

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

CP NO. 5/59/HDB/2020

*Under Section 59 and other applicable
provisions of Companies Act, 2013.*

IN THE MATTER OF M/S. SANGHI CEMENTS LIMITED

Between:

Mr. Gireesh Sanghi
S/o. Mr.Late Ram Sharan Sanghi,
Sanghi Nagar P.O., Hayat Nagar Mandal,
Hyderabad – 501511, Telangana.

... Petitioner

Versus

1. Sanghi Cements Limited
Sanghi Nagar P.O., Hayat Nagar Mandal,
Hyderabad – 501511, Telangana.
2. Mr. Ravi Sanghi.
Sanghi Nagar P.O., Hayat Nagar Mandal,
Hyderabad – 501511, Telangana.

... Respondents

DATE OF ORDER: 07.06.2024

CORAM:-

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

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

Appearance

For Petitioner : Shri S. Chidambaram, PCS, Shri Yogesh Jagia,
and Shri Harshit Ratra, Advocate

For the Respondents : Shri Avinash Desai, Sr. Advocate assisted by
Shri Kopal Sharraf and T. Vijay Kumar Reddy,
Advocates

[PER BENCH]

O R D E R

1. This is an application filed under Section 59 and other applicable provisions of the Companies Act, 2013 seeking for the following relief(s):

- a. Declare the allotment of 85,00,000 equity shares of Rs.10/- each to Respondent No.2 made on 21.03.2014 as illegal and void ab initio.
- b. Direct the Respondent No.1 Company to rectify the Register of Members and remove the name of the Respondent No.2 to the extent of 85,00,000 shares and restore the shareholding pattern prior to 21.03.2014.
- c. Pass such other order(s) as this Hon'ble Tribunal may deem fit and proper and thus render Justice.

2. Brief averments made by the Petitioner:-

2.1 It is stated that the Petitioner/Director of Respondent No.1 Company and also a shareholder holding 1,42,188 equity shares

constituting around 14.21% of the fully paid up share capital of the Respondent No.1 Company before the impugned allotment of shares to Respondent No.2.

2.2 It is stated that the Petitioner along with his family are holding around 4,87,499 (Four Lakhs Eighty-Seven Thousand Four Hundred and Ninety-Nine) equity shares of Rs.10/- (Rupees Ten only) each amounting to 48.76% of the total paid up share capital of the Respondent No.1 Company. The details of the shareholding of the Petitioner and his group before the impugned allotment of shares is as detailed below:

Sl. No.	Name of the Shareholder of Petitioner group	No. of shares	% of holding
1.	Mr. Girish Sanghi (Petitioner)	1,42,188	14.22
2.	Mrs. Alka Sanghi (Wife of Petitioner)	1,17,187	11.72
3.	Mr. Gaurav Sanghi (son of the Petitioner)	1,14,062	11.41
4.	Mr. Ashish Sanghi	1,14,062	11.41
	Total	4,87,499	48.76

2.3 It is stated that the Respondent No.2 and his family holds 4,87,501 (Four Lakhs Eighty-Seven Thousand Five Hundred and One) equity

shares of Rs. 10/- (Rupees Ten only) each amounting to 48.76% of shares in the Respondent No.1 Company before the impugned allotment of shares. The details of the shareholding of the Petitioner and his group before the impugned allotment of shares is as detailed below:

Sl. No.	Name of the Shareholder of Respondent group	No. of shares	% of holding
1.	Mr. Ravi Sanghi (Respondent No.2)	1,42,188	14.22
2.	Mrs. Anita Sanghi (Wife of Respondent No.2)	1,17,187	11.72
3.	Mr. Aditya Sanghi	1,14,063	11.41
4.	Mr. Alok Sanghi	1,14,063	11.41
	Total	4,87,501	48.76

Copy of Annual Return for the Financial year ended 31.03.2013 showing the shareholding before the impugned allotment is filed as **Annexure-2.**

2.4 It is stated that there were several disputes arose between the shareholders of the Respondent No.1 Company and set of shareholders have filed a petition under Section 397 and 398 read

with Section 11 of the Companies Act, 1956 which was numbered as CP No. 73 of 2008 before the erstwhile Hon'ble Company Law Board and later renumbered as TP No. 31/HDB/2016 and same is pending for adjudication.

