

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
ORDINARY ORIGINAL CIVIL JURISDICTION**

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

APO/114/2010

**IA NO: ACO/6/2015 (Old No: ACO/23/2015),
ACO/7/2017 (Old No: ACO/95/2017),
ACO/8/2017 (Old No: ACO/114/2017),
ACO/9/2018 (Old No: ACO/43/2018)**

**RAJIB PAUL AND ORS.
VS
VETERAN COMPANY PRIVATE LIMITED & ORS.**

For the appellant	: Mr. Kalyan Bandhopadhyay, Sr. Adv. Ms. Manju Bhutera, Sr. Adv. Mr. Ram Anand Agarwala, Adv Ms. Nibedita Pal, Adv Ms. Ananda Gopal Mukherjee, Adv Ms. Sonam Ray, Adv. Ms. Nasrin Khatoon, Adv. Ms. Arundhati Barman Roy, Adv. Mr. Abhishek Jain, Adv.
For the respondents	: Mr. Arif Ali, Adv. Ms. S. Bhattacharji, Adv.
Judgment on	: 02.09.2025

Ravi Krishan Kapur, J.:

1. This is an appeal under section 10F of the Companies Act, 1956 directed against an order dated 5 June, 2009 passed by the Company Law Board (CLB).
2. The brief facts culminating in the filing of this appeal are as follows:

a) In or about 1973, the Ministry of Defence had recommended the names of the following individuals for running a retail outlet at Haldia:

- i) Rakhal Chandra Paul,
- ii) Beni Madhab Das,
- iii) Niranjana Ghosh,
- iv) Sukumar Ray,
- v) Provakar Das Gupta,
- vi) Nilmani Sarkar and
- vii) Major Nityananda Ray.

b) Pursuant to the above, on 21 January, 1974, the respondent no.1 namely Veteran Company Private Limited (the company) was incorporated by the above 7 ex-servicemen. At the time of incorporation, the Articles of Association of the company, inter alia, provided as follows:

“Article 6 – Subject to the provisions of these Articles the shares shall be under the control of the Board who may allot or otherwise dispose of the same to such persons on such terms and conditions at such times either at par or at a premium and for such consideration as the Board thinks fit, subject to the provision that no such share of the company be allotted to any person unless he is a person, who is an ex-military/retired personnel from military service under the Ministry of Defence, Government of India.”

“Article 37: No transfer shall be made to a minor or person of unsound mind and to any person unless he is a person who is an Ex-Military/Retired Military personnel from Military service under the Ministry of Defence, Govt. of India.”

“Article 41 – The executor or administrator of a deceased member (not being one of several joint holders) shall be the only person recognised by the company as having any title to this share registered in the name of such member, and in the case of the death of any one or more of the joint holders of any registered share. The survivor shall be only person recognised by the company as having any title to or interest in such share but nothing herein contained shall be taken to release the estate of a deceased

joint holder from any liability on this share held by him jointly with any other person. Before recognising any executor or administrator the Board may require him to obtain a Grant of Probate or Letters of Administration or other legal representation, as the case may be from a competent Court in India and having effect in Calcutta. Provided nevertheless shall be lawful for the Board to dispense with the production of probate or Letters of Administration or such other legal representation upon such terms as to indemnify or otherwise as the Board, in its absolute discretion, may consider adequate.”

“Article 78 – Director must hold at least one ordinary share.

Amended Article 37- No transfer of shares shall be made to a minor or a person of unsound mind or to any outsiders, excepting the next generation and kith and kins only of the existing directors and in case of the admission of ex-military/retired personnel from the military services under the Ministry of Defence, Govt. of India, subject to such approval of the Board of Directors and necessary permission of the Director General Resettlement, Ministry of Defence, Government of India at New Delhi. ”

- c) Sometimes in 1984, one of the shareholders, Major Nityananda Ray died intestate. Despite his demise, none of his legal heirs applied for transmission of the shares held by him.
- d) On 6 February, 1998, Nilmani Sarkar informed the company that he had transferred his entire shareholding aggregating 243 shares to one Amal Krishna Das. Such transfer was in violation of Article 37 of the Articles of Association. Amal Krishna Das was neither a member of the company nor a legal heir of any of the shareholders and is a rank outsider. In this context, the Articles of Association categorically stipulates transfer of shares only to the next generation or to the kith and kin of an existing director and shareholder. As such, any transfer in favour of Amal Krishna Das was illegal, null and void.

