(2024) 03 NCLT CK 0058

In the National Company Law Tribunal

Case No : C.P. No. 70 Of 2016

Mr. Vivek Vijayanand Makar APPELLANT

Vs

Oriental Rubber Industries Limited & Others RESPONDENT

Date of Decision : 27-03-2024

Acts Referred:

Companies Act, 2013 — Section 244
Companies Act, 2019 — Section 58, 59Companies Act, 1956 — Section 43A

Citation : (2024) 03 NCLT CK 0058

Hon'ble Judges : V.G. Bisht, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Nausher Kohli, Shahdab Jan, Jash Gandhi, Mustafa Doctor, Ammar Faizullabhoy, Aashdin Chivalwala, Shreyas Lavekar

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (Technical)

1. This Company Appeal 70/2016 is filed by Vivek Vijayanand Makar on 13.05.2016 under Section 58 and 59 of the Companies Act, 2019 seeking following reliefs: -

1.1. Administrator(s) and/or Special Officer(s) and / or Independent Committee of Management be appointed to carry on the business of and to manage the affairs of the Company for such period and on such terms and conditions as this Hon'ble Board may deem fit,

1.2. That this Tribunal be pleased to restrain the Respondent Nos. 2 to 9, their respective nominees, transferees and / or assigns from in any manner selling, transferring, alienating, creating third party right, title and/or interest and / or otherwise dealing with the shares of the Respondent No. 1;

1.3. That this Tribunal may be pleased to order and direct the Respondents to grant inspection of the all registers, returns and other documents / records of the Respondent No. 1 from 1993 onwards in terms of the Petitioner's letter dated

29th March, 2016

1.4. That this Tribunal may be pleased to direct ROC at Pune and Mumbai to grant inspection of the all registers, returns and other documents / records of the Respondent No. 1 from 1993 onwards in terms of the Petitioner's letter dated 29 March, 2016;

1.5. That this Tribunal may be pleased to direct all documents including share transfer forms, bank accounts statements showing payment of consideration for the alleged transfer of Petitioner's 56,850 shares of Respondent No. 1;

1.6. That this Hon'ble Board be pleased to restrain the Respondent Nos. 2 to 4, their servants, agents and assigns, by an order and injunction of this Hon'ble Board from in any manner:

i. increasing the share capital or issuing or allotting any shares of Respondent No. 1;

ii. interfering with or disturbing the shareholding pattern of the Respondent No. 1; and / or

iii. creating any liability in the Company, giving loans or transfers in the Company, save and except with the prior consent of the Petitioner.

2. The Respondent No. 1 was set up and founded on 20th January 1949, as a private limited company, by Late Mr. Sadanand Hakimrai Makar (the grandfather of the Petitioner as well as of the Respondent Nos. 2 and 3). Once his son, Mr. Vijeynand Makar (the father of the Petitioner, Respondent Nos. 2 and 3 and husband of Respondent No. 5) attained majority, he became a part of the family business and managed the affairs of the Respondent No. 1 along with his father.

2.1. On 19th January 1965, Late Mr. Vijeynand Makar was inducted as a Director of the Respondent No. 1. Under Late Mr. Sadanand Hakimrai Makar's management and control, the Respondent No. 1 flourished and during the period from 1952 to 1975, the Respondent No. 1 rose to become the second largest manufacturer of rubber in the country.

2.2. On 6th May 1975, the Respondent No. 1 was deemed to be a public limited company under Section 43A of the Companies Act, 1956. In or about 1978, the Petitioner joined the Respondent No. 1 and assisted his grandfather, Late Mr. Sadanand Hakimrai Makar in managing the family business by undertaking certain responsibilities in the Respondent No. 1

2.3. In or about 1979-1980, the Respondent No. 1 ran into financial difficulties and managerial problems due to labour strike, as a result of which the Respondent No. 1's manufacturing unit ie. the factory had to be closed down. As a result, from the year 1988-1989 onwards, the Petitioner worked at Trikaya Grey Advertising as a part of the Financial Marketing Division and continued to do so until the year 1992. The Petitioner had been living independently since.

