

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY APPEAL (L) NO. 55 OF 2014  
IN  
COMPANY PETITION NO. 40 OF 2011**

Afzal Khan & Anr. ...Appellants  
vs.  
Mehboob Ayub Khan & Ors. ....Respondents

WITH

**COMPANY APPEAL (L) NO. 56 OF 2014  
IN  
COMPANY PETITION NO. 42 OF 2011**

Afzul Khaan & Anr. ...Appellants  
vs.  
Yasmin Ayub Khan & Ors. ....Respondents

WITH

**COMPANY APPEAL (L) NO. 65 OF 2014  
IN  
COMPANY PETITION NO. 97 OF 2011**

Afzul Mehbob Khaan & Ors. ...Appellants  
vs.  
Mehboob Productions Pvt.Ltd. & Ors. ....Respondents

WITH

**COMPANY APPEAL NO. 31 OF 2015  
IN  
COMPANY PETITION NO. 96 OF 2011**

Afzal Khan & Anr. ...Appellants  
vs.  
Mehboob Ayub Khan & Ors. ....Respondents

WITH

**COMPANY APPEAL NO. 54 OF 2015  
IN  
COMPANY PETITION NO. 96 OF 2011**

Mehboob Ayub Khan & Ors. ...Appellants  
vs.

Mehboob Productions Pvt.Ltd. & Ors.

....Respondents

WITH

**COMPANY APPEAL NO. 56 OF 2015  
IN  
COMPANY PETITION NO. 41 OF 2011**

Farida Ayub Khan

...Appellant

VS.

Mehboob Productions Pvt.Ltd. & Ors.

....Respondents

Mr.Aspi Chinoy, Senior Advocate with Vaibhav Krishna & Tahir Parande I/b. Juris Consillis for Appellants in Coapp 31/2015, Coappl 55/2014, 56/2014, 65/2014.

Mr.Haresh Jagtiani, Senior Advocate with Siddhesh Bhole, Khalid Khimani, Archan Shah I/b. Siddhesh Bhole for Appellants in Coapp 54/2015 and 56/2015.

Ms.K.R. Davierwala I/b. Mulla & Mulla & CB&C for Respondent No.1 in Coapp 54/2014, 56/2015 and Respondent No.2 in Coappl 55/2014 & 56/2014.

Mr.Mustafa Doctor, Senior Advocate with Ms.Niloofer Sawhney I/b. Hooseini Doctor for Respondent Nos.3 and 6 in Coappl 55/2014, 56/2014 & Respondent Nos.2 and 7 in Coapp 54/2014 & 56/2015.

Mr.Sameer Pandit with Ms.Ankita Godbole & Arpit Singhvi I/b. Wadia Ghandy & Co. for Respondent No.7 in Coappl 55/2014 & 56/2014 & Respondent No.8 in Coapp 54/2015, 56/2015.

**CORAM : S.C. GUPTE, J.**

**RESERVED ON : 28 OCTOBER 2015**

**PRONOUNCED ON : 28 MARCH 2016**

**JUDGMENT :**

Company appeal Nos.55 of 2014 and 56 of 2014 impugn an order passed by the Company Law Board, Mumbai Bench ("CLB") on applications under Section 111 of the Companies Act, 1956 ("Act"), by which the first Respondent company was *inter alia* directed to transmit shares held by a shareholder of the company and rectify the register of

members. Companion Company Appeal Nos.31 of 2015 and 54 of 2015 are cross appeals which impugn another order passed by the CLB on the same day on a petition filed by the same Petitioners under Sections 397 and 398 of the Act, complaining of the same facts as are the subject matter of the rectification petitions in addition to some other facts.

2 The short facts of the case may be stated as follows :

2(I) In or about 1947, the first Respondent company – Mehboob Productions Pvt.Ltd. (“Company”) - was incorporated by the reputed filmmaker, late Mehboob Khan. The company owns a large immovable property admeasuring about 4.2 acres at Hill Road, Bandra (West), Mumbai, known as 'Mehboob Studio', which is hired out for films and advertisements as of this date. The dispute between the parties relates to transfer / transmission of shares held by descendants / successors-in-title of late Mehboob Khan. The family tree of late Mehboob Khan is shown below for the purposes of convenience of understanding the controversy.

Mehboob Khan : Family Tree

I (two wives)

Fatimabibi (6 children)

Sardar Akhtar (no children)

I

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|                         |                          |                            |                           |             |                   |
|-------------------------|--------------------------|----------------------------|---------------------------|-------------|-------------------|
| Ayub Khan<br>(deceased) | Iqbal Khan<br>(Orig R-8) | Shaukat Khan<br>(Orig R-7) | Najma Sayed<br>(Orig R-2) | Mumtaz Khan | Zubeida Imam<br>I |
|-------------------------|--------------------------|----------------------------|---------------------------|-------------|-------------------|

