

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

COMP. APPL. No. 535(KB)2017

In

Company Petition No. 536/KB/2017

3. This is an application filed by one Mr. **Deobrat Bhadani and others** (hereinafter referred as **“Applicant”**) against one **Mr. Satyabrat Bhadani and others** (hereinafter referred as **“Respondents”**) seeking following reliefs:

- “a) CP No. 536/KB of 2017 be dismissed;*
- b) Pending disposal of this application, stay of all further proceedings of or in connection with CP No. 536/KB of 2017;*
- c) Ad interim orders in terms of prayers above;*
- d) Costs of and incidental to this application be paid by the respondents;*
- e) Such further order or orders be passed and/or direction or directions be given as to which this Hon’ble Court may deem fit and proper.”*

Facts and Brief:

4. Ramchand Ram Naga Ram Rice & Oil Mills Private Limited is a joint family-owned private limited company (herein after referred as **“Company”**) having its registered office in Bihar. The legal representatives of late Mr. Anand Mohan Bhadani who was Managing Director of the Company till his demise on 05.05.2014, have filed a company petition C.P. No. 536/KB/2017 before this Bench alleging fraudulent transfer of shares held by the late Mr. Anand Mohan Bhadani to Mr. Deobrat Bhadani (Applicant herein) and to his family. This application by the Applicant is questioning the maintainability of the said C.P. No. 536/KB/2017 mainly on two grounds, one on account of limitation (time barred petition) and another regarding on to file petition under section 244 of the Companies Act.

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5. The authorised share capital of the company is Rs.5.78 Lac divided into 34 equity shares of Rs.17,000/- each. The respondent No. 1 company was founded by Late Ramchand Ram, and Late Ram Lal and Late Hari Prasad as a partnership firm. Subsequently, the partnership firm was converted into a private limited company and both Late Ramchand Ram and Late Naga Ram were also first directors of the respondent company.
6. The company initially had 18 equity shares of Rs.17,000/- each, distributed among its first promoters. The company later issued 16 further equity shares increasing its paid-up share capital to Rs.5,38,000/- with 34 shares of Rs. 17,000/- each, with number of members as five.
7. It is the claim of the petitioners in C.P. No. 536/KB/2017 that all the 34 shares finally devolved on petitioners in the above CP and Mr. Deobrat Bhadani's father Late Anand Mohan Bhadani, by various transfers and transmission.
8. As per annual return of 2007-08 and 2008-09 dated 30.09.2008 and 30.09.2009 respectively, Late Anand Mohan Bhadani held 29 shares in the respondent company however, it is the claim of the petitioner in CP No. 536/KB/2017 that Mr. Deobrat Bhadani fraudulently transferred the entire shares of Late Anand Mohan Bhadani to himself, his wife and his two sons in the ratio of 8:7:7:7.
9. Petitioners in CP No. 536/KB/2017 claims that after the death of Anand Mohan Bhadani on 05.05.2014, sought transmission of shares only to know that Late Anand Mohan Bhadani's shares have

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already been transferred to Deobrat Bhadani, his wife Arti Devi, Harshit Bhadani, Ayush Bhadani who are sons of Deobrat Bhadani.

10. It is the claim of the petitioners in CP No. 536/KB/2017 that the shares only devolved on Late Anand Mohan Bhadani and he is not the original holder of those shares and therefore, he had no right to transfer the same and as such the shares shown to have been transferred by Late Anand Mohan Bhadani to Deobrat Bhadani, his wife and two sons is a fraud committed against the petitioners in main CP and hence they have filed petition No. 536/KB/2017 seeking several prayers as stated hereinbelow:

- a)** A Scheme be framed for management and administration of the Respondent No. 1 Company by appointment of independent directors with the Petitioners a director in view of their majority in the R1 Company;*
 - b)** Mandatory injunction directing the purported transfer of shares shown in the Annual Return of 30.09.2009 as invalid null and void;*
 - c)** Mandatory injunction directing R2 to transfer/transmission the 24 shares in the names of Petitioners with further direction to R1 & R2 to keep the rest of the 4 shares in trust for the benefit of both the Petitioners and the R2;*
 - d)** Alternatively mandatory injunction directing allotment of one more share in the Company for an equal and equitable transfer/transmission of shares of 7 shares each to three brothers and two sisters of late Anand Mohan Bhadani the original shareholders of the entire shares in the R1 Company.*
 - e)** Alternatively mandatory injunction directing R2, R3, R4, and R5 to transfer/transit their shares held in trust in Favor of the*
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Petitioners in the equal proportion as envisaged in the previous prayers hereinabove;

- f) In the alternative mandatory injunction directing cancellation of shares held by Respondent Nos. 3, 4, 5 not entitled for any shares in the R1 Company.*
- g) The following documents pertaining to the company be adjudged null and void and be delivered up to the Hon'ble Bench and cancelled: -
 - i. All Annual Returns starting from 30.09.2009 till date;*
 - ii. Any shares certificates purportedly issued to those persons under those purported allotments;**
- h) Mandatory injunction upon the Respondent Nos. 2 to 3 to forthwith disclose upon oath records, documents, books of accounts of the respondent Company and all statutory records;"*

The current application being Comp. Appl. 535/KB/2017 has been filed by the Respondents to the Company petition, to question the maintainability of CP No. 536/KB/2017.

Ld. Counsel for the Applicant:

- 11.** Ld. Counsel for the applicants submits that the petition filed as CP No. 536/KB/2017 in ex facie not maintainable as the petitioner do not have the requisite qualifications as prescribed under Section 244 of the Companies Act 2013.
- 12.** Ld. Counsel submits that the petitioners of CP No. 536/KB/2017 do not hold any shares in the company and never held any shares in the company. This will be evident from the submissions made in the Company Petition itself.

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- 13.** Ld. Counsel submits that none of the petitioners in the main CP was ever recorded shareholders of the company. On this ground alone, the petition filed by the respondents herein is liable to be dismissed.
- 14.** Ld. Counsel further submits that the company petition is ex facie barred by limitation. He submits that it has been specifically alleged in the company petition that the respondents herein had alleged date of knowledge regarding alleged acts forming subject matter of complaint made in the company petition in the month of August 2014, whereas they have filed the Company Petition in the month of September 2017, which is more than three years from the date of the petitioner's alleged knowledge of the alleged acts of complaint in the Company Petition. Therefore, Ld. Counsel submits that the petition filed by the respondents herein is not maintainable.
- 15.** In support of his claim on limitation, the Ld. Counsel submits that once an information became public by way of public document, the date of knowledge is deemed to be the date when such document became public. In the given case, it is an admitted fact that the annual return was filed in the year 2009, disclosing such transfer of shares by Late Anand Mohan Bhadani to Deobrat Bhadani, Arti Devi, Harshit Bhadani and Ayush Bhadani and therefore the deemed date of knowledge should be 30-9-2009 when the annual return was filed.
- 16.** Ld. Counsel submits, even assuming that the filing of annual returns was not within the knowledge of the petitioners in the Main CP, Mr. Anand Mohan Bhadani died on 05.05.2014 and the application to RoC for obtaining certified copy of share transfer was received on 21.08.2014 as admitted by the respondents herein.
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Hence, the Company Petition filed on 05.09.2017, is barred by limitation having been filed after three years.

