

**Multimedia Frontiers Ltd. Vs. Software Frontiers Ltd. and ors.**

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**Court :** Company Law Board CLB

**Decided On :** May-17-2006

**Reported in :** (2006)134CompCas387

**Judge :** K Balu

**Appellant :** Multimedia Frontiers Ltd.

**Respondent :** Software Frontiers Ltd. and ors.

**Judgement :**

1. This company petition has been filed under Section 111(4) of the Companies Act, 1956 ("the Act") seeking directions against M/s.

Software Frontiers Ltd. ("the company") to transfer 36,77,500 shares of Rs. 10 each in favour of the petitioner herein, but subsequently sought to rectify the register of members of the company under Section 111A(3) for the reasons set out in the company application, viz., C. A. No. 10 of 2005, in respect of the impugned shares by substituting the name of the petitioner in the place of respondents Nos. 6 and 7.

2. According to Shri C. Harikrishnan, learned senior counsel, the petitioner sold the impugned shares under a memorandum of understanding (MoU) dated February 21, 2000, to the sixth respondent (18,38,000 shares for an aggregate sum of Rs. 6,06,54,000), and the seventh respondent (18,39,500 shares for a total sum of Rs. 6,07,03,500), whereby respondents Nos. 6 and 7 agreed to pay the

consideration on or before August 20, 2000, which was never paid in terms of the MoU. In the meanwhile, the petitioner handed over the share transfer deeds (unstamped) duly signed together with the share certificates to respondents Nos. 6 and 7, which were lodged by them for transfer with the company, without affixing transfer stamps. Despite the deficiency, the company effected the transfer in respect of the impugned shares in favour of respondents Nos. 6 and 7 in contravention of Section 108. The apex court in *Mannalal Khetan v. Kedar Nath Khetan* [1977] 47 Comp Cas 185, while considering Section 108, categorically held that the provisions of this section are mandatory in regard to transfer of shares and that without production of the share certificate along with the share transfer deed, the transfer cannot be registered and if registered, such registration would be void. In view of this legal position, the registration of transfer of the shares, on the strength of the instruments of transfers, being unstamped, held in the name of the petitioner by the company in favour of respondents Nos. 6 and 7 is null and void. Consequently, the names of respondents Nos. 6 and 7 in the register of members of the company remain illegal and without authority, which is required to be rectified by removing the name of respondents Nos. 6 and 7 and incorporating the name of the petitioner.

A major part of the impugned shares are pledged by respondents Nos. 6 and 7 with various financial institutions, viz., respondents Nos. 2 to 5. The petitioner is ready and willing, on rectification of the register of members of the company in terms of the prayer of the petitioner, to offer the impugned shares as security to respondents Nos. 2 to 5, without jeopardising their interests. Shri Harikrishnan, learned senior counsel, while elaborating the evolution of the provisions of Section 111 pointed out that the Companies (Amendment) Act, 1988, which came into force with effect from May 31, 1991, assimilated the old Sections 111 and 155 and conferred the powers of the court under Section 155 on the Company Law Board and the powers of the Central Government under Section 111. The amended section shall apply to private limited companies. By virtue of Section 111(4), the person aggrieved, or any member or the company may apply to the Company Law Board for rectification of the register of members, if the name of any person is entered in the register without sufficient cause, or for omission of his name from the register or default in making any entry of his name in the register. There is no

limitation period prescribed under Sub-section (4) for making an application for rectification of the register of members. Applying the provisions of Article 137 of the Limitation Act, an application under Sub-section (4) would lie before the Company Law Board within a period of three years from the date of such entry or default in terms of Sub-section (4) of Section 111. By virtue of the Depositories Act, 1996, new Section 111A was inserted with effect from September 20, 1995, in respect of public limited companies, which came to be amended with effect from January 15, 1997.

