
(2005) 08 CAL CK 0009

In the Calcutta High Court

Case No : A.C.O. No. 215 of 2004 and A.P.O.T. No. 743 of 2004

Peerless General Finance and Investment Co. Ltd.

APPELLANT

Vs

Poddar Projects Limited and Another

RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Companies Act, 1956 — Section 108, 108(1), 108(1A), 109, 111
Limitation Act, 1963 — Section 5
Transfer of Property Act, 1882 — Section 6

Citation : (2006) 4 CHN 586 : 108 CWN 1005 : (2008) 81 SCL 51

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Sudipta Sarkar, Abhijit Chatterjee and Suprio Ranjan Saha, for the Appellant; Sanjib Banerjee, Sourya Sadhan Bose and S. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—Poddar Udyog Limited (hereinafter referred to as "Udyog") was holding the subject shares in the Peerless General Finance & Investment Co. Ltd. (hereinafter referred to as "Peerless"). Under a scheme of arrangement sanctioned by this Court on August 19, 1997 a part of the business division of Udyog was transferred to Poddar Projects Limited (hereinafter referred to as "Projects") which included the subject shares. On September 3, 1999 Project sold the shares to the respondent No. 2, Vijaya Finance Corporation Ltd. (hereinafter referred to as "Vijaya"). Advocate for Vijaya lodged the shares with Peerless for registration on November 12, 2001. On January 9, 2002, Peerless refused such rectification and intimated to the Advocate. On May 16, 2002 the shares were again lodged for registration on behalf of Project, the same was refused by Peerless on August 27, 2002. In none of those refusals Peerless assigned any reason in detail. Project and Vijaya both approached Company Law Board (hereinafter referred to as "CLB") by filing an application under Section 111A of the Company Act, 1956 on October 28, 2002. In course of

hearing pursuant to the direction of CLB Peerless disclosed the resolution by which the rectification was disallowed. The CLB upon hearing the parties allowed the application of Project by directing Peerless to register the original shares in favour of Project however, granted on relief to Vijaya, Vijaya accepted the order and did not prefer any appeal. Peerless being dissatisfied with the decision of the CLB filed the instant appeal which was heard by me on the above mentioned dates.

Reason for refusal assigned by Peerless in Board Meeting:

- (i) No application for registration of transfer was made either by transferor or by transferee. Lawyer's letter could not be said to be compliance of Section 108(1).
- (ii) Transfer deed was not delivered in terms of Section 108(1A). Hence, lodgment was not a good delivery.
- (iii) Transfer in favour of Vijaya was in violation of Security Contract (Regulation) Act, 1956 since it was not a spot delivery contract.
- (iv) The transferee was not a desirable person.
- (v) Proper cancellation of stamp was not made.

Findings of CLB:

- (i) Under the proviso to Section 111(2) the company was entitled to refuse rectification on cogent ground.
- (ii) Section 111A(3) provided for rectification and proviso to Sub-section (2) provided for refusal on sufficient cause. Hence the Board was entitled to refuse on sufficient cause.
- (iii) Even in case of unlisted shares Section 111A was applicable.
- (iv) Once Project was not registered as a shareholder subsequent transfer in favour of Vijaya could not be acceded to.
- (v) Rights of the third parties in case of amalgamation/ arrangement was not affected and Peerless had the right to refuse registration on sufficient cause notwithstanding the sanction of the scheme.
- (vi) The grounds on which Project was refused were not tenable save and except in respect of the bonus shares. Project became entitled to claim registration, after the same having been assigned to them by virtue of such sanction of arrangement and Peerless was not right in refusing such on the plea of desirability while considering rectification in favour of Projects.
- (vii) Order of sanction should be construed as an instrument of transfer and as such there was no fresh instrument executed u/s 108. Therefore, there was no necessity of compliance of Section 108.
- (viii) The plea of limitation was not tenable in view of the fact that Section 5 of

the Limitation Act would apply assuming there was a delay.

