

(2023) 08 DEL CK 0102

Delhi High Court

Case No: Civil Suit (COMM) No. 245 Of 2019

Shazia Rehman

APPELLANT

Vs

Anwar Elahi & Ors

RESPONDENT

Date of Decision: Aug. 9, 2023**Acts Referred:**

- Code of Civil Procedure, 1908 - Section 151, Order 7 Rule 10
- National Company Law Tribunal Rules, 2016 - Rule 70
- Commercial Courts Act, 2015 - Section 2(1)(c)(xii)
- Companies Act, 2013 - Section 58, 59, 59(1), 59(2), 62, 111A, 242(2)(a), 407, 420, 424, 430

Hon'ble Judges: Yogesh Khanna, J**Bench:** Single Bench**Advocate:** Vipul Ganda, Abhipsa Mohanty, Priyanka Jindal, Aditya Singh, Arpit Kumar, Mehak, Gurkamal Hora Arora, Jaisal Baath

Judgement

Yogesh Khanna, J

I.A.1143/2020

1. This application is filed by the applicant under Order VII Rule 10 and 11 CPC read with Section 151 CPC seeking rejection of plaint. The plaintiff has filed the suit as a commercial suit under the Commercial Courts Act, 2015 seeking relief of declaration, permanent and mandatory injunction with regard to 4556 shares, got transferred by defendant no.1 in his favour. The defendants no.1 and 2 have challenged the maintainability of the present suit as a commercial suit under the Commercial Courts Act, 2015.

2. It is submitted as per definition of "commercial dispute" as provided in Section 2(1)(c)(xii) of Commercial Courts Act, 2015 only disputes arising out of shareholders agreement with regard to shares shall be commercial disputes but in

the present suit there is no shareholders agreement being entered into between the parties, hence it cannot be treated as a commercial suit.

3. It is submitted present suit relate to a family dispute between the family of defendant no.3- the father-in-law of plaintiff on the other hand and family of defendant no.1. It is submitted the plaint be rejected as the case pertain to rectification of register of members, hence only the NCLT shall have the jurisdiction and per Section 430 of Companies Act no civil suit is maintainable for rectification of the shares. Sections 59, 424 and 430 of the Companies Act are as under:

“59. Rectification of register of members.—(1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

424. Procedure before Tribunal and Appellate Tribunal.— (1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding it ex parte;

(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(h) any other matter which may be prescribed.

(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situate; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

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 Tribunal."

4. It is the submission of the learned counsel for the defendant, the plaintiff's shares were transferred in favour of defendant no.1 in the year 2011 and plaintiff never objected to the same at that moment. In the year 2016, her father in law i.e., defendant no.3 rather filed a petition before NCLT wherein he alleged about the shares of plaintiff having come down. The plaintiff was also a party to the said petition but never objected to the reduction of shares and neither she filed an application for rectification of register. In the year 2019 the plaintiff had filed a suit challenging the reduction of her shares and since the case pertains to the rectification of the register hence per Section 59 and 430 of the Companies Act, this Court shall have no jurisdiction. Reference is made to the following paras of plaint.

"4. That the plaintiff Is filing the present suit In exercise of her legal rights as that of a shareholder of defendant No.2 and In order to seek reliefs for undoing the Illegal and criminal acts of the defendant No.1 who as promoter Director of defendant No.2 has caused substantial loss to the plaintiff and has

illegally got transferred the part shareholding of the plaintiff in defendant No.2 in his own name, without the Plaintiff having in any manner transferred validly and illegally her said shareholding of defendant No.2 in favor of the defendant No. 1, at any point of time.

5. xxxxxxxx

6. That the Plaintiff as per the above Annual Return had acquired on 30th September 2004, 5000 (Five Thousand) shares from Ledger Folio No.40 of the Transferor Ms. Shailja Aggarwal to her Ledger Folio No. 27. The copy of the Annual return of the defendant No. 2 for the year 2003-2004 is filed along with the plaint as a document relied upon by the plaintiff.

