

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**1. CAPP-5-2013(O&M)
Date of decision: 12.05.2022**

LIEUTENANT SHARAD SAXENA ..Appellant

Versus

M/S EFN GLOBAL IMPEX PVT. LTD AND ORS. ..Respondents

2. CAPP-1-2015(O&M)

**MUNEESH KUMAR SAXENA (DECEASED) THROUGH
HIS LRS**

..Appellant

Versus

LIEUTENANT SHARAD SAXENA AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Khanna, Advocate
Mr. Gurmandeep S. Sullar, Advocate
Mr. Rohan Khanna, Advocate
Mr. Akun Sharma, Advocate
for the appellant (in CAPP-5-2013)
for respondent No.1 (in CAPP-1-2015).

Mr. Aman Sharma, Advocate
for respondent No.1 (in CAP-5-2013).

Mr. Neeraj Gupta, Advocate
for appellant (in CAPP-1-2015)
for respondent No.2(a) to 2(c) (in CAPP-5-2013).

ANIL KSHETARPAL, J.

Through these separate Company Appeals filed under Section 10F of the Companies Act, 1956 (hereinafter referred to as 'the 1956 Act'), both the parties have questioned the correctness of the order passed by the Company Law Board (Tribunal) (hereinafter referred to as 'the Board') on 18.01.2013. In the considered opinion of the Court, the following questions arise for adjudication:-

i. Whether the delay, in filing the appeal under Section

10F of the 1956 Act, beyond the maximum period for condonation of delay prescribed therein, can be condoned?

ii. Whether the limitation for filing a petition before the Company Law Board under Section 397 and 398 of the 1956 Act, begins to run from the date on which the first step/act of oppression or mismanagement was carried out, particularly when such acts/steps form a series of actions which continue till the filing of the petition?

In these appeals, this Court is faced with a situation where the Board after recording findings in favour of Sh. Sharad Saxena, the appellant in CAPP-5-2013, has failed to grant appropriate relief.

Some facts are required to be noticed.

The facts are being noted from CAPP-5-2013. The respondent-Company i.e. M/s EFN Global Impex Pvt. Ltd. came to be incorporated on 06.06.1995, with an authorized share capital of Rs.50,000/- divided into 5000 equity shares of Rs.100/- each. The Company was closely held company by the Saxena family. Originally, the Company was promoted by Mr. Muneesh Kumar Saxena, being majority shareholder along with Mr. Ranjit Singh Yadav.

The appellant-Sharad Saxena is stated to have acquired majority share holding to the extent of 45.13% in the following manner:-

<i>Sl.</i>	<i>Date</i>	<i>No. of Shares</i>	<i>Allotment/Purchase</i>
<i>1.</i>	<i>12.09.1997</i>	<i>1,000</i>	<i>Allotted by Company</i>
<i>2.</i>	<i>16.09.1999</i>	<i>310</i>	<i>Purchased from Respondent No.7.</i>
<i>3.</i>	<i>01.03.2000</i>	<i>1,305</i>	<i>Allotted by Company</i>
<i>4.</i>	<i>10.03.2002</i>	<i>2,349</i>	<i>Purchased from Respondent No.3</i>
<i>Total</i>		<i>4,964</i>	

On 30.09.2005, the respective share holding of the Company was as under:-

<i>Sl.</i>	<i>Share Holder</i>	<i>No. of Shares held</i>	<i>Percentage share-holding</i>
1.	<i>Appellant</i>	4,964	45.13%
2.	<i>Respondent No.2</i>	3,665	33.32%
3.	<i>Respondent No.6(as Custodian EWF)</i>	2,371	21.55%
<i>TOTAL SHARES as on 30.09.2005:</i>		<i>11,000</i>	<i>100%</i>

It is clarified that respondent No.3-Sh.Mahender Kumar Saxena and respondent No.2-Sh.Muneesh Saxena are the father and brother of Sh.Sharad Saxena.

