



CS Makarand Joshi

Case Law Update

1. LLP Act

Jayamma Xavier (Petitioner) vs. Registrar of Firms Vanchiyoor, Thiruvananthapuram (Respondent) Kerala High Court, order dated 08.04.2021

Facts of the case

- A partnership firm was formed having 2 partners - one Sleeplock LLP, which is registered under the Limited Liability Partnership Act, 2008 (for short “LLP Act”) and one Individual in name and style of M/s Morning Owl Sleep Solutions.
- A partnership deed was executed accordingly on 18.09.2020 and deed was submitted for registration before the Registrar of Firms (“Respondent” in this case).
- The **respondent rejected** the same on the ground that **LLP cannot be a partner of a Partnership firm formed under Indian Partnership Act, 1932** and denied registration to this partnership firm.
- The said order passed by respondent declining registration of a partnership firm is under challenge in this **writ petition**.
- Petitioner is the Designated Partner of Sleeplock LLP

Petitioner's contentions

Learned Council on behalf of petitioner contended that:

- **A partnership along with an LLP is not prohibited** under the Indian Partnership Act 1932.
- **LLP is a legal entity**, as defined under the LLP Act and it is separate from its partners. It has perpetual succession and is having a common seal. Under Section 14 of LLP Act, it is capable of suing and being sued, on its registration. It is also capable of acquiring, developing or disposing of movable or immovable properties.
- Therefore, the **LLP is liable to be treated as a person**

- Hence, there cannot be any objection for registering a partnership firm with an LLP as one of its partners .
- Learned Counsel for the petitioner relied upon judgement given by the Kerala High Court in ***M.M. Pulimood Vs. Registrar of Firm : 1984 KLT 420*** in support of his contention, wherein it was held that there was **no impediment in executing a partnership with a Private Limited Company** incorporated under the Companies Act as one of its Partners, as “Company” shall be covered under the definition of “Person” under Section 3(42) of the General Clauses Act.

Respondent’s contentions

- **Some of the provisions** of the LLP Act 2008 are **inconsistent** with that of the Indian Partnership Act, 1932, **pertaining to the liability.**
- Section 25, 26 and 49 of the **Indian Partnership Act, 1932** makes the **partners to be jointly and severally liable with all the other partners and also severally liable for the acts of the firm**, of which such person is a partner. Whereas under Section 28 of the LLP Act, 2008 the provisions regarding the **liability of the partnership firm are restricted to the contents to the LLP agreement.** Such a provision **runs contrary** to section 25 and section 49 of the Indian Partnership Act.
- Also under the **LLP Act, 2008, foreign investment** is **permissible** whereas it is **not permissible** under the **Indian Partnership Act.**
- Relying on judgement of Supreme court in ***Dulichand Laxminarayanan***

vs. Commissioner of Income Tax, Nagpur: AIR 1956 SC 354, wherein it was held that a partnership cannot be formed between 3 firms, HUF and an individual, as firm is not a legal entity.

- Relying upon above-mentioned judgement of apex court, the Respondent argued that a **firm cannot enter into Partnership with LLP, i.e., LLP cannot become partner of a Partnership firm.**
- Further argued that though LLP is a kind of partnership having the nature of Company, the provisions in the LLP are completely frustrating the purport of Section 25 and 49 of Indian Partnership Act.

Held

- Question to be considered was **Whether LLP can be treated as a person which can be permitted to form a partnership with an Individual?**
- The Court observed that the **M.M. Pulimood case** which was relied upon by the petitioner, wherein issue under consideration was **whether a partnership deed can be executed with a private limited Company as one of the partners.**
- Further the Court also observed the judgement in ***Duli Chand Laxmi Narayanan’s case*** relied on by respondent, wherein the Honourable Apex Court after analyzing the provisions contained in Section 26A of the Income Tax Act as well as the provisions contained in the Indian Partnership Act and the definition of ‘person’ in Section 3(42) of the General Clauses Act arrived at a conclusion

that a partnership cannot be formed between 3 firms, a Hindu Undivided Family and an individual. It was found that a firm is not a legal entity.

