

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI**

IA(C/Act)/83/KOB/2022

(Under Rule 11 & 131 of the NCLT Rules, 2016 r/w Section 424(2)(b) of the Companies Act, 2013 & Order XI Rule 16 of CPC, 1908)

And

CA/19/KOB/2021

(Under Section 59 of the Companies Act read with Rule 70 of the NCLT Rules, 2016)

In the matter of: -

1. K.K. Chandran, Saraswathi, Makkuni Road, Pallikkunnu P.O., Kannur- 670 004;
2. Vijayalakshmi, Saraswathi, Makkuni Road, Pallikkunnu P.O., Kannur- 670 004;

...Applicants/Appellants

-Versus-

1. Prime Habitats Pvt. Ltd., Door No: T.V.-33114, V. K. Complex, Fort Road. Kannur- 670 001. Represented by its Managing Director Mr. Ravi Gupta;
2. Ravi Gupta, 11-F, Royal Mangrove, Sarovaram, Bio Park Road, Civil Station, Eranhipalam, Kozhikode- 673 020.
3. Mohanlal Gupta, Bheemanna Garden Street, Alwarpet, Teynampet, Chennai, Tamil Nadu- 600 018.

...Respondents/Respondents

Coram:

Shri. P. Mohan Raj	:	Member (Judicial)
Shri. Satya Ranjan Prasad	:	Member (Technical)

Appearance through Video Conferencing:

For Applicants /Petitioners	:	Mr. Abdul Raoof, Mr. Mohammed Shafi, Mr. Raj Carolin, Advocates.
For Respondents/Respondents	:	Mr. A.M. Sridharan, Mr. S. John Major, Advocates.

Order reserved on: 19.10.2022
Order pronounced on: 23.11.2022

ORDER

1. The Interlocutory Application No.83/KOB/2022 is filed under Rule 11 & 131 of NCLT Rules 2016 for direction to direct the respondent to cause the production of original minutes of 1st respondent dated 02.07.2018 filed as annexure A6 at page 21 of rejoinder filed by the respondents dated 05.01.2021.

2. This Appeal is preferred in the form of petition under section 59 of the Companies Act 2013 R/w Rule 70 of NCLT Rules 2016 against the refusal for registration of transfer of shares by the 2nd Respondent letter dated 12.07.2021 (annexureA-14).

The brief contents of petition are as follows:

3. The petitioners and their three daughters were shareholders of the 1st respondent company. Their shareholding in the company were 3660 it constitutes 25% of the total paid up capital of Rs.14,64,000.00/-The petitioners entered into an agreement with the 2nd respondent on 20.12.2018 to transfer their shares for consideration of Rs.20,00,000/-The 2nd respondent agreed to pay Rs.10,00,000/- by way of cheque and agreed to pay the balance Rs.10,00,000/- within two months period from the date of agreement. At the time of executing the agreement the petitioners and their family members have handed over all the necessary documents for effecting transfer of shares under the bonafide belief that the sale consideration would be paid as agreed. On the basis of share transfer agreement,

the total shares of 3660 of the petitioners and their daughters were transferred in the name of 3rd respondent as nominee of 2nd respondent. The 2nd respondent failed to pay the sale consideration despite the repeated demands made by the petitioners. When the 2nd respondent failed to pay the sale consideration the 1st petitioner issued legal notice to 2nd respondent. After the receipt of reply the petitioner issued notices dated 01.06.2021 under section 59 of Companies Act 2013 to respondents 1 to 3 seeking rectification of register as good as no transfer of shares belonged to the petitioners and their daughters were effected. This request was denied by the 2nd respondent in the impugned order dated 12.07.2021, against the said refusal this petition has been filed for necessary direction to the respondents to carry out necessary rectifications.

The brief contents of Reply of 3rd Respondent adopted by Respondents 1 and 2 are as follows:

4. The petition is filed under section 59 of Companies Act 2013, stating that the sale consideration mentioned in the share transaction agreement dated 20.12.2018 is not paid, the fact that whether the petitioners and their family members received the consideration or not can be decided only in a detailed trail after putting the parties to the chief and cross examination. This Tribunal has no jurisdiction to adjudicate this issue. The petition involves complicated question of facts and law, the proceedings before this Tribunal is summary in nature. The parties should be relegated to civil court for appropriate remedies. The petitioners seek rectification of the register of shareholders, but their daughters are not arrayed as parties, hence this petition suffers from the non-joinder of necessary parties. Further

