(2026) 07 NCLAT CK 0081

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : COMPANY APPEAL (AT) NO.125 OF 2021 & IA No.538/2022

Vivid Solutions Pvt Ltd — APPELLANT

Vs

Mukesh Jain — RESPONDENT

Date of Decision : 24-07-2026

Acts Referred:

Transfer of Property Act, 1882 — Section 54
Indian Registration Act, 1908 — Section 17
Companies Act, 2013 — Section 56, 130, 92
Companies Act (Share Transfer and Debenture Rules, 2014) — Rule 11

Citation : (2026) 07 NCLAT CK 0081

Hon'ble Judges : Yogesh Khanna, Officiating Chairperson;Ajai Das Mehrotra, Member (Technical)

Bench : Division Bench

Advocate : For Appellant:Ms Eshna Kumar, Mr Jitendralal Gorane, Mr. Anand Dilip Landge, Advocates. For Respondent:Mr. Vinit Trehan, Ms Bhumi Agarwal, Mr Yash Srivastava, Ms Urvi Syal, Advocates. Mr Dileep Poolakkot, Muhammed Siddick, Advocates for R4.

Final Decision : Dismissed

Judgement

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

The present appeal has been filed by the appellant against an order dated 08.10.2021 passed by the National Company Law Tribunal, Mumbai in Company Petition No.1841/2019 which declared the Respondent No.1 to 3 herein to tbe the 100% shareholders of the Appellant No.1 and the alleged transfer of the shares of Respondent No.1 to 3 in favour of Appellant No.2 to 4 to be illegal, null and void as also the transfer of immovable assets of Respondent No.1 company.

2. It was argued Respondent No.1 and 3 were shareholders and directors of appellant No.1 company and they contacted appellant nos..2 and 3 whose company i.e.. Appellant No.4 was situated adjacent to the property of appellant

No.1 and offered to sell their property and also to transfer 100% of their shareholding in appellant No.1 for consideration.

3. On 12.09.2012 after accepting the said proposal of 100% shareholding and the possession of the property of appellant No.1, the appellants no.2 and 3 immediately transferred an amount of Rs.*1* crore by way of RTGS to Respondent No.1.

4. Thereafter on 20.09.2012 the Respondent No.1 to 3, the erstwhile directors of appellant No.1 company called an EOGM of the shareholders and passed resolution and appointed the appellants No.2 and 3 as directors of appellant no.1 company and also authorized the appellant No.2 and 3 to file such information with the ROC in the prescribed format. Thus on 20.09.2012 the name of appellants No.2 and 3 as directors of appellant No.1 was incorporated in Form 32 and was submitted to Registrar of Companies.

5. Even on 14.12.2012 the Respondents No.1 to 3 i.e. the erstwhile directors of appellant No.1 company passed a resolution in the General Meeting that the appellant No.1 company will stand as a guarantor for various credit facilities proposed to be sanctioned to appellant No.4 company and appellant No.2 was authorized to sign all relevant documents in this regard and then the said property was hypothecated to Bank of Maharashtra on 20.12.2012.

6. Further on 21.12.2012 the Respondents No.1 to 3 also passed a resolution under their specific signatures in the meeting of the Board of Directors held on 21.12.2012 holding the Appellants No 2 and 3 are the directors of the Appellant No.1company and Appellant No.4 is an associate company of appellant No.1. The Respondents No.1 to 3 also confirmed the cash credit facility initiated by appellants No.2 and 3 on behalf of appellant No.1. Further on 21.12.2012 one MOU was executed wherein the appellants No.2 and 3 were to pay further amount of Rs.2 crore to Respondents No.1 to 3 and in consideration the Respondents No.1 to 3 agreed to hand over *100%* shareholding in the appellant No.1 company alongwith the company's property alongwith entire management in favour of Appellants No.2 and 3. Rather per Clause 9 of the MOU, Respondents No.1 to 3 confirmed the position that the appellants No.2 and 3 are introduced as a directors of the appellant company and they even confirmed the loan facility.

7. It was argued by the appellants on 23.01.2013 an amount of Rs.2 crore was paid as mentioned in the MOU dated 21.12.2012 and it was deposited in the account of Respondents No.1 and 3 against transfer of *100%* shares as well as the subject property. It was argued further on 30.03.2014 appellants No.2 and 3 also paid an amount of Rs.1 lakh towards the face value of *100%* shares of Respondents No.1 to 3.

