Chalasani Udaya Shankar vs M/S Lexus Technologies Pvt. Ltd on 9 September, 2024

Author: Sanjay Kumar

Bench: Sanjay Kumar

2024 INSC 671 REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 5735-5736 of 2023

Chalasani Udaya Shankar and others … Appellants

Versus

M/s. Lexus Technologies Pvt. Ltd. and others … Respondents

J U D G M EN T

SANJAY KUMAR, J.

1. Orders alike, dismissing their claims, having been passed by the original and appellate forums, Chalasani Udaya Shankar, Sripathi Sreevana Reddy and Yalamanchilli Manjusha are in appeal under Section 423 of the Companies Act, 2013 [for brevity, 'the Act of 2013'].

2. The appellants had approached the National Company Law Tribunal, Hyderabad/Amaravati Bench [for brevity, 'the NCLT'], by way of Company Petition No. 667/59 & 241/HDB/2018, seeking rectification of the Register of Members of M/s. Lexus Technologies Pvt. Ltd., Vijayawada, Andhra Pradesh, respondent No.1, by entering their names therein under Sections 59 and 88 of the Act of 2013, and to initiate action against Mantena Narasa Raju, Appa Rao Mukkamala and Suresh Anne, respondent Nos. 2,3 and 4, for oppression and mismanagement, apart from criminal proceedings under Sections 447 and 448 of the Act of 2013 for committing fraud.

3. Their case, as set out in the Company Petition, was as follows:

> M/s. Lexus Technologies Pvt. Ltd. was incorporated under the provisions of the Companies Act, 1956, on 28.03.2000. Its authorized share capital was 1,50,00,000/-, divided into 15,00,000 equity shares of 10/- each. The issued, subscribed and paid-up capital of the company was 1,10,96,230/-, divided into 11,09,623 equity shares of 10 each. The company is in the business of software development and ancillary activities and it acquired land at Chinnakakani Village in

> Guntur District in January, 2002, for establishing its infrastructure. On 09.03.2004, Mantena Narasa Raju, respondent No.2, had entered into a share purchase agreement with one C. Suresh, shareholder of the company, and acquired 10,51,933 equity shares, representing 94.8% of the equity share capital of the company. Thereafter, Mantena Narasa Raju and Appa Rao Mukkamala, respondent Nos. 2 and 3, were appointed as Directors of the Company on 02.03.2004. Suresh Anne, respondent No.4, became a Director of the company on 30.09.2004. While so, on 18.04.2015, the appellants acquired the equity shares held by Mantena Narasa Raju, respondent No.2, i.e., 10,51,933 equity shares, by executing Securities Transfer Deeds in Form No. SH-4.

Chalasani Udaya Shankar, appellant No.1, acquired 3,51,933 equity shares, representing 31.72% of the shareholding, while Sripathi Sreevana Reddy, appellant No.2, and Yalamanchilli Manjusha, appellant No.3, acquired 3,50,000 equity shares each, representing their 31.54% individual shareholding. Share certificates were issued to them, signed and authenticated by Appa Rao Mukkamala and Suresh Anne, respondent Nos. 3 and 4. The appellants claim to have paid consideration of 14,67,41,557/- to Mantena Narasa Raju, respondent No.2, towards the acquisition of their shares - Chalasani Udaya Shankar, appellant No.1, paid 4,90,91,557/- while Sripathi Sreevana Reddy and Yalamanchilli Manjusha, appellant Nos.2 and 3, each paid 4,88,25,000/- individually.

4. It is the further case of the appellants that they shared a very congenial and cordial relationship with Mantena Narasa Raju, Appa Rao Mukkamala and Suresh Anne, respondent Nos.2, 3 and 4, and they left the complete managerial control with them despite being the majority shareholders. They claim that they had no suspicion whatsoever against the said persons, but due to their failure in conducting Annual General Meetings during the financial years 2014-15, 2015-16 and 2016-17, the Registrar of Companies struck off the name of M/s. Lexus Technologies Pvt. Ltd. from the Register of Companies on 21.07.2017, in exercise of power under Section 248 of the Act of 2013. The appellants claim that, it was only upon browsing the online portal, they came to know that the said persons had thereafter filed annual returns and financial statements for the years in question with false information, by erasing their shareholding from the records of the company. The appellants allege that the aforesaid persons committed various acts of oppression with the intention of grabbing the company property. They, accordingly, prayed for rectification of the Register of Members of the company, by entering their names, and to initiate appropriate action against respondent Nos. 2, 3 and 4. Allegations were also made against V. Vasudev Reddy, respondent No.5, the Chartered Accountant associated with the company, to the effect that he was a co-conspirator and action was sought against him. The appellants also sought various interim reliefs pending disposal of the Company Petition. In the first instance, the NCLT directed status quo to be maintained as regards the company's assets and invited objections from the other side.

