

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

BEFORE:

The Hon'ble Justice Soumen Sen
and
The Hon'ble Justice Uday Kumar

A.P.O.T. No. 75 of 2023
with
C.S. No.211 of 2019
IA No. G.A. 2 of 2022

Phool Chand Gupta & Ors.
vs.
Mukesh Jaiswal & Ors.

For the Appellant	: Mr.Kuldip Mallik, Adv., Ms. Labanyasree Sinha, Adv., Mr. Shiven Ray, Adv.,
For the respondent	: Mr. Swatarup Banerjee, Adv., Mr. Sourav Sengupta, Adv., Mr. Aman Baid, Adv.
Hearing concluded on	: 28 th June, 2023
Judgment on	: 4 th July, 2023

Soumen Sen, J.:- The appeal is arising out of a judgment and order dated 5th December, 2022 passed in connection with an application filed by the appellant for rejection of plaint on the ground that the dispute raised in the plaint cannot be decided by a Civil Court.

2. The appellant contended before the learned Single Judge that the disputes in the plaint, falls within the exclusive jurisdiction of the National

Company Law Tribunal (in short 'NCLT'). Accordingly, the suit is not maintainable.

3. The learned Single Judge decided the issue against the appellant, hence, this appeal.

4. Before we advert to the submissions made it is necessary to consider the averments made in the plaint.

5. The plaintiff has filed a suit for declaration and injunction.

6. The defendant no.4 was incorporated as a closely held family company by one Sambhunath Shaw since deceased (in short 'Shambhunath') along with his wife and sister-in-law.

7. Sambhunath was in full control of the company and he used to run, manage and control the said respondent no.4.

8. Defendant no. 1 is a chartered accountant by profession. The defendant nos. 2 and 3 are the family companies of the defendant no.1. The entire shareholding of the defendant nos.2 and 3 are held by the defendant no.1 by himself and through his family members.

9. Sambhunath engaged defendant no.1 for rendering professional service and appointed him as the auditor of the defendant no.4.

10. Sambhunath reposed complete faith in the defendant no.1 regarding the affairs of the defendant no.4 except the business actually carried

on by the defendant no.4. The complete faith and trust on the defendant no.1 by Sambhunath continued till 2009 when Sambhunath for the first time detected diverse financial irregularities committed by the defendant no.1. Ultimately, defendant no.1 resigned as auditor of the defendant no.4 on 30th April, 2010.

11. In the mean time and from time to time, authorized and paid up share capital of the defendant no.4 was increased. The plaintiff alleged that such increase during the aforesaid period in the share capital of the defendant no.4 was made by Sambhunath at the instance of the defendant no.1.

12. The plaintiff became a shareholder of the defendant no.4 on 30th March, 2002 when Sambhunath had caused the defendant no.4 to issue 500 shares in favour of the plaintiff. The shareholding of the plaintiff in the defendant no.4 had increased thereafter from time to time and ultimately, the plaintiff became the holder of the 46,500 fully paid up equity shares of the defendant no.4.

13. On 12th March, 2015 the plaintiff was made a director of the defendant no.4. The plaintiff remained a director for a very short time and was removed on 23rd December, 2015.

14. Shambhunath died on July 31, 2018 and he was survived by his widow and two sons. The plaintiff is the younger son. On 14th August, 2018 the plaintiff was inducted as a director of defendant no.4. along with other directors.

15. After his induction the plaintiff discovered that the defendant nos.2 and 3 who did not have any connection with the Jaiswal family, jointly hold about 1,70,000 shares equivalent to 32.69 per cent of the whole share capital of the defendant no.4 company. The said defendant nos.2 and 3 are not connected with the family of Sambhunath in any manner whatsoever.

