

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

COMPANY APPEAL (AT) NO.150 OF 2024

(Arising out of judgement and order dated 14th March, 2024 passed by the National Company Law Tribunal Ahmedabad in CP No.35 of 2021)

In the matter of:

1. Rashmika Narendra Patel,
13, Alok Bungalows,
Sun N Step Club Road,
Thaltej,
Ahmedabad

2. Zinnia Vijaykumar Senjaliya
13 Alok Bungalows,
Sun N Step Club road,
Thaltej,
Ahmedabad 380054

3. Pooja Narendrabhai Patel,
13 Alok Bungalows,
Sun N Step Club road,
Thaltej,
Ahmedabad 380054

Appellants

Versus

1. Therm Flow Engineers Pvt Ltd,
Kapana Complex, 5th floor,
Near Memnagar Fire Station,
Navrangpura,
Ahmedabad 380009

2. Narayanbhai Gangaram Patel\
357 Lane 18,
Satyagrah Chhavani Society,
Satellite Road,

Ahmedabad 380015

3. Shivang Prakash Patel,
357, Lane 18,
Satyagrah Chhavani Society,
Satellite Road,
Ahmedabad 380015

4. Havesh Devidas Narumalani,
702, T-38, RoyalResort,
Shastri Nagar,
Andheri (West)
Mumbai 400053

5. Patels Airtemp (India) Ltd
Kalpana Complex,
5th Floor,
Near Memnagar Fire Station,
Navrangpura,
Ahmedabad 380009

Respondents

For Appellant:Mr Abhijeet Sinha, Sr. Advocate, Mr. M.S. Vishnu Sankar, Mr Pavan Godiawala, Mr K0shy John, Mr Aditya Santhosh, Mr. Athira G Nair, Ms Anjali Singh, Advocates.

For Respondent:Mr Ashish Dholakia, Sr. Advocate, Ms Gauri Rasgotra, Mr. Dinesh Moorjani, Mr. Rohan Chawla, Mr Shivansh Agarwal, Mr Gunav Gujral, Advocates for R1.

Ms Natasha Dhruvan Shah, Advocate for R3.

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

The present appeal is preferred under Section 421 of the Companies Act, 2013 against the impugned order dated 14th March, 2024 passed by National Company Law Tribunal, Ahmedabad in CP No.35/2021.

2. The appellants are legal heirs of Mr. Narendra Gopalbhai Patel, who was the promoter and shareholder of Respondent No.1 company. The Respondent No.2 to 4 were also the shareholders of Respondent No.1 company. It is alleged in the last quarter of July, 2013, Mr. Narendra Gopalbhai Patel, hereinafter referred to as the deceased, was persuaded by Respondent No.2 and 3 to sell his entire shareholdings to them pursuant to which the deceased resigned from the post of the director and had transferred his entire shareholding to Respondents No.2 and 3 at a throw away price of Rs.275/- per share wherein the actual price was Rs.3230.64.

3. Being aggrieved by the illegal transfer of shares, a company petition No.73/397-398/CLB/MB/2015 for oppression and mismanagement was filed by Respondent No.4 before the Company Law Board which was then transferred to Ld.NCLT. It is alleged in the said proceeding the transfer of shares made by deceased were held to be illegal and hence it is the submission of the learned senior counsel for the appellant now since the said shares are to be reallocated, the legal heirs of deceased be given a fair consideration. Heard.

4. The main issue is *qua* the transfer of 2500 shares by deceased. On record we see a letter dated 23.06.2015 issued by the deceased to the Board of Directors of Respondent No.1 *qua* the sale of his shares, as under:-

Date: 23rd June, 2015

From, Narendrabhai Gopaldas Patel
13-Alok bungalows,
Sun-N-Step Club Road,
Thaltej,
Ahmedabad-380054

To,

Board of Directors
Thermflow Engineers Private Limited,
55-56 Celler,
Kalpana Complex,
Nr. Memnagar Fire station,
Navrangpura,
Ahmedabad-380009
Dear Sir,

Sub :Sale of shares 2500 Shares, Folio No. 002, bearing certificate no.002

I Narendrabhai Gopaldas Patel herewith inform the company that I propose to sale 2500 Equity shares held by me under Folio No. 002, bearing certificate no.002 in Thermflow Engineers Private Limited. I propose to consider Rs. 275.62/- per share as fair value at which I am willing to offer the shares and I constitute the board of directors as agent for sale of shares. You are required to consider to my proposal and do the necessary formalities as required under the relevant clauses of the Article of Association.

Regards,

Sd/-

(Narendrabhai Gopaldas Patel)

5. Admittedly the sale took place and the Board of Directors transferred those *2500 shares* only to Respondent No.2 herein. The deceased accepted the sale and he got the entire sale consideration. He resigned from the Board of Directors vide letter dated 27.06.2015. However, the Respondent No.4 agitated on the grounds that these shares ought to have been allotted *on pro rata basis* by the Board of Directors to all 3 shareholders and hence Respondent No.4 filed TP No.106/2016 for distribution of shares on *pro rata* basis. In such petition, the deceased was arrayed as Respondent No.12. Following order was passed in TP No.106/2016 on 15.03.2017:-

“144. The transfer of shares to respondent No.12 is also bad since no notice. was given to the .petitioner, no offer was given to the petitioner Therefore,

the transfer of shares of respondent No. 12 to-respondent No.2 and 3 is illegal and void.

