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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 15.12.2023

+ CS(COMM) 166/2023

SHASHVAT NAKRANI

..... Plaintiff

Through: Mr. Jayant Mehta, Sr. Adv. alongwith
Mr. Raghavendra M. Bajaj, Mr.
Sidhant Goel, Mr. Mohit Goel, Ms.
Garima Bajaj, Mr. Nikhil Bamal, Mr.
Agnish Aditya, Mr. Kumar Karan,
Mr. Shagun Agarwal, Mr. Deepankar
Mishra, Mr. Karmanya Dev Sharma
and Ms. Ayushi Kumar, Advs.

versus

ASHNEER GROVER

..... Defendant

Through: Mr. Giriraj Subramaniam, Mr.
Shonak Sharma, Mr. Simarpal Singh
Sawhney, Mr. Siddhant Juyal and Ms.
Urvashi Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

IA No. 5683/2023 (on behalf of the plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908, read with Section 151 of the Code of Civil Procedure, 1908, for ad interim *ex-parte* injunction)

1. The present suit has been filed by the plaintiff seeking (i) a declaration that the (alleged) oral agreement entered into between the plaintiff and defendant on 02.07.2018 (“Agreement”) in respect of the plaintiff’s (then) Two Thousand Four Hundred and Forty Seven (2,447) equity shares in Resilient Innovations Private Limited (“RIPL”), which, as a



result of a share-split and a bonus share issue, today stand at Twenty Seven Thousand Six Hundred and Twenty Seven (27,627) equity shares (hereinafter, the “plaintiff’s shares”), stands rescinded and terminated in accordance with law and contract, and consequently has become void.

2. The plaintiff has further sought a declaration that “Form SH-4”, dated 02.07.2028 (hereinafter, the “Form SH-4”), executed by the plaintiff in favour of the defendant pursuant to the Agreement be declared to be void and liable to be cancelled; and a further declaration that the plaintiff continues to be the owner of the plaintiff’s shares, together with all rights that accrue in respect thereof. The plaintiff has also sought permanent prohibitory injunctions restraining the defendant (including his attorneys, assigns, successors-in-interest, agents, authorized persons or anyone acting for and/or on his behalf) from alienating, transferring, selling, creating any encumbrance, third-party rights or any other interest of any kind whatsoever in the plaintiff’s shares, or otherwise dealing with the plaintiff’s shares in any manner whatsoever; restraining the defendant from exercising any rights of any kind whatsoever in respect of the plaintiff’s shares; and restraining the defendant from (wrongly) professing, or claiming to be, the owner of the plaintiff’s shares amongst the public at large in any manner whatsoever. Alternative relief seeking compensation and damages has also been claimed by the plaintiff.

3. Alongwith the suit, the plaintiff has also filed an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908, *inter alia*, seeking as follows :-

“a) An interim injunction restraining the defendant, including his attorneys, assigns, successors-in-interest, agents, authorized persons or anyone acting for and/or on his behalf, from alienating, transferring,



selling, creating any encumbrance, third-party rights or any other interest of any kind whatsoever in the Plaintiff's Shares, or otherwise dealing with the Plaintiff's Shares in any manner whatsoever;

b) An interim injunction restraining the Defendant, including his attorneys, assigns, successors-in-interest, agents, authorized persons or anyone acting for and/or on his behalf, from exercising any rights of any kind whatsoever in respect of the Plaintiff's Shares;

c) An interim injunction restraining the Defendant, including his attorneys, assigns, successors-in-interest, agents, authorized persons or anyone acting for and/or on his behalf, from (wrongly) professing, or claiming to be, the owner of the Plaintiff's Shares amongst the public at large in any manner whatsoever;

d) It is further respectfully prayed that in view of the facts and circumstances of the present case and in the interest of justice and public interest, an ex parte order in the aforementioned terms may kindly be granted; and

e) Any further order that the Hon'ble Court may deem fit in the interest of justice.”

4. The factual background in the context of which the present suit alongwith the aforesaid instant IA No.5683/2023 has been filed, is briefly enumerated hereunder.

