IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO. 6 OF 2011

Hindustan Lever Ltd. …Appellant
vs.
Mr.Shyam Sunder Kukreja & Ors. ...Respondents

Mr.Sailesh Mendan with Abhay Jadeja i/b. Crawford Bayley & Co. for Appellant.
Ms.Indu Varma i/b. M/s.Sreeneeti for Respondent No.1.

CORAM : S.C. GUPTE, J.

15 JULY 2015

P.C. :

This appeal under Section 10F of the Companies Act, 1956 ('the Act') challenges an order passed by the Company Law Board, Western Region Branch on an application under Section 111A of the Act. The brief facts of the case giving rise to the present appeal may be noted as follows :

2 Respondent No.1 (original Petitioner before the CLB) was a joint shareholder (second holder) of 370 equity shares of Brook Bond Lipton India Ltd. ('BBLIL'). The first holder of these shares was one Naresh Dhawan. These 370 shares were held under seven different share certificates. By a letter dated 15 November 1996, one of the seven share certificates (comprising of 100 equity shares) was forwarded by Naresh Dhawan and Respondent No.1 to BBLIL for splitting into two share certificates of Rs.50/- each. (The Appellant disputes the receipt of this letter in its reply to the company petition.) By another letter of the same date, i.e. 15 November 1996, Naresh Dhawan and Respondent No.1 forwarded the remaining 270 equity shares held under six different share certificates for an endorsement about payment of call money. (The Appellant disputes the receipt of this letter in its reply to the company petition.) Respondent No.1 claims to have sent a reminder letter on 9 December 1996 to BBLIL about their two purported letters of 15 November 1996. (The Appellant disputes the

receipt of this letter in its reply to the petition.) Subsequently, on 16 January 1997, BBLIL received 370 shares referred to above for transfer together with transfer deeds purportedly executed by Naresh Dhawan and Respondent No.1 in favour of Respondent No.2. In pursuance of this request, a letter was addressed by BBLIL on 28 February 1997 to Respondent No.2, with copy to Naresh Dhawan and Respondent No.1, *inter alia* claiming that the signatures in the transfer deeds did not tally with their records and returned the share certificates and transfer deeds to the sender, i.e. Respondent No.2. Both before and after this letter, Respondent No.1 claims to have addressed remainder letters jointly with Naresh Dhawan to BBLIL regarding the two above referred letters of 15 November 1996. (The Appellant disputes the receipt of these reminder letters in its reply to the petition.) In response to the communication of BBLIL dated 28 February 1997, Respondent No.1 addressed a letter dated 17 March 1997 communicating to the former that the Respondent had not sold any of these shares or handed them over to anyone. (The Appellant disputes the receipt of this letter in its reply to the petition.) It appears that thereafter Respondent No.2, as a purported transferee of these shares, once again submitted the shares together with fresh share transfer forms with signatures of the transferors duly notorized to BBLIL. Around the same time, i.e on 21 March 1997, by a Scheme of Amalgamation sanctioned by this Court, BBLIL had merged and amalgamated with the Appellant. The scheme became effective on 31 March 1997. On 23 April 1997, in pursuance of the above referred to fresh submissions, the Appellant (as transferee company of the undertaking of BBLIL) transferred these shares in favour of Respondent No.2. Subsequently, in July 1997, in pursuance of the Scheme of Amalgamation, Respondent No.2 surrendered a total of 850 shares of BBLIL to the Appellant and obtained in return 382 shares of the Appellant in accordance with the scheme. (Out of these 382 shares, 166 shares corresponded to 370 disputed shares of BBLIL.) Subsequently, on 14 August 1997, Deutsche Bank AG lodged for transfer the subject shares in favour of one Pictet Investments (Mauritius) Limited, pursuant to which the shares were further transferred on 11 September 1997. Eventually, the shares were dematerialized and have since lost their identity. On 19 September 1997, in pursuance of a communication received from SEBI, Calcutta (communicating about a letter of Respondent No.1 addressed to it), the Appellant informed Respondent No.1 that the subject shares had been transferred out of the above folio through valid transfer deeds purportedly signed by Respondent No.1 and attested by Notary Public. The Appellant also enclosed photocopies of transfer deeds for ready reference and necessary action of Respondent No.1. Nothing seems to have happened thereafter for quite some time, though in February 1991, there was some correspondence between the Advocates of Respondent No.1, Respondent No.2, and the Appellant. On 15 April 1999, a petition was filed by Respondent No.1 before the CLB asking for adjudication of the disputes on the question of title of Respondent No.1 to the subject shares and declaration of invalidity and cancellation of allotment of the subject shares in the name of Respondent No.2. The petition originally filed under Section 111 of the Act was subsequently amended and converted into a petition under Section 111A of the Act. This was done around October 1999. The parties filed their respective pleadings in the petition. On 7 June 2001, the CLB passed the impugned order on the petition holding *inter alia* that the shares had been fraudulently transferred by Respondent No.6 to Respondent No.2 and but for the negligence / inaction on the part of BBLIL (the predecessor in title of the Appellant herein), the subject shares could not have been registered in the name of Respondent No.2. The CLB held that though under normal circumstances, in view of the fraudulent transfers, the CLB would have directed the company to rectify the register of members, the transferee, namely, Respondent No.2, having already sold his shares and new shares having been issued in exchange for these shares under the sanctioned scheme and their dematerialization having taken place subsequently, the identity of the shares has been lost and that as such, the question of rectification does not arise. In these circumstances, considering the fault of BBLIL in effecting the registration of the transfer in the name of Respondent No.2, the CLB directed the Appellant as the successor of BBLIL to pay the price of the impugned shares (equivalent to 166 shares of the Appellant) to Respondent No.1 by way of compensation. It is this order, which is impugned in the present appeal.

