NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
Guwahati

IA No. 62 of 2018
in
C.P.No.30/130/213/241/242/144/GB/2018

Coram:
Hon'ble Shri H. V. Subba Rao, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.09.2021

Name of the Company: Shehla Rahman
V/s
M/s. Shamshun Tea & Industries Pvt. Ltd.

Section of the Companies Act: Under Section 130, 213, 241, 242, 244 (1) read with Section 59 of Companies Act, 2013

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	NONE		PETIONER	Present in Video Conference
2.	NONE		RESPONDENT	

O R D E R

Date of Order: 17.09.2021

The Applicant is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The order is pronounced in the open court, vide separate sheet.

Sd/-

(**Prasanta Kumar Mohanty)**
Member (Technical)

Sd/-

(H. V. Subba Rao)
Member (Judicial)

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2.	NONE		RESPONDENT	Video Conference

O R D E R
Date of Order: 17.09.2021
[Per se: Shri Prasanta Kumar Mohanty, Member (T)]

1. This IA 62/2018 is filed by the Applicant before this Hon'ble Tribunal for waiver of the requirements of Section 244 of the Act of 2013 for the Company Petition No. 30/2018.

2. The Applicant submits that the Applicant has filed a Company Petition on 13.02.2018 against the acts of Fraud, Forgery and False Statements by way of which the Shareholders and Directors have seemingly usurped the office of the true directors of the **Shamshun Tea and Industries (P) Ltd. (hereinafter referred to as the Company),** and the alleged directors are so much as to not known to the Petitioner Shareholder, Oppression against the Petitioner Shareholder and Mismanagement of the Company by these alleged Directors and for rectification of the Register of Members. The said petition was registered as C.P. No. 30 of 2018

and is pending for disposal before this Hon'ble Tribunal. That the applicant craves the leave of this Hon'ble Tribunal to rely upon the statements made in the said petition and documents filed thereto for the purpose of this application. That states as under:

i. **That the Applicant, is a Shareholder/Member of Respondent No.1. Shamshun Tea and Industries Private Ltd. having CIN No. UO1132AS1984PTC002214.**

ii. That the Company is **a private family concern of M. A. Rahman, controlled by him, his wife and their 3 sons and 4 daughters.** That the Applicant is the daughter of Late Md. Azizur Rahman, who was the founder of the Company M/S Shamshun Tea and Industries Private Ltd. which has its registered office at PO. C. R. Building, Nirmaligaon 786003 under PS- Dibrugarh in the district of Dibrugarh, Assam and at present allegedly at Dekhari Tea Estate, P.O. Demow, District Dibrugarh, PIN 785662, Assam.

iii. That the said Shamshun Tea and Industries Private Ltd. was incorporated on 18.08.1984 and was allotted CIN No. UO1132AS1984PTC002214 by the ROC, Shillong. That Mr. Md. Azizur Rahman and his eldest son Shaukat Md. Rahman were the subscribers to the incorporation document i.e. MOA and AOA and were the first Directors named in the Articles of Association of the Company.

iv. That at the time of incorporation of the Company, the Authorised Shares Capital of the company was Rs. 10,00,000.00 (Rupees Ten Lakhs Only) divided into 10,000.00 (Ten Thousand Only) equity shares of Rs. 100.00 (Rupees One Hundred Only) each with the rights, privileges and conditions attached thereto as are provided by the regulations of the Company. That as per Annual Returns of the Company since incorporation up to 29.09.2006 there was no change of Authorised Capital of the Company, it remained the same at Rs. 10,00,000.00 (Rupees Ten Lakhs Only).

v. That the issued, subscribed and Paid-up Shares Capital stood at 1100 shares as on 31.03.1986 and the shares were held by the 9 (Nine) Members of the founder's family as follows: -

Sl. No.	NAME	SHARES
1.	Allnaz Md. Azizur Rahman	400 Shares
2.	Khurshed Ara Rahman	200 Shares
3.	Shaukat Md. Ratrman	100 Shares
4.	Tariq Md. Rahman	100 Shares
5.	Sajeed Md. Rahman	100 Shares
6.	Nilofer Rahman Saikia	50 Shares
7.	Rukshana Rahman Khan	50 Shares
8.	Shehla Rahman	50 Shares
9.	Lubna Rahman	50 Shares
	Total	**1100 Shares**

vi. That as the position of the Petitioner is more than 1/10th of the total number of the original members of the Company, she is entitled to maintain the connected C.P. NO. 30/2018.

