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ARTICLE

TRANSFER AND TRANSMISSION OF SHARES UNDER COMPANIES ACT, 2013

By

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Section 56: Transfer and Transmission of Securities
(Corresponding to Section 108,109,110,113,109B)

Section.56. (1) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as Transfer and transmission of securities.

WHAT IS NEW:

2. Under the old Act, there was no mechanism to permit transfer of interest in a company having no share capital but, however, that was transferable in accordance with the provisions of Transfer of Property Act. Under new Act, 2013, such transfer of interest in such company is permissible through execution of share transfer instrument and delivery of the same to the company within 60 days of such execution.

3. The Section now deals with "securities" which is a very wider term – old Section 108 provided for only (a) shares and (b) debentures. The Section 2 (81) of Companies Act, 2013 says securities means the securities as defined in Clause (h) of Section 2 of Securities (Contracts & Regulation) Act, 1956. The Section 2(h) reads as under:-

Section 2(h): Securities include shares, scrips, stocks, bonds, debentures, debenture stocks or other marketable securities of a like nature in or of any incorporated company or body corporate.

4. Now, under new Act, 2013, irrespective of nature of companies, the share transfer deeds shall have to be lodged with the company within 60 days and the company shall carry out transfer of shares subject to any indemnity as may be required to be furnished by the transferee to the company.

5. Rule 11 (1) of the Companies (Share Capital & Debentures) Rules, 2014 (as notified) provides that the purpose of Section 56(1), an instrument of transfer of securities held in physical form shall be in Form SH-4.

Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

(2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.

(3) Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

WHAT IS NEW:

6. In case application for transfer of shares has been filed by a transferor alone for a partly paid up shares, then company shall give notice to the transferee and upon receipt of No Objection from transferee, in the manner so prescribed, shall effect transfer of shares.

The Hon'ble Supreme Court in the case of Mannalal Khetan & ors. Vs. Kedar Nath Khetan & ors. (MANU/SC/0060/1976 : AIR 1977 SC 536) and Dale and Carrington Investments (P.) Ltd. & anr. vs. P.K. Prathapan & ors. MANU/SC/0748/2004 : (2004) 122 Comp. Cas. 161 (SC) have consistently held that Section 108 was mandatory in nature. In the event of any infraction or non-compliance of the provisions of Section 108, the transfer of shares shall be void. The Company Law Board in the case of Bhola Waman Khalkar Vs. Laxman Waman Khalkar MANU/CL/0046/2013 that the transfer of shares is void in the absence of consideration and non-compliance of Section 108 of Companies Act, 1956.

(4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

(a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;

WHAT IS NEW: Now, share certificates are required to be issued within two months from the date of incorporation. Earlier, it was seen share certificates were rarely issued upon incorporation.

(b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;

(c) within a period of one month from the date of receipt by the company of the instrument of transfer under sub-section (1) or,

as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;

(d) within a period of six months from the date of allotment in the case of any allotment of debenture:

WHAT IS NEW: In case of allotment of shares, time has been reduced from 3 months to 2 month for issue of share certificates, from 2 month to 1 months for transfer or transmission of shares and from 6 months to 3 months in case of allotment of debentures.

Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

(5) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

WHAT IS NEW: Now, the legal representatives of deceased shareholder are entitled to transfer of shares – despite the fact that the shares have not been transmitted in his name. However, the Hon'ble Supreme Court in the case of Worldwide Agencies (P) Ltd Vs. Margaratt Desor & others AIR 1990 SC 737 has held that the "legal representative" of the deceased member is entitled to file petition under Section 397 and 398 of the Companies Act, 1956 – although his name does not appear on the Register of Member.

(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

WHAT IS NEW: The quantum of fine has been substantially increased – both on company and its officer in default. The fine shall not be less than Rs.25,000 but it may exceed upto Rs. 5 lacs.

(7) Without prejudice to any liability under the Depositories Act, 1996, where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447.

WHAT IS NEW:

The Sub-Section (7) has been inserted in the new Companies Act, 2013 and this sub-section fastens a very strict liability in the event of fraudulent transfer of shares either by the depository or depository participant, he shall be liable for imprisonment for a period not less than six month but it may extend to ten years and shall also be liable for the amount involved in the fraud but it may extend to three times the amount involved in fraud.

Section 57: Punishment of impersonation of shareholder (Corresponding Section 116)

57. If any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Section 58 : Refusal to Register securities. Appeal against such refusal (Corresponding to Section 111,111A)

58. (1) If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of thirty days

from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

WHAT IS NEW:

In case, there is a agreement between two persons in relation to transfer of shares, such agreement shall be binding – previously whenever there was a Joint Venture Agreement or Shareholders’ Agreement between the Indian Entity and Foreign Entity restricting transfer of shares, then the Articles of Association were required to be amended in line with the provisions of Shareholders Agreement or Joint Venture Agreement.