3 In support of the appeal, it is submitted by learned Counsel for the Appellant that the CLB had committed several errors of law in the impugned

order. It is submitted that there was no case for ordering any rectification of register or award of any damages. In the present case, the application, which was under Section 111A(3), did not involve transfer of shares in contravention of any provisions of Securities and Exchange Board of India Act, 1992 ("SEBI Act") or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA") or any other law for the time being in force. It is submitted that the application involved several disputed questions of fact reflecting on the title of the transferee, i.e. Respondent No.2, *vis-à-vis* the title of Respondent No.1. It is submitted that the questions whether Respondent No.1 had actually effected the subject transfer of shares in favour of Respondent No.2 or whether there was a fraud practiced by Respondent No.6 by forging the signatures of the transferors including Respondent No.1 on the transfer deeds, are all serious questions of fact which are contested by all sides. It is submitted that the main basis of impugning the action or inaction on the part of BBLIL (the predecessor in title of the Appellant) was that BBLIL proceeded to transfer the shares in spite of there being pending splitting and endorsement applications under which the subject shares were already deposited by Respondent No.1 with BBLIL. The only finding in support of this case of negligence or inaction is that there was purportedly no denial in the reply of the company about receipt of the share certificates lodged by Respondent No.1 vide his two letters dated 15 November 1996, followed by several reminder letters by Respondent No.1. It is submitted that this observation of the CLB is plainly contrary to the record of the case, and there is no other basis or evidence to support the case that BBLIL had actually received the applications of Respondent No.1 for splitting and endorsement together with the original share certificates. Lastly, it is submitted that the CLB has power to order damages in a case under Section 111A or 111 of the Act only in the event of CLB directing rectification of the register. It is submitted that in the present case, such rectification not having been directed by the CLB, the CLB did not have authority or power to award any damages against the Appellant.

4 On the other hand, it is submitted by learned Counsel for the Respondent that the application can well be considered under Section 111(4) of

the Act, since Section 111(4) of the Act gets attracted for the purposes of the present proceedings by virtue of sub-section (7) of Section 111A read with sub-section (5) of Section 111. Learned Counsel relies upon the judgment of a learned Single Judge of this Court in the case of **Finolex Industries Ltd. Vs. Anil Ramchand Chabbria**[1] in this behalf. Secondly, it is submitted that Respondent No.1 has produced adequate evidence before the CLB in proof of receipt by BBLIL of the two letters dated 15 November 1996 addressed by Respondent No.1 and Naresh Dhawan to it. Learned Counsel also submits that since this is an application under Section 111(4), there is no particular period prescribed for presentation of the application for rectification of the register of members. It is submitted that even if a period of three years under the ordinary law of limitation was to be applied to the facts of the present case, having regard to the fact that there was a fraudulent transfer in favour of Respondent No.2, the application could have been preferred any time within three years of the knowledge of such fraud. It is submitted that the Appellant communicated the fact of transfer of the subject shares to Respondent No.1 on 19 September 1997 and within three years thereof, the present application was filed by Respondent No.1 before the CLB. Lastly, it is submitted that the power to award damages rests with the CLB and that power is in addition to the power to order rectification of register and in the event such rectification cannot be ordered for no fault of the Applicant, in an appropriate case, the CLB may very well order damages towards compensating the Applicant.

