

Supreme Court: CLB can't deny jurisdiction u/s 111 for rectification/member-registration, absent dispute regarding share-title



SC upholds Delhi HC order that directed a private ltd co. to register legal heirs ('respondents') as shareholders in place of their deceased father, quashes CLB order that denied its jurisdiction to direct such rectification; Observes that since respondents had furnished valid succession certificate and transfer deed executed by their grandmother (to whom shares were transferred by respondent's father through his Will), CLB could not have denied its jurisdiction; Holds that despite summary jurisdiction of CLB u/s 111, CLB can only relegate parties to Civil Court when case involves complex facts regarding title/property, not in instant case

where there was no real dispute, thus, rejects reliance on SC rulings in Ammonia Supplies Corpn. (P) Ltd. vs. Modern Plastic Containers (P) Ltd., Standard Chartered Bank vs. Andhra Bank Financial Services Ltd., as distinguishable on facts; Rejects contention of deceased father's cousins that father's Will did not mention respondents as legatees and since a stay was granted by HC against succession certificate, succession certificate could not be relied on, thus, shares could not be transferred to respondents; Holds that since stay was granted at instance of grandmother who herself opted out and proceeded to settle & transfer shares to respondents, thus, succession certificate which was issued by District Court was valid and rightly relied on by HC: SC

[\[LSI-751-SC-2015-\(NDEL\)\]](#)

Recent HC rulings on Rectification of Members' Register:

HC: Settles succession law; Legal heir, not 'nominee' entitled to deceased person's shares

Bombay HC interprets Section 109A of Companies Act, 1956 (that empowers shareholder to nominate a person to whom all his shares shall vest on event of his death), holds that it is legal heir and not nominee who shall be ultimately vested with shares of deceased shareholder, distinguishing co-ordinate bench ruling in Harsha Nitin Kokate v. Saraswat Bank; Going through the objective of Sec 109A, holds that, *"The fundamental focus of Section 109A.. is not the law of succession.. The sole intention is...to afford the company or depository...a legally valid quittance so that it does not remain forever answerable to a raft of succession litigations.. but the nominee continues to hold in a fiduciary capacity and is answerable to all claimants under succession law"*; Rejects contention that since Sec 109A starts with a non-obstante clause, it over-rides every other statutory provision, including the Succession Act, and confers a 'statutory testament'; Distinguishes nomination from ordinary law of succession, and observes that if nomination is considered as statutory testament, then, *"The so-called 'statutory' testament would oust this personal law entirely, even though there is nothing in either of the corporate statutes to indicate that this was ever the legislative intent.."*, terms it as 'unnatural'; Recognises the rights of legal heirs and holds that, *"nominations under Sections 109A and 109B of the Companies Act and Bye-Law 9.11 of the Depositories Act, 1996 cannot and do not displace the law of succession, nor do they open a third line of succession"*; Relies on SC rulings in Sarbati Devi v Usha Devi, Shri Vishin N.

Khanchandani & Anr. v Vidya Lachmandas Khanchandani & Anr, Shipra Sengupta v Mridul Sengupta & Ors, and holds co-ordinate bench ruling in Harsha Nitin Koakte as ‘per incuriam’: Bombay HC
[\[LSI-16-HC-2015-\(BOM\)\]](#)

HC: Holds CLB as ‘First Court’ under CrPC, authorized to entertain forgery application

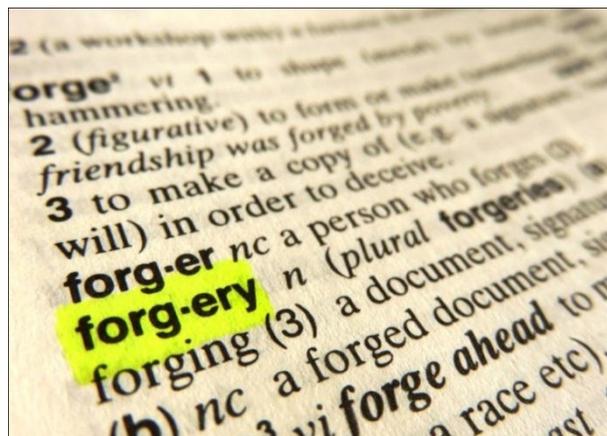
HC sets aside order passed by Company Law Board (‘CLB’), wherein CLB refused to initiate action and prosecute respondent for perjury and contempt for submission of forged board resolution approving transmission of shares; Holds that CLB is not barred from entertaining application u/s 340 of CrPC, observes that CLB has erred in refusing application and rejects CLB’s reliance on SC judgments in Iqbal Singh Marwah Vs Meenakshi Marwah & Sachida Nand Singh & Anr. Vs. State of Bihar & Anr.; Refers to sec. 195 & 340 of CrPC, observes that issue is not with regard to powers & jurisdiction of Second Court but with regard to powers & jurisdiction of First Court as it is before First Court (i.e. CLB) that an application u/s 340 CrPC has been filed for initiating perjury action for filing petition based on fabricated documents, knowing it as forged; Refers to Sec. 195(1)(b)(i) & (ii) CrPC, observes that embargo applies on Second Court and not on First Court, holds that there is no restriction on First Court from proceeding with complaint under CrPC about fabricated document; Restores application, directs CLB to consider it on merits and in accordance with procedure laid down in sec. 340 of Code of Criminal Procedure, 1973; Relies on its own rulings in Kuldeep Kapoor vs Sushanta Sengupta & Sanjeev Kumar Mittal Vs The State, clarifies that it has not considered merits of appellant’s allegation and respondent’s defence on factual matrix of forgery: Delhi HC