The appellant was the employee of the Company as well as one of its Director. Sh. Sharad Saxena filed petition under Section 397 and 398 of the 1956 Act complaining against the oppression and mismanagement of respondent No.2, while enlisting the various acts reflecting such oppression and mismanagement. The petition was filed for grant of the following reliefs:-

- “(a) The Hon'ble Company Law Board may be pleased to issue ex-parte interim orders restraining the Respondents from alienating, selling and/or creating any third party interests in the immovable properties owned by the Company being Plot No.G1-654 and 655, RICCO Industrial Area, Chopanki, District Alwar and Room nos.114, 115, 116, 203, 206, 209 and 210, Commercial Arcade, South City-I, Gurgaon, Haryana, any other immovable property obtained/purchased by the Company and the plant and machinery owned by the Company;*
- (b) The Hon'ble Company Law Board may be pleased to issue interim orders for verification, inspection and sealing or all statutory records of the Company to ensure that no further records are fabricated by the Respondents;*
- (c) The Hon'ble Company Law Board may be pleased to issue ex-arte interim orders restraining the Respondents from taking any decisions in respect of*

the affairs of the Company with immediate effect;

- (d) The Hon'ble Company Law Board may be pleased to issue interim orders restraining the Respondents from operating the bank accounts of the Company with immediate effect;*
- (e) The Hon'ble Company Law Board may be pleased to immediately direct and order an investigation into the affairs of the Company under the control and management of the current Board of Directors;*
- (f) The Hon'ble Company Law Board may be pleased to issue interim orders appointing the Petitioner as signatory for all Bank accounts of the Company with immediate effect along with any one present Director of the Company;*
- (g) The Hon'ble Company Law Board may be pleased to issue interim orders appointing independent Directors on the Board of the Company”*

In substance, the appellant Sh. Sharad Saxena claimed that in order to reduce his share holdings from majority to minority, the respondent No.2 has taken the following steps:-

- i. 2349 shares from Sh. Sharad Saxena were transferred to Sh. Mahender Kumar Saxena on 30.03.2006.
- ii. 5000 shares were issued to Sh. Mahender Kumar Saxena by the Company.
- iii. Thereafter, 1000 shares were issued to respondent No.7.
- iv. Subsequently, 17,210 shares were allotted to respondent No.2 (Muneesh Saxena).
- v. It is further alleged that the 5000 shares which were illegally issued to respondent No.3 were, thereafter, transferred in an illegal manner to respondent No.2. Subsequently, on 04.10.2007, 1000 shares which were illegally allotted to respondent No.7, were transferred to respondent No.2 (Muneesh Saxena). Further, 2371 shares were transferred from respondent No.6 (custodian

EWf) to respondent No.2.

By the aforesaid acts of illegal share allotment and transfers, the share holding in the Company, as on 30.09.2009, appeared as under:-

<i>Sl.</i>	<i>Share Holder</i>	<i>No. of Shares held</i>	<i>Percentage share-holding</i>
1.	<i>Appellant (Sh. Sharad Saxena)</i>	2,615	7.64%
2.	<i>Respondent No.2</i>	29,246	85.49%
3.	<i>Respondent No.3</i>	2,349	6.87%
<i>TOTAL SHARES as on 30.09.2009:</i>		<i>34,210</i>	<i>100%</i>

Apart from the other things, it was also alleged in the petition that the petitioner though resigned as the employee of the Company but never resigned as its Director, whereas, the respondent has filed the relevant form with the Registrar of Company (hereinafter referred to as 'the ROC') depicting that the appellant Sharad Saxena has resigned as its Director.

After completing the pleadings, the Board recorded the following findings:-

- i.

The alleged resignation letter of the appellant (Sharad Saxena) dated 11.08.2009, is not signed by him, therefore, Form-32 filled with the ROC for removal of the appellant as Director does not carry legal support of documents such as duly signed letter of resignation and also, acceptance of resignation by the Board of Directors, through passing necessary resolution.
- ii.

The allotment of the shares and its transfer is in violation of Article 9 of the Articles of Association.
- iii.

