

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH, JAIPUR

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

CA No. 17/59/JPR/2019

IN THE MATTER OF:

KOTAK MAHENDRA BANK LTD.

...Appellant

VERSUS

BHARATPUR NUTRITION PRODUCT LTD. & ORS.

...Respondents

MEMO OF PARTIES

KOTAK MAHINDRA BANK LTD.
27 BKC, C-27, G-Block, Bandra
Kurla Complex, Bandra (E), Mumbai-
400051

Also at: Kotak Mahindra Bank Ltd.,
Ratail-ARD, Near Dell Campus, 7th
Floor, Plot No. 7, Sector-125, Noida,
U.P.-201313

...Appellant

VERSUS

BHARATPUR NUTRITION PRODUCTS LTD.

Ghana Sewar Bypass Road,
Bharatpur-321001, Rajasthan,

Also at:- 5-D, Atma ram House, 1,
Tolstoy Marg, New Delhi-110001 &
2nd Floor, Indraprakash Building, 21,
Barakhamba Road, New Delhi-
110001

...Respondent No. 1

Sdr

Sdr

UNION BANK OF INDIA

*Erstwhile, (United Bank of India Trustees),
Merchant Banking Division Investment &
Fund Management,*

16, Old Court House Street, 3rd Floor,
Kolkata-700001

Also at:- 11, Hemant Basu Sarani 4th
Floor, Kolkata-700001

...Respondent No. 2

**PEERLESS GENERAL FINANCE &
INVESTMENT COMPANY LTD.**

Peerless Bhawan, 3, Esplanade East,
Kolkata-700009

Also at: World Trade Centre, Centre-
I, 19th Floor, Cuffe Prade, Colaba,
Mumbai-400005

...Respondent No. 3

FOR THE PETITIONER(S) : Amol Vyas, Adv.
FOR THE RESPONDENT(S) : Vikas Jain, Adv.

Order Pronounced on: 23.04.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

- The present Appeal numbered as *CA No. 17/59/JPR/2019* has been filed by *Kotak Mahindra Bank Limited* ('Appellant'/ 'Petitioner') under Section 59 of the Companies Act, 2013 for rectification of the register of members favoring Appellant qua 2,25,000 Non- convertible Debentures (NCDs) of Rs. 100/- each with the nominal value of Rs. 2,25,00,000/- (Rupees Two Crore Twenty- Five Lakhs only). The Appellant was incorporated under the provisions of the Companies Act, 1956 ('the Act') on 21.11.1985.

Sdr

Sdr

2. The Respondent No. 1 namely, *Bharatpur Nutritional Products Limited* (Formerly known as *Dalmia Industries Limited*) is a company incorporated under the provisions of Companies Act, 1913 and having registered office at Ghana Sewar Bypass Road, Bharatpur, Rajasthan. The Respondent No. 2 i.e. *Union Bank of India* has already been appointed as Debenture Trustee in respect of above-mentioned NCDs and Respondent No. 3 namely *M/s Peerless General Finance & Investment Company Ltd.*, on 30.03.2007 sold all the aforesaid 2,25,000 NCDs to the Appellant vide Deed of Assignment dated 30.03.2007.

3. The present application has been filed on the following set of facts:

3.1. The Respondent No. 1 issued 17% Secured Redeemable 2,25,000 NCDs for Rs. 100/- each to Respondent No. 3 pursuant to Resolution passed in Extraordinary General Meeting ('EOGM') of Respondent No. 1 dated 12.03.1992. The details of the said secured NCDs are as follows:

<i>Folio No.</i>	<i>Quantity</i>	<i>Nominal Value (Rs.)</i>	<i>Certificate No.</i>	<i>Distinctive No.</i>
NCD-002	2,25,000	2,25,00,000	001-040	000001 to 225000


3.2. Later, the Respondent No. 3 vide Assignment Deed dated 30.03.2007 sold all the 2,25,000 NCDs to the Appellant. The Appellant moved a petition under Section 111A read with Section 117C of Companies Act, 1956 before Company Law Board, New Delhi. On 11.06.2014,

Sd/-

Sd/-

final orders were passed in the said matter titled as *Kotak Mahindra Bank Vs. Bharatpur Nutritional Products and Ors.* and directions were issued to Respondent No. 1 to assign specific duties relating to shares and debentures to some responsible person at its registered office during normal business hours and affidavit to that effect be submitted. Consequently on receipt of the affidavit, the Appellant was allowed to lodge the duly executed and stamped transfer deed along with the debenture certificate with the Respondent No. 1 company for further actions.

