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**BEFORE THE COMPANY LAW BOARD
PRINCIPAL BENCH
NEW DELHI**

C.P. No. 1(111)/2009

**Present:- Justice D.R. Deshmukh
Chairman**

**In the matter of the Companies Act, 1956 under Section 111-A
And**

In the matter of

Shri Ajay Batra

..... Petitioner

Versus

M/s BHP Machines Limited & Others

.....Respondents

Present on behalf of the parties

1. Shri Arun Kathpalia, Advocate for the Petitioner.
2. Shri Uttam Datt , Advocate for the Petitioner.
3. Ms. Namitha Mathews, Advocate for the Petitioner.
4. Shri Gaurav Mitra, Advocate for the Respondents.
5. Shri Rishab Maheshwari, Advocate for the Respondents.
6. Ms. Sheena Iype, Advocate for the Respondents.

ORDER

(Pronounced in open court on 29th February 2012)

In this petition under Section 111A of the Companies Act, 1956, the Petitioner seeks rectification of the Register of Members of BHP Machine Ltd (henceforth referred to as the company) and a direction that the Petitioner is the sole owner of 96040 shares as contained in share certificates No.34, 35 and 36. Following reliefs have also been claimed:-



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- (i) Stay the alleged resolution allegedly passed on 30.6.2008 purporting to delete the name of the Petitioner from share certificate Nos.34, 35 and 36
 - (ii) Stay the cancellation of share certificate Nos.34, 35 and 36.
 - (iii) Stay the issue of share certificate No.43 that may have been issued in lieu of share certificate Nos.34, 35 and 36.
 - (iv) Stay the change in the registered folio number from 11 to 17.
 - (v) Cancel share certificate No.43, if issued
 - (vi) Pass any other or such further orders as this Board may deem fit and proper in the facts and circumstances of the case.

2. Admittedly the Petitioner is the son of late Sh. Y.P. Batra who held 96040 shares in the company jointly with his wife Mrs. Geeta Batra, R-2. Later at the request of the Petitioner the name of the Petitioner Mr. Ajay Batra was added as a joint holder in share certificate Nos.34, 35 and 36 in place of Mrs. Geeta Batra. Mr. Y.P. Batra died on 21.9.2008. It is also not in dispute that a Board Meeting of company was convened on 30.6.2008. The Petitioner had notice but did not attend the Board meeting.

3. Para-31 of the petition is reproduced below:-

'Hence this petition for rectification of the Register of Members inasmuch as, despite the request made on 3.10.2008, the Respondents have not transmitted in favour of the Petitioner, 96040 equity shares as contained in Certificate Nos.34, 35 and 36, being the sole surviving member under and in terms of Article 26(i) of the Articles of Association, by which the Company is bound. Instead they have even tried to delete the Petitioner's name from the aforesaid share certificates and indeed have even purported to cancel share certificate No.36. Hence this petition for rectification.'

Thus the petition purports to be one under sub-clause (2) and not under sub-clause (3) of section 111-A of the Companies Act 1956.

4. The Petitioner alleges that after the demise of his father Mr. Y.P. Batra on 21.9.2008 he sent an application annexure P-4 on 3.10.2008 for transmission of the shares contained in share certificates No.34, 35 and 36 solely in his name on the ground that under article 26 of the Articles of Association of the company, on the death of Mr. Y.P. Batra, he being the only surviving member ought to be recognised by the company as having title to 96040 shares contained in the above mentioned certificates. It is also not disputed that with the application annexure P-4 the Petitioner enclosed only the xerox copies of the share certificates No.34, 35 and 36 and withheld the originals thereof.