As per the Annual Return submitted on 30.09.2006, 2349 shares of the appellant were transferred on 31.03.2006,

whereas, the respondent could not produce any transfer deed on the date or before 31.03.2006, for the transfer of such shares. This is also evidenced from the petition that the respondent, after four months, obtained signed transfer deed from the appellant on the pretext of collateral for the loan and the alleged signed transfer deed dated 01.08.2006, has neither been registered nor the revenue stamps have been cancelled. Over and above, the respondents have not produced any evidence or any receipt showing payment of consideration for these shares. Thus, the Board declared the transfer of 2349 shares to be illegal.

The Board, although, held that allotment of the equity shares in favour of Sh. Mahender Kumar Saxena, Sh. Uday Chawla and Sh. Muneesh Kumar Saxena suffered from technical lapses namely:- The requisite resolution of the share holders of Company has not been passed and the absence of offer to the existing shareholders however, still held that since these steps were required to borrow money from Rajasthan Financial Corporation (hereinafter referred to as 'the RFC') to meet its business requirements, therefore, on this account, no relief can be granted to the petitioner. In substance, the Board held as under:-

- “(a) Removal of the petitioner is declared as illegal and thereby, the petitioner is restored as Director in the company and Form-32 filed with ROC for his removal as director be treated as null and void,*
- (b) Transfer of 2349 shares of the petitioner to R-3 is hereby declared as null and void and annual return showing such transfer of shares be treated as null and void,*
- (c) Allotments of shares made by the company as alleged*

in the petition are declared legal and valid.”

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbooks of both the appeals. It may be noted here that the learned counsel representing the appellant Sh. Sharad Saxena has filed a convenience note, whereas, the learned counsel representing the legal representative of Sh. Muneesh Saxena has failed to file the synopsis or convenience note, despite an opportunity being given.

This Court proceeds to examine the first question. The Company Appeal No.1 of 2015, has been filed on 17.12.2014, along with an application seeking condonation of delay of 638 days in filing the appeal. Reply to the application has been filed contesting the application. The learned counsel representing the legal representatives of late Sh. Muneesh Saxena contend that in view of the order passed on 12.09.2014, in CMA-82-84 of 2014 in CAPP-6-2013, the delay in filing the appeal should be condoned. The order passed on 12.09.2014, is extracted as under:-

“This application seeks to re-call the order dated 25.10.2013 whereby CAPP No. 6 of 2013 was dismissed as withdrawn on the basis of resolutions dated 11.07.2013 and 15.07.2013 said to have been passed by the appellant-Company. The instant application has been moved by the legal representatives of appellant No.2 – Muneesh Kumar Saxena, who passed away on 10.07.2013.

Notice of this application was issued. Reply has been filed by the contesting respondent in Court today, which is taken on record.

One of the plea taken by the respondent is that CAPP No. 6 of 2013 was filed by the Company and Power of Attorney was never signed by Muneesh Kumar Saxena [or his Lrs]. This fact is not disputed by learned counsel for the applicants also.

In this view of the matter, it is clarified and directed that CAPP No. 6 of 2013 shall not be taken to have been filed by late Muneesh Kumar Saxena or his

legal representatives. Resultantly, the legal representatives of Muneesh Kumar Saxena are permitted to file a separate appeal against the judgment and order dated 18.01.2013 passed by the Company Law Board and they shall be at liberty to take all the pleas as are raised by them in this application. It is further clarified that they shall be entitled to seek condonation of delay to the extent time has been spent in this application and/or the time which they may explain based upon any other reasonable cause. The order dated 25.10.2013 shall cause no legal impediment against maintainability of such appeal.

Disposed of. Dasti. ”

Per contra, the learned counsel representing the Sh. Sharad Saxena draw the attention of the Court to Section 10F of the 1956 Act, which provides that the High Court can condone the delay while hearing appeal under Section 10F of the 1956, till the period of 60 days from the day on which the period originally prescribed comes to an end. In other words, the appeal can be entertained by the High Court only if it is filed within the total period of 120 days i.e. 60 (original period) + 60 (extended period).

Section 10F of the 1956, is extracted as under:-

“10F. APPEALS AGAINST THE ORDERS OF THE COMPANY LAW BOARD Any person aggrieved by any decision or order of the Company Law Board 2 [made before the commencement of the Companies (Second Amendment) Act, 2002] may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order :

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.”