5. In August 2016, the plaintiff and Mr. Bhavik Koladiya are stated to have established “M/s EZY Services”, a partnership firm, in which the plaintiff had 40% shares and Mr. Bhavik Koladiya had 60% shares. It is averred in the plaint that on 20.03.2018, in order to formalize the structure of the business and to make the structure more investor friendly, the plaintiff and Mr. Bhavik Koladiya, jointly founded and incorporated “RIPL” as a private limited company with an equal shareholding of 5000 equity shares each. M/s EZY Services is stated to have assigned all rights, title and interest, together with goodwill in its brand “BharatPe” to RIPL. It is stated that in May 2018, the defendant was hired as a CEO of RIPL. It is averred in



the plaint as follows:-

*“12. **It was agreed that the Plaintiff would transfer to the Defendant Two Thousand Four Hundred and Forty-Seven (2,447) equity shares in RIPL, together with all rights attached to them (already defined in the Plaint as the "Plaintiff's Shares"), for Rupees Ten (INR 10) per equity share, payable as consideration. This would translate into a total consideration of Rupees Twenty-Four Thousand Four Hundred and Seventy (INR 24,470) (hereinafter, the "Purchase Consideration") for Twenty-Four Point Four Seven Percent (24.47%) shares in RIPL (this agreement is already defined in the Plaint as the "Agreement"). It was also decided that Mr. Koladiya would transfer to the Defendant Seven Hundred and Forty-Five (745) equity shares in RIPL, together with all rights attached to them, for Rupees Ten (INR 10) per equity share, payable as consideration, which would translate into a total consideration of Rupees Seven Thousand Four Hundred and Fifty (INR 7450) for Seven Point Four Five Percent (7.45%) shares in RIPL.***

13. Accordingly, pursuant to the Agreement, on 02 July 2018, the Plaintiff executed a Form SH-4 in favour of the Defendant in respect of the Plaintiff's Shares. However, the Defendant did not pay the Purchase Consideration to the Plaintiff by any mode, including by way of cash, in any form or manner.

14. Details of the Plaintiff's Shares are provided below :

DETAILS OF SALE SHARES

<i>Folio Number of Shares</i>	<i>Class of Sale Shares</i>	<i>Distinctive Number of Sale Shares</i>
<i>02</i>	<i>Equity Shares</i>	<i>7,554 to 10,000</i>

6. It is averred that pursuant to the Agreement dated 02.07.2018, the plaintiff executed the statutorily prescribed “Form SH-4” in favour of the defendant in respect of the plaintiff’s shares. However, while executing “Form SH-4”, dated 02.07.2018, the plaintiff did not receive the purchase consideration from the defendant by any mode, including by way of cash or in any form or manner, even though the standard form of the statutorily prescribed “Form SH-4” reflected payment of consideration under the



column titled “consideration received”. A copy of the “Form SH-4” stated to have been executed on 02.07.2018, has been filed alongwith the documents accompanying the plaint and is reproduced hereunder:-

“Form No. SH-4

Securities Transfer Form

[Pursuant to section 56 of the Companies Act, 2013 and sub-rule (1) of rule 11 of the Companies (Share Capital and Debentures) Rules 2014]

Date of Execution 02/07/2018

FOR THE CONSIDERATION stated below the “Transferor(s)” named do hereby transfer to the “Transferee(s)” named the securities specified below subject to the conditions on which the said securities are now held by the transferor(s) and the Transferee(s) do hereby agree to accept and hold the said securities subject to the conditions aforesaid.

CIN:	(not legible)
Name of Company (in full):	Resilient Innovations Private Limited
Name of the Stock Exchange where the company is listed, if any:	Not applicable

DESCRIPTION OF SECURITIES

Kind/Class of Securities (1)	Nominal Value of each unit of security (2)	Amount called up per unit of security (3)	Amount paid up per unit of security (4)
Equity Shares	Rs.10/-	Rs. 10/-	Rs. 10/-
No. of Securities being transferred		Consideration received (Rs.)	
In figures	In words	In words	In figures
2447	Two Thousand Four Hundred Forty Seven	Rupees Twenty Four Thousand Four Hundred Seventy Only	Rs. 24, 470/-

Distinctive Number	From	7554					
	To	10000					
Corresponding Certificate No.							

Transferor's Particulars:-

Registered Folio No.	02	
Sr. No.	Name(s) in full	Signature(s)
1.	Shashvat Munsukhbhai Nakrani	Sd/-

I, hereby confirm that the Transferor has signed before me.