Points urged before me:

(i) Order of sanction binds parties to the scheme. Hence, Project should have lodged shares for rectification within the time stipulated u/s 108. Order of sanction cannot be termed as the instrument of transfer.

(ii) Assuming the order of sanction can be considered as instrument of transfer the application of Project to the company for rectification was barred by limitation and the principles of Section 5 of the Limitation Act could not be invoked for condoning such delay.

Cases cited:

(i) 100 C L J 70 Albion Jute Mills Co. Ltd. v. River Steam Navigation Co. and Ors.

(ii) Singer India Ltd. Vs. Chander Mohan Chadha and Others,

(iii) Hindustan Lever and Another Vs. State of Maharashtra and Another,

(iv) Vasudev Ramchandra Shelat Vs. Pranal Jayanand Thakar and Others,

(v) Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others,

(vi) 2004 1 C LJ Cal 267 Madhu Intra Ltd. and Anr. v. Registrar of Cos. West Bengal and Ors.

Statute Law:

Amalgamation/Compromise:

2. Sections 391, 392 and 394 and together provide that a scheme for amalgamation/arrangement would bind the class of persons between whom the same is propounded, in case of amalgamation after the order of sanction the rights and liabilities of the transferor automatically merge with the transferee company without any further act being done. After the same is done the transferor company is dissolved without winding up. It means that two separate entities by order of amalgamation merge and become one single entity. It is a merger in all respect. In case of arrangement it is either partial merger and/or a partial demerger. In case a partial merger by way of arrangement the part of the undertaking of a company is merged with the transferee company and in such case also no further act or deed is contemplated under these provisions.

Rectification/Transfer:

3. Sections 108, 109, 111 and 111A are relevant for consideration herein. Section 108 is a negative Section where transfer of shares is prohibited unless an appropriate instrument duly stamped and executed is produced for registration. Sub-section (1A)(b)(i) provides that instrument of transfer in prescribed form must be lodged within two months from the date of presentation for stamping and endorsement. Second proviso to Section 108(1) gives power to the company

to register share transmitted by operation of law without asking for compliance of Section 108. Section 109 provides for transmission of shares by way of mutation of the legal representatives. Section 111A gives power to the transferee to appeal to CLB in case of refusal of registration. Proviso to Sub-section (2) of Section 111A provides that if a company without sufficient cause refuses to register within two months from the date on which the instrument of transfer is delivered to the company the transferee may approach CLB for rectification. Section 111 also contemplates application before the CLB in case of shares of a private company on a deemed public company. In Sub-section (3) of Section 111 such appeal against the refusal is to be made within two months from the date of receipt of the notice of such refusal or within four months from the date of lodgment Sub-section (7) of Section 111A provides that Sub-sections (9), (10) and (12) of Section 111 would also be applicable in case of application u/s 111A. Sub-section (3), however, has been totally kept out of the purview of Section 111A. Hence, there is no time limit prescribed in Section 111A to approach CLB.

Judgment Law:

Amalgamation/Compromise:

4. Before General Radio General Radio and Appliances Co. Ltd. and Others Vs. M.A. Khader (Dead) by Lrs., , if was almost consistent view that in an order of sanction in case of amalgamation two entities being the transferor and transferee become one single entity with their respective rights and liabilities. It might be so that the relevant Sections provide for scheme being formulated between class or classes of persons. Once final sanction is made and the transferor is dissolved it becomes binding upon all concerned for all practical purposes. General Radio made a departure by saying that a tenancy could not be transferred by way of amalgamation to the transferee as tenancy was not a transferable right under the appropriate laws of tenancy.