[\[LSI-286-HC-2014-\(DEL\)\]](#)

HC: Sets aside CLB order to rectify members’ register, absent natural justice principles compliance

HC allows appeal u/s 10F of Companies Act, 1956, sets aside CLB order passed u/s 111 that directed the company to rectify the register of members as CLB did not follow natural justice principles; Observes that CLB has proceeded to adjudicate the matter on merits without recording whether there is service of notice ‘effected’ on the respondent; Pursues the CLB’s order sheet, observes that petitioner was under obligation to send notice to respondent and file proof of service with CLB, however notes that petitioner has issued the notice and only the ‘receipt’ (and not ‘proof of service’) for having forwarded the notice was filed with CLB; Refers Regulation 21 (relating to service of notice and process issued by Bench) and Regulation 26 (relating to procedure to be followed where any party does not appear) of the CLB Regulations, observes that “until and unless the CLB records a finding that there has been service of notice on respondent, it cannot be presumed that there has been effective service of notice”; Remits the matter back to CLB for adjudication on merits afresh: Karnataka HC

[\[LSI-596-HC-2015-\(KAR\)\]](#)



HC: ‘Consensual’ share purchase agreement doesn’t impinge ‘free transferability’ concept; Upholds Arbitral Award

HC Division Bench reverses single judge order, upholds arbitral award that permitted Bajaj Auto Ltd (‘appellant’) to purchase shares in Maharashtra Scooters Ltd (‘MSL’) from Western Maharashtra Development Corporation (‘respondent’) at valuation done by arbitrator; Appellant and respondent, being promoter-shareholders of MSL had entered into a Protocol Agreement wherein Clause 7 gave the right of first refusal to the party who purchased the shares of other party; Single Judge Order held that such a clause vitiated Section 111A of Companies Act, 1956 (which provides for free transferability of shares), thus, quashed the arbitral award whereby valuation on the basis of the agreement was done; HC refers to Sec 22A of Securities Contracts (Regulation) Act, 1956 (that provides for free transferability of shares of a public ltd co.), and holds that, *“it cannot be said that two individual shareholders entering into a consensual agreement to deal with their shares in a particular manner, either in presenti or at a future date, would impinge or violate the concept of free transferability as contemplated under section 22A(2)”*; Observes that object of Sec 111A is same as Sec 22A of SCRA, states that the provision regulates powers of Board of Directors regarding transfer of shares, however the expression ‘freely transferable’ does not intend to take away shareholders’ right to enter into consensual agreements/arrangements with the purchaser in relation to their specific shares; Also holds that *“The fact that the shares of a public company can be subscribed to by the public, unlike in the case of a private company, does not in any way whittle down the right of a shareholder of a public company to arrive at a consensual agreement/ arrangement...with another shareholder”*; Also observes that *“It is not a blanket pre-emption clause which binds all the shareholders of MSL to sell their shares only to other members of MSL, which clauses are incorporated in the Articles of Association of a private company”*; Dismisses respondent’s cross-objection that there was no legal contract as no date for valuation of shares was fixed under the agreement, observes that correspondence between the parties and arbitrator stated that arbitrator shall consider all the factors which may have impact on share price; Holds that, *“date” of valuation would certainly be one of the factors which would have an impact on the share price of MSL shares*”; Upholds arbitrator’s decision of taking date on which concluded contract was arrived at between the parties as date of valuation of shares; Also rejects ‘wrong valuation’ objection raised by respondent, contending that arbitrator had considered discounts and valued shares on liquidation basis, though MSL was a going concern; Holds that *“discounts are to be applied on the market value of the assets because what has to be worked out*



is what a shareholder can expect to get after all the assets of the Company are notionally sold and in abstract theory the entire sale proceeds are distributed to the shareholders”; Relies on SC ruling in Byram Pestonji Gariwala vs. Union Bank of India, G.L. Sultania and Anr. vs SEBI: Bombay HC