5. The company, respondent No.1, filed a counter opposing the grant of interim reliefs. Therein, it contended that the appellants could not allege oppression and mismanagement as they were not members of the company and were, in fact, seeking rectification of the Register of Members in that regard. The transfer of shares, as claimed by the appellants, was denied and, in consequence, their

locus to maintain the company petition was challenged. Issue of limitation was also raised as the appellants' claim was that they had acquired the shares on 18.04.2015 but the company petition was filed only on 09.11.2018, i.e., after the lapse of over three years. The company alleged that it had received emails from respondent Nos. 3 and 4 stating that the appellants had forged their signatures on the purported share certificates and the company asserted that the NCLT would have no jurisdiction to adjudicate such allegations of fraud and only the competent civil court could decide the same.

6. A reply was also filed by Mantena Narasa Raju, respondent No.2, contesting the interim reliefs sought. While reiterating the contentions of the company in its counter, he disputed the appellants' ownership of the shares. He asserted that he never sold any shares to the appellants and that they were complete strangers to him. He claimed that he had borrowed a sum of 5.66 crore from one L. Ramesh, his friend, who agreed to lend him the money through banking channels, by arranging for a total sum of 14.66 crore, out of which he would take back 9 crore and the balance 5.66 crore could be retained by respondent No.2. He further claimed that L. Ramesh arranged for his known persons to remit the amounts in his bank account and it was in this context that the appellants deposited the total sum of 14,66,39,400/- in his account. He further claimed that he returned the sum of 9 crore, as per the instructions of L. Ramesh, to one Swarna Bhaskar H. (7.5 crore) and to one Venkata Surya R (1.5 crore), i.e., in all, 9 crore. He further claimed that L. Ramesh forcibly obtained his signatures on several documents, including white papers, letter heads, blank non-judicial stamp papers and green sheets, at that time. He alleged that those blank papers might have been handed over to the appellants by L. Ramesh and they fabricated the documents. He pointed out that the share transfer deeds put forth by the appellants projected a total consideration of 14,67,41,557/-, but only the sum of 14,66,39,400/- had been remitted, leaving a balance of 1,02,157/-. He also alleged that the format of the appellants' share certificates was not that of the company and the folio numbers therein were different, indicating that they had been fabricated by the appellants.

7. The appellants filed separate rejoinders to the replies filed by respondent Nos. 1 and 2. Therein, they reiterated their claims and asserted that their petition was within time. They denied the financial transactions allegedly arranged by L. Ramesh and the alleged fabrication of documents by them. They pointed out that the signature of respondent No.2 appeared in the share transfer forms at the correct place, manifesting that the same were not fabricated on signed blank papers. As regards the shortfall in the consideration, they asserted that a portion of the stamp duty on the transfer was to be borne by respondent No.2 and it was accordingly adjusted, leading to the lesser sum of 14,66,39,465/- being paid.

8. Thereupon, the NCLT, through the Member (Judicial), passed an interim order on 27.06.2019. Having considered the matter, the NCLT noted as follows: Respondent No.2 had addressed letter dated 29.12.2014 (Annexure A-1) to the Board of Directors of the company expressing his intention to sell his shareholding therein. A Board Meeting was held on 24.01.2015 to consider his request and it was found that there was no buyer within the existing shareholders who was willing to purchase the shares of respondent No. 2. This was stated to have been communicated to respondent No.2 leaving it open to him to make his own arrangement for sale of his shares to outsiders. It was in