2.4. During the intervening period, on 11th January 1985, a trust deed was executed by (i) Late Mr. Sadanand Hakimrai Makar, as the 'Settlor' (ii) Late Mrs. Premavati Makar (the Petitioner's grandmother) and (iii) Late Mr. Vijeynand Makar (the Petitioner's father) as 'Trustees (Trust Deed). By virtue of the Trust Deed, Late Mr. Sadanand Hakimrai Makar as 'Settlor' had made an irrevocable transfer and assignment of 32,000 shares of Rs. 10/- each held by him in the Respondent No. 1 along with cash of Rs. 501/- as well as any other money / investment that may be added to the fund (Trust Fund) in favor of a non-discretionary trust i.e. Vivek Family Trust, for the benefit of the Petitioner, the sole beneficiary thereof.

2.5. As per Clause 7 of the Trust Deed, the Trustees were required to distribute the Trust Fund to the Petitioner on the day after expiry of 30 years from the date of execution of the Trust Deed or on any earlier fixed by the Trustees in writing not earlier than one year from date of execution of the Trust Deed.

2.6. Further, under Clause 11 of the Trust Deed, the Trustees were expressly authorized to accept gifts / money/property for the benefit of the Trust from the settlor/ Late Mr. Sadanand Hakimrai Makar or any other person, and such gift/ money / property was to be held by the Trustees as an accretion to augment the Trust Fund and the same would form part of the original Trust Fund.

2.7. In pursuance thereof, a gift deed dated 14th January 1985 was executed by Late Mrs. Premavati S. Makar (the Petitioner's grandmother and a trustee of Vivek Family Trust) whereby out of 1,20,144 shares of Rs. 10,232/- each held by her in the Respondent No. 1, Late Mrs. Premavati Makar made an unconditional and irrevocable gift of 32,000 shares of Rs. 10/-each in the Respondent No. 1 in favour of the Petitioner, the beneficiary of Vivek Family Trust (Gift Deed).

2.8. It was further recorded in the Gift Deed that Late Mrs. Premavati Makar had delivered the share certificates and transfer forms to Late Mr. Vijeynand Makar (the Petitioner's father) to hold the same in his capacity as a trustee of the Trust and for the purpose of transferring the same to the Petitioner. It is pertinent to note that Late Mr. Vijeynand Makar had signed the Gift Deed accepting the gift and declaring that the same will be the absolute property of Vivek Family Trust

2.9. Therefore, the Trust Fund of the "Vivek Family Trust held an aggregate 64,000 number of shares. The said shares are to belong to the Petitioner alone.

2.10. Similar Trusts with 64,000 shares were executed/ created for the benefit of Respondent No. 2 and Respondent No. 3 and were termed as "Vikram Family Trust and Vishal Family Trust. Besides the aforesaid 64,000 shares of the Respondent No. 1 which were held by the "Vivek Family Trust as a part of the Trust Fund created under the Trust Deed, as on 31 March 1986, the Petitioner held 52,612 shares of the Respondent No. 1 which then constituted approximately 20% of the total shareholding of the Respondent No. 1 at the relevant time. After the demise of the Petitioner's grandparents who were also two of the trustees of Vivek Family Trust, Late Mr. Vijeynand Makar, being the

Petitioner's father and the only surviving Trustee of Vivek Family Trust, continued to hold the share certificates and transfer forms in respect of 64,000 shares held in 'Vivek Family Trust', for the benefit of the Petitioner, in terms of the Trust Deed. During such time, the Respondent No. 1's new factory was commissioned at Koregaon Bhima, Pune and differences began to develop in the style of working between the Petitioner and the rest of his family. In view thereof, at the request made by the Petitioner's father and in order to maintain good relationship with his family members and avoid conflicts, the Petitioner discontinued his involvement in the business of the Respondent No. 1. When the Petitioner had acquired 56,850 shares of the Respondent No. 1 in the year 1993-1994, the Petitioner held over 20% of the total shareholding of the Respondent No. 1.

2.11. In or about 1993, when the Respondent No. 1's factory was re-opening and the Respondent No. 1 resumed its business after inordinate delay and huge cost overruns, the Petitioner was asked to re-join the Respondent No. 1 and accordingly, the Petitioner assisted his grandfather and father in running the affairs of Respondent No. 1.

