

**\* THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**+ COMPANY APPEAL No.11 of 2014**

% 11.03.2015

# T.Rajendra and others

...Appellants

Vs.

\$ M/s.Aryabhata Solutions Limited, Hyderabad

and others

...Respondents

! Counsel for the appellants: Sri Ch.Venkat Raman

Counsel for respondent No.1: Sri C.Raghu

Counsel for respondent No.2: Sri S.Ravi, senior counsel  
for Sri K.Ramakrishna

Counsel for respondent No.4: Sri C.Sai Vishnu

Counsel for other respondents: .....

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>Head Note:

? Cases referred:

(1998) 7 SCC 105

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

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**Between:**

T.Rajendra and others

...Appellants

And

M/s.Aryabhatta Solutions Limited, Hyderabad  
and others

...Respondents

Counsel for the appellants: Sri Ch.Venkat Raman

Counsel for respondent No.1: Sri C.Raghu

Counsel for respondent No.2: Sri S.Ravi, senior counsel  
for Sri K.Ramakrishna

Counsel for respondent No.4: Sri C.Sai Vishnu

Counsel for other respondents: .....

**The Court made the following:**

**JUDGMENT:**

This company appeal arises out of the order, dated 13.12.2013 of the Company Law Board Chennai Bench at Chennai in C.A.No.165 of 2011 in C.P.No.34 of 2011, whereby it has allowed the company

application and dismissed the company petition.

Brief facts leading to the filing of this appeal are that the appellants were the Directors of respondent No.1 company. On 30.07.2006, the appellants entered into an agreement with respondent No.2 for transfer of all their shares to him and his relatives. It is the pleaded case of respondent No.2 that in pursuance of the said agreement, 2,50,000 shares were allotted to him and his relatives in the year 2008 and that on 04.02.2008, share transfer deeds were executed in favour of respondent Nos.3 to 5. The appellants have, however, approached the Company Law Board at Chennai, by way of C.P.No.34 of 2011 under Sections 397 and 398 read with Section 111A, 108, 237, 402 and 403 and Schedule XI of the Companies Act, 1956 (for short 'the Act') for multiple reliefs, the main relief being to declare that the acts of respondent Nos.2 to 6 are prejudicial to the interests of respondent No.1 company and are oppressive against the appellants and to declare that the allotment of 15,59,201 equity shares made on 15.04.2010 to respondent No.2 is illegal and void *ab initio* and to order consequent rectification of Register of members. Respondent Nos.2 to 6 filed C.A.No.165 of 2011 in C.P.No.34 of 2011 under Sections 399 and 403 of the Act read with Regulations 44 and 47 of the Company Law Board Regulations, 1991 to allow them to raise the issue of maintainability of the company petition as a preliminary issue and dismiss the company petition, and to punish the appellants for contempt for suppressing the material. By order, dated 13.12.2013, the Company Law Board has allowed C.A.No.165 of 2011 and dismissed C.P.No.34 of 2011.

Shorn of avoidable details, the main plea on which C.A.No.165 of 2011 was filed by respondent Nos.2 to 6 and allowed by the Company Law Board is that in pursuance of the agreement, dated 30.07.2006, all the shares held by the appellants were transferred in favour of the aforementioned respondents and entries in that regard

were made in the Company Register and that therefore, the Company Petition itself was not maintainable as the same is not in conformity with the requirements of the provisions of Section 397 read with Section 399 of the Act.