5. The Petitioner contended that the Board Resolution dated 30.6.2008 relating to deletion of his name as a joint holder in the above mentioned share certificates was an act of forgery and fraud as no such resolution was passed in the said Board meeting. It is further alleged that if any such Board Resolution would have been passed on 30.6.2008 the authorised signatory of the company would not have asked the Petitioner by letter dated 14.10.2008 to forward the original share certificates of the company for consideration and necessary action by the Board (underlined by me). It is further alleged in the petition that Mr. Y.P. Batra did not execute a deed of declaration on 20.11.2007 for deleting the name of the Petitioner as joint holder in share certificates No.34, 35 and 36 for 96040 shares in the company.

6. Respondent's case in short is that under the deed of declaration dated 27.11.2007 Mr. Y.P. Batra had expressed that the



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name of the Petitioner be struck off as a joint holder in respect of 96040 shares held jointly by him with the Petitioner. This deed of declaration dated 27.11.2007 was considered in the meeting dated 30.6.2008 by Board of Directors which resolved to delete the name of the Petitioner from the above mentioned share certificates as joint holder. Later, after the death of Mr. Y.P. Batra, on presentation of a Will of Mr. Y.P. Batra in her favour by R-2 the Board of the company on dated 7.11.2008 had resolved to recognise R-2 as a holder of 96040 shares by way of transmission. The Petitioner had thus no legal right for transmission of 96040 shares in his name.

7. The Respondents contend that Mrs. Geeta Batra, Respondent No.2 has filed a probate petition numbered as Test Case No.9/2009 for grant of probate on the Will dated 11/03/2008 by late Mr.Y.P. Batra. It is further stated that Mrs. Geeta Batra, R-2 has also filed a Civil Suit No.498/2009 titled as Geeta Batra Versus Ajay Batra & others for declaration of being the sole holder and owner of 96040 shares which is the subject matter of this petition. On these premises it is urged that complicated questions of law ought not to be decided by the Company Law Board in the summary procedure u/s. 111A.

8. Section 111 and 111-A of the Companies Act are reproduced below for easy reference.

Section 111.

- (1) *If a company 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 shares or interest of a member in, or debentures of the company, it shall, within two months 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 transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

- (2) The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the Tribunal against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in sub-section(10), either to register the transfer or transmission or to send notice of its refusal to register the same.
- (3) An appeal under sub-section (2) shall be made within two months of the receipt of the notice of such refusal or, where no notice has been sent by the company, within four months 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) the name of any person –
 - (i) is without sufficient cause, entered in the register of members of a company, or
 - (ii) after having been entered in the register, is, without sufficient cause, omitted therefrom; or
 - (b) 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 (including a refusal under sub-section(1)).

The person aggrieved, or any member of the company, or the company, may apply to the Tribunal for rectification of the register.

- (5) The Tribunal, while dealing with an appeal preferred under sub-section (2) or an application made under sub-section (4) may, after hearing the parties, either dismiss the appeal or reject the application, 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 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) The (Tribunal) while acting under sub-section (5), may, at its discretion make-
 - (a) such interim orders, including any orders as to injunction or stay, as it may deem fit and just;
 - (b) such orders as to costs as it thinks fit; and
 - (c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.
- (7) On any application under this section, the Tribunal –
 - (a) may decide any question in relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register;
 - (b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.



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- (8) *The provisions of sub-sections (4) to (7) shall apply in relation to the rectification of the register of debenture holders as they apply in relation to the rectification of the register of members.*
- (9) *If default is made in giving effect to the orders of the Tribunal under this section, the company and every officer of the company who is in default shall be punishable with fine which may extend to (ten) thousand rupees, and with a further fine which may extend to (One thousand) rupees for every day after the first day after which the default continues.*
- (10) *Every appeal or application to the Tribunal under sub-section (2) or sub-section (4) shall be made by a petition in writing and shall be accompanied by such fee as may be prescribed.*
- (11) *In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interest of a member in, or debentures of, the company is transmitted by a sale thereof held by a court or other public authority, the provisions of sub-sections (4) to (7) shall apply as if the company were a public company;*

Provided that the Tribunal may, in lieu of an order under sub-section (5), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid within such time as may be allowed for the purpose by the order, on payment to the purchaser of the price paid by him therefor or such other sum as the Tribunal may determine to be a reasonable compensation for the right in all the circumstances of the case.