2.5 It is stated that on 19.12.2019 when the Petitioner was carrying out the inspection of records of the Respondent No.1 Company filed with the Registrar of Companies to the utter surprise of the Petitioner the Respondent No.2 has filed Form PAS -3 showing as if a Board Meeting of the Respondent No.1 Company was held on 21.03.2014 and at the said Board Meeting the Respondent No.1 Company has allotted 85,00,000 (Eighty-Five Lakhs) equity shares of Rs. 10/- (Rupees Ten only) each to Respondent No. 2 increasing his group shareholding from 48.76% to 94.61% and thereby reduced the shareholding of the Petitioner and his group from 48.76% to 5.13%. Copy of Form No. PAS-3 showing impugned allotment of shares is enclosed as **Annexure-3**.

2.6 It is stated that the Petitioner is one of the Directors of the Respondent No.1 Company and the Petitioner has not received any

notice calling the Board Meeting for allotment of any shares to the Respondent No.2. The Petitioner further submits that he and his group were holding 48.76% of the total paid-up share capital of the Respondent No.1 Company without their consent no Special Resolution would have passed as required under Section 81(1A) of the Companies Act, 1956. The Respondent No.2 has played fraud on the Petitioner and his group and illegally increased his shareholding in the Respondent No.1 Company. It is brought to the notice that no Board Meetings or General Body Meetings were never conducted by the Company since 2008. It is stated that the impugned allotment was made when the matter is sub-judice before this very Tribunal that to behind the back of the Petitioner and without his knowledge and concurrence. The only valuable asset of the Company is that land allotted by the state government to the Company for construction of the factory and also license in rights of lime stone quarry of about 1000 acres. The obvious purpose committing the fraud is to usurp this valuable property rights.

2.7 It is stated that as per the illegal Form PAS-3 the Respondent No. 2 is showing as if the allotment was made on 21.03.2014 the form was

filed only on 20.12.2016 which is around three years after the alleged date of allotment. This clearly nails the fraud played by the Respondent No.2 on the Petitioner and his group. The very fact that the Respondent No. 2 has filed Form PAS-3 after more than 2 years 9 months clearly demonstrates that the no allotment was made but as an after thought the Respondent No. 2 has filed Form PAS-3 to make the Petitioner and his group who are holding equal number of shares a miniscule minority. It is also apprehended no consideration was ever received by the Company with Respect to the impugned allotment. On this ground alone the impugned allotment needs to be set aside.

3. Interim reply/counter filed by the Respondents No. 1 and 2 dated 05.02.2020, inter-alia contending as under:

- 3.1 It is stated that the Petitioner claimed variedly at different parts of the Petition that the date on which he had gained knowledge of the impugned allotment dated “20.12.2019” was 19.12.2019 and, in another place, that the “allotment was made on 21.03.2014 the form was filed only on 20.12.2016”. The Petitioner has, thereby, made

contradictory statements and has filed the above Petition knowing fully well that it is time barred.

- 3.2 It is stated that the allotment of shares by the Respondent No.1 Company on 21.03.2014 and the instant Petition is filed by the Petitioner on 19.12.2019 which is way beyond the limitation period i.e., after a period of 5 years and 9 months from the date of allotment of shares prescribed under Article 137 of the Limitation Act, 1963. Therefore, the instant Petition is barred by limitation and is liable to be dismissed.
- 3.3 It is stated that the Petitioner contends that the Petitioner came to know about the alleged fraud committed by the Respondents only upon the inspection of records of the Respondent No.1 Company on 19.12.2019, it is highly surprising that the Petitioner on the very same day of inspection of records of the Respondent No.1 Company had managed to engage a counsel, draft the Petition, collate all the documents and file the instant Petition on the very same day before this Hon'ble Adjudicating Authority seeking various interim reliefs.