16. On a further enquiry, it was revealed that the defendant no.1 personally holds 4,120 number of equity shares out of 2,94,500 paid up shares of the defendant no.2 and total 80,100 number of equity shares in the defendant no.2 either through his family members or through HUF of which he is the Karta and also through one PCG Properties Private Limited. These facts came to the notice of the plaintiff on 15th July, 2019 after going through the notices of the annual general meeting of the defendant nos.2 and 3 along with the Balance-sheet, auditor's report, and Annual Returns of the said company dated 31st March, 2018. A further perusal of the said documents had revealed that defendant no.1 holds 100 number equity shares out of 2,50,000 paid up shares of the defendant no.2 and an aggregate of 2,00,350 number of equity shares in the defendant no.3 company either through his family members or through HUF and also through one PCG Properties Private Limited and Fair Deal Business Organs Private Limited of which he is also a shareholder and director. Further inspection revealed that out of its 12,000 issued shares of PCG Properties Private Limited the defendant no.1 holds 10,300 number of shares in the said company either by himself or through his family members or through the defendant no.3. It further transpired that aforesaid 1,70,000

shares of and in the defendant no.4 were allotted to the defendant nos.2 and 3 on 30th March, 2002 when the other shareholders of the defendant no.4 being Sambhunath and his family members were allotted only 1,30,000 shares of defendant no.4

17. The plaintiff alleged that the defendant no.4 being a private limited company and a family company of Sambhunath such shares could not have been allotted to and in favour of the defendant nos.2 and 3.

18. The plaintiff alleged that such shares were caused to be issued by the defendant no.1 by keeping Sambhnath in dark as under no circumstances he could have allowed the control of the family company to go into the hand of outsiders. In any event, the defendant no.1 being an auditor of the defendant no.4 was not entitled to acquire shares of in the defendant no.4 either by himself or even through the companies under his management and control.

19. Acquisition of shares in the name by the defendant no.1 and in the name of the defendant nos.2 and 3 were either directly or by necessary implication barred under the provision of the companies Act, 1956 and subsequently under amended provisions of the company Act, 2013. The appellant being an auditor of the defendant no.4 could not have acquired shares of the defendant no.4 directly or indirectly. Since such acquisition of shares are illegal being statutorily barred and *void ab initio* the shareholding of the said two companies being the defendant nos.2 and 3 in the defendant no.4 are liable to be reversed and the share scripts issued against such allotment of

shares to such companies are liable to be delivered up and cancelled. The plaintiff alleged fraud by the auditor of the defendant no.4 on Sambhunath and his family members.

20. In paragraph 28 of the plaint the particulars of fraud have been narrated which are as follows:

“a) The respondent no.1 actively concealed the fact that the respondent no.2 and 3 are companies owned and controlled by him though the respondent no.1 had knowledge of the said fact.

b) The respondent no.1 suggested as a fact that the respondent no.2 and 3 were independent companies, which were not true and which the respondent no.1 did not believe to be true.

c) The respondent, no.1 caused the respondent no.4 to issue shares in favour of the respondent nos.2 and 3 with an intention to deceive.

d) The respondent no.1 knowing that as an auditor he was not entitled to acquire share of and in the respondent no.4 directly in his name actively concealed that the respondent nos.2 and 3 were companies controlled and managed by him.

e) The respondent no.1 while causing the respondent no.4 to issue shares in favour of the respondent nos.2 and 3 omitted to indicate that the said respondent nos.2 and 3 were companies owned and controlled by him to deceive the lawful shares of the respondent no.4.

f) Lifting of the corporate reliefs of the defendant nos.2 and 3 companies would ensure that the said two companies are primarily controlled by the defendant no.1 who has in continuance of his act of fraud influenced such transfer of shareholding of the defendant no.4 company to take actual control of the same.”

