
(2009) 10 KAR CK 0068
In the Karnataka High Court
Case No : Compa No. 13 of 2005

Krithika Mullengada Magar (Formerly Known as M K Krithika) APPELLANT
Vs
Wipro Limited RESPONDENT

Date of Decision : 29-10-2009

Acts Referred:

Citation : (2012) 108 CLA 28 : (2012) 170 CompCas 323

Hon'ble Judges : L. Narayana Swamy, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Shreyas Jayasimha for M/s. AZB and partners, for the Appellant;
Udaya Holla for M/s. Goutham and Rajeswar for M/s. AKS Law Associates for C/
R, for the Respondent

Final Decision : Allowed

Judgement

1. Misc. Civil No. 18307 of 2009 for taking additional documents on record is ordered.

2. This is an appeal u/s 10-F of the Companies Act, 1956 [for short the Act] by persons, who had petitioned the Company Law Board, Southern Region Bench, Chennai, under the provisions of Sections 111 and 111A of the Act, seeking for the following relief:

8. Relief(s) sought:

In view of the facts mentioned above, the Petitioner prays for the following relief(s):

For the grounds and reasons setout herein and in the interest of justice, fairness and equity, the Petitioners most humbly pray that the Hon"ble Bench/Board may be pleased to direct:-

1). The rectification of Register of Members as explained in detail hereinabove in respect of the said 6000 (six thousand) equity shares of Rs. 2 each in favour of the Petitioners herein by ordering enhancement of the holding of the Petitioners

by the said 6000 (six thousand) equity shares to the Petitioners herein.

2). Consequently, the Respondent Company be directed to pay the accumulated dividend of Rs. 18,900/- alongwith interest as may be deemed fit and proper by this Hon''ble Bench/Board.

3). To award costs and damages as may be deemed fit and proper by this Hon''ble Bench in the facts and circumstances of the matter involved herein.

4). To pass such orders or such further orders as may be deemed fit and proper in the facts and circumstances of the matter involved herein and thereby render justice.

3. The appellants-petitioners having not got the relief sought for before the Company Law Board, as the Board dismissed the petition as per its order dated 5-12-2003, the present appeal is filed.

4. The appellants-petitioners had approached the Company Law Board for relief as indicated above, on the premise that the appellants-petitioners had purchased 100 number of shares in the respondent-company on 3-11-1989 from one Brijesh Bahati. The shares were purchased through the main broker at Mumbai Sri Vidyut Devendrakumar and through the sub-broker of the petitioner, who had his business at Mysore under the name and style of M/s J V Raman, Ramgo Investments, Mysore.

5. It is the version of the appellants-petitioners that a delivery note to this effect was handed over to the appellants-petitioners by the sub-broker on 20-12-1989 to the second appellant-petitioner, also being representative of the first appellant-petitioner as power of attorney holder and a letter was addressed on behalf of the appellants-petitioners to the respondent-company on 21-12-1989, enclosing share transfer form along with the acknowledgement, seeking for transfer of the shares to their names. The transfer form along with the share certificate lodged by the appellants-petitioners, it appears, was received by the respondent-company on 27-12-1989, about which date, there is no dispute between the petitioners and the respondent-company.

6. It appears that even prior to that at the annual general body meeting of the respondent-company, a resolution had been passed on 29-8-1989, resolving for issue of bonus shares to the existing shareholders in the ratio of 1:1 and it was followed up by a resolution passed by the board of directors of the company resolved on 27-11-1989.

7. It was the version of the respondent-company that in the context of the issue of shares in the background of closure of books of the company for the purpose of recording any transfer in the ownership of the shares of the company between 27-12-1989 and 3-1-1990. It is also the undisputed case of parties that the record date for the purpose of issue of bonus shares in favour of members of the company i.e. existing shareholders of the company, had been fixed to be 27-12-1989, which was done by the company in consultation with the controller

of capital issues in terms of the order dated 18-10-1989. as reflected in the resolution of the board of directors of the company itself. It was to the following effect:

3. ISSUE OF BONUS SHARES

Consequent upon the receipt of the consent order from the controller of Capital Issues for issue of bonus shares by the company in the ratio of 1 (one) new equity share of Rs. 10 each for every 1 (one) existing equity share of Rs. 10 each, the following resolutions were passed to fix the Record Date for issue of bonus shares and close the books for the same and authorise the Administrative Committee to allot bonus shares.

"RESOLVED THAT pursuant to the special resolutions passed by the members of the Company at the Annual General Meeting held on August 29, 1989 and consequent upon receipt of consent of the Controller of Capital Issues Vide Order No. R-654/9/CCI/89/5258 dated October 18, 1989. the Record Date for issue of bonus shares be fixed as December 27, 1989 and the Register of Members and Share Transfer Books be closed from December 27, 1989 to January 3, 1990 (both days inclusive) for issue of bonus shares to the existing members of the Company.

RESOLVED FURTHER THAT the Company do hereby empower the Administrative Committee of the Board of Directors comprising of Mr. Azim H. Premji, Chairman and Managing Director and Mr. Hamir K. Vissanji Director, to allot the bonus shares to those members whose names appear on the Register of members as on December 27, 1989 and to take such steps as may be deemed necessary in this regard.

RESOLVED FURTHER THAT the Company do hereby approve the printing of new share certificates and the same be signed by way of facsimile signatures by Mr. Azim H. Prenyl, Chairman and Managing Director and Mr. Nairn Thankor, Director, and countersigned by Mr. N. Balasubramanian, Corporate Executive Vice President, Finance, or Mr. Satish Menon, Deputy Company Secretary, or Mr. Krishna Kumar Darbha, Authorised Signatory, or Mr. Arun Agarwala, Manager Finance and Accounts, or Mr. Ramesh Srinivasan, Manager Accounts, or Mr. Jonathan F. Lobo, Senior Accounts and Systems Executive.

RESOLVED FURTHER THAT Mr. Satish Menon, Deputy Company Secretary, be and is hereby authorised to make the necessary application to the Stock Exchange, Bombay, subsequent to allotment of bonus shares for enlisting the same.

8. It appears that the share transfer form and the share certificate lodged by the petitioners with the respondent-company and received by the company on 27-12-1989, was lying with the company and with the closure of books and the record date being between 27-12-1989 and 3-1-1990, according to the company, the documents did not receive any further attention in their office till 3-1-1990, up to which point of time, the books were closed and on which date alone the

register of members of the respondent company was reopened for making entries of the transfer of shares, and in fact, the company issued bonus shares on 15-1-1990 in favour of all members of the company, whose names figure in the register of members as on the record date.

9. It appears that the respondent-company, on noticing the share transfer form and the share certificate that had been lodged by the appellants-petitioners for transfer, had taken steps and approved the share transfer application for transferring the ownership of the shares from the erstwhile owner to the appellants-petitioners on 20-3-1990.

10. The second petitioner, in the meanwhile being apprehensive of the non-receipt of the transferred shares and receiving no response either from the company or from the brokers, had sent a letter dated 14-4-1990, apprising the company of the position and also complaining not only about the non-receipt of the share certificates but also of the bonus shares and about the inordinate delay in transferring the shares and the like. It is thereafter that the appellants-petitioners, it appears, received a communication dated 4-5-1990 from the company apprising them that the share certificate has been duly transferred to the names of the appellants-petitioners and the transferred share certificate was also enclosed with the letter.

11. It appears that the respondent-company in response to the letter addressed by the appellants-petitioners, had also sent a letter dated 8-5-1990 to the main broker Sri Satish Parekh, advising the broker to contact the transferor and obtain the bonus shares from him, as it appears, the company had issued bonus shares in the name of the transferor, as according to the respondent-company, while the appellants-petitioners' names did not figure in the register depicting the names and addresses of the shareholders of the company on record date, as it remained in the name of the transferor on that date and therefore the bonus shares had already been issued in the name of the transferor and that the broker should take efforts to get back the 100 bonus shares from the transferor Brijesh Bahat, so that it can be re-transferred in the name of the appellants-petitioners. The said letter reads as under:

May 8, 1990

Mr. Satish Parekh

C/o M/s. Vidyut Devendrakumar

T.No. 7, East Wing, 4th Floor,

Stock Exchange Tower,

Dalai Street, Fort,

Bombay - 400 023.

Dear Sir,

This has reference to the personal meeting yourself alongwith Mr. J.V. Raman of Raman Counsultancy, Mysore, had with us yesterday afternoon at our office in connection with the transfer of 100 equity shares in favour of Ms. M.K. Krithika jointly with Mr. M.M. Kaveriappa as well as the issue of bonus shares to the said party.

In this connection, we may inform you that the Share Transfer books and the Register of Members of the Company were closed from December 27, 1989 to January 3, 1990 (both days inclusive) for issue of bonus shares. The share transfer form sent by you for transfer of 100 shares infavour of Ms. M.K. Krithika jointly with Mr. M.M. Kaveriappa was received by the Company on December 27, 1989 i.e., the day the share transfer books were closed. In view of the same, the said transfer was not considered by the Company for issue of bonus shares to Ms. M.K. Krithika and accordingly the bonus shares were allotted to the transferor, viz., Mr. Brijesh Baheti.

In view of the above, you are requested to directly contact Mr. Brijesh Baheti for retransfer of the Bonus shares in your name, at the below given address: (which we confirm having given to you earlier also)

Mr. Brijesh Baheti
Hariniketan Society
Bldg. No. F-1
Flat No. 2,
Bangur Nagar
Goregaon West
Bombay 400 090.

