(2023) 07 NCLT CK 0033

In the National Company Law Tribunal

Case No : CA No.402/2018 A/w Company Appeal No.1/Chd/Pb/2018

Manjit Singh Lamba Vs Chaman Lal Setia Exports Limited ?

Date of Decision : 20-07-2023

Acts Referred:
Companies Act, 2013 — Section 50, 56(3), 58, 59
Companies Act, 1956 — Section 205A

Citation : (2023) 07 NCLT CK 0033

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Manish Jain, Divya Sharma, Karanveer Jindal

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

CA No.402/2018

1. The present application is filed by the appellant in Company Appeal No.1/Chd/Pb/2018 for condonation of delay of 183 days in filing the present application as the appellant consulted his previous counsel and issued necessary instructions to initiate suitable proceedings but the same were not filed. The appellant has engaged the present counsel who apprised the appellant about the limitation period of 60 days. It is submitted that if the delay is condoned then it will not cause any prejudice to the present appeal.

2. The reply has been filed by the Respondent Company stating that the cause of action of filing the present appeal arose on 30.07.2005 i.e. the date of the refusal of the Transfer of Shares. The issue is discussed in the subsequent Paragraphs of this order.

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3. The present Company Petition has been filed by Appellant Manjit Singh Lamba (hereinafter referred as "Appellant/Appellant") being holding Company of

Chaman Lal Setia Exports Limited, (hereinafter referred to as the "Respondent Company") under Section 58 & 59 of the Companies Act, 2013 for transmission of shares of respondent Company in the name of the appellant.

4. It is prayed by the appellant to Direct Respondent-Company to transfer 3900 shares initially allotted in the name of M/s. HMB Finvest Ltd. vide Folio # 872, bearing Certificate # 11519 to 11557 bearing Distinctive # 7190101 to 7194000 in the name of the Appellant, along with all incidental benefits like dividend, bonus issue, right issue accruing thereon and to Direct the respondent to rectify the Register of Members.

5. It is stated that the Respondent Company, Chaman Lal Setia Exports Limited, was incorporated on 21.09.1994 as a Limited Company under the provisions of the Companies Act, 1956, having CIN number L51909PB1994PLC015083. The Authorized and Paid-up share capital of the respondent as on date is Rs. 10,34,67,100/- divided into 1,03,46,710 equity shares of Rs. 10/- each. A copy of the master data of Respondent is attached with the appeal as Annexure P-1. The Appellant herein had purchased the 3900 shares of Respondent from HMB Finvest Ltd. in 2005 for a consideration of Rs. 1,40,000. HMB Finvest Ltd. was allotted 3900 equity shares of the respondent in the year 1995 under Folio # 872 bearing Certificate # 11519 to 11557 and bearing distinctive # 7190101 to 7194000 having a face value of Rs. 10/- each. The said equity shares were allotted "partly paid up" i.e. @ Rs. 5/- per share. The shares were sold to the Appellant and in this regard, the director of HMB Finvest Ltd. accepted the sale price on behalf of the Allottee Company vide Board Resolution dated December 2, 2002 (Annexure P-4). Pursuant to the sale of the shares by HMB Finvest Ltd., a transfer deed has been executed and the appellant applied for transfer of shares. The Share Transfer Form dated 15.06.2005 is attached with the application as Annexure P-5.

6. It is submitted that the representative of the respondent informed that the said 3900 shares were not fully paid up and it would make a "Call" with respect to the remaining amount payable. It is further submitted that the respondent issued a dividend amounting to Rs.4,875/- in respect of the said 3900 shares on 23.10.2004 in the name of HMB Finvest Ltd. "Erstwhile Allottee". The HMB Finvest Ltd. has returned the Dividend Warrant with the letter dated 18.07.2005, so that the earned dividend would be adjusted towards the balance share money. The respondent Company has not made any "call" in respect of the balance share money and also did not inform the appellant about such a balance payment. The appellant has made several requests to the respondent to inquire about the balance share money, but the respondent did not reply. The copy of letter issued by the appellant is attached with the appeal as Annexure P-7. The appellant has also sent a letter dated 01.07.2005 to HMB Finvest Ltd. to pay the arrears of call-money and the allottee Company has requested to provide details of the amount payable towards call-money. However, no response has been received from the respondent Company. The allottee Company-HMB Finvest Ltd. has addressed

another letter dated 25.7.2005 (Annexure P-10) wherein it is stated that the shares had been sold to the Appellant and the allottee Company indicated their intention to pay the said amount before transfer.