- After reading relevant provisions of Partnership Act and LLP Act, court observed that –
 - Section 4 of the Indian Partnership Act, 1932 defines partnership, partner, firm and firm name wherein it is stated that Partnership is **relation between persons** who have agreed to share profit of business carried on by all or any of them acting for all...
 - Person is not defined either in the Partnership Act or in the LLP Act. Sec. 3(42) of the General Clauses Act, 1897 defines it as ““person” shall include any company or association or body of individuals, whether incorporated or not;”
 - LLP is body corporate, it can be said to be a person as per above referred definition, in case there is no repugnancy in the subject or context.
 - Further the liability of partners of LLP and liability of the LLP as a partner under the Partnership Act would be different. **The liability of partners in an LLP cannot have any relevance when the LLP itself becomes a partner**, when it would be bound by the provisions in the Partnership Act. **The liability of the LLP would be as in the case a company which joins a firm after entering into a partnership.**

- Therefore, the **difference in the provisions** under the Partnership Act **relating to liability** of the firm or the individual partners **would not stand in the way of constitution of a partnership with an LLP**
- Hence court found that that **LLP cannot have a disqualification from entering into a partnership** with an individual or any other persons.
- **Therefore, rejection order of Respondent (Registrar of Firms) was set aside, and the Court directed respondent to reconsider the request of petitioner for registration** and to take appropriate action on the same **within a period of one month** from the date of receipt of a copy of the judgement.

SEBI

Order of Adjudicating Officer of Securities and Exchange Board of India

Name of the Case: In the matter of complaint of Mr. Manoj Dharamdas Shah. In respect of M/s. Eicher Motors Ltd

Facts of the case

1. Securities and Exchange Board of India (SEBI) received a complaint dated June 28, 2015 from Mr. Manoj Dharamdas Shah (the Complainant), who claimed to be a *bonafide* existing shareholder of Eicher Motors Limited (Eicher/ Issuer Company/the Noticee), a listed company. As per the Complainant, he was holding the shares of the Noticee since May 07, 1991 and had the original certificate with him. The Complainant submitted shares of the Noticee for

dematerialization on January 06, 2015. Request of Complainant was rejected by the Registrar and Share Transfer Agent ('RTA') MCS Ltd ('MCS') on January 19, 2015 on the pretext that duplicate share certificate in respect of those shares had already been issued. However, the Complainant contended that he had never applied for issue of duplicate share certificate. MCS was RTA of Eicher from 2005-2015.

2. The Complainant *inter alia* alleged that the Issuer Company and MCS had cheated him by changing his address and signature in their records, issuing duplicate share certificates for 100 shares of Eicher belonging to him and thereafter illegally transferring the said shares in the name of one Mr. Vijay Ratnakar Humbre.
3. SEBI then conducted a preliminary examination in the matter. During investigation MCS stated that during March 2007, it had received a request in the name of Manoj D. Shah for change of address as well as signature. Subsequently, MCS received another request for duplicate share certificate along with various documents (i.e. copy of FIR, letter of indemnity and Affidavit) during September 2007 in which signatures of Mr. Manoj D. Shah were tallying with the specimen signature in the records of MCS. The said documents were processed by MCS and the same were sent to Eicher for approval. On receipt of approval, duplicate share certificate was issued to Manoj D. Shah on October 27, 2007 and dispatched to his address. On receipt of duplicate share certificate, Manoj D. Shah had transferred the same to one Mr. Vijay R Humbre on December 04, 2007, who later dematerialized the same.
4. On further examination SEBI observed that Eicher or MCS could not produce any document pertaining to the request for change of signature and address of Manoj D. Shah, purportedly received in March 2007, or any communication sent to him to verify the old as well as the new address and they claimed that the same were untraceable.
5. On further investigation SEBI observed that in the documents obtained by MCS for issuing duplicate share certificate, the name of the shareholder had been mentioned as Manoj Dayalal Shah, whereas the name of the complainant/actual shareholder was Manoj Dharamdas Shah. SEBI further stated that all the documents mentioned Manoj D. Shah's father's name as "Dayalal Shah" whereas in the permanent records of Eicher, the same was captured as "Dharamdas Shah". MCS submitted that the Complainant's name was recorded as Mr. Manoj D. Shah and it had presumed that "D" stood for "Dayalal" in the Complainant's name. Further it was found by SEBI that Duplicate Share Certificate request was approved by Eicher in the meeting of Shares Committee on October 27, 2007. Eicher and MCS submitted that while issuing duplicate share certificate, the name of the shareholder, address, FIR, notarization etc. were relied upon in good faith.
6. SEBI further investigated Mr. Manhar Kapoor, the Chief Compliance Officer of the Noticee. He vide his statement recorded on September 28 2015