[\[LSI-479-HC-2015-\(BOM\)\]](#)

HC: Transmission procedure applicable for ‘share-transfer’ under amalgamation scheme, upholds CLB order

Bombay HC holds that in company amalgamation there is no general proposal for share transfer and there is no particular value for such transfer which takes place on sanctioning of scheme, upholds CLB



order; Notes that Appellant co. had rejected Respondent co.’s (transferee co.) application on ground that transfer of shares was in breach of relevant Articles of Association, not providing for pre-emption right; Observes that transfer occurs upon or subject to Court sanctioning the Scheme, holds that in amalgamation there is transfer of co. or its undertaking as going concern and not of any individual assets (including shares held by transferor co.); Peruses Articles, holds that share transfer occasioned by amalgamation scheme is not transfer of shares under Article 21 to 38 (relating to ‘share transfer procedure’) but Article 39 (relating to ‘share transmission’) by ‘any lawful means other than by transfer’; Holds that such transmission merely requires

production of evidence under Article 39, and states *“all entitlements to shares other than by virtue of transfers in pursuance of Articles 21 to 38 are covered by Article 39 and must abide by it”*; States in such share-transmission clause, directors are not under any obligation to give consent, but if directors refuse to give consent, then respondent would be free to invoke regulations which apply to share transfer: Bombay HC

[\[LSI-987-HC-2016-\(BOM\)\]](#)

HC: Share transfer pursuant to Sec. 391-394 scheme to be reckoned for oppression/mismanagement petition

Calcutta HC holds that transfer of shares pursuant to an order sanctioning amalgamation scheme does not require compliance of Section 108(1) of Cos. Act, 1956 (relating to ‘transfer of shares’); Also holds that transferee of shares pursuant to an order sanctioning scheme of amalgamation is entitled to cite such shareholding to meet qualification u/s 399 any time after the order sanctioning the scheme becomes effective for instituting proceedings u/s 397/398 against the company; HC states that *“There is no doubt that a scheme of amalgamation involves the transfer of the assets and liabilities to another but there is a key distinction between a ‘transfer of shares simpliciter’ and a ‘transfer pursuant to the sanction of a scheme of amalgamation’”*; Peruses Section 108(1), 391 and 394, states that *“it does not appear appropriate to regard transfer of shares in company sanctioned by an order u/s 391-394 as ‘transmission by operation of law’, there is no need to dilute finality of an order u/s 394 by taking recourse to the excuse under second proviso to Sec. 108(1) thereof”*; Holds that *“by virtue of extraordinary transfer recognised in Section 394(2), the compliance with Section 108(1) thereof becomes redundant. In any event, negative mandate in Section 108(1) operates on concerned company and does not affect transfer of property in shares recognised by Section 394(2), that is completed upon an order sanctioning scheme of amalgamation / arrangement becoming effective”*; HC holds that mere failure of petitioner to intimate company regarding vesting of relevant shares in their favour to sanction the scheme of amalgamation would not follow that their title to such shares would vanish into thin air, states *“It would be grossly disproportionate to the acts of omission on the part of the second petitioner before the CLB or its immediate predecessors-in-interest to rob them of their valuable rights in the shares on account of a minor transgression”*: Calcutta HC [\[LSI-894-HC-2015-\(CAL\)\]](#)

HC: Private agreement executed between parties unenforceable u/s 111A petition, upholds CLB order

HC dismisses appeal filed by IDBI Bank Ltd. ('Appellant') against CLB's order that rejected rectification of register of members petition on the ground that petition was not maintainable u/s 111A of the Companies Act 1956 ('the Act'); Observes that Appellant had filed petition before CLB seeking direction for cancellation of transfer/ pledge done by United Western Bank ('UWB', which got amalgamated to appellant pursuant to Govt notification) as UWB violated terms of articles of agreement entered into with its transferee cos.; Peruses Sec 111A(3) of the Act, clarifies that three grounds under which CLB can direct rectification of members' register include- if transfer was in contravention of i) SEBI Act or regulations, ii) SICA, iii) any other law; Rejects appellant's contention that instant case came within the ambit of violation of "any other law", refers to Article 13(3) (a) of Constitution of India and states that definition of law does not include contract or an agreement enforceable by law and "breach or contravention of an agreement is a violation of a contractual obligation. This cannot be stretched to say breach of an agreement is the same as contravention of any law."; Holds that "though it is open to the appellant to take such legal recourse, they may be advised. Adopting action under Section 111A of the Companies Act, 1956 is not an option." : Bombay HC



[\[LSI-992-HC-2016-\(BOM\)\]](#)

Recent CLB rulings on Rectification of Members' Register :

CLB: Non-transmission of shares to legal heir, despite probated Will a 'gross oppression'