14. That certain disputes thereafter however arose in the meanwhile between Mr. Mohd Nowshah Defendant No.3 and Mr. Anwar Elahi Defendant No.1 in the years 2013 as regards the affairs of the Defendant No.2 Company and in the year 2016 a petition was filed before the National Company Law Tribunal by Mr. Mohd Nowshah defendant No.3 alleging acts of mismanagement and oppression in the affairs of the above defendant No.2 Company on part of the Board of Directors of the Company which was controlled by Mr. Anwar Elahi defendant No.1. The Plaintiff was arrayed as one of the Respondents in the said petition.

15. That at the time of filing of the said petition, being case No CP 91/2016, certain documents being Statutory Returns of the company were annexed with the petition by Mr. Mohd Nowshah defendant No.3 to support his allegations against the other directors of the company. In the said petition and the annexed documents, the shareholding of the Plaintiff was shown to have been reduced from 5002 to 547 thereby reducing the shareholding of the Plaintiff from 12.77 percent of the issued share capital to 1.39 of the issued share capital of the defendant No.2 Company.

18. That Mr. Mohd Nowshah defendant No.3 informed the Plaintiff thereupon that Mr. Anwar Elahi Defendant No.1 had failed to abide with the understanding and execute the requisite documents with respect to the property bearing No.A-48, Mohan Cooperative Industrial Area, Badarpur, Mathura Road, New Delhi in favour of Mr. Mohd. Nowshah defendant No.3 and in case the Plaintiff claimed that she had not authorized any transfer of her shares in favour of Defendant No.1 she should take whatever action needed for correction of the list of the shareholders of the Company and restoration of her shares in her name, in the records of the Company if the transfer was not authorized by her as the transfer of shares was an issue between the plaintiff and the defendants No 1 & 2 and did not concern defendant No 3 who had No role to play in the same and was kept in dark by defendant No.2 as regards few of the internal affairs of defendant No.2 for a long time since 2013."

5. It is submitted as the allegations are the shares of plaintiff are reduced from 5002 to 547 i.e., 12.77% to 1.39% in the company and the prayer is to re-transfer said shares in her name which would certainly require rectification of shares hence this suit is not maintainable. Reference is also made to NCLT Rules, 2016 to show the tribunal has power akin to Civil Courts and this controversy can be decided before NCLT:

“39. Production of Evidence by Affidavit.- (1) The Tribunal may direct the parties to give evidence, if any, by affidavit.

(2) Notwithstanding anything contained in sub-rule (1), where the Tribunal considers it necessary in the interest of natural justice, it may order cross-examination of any deponent on the points of conflict either through information and communication technology facilities such as video conferencing or otherwise as may be decided by the Tribunal, on an application moved by any party.

(3) Every affidavit to be filed before the Tribunal shall be in Form No. NCLT.7.

43. Power of the Bench to call for further information or evidence. - (1) The Bench may, before passing orders on the petition or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary:-

(a) for the purpose of satisfying itself as to the truth of the allegations made in the petition or application; or

(b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.

(2) Without prejudice to sub-rule (1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, written communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.

(3) Where any party preferring or contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it shall be at liberty to move an appropriate application for forensic examination and the Bench hearing the matter may, for reasons to be recorded, either allow the application and send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records, or dismiss such application.

70. Appeal under sections 58 and 59.-

(1) to (4) xxxxxxxx

(5) On any petition under section 59, the Tribunal may-

(a) decide any question relating to the title of any person who is a party to the petition to have his name entered in, or omitted from, the register;

(b) generally decide any question which is necessary or expedient to decide in connection with the application for rectification."

6. In support of his submissions the learned counsel for defendant referred to Shashi Prakash Khemka vs. NEPC Micon, (2019) 18 SCC 569, wherein it was held:

"6. It is not in dispute that were a dispute to arise today, the civil suit remedy would be completely barred and 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.

