

# Rectification of Register of Members of a Company: Supreme Court re-confirms Summary Jurisdiction of NCLT under Section 58/59 of Companies Act, 2013

The Companies Act, 2013 enacted Sections 58 and 59. Unlike in the past, section 58 of the Companies Act, 2013 now permits to apply to the NCLT for rectification of the register of members only in the case of shares of public companies. Subsection (4) of section 58 specifically provides that, this remedy can be resorted to only if a public company without sufficient cause refuses to register the transfer of securities. Refusal to register a transfer or transmission of shares without sufficient cause is the only ground on which an appeal can be filed in terms of subsection (4).



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## INTRODUCTION

In *IFB Agro Industries Ltd. v. SICGIL India Ltd.* [2023] 236 Comp Cas 316 (SC), the Supreme Court has reiterated and reconfirmed the principle laid down in *Ammonia Supplies Corporation P. Ltd. v. Modern Plastic Containers P. Ltd.* [1998] 94 Comp Cas 310 (SC).

In *IFB Agro* case respondent Company acquired additional shares of the appellant Company, as a result whereof, its individual shareholding exceeded 5% of the total paid-up share capital of the appellant Company. Appellant filed a petition before the Company Law Board under S.111-A of the Companies Act, 1956 (presently S.59 of the 2013 Act), praying for rectification of its register by deleting the name of the respondents as the owner of shares which are over and above the 5% threshold. The National Company Law Tribunal allowed a company petition for rectification of Members Register. The Tribunal directed the appellant company to buy-back its shares which were held by respondent company.

The Supreme Court traced the historical legislative background of Section 59 of the Companies Act, 2013 since the Indian Companies Act, 1913, and held:

“NCLT under S.59 of 2013 Act cannot exercise a parallel jurisdiction with SEBI for addressing violations of SEBI

Regulations. The Court observed that the rectificatory powers of a Board/Company Court under S.38 of the Companies Act, 1913, then under S.55 of the 1956 Act, followed by S.111A introduced by the 1996 Amendment to the 1956 Act, and finally, S.59 of the 2013 Act, demonstrate that its essential ingredients have remained the same. It is a summary power to carry out corrections or rectifications in the register of members. The rectification must relate to and be confined to the facts that are evident and need no serious enquiry. The Court held that the company petition under S.111-A of the 1956 Act for a declaration that the acquisition of shares by the respondents was null and void was misconceived. The Tribunal should have directed the appellant company to seek such a declaration before the appropriate forum. [emphasis supplied]

## DEVELOPMENT OF LAW AS TO RECTIFICATION OF REGISTER OF MEMBERS

Before the Companies (Amendment) Act, 1988 was enacted, the provisions in regard to the remedy of rectification of register of members were contained in Section 155 of the Companies Act, 1956 under which an application for an order for rectification of the register lay before the High Court. These provisions were enacted in Section 38 of the Indian Companies Act, 1913.

Thus, until the 1988 Amendment Act was passed, the two remedies, namely, the appeal under Section 111 and the application under Section 155 were to be pursued with two distinct forums, namely, the Company Law Board (now NCLT) being the delegate of the Central Government under Section 111, and the court, respectively.

The Companies (Amendment) Act, 1988, deleted Section 155, and also Section 156 which was incidental to Section 155, and incorporated the provisions of Section 155 in the recast Section 111. These amendments were based on the recommendations of the Sachar Committee. The recommendations of the Committee in this regard as contained in para 7.21 of the Report. Section 111 applied only in the case of shares of private companies. The Inserted by the Depositories Act, 1996 inserted Section 111A which was made applicable for rectification of register of members of public companies.

Finally, the Companies Act, 2013 enacted Sections 58 and 59. Unlike in the past, Section 58 of the Companies Act, 2013<sup>1</sup> now permits to apply to the NCLT for rectification of the register of members only in the case of shares of public companies. Sub-Section (4) of Section 58 specifically provides that, this remedy can be resorted to only if a public company without sufficient cause refuses to register the transfer of securities. Refusal to register a transfer or transmission of shares without sufficient cause is the only ground on which an appeal can be filed in terms of Sub-Section (4).

The substantive provision regarding rectification of register of members, however, is in Section 59,<sup>2</sup> according to which 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. An application can be made to National Company Law Tribunal (NCLT) by the person aggrieved, any member of the company, or the company for rectification of the register. The NCLT may, after hearing the parties to the appeal by order, *inter alia*, direct rectification of the records of the depository or the register and in the latter case.