- 3.4 It is stated that being a Respondent in the C.P.No. 73 of 2008, the Petitioner cannot deny that the Petitioner is not aware the matters related to the Respondent No.1 Company and that he is not aware about any Board Meeting conducted during the last 11 years. The Petitioner being a Respondent in the said Company Petition has also appointed a Counsel to represent himself. Further, the contention of the Petitioner that he is not aware of any Board Meeting conducted during last 11 years, goes on to show that the Petitioner is in complete dereliction of his duties as a director of the Respondent No.1 Company.
- 3.5 It is stated that the members of the Respondent No.1 Company in the Extra-Ordinary General Meeting (“EGM”) held on 21.03.2014 had approved the Preferential Allotment of up to 90,00,000 equity shares under Section 81(1A) of the Companies Act, 1956 to the Respondent No.2 herein. The resolution passed in the said EGM was filed in e-form MGT-14 with the Registrar of Companies, Hyderabad on 20.11.2014. Therefore, the contention of the Petitioner in Para 6.6 of the Petition that no General Meeting was conducted for passing the special resolution under Section 81(1A)

of the Companies Act, 1956 stands defeated, as the said resolution was passed on 21.03.2014 and also filed with the ROC, Hyderabad on 20.11.2014. A Copy of the resolution passed by the shareholders in the EGM held on 21.03.2014 is enclosed hereto as **Annexure-1**, copy of e-form MGT-14 filed with the ROC, Hyderabad and challan evidencing the filing of form on 20.11.2014 is enclosed hereto as **Annexure-2**.

- 3.6 It is stated that the shareholders of the Respondent No.1 Company had approved the increase in Authorised Share Capital in order to further issue shares by way of Preferential Allotment to the Respondent No.2. The explanatory statement to the notice of EGM clearly specifies that for the purpose of meeting working capital requirements of the Respondent No.1 Company it was proposed to issue shares to the Respondent No.2. Therefore, the contention of the Petitioner that he was never aware of the allotment of equity shares to the Respondent No.2 is absolutely false more so, when the Form MGT-14 for approval of increase of authorized shared capital as well as for preferential allotment of shares was filed on 20.11.2014 itself. Thus, the instant Petition is barred by limitation.

3.7 It is stated that the Petitioner has failed to establish the three essential elements for granting of interim reliefs i.e., prima facie case, balance of convenience and irreparable loss and injury. Therefore, the interim Reliefs sought by the Petitioner are not tenable.

4. In the light of the contest as afore stated the points that emerge for our consideration are: -

1. Whether the present company petition is barred by limitation?
2. Whether the Petitioner has made out a case for a declaration that allotment of 85,00,000 equity shares of Rs.10/- each to the 2nd Respondent made on 21.03.2014, is illegal and void *ab initio*? If, so, whether the said transfer can be set aside?
3. Whether the rectificatory jurisdiction of this Tribunal, under Section 59 of Companies Act 2013, can be exercised in the case on hand? If so, whether the Petitioner has made out a case for a direction to the 1st respondent to rectify its share Register, as prayed by the petitioner?

5. We have heard Ld. PCS Mr. S. Chidambaram, Ld. Counsel Mr. Yogesh Jagia, for the Petitioner, Ld. Senior Counsel Avinash Desai and Ld. Counsel Ms. Kopal Sharraf, for contesting Respondents, perused the record, and the written submissions.

Point.1

Whether the company petition is barred by limitation?

6. Mr. S. Chidambaram, Ld. PCS & Mr. Yogesh Jagia, Ld. Counsel, for the petitioner submits that, the allotment of shares is contrary to Articles of Association necessitating offer to the existing members and for preference compliance of Section 81(1A) of Companies Act, 1956. According to the Ld. Counsels in absence of any notice to Petitioner for right issue or for EOGM dated 21.03.2014 wherein it is claimed to have passed special resolution for preferential allotment, the rights issue or EOGM, are contrary to Articles and provisions of Companies Act, 2013. Ld. Counsel states that from Form PAS-3 for allotment of 85,00,000 lakh shares filed on the portal of Ministry of Corporate Affairs on 20.12.2019, the Petitioner gained knowledge of allotment made on 19.12.2019 and filed the instant company petition on the same day. Therefore, the instant company petition having been filed within the period of limitation of three years, in terms of Article 137 of the Limitation Act and as prescribed under section 433 of Companies Act, 2013.

7. Mr. Avinash Desai, Ld. Sr. Counsel for the 2nd Respondent submits that, Section 433 of the 2013 Act, contemplates that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or Appeals before the Tribunal or the Appellate Tribunal, as the case may be. Thereby, the provisions of the Limitation Act, 1963 will be applicable to a Petition under Section 59 of the 2013 Act. Ld. Sr. Counsel submits that Hon'ble Supreme Court in *Kerala State Electricity Board v. T.P. Kumhaliumma, (1976) 4 SCC 634* , held that;

“ 18. The alteration of the division as well as the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 of the Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure.....Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when the court is closed and extension of prescribed period if applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application during such period.