these circumstances that the appellants purchased the shares of respondent No.2. By e-mail dated 20.04.2015 (Annexure A-4), respondent No.3 sought the approval of the other shareholders for sale of these shares in favour of the appellants. A meeting was held on 27.04.2015 in this regard and share certificates were also issued on the said date to the appellants. These share certificates were signed by respondent Nos. 3 and 4 as Directors of the company. It was noted that respondent No. 2 had contested this claim, by asserting that respondent Nos. 3 and 4 were not even in India on the said date and that the share certificates were fabricated. Various discrepancies were pointed out by him in the said certificates, including absence of the signature of the company secretary. The NCLT, however, noted that respondent No.2 did not dispute the receipt of monies from the appellants. Further, the NCLT also noted that respondent No.2 did not dispute his signatures appearing in the share certificates and share transfer forms but his attempt was to explain the same, by claiming that L. Ramesh had obtained blank papers from him which had been misused. Noting the details of the financial transactions sought to be put forth by respondent No.2 in relation to the receipt of 14.66 crore, the NCLT observed that this aspect needed to be probed as the undisputed fact remained that the said sum was remitted into the account of respondent No.2. The NCLT observed that it was necessary to go into the issue as to whether this amount was actually remitted at the instance of L. Ramesh as there was no evidence at that point of time in proof of the claims of respondent No.2 in that regard. The NCLT noted that it was a question to be enquired into as to whether respondent No.2 has returned 5.66 crore, which he claimed to have received as a loan, and this was a question to be thoroughly looked into during a full inquiry. The NCLT further noted that on the strength of these oral contentions, it was not possible to accept at that stage that the said monies were given to him only as a loan and not for the sale of his shares. His further claim that he had signed various blank papers, judicial stamp papers, letter heads, etc. also required to be examined at the time of final disposal of the matter. It was noted that respondent No.2 was a doctor by profession. The NCLT went on to observe that Form SH-4 was a printed form, as were the share certificates, and it was not believable that the same could have been fabricated on signed blank papers. Dealing with the contention that respondent Nos. 3 and 4 were not even in the country on the date in question, the NCLT noted that none had appeared on their behalf and they had not chosen to file any counter in support of the stand taken by them. As on that date, per the NCLT, respondent No.2 relied upon the communication allegedly received by him from respondent Nos. 3 and 4, but the authenticity of the same still remained to be proved, as respondent Nos. 3 and 4 had not filed any affidavit. The NCLT also noted that there were conflicting materials produced by both sides and at that stage, it could not be decided whether the signatures in the share certificates did not belong to respondent Nos. 3 and 4 and the issue required to be thoroughly examined at the time of final hearing.

9. Dealing with the issue of limitation, the NCLT observed that the case of the appellants was that they came to know of their names being excluded only after the company filed financial accounts and statements for the years 2014-15, 2015-16 and 2016-17, and the petition was filed within three years from the date of such knowledge. Opining that limitation was a mixed question of fact and law, the NCLT stated that it needed to be examined at the final hearing stage, after the parties filed all their documents. The NCLT also rejected the contention of the respondents that it had no jurisdiction to try the petition as it involved issues of fraud, etc. The NCLT, therefore, observed that an interim order restraining the company and respondent Nos. 2 to 4 from either disposing of or creating encumbrances over the assets of the company would not affect either of the parties,

pending disposal of the main petition, and accordingly granted an interim order to that effect.

10. This being the tone and tenor of the NCLT's interim order, the final order dated 21.08.2021 passed by the NCLT, dismissing the Company Petition, makes for an interesting reading. Be it noted that the interim order was passed by the Member (Judicial) of the NCLT and the final order came to be passed over two years later by its Acting President. Significantly, no reference whatsoever was made to the 46-page interim order in the body of the final order. It is as if the Acting President of the NCLT was completely oblivious of what had transpired in the matter earlier, though a passing reference was made by him to an interim order passed on 22.10.2019, impleading three more respondents in the Company Petition.

11. Respondent Nos. 1 and 2 again filed counters in the main Company Petition essentially replicating the stands taken by them in their earlier counters. The appellants also filed their rejoinder thereto along with several documents. Having referred to the facts, as set out in the Company Petition, the Acting President of the NCLT noted that separate counters had been filed by respondent Nos. 1 and 2, on the one hand, and by the newly impleaded respondent Nos. 8 to 10, who claimed independent rights in the same shareholding. Respondent Nos. 3 and 4 had filed Memos adopting the counter filed by the company, respondent No.1. Perusal of the judgment dated 21.08.2021 reflects that the Acting President of the NCLT extracted the gist of the pleadings of the parties and went on to reproduce the caselaw cited by them at great length. His actual findings commence from paragraph 9 at page 60 of his 67-page order. The points that fell for consideration were set out by him in paragraph 9.1, which reads as under:

> '(1) Whether the Petition filed is well within the time.
>
> (2) Whether purported transfer of shares is in accordance with the provisions of the Companies Act and in accordance with clauses of the Articles of Association.
>
> (3) Whether the amount purportedly paid should be treated as consideration to the shareholders of the Company, by the Petitioners.
>
> (4) Whether the share certificates purportedly issued to the Petitioners are genuine.
>
> (5) Whether any relief can be granted to the Petitioners or whether the petition is maintainable.'

12. On the issue of limitation in point No.1, the Acting President baldly summed up that filing of the petition by the appellants was an afterthought and, therefore, the question of limitation did not arise, as the petition was not filed within the limitation period of three years. This cryptic approach in para 9.2 was not in keeping with the observation of the Member (Judicial) of the NCLT in the interim order that limitation, being a mixed question of law and fact, required to be examined fully.

