

P. Subli Calan

**BEFORE THE COMPANY LAW BOARD
CHENNAI BENCH
AT CHENNAI**

CP. No. 2/2013

Present: **SHRI KANTHI NARAHARI, JUDICIAL MEMBER**

**IN THE MATTER OF THE COMPANIES ACT, 1956 (1 OF 1956)
SECTION 111A R/W 637A
AND**

**IN THE MATTER OF M/S TAMILNADU MERCANTILE BANK
LIMITED**

BETWEEN

1. M/s. SIFA Printing Inks Pvt Ltd
No.3/532, East Coast Road,
Palavakkam, Chennai – 600 041. ... PETITIONER

AND

1. M/s. Tamilnadu Mercantile Bank Ltd
No.57, V.E Road,
Thoothukudi – 628 002. ... RESPONDENTS

PARTIES PRESENT:

1. Shri. G.B Sabari Das, Advocate ... For Petitioner
2. Shri. R. Shankaranarayanan, Advocate ... For Respondents

ORDER

The present petition is filed under section 111A of the Companies Act, 1956 praying this Bench to direct the respondents to effect the transfer of shares numbering 1073 shares of the R1 Company in the name of the petitioner.

2. The counsel appeared for the petitioner narrated the brief facts of the case. He submitted that the petitioner company had purchased 1073 shares of

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the respondent company and presented the same for transfer with the respondent bank on various dates between April' 2012 to October' 2012. The respondent repeatedly refused to transfer the share quoting one reason or other for compliance of certain irregularities. The petitioner company also complied with the requirement of the respondent bank. The respondent bank by letter dated 02.01.2013 impugned herein finally came out with its 'True colour of whimsical Reason' treating the petitioner company's investment in the shares of the respondent bank within the group of Shri B. Sivanthi Adithan and Shri B. Ramachandran Adithan. The explanation as quoted by the respondent bank calling it as a group is that the investment by the petitioner and its director made independently into the companies in which Shri B. Sivanthi Adithan or his son Shri Balasubramanian Adithan is director, indirectly come within the group concern of Shri B. Sivanthi Adithan. The said reasoning is nothing but farce to reject the share transfer of the petitioner. The respondent bank erred in its reasoning which is nothing but "remoteness of reasoning" and if such illogical conclusions are to accepted, then the entire shareholders of the respondent bank forms under 'Single group' since shareholders of the respondent bank are in one way or other connected through investments in the share of 'Blue Chip' Companies, thus the respondent bank cannot transfer any share for that matter without RBI prior approval.

3. It is submitted that the dates and events per-se evidence the fact that the respondent bank had deliberately kept refusing to transfer the shares in the name of the petitioner for ulterior motives. The respondent bank on the contrary had transferred the shares purchased by NRI exceeding 10% without prior approval of RBI, which clearly shows the malafide attitude of the respondent bank and hostility towards the petitioner. The reasoning adopted by the respondent bank bringing the petitioner company within group of Shri B. Sivanthi Adithan and his son Shri Balasubramanian Adithan is to vitiate the transfer of shares in the



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name of the petitioner company. The respondent bank calling the investment of the petitioner company in the share of the respondent bank forming under a group concern is nothing but 'remoteness of reasoning' and cannot be sustained in law otherwise the entire shareholders of the respondent bank forms under 'Single group' since shareholders of the respondent bank are in one way or other connected inter alia through investments in the share of 'Blue Chip' Companies or other companies. The refusal to transfer the shares in the name of the petitioner company by the respondent bank is deliberate with ulterior motives. Hence he requested the Bench to grant the relief as prayed for.

4. The respondent filed reply statement to the petition. Shri R. Shankaranarayanan, learned counsel appeared for the respondent submitted that the petition filed is not maintainable for the following amongst other reasons:

a. The petition is filed for a direction to the respondent to effect the transfer of 1073 shares without insisting for fresh or revalidation transfer forms and to rectify the register of members. Section 111A(2) deals with rectification of register of members. The proviso enables a person to approach this Hon'ble Board for a direction to register the transfer of shares. The proviso can be passed into service only when the company refuses to register the transfer of shares and such refusal is without sufficient cause. The petitioner sought the transfer of shares and after having a prolonged correspondence the respondent raised certain important queries touching upon the transfer of shares and ultimately called upon the petitioner to furnish all particulars to enable the respondent to take the matter forward. The respondent pointed out that the transfer of shares required the approval of the RBI as per the guidelines issued by the RBI and the particulars are required to seek the approval. In other words the respondent did not take any final decision on the transfer of shares but only called upon the petitioner for better



particulars and also entered a Caveat that the transfer might warrant approval by the RBI. The sum and substance of the letter dated 02.01.2013 is therefore not one refusing to register the transfer but one which calls for particulars. The petition is therefore premature and is liable to be dismissed.

b. The respondent is required by law to refer the matters to the RBI in respect of transfer of certain shares if the transfer impinges upon the circular issued by the RBI. The grievances of the petitioner if any on any decision that RBI might take has to be redressed in a manner known to law and the petition under 111-A is not maintainable.