2.12. On 1st September 1990 and 1st October 1992, Respondent Nos. 2 and 3 were appointed as directors of Respondent No.1. On 5th May 1994, a Memorandum of Understanding of Family Arrangement (MOU) was executed by and between Late Mr. Vijeynand Makar, Respondent No. 5, the Petitioner, Respondent Nos. 2, 3, 6 and 7 (Family). The MOU expressly recognizes, records and accepts the Petitioner's ownership of 56,850 shares of Respondent No. 1 although the Register of Members for the financial year ending 31st March 1986 records 52,612 shares in the name of the Petitioner. It, inter alia, records that 56,850 equity shares of the Respondent No. 1 held by the Petitioner would be purchased by his father, Late Mr. Vijeynand Makar for Rs. 56,850/- on basis of principles of valuation on or before 31. 5.95. The Petitioner further states that what was settled in 'Vivek Family Trust' does not form part of the MOU.

2.13. The MOU was however, abandoned and never acted upon by any of the parties thereto. None of the terms were performed and the MOU lapsed on account of non-performance and subsequent death of the family members. It is submitted that the Petitioner's 56,850 equity shares of Respondent No. 1 were never purchased by Late Mr. Vijeynand Makar and neither did the Petitioner receive any amount from the Respondent No. 1 / Mr. Vijeynand Makar towards sale of the same or otherwise. The Petitioner never executed any transfer forms and / or accorded his consent for the sale and/or transfer of his 56,850 shares to his father.

2.14. In early 1995, the Respondent No. 1's factory had to be closed down for a couple of weeks as the Respondent No. 1was not performing well due to lack of availability of raw material / paucity of funds. Since the MOU was abandoned and Respondent No. 1 was in need of funds, in good faith and considering Respondent No. 1 is a family company, the Petitioner advanced approximately

Rs. 1,50,00,000/-(Rupees One Crore Fifty Lacs) to the Respondent No. 1 as and by way of a loan at an agreed interest rate of 21% per annum with quarterly rests. The Petitioner accumulated this sum by selling stocks, personal borrowings from relatives and friends and collected monies received from the rent collected from his apartment to revive the Respondent No. 1.

2.15. The Petitioner submits that the liability towards the outstanding dues of the Petitioner is admitted and acknowledged by the Respondent No.1 and various part payments are made to the Petitioner from time to time. The Petitioner states that in fact there has been regular discussions and meeting held between the parties and assurances and correspondence exchanged from the Respondent No. 1 and with the Petitioner acknowledging the outstanding amounts payable towards the Petitioner from time to time and at relevant time late Mr. Vijeynand Makar and Respondent Nos. 2 to 4 committed and assured to honor such admitted liabilities.

2.16. The Petitioner states that as on 25 September 2015, the Petitioner is entitled to receive a sum of Rs. 34.83 crores from the Respondent No.1. However, the modus operandi of the Respondent Nos. 2 & 3 as stated herein creates justifiable and reasonable doubts as to such bonafide commitments to continue in future.

2.17. On 11th January 2015, thirty years expired from the date of execution of the Trust Deed, and as per Clause 7 of the Trust Deed, the Trustees were obligated to distribute the Trust Fund to the Petitioner on the day after expiry of 30 years from the date of execution of the Trust Deed. The Petitioner was under the impression that once the Trust matured in the year 2015, Respondent Nos. 2 and 3 would suo motu transfer the shares of the Respondent No. 1 forming part of the Trust Fund on such date, in favor of the Petitioner.

2.18. The Petitioner states that the Petitioner orally communicated with his brothers, the Respondent Nos. 2 and 3, being directors of the Respondent No. 1 and the heirs of the last surviving trustee Late Mr. Vijeynand Makar, and requested them to transfer the total of 64,000 shares along with all accruals, benefits and entitlements thereof, in his favor. The Petitioner had faith and trust in his brothers and did not suspect their bonafides and therefore, felt no need to formally write to the Respondent Nos. 1 to 4.

2.19. Accordingly, the Petitioner requested the Respondent No. 1 and Respondent Nos. 2 and 3 for transfer of his entitlement in the said trust. However, the Petitioner did not receive any clear response with respect to the said shares.

