Critical Analysis on transfer and transmission of shares

A.M. SRIDHARAN
PRACTICING COMPANY SECRETARY
shares

- A share is an interest in a company measured by a sum of money – CIT Vs. Standard Vacuum Oil Company (1966) 1 Comp. L.J. 187 (S.C.); AIR 1966 SC 1393

- The value of share is relevant to ascertain the liability of a shareholder to the company and the control which the shareholder can exercise in general meetings in relation to other shareholders
Share – A movable property

- In terms of Sec.82 of the CA 1956, a share is a movable property.
- Arjun Prasad and Others Vs. Central Bank of India AIR 1956 Pat 32;
- Sec.541 of the UK Companies Act, 2006 the shares or other interest of a member in a company are personal property (or in scotland, movable property) are not in the nature of real estate for heritage.
'chuse-in-action and chose-in-possession'

- A chose is a right and may be one of two kinds; it may a 'chose-in-action' or 'chose-in-possession'
- 'chose-in-possession' are physical property capable of possession; 'chose-in-action' are intangible property that are enforceable rights vest in a legal entity
- Chose in action encompass all personal rights of property which can only be claimed or enforced by action
Transfer of share

- Is a statutory right;
- Regulated by articles;
- If a company does not have articles, Table A would apply;
- Where the Articles do not provide for transfer of shares and also expressly exclude application of Table A, general law relating transfer of movable property will govern.
Pledge or Mortgage of share

- In India share being a movable property can be pledged or mortgaged;
- It has to be decided by the intention of the parties evidenced by circumstances;
- In UK, shares being chose-in-action cannot be pledged but only mortgaged; equitable mortgage is mostly resorted to than legal mortgage
Duly stamped

- Kothari Industrial Corporation Limited Vs. Lazor detergents Pvt. Ltd. And others (1994) 81 Comp.Cas 699 (Mad)

- Neither companies Act nor SCRA defines the words 'duly stamped'; provisions of stamp Act could only be applied

- Duly stamped could mean stamped in accordance with law prescribing stamp duty in relation to the instrument referred to
Duly stamped

- Union of India Vs. Kullu Valley transport Limited (1958) 28 Comp. Cas 29 (Punj)
- Nuddea Tea Co. Ltd. Vs. Ashok Kumar Saha (1988) 64 Comp. Cas 775 (cal)
- Mathrubhumi Printing and Publishing Co. Ltd. Vs. Vardhaman Publishers ltd (1992) 73 Comp. Cas 80 (Ker.)
- Muniyamma Vs. Arathi Cine Enterprises (P) Ltd. (1993) 77 Comp. Cas (Kar.)
Duly stamped

- Sec. 2(11) defines 'duly stamped'
- Sec. 12 – brings a legal fiction that the instrument bearing adhesive stamps which have not been cancelled in accordance with that section deemed to have been unstamped
- Sec. 2(12) defines 'executed' and 'execution'
- Sec. 10 How duties to be paid
- Sec. 11 cancellation of adhesive stamps
Whose responsibility is to affix and cancel the stamps

- The transferor is responsible
- Jainnarain Ram Lundia Vs. Surajmull Sagarmull and others 1949 MLJ 476
- At page 481 the federal court of India observed
  "As regards stamp duty, it is not disputed that there was no previous talk between the parties on this point, though ordinarily and as a matter of law in case of transfer of shares, it is the vendor by whom the stamp duty is payable"
Liability to pay stamp duty

- G.R. Parry Vs. Union of India (1962) 32 Comp. Cas 145
- “The liability (namely, to affix stamps for transfer of shares) is dealt with under Sec.29, item 62(a) which relates to transfer of shares, etc. The duty is payable “by the person drawing, making or executing such instrument”
Liability to pay stamp duty

- By the transferee
Consideration for shares

- May be fixed in the contract itself
- May be left to be fixed in an agreed manner
- May be determined from the course of dealings between the parties
- Where the price is not determined, the buyer must pay a reasonable price (Sec. 9 of sale of goods Act)
- M.S. Madhusoodhanan and another Vs. Kerala Kaumudi Private limited and others (2003) 117 Comp. Cas 19 (SC)
Rights of a transferee

- To have delivery of shares
- To repudiate the contract when there is a breach of conditions
- To sue the transferor for damages if he refuses to deliver
- To sue the transferor for the return of the price
- To sue for specific performance
Rights of a transferee

- Transferor becomes a trustee
- Comply with the directions of the transferee
- Transferee is entitled to all dividends and bonus shares
- Bharati Chadha Vs. Ranbaxy Laboratories Limited - MANU/DE/0511/1995
Rights of a transferor

- As against shares
- Right of lien
- Right of stoppage in transit
- Right of re-sale
- As against the transferor
- suit for price
- damages for non-acceptance
- repudiation of the contract before due date
- suit for interest
Rights of a company

- To file a petition under Sec.100
- To file a petition before CLB under Sec.111/111A
Provisions of Sec. 108

- 108(1) is mandatory
- Mannalal Khetan and others Vs Kedar Nath Khetan and others (1977) 1 Comp. Cas 185 (SC)
- 108(1A), (1B) and (1C) are directory and not mandatory
- Gujarat Industrial Investment Corporation Limited Vs. Sterling Holiday Resorts (India) Ltd and others (2005) 124 Comp. Cas 390 (CLB)
When a company can refuse transfer of shares

- Non compliance of Sec. 108(1)
- Refusal should be in the interests of the Company
- Refusal should be in tune with the articles of the Company
- Bajaj Auto Limited Vs. N.K. Firodio and another
- 1971 (41) Comp. Cas 1 (SC)
Application of Limitation Act to CLB

- Before and after Nupur Mitra Vs. Basupani P. Ltd.
- T.G. Veera Prasad and Tungabadra Machinery and Tools Limited Vs. Sree Rayalaseema Alkalies and Allied Chemicals Limited and others (1997) 89 Comp. Cas. 13 (CLB)
- Bombay Dyeing Limited Vs. Arun Kumar Bajoria
Remedies on refusal to transfer the shares

- In case of Private company appeal to CLB u/s.111(3)
- In case of Public Company appeal to CLB u/s.111A(2) proviso
- In case of private company appeal may also be filed u/s.111(4)(b)
Rectification of Register

- Appeal will lie to CLB u/s.111(4) in case of private company
- Appeal will lie to CLB u/s.111A(3) in case of public company
- 111(4) is much wider than 111A(3)
- 111(4) can be invoked on sufficient cause
- 111A(3) can be invoked only when there is a violation of law
Whether CLB jurisdiction is exclusive

- Proceedings before CLB in summary in nature
- Ammonia Supplies Corporation Ltd. Vs. Modern Plastic Containers P. Ltd. And others (1994) 79 Comp. Cas. 163 (Delhi)
- Complicated questions of fact CLB always relegated the parties to civil suit
- Sec.10GB of the Companies Act, 1956
When the period of limitation would apply

- From the date of knowledge and not from the date when the actual entry is made in register
- A. Devrajan Vs. N.S. Nemura Consultany P. Ltd.
  And A. Pannerselvam Manu/CL/0060/2004
Transmission of shares

- By operation of law
- Occurs on the death or insolvency of a member or a debenture holder
- 108(1) is not applicable to the sale of shares by court
- Mahadeo Vs. The New Darjeeling Tea Co. Ltd. AIR 1952 CAL 58
Guarantee companies

- In Case of Private Company a member can invoke provisions of Sec.111(4)
- In case of Public Company there is no provision
Enforcement of the order

- Sec.634A
Thank you and MR. Sajjan Kumar, PCS