5. In Albion Jute Mills Ltd. the learned Single Judge of this Court nr 1957 held that right to sue for damages could not be transferred by way of sanction of scheme as it was not a transferable interest u/s 6(e) of the Transfer of Property Act. In case of arrangement the situation is somewhat different. Here two entities do not merge as a whole. However, partial merger or demerger is contemplated. The Apex Court decision in Singer or Hindustan Lever however held a different view which is different from the issue in controversy before me. In Hindustan Lever a particular provision of the Bombay Stamp Act was under challenge in a writ proceeding. By the said provision the State imposed stamp-duty on the order of amalgamation and/or arrangement. The same was held to be good law. While doing so the Apex Court observed that the order of sanction had all trappings of sale.

6. In case of Singer the identical issue like General Radio came up for consideration before the Apex Court. There also Section 14 of the Rent Act clearly prohibited transfer of tenancy. The Apex Court held that the order of

sanction could not be made binding on the landlord.

7. In *Madhu Intra Ltd./Gemini Silk* our Division Bench held that the Albion was ruled out by *New Central Jute Mills Co. Ltd. Vs. Rivers Steam Navigation Co. Ltd. and Others*, . In *Madhu Intra Ltd.* also the point of consideration was whether the order of sanction would require payment of stamp-duty or not. The learned Single Judge held that it attracted payment of stamp-duty. However, such decision of the learned Single Judge was set aside by the Division Bench. The Division Bench was of the view that it was not a transfer by a conveyance which required payment of stamp-duty.

8. Hence, the law as stands today on the amalgamation/compromise in any view is that the order of sanction would bind the persons who were parties to the scheme. Even if the transfer is made by operation of law it cannot take away somebody else's right as against the transferor or transferee who is not a party to the scheme. It also provides that such scheme even though binds all concerned by operation by law restricts transfer which is otherwise not permissible in law like tenancy etc.

Transfer of Shares:

9. In case of *Shelet* the Apex Court held that the company is entitled to deal with the shareholder who is on register and in case of recording of a transfer proper compliance is to be done by the transferee.

10. In *Mannalal Khetan* case the Apex Court observed that negative wordings of the Section are indicative of the legislative intent to the extent that such Section is clearly prohibitory in nature and the words "shall not register" are mandatory in character.

My view on Amalgamation/Compromise:

11. On careful reading of the relevant Sections and the decisions cited I am of the view that the order of sanction of compromise is in the present case although binding between the class of persons being the shareholders of *Udyog* and shareholders of *Project* once the same was effected and implemented by filing the certified copy with the Registrar the Process was complete. Whether such transfer would attract payment of stamp-duty or not is not a point in issue hence I refrain in from dealing with the same. Sub-section (2) of Section 111A clearly provides that shares in public companies are freely transferable. Hence, the restrictions discussed in *General Radio* or *Singer* are not in any way relevant herein. When shares are freely transferable between the transferor and transferee the company as nothing to do with the same in case of sanction of scheme by Court. The company is only obliged to record such rectification once the shares are lodged with them. They are to see that the person who is lodging the shares is the lawful person to do so. Hence, by way of arrangement when shares of *Udyog* came to *Project Peerless* did not have anything to oppose on that score. They were to record such transfer by rectifying their shareholders

register. It is true that initial lodgment done on behalf of Vijaya was irregular. However, the second lodgment was perfect in law and Peerless did not have any plausible reason to refuse such registration on the plea that there must be further compliance of Section 108 by lodging the relevant transfer deed duly executed by Udyog in favour of Project. In my view when the second application was made by Project to record such transfer Peerless was obliged to record such transfer and their refusal on the ground of non-compliance of Section 108 was not tenable and the CLB was right in rejecting such plea. In my view, such application although in technical sense was an application u/s 108(1) second proviso read with Section 109. The same was nothing but an intimation to the company of the scheme of compromise so that the company could rectify their register. The documentation contemplated in Section 108 was not required to be done and such plea of Peerless was not tenable and CLB rightly rejected the same.

My view on limitation:

12. On perusal of the decision of the CLB as well as the submissions made by Peerless before me it would appear that Peerless raised plea of limitation at two stages i.e. (i) Limitation with regard to the lodgment of shares with the company and (ii) Limitation with regard to the application made before CLB u/s 111A.

