

PEERLESS GENERAL FINANCE & INVESTMENT CO. LTD.

A

v.

PODDAR PROJECTS LTD. & ANR.

FEBRUARY 13, 2007

[TARUN CHATTERJEE AND ALTMAS KABIR, JJ.]

B

*Companies Act 1956—Sections 108, 391 and 394—Transfer of shares under scheme of arrangement—Registration of shares in name of subsequent transferee—Execution of instrument of transfer—Compliance of—Held: Till the time the shares are not registered in the name of original transferee, it cannot be registered in the name of subsequent transferee—During pendency of appeal, company has registered the shares in question in the name of original transferee, the question having been rendered academic, appeal is disposed of.*

C

**PU Company held certain shares of the appellant-company. Under a scheme of arrangement a part of the business division of PU was transferred to the respondent No.1. Thereafter, the respondent No.1 sold the shares to the respondent No.2. Respondent no. 2 lodged the shares with the appellant-company for registration twice. Appellant-company did not register the shares. Respondents filed application. Company Law Board allowed the same and directed the appellant-company to register the original shares in favour of the respondent No.1, but did not grant any relief to the respondent No.2. Respondent No.2 did not file any appeal. Appellant-company filed an appeal. High Court upheld the order of Company Law Board. Hence the present appeal.**

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E

**Appellant-company contended that the question involved in the matter had been rendered academic since during the pendency of the appeal, the appellant-company had registered the original shares in the name of the respondent No.1-company; and that since the respondent No.2 had not preferred any appeal against the order of the Company Law Board, the same became final with regard to the respondent No.2.**

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**Respondent No. 2 contended that the decision of the Company Law Board, as applicable to the respondent No.1 would also operate in its favour.**

**Disposing of the appeal, the Court**

H

**A** HELD: Till such time the shares were not registered in the name of the respondent No.1, the application of the respondent No.2 for subsequent registration of the same shares in its name could not be considered. Accordingly, the direction given by the Company Law Board in respect of the respondent No.1 could not apply to the respondent No.2 and that is why the said respondent No. 2 did not prefer any separate appeal against the order of the Company Law Board. The questions raised in the appeal have been rendered academic since the appellant-company has since registered the shares in question in the name of the respondent No.1-company. [Paras 4 and 5] [575-G, H; 576-A, B]

**C** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5929 of 2005.

From the Judgment and final Order dated 2.8.2005 of the High Court of Calcutta in ACO No. 215 of 2004 in APOT No. 743/2004.

**D** Ashok H. Desai, Bhaskar P. Gupta, S. Sukumaran and K. Rajeev for the Appellant.

R.F. Nariman, C. Mukund, Neeraj, Pankaj Jain, Ashok Kumar Jain and Bijoy Kumar Jain for the Respondents.

The Judgment of the Court was delivered by

**E** **ALTAMAS KABIR, J.** 1. Certain shares of the appellant-company were being held by Poddar Udyog Limited. Under a scheme of arrangement sanctioned by the Calcutta High Court on 19th August, 1997, a part of the business division of Poddar Udyog Limited was transferred to the respondent No.1 herein. On 3rd September, 1999, the respondent No.1, Poddar Projects Limited, sold the shares to the respondent No.2, Vijaya Finance Corporation Limited. The said respondent lodged the shares with the appellant-company herein for registration on 12th November, 2001. The appellant-company refused to register the said shares on 9th January, 2002 and intimated the advocate for the respondent No.2 of its said decision.

**G** 2. On 16th May, 2002, the shares were again lodged for registration on behalf of the respondent No.1-Poddar Projects Limited, but once again the appellant-company refused to register the same.

**H** 3. Such refusal led to the filing of an application by the respondents herein under Section 111 A of the Companies Act, 1956 on 28th October, 2002.

The Company Law Board allowed the application filed by the respondent No.1 herein by directing the appellant-company to register the original shares in favour of the respondent No.1, but declined to grant any relief to the respondent No.2. The respondent No.2 accepted the order and did not prefer any appeal. The appellant-company being dissatisfied with the decision of the Company Law Board filed an appeal before the Calcutta High Court under Section 10F of the Companies Act, 1956. Before the Calcutta High Court, it was submitted on behalf of the appellant-company that since no transfer deed was delivered in terms of Section 108 (1A) of the Companies Act, the lodgment for registration was itself defective and could not, therefore, be acted upon. It was further submitted that till such time as the shares were not registered in favour of the respondent No.1-company, the same could not be registered in the name of the subsequent transferee, namely, the respondent No.2 herein. Certain other objections were also taken regarding cancellation of stamps and the fact that the transferee was not a desirable person.

4. The Calcutta High Court negated the submissions made on behalf of the appellant-company and affirmed those of the Company Law Board. It is against the said order of the Calcutta High Court that the instant appeal has been filed.

5. Although, in the appeal a question was raised as to whether for registration of transfer of shares effected under a scheme of arrangement or compromise or amalgamation sanctioned by a competent court under Sections 391 and 394 of the Companies Act, it is necessary to execute a further instrument of transfer as contemplated by Section 108 of the said Act, at the time of the hearing of the appeal, it was submitted on behalf of the appellant-company that the said question had been rendered academic. It was submitted that during the pendency of the appeal, the appellant-company had complied with the direction of the Calcutta High Court and had registered the original shares in the name of the respondent No.1-company. Since the respondent No.2 had not preferred any appeal against the order of the Company Law Board, the same became final as far as the respondent No.2 is concerned. Although, on behalf of respondent No.2, it was submitted that the decision of the Company Law Board, as applicable to the respondent No.1, would also operate in its favour, such a submission is not acceptable since the respondent No.2 stands on a different footing. Till such time as the shares were not registered in the name of the respondent No.1, the application of the respondent No.2 for subsequent registration of the same shares in its name could not be considered. Accordingly, the direction given by the Company Law Board in

A respect of the respondent No.1 could not apply to the respondent No.2 and that is why the said respondent No.2 did not prefer any separate appeal against the order of the Company Law Board.

B 6. As pointed out by Mr. Ashok Desai, learned senior counsel, appearing on behalf of the appellant-company, the questions raised in the appeal have been rendered academic having regard to the fact that the appellant-company has since registered the shares in question in the name of the respondent No.1-company.

C 7. The appeal is, therefore, disposed of as having become infructuous and the questions raised therein are left open for decision in an appropriate case.

8. There will be no order as to costs.

N.J.

Appeal disposed of.