

(2012) 04 CAL CK 0123

In the Calcutta High Court

Case No : APO No. 391 of 2011 and ACO No. 157 of 2010

Metro Infrastructure Development Ltd.

APPELLANT

Vs

GNB Credit Pvt.

RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Companies Act, 1956 — Section 108, 10F, 111, 111A

Citation : (2012) 3 CHN 440

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : R.R. Sen and K.R. Thakkar, for the Appellant; S.B. Mookerji, Lopita Banerji and T.K. Aich, for the Respondent

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J.—Two points have been urged in this appeal u/s 10F of the Companies Act from an order disposing of a prospective shareholder's petition for registration of the shares acquired. The company is in appeal. The company says that the Company Law Board erred in law in failing to appreciate the import of Article 5A of the articles of association of the company and the Company Law Board erred in law in permitting the respondent to have the share transfer form validated despite the form having once been used for lodging the shares for transfer with the company. The company considers the respondent undesirable to be made a member thereof. It is not necessary in the present context to go into the reasons for the company harbouring such a view. Upon the respondent lodging the share transfer form along with the share certificates with the company for registration of the transfer thereof in the name of the respondent, the company invoked Article 5A of its articles of association to decline to register the transfer. The relevant article provides as follows;

5A. The Board may subject to the right of appeal conferred by Section 111 of the Companies Act, 1956 decline to register:

The transfer of any shares to a person of whom they do not approve;

Any transfer of shares on which the company has a lien.

2. Following the company's rejection of the request to register the transfer, the respondent applied to the Company Law Board u/s 111A of the Act since the company in this case is a public company. The Company Law Board referred to the concept of free transferability of shares in a public company that the amended provisions of the Companies Act now recognise. However, the Company Law Board found that the share transfer form was not complete in all respects as the period of its validity has expired. While the Company Law Board upheld the respondent's contention that it was entitled to have the registration of the shares in its favour, since it found that the share transfer form was invalid when it had been deposited, it permitted the respondent to lodge the relevant documents afresh upon taking steps in accordance with law. The Central Government is authorised to extend the period of validity of a share transfer form. It, therefore, appears from the order of the Company Law Board that the registration of the shares in the respondent's favour may be a mere formality upon the respondent lodging the share certificates along with a valid share transfer form.

3. The argument that the appellant company makes is that the discussion by the Company Law Board on such aspect of the matter in the impugned judgment rules out the possibility of an unlisted public company retaining any discretion as to the desirability of the persons who seek to become members thereof. This, according to the appellant, may neither be the mandate of the statute or of any fundamental principle of company law. However, the issue that is raised by the appellant company cannot be received or assessed in the abstract since there is no factual foundation therefore. In an appropriate case, the Court may be called upon to evaluate whether any authority conferred by the articles of association on the directors of an unlisted public company to ascertain the desirability of having some persons as its members would be valid or not; but such question does not arise in the facts of this case. It is evident that the appellant company was once a private company. The appellant is now a public company. Article 5A of its articles of association has not been altered consequent upon the appellant converting itself from a private company to a public company. In such circumstances, Article 5A appears to have been rendered otiose upon the company becoming a public company.

4. At one point of time Section 111 was the only provision in the statute that provided for complaints being lodged either for the refusal in the registration of shares or for rectification of the members' register of any company. A slew of amendments followed upon the Depositories Ordinance (subsequently followed by the Act) being promulgated. section 111 of the Companies Act, with some minor modifications, was confined to private limited companies and section 111A was engrafted in respect of public companies. Though there are some judicial pronouncements that blur the distinction, such matter is not relevant for the

present purpose.

5. It is evident, therefore, that the right conferred by Article 5A of the articles of association of the appellant herein was subject to the right of appeal of the would-be shareholder u/s 111 of the Act. Since, upon the appellant becoming a public limited company, section 111 does not apply to it, the article appears to be a dead wood in the articles of association of the company. In the light of such factual position, the larger legal question that has been sought to be asserted by the appellant has no ground to stand on in the present circumstances.

6. As to the other aspect of the appellant's challenge, that the Company Law Board should have recognised that section 108 of the Companies Act was mandatory and should have held that there was no valid application for the registration of the transfer of the shares by the respondent, it appears that the Company Law Board was alive to the issue. The impugned order did not brush aside the appellant's objection u/s 108 of the Act, presumably on the understanding of the Company Law Board that the requisite duties as contemplated under such provision had to be complied with by a prospective shareholder seeking registration of the transfer of shares in its favour. The Company Law Board merely required the respondent herein to comply with the provisions of section 108 of the Act before lodging the shares and the transfer form for registration. The Company Law Board also ensured that the exercise of refusing the registration would not be repeated by the company by dealing with such aspect of the matter for which no fault can be found.

7. The order under appeal appears to be justified in its content and form. APO No. 391 of 2011 is dismissed. The connected application, ACO No. 157 of 2010, stands disposed of. The subsisting interim orders stand vacated.

8. There will be no order as to costs in either case. Urgent certified photocopies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.