14.3.08

I

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|                                                                          |                                                                                     |                          |                          |
|--------------------------------------------------------------------------|-------------------------------------------------------------------------------------|--------------------------|--------------------------|
| Aslam Khan & Afzul Khan<br>(1 <sup>st</sup> marriage)<br>(Respdts 3 & 4) | Mehboob Khan & Yasmin Khan<br>(from 2 <sup>nd</sup> marriage)<br>(Orig Petitioners) | SattarKhan<br>(Orig R-5) | Hafiz Khan<br>(Orig R-6) |
|--------------------------------------------------------------------------|-------------------------------------------------------------------------------------|--------------------------|--------------------------|

(II) Prior to 1992, Ayub Khan (“Ayub”), son of late Mehboob Khan, was a shareholder of 1132 equity shares of the company. At his request, by a resolution duly passed on 9 May 1992, the then Directors of the company resolved to add the names of Mehboob Ayub Khan (“Mehboob”) and

Yasmin Ayub Khan ("Yasmin"), who were his children from second marriage, i.e. with one Farida Moriswala ("Farida"), (original Petitioners) as joint holders in respect of 726 and 128 shares, respectively, held by Ayub in his sole name. The entries were made in the share certificates and the names of the original Petitioners, Mehboob and Yasmin, were entered in the register of members as joint holders with Ayub in respect of the shares. Thus, 1992 onwards, 726 shares of the company have been held by Mehboob whilst 128 shares have been held by Yasmin, both jointly with Ayub.

(III) In or about November 2003, Najma Sayed (original Respondent No.2) ("Najma") filed a company petition before the CLB, being Company Petition No.14 of 2003, *inter alia* challenging the entry of joint shareholding of Mehboob and Yasmin for 726 shares and 128 shares, respectively, as being violative of the pre-emption clause in the Articles of Association. (In an affidavit filed in the company petition, Ayub took up a position that the joint shareholding of Mehboob and Yasmin was not a transfer but that the names were added in view of a proposed testamentary disposition during his life time in favour of the two, which was to take effect upon his death and that since that was not a transfer, the pre-emption clause in the Articles did not apply thereto.) Around the same time, i.e. in or about November 2003, Najma also filed another company petition, being Company Petition No.108 of 2003, under Sections 397 and 398 of the Act, complaining of oppression and mismanagement. (Once again, in reply to that petition, Ayub filed an affidavit stating that the addition of the names of Mehboob and Yasmin did not amount to a transfer.)

(IV) On 3 January 2004, Ayub and Farida purported to register under the Special Marriage Act their nikah marriage held in 1966. (The validity of registration of this marriage under the Special Marriage Act is a contentious issue between the parties. The significance of registration of marriage under the Special Marriage Act is that the restrictions under Shariat Law regarding testamentary succession to the property of a

Mohammedan do not apply in the event of registration of the testator's marriage under the Special marriage Act, making bequest of 100% estate of the Mohammedan through a will possible.)

(V) On 17 September 2007, Ayub executed his last will and testament by which he bequeathed the aforesaid shares in favour of Mehboob and Yasmin in keeping with the original proposal of including their names in the share certificates so as to enable a testamentary disposition. The balance 278 shaes (out of 1132 shares held by Ayub) were bequeathed to Farida.

(VI) On 14 March 2008, Ayub passed away. On his death, the shareholding of the company was held as follows :

- (i) Estate of Ayub – 1132 shares – 22.64%
- (ii) Iqbal Khan (original Respondent No.8) – 1134 shares – 22.68%
- (iii) Shaukat Khan (original Respondent No.7) – 1299 shares – 25.98%
- (iv) Afzal Ayub Khan (original Respondent No.4) – 117 shares – 2.34%
- (v) Aslam Ayub Khan (original Respondent No.3) – 116 shares – 2.32%
- (vi) Sattar Khan (original Respondent No.5) – 381 shares – 7.62%
- (vii) Abdul Hafiz Khan (original Respondent No.6) – 338 shares – 6.56%
- (viii) Najma Sayed (original Respondent No.2) – 429 shares – 8.58%
- (ix) Zubeida Peshimam (daughter of late Mehboob Khan) – 39 shares - 0.78%
- (x) Estate of Sardar Akhtar (late Mehboob Khan's second wife) – 25 shares

(VII) On 4 April 2008, Mehboob, Yasmin and Farida called upon the company to effect transfer of 726 shares and 128 shares, respectively, to the sole names of Mehboob and Yasmin by survivorship (i.e. by deletion of the name of the deceased joint holder – late Ayub). They also requested that the balance 278 shares (out of 1132 shares held by the estate of Ayub) be transferred to Farida by transmission under the will of late Ayub.

(VIII) On 17 April 2008, original Respondent Nos.3 and 4 (Aslam Ayub Khan - “Aslam”, and Afzal Ayub Khan - “Afzal”) filed a suit in the City Civil Court at Bombay, being Suit No.726 of 2008, challenging the last will and testament purportedly executed by Ayub.

(IX) On 26 August 2008, Afzal and Aslam also filed an administration suit, being Suit No.2855 of 2008, in this Court claiming entitlement by way of intestate succession to half the estate of late Ayub, being sons from the latter's first marriage, which *inter alia* included 566 shares out of 1132 shares of the company originally held by Ayub.

