

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8035 OF 2017

Aditya Birla Science and Technology Company
Pvt. Ltd. ... Petitioner

Versus

State of Maharashtra and Ors. ... Respondents

Mr. Kevie Setalvad, Sr. Advocate a/w Adv Shailesh Poria for the
petitioner.

Adv Prashant Chawan a/w Adv Chaitali Kandare I/by Navdeep
Vora & Associates for R. NO. 2.

Mr. N.C. Walimbe, AGP for the respondent State.

**CORAM : B.P. DHARMADHIKAKRI &
SARANG V. KOTWAL, JJ.**

DATE : DECEMBER 12, 2018

P.C.:

Heard counsel for the respective parties.

2. Rule. Rule is made returnable forthwith and by consent
heard finally.

3. The contention of the petitioner is the conversion of M/s.
Aditya Birla Science and Technology Company Limited“ into
“Aditya Birla Science and Technology Company Private Limited.”
with effect from 30/3/2015 is merely a formal transfer and hence,

the demand of differential premium in the impugned order is unwarranted. Our attention is drawn to circular dated 12/5/1998 particularly clause 6 therein to substantiate this contention. Circular issued by respondent on 1/1/2013 containing clarification thereof and clarification at clause (e) is also placed into service for this purpose.

4. Learned counsel for respondent no.2 submits that the circular dated 12/5/1998 needs to be construed in the light of the board resolution and that resolution dated 18.4.1998 explains what is formal transfer and non formal transfer. Our attention is invited to the fact that the share holding pattern has undergone substantial change as compared to the original share holding pattern and the directors have also been substituted. It is clear that the said change has more than 51% of original share holders and therefore, it has been rightly treated as non formal transfer and sum of Rs.6,46,88,800/- has been demanded at 10% as differential premium for taking note of this change.

5. After hearing the respective counsel, we find that the impugned communication dated 17/4/2017 except for recording change in the name does not contain any reason why the transfer has been treated as non formal transfer. It appears that section 18

of the Companies Act, 2013 may have been lost sight in the matter.

6. In the circumstances, though learned counsel for respondent no.2 is seeking time to obtain further instructions, we are not inclined to adjourn the matter.

7. Interest of justice can be served by directing respondent no. 2 to extend opportunity of hearing to the petitioner and to pass suitable orders within eight weeks from the date of appearance of the petitioner before respondent no. 2. .

8. To facilitate this exercise, we quash and set aside the impugned letter dated 17.4.2017. We direct the petitioner to appear before respondent no. 2 on 7/1/2019. Period of eight weeks shall commence from the same date.

9. Petition is thus partly allowed and disposed of.

(SARANG V. KOTWAL, J.) (B.P. DHARMADHIKARI, J.)