In strict legal terms, we may not be able to withhold permission on a transfer Application lodged by any third party for transfer of these Bonus Shores.

Thanking you.

Yours faithfully

For WIPRO LIMITED

Sd/-

S. Radhakrishnan
Company Secretary and Corporate Counsel
CC: Raman Consultancy
Investment - Consultant
No. 1478, Ashoka Clinic

Mysore - 570 004.

12. It appears, thereafter there was not much activity and the appellants-petitioners, who had already addressed one letter dated 14-4-1990 complaining of not only non-receipt of the transferred share certificates but also non-receipt of the bonus shares and they still having not received any positive response and obviously the bonus shares not reaching their hands, whether through the broker or any other mode, knocked the doors of the company again, by addressing a letter dated 26-3-1991, pressing for forwarding of 100 number of bonus shares apprising that the petitioner has understood through the broker that the non-receipt of the bonus shares by the appellants-petitioners due to the mistake on the part of the company and having issued the bonus shares to the erstwhile owner Brijesh Bahati, notwithstanding the transfer form and the original shares having been lodged by the appellants-petitioners for transfer and that having reached the company even on the morning of 27-12-1989 and that the transferor blissfully silent on the remedial measure and therefore the bonus shares were to be restored to the name of the appellants-petitioners, even in terms of the then existing provisions of the Act and it was the responsibility of the company to do so. The appellants-petitioners also pleaded their difficulties and helplessness to initiate legal proceedings for such purpose, as the second petitioner is a retired person and cannot afford legal expenditure nor can claim the shares through court of law, but could not at the same time forgo the shares, as they are valuable for him and therefore prayed for suitable action by the company itself and if need be against the seller also, that too providing bonus shares at any cost etc. The said letter dated 26-3-1991 reads as under:

To

Dated 26th Mar"91

The Secretary

WIPRO Ltd.,

Bhaktawar, 229,

Nariman Point,

Bombay-400021.

Reg. Folio No. 591, dt. 20.3.1990

Transfer No. 437

Dear Sir,

I am enclosing a copy of my letter to you dated 14.4.1990 for your ready reference. Though I have received the original share certificate Nos. 1966 & 1967 transferred jointly to my daughter Krithika's and my names, we have not received the bonus shares. Also you have not replied to any of my two letters. From my brokers I have come to learn that by mistake you have sent the bonus

shares to Mr. Brijesh Baheti though my original shares reached you in the morning of 27.12.1989. Mr. Brijesh Baheti also does not reply to any of my letters.

I have discussed this matter with legal experts and I have been assured that as per the company's Registration Act 1956 amended in 1989, it is your responsibility to restore the bonus shares to me.

I am a retired person and cannot afford the legal expenses of taking the issue to the law courts. Much less can I afford the loss of these shares.

I shall be grateful if you kindly arrange to send me the bonus shares and take any suitable action against the seller for selling the bonus shares to which he was not entitled.

Thanking you,

Yours faithfully,

Sd/-

(M.M. KAVERIAPPA)

13. The company responded in terms of its communication dated 4-4-1991. While admitting the receipt of the share transfer form and shares lodged for effecting transfer by the petitioners received on 27-12-1989, the company nevertheless apprised that the company was justified in not considering the case of the appellants-petitioners for issue of bonus shares, as, according to the company, the shares and transfer form were, though received on 27-12-1989, as the share transfer books and the register of members of the company being closed between 27-12-1989 and 3-1-1990, precisely for the purpose of issue of bonus shares, the company was justified in not considering the issue of bonus shares to the petitioners and further apprised that the brokers of the appellants-petitioners had virtually misled them and for that reason the company was not in a position to help the appellants-petitioners and if at all the appellants-petitioners were keen on getting any relief, they can impress upon the original share owner Brijesh Bahati to transfer the bonus shares in the name of the appellants-petitioners. The reply letter dated 4-4-1991 reads as under:

April 4, 1991

Mr. M.M. Kaveriappa,

"Prikrithi", Site No. 34, I Main,

I Cross, Gokulam III Stage,

Mysore 570 002, Karnataka

Dear Sir,

Sub: Reg. Folio No. 591

We refer to your letter dated March 26, 1991, which was received by us on April 2, 1991.

To put the facts correctly, the Share Transfer Books and the Register of Members of the Company were closed from December 27, 1989 to January 3, 1990 (both days inclusive) for issue of bonus shares. The share transfer form sent by your broker for the transfer of 100 shares in your favour, was received by the Company on December 27, 1989, i.e. on the day the Transfer Books were closed. In view of the same, legally, the said transfer was not considered by the Company for issue of bonus shares.

If your broker has reported to you that the Company had by mistake sent the bonus shares to the transferor, your broker is wrong and he is misrepresenting to you. It was your broker's duty to contact the transferor and collect the bonus shares alongwith necessary transfer form. In mis connection, we have written to your broker as far back on May 8, 1990 (a copy of our letter is enclosed for your reference).

This being so, as a Company, we are unable to do anything in this matter.

We therefore request you to kindly impress upon Mr. Brijesh Baheti to transfer the bonus shares in your name.

Thanking you,

Yours faithfully,

for WIPRO LIMITED

Sd/-

S. Radhakrishnan

Company Secretary and Corporate Counsel

14. There was further correspondence from the appellants-petitioners addressed to the company as per letter dated 25-4-1991 again pleading difficulties of the appellants-petitioners as the broker and the sub-broker were not very responsive to the appeals of the appellants-petitioners; that they had also advised the appellants-petitioners to get the shares either from the company or from the original owner-transferor and they are in any way responsible, particularly, as the seller was non-responsive to their letter and virtually sought for advice from the company with the following questions:

1. Can I hold M/s Vidyut Devendra Kumar responsible as M/s Raman Consultancy is their agent?
2. Should I sue the Seller directly or should I file a case against the Seller and the Broker together?
3. Can I file the case in Mysore? or must I do it in Bombay?

4. Which is the relevant Act that covers these matters?

I shall be most grateful if you kindly write a couple of lines in reply. This also has reference to my Telephonic talk with Mr. Krishnan Nair of your office.

With kindest regards.

Yours sincerely,

Sd/-

(M.M. KAVERIAPPA)

15. The appellants- petitioners faced with no other option, have also virtually sought legal advice from the company, with their further letter dated 20-5-1991, which reads as under:

To

20th May 1991

Mr. S. Radhakrishnan

Company Secretary &

Corporate Personnel

M/s. WIPRO Ltd.,

Bhaktawar, 229, Nariman Point,

BOMBAY -400 021.

My Dear Mr. Radhakrishnan,

Sub: Reg. Folio No. 591

Ref: Your letter dt: 4-4-91

I am enclosing a copy of my letter dated 25.04.1991, to you for your ready reference, I also refer to my telephonic talks with you. I am very eagerly awaiting a detailed reply from you to my letter. I have discussed again with the brokers who say that it is for me to take legal action against the transferor. Now, I have no alternative but sue the brokers and the Seller together. Hence, I need your advice on the Act and the sections under which I can take action.

I shall be grateful if you write a few lines in reply at the earliest.

With kindest regards,

Yours sincerely,

Sd/-

(M M KAVERIAPPA)

and ultimately received a response from the company as per letter dated 27-5-1991 with the company advising as under:

May 27, 1991

Mr. M.M. Kaveriappa,
Prikirthi,
Site No. 34, I Main I Cross,
Gokulam III Stage,
Mysore - 570 002.

Dear Mr. Kaveriappa,

I have received today your letter dated May 20, 1991 enclosing your earlier letter, As advised by me on phone, you can take action:

- a) by filing a complaint to the Police or to the Magistrate under Indian Penal Code for the crime u/s 420 of the Indian Penal Code against -
 - i) your broker through whom you have purchased the shares;
 - ii) the seller of the shares; and
 - iii) the main broker.

This complaint may be made before the local Magistrate and you can get the warrant issued against the culprits.

- b) A Civil Suit against your broker and the seller of shares for recovery of money.

These two actions can be initiated simultaneously and will be more effective. You should also draft a letter to the Stock Exchange and Stock Brokers' Association of your plight by generally making a complaint against your Stock Broker.

Meanwhile, on checking our records, we find that the seller, Mr. Rajesh Behati has already sold the bonus shares in August/September, 1990. Therefore, it may not be possible for you to recover the bonus shares, but you can surely recover the cost of bonus shares, i.e. the value Mr. Rajesh Behati has got on the sale of shares.

From the Company we assure you to provide all co-operation in giving evidence before any authorities.

Thanking you,

Yours faithfully,

For WIPRO LIMITED

Sd/-

for S. Radhakrishnan

Company Secretary and Corporate Counsel

16. In this letter, the company also apprised the appellants-petitioners that the erstwhile owner of 100 shares though had transferred the shares to the appellants-petitioners, but had nevertheless received 100 bonus shares, as his name figured in the register of the company, had in fact sold the bonus share to some one else even during August/September 1990 and this position was realized by the company on checking their records and in view of these developments, while it may not be possible for the appellants-petitioners to recover the bonus shares, the petitioners can definitely recover the value of the bonus shares from the said Brijesh Bahati. However, the company did not forget to assure all cooperation to the appellants-petitioners, to help them to recover the shares or amount from the transferor.