(X) On 25 November 2008, this Court rejected the prayer for ad-interim reliefs in the notice of motion of Afzal and Aslam in Suit No.2855 of 2008. The reliefs were declined essentially on account of want of leave under Order 2 Rule 2 from the City Civil Court in the earlier suit, namely, Suit No.726 of 2008, though it was made clear that transactions effected by the defendants in respect of the suit property would be subject to further orders that may be passed in the notice of motion and the suit.

(XI) On 13 December 2008, in a meeting held by the Board of Directors of the company, the Board noted the order in the notice of motion *inter alia* to the effect that all transactions would be subject to further orders in the motion and the suit and in pursuance thereof, decided not to transmit the shares and to keep the dividend on the shares in a separate account.

(XII) In January 2011, the Company through its Advocates informed the

Advocates of Mehboob and Yasmin that the company would not accede to their request for transmission of the shares unless appropriate directions were obtained from the court in that behalf.

(XIII) On or about 7 April 2011, at an EoGM of the Company, a resolution was passed appointing Afzal, Aslam, Najma and two others as Directors of the company. (The other Directors were Iqbal Khan, Managing Director and Shaukat Khan, Director, the two other sons of late Mehboob Khan.)

(XIV) By its letter dated 11 July 2011, the Company finally rejected the request of Mehboob and Yasmin to transmit the shares and called upon the latter to obtain appropriate orders from the court.

(XV) In the premises, on 5 September 2011, Mehboob and Yasmin, respectively, filed Company Petition Nos. 40 of 2011 and 42 of 2011 for rectification of register of members in respect of 726 shares and 128 shares of Ayub jointly held by them with him. The petitions proceeded alternatively on the basis of the right of survivorship of Ayub and Yasmin as joint shareholders along with Ayub in respect of these shares and devolution of shares under the last will and testament of Ayub. Simultaneously, Farida filed a petition, being Company Petition No.41 of 2011, claiming devolution of 278 shares under the last will and testament of Ayub.

3           That is where the matters stood when the disputes were taken before the CLB under the captioned petitions. A few important developments in the matter of transmission / transfer of shares during the pendency of the petitions may now be noted.

(I)     On 12 September 2011, in a meeting of the Board of Directors of the Company, the Board noted that the original transfer of shares to the joint names of Mehboob and Yasmin along with late Ayub, which was accomplished in 1992, was in violation of the Articles of Association and

that the Board was duty bound to take remedial steps for rectification / correction of entries made in the register of members. The Board of Directors by a majority of 6 : 1 resolved that the transfer of 726 shares and 128 shares by Ayub in favour of himself jointly with Mehboob and Yasmin, respectively, by Board Resolution dated 9 May 1992, was invalid and beyond the powers of the Directors and void *ab-initio*, being in breach of the Articles of Association and pre-emption rights contained therein. The Board, accordingly, resolved to rectify the register of members.

(II) On 9 November 2011, the joint names of Mehboob and Yasmin were deleted from the register of members, purportedly for giving effect to the Board resolution of 12 September 2011.

(III) On 15 November 2011, Mehboob, Yasmin and Farida filed Company Petition No.96 of 2011 under Sections 397 and 398 of the Act, complaining of oppression and mismanagement and challenging *inter alia* the resolution dated 12 September 2011.

(IV) On 23 November 2011, original Respondent Nos.3 and 4 as well as the two other Directors, Sattar Khan and Afiz Khan, were removed as Directors of the company. The reconstituted Board passed a resolution rescinding all earlier resolutions passed by them during their tenure, including presumably the resolution of 12 September 2011.

4               Based on the actions of the Board of Directors in passing the resolution of 12 September 2011 and deleting the names of Mehboob and Yasmin in pursuance of it and other actions of the Board which came into existence after the EoGM resolution of 4 April 2011, a petition (Company Petition No.96 of 2011) was filed by Mehboob, Yasmin and Farida complaining of oppression and mismanagement, under Sections 397 and 398 of the Act. On the other hand, Afzal and Aslam along with Sattar Khan challenged the resolution of 23 November 2011, removing them as directors of the company, in a petition under Sections 397 and 398

(Company Petition No.97 of 2011).

5 In the backdrop of these facts, the company petitions of Mehboob, Yasmin and Farida under Section 111 of the Act seeking rectification of register of members (C.P. Nos.40, 41 and 42 of 2011) as well as the company petition filed by the three under Sections 397 and 398 of the Act (C.P. No.96 of 2011) along with the petition of Afzal, Aslam and Sattar (C.P. No.97 of 2011) were taken up together for hearing by the CLB.