7. 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. In view of the lapse of time, we permit the appellants to file a fresh petition within a maximum period of two months from today."

7. Further in SAS Hospitality Pvt. Ltd. vs. Surya Constructions Pvt. Ltd. 2018 SCC OnLine Del 11909, wherein prayer in the suit was to declare the allotment of shares in defendant no.1 company in favour of defendant nos.5 to 9 to be null, void and illegal; the Court held:

"10. Before going into the question as to whether this Court has the jurisdiction to entertain and try the present suit and grant reliefs prayed for, it is necessary to analyze the scheme of the Companies Act, 2013, along with the constitution of the NCLT. The NCLT has been vested with powers that are far reaching in respect of management and administration of companies. The said powers of the NCLT include powers as broad as "regulation of conduct of affairs of the company" under Section 242(2)(a), as also various other specific powers. NCLT is a tribunal which has been constituted to have exclusive jurisdiction in the conduct of affairs of a company and its powers can be contrasted with that of the CLB under the unamended Companies Act, 1956.

11. In the 2013 Act, Sections 407 onwards deal with the constitution of the Tribunal. Section 420 has vested the Tribunal with powers to 'pass such orders thereon as it thinks fit'. The Tribunal is also vested with the power of review. Under Section 424 of the Companies Act, 2013, the Tribunal also has the same

powers and functions as are vested with a Civil Court. In addition to the above, the Tribunal also has the power to punish for contempt which was hitherto not available with the CLB. In various ways, the NCLT is not merely exercising the jurisdiction of a Company Court under the new Act, but is also vested with inherent powers and powers to punish for contempt. It is in this background that the court has to decide the issue of jurisdiction, which has been raised by the Defendant.

15. The bar contained in Section 430 of the 2013 Act is in respect of entertaining "any suit", or "any proceedings" which the NCLT is "empowered to determine". The NCLT in the present case would be empowered to determine that the allotment of shares in favour of the Defendant Nos.5 to 9 was not done in accordance with the procedure prescribed under Section 62 of the 2013 Act. The NCLT is also empowered to determine as to whether rectification of the register is required to be carried out owing to such allotment, or cancellation of allotment ordered, if any. The NCLT can also determine if in the interregnum, the Defendant Nos.5 to 9 sought to exercise any voting rights. The NCLT would be empowered to pass any such orders as it thinks fit, for the smooth conduct of the affairs of the company, which would include an injunction order protecting the assets of the Defendant No.1 Company. The NCLT would also be empowered to oversee and supervise the working of the company, and also appoint such persons as it may deem necessary to regulate the affairs of the company."

8. Heard.

9. As per plaint, the annual returns for the year 2003-04 filed by the defendant No.2 i.e. United India Metal Formings Private Limited, the plaintiff held 5002 shares of the Defendant No. 2. It is alleged defendant No.1 and defendant No.3 approached the plaintiff with a proposal whereby the property bearing No.A-48, Mohan Cooperative Industrial Area, Badarpur, Mathura Road, New Delhi was to vest, henceforth, solely in the name of defendant No.3 and an amount equivalent to the then market value of 50 % share of the said property would be paid by defendant No.3 in favour of defendant No.1. It was further proposed the said amount would be deemed to have been paid by transferring the shares belonging to the plaintiff held in the defendant No.2, to Defendant No.1. The plaintiff did not agree to the proposal and informed the defendants No.1 and 3 that her shares in defendant No.2 would be transferred by her only upon receipt of lawful consideration by for her such shares. Neither did the plaintiff execute any transfer deed nor did she receive any consideration for her shares in defendant No. 2.

10. The plaintiff also alleged when C.P. No.91/2016 was filed by defendant No. 3, the plaintiff came to know as per the annual return of the defendant No.2 for the year 2004-15, the shareholding of the plaintiff was wrongfully reduced from 5002 shares to only 547 shares, and 4556 shares belonging to the plaintiff were fraudulently

transferred in the name of defendant No.1 by himself.