17. It was in this background that the appellants-petitioners chose to file a complaint before the District Consumer Disputes Redressal Forum, Mysore as per complaint dated 5-6-1991. The sub-broker at Mysore and the company were initially arrayed as respondents 1 and 2 to this complaint, praying for the two reliefs as under:

1. To deliver 100 (One hundred) WIPRO Equity shares to my daughter and to me or pay an amount sufficient to buy 100 (One hundred) Equity shares of WIPRO from the Open Market and

2. Pay a compensation of Rs. 10,000/-(Rupees Ten thousand only) to cover the dividends paid by the company in respect of those shares and to meet the expenses of my correspondences, Telephone bills etc., with the transferor, the company and others and also to compensate for the sorrow, misery and the mental torture and tension my daughter and I have been going through during these one and half years because of the omissions and commissions of M/s Ramgo Investments, Mysore,

18. While the first respondent-sub-broker at Mysore filed objections on his own, the company also filed its objections on 16-10-1991, inter alia, indicating that in strict legal sense, it was not possible for the company to restore the bonus shares in favour of the appellants-petitioners and this factum had already been apprised to the representative of the appellants-petitioners viz., the sub-broker at Mysore, even as far back as in the year 1990 and the company had, in fact, encouraged the complainant to approach the transferor for restitution of the bonus shares and as per the records of the company, it was realized that said Brijesh Bahati had sold 100 bonus shares, which were in dispute, to two different parties and the said transfers were effected by the company on 22-6-1990 and the follow-up action by the sub-broker of the appellants-petitioners much later in the month of March 1991, was obviously not of much use and accordingly prayed for deciding the case as per the factual and legal position.

19. While so many other things have happened in between, what is important for our purpose is that the district forum as per the order dated 17-2-1997 held that in view of the subsequent development viz., issue of further bonus shares by the company at periodic intervals, the appellants-petitioners were entitled to receive 400 shares of the company or in the alternative the market value thereof and indicated that such relief can be obtained by the appellants-petitioners only as against the opposite party No 1 - the sub-broker at Mysore. The district forum also opined that it cannot be held that any deficiency of service that can be attributed on the part of the company and the main broker at Mumbai, who was added as a party before the district forum before passing the final order by way of an amendment and as per the request of the appellants-petitioners made on 13-6-1991.

20. While the sub-broker at Mysore filed an independent appeal in Appeal No 207 of 1997 before the Karnataka State Consumer Disputes Redressal Commission, Bangalore, one of the appellants herein i.e. Mr Kaverappa, filed appeal in Appeal No 202 of 1997 and outcome of these appeals in terms of the order dated 16-8-2000 passed by the state commission was to dismiss both appeals, confirming the order passed by the district forum with a modification that the market value of 400 shares, to which the petitioners were entitled to be held as per the directions of the district forum, has to be calculated on the basis of the average between the highest and the lowest value per share as per the records of the Bombay Stock Exchange during the period from 4-1-1990 to 5-6-1991. The amount so calculated for the 400 shares should be paid by the sub-broker at Mysore in favour of the appellants-petitioners herein, within six months from the date of receipt of a copy of the order, failing which, thereafter, the amount would have to be paid with interest at 15% p.a. till payment.

21. While coming to such conclusion, the state commission also observed thus:

... Fulfilling a statutory obligation can hardly be construed as a substitute for the material cause of a contract under the Consumer Protection Act creating a privity between the parties unless there is a flow of consideration from the hirer of services. Hence we find no merit in the argument of the complainant that he is entitled to maintain a complaint against opposite party No 2-M/s Wipro Ltd. Consequently we are of the view that in the circumstances alluded to above, the complainant has no credential to be treated as a "consumer" within the meaning of that expression U/s.2(1)(d) of the Consumer Protection Act in relation to opposite party No. 2 and hence we hold that he is not entitled to institute a complaint against M/s. Wipro Ltd.

22. This order was followed up by the appellants-petitioners taking the matter to the National Consumer Disputes Redressal Commission, New Delhi, by way of revision petition u/s 21 of the Consumer Protection Act. However, the revision petition was not pursued by the appellants-petitioners for relief, as the said petition was got dismissed as not pressed as per order dated 13-8-2002, which reads as under:

After some hearing Mr. Bhasme, Counsel for the Petitioner, on instructions from the Petitioner in person, wants to withdraw this petition. He states that he will move the Company Law Board or any other appropriate forum for his reliefs. These Revision Petitions are dismissed as withdrawn.

23. It is thereafter, the appellants-petitioners presented the present company petition under Sections 111 and 111A of the Act before the Company Law Board on 1-10-2002. The company petition was resisted by the respondent-company in terms of their counter affidavit in March 2003.0.

24. Before the Company Law Board, the respondent -company had raised a preliminary objections with regard to the maintainability of the petition u/s 111 read with Section 111A of the Act on several grounds.

25. It was firstly contended that the provisions of sections 111 & 111A of the Act are mutually exclusive; that they do not go together and therefore a combined petition for seeking relief under both these provisions of law is not maintainable.

26. It was also contended on behalf of the respondent -company that though no period of limitation as such is prescribed in respect of a petition presented u/s 111 of the Act, it would nevertheless be governed by the principles of the Limitation Act and the petition filed beyond three years from the date of accrual of cause of action is barred by time.

27. Even with regard to the provisions of Section 111A of the Act, it was contended that the provision itself stipulates a period of two months as the limitation period and presentation of the petition for relief u/s 111A of the Act being much beyond the outer limit of three years, it is not only barred by limitation but also a stale matter and therefore the petition should be rejected in limine.

28. It was also pointed out on behalf of the respondent -company that not impleading the original transferor of the shares, the subsequent transferees of the bonus shares, the share brokers who had acted as middlemen for the sale of the shares by the transferor to the transferee having not been added as respondents, the petition was not tenable.

29. It was also pointed out that 100 nos. bonus shares issued during January 1990 by the company has by itself swelled to 6,000 shares by the time objections to the company petition was filed by the company and it was practically impossible to rectify the register of the members of the company in respect of the names of all those members who could have acquired shares from amongst the 6000 shares generated by the 100 nos. bonus shares that was issued during January 1990.

30. In this regard, it was contended that the rectification of such magnitude and at this point of time i.e., eleven years from the date of issue of bonus shares was not either practical or a fair possibility, particularly, when it could affect the interest of so many other transferees who had acquired the shares in the

interregnum and even without their presence before the Board. It is for this reason it was contended that not impleading necessary parties was fatal to the petition on the strength of the ratio laid down by the Supreme Court in the case of Sha Mulchand and Co. Ltd. (In Liquidation) Vs. Jawahar Mills Ltd.,

31. Technical objections was also raised on behalf of the company before the Company Law Board to contend that the provisions of Section 111A of the Act are attracted only when any person had lodged any shares for transfer with the supporting documents and as the so called 100 bonus shares to which the petitioners laid claim had never been lodged before the company and on this admitted position, the provisions of Section 111A of the Act being not attracted, the petition for relief under this provision was not tenable. Reliance was placed on the Judgment of the Supreme Court in the case of M/S. AMMONIA SUPPLIES CORPORATION [P] LTD., vs. M/S. MODERN PLASTIC CONTAINERS PVT. LTD., reported in 1991 [1] CTC 273.

32. On merits, it was contended that 100 shares purchased by the petitioners having been lodged in the company only on 27.12.1989 after book closure which was from 27.12.1989 upto 3.1.1990, there was no way of the company registering the transfer of shares until the book closure period was over and the books were reopened on and after 3.1.1990 and consequently as the original shareholders' name remained on the register of members of the company, quite naturally such member became entitled for receiving the bonus shares as such member's name stood on the day prior to the book closure and he alone was entitled to claim the bonus shares. Reliance was placed in support of this proposition on the Judgment of the Supreme Court in the case of Chunilal Khushaldas Patel Vs. H.K. Adhyaru and Others,

33. With the entitlement for 100 bonus shares being not in favour of the petitioners, but in terms of the bonus shares issued by the company in favour of the erstwhile shareholders, there was no occasion to issue the bonus shares in the name of the petitioners nor the claim of the petitioners was 100 nos. bonus shares in the year 1990 was tenable and accordingly the petitioners were also not entitled to any claim towards dividend, interest etc., attributable to 100 nos. bonus shares which had been issued during January 1990. The company's stand to the effect that it did not effect transfer of any shares leave alone claim of the petitioners during the book closure period was pointed out as the proper and uniform conduct on the part of the company and the company having acted bona fide in dispatching 100 bonus shares to the erstwhile shareholder named Brijesh Baheti, the action on the part of the company can never be found fault with; that there was no way of the company keeping in abeyance or otherwise the 100 bonus shares and that even the provisions of Section 111 of the Act and Section 206A of the Act did not compel the company to accept the claim for transfer of shares during the period when the books of the company i.e., the register of the members of the company remained closed; that the provisions of Section 206-A of the Act were not attracted to the situation of the present nature and reliance

was placed by the respondent - company on good number of Judgments of the Supreme Court as well as the High Courts and the company law board to make good such submissions.

34. The conduct of the petitioners was also pointed out as circumstance for disentitlement of the relief. On the merits of the petitioners' case, the respondent - company also pressed into service the provisions of the Limitation Act by contending that even here the provisions of Section 14 of the Limitation Act were not attracted to the situation as on hand; that the petitioners cannot claim the benefit of Section 14 of the Limitation Act for excluding the time spent before the District Consumer Forum, State Consumer Commission and National Consumer Commission as prosecuting the litigation in a bona fide manner and therefore the petition inevitably has to be dismissed.