At the hearing, Sri Ch.Venkat Raman, learned counsel for the appellants, has strenuously submitted that the purported share transfers are wholly fraudulent as the contesting respondents have failed to pay the balance sale consideration of about Rs.8 to 9 crores. He has further submitted that as admittedly share transfers have purportedly taken place on 04.02.2008, the contesting respondents have to explain as to how to a tune of 5,70,065 shares were allotted in favour of appellant Nos.1 and 2 on a subsequent date i.e., 06.03.2008. Learned counsel has also invited this Court's attention to the information furnished by the new management to the Registrar of Companies to the effect that the transfer of shares has taken place on 10.09.2010, which is in conflict with their stand that the share transfers have taken place on 06.03.2008. He has also pointed out that as per the details of the share capital for the financial years 2007-10, appellant Nos.1 and 2 held share capital to the tune of 9,33,260 and 3,10,100 respectively and that therefore, the objection to the maintainability of the company petition on the ground that appellant Nos.1 and 2 have ceased to be the members of respondent No.1 company is contrary to the record produced by respondent Nos. 2 to 6 themselves.

Sri S.Ravi, learned senior counsel, appearing for the respondents, submitted that the appellants have filed the company petition on the premise that they continued to be the members of respondent No.1 company, which claim is contrary to the record. He has further submitted that the appellants have played fraud against respondent Nos.2 to 6 with regard to share transfers and that the jurisdiction of the Company Law Board under Section 111A (3) of the

Act being the summary in nature, the allegation of fraud cannot be adjudicated by it and that the appropriate remedy for the appellants is only to file a civil suit before the Court of competent civil jurisdiction. The learned senior counsel contends that the Company Law Board has, therefore, rightly allowed the company application filed by respondent Nos.2 to 6 and dismissed the company petition relegating the appellants to the competent civil Court. The learned senior counsel has relied upon the judgment of the Supreme Court in **Ammonia Supplies Corpn. vs. Modern Plastic Containers (P) Ltd.**<sup>[1]</sup> in support of his submission that the civil Court alone has jurisdiction to enquire into the allegations of fraud.

I have carefully considered the submissions of the learned counsel for the parties and perused the record.

Section 111A (3) of the Act conferred jurisdiction on the Company Law Board to entertain an application made by the depository, company, participant or investor or the Securities and Exchange Board of India and direct any depository or company to rectify its register or records if it finds that the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 or any other law for the time being in force.

Under Section 397(1) of the Act, any member(s) of the company can complain if the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member(s). Section 399 of the Act adumbrates conditions to be satisfied for making an application either under Section 397 or 398 of the Act. Under this provision, in the case of a company having a share capital, not less than 100 members of the company or not less than 1/10<sup>th</sup> of the total number of its members, whichever is less or any

member(s) holding not less than 1/10<sup>th</sup> of the issued share capital of the company, and in the case of a company not having a share capital, not less than 1/5<sup>th</sup> of the total number of its members, such companies are entitled to apply under Sections 397 and 398 of the Act.

For maintaining an application by an individual under Section 111A (3) of the Act, the applicant must satisfy the condition that he is either a depository or a participant or an investor in the company concerned.

To maintain an application under Section 397 or 398 of the Act, the applicant must satisfy that he is a member of the company besides the other requirements stipulated in Section 399 of the Act. In the case on hand, it is not the pleaded case of the appellants that they filed the application in any capacity falling under Section 399 of the Act. There is a serious dispute about the appellants continuing as members of respondent No.1 company, let alone their holding 1/10<sup>th</sup> of the issued share capital. While the appellants admit entering into the agreement for share transfer and also receipt of part consideration, it is the pleaded case of respondent Nos.2 to 6 that as per the said agreement, entire sale consideration is paid through various cheques and also through cash for certain minor payments and thereafter share transfer was effected on 06.03.2008 with the consent of appellant Nos.1 and 2.

Sri S.Ravi, learned senior counsel, has placed before the Court original share transfer records which purportedly contain the signatures of appellant No.1. Appellant Nos.1 and 2, however, denied such share transfer taking place. Thus, in effect, the dispute between the parties mainly centers around whether appellant Nos.1 and 2 have ceased to be the members of respondent No.1 company and whether the alleged share transfers are valid or respondent Nos.2 to 6 played fraud against the appellants in respect of the purported share transfers. Unless this aspect is conclusively adjudicated, the Company Law Board cannot grant any relief claimed by the

appellants. Therefore, the only aspect which requires consideration is the scope of jurisdiction of the Company Law Board to adjudicate such a dispute.