- 3.3. On 11.07.2014, the Appellant received the copy of Affidavit in terms of Order dated 11.06.2014, whereby *Mr. Ganga Ram Sharma* was appointed. On 05.09.2014, the Petitioner deputed officials at the office along with covering letter dated 05.09.2014, original NCDs, Share Transfer Form. On 19.09.2014, original letter dated 05.09.2014 was received by official of Respondent No. 1 at the corporate office. The Respondent No. 1 vide letter dated 19.09.2014 informed the Appellant regarding the transfer form being undated, stale, without payment of requisite stamp duty, the details of NCDs were not specified etc.
- 3.4. The Appellant vide letter dated 20.05.2015 informed the Respondent No. 3 for removal of such defects and vide letter dated 17.07.2015,



the Respondent No. 2 confirmed to Respondent No. 1 their assurance of not claiming or entering one time settlement proposal as the Respondent No. 3 sold the 2,25,000 number of NCDs to the Appellant. On 05.08.2016, the Appellant approached Collector of Stamps for adjudication of proper stamp duty payable on transfer of debentures along with copy of Form- SH-4. Another application was moved as the earlier application was not traceable. Thereafter, on 13.03.2018, the Collector of Stamps, Sham Nath Marg, Delhi adjudicated stamp duty payable as Rs. 3,37,500/- (Rs. Three Lakhs Thirty- Seven Thousand Five Hundred Only).

- 3.5. Later, on 13.04.2018, certificate was issued by Revenue Department, Government of NCT certifying deposit of consolidated stamp duty being Rs. 3,37,500/- (Rs. Three Lakhs Thirty- Seven Thousand Five Hundred Only). On 21.08.2018, the officials again approached the Respondent No. 1 along with SH-4 Form and tendered copy of Board Resolution, certificate of collector of stamp along with original Debenture Certificate 001 to 040 bearing distinctive numbers 000001 to 225000. On 29.08.2018, a reminder letter was sent, however, the Respondent No. 1 has not affected the transfer and correction in the register of members of NCDs. Therefore, the present application has been filed.

SdrSdr

4. The Respondent No. 2 has filed reply vide Diary No. 1918/2019 dated 16.09.2019. There is no representation on behalf of Respondent Nos. 1 & 3 despite of repeated service, hence, proceedings against these two were initiated ex-parte. The Respondent No. 2 had contended that Debenture Trustee holds debentures in a fiduciary capacity and since no proof/ evidence/ documents has been given by the Appellant qua transfer of NCDs, the answering Respondent is bound by legal obligations and rules or regulations in this regard. Further, reliance has been placed on Rule 18 of Companies (Share Capital & Debenture Rule) Rules, 2014 as per which a trust deed shall be open for inspection only to members of companies or debenture holders. Whereas at the case in hand, the Appellant failed to show any proof evidencing its membership in the company. Hence, the trust deed with respect to debentures cannot be submitted/ delivered to Appellant Bank as Appellant Bank was neither the member of the company nor registered as the Debenture holder.
5. The Appellant filed Written Submissions vide Diary No. 231/2024 dated 25.01.2024 contending that the assignment of NCDs was intimated to the Respondent No. 1 via letter dated 04.04.2007 along with Form 7B and details of NCDs. The Officials of the Appellant Company also visited the registered office of Respondent No. 1 for handing over of the NCDs but no office bearer of the Respondent Company 1 was available at the Registered

SdrSdr

Office. Also, the Appellant earlier filed an appeal before the NCLT, Delhi on 29.11.2019, however, the same was withdrawn on account of lack of jurisdiction and this Appeal was filed.

6. We have heard the Learned Counsel for the parties and perused the Application, Affidavits, Replies along with the documents placed on record.
7. An appeal has been filed by *Kotak Mahindra Bank* vide *CA No. 17/59/JPR/2019* regarding non-transfer of NCDs as detailed below purchased from Respondent No. 3 and already submitted in original along with transfer form to the Company on 05.09.2014 in compliance of the order of the Company Law Board passed dated 11.06.2014. The details of the said NCDs is as below:

<i>Folio No.</i>	<i>Quantity</i>	<i>Nominal Value (Rs.)</i>	<i>Certificate No.</i>	<i>Distinctive No.</i>
NCD-002	2,25,000	2,25,00,000	001-040	000001 to 225000

8. It is prayed by the Appellant that despite due receipt of the NCDs by the nominated officials i.e. the Respondent No. 2, the transfer has not been affected in favor of Appellant. The Petitioner has also submitted that a certificate was issued by the Revenue Department Government NCT certifying the deposit of the stamp duty of Rs. 3,37,500/- (Rupees Three Lakhs Thirty-Seven Thousand and Five Hundred Only). A reminder was also sent on 29.08.2018 by the Petitioner to Respondent No. 1, however, no

Sdr

Sdr

action has been taken by the Respondent No. 1 Company so far to register the name of the Appellant in the Register of Members.

9. In terms of the powers vested with this Tribunal u/s 59(4) of the Companies Act, 2013, Respondent Company is directed to complete the transfer of the above NCDs in favour of the Petitioner within 14 days from the date of this order. Compliance of the same be reported by parties by 22.05.2024.
10. The Registry is directed to send the copy of this order to the parties herein.


DEEP CHANDRA JOSHI,
JUDICIAL MEMBER


RAJEEV MEHROTRA,
TECHNICAL MEMBER