vii. That the instant petition has been filed by way of abundant caution, in the event that it is felt that the Petitioner's Application is hit by the provisions of the section 244 of the Companies Act 2013.

viii. That the facts and circumstances demonstrated in the connected CP clearly demonstrate that there has been Oppression, Mismanagement and Fraud in the conduct of the affairs of the Company and the Respondents have been acting in a fraudulent manner prejudicial to the public.

ix. That as the petitioner is one of the original true 9 (Nine) members of the Company holding 50 (Fifty) out of the total 1100 (Eleven Hundred) Shares. In terms of number of Members, the petitioner represents more than 1/10th of the true Members of the Company.

x. That the applicant states that since the case is filed for protecting the rights and interest of the Applicant as provided under Section 241, 242 and 244 of the Companies Act, 2013 and as such it is a fit case wherein the requirements of section 244 (1) (a) may be waived by this

Hon'ble Tribunal under the powers of the proviso to sub section (b) of Section 244 of the Companies Act, 2013.

xi. That the Applicant submits that they shall suffer irreparable loss and injury if the powers of this Hon’ble Tribunal to waive the requirements of section 244 is not waived, if it might be required in the facts and circumstances of the case.

xii. That the applicant has filed this application bonafide and for the ends of justice.

xiii. That in the premises above, it is prayed therefore that the Hon’ble Tribunal may be graciously pleased to invoke the provision of the proviso to sub section (b) of section 244 (1) of the Companies Act, 2013 and hold that the petition is maintainable even, if it is contended that the petitioner might not be competent to maintain the petition in view of the present fraudulent share holding pattern as well as entries in the register of members.

3. Respondent No. 1 and 5 filed their Additional Counter Affidavit dated 18.01.2019 on 22.01.2019 wherein the Respondents made the following submissions;

i. That the present additional objection has been filed by the Respondent No. 1 and 5 in response to the documents filed by the petitioner. The Petitioner has filed the two documents viz. the agreement for sale dated 04.10.21998 and as well as the Judgement and order dated 31.10.2018 passed by the Learned Civil judge, Dibrugarh in Title Suit No.35 of 2008. For the sake of brevity of contents of the said agreement dated 04.10.1997 as well as Judgement and order dated 31.10.2018 passed by the Learned Civil judge, Dibrugarh in Title Suit No.35 of 2008 are not reiterated herein and tile answering respondent nos. 1 and 5 crave leave of this Hon'ble Tribunal to refer and rely upon the same at the time of hearing of this case, however it is relevant to mention herein that in clause 32 of the agreement dated 04.10.1998 there is a stipulation as regard the purchase of shares of the Plaintiffs including the Petitioner herein by their brothers, i.e. Respondent nos. 2, 3 and 4. It is also relevant to mention herein that in the Judgment and order dated 31.10.2018 passed by the Learned Civil Judge, Dibrugarh, more particularly in paragraph 24, it has been held that the Plaintiffs including the Petitioner were aware about the selling of various assets of the Respondent No. 1 company as well as execution of Memorandum of Understanding in favour of Respondent No. 5, by which he purchased 800 shares of the Respondent No. 1 Company giving him the controlling rights. Be it stated herein that the said Title Suit No. 35 of 2008 was filed by the Plaintiffs including the Petitioner herein, amongst others, for specific performance of the agreement dated 04.10.1998 whereby the Plaintiffs including the Petitioner herein had agreed to sell their shares to their brothers, who are arrayed as Respondent Nos. 2, 3 and 4 in the present proceeding. The petitioner has also not disclosed before this Hon'ble Tribunal, the copy of the plaint tiled in Title Suit No. 35 of 2008, wherein the Plaintiffs including the Petitioner herein in paragraph 7 have clearly pleaded that after the said agreement dated 04.10.1998, they were interested only in the sale consideration of their shareholdings. **Moreover, in the prayer made in the plaint the Plaintiffs including the Petitioner herein had, amongst others, sought for a declaration that the agreement dated 04.10.1998 is a concluded contract and the plaintiffs were entitled to recover a sum of Rs. 65,30,000.00 (Rupees Sixty-Five Lakhs Thirty Thousand Only).** A copy of the plaint filed by the Plaintiffs in Title Suit No. 35 of 2008 is annexed herewith and marked as **ANNEXURE - A.**

ii. That the answering Respondent Nos. 1 and 5 further state and submit that on the basis of the statements made in paragraph 7 of the plaint itself, the present petition of the Petitioner is not maintainable and the leave sought by the Petitioner is liable to be rejected.

