
(2024) 02 NCLT CK 0057
In the National Company Law Appellate Tribunal
Case No : CP-55/ND/2022

Mr. Surender Singh Gakkhar

APPELLANT

Vs

Hemisphere Properties India Ltd

RESPONDENT

Date of Decision : 12-02-2024

Acts Referred:

Companies Act, 2013 — Section 56, 56(1), 56(2), 58, 58(3), 59, 232

Citation : (2024) 02 NCLT CK 0057

Hon'ble Judges : Ashok Kumar Bhardwaj, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Mukul Chandra, Asham Ahmed, Shabiasta Nabi, Harilal S., Ankita Sharma, Abhishek Dwivedi??

Final Decision : Dismissed

Judgement

1. The prayer made in the captioned application filed under Section 58 and 59 of the Companies Act reads thus:

“(a) direct the Respondent Company to transmit 3600 shares to the Petitioner;

(b) direct the Respondent Company to deliver the certificates of all shares transmitted to the Petitioner and register the transmission of shares in the Petitioner’s name;

(c) direct the Respondent Company to enter the Petitioner’s name in the register of members of the Respondent Company;

(d) direct the Respondent Company to pay damages in the sum of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) to the Petitioner for the willful inaction in registering the transmission of shares despite being served with a letter of intimation and compelling the Petitioner to approach this Hon’ble Tribunal for the redressal of his grievances; and

(e) pass such other or further order(s)/ direction(s) as may be deemed fit and

proper in the facts and circumstances of the case and to secure the ends of justice in favour of the Petitioner and against the Respondent Company.”

2. The facts of the case as mentioned in the petition filed by the petitioner are that he is an ex-employee of erstwhile Videsh Sanchar Nigam Ltd. (VSNL), and took retirement from service in the year 2003. At that time, he was holding the post of Deputy General Manager IT in VSNL. It is not in dispute that the Petitioner was holding 3600 shares qua the VSNL. Nevertheless, it is the case of the Petitioner himself that, he could sell the shares in open market, during the years 2005 to 2007. The averments made in para (I) (page-9) of the petition reads thus:

“(I) In between the years 2005 and 2007, many ex-employees of VSNL sold their shareholdings in VSNL. The Petitioner too sold his 3600 shares of VSNL during the same time. The share prices of VSNL were reduced by almost half in the share trading market within one year of the disinvestment as the share traders knew that VSNL shares to be purchased by them would not have non-core asset (surplus land of 773.13 acres) values in it.”

3. It is also not in dispute that much after the transfer/sale of the share by the Petitioner in open market, scheme of arrangement and reconstruction was entered into between the Tata Communications Limited (earlier VSNL) and M/s Hemisphere Properties India Ltd. The appointed date mentioned in the Scheme is 30th March, 2018. The National Company Law Tribunal could approve the scheme on 12.07.2018 and the order of NCLT was implemented by MCA on 05.08.2019. The Ld. Counsels for the parties are ad idem that the in terms of the aforementioned scheme of arrangement and reconstruction, 773.13 acres of land of VSNL (Tata Communications Ltd.) could be vested in M/s Hemisphere Properties India Ltd. The relevant excerpt of the Scheme reads thus:

4. The sole and the salient contention espoused by the Petitioner in the present Petition is that, might be the Petitioner had sold his shares qua VSNL (Tata Communications Ltd.) in open market during the years 2005 to 2007 but since the Company could transfer the surplus land to the Respondent herein before us viz. M/s Hemisphere Properties India Ltd, the Petitioner is entitled to hold share in the said company. As can be seen from Section 56 of the Companies Act, 2013. The company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of company a having no share capital other than transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer in such form as may be prescribed duly stamped and dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of 60 days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence along with the letter of allotment of securities. Section 56(1) of the Companies Act reads thus:

“56. Transfer and Transmission of Securities

[(1) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:

Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.]”

5. Section 58 of the Companies Act, 2013 provides for an appeal, if a private company limited by shares refuses, whether in pursuance of any power of the Company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company. Section 58(3) of the Companies Act of 2013 reads thus:

“58. Refusal of registration and appeal against refusal.

(3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.”

6. As can be seen from Index of the appeal, the present proceedings are instituted under Section 58 and 59 of the Companies Act. S. No. 1 to 4 of the Index reads thus:

7. As far as Section 59 of the Companies Act is concerned, if the name of any person is without sufficient cause entered into register of members of a company, or after having been entered in the register, is, without sufficient cause omitted there from, or if a default is made, or unnecessary delay takes place in entering in the register, the facts of any person having become or ceased to be a member, the person aggrieved or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to the Competent Court outside India, specified by the Central Government by notification in respect of foreign members or debenture holders residing outside India for rectification of the register. Section 59(1) of the Companies Act, 2013 reads thus:

“59. Rectification of register of members.

(1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.”

8. If we decipher Section 56(2) relied upon by Mr. Chandra, Ld. Counsel appearing for the Petitioner it provides that nothing in sub-section (1) shall prejudice the power of the Company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted. The Section 56(2) reads thus:

“56. Transfer and Transmission of Securities

(2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.”

9. Our attention is not drawn to any such law, by operation of which the Respondent before us is liable to register any number of shares in the name of the Applicant. The only plea espoused by Mr. Chandra is that since certain portion of land could be transferred from VSNL (Tata Communications Ltd.), qua which he was holding the shares, the shares qua the Respondent should be registered in his name. We are unable to understand that when the Applicant had sold his shares during the years 2005 to 2007 in open market, how after a period of almost 14 years, when certain portion of land owned by VSNL (Tata Communications Ltd.) was transferred to the Respondent herein before us would entitle him to an independent shareholding qua the Corporate debtor merely because such land has been transferred to the Respondent. The conditions mentioned under Section 56 and 59 are very clear. In terms of the said provisions, a Company shall not register a transfer of securities of the Company or the interest of a member in the company in the case of a company having no share capital other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument transfer, in such form as may be prescribed. In terms of the provisions of Section 56, the only condition is that a person should hold securities qua the company, but sale of the same will not be registered in the name of the transferee unless a proper instrument giving effect to the transfer is executed. Section 59 also simply provides that if the name of a shareholder is either entered or omitted after having been entered in the register of members by mistake in register of company, an appeal may be preferred before this Tribunal for rectification of the error. In all the aforementioned circumstances, a person who preferred an appeal before us needs to be holder of the security qua

the company and their need to be an instrument executed, transferring the shares in his favour or there should be some such provision of law, by operation of which, certain shares are required to be transmitted to him. In the present case, we could still endeavour to find out the ramification of the aforementioned scheme of arrangement and reconstruction under Section 232 of the Companies Act, 2013, if either on the date of execution of the scheme i.e. 30.03.2018 or on appointed date or on the date of approval of scheme by MCA, the Applicant could be holder of security/shares qua the VSNL (Tata Communications Ltd.). But as is the admitted position, the Applicant sold his shares in the open market way back during the years 2005 to 2007, i.e. much before the scheme of arrangement and reconstruction could be executed.

10. We are not aware of any such law, that the holder or the allottee of shares qua the company can claim that his shareholding is having a break up qua the different assets of the company like land etc. The Ld. Counsel appearing for the Applicant could not draw our attention to any such law. The petition is misconceived and is accordingly dismissed.