11. The plaintiff approached defendant No.1 seeking valid explanation, but he failed to provide any plausible response. In another civil suit bearing C.S. (OS) No.273/2017, defendant No.1 claimed to have purchased shares for a valid consideration, though the plaintiff filed police complaint with Economic Offence Wing, Mandir Marg, New Delhi vide Diary No.D2856/2019 alleging defendant No.1 of fraud and forgery. It is alleged as the transferred shares, belonging to the plaintiff, were transferred fraudulently and illegally by defendant No.1, the plaintiff was constrained to file the present suit seeking reliefs of declaration, mandatory injunction and permanent injunction in order to assert her individual rights of title (and other rights and interest) qua the Transferred Shares.

12. The broad contentions raised by defendants No.1 & 2 in this application is the plaintiff's remedy for restoration of her name in the records of the Defendant No.2 with respect to 4556 shares, is available only under Section 59 of the Companies Act, 2013, read with Rule 70 of the National Company Law Tribunal Rules, 2016 and thus, the present suit is barred under Section 430 of the Companies Act, 2013. I am not inclined to adhere to such view.

13. The membership of share holder of a company has two kinds of rights viz. individual membership rights and the corporate membership rights. The individual members/shareholder of a company are entitled to sue in civil court in order to protect their individual rights. Individual membership/ownership rights are a rights of a member/shareholder to maintain himself (or herself) in full membership / ownership with all the rights and privileges appertaining thereto. The shareholding of the plaintiff in defendant No.2 Company was illegally and fraudulently transferred/reduced by Defendant No.1 from 5002 to 547 shares, bringing it down from 12.77% of the issued share capital to 1.39% of the issued share capital of the Company. As Transferred Shares, belonging to the plaintiff, were transferred fraudulently and illegally by defendant No. 1, the plaintiff was constrained to file the present suit seeking prayers of declaration, mandatory injunction and permanent injunction in order to assert her individual rights in respect of the Transferred Shares, in opposition to the individual rights asserted by defendant No.1 qua the Transferred Shares.

14. In the respective written statements filed by Defendant No. 1 and Defendant No. 2, they are disputing the title of Plaintiff qua the Transferred Shares and at the same time Defendant No. 1 is asserting his title in relation to the Transferred Shares. As per section 59 (1) of the Companies Act, 2013, in the event a company, (a) enters the name of a person in the register of its members, without sufficient cause; (b) omits the name of a person in the register of its members, without sufficient cause (c) delays in entering name of a person in its register of members, the aggrieved person may, in this connection, file an appeal before the learned National Company Law Tribunal As per Section 59 (2), the learned NCLT may direct the company to

rectify its register of members or to register the transfer of shares. As can be seen from the provisions of Section 59 (1) of the Companies Act, 2013, only the company's action (and not individual actions), of which a person is aggrieved, in relation to (a) an incorrect entry; (b) omission to make entry; or (c) delay in making the entry, of the person's name, in its register of members can be challenged before learned NCLT, and the action of an individual shareholder / member (in the present case, the Defendant No. 1) cannot be challenged. Similarly, in terms of Section 59(2), the learned NCLT can only direct the company to rectify its register of members or to register the transfer of shares.

15. In the present case, prior to rectification of the register of members, inter alia, (a) the fraudulent execution of the share transfer forms would be required to set aside and declared void ab initio; and (b) the question of title of the Plaintiff in relation to the Transferred Shares would be required to be adjudicated; (c) the question whether Plaintiff was paid the consideration for the so called transfer shares be required to be examined; and (d) the Plaintiff would be required to be declared as the owner of the Transferred Shares.