NOTE: It has been held by the Bombay High Court in the case of Spindel Fabric Sussen Vs. Sussen Textile Barmingham 1989(2) CLA 202 and also in Rolta India Limited Vs. Venire India Ltd 2000(100) Company Cases 19 (Bom) has held that private agreement between shareholders, unless incorporated in the Articles of Association, are not binding on the company.

(3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

(4) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(5) The Tribunal, while dealing with an appeal made under subsection (3) or subsection 4), may, after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

WHAT IS NEW IN SECTION 58:

a): Now Section 58 will cover all types of securities, including shares and debentures.

b): In case any public limited refuses to transfer any securities or there is a neglect even to send a notice of refusal, then the person shall have to file a petition before the NCLT within a period of three month from the date of lodgment of request for transfer/transmission or within two months from the date of refusal. In case of private company, it is 30 days from the date of refusal or if no refusal has been received, then 60 days from the date of lodgment.

c): In case, there is a agreement between two persons in relation to transfer of shares, such agreement shall be binding – previously whenever there was a Joint Venture Agreement or Shareholders’ Agreement between the Indian Entity and Foreign Entity restricting transfer of shares, then the Articles of Association was required to be amended.

d): In case of a public company or private company, the intimation of refusal of transfer or transmission, shall have to be given within a period of thirty days as against 60 days previously prescribed.

e): The power of filing of an appeal in case of refusal to transfer or transmit shares, only transferee/transmittee is entitled to file an appeal before NCLT – under Companies Act, 1956, all the persons namely (i) transferor (ii) transferee (iii) or person giving intimation about the transmission of shares were entitled to file.

f): If any person commit contravention of orders passed by NCLT on appeal before it, such person shall be liable to imprisonment which shall not be less than one month and which may exceed to three years and fine which shall not be less than one Rs. lac and which may exceed to three months.

IMPORTANT ISSUES:

One of the very important and substantial issue is in relation to the period prescribed for time filing an appeal before the NCLT. Whether the appeal would not be entertained in case there is a delay in filing the same before NCLT. Some of the very important judgments delivered by the CLB are given for ready reference:-

The Division Bench of Company Law Board in the case of BN Nigam Vs. Hindustan Lever Limited MANU/CL/0036/2002 CLB DB, has observed (i) both on the issue when the petition is filed under wrong section and (ii) where the petition has been filed after long delay, as under:-

We have heard the learned counsels for the parties and have perused the pleadings. On behalf of the respondent, two

preliminary objections were raised at the outset, namely, that the petition filed under Section 111 was not maintainable as the said section did not apply in case of the respondent which was a public Ltd. company. Secondly, the petition was barred by limitation as the cause of action arose in August/September, 1996 but the petition was filed after about 3 years. So far as the first objection is concerned, on the oral prayer made by the learned counsel for the petitioner we have treated this petition as filed under Section 111A. As regards the second objection since the petitioner was alleging that his shares have been transferred fraudulently on the basis of forged signature and fraudulent attestation of the same and, thus, was void ab initio, in our view in such a case the period of limitation cannot be strictly applied. We have, therefore, proceeded to hear this petition on merits.

The CLB in another case of Hindustan Lever Limited (MANU/CL/0067/2012), while dealing with the scope of rectification of register of members, has observed as under:-

There is a catena of judgments of various High Courts and the Supreme Court with regard to the scope of inquiry under Section 111 (4) read with Section 111 (7) which were exactly incorporated from the erstwhile Section 155 of the Act. The CLB has jurisdiction to decide even questions of allotment/non-allotment/forfeiture which have a bearing on the register of members.

Further, it was argued that even though the petitioner has not specifically mentioned that the petition is under section 111A, yet it can be treated as a petition under section 111A instead of Section 111 of the Act. Reliance was placed on the case law in B.N. Nigam v. Hindustan Lever Ltd. (2002) 49 CLA 85 (CLR) and Multimedia Frontiers Ltd. v. Software frontiers Ltd. MANU/CL/0039/2006 : (2006) 75 CLA 317 (CLB) to treat this petition under section 111A of the Act as quoting a wrong section shall not be a ground for rejecting the petition.

IMPORTANT AND SUBSTANTIAL POINT

The Company Law Board, in the above case, has held that the CLB, in a petition under Section 111/111A of the Companies Act, 1956 (now Section 58 and 59 of Companies Act, 2013), can examine the issue of allotment and non-

allotment of shares or transfer of shares and non-share of shares.

Section: 59: Rectification of Registrar of Members (Corresponding Section 111,111A)

59. (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.

(2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

(3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(4) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned. Refusal of Registration and appeal Against refusal. Rectification of register of members.

(5) If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

WHAT IS NEW

a):The Section 59 shall include all securities which obviously include shares and debentures.

b): In case of company, the penalty of minimum of Rs.1 lac which may be increased to Rs. 5 lacs – Every officer of the Company shall be liable to imprisonment which may extend to one year or fine which shall not be less than Rs.1 lacs and which may go upto Rs. 3 lacs. For company, the maximum fine is Rs.5 lacs and officer in default, the maximum is Rs. 3 lacs.