13. As I have already discussed hereinbefore that Section 111 dealt with shareholders of private companies and deemed public companies wherein Sub-section (3) provides for lodgment of shareholders within a specified period. Although in Section 111A which is applicable in the instant case some of the Sub-sections of Section 111 were made applicable by Sub-section (7) of Section 111A. Sub-section (3) of Section 111 has not been included therein meaning thereby the legislators did not intend to...restriction on time period with regard to the lodgment of share in respect of public companies. It was never the intention of the legislature to allow the company to refuse rectification on the plea of limitation in the case of public companies. It was urged before me that u/s 108(1A) shares were to be lodged within two months from the date of its presentation for stamping and endorsement. This was possibly incorporated to avoid a speculation and other illegal transaction. When a share is properly stamped and endorsed by the appropriate authority the same are to be lodged within two months from the date of such stamping and/or endorsement. In the instant case, when the order of sanction itself was not required to be endorsed or stamped (at the relevant time there was no provision of payment of stamp-duty in West Bengal Stamp Act on the order of amalgamation/compromise). Hence, the question of lodgment of shares within two months from that date would not arise. In case of Madu Intra the learned Single Judge held that the stamp-duty was payable and such decision was upset by the Division Bench. Thereafter, the State Government imposed stamp-duty on the order of amalgamation/compromise. However, in the instant case at the relevant time the order of sanction did not contemplate any stamping or endorsement on the subject

shares. Hence, there was no need for compliance of Sub-section (1A)(a). It is true that the CLB was wrong in applying the provision to Section 5 of the Limitation Act, which can only be applied in the case of a proceeding before a Court of Law or a Judicial Tribunal. Even if there is any time limit for lodgment of shares with the company the provision of Section 5 of the Limitation Act cannot have any application therein and the CLB was wrong in applying the same in respect of the lodgment of shares with the company. I am of the view that the Sub-section (1A) has no application at all in the instant case. Moreover, the intention of the legislature as would appear from the said Sub-section was that it was the duty of the transferee to have the deed of transfer duly stamped and endorsed by the appropriate authority within a particular period stipulated therein. The second proviso to Section 108(1) being relevant herein needs discussion. It stipulates that nothing in the Section 108 would prejudice the board of the company to register a share whose right has accrued by operation of law. Reading all this provisions I am of the considered view that once the order of sanction was passed by the Court and the same was indicated to the company by why of second application the company should not have refused registration on the plea of limitation.

14. Although the second plea was taken by Peerless that the application u/s 111A was barred by limitation before the CLB Mr. Sarkar appearing for the Peerless did not seriously press that point. However, the same also need some discussion as the CLB in its order dealt with the same. The provision of Section 111A did not put any time restriction on approaching the CLB. Moreover, on the day when the CLB was approached the Project did not know the reason for refusal. The ground of refusal as stated in the minutes of the Board of Directors was disclosed in course of hearing of the application before the CLB. Hence, it would not be proper to say that the application before CLB was barred by limitation. The proviso to Sub-sections (2) and (3) of Section 111A stipulate that if a company without sufficient cause refuses to register the transfer within two months from the date of lodgment the transferee may approach the Tribunal for relief. Hence, the transferee has to wait for two months to approach CLB. Such two months period is not an outer limit contemplated in the said Section.

15. Hence, in my view, the application before the CLB was also not barred by limitation and there was no need of application of Section 5 of the Limitation Act therefore.

Conclusion:

16. Ultimate decision of the CLB whereby Peerless was directed to register the shares in favour of Project is sustained and affirmed. The decision of CLB on the plea of limitation and application of Section 5 of the Limitation Act is, however, quashed as being superfluous is discussed above.

17. Appeal is accordingly disposed of without, however, no order as to costs.

18. Urgent xerox certified copy would be given to the parties, if applied for.