16. In terms section 59 of the Companies Act, 2013, the learned NCLT is not empowered to decide and / or grant reliefs of the above nature, predominantly pertaining to individual rights, but only empowered to direct the company to rectify its register of members, if it finds merit in the case of the person aggrieved. Additionally, in terms section 59 of the Companies Act, 2013, aided by Rule 70 of the NCLT Rules, 2016, in a case where the provisions of Section 59 are applicable, the NCLT is only empowered to superficially examine the title of person aggrieved, in respect of the shares of which he / she is seeking rectification (based on the documents on record), but not to decide the complex question of a seriously disputed title or grant of declaratory / injunctive reliefs, again which predominantly pertain to individual rights of the Plaintiff.

17. Therefore, from the conspectus of the aforesaid, in case of individual rights of a member of a company, such as in the present case, there is no remedy under the Companies Act, 2013, the said right can be enforced in the civil court. In *Naresh Dayal & Ors vs The Delhi Gymkhana Club Ltd . & Ors.* 2021 SCC Online Del 91 the Court held Individual members of a company can sue in a civil court to protect their individual rights. *Ld. NCLT* has no jurisdiction to decide cause of action over which it has no power under Companies Act.

18. Even otherwise, the case in hand cannot be adjudicated by the learned NCLT as the subject matter of the suit pertains to fraudulent transfer of the Transferred Shares, as elaborated hereinabove. The Plaintiff has pointed out the fraudulent act of the Defendant No. 1 in the *Plaint*. The Section 59 of the Companies Act, 2013 does not envisage an adjudication by the *Ld. NCLT* in relation to the frauds committed by the company or individuals. In the present case, the specific averments in the *Plaint* point towards fraud committed by the Defendants No. 1 and 2. The allegations of

fraud are to be adjudicated upon only by the civil court through the detailed and meticulous process of trial before it. In *Mukesh Jaiswal v. Phool Chand Gupta & Ors.*, 2022 SCC OnLine Cal 3957 the Court held the Ld. NCLT cannot decide the question of fraud as the Plaintiff has taken specific ground of fraud.

19. Per section 430 of Companies Act, 2013 civil court's jurisdiction is diminished only to an extent the Ld. NCLT has been correspondingly empowered. A bare reading of section 430 of the Companies Act, 2013, makes it clear the extent of the ouster of the jurisdiction of the civil court is directly proportionate to the extent of conferment of jurisdiction on the Ld. NCLT. Further, it is settled law the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. There is a thin line in appreciating the scope of jurisdiction of Ld. NCLT. In the present case, the jurisdiction of the Ld. NCLT would have been exclusive if the matter truly pertained to rectification of register of members. However, if the issue is alien to rectification of register of members such matter would not be within the exclusive jurisdiction of the Ld. NCLT.

20. In the present case, the Plaintiff has challenged the fraudulent transfer of the Transferred Shares by Defendants No. 1 and 2 in favour of Defendant No. 1, and is not seeking rectification. Needless to mention that upon grant of the relief sought by the Plaintiff (i.e. after the question of title and ownership of the Transferred Shares is decided), rectification of the register of members would be a consequential and subsequent step.

21. Thus, in the present matter, the question relates to disputed title and fraudulent transfer of the Transferred Shares. Therefore, learned NCLT, being a summary jurisdiction, is not empowered to decide such questions and said questions can only be decided by a civil courts i.e. this Hon"ble Court. Accordingly, the jurisdiction of this Hon"ble Court is not barred.

22. In *Sita Chaudhry vs Verinder Singh and Ors.*, 2022 SCC Online Del 2235 the Court held rectification of register would only be a subsequent step after the question of title and ownership of share is decided. The exclusive jurisdiction vested with the erstwhile Company Law Board/NCLT is only in respect of rectification of the register. However, the right, title and interest in shares can only be determined in a civil suit. In *Bakshi Faiz Ahmad vs. Bakshi Farooq Ahmad and Anr.*, 2018 SCCOnLine J&K 249 the Court held qua applicability of provisions of Companies Act, 2013, the Tribunal has no power to decide the title of the shares in summary proceedings. The Tribunal has a power only to decide the issue of rectification of register of members and has no power to decide the issue of title. The word "title" has not been included in section 58 of the Companies Act, 2013. In *Jai Mahal Hotels Pvt. Ltd. vs. Devraj Singh* (2016) 1 SCC 423 the Court held the rectification 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/ Company Law Board.