35. It was also contended on behalf of the company that even in terms of the provisions of Section 11 of the CPC - the principles of res judicata, the petitioners cannot approach the company law board for the relief in respect of the subject matter for which the petitioners had agitated before the District Forum and for long years and particularly after having voluntarily got the revision petition dismissed before the National Commission and it was noticed by the National Commission by passing the order dated 13.8.2002 which reads as under:

After some hearing Mr. Bhamse, counsel for the petitioner, on instructions from the petitioner in person, wants to withdraw this petition. He states that he will move the Company Law Board or any other appropriate forum for his reliefs. These revision petitions are dismissed as withdrawn.

and this definitely did not leave any scope for the petitioners to agitate for the very relief before another forum, namely, the company law board, particularly, after 11 years from the date of accrual of cause of action and the National Commission having not expressly reserved any liberty in favour of the petitioners to prosecute the proceedings before any forum, the provisions of Section 11 of the CPC inevitably operates and therefore also the petition deserves to be dismissed. A good number of authorities referred to and relied upon by the parties before the company law board was examined by the company law board and the Board opined that the company petition was not only hit by the principles of laches and limitation beyond the permitted time in law but also rendered itself liable for dismissal on the principles of res judicata as recognized u/s 11 of the Code of Civil Procedure.

36. The company law board upheld the preliminary objection, did not expressly record finding on merits though had occasion to examine and did indicate the outcome otherwise and therefore dismissed the petition.

37. It is thereafter, the present appeal.

38. The appeal had been admitted, the respondents had been notified and are represented by counsel. Sri Shreyas Jayasimha, learned counsel has appeared

for the appellants while M/s. Gowtham & Rajeswar, learned counsel have filed power for the respondent - company.

39. We have heard Sri Shreyas Jayasimha, learned counsel for the appellants extensively and to a limited extent Sri Rajeswar and also Sri Narayana Rao who had appeared for the respondent before the court for a day and intermittently to some extent even Mr. Udaya Holla, learned senior counsel who had interjected when submissions were made by Sri Shreyas Jayasimha, learned counsel for the appellants.

40. Sri Shreyas Jayasimha, learned counsel for the appellants has taken us through the developments leading to the filing of the present appeal in a sequential manner by adverting to the list of dates and events placed before the court starting from 29.08.1989 upto filing of the appeal on 7.2.2004. These facts we have already noticed to some extent in the earlier part of this Judgment.

41. It is the submission of Sri Shreyas Jayasimha, that when 100 shares purchased by the appellants had been lodged for transfer and was received by the company even as on 27.12.1989 the date of the so called book closure and record date, there was no way of the company ignoring the same.

42. Sri Shreyas Jayasimha has drawn our attention to a resolution passed by the members of the company in the annual general meeting held on 29.08.1989 for the purpose of capitalizing part of the reserve fund subject to the consent of the controller of capital issues and observing other formalities and also the subsequent resolution of the decision of the Board of Directors dated 27.11.1989, as quoted above, particularly, relating to the question of issue of bonus shares and the clause-17 of the agreement between the company and the Bombay Stock Exchange which reads as under:

Clause 17. - The Company will accept for registration transfers that are lodged with the company upto the date of closure of the Transfer Books (or when the Transfer Books are not closed, up to the record date) and save as provided in Clause 12 will register such transfers forthwith; and unless the Exchange agrees otherwise, the Company will defer, until the Transfer Books have reopened, registration of any transfers which may be received after the closure of the Transfer Books.

and in this background has drawn our attention to Section 154 of the Act.

43. With reference to provisions of Section 154 of the Act and the factual position, submission of Sri. Shreyas Jayasimha, learned counsel for the appellants is that the situation is one to which the provisions of Section 206-A of the Act was squarely attracted, a statutory provision which had found place on the statute book by way of amendment to the Act in terms of the Companies [Amendment] Act, 1988 with effect from 15.06.1988 and which reads as under:

Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares.

206A. Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act, -

(a) transfer the dividend in relation to such shares to the special account referred to in Section 205A unless the company is authorised by the registered holder of such share in writing to pay such dividend to the transferee specified in such instrument of transfer; and

(b) keep in abeyance in relation to such shares any offer of rights shares under clause (a) of sub-Section (1) of Section 81 and any issue of fully paid-up bonus shares in pursuance of sub-Section (3) of Section 205.

44. Attention is specifically drawn to clause [b] of Section 206-A of the Act to submit that the issue of fully paid up bonus shares should have been kept in abeyance pending transfer of shares to the name of the petitioners on the receipt of the transfer document and share certificate by the company as on 27.12.1989.

45. Sri Shreyas Jayasimha submits that the relief sought for by the appellant - petitioner before the Board is a relief directly and squarely attributable to Section 206A of the Act and for availing such relief provided u/s 206A of the Act, the appellants - petitioners had petitioned the company law board invoking the provisions of sections 111 and 111A of the Act.

46. For such purpose, learned counsel for the appellants has taken us through the legislative history behind the introduction of this statutory provision and points out that the manner of regulating not only the payment of dividends but also the issue of additional shares either by way of rights issue or by way of bonus issue as indicated in clauses [a] and [b] of Section 206A of the Act during the interval when a person who has purchased shares in the company lodges the shares with relevant transfer documents with the company and the company actually transfers the shares in the sense that the company changes the name of the shareholder in the register of the company depicting the name of the members of the company and seeks to regulate the possibility in the interregnum.

47. It is submitted that the statutory provision has been incorporated on the statute book to provide protection to such shareholders who have purchased the shares and who might have lodged the shares for the company to recognize their ownership of shares, but the company for whatever reasons has either not recognized or has not been able to recognize this change in ownership immediately on lodging but does so some time thereafter and therefore the name of the transferor of the shares remain in the register of the company depicting the names of the shareholders.

48. Significance here being a dividend declared in respect of the holdings of shares in a company in favour of the members is with reference to a particular date and likewise the additional shares either by way of rights issue or by way of

bonus issue is also determined with reference to a date known as the "record date" and the name of the shareholder whose name so figures in the register of the members of the company.

49. It is pointed out that quite naturally if a person is aspiring for receiving dividend which is no doubt for the entire year is nevertheless paid on the basis of the person holding share on a given date and likewise the additional issue of rights shares or bonus shares also being dependent on the crucial date known as the "record date" on which day the ownership in the shares of the company is depicted in the books of register of members of the company.

50. It is also pointed out with reference to the market practice that the shares of a company which is listed and are traded freely in terms of the regulation governing the same are in market circles traded, cum dividend, cum bonus and cum rights etc., and the purchaser who pays the price for a share normally pays that price for the share with the understanding and the expectation that by purchasing the shares before the declaration of dividend or before announcement of the rights or bonus shares i.e., the purchase effected before the "record date" will entail the person either dividend or rights shares or bonus shares as the case may be.

51. With reference to the facts as it prevailed in the present appeal, it is pointed out that the appellants, in fact, purchased the shares as early as on 3.11.1989 and had also lodged it through their brokers for recognizing such change of ownership in the shareholding of the company by the share certificate and the transfer documents having been lodged with the company and without dispute received by the company as on 27.12.1989.

52. It is with reference to the date 27.12.1989, when the company without any dispute received the documents, it is submitted that the provisions of Section 206A of the Act come into play; that the provisions of Section 206A of the Act which has a non-obstante clause imbedded within it inevitably points out that this Section alone matters in respect of the two situations of the persons who are entitled to receive the dividend or who are entitled to receive the rights or bonus shares as the case may be with reference to the record date.

53. It is also pointed out that when any such shares are lodged with the company for the company recognizing the change of ownership and received even on the "record date", the company cannot simply proceed to forward the dividend warrants to the member whose name figured before the record date and also likewise cannot issue or forward the bonus shares as in the present case to the erstwhile member but should withhold further action and it is only after ascertaining as to whether the shares in fact have been so transferred, proceed to act in terms of Section 113 of the Act for effecting the transfer within the period of two months thereafter, but the significance is while the provisions of Section 113 of the Act indicates the outer limit within which the company is required to act and that action is only in recognition of the transfer of ownership

in shares that has already taken place by transaction between the transferor and transferee which according to learned counsel for the appellants took place even as on 3.11.1989.

54. Submission of Sri Shreyas Jayasimha, learned counsel for the appellants with reference to this statutory provision is that the appellants - petitioners while did become owners of 100 shares even as on 3.11.1989, on and after 27.12.1989, the day on which the share certificate with transfer documents were lodged for recognizing the transfer in the register of the members of the company, the provisions of Section 206A takes over the situation and when once that transfer is effected even later and in the present case there being no dispute about the entitlement of the petitioners - appellants for seeking such transfer and company in fact having transferred even as per their communication dated 4.5.1990 enclosing the share certificates duly transferred to the name of the petitioners - appellants, all other consequences in law follows, in the sense that, the petitioners - appellants became entitled to receive the bonus shares declared by the company in terms of the Board resolution dated 27.11.1989 and if the company did not act in terms of the provisions of Section 206A of the Act, it was well within the rights of the petitioners - appellants to seek for remedy by invoking the provisions of sections 111 and 111A of the Act and it is precisely for such purpose, the petitioners - appellants had approached the company law board, but the company law board by a totally erroneous understanding of the legal position governing the grant of relief under sections 111 and 111A of the Act and particularly being of the incorrect view that there was an impediment for granting relief to the petitioners in terms of sections 111 and 111A of the Act as the petition was not only hit by laches but also barred by limitation and further the earlier proceedings which had been pursued by the petitioners before the consumer for a being conclusive between the parties that the principles of res judicata in terms of Section 11 of the CPC was attracted and therefore while the petition being barred by limitation and beyond the reasonable period for presentation even otherwise being barred by principles of res judicata was only to be rejected on the preliminary objections raised by the company and on such premise having dismissed the company petition even at the threshold it has become necessary for the appellants to approach this court invoking Section 10F of the Act.