2.20. Thus, in circumstances aforesaid and owing to the indifferent attitude of the Respondent Nos. 1 to 4 and apprehensive that the Respondent No. 1 was not disclosing the true position, the Petitioner was constrained to conduct a search of the records with the Registrar of Companies sometime in the month of June 2015. The Petitioner accordingly instructed his Advocates to conduct a search of the records of the Respondent No. 1.

2.21. Upon receipt of results of the search recovered from the Web Portal of the Ministry of Corporate Affairs received in June 2015, the Petitioner for the first time, learnt that 64,000 shares held by the 'Vivek Family Trust' were not reflected in the Annual Returns for FY 2014 filed by the Respondent No. 1. The Petitioner was also shocked to learn that his name was not reflecting in the Annual Returns for FY 2014 in respect of 56,850 shares continuously held by him since the year 1993-1994.

2.22. In view thereof, the Petitioner instructed his Advocates to carry out a further detailed search of the entire past records of the Respondent No. 1 as available on the Web Portal of the Ministry of Corporate Affairs (MCA) and also a physical search of the records with the Registrar of Companies at Pune and Mumbai through a practicing Company Secretary. Accordingly, somewhere in July-August 2015, the Petitioner through his Advocates engaged the services of M/s. Pawan B. Randad & Co. practicing Company Secretary at Pune, and Mr. Mahesh Hurgat, the practicing Company Secretary at Mumbai, respectively, for conducting search of the records of the company. The Petitioner states and submits that the records prior to year 2003 were not available for inspection at the Registrar of Companies at Pune. The Petitioner was informed that inspection of records which may be in godowns / old records in Mumbai will be provided only if appropriate court orders passed in this regard. Upon taking the search, the Petitioner for the first time, learnt that:-

(i) the Petitioner's name has been wrongfully and illegally, deleted and / or removed from the list of shareholders of the Respondent No. 1 in respect of the 56,850 shares of the Respondent No. 1 held by him as will be clear from the copies of Annual Returns for Financial Year ending 2003, 2005 to 2007 and FY ending 2009 to 2014 which are. annexed as Annexure 'G-1' to Annexure 'G-10' respectively. The Petitioner states that the Annual returns for Financial Year ending 2004 & 2008 are not available on the MCA portal and hence the Petitioner calls upon Respondents to produce same and crave leave to refer to and rely upon them when produced.

(ii) on 23rd September 2006, 64,000 shares from the 'Vivek Family Trust' had been illegally and wrongfully transferred to the Petitioner's father, Late Mr. Vijeynand Makar (who died subsequently on 2nd August 2012), without the knowledge or consent of the Petitioner. The same is evident from the details of transfer of shares and list of shareholders reflecting in the Annual Return for FY 2006 filed by the Respondent No. 1. Hereto annexed and marked as Annexure-H is a copy of the Annual Return for FY 2006.

(iii) Just like Vivek Family Trust, two other Trusts namely Vikram Family Trust (for the benefit of Respondent No. 2) and Vishal Family Trust (for the benefit of Respondent No. 3) held 64,000 shares each. These shares were transferred by the respective Trusts to Respondent Nos. 2 and 3 on 23rd September 2006 i.e.

the same day on which/ the Petitioner's shares were fraudulently transferred in the name of Late Mr. Vijeynand Makar instead of the name of the Petitioner in whose name the said shares ought to have been transferred and vest but the shares have not been transferred in the name of the Petitioner.

(iv) Respondent Nos. 2 and 3 used the Petitioner's father Late Mr. Vijeyanand Makar as a conduit to fraudulently transfer the Petitioner's entire shareholding to themselves. It appears that 64,000 shares from the Petitioner's 'Vivek Family Trust' were first transferred by Respondent No. 2 / Respondent No. 3 in their capacity as directors to Late Mr. Vijeyanand Makar's name and thereafter, obtained further transfer from Late Mr. Vijeyanand Makar to themselves and have subsequently changed the folio numbers with malafide intentions. The Petitioner is not aware how this was done. To obfuscate/ cover up this modus operandi, Respondent No. 2 / Respondent No. 3 coerced the Petitioner's father into preparing a bogus Will dated 9th March 2001 The Petitioner denies the said Will and in any event, the said Will has not been probated and cannot be acted to the prejudice and against the rights and entitlements of the Petitioner. The Petitioner reserves his rights to challenge the said Will at later stage by way of separate proceedings as may be advised.