iii. **That the answering Respondent Nos. 1 and 5 further state that in Title Suit No. 35 of 2008, the Plaintiffs including the**

Petitioner herein had exhibited the Memorandum of Understanding dated 30.01.2009 executed by and between the mother and brothers of the Petitioner on one hand and the Respondent No. 5 on the other hand whereby the Respondent No.5 got the controlling stake in the company. It is further stated and submitted that in the aforesaid suit, the plaintiffs including the petitioner herein exhibited notice dated 17.08.2007 whereby they demanded money from their brothers and they were not at all concerned with the selling of assets and properties of the Respondent No. 1 Company. A copy of the notice dated 17.08.2007 is annexed herewith and marked as **ANNEXURE - B.**

iv. That the answering Respondent Nos. 1 and 5 further state that the Petitioner has made misleading statements before this Hon'ble Tribunal by stating that she had immediately complained to the ROC, Shillong vide her representation dated 14.02.2015 after being aware of the illegal activities. Moreover, the petitioner without disclosing the date of obtaining the annual returns of the Respondent No. 1 Company, is trying to show that she has filed the present petition in February, 2018 within 3 years from the date of submission or her representation dated 14.02.2015 immediately after coming to know about the illegalities. In fact, the Petitioner has supressed many facts from this Hon’ble Tribunal including the date of obtaining the 23rd Annual Return of the Respondent No. 1 Company for the AGM held on 30.09.2008. In this context, it is relevant to mention herein that in Title Suit No. 35 or 2008, the 23rd Annual Return of the Respondent No. 1 Company was exhibited as Exhibit 12 and the signature of the Sheristadar of the Court of the Civil Judge, who had compared the copy of the returns with the original, appears to have been dated 21.01.2014 and therefore, at least the Plaintiffs including the Petitioner had knowledge of the 23rd Annual Return from 21.01.2014, wherein the name of the Respondent No. 5 appears as Director of the Company. Similarly, the

Plaintiffs including the Petitioner herein had exhibited the notice dated 27.01.2009 as Exhibit 14, which was regarding change of Registered Office of the Company, which was also compared by the Sheristadar of the Court of the Learned Civil Judge, Dibrugarh on 21.01.2014 there was also change of registered office of the Respondent No. 1 Company. It is further stated and submitted that the Plaintiffs including the Petitioner herein had also exhibited the MOU dated 30.01.2009 as Exhibit 15 whereby the respondent no. 5 had purchased 800 shares of the Respondent No. 1 Company and had agreed to look after and manage the day to day affairs of the Respondent No. 1 Company. It is very interesting to note that the Plaintiffs including the Petitioner herein had obtained the certified copy of the said MOU dated 30.01.2009 on 28.07.2009, which is reflected in the Xerox of the certified copy of the MOU dated 30.01.2009 and therefore, it can be presumed that the Petitioner had the knowledge of purchase of 800 shares of the Respondent No. 1 Company by Respondent No. 5 at least on 28.07.2009 and since then she had not challenged the said sale/MOU in favour of the Respondent No. 5 for the obvious reasons that she was only interested in her money payable by the Respondent Nos. 2, 3 and 4 as **she had already filed the suit for specific performance for the agreement dated 04.10.1998.** The answering Respondent Nos. 1 and 5 would like to place before this Hon'ble Tribunal the evidence on affidavit filed on behalf of the three Plaintiffs including the Petitioner herein in Title Suit No. 35 of 2008, however for the sake of brevity, the contents of the same are not reiterated herein and the answering Respondent Nos. 1 and 5 crave leave of this Hon'ble Tribunal to refer and rely upon the same at the time of hearing of this petition. A copy of the 23rd Annual Return for the AGM dated 30.09.2008, a copy of the notice dated 27.01.2009, a copy of MOU dated 30.01.2009 all exhibited on behalf of the Plaintiffs as well as evidence on affidavits of the three Plaintiffs are annexed herewith and marked as **ANNEXURES- C, D, E, F, G, H** respectively.