6 By its impugned order passed on the company petitions of Mehboob and Yasmin for rectification, the CLB set aside the Board resolutions of 13 December 2008 (to the extent it related to Mehboob and Yasmin) and 12 September 2011 (resolving deletion of the names of Mehboob and Yasmin from the register of members) and directed the Company to transmit 726 shares to Mehboob and 128 shares to Yasmin and enter their names in the register in respect of the respective shares. An undertaking was, however, directed to be filed by the transferees not to deal with these shares without prior approval of this Court in the pending administration suit, i.e. Suit No.2855 of 2008. The company petition of Farida (C.P. No.41 of 2011) for rectification of register in respect of 278 shares of late Ayub by giving effect to the will executed by Ayub, was disposed of by reserving liberty to her to revive her petition after the conclusion of the pending administration suit before this Court. Aggrieved by the order, Afzal and Aslam, (original Respondents to the rectification petitions) have filed two separate appeals, Company Appeal No.55 of 2014 and 56 of 2014, challenging the impugned order on the two separate company petitions for rectification, namely, C.P. Nos.40 and 42 of 2011 of Mehboob and Yasmin. Farida, on the other hand, has challenged the order on her petition (C.P.No.41 of 2011) to the extent the CLB refused to grant her prayer for rectification.

7 By its order of the same date, i.e. 7 August 2014, the CLB dismissed the company petition of Mehboob, Yasmin and Farida under

Sections 397 and 398 of the Act (C.P. No.96 of 2011), *inter alia*, on the ground that the grievance of Mehboob and Yasmin in respect of non-transmission of 726 and 128 shares respectively held by them as joint shareholders with late Ayub had already been brought to an end by final orders passed on C.P. Nos.40 and 42 of 2011, whilst the other grievances raised in respect of oppression and mismanagement had not been substantiated. This order is separately challenged by Mehboob, Yasmin and Farida in the companion appeal, namely, Company Appeal No.54 of 2015. Afzal and Aslam have filed a cross-appeal being Company Appeal No.31 of 2015, challenging the same order to the extent it accepts the grievance of Mehboob and Yasmin about transmission of 726 and 128 shares.

8 By another order of the same date, i.e. 7 August 2014, the CLB dismissed the petition of Afzal, Aslam and Sattar under Sections 397 and 398 (C.P. No.97 of 2011). This order has been challenged by them in Company Appeal No.65 of 2014.

9 The appeals form four groups : (i) The appeals of Afzal and Aslam from the rectification orders passed on the petitions of Mehboob and Yasmin (Co.App.Nos.55 and 56 of 2014) and the appeal of Afzal and Aslam from the order on the oppression and mismanagement petition of Mehboob, Yasmin and Farida (Co.App. No. 31 of 2015); (ii) The appeal of Mehboob, Yasmin and Farida from the order on their oppression and mismanagement petition (Co.App. No.54 of 2015); (iii) Farida's appeal from the order on her rectification petition (Co.App. No.56 of 2015); and (iv) The appeal of Afzal, Aslam and Sattar from the dismissal of their petition under Sections 397 and 397 (Co.App. No.65 of 2014). This order disposes of three appeals, namely, Co.App. Nos.55 and 56 of 2014 and Co.App.No.31 of 2015, forming part of the first group. These appeals deal with one particular subject, namely, rectification of register of members so as to transmit 726 and 128 shares to the sole names of Mehboob and Yasmin, respectively.

**Co.Appeal Nos.55 and 56 of 2014 & Co.Appeal Nos.54  
and 31 of 2015**

10            Mr.Chinoy, learned Senior Counsel for the Appellants in Co.Appeal Nos.55 and 56 of 2014 and Co.Appeal No.31 of 2015, made the following submissions:

(i)        Learned Counsel submitted that the finding of the CLB that the resolution of 12 September 2011 passed by the Board of Directors was null and void, is without jurisdiction, and in fact a miscarriage of justice. By this resolution, the Board had actually resolved that the original transfer of shares from the sole name of Ayub to the joint names of Ayub and Mehboob in respect of 726 shares, and Ayub and Yasmin in respect of 128 shares was *ultra vires* the directors, and null and void as being violative of the Articles of the Company. It is submitted that this resolution, which was passed during the pendency of the rectification petitions, was sought to be challenged by the Petitioners by introducing an amendment to their petitions, but the amendment application was dismissed as not pressed. Mr.Chinoy submitted that in the premises, the CLB could not have proceeded to set aside that resolution, particularly considering that the same did not form part of the challenge and his clients had no opportunity to deal with the same in their pleadings in the rectification petitions.

(ii)       Secondly, it is submitted that the foundation of the CLB's impugned order is the purported lack of power in the Board of Directors to correct the entries in the register of members. It is submitted that the Board has such power and in case anyone is aggrieved by the exercise of that power, there is an option to the aggrieved party to approach the CLB under Section 111 of the Act.

(iii)      Thirdly, learned Counsel submitted that the impugned order of the CLB is erroneous on merits.