21. The plaintiff reserved its right to give full particulars of the fraud alleged to have been perpetrated by the defendant nos. 1 to 3 and particularly of the defendant no.1 until full discovery is made by the said defendants. Under the aforesaid circumstance, the plaintiff filed the suit praying inter alia, for the following reliefs:

“a) Declaration that the recordings of the names of the defendant nos.2 and 3 as holders of 55,000 and 1,15,000 shares of and in the defendant no.4 respectively in the books and the register of the defendant no.4 are illegal, fraudulent, null and void;

b) Decree for delivery up and cancellation of the share certificates issued in favour of the defendant nos.2 and 3 by the defendant no.4 in respect of the shares mentioned in prayer (a) above;

c) Decree for perpetual injunction restraining the defendant nos.1 to 3 and each one of them by themselves or through their respective servants, agents or assigns from exercising any ownership right in respect of the said shares mentioned in paragraph a) above in any manner whatsoever;

d) Decree for perpetual injunction restraining the defendant nos.1 to 3 and each one of them either by themselves or through their respective servants, agents or assigns from exercising any voting right in respect of the said shares in any manner whatsoever;.”

22. On 18th February, 2020 in an application for interim relief Justice Basak had passed the following order:

“It is not disputed that, the defendant no. 1 acted as the auditor of the defendant no. 4. There were issue and allotment of shares of the defendant no. 4 in favour of the defendant no. 1 and defendant nos. 2 and 3 during the period the defendant no. 1 acted as an auditor of the defendant no. 4. The defendant nos. 2 and 3 admittedly are under the

control and management of the defendant no. 1. The defendant no. 1 as a professional and auditor of the defendant No. 4 owes fiduciary dues to the defendant no. 4. The transactions between the defendant no. 1 and defendant no. 4 may sound in breach of the fiduciary duties owed by the defendant no. 1 to the defendant no. 4. The transactions are under challenge in the suit. In such circumstances, it would be appropriate to restrain the defendant nos. 1, 2 and 3 from selling and/or creating a third party rights in respect of the shares of the defendant no. 4 in any manner whatsoever. The defendant no. 4 will not register any transfer of the shares held by the defendant nos. 1, 2 and 3 in the defendant no. 4 without obtaining prior leave of the Court.”

23. In or about January, 2022 the appellant filed an application for rejection of the plaint on the ground that having regard to the nature of the dispute Civil Court has no jurisdiction. It was stated that the essential dispute as narrated in the plaint revolved around the share holding of the defendant nos.2 and 3 in the defendant no.4 which is alleged to be the family company of the plaintiff. The disputes and the consequential prayers in the plaint squarely falls within the exclusive jurisdiction of the National Company Law Tribunal as entailed under the Companies Act, 2013. The disputes alleged in the plaint are in the nature of rectification of the registrar which falls within the exclusive jurisdiction of the NCLT.

24. The said application was dismissed by Justice Rao on 5th December, 2022 thereby giving rise to the appeal.

25. The reason for dismissal by Justice Rao is summarized in the following paragraphs:

“The plaintiff has categorically pointed out the fraudulent act of the defendants in paragraph 28 of the plaint and the said fraudulent act is not committed while initiating proceeding before the NCLT. The plaintiff has also prayed for other relief with regard to perpetual injunction relates to the title of share of the plaintiff. Section 58 and 59 of the companies Act, 2013 deals with refusal by company to transfer of shares but in this case before transfer of share it is to be declared that the recording of share in the name of the defendants have been made fraudulently. The specific case of the plaintiff is fraud and the said fraud is to be adjudicated upon adducing evidence by both the parties before the Civil Court only. Section 65 of the Insolvency and Bankruptcy Code, 2016 has no manner of application in the instant case as the challenge is against issuance of shares by the auditor of a company in derogation of his fiduciary with the company and whether the said act of the auditor is in contravention of the provisions of Company Act, 2013 is on act of fraud or not is to be decided by the Civil Court. This court finds that the judgment relied by the plaintiff is distinguishable and the judgment relied by the defendants are squarely applicable in the instant case.

In view of the above, this Court finds that NCLT is not competent to enquire into the allegation of fraud specifically when the plaintiff has prayed for declaration of recording the names of defendant no. 2 and 3 as share holders in the books and the register of defendant no. 4 fraudulently and also prayed for perpetual injunction against the defendant nos.1 to 3. Accordingly, the suit filed by the plaintiff is maintainable.”

26. Mr. Kuldip Mallick, learned Counsel representing the appellant submits that the Companies Act, 2013 has brought about a sea change with regard to the jurisdiction of the Civil Court in deciding matters concerning control, management, issuance of shares and everything that concerns a company.