(v) The modus operandi of the Respondent Nos. 2 & 3 is further evident from the fact that, the Respondent Nos. 2 & 3 taking advantage of their dominant position and exercising undue influence over the Petitioner's father, Late Mr. Vijeyanand Makar, on or about 15.11.2011, surreptitiously obtained transfer of the shares held in trust of the Petitioner from their father. It is also significant to note that this transfer was done during the last phase of life of Late Mr. Vijeyanad Makar when he was old and ailing. The aforesaid information is gathered from the ROC records search conducted recently by the Petitioner.

2.23. The search result demonstrates that the Respondent Nos. 1 to 3 in collusion and connivance with Respondent Nos. 4 to 9 have perpetrated fraud on the Petitioner by illegally usurping his shares of Respondent No. 1, and deprived him of his legal entitlement including the accruals, benefits and entitlements arising therefrom.

2.24. Clause 10 of the Trust Deed provides that no part of the Trust Fund or income of the Trust will be paid or applied for the benefit of the Settlor. The Term 'Settlor' includes heirs, administrators and executors. Therefore it is submitted that no shares could be transferred by Late Mr. Vijeynand Makar to himself from the Trust. This transfer itself is non-est, void, ab initio and creates no right, title or interest in favor of the transferee (the Petitioner's father). The Petitioner's father, Late Mr. Vijeynand Makar who was the sole surviving trustee of 'Vivek Family Trust' was made to act in breach of his fiduciary duties as a director of the Respondent No. 1 and as trustee under the Trust Deed, by Respondent Nos. 2 and 3. The instigation and collusion of Respondent Nos. 2 and 3 who also were whole-time directors of the Respondent No. 1 at the relevant time in FY 2005-2006 is obvious. The Respondents wanted to usurp the entire control of

Respondent Nos. 1, 2 and 3 also wanted to resile from their obligations of repaying the loan of the Petitioner. Respondent Nos. 2 and 3 have breached their fiduciary duties as directors of the Respondent No. 1. Similarly, Respondent Nos. 2, 3 and 5 (who were responsible as trustees after the death of Late Mr. Vijeynand Makar) have also acted in breach of their fiduciary duties as trustees of the Vivek Family Trust and against the interests of the Petitioner.

2.25. It is obvious that Respondent Nos. 2 and 3 ensured that shares in their respective Trust were transferred to their individual names, whilst shares of Vivek Family Trust were illegally first transferred to the father and thereafter to themselves instead of the Petitioner's name and the said shares ought to have been transferred to the Petitioner's name. The fraud is ex facie apparent. Respondent Nos. 2 and 3 have also acted in breach of their fiduciary duties as joint managing directors of the Respondent No. 1. Respondent No. 4 being a director of the Respondent No. 1 has also breached fiduciary duty owed to the Respondent No. 1. The Petitioner states that the power to issue and / or transfer shares is a fiduciary power that the Board of Directors must exercise in a bonafide manner, for a proper purpose and in the interest of the Respondent No. 1 and without any ulterior motive. The Directors' powers ought not be exercised for an improper purpose such as excluding a substantial shareholder altogether for personal gains and ulterior motives.

2.26. On an examination of the Annual Returns of the Respondent No. 1 for FY 2003 to 2014, the Petitioner also noticed that in the year 2007 (immediately after the 64,000 shares were illegally transferred from the Vivek Family Trust) and also in the year 2012, the Respondent No. 1 had issued bonus shares to all its shareholders. Further, the authorized share capital had been increased twice, in the year 2005 and 2012. The Petitioner was kept in dark of these developments/ changes despite being a shareholder of the Respondent No. 1. The Respondent Nos. 2 to 4 ought to have given mandatory notice to the Petitioner as regards the meetings in which the decision for issuance of bonus shares and increase in share capital was taken, considering that the said decision would adversely affect the rights and interests of the Petitioner in the Respondent No. 1. No notices of any AGM, EOGM, etc. were served on the Petitioner. It is apparent that the real motive of the Respondent Nos. 2 and 3 in increasing the authorized share capital and issuance of bonus shares was to unlawfully alter the voting power in the Company and also to unlawfully enrich themselves by offering shares to themselves.

