

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP No. 31/59/HDB/2018
u/s. 59 of Companies Act, 2013

IN THE MATTER OF:

Sanghi Textiles Private Limited

...Petitioner

VS

Sanghi Industries Pvt Ltd & Ors

...Respondent

Dated: 15.09.2023

Coram: -

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)**

SHRI. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

CORRIGENDUM ORDER

1. A Rectification Memo is filed on behalf of the Respondent No.2, stating that there is a Typographical error in the cause title of the docket order dated 07.09.2023 in CP No. 31 of 2023.
2. In the cause title of the said order "Sanghi Industries Ltd" is mentioned erroneously as Petitioner and "Sanghi Textiles Private Limited & Ors" as Respondent, instead of vice-versa.
3. Hence, corrigendum is issued as under:

For	Read
"Sanghi Industries Limited and others as Petitioner"	"Sanghi Textiles Private Limited as Petitioner"
"Sanghi Textiles Private Limited as Respondents"	"Sanghi Industries Limited and others as Respondents"

4. The rest of the contents of the docket order dated 07.09.2023 remain unaltered.

Sd/-

Charan Singh
Member (Technical)

Sd/-

Dr. Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
07-09-2023 AT 10:30 AM

CP No. 31/59/HDB/2018
u/s. 59 of Companies Act, 2013

IN THE MATTER OF:
Sanghi Industries Pvt Ltd

...Petitioner

VS

Sanghi Textiles Private Limited

...Respondent

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders pronounced. Recorded vide separate sheets. In the result, “ having found that the case on hand involved contested facts and disputed questions, in the light the ruling of Hon’ble Supreme Court of India, in re, *IFB Agro, supra*, wherein it has been categorically held that the rectificatory jurisdiction of this Tribunal under Section 59 of the 2013 Act, is *summary* in nature and not intended to be exercised *where there are contested facts and disputed questions*, we are of the considered view that the present company petition under Section 59 of the 2013 Act, seeking declaration and other reliefs, is **not maintainable**, before this Tribunal, hence the same is hereby dismissed as not maintainable. **We leave it open to the parties to seek such a declaration before the appropriate forum.**”
As company Petition is disposed of IAs if any pending stands disposed of.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP NO. 31/59/HDB/2018

*Under Section 59 of Companies Act, 2013,
Read with Rule 11 of the NCLT Rules, 2016.*

IN THE MATTER OF M/S. SANGHI INDUSTRIES LIMITED

Between:

Sanghi Textiles Private Limited
Sanghi Nagar, Hayat Nagar Mandal TQ,
Ranga Reddy District - 501511

... Petitioner

Versus

1. Sanghi Industries Limited
Sanghi Nagar, Hayat Nagar Mandal TQ,
Ranga Reddy District – 501511
2. Mr. Ravi Sanghi.
Sanghi Industries Limited
Sanghi Nagar, Hayat Nagar Mandal TQ,
Ranga Reddy District – 501511
3. Sudhir Sanghi
4-3-352, Bank Street, Koti
Hyderabad – 500095
4. Siddharth Sanghi
4-3-352, Bank Street, Koti
Hyderabad – 500095

5. Amit Sanghi
8-2-686/D/1/S/2, Road No. 12,
Inner Space Furniture Store,
Banjara hills, Hyderabad – 500034
6. Swathi Sanghi
4-3-352, Bank Street, Koti
Hyderabad - 500095
7. SZF Private Limited
4-3-352, Bank Street, Koti
Hyderabad - 500095
8. Balaji Zippers Private Limited
4-3-352, Bank Street, Koti
Hyderabad - 500095
9. Sanghi Poly Zips Private Limited
4-3-352, Bank Street, Koti
Hyderabad - 500095
10. Sanghi Synthetics Private Limited
4-3-352, Bank Street, Koti
Hyderabad - 500095
11. Alpha Zippers Private Limited
4-3-352, Bank Street, Koti
Hyderabad - 500095
12. Fancy Zippers Private Limited
4-3-352, Bank Street, Koti
Hyderabad - 500095
13. S K K Zippers Private Limited
4-3-352, Bank Street, Koti

Hyderabad - 500095

14. Maruthi Fasteners Private Limited
(Represented by its Director Siddharth Sanghi – R4)
4-3-352, Bank Street, Koti
Hyderabad - 500095
15. Sanghi Threads Private Limited
4-3-352, Bank Street, Koti
Hyderabad – 500095
16. Sanghi Filaments Private Limited
4-3-352, Bank Street, Koti
Hyderabad - 500095
17. Sanghi Polyesters Limited (under Liquidation)
Official Liquidator
1st Floor, Corporate Bhawan, GSI Post,
Tattiannaram Nagole, Bandlaguda
Hyderabad - 500068
18. CIL Securities Limited
214, Raghava Ratna Towers,
Chirag Ali Lane, Abids,
Hyderabad - 500001

... Respondents

Date of Order: 07.09.2023

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)**

and

SHRI. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Appearance:-

For Applicant : Shri S. Chidambaram, PCS and Shri
Yogesh Jagia, Advocate.