Signature of witness
Name and address



<i>Transferee's Particulars:-</i>					
<i>Name in Full</i>	<i>Father's/ Mother's/ Spouse Name</i>	<i>Address & Email Id</i>	<i>Occupation</i>	<i>Existing Folio No, if any</i>	<i>Signature</i>
<i>1.</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
<i>Mr. Ashneer Grover</i>	<i>Mr. Ashok Grover</i>	<i>B-1/36, 2nd Floor, Malviya Nagar, New Delhi – 110017 Ashneergrover@gmail.com</i>	<i>Business</i>	<i>NA</i>	<i>Sd/-</i>

Folio No. of Transferee: 03

Specimen Signature of Transferee

1 sd/-

2 sd/-

3 sd/-

Value of stamp affixed

Enclosures.

(1)Certificate of shares or debentures or other Securities”

7. It is averred that although the aforesaid “Form SH-4” expressly mentions the amount of purchase consideration under the column titled “consideration received”, as a matter of fact, the plaintiff did not, receive such consideration.

8. It was submitted that the defendant represented and assured the plaintiff that the defendant would pay the purchase consideration in due course. The suit proceeds on the basis that since the purchase consideration was not paid, the property/title in the plaintiff’s shares did not pass on to the defendant; consequently, the plaintiff purports to treat the aforesaid transaction as repudiated.

9. In support of his contention that the purchase consideration was not paid, the plaintiff has sought to file the bank statement of all the plaintiff’s



accounts in which the defendant could have paid the purchase consideration.

10. In the above background, the plaintiff purported to exercise its rights to rescind and terminate the aforesaid agreement and treat “Form SH-4” dated 02.07.2018 as cancelled and issued a “Rescission and Termination Notice” dated 18.03.2023. In the said notice, it has been stated as under:-

<p>“Raghavendra Mohan Bajaj Advocate Garima Bajaj Advocate on Record</p>	<p>D-256, LGF, Defence Colony, New Delhi-110024. Email: raghavendrambajaj@gmail.com Mobile No. 9810248083 Office No. 011-40159656 & 9810048083 Office email: off.rmb@gmail.com</p>
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By Email, Courier, Speed Post and WhatsApp

<p>To Mr. Ashneer Grover N-114, Second Floor, Panchsheel Park, New Delhi-110017 Email Address: ashneer.grover@icloud.com and ashneer.grover@gmail.com Phone Number: 9560024869</p>	<p>18th March 2023</p>
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Re: Notice for Rescission and Termination of the agreement,
dated 02 July 2018 on behalf of Mr. Shashvat Nakrani.

Dear Mr. Grover:

We write on behalf of, and under instructions from, our Client, Mr. Shashvat Nakrani (hereinafter, “our Client”), with reference to the agreement entered into (“Agreement”) between our Client and you on 02 July 2018 in respect of sale/purchase of our Client’s (then) Two Thousand Four Hundred and Forty Seven (2,447) equity shares in Resilient Innovations Private Limited (“RIPL”), which, as a result of a share-split and a bonus share issue, today stand at Twenty Seven Thousand Six Hundred and Twenty Seven (27,627) equity shares (hereinafter, “our Client’s Shares”). For the purpose of fixing consideration under the Agreement, each of our Client’s Shares were valued at Rupees Ten (INR 10); thereby making the aggregate consideration payable under the Agreement for our Client’s Shares as Rupees Twenty Four Thousand Four Hundred and Seventy (INR 24,470) (hereinafter, the “Purchase Consideration”).

Pursuant to the Agreement, our Client performed his obligations in their entirety on 02 July 2018 by executing the necessary forms, namely, Form No.SH-4 (Securities Transfer Form), dated 02 July 2018, to give effect to the transaction in respect of our Client’s Shares in your favour, believing in good faith that you would pay the Purchase Consideration to our Client. However, without having paid the Purchase Consideration to our Client, you took



advantage of our Client's performance of all his obligations under the Agreement, and got your name recorded in the register of share transfer, and register of members, of RIPL in respect of our Client's Shares.

Since the execution of the Agreement, and having taken advantage of our Client having signed the Form SH-4, you have failed to pay to our Client the Purchase Consideration for our Client's Shares by any mode. This is despite the fact that the payment of the consideration is a condition of any such agreement, and that too, a concurrent condition. You have even failed to pay the Purchase Consideration to our Client within a reasonable period of time after the Agreement was entered into. The Purchase Consideration remains unpaid even as on date.

You have made multiple representations and statements in public asserting ownership and title over our Client's Shares despite not having made payment of the Purchase Consideration to our Client. In your statements, you have not even acknowledged or recognized any obligation towards our Client under the Agreement, or otherwise. Similar statements have thereafter been made by you in your book, titled 'Doglapan' that was made available to the public in the month of December 2022.