As per the amended Section 111A(3), the Company Law Board is empowered, on an application made by a depository, company, participant, investor or the Securities and Exchange Board of India, to direct rectification of the register or records of any 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. In view of the non-fulfilment of one of the mandatory requirements of Section 108 of the Act, viz., the instrument of transfer being "duly stamped" in the case before the Company Law Board, the registration of the transfers of the shares in the name of respondents Nos. 6 and 7 is hit by Section 111A(3). This violation is still continuing and, therefore, the question of limitation as put forth by respondents Nos. 2 to 5 does not apply. Further, the company and respondents Nos. 6 and 7 have no objection to allow the prayer of the petitioner. The Company Law Board may, therefore, pass appropriate orders, as prayed for by the petitioner. The company secretary representing the petitioner reiterated that respondents Nos. 6 and 7 have not paid the purchase consideration in terms of the MoU dated February 21, 2000, but paid the capital gains, arising out of the sale of the impugned shares to respondents Nos. 6 and 7.

3. According to the company, respondents Nos. 6 and 7, lodged the share certificates together with the unstamped transfer deeds in respect of the impugned

shares. However, these shares have been transferred due to oversight in favour of respondents Nos. 6 and 7, in spite of the requisition dated August 1, 2000, of the petitioner not to transfer the shares in favour of respondents Nos. 6 and 7. The impugned transfers without fulfilling the mandatory requirements of Section 108 are null and void. The company has no objection with regard to rectification of register of members in terms of its communication dated May 27, 2002.

4. Shri Manu Seshadri, learned Counsel representing the third respondent submitted : The seventh respondent after acquiring 18,39,500 shares of the company from the petitioner, got the transfer duly registered in its favour and thereafter, out of 18,39,500 shares pledged 2,00,000 shares bearing distinctive Nos. 770021 to 970020 with the erstwhile Times Bank Ltd., now merged with HDFC Bank Ltd., to secure certain outstanding liabilities of Fidelity Industries Ltd., due to this respondent. The petitioner having admittedly sold and delivered the impugned shares to respondents Nos. 6 and 7 can only seek recovery of the unpaid consideration, if any, and cannot claim ownership of the shares or for rectification of the register of members of the company.

In the event the present prayer of the petitioner is allowed, the security held by this respondent would be rendered unenforceable.

Further, the petitioner is guilty of laches and would not be entitled to any relief whatsoever. The transfer in favour of respondents Nos. 6 and 7, reportedly in contravention of the mandatory requirements under Section 108 has already taken place and is reflected in the register of members, thereby the wrong already stands completed and it is not a continuing wrong and therefore, a fresh period of limitation would not begin to run, at every moment of time, during which the transaction continued, in support of which reference has been drawn to *Bipin Vadilal Mehta v. Ramesh B. Desai* [1998] 92 Comp Cas 910 (Guj). Hence, the claim of the petitioner for rectification is barred by limitation.

The petition has been filed under Section 111(4), which does not apply to public companies. The belated attempt of the petitioner to cover the prayer under Section 111A(3) is not maintainable. The plea of contravention of Section 108 by the petitioner is made with a view to defeat the huge claim running into several crores

of rupees, of the various financial institutions. The petitioner, respondents Nos. 1, 6, 7 and Fidelity Industries Ltd., are group companies. The very fact that the company and respondents Nos. 6 and 7, are supporting the petitioner would indicate the collusive course of conduct adopted by the parties.

The petitioner failed to make available a copy of the MoU dated February 21, 2000, either to this respondent or for perusal by the Bench. Similarly, the purported unstamped transfer deeds have not been produced by the company to test the veracity of the stand taken by it.

The parties in the present case, viz., the petitioner and the company being aware of the purported defect cannot take advantage of such defect seeking rectification of the register of members of the company.

If an instrument of transfer is not stamped, it will not invalidate the transaction between the parties, to the instrument. The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The provisions are conceived in the interest of revenue. Against this background the High Court of Madras, while examining the issue whether the prayer for rectification can be granted on the ground that the instruments of transfer have not been duly stamped, in *Kothari Industrial Corporation Ltd. v. Lazor Detergents P. Ltd.* [1994] 81 Comp Cas 699 (Mad), unequivocally held that it will be wholly unjust and inequitable to grant such prayer. The person seeking any discretionary and equitable relief should not be guilty of laches, as held in *Kothari Industrial Corporation Ltd. v. Lazor Detergents P. Ltd.* [1994] 81 Comp Cas 699 (Mad).