For the Respondents : Shri. D V Sitharam Murthy, Sr Advocate
assisted by Mr.T.Vijaya Kumar Reddy, Advocate, Shri Sharad Sanghi, Shri
Jagadish, Shri A.Kalyan Chakravarthy, Shri Venkata Vardhan and Shri
Y.Suryanarayana, Advocates

[PER BENCH]

O R D E R

1. This is an application filed under Section 59 of the Companies Act, 2013, Read with Rule 11 of NCLT Rules, 2016 seeking for the following relief(s):
 - a. Declare that 58,70,000 of Petitioner Company shares transferred on 18.12.2014 is in willful violation of Orders of Hon'ble Company Law Board, 23.10.2008 and 28.10.2009.
 - b. Direct rectification of Register of Members of Respondent No. 1 Company to the extent of 58,70,000 shares transferred to Respondent No. 2 on 18.12.2014, previously held Petitioner Company and restore the Petitioner's name in the members register of R1 Company.
 - c. Declare that 1,33,62,800 shares of R7 to R17 transferred on 18.12.2014 is in willful violation of Orders of Hon'ble Company Law Board, 23.10.2008 and 28.10.2009 and in addition illegal, null and void.

- d. Direct rectification of Register of Members of Respondent No.1 Company to the extent of 1,33,62,800 shares transferred to Respondent No.2 on 18.12.2014, previous held by R7 to R17 and as detailed below and consequent rectification of shareholding of R2 in R1 Company by restoring name of R7 to R17 in members register of R1 Company:

Sl. No.	Name of the Respondent	Impugned Transfer of Shares
1	SZF Pvt Ltd (R7)	24,00,000
2	Balaji Zippers Pvt Ltd (R8)	6,00,000
3	Sanghi Poly Zips Pvt Ltd (R9)	6,00,000
4	Sanghi Synthetics Pvt Ltd R10)	6,00,000
5	Alpha Zippers Pvt Ltd (R11)	6,00,000
6	Fancy Zippers Pvt Ltd (R12)	6,00,000
7	SKK Zippers Pvt Ltd (R13)	6,00,000
8	Maruthi Fasteners Pvt Ltd R14)	6,00,000
9	Sanghi Threads Pvt Ltd (R15)	6,00,000
10	Sanghi Filaments Pvt Ltd (R16)	7,50,000
11	Sanghi Polyesters Ltd (R17)	54,12,800
	Total	1,33,62,800

- e. Direct the Respondent No.18 to effect the changes to the beneficiary accounts immediately.

- f. Direct the Registrar of companies, to initiate appropriate proceedings against directors of R7 to R17 at the contemporaneous time (on 18.12.2014) for fraudulently transferring the shares of held by Respondent No. 7 to 17 without receiving consideration.
- g. Further any other consequential, incidental or other order(s) as this Hon'ble Tribunal may deem fit in the circumstances of the case.

2. Brief averments made by the Petitioner:-

- a. The present petition is filed by the petitioner for impugned transfer of shares occurred on 18.12.2014 without the knowledge of the petitioner.
- b. It is averred that, Respondent No.1(Sanghi Leathers Private Limited) is initially private limited Company, later expanded its business and ventured into various other industries and thus decided to convert Respondent no.1 into Public Limited Company and changed its name to Sanghi Industries Limited.
- c. It is averred that Respondent no.1 Company and Respondent no.7-17 are part of Sanghi Group of Companies.
- d. The petitioner Company submits that the Company holds 58,70,000 equity shares of Rs.10/- each fully paid out of the total paid up capital of the Respondent no.1 Company.

e. It is averred that R.7-17 being part of Sanghi Group of Companies together were holding 3,84,08,300 which amounts to 17.45% of the total equity paid-up share capital of the R1 Company. The details of shareholding pattern is mentioned below:

Sl. No.	Name of the Respondent	No. of shares held as on September, 2014	Impugned Transfer of Shares	No. of shares held as on September, 2017
1	SZF Pvt Ltd (R7)	92,84,000	24,00,000	68,84,000
2	Balaji Zippers Pvt Ltd (R8)	33,75,000	6,00,000	27,75,000
3	Sanghi Poly Zips Pvt Ltd (R9)	20,82,500	6,00,000	14,82,500
4	Sanghi Synthetics Pvt Ltd R10)	22,75,000	6,00,000	16,75,000
5	Alpha Zippers Pvt Ltd (R11)	22,75,000	6,00,000	16,75,000
6	Fancy Zippers Pvt Ltd (R12)	20,68,750	6,00,000	14,68,750
7	SKK Zippers Pvt Ltd (R13)	41,75,000	6,00,000	35,75,000
8	Maruthi Fasteners Pvt Ltd (R14)	20,68,750	6,00,000	14,68,750
9	Sanghi Threads Pvt Ltd (R15)	23,54,000	6,00,000	17,54,000
10	Sanghi Filaments Pvt Ltd (R16)	30,37,500	7,50,000	22,87,500
11	Sanghi Polyesters Ltd (R17)	54,12,800	54,12,800	0
	Total	3,84,08,300	1,33,62,800	2,50,45,500

The above transfers have been affected by the Respondent Companies without receipt of any consideration in favour of R2. The shareholding pattern of R1 Company Post the impugned transfers as of December 2014 is at **Annexure – A6**.