27. Mr. Mallick has referred to Section 430 of the Companies Act, 2013 and submits that the jurisdiction of the Civil Court is clearly ousted by the NCLT and any dispute arising out of Section 59 of the Companies Act 1913 is required to be adjudicated by the NCLT. It is submitted that the dispute essentially is of rectification of the share register. It is not in dispute that during the lifetime of Shambhunath's shares had been allotted to the respondent nos. 2 and 3. The plaintiff now disputes such allotment. It is a case of refusal of registration within the meaning of Section 58(3) of the Companies Act, 2013. It is submitted that Section 59 of the Companies Act, 2013 has specifically stated that if the name of any person not entered in the register of members the person aggrieved may appeal to the NCLT.

28. It is further submitted that the plaintiff has committed the alleged fraud and NCLT under Section 447 of the Companies Act, 2013 read with Section 65 of the IBC has power to deal with such issues. Mr. Mallick has extensively referred to the decision of the coordinate Bench presided over by one of us (Soumen Sen, J.) in **Vikram Jairath vs. Middleton Hotels Private Limited & Ors.**, reported at **2019 SCC Online Cal 6663** and submits that in a similar situation on interpretation of Sections 58 and 59 of the 2013 Act, the Division Bench held that such issues are required to be exclusively dealt with by NCLT by reason of Section 430, 241 and 242 of the Companies Act, 2013.

29. Mr. Mallick submits that as observed in **Vikram Jairath** (supra) under the 2013 Act NCLT has given very wide power akin to that of a Civil

Court and in view of such wide power read with Rule 70(5) (a) of the National Company Law Tribunal Rules, 2016 (in short NCLT Rules, 2016) permitting the NCLT to decide any question relating to the title of any person who is a party to the petition to have entered his name in the register the proper remedy lies in approaching the NCLT for proper adjudication of the dispute. Mr. Mallick submits that even if the question is as to whether the issue of share capital was contrary to the articles or any breach of any fiduciary capacity. In view of the decision of Delhi High Court in **SAS Hospitality Pvt. Ltd. & Anr. v. Surya Constructions Pvt. Ltd. & Ors.**, reported in **2018 SCC Online Del 11909: (2019) 212 Comp. Cas 102** NCLT is the proper forum to decide the said issue.

30. The learned Counsel has referred to **Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors.** reported in **2020 (13) SCC 308** in order to emphasis that fraudulent dealings and transactions can be enquired and adjudicated by NCLT in exercise of its power under Section 65 of the IBC 2016 and having regard to conferment of such jurisdiction upon the NCLT, the issues involved in the suit can only be decided and tried exclusively by NCLT and not by a Civil Court.

31. Per contra, Mr. Satarup Banerjee, learned Counsel appearing on behalf of the plaintiff has submitted that the issue raised in the plaint cannot be decided by NCLT. The suit is not for rectification of the register. It may so happen that in the event the issuance of share in favour of respondent nos. 2

and 3 are held to be illegal and the shares certificates are delivered and cancelled, the plaintiff may have a cause of action to apply for rectifications and recording his name in the share register in accordance with the Articles but the primary relief in the suit is a declaratory relief which is based on a fraud being perpetrated upon his father Sambhunath by the erstwhile auditor and allotment of shares to his family companies in breach of fiduciary capacity.

32. Mr. Banerjee has extensively referred to the averments made in the plaint and the particulars of the fraud alleged to support his argument. It is submitted that the learned Single Judge of the Madras High Court in ***N. Ramji v. Ashwath Narayan Ramji & Ors.*** reported in **2017 (203) Comp. Cases 574 (Mad)** has observed that a serious question of fraud and collusion cannot be decided by the Tribunal in a summary proceeding and accordingly the plea that the suit filed before the Civil Court is essentially one of rectification and hence clearly barred under Section 430 of the Companies Act was not accepted. Mr. Banerjee has relied upon paragraph 25, 26, 27 and 28 of the said judgment which reads:

“25. Section 430 bars jurisdiction of the Civil Court and as per Section 434(1)(c), proceedings pending before the High Courts and District Courts have to be transferred to the National Company Law Tribunal. To substantiate this claim, the learned senior counsel for the petitioner relied on the judgment reported in (1993) 3 SCC 123 (Inacio Martins (deceased through legal heirs) v. Narayan Hari Naik and others).