Rs.20,00,000/- towards the consideration for transfer of shares were received by Ms. P. Sreelakshmi and Ms.Shikha directly. The petitioners admitted the execution of share transfer agreement dated 20.12.2018, in pursuance of said agreements and other necessary documents executed by the petitioners and their daughters the shares were also transferred in the name of 3rd respondent. The shares of a company are movable properties as per section 44 of Companies Act 2013 and under section 2(7) of the Sale of Goods Act 1930. When the sale is completed and if the sale price is unpaid, the seller is entitled to file a suit for the price in terms of section 55 of Sale of Goods Act 1930 and have no right to reverse the sale which was already completed. The daughters of the petitioners Ms.Shikha, P.Sreelakshmi and Ms.P.Chitra are the shareholders and directors of another company Arogya Holistic Ayurvedic Medicare and Resorts Limited. The 1st petitioner and 2nd respondent on 01.01.2017 entered into an agreement to develop the property held by Arogya. The company also entered into an agreement on 01.04.2017 with Ms.P.Sreelakshmi, she is MD in Ayurveda had agreed to assist for which the company agreed to pay Rs.10,00,000/- as remuneration, similarly the company also entered into an agreement on 01.04.2017 with Ms.P.Shika she is Ph.D in Bio Technology for the purpose of providing designing, building spa and company agreed to pay a sum of Rs.10,00,000/- as remuneration. The company could not proceed with the project due to certain reason hence as per the termination agreement the company paid Rs.15,00,000/- to Arogya towards damages. The company paid Rs.1,00,000/- as TDS towards the accounts of daughters of petitioners for the financial year 2017-18 the said amount to be adjusted towards share sale consideration. The 2nd

respondent paid Rs.10,00,000/- on 04.01.2019 and 05.01.2019, company paid Rs.9,85,000/- to Ms.Sreelakshmi, similarly the company paid to Ms. P. Shikha Rs.2,15,000/- on 07.01.2019, Rs.4,00,000/- on 15.01.2019 and Rs.3,00,000/- on 25.01.2019, thus the petitioners and their daughters received the entire sale consideration. All the above payments were made subsequent to the share transfer agreement dated 20.12.2018. The 2nd respondent also paid a sum of Rs.9,00,000/- to the 1st petitioner on different dates when he agreed to repay the amount, but till date he has not return the said amount of Rs.9,00,000/-The 2nd and 3rd respondents have already filed declaratory suit before the civil court. For the reasons stated above the petition may please to be dismissed.

The Points for consideration are as follows:

- 1) Whether the respondents are to be directed to produce original minutes of 1st respondent dated 02.07.2018/ as Prayed in IA. No. 83/KOB/2022?
- 2) Whether this Tribunal has no jurisdiction to entertain this Petition?
- 3) Whether the petition is hit by non-joinder of necessary parties?
- 4) Whether the petition filed for reversal of transfer of shares is maintainable?
- 5) Whether the petitioners are entitled for the relief of rectification of records of the 1st respondent company as prayed in the petition?

Point No.1

5. This interlocutory application is filed by the petitioners for direction to direct the respondents to produce original minutes of the 1st respondent company dated 02.07.2018. The draft minutes of the same is filed by the

petitioners as annexure 17 along with their rejoinder in C.A.No.19/KOB/2021. The contention of the petitioners is in the minutes clause 5 is inserted and filed into this Tribunal. Earlier the petitioners filed I.A.No.23/KOB/2022 to pass an order for prosecution against 2nd and 3rd respondents because the respondents inserted clause 5 in the minutes dated 02.07.2021 and thus committed forgery and manipulated the documents. This Tribunal dismissed the said application on merits on 14.06.2022 after observing that the minutes produced by the petitioners as annexure 18 in I.A.No.23/KOB/2022 is draft minutes and minutes produced by the respondents as annexure 19 is the final minutes, both were prepared on the same day and in both the minutes the 1st petitioner and 2nd respondent put their signatures. Further held that the 1st petitioner knowingly signed in the final minutes and concluded that clause 5 in the final minutes was added with the consent of both parties. Now the petitioner filed this petition for production of original of annexure 19 filed I.A.No.23/KOB/2022. The petitioners submits that the I.A.No.23/KOB/2022 was disposed of without production of original of annexure 19, it leads to pass an order of dismissal hence this petition is filed for production of original. The contention of the petitioners is unsustainable, if the petitioners are aggrieved by the order of this Tribunal, they shall approach the appellate forum for redressal instead they filed this petition circumventing the appeal. Apart from this there is no iota of evidence to show that how the production of final original minutes will be helpful to decide the main company Appeal. In the circumstances it is answered that there is no need to issue any direction against the respondents.

Point No.2

6. The contention of the respondents that the proceedings before this Tribunal is summary in nature is incorrect. Section 424(2) of Companies Act 2013 vest the power of civil court to this Tribunal to examine the witness. The relief sought by the petitioners is for rectification of records of the 1st respondent company this fall under section 59 of Companies Act 2013, in such a situation this Tribunal alone has exclusive jurisdiction to decide the petition. Section 430 of Companies Act 2013 ousted the jurisdiction of Civil court. In this regard the Apex held in *Shashi Prakash Khemka v. NEPC Micon*, [2019 SCC OnLine SC 223](#) as follows:

“After Companies Act, it is not in dispute that were a dispute to arise today, the civil suit remedy would be completely barred and the power would be vested with the NCLT under Section 59 of the said Act”.

