

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No.252 of 2018**

[Arising out of order dated 05.03.2018 passed by National Company Law Tribunal, Mumbai Bench, Mumbai in CA No.32 of 2016 in Company Petition No.46 of 2016]

**IN THE MATTER OF:**

Mr. Chandrashekhar Bellad,  
Indian Adult having address,  
Resident at 202, Jamuna Sagar,  
59/60, Shahid Bhagat Singh Road,  
Mumbai – 400 005

...Appellant  
(Original Petitioner)

**Versus**

1. M/s. Orion Offset Private Limited,  
Having registered office at,  
205, Om Saidham, Plot No.40,  
Sector 17, Vashi,  
Navi Mumbai – 400 703
2. Mr. Ashok Allappa Kalyanshetti,  
Indian Audit having address,  
Seawood Estate, NRI Complex,  
20/103, Sector 54, Nerul,  
Navi Mumbai – 400 706
3. Mrs. Radhika Ashok Kalyanshetti,  
Indian Audit having address,  
Seawood Estate, NRI Complex,  
20/103, Sector 54, Nerul,  
Navi Mumbai – 400 706
4. Aditya Ashok Kalyanshetti,  
Indian Audit having address,  
Seawood Estate, Bldg 20, Flat 103,  
Sector 54-56-58,  
Navi Mumbai – 400 706

...Respondents  
(Original Respondents)

**For Appellant:** Shri Kamal Ahuja, Advocate  
Ms. Suchita Bhardwaj, PCS

**For Respondents:** Shri B.S. Mahajani and Shri Prateek Gupta, Advocates

**ORAL JUDGEMENT**  
**30.10.2018**

**A.I.S. Cheema, J. :** The present Appeal is filed by the original Petitioner whose Company Petition 46 of 2016 has been dismissed by the National Company Law Tribunal, Mumbai Bench on 5<sup>th</sup> March, 2018 allowing the Application No.32 of 2016 filed by the Respondents. The Company Petition was filed by the Appellant raising grievances of oppression and mismanagement as have been detailed in the Company Petition, copy of which is available with us in Diary No.7783.

2. The Respondents filed the Company Application 32 of 2016 in the Petition, copy of which is available at Page – 93 of this Appeal. In the synopsis at Serial No.7, the Respondents accepted that the original Petitioner was inducted and allotted 10 shares at the time of incorporation of the Company. It has been then stated in the Application – para - viii to xii as under:-

“viii) In the financially difficult times of Applicant/Respondent No.1 Company in the year 2004, Respondent/Petitioner proposed to take away the Machinery to M/s. Mudrika’s factory premises at Mumbai. It was Respondent/Petitioner’s proposal at the instance of his sister in law (brother’s wife /widow) to take away the machinery from the premises of Applicant/Respondent No.1 Company to the premises of M/s. Mudrika at Mumbai. Applicant/Respondent No.2 did not object to this but he asked

Respondent/Petitioner to resign from Applicant/Respondent No.1 Company. Therefore Respondent/Petitioner resigned from Applicant/Respondent No.1 Company in September, 2004 & relinquished his shares of Applicant/Respondent Company. ROC records confirm this fact.

ix) Applicant/Respondent No.3 was appointed as Director of Applicant/Respondent No.1 Company, w.e.f. 16th September, 2004. She was appointed in place of Respondent/Petitioner, who himself had resigned from the Directorship of Applicant/Respondent No.1 Company, w.e.f. 16th September, 2004. The Resignation of Respondent/Petitioner & Appointment of Applicant/Respondent No.3 in the Directorship of Applicant/ Respondent No.1 Company, w.e.f. 16th September, 2004 are notified to the Registrar of Companies by filing Form – 32 & payment of fees for the same on 20th September, 2004. Photocopies of the Respondent/Petitioner's Resignation from Applicant/Respondent No.1 Company, Form – 32 & Receipt of payment of Fees for the same are annexed herewith and marked hereto as **Exhibits – A 5 & A6** respectively.