- f. With regard to the oppressive acts and mismanagement by Late Mr.Anand Prakash Sanghi and others, petitioner filed several applications before Hon'ble Company Law Board and the same are pending for adjudication before this Hon'ble Tribunal.
- g. It is averred that when matter stood thus, the Petitioner No.1 apprehended that Respondents may transfer the shares of R1 Company held by R7 to R17 and sought protection from the Hon'ble Company Law Board, Additional Principal Bench, Chennai, which has passed the following order on 23.10.2008 in Company Petition No. 23 and 25 to 35 wherein the Respondent Companies are parties (copy of the order of CLB dated 23.10.2008 is enclosed as per **Annexure – A7**):

“.....Therefore with a view to ensure amicable solution for the disputes and in the paramount interest of Sanghi Group of Companies, it is hereby directed that (a) both parties shall maintain the present status quo in regard to their shareholding and also fixed assets of all companies in Sanghi Group of Companies until further orders; and (b) any transfer of shares in Sanghi Group of Companies by either parties, in the interregnum period, would be null and void. Liberty to apply.”

- h. The Petitioner further submits that the Hon'ble Company Law Board vide its order dated 28.10.2009, in Company Applications filed in Company Petition Nos. 27 to 35 wherein the Respondents 2 to 16 are parties, has passed orders as under (copies of the said orders enclosed colly as **Annexure – A8**):

“The respondents 2 to 11 are hereby restrained from encumbering or deal in any manner the shares of SIL held by the first respondent company without leave of this Bench until further orders.”

- i. It is averred that the respondents are aware of the order of the Hon'ble Company Law Board, have illegally, without knowledge of the petitioner transferred **1,33,62,800** shares of Sanghi Industries Limited held by the Respondents 7 to 17 on 18.12.2014 in active collusion of the Respondent No. 18.
- j. While this is so, petitioner came to know that the Respondents have informed the Stock Exchanges that the Respondent No. 2 has acquired 2,72,86,050 equity shares of Respondent No.1 Company from Respondent No. 7 to 17 along with Petitioner Company's shares in R1 Company to the extent of 58,70,000 and others (Copies of the disclosures made to BSE Limited is enclosed as **Annexure – A9**). It is averred that the said transfer of shares by Respondent No. 7 to 17 and illegal transfer of Petitioner Company's shareholding in favour of Respondent No. 2 is in absolute willful disobedience of the order of the Hon'ble Company

Law Board, Additional Principal Bench, dated 23.10.2008, and hence amounts to contempt of the order of the Hon'ble Company Law Board.

- k. The Petitioner submits that the said transfer is also in violation of SEBI (Substantial Acquisition of shares and Takeover) Regulations, 2011, which is done without any sufficient cause, without receiving any consideration, fraudulently benefiting of the Respondents to the detriment of the Petitioner and Respondent No. 7 to 17. The Petitioner being the shareholder of the Respondent No. 7 to 17 is also aggrieved with the illegal transfer of shares of the Respondent No.1 Company held by the Respondent No. 7 to 17.
- l. It is further averred that Respondents have transferred the shares of Respondent No.17 Company also, which is under liquidation and the shares has been transferred without the knowledge of the Official Liquidator.
- m. It is averred that Respondents have illegally and fraudulently transferred shares of the group companies without any consideration to the Respondent No. 2. The Petitioner Company further submits that by this illegal transfer the group companies have incurred a loss to the tune of Rs. 96 Crores, Out of which to the tune of Rs. 27 Crores to the shareholders of the Respondent No. 17 Company which is a publicly listed Company, with public shareholding which is very substantial. The details of the shares of the Respondent No. 1 Company illegally transferred by the Respondents that were held by the Group Companies (i.e., Respondent No. 7 to 17 and Petitioner Company) are given under:

Sl. No.	Name of the Respondent	No. of shares sold	Value in (Rs.)
1	SZF Private Limited	24,00,000	12,00,00,000
2	Balaji Zippers Private Limited	6,00,000	3,00,00,000
3	Sanghi Poly Zips Private Limited	6,00,000	3,00,00,000
4	Sanghi Synthetics Private Limited	6,00,000	3,00,00,000
5	Alpha Zippers Private Limited	6,00,000	3,00,00,000
6	Fancy Zippers Private Limited	6,00,000	3,00,00,000
7	SKK Zippers Private Limited	6,00,000	3,00,00,000
8	Maruthi Fasteners Private Limited	6,00,000	3,00,00,000
9	Sanghi Threads Private Limited	6,00,000	3,00,00,000
10	Sanghi Filaments Private Limited	7,50,000	3,75,00,000
11	Sanghi Textiles Private Limited	58,70,000	29,35,00,000
12	Sanghi Polyesters Limited	54,12,800	27,06,40,000
	Total	1,92,32,800	96,16,40,000

- n. Petitioner further submits that from the above table it shows that the alleged transfer of **1,33,62,800** equity shares of Respondent No. 1 Company held by Respondents No. 7 to 17 and Petitioner Company (58,70,000) in favour of Respondent No. 2 are illegal, improper and void and not binding on these Petitioner and the Respondent No. 1 Company.
- o. The Petitioner Company further submits that though the Petitioner Company is a member of the Respondent No.1 Company, despite several requests the Respondent No.2 is not allowed for inspection of the register of members of the Respondent No.1 Company nor

furnishing a copy of the register of members of the Respondent No. 1 Company. Thus, the present Petition is filed for impugned transfer of shares.