From a careful reading of Section 10F, it is evident that the statute provides for a cap for condoning the delay which is upto the period of 60 days after the expiry of limitation. The proviso to Section 10F specifically lays down that the delay only for a period “not exceeding 60

days” can be condoned.

In that context, the order passed by the High Court on 12.09.2014, is required to be examined. On a careful reading thereof, it is evident that the Court had clarified that the legal representative of Sh. Muneesh Saxena shall be entitled to seek condonation of delay to the extent the time has been spent in prosecuting the application. The application is dated 30.07.2014 (Annexure A-1) and was disposed of on 12.09.2014. In the application for condonation of delay, the appellant has not explained as to when the relevant application was filed in the Court. Even if the aforesaid period is excluded, still there is a delay beyond the period of 60 days. Though, this Court is of the opinion that such delay also cannot be condoned beyond the period of 60 days. However, the aforesaid question is left open. Here is a case, where the delay of more than 2 years even if the period spent in prosecuting the application is excluded. A similar provision exists in Section 34 of the Arbitration and Conciliation Act, 1996, according to which the maximum period upto which delay can be condoned is 30 days from the date of expiry of limitation for filing the petition after the initial period of limitation of 3 months has come to an end. There, the statute has used the expression 'but not thereafter'. Here, in the present case, the expression used by the statute is 'not exceeding 60 days'. The 1956 Act is a special Act which will be applicable in preference to the general act i.e. the Limitation Act, 1963. This aspect has been examined by the Supreme Court in **ONGC Vs. Gujarat Energy, 2017(5) SCC 42** and **Union of India Vs. Popular Construction, 2001(8) SCC 470.**

Consequently, in view of the aforesaid discussion, it is declared that the appeal filed under Section 10F of the 1956 Act is beyond the

maximum period prescribed for condoning the delay therein and is, therefore, liable to be dismissed being barred by time. The Court declines to condone the delay beyond the maximum limit for condonation of delay prescribed in the Act.

The Bench now proceeds to deal with question No.2.

ii. Whether the limitation for filing a petition before the Company Law Board under Section 397 and 398 of the 1956 Act, begins to run from the date on which the first step/act of oppression or mismanagement was carried out, particularly when such acts/steps form a series of actions which continue till the filing of the petition?

The Board while observing that Section 137 of the Limitation Act, 1963, is not applicable and the appellant came to know of the facts from the Annual Return as on 30.09.2009, which was filed in June, 2010, held that the petition is within limitation. In para 11 of the petition, the appellant has asserted that during October, 2006, on receipt of copies of the annual report for the Financial Year 2005-2006, he came to know about allotment of 5000 equity shares at par to respondent No.3 and subsequent thereto, the share capital of the Company increased from Rs.11,00,000/- to Rs.16,00,000/-. In the same para, it has been asserted that 2349 equity shares belonging to the appellant, which were taken on the pretext of being used as a collateral for obtaining loan from some private financier, have been illegally transferred in the name of respondent No.3. Thus, the petition was filed after a period of three years from the date of taking of the afore-stated steps. This aspect is required to be examined from another perspective. In a family concern or a closely held Company. It is but obvious that at the first stage, while making protests, efforts would be made to resolve the dispute by sitting around the table with the family members. It is evident Sh. Sharad Saxena had made those efforts. It has been specifically

asserted by the appellant that he, on numerous occasions, protested and sent E-mails concerning the issue. Till 2008, several meetings, were held between the petitioner and the respondent to amicably resolve the matter. In May, 2008, a meeting of the Board of Directors was held, wherein, it was confirmed that the allotment of 6000 equity shares at par and the transfer of 2349 equity shares was unauthorized and is the result of mistake, as the transfers have been made without following due process. The Board of Directors confirmed and resolved that the said allotment and transfer stand cancelled and necessary filings would be made to the ROC, to enable the share holdings structure to restore as it existed, originally on 30.05.2005. Thereafter, the appellant kept waiting for extra ordinary General Meeting or Annual General Meeting to be held for finalizing the accounts but was informed that the Annual Return of the Financial Year 2008-2009, was, still, not finalized. On discovering from the Annual Return which was filed in June, 2010, but was required to be filed on 30.05.2009, that the respondents did not take the remedial measures, and are playing hide and seek, Sh. Sharad Saxena filed the petition before the Board in February, 2012. He filed the petition after obtaining certified copies of the companies Annual Returns and other statutory filings which were provided to him on 06.01.2011.