13. On point No.2, the Acting President rejected the case of the appellants, by way of brief para 9.3, completely ignoring the points set out by the Member (Judicial) in the interim order and the

material placed on record, such as the share transfer forms, share certificates and emails/ correspondence, which supported the case of the appellants. His categorical finding that 'not a single document existed between the parties to show that there was a transfer of shares and not a single document was filed to show that the existing shareholders were given an opportunity to buy the shares' was clearly contrary to the material available on record, viz., the emails, transfer forms, share certificates, etc. No doubt, the genuineness of these documents required to be verified but without even venturing to do so, they could not have been dismissed thus.

14. As regards point No.3, the Acting President observed that there was no covering letter or correspondence to support the claim that the amount transferred into the account of respondent No.2 was for purchase of shares. He noted the discrepancy in the sale consideration amount to the extent of 1,02,157/- and the claim of respondent No.2 that one L. Ramesh was also involved. He then went on to surmise that there were some other transactions between the parties and the company had been entangled in the dispute for reasons best known to the parties. On that basis, he strangely concluded that it could not be accepted that the monies transferred into the account of respondent No.2 were for purchase of shares. The version put forth by respondent No.2, as rightly pointed out in the interim order, required to be proved and could not have been taken to be the truth straightaway in this abrupt and self-serving manner.

15. As regards point No.4, the Acting President opined that the appearance of the share certificates was dubious and the numbers therein were also completely different. He held that, without going deep into the aspect, it could be concluded that the share certificates were not genuine and were fabricated. Again, no evidence whatsoever was led or considered on the issue. Surprisingly so, as the appellants produced the original share certificates given to them along with their rejoinder and filed applications for production of the original record of shareholders of the company and their share certificates of 2004, Board Resolutions, Minutes of Meetings, etc.

16. On point No.5, the Acting President concluded that the appellants had failed to prove their case and had not bothered to realize their rights as shareholders, if at all they had considered themselves to be so. He observed that the very manner and conduct of the appellants indicated that the transaction which seems to have taken place between the parties was completely different, without involving the company, and for no reason, the company had been entangled in the dispute. The case of the appellants was held to be fraudulent in nature and devoid of fact and law. He, accordingly, dismissed the case with costs of 5,00,000/-.

17. Aggrieved by the dismissal of their petition, the appellants approached the National Company Law Appellate Tribunal, Chennai Bench (NCLAT), by way of Company Appeal (AT) (CH) No. 44 of 2021. They also filed I.A. No. 548 of 2021 therein for interim relief pending its disposal. However, the NCLAT dismissed their appeal and I.A. by judgment dated 10.04.2023. Speaking for the Bench, the Member (Technical) referred to the facts of the case; the contentions of the parties; the points for consideration set out by the NCLT and its findings thereon. Thereafter, the relevant provisions of the Act of 2013 were extracted at length and again, reference was made to the contentions of both sides. Having done so, the NCLAT curiously concluded that L. Ramesh had remitted through his 'known persons' the sum of 14,66,39,400/- into the bank account of respondent No. 2. The NCLAT

then strangely observed as follows:

> ‘First of all, the money has not been transferred by the 'Appellants' in favour of the 'Respondents'. Secondly, as admitted in the averments as well as recorded clearly in the 'impugned order' that, Mr. Lingamaneni Ramesh gave Rs. 14,67,41,557/- and took back Rs. 9 Crores from the 'Respondents' as such prima-facie this does not seem to be a clear transaction of payment of money towards acquisition of shares and consequently allotment of shares in favour of the 'Appellants' is also not established.’

18. Significantly, the three persons named by the NCLAT in the table in the very same paragraph as the ‘known persons’ who paid the monies are none other than appellant Nos. 2 and 3 and Ms. Vahini Surya Chalasani, the joint-account holder of appellant No. 1. Therefore, the conclusion of the NCLAT that the money was not transferred by the appellants was factually incorrect. Further, the story put forth by respondent No. 2 as to his friend, L. Ramesh, playing a role in the transaction was taken to be the biblical truth by the NCLAT though it was very much in dispute and required to be proved, even as per the interim order passed by NCLT. As regards the issue of limitation, the NCLAT simply went by the date of purchase of the shares and the date of the institution of the Company Petition and concluded that the same was barred by limitation, without reference to the issue highlighted by the NCLT in its initial interim order that limitation, being a mixed question of law in fact, required further examination as to when the clock would start ticking. The further finding of the NCLAT that the appellants had not furnished any documentary proof of their claims was equally bereft of foundation as material had been produced by them, which was duly taken note of in the NCLT’s interim order, which led it to the opinion that further inquiry was needed on those aspects. To further compound the patent lack of application of mind on its part, the NCLAT observed that the appellants failed to produce their original share certificates pursuant to the NCLT’s order dated 18.02.2021, overlooking the fact that the original share certificates and other documents were, in fact, filed by the appellants along with their rejoinder dated 22.03.2021. Concluding that the appellants had failed to cross the first hurdle of locus, the NCLAT held that they could not maintain the allegation of oppression and mismanagement which would be available only to a person who is a member of the company. The NCLAT accordingly dismissed the appeal and the I.A. as devoid of merit, leading to the filing of these appeals.