Following the said Apex court Citation, the NCLAT held in **MAIF Investment India PTE Ltd. v. Ind-Barath Power Infra Ltd.**, [2019 SCC OnLine NCLAT 203](#), decided on 28-05-2019] as follows:

On the basis of above arguments and in view of the law laid down in NEPC Micon case, it was held that NCLT had jurisdiction to deal with all the cases which dealt with questions regarding rectification and all questions incidental and peripheral to rectification, for the purpose of deciding the legality of the

rectification. It was opined that in the present matter, there were really no complex questions involved and even if it were then the same had to be decided by the NCLT and in appeal, this Tribunal was bound to consider whether or not entry made in the Register of Members could be upheld.

In these circumstances it is answered that this Tribunal has jurisdiction to entertain this petition.

Point No.3

7. The petitioners along with their daughters were holding 3660 shares as mentioned below.

SI. No.	Name	Certificate Number	Dist Number	Shares
1.	K.K Chandran	017	12641 to 14640	2000
2.	P. Vijayalakshmi	010	4981 to 5980	1000
3.	P. Chithra	012	6201 to 6420	220
4.	P. Shikha	011	5981 to 6200	220
5.	P. Sreelekshmi	013	6421 to 6440	220

By share transaction agreement dated 20.12.2018 entire 3660 shares were transferred to the 3rd respondent for sale consideration of Rs.20,00,000/-There after the shares were transferred and registered in the name of 3rd respondent. The petitioner in this petition prayed for reversal of entire 3660 shares in their names as

if no transaction was held. Admittedly the 1st and 2nd petitioners were holding 3000 shares, remaining 600 shares were owned by their three daughters. The petitioners filed the petition on their individual capacity, their daughters not authorised them to file this petition, in the absence of any authority from their daughters they cannot claim relief for their daughters. The petitioners can maintain the petition only to the extent of 3000 shares, they cannot seek any relief to their daughters. The crux of the petition is regarding the consideration, the respondents taken a plea and stated that the sale consideration were paid to the daughters of the petitioners on different dates. In this situation for complete adjudication the three daughters of the petitioners in whose favours the 600 shares were stood are necessary party to this petition, In these scenario the petition is hit by non-joinder of necessary parties.

Point No.4

8. It is admitted case of the petitioners that in pursuance of share transaction agreement dated 20.12.2018 and other documents and forms executed by the petitioners the share transactions were completed and the shares were transferred in the name of 3rd respondent. The execution of share transaction agreement is admitted, the contention of the petitioners is that the purchaser/ 2nd respondent failed to adhere his words to pay the sale consideration within two months from the date of agreement as agreed. As stated on the respondent side as per section 44 of Companies Act 2013 and under section 2(7) of the sale of Goods Act 1830 the shares are considered as 'goods' on the assurance made by the 2nd respondent to pay the consideration within two months, the shares were transferred to the respondents, thus the sale was completed. According to the contention of the

petitioners, they are unpaid seller as defined under section 45 of the Sale of Goods Act 1830, their rights are defined in section 46 of the Sale of Goods Act 1830. In this case the possession of goods (shares) was already passed to the respondent in such a situation the petitioner is entitled for unpaid sale consideration/sale price and not for the reversal of sale. In the situation the petition filed for rectification of register is not maintainable. Thus, this point is answered.

Point No.5

9. In view of the answers arrived to the points No.3 & 4 the petitioners' prayer for rectification of register it amounts to reversal of sale cannot be conceded. The prime point involved in this petition is regarding the passing of sale consideration. If the petitioners are aggrieved for non-payment of the sale consideration for the goods sold and delivered the remedy is suit for recovery of price/money before the regular civil court. Here in this company appeal, it is not necessary to determine whether the deferred sale consideration was paid or not. The point here determined and concluded are that the sale of shares are valid and transfer of shares made in the name of 3rd respondent held proper. In circumstances it is answered that the petitioners are not entitled for the relief of rectification of records of the 1st respondent company as prayed in the petition. Thus, this point is answered.

10. In the result **I.A.No.83/KOB/2022** and **C. A. No. 19/KOB/2021** are **DISMISSED**.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CA/19/KOB/2021

In re: K.K. Chandran & another Vs. Prime Habitat & 2 Others.

11. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,

12. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Satya Ranjan Prasad
Member (Technical)

P. Mohan Raj.
Member (Judicial)

Signed on this 23rd day of November, 2022.

Supriya-P. s