In such circumstances, the question which arises is “whether the petition under Section 397 and 398, was barred with respect to the transfer of shares in the year 2006-2007, or not?”

On a careful reading of Article 137 of the Limitation Act, 1963, it is evident that the time from which the period begins to run is when the right to sue accrues. In the present case, the appellant has specifically

pleaded that efforts were made and the respondents held a meeting of the Board of Directors in May, 2008, and passed a resolution in this regard. Thereafter, there was a delay in filing of the Annual Return and the appellant filed the petition immediately on coming to know of the fact that the respondents have not taken the steps as promised, filed the petition before the Board. In such circumstances, the time from which the period begins to run would be in June, 2010, as the Annual Return which was required to be filed on 30.09.2009, was actually filed in June, 2010.

Furthermore, this matter can be examined from another perspective. There was continuous acts/steps on the part of the respondents which fall within the definition of oppression and mismanagement. All the aforesaid actions form a series of steps taken by the respondents. In such a situation, the limitation cannot be counted from date when the first act of the alleged transfer or allotment of the shares, had taken place. The cause of action will arise when despite assurances which were followed by a resolution of the Board of Directors, no remedial steps were taken. On the question of running of limitation period particularly when the acts of oppression and mismanagement are in a series of actions, the Delhi High Court in **Surinder Singh Bindra and others Vs. M/s Hindustan Fasteners Pvt. Ltd., AIR 1990 Delhi 32**, has held that if there are a series of steps or actions of oppression and mismanagement, then the petition cannot be held to be barred by time on account of expiry of the limitation period commencing from the first act. There is a continuous running of limitation for every default, in such a case. It has been observed that the acts/omissions resulting in breach if form a part of a continuous process, continuing upto the date of petition, then, Section 22 of the Limitation Act,

1963, shall be applicable in such cases and a fresh period of limitation accrues on every single default. Accordingly, each act of oppression and mismanagement in the present case, shall give rise to a fresh cause of action. In other words, such repeated steps will establish a continuous cause of action. Similarly, the Madras High Court in A. Brahmaraj Vs. Sivakumar Spinning Mills Pvt. Ltd. and others 1986(3) Company Law Journal 109, after distinguishing the judgment passed by the Calcutta High Court held that since the existence of a continuous wrong is the *sine qua non* for the maintainability of the petition for oppression and mismanagement, hence, no question of limitation could arise. The relevant discussion is in para 13 which is extracted as under:-

“In the above Calcutta case, in paragraph 66, the learned Chief Justice has referred to the expression “affairs of the company are being conducted” appearing in both sections 397 and 398 of the Act and observed that shows a kind of continuing wrong. The expression “are being conducted” was also held as indicating that constructions. That was also the ration of the decision of the Supreme Court in Shanti Prasad Jain's case (1965) 35 Comp Cas 351 (SC) : (1956) 1 Com LJ 193(SC) case, referred to above. If that is so, a fresh period of limitation would begin to run at every moment of the time during which the breach or wrong continues as provided under section 22 of the Limitation Act; and since the existence of the continuous wrong is the sine qua non for the maintainability, no question of limitation also could arise. Therefore, with great respect to the learned Chief Justice of the Calcutta High Court, having regard to the nature of the provisions of the Act, as held by the Supreme Court in Shanti Prasad Jain's case, (1965) 35 Comp Cas 351 (SC) : (1965) 1 Comp LJ 193 (SC) cited supra, we are unable to share his view that article 137 would apply to a petition under sections 397 and 398 of the Act.”