17. Ld. Counsel also relied on the judgment of Hon'ble NCLAT rendered in the case of **Ganesh Jaiswal and Others Vs. Tourist Inn Private Limited and Others** in **2019 SCC OnLine NCLAT 466**. Ld. Counsel brought to our attention on Para 6 of the above Order passed by the Hon'ble NCLAT which is reproduced for seeking of convenience:

*“6. It is well settled that a plea of limitation is a mixed question of law and fact. Reference in this regard may profitably be made to the judgment of Hon'ble Apex Court rendered on 11th July, 2006 in Civil Appeal No. 4766 of 2001 titled '**Ramesh B Desai V. Bipin Vadilal Mehta**' reported in (2006) 5 SCC 638 (para 19). It is not in dispute that in regard to matters falling within the purview of Section 397-398 of the Companies Act, 1956, the Limitation Act does not specifically provide for a period of limitation. In terms of Article 137, which is applicable to matters for which no period of limitation is specifically provided, the period of limitation is three years from the date when the right to apply accrues. **Unless there is a continuing cause of action, the right to apply will have to be construed as having accrued when the first violation of right occurs or is discovered. Successive violation of right will not give rise to a fresh cause of action.** In the instant case, the alleged acts of oppression attributed to Respondents pertain to period ranging from year 1996 to 2009. The last act indisputably relates to year 2009. However, it is for the first time in the year 2014 that the Appellants filed the Company Petition alleging oppression and mismanagement qua the acts of omission and commission pertaining to the period commencing from year 1996 and lasting till 2009. Computed from the date of first alleged violation occurring in year 1996, the Company Petition is patently barred by limitation. Even if such acts of omission and commission are considered to be a chain of events forming a series, admittedly the Company Petition was filed much beyond the prescribed limitation period of three years from the alleged last act of oppression stated to have occurred in year 2009. Viewed in this context there is hardly any scope for departure from the finding*

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recorded by the Tribunal that the Company Petition was barred by limitation.”

(Emphasis Added)

- 18.** Thus the Ld. Counsel submits that even assuming that they became aware of such transfer pursuant to receipt of information from RoC on 21.08.2014, yet they filed this petition only in September 2017 and thus, this petition is clearly barred by limitation.
- 19.** Ld. Counsel further submits that if at all they are entitled to shareholding as legal heirs of the deceased, it is a matter of civil dispute and the same cannot be adjudicated before this Tribunal.
- 20.** The Ld. Counsel pointed out that the alleged transfer took place in 2009 and annual reports were filed reflecting such transfers in 2009 whereas the transferor Mr. Anand Mohan Bhadani died on 05.05.2014 only, which is after 5 years from the date of the alleged transfer. During this period, the transferor continued as managing director of the company and in these facts and circumstances, if at all the transfers made to the applicant herein are fraudulent, the transferor would have questioned and taken appropriate legal steps to reverse such transfer within the 5 years i.e. from 2009 to 2014. In view above submissions, the Ld. Counsel submits that the company petition filed by the respondent herein is not maintainable.

Ld. Counsel for the Respondent:

- 21.** Ld. Counsel for the respondent submits that shares have been transferred in favour of the Mr. Deobrat Bhadani and his family consisting of his wife and two sons in the ratio of 8:7:7:7 is without knowledge of the respondents herein. While Mr. Anand Mohan Bhadani continued as managing director till his demise on
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05.05.2014, he was almost in bed rest from the year 2009 and all the operations of the company were managed by the respondent No. 2 to namely, Mr. Deobrat Bhadani in the main company petition.

- 22.** The Ld. Counsel further submits that the shares only devolved on father Late Anand Mohan Bhadani and he had no right to transfer the same.
- 23.** Ld. Counsel for the respondent further contends that the transfer forms and the reports dated 30.09.2009, have been prepared by cutting and pasting the signature of Late Anand Mohan Bhadani in the said transfer documents and returns.
- 24.** The Ld. Counsel submits that after respondents herein became aware of the alleged fraudulent transfers, the matter was referred to forensics' experts and prima facie opinion of them is against the Applicant herein. He submits that Late Anand Mohan Bhadani was sick and was not in a position to replicate his signature and as such it is apparent his signature has been forged to execute the fraudulent transfer.
- 25.** Relying on the judgment rendered by the Hon'ble Supreme Court of India, in ***M/s World Wide Agencies Pvt. Ltd. and Another Vs. Margarat T. Desor and Others*** in ***(1990) 1 SCC 536***, the Ld. Counsel submits that after death of a member whose name is still in the register of members, his legal representatives are entitled to maintain a petition under Section 397 and 398 of the erstwhile Companies Act, even though they are not registered members. Therefore, the Ld. Counsel submits that the CP No. 536/KB/2017 is maintainable and Section 244 of the Companies Act, 2013 may be read in the context of the judgment cited above.
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- 26.** Ld. Counsel further submits that once fraud is committed, the question of limitation or time bar would have no relevance. Respondents herein became aware of such transfers after receipt of certified copy of statutory records on 21.08.2014, from the office of RoC and this application has been filed on 07.09.2017.
- 27.** In view of above, the Ld. Counsel pleaded that the company petition is maintainable and accordingly submitted that this demurrer application filed by the applicants herein is liable to be dismissed.