5. According to the fourth respondent, the sixth respondent acquired 18,38,000 shares from the petitioner and lodged the transfer deeds and share certificates with the company, upon which the transfer of shares was registered in the name of the sixth respondent and therefore, it cannot now be contended by the company that the transfer deeds were not duly stamped. It is neither the concern of the petitioner at this belated stage. The sixth respondent pledged 5 lakhs shares out of 18,38,000 shares of the company to secure the liabilities of Fidelity Industries Ltd., due to this respondent. The petitioner is adopting an illogical stand with a view to

defeat the rightful claim of the financial institutions including this respondent. Therefore, the prayer of the petitioner must be rejected. The petitioner has no locus standi to prefer any appeal before the Company Law Board under Section 111(4) on the ground that it has not received the full consideration from the sixth respondent for the shares purchased by the latter. The company having registered the transfer of shares cannot be permitted to rectify the register of members on the ground that the transfer is violative of the provisions of Section 108. There is also no equity in favour of the company.

6. According to Shri K. Ramasamy, learned Counsel representing the fifth respondent, 18,38,000 shares of the company have been transferred on February 21, 2000, to the sixth respondent, out of which 5 lakhs shares have been pledged in favour of the fifth respondent. The transferee acquires title as and when shares are transferred in his name, irrespective of whether the transfer of shares is registered or not by the company as held in CIT v. M. Ramaswamy . A transferee gets title to shares once he has the certificates and blank transfers signed by the registered holder(s), as held by the Supreme Court in Vasudev Ramchandra Shelat v. Pranalal Jayanand Thakar [1975] 45 Comp Cas 43. The transferor cannot claim to be the owner of the shares.

The Madras High Court in Kothari Industrial Corporation Ltd. v. Lazor Detergents P. Ltd. [1994] 81 Comp Cas 699 while considering the issue whether the transferors are necessary parties to the application for rectification concluded that the transferors are not necessary parties to such application. Whereas the present petition has been filed by the transferor seeking to rectify the register of members of the company.

The company failed to establish that the transfer deeds remained unstamped. The plea of the violation of Section 108 does not merit any consideration. Hence, the petitioner has no authority to file the present petition, reversing the registration of transfer of the impugned shares.

7. Shri Elambharathi, learned Counsel appearing for respondents Nos. 6 and 7, contended that the financial institutions, being pledgees of the impugned shares cannot resist the prayer for rectification of the register of members of the company.

They are free to invoke the civil jurisdiction in realization of the outstanding amounts due to them.

Respondents Nos. 6 and 7 deposited with the company the transfer deeds along with the share certificates for effecting the transfer in their names. The instruments of transfers were not stamped, but due to oversight, the company registered the transfer of the impugned shares in the names of respondents Nos. 6 and 7, in contravention of the mandatory requirements of Section 108 of the Act. These respondents have no objection to rectification of the register of members of the company by incorporating the name of the petitioner and deleting the names of respondents Nos. 6 and 7.

8. Learned Counsel representing Shri Narayanan, learned Counsel for the second respondent, adopted the arguments advanced on behalf of the other financial institutions.

9. I have considered the pleadings and arguments of learned Counsel.

The issue before me is whether the prayer for rectification of the register of members of the company is justifiable, in the facts and circumstances of the present case. The petitioner seeks to rectify the register of members of the company on the sole premise that the impugned transfers in favour of respondents Nos. 6 and 7, violative of the mandatory requirements of Section 108 are void. The serious contentions of respondents Nos. 2 to 5, that the application filed under Section 111(4) and not under Section 111A(3) for rectification of the register of members of the company and the subsequent prayer invoking the provisions of Section 111A(3) are not maintainable do not merit any consideration, in the light of the legal position that quoting a wrong section shall not be a ground for rejecting an application, in case it is otherwise maintainable. In this connection, beneficial reference is drawn to *Bhanwar Lal v. Satyanarain*. There is, therefore no legal impediment to treat the company petition as one filed under Section 111A of the Act and pass appropriate orders thereon in accordance with law. Section 108(1) requires, inter alia, that every instrument of transfer shall be duly stamped. The delivery of a duly stamped instrument of transfer is a condition precedent. If an instrument of transfer is not duly stamped, the instrument and consequently, the