x) As regards the paid up share capital of Applicants/Respondent Nos.2 & 3, it is submitted that Applicant/Respondent No.2 had given Unsecured loan of Rs.29,20,946.77 to the Applicant/Respondent No.1 Company in the year 1997. This is reflected in the balance sheets of all the years from 1996-97 till Respondent/Petitioner's exit in 2003-04 & the same have been signed by the Respondent/Petitioner as Director of Respondent Company. Photocopies of the relevant pages of balance sheets of Applicant/Respondent No.1 Company are annexed herewith and marked hereto as **Exhibits – A7**. (For further reference please refer page Nos.130, 133, 136, 148 etc. of the petition)

ix) After the amendment of 2002 in the Companies Act, all private limited companies are required to maintain a minimum paid up share capital of Rs.1,00,000/- (One lakh). Accordingly, in order to comply with the said requirement, Rs.99,550 were adjusted from out of the aforesaid unsecured loan of Applicant/Respondent No.2's account & the paid up

share capital of the Applicant/Respondent Company was increased to Rs.1,00,000/-. Thus, Applicant/Respondent No.2 was allotted 9955 equity shares of Applicant/Respondent Company. Till that time, Applicant/Respondent Company's paid up capital was Rs.450/- (i.e. 45 Equity shares), as can be seen from the Balance Sheets of the Applicant/Respondent Company, till the year 2001-02. Photocopy of the relevant page of balance sheet of Applicant/Respondent No.1 Company is annexed herewith and marked hereto as **Exhibits - A8**. (Please refer page No.157 of the petition). In view of this payment, Applicant/Respondent no.2 was allotted 9955 shares of Applicant/Respondent Company in the year 2003. The total paid up capital became Rs.1,00,000/-. **Accordingly, the Unsecured Loan Amount was reduced by Rs.99,550/- & became Rs.28,21,396.77.** This is reflected in the balance sheet for the year 2002 - 2003, which has also been signed by the Respondent/Petitioner as Director of Respondent Company. Photocopy of the relevant page of balance sheet of Applicant/Respondent No.1 Company (Ref. page - 164 of the petition) is annexed herewith and marked hereto as **Exhibits - A 9**. Thus, Applicant/Respondent No.2 has paid applicable money for the paid up capital of Rs.99,500/- & therefore, 9955 shares were purchased by him.

xii) After the aforesaid payment & allotment of 9955 shares to Applicant/Respondent No.2, he transferred 4965 shares to Applicant/Respondent No.3 (out of the aforesaid 9955 shares). Thereafter, the shareholding pattern of the Respondent Company became as follows: i) Applicant/Respondent No.2 - 5000 shares, (ii) Applicant/Respondent No.3 - 4990 shares & (iii) Respondent/Petitioner - 10 shares. However, following, the resignation of Respondent/Petitioner from the Applicant/Respondent Company, as stated earlier, the share holding pattern became as follows: i) Applicant/Respondent No.2 - 5000 shares, (ii) Applicant/Respondent No.3 - 5000 shares."

There are errors in the application which was filed with regard to paragraph numberings as different paragraphs have same marking also

which are handwritten corrections. We are told this is how it is. We have reproduced the paragraphs as were mentioned before the NCLT and copy of which is filed before us.

3. The question of limitation was also raised before the NCLT. The learned NCLT raised issues as under:-

- “(i) Whether the Respondent/Petitioner owns requisite share qualification to institute proceeding U/s 397/398 of the Companies Act, 1956.
- (ii) Whether the Petitioner seeking the relief for Oppression/Mismanagement had approached the Court within the period of limitation i.e. three years and whether the Limitation Act is applicable to the cases filed under 397 & 398 before the Company Law Board or National Company Law Tribunal.
- (iii) Whether the Applicants are justified in seeking the relief of dismissal of the Company Petition, on the issue of Maintainability, to be decided at the threshold.”

With regard to limitation, NCLT observed in para – 15 as under:-

“15. As regards the issue No. 2 is clearly against the Respondent/Petitioner and is decided in favour of the Applicant/Respondent No.2 as the contentions and allegations raised in the Petition relates to the year 2003 & 2004 and the Respondent/Petitioner knocked the doors of the Company Law Board in the year 2016 clearly after the period of limitation is over. Apart from that the Respondent/Petitioner had not furnished any cogent or tenable reasons as to why he could not approach the Company Law Board within the reasonable time.”

4. As regards the eligibility to maintain the petition, the material observations of the NCLT can be found in Para - 14 of the Judgement/Order as follows:-

“14. No doubt, when the Petitioner possess the requisite qualification to maintain a claim u/s 397 & 398, the above citations certainly comes to the rescue of the Respondent/ Petitioner and throwing the way the Petition at threshold would have been not correct. But, in the present case, none of the contentions raised by the Respondent/Petitioner are not any way, corroborated with the material on record. We still feel that upholding the transfer of 10 shares held by the Respondent/Petitioner in favour of the Applicant/Respondent No.3 is not properly supported by proper material on record. However, even if the Respondent/Petitioner holds 10 shares in the company, the requisite qualification to file the case u/s 397 & 398 as contained in Section 402 of the Companies Act, 1956 is not met. Hence, the Petitioner fails. The issue No.1 is accordingly decided against the Respondent/Petitioner.”