While Section 111A of the 1956 Act empowered the CLB to order rectification of register of members, it also made Sub-Section (7) of Section 111 applicable to Section 111A, which conferred on the CLB the powers to (a) decide any question 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, to decide any question which is necessary or expedient to decide in connection with the application for rectification. This provision seemed to have given an unlimited jurisdiction to the CLB to order rectification of register of members.

## RULE 70(4) AND (5) OF NCLT RULES: A QUESTIONABLE VALIDITY

Section 59 of the 2013 Act does not contain a provision corresponding to Section 111(7) dwelt upon the preceding paragraph.

However, Rule 70(4) and (5) of the National Company Law Tribunal Rules, 2016 confer such jurisdiction on NCLT. It read as follows:

- (4) The Tribunal may, while dealing with a petition under Section 58 or 59, at its discretion, make-
- (a) order or any interim order, 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.

- (5) On any petition under Section 59, the Tribunal may-
- (a) decide any question relating to the title of any person who is a party to the petition to have his name entered in, or omitted from, the register;
  - (b) generally, decide any question which is necessary or expedient to decide in connection with the application for rectification.

It will be noticed that rules 70(4) and (5) confer on the Tribunal the powers which are not conferred on it by the statute and, therefore, validity of this Rule is questionable. It is a well settled principle that a rule, regulation or bylaw must not be ultra vires, that is to say, if a power exists by statute to make rules, regulations, bylaws, forms, etc, that power must be exercised strictly in accordance with the provisions of the statute which confers the power, for a rule, etc, if ultra vires, will be held incapable of being enforced.

“Underlying the concept of delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. The power delegated by an enactment does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary its ends. The aforesaid principle will apply with greater rigour where rules have been framed in exercise of power conferred by a constitutional provision.”<sup>3</sup>

As noted above, the powers vested in the CLB by Sub-Section (7) of Section 111 were not there in Section 155 of the Companies Act, 1956 or in the corresponding provision of the India Companies Act, 1913. The concept of ‘summary jurisdiction’ was emphasised by the Supreme Court concerning Section 155 of the 1956 Act in *Ammonia Supplies Corporation Pvt Ltd v Modern Plastic Containers Pvt Ltd*.<sup>4</sup>, thus:

“Section 155(1)(a) refers to a case where the name of any person without sufficient cause entered or omitted in the register of members of a company. The word ‘sufficient cause’ is to be tested in relation to the Act and the Rules. Without sufficient cause entered or omitted to be entered means done or omitted to do in contradiction of the Act and the Rules or what ought to have been done under the Act and the Rules but not done. Reading of this sub-clause spells out the limitation under which the Court has to exercise its jurisdiction. It cannot be doubted in spite of exclusiveness to decide all matter pertaining to the rectification it has to act within the said four corners and adjudication of such matter cannot be doubted to be summary in nature. So, whenever a question is raised

<sup>1</sup> Corresponding partly to section 111 of the Companies Act, 1956.

<sup>2</sup> Corresponding to section 111A of the Companies Act, 1956.

<sup>3</sup> *Dr Mahachandra Prasad Singh v Chairman, Bihar Legislative Council* (2004) 2 SCC 351; AIR 2005 SC 69.

<sup>4</sup> (1998) 94 Comp Cas 310; AIR 1998 SC 3153.



Court has to adjudicate on the facts and circumstances of each case. If it truly is rectification all matter raised in that connection should be decided by the Court under S. 155 and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by Civil Court. Unless jurisdiction is expressly or implicitly barred under a Statute, for violation or redress of any such right Civil Court would have jurisdiction. There is nothing under the Companies Act expressly barring the jurisdiction of the Civil Court, but the jurisdiction of the 'Court' as defined under the Act exercising its powers under various Sections where it has been invested with exclusive jurisdiction, the jurisdiction of the Civil Court is impliedly barred. The jurisdiction of the 'Court' under S. 155 to the extent it has exclusive, the jurisdiction of the Civil Court is impliedly barred. For what is not covered as aforesaid the Civil Court would have jurisdiction. Similarly, even under S. 446(1), its words itself indicate jurisdiction of Civil Court is not excluded. This sub-Section states, '... no suit or legal proceedings shall be commenced ... or proceeded with ... except by leave of the Court'. The words 'except by leave of the Court' itself indicate on leave being given the Civil Court would have jurisdiction to adjudicate one's right. Of course, discretion to exercise such power is with the 'Court'. Similarly, under S. 446(2) 'Court' is vested with powers to entertain or dispose of any suit or proceedings by or against the company. Once this discretion is exercised to have it decided by it, it by virtue of language therein excludes the jurisdiction of the Civil Court. Thus, the jurisdiction of the Court under S. 155 is summary in nature." (Para 31)

