

Discretionary Power of Directors to refuse 'Transfer of Shares' is not to be resorted to in a deliberate or arbitrary fashion but in good faith.

November 12, 2020	<i>M/s Vintage Hotels Private Limited & Ors. (Appellants) vs. Mr. Ahamed Nizar Moideen Kunhi Kunhimahin (Respondent)</i>	NCLAT
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Fact of the case

The Respondent herein is an existing shareholder and also one of the Directors of the First Appellant Company. It transpires from the contents of affidavit of 'T. Shahul Hameed' dated 10.04.2015 that he was holding 20,000 equity shares of Rs. 100/- each of the First Appellant Company and that he had transferred the aforesaid shares to 'Mr. Ahamed Nizar Moideen Kunhi Kunhimahin' and further that the 'Share Certificates' were lost and were not in his possession. The deponent of 'Affidavit' (T. Shahul Hameed) had averred that he had made a request to the First Appellant Company to issue duplicate share certificates in lieu of the original share certificates in the name of Respondent.

The First Appellant Company through its communication dated 30.10.2015 had rejected the request for transfer of the shares in the name of Respondent. The Appellants submitted that in the 'Share Transfer Form' SH-4 furnished by the Respondent, the distinctive number of the share was not mentioned, corresponding certificate numbers were not mentioned, witness signature and name was not found, and the Transferee's details were not mentioned. Further, the 'Allotment Letter' or the 'Original Share Certificate' was not enclosed with the share transfer form.

Respondent contended that the Board of Directors had not issued the duplicate share certificates even though request was made by the transferor.

Judgment

The NCLAT observed the discretionary power to refuse 'Transfer of Shares' is not to be resorted to in a deliberate, arbitrary, fraudulent, ingenious or capricious fashion. As a matter of fact, the Directors are to exercise their discretion in good faith and to act in the interest of company. The Directors are to give due weightage to shareholder's right to transfer his share.

When the original share certificates were lost, it is not prudent for the Appellants to insist upon the production of original share certificates in question to give effect to the transfer of shares. Thus, the NCLAT **upheld the order passed by the NCLT, Bengaluru bench and dismissed the present appeal.**