19. IA Nos. 171771 and 168458 of 2023 filed in one of these appeals by the appellants seeking permission to file additional documents are allowed and the said documents are taken on record. IA No. 72990 of 2024 is also allowed at the sole risk and peril of the appellants, permitting deletion of the name of respondent No. 6 from the array of parties.

20. While ordering notice in these appeals on 01.09.2023, this Court raised certain questions, which the appellants were required to answer. The questions read as

follows:

'1. Why, after acquiring the shares, the appellants did not come on the Board of Directors?

2. Why the appellants did not attend or call upon the Directors to hold the Annual General Meeting(s)?

3. Why the appellants did not take steps as the annual accounts were not audited and submitted to them and with the Registrar of Companies.' The appellants were directed to file an affidavit dealing with the aforesaid aspects. Pursuant thereto, Affidavit of Compliance dated 08.12.2023 was filed by the appellants. Therein, apropos the first query as to why the appellants did not come onto the Board of Directors after acquiring the shares, they stated that they had purchased the shares for investment purpose and hence, initially, they did not take interest in the affairs of the company. They further stated that they had long-standing business and personal relations with respondents 3 and 4, who were the Directors of the company, and in such circumstances, a fiduciary relationship existed between them. According to them, they did not come onto the Board of Directors due to these reasons and trusted that respondents 3 and 4 would continue to run the affairs of the company in accordance with law.

21. As regards the second query posed by this Court as to why they did not attend Annual General Meetings or call upon the Directors to hold such meetings, the appellants stated that the name of the company was struck off by the Registrar of Companies on 21.07.2017 owing to failure in filing of Annual Returns for the financial years 2014-15, 2015-16 and 2016-17. It was only on coming to know of this that the appellants claim to have inquired with the Directors and were informed that the issue would be settled shortly. The Directors are stated to have informed them orally that there was a complaint filed against the Directors and the Auditor of the company in Machavaram Police Station at Vijayawada on 30.12.2013, by one of the shareholders, and the Directors promised that all issues would be settled and the Annual Returns would be updated with the Registrar of Companies along with the names of the investors. They further stated that they could not file a company petition when the name of the company was struck off from the rolls of the Registrar of Companies. They asserted that the name of the company was restored in August, 2017, but the company filed Annual Returns for the years 2014-15 to 2016-17 only on 12.06.2018. It was after this event that the appellants claim to have found that their names were not in the shareholders' list and questioned the Directors about such non-inclusion. They further claim that the Directors assured them that after the police case was closed, the names of the appellants would be added but the appellants found out that even after the closure of the case on 30.06.2018, their names were not shown as shareholders. It was in these circumstances that the company petition was filed before the NCLT. The appellants asserted that it was due to these reasons that they

could not call for an Annual General Meeting, as they were not shown as shareholders of the company.

22. In response to the third query as to why they did not take steps when the annual accounts were not audited and submitted to them or with the Registrar of Companies, the appellants stated that, as they were informed that there was a police case against the Auditor of the company, they could not take any steps to get the accounts audited and submitted to them. They further stated that due to the fiduciary relationship between respondents 2 to 4 and the appellants, they never suspected that the respondents were not holding Annual General Meetings and were mis-managing the affairs of the company. Further, the Directors are stated to have promised that the issue would be settled and that the Annual Returns would be updated with the Registrar of Companies and that the investors' names would be updated. However, despite such assurances by the Directors, the appellants deemed it prudent to inspect the records of the company by accessing its master data on the MCA portal in 2017 and were shocked to find that the affairs of the company were being run contrary to law, as a result of which the name of the company was struck off by the Registrar of Companies. The appellants also came to know that their shareholding was not reflected in the Register of Members and they accordingly filed a composite petition before the NCLT under Sections 59 and 241 of the Act of 2013.

23. Satisfactory answers having been furnished by the appellants as aforestated, it would be appropriate at this stage to take note of the statutory provisions and precedential law relating thereto. Originally, Section 155 of the Companies Act, 1956, dealt with rectification proceedings in connection with entry of names in the Register of Members of a company. Section 155 was omitted with effect from 31.05.1991.