11           The contention of learned Counsel for the Appellants that the finding of the CLB on the Board resolution of 12 September 2011 was without jurisdiction and null and void by reason of dismissal (as not pressed) of the amendment application introducing a challenge to the resolution, appears to be hyper technical and is decisively devoid of any substance. The allegation is that the order is without jurisdiction and amounts to miscarriage of justice for two reasons – one, the resolution was not the subject matter of challenge in the company petitions for rectification of register of members, and two, the Appellants had no opportunity to join issue and deal with merits of the challenge in the rectification petitions. It is, however, pertinent to note that the validity of the resolution of 12 September 2011, by which the Board of Directors had resolved the original transfer of shares from Ayub to the joint names of Ayub and Mehboob, and Ayub and Yasmin, to be null and void as being violative of the Articles, was very much a subject matter of challenge in the companion company petition, namely, Company Petition No.96 of 2011. In fact, that was one of the main grounds on which the grievance of Mehboob and Yasmin about oppression and mismanagement by the Appellants herein was premised. Company Petition No.96 of 2011 was heard by the CLB along with the rectification petitions, namely, Company Petition Nos.40, 41 and 42 of 2011. The parties had very much joined issues on the validity of the resolution of 12 September 2011 in Company Petition No.96 of 2011. After hearing the parties fully, the CLB passed an order holding the resolution to be illegal, whilst directing rectification of register of members, in Company Petition Nos.40 and 42 of 2011 of Mehboob and Yasmin, respectively. Merely because this order was passed in the rectification petitions of Mehboob and Yasmin instead of the oppression and mismanagement petition of Mehboob, Yasmin and Farida, it cannot possibly be suggested that the order is either without jurisdiction or amounts to miscarriage of justice. Both orders on the rectification petitions and the oppression and mismanagement petition were passed on the same day after hearing the parties. Learned Counsel for the Appellants has not been able to show a

single plea which the Appellants could not take, or a single document which the Appellants could not produce, in support of the validity of the resolution of 12 September 2011 because of the dismissal of the amendment application of the original Petitioners as not pressed.

12           The Appellants' main ground of challenge on a question of law is that the CLB's conclusion that the Board of Directors had no power to delete the name of a member from the register of members, without seeking an order from the CLB under Section 111(4) of the Act, is erroneous. It is submitted that Section 111(4), which enables a company to apply to the CLB for rectification of the register just as a person aggrieved or any member of the Company would, is merely a permissive and enabling provision and it is not obligatory for the company to apply to the CLB for such rectification. It is submitted that the scheme of Section 111, particularly Clause (a)(ii) of Sub-section (4) thereof, does suggest that the Company itself could omit the name of any person from the register of members, provided of course it has a sufficient cause to do so; and if it does so without such sufficient cause, any aggrieved person or member may apply to the CLB for restoration of such name. It is submitted that the original entries of joint holdership of Mehboob and Yasmin in respect of 726 and 128 shares of Ayub, were illegal, null and void and the Board of Directors had a sufficient cause to delete the entries. Learned Counsel for the Appellants relies upon the judgments in the cases of **His Highness Manabendra Shah Maharaja of Tehri Garhwal vs. The Official Liquidator, Indian Electric Tools Corporation Ltd.**<sup>1</sup> and **Smt.Biva Pyne vs. Pyne Properties P. Ltd.**<sup>2</sup> in support of his submission that such rectification could be made by the Company. He also relies on the judgments of **Hunter vs. Hunter**<sup>3</sup> and **Tett vs. Phoenix Property and Investment Co.Ltd.**<sup>4</sup> to support the action of the Board in deleting the entries.

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1   ILR (1975) II Delhi 594

2   (2010) 153 Comp Cas 49 (CLB)

3   {1936} A.C. 222

4   (1986) 2 B.C.C. 99140

13                Section 111 deals with entries in the register of members and rectification of the register. Sub-sections (1) to (4) of Section 111 deal with grievances which may arise in the matter and provide for appeal to the CLB. The sub-sections are quoted below :

**“111. POWER TO REFUSE REGISTRATION AND APPEAL AGAINST REFUSAL**

(1) If a company refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any shares or interest of a member in, or debentures of, the company, it shall, within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(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 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.

(3) An appeal under sub-section (2) shall be made within two months of the receipt of the notice of such refusal or, where no notice has 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.

(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.”

As is apparent from the provisions quoted above, there are three

categories of persons who may file an appeal before the CLB for redressal, namely, (i) the person aggrieved (by such refusal, entry or omission, or default or delay), (ii) any member of the Company and (iii) the Company itself. On the other hand, the grievances themselves may arise in three different ways, namely, as a result of (a) refusal to register any transfer or transmission, (b) entering or omission of a name without sufficient cause and (c) default or delay in entering or omitting any name. Insofar as grievance (a) is concerned, obviously the aggrieved person or any member alone could file an appeal. There is no question of a company carrying the matter before the CLB, since the appeal in this case actually challenges an action of the company, namely, refusal to register a transfer or transmission. So also, in the case of (c), the appeal could only be by a person aggrieved or a member, since the challenge is to the default or delay on the part of the company. That leaves the company as a prospective applicant (in addition to a person aggrieved or a member) only in the case of (b), that is to say, where there is any entry or omission in the register without sufficient cause. The subject of challenge even in such case is not the actual making of an entry or omission on the part of a company, but existence of a name or omission in the register. If a name exists on the register, without there being a sufficient cause, or a name which originally existed stands omitted in the register, again without a sufficient cause, the company may be aggrieved and may, in that case, apply to the CLB for rectification of register. In other words, it is not the act of entering or omitting a name, but the subsistence of such entry or omission, which gives rise to a grievance insofar as the company is concerned.