55. Submission of Sri Jayasimha is that the Company Law Board has rejected the Company Petition even at the threshold on the technical objection raised by the Company namely, being barred by limitation inasmuch as the provisions of Section 14 of the Limitation Act will not enure to the benefit of the petitioner and further that the petition is barred by res judicata to hold that the petitioner had not taken effective or commensurate steps to pursue the matter against the transferor and when the petitioner had not followed up the matter with the transferor, the company cannot be held liable for the delivery of the equity bonus shares and also the dividends on all such shares and further entitlements, that such a view taken was not justified either in law or on facts and what all is

submitted by Sri Jayasimha is that the Company Law Board while in one breath says that preliminary objection raised by the company is to be upheld and the petition should be dismissed on this count alone but nevertheless even examines the merits on an incorrect and erroneous premise and opines that there is a further ground to dismiss the petition, that the Company Law Board was more obsessed that the company petitioners having spent time before the District Consumer Forum in the beginning, State Commission later and ultimately before the National Commission, that such approach on the part of the Company Law Board to examine the merits claim of the petitioners under the statutory provisions has virtually coloured the views of the Board that the company petition has not received an objective and dispassionate examination by the Company Law Board, that the view of the Company Law Board to the effect that Section 14 of the Limitation Act was not applicable to the facts of the present case is clearly in contravention and variance of the settled legal position; that the legal position is otherwise and even on the aspect of principles of res judicata that the appellants/petitioners having withdrawn the revision petition before the national Consumer Disputes Redressal Commission, the examination by the Consumer Forum was not conclusive for granting the entire relief that has been sought for before the Company Law Board; that the nature of jurisdiction which the Consumer Forum exercises and the relief which consumer forum can grant is totally different from the nature of the relief and the statutory provisions with reference to which relief can be granted by the Company Law Board; that the withdrawing of the revision petition by the appellants/Petitioners before the National Commission to pursue the remedies available to the petitioners before the Company Law Board, clearly indicate that the petitioners' option to seek remedy before the Board was neither preempted nor the principles of res judicata was attracted to the present case and therefore, the submission that the order of the Company Law Board is not tenable and rejecting the company petition at the threshold on such premise was illegal. It is also submitted by Mr. Jayasimha that the Company Law Board has not given proper consideration to the authorities relied upon and placed before the Board on behalf of the appellants/petitioners.

56. Sri Jayasimha, learned counsel has drawn our attention to the correspondence between the petitioners and the company as also the letters and communications originating from the company addressed to the share brokers of the petitioners, principal share broker at Mumbai and his immediate broker at Mysore, to demonstrate that the company had not merely admitted the entitlement of the petitioners to get the shares transferred in pursuance of the transfer documents and the communication from the petitioners, but also had virtually admitted the entitlement of the petitioners to the bonus shares by going to the extent of advising the petitioners that while the petitioners were in law entitled to bonus shares can lay claim to that, they should do so only against the original transferor to whom the company had already allotted the bonus shares and wherefore the petitioners should not look up to the company for any further

action on the part of the company, that such an advise given to the petitioners by the company virtually is in the nature of admission of entitlement of the petitioners and once petitioners" entitlement for getting the original shares transferred to their names in the registers of members of the company is not disputed and on the other hand in fact the company itself having acted in recognition of the same, the only other possibility is about the authorization or the manner of operation of the provisions of Section 206A of the Act and that being sought for implementation through the petition u/s 111 and 111A, there was no way of the Company Law Board denying relief to the petitioners.

57. In support of the submission that the company petition was neither hit by limitation nor by delay and laches Mr. Jayasimha has taken us through the provisions of Section 111 and 111A and points out that while for seeking relief under sub-Section (2) of Section 111, the period of limitation in terms of sub-Section (3) is two months from the date of receipt of notice of refusal to register or four months from the date of lodging of the transfer instrument as the case may be, but for seeking relief under sub-Section (4) of Section 111 that is for rectifying the registry to remove the name of a member which has been wrongly entered or if a name was found to have been erroneously omitted or even if there is inordinate delay in either situation, there is no time stipulation indicated in the statutory provisions within which the aggrieved person can seek relief before the Company Law Board by seeking rectification of the register.

58. Likewise it is pointed out that under the provisions of Section 111-A of the Act, the time stipulation is two months as indicated in sub-Section (3) but it is submitted that both in 111 and 111A when application/petition is presented even beyond the period prescribed by the statute itself can be entertained if the petitioner is able to satisfy the Company Law Board for condoning the delay in so presenting the petition by filing an application u/s 5 of the Limitation Act seeking condonation of delay of the period beyond the permitted period under the statute.

59. In support of the submission that the Company Law Board was in error in rejecting the petition on the preliminary objection of limitation, Sri Jayasimha has relied upon the following decisions particularly in support of the submission that Section 5 of the Limitation Act is attracted even if the presentation is not within the period stipulated by the Act itself and if sufficient cause is shown for the delay, the delay needs to be condoned and matter needs to be gone on merits. Sri Jayasimha would submit that though the Company Law Board itself has uniformly and consistently held that the provisions of Section 5 of the Limitation Act is applicable in respect of petitions presented before the Board which are beyond the period stipulated under the Companies Act itself for the purpose of examining the question for condonation of delay in presentation of such a petition and though he is unable to point out a direct authority of the High Court or the Supreme Court on this aspect, nevertheless places reliance on the decision of the Company Law Board, Northern Region Bench, New Delhi in V.K. Gupta & Others vs., Auto Lamps Limited & Others (Company petition No.

154-155/111-92 CLB), reported in (1999) 2 Comp LJ 519 to contend that the Delhi High Court itself had opined that the provisions of Section 5 of Limitation Act are very much applicable to proceedings before the Company Law Board inasmuch as the Delhi High Court had by setting aside the earlier order of the Board and while remanding the matter to the Board had not only permitted to file an application u/s 5 of the Limitation Act to seek condonation of delay in presenting petition before the Board but also had directed the Board to examine the application made u/s 5 on its merits etc., which clearly amounts to the High Court having taken the view that the provisions of Section 5 of the Act are attracted in respect of proceedings before the Law Board and would urge that the consistent practice followed by the Board in relying upon Section 5 of the Act for condoning delay and entertaining petitions presented beyond the period of limitation stipulated under the Act and for condoning the delay u/s 5 coupled with the direction issued by the Delhi High Court in the case of V K GUPTA (supra) to the effect that the Company Law Board was required to examine the merits of the matter constituted a persuasive precedent for supporting the view that the provisions of Section 5 are attracted for examining the petition presented before the Board beyond the period under the Companies Act itself.

60. In support of the submission that the provisions of Section 14 are also attracted, learned counsel apart from placing reliance on the several authorities of the High Court and Supreme Court has also submitted that when once Section 5 of the Limitation Act is attracted on principle there is no question of eschewing Section 14 of the Act and if at all the only question can be as to whether on the facts of the given case if it is a case for excluding the time consumed by a litigant before the Forum where the litigant cannot get full relief, is a concluded question and even otherwise if the respondent company itself not joining issue on the applicability of the provisions of Limitation Act to the proceedings before the Company Law Board under the provisions of the Companies Act particularly as in respect of the relief under sub-Section (4) of Section 111 falls, no particular time stipulation has been entered in the Act itself and even if it is to be contended on behalf of the respondent that even when no limitation is provided in the act itself, the period of limitation cannot be beyond the period of 3 years the residuary article under the Limitation Act in terms of Article 137 and if the respondent Company itself should contend that Article 137 of the schedule to the Limitation act is attracted, there is no gain saying in the argument that either Section 5 or Section 14 of the Act are not attracted. Sri Jayasimha has placed reliance on the following judgments to bring home the point that Section 14 of the Limitation Act is attracted.

1. Roshanlal Kuthalia and Others Vs. R.B. Mohan Singh Oberoi,
2. Laxmi Engineering Works Vs. P.S.G. Industrial Institute,
3. Saushish Diamonds Ltd. Vs. National Insurance Co. Ltd.,
4. P. Sarathy Vs. State Bank of India,

61. While there can be no dispute or doubt about the applicability of Section 14 in a situation where the litigant is prosecuting the other proceedings with bonafides and due diligence and is unable to get relief before that Forum for want of proper jurisdiction in that Forum or disabled from entertaining a lis of that nature for relief and while the lis before the Consumer Forum or the Court in the form of suit, Company Law Board in the form of a petition, are all undoubtedly civil proceedings and if the preponderance of binding authorities as noticed above being to the legal position that Section 14 of the Act is attracted even to a situation of the present nature particularly with the judgment in LAKSHMI ENGINEERING WORKS, wherein the Supreme Court itself had opined that even if the proceedings before the Consumer Forum taken right up to the National Commission having failed for providing relief to the consumer, the consumer could nevertheless pursue for relief before a civil court by filing a suit and can definitely claim benefit of Section 14 of the Limitation to get over the period of Limitation for the period when the proceedings were pending before the Consumer Forum as indicated in Para-26 would therefore submit that this is equally applicable to a petition before the Company Law Board and the only distinction being that instead of filing a suit before the civil Court for relief, in the present case, petitioners had approached the Company Law Board seeking for a specific relief under the provisions of Companies Act seeking relief in terms of Section 111 and 111A of the Companies Act. It is, therefore, submitted that Section 14 is clearly attracted and when the petitioners were bona fide prosecuting the litigation before the Consumer Forum for relief and failed to get the full or proper relief before such Forum they were not only entitled to seek relief before the Company Law Board but also were entitled to seek for exclusion of the time spent in the proceedings before Consumer Forum for the purpose of computing limitation under the Companies Act.