26. On the other hand, learned senior counsel for the first respondent contended that the proceedings before the National Company Law Tribunal is summary in

nature. A serious question of fraud and collusion cannot be decided by the Tribunal in a summary proceedings. First respondent has claimed injunction restraining the petitioner from claiming any title or interest in respect of the shares mentioned in the suit schedule. In view of the relief of permanent injunction sought for in the suit, the title of the shares in question has to be decided. The Tribunal has no power to decide the title of the shares in a summary proceedings. Once the Tribunal comes to the conclusion that the title of the shares is involved, the issues have to be decided only by the Civil Court. For this, the learned Senior Counsel appearing for the first respondent relied on the decision reported in (2016) 1 Supreme Court Cases 423 in (Jai Mahal Hotels Private Limited v. Devraj Singh and others) and (2016) 198 CompCas 481 (Kar) in (K. Ravinder Reddy v. Alliance Business School and others).

27. A reading of Section 58 of the Companies Act, 2013, shows that rectification of register of members has to be decided by the Tribunal and as per Section 430 of the Companies Act, 2013, the Civil Court has no jurisdiction. At the same time, in the judgment relied on by the learned Senior Counsel for the petitioner and first respondent, it is clear that the Tribunal has a power only to decide the issue of rectification of register of members as per Section 58 of the Act and has no power to decide the issue of title. It is relevant to note that as per Section 111A of the Companies Act, 1956, the Company Law Board was empowered to decide the issue of title also. The word 'title' was not included in Section 58 of the Companies Act, 2013. Even while considering the Section 111A, it was held by the Hon'ble Apex Court that a seriously disputed question of title cannot be decided by the Company Court or Company Law Board. This conclusion was arrived by the Hon'ble Apex Court by taking into consideration of the jurisdiction of the Company Law board is summary in nature. The procedure in National Company Law Tribunal constituted under the Companies Act, 2013 is also summary in nature.

28. From the provisions of the Companies Act, 2013 and 1956, it is clear that the Tribunal or Board as the case may be can decide only the rectification of register of members with regard to shares and connected incidental issues. In the present suit, a reading of the averments in the plaint as well as the relief sought

for by the first respondent shows that to decide the issue raised by the first respondent, the title to the shares in question has to be considered. The first respondent has not only prayed for rectification of register of members by substituting his name in the place of the petitioner and issue share certificates to him, but also prayed for permanent injunction restraining the petitioner from claiming any title over the shares in question. Whether the first respondent is entitled to relief of permanent injunction and also payment of dividends and bonus in respect of the shares can be decided only when the title to the shares are decided. Only if the first respondent proves by acceptable evidence that he is the owner of the shares in question and that the petitioner fraudulently in collusion with the officials of the second respondent got transferred the shares in his name due to estranged relationship between the petitioner and his wife, mother of the first respondent, the first respondent cannot succeed in the claim of the rectification of register of members of the second respondent. The petitioner has not stated that first respondent is not the owner of shares at any point of time and that there was no fraudulent transfer in collusion with the officials of the second respondent. In this circumstance, the issue on title of shares is the main issue to be decided in the suit filed by the first respondent.