In *Standard Chartered Bank* AIR 2006 SC 3626, scope of Section 111(7) was considered. It was observed that

jurisdiction being summary in nature, a seriously disputed question of title could be left to be decided by the civil court. It was observed:

".....The nature of proceedings under Section 111 are slightly different from a title suit, although, Sub-Section (7) of Section 111 gives to the Tribunal the jurisdiction to decide any question 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 and also the general jurisdiction to decide any question which it is necessary or expedient to decide in connection with such an application. It has been held in *Ammonia Supplies Corpn. (P) Ltd. v. Modern Plastic Containers (P) Ltd.* AIR 1998 SC 3153 that the jurisdiction exercised by the Company Court under Section 155 of the Companies Act, 1956 (corresponding to Section 111 of the present Act, before its amendment by Act 31 of 1988) was somewhat summary in nature and that if a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, which was the more appropriate remedy for investigation and adjudication of such seriously disputed question of title."

### CONFLICTING JUDGMENTS

In a Company Law Board order<sup>5</sup> which was referred to by the Supreme Court in the *IFB Agro* judgment, it was held:

Where most of the allegations made by the petitioner-company against the respondents/respondent companies are yet to be investigated, crystallised or confirmed as violations of the law, and there are allegations of

<sup>5</sup> *Zandu Pharmaceutical Works Ltd. v Devkumar Vaidya and others* [2009] 89 CLA 65 (CLB).

violation of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations and the SEBI (Prohibition of Insider Trading) Regulations which are to be decided by the SEBI, and allegations of investment beyond limit which violations are to be investigated, crystallised, or confirmed by the Central Government, the Company Law Board would have no power to order rectification of register of members, and to prematurely declare the allegations as violations of law. Moreover, some of the allegations being of criminal nature, only a competent criminal court could decide the said matter.

Referring to *Ammonia Supplies* judgment, the Supreme Court in *IFB Agro* case observed:

“It is evident from the above that while interpreting Section 155, this court has held that the power of the CLB is narrow and can only consider questions of rectification. If a petition seeks an adjudication under the garb of rectification, then the CLB would not have jurisdiction, and it would be duty-bound to re-direct the parties to approach the relevant forum. The court also held that the words “sufficient cause” cannot be interpreted in a manner which would enlarge the scope of the provision.”

Curiously, the *IFB Agro* case arose out of a petition under Section 111A of the Companies Act, Sub-Section (3) of which empowered the Company Law Board (CLB) to order rectification of register of members, if it was found by the Tribunal that a transfer of shares or debentures was, *inter alia*, in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 or any Regulations made thereunder, and, yet, the ruled as aforesaid. In the Supreme Court’s view, the NCLT should have referred the case for investigation to SEBI to decide whether there was a contravention of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or not.

Sub-Section (4) of Section 59 of the Companies Act, 2013 corresponds to Sub-Section (3) of Section 111A of the Companies Act, 1956. On this facet of the case, the Supreme Court remarked as follows:

“... the petition under Section 111A of the 1956 Act for a declaration that the acquisition of shares by the respondents was null and void was misconceived. The Tribunal should have directed the appellant to seek such a declaration before the appropriate forum. The Appellate Tribunal was, therefore, justified in allowing the appeal and setting aside the order of the Tribunal. The Securities and Exchange Board of India had comprehensive role in regulating the securities market with respect to insider trading, and the important role of the regulator could not be circumvented by simply asking for rectification under Section 111A of the 1956 Act. Such an approach was impermissible. The scrutiny and examination of a transaction allegedly in violation of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 had to be processed

through the Regulations and the remedies provided therein. The appellant was not justified in invoking the jurisdiction of the Company Law Board under Section 111A of the Act for violation of the SEBI Regulations. The Tribunal committed an error in entertaining and allowing the petition filed under Section 111A of the 1956 Act. Though the reasoning adopted by the Appellate Tribunal in the order was not agreeable, its conclusion that the Tribunal exceeded its jurisdiction was correct.”

## SECTION 430 OF COMPANIES ACT 2013 LATEST CASES

After the arrival of the Companies Act 2013, the controversy on this subject once again cropped up due to insertion of Section 430 in the Act. In the article published in January 2023 issue of Chartered Secretary, this author has analysed Section 430 and concluded that the said Section does not completely bar jurisdiction of civil courts.