8. It was argued on 31.03.2014, after completion of the above transactions mentioned in the MOU 21.12.2012 *viz the* payment of Rs.*3* crores and Rs. 1 lakh towards face value of *100%* shares, the Respondent No.1 to 3 resigned from the directorship of appellant no. 1.

9. It was argued in April, 2014 the Respondent No.1 came to Nasik, Maharashtra and handed over shares transfer form, share certificate and all original documents of appellant No.1 company and thereafter form No.32 was submitted to the Registrar of Companies and thus the names of Respondent No.1 and 3 were deleted from the records of Registrar of Companies and names of appellants Nos. 2 and 3 incorporated as new directors. Form MGT 7 was also filed with Registrar of Companies.

10. It was argued on 20.06.2014 appellants No.2 and 3 further availed loan of Rs.5 crores from Respondent no.1 who handed over the same interest free, subject to return of original share certificate, as security. It was mutually agreed till the said loan is repaid, the appellants No.2 and 3 will not delete the names of Respondents even though the consideration for sale of shares was already paid. It is alleged later appellants No.2 and 3 repaid the interest free loan of Rs.5 crore to Respondent No.1 and when they demanded the original shares certificate and other documents, the Respondent No.1 without any justification started demanding interest on such loan. The Whats App chat is relied upon to disclose the real intention of Respondent No.1.

11. It is argued on 31.03.2015 the appellants No.2 and 3 filed balance sheet of the financial year 2014-15 with the Registrar of Companies thereby showing all the transactions done by them in favour of Respondents No.1 to 3 and against purchase of subject property including full payment of transfer of *100%* shares in favour of Appellants No.2 and 3. It was argued from 2019 the appellants No.2 and 3 are continuously filing balance sheets of the respective financial years with Registrar of Companies showing all the transactions with details of the appellant No.1 company but despite that the impugned order is passed against them.

12. Before proceeding further let us note the salient features of the impugned order viz:-

38. In the Balance Sheet of the company (Respondent No.1) for the year ending 31.03.2017 the property ceases to be shown as an asset of the Respondent no. 1 and was shown to be transferred to the Respondent No. 4 i.e. M/s Ukay Metal Industries Private Limited against an unsecured loan of Rs. 3 crores. This was done by merely passing the book entry in the foot-notes to the financial statements.

39. The Bench notes that until 2016 and 2017 the said property was admittedly shown in the balance sheet of the Respondent no.1 Company as an asset of Respondent no. 1 Company. The Bench notes that all of a sudden without execution of any documents as required under Section 54 of the Transfer of Property Act, 1882 read with Section 17 of the Indian Registration Act, 1908, the Respondent Nos. 2 and 3, simply altered the balance sheet of the Respondent no. 1 Company as on 31.03.2017 to show that the said property which was shown as having a value as on 31.03.2016 being transferred to Respondent No.4.

40. The Bench further notes that there is no document to support that the said

property has been transferred to respondent no.4. The manner in which an immovable property can be transferred only by way of Registered Conveyance/ Agreement deed which is not there in the instant case. The Bench therefore, notes that the property has not been transferred through any agreement/ conveyance deed which need to be registered under Section 17 of the Indian Registration Act, 1908 and Section 54 of Transfer of Property Act, 1882. Xxxxx

41. Therefore, it is untenable to contend that the property has been transferred as on 31.03.2017 when the Respondent no.4 is admittedly paying rent to Respondent no.1, thereby recognizing the respondent no.1 as the owner of the said property even after March 31, 2017. This further corroborates the fact that neither legally nor in reality this property was ever transferred from Respondent Nos. 1 to 4 Company.

43. In view of the above, the Bench concludes that the immovable property of Respondent No. 1 Company passing to the Respondent No. 4 namely Ukay Metal Industries Private Limited without any transfer document, under no circumstances can be constituted as a valid transfer and, therefore is illegal, null and void.

44. The Bench notes that the Shares of Respondent No. 1 Company admittedly presently being held by the Petitioners has been sought to be transferred to Respondent No. 2 to 4 based on frivolous Balance Sheet / Annual Returns of Respondent no.1 Company. Admittedly as on 31.03.2017 the statutory filing of respondent no.1 with the ROC reflects the petitioner as 100% shareholder of the Respondent no. 1 company. All of sudden, in the statutory filing of 2017-18, the Respondent no. 2 to 4 are shown as 100% shareholder of Respondent no.1. There exists no transfer form which have been signed by the petitioner or Respondent no. 2 to 4 under Section 56 of the Companies Act, 2013 read with Rule 11 of the Companies Act (Share Transfer and Debenture Rules, 2014). These signed, stamped and duly executed transfer forms are required to be submitted to the company which admittedly has never been done. It is well settled proposition of law that in the absence of transfer form duly executed there cannot be a valid transfer of Shares.