33. It is submitted that Delhi High Court judgment is clearly distinguishable on facts. The instant suit is not for rectification of the register or issuance of any share in breach of the scheme. The principal grievances that the appellant as auditor of the company at the material point of time had acted in breach of his fiduciary capacity and made allotment in breach thereof and also in breach of the Companies Act. This issue is not an issue falling within the ambit of Section 58 and 59 of the 2013 Act or Section 65 of the IBC or Rules 70(5)(a) of the NCLT Rules 2016. The division Bench judgment in **Vikram Jairath** (*supra*) is also distinguishable on facts. It is submitted that the Appeal Court was considering the order of injunction and in deciding the

said issue the appellate Court interpreted Section 58, 59, 241 and 242 of the Companies Act, 2013. On analyzing of the said sections the Appellate Court declined to interfere with the order of the learned Single Judge on the ground that there are parallel proceedings one before the High Court and the other before NCLT and the proceeding before NCLT were more comprehensive and the issues raised in the Civil suit was also raised in the pending NCLT proceeding. In the said judgment it has not been decided that where question of title is raised or fraud alleged the jurisdiction of the Civil Court is ousted by reason of Section 430 of the Companies Act.

34. Mr. Banerjee has submitted that the jurisdiction exercised by the NCLT is summary in nature has been recently reiterated in ***IFB Agro Industries Limited. V. Sicgil India Limited & Ors.***, reported in **2023(4) SCC 209**. The judgment in ***Ammonia Supplies Corpn. Pvt. Ltd. v. Modern Plastic Containers Pvt. Ltd.***, reported at **1998 (7) SCC 105** have been accepted and reiterated.

35. Mr. Banerjee has further submitted that the appellant did not raise the jurisdictional issue in the earlier interlocutory proceeding that was disposed of on 18th February, 2020 by Justice Basak. In an appeal from the said judgment the issue of jurisdiction was also not raised. The appeal was preferred by the present appellant along with his group companies namely respondent nos. 2 and 3. The appellants in fact, had abandoned the appeal which would be evident from the order dated 1st December, 2021. They have

accepted the interim order and that is now become final. The said order is reproduced below:

“This appeal is appearing with the warning “last chance”.

On an earlier occasion, none had appeared for the appellants.

Even today, none appears for the appellants although, the respondents are represented by learned Counsel.

The appeal (APOT No. 142 of 2021) is, accordingly, dismissed for default.

Interim order, if any, is vacated.”

36. The said appeal has not been restored. Mr. Banerjee submits that the respondents are delaying the trial of the suit.

37. The principal question arises in this appeal is with regard to the jurisdiction of the Civil Court to decide the dispute between the parties, in other words whether the Civil Court has jurisdiction to adjudicate the dispute. It is essentially a jurisdictional issue which is required to be decided on the basis of Section 9 of the Code of Civil Procedure and Section 430 of the Companies Act.

Section 430 of the Companies Act, 2013 reads:

“Section 430: Civil Court not to have jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the

time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.”

38. We have briefly narrated the facts stated in the plaint. It is clear from the averments made in the plaint that it is not a proceeding for refusal of registration or rectification of register under Section 58 or 59 of the 2013 Act. Section 58 contemplates a situation where a private company limited by share refuses whether in pursuance of any power of the Company under its article or otherwise to register the transfer of or the transmission by operational law of the right to any security or interest within a period of 30 days from the date on which the instrument of transfer or the intimation of such transmission was delivered to the company if there is a refusal the transferee may appeal to the tribunal under Section 58(5) of the Companies Act, 2013 where, however, the name of a person is erroneously entered in the register in place of a rightful owner and such error appears to be apparent a proceeding under Section 59 would be permissible.

39. In ***Adesh Kaur v. Eigher Motors Limited & Ors.***; 2018(7) SCC 709) the jurisdiction of the tribunal in a proceeding under Section 59 was not interfered with as the Hon’ble Supreme Court observed that it was “an open and shut case of fraud in which the appellant has been victim, and respondent no. 2 the perpetrator”. (emphasis supplied)

For the sake of clarity the relevant paragraphs are reproduced below:

“2. It appears that sometime in 2012, another Ms. Adesh Kaur, who is a resident of Mumbai impersonated the Appellant and requested Respondent No. 2 to change the address from Punjab to Mumbai. It is not disputed before us that the standard procedure to be followed was not followed by Respondent No. 2, and the aforesaid change of address was despite the requirements of Circular No. 1 : dated 09.05.2001. The impersonator then went on to execute an indemnity bond by forging the Appellant's signature for issue of duplicate share certificates of the 903 equity shares mentioned above. This being done, on 28.09.2012, Respondent No. 2 issued duplicate certificates in favour of the impersonator who, in turn, on 10.12.2012, transferred the said shares to one Vikas Tara Singh, Respondent No. 8, resident of Malad, Mumbai by using the forged signature of the Appellant.