- (12) *If default is made in complying with any of the provisions of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to (five hundred) rupees for every day during which the default continues.*
- (13) *Nothing in this section and section 108, 109 or 110 shall prejudice any power of a private company under its articles to enforce the restrictions contained therein against the right to transfer the share of such company.*
- (14) *In this section "company" means a private company and includes a private company which had become a public company by virtue of section 43A of this Act.]*

Section 111A.

- (1) *In this section, unless the context otherwise requires, a company" means a company other than a company referred to in sub-section (14) of section 111 of this Act.*
- (2) *Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable:*

[Provided that if a company without sufficient cause refuses to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the Tribunal and it shall direct such company to register the transfer of shares].

- (3) *The Tribunal may on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act 1992 (15 of 1992), or regulations made thereunder or the Sick Industrial Companies (special Provisions)Act 1985 (1 of 1986), or any other law*

for the time being in force, within two months from the date of transfer of any shares or debentures 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, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records.]

- (4) The Tribunal while acting under sub-section (3) may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry
- (5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.
- (6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Tribunal of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.
- (7) The provisions of sub-section (5), (7)m (9), (10) and (12) of section 111 shall, so far as may be, apply to the proceedings before the Tribunal under this section as they apply to the proceedings under that section.]

9. I have considered the arguments advanced on both sides and have also perused the case law cited. For the reasons given below I am of the considered opinion that the petition u/s. 111A deserves to be dismissed.

10. It was urged that the words 'transfer' appearing in the heading as well as sub-clause(a) of section 111A should be interpreted to include a case of transmission of shares. In such a situation a company is not obliged to entertain prayer for transfer of shares unless such application is accompanied by the share certificates in original because Sub-clause 1 of Section 108 of the Companies Act 1956 issues a command to a company not to register transfer of shares in the company unless the transfer documents are accompanied by original share certificates.



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11. As held in Mannalal Khetan etc. versus Kedar Nath Khetan and others AIR 1977 Supreme Court 536 the provisions contained in Section 108 are mandatory. It is not in dispute that the application dated 3-10-2008 by the Petitioner for transmission of shares in his sole name was not accompanied by the original share certificates, possession of which was retained by the Petitioner. Therefore, on 14.10.2008 the company was wholly justified in asking the Petitioner to send the original share certificates so that it could be placed with his application before the Board for consideration. No such inference as suggested by the Petitioner and underlined in para-4 (supra) can therefore be drawn. The Petitioner instead of sending the original share certificates to the Company filed this petition (appeal) on 4.2.2009. It would thus appear that while the Petitioner did not comply with the requirement of section 108(1) there was no refusal communicated by the company to the Petitioner. Thus for want of compliance of sub-section (1) of section 108 by the Petitioner there was no occasion for the Company to consider the application dated 03-10-.2008 by the Petitioner or to communicate refusal in the strict sense of sub-section (2) of section 111-A. It is only after the original share certificates which were in possession of and retained by the Petitioner were transmitted to the company that the Board of the Company would have been obliged to consider the application for transmission of 96040 shares in favour of the Petitioner and communicate its refusal, if any to the Petitioner. The appeal under sub-section (2) of section 111-A therefore deserves outright dismissal.



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12. The Petitioner has filed the petition u/s. 111-A for rectification of the Register of Members of the Company in the capacity as Member of the company. In Shirish Finance and Investment (P) Ltd. versus M. Sreenivasulu Reddy and Others (Bombay High Court Order dated 28/09/2001) reported in 2002-(002)-CLJ-0386-BOM it has been held that a Member of the company has no statutory right under the Companies Act to seek rectification of Register of Members under section 111-A. However a common law right of such member remains intact and he can assert such right by filing a suit before a court of competent jurisdiction. Placing implicit reliance on the dictum in Shirish Finance and Investment (P) Ltd. (supra) the petition does not lie u/s 111-A.