5. We have heard Counsel for both sides. Looking to the submissions made and the record, it is undisputed that the Appellant – original Petitioner was initially holding 10 shares and was one of the three shareholders in the Company. The Respondents claim that the Petitioner parted ways in 2004 and had submitted resignation as Director, copy of which has been filed (Page – 136). Counsel for the Appellant – original Petitioner submits that in his Reply to the Application filed regarding maintainability, he has disputed and claimed that this letter is fabricated. However, we are not entering into that aspect for the purpose of deciding the question of maintainability. The fact whether he resigned as a Director

or not is not for us to settle to decide the maintainability of the Company Petition. The fact remains that he has had 10 shares in the Company.

6. The Respondents claim (see para 'viii' reproduced above) that Petitioner relinquished the same and that later on after amendment in Company Act in 2002, they issued further shares to themselves. Appellant – Petitioner is disputing these acts. Learned Counsel for the Respondents vehemently made submissions to say that conduct of original Petitioner is material which shows that he parted ways and took away machinery, which was his contribution at the time of incorporation of the company and thus, when he tendered resignation as Director, he relinquished the shares. We have referred to the application where such pleadings have been made that the original Petitioner relinquished his shares. We asked the learned Counsel for Respondents to show us any provision in the Companies Act, which would permit such relinquishment to be accepted as a valid mode of transfer of shares. Section 108 and Section 109B of the Companies Act, 1956 do not appear to be covering any such relinquishment. The learned Counsel for the Respondents has not been able to show any other provision which allows relinquishment as the mode of transfer of shares. In fact, the NCLT itself in Para – 14 of the Impugned Order, which we have reproduced above, has also expressed that claim regarding transfer of 10 shares was not properly supported by proper material on record.

7. The paragraphs which we have reproduced from application objecting to maintainability shows the Respondents themselves claiming that on resignation of the Petitioner, the shareholding pattern became that of (1) original Respondent No.2 – 5000 shares and (2) original Respondent No.3 – 5000 shares. The Respondents counted 10 shares of original Petitioner as if they were relinquished. Looking to such pleadings, and the law as we understand, 10 shares of the original Petitioner cannot be accepted as relinquished. When that is so, it must be said that there are three shareholders and taking into consideration the provisions of Section 399(1)(a) of the Companies Act, 1956, the Petitioner being one third of the members, and thus more than 1/10 of the total number of Members of the Company, his right to maintain the Company Petition cannot be questioned.

8. As regards limitation, the Company Petition shows the Petitioner pleading in para – 7.1.11 as under:-

“7.1.11 The Petitioner states that he took online search on MCA website and was shocked and surprised that the Respondent No.2 has uploaded Annual Returns for the Financial Years 2005 – 06 to 2013 – 14 between the period 16.01.2014 to 26.11.2014. The Respondent No.2 had also filed Annual Return for the year 2014 – 15 on 27.11.2015.”

Looking to these pleadings and the others in the Company Petition, if the Annual Returns were uploaded only in 2014, disputes based on facts coming to knowledge on the basis of such filing cannot be ignored. The

Company Petition filed in 2016 cannot be simply marked as time barred. The Order of the learned NCLT does not deal in details with the averments made in the Company Petition to say that they should be treated as time barred or suffering from delay and latches.

9. For such reasons, we are unable to uphold the Impugned Order. It appears to us that it is necessary that the Company Petition should be tried and decided on its merits.

10. The observations made by us in this Judgement are limited to deciding the question of maintainability and will not weigh while deciding the Company Petition on its merits.

11. For such reasons, we allow the Appeal. We dismiss the Company Application 32 of 2016 filed by the Respondents. The Company Petition 46 of 2016 is restored to file of NCLT, Mumbai Bench. The same be decided on its merits after hearing both sides.

Parties to appear before NCLT on 19<sup>th</sup> November, 2018.

No orders as to costs.

[Justice A.I.S. Cheema]  
Member (Judicial)

[Balvinder Singh]  
Member (Technical)

/rs/nn