CLB holds oppression and mismanagement u/s 397 & 398 of Companies Act, 1956 in respondent co., states that legal heir of deceased shareholder (petitioner) is entitled to shares held by her deceased husband in respondent co., as the deceased's Will was executed in petitioner's favour; Rejects respondent's contention that Will was executed on suspicious grounds, holds, "once a will is probated by a competent court, unless it is set aside by a competent appellate forum, it is binding on the Parties" and holds that non-transmission of shares in favour of

Petitioner was deliberate and malafide act and amounts to oppression; Also rejects respondent's contention that since petitioner was not a shareholder, she could not file such petition, and holds that petition u/s 397 & 398 of Act is maintainable as it is filed by legal heir who claims to be entitled to shares left by predecessor-in-title; Sets aside allotment made by respondents to themselves and observes that

it was made with ulterior motive to gain control over company, amounting to oppressive acts and orders for rectification of Register of Members; States that law of fiduciary duty of directors is evolved on principle of corporate governance, which aims at protecting collective interest of stakeholders and states that law relating to oppression is based on principles of equity and fair play as against strict compliance of law; Holds that payment to workers when the co. is closed, funding personal litigation by respondent company, writing-off sundry balances without considering as bad loans is oppressive, lacks probity and is 'mismanagement' u/s 398, accordingly appoints Chartered Accountant for conducting special audit for 7 previous financial years; However, rejects petitioner's contention on cancellation sale of immovable property, holds that past and concluded transactions are not liable to be set aside and states that remedy u/s 397 & 398 is of preventive nature with an intention to bring an end to oppression & mismanagement; Relies on SC observations in Dale & Carrington Investment Pvt. Ltd. vs P K Prathapan, Needle Industries (India) Ltd, Delhi HC ruling in Charanjit Khanna vs. Khanna Paper Mills, CLB order in Anil R Chhabria vs. Finolex Industries Ltd.: Mumbai CLB

[\[LSI-169-CLB-2014-\(MUM\)\]](#)

CLB: 'Non-receipt of consideration' no ground to reject share transfer, CLB not appropriate forum

CLB directs transfer of shares of respondent company in favour of petitioner and orders for rectification of register of members u/s 111 of Companies Act, 1956; Sets aside respondent company's board of directors' (BoD) decision for rejecting transfer of shares as it has failed to point out any deficiency in compliance of Act, observes that non-receipt of consideration by transferor is not valid ground & remedy lies elsewhere, but not with CLB; States that Reg. 21 of Table A (governing Articles of Association) provide only two grounds on basis of which BoD can refuse share transfer registration, and it does not include non-receipt of consideration, hence rejecting such transfer is illegal; Observes BoD, ought to have given effect to share transfer, where properly executed of share transfer forms are lodged along with original share certificates with respondent company u/s 108; Orders for issue share certificates reflecting name of petitioner within 30 days and states that petitioner is entitled to all benefits accrued (dividend, bonus shares etc.): Chennai CLB

[\[LSI-159-CLB-2014-\(CHE\)\]](#)

CLB: Amalgamation scheme cannot extinguish title in shares; Equates share transfer with 'transmission'

CLB declares petitioner as lawful owner of shares, directs respondent co. to rectify register of members; Observes that pursuant to duly sanctioned scheme of amalgamation by High Court, the 'transfer of shares' is equivalent to 'transmission of shares by operation of law' as there is no 'transfer' inter-vivos; Rejects respondent's contention that Articles of Association of respondent co.'s contain provisions relating to preemptive rights and 'transfer of shares' is not in accordance with prescribed articles provisions; Explains in detail the complete anomalous situation that will arise if respondent's contention relating to compliance of 'transfer of shares' is considered instead of 'transmission of shares'; Accepts petitioner's reliance on transmission related provisions in



articles and observes that *“if respondent’s contention that duly sanctioned scheme of amalgamation amounts to a transfer which must be regulated by article 23 to 28 and be subject to right of pre-emption, is accepted, it will result in an anomalous situation which will result in an illegality / invalidity of the Articles of Association”*; Agrees to petitioner’s contention that title of shares cannot be extinguished without payment of fair consideration / fair value to person who owned shares and rules that provisions in articles relating to transfer of shares cannot be enforced to defeat the petitioner’s legal rights; Separately, on issue of limitation holds that limitation period of 3 years as envisaged under Article 137 of Limitation Act is applicable to petition filed u/s 111 of Cos. Act, 1956.: Mumbai CLB

[\[LSI-219-CLB-2014-\(MUM\)\]](#)

CLB: Holds respondent guilty under IPC for producing fabricated gift deeds & share-transfer forms