3. At this stage, it is important to note that Respondent No. 8, though served in the present proceedings, has not appeared either before the Tribunal or before the Appellate Tribunal and has not appeared before us. The Appellant, sometime in 2014, came to know through the Company Secretary of Respondent No. 1 that duplicate share certificates had been given to somebody else who had subsequently transferred them to a third party. As soon as she became aware of the fraud that was perpetrated on her, the Appellant requested the Company to issue revalidated fresh share certificates for the said 903 equity shares on 17.09.2014. Since this was not done, despite repeated reminders for the same, a Company Petition was filed on 31.07.2015 before the Company Law Board, which was then taken up under the Amended Act by the National Company Law Tribunal.

4. In a significant order that was passed by the NCLT on 09.11.2016, the NCLT recorded that it was acknowledged, both by the Company as well as by the SEBI, that procedural aspects and due care were not adhered to in the process of issuance of duplicate shares, as otherwise such fraud would easily have been unearthed. In the order passed by the NCLT, the NCLT adverted to the aforesaid facts and afforded relief to the Appellant in the following terms:

The objection of Respondent No. 1 that the case in hand cannot be adjudicated by the Tribunal is a frivolous attempt to escape any liability and or grant relief to the Petitioner. This Bench fails to understand why the Petitioner should resort to a civil court in order to prove her title. Apart from her oral testimony and her original share certificates, there is little else to be adduced in evidence even in a Civil Suit. She has her original certificates in hand. The Respondents are aware of the fraudulent acts perpetrated on her and have even initiated criminal proceedings. There is no reason for the Petitioner to be deprived of her assets for the outcome of the criminal investigation or wait for the criminal to be brought to book. Her documents and her entitlement are not denied to by the Respondents. Under such circumstances, vague denial to escape any liability and to suggest that the Petitioner initiates a Civil Suit is viewed as an attempt not to redress the grievance which has primarily arisen out of the fraud played by the employees of the Respondent Company or their Agents. Apart from guidelines of Respondent No. 3 that unequivocally make the Respondent Company liable for the acts of their Register cum Share Transfer Agents, the law on the point is clear that the Principals are liable for the acts of their agents.

9. We are of the view that the Tribunal was absolutely correct in not relegating the Appellant to any further proceedings inasmuch this is an open and shut case of fraud in which the Appellant has been the victim, and Respondent No. 2 the perpetrator." (emphasis supplied)

40. As a corollary if it appears that the disputed questions of the facts are complicated and cannot be conveniently decided in a summary procedure the jurisdiction of the Civil Court is not ousted. Although it cannot be disputed that the NCLT may have jurisdiction to decide the title of any person who is a party to the application urging that his name has been wrongly omitted from the register or should have been entered in the register in a proceeding under

Section 59 of the present Act or Section 155 read with Section 111 of the Companies Act, 1956, however, the issue in the suit is not one of rectification. As observed in **Ammonia Supplies** (supra) and quoted with approval in **IFB Agro** (supra) in paragraph 22 “the very word "rectification" connotes something what ought to have been done but by error not done and what ought not to have been done was done requiring correction. Rectification in other words is the failure on the part of the company to comply with the directions under the Act.” The relevant portion of the judgment in **IFB Agro** (supra) is as under:

“22.The relevant portion of the judgment in Ammonia is as under:

26..... There could be no doubt any question raised within the peripheral field of rectification, it is the court Under Section 155 alone which would have exclusive jurisdiction. However, the question raised does not rest here. In case any claim is based on some seriously disputed civil rights or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member and if the court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar some such facts falling outside the rectification, its discretion to send a party to seek his relief before the civil court first for the adjudication of such facts, it cannot be said such right of the court to have been taken away merely on account of the deletion of the aforesaid proviso. Otherwise under the garb of rectification one may lay claim of many such contentious issues for adjudication not falling under it. Thus in other words, the court under it has discretion to find whether the dispute raised is really for rectification or is of such a nature that unless decided first it would not come within the purview of rectification. The word "rectification" itself connotes some error which has crept in requiring correction. Error would only mean everything as required under the law has been done yet by some mistake the name is either omitted or wrongly recorded in the Register of the company.....