3. Respondent No. 5 has filed the reply stating that as the Respondent No. 1 company was a loss making company and as the shores had no value and also in order to insulate himself from any liabilities and claims which may arise due to various litigations in which the Respondent No.1 Company was engaged at that point of time as well as due to the inter personal differences which the Petitioner had with his father (Late Mr Vijeynand Makar) and grand father (Late Mr Sadanand Makar), the Petitioner gifted his 52.612 shares in the Respondent No.1

Company to me on 9th September, 1991 and accordingly signed transfer forms with respect to 52.612. shares held by him. The duly signed share transfer forms for transfer of 52.612 shares were accordingly submitted to the Respondent No.1 company. Thereafter, the transfer of the said shares was approved by the Company and the said shares were transferred to me on 30th September. 1991.

3.1. I have been receiving all entitlements including the accruals, benefits and entitlements arising in respect of the 52,612 shares transferred to me by the Petitioner and the shares originally owned by me of Respondent No.1 company. I say that I have received notices of meetings and attended shareholder meetings and exercised my voting rights based on these shares since 1991. I say that in the year 2008 and 2013, 1 have received bonus shares and dividends on the basis of such shares.

4. Respondent Nos. 1 to 4 and 6 to 9 have filed written submissions stating that Petition is barred by delay and latches at the Petitioner seeks to challenge the transfer of shares which have taken place in the year 1991 and 2006. In the Petition, the Petitioner has falsely contended that it was only in the month of June-July 2015, that the Petitioner for the first time learnt that the Respondents have unlawfully and fraudulently usurped the entire shareholding of the Petitioner held in Respondent No. 1. It is pertinent to note that the Petitioner carried on his own business from the registered office of Respondent No. 1 till the premises was vacated by Respondent No. 1 in the year 1999. Neither any notice of any Annual General Meeting or Extra Ordinary General Meeting was served on the Petitioner since the year 1991 nor any dividend was paid to him. The Petitioner never raised any grievances or made any enquiries for not receiving the notice or dividend from Respondent No. 1.

4.1. Petition is not maintainable for want of jurisdiction as the Petitioner seeks to challenge the acts of a trustee of a private trust. The jurisdiction of the National Company Law Tribunal under Insolvency and Bankruptcy Code, 2016 is summary in nature and not as extensive as a Civil Court to enquire into the validity of documents and the disputes arising therefrom. In the matter of Aruna Oswal v. Pankaj Oswal and Ors. (2020) 8 SCC 79, the Hon’ble Supreme Court in paragraph 33 held that the jurisdiction of National Company Law Tribunal does not extend to determination of disputes as to succession or ownership of shares and a proper forum for the same is a Civil Court.

4.2. Petition is not maintainable as the Petitioner is not a shareholder.

5. The Respondent No. 3 has also placed on record (i) Notice dated 17 September 1991, of Board Meeting to be held on 30 September 1991, (ii) Minutes of the Board Meeting held on 30 September 1991, in which the resolution for effecting transfer of the 52,612 shares of the Petitioner in favour of Respondent No. 5 was passed, and (iii) cancelled Share Certificates of Respondent No. 5 prior to consolidation, showing endorsement of transfer from Petitioner/Applicant to Respondent No. 5 in the year 1991.

5.1. On 8 September 2006, the Late Mr. Vijeynand Makar addressed a letter to the Petitioner inter alia A family arrangement mediated by Mr. L.V. Merchant was reached among the family members and accordingly a Memorandum of Understanding dated 9th October 1994 was executed ("MoU/Family Arrangement"). As per the MoU/Family Arrangement, the shares of the Respondent No. 1 Company held by the 'Vivek Family Trust' of which the Petitioner was the beneficiary, were to be transferred in the Late Mr. Vijeynand Makar's name

6. We have heard learned Counsel and perused the material on record.

6.1. The Petitioner has claimed transfer of 52612 shares held by him in his name in the Respondent Company and further claimed ownership of 64000 shares of the Respondent Company which were to be bestowed upon him upon maturity of trust in 2015 under terms of Private family trust in his name settled by his grand father. These share in his name are stated to have been transferred fraudulently by the Respondents in 1991 and shares in name of trust in the year 2006. The Petitioner has filed this Petition in 2016 contending that he came to know about transfer of shares standing in his names and further shares to be transferred to him by the private family trust in 2015 only.