CLB holds respondents guilty of producing fabricated gift deed and share transfer forms, observes it as false evidence; States that annexing such fabricated documents to affidavit-in-reply amounts to commission of offence u/s 191, 192, 199 & 200 of Indian Penal Code (IPC); Notes bare evasive denials by respondents to petitioner’s averments and absence of specific reply, clearly proves fabrication of documents & correctness of petitioner’s allegations; Rejects respondents’ plea for deferment of order until hearing of petition and states under criminal law, complainant is entitled to avail remedy at earliest possible time; States that *“allowing further time would mean giving an advantage to and encouraging dishonest litigants to false evidence and forged documents”*.: Mumbai CLB

[\[LSI-158-CLB-2014-\(MUM\)\]](#)

CLB: Dismisses ‘hopelessly time barred’ petition for members register rectification; Limitation Act applicable



CLB dismisses petition filed u/s 111A of Companies Act, 1956 (‘Act’) for rectification of Larsen and Toubro’s register of members, states *“petition is hopelessly time barred”*, having no merits; Rejects petitioners’ contention, states that *“although Section 111(4) does not specifically provide for any period of limitation..., in that case Article 137 of limitation act shall be applicable”*, which provides 3 years limitation period to aggrieved party to approach CLB; Observes that petition was filed in 2012, whereas cause of action arose in 2005 when petitioner’s appeal was dismissed by civil

appellate court, states even *“assuming that provisions of limitation act do not apply with respect to the petition filed under section 111 of the Act, it is an undisputed proposition of law that doctrine of ‘delay’ and ‘laches’ applies to the proceedings filed under section 111 of the Act”*; However, rejects respondents’ contention that NSDL ought to have been joined as party to case as shares were in dematerialised form, accepts petitioner’s contention that beneficiary owner has all rights & benefits and is subject to all liabilities associated with shares held by depository in its behalf, thus, holds that NSDL was neither necessary nor proper party; Relies on Bombay HC observations in Finolex Industries Ltd. v. Anil Ramchandra Chhabria & SC observations in Canara Bank v. Nuclear Power Corporation of India Ltd.:Mumbai CLB

[\[LSI-340-CLB-2015-\(MUM\)\]](#)

CLB: Serious lapses in filing cannot be rectified by Sec. 111 petition, observes malafide

Rejects petition filed under Section 111 of Companies Act, 1956 for rectification of Register of Members, as petition is made with mala fide intention and oblique motives, orders Registrar of Companies to take necessary action against officers in default; Rejects petitioners contention that Return of Allotment (in Form 2 – under Companies Act, 1956) is wrongly filed due to ‘clerical errors’ at two occasions (Mentioned 7,00,000 Equity Shares instead of 1,400 Equity Shares which are allotted & mentioned 93,00,000 Equity Shares instead of 18,600 Equity Shares); States that such major mistakes cannot be repeated one after another and go unnoticed by signatories who have signed e-Forms, observes ‘serious lapses’; States that petitioner company cannot reduce paid-up share capital when filing Annual Return with Registrar of Companies, without complying with procedure u/s 100 of Companies Act, 1956 (relating to Reduction of Share Capital) and without seeking confirmation of High Court; Sends Order copy to Director (Inspection) Ministry of Corporate Affairs, New Delhi and SEBI for necessary action.: Mumbai CLB

[\[LSI-83-CLB-2014-\(MUM\)\]](#)

CLB: Upholds bank management’s decision to defer share transfer; RBI’s approval a pre-requisite



CLB dismisses petition for transfer of 1073 shares held by petitioner (pvt ltd co) in private banking co, Tamilnadu Mercantile Bank Pvt Ltd (‘respondent co’), holds that such transfer registration required prior approval of RBI; Accepts respondent co’s submission that since petitioner was group / related entity with Shri B. Sivanthi Adithan and Shri B. Ramachandran Adithan (other investors), who already had invested in respondent co., thereby holding shares in excess of 10% of paid up share capital of respondent bank, which required RBI approval; Rejects petitioner’s contention that relating it with other investors to form a ‘group concern’ was ‘farce’, ‘deliberate with ulterior motive’, only to invoke RBI guidelines and defer share transfer registration process; Observes that petitioner co

had several investments in which the other investors were directors, thus, they were related / group concerns; Holds that thus, *“reasoning given by the respondent...is a valid reason and cannot be treated as refusal”*, states that *“respondent intends to comply with the statutory requirement of law to which the petitioner has to cooperate in complying...rather than approaching this Bench”*: Chennai CLB

[\[LSI-556-CLB-2015-\(CHE\)\]](#)

CLB: Proceedings at CLB ‘summary’ in nature; Can’t decide disputed share transfer petition