Section 111 and Section 111-A were inserted in the Companies Act, 1956, with effect from 31.05.1991 and 20.09.1995 respectively. These provisions corresponded to erstwhile Section 155. Presently, Section 59 of the Act of 2013 and Rule 70(5) of the National Company Law Tribunal Rules, 2016, deal with rectification. Rule 70(5) is in pari materia with Section 111(7) of the Companies Act, 1956.

24. In Ammonia Supplies Corporation (P) Ltd. vs. Modern Plastic Containers Pvt. Ltd. and others1, the short question for consideration was framed thus by this Court: 'Whether in the proceedings under Section 155 of the Companies Act, 1956, the Court has exclusive jurisdiction in respect of all the matters raised therein or has only summary jurisdiction?' It was observed that the very word 'rectification' in Section 155 of the Companies Act, 1956, connotes something that ought to have been (1998) 7 SCC 105 done but by error was not done or ought not to have been done but was done, requiring correction. It was held that the Court has discretion to find out 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. It was further held that, if it is truly a case of rectification, all matters raised in that connection should be decided under Section 155, but if it finds adjudication of any matter not falling under it, the Court may direct a party to get his right adjudicated by a civil court. Noting that there was nothing in the Companies Act, 1956, expressly barring the jurisdiction of the civil court, it

was observed that where the 'Court' as defined under the Act is exercising its powers under various sections, where it has been vested with exclusive jurisdiction, the jurisdiction of the civil court is impliedly barred. It was, therefore, held that to the extent the 'Court' has exclusive jurisdiction under Section 155, the jurisdiction of the civil court is impliedly barred. But for what is not covered as aforesaid, the civil court would have jurisdiction. Noting that the jurisdiction of the 'Court' under Section 155 is summary in nature, it was held that it would be appropriate for the 'Court' to see for itself whether any document alleged to be forged is said to be so, only to exclude the jurisdiction of the 'Court' or it is genuinely so. As the High Court, exercising jurisdiction under Section 155 of the Companies Act, 1956, had not examined the case in this light, this Court remanded the matter to the High Court for decision afresh. The observations in paragraph 26 of the judgment are of relevance in this regard and are extracted below:

> "26. The proviso gave discretion to the court to direct an issue of law to be tried, if raised. By this deletion, submission is that the Company Court now itself has to decide any question relating to the rectification of the Register including the law and not to send one to the civil court. 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. ..."

> 25. In Standard Chartered Bank vs. Andhra Bank Financial Services Limited2, a 3-Judge Bench of this Court affirmed the view taken in Ammonia Supplies Corporation (P) Ltd. (supra) that the jurisdiction (2006) 6 SCC 94 exercised by a Company Court under Section 155 of the Companies Act, 1956 (Section 111, thereafter), was somewhat summary in nature and that, if a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, which was the more appropriate remedy for investigation and adjudication of such seriously disputed questions of title.

> 26. In Jai Mahal Hotels Private Limited vs. Devraj Singh and others3, this Court again held that issues which truly relate to 'rectification' of the Register fall within the summary jurisdiction of the Company Law Board and only complex questions of title fall outside its jurisdiction. It was observed that there is a thin line in appreciating the scope of jurisdiction of the Company Court and the jurisdiction is exclusive, if the matter truly relates to 'rectification', but if the issue is alien to 'rectification', such matter may not be within the exclusive jurisdiction of the Company Court.
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> 27. In Adesh Kaur vs. Eicher Motors Limited and others 4, this Court found, on facts, that it was an open-and-shut case of fraud, in which the appellant who had applied for rectification had been the victim, and held that the appellate tribunal was not correct in relegating the appellant to the civil court on the ground that a criminal complaint and a SEBI investigation were pending and in holding that it was not proper for the National (2016) 1 SCC 423 (2018) 7 SCC 709 Company Law Tribunal to exercise power to rectify the Register under Section 59 of the Companies Act, 2013.
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> 28. In Shashi Prakash Khemka (Dead) through legal representatives and another vs. NEPC MICON (Now NEPC India Limited) and others5, this Court again had occasion to deal with exercise of power under Section 111-A of the Companies Act, 1956. The Company Law Board's view had been reversed by the Madras High Court in appeal, whereby the appellants were relegated to the remedy of a civil suit in relation to the issue raised qua the transfer of shares. This Court took note of the earlier judgment in Ammonia Supplies Corporation (P) Ltd.