45. The contention of the Respondents to the effect that the Petitioners have handed over share transfer forms duly signed by them to the Respondents which were lost in their custody cannot be trusted in the absence of any evidence before this bench. It is very difficult to believe such statement from the Respondents who are seasoned commercial businessmen who are well aware of the consequences if really those forms were lost in their custody.

47. The Bench notes that the petitioner are in the possession of the original shares. Admittedly there is no endorsement of any transfer on the said share certificates. The Bench also notes that under the Article of Association of Respondent no.1 Company. The entire procedure of transfer of shares is provided, which has not been fallowed in the present case. The above factors

make it clear to the Bench that there is absolutely no legal basis for claiming that there has been transfer of the said shares. On these grounds, this Bench is inclined to declare that the said share of those of the Petitioners which has been purportedly transferred illegally by making mere entries in the balance sheet of the company is illegal and null and void.

48. That purported share transfer is illegal and mischievous is also evident from the fact that for the first time in the year 2017-18 through their Balance Sheet, the Respondent no.2 to 4 have contended that share stands in their name. Strangely, however in the same page of the filing in the Balance Sheet it is also been mention that 0.0 % transfer have been executed in the year 2017-18. The Bench fails to understand as to how Respondent no. 2 to 4 suddenly become 100% shareholder with admittedly 0% change in the shareholder pattern during 2017 and 2018. Xxx

49. It is very clear that no reopening of accounts can take place without orders from the Tribunal and it is admittedly a fact that no such orders of reopening of books of accounts has been obtained by the Respondent side from the Tribunal.

50. It was also contended by the Respondents that there is an independent transfer of Rs. 5 crores loan given by the Petitioner No. 2 to Respondent no. 2 and 3 which has been repaid on 26.09.2017. the Respondents mention that this is the reason that share transfer was not done by the Petitioners to the Respondent nos. 2 and 3. The Bench notes that there is not a single document has been produced to connect the share transfer with Rs. 5 crores loan. The loan has been given by the Petitioner no. 2 to the Respondent nos. 2 and 3 in their individual capacity and has no relationship with the transfer of Shares of the Respondent No. 1 Company. A mere oral contention by Respondent nos. 2 to 4 cannot have any bearing on the share of Respondent no.2. In any case these loans given in the personal capacity by the petitioner no.2 was repaid back fully by respondent no. 2 and 3.

13. On the issue pertaining to the alleged transfer of 100% shareholding of appellant No.1, it was argued on behalf of the respondents that the official MCA records categorically and unequivocally reflect the shareholding in the name of Respondents No.1 to 3 as on the date of filing of the petition till date. Reference was made to the certified copy of ROC documents evidencing shareholding of Respondents No.1 to 3 as 100% till March, 2019. Further a bare perusal of the financial statements would show the appellants No.2 to 4 shareholding on 2nd September, 2017, duly authenticated by the CA; whereas financial statements reflect the Respondents No.1 to 3 as 100% shareholders as on 02.09.2017 also authenticated by the CA and the said record filed alongwith the reply showcase the Respondents No.1 to 3 to be 100% shareholders.

14. It is argued the financial documents of appellant No.1 were fabricated under disguise of filing revised return and appellant No.2 to 4 were shown as *100%* shareholders and there was a clear violation of the prescribed procedure for

transfer of shares; as envisaged under Section *56* of the Companies Act and hence the transfer was non-est in the eye of law. The procedure as envisaged under Section *56* is as follows:-

-Execution of Transfer Deed/Form No.SH-4 (duly executed/duly stamped) between the parties and deliver to the Company within a period of 60 days from execution (the Transfer Deed to be accompanied with Share Certificate and if 'Share Certificates' are not there then to be accompanies with Share Allotment letter.

-Basis, the said transfer deed and after compliance, the Company can register the transfer of securities in the name of the Applicant.

15. We have heard the arguments advanced by the learned Sr. counsel appearing for both sides.

16. Admittedly, two connected claims were raised by Appellants No. 2 to 4. First, a claim to 100% shareholding in M/s Vivid Solutions Pvt Ltd. for the period 2014–2017, founded solely on revised form filings made on 07.04.2019 without any share transfer deed, without endorsement on the original share certificates, and contrary to the contemporaneous ROC records. Secondly, a claim Appellant No. 4/ Ukay Metal Pvt. Ltd. had acquired the Company's sole immovable asset i.e., E-74, MIDC, Industrial Area, Bombay [7,800 sq. ft.] ["Property"] through a mere change of book entries, without any registered conveyance. The Respondents No. 1 to 3 [Mukesh Jain, Sushil Jain, Sonu Jain] are, admittedly and *per* MCA records, *100%* shareholders as on date, and contested both claims on the ground no transfer deed or share-certificate endorsement was ever effected; MCA records still reflect them as 100% shareholders.