Company Law Board (‘CLB’) dismisses petition filed for rectifying of respondent company’s register of members as petition is not maintainable under Cos. Act, 1956 (‘the Act’); Holds that fundamental / disputed questions that, whether shares are ‘transferred’ or ‘pledged’ cannot be decided under guise of rectification of register of members; Refers duly executed power of attorney, states that *“though the petitioner has been nominated and appointed by the 13th respondent to execute and do all acts etc., however there is no specific mention about filing petition before this bench”*, concludes that petitioner has no specific power to file this petition for ventilating respondent’s grievance; Observes that petitioner is also not shareholder, concludes that u/s 111 of the Act, petitioner cannot be considered as

‘aggrieved person’; Holds that proceedings before CLB are summary in nature and are decided based on facts & disputed questions of law (here, ‘share transfer’ & ‘pledge’), cannot be decided by Board where full-fledged trial is required; Relies on Bombay HC observations in Advansys (India) Pvt. Ltd. & Ors. Vs Ponds Investment Ltd. & Ors., wherein it was held that applicant u/s 111 of Act must show that he has complied with every single requirement/ prescribed statutory procedure, and in absence of such compliance, no application for rectification can possibly lie: Chennai CLB

[\[LSI-342-CLB-2015-\(CHE\)\]](#)

CLB: Holds 98-years lease deed prejudicial, but precludes 1% shareholder from challenging share-allotment

CLB in a Sec 397/398 petition, observes that respondent co. leased out its properties to the detriment of the co., notes non-deduction of TDS by tenants, execution of lease deed for 98 years, subsequent cancellation of deed; Observes that co’s affairs have been mismanaged, in order to benefit the respondent directors, thus, appoints an independent auditor to ascertain whether actual rental income was deposited in cos.’ accounts; However, with respect to petitioner’s (minority shareholder) complaint that co’s properties were let out on unreasonable low rent, holds it as untenable, being commercial, could not be entertained u/s 397/398; Further rejects petitioner’s contention that co. indulged in act of oppression by converting unsecured loans into equity shares in favour of respondents, thereby, reducing petitioner’s shareholding from 1% to 0.13%, absent proof to show malafide intention in such additional allotment; Also observes that a shareholder holding only 1% shares is not entitled to contend that such allotment was made to reduce her to minority or oust her from control of management: Mumbai CLB



[\[LSI-568-CLB-2015-\(MUM\)\]](#)

CLB: Orders members’ register rectification; Dismisses Sec. 391-394 scheme pretence to restrict share transfer

CLB allows petition, directs respondent co. to register transfer of shares in petitioner’s favour and rectify its register of members; Rejects respondents’ contention that transferor (ICICI Bank) had no right to sell/ transfer such shares, as they were part of scheme of arrangement u/s 391-394 of Cos. Act, 1956, and by transferring such shares, it would commit gross contempt of HC’s order that sanctioned the scheme and also would violate RBI Guidelines; CLB mentions that *“it is a fundamental law that transferability of shares is subject to the provisions of Companies Act and no restriction, save and except as provided in law, can be imposed”*, and holds respondents’ objection to be frivolous, malafide, arbitrary and against basic principles of law; On respondents’ contention that petitioner acquired impugned 5,00,000 shares for meagre consideration of Rs. 5000, CLB states that *“the alleged inadequacy of monetary consideration with respect to transfer of shares...cannot be taken as a ground for rejection for registration/ transfer of shares by the company, if, the Transferor has no objection in this regard”*; Also rejects respondents’ preliminary objection that petition was barred by limitation, states that although Sec. 111(4) does not

specifically provide limitation period, Sec. 137 of Limitation Act will apply which provides 3 years period w.e.f. from date of cause of action, thus holds present case to be within prescribed limitation period: Mumbai CLB

[\[LSI-387-CLB-2015-\(MUM\)\]](#)

CLB: Share transmission refusal to legal heir oppressive; Notice serving to 'watchman' void

CLB allows petition u/s 58 and 59 of Companies Act, 2013 (share registration and rectification of members' register) and Sec 397/398 petition, dismisses respondents' (co. and its directors) challenge to maintainability of Sec 397/398 petition; Directs rectification of members' register as petitioner was entitled to 1/5th of shares held by his deceased mother in respondent co., holds that respondents have without sufficient cause refused share transmission and such refusal amounts to oppression; Accepts petitioner's contention that rights and obligations between co. and shareholders are governed by Articles of Association which provides for 'succession of shares', holds that transmission is governed by applicable Articles and not in manner of 'tenants in common acquire rights'; Sets aside special resolution passed for increasing authorized share capital of respondent co., notes that the notice of general meeting was served on the watchman of petitioner's building and not to petitioner, terms general meeting as 'bad in law, non-est and void';