v. That the answering Respondents Nos. 1 and 5 would like to persuade this Hon'ble Tribunal not to exercise discretion in favour of the Applicant/Petitioner because the claims made by her is grossly time barred and she has not approached this Hon'ble Tribunal with clean hands as has been demonstrated by the answering Respondents Nos. 1 and 5.

vi. That the present additional counter affidavit is filed in response to the documents submitted by the petitioner as well as to bring on record additional documents, which are very relevant for adjudication of the issues raised by the answering respondents.

vii. That this additional counter affidavit is filed bonafide and for the ends of justice.

4. Respondent No. 16 has filed their Reply dated 30.10.2018 on 01.11.2018 wherein the Respondent made the following submissions:

i. That the answering Respondent No. 16 is a body corporate namely Andhra Bank, duly constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1980, having its Head Office at Dr. Pattabhi Bhavan, Saifabad, Hydrabad-500004 (Telangana) and carrying on its Banking business all over the country through its diverse branches and in particular at Dibrugarh Branch, H. S. Road, Dibrugarh-786 001, Assam and represented by its Senior Branch Manager.

ii. That a copy of the LA. No. 62 of 2018 in C.P. No. 30 of 2018 filed by the petitioner under sections 130, 213, 241, 242, 244(1) and 59 of the Companies Act, 2013 has been served upon answering Respondent No. 16 on 09-10-2018. All the papers were received by the Panel advocate on 16.10.2018 and 171h, 18th and 19th October, 2018 being Puja holiday, as instructed by the Panel advocate, I (Senior Branch Manager) have reached Guwahati on 21.10.2018 to assist the Panel advocate to draft and prepare the reply in the aforesaid case. Hence prayer was made for and on behalf of the Respondent No. 16 for time, which was allowed fixing the matter on 01.11.2018.

iii. That at all material time, the Respondent No. 1/Borrower was the customer and constituent of the answering respondent No. 16 at its Dibrugarh Branch, Dibrugarh and at the request of the Respondent No. 1 the answering respondent No. 16 upon appraisal of the loan application and documents submitted by Respondent No. 1, through Directors, Respondent No.5 and 7 sanctioned credit facility by way of term loan of Rs.49,00,000.00(Rupees Forty-Nine Lakhs Only) to the Respondent No. 1 for the purpose of replantation on the Tea Garden, upon their agreeing and undertaking to comply with and abide by the terms and conditions as stipulated in the Sanction letter dated 28.07.2016. The Respondent No. 1 vide resolution dated 18.01.2017 resolved that the Company to borrow credit facilities of Rs.49,00,000.00 (Rupees Forty-Nine Lakhs Only) from the answering Respondent No. 16 on the security of the Company's current assets present and future and further delegated the powers to Respondent No. 5 and 7 to borrow monies from the answering Respondent No. 16 by executing such documents as are required by the Bank. The Respondent No. 5, 9, and Mrs Paridhi Agarwal daughter of Respondent No. 5 stood as personal guarantors for the credit facilities availed by the Respondent No. 7. The loan is repayable in 84 monthly instalments with 24 months' gestation period with interest as and when debited at the rate of MCLR + 2.55% + 0.50% (TP) presently 12.60 %. All the loan documents have been executed by Respondent No. 5 and 7 as Directors of the Respondent No. 1. The Respondent No. 1 has availed and enjoyed the credit facilities granted by the answering respondent No. 16.

iv. That the present petition filed by the Petitioner against the answering Respondent No. 16 is not at all maintainable in law and facts and the same is liable to be dismissed against them.