3. Counter filed by the Respondent No.2

- a. It is averred that the petitioner cannot be a “person aggrieved” as no rights of the petitioner as shareholder has been affected. Further stated that the petitioner has no locus standi to raise any grievances, on behalf of respondents 7-17 as they are corporate entities, which alone would have the locus-standi to file the petition and further stated that Respondents 7-17 have not given any authorisation to the petitioner to represent them. Hence on this ground the present petition is not maintainable.
- b. It is averred that the petitioner is aware of the transfers in December, 2014 hence the claims made by the petitioner are barred by limitation.
- c. It is averred that R.7 to R.16 have transferred their shares in R.1Company in favour of 2nd Respondent for discharging their outstanding owed to M/s.Sanghi Spinners India Limited and pursuant to the family settlement arrived at between the Applicant and his two elder brothers (Sri Sudhir Sanghi and Late Sri Anand Prakash Sanghi). Thereafter 2nd respondent repaid the loan amounts and made the M/s. Sanghi Spinners India Limited debt free. The facts are well known to the petitioner and suppressed in the Company petition.

- d. It is averred that on 21.10.2017, Mr.Girish Kumar Sanghi, executed a memo along with R.2 for withdrawal of all pending cases and also undertaking that no fresh cases could be filed against each other. The memo is on record in Civil Appeal No.12441/2017 before Hon'ble Supreme Court. Subsequent to the memo Mr.Girish Kumar Sanghi filed three petitions(CP No's 10/59/2018, 31/59/2018, 33/59/2018) before this Hon'ble Tribunal and two appeals before Hon'ble NCLAT in the matter of AGA Publications Ltd.
- e. It is further averred that R.17(M/s. Sanghi Polyesters Ltd) has been ordered to be wound up by the Hon'ble High Court of Hyderabad in the year 2014 and the said liquidation proceedings are going on. Hence cannot make allegations against the R.17.
- f. It is averred that Mr.Girish Sanghi is guilty of filing frivolous and baseless cases to harass the Respondents and tarnish their image and reputation. Hence the petition is liable to be dismissed.

1. In the light of the contest as afore stated the point that emerges for our consideration: -

Whether the *rectificatory* jurisdiction under Section 59 of Companies Act 2013, which is *summary* in nature can be exercised where there are contested facts and disputed questions.?

2. We have heard Ld. PCS Mr. S. Chidambaram for the petitioner and Ld. Senior Counsel Mr. D.V. Seetharam Murthy, Ld. Counsel

Mr. R. Venkata Vardhan, Ld.Counsels Mr. Pulkit Jain, Mr. T. Vijay K. Reddy for contesting Respondents.

Point.

Whether the *rectificatory* jurisdiction under Section 59 of Companies Act 2013, which is *summary* in nature, can be exercised where there are contested facts and disputed questions.?

3. The scope of *rectificatory* power of the *erstwhile* Company Law Board or the Tribunal constituted under the Companies Act 2013, is no more *res integra*, as Hon'ble Supreme Court of India, in re, *Ammonia Supplies*, held that,

'it is a summary power to carry out corrections or rectifications in the register of members and that the rectification must relate to and be confined to the facts that are evident and need no serious enquiry'.

In IFB Agro Industries Limited Vs. SICGIL India Limited & others, (2023) SCC On Line SC 8 , Hon'ble Supreme court of India, while reiterating the law as laid in *Ammonia Supplies, supra*, held as below;

"The rectificatory powers of a Board/Company Court under Section 38 of the Companies Act, 1913, then under Section 155 of the 1956 Act, followed by Section 111A introduced by the 1996 Amendment to the 1956 Act, and finally, Section 59 of the 2013 Act, demonstrate that its essential ingredients have remained the same. It is a summary power to carry out corrections or rectifications in the register of members. The rectification must relate to and be confined to the facts that are evident and need no serious enquiry.

“19. The scope and ambit of Section 155 of the 1956 Act, as it then existed, fell for consideration in a decision of this Court in Ammonia Supplies (supra). The application for rectification in Ammonia’s case was filed under Section 155, and it was submitted that the scope for rectification under Section 155 is enlarged in comparison with the position as it were under Section 38 of the 1913 Act. Rejecting the argument, this Court in Ammonia held that the jurisdiction exercised by the court for rectification of the register of members is essentially limited. The comparative analysis in Ammonia assumes importance as a similar submission is made before us by Mr. Chidambaram 8 that the scope and jurisdiction of the Tribunal under Section 59 of the 2013 Act is wide when compared with Section 111A of the 1956 Act as amended in 1996. *The relevant portion of the judgment in Ammonia is as under: -*

“26. There could be no doubt any question raised within the peripheral field of rectification, it is the court under Section 155 alone which would have exclusive jurisdiction. However, the question raised does not rest here. In case any claim is based on some seriously disputed civil rights or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member and if the court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar some such facts falling outside the rectification, its discretion to send a party to seek his relief before the civil court first for the adjudication of such facts, it cannot be said such right of the court to have been taken away

merely on account of the deletion of the aforesaid proviso. Otherwise under the garb of rectification one may lay claim of many such contentious issues for adjudication not falling under it. Thus, in other words, the court under it has discretion to find whether the dispute raised is really for rectification or is of such a nature that unless decided first it would not come within the purview of rectification. The word “rectification” itself connotes some error which has crept in requiring correction. Error would only mean everything as required under the law has been done yet by some mistake the name is either omitted or wrongly recorded in the Register of the company.