admitted that there was an error in not comparing the father's name. SEBI further stated that indemnity/FIR/ affidavit copy obtained while processing the request for issuance of duplicate shares of Manoj D Shah were not proper and MCS had processed the request while Eicher had approved the issuance of duplicate shares without receipt of proper indemnity. Further SEBI observed that, Eicher had not issued new certificate for the lost certificate within six weeks of notification of loss, as required under the provisions of Clause 3 (e) of Listing Agreement.

7. Pursuant to this SEBI vide its order dt: October 27, 2016 directed Eicher to reinstate disputed shares in lieu of proper indemnity of the Complainant and submit compliance report within one month. Eicher appealed against this order before Hon'ble Securities Appellate Tribunal (SAT). The Hon'ble SAT had set aside the said order of SEBI on February 02, 2017 on the ground that the impugned order was an ex-parte order passed without hearing the appellant. Consequently, the Hon'ble SAT directed SEBI to pass a fresh order on merits and in accordance with law. Accordingly, SEBI issued a show cause notice (SCN) dated April 04, 2018 calling upon the Noticee to show cause as to why appropriate directions under Section 11B of the SEBI Act, 1992 (SEBI Act) should not be issued against it for the aforesaid violations. SEBI in SCN has also stated that it had done a limited purpose inspection of MCS on May 12, 2014 pursuant to some media reports. In this it found that

MCS entertained a total of 22 requests for issuance of duplicate shares, illegal transfer and dematerialization of shares, out of which 6 requests were for issuance of duplicate shares which had a cumulative value of Rs. 95,20,000/-. The inspection also revealed that signature records were not available with MCS and nor were any advertisements issued in any widely circulated newspaper with regard to the abovementioned requests.

Charges levied: Noticee had violated the following provisions:-

1. Failure to exercise due skill, care and diligence while issuing duplicate share certificates
2. Clause 23 of General Norms for Processing of Documents as prescribed under RTI Circular no. 1 (2000-2001) dated May 09, 2001 – non publication of newspaper notice before issuing duplicate share certificates where value exceeds Rs. 10,000/-
3. SEBI Circular SMDRP/POLICY/CIR-46/2001 dated September 27, 2001 (incorporated in Master Circular CIR/MRD/DP/9/2015 dated May 26, 2015) - if investor complains about issuing duplicate share certificates by Company on the basis of allegedly forged/stolen documents by a third party, the Company needs to verify and satisfy itself of the claim of the investor, within 15 days of receipt of claim and take steps for invoking the indemnity bond to issue shares and corresponding benefits to the rightful owner
4. Clause 3 (e) of Listing Agreement – Not issuing new share certificate, in

replacement of that which was lost, within 6 weeks of notification of loss.