17. Now the Appellants misrepresented the MOU dated 21.12.2012 to project it as creating a binding and concluded contract whereby the consideration for the transfer of 100% shareholding stood finally settled at Rs.*3 Crores.* Admittedly, no Share Transfer Deed [Form SH-4] was ever executed, no share certificates were endorsed or delivered, and the mandatory procedure prescribed under Section 56 of the Companies Act, 2013 was never followed. Consequently, the alleged transfer of shareholding is non-est in the eyes of law. Respondents No.1 to 3 [Mukesh Jain, Sonu Jain, and Sushil Jain] remain as 100% shareholders of Appellant No.1 Company since September 2007, and remain in possession, till date, of the original share certificates, with no endorsement of transfer thereon.

18. Now *vide* the MoU, Respondents No.1 to 3 discussed to transfer their 100% shareholding of Appellant No.1 Company to Appellants No.2 and 3, for a consideration that was expressly left to be finalised between the parties on a subsequent valuation. The same is unequivocally established by Clause *10* of the MoU which read as: "after receipt of Loan Amount, Second Party will pay balance total amount to First Party immediately." A plain reading of the MOU itself demonstrates the consideration was never finalised and was expressly left to be determined in future. The Appellants' attempt to portray Rs.3 Crores as the final

sale consideration is contrary to the express terms of the MOU.

19. At best the MOU contemplated two stage process for transfer of shareholding which was never completed *viz.* an initial infusion of Rs.3 Crores if Appellants No. 2 & 3 intend to acquire 100% shareholding; and subsequent negotiation and finalization of consideration, followed by share transfer. Admittedly, consideration was never finalized nor any share transfer effectuated, in fact the Original Share certificates are with Respondents since beginning i.e., 2007 till date. If the alleged transfer had in fact been concluded in 2014, there is no explanation whatsoever for the complete silence until 07.04.2019, when the Appellants, through a unilateral and legally impermissible filing of revised annual returns, retrospectively altered the shareholding pattern. Such conduct itself exposes the defence as a subsequent afterthought.

20. The Appellants have sought to justify the transfer of the Company's sole asset by relying upon the alleged consideration of Rs.3 Crores under the MOU. Now an amount of Rs.3 Crores was admittedly advanced solely by M/s. Ukay Metal Industries Ltd. (in short **"M/s. Ukay Metals"**), whereas, M/s. Ukay Metal was never a party to the MOU dated 21.12.2012. In law, no rights can emanate in favour of a stranger to a contract. The Appellants, therefore, cannot rely upon the MOU to justify any transfer in favour of M/s. Ukay Metal. Moreover, interestingly, a month before the MoU, the Bank of Maharashtra's valuation dated 01.11.2012 by M/s. Ukay Metal itself came to be Rs.10.62 crores and thus even on the yardstick of logic, Rs.3 crores cannot be deemed as consideration for the transfer of the said asset. It appears an amount of Rs.3 crores was advanced by Appellant No.4/ M/s. Ukay Metal to Appellant No.1 Company as an unsecured, interest-free loan, unconnected with, and outside the scope of, the MoU, to which M/s. Ukay Metal was admittedly not even a party. Moreover, this Loan was allegedly repaid by Mukesh Jain to M/s. Ukay Metal in the year 2014. Therefore, this loan of Rs.3 Crore is completely un-related to the consideration that were to be agreed for the transfer of 100% shareholding of the Appellant No.1 Company.

21. Thus, the Appellants falsely projected that Appellants No. 2 and 3 paid Rs.3 crores towards the purchase of the Respondents' shareholding. The contemporaneous financial records conclusively belie this assertion. The amount of Rs.3 Crores was admittedly advanced only by M/s. Ukay Metal, *which consistently reflected the said amount in its own books merely as a loan, and never as consideration for the purchase of shares or acquisition of immovable property,* and then suddenly in the books of 2017, it was shown as "All fixed assets & other loans & advances transferred to M/s. Ukay Metal Industries Pvt. Ltd. against loan amount of Rs. 3,00,00,000/- " without there being any document executed in favor of the M/s. Ukay Metal by the Appellant Company. Moreover, the very same MGT-7/Annual Return for FY 2016- 17, filed on 22.11.2017 where the asset was shown as transferred to Ukay Metal, continues to reflect Respondent Nos.1 to 3 as 100% shareholders even as on 31.03.2017. Further, the statutory records from 2014-2017 categorically reflected