In view of the complete and substantial failure on your part to pay the Purchase Consideration under law, property/title in our Client's Shares has not passed on to you, notwithstanding the execution of the Form SH-4, dated 02 July 2018. Further, the false statements being made by you in public about your title and ownership of our Client's Shares, as stated above, evidence a complete refusal by you to pay the Purchase Consideration. You have also disabled yourself from performing the Agreement.

Accordingly, our Client, with immediate effect, hereby rescinds and terminates the Agreement because of your fundamental breach, non-performance and repudiation of the Agreement, which goes to the root of the Agreement.

As a result of the above, the Form SH-4, dated 02 July 2018, is void, given that property/title over our Client's Shares never stood transferred to you. Thus, the Form SH-4, dated 02 July 2018, is liable to be declared as such. Accordingly, our Client continues to be the legal and beneficial owner of our Client's Shares together with all rights that have accrued in respect of our Client's Shares. You are liable to restore to our Client the advantage that you have gained under the Agreement. This includes recording of ownership over our Client's Shares, together with all rights attached to them, by RIPL in its records as well as in the records of the appropriate authorities. Our Client is also entitled to all other rights that may get attached with our Client's Shares from time to time.

Consequently, our Client also seeks and demands that you cease and desist from (a) alienating, transferring, selling, creating any encumbrance, third-party rights or any other interest of any kind whatsoever in our Client's Shares, or otherwise dealing with our Client's Shares in any manner whatsoever, (b) exercising any right of any kind whatsoever in respect of our Client's Shares, and (c) wrongly professing, or claiming to be, the owner of our Client's Shares amongst the public at large in any manner whatsoever. Our Client further reserves his right to alternatively claim compensatory damages arising out of your fundamental breach, non-performance and repudiation of



the Agreement, on account of which the Agreement has been rescinded and terminated by our Client, and has become void.

All rights are reserved.

Yours sincerely,

Raghavendra Mohan Bajaj and Garima Bajaj

(Advocates)

Email: raghavendrambajaj@gmail.com”

11. The defendant replied to the aforesaid termination notice on 19.03.2023, stating as under :-

“3. That it would appear that your Client has not placed the correct facts before you and further your Client appears to be mistaken with respect to the position of law. In response to the misconceived and obfuscating contents of your Notice dated 18th March 2023; I wish to place the correct sequence of events and position of law before you and your Client;

i. That on the execution of the agreement dated 2nd July 2018 in respect to the sale and/or purchase of Two Thousand Four Hundred Forty Seven (2,447) equity shares of your Client in M/s. Resilient Innovations Private Limited (hereinafter referred to as “subject equity shares”) in favor of my Client, the consideration amount of INR Twenty Four Thousand Four Hundred and Seventy (INR 24,470/-) (hereinafter, referred to as “consideration”) was then and there paid in cash by my Client to your Client.”

12. In the above background, the present suit came to be filed seeking the above mentioned prayer(s).

13. The defendant has filed a written statement, wherein, it has been averred as under :-

“11.It is humbly submitted that out of the three thousand one hundred and ninety-two (3,192) equity shares, the Plaintiff and the Defendant orally agreed on 02 July 2018 that the Plaintiff would transfer to the Defendant two thousand four hundred and forty-seven (2,447) to them for Rupees Ten (INR 10) per equity share, payable as consideration. That this translated into a total consideration of Rupees Twenty-Four Thousand Four Hundred and Seventy (INR 24,470) (hereinafter, the “Purchase Consideration”) for Twenty- Four Point Four Seven Percent (24.47%) shares in RIPL (this agreement is defined as the “Agreement”). That remaining equity shares were transferred by Mr. Koladiya by way of a separate agreement between him and the Defendant which is not a



part of the present dispute.

12. That pursuant to the Agreement, the Plaintiff admittedly executed a Form SH-4 in favour of the Defendant in respect of the Plaintiff's shares Two Thousand Four Hundred and Forty Seven (2,447) equity shares in RIPL. It is submitted that the Defendant paid the purchase consideration in cash then and there to the Plaintiff in pursuance of the agreement dated 02 July 2018.

13. It is humbly submitted that after almost 5 years the Plaintiff has come up with this bogus and baseless suit on the ground that the Defendant did not pay the purchase consideration in lieu of the equity shares transferred by him to the Defendant. However, the Plaintiff has failed to attach even one document in the present Plaint wherein the Plaintiff has demanded the payment of the purchase consideration from the Defendant evincing the fact that the purchase consideration had already been paid to the Plaintiff by the Defendant.