“27. In other words, in order to qualify for rectification, every procedure as prescribed under the Companies Act before recording the name in the register of the company has to be stated to have been complied with by the applicant.... The Court has to examine on the facts of each case whether an application is for rectification or something else. So field or peripheral jurisdiction of the court under it would be what comes under rectification, not projected claims under the garb of rectification. So far exercising of power for rectification within its field there could be no doubt the Court as referred under Section 155 read with Section 2 (11) and Section 10, it is the Company Court alone has exclusive jurisdiction...But this does not mean by interpreting such “court having exclusive jurisdiction to include within it what is not covered under it, merely because it is clocked under the nomenclature rectification does not mean the court cannot see the substance after removing the cloak.

“28. Question for scrutiny before us is the peripheral field within which the Court could exercise its jurisdiction for rectification. *As aforesaid, the very word “rectification” connotes something what ought to have been done but by error not done and what ought not to have been done was done requiring correction. Rectification in other words is the failure on the part of the company to comply with the directions under the Act. ...*

31. Sub-section (1)(a) of Section 155 refers to a case where the name of any person is without sufficient cause entered or omitted in the Register of Members of a company. The word “sufficient cause” is to be tested in relation to the Act and the Rules. Without sufficient cause entered or omitted to be entered means done or omitted to do in contradiction of the Act and the Rules or what ought to have been done under the Act and the Rules but not done. Reading of this sub-clause spells out the limitation under which the court has to exercise its jurisdiction. It cannot be doubted that in spite of exclusiveness to decide all matters pertaining to the rectification it has to act within the said four corners and adjudication of such matters cannot be doubted to be summary in nature. So, whenever a question is raised the court has to adjudicate on the facts and circumstances of each case. If it truly is rectification, all matters raised in that connection should be decided by the court under Section 155 and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by a civil court....”

“20. It is evident from the above that while interpreting Section 155, this Court has held that the power of CLB is narrow and can only consider questions of rectification. If a petition seeks an adjudication under the garb of rectification, then the CLB would not have jurisdiction, and it would be duty-bound to re-direct the parties to approach the relevant forum. The Court also held that the words ‘sufficient cause’ cannot be interpreted in a manner which would enlarge the scope of the provision.

“ 21. The decision in Ammonia was followed by this Court even after the deletion of Section 155 and insertion of Section 111A. This Court, in Standard Chartered Bank v. Andhra Bank Financial Services Ltd. & Ors.¹⁵ and Jai Mahal Hotels (P) Ltd. v. Devraj Singh & Ors.¹⁶ , held that even though Section 111(7) of the 1956 Act¹⁷ seemingly enlarges the power of the CLB, the power of rectification continues to remain summary in nature and if any seriously disputed questions arise, the Company Court should relegate the parties to a forum which is more appropriate for investigation and adjudication of such disputed questions.

22. In Kesha Appliances (P) Ltd. & Ors. v. Royal Holdings Services Ltd.& Ors.¹⁸ , the High Court of Bombay has held that:

“41.The contention of the learned counsel for the plaintiff that there was a pre-existing common law right under section 9 of the CPC and that pre-existing common law right is not taken away by the provisions of Section 15Y and 20A also cannot be accepted. It is because the common law right of rectification which is sought to be

enforced and exercised by the plaintiff in the present case arises out of the right conferred on the basis of Take Over Regulations and once the provisions of the Take Over Regulations are invoked then the entire jurisdiction by virtue of the provisions of Section 15Y and 20A is exclusively conferred on the SEBI authorities. Learned counsel's argument that under Section 15Y the only jurisdiction conferred on an adjudicating officer is to penalise the party and not for rectification also cannot be accepted because the provisions of Section 15Y are to be read together with Section 20A of the SEBI Act which inter-alia confers a power on the board to pass any order which includes direction as contemplated under Regulation 44 of the Takeover Regulations.....

43. I am of the opinion that on plain and simple reading of section 15Y read with section 20A of the Act all the cases arising out of the breach and Take Over Regulation must fall within the exclusive domain of SEBI and cannot be complained in the court of Law by virtue of express bar contained under section 15Y and section 20A of the SEBI Act. I am also of the further opinion that there is no doubt that there is a common law right in a shareholder to apply for rectification of the share register even though it is not his own share in respect of which he is seeking rectification but still the said right if it flows from the provisions of Take Over Regulations then undoubtedly it would fall within the exclusive Jurisdiction of SEBI and not within the Jurisdiction of this court in view of the express bar contained under the aforesaid statute. I am of the further opinion that the enactment of

the amendment of Take Over Regulation of Amending provisions of SEBI (Substantial Acquisition of Shares and Take Over) Second Amendment (Regulation 2002) w.e.f. 9.9.2002 by providing for the remedy under sub clause (c) and (d) of the Regulation 44 the board has been empowered to give 15 (2006) 6 SCC 94 16 (2016) 1 SCC 423 17 Section 111(7) - On any application under this section, the Tribunal - (a) may decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register; (b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification. 18 (2006) 1 Bom CR 545 10 effective relief of Rectification of Share Register by declaring cancellation of the Allotment and/or by directing the company not to give an effect to the transfer if they are found to be in contrary to the Take Over Regulation.”