7. It is further submitted that the Appellant issued a legal Notice dated 07.12.2017 to the respondent, calling upon it to transfer the said shares in his name. The copy of Notice dated 07.12.2017 is attached as Annexure P-11. The respondent has replied despite repeated demands, the balance share money was not paid in respect of the said shares. The respondent has denied that Dividend accrued/earned/to be earned in future would be adjusted towards the balance share money. It is also averred that Respondent has also defaulted in complying with the provisions of Section 56 (3) of the Companies Act, 2013.

8. It is also stated that over the period of time the Respondent Company has issued "split-shares" against the said 3900 shares and consequently, the number of shares to be transferred in the name of the Appellant stand increased to 19,500 shares approximately. the Appellant has taken every possible step to get the aforesaid shares transferred in his name as per due process of law, however, there has been no positive response from the Respondent-Company till date.

9. The respondent has filed the reply stating that M/s HMB Finvest Limited had applied for 5000 equity shares and paid total application money of Rs. 1,00,000/- being Rs. 20/- each for 5,000 equity shares. Since, the IPO was oversubscribed, HMB Finvest Ltd was allotted 3900 equity shares and Rs. 1,00,000/- was adjusted against the remaining amount on partly paid up shares of these 3900 equity shares, however, some amount (Rs. 56,000) still remained unpaid. On 15.05.1995, by Allotment advice-cum allotment money notice, all partly paid up shareholders were called upon to pay balance amount on or before 30.06.1995. It was further stated in the notice that in case of default, interest would be charged and allotment will be liable to be cancelled and shares application money liable to be forfeited. Respondent had issued dividend on various occasions. Sometimes the dividend was paid to the shareholders and sometimes it was adjusted in the outstanding amount of the partly paid up share capital. The unclaimed dividend amount was transferred to unpaid dividend account of the Company as per Section 205A of the Companies Act, 1956. The outstanding amount of M/s HMB Finvest Limited was Rs. 19437.5 in the FY 2013-14. On. 09.07.2005, the Respondent received transfer request from the Appellant for transfer of 3900 shares of M/s HMB Finvest Limited to his name. The said request was transferred to SEBI registered Registrar and Share Transfer Agent (RTA) of the Company on 18.07.2005. The RTA returned the share transfer form on two grounds: a) there is Alteration in transfer deed and it needs signatures of both transferor and transferee, and b) the shares are partly paid up shares. it is averred that the said return letter was duly communicated to the Appellant. As the allottee Company never intimated the change of address if any to the Respondent Company and for next 13 years, the Respondent didn’t receive any communication. In the year 2005, M/s HMB finvest Ltd. got itself voluntarily

struck off. Respondent issued request letter dated 30.05.2015 to all partly paid-up equity shareholders including M/s HMB Finvest Limited to pay balance amount due on partly paid shares otherwise company will forfeit their shares. the Respondent vide its board resolution dated 23.07.2015 waived off the interest on outstanding amount and decided to issue final call notice and in default shares would be forfeited. Final notice dated 24.07.2015 was sent to M/s HMB Finvest Limited for making payment on or before 24.08.2015 or face forfeiture. The Final notice was also published in newspapers on 24.07.2015 in "Financial Express" and "Punjabi Jagran.". After 20 years of IPO and the first call for payment, the shares of various shareholders, including M/s HMB finvest were forfeited vide Board Resolution dated 28.08.2015. The Company never received any communication either from HMB Finvest Limited or from the Appellant from 2005 till 08.12.2017. The Respondent Company also denied receiving any letter from HMB Finvest Limited or the appellant, and there is no proof attached with such letters. The appellant has admitted receiving the request for call money from the Respondent Company, Therefore, the Appellant did nothing for more than 10 years to either pay the outstanding amount or remove objections from the transfer form.

10. It is averred by the respondent that the Petition is barred by limitation as the share transfer form was admittedly returned in the Year 2005 and the Petition is filed after 13 years in 2018. The appellant has not sent share transfer form in terms of Section 58 of the Companies Act, 2013 as the same was sent under Companies Act, 1956 and the Appellant has not challenged/questioned the grounds for return of his share transfer form/application. The appellant has concealed various material facts about the Shares stand forfeited. The Appellant has not challenged the forfeiture of shares and/or the procedure adopted for forfeiture of shares in the said Petition. Reliance has been placed on the judgement of the Hon'ble erstwhile Company Law Board, in case of K.B. Madhavan vs. Federal Bank Limited dated 21.07.2006 wherein the petition was dismissed for rectification of register in exactly similar facts and circumstances.

