

Company Law Board

Tamilnadu Finance Limited vs Raasi Cement Limited on 2 May, 2006

Bench: K Balu

ORDER K.K. Balu, Vice-Chairman

1. This company petition is filed under Section 111A read with Section 113 of the Companies Act, 1956 ("the Act") seeking directions against M/s Raasi Cement Limited ("the Company") -

a) to rectify its register of members in respect of 2,900 shares, particulars of which are set out in the schedule hereto, by incorporating the name of the petitioner;

b) to register the impugned shares in the name of the petitioner; and

c) to issue duplicate share certificates in respect of those shares.

2. According to Shri R. Sargunaraj, learned Counsel, the shares in question owned by the petitioner were lost together with the blank transfer forms thereto in the year 1995, upon which the petitioner had filed civil suits in C.S. No. 526/1995 and C.S. No. 1625/1995 on the file of High Court of Madras, of which the latter suit got transferred to City Civil Court, Chennai and numbered as O.S. No. 997/1996 and obtained an order of injunction restraining the Company from transferring the shares to any third party. The petitioner filed yet another civil suit in O.S. No. 518/1998 on the file of XV Assistant City Civil Court, Chennai against the Company and 30 others, claiming to be purchasers of the impugned shares for declaration of its title, which came to be decreed on 24.01.2003, declaring that the petitioner is the owner of the shares impugned in the company petition. In spite of repeated demands and the legal notice dated 19.10.2004, the Company neither issued duplicate share certificates nor rectified the register of members of the Company by substituting the name of the petitioner, thereby disobeying the decree of the civil court. The decree in O.S. No. 518/1998 will remain satisfied only when the register of members of the Company is duly rectified, over which the Company Law Board alone can exercise jurisdiction in terms of Section 111A of the Act. The title to the impugned shares has been declared by the civil court on 24.01.2003, but the petitioner could approach the CLB only on 01.04.2005, after a delay of 372 days, mainly due to the subsequent correspondence exchanged with the Company. This delay is neither wilful nor wanton but due to the prolonged inaction on the part of the Company, which is sought to be condoned, to meet the ends of justice.

3. According to the Company, the petitioner had not delivered the instruments of transfer at any point of time and the Company never refused registration of the transfer in the name of the petitioner. Hence, the applicability of Section 111A(2) for rectification of the register of members and the question of limitation in filing the appeal to the CLB do not arise. Section 111 A(3) empowers the CLB to direct rectification of register or records of any company or depository, in case the transfer has been made in contravention of the provisions of the Securities Exchange Board of India Act, 1992 or the Sick Industrial companies (Special Provisions) Act, 1985 or any other law for the time being in force. The Company has not contravened any of the provisions of the enactments specified in Section 111A(3). Section 113 envisages that the Company shall deliver the share certificate to the

allottee within three months from the date of allotment and in favour of the transferee within two months after making of the application for registration of the transfer of shares. The petitioner has neither applied for the allotment of shares nor for the transfer of shares by delivering the instruments of transfer together with the original share certificates. Hence, the petitioner cannot invoke the provisions of Sections 111(A) & 113 of the Act. The petitioner has obtained a decree in O.S. No. 518/1998 on the file of the City Civil Court, Chennai against the Company, wherein it has been declared that the petitioner is owner of the impugned shares. The petitioner, instead of approaching the City Civil Court, has invoked jurisdiction of the CLB for execution of the decree, which is not maintainable under law. The petitioner has not deliberately arrayed 7 transferees and 11 transferors, as parties to the civil suit in O.S. No. 518/1998, despite the petitioner having been informed of the relevant details by the Company. The petitioner ought to have impleaded all the transferees and registered shareholders in the present proceeding, but not having done so the petition is bad for nonjoinder of necessary parties. There is no direction to the Company in the decree obtained in O.S. No. 518/1998 by the petitioner either to register the transfer of shares in the name of the petitioner or for issue of duplicate share certificates to the petitioner. Further, the Company, in order to avoid multiplicity of proceedings could not accede to the demand made by the petitioner, more so when the Company has received the transfer instruments and the shares certificates in respect of the impugned shares from 35 transferees.

4. Shri Sargunraj, learned Counsel in his rejoinder submitted: The petitioner has not impleaded the transferees in respect of 350 shares with certificate Nos. 34713, 57997, 88880, 29383, 208458, 63346 and 46162 forming part of the impugned shares, to the present petition and sought to exclude these shares from the purview of the company petition, in support of which filed a Memo dated 23.03.2006. In view of this, learned Counsel prayed that the reliefs in respect of the remaining shares may be granted as claimed in the petition.

5. I have considered the pleadings and arguments of learned Counsel. The issues now before me are whether the petitioner is entitled for the reliefs -(a) rectification of the register of members in respect of the impugned shares; (b) registration of the transfer of shares in the name of the petitioner under Section 111A; and (c) issue of duplicate shares under Section 113, as claimed in the company petition. Section 111 A(2) provides that the shares or debentures and any interest therein of a public company shall be freely transferable. As per proviso to Sub-section (2), an aggrieved transferee may prefer an appeal before the CLB, if transfer is refused without sufficient cause within two months from the date of lodgment. Section 111A(3) empowers the CLB on an application made by a depository, company, participant, investor or SEBI, to direct rectification of register or records of a company or depository in case a transfer has been made in contravention of the provisions of the Securities and Exchange Board of India Act, 1992 or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 or any other law for the time being in force within two months from the date of transfer of any shares held by a depository or from the date on which the instrument of transfer or the intimation of the transmission was delivered to the company, as the case may be. According to the petitioner, the shares in question along with the blank transfer forms were lost in the year 1995, upon which the petitioner filed a civil suit in O.S. No. 518/1998 before the City Civil Court, Chennai against the Company and thirty others, claiming to be purchasers and obtained a decree on 24.01.2003 declaring that the petitioner is the owner of

the impugned shares. The petitioner undisputedly has not lodged with the Company the original share certificates together with the instruments of transfer, in compliance with the mandatory requirements of Section 108 of the Act. The Company, on the other hand, claims that it has received the original share certificates and the transfer forms from the purported transferees for effecting the transfer in their favour. It is thus far from doubt that the petitioner neither delivered the requisite documents nor the Company refused registration of the transfer in favour of the petitioner. By virtue of Section 111 A, the CLB has jurisdiction to adjudicate only when there is a refusal for transfer of shares on sufficient cause and/or pass an order for rectification of register or records when transfer is in contravention of law as specified therein. But in the present case before me none of these two criteria exists. In this background, the petitioner cannot invoke either Sub-section (2) or (3) of Section 111A to press into service the prayer for rectification of the register of members of the Company. Section 113 provides that the company shall deliver the share certificate to the allottee within three months after the allotment of any of its shares and in favour of the transferee within two months after making of the application for registration of the transfer of shares. Under Section 113, the CLB has no power to give directions for issue of duplicate share certificates. The provision for issue of duplicate share certificates has been prescribed under Rule 4 (3) of the Companies (Issue of share certificates) Rules, 1960. Therefore, the relief of issue of duplicate share certificate falls outside the ambit of Section 113. In these circumstances, I am of the considered view that the CLB has no power to pass any order under Sections 111A and 113 as prayed for by the petitioner. Accordingly, the petition is dismissed with no order as to costs. However, the petitioner is at liberty to execute the decree obtained on 24.01.2003 in O.S. No. 518/1998 before the City Civil Court, Chennai against the Company in respect of the impugned shares, thereby, redressing its grievance that the Company disobeyed the decree passed by the civil court.