Analysis and Findings:

- 28.** We find that there are two issues that needs to be addressed in the case in hand:
- i.** Whether the respondents herein are members of the company having requisite percentage of shareholding or number of members as provided in Section 244 of the Companies Act. 2013.
 - ii.** Whether the Company Petition is barred by limitation.

Right to apply in terms of Section 244:

- 29.** We find that even the respondents herein have not claimed to be the shareholders/members of respondent No. 1 company. All they are saying is that they are entitled to shareholding of the company consequent to the death of father Late Anand Mohan Bhadani as legal representatives/legal heirs. While the respondents herein relied on the Hon'ble Supreme Court judgement of ***M/s World Wide Agencies Pvt. Ltd. and Another Vs. Margarat T. Desor and Others in (1990) 1 SCC 536*** mentioned above, we are of the view that the said case law of Hon'ble Supreme Court will not come to the rescue of the respondents herein. This is because at the time of
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death of Late Anand Mohand Bhadani was not a member of the respondent No. 1 company and the Hon'ble Supreme Court of India in the judgment cited by the respondent held that after the death of a member **whose name is still in the register of members**, his legal representative is entitled to maintain a petition.

- 30.** In this case, undisputedly the Late Anand Mohan Bhadani's shares have been transferred in favour of petitioner's way back in 2009 whereas, Late Anand Mohan Bhadani died only on 05.05.2014, which is 5 years after the alleged transfer. So, when he was not a member at the time of his death, question of relying on the judgment of Hon'ble Supreme Court of India cited supra, does not arise.
- 31.** Since Late Anand Mohan Bhadani continued as managing director for approximately 5 years after the alleged transfer of shares in favour of respondent No. 2 as to his family in 2009, Late Anand Mohan Bhadani would have/should have questioned and taken legal steps to reverse such transfer if they were fraudulent.
- 32.** However, since the transferor is no more, without expressing any opinion on the merits of transfer at this stage, we are of the view that the respondents do not meet requirements of Section 244 of the Companies Act to maintain CP No. 536 of 2017 filed by them.
- 33.** We are also of the view that once the annual reports are filed on 30.09.2009, it becomes public document and the concerned parties deemed to have knowledge of such transfers. Even assuming that they became aware only on receipt of certified copies of statutory records from the office of RoC on 21.08.2014, they should have filed a petition by 20.08.2017. whereas this application has been filed on

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05.09.2017, without explaining reasons for the delay. In fact, the petitioner is not even seeking condonation of delay in filing Company Petition No. 536/KB/2017.

- 34.** Under the aforesaid facts and circumstances, we are of the view that the petition is also barred by limitation. While we have noted Ld. Counsel for the respondents' vehement argument that once a fraud is committed, limitation does not apply, we are unable to accept this argument unless it is proved that fraud has indeed been committed particularly, when the transfer took place in 2009, whereas Mr. Anand Mohan Bhadani died only on 05.05.2014 and till then he continued as managing director of the respondent company. In view of above, we allow this demurrer application and hold that **CP No. 536/KB/2017 is not maintainable.**
- 35.** In view of above, **CP No. 536/KB/2017** has become infructuous and accordingly, **dismissed.**
- 36.** Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 22th day of April, 2024.

PH(PS)