Arguments made by Eicher

1. **RTA acts as an interface between the company and its shareholders and is responsible and accountable for undertaking the entire process of transfer:** Eicher submitted that SEBI registered RTA, nominated by a company in accordance with the SEBI guidelines, acts as an interface between the company and its shareholders. RTA is responsible and accountable for undertaking the entire process of transfer or transmission of shares and related or ancillary activities. The RTA acts independently of the company and strictly in accordance with the guidelines issued by SEBI on the matter. Company has almost no role in the process of transfer of shares and related activities. Eicher further submitted that the relationship between the company and RTA is statutory in nature in as even the contract between these two entities is prescribed by SEBI. The agreement specifying the relationship between the Company and RTA, the roles and responsibilities of both the parties is also prescribed and governed by SEBI, with no choice with Company to modify it. This agreement is not in the nature of contract of service, but it is more of contract for service, where the agent is supposed to work independently. RTA is responsible and accountable for undertaking the entire process of transfer or transmission of shares and related or ancillary activities. Eicher submitted that it cannot be
2. **Non-compliance with Circular no. SMDRP/POLICY/CIR-46/2001 dated September 27, 2001 (incorporated in Master Circular CIR/MRD/DP/9/2015 dated May 26, 2015) - to verify and satisfy itself of the claim of the investor, within 15 days of receipt of claim and take steps for invoking the indemnity bond to issue shares and corresponding benefits to the rightful owner:** Eicher contended that with regard to issuance of duplicate share certificate, MCS in its email dated July 15, 2015 has admitted that the documents for issuance of duplicate share certificate as received from the alleged impersonator were scrutinized and processed by MCS and upon being satisfied with the submissions, MCS forwarded the details of the approved case to the Company for necessary formalities of passing a resolution by Committee of Directors and signing of the duplicate share certificate. Eicher further contended that from MCS's email dated July 22, 2015 as referred to in the SCN, it is evident that the case of Manoj D. Shah was processed entirely by MCS and post processing, the approval from the company was sought.

Further on receipt of Complaint on July 15, 2015 from Mr Manoj D. Shah on SCORES Platform claiming fraudulent transfer of shares in view of the purported fraud/forgery, the Company filed a complaint with the SHO, Saket Police Station, New Delhi against the alleged impersonator and Mr. Vijay R

Humbre for committing the offences of cheating, theft, forgery, fabrication and impersonation. The Company also filed a fresh complaint with the Senior Inspector of Police, Dindoshi Police Station at Mumbai on February 25, 2016 since the transaction had happened at Mumbai. The investigation in the matter is still going on by the police authorities. Eicher contended that it had complied with SEBI Circular dt: September 27, 2001.

3. **SEBI Circular no. 1 (2000-2001) dated May 09, 2001 used the phrase ‘Company/STA’ – Non publication of newspaper notice before issue of duplicate share certificates having value more than Rs. 10,000/-:** Noticee contended that SEBI Circular no. 1 (2000-2001) dated May 09, 2001 which provides for uniform procedures or practices adopted by companies and their registrars to issue/share transfer agents for handling and processing of transfer documents etc., had envisaged its applicability on the listed companies which were involved in in-house processing of share transfers and related work. SEBI was mindful of the fact that some listed entities had by then outsourced the transfer related work to third party. Therefore, while detailing the norms for processing of documents and share transfers, the circular has deliberately used the phrase ‘Company/STA’ signifying company or transfer agent, as the case may be. Noticee further contended that in the event any company is carrying out the stipulated work in-house, these norms for processing have to be followed by the company but in case it has appointed transfer agent, the norms are to be

followed by such transfer agent. Noticee further stated that this interpretation also finds support from the fact that SEBI has on earlier occasions held the transfer agents to be exclusively responsible for compliance with the above circular in respect of share transfer related work for their client companies. The expression “Company/STA”, used in various SEBI Circulars, do not provide for over lapping of activities and the symbol “/” has been cautiously incorporated to mean ‘either of the RTA or the Company’ and can in no manner be construed to mean ‘both RTA and Company’ or the company ‘exclusively’. SEBI has proceeded in a prejudiced manner as if the Company had been exclusively or jointly with RTA, responsible for the same. There have been numerous judicial precedents contradicting this theory. The term ‘RTA/Company’ has been inducted in the said circular as a well-thought-out term to prosecute the RTA or the Company ‘as the case may be’ and not otherwise. In all cases, the RTAs have been held responsible for violation of SEBI circulars and guidelines relating to the share transfer work and not the companies for whom they are appointed.