IMPORTANT JUDGMENTS:

(EXCLUSIVE JURISDICTION OF CLB/NCLT)

(1): The Delhi High Court in the case of Raj Kumar Devraj Vs. Jai Mal Hotels (P) Ltd MANU/DE/6312/2012, while dealing with the issue of rectification of Register of Member, has observed as under:-

The Apex Court in the case of Ammonia Supplies Corporation has held that in matters of rectification, it is the company Court alone which will have jurisdiction; all the issues peripheral to rectification would come within the domain of the company court; it would be the court of exclusive jurisdiction in so far as the rectification is concerned. It is only where fraud or forgery in holding the shares or fraud or forgery qua the title to the said shares is alleged and prima facie established only then the said issue will go beyond the jurisdiction of the Company Judge and would have to be decided by a civil forum. It is the nature of the allegations made in each case which will answer the question as to whether the rectification

is permissible by the Company Law Board under Section 111 of the Companies Act or not.

(ISSUE OF LIMITATION FOR FILING PETITION)

The Hon'ble Company Law Board in the case of Calcutta Security Printers v. Calcutta Phototype Co. [2003] 52 CLA 171 (CLB)/ [2002] 171 CC 104 - The limitation period that runs from the date of the knowledge could not be a matter of argument. A liberal opinion had to be taken on the issue of limitation, where a prima facie case of fraud was made out.

WHERE FRAUD HAS BEEN PRACTICED,NO LIMITATION SHALL APPLY.

The Bombay High Court in the case of Finolex Cables Ltd Vs. Anil Ramchand Chhabria (2000-26 SCL 233 has observed as under:-

Section 111 is a very comprehensive section, dealing with rights remedies and jurisdiction. It is applicable to both public and private limited companies. Remedy provided in Section 111A(3) is in addition to the remedy provided in Section 111 (4). It is, therefore, held that the remedies of an appeal and rectification are available to all kinds of shares held in a public company under the proviso to Section 111A(2) and 111A(3) read with Sub-section (7) of Section 111A of the Act which would make applicable the provisions of Section 111 (1), (2) and (4) by virtue of Section 111 (5) of the Act. While following this proposition of law, the CLB held in S. Kanthimathy v. Woodlands Estates Ltd. MANU/CL/0067/2007 : [2008] 83 SCL 491 (CLB - Chennai) that a combined reading of Sections 111(5) and 111A(7) would show that transmission of shares by operation of law is also governed by Section 111A.

Dealing with the question of limitation, the Hon'ble Company Law Board, in a recent judgment, in the case of Dilip M Tumbo Vs. Sociedade De Fomento industries (P) Ltd MANU/CL/0055/2012 has observed as under:-

The CLB is a quasi-judicial authority exercising equitable jurisdiction guided by the principles of natural justice in the exercise of its powers and discharge of its functions under the Act and shall act in its discretion. The CLB has all the trappings of a

Court. The CLB has its own Regulations. The CPC does not apply, the principles do. The provisions of the Limitation Act are not applicable to the proceedings before the CLB. But delay and latches do apply. On the plea of application of the Limitation Act to the proceedings before the CLB it has been consistently held by the CLB that the Limitation Act as applied by the Civil Court is not applicable to the proceedings before the CLB, a quasi-judicial authority and not a Court in the strict sense of the term, however, this does not preclude CLB from rejecting/dismissing petition on account of delay/latches in appropriate cases.

In respondent to the preliminary objection by the respondent-company about the petition being barred by limitation, the petitioners rely on two ruling passed by the CLB as reported at *Bhuvaneshwar Nath Nigam v. Hindustan Levers Ltd.* [2002] 49 CLA 85 (CLB): [2002] 111 Comp Cas 590 where it has been held that in case of allegation that shares were fraudulently transferred under forged signature and attestation, strict time limit not be enforced. The Bench held that since the petitioners was alleging that his shares had been transferred fraudulently on the basis of forged signatures and fraudulent attestation of the same and, thus, the transfer was void ab-initio, in such a case the period of limitation could not be strictly applied. In another case *Calcutta Security Printers Ltd. v. Calcutta Photo Type Co. Ltd.* [2003] 52 CLA 171 (CLB): [2002] 112 Comp Cas 434, the Bench observed that when forgery is alleged, question of limitation to be viewed liberally. The CLB has held that it is a settled law that where a prima facie case of fraud has been made out against the defendant, the onus of proving that the alleged forgery was not in fact so rests on the defendant.

I proceed to examine that validity of the transfer of shares in terms of the provision contained in section 108 of the Act. Undisputedly, the respondents have failed to show the compliance of provisions of section 108 of the Act relating to transfer of impugned shares. In the absence of consideration, the transfer is void. *Bhola Waman Khalkar Vs. Laxman Waman Khalkar* MANU/CL/0046/2013.