27. In other words, in order to qualify for rectification, every procedure as prescribed under the Companies Act before recording the name in the register of the company has to be stated to have been complied with by the applicant.... The Court has to examine on the facts of each case whether an application is for rectification or something else. So field or peripheral jurisdiction of the court under it would be what comes under rectification, not projected claims under the garb of rectification. So far exercising of power for rectification within its field there could be no doubt the Court as referred Under Section 155 read with Section 2(11) and Section 10, it is the Company Court alone has exclusive jurisdiction...But this does not mean by interpreting such "court having exclusive jurisdiction to include within it what is not covered under it, merely because it is clocked under the nomenclature rectification does not mean the court cannot see the substance after removing the cloak.

28. Question for scrutiny before us is the peripheral field within which the Court could exercise its jurisdiction for rectification. As aforesaid, the very word "rectification" connotes something what ought to have been done but by error not done and what ought not to have been done was done requiring correction. Rectification in other words is the failure on the part of the company to comply with the directions under the Act.

31. Sub-section (1)(a) of Section 155 refers to a case where the name of any person is without sufficient cause entered or omitted in the Register of Members of a company. The word "sufficient cause" is to be tested in relation to the Act and the Rules. Without sufficient cause entered or omitted to be entered means done or omitted to do in contradiction of the Act and the Rules or what ought to have been done under the Act and the Rules but not done. Reading of this Sub-clause spells out the limitation under which the court has to exercise its jurisdiction. It cannot be doubted that in spite of exclusiveness to decide all matters pertaining to the rectification it has to act within the said four corners and adjudication of such matters cannot be doubted to be summary in nature. So, whenever a question is raised the court has to adjudicate on the facts and

circumstances of each case. If it truly is rectification, all matters raised in that connection should be decided by the court Under Section 155 and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by a civil court.....

23. It is evident from the above that while interpreting Section 155, this Court has held that the power of CLB is narrow and can only consider questions of rectification. If a petition seeks an adjudication under the garb of rectification, then the CLB would not have jurisdiction, and it would be duty-bound to re-direct the parties to approach the relevant forum. The Court also held that the words 'sufficient cause' cannot be interpreted in a manner which would enlarge the scope of the provision.

24. The decision in Ammonia was followed by this Court even after the deletion of Section 155 and insertion of Section 111A. This Court, in Standard Chartered Bank v. Andhra Bank Financial Services Ltd. and Ors. (2006) 6 SCC 94 and Jai Mahal Hotels (P) Ltd. v. Devraj Singh and Ors. (2016) 1 SCC 423, held that even though Section 111(7) of the 1956 Act seemingly enlarges the power of the CLB, the power of rectification continues to remain summary in nature and if any seriously disputed questions arise, the Company Court should relegate the parties to a forum which is more appropriate for investigation and adjudication of such disputed questions.”

41. NCLT thus, would have jurisdiction to decide a rectification proceeding where facts are self evident and does not call for any serious enquiry or adjudication of fraud. It would depend on the facts of a case. However, the present proceeding is not for rectification although eventually it may lead to the same in the event the suit is decreed.

42. In view of the aforesaid we are in agreement with the judgment passed by Justice Krishna Rao. We are affirming the judgment under appeal.

43. In the event, the appellant has not filed any written statement and the time had expired in the meantime the appellant shall be permitted to file written statement within three weeks from date, in default, the suit may proceed ex parte against the appellant.

44. The appeal stand dismissed.

45. However, there shall be no order as to costs.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)