- e) Subsequently, in or about March 1998, 280 shares was allotted to all the shareholders except Nilmani Sarkar since on that date the said Nilmani Sarkar was not a shareholder of the company. As a consequence, no additional shares could be allotted to him.
- f) On 14 May, 1998, the said Provakar Das allegedly transferred his entire shareholding to the said Amal Krishna Das. The said allotment was also in contravention of the Articles of Association for similar reasons as stated above. Incidentally, the alleged transfer in favour of the said Amal Krishna Das is also the subject matter of a suit being Title Suit No.124 of 1998 pending before the Learned Civil Judge, Senior Division at Alipore.
- g) In or about June 1998, Beni Madhab Das submitted his resignation from the company and also transferred his shareholding to Amal Krishna Das. Subsequently in the year 2000, 600 shares of the company were allotted to Rakhal Chandra Paul and Niranjan Ghosh. In the same year, Rakhal Chandra Paul transferred his 500 shares to Rajib Paul and 100 shares to Sanjib Paul. Niranjan Ghosh also transferred his 500 shares to Premangshu Ghosh and 100 shares to Sudhangshu Ghosh.
- h) Pursuant to the above, the appellant nos.1, 2, 4 and 5 were inducted as directors of the company.
- i) In 2002, Provakar Das Gupta, Beni Madhab Das, Sukumar Roy and Nilmani Sarkar filed the instant Company Petition No.23 of 2002 under

sections 397 and 398 of the Companies Act, 1956 praying for the following reliefs:

- “a) The impugned appointments made by the respondent Nos.2 and 5 in favour of the respondent nos.3, 4, 6 and 7 in the post of directors of the company on 30th September, 2000 be quashed and/or set aside and/or all other impugned actions of the respondent nos.2 to 7 in connection with the affairs of the company in respect of which no notice had been served upon the petitioners during the period from 1998 and till date be quashed and/or set aside;*
 - b) The respondent nos.3, 4, 6 and 7 be permanently restrained from acting in the capacity of the directors/members/shareholders of the company and the respective membership and shares of the said respondent nos.3, 4, 6 and 7 be also cancelled and appropriate additional directions be passed in that regard;*
 - c) An appropriate order and/or direction be passed by this Learned Bench for proper administration of the business of the company in future;*
 - d) An extraordinary general meeting be directed to be held for the purpose of election of the directors to take charge of the management of the company;*
 - e) A declaration be made to the effect that the petitioner no.1 is entitled to another 280 equity shares of the company and appropriate additional direction in that regard be also passed;*
 - f) An order restraining the respondent nos.2 to 7 from interfering with the right of the petitioners to have entry into the business and to carry on the business alongwith the other lawful directors/members/shareholders thereof be passed.*
 - g) Any other order or orders to which the petitioners may be found entitled be passed;”*
- j) In the year 2007, 1000 shares each were allotted to Rakhal Chandra Paul & Niranjana Ghosh. In the same year, Rakhal Chandra Paul transferred his 500 shares to Rajib Paul and 500 shares to Sanjib Paul whereas Niranjana Ghosh transferred his 500 shares to Premangshu Ghosh and 500 shares to Sudhangshu Ghosh.
- k) During the pendency of the above proceedings, on 3 June 2009, Niranjana Ghosh expired. By an order dated 5 June, 2009, the

Company Law Board, *inter alia*, directed that Sukumar Ray be appointed as a director of the company and that the company be jointly managed by Sukumar Ray, Rakhal Chandra Paul and Nirranjan Ghosh.

3. By the impugned order, the Company Law Board *inter-alia* set aside the allotment of shares made in the year 2000 and 2006-2007 respectively and directed that the appellant nos.1, 2, 4 and 5 cease to be directors of the company with immediate effect.
4. Upon the filing of the instant appeal, by an order dated 13 July, 2009, a Co-ordinate Bench passed the following order:

“....so far as holdings of the individual shareholders of the company has continued for quite sometime now, I am of the view that status quo ought to be mentioned as regards holdings of the individual shareholders as on date, and also operation of the petrol pump, which appears to be the main business of the company shall not be disturbed until further order, subject to any order passed in any other Court of competent jurisdiction as this Court is informed that there are connected matters pending in this Court as well as in the District Court at Alipore of 24-Parganas (South).”

5. The primary grievance of the appellants is that the impugned judgment passed by the Company Law Board is perverse inasmuch as the finding of CLB that the sons of respondent nos. 2 i.e. the respondent nos. 3 and 4 alongwith the sons of the respondent no.5, i.e., the respondent nos.6 and 7 did not become members by transfer of shares but became shareholders by allotment of shares is contrary to the records. The respondent nos. 3, 4, 6, and 7 before the Company Law Board are the appellant nos. 1, 2, 4 & 5 herein.
6. It is contended on behalf of the appellants that the shares were never allotted in favour of Rajib Paul, Sanjib Paul, Premangshu Ghosh and

Sudhangshu Ghosh being the appellant nos.1, 2, 4 and 5 respectively. In fact, the shares were allotted in favour of the original shareholders who thereafter transferred the said shares in conformity with the amended Article 37 of the Articles of Association. On the basis of the above erroneous finding, the shares transferred in favour of the appellant nos.1, 2, 4 and 5 were cancelled and they were removed as the directors of the company. All the consequential directions have been passed on such mistake of fact which is *ex facie* apparent from the admitted records. The impugned order is also assailed on the ground that the above finding of fact is *ex facie* perverse based on no evidence at all and is liable to be set aside.

