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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 12th September, 2023.
Date of decision: 10th November, 2023

+ **CO.A(SB) 9/2015 & CO.APPL. 615/2015**

M/S PHENIL SUGARS LTD.

..... Appellant

Through: Mr. Naveen Chawla, Advocate (M-9811468315)

Mr. Devansh Shekhar, Advocate (M-9984072173)

versus

MRS. LAXMI GUPTA & ORS.

..... Respondents

Through: Mr. M. Salim, Adv. for R -3 (M-9811195036)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. The present appeal has been filed by the Appellant under Section 10F of the Companies Act, 1956 (*hereinafter 'the Act'*) against the impugned judgment and order dated 17th December, 2014 passed by the Company Law Board (CLB). Vide the impugned order, the CLB has held that the reason given by the Appellant to refuse registration of shares of the Respondents do not fall within the ambit of Section 111A of the Act.

2. The appeal at hand arose out of an application filed by the Respondents, namely, Mrs. Laxmi Gupta- Respondent No.1 Mr. Chandra Prakash Pahwa- Respondent No.2, Mr. Kapil Kumar- Respondent No.3, Mr. Madhav Sharan Gupta- Respondent No.4 and Ms. Astha Gupta- Respondent No. 5 against the Appellant Company - M/s Basti Sugar Mills (now 'Phenil Sugars Ltd.') seeking a prayer to the effect that their shareholding ought to be registered by the company.



3. The said prayer was allowed by the CLB vide the impugned order which is now under challenge by the company. The said order was initially stayed by this Court on 21st April, 2015 and the matter has remained pending since then.
4. The Respondents were duly served in this matter and had entered appearance on 21st April, 2015. However, for the last several hearings, none has appeared for Respondent Nos.1, 2 and 4.
5. One Mr. Sadaat Salim, Id. Counsel had appeared for Respondent No.3 on the last date of hearing. However, there was no appearance for the said Respondent today on the first call. The Court, accordingly, passed over the matter and directed the Appellant to contact Mr. Sadaat Salim, Id. Counsel. He has entered appearance through video conferencing and submits that he has no instructions to appear from Respondent No. 3.
6. In view of the above, the Respondents are proceeded *ex-parte* and submissions were heard on behalf of the Appellant.
7. Mr. Naveen Chawla, Id. Counsel for the Appellant submitted that under Section 111A of the Act, the proviso to sub-Section 2 makes it clear that the company has the discretion to refuse the registration of the transfer of shares for sufficient cause. It is his submission that one of the Respondents *i.e.*, Respondent No.4- Mr. Madhav Sharan Gupta was the Auditor of the company and had conducted himself in a manner which was detrimental to the interests of the company itself. The same is clear from the reply which has been filed by the company before the CLB, wherein the reasons has been spelt out clearly that the Respondent No.4 along with his other family members has started making baseless and frivolous complaints against the company to various authorities. In addition, when the company did not wish to continue



his services, he sought to purchase shares of the Appellant from the market and sought registration of the said shares.

8. The allegation against the said Respondent is contained in paragraph 4 of the reply filed before the CLB which is relied upon by the Id. Counsel for the Appellant. He further submits that the CLB has also erred in law in holding that the request of the Respondents would have been covered under Section 111(A)(3) of the Act and not under Section 111(A)(2) of the Act.

9. He relies upon the judgment of the Supreme Court in ***Mackintosh Burn v. Sarkar and Chaudhary Enterprise Pvt. Ltd. (2018) 5 SCC 575***, wherein, as per the Id. Counsel, the clear legal position has been laid down to the effect that the refusal can be on any ground which constitutes sufficient cause and need not be only in respect of violation of law as mentioned in 111A (3) of the Act. He submits that the Supreme Court has specifically held that conflict of interest could be a ground for refusing to register the shares.

10. Heard Id. Counsel for the Appellant and perused the record.

11. The Appellant is a company incorporated in the year 1927 and has been engaged in the business of manufacturing and sale of sugar. Respondent No.4 is a chartered accountant who was allegedly responsible for dealing with taxation and other financial functions of the Appellant. The predecessor of the Appellant i.e., Basti Sugar Mills Co. Ltd. was acquitted by the Appellant in the year 2005. As per the Appellant the new management observed serious non-compliances, including but not limited to non-filing of income tax returns for the financial year 2003-04, which resulted in disallowance of carry forward losses of several crores of rupees. Respondent No.4 was then asked to explain the reasons thereof. Moreover, the new management also removed



the statutory auditor of Respondent No.1 company, namely, M/s Basant Ram & Sons.