14            If Mr.Chinoy's arguments were to be accepted, that is to say, if the company could deal with its own grievance of subsistence of any entry or omission without sufficient cause by the simple expedient of omitting such offending entry or undoing the offending omission by making an entry itself, there is possibly no reason to provide for a right to apply to the company. For if it does take any of the aforesaid two actions, only the

other two categories, namely, the person aggrieved or any member, would be aggrieved and may have to apply for rectification. Mr.Chinoy suggests that the very fact that entry or omission of a name without sufficient cause is made a subject matter of grievance implies that there could be an entry or omission with sufficient cause and who else could do it but the company itself. There is a fallacy in this argument and that arises if we consider Section 111 as a stand-alone provision and not in the back-drop of other provisions. Section 111 finds place in a group of sections, Sections 108 to 112, which is under the title "Transfer of Shares and Debentures". Section 108 deals with the requisites of a valid transfer. It mandates the company not to register a transfer of shares (or debentures) unless the transfer is in accordance with its provisions. Section 108A to 108I deal with restrictions on acquisition or transfer of shares in special cases. Section 109 enables transfer of shares held by a deceased member by his legal representative without such representative himself being a member. Section 109A provide for nomination of shares by a holder thereof and vesting of the shares in such nominee upon the death of the holder. Section 110 provides for the application for transfer and notice before registration of transfer. In this context, Section 111 deals with the various grievances, which may arise as a result of a wrongful entry or omission or refusal to register, or delay or default in registration. As the scheme of these Sections indicates, a company may refuse to register any transfer or transmission by reason of non-compliance with Section 108 or Sections 108A to 108I or simply delay or default, in which case the aggrieved person or any member may apply for rectification; If a company refuses to register a transfer by a legal representative or delays or defaults in it, such legal representative or his transferee or any member could apply; If the company refuses to register a transfer for non-compliance with Section 110 or registers it in breach of Section 110 or delays or makes a default, the person aggrieved or any member could apply. These are all wrongful refusals or delays or defaults. These are all actions or omissions of the company on applications for transfer or transmission. In addition to these categories of cases, there may be cases where a wrongful entry or omission may be subsisting in the

register without a sufficient cause, that is to say, an entry or omission, no doubt made earlier by the company in the first place (though not necessarily on the application of the person aggrieved or any existing member), which has no sufficient cause to subsist in the register. When such entry or omission exists, all three categories of persons are aggrieved, including the company itself. The redressal, in that case, could only be by the CLB in a rectification application. A Company may, in other words, refuse to register or make or omit an entry or delay or default in making or omitting one, all on the applications of (i) a transferor or (ii) a transferee or (iii) a transmittee or (iv) a legal representative of a holder. Sections 108, 108A to 108I, 109 and 110 apply to such applications. In all these cases, the aggrieved person or any member, as the case may be, may apply to the CLB for rectification. In case, however, any entry or omission previously made subsists on the register, and there is no sufficient cause for its subsistence, any aggrieved person, member or the company may apply to the CLB for rectification. There is no question of any aggrieved person or member applying to the company or the company itself, being aggrieved, acting on such grievance and correcting the register accordingly. That is the scheme of Sections 108 to 111. Accepting Mr.Chinoy's submission would lead to dangerous consequences. In the case of a wrongful refusal to enter or omit or making of a wrongful entry or omission, etc., any member could apply to the company itself for rectifying the register and the company could then proceed to rectify. After all if the company could rectify suo motu, it may well rectify on the application of a person aggrieved or any member. In every such case, Mr.Chinoy would have to admit, the company could well be said to have the power to do so and the only contested question would be of sufficiency of the cause to do so. That, I am afraid, cannot be a correct interpretation of the law.

15           The reason for not reserving unto the company the power to correct a subsisting entry (as opposed to making of an entry or omission occasioned by allotment, transfer or transmission) in the register is not far to seek. The register of members of a company is an important public

document and its sanctity cannot be tampered with except in accordance with law. This question was considered by Madras High Court in the case of **P.V. Damodara Reddy vs. Indian National Agencies Limited**<sup>5</sup>. In that case, the Applicants before the Court in an application for rectification of register were duly entered on the register of members as allottees of shares. The directors later resolved to cancel the allotment and proceeded to remove their names from the register. This is what Madras High Court said in that case:

“4. Before proceeding further, I may say I am disposed to regard the removal by the company of the applicants' names from the register of members as wholly illegal. The register of the members of a company is a public document and I know of no provision in the Companies Act which permits the directors of a company or any officer of a company to make any alteration to the register in the circumstances alleged in the present case. If these members' names had been improperly added to the register, the remedy or the company was to apply to this Court under section 38 for the rectification of its register and not to take upon itself to alter the register.”