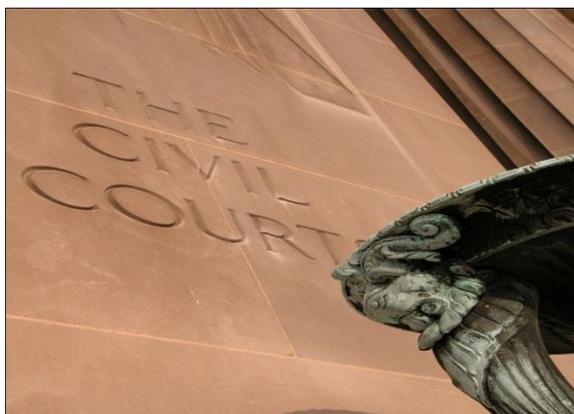


Observes that directors' were appointed with retrospective effect (in year 2010), whereas forms were filed with MCA in 2013 i.e. after the death of petitioner's mother, and also the minutes of meetings & resolutions were neither produced before RoC nor before CLB; Discusses law for maintainability of Sec 397/398 petition, observes that respondents' actions were burdensome, harsh, lacking probity and fair dealing, appoints Chartered Accountant firm as 'Special Auditor' for conducting audit and finding out whether

funds were diverted / misappropriated: Mumbai CLB

[\[LSI-655-CLB-2015-\(MUM\)\]](#)

CLB: Detailed trial imperative for register rectification with controversial facts; Civil Court appropriate forum



CLB disposes co. petition filed u/s 111A of Cos. Act, 1956 for rectification of register of members, states that where there is involvement of complicated and controversial questions of facts, examination / cross-examination of different persons / witnesses, a detailed trial is imperative, directs parties to approach Civil Court; Notes the facts that petitioner was shareholder of erstwhile Jindal Strips Limited and upon demerger, petitioner was entitled to get certain shares of respondent Co. as per High Court approved scheme, however respondent co. received duly executed transfer deeds which were given

effect; Observes that petitioner has taken unreasonable time of 5-years to file police complaint for share certificate loss and it took further 3-years to write to respondent co. to 'stop transfer' of shares; States "suspicion arises as to why the shares were in transferred in September 1999, when the circular of July 1999 was sent to the registered shareholders to surrender the original share certificates for obtaining share certificates of demerged entities"; Relies on SC ruling in case of Ammonia Plastics Corporation Vs. Modern Plastics Container: New Delhi CLB

[\[LSI-637-CLB-2015-\(NDEL\)\]](#)

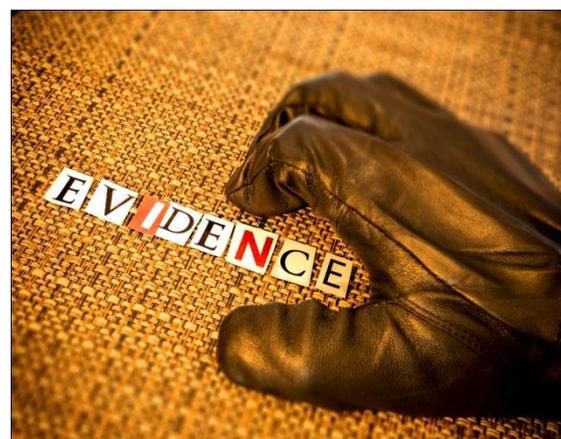
CLB: Strikes down AoA clause conferring discretionary powers to directors on share allotment

CLB sets aside disproportionate share allotment in pvt co (family business) that reduced one group of shareholdings, as "oppressive", directs Board of Directors to restore the earlier shareholding pattern; Rejects respondent co's contention that Article 7 of Articles of Association gave blanket powers to the directors to allot shares as they deem fit; Holds that "no doubt that right of allotment is accrued to the Directors under Article 7.. but here, it is a family company running on partnership line, therefore, it cannot be said that Board is at liberty to change the shareholding pattern at the wish of the management in control"; Observes that pvt ltd cos were closely held cos., i.e., shares were held within the members of the co which was akin to partnerships where partners owe a duty to act with utmost good faith towards each other, thus, "the proportionate right the other family members have in the company cannot be whittle down by an Article of Association"; Further holds that though Articles have given Directors absolute right to make allotment, Articles don't give them right to make disproportionate allotments to the shareholdings already existing in the company, thus, "to beat one section of shareholders, Board cannot take a route of preferential basis and allot shares disproportionately"; Relies on SC ruling in Dale & Carrington Investment (P) Ltd vs P. K. Prathapan:New Delhi CLB

[\[LSI-554-CLB-2015-\(NDEL\)\]](#)

CLB: Quashes rectification petition filed by ex-directors, relies on prima-facie evidence approving share transfer