62. It is submitted that if the period spent before the Consumer Forum is excluded, the petition is well within time particularly as if the respondent company has conceded that the period of limitation being not specifically stipulated in the Act itself, it cannot be beyond the period of 3 years as indicated in Article 137 of Schedule to the Limitation Act and that petition being well within the period of 3 years. If so computed, excluding the time spent before the Consumer Forum by applying the principles enunciated in Section 14 of the Limitation Act, the Petition was well within the period of three years and was therefore tenable and was required to be examined on the merits of the petition.

63. It is also submitted that the Board was clearly in error in applying the principles of res judicata for throwing out the petition at the threshold particularly as the Consumer Forum had by themselves indicated that they had no jurisdiction for granting the said reliefs, that the petitioners had sought for before the said Forum as consumers and if the very forum thought it had no jurisdiction and which in fact was also the stand of the Company itself, and when the petitioners had approached the Company Law Board which admittedly has jurisdiction for granting the reliefs in terms of Section 111 & 111A of the

Companies Act, even in terms of Section 11 of CPC, the principles of res judicata was not attracted inasmuch as the res judicata will apply only in a situation where the prosecution of litigation for relief is barred only if for the very relief the very parties had agitated before different forum of competent jurisdiction and that the court or forum had denied the relief to the party on merits and on contest and the question being an issue and answered by the court.

64. It is also submitted by the learned counsel that the Company Law Board is also clearly in error in thinking that the mere dismissal of the revision petition by the National Commission without expressly reserving leave to further prosecute the matter attracts the principles of res judicata to debar the proceedings before the Company Law Board, firstly for the reason as indicated above that the Consumer Forum was not a forum having jurisdiction or competence to grant all the reliefs that can be granted by the Company Law Board and also for the reason that the National Commission having consciously permitted the petitioners to withdraw the revision before the National Commission and being aware of the contents of the memo where the petitioners had indicated that they would withdraw the revision petition for prosecuting the remedies before the Company Law Board even impliedly amounted to granting such permission and in any view of the matter, the provisions of Section 11 of CPC were not attracted and therefore, rejection of the petition by the Company Law Board is obviously bad in law.

65. On behalf of the first respondent Company though in response to the contentions urged on behalf of the appellant as submitted by Sri Jayasimha, no counter arguments have been submitted by way of countering the submissions after the conclusion of the hearing on behalf of the appellant, we would nevertheless examine the contentions which had been urged even earlier not only by Sri Rajeshwar, learned advocate on record but also by Sri Udaya Holla, learned Senior Counsel who had appeared for the respondent Company intermittently, by pointing out that the respondent company joined issue with the appellant for the purpose of defending the order of the Company Law Board that the order passed by the Company Law Board is perfectly valid, proper and is in accordance with law and that no interference is warranted by this Court in exercise of appellate power and in the first instance the provisions of Section 206A of the Companies Act is not attracted particularly as the statutory provision presupposes a situation wherein remedial measures or consequential measures are indicated only when any instrument of transfer of shares has been delivered to any company for registration a transfer of such shares and company has failed to take up a follow up action, that in the present case so far as 100 bonus shares in respect of which the petitioner-appellants are agitating being not covered by this statutory provision, for the simple reason, that there was no delivery of an instrument of share transfer for being registered by the petitioner-appellants and therefore the very provisions of Section 206-A are not attracted. The provision of Section 111A being in the nature of a remedial provision for extending the relief in a situation where the entitlement and the premises on which the relief is

sought for is not in dispute, in the sense that the rectification of the register of names in the company will be only on the admitted position of the entitlement of the shares in the sense that the persons seeking for rectification is a person who has such a right in the shares, either for entering his name or for removing the name of another person as wrongfully entered and that virtually being dependent on the position as it emerges in the operation of the provisions of Section 206A, that position being not available to the appellant-petitioners in the present case as there was no delivery of the shares or share transfer forms to the company seeking for registration in the register of members of the company, the petitioners could not have maintained a petition for the relief u/s 111 or 111-A of the Act and also that the Company Law Board was very right in not only concluding that the petition was hit by the principles of res judicata as recognized u/s 11 of CPC and further that the provisions of Section 14 of the Limitation Act are not attracted to a petition before the Company Law Board particularly in a situation of the present nature where the petitioners were agitating for relief before the Consumer Forum and for as long as 11 years and that by any stretch of imagination as reasonable unless the provisions of the Limitation Act or even the principles of delay and laches for such a long period can be construed to be a period spent litigating bona fide and Section 14 is not available to the appellants either in law or on facts and there was no way of the appellants getting over the preliminary objections as sustained by the Board in its order and therefore, the present appeal is necessarily to be dismissed.

66. Though the Court after concluding hearing in the absence of further submissions on the part of the learned counsel for the respondent company though was present before the Court, who would not make submissions but would prefer to wait for the Senior Counsel and in the absence of any submissions and in the wake of silence that followed later, we proceeded to dictate the judgment and thereafter the learned counsel appeared before us and sought for permission to intervene and make submission which permission was refused by us and though several judgments were sought to be relied upon and were sought to be placed before us in support of the above contentions noticed on behalf of the Respondent Company, we have not looked into the same for the simple reason the argument was concluded and were dictating the judgment and in the absence of the learned counsel for the respondent company having submitted as to which specific authority is in support of which proposition and further there being no possibility, learned counsel for the appellants having an opportunity to respond to this in reply, we have declined to look into the authorities placed on behalf of the respondent company.

67. We would nevertheless proceed to examine the submissions made at the Bar by the learned counsel for the appellants and the points which had been initially urged on behalf of the Respondent Company by Sri Holla, learned Senior Counsel and as noticed above.

68. In so far as the facts are concerned, there is not much dispute particularly

with regard to the date of receipt of the share transfer instrument that the share certificates for effecting the transfers signed by or on behalf of the petitioner-appellants and received by the company which is as on 27.12.1989. On the basis of this factual premise only question is as to what can be the outcome in law and particularly as reliance is placed by the learned counsel for the appellant on the provisions of Section 206A of the Act.

69. The legislative intent which has been brought to our notice by Sri Jayasimha, undoubtedly indicates that it is a statutory provision brought on the statute book by the legislature with the avowed object of providing relief to a person who has acquired or purchased the shares in a company and has placed the same before the company for recognition of such transfer and even before the company could act on the same and in the interregnum there is a possibility of the company either declaring dividends or issuing additional shares. It is precisely to cover the situation the provision has been introduced and if one may say so, it can be only understood to be a provision to rescue a helpless or hapless shareholder who would not become the member of the company from being not recognized of that by the company by adopting that position in the register indicating the names of members of the company, where deliberately or even in some bona fide circumstances either due to inadvertence or by mistake or for any other reason and a right to receive dividend or the right to receive additional shares has accrued in the interregnum through a person who is a shareholder of the company.

70. A member and shareholder are one and the same and the question will be what is the entitlement. In law there is no dispute or difficulty in concluding that the entitlement for receipt of dividend or additional shares goes with the ownership of the shares. Of course under the Companies Act and for the sake of convenience, the Companies declare dividends and though it is for the year, it is made available at a particular date and in favour of a person whose name figures in the register of the Companies as a member and likewise for the existence of bonus shares and right shares. In the present case, we are concerned with the issue of bonus shares. There is no dispute that the record date for such a purpose is 27.12.1989 and it so happened of the present case closure is on the same day. It perhaps for this reason, the company has contended on the date when the company received the shares, original 100 shares transferred to the petitioners and the share transfer instrument for recognizing their ownership in the shares the company could not contact on the same as their books were closed for the day and secondly the bonus entitlement was in favour of the person who figured as a member and as the owner of the original 100 shares and company having acted bona fide and even having gone to the extent of advising the petitioner-appellants to seek remedy against the transferor who had already received the bonus shares and the petitioners having not chosen for taking action and even the remedy sought before the consumer forum has been pending, there is no way of seeking remedy before the Company Law Board invoking the statutory provisions.

71. The question however is whether the defences put up by the company however assuming that it is a bona fide one stands the test of statutory provisions.

72. It is in the wake of this controversy, the present appeal and in the wake of submissions made at the Bar, we are of the opinion the following points arise for our determination:

(i). Whether Company Law Board was right in rejecting the company petition at the threshold on the preliminary objection by holding that the provisions of Section 14 of the Limitation Act are not applicable to the proceedings before the Company Law Board and no case was even made out on facts for invoking Section 14 of the Limitation Act?

(ii). Whether the Company Law Board was justified in holding that the petition was hit by the principles of *res judicata* as recognized u/s 11 of CPC for the reasons that the appellants had approached the consumer forum for relief and were not successful in getting full relief there and for part of the relief approaching the Company Law Board?

(iii). Whether the Company Law Board was justified in concluding that the dismissal of the revision petition by the National Consumer Disputes Redressal Commission as withdrawn by the appellants amounted to a decision by the Forum attracting the principles of *res judicata*?

(iv). Whether the appellants are entitled in law to seek benefit of the provisions of Section 206A of the Companies Act and if so as to whether the petitioners could seek for relief on such premises under the provisions of Section 111 and 111A of the Act?