There is, however, an exception to this rule. Where there is sufficient cause for rectifying any mistake or omission, and “if there is no dispute, and if the circumstances are such that the Court would order rectification”, the Board of Directors may itself effect the necessary correction (Halsbury's Laws of England, Fourth Edn. Vol.7, Para 306). In **re Poole Firebrick and Blue Clay Company (known as Hartley's case)**<sup>6</sup>, the law was stated by the Master of the Rolls in the following words :

“ It is part of the duty of directors to keep a correct register of their shareholders. Here they allotted certain shares as fully paid up on the supposition that they had power to do so : the allottee accepted the shares on the same supposition. In fact, they had no power to make such an allotment. It was a case of common mistake ; and some time after the

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<sup>5</sup> 1946 MWN 460

<sup>6</sup> (1874-75) Law Reports 10 Ch. App.157

allotment was made the mistake was discovered. If the parties had come to the Court, it is admitted that the Court would have ordered the company and its directors to do exactly what has been done. Then the only question is, Can it be necessary to come to the Court to get an order to do that which both parties are willing to do, and wish to be done ? I cannot hold that it is necessary, and I am therefore of opinion that Mr.Hartley is in the same position as if his name had not been placed on the register until after the contract had been filed. His name must, consequently, be removed from the list of contributories."

16           The decision of Delhi High Court in the case of **His Highness Manabendra Shah Maharaja of Tehri Garhwal** (supra), relied upon by Mr.Chinoy, was a case where the shareholder's case was that though he had applied for 500 shares, a mistaken entry was made in the register in respect of 50,000 equity shares; by a resolution subsequently passed by the Board of Directors that allotment of 50,000 shares was cancelled and the register was rectified. The Court held that an application for rectification to the Court was not necessary to effect the rectification in the facts of the case. The Court relied on the decision in Hartley's case and also the obligations of the McCardie J. in **First National Re-insurance Company Ltd. vs. Greenfield**<sup>7</sup> to the following effect :

“           With regard to the rectification of the register an application to the court was essential only when the company disputes the right to rectification. There is no reason why the directors, if they bone fide agree that the shareholder has a right to avoid the contract, should not thereupon assent to the rescission of the contract and rectify the register in an appropriate manner. An order of the court is not necessary in such a case.”

17           In the case of **Biva Pyne** (supra), the shareholding of a member was erroneously reflected in an annual return, which error was corrected by the Board. It is important to note that the claim for the altered

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<sup>7</sup> [(1921 (2) K.B. 260] (13)

shareholding was made not on the basis of share certificates or entries in the register but purely on the basis of annual returns. The stand of the company was that the Board had corrected this error to bring the shareholding to the correct position. The CLB in **Biva Pyne**, however, proceeded on the footing of a presumption that the register of members was also altered in keeping with the altered shareholding purportedly erroneously reflected in the annual returns. To the extent the CLB decision suggests that the company can alter its register either by entry in or omission from the register on its own and without recourse to the Court even in a contested matter, the case must be held to be wrongly decided and not good law.

18           The conclusion drawn by the CLB in its impugned order in the present case (which was a contested matter) that the Board of Directors of the Company had no power to rectify the register on its own, without recourse to the Court, is thus correct and does not suffer from any error of law.

19           Even on merits, the CLB found the resolution of 7 September 2011 to be clearly mala fide and oppressive for two reasons. (See the CLB order of the same date in Company Petition No.96 of 2011.) Firstly, because no court order was sought under Section 111(4) and secondly, because Mehboob and Yasmin were joint holders for over 19 years as per the register of members and under the Articles of Company, the Board was bound to register the transmission in their favour after the death of Ayub. Mr.Jagtiani, learned Senior Counsel for the Respondents, supported this conclusion of the CLB by submitting that the power of the Board of Directors of rejecting or accepting a transfer or transmission must be exercised bona fide and in the interest of the company and the shareholders in general, and not mala fide or with an oblique motive or for a collateral purpose or arbitrarily. In **Bajaj Auto Ltd. vs. N.K. Firodia**<sup>8</sup>, the Supreme Court laid down three standpoints from which the exercise of

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<sup>8</sup> 1970(2) Supreme Court Cases 550

powers of the directors in this behalf ought to be tested. The Supreme Court held as follows :

"14. In the present appeals, the reasons of the Directors have to be tested from three points of view. First, whether the Directors acted in the interest of the company; secondly, whether they acted on a wrong principle; and, thirdly, whether they acted with an oblique motive or for a collateral purpose. This Court in *M/s. Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhuniunwala & Others* [(1962) 2 SCR 339 : AIR 1961 SC 1669] that "the discretion of the Directors would be nullified if it were established that the Directors acted oppressively, capriciously or corruptly or in some other way *mala fide*". The decision in *Harinagar Sugar Mills Ltd.* (supra) related to a case under the Companies Act, 1956, prior to the introduction of section 111(5-A). That is why if the Directors under the Articles were not to disclose reasons it was said that the Court would presume where the Directors refused to register the transfer of shares that their power of absolute discretion was exercised *bona fide* unless corrupt or *mala fide* motives were affirmatively pleaded and proved. It would be for the aggrieved transferor to show that the refusal to register transfer was exercised *mala fide* and not in the interest of the company and thereby the presumption of *bona fide* would be displaced.