v. That the present petition filed by the petitioner against the answering respondent No. 16 is barred by limitation in as much as the loan was sanctioned on 28.07.2016 and at no point of time the petitioner raised any objection with regard to sanction of the loan to the Respondent No. 1 and the Respondent No.1 having availed and enjoyed the credit facility granted by the answering respondent No. 16. It is pertinent to mention here that that admittedly the Petitioner has lodged complaint before ROC vide letter dated 14.02.2015 which was disposed of by the ROC vide letter dated 30.03.2015, but the instant C.P. No.30 of 2018 alleged to have been filed by the Petitioner on 13.02.2018 without assigning any cogent and sufficient reason for the delay and notice in I. A. 62 of 2018 appears to have been issued on 01.10.2018.

vi. That in view of the averments made above, the answering Respondent No. 16 has been falsely impleaded as party Respondent No. 16 in this application and the relief claimed against them is untenable in law and facts. Further, the petitioner has not attached documentary proof of requisite qualification to file the petition.

vii. That the averments made in this petition which are not specifically admitted herein by the answering respondent No. 16 deemed to have been died and the petitioner is put to prove thereof.

viii. That the averments made in para 4(1) to 4(5) of the present petition are all matters of record and the answering respondent No. 16 does not admit any thing which are contrary to and/or inconsistent with record and the petitioner is put to strict prove thereof.

ix. That with regards to the averments made in para 4(6) and 4(7) of the petition, it is not admitted by the answering respondent No. 16 that as the position of the petitioner is more than 10th of the total number of the original members of the Company, she is entitled to maintain the connected C.P. 30/2018 and that the same has been filed by way of abundant caution, in the event the petitioner's application is hit by the provisions of section 244 of the Companies Act,2013. In the instant case since the petitioner is not holding one-tenth of the issued share capital is not capable of invoking Section 241.

x. That with regard to the averments made in para 4(8) of the petition, the answering respondent makes no comments as the averments made therein does not relates to the answering respondent.

xi. That with regard to the averments made in para 4(9) and 4(10) of the petition, the answering Respondent does not admit that the petitioner has the requisite qualification to present the original C.P. No. 30 of 2018 and in that view of the matter question of granting waiver of the requirement of section 244 (1) (a) under the powers of the proviso to sub-section (b) of section 244 of the Companies Act, 2013 does not arise. Qualifying member may file the petition with the consent and on behalf of and for benefit of such other members with whom the qualifying membership requirements under section 244 are met and in the instant case no such consent of other members have been taken by the petitioner, the petition is liable to be rejected.

xii. That with regard to the averments made in the petition, the answering respondent does not admit that the Petitioner will suffer irreparable loss and injury and the Petition has been filed bonafide and for the ends of justice, in as much as the Petitioner is guilty of serious and deliberate latched and negligence on her part in approaching this Hon'ble Tribunal and there is no urgency in this matter.

xiii. That the relief as prayed for in para 4(13) of the petition is legally not tenable in law and facts because of laches and/or negligence of the petitioner in approaching this Hon'ble Tribunal.

xiv. That in the premises as aforesaid, the present application for waiver of the requirement of Section 244 (1) (a) of the Companies Act, 2013 is liable to be dismissed with cost.

5. The Bench took up the matter on 24.09.2018, 22.10.2018, 01.11.2018, 30.11.2018, 10.12.2018, 18.12.2018, 11.01.2019, 31.01.2019, 15.02.2019, 15.03.2019, 12.04.2019, 14.06.2019, 21.06.2019, 08.08.20219, 04.09.2019, 24.10.2019, 22.11.2019,

11.12.2019, 23.01.2020, 11.02.2020, 05.03.2020, 30.04.2020, 12.11.2020, 08.12.2020, 18.01.2021, 10.02.2021, 09.03.2021, 23.03.2021, 19.04.2021, 03.05.2021, 08.06.2021, 22.06.2021, 20.07.2021, 11.08.2021, 26.08.2021.

6. It is noted that Respondent No. 2, 3, 4 are not appearing from a long time and Respondent No. 17 and 18 have orally supported the claims of the Petitioner during the hearing of the matter.

7. At the last hearing of this matter on 26.08.2021, this Tribunal passed the following order:

"O R D E R
Date of Order: 26.08.2021

The matter is taken up for hearing through Video Conferencing. Heard the learned Counsels present at length.
2. It is decided to dispose of the I.A 62 of 2018 before moving forward to take up the main petition as this I.A. is filed with regard to the maintainability of the petition.
3. Both the sides along with Respondent no. 17 & 18 are given liberty to file their written submissions, if any in 4 to 5 pages relating to this petition only within 10
days from today.
4. Matter is reserved for order."