CLB dismisses petition filed by former directors ('petitioners') of respondent co. u/s 59 of Cos. Act, 2013 to register themselves as shareholder, relies on prima-facie evidence u/s 164 of Cos. Act, 1956; Observes that petitioners executed transfer deeds, resolution was passed by board of directors approving share transfer for consideration, also notes that co. was suffering from losses in 2001 when the petitioners resigned as directors and transferred shares and now the petition is filed in 2013 for rectification of members' register when co. is running well with Rs. 100 crore reserves; Observes that share transfer was approved based on executed transfer deeds, however original share certificates were lying with the petitioners, holds "merely because some share certificates were lying with petitioners, it will not give any right to claim their shareholding in 2013, saying that they came to know for the first time about their shareholding was transferred in 2002"; Rejects petitioners' reliance on SC ruling in Mannalal Khetan Vs Kedar Nath Khetan (wherein it was held that provisions of Sec. 108 of Cos. Act, 1956 are mandatory and not recommendatory in nature) distinguishes on facts,



observes that since petitioners worked with other co. directors and now they cannot claim any ignorance for share transfer after 10-years; Rejects petitioners submission that consideration being more than Rs. 20,000 by bearer cheque, the same violates Income Tax Act provisions, holds “section comes into existence to persons making transaction of Rs. 20,000 shall not escape tax payment, but it does not mean if a bearer cheque is given for more than Rs. 20,000, that transaction is null and void”; On petitioners’ allegation of forgery/fabrication of share transfer deed, CLB holds that no one prevented petitioners from filing petition with Civil Court for such allegation, states that there is ample evidence supporting the presumption u/s 164 of Cos. Act, 1956 to confirm that petitioners transferred shareholding to respondent: New Delhi CLB

[\[LSI-785-CLB-2015-\(NDEL\)\]](#)

CLB: Dismisses challenge to decade-old allotment/transfer, upholds Board’s discretionary share-transfer powers under Articles

CLB dismisses Section 397/398 petition filed by former Managing Director (‘petitioner’) of respondent co., observes that petitioner has not come to the court with clear intentions and has not made any case



of oppression and mismanagement, terms petition as ‘futile exercise’; Observes that petitioner has challenged the share allotment made in 1996 to the two co. directors, and has also challenged the acts of 1992, 1995 and 1996, holds that petition suffers from delay and laches; Rejects petitioner’s contention that share transfer is against provisions in Articles of Association, peruses the minutes of board meeting held in October, 1992 approving the share transfer, observes parties have complied with provisions of Section 108 of Cos. Act, 1956, holds that board of

directors is vested with discretionary powers to sanction share transfer in terms of Articles; Peruses the minutes of Board meeting (wherein petitioner was appointed as MD and 165 shares were allotted to him), states “if petitioner’s contention is taken into consideration, that allotment of shares to other persons are illegal and void, the same principle will apply to the petitioner and allotment to him would be treated as illegal/void”; Refers to the board meeting minutes, observes that petitioner was removed as MD in 1984 for fund misappropriation, CLB states “petitioner has invested only Rs. 16,500 and when co. was facing financial crises, petitioner has not even bothered to take any initiative for supporting co.”, observes that petitioner’s interest has taken over co.’s property and not co. welfare and petitioner has no locus standi to do real estate business with co.’s property: Chennai CLB

[\[LSI-843-CLB-2015-\(CHE\)\]](#)

CLB: Cancels allotment on conversion of non-existent loan; Orders members’ register rectification

CLB allows company petition filed u/s 111 of the Cos. Act, 1956, orders rectification of register of members for illegal preferential allotment made by respondent company to promoter group (individuals / company); Observes that allotment was made without approval of members and Central Government as contemplated u/s 81 of Cos. Act, 1956, SEBI Takeover Code & ICDR Regulations; Notes that no loan was proved against the allotment as Respondent Co.’s bank statement was never presented before CLB, and states that cancellation of allotment will not tantamount to reduction of share capital u/s 100 of Cos. Act, 1956; Peruses Annual Report of respondent company and ‘lending company’, observes that

there is no mention of liability owning or borrowing, accordingly cancels the allotment and grants extension of 6 months for holding Annual General Meetings and for filing annual accounts: New Delhi CLB

[\[LSI-636-CLB-2015-\(NDEL\)\]](#)

CLB: Directs members' register rectification, rejects 'change of control' defense, terms 'non-registration' as arbitrary

CLB allows petition u/s 58 & 59 of Cos. Act, 2013 (corresponding to Sec. 111 & 111A of Cos. Act, 1956), directs respondent co. (Govt. undertaking) to register transfer of 100 equity shares by rectifying members' register; Observes that if purchase of additional shares is taken into consideration, petitioner's shareholding will be 39.77%, rejects respondent co.'s contention that there would be change in control, and holds "reason for non-registration on suspicion of acquisition of control is baseless and unfounded"; Notes that the petitioner has complied with the articles of association relating to registration of share transfer, holds that such registration cannot be refused arbitrarily: Kolkata CLB



[\[LSI-807-CLB-2015-\(KOL\)\]](#)

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