15 The words 'bonafide and for the benefit of the company as a whole' have been considered in some English decisions. Reference may be made to the decision in *Greenhalgh v. Arderne Cinemas Ltd.* [(1950) 2 All ER 1120] where Evershed, M.R. said that if a resolution had the effect "to discriminate between the majority shareholders and the minority shareholders so as to give the former advantage of which the later were deprived", the resolution could be attacked on grounds of elements of dishonesty or impropriety. The acts of the Directors would have to be scrutinised as to whether they were the honest opinion of the Directors acting for the company as a whole."

20 In the present case, the resolution of the Board of Directors dated 12 September 2011 does not stand the scrutiny of these tests. During the brief period, i.e. between 4 April 2011 and 23 November 2011, when the Appellants were on the Board of the Company, they appear to have passed this resolution acting in their own interest. Their suit, challenging the will of Ayub, was pending before this Court. So also, was their petition challenging the joint holdership of Mehboob and Yasmin pending before the CLB, Principal Bench. They were clearly aware that the entries of joint holdership of the two had to be rectified by seeking an appropriate order from the Court or the CLB. And yet, when they got an opportunity to be on the Board, they unilaterally proceeded to cancel the entries, acting in their own interests and on a wrong principle. The conclusion of the CLB, in the premises, of the resolution of 12 September 2011 being vitiated by mala fides is, thus, clearly sustainable. There is no error of law in it.

21 Further, it is important to note that there was no application before the CLB to cancel the entry of joint shareholding effected in favour of Mehboob and Yasmin in respect of 726 and 128 shares of Ayub by the Board resolution of 9 May 1992. The power of the then Board of Directors of the Company to add their names jointly with Ayub in the share certificates and make entries accordingly in the register was not a subject matter of challenge. Earlier, the resolution of 9 May 1992 was challenged by Najma in a company petition filed in the year 2003 before the Company Law Board, New Delhi (Company Petition No.108 of 2003), but there was no order for cancellation of the resolution or the entries made in pursuance thereof on that petition. Even on the petition of the Appellants herein, Afzal and Aslam, before the Company Law Board, New Delhi (Company Petition No.1757 of 2008) challenging the inclusion of Mehboob and Yasmin as joint shareholders for 726 shares and 128 shares of Ayub, no order was passed. The only question before the CLB in the present case was the validity of the refusal of the company to transmit 726 and 128 shares jointly held by Mehboob and Yasmin, respectively, with Ayub upon the latter's

death. There were two contests on merits :(i) the locus of the Petitioners, Mehboob and Yasmin, to present the petition in the face of the subsequent Board resolution of 12 September 2011 omitting their names; and (ii) whether the board had sufficient cause to refuse the transmission. On the first question, the CLB found, and rightly so, that once the resolution of 12 September 2011 was held to be contrary to the provisions of law and set aside, the earlier resolution of 9 May 1992 stood restored and therefore, there is no question of the locus of the Petitioners to apply for transmission by survivorship. (I have already held the decision of the CLB to set aside the resolution of 12 September 2011 to be valid.) On sufficient cause so far as the refusal to transmit is concerned, the CLB rightly relied on Article 25 of the Articles of Association of the Company, under which, in case of death of one or more joint holders, the survivor/s is/are the only person/s recognized as having title to or interest in the shares. In the case of a will, Article 28(f) of the Articles came into play. The CLB held that the company was bound to follow its Articles and could not have denied transmission / registration of the shares in the sole names of Mehboob and Yasmin. The CLB further noted that by a further resolution passed on 23 November 2011, the Company had decided to annul the resolution of 12 September 2011 and this position was not contested by the company before the CLB. On the other hand, the Company had categorically expressed its willingness to comply with the order to be passed by the CLB on the application of the Petitioners. The CLB, in the premises, held that the Petitioners were entitled to the relief of rectification of register, by entering their names as sole shareholders in respect of 726 and 128 shares. The conclusion is clearly in order. No error of law can be said to vitiate it.

22            In the premises, there is no merit in these appeals. Company Appeal Nos.55 of 2014 and 56 of 2014 are, accordingly, dismissed. No order as to costs.

23            The companion appeal, Company Appeal No.31 of 2015, which challenges the order of the CLB of the same date, i.e. 7 August

2014, insofar as the same deals with transmission of 726 shares and 128 shares, is also dismissed for the reasons stated above. No order as to costs.

24           The other appeals, namely, Company Appeal Nos.65 of 2014, 54 of 2015 and 56 of 2015 to come up in due course. The interim order passed in the group of appeals in respect of 1132 shares shall now continue only in respect of 278 shares, transmission of which is claimed by the Appellant in Company Appeal No.56 of 2015.

25           On the application of the Appellants in Company Appeal Nos.55 of 2014, 56 of 2014 and 31 of 2015, this order is stayed for a period of four weeks from today.

**(S.C. Gupte, J.)**