

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 10.03.2017
Judgment Pronounced On: 14.07.2017

CO. A. (SB) 51/2014

MILIND S. NAGARKAR

..... Appellant

Through: Ms. Vandana Sharma Bhandari,
Advocate.

versus

MOTHER SON SUMI SYSTEMS LIMITED & ORS.

..... Respondent

Through: Mr. P. Nagesh, with Mr. Sanskar
Agarwal, Advocates.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present appeal under the provisions of Section 10F of the Companies Act, 1956 (hereinafter referred to as 'the Act') assails the order dated 18.07.2014, as modified by way of order dated 22.07.2014, rendered by the Company Law Board (CLB) in Company Petition No.20/59/2014-CLB, titled as '*Milind S. Nagarkar v. Mother Son Sumi*

Systems Ltd & ors.’ (hereinafter referred to as ‘the said Company Petition’).

2. By way of the impugned orders, the CLB was pleased to dismiss the said Company Petition filed under the provisions of Section 111A of the Act, seeking rectification of the register of members maintained by the Respondent-Company.

3. The Appellant has averred that he purchased the subject shares on 13.06.2001; and immediately thereafter, sent a request to the Respondent-Company for the necessary rectification in the Register of the Respondent Company. The Respondent-Company, however, refused to register the transfer of the subject shares on the ground that the signatures of the transferor in the Share Transfer Deeds did not tally with the specimen signatures available with the Respondent-Company in its records. Resultantly, the subject shares along with the Share Transfer Deeds were returned as bad delivery.

4. It is the averment of the Appellant that he did not respond to the action taken on behalf of the Respondent-Company until the year 2013, on account of the circumstance that he had, in the meantime, moved to Jaipur; and discovered the subject share certificates along with the Share Transfer Deeds lying at his house in Mumbai, only on his return to the city.

5. The Appellant is then stated to have approached the Respondent No.4/Stock Broker, who had facilitated the sale of the subject shares, for fresh transfer deeds. Owing to the circumstance that the Appellant received no response from Respondent No.4, the former was constrained to approach Respondent No.2/Registrar and Stock Transfer Agent of the

Respondent Company, in order to obtain the address of the Respondent No.3/Transferor.

6. Subsequent thereto, the appellant avers, that he sent a letter to the Respondent No.3/Transferor, which was returned with the remark that no such person was found at the said address.

7. The Appellant thereafter sent a letter dated 01.05.2013 to the Respondent No.2/Registrar and Stock Transfer Agent of the Respondent Company, seeking release of new split shares along with all the consequential benefits. In response to the communication, the Respondent No.2/Registrar and Stock Transfer Agent of the Respondent Company, vide its letter dated 07.05.2013 stated that it would be unable to transfer the shares in favour of the Appellant and advised him to approach a court of competent jurisdiction in accordance with law, seeking a direction to the Respondent-Company for rectification of the Register of the Company. The Appellant was, therefore, constrained to institute the said Company Petition seeking rectification of the Share Register *qua* the company and transfer of 500 shares, hitherto held by the Transferor, in the name of the Appellant along with the benefits accrued thereupon.

8. The CLB dismissed the said Company Petition by way of the impugned orders.

9. The Appellant assails the impugned orders principally on the ground that the Transferor failed to respond or appear before the CLB despite being served; and therefore contends that the CLB fell into error in not accepting the uncontroverted factual position as stated by the

Appellant, to the effect that, the shares had been duly transferred by the Transferor to the Appellant in accordance with law.

10. The appellant further assails the impugned orders on the ground that the CLB fell into error in holding that Section 108 of the Act, which requires a company to register a transfer of its shares only upon, *inter alia*, filing of a proper instrument of transfer, duly stamped and executed by or on behalf of the Transferor; is a mandatory pre-condition to the invocation of the provisions of Section 111A of the Act.

11. In this behalf, it is urged by learned counsel appearing on behalf of the appellant that the provision of Section 111A(3) of the Act has to be given its widest interpretation and cannot be restricted to rectification of the Register only in transfer matters and in fact, can also be extended to include in its application the case of loss of shares, loss of transfer deed, bad delivery, theft and forgery etc. In this behalf, it is also urged that the remedy provided under Section 111A(3) is in addition to the remedy provided in Section 111(4) of the Act. In other words, it is urged that Section 111A of the Act is of the widest amplitude conferring power on the CLB to allow rectification even in cases of loss of share, loss of transfer deed, bad delivery, theft, forgery etc., without seeking compliance with the provisions of Section 108 of the Act.

12. Lastly, it is urged that CLB fell into error in overlooking the provisions of Section 111(7) which empowers the CLB to decide any question relating to the title of any person who is a party to the application, to have his name entered or omitted from the register; and also decide any question which it considers necessary or expedient, in connection with the application for rectification.

13. Be that as it may, Mr. P. Nagesh, learned counsel appearing on behalf of the Respondent-Company, without prejudice to their rights and contentions, states that the latter is willing to resolve the dispute and put a quietus to the litigation by transferring the subject shares in the name of the Appellant. However, it is pointed out that the subject shares, which were originally 500 in number, have with passage of time, swelled into 25312 shares, which they shall transfer into the name of the Appellant, save and except that the dividend accrued thereon, which will not be paid to the latter, owing to the circumstance that the same already stands transferred into the Investor's Fund. It is also stated that the above transfer shall be subject to the appellant furnishing an undertaking of indemnity to the company to absolve and indemnify the latter from any action that may be taken against them by the transferor.

14. At this stage, learned counsel appearing on behalf of the appellant, accepts the proposal made on behalf of the Respondent-Company.

15. In view of the foregoing, the present appeal is disposed of by according the Court's approval and sanction to the proposal elaborated hereinabove, without determining the issue of law raised therein; and by directing the Respondent-Company to make all the necessary rectifications in the Share Register maintained by them in regard to the subject shares as available today. It is, however, clarified that the appellant shall not be entitled to claim from Respondent-Company the dividend that has accrued upon the subject shares. Further, an undertaking of indemnity furnished by the Appellant to the Respondent Company, to absolve and indemnify the latter from any action that may

be taken against them by the transferor, be filed within a period of four weeks from today.

16. With the above directions the appeal is disposed of.

SIDDHARTH MRIDUL, J.

JULY 14, 2017

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