(supra) but noted that Section 430 of the Act of 2013 barred the jurisdiction of the civil court and opined that the effect thereof is that, in matters in respect of which power has been conferred on the National Company Law Tribunal, the jurisdiction of the civil court is completely barred. This Court observed that it is not in dispute that, were a dispute to arise today, remedy of a civil suit would be completely barred and the power would vest with the National Company Law Tribunal under Section 59 of the Companies Act, 2013. Noting that the cause of action in that case had arisen at a stage prior to enactment of the Act of 2013, this Court was of the view that relegating the parties to a civil suit would not be the appropriate remedy, (2019) 18 SCC 569 considering the manner in which Section 430 of the Act of 2013 was widely worded.

29. Shashi Prakash Kemka (supra) was followed by the National Company Law Appellate Tribunal, New Delhi, in Smiti Golyan and others vs. Nulon India Ltd. and others 6 whereby, the decision of the National Company Law Tribunal, Principal Bench, in relation to rectification proceedings was upheld without relegating the parties to the civil court. Civil Appeal No. 4639 of 2019 filed before this Court against Smiti Golyan (supra) was dismissed on 03.07.2019 and this Court observed that the findings recorded by the National Company Law Appellate Tribunal were absolutely proper and no ground was made out to interfere with the same.

30. Thereafter, in IFB Agro Industries Limited vs. SICGIL India Limited and others7, this Court considered the appropriate forum for adjudication and determination of violations and

consequential action thereon under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992. It was observed that the Securities and Exchange Board of India (SEBI) was conferred with regulatory jurisdiction, which included ex-ante powers to predict possible violations and take preventive measures. This Company Appeal (AT) No. 222 of 2018, decided on 25.03.2019 (2023) 4 SCC 209.

Court held that the role of SEBI as a regulator could not be circumvented by applying for rectification under Section 111-A of the Act of 1956 and that, such an approach would be impermissible as scrutiny and examination of a transaction allegedly conducted in violation of the Regulations has to be processed through the rules and remedies provided in the Regulations themselves. This Court emphasized that when Constitutional Courts are called upon to interpret provisions affecting exercise of powers and jurisdiction by regulatory bodies, it is the duty of the Court to ensure that transactions falling within the province of the regulators are necessarily subjected to their scrutiny and regulation. It was pointed out that this would ensure that the regulatory body charged with the duty to protect the consumers has real-time control over the sector, thereby realizing the purpose of its constitution. It was, therefore, held that the purpose of these regulations could not be short-circuited by making an application to the Company Court under Section 111-A of the Act of 1956, on the ground that the provision bestowed jurisdiction parallel to the SEBI. It is in this context that this Court, in IFB Agro Industries Limited (supra), examined Sections 155 and 111-A of the Act of 1956 and Section 59 of the Act of 2013. The judgment heavily relied upon and extensively quoted from the earlier judgment in Ammonia Supplies Corporation (P) Ltd. (supra), which we have already referred to hereinabove and also quoted.

31. The judgment in Ammonia Supplies Corporation (P) Ltd. (supra), as noted, states that the provisions relating to rectification give discretion to the Company Court to examine whether, under the garb of rectification, one is laying claim for an adjudication of such contentions and issues which do not fall within the realm of ‘rectification’ and consequently, within the jurisdiction of the Company Court. However, if the Company Court finds that the dispute relates to the field of ‘rectification’ or its peripheral aspects, it will have exclusive jurisdiction to address the claim under Section 155 of the Act of 1965. When the Court is, however, of the opinion that the contentious issues that are raised before it for adjudication do not fall within that sphere and, in consequence, its jurisdiction under that provision, the power of rectification should not be exercised. Thus, if the application for rectification, in effect, includes projected claims which do not come within the purview of rectification and the Company Court feels that the civil court/regulatory body would be the more appropriate forum, jurisdiction under Section 155 of the Act of 1965 would not be exercised.

32. This would mean that the National Company Law Tribunal exercising jurisdiction under Section 59 of the Act of 2013 has to examine the factual issues to ascertain the substance of the issue before it after removing the cloak of the form of the application. The expression ‘rectification’, as already pointed out, connotes something that ought to have been done but, by error, was not done, or what ought not to have been done but was done, requiring correction. The phrase ‘sufficient cause’ in Section 59 of the Act of 2013 is to be tested in relation to the statutory mandate thereof, i.e.,

anything done or omitted to be done in contravention of the Act of 2013 or the Rules framed thereunder.