8. Since liberty was given by this Bench to the both the sides on 26.08.2021, the Petitioner has only filed its written submissions dated 03.09.2021, wherein it has made the following submissions:

i. **That this is a fit case for waiver of the requirement of Section 244 of the Act of 2013 under its proviso by application of discretionary power of the Hon'ble Tribunal, which was earlier vested with the Central Government under section 397-401 of the Act, 1956. But, for judicious application the power has been vested to this Hon'ble Tribunal.**

ii. The present I.A 62/2018 has been filed as a matter of abundant caution in view of the large scale fraud committed by the respondents in collusion with each other, which will be evident from reading of the averments made in the company petition 30/2018 and documents annexed thereto (The petitioner has sought leave of this Hon'ble Tribunal to refer and rely upon those documents in I.A 62/2018).

iii. The Petitioner further submits that

a. By an agreement, shares cannot be transferred. In this regard it is submitted that Section 20 of the sales of Goods Act, 1930 has no application when shares are to be sold or transferred. Further, Section 56 of the Companies Act of 2013 and section 108 of the Companies Act of 1956 may be referred and judgments already submitted are relied upon. Judgments relied upon by the respondents No.1 & 5 have no application in this case, since those are applicable in respect of sale of goods.

b. Shares are not goods as defined under section 2 (84) of the Act of 2013 which defines "Shares" as, shares mean as share in the share capital of the company and includes stock.

c. The respondent has admittedly purchased 800 shares of respondent No. 2,3,4 through an agreement and not the entire shareholding of the Company i.e. 1100 shares. Now, the question arises how the remaining 300 shares were transferred to respondent No.5 because neither those shares were transferred by signing transfer deed and surrendered with the original share certificate. As such, it can be submitted that those 300 shares were transferred by fraud, manipulation or material change in the register of shareholdings. Here, it is a case where the respondents company as well as the Respondent No.5 had willingly and deliberately kept on hold, the records and did not produce the record before the Tribunal.

d. Laws are made by the legislature and being interpreted by the judiciary or quasi-judicial authority from time to

time. When the name of a person or a shareholder is removed from the register of members by fraudulent means, a petition under Section 241 is maintainable as interpreted by various courts and quasi-judicial authorities in a catena of decisions.

e. It is a well settled law that, if any transaction takes place by fraud, forgery etc. then the same goes to the root of the matter and if proved, any transaction may have been made long ago becomes void ab initio and any person claiming under such fraudulent transaction is not entitled to hold the title.

f. The Tribunal is to be guided by the principle of natural justice as per Section 424 of the Act of 2013.

iv. In support of the contentions of the Petitioner that the waiver petition is maintainable, the Petitioner relies upon the following judgments, copies of which has already been supplied to this Hon'ble Tribunal [Along with written submissions in two different sets].

a. ***Sangeeta Maheshwari* vs. *Prem Sagar Agricultural Pvt. Ltd.* (MANU/NL/0260/2018 — NCLAT):** In that case also, as in the present case before Y/L, the Appellant/Petitioner was holding 200 shares of family incorporated company. She was divorced by the husband/Respondent. After divorce, she was in the believe that she held 200 shares, since the original share certificates was with her and she did not sign the transfer deed. In that case also, to reduce the holding percentage of the Appellant/Petitioner, the Respondent had increased the share capital and her shares were shown to be transferred to the Respondent. The Respondent therein also took almost same grounds as in the present case -regarding family settlement, etc. Now Y/L, kindly peruse paras. 6, 9, 13, 14, 18, 19, 31, 34, 35 & 36.

b. ***Vikram Jairath and Ors.*** **vs.** ***Middleton Hotels*** **(Para 71, Calcutta High Court - MANU/WB/2568/2019)**: Due compliance of law required.

c. ***Smt. Golyan and Anr*****. Vs.** ***Nalon India Ltd*****. (Page 61, para 15; Page 68, para 18 and page 70 NCLAT):** Due process of law needs to be followed or the same shall be invalid.

d. ***Gulab Rai Kali Das Naik*** **vs.** ***Laxi Das*** **(48 corn cases 438, Para 20**): Whether the petitioner was a member in the past.