21. The changed definition of the words “applicant” and “application” contained in Sections 2(a) and 2(b) of the 1963 Limitation Act indicated the object of the Limitation Act to include petitions, original or otherwise, under special laws....Article 137 includes petitions within the word “applications”. These petitions and applications can be under any special Act as in the present case”.

8. Ld. Sr. Counsel further submits that, this Tribunal in its Order dated 25.04.2023 in *Hasmukh Kanubai Shah v. Aurobindo Pharmaceuticals Limited & Anr, IA (IBC)/103/2022 in CP (I.B) No.9/59/HDB/2022* while adjudicating on the issue of condoning the delay in filing a Section 59 petition under the 2013 Act by 308 days dismissed the Application by holding that Article 137 of the Limitation Act read with the Hon'ble Supreme Court judgment in *Kerala State Electricity Board* will mean to construe that the three years period prescribed under the Limitation Act, 1963 will be squarely applicable to a Section 59 Petition under the 2013 Act and therefore, without a sufficient cause the delay cannot be condoned.
9. According to the Ld. Sr. Counsel, the Petitioner's averment that he is not been aware of any board meeting in the last eleven years shows to prove the dereliction of his duties as a Director in the Respondent No.1 Company. Moreover, a special resolution under Section 81(1A) was passed on 21.03.2014 to increase the share capital of the Company and to allot the shares to Respondent No.2 and Form No.MGT-14 was duly uploaded with the Registrar reflecting the

resolution along with the Explanatory statement for increasing the shareholding. Ld. Senior Counsel submits that the same is a public document as it was duly uploaded and the Petitioner being a Director of the Respondent No.1 Company cannot claim ignorance of this resolution and the day-to-day affairs of the Company. It is submitted that in fact, every Annual Returns filing made by the Company after the date of allotment i.e. 21.03.2014 (For instance, including the Annual Returns for the FY ending 31.03.2014, @ Annexure 5, Additional Documents, reflects that the allotment was made in the name of Respondent No.2.

10. Ld. Sr. Counsel states that, statutory records such as Form No.MGT-14, e-Form PAS-3, and Annual Returns are filed with the MCA and instantaneously become part of the public domain and the Petitioner at its own peril chose to be complacent and cannot rake up old disputes belatedly. In support of *this* submission Ld. Sr. Counsel relied on the ruling of National Company Law Tribunal, New Delhi in *Sanjay Goel v. Majestic Buildcon Pvt Ltd, 2017 SCC SCC OnLine NCLT 12525* whilst adjudicating on the dispute

relating to allotment of shares under Section 241 of the 2013 Act whereupon similarly the Petitioner upon belated inspection of the MCA website moved against the Respondents, the Hon'ble Tribunal dismissing the Application held as follows:

10. The challenge to the acquisition of shares by Respondent No.2 after several years is vitiated by delay and laches as by the laws of limitation which are now applicable under the Act.....If the petitioner chose to be complacent with respect to the affairs of the Company as alleged, he did it at his own peril and it gives rise to the inference of his consent. It is a little difficult to accept that the petitioner was not aware of the business exigencies and steps taken for so long Being a Director, as per records, returns of the company bear his signatures also. He cannot at this stage lay the default in timely filing of statutory records at the doorstep of the only other Director viz Respondent no.2. His allegations that respondent no.2 was handling all affairs cannot absolve him from his obligations as a Director.

11.1) ...Besides these transactions were affected in the year 2010. The petitioner cannot allege ignorance of the same. The Annual Returns of the company were also in public domain since 11.07.2012 and reiterated thereafter and hence there is no ground to justify the delay and laches, much less limitation, merely on oral averment. "I just came to know" on an alleged belated inspection of the MCA website.

11. It is stated that the National Company Law Tribunal, Chandigarh Bench in *Kuldeep Singh v. Sainis Cold Retreaders Private Limited, 2019 SCC OnLine NCLT 2240* while dismissing the Application under Section 241 of the 2013 Act held as follows:

16. It would be thus, quite strange for the petitioner to allege that he has not been receiving any notice of the meeting of AGM and

in case he challenges his removal as a Director and remained silent for a period of 9 years. The filing of the statutory documents with the Registrar of Companies comes within the public domain and would be considered a public notice to all and sundry for the purposes of counting the period of limitation for filing the petition.