23. Zandu Pharmaceutical Works Ltd. v. Devkumar vaidya & Ors. 19 , is another instance where it has been held that in a case of violation of the SEBI Regulations, the CLB cannot exercise rectificatory jurisdiction unless and until the SEBI, in the very first instance, decides if there has been a violation or not. The CLB held that: “11. Most of the allegations made by the petitioner are yet to be investigated and to be crystallised/confirmed as violations of the law. The allegations of violation of Takeover Code and Insider Trading is to be decided by the SEBI and similarly the allegations of investment beyond the limit under section 372A of the Act and acquisition of

shares creating thereby a dominant undertaking under section 108A of the Act are to be investigated and crystallised/confirmed as violations by the Central Government. Unless it is confirmed as a violation of law, the CLB has no power to issue orders for rectification of register of members and further this Bench has no power to declare these allegations as violations of law.”

24. The principle enunciated in Ammonia’s case relating to the jurisdiction of a Tribunal with respect to the rectification of the register is well-recognized and consistently followed. Sub-section (3) of Section 59 recognizes the overarching right to hold and transfer securities with the concomitant entitlement of voting. This is a precious right, and that is the reason why the Parliament found it necessary to caution that the provision of this Section shall not restrict the right of a holder of securities, to transfer such securities. This is another feature which is indicative of the limited scope and extent of the power of rectification of the register.

25. For the reason stated above, *we are of the opinion that the company petition under Section 111A of the 1956 Act for a declaration that the acquisition of shares by the Respondents as null and void is misconceived. The Tribunal should have directed the Appellant to seek such a declaration before the appropriate forum. The Appellate Tribunal is, therefore, justified in allowing the appeal and setting aside the order of the Tribunal*”.(Emphasis is ours).

4. Therefore, in the light of the law as laid down *in re*, Ammonia Supplies and IFB Agro, *supra*, the present petition since filed under section 59 Companies Act 2013, it is *imperative* for us to examine *whether or not the factual assertions* as made tantamount to ‘*contested facts and disputed questions*’ and if the same are found to be so, then relegate the parties to a competent forum so that these facts can be investigated and adjudicated.
5. However, before we proceed to examine the *factual assertions*, we wish to refer to the main relief that was sought by the petitioner in this petition which is filed under section 59 of the Companies Act 2013, and the same is as below.
 - i). To declare that 1,33,62,800 shares transferred on 18.12.2014 is in willful violation of Orders of Hon’ble Company Law Board, 23.10.2008 and 28.10.2009.
 - ii). To direct rectification of Register of Members of Respondent No. 1 Company to the extent of 1,33,62,800 shares transferred to Respondent No. 2 on 18.12.2014, previously held by R7 to R17.
6. (i) The Petitioner’s plea that transfer of shares by the 2nd respondent was in wilful violation of order of Hon’ble Company Law Board, has already been raised by the Petitioner before this Tribunal and this Tribunal on 22.04 2019, had passed the following order.

“So, in the light of above discussion, it cannot be said that there is wilful disobedience of the order dated 23.10.2008. Thus, there is no sufficient ground to conclude that Respondents committed contempt of the order dated 23.10.2008. Thus, while summing up with the matter, the Application is not maintainable as it is barred by limitation. Secondly, this Tribunal has no jurisdiction to entertain this Application under Section 425 of the Companies Act, 2013 and thirdly that the circumstances stated are not sufficient to conclude that there is contempt of the order dated 23.10.2008 committed by the Respondents. In the result, this Application is dismissed and so also all the IAs stated in this order are also dismissed”.

(ii) That apart, the relief of declaration cannot be granted in exercise of a *rectificatory* jurisdiction which is held to be summary.

(iii) So much so, the first relief is liable to be rejected and we accordingly hereby reject the same.

We shall now refer to the *crux of the pleadings and submissions which is as below:*

(A) (i) Pleadings of the Petitioner

- The Respondents 2 to 11 in CP 27 to 35 including Respondent No. 3, 4, 5 and 6 were aware of the order of the Hon’ble Company Law Board dated 28.10.2009 despite knowing the same they have illegally, without knowledge of the petitioner transferred 1,33,62,800 shares of

Sanghi Industries Limited held by the Respondents 7 to 17 on 18.12.2014 in active collusion of the Respondent No. 18.

- Illegal transfer of 2,72,86,050 equity shares of the Respondent no. 1 company were done without receiving any consideration and the alleged transfers were done pursuant to a family settlement, but no such settlement was ever been entered and neither was any such settlement deed filed before the Tribunal.
- The petitioner took shelter under the SEBI (Substantial Acquisition of shares and takeover) Regulations, 2011 and submitted that the said transfers are violative of the regulations.
- Due to the said alleged illegal transfer of shares without consideration the petitioner incurred losses of Rs. 96 Crores, out of which to the tune of Rs. 27 crores to the shareholders of the Respondent no. 17 company which is a public listed company, with public shareholding which is very substantial.

(ii) The pleadings of the 2nd Respondent:

- The petitioner cannot be a “person aggrieved” under section 59 of IBC as no rights of the petitioner as a shareholder has been affected

as there is no change in the shareholding of the petitioner in the Respondent no. 1 company.

- The petitioner was aware of the transfers in question even in December, 2014 which are categorically mentioned (in the contempt petition No: 53, 54, 56, 57, 58 & 59 batch) which creates bare of limitation on the claims made by the petitioners.
- The petitioner has no locus standi to raise any grievances on behalf of Respondent no. 7 to 17 as they are corporate entities.
- The Respondent No. 7 to 16 have transferred their equity shares held in Respondent No.1 Company in his favour towards consideration for settling their loan amounts due to M/s. Sanghi Spinners India Ltd pursuant to the family settlement arrived at between the families enabling the transfers amongst the promoters, and the Petitioner was well aware of.
- The reliefs sought for by the Petitioner to declare the transfer of 1,33,62,800 shares of R7 to R17 on 18-12-2014 as illegal and null and void and also in violation of orders of Hon'ble Company Law Board, dated 23/10/2008 and 28/10/2009. The said relief is a

subject matter of contempt petitions which were already decided and dismissed by the Tribunal vide order dated 22-04-2019.