4. **Compliant has been withdrawn:** The SCN in this matter has been issued to the Company on a purported complaint by one Mr. Manoj Dharamdas Shah regarding his shareholding in the Company. However, the Complainant has withdrawn his complaint against the Company and has issued a no objection certificate in this regard. Thus, the SCN has become infructuous and is liable to be withdrawn.

Arguments made by SEBI

1. **RTA acts as an interface between the company and its shareholders and is responsible and accountable for undertaking the entire process of transfer:** SEBI observed that the Noticee has repeatedly contended that since it had appointed a SEBI registered RTA which is regulated by SEBI and is governed by the provisions of the RTA Regulations and other guidelines, it cannot be held responsible for any lapses in respect of any procedural lapses. However, SEBI refused to accept this argument of the Noticee. **SEBI further stated that while the provisions of RTA Regulations and various Circulars issued by SEBI regulate the functioning of an RTA, the same do not dilute the responsibility of the Company in any manner. The mere fact that an RTA is registered with and regulated by SEBI does not lessen the liabilities and obligations of a company in any manner.** In the given case of Manoj D. Shah, the Noticee has admitted that the details pertaining to request for issuance of duplicate shares, after being processed at the RTA's end, were forwarded to the Noticee for approval and such approval was accorded by the Shares Committee of the Company. **The fact that the Shares Committee of the Company approved the issuance of duplicate share certificate in case of Manoj D. Shah despite the apparent errors in the supporting documents (i.e. incorrect father's name) and in the absence of a newspaper advertisement shows that the Company did not exercise reasonable skill, care and diligence.** Further, since it had failed to ensure the

issuance of newspaper advertisements in the six other cases as mentioned in the SCN. The Noticee cannot shift the liability for contravention of Clause 23 of General Norms for Processing of Documents as prescribed under RTI Circular no. 1 (2000-2001) dated May 09, 2001 to MCS. **The Company being the principal entity in respect of issuance of shares, it remains jointly responsible with the RTA for any lapse.** This is more so in such cases where the procedures pertaining to transfer of shares necessarily involve both the RTA and the company. SEBI further stated that a company has to exercise due diligence and care while considering any proposal received from its RTA, irrespective of whether RTA has given its approval or not. This exercise should not be carried out in a perfunctory manner by the Company.

2. **Non-compliance with Circular no. SMDRP/POLICY/CIR-46/2001 dated September 27, 2001 (incorporated in Master Circular CIR/MRD/DP/9/2015 dated May 26, 2015) while issuing duplicate share certificate - to verify and satisfy itself of the claim of the investor, within 15 days of receipt of claim and take steps for invoking the indemnity bond to issue shares and corresponding benefits to the rightful owner AND Clause 3 (e) of Listing Agreement – Not issuing new share certificate, in replacement of that which was lost, within 6 weeks of notification of loss:**

SEBI stated that as per Circular no. SMDRP/POLICY/CIR-46/2001 dated September 27, 2001 (incorporated in Master Circular CIR/MRD/DP/9/2015