24. The petitioner has attached copy of notice of the EGM proposed to be held on 30.06.2009, Annexure P-10, for service to all the Members of the Company. The petitioner has simply alleged that he has not received any notice of the meeting after a period of 9 years when even the Annual Return or necessary Form was filed by the Company in the same year with the portal of the Ministry of Corporate Affairs.

12. Ld. Sr. Counsel also relied on the ruling of this Tribunal in *Sara Quereshi v. GB Bakers Industries Pvt Ltd & Ors*, IA (CA) No.50 of 2022, IA (CA) 67 & 68 of 2022 in Company Petition No.5 of 2022 while dismissing the Company Petition by holding that it was barred by limitation by relying on the *Kuldeep Singh (supra)*, observed that:

“No doubt in case whether fraud alleged by the Petitioner if established, the date on which the Petitioner came to know about the fraud will be the starting point for the purpose of calculating the of limitation in terms of sub section 1 (a) (d) of Section 17 of the Limitation Act. However, in terms of Order VI Rule 4 CPC, whenever a Party pleads the party shall plead the required details of such fraud. **In the case on hand, except merely contending that fraud has been played, no details as to the alleged fraud has been mentioned.**”

Our analysis & finding.

13. According to the petitioner, the Petitioner gained the knowledge of allotment on 19.12.2019 when Form PAS-3 for allotment of 85,00,000 lakh shares was filed on the portal of Ministry of Corporate Affairs and on the same day filed the instant company petition, therefore, the instant company petition is within the period of limitation as prescribed under section 433 of Companies Act, 2013. It is pertinent to note that in the interim reply, the 1st and 2nd Respondents categorically states that a special resolution under Section 81(1A) @Annexure-1, was passed on 21.03.2014 to increase the share capital of the Company and allot the shares to Respondent No.2 and Form No.MGT-14 has been duly uploaded with the Registrar reflecting the resolution along with the Explanatory statement for increasing the shareholding. Needless to say, that Form No.MGT-14 being a public document, hence when the same was duly uploaded as rightly contended by the Ld. Sr. Counsel for the respondent, the Petitioner being a Director of the 1st Respondent Company cannot claim ignorance of this resolution and the day-to-day affairs of the Company. Moreover, post filing of

Form No.MGT-14 in the year 2014, the Annual Returns filed by the Company after the date reflects that the allotment was made in the name of 2nd Respondent.

14. As per Article 137 of the limitation Act, the prescribed three years' time begins to run when the right to apply accrues. When it is the case of the petitioner only upon visiting the MCA website on 20.12.2019, he came to know about the purported illegal allotment of 85,00,000 lakh shares in the year 2019, the very same website also contained the annual returns of the year 2014 reflecting the allotment made in the name of the 2nd respondent. So much so, on a mere plea that the petitioner came to know on 20.12.2019 on his alleged belated inspection of the MCA website, the petitioner version as regards the impugned special resolution under Section 81(1A) passed on 21.03.2014 to increase the share capital of the Company and allot the shares to 2nd Respondent cannot be accepted. Therefore, we hold that the Petition is barred by limitation.

Point is answered accordingly.

POINT NO.2

Whether the Petitioner has made out a case for a declaration that allotment of 85,00,000 equity shares of Rs.10/- each to the 2nd Respondent made on 21.03.2014 as illegal and void ab initio? If, so, whether the said transfer can be set aside?

15. In our discussion on point 1, above we have held that the present company petition is barred by limitation. Though the Petitioner had contended that the allotment of shares in favour of the 2nd Respondent is contrary to the Articles of Association, besides that there is no compliance of Section 81(1A) of the Companies Act, 1956, the Petitioner had not placed any material substantiating the said contention. On the other hand, the financial returns filed before the ROC for the Financial Year ending 31.03.2014 shows the number of shares that the 2nd Respondent has been allotted. Moreover, in the following rulings, it has been held that issues regarding to allotment of shares did not fall within the ambit of acts of oppression and mismanagement.