73. On examination of the impugned order, the record, the submissions made at the Bar and the authorities relied upon, we opine as under:

74. The petition having been dismissed by the Company-Law Board as not maintainable, that will be the first examination. The petition had been presented invoking the provisions of Section 111 and 111A the provision which enables the Company Law Board to direct the Company to register the transfer of shares in the name of members seeking for relief when it finds that the company has without sufficient cause refused to register the transfer of shares within the initial period of two months from the date of lodging of instrument with the company.

75. For the purpose of granting relief even u/s 111A by the Board against a company other than a private company and which had become a public company under proviso to Section 111A the Board has nevertheless on such powers as are available to it under sub-Section 5, 7, 9, 10 & 12 of Section 111 so far as they apply to the proceedings and therefore examine any entitlement for the transfer in terms of these sub-sections of 111 and for consequential relief to direct the company to register as per the provisions of Section 111A as in the present case. It is not in dispute that if at all what is applicable to the present situation, is only

the provisions of Section 111A of the Act which is applicable for the reason that the company in question is a public limited company and not a private company or deemed public limited company as is covered and indicated in sub-Section (14) of Section 111. The reference to different sub-sections of Section 111 for the present purpose may not be necessary for the simple reason that so far as entitlement of transfer of shares as originally lodged by the petitioner before the company is not in dispute particularly even as the Company itself having acted for effecting transfer though on a date later than the record date and which is now claimed by the petitioner is contrary to the provisions of Section 206A of the Act.

76. That in turn reduces the area of controversy only to the maintainability by testing the petition on the touch stone of Section 5 and 14 of the Limitation Act and Section 11 of CPC.

77. In so far as applicability of Section 5 and Section 14 of the Limitation Act is concerned the preponderance of judicial opinion and settled legal position of law even as per the binding authorities of Supreme Court being in favour of the applicability of Section 14 to a petition while that concludes the issue and we are of the definite view that the Company Law Board was in error in opining to the contrary. So far as applicability of Section 5 of the Limitation Act is concerned, it is only a view of the Delhi High Court which has indicated applicability of Section 5 to a proceeding before the Company Law Board as in the case of V K GUPTA (SUPRA) and there being a direct authority of our High Court in case of NAVEEN KUMAR & OTHERS V. KARNATAKA THEATRES LIMITED, MANGALORE & OTHERS, REPORTED IN 1998(93) COMP. CASES 443 (KAR) wherein this Court had occasion to opine that the provisions of the Limitation Act are attracted and in the absence of any other authority to the contrary, we would respectfully follow the view taken by the Delhi High Court as that would only advance the object of the provisions of Section 111A to entertain a petition in the situation where the delay in approaching the Company Law Board is explained to be bona fide and a justifiable delay and in our opinion the delay in the present case being one such particularly as the petitioners were prosecuting bonafide litigation before another forum even forum like the consumer forum is a bona fide prosecution for the purpose of Section 14 of the Act, it cannot take a different view for the purpose of Section 5 of the Act and if the prosecution of litigation before the consumer forum up to the National Forum as in our opinion is a bona fide prosecution on facts and even on the authority of law cannot be different for the same file and therefore we hold even Section 5 of the Act is attracted to the present situation and on facts in law Section 5 is attracted and on facts in respect of prosecuting the relief before the forum where the petitioners could not get relief is a bona fide prosecution and is tenable explanation for the delay and therefore the application u/s 5 and 14 applies before the Company Law Board deserves acceptance. The Company Law Board as pointed not only held the provisions are not applicable and rejected the same and gave a finding to the effect that the company petition was liable to be rejected on the preliminary objection at the

threshold is, therefore set aside.

78. Coming to the merits of the claim for rectification, the objection raised is that the very premise of the applicability of Section 206A is not available and therefore, no petition could have been entertained for relief u/s 111A of the Act.

79. While it is true that a rectification principally, speaks and accomplished on undisputed facts situation and a rectification also principally speaks a mistake which is a mistake on the acceptance of the legal position by the parties and therefore it can be said the rectification is only a matter of formality if the legal position or legal entitlement is made good and a scope for such a demonstration also being available for a person seeking relief u/s 111A before the Board in terms of sub-Section (7) of Section 111A, the only further question is as to whether Section 206-A of the Act is attracted and as vehemently urged by the learned counsel for the appellant and as disputed by Sri Udaya Holla, learned senior counsel appearing for the respondent.

80. One aspect on which reliance is placed by the learned Senior Counsel for respondent company is the provisions of Section 108(a) and (b) of the Act which enjoins a Company not to register transfer of shares, unless the person claiming the transfer has delivered to the company not only the very instrument of transfer but also incidentally prays for effecting the same such names and address etc., and which is made available to the company before the date on which the register of members of the company is closed. It is precisely for this reason, the company has contended that its books register had been closed on the record date namely on 27.12.1989 and therefore the company was not obliged to effect transfer in the register of the company on that date and if that is not done on that day, there is no way of the appellants claiming bonus shares should have been issued in their name and not in the name of the original transferor.

81. It is precisely to answer this argument, Sri Jayasimha, learned counsel for the appellant has drawn our attention not only to the provisions of Section 206-A but also to the legislative intent which we have adverted to earlier and specific attention is also drawn to the non-abstente clause used in the Section and to contend that the consequences in Section 206A follow notwithstanding the provisions of Section 108 of the Act.

82. What is submitted by Jayasimha is that even though the company perhaps could have earlier adopted that it had closed its books/register on the day when they received the share transfer instrument etc., that possibility is now clearly not available to the company in the wake of Section 206-A of the Act and has drawn attention as to the further course of action that the company is required to take namely, that it should necessarily keep issue of bonus shares in abeyance and take action only after the share transfer instrument is acted upon and depending on the outcome. It has to be noticed that a company keeps in abeyance or defers the registering of the shares and would postpone the same in

terms of Section 111A (ii) proviso only in a case where it has sufficient cause to refuse register of transfer of shares and not otherwise.

83. In the instant case, it is not the case of the company that it had sufficient cause to refuse to register transfer of shares and in our considered opinion a situation where they contend their registers are closed is not a situation within the contemplation of sufficient cause to refuse register as indicated in the proviso to sub-Section (ii) of Section 111A.

84. In fact an answer of this nature is fully and squarely taken care of by the provisions of Section 206-A and in the wake of legislative development and having regard to the legislative intent, we have no hesitation to hold that this aspect of the matter and for the purpose of putting forth Section 108 as a defence of the course of action indicated in Section 206A of the Act is not at all available to the company and more so in a situation where the company has never indicated there was any cause for denying the transfer of shares to the name of the appellants but in fact on its own has transferred the shares but much later and therefore is contending that the issue of bonus shares in the name of transferor was proper and justified.

85. The defence of this nature is no more tenable in law in the wake of provisions of Section 206A of the Act and therefore we are of the opinion that the company should have recognized the entitlement for the issue of bonus shares only after the instrument of transfer was acted upon in terms of Section 206-A of the Act and failing to do so is a failure in law and the legal consequences would inevitably follow.

86. When once it is found that the petitioner-appellants are in fact entitled to claim the bonus shares in terms of Section 206-A of the Act, the other conduct on the part of the parties etc., receipt of transfer forms in this background and in fact even on facts there is not much force to appreciate the conduct on the part of the company as the company, which was obliged in law to act in favour of the appellants to protect its feet and went on giving advise right or wrong not necessarily right, to direct the petitioners to pursue action against the brokers and others including filing of criminal case against them which in our opinion is nothing short of misguiding or misleading the appellants and avoiding their own responsibility and can in no way advance the case of the company for defending its action.

87. The legal consequence is it is declared that the appellants are entitled to receive 100 bonus shares on the transfer of ownership of 100 shares from Brijesh Bahati and in terms of the transfer effected by the original owner of the shares which was on 3.11.1989.

88. It is as though the petitioners are the owners of those shares on subsequent dates but for the present case definitely on the record date and all consequences in law follow as a result of their ownership of the shares on that day and the company is, therefore, directed to rectify its register to show the name of the

appellants as members of the company in respect of original 100 shares on the record date and to rectify the register as consequence in respect of all further issues.

89. The long lapse of time perhaps could have been the reason for us to mould the relief in any other manner. But the parties though were given time to workout any possible settlement or resolution between themselves were not able to arrive at any mutually satisfactory position and therefore requested us to proceed to judgment on merits of the matter.

90. Mr. Jayasimha, learned counsel for the appellant has submitted that insofar as moulding of the relief in favour of the petitioner-appellants is concerned, there are three options that if the company should plead its difficulty or impediments to take back the original 100 bonus shares and its offshoots and with its further bonus issues which according to the learned counsel might be 36000 in number as that number of shares will have to be distributed in a good number of shareholders in market and it may be impracticable to lay their hands on such shareholders and alternative would be to draw commensurate amount from capital reserves of the company to capitalize them by issuing as many shares in favour of the appellants which by itself would be a satisfactory solution and relief to the appellants in so far as the shares are concerned and their entitlement to the bonus shares, are concerned.

91. In so far as other consequential relief is concerned submission is that the petitioner-appellants are also entitled for the dividends that were declared in respect of these shares over all these period and that entitlement is also in terms of provisions of Section 206A(a) and has provided a chart indicating the entitlement as per the appellants and which would show that they would become entitled to a sum of Rs. 21,64,656 by way of periodic dividends and at 12% simple interest on the dividend as and when they became due. Copy of this chart is also furnished to Sri Rajeshwar, learned counsel for the respondent company and submission of Sri Rajeshwar is that basis for the court to mould relief is what kind of relief the petitioners are entitled to.