e. ***M. L. Arora*** **vs** ***Green Valley*** **(CLB para 15):** Due process of law required to transfer the shares.

f. ***Saurastra Cements*** **vs.** ***ESMA Industries*** **— Gujarat HC (Para 16):** Directors are not entitled to increase shareholdings to deprive minority shareholders.

g. ***Banford Investment Ltd. Maaadh Spunpipe Ltd.*** **— CLB (Para 20):** Test to apply whether a person is a member or not.

h. ***Satish Chandra Sanwalka*** **vs.** ***Tinplate Dealers Association*** **— CLB (Para 30):** Guilty for removing names.

i. ***K.M. Nasiruddin*** **vs.** ***S.M. Naksba*** **Madaras High Court (para 7):** Forgery goes to the root of the cause and how long has been the transaction, it is void-ab-initio.

j. ***Cyrus Investments Pvt. Ltd.*** **vs.** ***Tata Sons Ltd. and Ors*****. [MANU /NL 0100/2017), (Para-140):** Questions which the Tribunal cannot decide while considering an application of waiver.

ORDER

9. This application has been filed for waiver of the requirements of Section 244 of the Act of 2013 for the Company Petition No. 30/2018.

10. It is pertinent to mention that on perusal of Section 244 proviso; it is clear that the Tribunal has the power to waive all or any requirements under Sec 244(1) so as to enable an applicant to file for relief against mismanagement and oppression under Sec. 241 of the Companies Act, 2013.

"Sec 244: "Right to apply under section 241"

1. *The following members of a company shall have the right to apply under section 241, namely:*
    a. *in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;*
    b. *in the case of a company not having a share capital, not less than one-fifth of the total number of its members.*

    Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b)so as to enable the members to apply under section 241.

    Explanation: For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.
2. *Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them."*

11. Heard both the sides at length. On perusal of the documents, affidavits submitted and submissions and arguments made by both the sides, we are of considered view that this application needs to be allowed for the following reasons:

i. As per Sec. 244 of the Companies Act, 2013, in case of a Company have share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the company may apply under Sec. 241 for relief against oppression and mismanagement of the Company.

ii. **This is a Family Company/Concern. There were total 9 Original Shareholders out which one is the Petitioner. Hence the Petitioner is within the one-tenth of the total number of its members, though the Petitioner is holding only 50 (Fifty) Shares out of the total 1100 (Eleven Hundred) Shares.**

iii. **Respondent No. 17 and 18 of the Main Petition have supported the claim of the Petitioner. They are the daughters of Late Md. Azizur Rahman, and are holding 50 (Fifty) Shares each respectively.**

iv. **The Original Share Certificates are still in the possession of the Petitioner and Respondent No. 17 and 18 which shows that the transfer of these shares might not have taken place.**

v. **The Judgement and order dated 31.10.2018 passed by the Hon'ble District Court, Dibrugarh in Title Suit No.35 of 2008 wherein it was ordered by the Learned Civil Judge (which is partly reproduced as under):**

> ***"The plaintiffs are hereby declared entitled and the defendants are declared as liable, and being so liable, the defendants shall pay a sum of Rs. 60,75,708.00 (Rupees Sixty Lakhs Seventy-Five Thousands Seven Hundred Eight Only) in total as per their proportionate dues to the plaintiffs within a period of 6 (six) months from today. On receipt of the sum, the plaintiffs shall receive their proportionate amount which are due to each of them.***
>
> ***On receipt of the aforesaid amount, the plaintiffs shall formally transfer their shares in the company in favour of the defendants without unnecessary delay."***

Therefore, it is clear that the applicant herein is a Member Shareholder of the concerned Company and the prayer made by the Petitioner to hear the Main Petition needs to be entertained.

12. Hence, IA 62/2018 is allowed only to the extent of hearing the Main Company Petition No. 30/2018 filed by the Petitioner before this Tribunal.

13. Since the matter is going on from the last 3 (Three) years, the Registry is directed to list the Main Petition at an early date for hearing.

Sd/-

(**Prasanta Kumar Mohanty)**
Member (Technical)

//R.M//
//D-17.09.2021//

Sd/-

(H. V. Subba Rao)
Member (Judicial)