registration of the transfer are invalid. This is the effect of the language used in Sub-section (1) of Section 108 and the ratio of the apex court decision in Mannalal Khetan v. Kedar Nath Khetan [1977] 47 Comp Cas 185, wherein it has been held that the provisions contained in Section 108(1) are mandatory in character and any registration of transfer of shares contrary to the mandatory provisions of this section would be illegal. It has to be borne in mind that once a transfer form has been executed, the transfer is complete as between the transferor and transferee and the transferee acquires title to shares, as held in CIT v. M. Ramaswamy and Vasudev Ramchandra Shelat v. Pranal Jayanand 10. According to the petitioner, respondents Nos. 6 and 7, failed to pay the consideration for the impugned shares as stipulated in the MoU, pursuant to which a written request was made on August 1, 2000, to the company not to transfer the shares in favour of respondents Nos, 6 and 7. This Bench is not concerned with the grievance of the petitioner regarding purported non-payment of the consideration for the shares in the present proceedings. Further, the petitioner has not chosen to produce a copy of its communication dated August 1, 2000, intimating the company not to transfer the impugned shares in favour of respondents Nos. 6 and 7. It may be observed that the petitioner sold the impugned shares as early as on February 21, 2000, to respondents Nos. 6 and 7, but there are no details as to when (i) the petitioner handed over the share transfer deeds reportedly unstamped, but duly signed by it along with the share certificates ; and (ii) the company registered the transfer of the impugned shares in the name of respondents Nos. 6 and 7. The company has neither been represented after September 22, 2003, in spite of several of the opportunities afforded by the Bench from time to time not chosen to produce the communication dated August 1, 2000, allegedly sent by the petitioner for not transferring the impugned shares in favour of respondents Nos.

6 and 7. The plea that the instruments of transfer remained unstamped while lodging them with the company has been taken for the first time in the company petition, which has not been substantiated by production of the original instruments of transfer. The company must have custody of the impugned instruments of transfer but they have not been produced before the Bench to prove the genuineness of the statement made on behalf of the petitioner, and respondents Nos. 6 and 7, that those instruments are unstamped ones. Without

substantiating this plea, I am not in a position to come to the rescue of the petitioner. It is indisputably clear that the petitioner, respondents Nos. 1, 6 and 7, being group companies failed to take appropriate steps for production of the original instruments of transfer in respect of the impugned shares to show whether the instruments of transfer remain unstamped.

The company as well as respondents Nos. 6 and 7, on the other hand conceded to the prayer for rectification of the register of members of the company, which raises a serious doubt on their plea of non-fulfilment of the mandatory requirements of Section 108. In the absence of such proof it cannot be concluded that the impugned transfers are in violation of the statutory requirements of Section Mannalal Khetan v. Kedar Nath Khetan [1977] 47 Comp Cas 185 that any transfer which does not comply with the mandatory requirements of Section 108 will not be valid, cannot be applied to the case before me. Furthermore, if an instrument of transfer is not duly stamped, it would not invalidate the transaction between the parties to such instrument, as reiterated in Kothari Industrial Corporation Ltd. v. Lazor Detergents P. Ltd. [1994] 81 Comp Cas 699 (Mad). For these reasons, I am of the considered view that the petitioner has not established its case so as to grant the reliefs claimed in the company petition. In this backdrop of circumstances it will be futile to go into the question of limitation as raised by respondents Nos. 2 to 5. Accordingly, the company petition is dismissed, without any order as to costs.

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