respondents as the *100%* shareholders of Appellant No. 1. It was only after the FIR was lodged a unilateral, and restrospective revision of shareholding was done w.e.f. April 2014 which is contrary to Section *130* of the Companies Act, 2013. The statutory ROC filings, Annual Returns in Form MGT-7 for FY 2014-15 up to FY 2016-17 were filed contemporaneously between 2014 and 2017, before any dispute arose, unequivocally and consistently reflect Respondent Nos.1 to 3 as the 100% shareholders of Appellant No.1 Company. Such statutory records, filed in compliance with Section 92 of the Companies Act, 2013, enjoy a presumption of correctness that cannot be lightly displaced.

22. The genuine, contemporaneous record is internally consistent and speaks for itself: the Balance Sheet for FY 2015-16 reflects Rs.3 crores as an unsecured, interest-free long-term borrowing, and confirms receipt of ☐ 2.4 lakhs as rental income from M/s. Ukay Metal. The MGT-7/Annual Return for FY 2015-16, filed on 12.11.2015 reflects Respondent Nos.1 to 3 as 100% shareholders. It is only in the AOC-4/Balance Sheet for FY 2016-17 the long-term borrowing is shown, for the first time, as reduced to NIL, with the fixed assets shown as transferred to M/s. Ukay Metal "against loan amount taken Rs. 3,00,00,000/-" and "land & building transferred against loan taken from M/s. Ukay Metal Industries Pvt. Ltd." yet the very same MGT-7/Annual Return for FY 2016-17, filed on 22.11.2017 continue to reflect Respondents No.1 to 3 as 100% shareholders even as on 31.03.2017. This internal inconsistency, on the Appellants' own record, exposes the alleged transfer of both the shareholding and the Property as an afterthought engineered years later, and not a transaction that ever actually took place.

23. Thus, there is a clear violation of procedure prescribed for "Transfer of Property" u/s Section *54* of Transfer of Property Act, 1882 and Section *17* of the Registration Act, 1908 and also violation of the procedure prescribed under Section 56 of the Companies Act for the transfer of shares. Admittedly, in the present case, neither the Transfer Deed has been filed nor any Share Certificates produced nor there is any indication of endorsement upon the Share Certificates. Interestingly, the Appellant though maintained a stand that the modalities/ payments qua the alleged transfer took place in 2014, the Appellant filed for the retrospective revision in the financial statements from 2014-2017 and only on 07.04.2019. Thus, as on the date of filing of the Company Petition, i.e. 06.05.2019, the genuine and contemporaneously filed statutory records, which had stood on the register of the ROC since 2014-2017 reflected Respondent Nos.1 to 3 as the 100% shareholders of Appellant No.1 Company. The only document suggesting otherwise is the retrospective, unilateral revision filed by the Appellants on 07.04.2019, a mere month before the Petition, after two FIRs already stood registered against Appellants No.2 and 3.

24. As per the proceedings, the respondents became aware of removal of their names as shareholders only *via* letter dated 25.03.2019 issued by the Appellants No. 2 and 3 denying the inspection of records to the Respondents and alleging they are no longer the shareholder of the Company.

25. This is not a case of two parties asserting rival, bona fide claims of title based on competing instruments. It is a case where the Appellants seek to find title on documents that are void ab initio for non-compliance with the mandatory procedure prescribed under Section *56* of the Companies Act (for shares) and under Section *17* of the Registration Act, 1908 read with Section *54* of the Transfer of Property Act, 1882 (for the Property), and which were, in any event, created and filed belatedly as a counterblast to criminal proceedings already initiated against the Appellants. The Ld. NCLT was, therefore, fully within its jurisdiction to adjudicate the issue.

26. The manipulation of statutory records to usurp 100% shareholding, and the stripping of the Company's sole asset by way of a bogus book entry without registered conveyance, without stamp duty, and while continuing to collect rent on the very asset claimed to have been transferred strike at the root of the corporate structure and ownership of Appellant No.1 Company, and constitute continuing acts of oppression and mismanagement of the gravest kind, directly prejudicing Respondents No.1 to 3 as members, hence we are not inclined to interfere with the reasoned judgment of the Ld. NCLT. Accordingly the appeal is dismissed. Pending applications are also disposed of.