12. Respondent No.4 thereafter terminated his association with the Appellant and made several complaints to the Registrar of Companies, Company Law Board, Securities and Exchange Board of India and various other authorities against the Appellant.

13. It is averred by the Appellant that Respondent No. 4 then formed a cartel of individuals which included his family members *i.e.*, Respondent No.1 and Respondent No. 5, as also Respondent No.2 and Respondent No.3, who were relatives of the ex-statutory auditor of the Appellant Company.

14. It is the case of the Appellant that Respondent No.4 thereafter acting in concert with his family members, who are other Respondents in the present petition, purchased shares of the Appellant Company. The relationship amongst the various Respondents has been depicted in the appeal in the following terms:

Respondent	Name	Relationship
1	Laxmi Gupta	Wife of Respondent No.4
2	Chandra Prakash Pawha	Relative of Ex- Statutory Auditor H K Chadha
3	Kapil Kumar	Younger Brother of Ex- Statutory Auditor H.K. Chadha
4	Madhav Sharan Gupta	Husband of Respondent No.1 and long-time associate of Ex Statutory Auditor H.K. Chadha
5	Astha Gupta	Daughter of Respondent No.1 and Respondent No.4.

15. It is further claimed by the Appellant that the Statutory Auditor gave a report concerning the accounts of the Company on 9th October, 2006 for the



financial year ending 31st March, 2006. The same was delivered by Respondent No. 5 to Ministry of Corporate Affairs seeking information whether any action has been taken against the Company *i.e.*, the Appellant, without giving the Appellant Company a chance to respond.

16. The Appellant's aver that on 24th November, 2006, Respondent No. 5 made a false claim that Appellant company had delivered her a copy of Balance Sheet for the year 31st March, 2004 along with Auditors report dated 9th October, 2006.

17. The share transfer deeds along with the share certificates were filed with the company in September, 2006. However, the Board of Directors of the Appellant company on 9th April, 2007, had refused to register the shares of the Respondents, stating that the sole object behind the proposed transfer lodged by the Respondents was to seek membership rights and cause hurdles in way of corporate decisions taken by the Company.

18. On 22nd May, 2007, Respondents filed a Company petition seeking rectification of Registrar of Shareholders of the Appellant company to include names of the Respondents as Shareholders of the Appellant company. The Appellant then on 3rd January, 2008 placed on record evidence that the Petitioners before the CLB, were all members of the cartel formed by the ex-statutory auditors of the Appellant company and submitted that the postal ballots filed by the Respondents were forged.

19. It was further claimed that the Share Transfer Deeds does not contain any entry as to the effecting transfer of shares in favour of the Respondents. Subsequent to which a rejoinder has been filed by the Respondents dated 29th February, 2008.



20. The Respondents then preferred an application before the CLB against the said refusal which has been allowed vide order dated 16th December, 2014 in the following terms:

“20. Apart from the citations relied upon by the respondents counsel, the respondent counsel further emphasised that the sufficiency clause mentioned in proviso is much broader than the aspects covered in sub section 3 of the Section 111A of the Companies Act, 1956. Since the ultimate object of the Board is to protect the interest of the company, the Board refused to register shares in the name of the petitioners on determination that these petitioners would cause hurdles to the company if they enter into the company as shareholders. When sub section (2) has come into existence in the year 1995, the proviso has not come into existence along with sub section (2) in the year 1997. Perhaps on seeing the anomalies happening at the time of registration, the petitioner counsel says, it was further enacted by bringing in a proviso to sub section 2 giving a leeway to the company to refuse registration of shares as and when such registration is against the interest of the company. Therefore, the counsel submits with all humility that since 1997 the company has got a right to refuse for registration of shares as and when any sufficient cause is there for such refusal. Since the company refused on a bona fide ground as mentioned in the letter dated 9.4.2007, the counsel prays this Bench to dismiss the reliefs sought for registration of shares.