dated May 26, 2015) where the investor has complained about issuing of duplicate share certificate(s) by the company on the basis of allegedly forged /stolen documents furnished by a third party, the company shall verify and satisfy itself of the claim of the investor, within 15 days of receipt of the claim and take steps including invoking of indemnity bond to issue shares and corresponding benefits to the rightful owner in terms of section 84 of the Companies Act read with Rule 3 of the Companies (Issue of Share Certificates) Rules, 1960. SEBI further stated that except for filing a criminal complaint in the matter, Eicher has not done anything to satisfy itself of the claim of the Complainant. It further stated that the Noticee has not invoked the indemnity bond to issue shares and corresponding benefits to the rightful owner. SEBI further stated that the Noticee is also alleged to have violated the provisions of Clause 3(e) of the Listing Agreement, which required a company to issue new share certificate to in replacement of that which was lost, within six weeks of notification of loss. Admittedly, the Noticee has not issued duplicate shares to the Complainant. In this regard, SEBI noted the Company has not taken any concrete steps for restoration of shares and consequent benefits to the Complainant Manoj D. Shah. Thus, the allegation of violation of abovementioned provisions of SEBI Circular dated September 27, 2001 and the Listing Agreement stood established.

3. SEBI Circular no. 1 (2000-2001) dated May 09, 2001 used the phrase 'Company/STA' - Non publication

of newspaper notice before issue of duplicate share certificates having value more than Rs. 10,000/-: SEBI noted that Clause 23 of General Norms for Processing of Documents as prescribed under RTI Circular no. 1 (2000-2001) dated May 09, 2001, requires “issue of advertisement in widely circulated newspaper when value of shares is greater than ₹ 10,000”. SEBI further stated that Eicher has admitted that no notice was published in any newspaper informing general public about loss of original share certificate, even though the value of shares exceeded ₹ 10,000. SEBI stated that even though Circular no. 1 (2000-2001) dated May 09, 2001 uses the phrase ‘Company/STA’ at multiple places it refers to the phrase “The Company/STA” while prescribing how various functions relating to processing of documents have to be discharged. **SEBI denied Noticee’s submission that the said phrase has been used to squarely mean “company or transfer agent, as the case may be”.** SEBI stated that the company, being the issuer of the securities, has the primary responsibility in respect of all issues concerning the transfer of shares and the RTA merely acts as its agent to whom such functions can be outsourced. Also Rule 4(3) of the Companies (Issue of Share Certificates) Rules, 1960, which was applicable at the relevant time, provided that “*No duplicate share, certificate shall be issued in lieu of those that are lost or destroyed without the prior consent of the Board or without payment of such fees, if any, not exceeding ₹ 2 and on such reasonable terms if any,*

as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence as the Board thinks fit.” The said provision clearly mentions about company’s responsibilities in case of issuance of duplicate shares. Further, Regulation 9A(b) of the RTA Regulations provides for execution of an agreement between the company and RTA allocating the duties and responsibilities between the RTA and the company. Further, Clause 14 of the Model Draft Agreement between the STA and the Company, as provided in Annexure B of the RRTI Circular: No. 1 (94-95) dated 11-10-1994 clearly indicates that *“Company is primarily responsible for the work of share transfer work assigned to STA.”* From the abovementioned points, it is clear that in matters pertaining to transfer of shares and issuance of duplicate share certificates, the legal provisions put the primary responsibility on the Company. It therefore logically follows **that the phrase “Company/STA” used in the said SEBI Circular dated May 09, 2001 implies a joint responsibility of the issuer company and its RTA in**

ensuring that all due procedures are followed.

4. **Compliant has been withdrawn:** SEBI stated that Complainant in this case has withdrawn his complaint against the Company. Due to this withdrawal of Compliant cause of action no longer survives and the grant of any relief to the Complainant became infructuous. Hence, SEBI stated that it is not inclined to pursue the matter any further against the Noticee. SEBI further warned the Noticee to exercise due care and caution and ensure adherence to all applicable norms in matters pertaining to issuance of duplicate shares henceforth.

Held by SEBI: Matter disposed off without penalty but with a warning to Company to exercise due care and caution henceforth.

Cases referred by Eicher: SEBI order dated 29.06.2015 in the matter of ‘Knack Corporate Services Private Limited’ and the order of the Hon’ble SAT in the case of *‘Parsoli Corporation Ltd. vs. SEBI’ (Appeal No. 146 of 2010 dated 12.08.2011)*.

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