

BEFORE THE COMPANY LAW BOARD  
KOLKATA BENCH

**C.A. No.586/2013** in connection with **C.P. No.450/2011**

**Present** : Shri A Bandopadhyay, Member

In the matter of the Companies Act, 1956 (1 of 1956) : Section  
397/398;

**And**

In the matter of Regulations 44, 45 & 46 of CLB Regulations, 1991;

**And**

In the matter of : Kishori Lal Agarwal & Ors.

..... Petitioners/**Applicants**

**-versus-**

M/s. Alliance Engineers Pvt. Ltd. & Ors. .... Respondents

**Present on behalf of parties:**

Shri Sanjay Kr. Gupta, Pr. C.S. | For **Applicants**/Petitioners  
Shri Deepak Kr. Khaitan, Pr. C.S. |

Shri Kamalendu Ghose, Advocate | For Respondents  
Shri Raja Ghosh, Advocate |

**ORDER**

(Dated : 27-01-2014)

In this order, I am considering CA No.586/2013, in connection with CP No.450/1011 which already stands disposed of vide order dated 12.08.2013. The main averments made in the application are as under:

- i) Certain original documents contained in sealed envelopes evidencing deposit of all original share certificates of the petitioners and all the share transfer papers with respect to the petitioners, duly verified by an affidavit dated 24.02.2012 were handed over to CLB, Kolkata Bench, vide letter dated 24.02.2012, for necessary verification by the Bench.



- ii) The main petition has been filed under Sections 111, 186, 235, 397, 398, 399, 406 and 407 of the Companies Act, 1956 (the Act) and the Hon'ble Bench had rightfully accepted the instant petition under all the aforesaid sections and accordingly, passed an interim order dated 02.06.2011 and decided to proceed with the petition.
- iii) While passing the final order dated 12.08.2013, Hon'ble Bench accidentally slipped or omitted to take note that the petition has been filed under Section 111 of the Act and hence, the observation regarding non-compliance of Section 111 of the Act has been recorded as indicated in para 7 of the application.
- iv) The Hon'ble Bench has also accidentally slipped or omitted to take note of the original share certificates and share transfer papers handed over to the Bench duly verified by an affidavit dated 24.02.2012 and omitted to pass directions for returning the aforesaid documents.
- v) Reference has been invited to Regulation 44 of CLB Regulations, 1991, indicating inherent power of CLB to pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench.
- vi) Reference has also been invited to Regulation 45 of CLB Regulations, 1991, by virtue of which the Bench after receiving an application from any party can rectify an error in the order arising because of accidental slip or omission therein. The extracts of Regulation 45 are reproduced as under:  
 "Any clerical or arithmetical mistake in any order of the Bench or error therein arising from any accidental slip or omission, may, at any time, be corrected by the Bench either on its own motion or on application of any party."
- vii) Finally, Regulation 46 of CLB Regulations, 1991, has also been quoted to indicate that the Bench can amend any defect or error for the purpose of determining the real question or issue raised. The said Regulation 46 is reproduced as under:  
 "A Bench may, at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding before it and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."



2. Based on the above averments, following main prayers have been made:

- (i) Order may be passed directing to return to the petitioners 'original share certificates and transfer forms' kept in sealed envelopes under the safe custody of the Hon'ble Bench.
- (ii) Order may be passed issuing necessary direction for effecting the registration of the transfer of the shares in favour of the petitioners and making necessary entries in the Register of Members and the Register of Share Transfers.
- (iii) Any further order granting necessary relief to the petitioners.

3. As against the above averments, the main contentions raised in the reply affidavit of the respondents are as under:

- i. The entire application has been made without any substance and the order dated 12.08.2013 is final order and unless superior Court of law or authority change, modify or cancel the subject matter of order dated 12.08.2013 under reference, Hon'ble Bench has no power or can exercise any function or duties in any manner in respect of the application under Regulations 44 and 46 of CLB Regulations, 1991.
- ii. The petitioners should have come with an application much earlier for review which the petitioners did not carry out and subsequently, filed an application for deferring the order even with a prayer of interim order.
- iii. As per the records available with the company, the claim of the applicants that they have purchased shares from existing shareholders is totally false and the relevant papers and documents have been manipulated because the alleged shares have been gifted free of cost to employees of Worker's Co-operative Society by the company for the welfare and benefit of the employees/workers and the same will appear from the record of the company as well.
- iv. After hearing submissions from both parties in respect of the petition and considering all documents and material facts and judgments, the order passed by the Hon'ble Bench on 12.08.2013 is final and the Hon'ble Bench has no power or authority to entertain or hear the same for any relief as sought



for in any manner whatsoever and the same is liable to be dismissed with cost.

4. I have considered the above submissions/averments and pleadings in connection with the aforesaid application being CA No.586/2013. The final order in respect of CP No.450/2011 was passed on 12.08.2013 after examination of all evidence/documents placed on record along with the pleadings. No clerical or arithmetical mistake has been pointed out in the application which can be amended in accordance with Regulation 45 of CLB Regulations, 1991. I also do not find any convincing reason to invoke the provisions of Regulations 44 and 46 of CLB Regulations, 1991, because the real question or issues raised in the petition have been determined based on the pleadings and the same have been adjudicated as highlighted in the order. There has been a clear cut observation in the order dated 12.08.2013 while disposing of the petition that the petitioners have not complied with the provisions of Section 111 of the Companies Act, 1956, in order to carry out rectification in the Register of Members by including their name in such register. Where the maintainability of the petition in terms of Section 399 depended on the rectification of the Register of Members of the company, CLB could not order such rectification for want of jurisdiction, as has been clearly held in the case of "**Turner Morrision Limited -vs- Jenson & Nicholson (India) Limited**" – 93 Comp.Cas 347, (1998) 29 CLA 449, (1998) 16 SCL 619 (CLB).

5. Based on the averments made in the application, the direction sought for effecting the registration of the transfer of the shares in favour of the petitioners and making necessary entries in the Register of members and Register of share transfers, clearly amounts to review of judgment and the order already passed in this regard and CLB has no power to review its own order for want of any statutory conferment on such powers on the Board, and this view has been accepted by the Board itself in **Naresh Trehhan -vs- Hymatic Agro Equipments Pvt. Ltd.** (1999) 98 Comp.Cas. 7 and **Michelle Jawad-Al-Fahoum -vs- Indo Soudi (Travels) Pvt. Ltd.** (1998) 93 Comp.Cas. 151.

6. It has been clearly held in the order of disposal of the main petition that the petition is not maintainable on the preliminary issue of eligibility of the petition under Section 399 of the Act, because the



petitioners have not been able to establish indisputable and unchallengeable title to membership of the company in excess of 10% of the issued share capital of the company which is a mandatory requirement as per the said section and therefore, nothing more remains to be adjudicated based on the pleadings and materials available on record. Accordingly, the application is considered to be devoid of any merit for the substantial relief prayed for and as a result, it is dismissed. However, the Bench Officer is hereby directed to return the documents placed in safe custody of the Bench in sealed envelopes as indicated in para 5 of the application after necessary verification, and obtain receipt of acknowledgement for the same from the concerned parties.

*Sd/-*  
[ A BANDOPADHYAY ]  
Member

CERTIFIED TO BE TRUE COPY

*[Signature]*  
HARHARA SAHOO  
BENCH OFFICER  
COMPANY LAW BOARD  
KOLKATA BENCH