92. Another option to the company is to comply with the direction by providing monetary compensation in the sense to pay the equivalent amount of money to the number of shares which the appellants are entitled to and by valuing the bonus shares and further entitlement which amounts to a situation of loss of members and in this regard our attention is drawn to SEBI Circular SMD/Policy/CIR-10/02 dated 7.5.2002 which reads as under:

Delay in transfer of shares by companies

In the meeting of stock exchanges held on August 14, 2001, the matter relating to "Delay in transfer of shares by the Companies" was deliberated and the following decisions were taken for speedy redressal of grievances pertaining to a) pending transfer of Shares, b) Dealing with objection memos in future and c) Duplicate share certificates.

A) Pending Transfer of Shares

i) In case the transfer deed and the share certificates are with company awaiting transfer beyond 30 days and in cases where the same are returned by the company to the investor with a company objection including due to signature difference (other than court cases where injunction has been ordered), companies shall effect the transfer of shares on obtaining from the transferee the proof of purchases duly acknowledged by the stock exchange/broker. If so desired, a company may also obtain indemnity bond from the transferee. Before effecting transfer, the company shall within 10 days of the date of such direction, send letters under registered post AD/ Speed Post AD to the transferor (s) asking for their confirmations/no-objection, so as reach the company within 15 days from the date of receipt of the letter by the transferor. If the confirmation is received/no-objection is not received within 15 days from the transferor(s), the transfer would be effected immediately thereafter. The valid objection, if any should be accompanied by correspondingly old prohibitory order from a competent authority. Immediately after effecting the transfer of shares, the benefits (i e. Bonus, rights, dividend) held back by the company shall be handed over to the transferee. If such benefits have been passed on to the transferor, the concerned stock exchange shall arbitrate through the brokers of the transferor and the transferee to determine the rightful claimant Keeping in view the provisions of Sections 206A of the Companies Act and Section 27 of the Securities Contracts (Regulations) Act, 1956, in such cases, the Stock Exchanges should entertain claims for resolving through arbitration even if they are beyond the stipulated time of 4 months.

ii) In respect of complaints (other than court cases where injunction has been ordered) where the original transfer deeds have been lost in the process of rectification on account of company objection, companies shall transfer the shares as per the first proviso to subsection(1) of Section 108 of the Companies Act on obtaining from the transferee the proof of purchases duly acknowledged by the stock exchange/broker on an indemnity bond from the transferee. Before effecting transfer, the company shall within 10 days of the date of such direction, send letters under registered post AD/Speed post AD to the transferor (s) asking for their confirmation/ no-objection, so as reach the company within 15 days from the date of receipt of the letter by the transferor. If the confirmation is received / no-objection is not received within 15 days, the transfer would be effected immediately thereafter. The valid objection, if any, by the transferor shall be accompanied by correspondingly old prohibitory order from a competent authority. Immediately after effecting the transfer of shares, the benefits lie. Bonus, rights, dividend) held back by the company shall be handed over to the transferee. If such benefits have been passed on to the transferor, the concerned stock exchange shall arbitrate through the brokers of the transferor and the transferee to determine the rightful claimant. Keeping in view the provisions of the Section 206A of the Companies Act and Section 27 of the Securities Contracts (Regulation) Act, 1956, in such cases, the Stock Exchanges should

entertain claims, even if they are beyond the stipulated time.

iii) In respect of companies where shares and transfer deeds are lying with the investor or introducing broker-member (IM), and IM has already paid/replaced shares to buyer/broker due to bad delivery on account of objection memo raised by the company, but there was a delay on the part of the company in raising objection beyond the stipulated time period of 1 month, shares shall be transferred by the company to the investor/IM, as applicable, provided no objection certificate of the buyer/buying broker is provided.

B. Procedure for dealing with Company objections in future:

i) In respect of complaints where shares and transfer deeds are lying with the investor or introducing the broker-member (IM) and IM has already paid/replaced shares to buyer/broker due to bad delivery on account of objection memo raised by the company, but there was a delay on the part of the company in raising objection beyond the stipulated time period of 1 month. In such cases the company would be liable to compensate the aggrieved party for the opportunity losses during the intervening period.

ii) In cases of company objection due to signature difference (Other than court cases where injunction is ordered), companies shall effect the transfer of shares by following the procedure mentioned below. Before effecting transfer, the company shall within 10 days of receipt of shares from the transferee, send letters under registered post AD/Speed Post AD to the transferor(s) asking for their confirmations/no-objection, so as to reach the company within 15 days from the date of receipt of the letter by the transferor. If the confirmation is received/ no-objection is not received within 15 days, the transfer would be effected immediately thereafter. The valid objection, if any, should be followed/ accompanied by a prohibitory order from a competent authority and should reach the company within 30 days thereafter, Jailing which the transfer would be effected. Immediately, after effecting the transfer of shares, the benefits (i.e. Bonus, rights, dividend) held back by the company shall be handed over to the transferee. If such benefits have been passed on to the transferor, the concerned stock exchange shall arbitrate through the brokers of the transferor and the transferee to determine the rightful claimant Keeping in view the provisions of Section 206A of the Companies Act and Section 27 of the Securities Contracts (Regulation) Act 1956, In such cases, the Stock Exchanges are hereby advised to entertain claims even if they are beyond the stipulated time.

iii) In cases where transfer deed and the share certificates are with the company and the company has not effected transfer of shares, within the stipulated time period of one month, without communicating the investor any valid objection. In such cases the company would be liable to compensate the opportunity losses occurred to the investor (buyer). In addition, the company shall transfer the shares immediately and keeping in view the provisions of Section 206 A of the Companies Act and Section 27 of the Securities Contracts (Regulation) Act 1956,

provide all benefits (i.e. bonus shares, dividend) which accrued to the investor during the intervening period on account of such delay.

iv) Once a share certificate is returned by a transfer agent as a "company Objection" keeping in view the provisions of Section 206 A of the Companies Act and Section 27 of the Securities Contracts (Regulation) Act, 1956, all benefits must be held in abeyance by the company till such time the transfer actually takes place or a valid no objection is received from the Transferee on his receiving replacement.

v) Every time an introducing broker replaces a bad delivery share or pays for the share to the receiving broker/buyer investor as per market norms, a No Objection Certificate to transfer the shares in the name of introducing member from the receiving broker/buyer investor shall be given to the introducing member broker/seller investor, as applicable, through the Bad Delivery Cell mechanism.

C. Duplicate Share Certificate:

Where the investor has complained about issuing of duplicate share certificate (s) by the company on the basis of allegedly forged/stolen documents furnished by a third party, the company shall verify and satisfy itself of the claim of the investor, within 15 days of receipt of the claim and take steps including invoking of indemnity bond to issue shares and corresponding benefits to the rightful owner in terms of Section 84 of the Companies Act read with Rule 3 of the Companies (Issue of Share Certificates) Rules, 1960.

And would submit that even in terms of the circular which was required to be implemented by the list of stock exchanges person who had been deprived of the legitimate entitlement of bonus shares should be compensated for the lost members and that submission of the learned counsel would be to pay entitled persons the price of the shares at the higher level during the course of listing in the interregnum and would point out that the price of the shares at peak was Rs. 9800 per share of face value of Rs. 2 during February, 2000 and by which point of time 100 bonus shares had multiplied by subsequent issue of bonus shares to a total number of 6000 shares and if it is so computed on that day from that day the appellants should be further compensated with interest at a nominal rate of 12% even on the authority of the decision of the Andhra Pradesh High Court reported in G R DESAI AND OTHERS VS REGISTRAR OF COMPANIES OF AP, KOTI, HYDERABAD AND OTHERS [(1999) 95 Comp Cos 138 (AP)].

93. The third option submitted by Sri Jayasimha is to pay the market value of 36000 number of shares as on date along with the dividend computed as above.

94. Accordingly this appeal is allowed as under:

(i) Order of the Company Law Board is set aside.

(ii) Company petition presented by the petitioner appellants before the Company

Law Board under the provisions of Section 111 and 111A is allowed.

(iii) The Respondent Company is directed either to issue the present entitlement of number of shares attributable to the initial 100 bonus shares which the petitioner-appellants were entitled on the record date that is as on 27.12.1989 which according to the appellants has now proliferated to 36.000 in No. and which is not disputed by the respondent company along with the compensation towards the loss of dividend which according to the appellants amounted to Rs. 21,64,656 and along with interest as computed above at 12% from the date of entitlement till 29.10.2009 and if the amount is not paid within a period of two months from today, this amount will carry further 12% interest on the same thereafter till payment.

(iv) As the appellants have communicated they are also agreeable for the option of the company if agrees to compensate them for the loss of members and on the date when the particulars of share had indicated above at Rs. 9800/- per share of the face value of RS. 2 per share and at that time even according to the appellants their entitlement was 6000 x 9800/-Rs 5,88,00,000/- with interest at 12% from March, 2000 onwards till settlement and along with the dividend for 6000 number of shares with interest at 12% from February, 2000.

(v) It is to the option of the company to implement this order in one of the two modes indicated above within two months from today as though in our opinion the first option is the proper option to grant relief as the appellants themselves have opted for it but as the second choice and that option is given to the company. It is open to the company to chose one of the two options for implementation of this judgment within two months from today.

(vi) The appeal is allowed with costs quantified at Rs. 25,000/- payable by the respondent company within two months from today failing which the Registry is permitted to issue certificate in favour of the appellants for recovery of this amount independently as though it is a decree passed by a Civil Court.