21. Though the respondent counsel made a submission that refusal on sufficient cause beyond the reasons mentioned in sub section (3) is valid, he has not placed any ratio in support of the submission made by him. The respondent counsel submits sub section (2) and its proviso is to, be invoked in pre-registration cases whereas sub section (3) is to be



invoked in post-registration cases. He also further submits since sufficiency clause was there even before 1995, since it has been brought back into the year 1997, whatever proposition of law as to sufficiency clause was in existence before 1995, is equally applicable soon after sufficiency clause has been inserted in the year 1997.

22. On seeing this proposition, though it appears to be plausible, the demarcation that came into existence in the year 1995 is delineating registration of shares in public limited companies from the private companies. If at all every ground is taken up into consideration under the sufficiency clause, then the very enactment of free transferability clause in sub section (2) will become redundant. If the present scenario in demat form is taken into consideration, a public limited company will not get an occasion to put the lodgement to scrutiny before registration. The only option available to the company is to rectify the register in case it is affected by any violation as stated under sub section 3 of Section 111A of the Companies Act, 1956. Though it is in variance on post-registration and pre-registration, if the company has any occasion to identify the violations that are mentioned in sub section 3 before the registration, the company is at liberty/ to invoke the violation under sub section 3 as sufficient cause as an objection even before registration. Whenever any proviso is to be read, that is to be read as exception to the main clause of the section, but not in such a way the intent of such section is obliterated by a proviso. The Court is not supposed to supply something that is not present in the legislation. Since the sufficiency clause that has been mentioned by the respondent counsel before 1995 is very much present in the present Section 111 of the Companies Act, this sufficiency clause mentioned in proviso under sub section (2) of Section 111A of the Company Act, cannot be taken in the spirit as taken in



*section 111 of the Companies Act. Therefore, if the proviso is taken out and read in the entire section, the company can rectify the register only on the statutory violation as shown in sub section (3). **Since the company should not be handicapped to invoke the same violations at the time of pre-registration, perhaps to my understanding, this proviso has been brought in to apply to those violations under sub section (3) It the time of pre-registration as well.** Since there being no ratio extending this sufficiency clause beyond the violations stated in sub section (3), this proviso of sufficiency clause cannot control the free transferability that has been mentioned in sub section 2 of Section 111A of the Companies Act, 1956.*

*23. Therefore, this Bench, though Respondent counsel submission are elucidating, could not agree with his submissions against the letter and spirit of Section 111A of the Act. **Therefore, this Bench hereby holds that the reason given as sufficient to refuse registration of shares in the name of the petitioners is not within the ambit of Section 111A of the Act.***

24. Therefore, this Bench hereby directs the Respondents to enter the names of the petitioners in the register of shareholders and also confer upon the petitioners, all the rights accruing in their favour since the date of refusal of lodgement of Shares.”

21. The CLB has concluded that though Basti Sugar Mills Co. Ltd. merged with Phenil Sugars Pvt. Ltd. on 20th February, 2013, the transferor company being a public company, the *lis* would be covered by Section 111A and not Section 111 of the Act.

22. Thus, the CLB has allowed the application of the Respondents on the ground that the ‘sufficient cause’ in proviso to sub-section 2 of 111A of the Act is to be construed to include every ground, then the very enactment of the



free transferability clause in sub-section 2 will become redundant. Further, if the company identifies violations mentioned in sub-section 3 before registration, the company is at liberty to invoke the violations under sub-section 3, as sufficient cause as an objection even before the registration. The Company can rectify the register only on the basis of statutory violation, as proposition existing before 1995 has changed, enabling free transferability of shares in the Public Ltd. Company. Section 111A of the Companies Act, 1956 reads as under:

111A. Rectification of Register on Transfer

(1) In this section, unless the context otherwise requires, "company" means a company other than a company referred to in sub-section (14) of section 111 of this Act.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable:

*Provided that if a company **without sufficient cause** refuses to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the Tribunal and it shall direct such company to register the transfer of shares.*

(3) The Tribunal may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992), or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), or any other law for the time being in force, within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of



transfer or the intimation of the transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records.

(4) The Tribunal while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Tribunal, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 111 shall, so far as may be, apply to the proceedings before the Tribunal under this section as they apply to the proceedings under that section.