7. On behalf of the respondent no.2, it is contended that the instant appeal is not maintainable since there is no question of law which arises for consideration. In support of such contention, the respondent no.2 relies on the decisions of *Bhagwati Developers Private Limited vs. Peerless General Finance and Investment Company Limited and Ors.* (2005) 128 Comp Cas 444 and *C.Sri Hari Rao vs. Sri Ramadas Motor Transport Ltd.* (1999) 97 Comp Cas 685.
8. Admittedly none of the original shareholders of the said company are alive. There has also been no challenge to the amended Article 37 of the Articles of Association. The amended Article 37 continues to be lawful, binding and enforceable *inter se* the shareholders and members of the company. Those shareholders having transferred their shares in contravention of the

Articles of Association to a rank outsider have clearly acted against the interests of the company. In any event, and any such transfer is void.

9. There is also no challenge to the finding in the impugned order that "Therefore, not only their shareholding is under challenge, they have also resigned from the Board. Therefore, till such time, in either of the pending proceeding, the transfer of shares effected by them is declared as null and void, the petitioners cannot participate in the affairs of the company even though their names continue to be in the register of members".
10. In *Dale and Carrington(P) Ltd And Another vs. P.K. Prathapan and Others* (2005), 1 SCC 212, it has been held as follows.

"Section 10-F refers to an appeal being filed on the question of law. The learned counsel for the appellant argued that the High Court could not disturb the findings of fact arrived at by the Company Law Board. It was further argued that the High Court has recorded its own finding on certain issues which the High Court could not go into and, therefore, the judgment of the High Court is liable to be set aside. We do not agree with the submission made by the learned counsel for appellants. It is settled law that if a finding of fact is perverse and is based on no evidence, it can be set aside in appeal even though the appeal is permissible only on the question of law. The perversity of the finding itself becomes a question of law. In the present case we have demonstrated that the judgment of the Company Law Board was given in a very cursory and cavalier manner. The Board has not gone into real issues which were germane for the decision of the controversy involved in the case. The High Court has rightly gone into the depth of the matter. As already stated, the controversy in the case revolved around alleged allotment of additional shares in favour of Ramanujan and whether the allotment of additional shares was an act of oppression on his part. On the issue of oppression the finding of the Company Law Board was in favour of Prathapan i.e. his impugned act was held to be an act of oppression. The said finding has been maintained by the High Court although it has given stronger reasons for the same."

11. There is nothing on record to substantiate the cancellation of the shareholding of the appellant nos. 1, 2, 4 and 5 and their consequential removal as directors. This direction is unsustainable and contrary to the admitted records before the CLB. As a consequence, all the directions on

this aspect of the matter are unsustainable and have been passed on an erroneous interpretation of the facts. [*Dale and Carrington (P) Ltd And Another vs. P.K. Prathapan and Others (Supra)*].

12. In view of the above, the impugned order dated 5 June 2009 is modified to the extent that the transfer of shares in favour of the appellant nos. 1, 2, 4 and 5 are declared to be valid and their consequential appointment as directors are also declared to be valid. Subsequent to the demise of the said Rakhal Chandra Paul and Niranjana Ghosh, their shares could only have been transmitted in favour of their legal heirs. Thus, there is no embargo in them acting as directors of the company. In such circumstances, the legal heirs of the deceased shareholders i.e. Rakhal Chandra Paul and Niranjana Ghosh are granted liberty to apply to the company in accordance with law and in conformity with Article 41 of the Articles of Association of the company to effect such transmission.
13. Insofar as group of Provakar Das Gupta is concerned, it is unequivocally and unconditionally submitted on their behalf that they are ready to transfer their entire shareholding in the company in favour of the appellant nos. 1, 2, 4 and 5 at an agreed consideration of Rs.30 lakhs by way of cheque and/or equivalent bank instrument and shall be solely responsible in respect of any claim which may be raised in the future by the said Amal Krishna Das or any of his heirs or legal representatives or any one claiming through him. In this connection, the said Provakar Das Gupta undertakes to sign all necessary documents in favour of the

appellant nos.1, 2, 4 and 5, subject to payment of the agreed consideration Rs.30 lakhs.

14. In view of the above, and in the best interests of the company, the questions of law raised in this appeal are answered.
15. It is agreed that the above exercise will be completed within a period of four weeks from date.
16. To the above extent, the impugned order stands modified, APO/114/2010 alongwith all pending applications stand disposed of.

(Ravi Krishan Kapur, J.)