33. Significantly, the earlier decision in Shashi Prakash Khemka (supra) had concluded that the jurisdiction of the civil court would be barred by referring to the provisions of Section 430 of the Act of 2013. Neither this provision nor this decision was noticed by this Court in IFB Agro Industries Limited (supra). However, it would be wrong to hold that, for the said reason, there is a conflict between these two decisions. The jurisdiction of the civil court or for that matter, any other forum, would be barred only when the subject matter of the dispute squarely falls within the domain and jurisdiction of the court/forum constituted under the provisions of the Act of 1956/Act of 2013. When and where the Act of 1956/Act of 2013 does not confer such exclusive jurisdiction on the court/forum constituted thereunder or the dispute falls outside the realm of that particular provision of the Act of 1956/Act of 2013, the jurisdiction of the civil court would not be completely barred (See Dhulabhai vs. State of Madhya Pradesh and another8). Notably, the edict in Ammonia Supplies Corporation (P) Ltd. (supra) was also to this effect and it was followed and affirmed in the decisions that followed thereafter. In Adesh Kaur (supra), this Court observed that if, on facts, an open-and-shut case of fraud is made out and the person seeking rectification was the victim, the National Company Law Tribunal would be entitled to exercise such power under Section 59 of the Act of 2013. This Court rejected the contention that, as criminal proceedings had been initiated, there was a serious dispute and it was not correct for the National Company Law Tribunal to exercise power under Section 59 of the Act of 2013. The contention that the shares had been dematted and were in the name of another person and, therefore, the power of rectification should not have been exercised, was also rejected.

34. In the present case, proper verification of the assertions made by the parties was a sine qua non. The Acting President of the NCLT, by failing to carry out the said exercise, failed to discharge the mandate of law. Exercise of power under Section 59 of the Act of 2013 is to be undertaken in right earnest by examining the material, evidence, and the facts on record. This has not been done. Rather, a narrow view was taken without (1968) 3 SCR 662.

calling upon respondent No. 2 to prove the veracity of the contrary story put forth by him, despite receiving monies from the appellants. The facts, material, and evidence had to be examined in the context of the underlying facts, which would have included the receipt of monies, the signatures on the transfer deeds, etc. Needless to state, questions of fact must be decided on the principle of preponderance of probabilities, giving due weight to the specific facts, as found, so as to draw the conclusion that a reasonable person, acquainted with the relevant field, would draw on the basis of the same facts. (See High Court of Judicature at Bombay through its Registrar vs. Udaysingh and others9).

35. Neither the Acting President of the NCLT nor the NCLAT examined, with any seriousness, the issues raised before them to come to a cogent conclusion as to whether the disputes raised by the respondents were mere moonshine. Notably, in Ammonia Supplies Corporation (P) Ltd. (supra), this Court held to that effect in the context of Section 155 of the Companies Act, 1956. Thereafter, in Aadesh Kaur (supra) also, this Court affirmed that if, on facts, an open-and-shut case of fraud is

made out in favour of the person seeking rectification, the National Company Law Tribunal would be entitled to exercise such power under Section 59 of the (1997) 5 SCC 129.

Act of 2013. Therefore, verification of this aspect was essential but the NCLT failed to discharge this mandate.

36. Another crucial fact that needs to be noted is that the interim order passed on 27.06.2019 by the Member (Judicial) of the NCLT had indicated, in clear terms, the issues that arose for consideration and the inquiry required to determine the same. However, ignoring the said interim order, the Acting President of the NCLT chose to summarily dismiss the petition, without considering the material already placed on record and without further evidence being adduced. The documents that were referred to and attached to the Company Petition and the appellants' rejoinder were glossed over or were completely ignored. Compounding the error of the Acting President of the NCLT, the NCLAT did not even get the facts right. Production of the original share certificates by the appellants and their argument, relying on Section 46 of the Act of 2013, that the signatures thereon by two Directors was sufficient in the eye of law, was totally lost sight of by the NCLAT. Further, the NCLAT blindly accepted the story put forth by respondent No. 2 to such an extent that it totally overlooked the fact that it was the appellants who had paid 14,66,39,400/- to respondent No. 2. Neither the NCLT nor the NCLAT chose to labour over the actual issues for consideration by looking at the documentary evidence already placed on record or by calling for further evidence in that regard.

37. On the above analysis, these appeals deserve to be and are, accordingly, allowed. The judgment in Company Petition No. 667/59 & 241/HDB/2018 and the judgment in Company Appeal (AT) (CH) No. 44 of 2021 & I.A. No. 548 of 2021 are set aside. Company Petition No. 667/59 & 241/HDB/2018 is restored to the file of the National Company Law Tribunal, Amaravati Bench, for consideration afresh on merits and in accordance with law, upon proper appreciation of evidence. Given the passage of time since the institution of the petition, we would request the National Company Law Tribunal, Amaravati Bench, to give priority to the same and endeavour to dispose it of as expeditiously as possible.

Pending I.A.s, if any, shall stand disposed of.

Parties shall bear their own costs.

……,J (SANJIV KHANNA) ……,J (SANJAY KUMAR) September 9, 2024;

New Delhi.