In **Ammonia Supplies** (supra), the Supreme Court has considered the scope of the provisions of Section 155 of the Act which was subsequently omitted by the Companies (Amendment) Act, 1988 with effect from 31.05.1991. Section 111A was incorporated in different parts at different stages. As we are concerned with Section 111A (1) to (3), it is relevant to note that, that part of the Section was incorporated by the Depositories Act, 1996 with effect from 20.09.1995 and thereafter, the proviso to Section 111A (2) was incorporated by the Depositories Related Laws (Amendment) Act, 1997 with effect from 15.01.1997.

With a view to examine whether the judgment in **Ammonia Supplies** (supra) has a bearing on the case on hand, the provisions of Section 155 and Section 111A of the Act need to be considered.

Section 155 of the Act reads:

“155. Power of Court to rectify Register of Members:

(1) 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 on the Register the fact of any person having become, or ceased to be, a member;  
the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the Register.”

Section 111A of the Act, to the extent it is relevant, reads:

111A. (1) In this section, unless the context otherwise requires, “company” means a company other than a company referred to in sub-section (14) of Section 111 of this Act;

(2) Subject to the provisions of this section, the

shares or debentures and any interest therein of a company shall be freely transferable;

Provided that if a company without sufficient cause refuses to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the Company Law Board and it shall direct such company to register the transfer of shares.

(3) The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities & Exchange Board of India, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992), or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), or any other law for the time being in force, within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of the transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records.

.....”

Though the language of Section 155 of the Act and that of the proviso to Sub-Section (2) to Section 111A or Section 111A(3) of the Act is not similar, however, both the provisions deal with the power of the Company Law Board to rectify the Register of members and they apply to a situation where the company refuses to rectify the Register without sufficient cause. While dealing with Section 155 of the Act, the Supreme Court held that if the question raised before the Court was truly one of the rectification, all matters raised in that connection should be decided by the Court under the said provision and that if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by the Civil Court and that unless the jurisdiction is expressly or implicitly barred under the statute, for the civil Court would have jurisdiction.

From the conspectus of the facts recorded above, it is clear that

many disputed issue(s) need to be resolved by the Company Law Board before exercising its jurisdiction to direct rectification of the Register of members. These questions include whether respondent Nos.2 to 6 have paid the entire sale consideration; whether appellant No.1 executed share transfers, if so, whether they are valid and conversely, whether the purported share transfers have not taken place and respondent Nos.2 to 6 have played fraud on the appellants. Therefore, for exercising jurisdiction under proviso to Sub-Section (2) of Section 111A or under Sub-Section (3) of Section 111A, adjudication of the above aspects is needed. From the language of the provisions of Section 111A, it appears to me that jurisdiction of the Company Law Board is summary in nature and wherever serious allegations such as fraud are made, the proper remedy for the aggrieved party is to first approach the civil Court and establish the factum of fraud before approaching the Company Law Board with an application under Section 111A for rectification of Company Register. I am, therefore, of the opinion that to the extent of adjudication of these disputes, jurisdiction of civil Court is not ousted. The disputes raised by the appellants are not truly confined to mere rectification, but they fall in the realm of various disputed questions, which cannot be decided in exercise of summary jurisdiction of the Company Law Board. Though the Company Law Board did not proceed on this reasoning, yet I am of the opinion that the conclusion reached by it albeit, on different grounds, is not liable for interference.

On the above analysis, the Company Appeal fails and the same is accordingly dismissed, however, with liberty to the appellants to approach the competent Court of civil jurisdiction for appropriate relief. If it succeeds before the civil Court, it can approach the Company Law Board for rectification of the Register.

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**(C.V.NAGARJUNA REDDY, J)**

11<sup>th</sup> March, 2015

Note: L.R.copies to be marked.  
(B/o)  
GHN

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[\[1\]](#) (1998) 7 SCC 105