(i) Sri Dhanada Laboratories Private Limited v. Namireddy Raghu Ram Reddy & Ors, Company Appeal (AT) No.154 of 2020 Hon'ble National Company Law Appellate Tribunal, New Delhi in observed that,

15. At the cost of repetition, it is reiterated that the issue of 'Allotment of Shares' and 'Removal of Director' if alleged to be 'illegal' do fall within the ambit of the 'acts' of 'Oppression and Mismanagement' as they affect the overall functioning of the Company"

- (ii) Vijaya Hospitality and Resorts Limited and Another Versus Tony P.A And Others [2023 SCC Online NCLAT 627] in Para 25 held that,

"25. In light of the aforesaid decision, this Tribunal is of the earnest view that the issue regarding cancellation of allotment of shares to the 2nd Appellant would fall within the scope and ambit of Section 59 of the Act."

The point is answered accordingly.

POINT NO.3

Whether the rectificatory jurisdiction of this Tribunal, under Section 59 of Companies Act 2013, can be exercised in the case on hand? If so, whether the Petitioner has made out a case or a direction to the 1st respondent to rectify its share Register, as prayed by the petitioner?

16. Ld. Counsel for the Petitioner contends that, the rectificatory jurisdiction of this Tribunal, under Section 59 of the Companies Act 2013, can be exercised even when the factual assertions as pleaded are 'contested facts' and 'disputed questions.' In support of this submission Ld. Counsel placed reliance on the ruling in Ashok

Kumar Khmkha (D) by Lrs Vs Nepc Mecon, (2019) SCC OnLine

SC 223 , it was held that;

“The subject matter of dispute before us is the exercise of power under Section 111-A of the Companies Act, 1956 (as amended in 1988) and the Depositories Related Laws (Amendment) Act, 1997. In terms of the impugned order of the Madras High Court, on an appeal filed against the order of the Company Law Board, the view taken by the Company Law Board has been reversed and thus, in effect, the appellants have been left to a remedy of civil suit. Learned counsel for the appellants says that the issue raised by the appellants qua the transfer of shares, whether done rightly or wrongly, has to be adjudicated by some forum – whether it be a civil suit or the exercise of jurisdiction by the then Company LawBoard. CA 1965-66/2014 2 Learned counsel for the appellants has drawn our attention to the view expressed in Ammonia Supplies Corporation (P) Ltd. vs. Modern Plastic Containers Pvt. Ltd. and Others (1998) 7 SCC 105, to canvass the proposition that while examining the scope of Section 155 (the predecessor to Section 111), a view was taken that the power was fairly wide, but in case of a serious dispute as to title, the matter could be relegated to a civil suit. The submission of the learned counsel is that the subsequent legal developments to the impugned order has a direct effect on the present case as the Companies Act, 2013 has been amended which provides for the power of rectification of the Register under Section 59 of the said Act. Learned counsel has also drawn our attention to Section 430 of the Act, which reads as under: - “430. Civil court not to have jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate.” The effect of the aforesaid provision is that in matters in respect of which power has been conferred on the NCLT, the jurisdiction of the civil court is completely barred. It is not in dispute that were a dispute to arise today, the civil suit remedy would be completely barred and CA 1965-66/2014 3 the power would be vested with the National Company Law Tribunal (NCLT) under Section 39 of the said Act. We are conscious of the fact that in the present case, the cause of action has arisen at a stage prior to this enactment. However, we are of the view that relegating the parties

to civil suit now would not be the appropriate remedy, especially considering the manner in which Section 430 of the Act is widely worded. We are thus of the opinion that in view of the subsequent developments, the appropriate course of action would be to relegate the appellants to remedy before the NCLT under the Companies Act, 2013”.

17. Mr. Avinash Desai, Ld. Senior Counsels for the Respondents, at the outset, submits the Petitioner is attempting to seek adjudication /declaration on the aforesaid transfer of shares under the garb of rectification under Section 59 of the CA, 2013, which is impermissible under law. In support of this submission Ld. Sr. Counsel relied on the following rulings.

i). IFB Agro Industries Limited v. SICGIL India Ltd & Ors, (2023)