13. Section 111A of the Companies Act deals with rectification of the Register of a public company on transfer of shares. Sub-clause (2) lays down that the shares or debentures and any interest therein of a public company shall be freely transferable. Under the proviso to sub-clause (2) of section 111A an appeal lies to the Company Law Board if the company without sufficient cause refuses to register transfer of shares within two months from the date on which the instrument for transfer or intimation of transfer, as the case may be, is delivered to the company. The proviso has therefore to be read in context of sub-clause (2). A situation where the name of a holder of shares is omitted from the register of members without sufficient cause is not covered under the proviso to sub-clause (2) of section 111A. Such a situation falls under sub-clause (4) of section 111 which relates



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to rectification of the register of a private company and provides that 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 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 (including a refusal under sub-section(1)], the person aggrieved, or any member of the company, or the company, may apply to the Company Law Board for rectification of the register. Under Sub-section 7 of section 111-A the provisions of sub-section (4) of section 111 have not been made applicable to the proceedings before the Tribunal under section 111-A. It is thus clear that a situation as provided in sub-clause (4) of sec.111 is not contemplated by section 111A. Sub-section(2) of Section 111-A speaks only about a transfer and not about transmission of shares and deliberately excludes the applicability of sub-section (4) of section 111 of the Companies Act to an appeal under sub-clause (2) of section 111-A. Therefore, the question whether or not the Board of the Company had on 30th July 2008 during the lifetime of Mr.Y.P. Batra, i.e. much before the application submitted by the Petitioner on 03.10.2008 for transmission of shares in his sole name, had actually passed the resolution for omitting the name of the Petitioner as a jt. holder for 96040 shares on the basis of a deed of declaration dated 27.11.2007 of Mr. Y.P. Batra is beyond the domain of an appeal under sub-clause (2) of section 111-A.



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14. A perusal of the provisions contained in Section 111 and 111-A it is easily discernible that while sub-section (2) of Section 111-A provides for an appeal, sub-section (3) speaks of an application. Similar distinction is to be found in section 111. While sub-section (2), (3) and (5) of section 111 provide for an appeal, sub-section (4) provides for an application. Sub-clause(7) of section 111 begins with the words "on an application under this section the Company law Board". The exercise of powers of the Company Law board under sub-section (7) of section 111 is therefore to be confined only to an application and not to an appeal. Rightly so because in an appeal under sub-clause (2) of section 111-A this Board would only examine whether the company had sufficient cause in refusing to register transfer of shares. In the present case, the reliefs claimed by the Petitioner are reproduced in para (1). No relief for a declaration that the Board Resolution dated 30.6.2008 or the deed of declaration dated 27.11.2007 is void, has been sought. The question of title of the Petitioner to 96040 shares cannot therefore be gone into by this Board in a petition (appeal) under sub-clause (2) of section 111-A.

15. It is not in dispute that the Petitioner had notice of the Meeting of the Board of Directors of the Company held on 30th June 2008. In the petition, the Petitioner could not and for obvious reasons did not seek a declaration that deed of declaration dated 27.11.2007 by Mr. Y.P. Batra is void or that the resolution passed in the Board Meeting dated 30th June 2008 for omitting his name as a joint-holder in share certificate Nos. 34, 35 & 36 for 96040 shares is void as it is an



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act of fraud and forgery and no such resolution was considered at the Board Meeting. For such a relief the Petitioner who asserts himself to be a Member of the Company has no locus to file an appeal under sub-section (2) of section 111A and may avail his common law right by filing a suit.

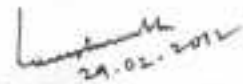
16. For the above reasons, the petition is dismissed.



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मध्य पीठ अधिकारी / Bench Chief
कंपनी विधि बोर्ड / Company Law Board
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi


24.02.2012
[Justice D.R. Deshmukh]
Chairman