- will be paid to respondent nos.1 and 2 while the balance sum of Rs.50,000/- will be paid to respondent no.3.

RAJIV SHAKDHER, J

JANUARY 03, 2013/ yg