4 SCC 209 , wherein it was held that;

27. The principle enunciated in Ammonia’s case relating to the jurisdiction of a Tribunal with respect to the rectification of the register is well-recognized and consistently followed. Sub-section (3) of Section 59 recognizes the overarching right to hold and transfer securities with the concomitant entitlement of voting. This is a precious right, and that is the reason why the Parliament found it necessary to caution that the provision of this Section shall not restrict the right of a holder of securities, to transfer such securities. This is another feature which is indicative of the limited scope and extent of the power of rectification of the register.
28. For the reason stated above, we are of the opinion that the company petition under Section 111-A of the 1956 Act for a declaration that the acquisition of shares by the respondents as null and void is misconceived. The Tribunal should have directed

the appellant to seek such a declaration before the appropriate forum.

ii). Sri Dhanada Laboratories Private Limited v. Namireddy Raghu

Ram Reddy & Ors, Company Appeal (AT) No.154 of 2020

Hon'ble National Company Law Appellate Tribunal, New Delhi

in observed that,

15. At the cost of repetition, it is reiterated that the issue of 'Allotment of Shares' and 'Removal of Director' if alleged to be 'illegal' do fall within the ambit of the 'acts' of 'Oppression and Mismanagement' as they affect the overall functioning of the Company"

iii). Vijaya Hospitality and Resorts Limited and Another Versus Tony

P.A And Others [2023 SCC Online NCLAT 627] in Para 25 held

that,

"25. In light of the aforesaid decision, this Tribunal is of the earnest view that the issue regarding cancellation of allotment of shares to the 2nd Appellant would fall within the scope and ambit of Section 59 of the Act."

18. Having heard the Ld. Counsels at length, and on perusal of the record and the law as referred above, we wish to state that, a bare perusal of Sections 38 of the Companies Act, 1913, under section 155 of the 1956 Act, followed by section 111A introduced by the

1996 Amendment to the 1956 Act, and, section 59 of the 2013 Act, discloses that the essential ingredients of the *rectificatory powers* of this Tribunal/ erstwhile Ld. CLB, have remained the same.

19. Hon'ble Supreme Court of India, in re, IFB Agro, *Supra*, wherein it was held that;

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

20. Therefore, it is quite clear from the above observation of Hon'ble Supreme Court of India, that, the newly introduced Section 430 in the Companies Act 2013, has not taken away the 'rectificatory' or any 'other jurisdiction' in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force. In fact, the same was the categorical observation of Hon'ble Supreme Court of India, in re, *Khemeka, supra*, which is as below;

“Learned counsel has also drawn our attention to Section 430 of the Act, which reads as under:-

“430. Civil court not to have jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate.”

The effect of the aforesaid provision is that in matters in respect of which power has been conferred on the NCLT, the jurisdiction of the civil court is completely barred.” (Emphasis is ours).

21. Therefore, in re, IFB Agro, Hon’ble Supreme Court of India, has only clarified on when the already existing ‘rectificatory’ jurisdiction of this Tribunal under section 59 of the Companies Act 2013, to be exercised and when the parties be relegated to a Civil court. IFB Agro, supra, neither has conferred jurisdiction afresh nor taken away the existing jurisdiction of this Tribunal, under section 59 of the companies act 2013.
22. So much so, we are of the firm view that, both Civil Court and this Tribunal, have Jurisdiction to entertain matters under the Companies Act, and the only *embargo* on the Jurisdiction of the Tribunal constituted under the Companies Act 2013, while

exercising its rectificatory jurisdiction under section 59 of the Companies Act 2013 is 'if any seriously disputed questions arise, the Tribunal, should relegate the parties to a Civil Court, which is more appropriate for investigation and adjudication of such disputed questions.

23. Indisputably, both the pleadings as well as submissions in the case on hand are *focused, on* pleas such as, illegal transfer of shares, disputed family settlement, non- payment of consideration in respect of the shares transferred, loss of crores of rupees to the shareholders, the locus standi of petitioner in transfer of equity shares for discharge of loans, violation of the order of status quo by the respondents etc. In our considered view the above pleas/questions since being contested and disputed seriously require deeper investigation and a detailed adjudication. This Tribunal's jurisdiction under section 59 of the Companies Act 2013, being summary and is mere rectificatory, de hors seriously disputed facts and contested questions, we relegate the parties herein to a Civil Court, which is more appropriate for investigation and adjudication of such disputed questions.

The Point is answered accordingly.

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

SD/-
CHARAN SINGH
MEMBER (TECHNICAL)

SD/-
DR. N. VENKATA RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

Pavani/ Sridher/LRA's