If a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, which was more the appropriate remedy for investigation and adjudication of such seriously disputed question of title. In *Standard Chartered Bank vs Andhra Bank Financial Services and Ors.*, (2006) 6 SCC 94 the Court held the jurisdiction exercised by the Company Court in relation to rectification of register of member is somewhat summary in nature and if a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, which was more the appropriate remedy for investigation and adjudication of such seriously disputed question of title. In *Ammonia Supplies Corporation vs Modern Plastic Containers and Ors.*, (1998) 7 SCC 105 the Court held the Company 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. If it truly is rectification, all matters raised in that connection should be decided by the Company Court and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by a civil court. In *N. Ramji vs. Ashwath Narayan Ramji & Anr.*, 2017 SCC OnLine Mad 37591 the court held it is relevant to note as per Section 111A of the Companies Act, 1956, the Company Law Board was empowered to decide the issue of title also. The word "title" was not included in Section 58 of the Companies Act, 2013. Even while considering the Section 111A, it was held by the Hon"ble Apex Court a seriously disputed question of title cannot be decided by the Company Court or Company Law Board. This conclusion was arrived by the Hon"ble Apex Court by taking into consideration of the jurisdiction of the Company Law board is summary in nature. The procedure in National Company Law Tribunal constituted under the Companies Act, 2013 is also summary in nature.

23. I have also gone through the judgments relied upon by the learned counsel for defendants. In *Shahi Prakash Khemka (supra)* the observations of the Hon"ble Supreme Court were not in the context of disputed title to the shares. In the said case the dispute was not amongst the members in relation to title of shares or with regard to the individual rights of the members. However, the same was inter se the Company and its member / shareholder purely in relation to rectification of register of members. In fact, the observations of the Hon"ble Supreme Court of India the learned NCLT would have exclusive jurisdiction was only in the context of Section 59 of the Companies Act, 2013 whereas in the present matter, as, the Plaintiff is alleging the fraud on the part of the Defendant No. 1 and asserting her individual rights of title (and other rights and interest) qua the Transferred Shares, and not rectification of register of members. Therefore, the said judgment would not be applicable in the facts and circumstances of the present case

24. *SAS Hospitality Pvt Ltd (supra)* is also not applicable to the facts of the case as in this decision the challenge before the Court was in respect of allotment of shares by the Company in favour of certain defendants. The allegations in the matter pertain to the actions of the company perse with regards to its affairs in relation to the

illegal allotment of shares by the company, thus, it was not a dispute wherein the individual rights interse the members/shareholders of the Company were being asserted. In the present matter, as, the Plaintiff is alleging fraud on the part of Defendant No.1 and asserting her individual rights of title (and other rights and interest) qua the Transferred Shares, and not rectification of register of members, therefore, the said judgment would not be applicable in the facts and circumstances of the present case. The judgment rendered in Sita Chaudhary vs. Verinder Singh and Ors., 2022 SCC Online Del 2235 distinguishes the applicability of the ratio in SAS Hospitality in the context of disputes in relation to title of shares, and holds in the context of disputes of title of shares the ratio of SAS Hospitality would not be applicable as the same was rendered in the context of internal affairs of the company, interalia, in relation to allotment of shares.

25. In view of the above, the I.A.1143/2020 under Order VII Rule 10 CPC read with Section 151 CPC is dismissed.

CS(COMM) 245/2019

26. List on 04.12.2023 for framing of issues.