5. He further submitted that the RBI by virtue of the powers vested in it issues guidelines on acknowledgement for acquisition for transfer of shares in private section banks such guidelines assumes great importance as banks not only accepts deposits but also employs the fund and are responsible for leveraging funds through credit creation. RBI passed one such guideline on 03.02.2004 whereby it made it mandatory that any acquisition of shares of 5% and above of the paid up capital of a private section bank requires acknowledgement. No single entity or group of related entities should control directly or indirectly by holding shares in excess of 10% of paid up share capital of the bank. The bank is required to refer all cases of transfer of shares when it exceeds 5% to RBI. The respondent received a request for transfer of 947 equity shares in favour of the petitioner. There were as many as 24 transfer deeds and the consideration in all the transfer deeds was stated to be Rs.5000/-. The respondent on considering the request sent a letter on 10.07.2012 calling upon the petitioner asking for a Board resolution, a communication from the Chartered Accountant confirming the cost of total investment in the subject shares together with other investments are within the limits laid down in the Board resolution and a few other details. This was followed by another letter



dated 02.08.2012 whereby it was pointed out that the total investment by the petitioner was limited to Rs. 1 crore and that the proposed investment would exceed more than one crore as the current market value of the share prevalent at that time was Rs.58,000/-. The respondent found that the paid up capital and the reserves of the petitioner company as on 31.03.2011 was Rs.33.24.742/-. The respondent observed that even if the consideration for transfer of one share was Rs.5000/- the proposed investment would exceed the paid up capital and free reserves of the petitioner company and that it would violate section 372-A of the Companies Act, 1956. The Board of directors of the respondent bank passed the resolution in the meeting held on 10.09.2013 that the approval of transfer should be deferred it was also resolved that the respondent bank should ascertain whether the petitioner formed part of the group. The copy of the resolution passed in the Board meeting held on 10.09.2013 is filed and marked as Annexure R1. The respondent conducted a due diligence on certain companies allegedly belong to the same group. The respondent found out that the petitioner had made investment of one lakh equity shares of Rs.10/- each in Sun Paper Mills Ltd. Late Mr B. Sivanthi Adithyan was the Managing Director of Sun Paper Mills Ltd and his son Balasubramanian Adithyan, it was found out that the directors of the petitioner company namely R. Baskaran and P. Jeyapandy are shareholders of Sovereign Media Marketing (P) Ltd in which Balasubramanian Adithyan is director and holds 73% of paid up share capital of Sovereign Media Marketing (P) Ltd.

6. The respondent bank by letter dated 02.01.2013 addressed to the petitioner pointing out the resolutions passed in its Board meeting held on 27.12.2012 and called upon the petitioner to reply to the letter in order to enable the respondent to approach RBI for prior approval. The transfer deeds were returned for the said purpose. It is submitted that the respondent has performed a duty enjoying by law and agreed to do all that was required provided the



petitioner respondent to the queries and furnished necessary particulars. In view of the reasons he requested the Bench to dismiss the petition.

7. Heard the learned counsel appeared for the respective parties. Admittedly the petition is filed by invoking section 111A of the Companies Act, 1956 seeking directions from this Bench to effect the transfer of shares in the name of the petitioner with a condition that the respondent bank should not insist for fresh or revalidation transfer forms. Even without going into the merits of the case, I am of the view that the petitioner cannot ask for waiver of conditions by the respondent with regard to transfer of shares. The petitioner aggrieved by the letter dated 02.01.2013 stating that the refusal to transfer the shares is deliberate with ulterior motive is not correct. From the perusal of said letter dated 02.01.2013 the respondent bank treated Sri B. Sivanthi Adithan and Sri B. Ramachandra Adithan as single group as per RBI guidelines and stated that their shareholding exceeds 10% and therefore it needs prior approval of RBI. Therefore the reasoning given by the respondent in their letter dated 02.01.2013 is a valid reason and cannot be treated as refusal. Moreover the respondent intends to comply with the statutory requirement of law to which the petitioner has to cooperate in complying with the statutory requirement rather than approaching this Bench. The provision under which the present petition is filed gives the right to an aggrieved person that if the company without sufficient cause refuses to register transfer of shares within two months, the person aggrieved may make an application to the CLB. Even on the merits of the case the petitioner has not made out any prima facie case to be inferred by this Bench. As per the averments, the petitioner purchased 1073 shares and the same has been presented for transfer with the respondent. The respondent bank vide their letter dated 19.06.2012 addressed to the petitioner whereby the respondent returned the share transfer deed along with share certificate for the reasons as stated therein. There was certain correspondence between the



petitioner and the respondent with regard to share transfers. The respondent vide their letter dated 02.01.2013 (which was impugned) addressed to the petitioner requesting them to furnish certain information as detailed out in the letter. As stated supra the respondent in their letter dated 02.01.2013 at para 7 stated that they have treated Shri B. Sivanthi Adithan and Shri B. Ramachandra Adithan as a single group as per RBI direction and also the shareholdings of the group has already exceeded 10% hence need prior approval of RBI before effecting the transfer of shares as per the RBI guidance on ownership and governance in private sector banks dated 28.02.2005. It was stated that they are returning 1073 shares lodged by the petitioner and requested the petitioner to reply to the said letter enabling them to approach RBI for approval. The petitioner has received the said letter and filed the present petition on 18.02.2013 before this Bench seeking directions from this Bench to effect the transfer of shares without insisting for fresh or revalidation transfer forms. The letter dated 02.01.2013 cannot be treated as refusal/rejected to transfer the shares. Admittedly the respondent is a public limited banking company and has to necessarily follow certain RBI guidelines issued from time to time. As stated supra the respondent has called upon the petitioner to furnish certain particulars as required. On facts and law, I hold that the petition is not maintainable under section 111A of the Companies Act, 1956 and the petition is miserably failed and liable to be dismissed. Accordingly, the petition is dismissed. No orders as to cost.

Kanthi Narahari
KANTHI NARAHARI
JUDICIAL MEMBER

DATED THIS THE 17TH DAY OF APRIL, 2015

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Certified to be True Copy

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ચાચપાટ અધિકારી
Bench Officer
કંપની વિધિ બોર્ડ ચાચપોટ
Company Law Board
ચેન્ની ચાચપોટ
Chennai Bench
કારણ 20 4 2015
Dated the