(B) Now, we shall refer to the crux of the submissions made by the Learned Counsels for both sides.

(i) Shri Yogesh Jagia, Learned Counsel for the Petitioner contended that section 59 is the combination of two provisions governing (1) delay or refusal of transfer and transmission of shares (prior to notification of Depositories Act, 1996 and post notification of this Act) and (2) Rectification of register but despite of using the word "appeal" or "application" the jurisdiction is original wherein appeal is used against refusal or delay in registration of transfer or transmission of shares because it require filing of application with company with instrument of transfer.

- Learned Counsel also referred to Law Commission Report 1952, and certain provisions of Companies Act, 1956. The law commission submitted their report in the year 1952 based on which the Companies Act, 1956 was notified. Besides the report of “Sachar Committee Report and Amendment to Companies Act, 1956 which laid to bring certain amendments to Section 111 of Companies Act, 1956”.

- Learned Counsel also relied on Hon'ble Supreme Court in re "**Canara Bank Vs Nuclear Power Corporation of India Ltd**", wherein, Hon'ble Supreme Court of India , while dealing with the issue of jurisdiction of Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992 and section 111 of Companies Act, 1956 in para 17 and 34 of the judgement dealt with the issue of appeal vis-a- vis application and held that "the word "appeal" or "application" in the context of section 111 have the same meaning.

Para 17 & 34 inter alia held as follows:

“17. Whereas sub-sections (2) and (3) of Section 111 term the pleading that the person aggrieved has to file before the CLB an appeal', sub- section (4) requires the person aggrieved to apply, sub-section (5) speaks of it as an 'appeal' or an 'application', sub-section (7) as an 'application' and sub-section (10) as an "appeal or ap- plication", which shall be made "by a petition in writing". The words "appeal" and "application" in the context of the provisions of Section III have the same meaning. Plainly, it is an application that has to be made.”

“34. As has been pointed out, sub-sections (2) and (3) of Section 111 of the Companies Act term the pleading that the person aggrieved has to file before the CLE an 'appeal', sub-section (4) requires the person aggrieved to apply, sub section (5) speaks of it

as an 'appeal' or an 'application', subsection (7) as an 'application' and sub-section (10) as an 'appeal or application' which shall be made by a "petition in writing". The words "appeal" and "application" in the context of the provisions of Section 111 have, therefore the same meaning and it is, plainly, an original application that is made. The shareholder does not resort to a superior court to review the decision of an inferior court or tribunal. The fact, therefore, that Section 9A(2) of the Special Court Act speaks of the transfer of 'every suit', claim or other legal proceeding (other than an appeal)" does not exclude the "application' or "appeal" made under the provisions of Section 111 of the Companies Act from the purview of Section 9A(1) of the Special Court Act."

(ii) Learned Senior Counsel Shri D.V.Sitaram Murthy, for the respondent while refuting the submissions made by the learned counsel for the petitioner, contending , inter-alia:-

- That the petition is not maintainable and is gross abuse of the process of law. It is further sated that there is no change in the shareholding of the petitioner in the Respondent No.1 Company there is no allegation that the Respondents have dealt with the shares belonging to the petitioner.

- The petitioner has no *locus standi* to question the transfer of shares of Respondent No.7-17 in Sanghi Industries limited in favour of the Respondent No.2 as they are corporate entities, which alone has locus standi to file the petition.
- The cause of action to invoke the provisions of section 59(1) of the Act would arise only when the fact of any member having ceased to be a member is brought before the company/board and the company/board defaults or delays in taking a decision. Since the Petitioner has not approached the board of the company seeking for removal of the name of the 2nd Respondent from the register of members, as held in the judgment in Sapna Gupta v. Jagran Publications (P) Ltd., [2009] 90 CLA 83 (CLB) :[2009] 96 SCL 221, he has no cause of action to file this petition and as such, the same is liable to be dismissed at the threshold.
- In terms of section 59(4), the above Petition is not maintainable, as a person can seek a remedy under the said provision only if he is the depository or the or the depository participant or the actual holder of securities concerned or the SEBI. Admittedly,

the Petitioner herein does not qualify in any of the said categories and, as such, is disentitled from maintaining the above Petition.

- Section 59 of the Act does not envisage a proceeding in respect of companies in a derivate capacity and a third party to the shares in question cannot challenge the legality of claim to the ownership of shares, as held by the “Karnataka High Court in J.R. Srinivas v. Sri Gururaja Enterprises (P) Ltd., [2010] 157 Comp Cas 46”. Further stated that the proceedings under section 59 of the Act cannot be treated as a public interest litigation, especially considering the fact that the jurisdiction of the Hon'ble NCLT is summary in nature.
- SEBI has adjudicatory powers if there is any transgression of the rules prescribed in case of listed entities. As such, the appellant is not justified in invoking the jurisdiction of the Hon'ble NCLT under the Section 59 of the Act for violation of SEBI Regulations. Thus, the instant petition is not maintainable and should be dismissed *in toto*.