The learned counsel representing the legal heirs of Sh.

Muneesh Khanna relies upon S. Sukhdeep Singh Jhikka Vs. S. Ajit Singh

Deogan and others, 2009(150) Company Cases 182, to submit that Article

137 of the Limitation Act, 1963, applies in the present situation. This Court has carefully read the judgment. In para 16, the Court found that the first respondent before the High Court had the knowledge about the increase of share holdings even in the year 2002, but he remained quiet for 9 years from the date when the share holdings were increased. In those circumstances, the Court observed that the petition shall be barred by limitation as well as on account of laches.

Thus, it is evident that the judgment relied upon by the learned counsel representing the legal representatives of Sh. Muneesh Khanna is not a judgment which involves continuous acts of oppression and mismanagement continuing upto the date of filing of the petition. In the present case, the shares were transferred in favour of respondent No.2 on 04.10.2007, 19.05.2008 and subsequently, in June, 2010. Thus, in the present case, there was a continuous cause of action till the filing of the petition. Hence, the petition filed before the Board was neither barred by limitation nor suffering from delay and laches. Accordingly, question No.2 is answered in the manner discussed above.

On a careful reading of the order passed by the Board, it is evident that the Board, after having found that the respondents have taken various steps/actions which were not only in violation of the Articles of Association but also otherwise illegal, failed to grant appropriate relief. The Board, having found that the allotment and transfer of shares were in violation of the Articles of Association as neither the requisite resolution was passed nor offer to the existing shareholders as required under Articles of Association was made, however, still, held that since the Company required to borrow money from the RFC to meets its business requirements

and the allotments were made to the existing shareholders and outsiders in the interest of the Company, therefore, the appellant is not entitled to the declaration that such allotment and transfer of shares is illegal. It may be noted here that in 2006, the appellant was given an impression that the shares are required for raising loan from a private financier but no steps were taken in that direction by the Company. The allotment of the 5000 equity shares was on 04.10.2007, whereas, 1000 shares were illegally transferred from respondent No.7 to respondent No.2 on 04.10.2008. 2371 shares were illegally transferred from respondent No.6 to respondent No.2, on 19.05.2008. Whereas, the loan was taken from the RFC as per the agreement dated 09.01.2009. Furthermore, the respondent-Company was having sufficient funds of its own, in comparison to its share capital. As per the Annual Return 2005-2006, 2006-2007 and 2007-2008, the Company was having good reserves and surplus. As per Annual Return 2008-2009, there was cash reserve of more than Rs.80,00,000/- as on 31.03.2009. Furthermore, after taking loan from the RFC, the assets of the Company were sold to return the loan prematurely, though, it was repayable over the period of 8 years. The respondent shut down the Company's plant in February, 2010, after only 9 months of its operation and prematurely closed the RFC loan account in May, 2011, after selling the company's plant and machinery. Thus, it was clearly an act of mismanagement.

Keeping in view the aforesaid facts, once the Board had come to an conclusion that the allotment of the equity shares at par as well as transfer of the shares was not in accordance with the Articles of Association, then, the Board should not have shied away from granting appropriate relief.

The action of the respondent-Company to transfer 2349 shares, from the appellant to respondent No.3, has already been declared invalid by the Board. The allotment of 5000 shares to respondent No.3 on 31.03.2006, and thereafter, transfer of the aforesaid shares from respondent No.3 to respondent No.2 on 04.10.2007, are hereby, declared illegal as no meeting of the shareholders of the Company was held and no offer was made to the existing shareholders. Similarly, on parity of reasons, the allotment of 1000 shares to respondent No.7 and thereafter, transfer to respondent No.2, are also declared illegal. The subsequent allotment of 17210 shares to respondent No.2 by the Company on 18.12.2008, is also declared illegal. On the same lines, transfer of 2371 shares on 19.05.2008, from respondent No.6 to respondent No.2, is declared illegal. The consequences of the aforesaid decisions shall follow, accordingly.

With these observations, the Company Appeal No.5 of 2013, is allowed, whereas, Company Appeal No.1 of 2015, stands dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

12th May, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*