145. Respondent No. 12 filed affidavit stating that he has nothing to do with the company from 23.06.2015. **Therefore, the shares of Respondent No.12 has to be re-allotted to all original shareholders i.e, the petitioner and respondent No.2 and 3 whoever made the offer, as per the procedure laid down in the articles of association and provisions of Companies Act."**

6. It was thus held in TP No.106/2016 the shares of the deceased be re-allotted to the shareholders by duly following the procedure laid down in Companies Act and Articles of Association.

7. Admittedly, the deceased who expired on 08.02.2021 did not challenge the order dated 15.03.2017 and rather it was challenged only by Respondent No.2 before the NCLAT but such appeal was dismissed. The appeal against the order of NCLAT was dismissed by the Hon'ble Supreme Court in the year 2018. Thus the issue which was contested and settled was only to whom such 2500 shares could be allotted and not that the sale made by R12 was bad and in that sense the allotment of shares only to Respondent No.2 was held to be illegal.

8. The appellant then filed petition *viz* CP/35(AHM)2021 with the following prayers:-

A) BE PLEASED to set aside the transfer of 2500 equity shares of face value of Rs. 10/- which were illegally transferred to the Respondent Nos. 2 to 4 herein in the interest of justice;

B) BE PLEASED to grant permanent injunction restraining the - Respondent Nos. 1 to 4, their servants, agents and person claiming by, through and/or under them from in any manner transferring, assigning or mortgaging the 2500 equity shares of the Petitioners illegally transferred to the Respondents in the interest of justice;

(C) BE pleased to pass such other and further orders / reliefs as may be deemed fit as the nature and circumstances of the case may require.

9. Vide this Company Petition the appellants are trying to reverse what was held by Ld.NCLT, NCLAT and Hon'ble Supreme Court in earlier round of litigation. The grievance of the appellant is now since the transfer of shares was held to be illegal hence the legal heirs of deceased should get those shares and/or a fair price. We are not inclined to accept this contention since initial transfer was challenged only by Respondent No.4 and that too on the ground he should also get a slice of it. The deceased admittedly never alleged/claimed any right on such shares after he had received the entire consideration and after he had executed letter dated 23.06.2015 (supra). Rather he gave an *affidavit* in TP No.106/2016 as under:-

“At present I am neither the director nor the share holder of the company since 23.06.2018 so I request Board not involve me in this case now onwards.”

10. It is important to mention despite the Hon'ble Supreme Court decision in 2018 the deceased never took any action for transfer of shares in his favour by 2021 *i.e.* till he was alive. The appellants/legal heirs of the deceased came into action six months after of his death and are now trying to misinterpret the order passed in TP No.106/2016 to their benefit. The transfer of shares by deceased was never an issue *pending* before Company Law Board or Ld. NCLT and neither the deceased challenged such transfer. It was purely a dispute between other directors and deceased himself opted out of that frame. Hence this appeal has no merit. Even otherwise we find the appellants have no locus to file petition under Section 241-242 under the Companies Act as they are not the member/shareholders of the Company. In *Jitendra Parlappli Vs Wirecard India Pvt Ltd 2023 SCC OnLine NCLAT 1435* this Tribunal held

30. The term 'Shareholder' and 'Holder' of a 'Share', are employed in the 'Companies Act', in same manner, meaning 'a person', who holds 'Share', in a 'Company', and is 'Registered', as 'Member', in the 'Register of Members'. Hence, only 'a person', who as a 'Shareholder', and his 'name' entered on the 'Register of Members', is 'recognised', for 'preferring' an 'Application', under 'Section 241 of the Companies Act, 2013' (for Relief in cases of Oppression, etc. before the 'Tribunal').

36. An 'Individual', whose name, does not 'appear', on the 'Register of Members', is not a 'Member', and has no 'Locus', to 'Prefer' a 'Petition', under Section 244 of the Companies Act, 2013. To put it differently, if 'a person', is not a 'Member' of a 'Company', the question of his alleging 'Oppression', does not 'arise'.

66. In the instant case on hand, the 'Appellant', in Comp. App (AT) (CH) No. 127 of 2022, had tacitly admitted that he is / was not a 'Shareholder' of the '1st Respondent / Company' ('1st Defendant' in Suit). When that be the fact situation, and as per Section 241 of the Companies Act, a 'Petition', can be preferred, only by the 'Member(s)' of the 'Company', and all the more, the 'eligibility' of the 'Member(s)', who can sustain a 'Petition', under Section 241 of the Companies Act, 2013, is prescribed, and when the 'Appellant' / 'Petitioner', has no 'Right' to file a 'Petition', under Section 241 of the Companies Act, because of his 'ineligibility' (not being a 'Shareholder' / 'Member' of the '1st Respondent' / 'Company'), then, in 'Law', he has no 'Locus' whatsoever, to seek 'waiver of the requirement', in IA/644/2020 in CP/289/2020, enabling him, to 'Apply', under Section 241 of the Act. Viewed in that perspective and looking at from any angle, the IA No. 644/2020 in CP/289/2020, filed by the 'Petitioner / Appellant' (before the 'National Company Law Tribunal', Division Bench – I, Chennai), seeking to 'Waive' all the requirements, specified in Clauses (a) and (b) of Section 244 of the Companies Act, 2013, and resultantly, permitting him to prefer a 'Petition', as per Section 241 and 242 of the Companies Act, 2013, is 'per se', not 'Sustainable', in the 'eye of Law', as held by this 'Tribunal'.

11. The appeal thus has no force. Accordingly it is dismissed. Pending applications also stand dismissed.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated: 29.07.2024

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