This Section corresponds to Section 10GB of the Companies Act, 1956, which was inserted by the Companies (Second Amendment) Act, 2002; but was never made effective.

Interestingly the *IFB Agro* decision does not refer to Section 430 of the Companies Act, 2013 which bars jurisdiction of civil courts, nor does it refer to the Supreme Court’s earlier decision in *Shashi Prakash Khemka v NEPC Micon Ltd* [2019] 212 Comp Cas 385 (SC), in which the Supreme Court held that as the civil suit remedy was completely barred and the power was vested with the Tribunal under Section 59 of the Act, although the cause of action had arisen at a stage prior to the enactment of the Companies Act, 2013, relegating the parties to civil suit now would not be the appropriate remedy, especially considering the manner in which Section 430 of the Act was widely worded, the appropriate course of action would be to permit the appellants to file a fresh petition before the Tribunal under the Companies Act, 2013 within two months. This decision, however, does not discuss the principle of summary jurisdiction of the NCLT in an application for rectification of register of members (which the *IFB Agro* judgment has discussed extensively). As held in *IFB Agro*, the jurisdiction even under Section 59 of the Companies Act, 2013 is summary in nature.

There were innumerable cases in which it was laid down that complicated questions of law and fact and where title to the question is in dispute or questions relating to succession are involved, should not be decided by the Company Law Board in a petition under Section 111A of the 1956 and the parties should be relegated to a civil suit. The cases decided under Section 59 are, however, creating doubts as to the correct interpretation of Section 430 vis-à-vis Section 59, and conflicting judgments of some High Courts and NCLT/NCLAT are confusing. The *IFB Agro* judgment should help settle substantially the controversy and confusion.



A Calcutta High Court judgment in *Phool Chand Gupta v Mukesh Jaiswal* [2023] 175 CLA 185 (Cal) does refer to *IFB Agro* decision and holds that where it appears that the disputed questions of the facts are complicated and cannot be conveniently decided in a summary procedure, the jurisdiction of the civil court is not ousted. It cannot be disputed that the NCLT may have jurisdiction to decide the title of any person who is a party to the application urging that his name has been wrongly omitted from the register or should have been entered in the register in a proceeding under Section 59. However, the issue in the suit is not one of rectification; the very word ‘rectification’ connotes something what ought to have been done but by error not done and what ought not to have been done was done requiring correction. Rectification in other words is the failure on the part of the company to comply with the directions under the Act.

A recently pronounced order of the NCLAT in *Satori Global Ltd v Manjula Jhunjhunwala* [2023] 239 Comp Cas 228 (NCLAT [Pr B]) is also worth noting in this regard and all NCLT Benches are expected to follow the principle laid down by the Supreme Court in *IFB Agro* case and by NCLAT in *Satori Global* case. In *Satori Global* order, the NCLAT concluded:

“From the aforementioned ratio, it is clear that the hon’ble apex court in a catena of the judgments has observed that the jurisdiction under Section 155 was summary in nature and the matter ought to be decided in a suit and a court may relegate the matter to such remedies.... At the cost of repetition, any dispute with respect to issues relating to “fraud”, “manipulation”, and “coercion”, and false statements cannot be decided in a summary jurisdiction. The contentions of the learned counsel for the respondent that there is “over writing on the certificates”, signatures

were taken on blank forms, there is mala fide suppression of some documents all require examination of evidence and hence cannot be decided by the National Company Law Tribunal in a summary fashion.”

This is equally true about the NCLT’s jurisdiction under Section 58/59 of the Companies Act, 2013 despite the bar of jurisdiction created by Section 430 of the Act.

## AMENDMENTS NEEDED

The problem area is Sub-Section (4) of Section 59, according to which, if 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.

This provision confers on the NCLT the jurisdiction which actually falls within SEBI’s jurisdiction and this is precisely what the Supreme Court pointed out in the *IFB Agro* case. Sub-Section (4) should essentially provide that if the transfer of securities is in contravention of any of the aforesaid Regulations, the Tribunal should direct the petitioner to approach SEBI or itself refer the case to SEBI. Sub-Section (4), thus, needs an amendment to end the controversy. A similar amendment needs to be made to provide that where the NCLT finds that the case involves a question of title to the shares in question or other complicated questions of fact and law which requires a civil court to try the case, the NCLT should refer the petitioner to civil court. Simultaneously, Rule 70(4) and (5) of the National Company Law Tribunal Rules, 2016 need to be omitted. 