5 The present application, which was admittedly under Section 111A, could only have been preferred under Section 111A(3). Section 111A(3) can be invoked only when the transfer of shares is in contravention of the provisions of SEBI Act or regulations made thereunder or SICA or any other law for the time being in force. There is no such case in the present application. Though learned Counsel for Respondent No.1 relies upon the judgment of our Court in the case of **Finolex Industries Ltd.,** it is debatable whether the ratio of that case applies to the facts of the present case. Besides, under Section 111A(3), the period of limitation for making an application for rectification is two months. Even if it is

1 **2000(4) Mh.L.J. 181**

assumed that the Applicant did not know about the impugned transfer of shares, there is no explanation why the application was not filed within such period after knowledge of the impugned transfer. Though rival submissions were addressed by learned Counsel for both sides on these issues, I do not propose to decide the appeal on any of these issues. I would rather deal with the merits of the appeal which clearly weigh in favour of the Appellant. There is no finding of any fraudulent conduct on the part of the Appellant or its predecessor in title. The CLB has found a fraud on the part of Respondent No.6. In the matter of transfer of the shares to Respondent No.2, the only allegation against the Appellant or its predecessor is of negligence or inaction. This finding is based on the singular fact that BBLIL proceeded to transfer the subject shares to Respondent No.2 despite pending applications of 15 November 1996 for splitting and endorsement of the subject shares and despite the Applicants for such splitting and endorsement having deposited the subject share certificates with BBLIL. A pivotal fact, which needs to be proved by a proponent of such a case, is the receipt by BBLIL of the applications for splitting and endorsement together with the share certificates. The only basis of the CLB concluding against the Appellant on the factum of receipt of the share certificates and applications by BBLIL is non- denial in the reply of the Appellant about the receipt of the share certificates lodged with the two letters of 15 November 1996 and the subsequent reminder letters. If one has regard to the pleadings of the parties, the Appellant has clearly contested the receipt of the subject share certificates. The relevant pleading of the Appellant in this behalf is contained in para 4 which was as follows :

> "4. That the 7 share certificates annexed to the Petition and marked as Annexures D1 to D7 by the Petitioner in respect of 370 equity shares of BBLIL as claimed in paragraph 4 of the Petition, were never received by BBLIL as per information, derived by this Respondent from BBLIL."

Even the receipt of the subsequent letters has been denied by the Appellant. Such denial is contained in para 6 of its reply, which is quoted below:

> "6. That based upon information derived from BBLIL this Respondent states that the letters dated 9.12.1996, 21.01.1996, 03/04.03.1997 and 17.3.1997 allegedly sent by the Petitioner to BBLIL are not traceable in BBLIL's record and hence this Respondent denies the receipt thereof by BBLIL."

The only basis of the CLB's conclusion in this behalf, namely, the so-called non-denial of the Appellant, thus, being clearly against the record of the case, there is no way to sustain the same. Once it is accepted that not only was there no admission of receipt of the original share certificates with the covering letters of 15 November 1996 or the subsequent reminder letters but that there was actually a denial of receipt of these, Respondent No.1 was put to the proof of these letters. There is no credible evidence placed before the CLB by Respondent No.1 of BBLIL having received the applications for splitting and endorsement together with the share certificates from Naresh Dhawan and Respondent No.1. The only evidence relied upon in this behalf is of a speed post delivery slip together with a communication of the speed post for having delivered the item to the addressee. In the first place, the communication addressed by the postal authority to Respondent No.1 and the speed post delivery slip, which does not bear the signature of acknowledgement of the addressee, is no conclusive proof of receipt of delivery. It does not even amount to a deemed notice of delivery to the addressee in law. The entire conclusion of negligence and inaction on the part of BBLIL is based only on the receipt of the two letters together with the share certificates and the same having not been proved, the conclusion cannot be sustained.

6 The present matter involves several disputed questions of fact, some of which have been noted above. Apart from the serious question as to the receipt by BBLIL of the two letters of 15 November 1996 enclosing the share certificates, there are several other disputed questions relating to the fraud practiced by Respondent No.6 for effecting the impugned transfer of shares in

favour of Respondent No.2 and the roles played, respectively, by Respondent Nos.2, 3, 4 and 5 in connection therewith. These are all matters involving seriously disputed questions of fact. An inquiry into these questions is not open to the CLB under the summary procedure applicable under Section 111 or Section 111A.

7 For all these reasons, the impugned order cannot be sustained. The appeal is allowed and the impugned order is set aside.

8 By an ad-interim order, an amount of Rs.1,87,454/-, being the damages ordered by the CLB, was deposited with this Court. This amount is invested by the Prothonotary & Senior Master in terms of the order dated 1 August 2001. Since the appeal is dismissed, that order is vacated. The Prothonotary & Senior Master is directed to refund the amount together with accrued interest to the Appellant.

(S.C. Gupte, J.)