- Respondent No.7 to 17 have transferred their equity shares held in Respondent No. 1 Company in favor of Respondent No. 2 towards consideration for settling their loan amounts due to M/s. Sanghi Spinners India Ltd. Respondent No. 2 repaid these loan amounts, and, consequently, these payments helped in clearing the debts of M/s. Sanghi Spinners India Ltd., which became debt free. This also enabled the release of personal guarantees of Sanghi brothers including Gireesh Kumar Sanghi (Petitioner herein) and release of corporate guarantees including M/s Sanghi Textiles Pvt Ltd., which is managed by the Petitioner, and this fact which the Petitioner was well aware of but has suppressed in this company petition.

7. Thus, both the pleadings as well as the submissions since are focused on *pleas* such as, illegal transfer of shares, disputed family settlement, non-payment of consideration in respect of the shares transferred, loss of crores of rupees to the shareholders, the petitioner locus standi of, transfer of equity shares for discharge of loans, dismissal of the plea of violation of the order of status quo by the respondents etc, in our considered view the same are of the nature of *seriously contested facts and disputed questions*. So much so, in the light of the rulings, in re, *Ammonia Supplies* and *IFB Agro*, supra, the *rectificatory* jurisdiction of

this Tribunal under section 59 of the Companies Act, 2013 being summary, cannot be exercised in this case and the remedy if any for the parties herein is to take recourse of the competent civil court. As such the present petition is not maintainable, before this Tribunal.

8. Point answered accordingly.
9. In so far as the prayer to grant interim relief is concerned, it is pertinent to mention that this Tribunal while disposing of IA No.200 of 2023, which was an application filed by the Company Petitioners seeking for reopening of the matter, enabling them to file Interlocutory Applications for stay of transfer of shares of 1st Respondent by 2nd respondent in favour of Ambuja Cements Limited, a company being managed by “**Adani Group**” this Tribunal had observed that the prayer for grant of injunction restraining the 2nd respondent from alienating the shares of 1st respondent, a part of which are stated to be the subject matter of the present proceedings, will be considered at the time of disposal of the main Company Petition itself, as the main Company Petition itself stood posted for orders two days hence.
10. While it is the case of the learned counsel for the petitioners that 2nd respondent Mr. Ravi Sanghi, with the Bombay Stock Exchange/National Stock Exchange dated 18/12/2014 that he acquired 2,72,86,050 equity shares of "SIL" out of which transfer of equity shares of 1,33,62,800 is under challenge in CP10/59/HDB/2018 and

transfer of 58,70,000 is under challenge in CP/31/HDB/2018 and thus in these petitions, applicants/petitioners have challenged transfer of 1,92,32,800 equity shares of SIL by various group family companies to Mr. Ravi Sanghi.

11. Ld. Counsel further stated that Mr. Ravi Sanghi, as per declaration filed with BSE/NSE agreed to sell 4,98,69,750 equity shares however after filing of application by applicant on 22.08.2023 seeking interim relief, Mr. Ravi Sanghi on 11/08/2023 filed memo duly signed by him in CP 25/2008 (TP 19/2016) and other CPs claiming that he agreed to sell the equity shares held by him and not owned by any of the companies against which proceedings under section 397/398 of the Companies Act, 1956 are pending including SZF Pvt Ltd. which means he agreed to transfer the equity shares which are pending in lis in CP.No.10/59/HDB/2018 the present petition as well as in CP.No. 31/59/HDB/2018.

12. The Applicant submits that as per information available on the portal of BSE, Mr. Ravi Sanghi as at 30/09/2014 was holding 30,12,500 equity shares of SIL whereas after alleged transfer he declared his holding 3,02,98,550 equity shares of SIL. By entering into share purchase agreement on 03/08/2023 (supra) agreeing to sell equity shares at Rs. 14.22 per share, Mr. Ravi Sanghi will pocket INR 219,67,70,416/- at the cost and expense of lawful owner of these shares which amounts to unjust enrichment.

13. Therefore, under the circumstances, the Petitioner has moved this IA 202/ 2023, for an order restraining the 2nd Respondent from transferring the shares, title of which is the subject matter of this Company Petition. Hence, it is essential that the matter be re-opened and the IA (un-numbered) be heard.

14. In order to answer the plea of the petitioners, we refer to subsection (3) of section 59 of the Companies Act, 2013, which is as below:

“59. Rectification of register of members.—

(3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.”

15. Thus, a perusal of the above provision makes it abundantly clear that section 59 of the Companies Act, 2013 shall not restrict the right of holder of securities to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless voting rights have been suspended by an order of the Tribunal.

(4) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992) or this Act.

16. Thus, Section 59 of the Act, does not preclude the holder of securities from transferring the same, and it only enables the petitioner to seek the

suspension of voting rights of the holder of securities. Hence the prayer for injunction restraining the 2nd respondent from transferring the securities is not maintainable in a petition under Section 59 of the Companies Act, 2013. Hence the same is rejected.

17. In the result, the present company petition under Section 59 of the Companies Act, 2013, seeking declaration and other reliefs, is not maintainable, before this Tribunal, hence the same is hereby dismissed as not maintainable, however without costs.
18. As the company Petition is disposed of IAs if any pending stands disposed of.

Sd/-

CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

Pavani/ Sridher/LRA's