23. The impugned judgment of CLB is of the year 2014. Subsequently, the Supreme Court has passed a judgment in the case of ***Mackintosh Burn (supra)*** in respect of section 58(4) of the Companies Act, 2013 which is the newer avatar of Section 111A of the 1956 Act. The said section reads as under:

“58. Refusal of registration and appeal against refusal.-

(1) If a private company limited by shares 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 securities or interest of a member in the company, it shall



within a period of thirty days 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 transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) Without prejudice to Sub-section (1), the securities or other interest of any member in a public company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

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(4) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.”

24. While interpreting the term ‘sufficient cause’ in the said section, the Supreme Court held as under:

“12. Under Section 58(2) of the Companies Act, 2013, the securities or interest of any member in a public company are freely transferable. However, Under Section 58(4), it is open to the public company to refuse registration of the transfer of the securities for a sufficient cause. To that extent, Section 58(4) has to be read as a limited restriction on the free transfer permitted Under Section 58(2). Section 10F of the Companies Act, 1956, provides that an appeal against an order passed by the Company Law Board can be filed before the High Court on questions of law. Right to refuse registration of transfer



on sufficient cause is a question of law and whether the cause shown for refusal is sufficient or not in a given case, can be a mixed question of law and fact.

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17. Be that as it may, as we have been taken through the grounds before the Company Law Board, we propose to consider the matter from that stage. The Company Law Board, it appears, was of the view that the refusal to register the transfer of shares can be permitted only if the transfer is otherwise illegal or impermissible under any law. Going by the expression "without sufficient cause" used in Section 58(4), it is difficult to appreciate that view. Refusal can be on the ground of violation of law or any other sufficient cause. Conflict of interest in a given situation can also be a cause. Whether the same is sufficient in the facts and circumstances of a given case for refusal of registration, is for the Company Law Board to decide since the aggrieved party is given the right to appeal. The contention of the Appellant before the Company Law Board that the whole transfer is deceptive and mala fide in the background of the Respondent company, should have been considered."

25. The Supreme Court in *Balwant Singh v. Jagdish Singh* AIR 2010 SC 3043 has explained the meaning of the expression 'sufficient cause'. It observed as under:

"...The expression 'sufficient cause' implies the presence of legal and adequate reasons. The word 'sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plenitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its



judicial discretion, to treat the delay as an excusable one.”

26. Further, the Supreme Court while interpreting the said expression in the context of Section 5 of the Limitation Act, 1963 observed as under:

*“11. The words "sufficient cause for not making the application within the period of limitation" **should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case.** The words 'sufficient cause' in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.”*

27. Thus, the interpretation of the expression ‘sufficient cause’ in the context of refusal by a Company to register shares has to be pragmatic, reasonable and in consonance with the purpose of the legislation. Moreover, it has to be kept in mind that the legislature deliberately used the expression “sufficient cause” in proviso to Section 111A (2) as against the expression “contravention of any of the provision of law” used in proviso to Section 111A (3) of the Companies Act, 1956.

28. In the opinion of the Court, the import of the expression ‘sufficient cause’ cannot be reduced to mean only violation or contraventions of law. Any *mala fide* transfer done with the intention of obstructing the functioning of the company can also constitute sufficient cause for refusing the



registration of transfer of shares. There is no doubt in the mind of the Court that a company can refuse registration of transfer of shares if:

- i. There is an apprehension that the transfer is not in the best interest of the company and all its stakeholders including the shareholders;
- ii. The said apprehension is reasonable and there is material on record to support the apprehension.

29. In the case at hand, Respondent No.4 was associated with the Appellant company in the past. Respondent No.1 is stated to be his wife while Respondent No.5 is his daughter. On the other hand, Respondent Nos.2 and 3 are alleged to be relatives of the Ex-statutory director of the Appellant company. The Respondents have filed multiple complaints against the Appellant company to various statutory authorities. There are various allegations against Respondent no.4 and the manner in which he has functioned as an auditor of the Company. In this background, the allegation of the Appellant company is that the Respondents seek to cause hurdles in the way of *bona-fide* corporate decisions taken by the Appellant Company. The Respondents have chosen not to appear before this Court to rebut the allegation of the Appellant.

30. In the opinion of the Court, these facts constitute 'sufficient cause' and the Appellant company has rightly refused to register the shares of the Respondents.

31. In view of the above legal and factual position, the order of the CLB is unsustainable and is accordingly set aside.



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32. The appeal is allowed in the above terms. All pending applications are disposed of.

PRATHIBA M. SINGH, J

NOVEMBER 10, 2023

Rahul/sk