11. We have heard the learned counsel for the appellant and the respondent and have pursued the records carefully.

12. From the records and the submissions made by the parties, there are two issues to be adjudicated upon

i. Whether the present appeal is filed within the limitation.

ii. Whether the appellant has complied with the necessary provisions for the transfer of shares.

13. So far as the first issue is concerned, it is seen that the appellant has purchased 3900 shares from HMB Finvest Limited and executed a transfer deed. In order to transfer the shares, the Share Transfer Form dated 15.06.2005 has been filed. Furthermore, the allottee company has also received the dividend from the company which has been returned by letter dated 18.07.2005. It is

averred that the respondent company has to make a “call” in respect of the balance share money as the shares were partly paid up. The dividend amount has been returned so that it could be adjusted towards the balance payment of share call money. It is also submitted that the respondent company has written a letter dated 01.07.2005 to HMB Finvest Limited asking for the payment on partly paid shares and to pay the arrears of call money within 45 days. In pursuance of that letter, the petitioner has written letters dated 02.08.2005, 17.08.2005, 29.08.2005, and 10.09.2005, requesting to inform the pending amount with respect to the 3900 shares. HMB Finvest Limited has also written letters dated 13.07.2005 and 18.07.2005 asking for the pending amount. It is averred that after delivering such letters no response has been given by the petitioner companies and has violated the provisions of Section 50 of the Companies Act.

14. The petitioner has contended that they have sent a legal notice dated 07.12.2017 calling upon to transfer 3900 shares in his name and the respondent company has replied by notice dated 23.12.2017 stating that despite repeated demands the balance amount was not paid and the said shares were forfeited. As per Section 58 of the Companies Act, 2013 which is reproduced below:-

“Section 58: Refusal of registration and appeal against refusal.

*58. …..

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

(5) The Tribunal, while dealing with an appeal made under sub-section (3) or subsection (4), may, after hearing the parties, either dismiss the appeal or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6).........”

15. In this regard, the respondent has also attached the communications made to the transfer agent of SEBI for the transfers of shares from HMB Finvest Limited to the present appellant. No communication has been made by the appellant or the company to confirm the transfer of such shares. The company has received an intimation dated 30.07.2005 from the transfer agent stating the

reasons for the non-transfer of such shares. The communications made by the appellant by letter dated 02.08.2005, 17.08.2005 and 29.08.2005 made it clear that they have the knowledge of the fact that the shares were not transferred yet thereby asking for the payment of remaining call money. It is clear from the aforesaid provision that the limitation to file the present appeal is 90 days when there is no intimation received from the company. In this case after filing the application of the transfer of shares in the year 2005, no such intimation has been received by the appellant. The limitation of 90 days starts from the date of filing of application for transfer of shares to the Respondent-Company. If as no such intimation was received by the appellant, then he was required to approach the appropriate forum for redressal of his grievances. Hence, the limitation expires in 2005 itself and the present application is filed in 2018 for the rectification in the registers of the company. The appellant has also filed the CA No. 402/2018 for a condonation delay of 180 days in filing the present appeal, but this application is misconceived as the limitation would commence from 2005 instead of 2018. It is settled law that the limitation once commenced cannot be disrupted. Therefore, it can be safely concluded that the present application is beyond limitation.

16. Another issue before this Tribunal is whether the appellant has made compliance of all the necessary requisitions for the transfer of shares or not. It is seen from the allotment notice dated 15.05.1995 that the balance amount payable on the shares has to be paid on or before 30.06.1995 as per notice which has not been paid by the allottee company and the appellant has stepped into the shoes of the allottee company. The respondent company has also issued a request letter dated 24.07.2015 to the allottee company requesting to pay the balance amount of allotment money and a newspaper publication has also been made in this regard. The respondent company has followed the process for the forfeiture of the shares on account of non-payment of the allotment money. The lapse on the part of the appellant himself cannot make the appellant entitled to the relief as prayed in the appeal. It is worthwhile to note that the appellant has also not challenged the forfeiture of shares by the Respondent Company.

17. Resultantly. in view of the reasons recorded hereinbefore, the Company Appeal No.1/Chd/Pb/2018 and CA No. 402/2018 are dismissed and disposed of accordingly.