6.2. Since, the Petitioner have claimed ownership of 56,850 shares (Originally 52,612 shares) in the Respondent Company and has claimed that these shares have been fraudulently transferred by the Respondents, which include the Respondent Company as well, we are of considered view that the present petition is maintainable on this ground meeting the threshold in terms of section 244 of the Companies Act, 2013.

6.3. We further notice that the shares standing in the name of the Petitioner were transferred in the year 1991 pursuant to deed of gift executed by him on 9th September, 1991 in favor of Respondent No. 5, his mother and the all the benefits arising from these shares as well as notices in relation to meetings of the company were given to the Respondent No. 5. The shares standing in name of Vivek Family Trust were transferred in name of Petitioner’s father in terms of deed of family arrangement vide Memorandum of Understanding dated 9th October 1994, whereby the shares in the name of trust, of whose the Petitioner was beneficiary, were to be transferred to his father after the Petitioner have been given one residential flat in Malabar Hills under the family arrangement. The Petitioner’s reliance on a Memorandum of Family Arrangement dated 5 May 1994 to prove his entitlement to 52,612 is not a tenable proposition considering the fact the said MOU is stated to have been executed on a stamp paper issued on 4th May, 1995.

6.4. We find that the Petitioner have never raised any grievance in so far as non-receipt of notice for the Shareholder’s meeting of the Respondent Company is concerned. On the other hand, the Petitioner’s mother i.e. Respondent No. 5, the donee of shares has affirmed that these shares were gifted by her son and duly transferred in her name on the basis of validly executed transfer deed. The Respondent No. 3 has placed on record the relevant documents before us evidencing the proceedings for transfer of these shares. It is not the case of the Petitioner that he is not aware of the procedures of company, while he himself claims to have been involved in Respondent Company's business. These facts clearly evidence that the Petitioner has filed this petition as anafter thought in so far his claim of ownership of 52,612 shares is concerned and such claim having been filed after expiry of 24 years is clearly barred by limitation as well as on ground of delay & laches.

6.5. In so far as the Petitioner claim for 64,000 shares previously standing in the name of Vivek Family Trust is concerned, we find that transfer of shares from the trust in favor of Petitioner's father took place in pursuance of the MOU dated 9.10.1994 and the genuineness of the same has been confirmed by Mr. L.V. Merchant. Further, Mr. L. V. Merchant has furnished his Affidavit and stated on oath that the Memorandum of Family Arrangement dated 9 October 1994 was prepared by him in his own handwriting and the same was executed by the parties in his presence (Annexed – Affidavit of Mr. L. V. Merchant at Exhibit B/Pg 128 of the Respondent No. 3's Sur Rejoinder). Pursuant thereto, Respondent No. 1 transferred the 64,000 shares to the late Mr. Vijeynand Makar, petitioner's father. pursuant to a valid transfer request from the two Trustees of the Trust, Mr. Subhash Chander Khurana and Mr. Vijeynand Makar, with requisite Transfer Forms and Share Certificates. The share transfer forms were duly signed by the two Trustees of the Trust i.e. Mr. Subhash Chander Khurana and Mr. Vijeynand Makar. Accordingly, we cannot find any wrong in so far as action of Respondent No. 1 is concerned.

6.6. As regards the Petitioner's contention that the trust property could not have been transferred to a person other than the named beneficiary and such transfer was done fraudulently, we find that the Petitioner has affixed his signature on MOU thus admitting to such transfer. We find merit in the contention of the Respondents that the Petitioner, having received the fruits of MOU dated 9 October, 1994 can not be permitted to deny the corresponding obligations attached to such benefits falling in the share of Petitioner. In the matter of R.N. Gossain vs Yashpal Dhir, (1992) 4 SCC 683, the Hon'ble Supreme Court observed in paragraph 10 that "Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage".

6.7. In view of the above, we do not find any merit in this Petition as no case of oppression or mismanagement has been made out by the petitioner. Accordingly, we are of considered view that this Petition deserves to be dismissed.

7. In view of the above, CP 70/2016 is dismissed as not maintainable and disposed of accordingly. CA 10/2017 is accordingly disposed of.