14. It is humbly submitted that the entire suit of the Plaintiff falls flat on this ground alone that the purchase consideration had already been paid by the Defendant and now the Plaintiff is perjuring himself by making a clearly false averment that the purchase consideration was not paid to him. That to demonstrate the same, the Defendant seeks to rely upon the Plaint filed by the Company i.e. RIPL against the Defendant and his family members in the matter captioned as "Resilient Innovations Private Limited v. Madhuri Jain Grover and Ors." bearing CS (OS) No. 771 of 2022 pending before this Hon'ble Court. It is pertinent to mention herein that the above captioned suit has been filed under the affidavit of the Plaintiff acting as the Authorised Representative of the Company.

15. It is submitted that the Para No. 9 of the above mentioned suit filed by RIPL under affidavit of the Plaintiff herein clearly states that "Defendant No. 2's association with the Plaintiff began on 2 July 2018, when he became a shareholder of the Plaintiff by contributing a paltry sum of INR 31,920 against which he was transferred 3,192 shares in the Plaintiff company." For clarity, it is submitted that the Defendant had paid INR 24,470 to the Plaintiff herein for transfer of his 2,447 equity shares for INR 10 per equity share as consideration and similarly, the Defendant has paid INR 7,450 to Mr. Koladiya for transfer of his 745 equity shares for INR 10 per equity share as consideration cumulatively amounting INR 31,920 for transfer of 3,192 shares in the Company.

16. It is humbly submitted that this leads to the inexorable conclusion that the Plaintiff had admittedly been paid the purchase consideration by the Defendant as admitted by the Plaintiff himself. Hence under no



circumstances can the Plaintiff now claim that the purchase consideration had not been paid by the Defendant when in another suit pending before this Hon'ble Court the Plaintiff, as an authorised representative of the Company, has claimed and affirmed that the Defendant had in fact "contributed" a paltry sum on INR 31,920 to become a shareholder of the Company, the said statement has been reaffirmed by the Plaintiff in his Replication(supported by the duly affirmed affidavit of the Plaintiff) to the Written Statement filed by the Defendant herein. That the relevant para of the Suit captioned as "Resilient Innovations Private Limited v. Madhuri Jain Grover and Ors." bearing CS (OS) No. 771 of 2022 has been reproduced below for the kind consideration of this Hon'ble Court:

"9. Defendant No. 2's association with the Plaintiff began on 2 July 2018, when he became a shareholder of the Plaintiff by contributing a paltry sum of INR 31,920 against which he was transferred 3,192 shares in the Plaintiff company. On 5 November 2018, Defendant No. 2 was appointed as a Director of the Plaintiff. On 12 December 2018, he was appointed as the CEO of the Plaintiff pursuant to an Employment Agreement dated 12 December 2018 ("2018 Employment Agreement"). The 2018 Employment Agreement provides that Defendant No. 2 would be responsible for primarily leading and directing the management of the Plaintiff, with substantial control over its key operational decisions, subject to the overall supervision of the Board."

(Emphasis Supplied)"

14. It is further averred in the written statement that the plaintiff has executed multiple agreements, including agreements where RIPL had raised investments, acknowledging that the subject equity shares stand transferred in favour of the defendant.

15. It is therefore submitted that the plaintiff is estopped from denying the shareholding of the defendant and the binding nature of the agreement dated 02.07.2018. It is emphasized that the plaintiff itself was a signatory to the said agreements. The details of the same are set out in the written statement as under :-

"21.



<u>S. No.</u>	<u>Date</u>	<u>Particulars</u>
1	22 nd July 2018	Share subscription and shareholder's agreement between Resilient Innovations Pvt. Ltd., Ashneer Grover, Bhavik Koladia, SashvatNakrani, Vibha Paul Rishi and SAAM Partners LLP
2	13 th Oct 2018	Share subscription and shareholder's agreement between Resilient Innovations Pvt. Ltd., promoters, other existing shareholders and BEENEXT2 PTE. Ltd.
3	12 th Dec 2018	Subscription and Shareholders' Agreement Between Resilient Innovations Private Limited and BEENEXT2 PTE. Ltd. and SciInvestments VI and Sequoia Capital India Trust and the Persons listed in Schedule I And The Persons listed in Schedule II
4	25 th Feb 2019	Subscription agreement and addendum to share subscription and shareholders' agreement
5	22 nd March 2019	Share subscription agreement by and amongst Resilient Innovations Private Limited, Ashneer Grover, Shashvat Mansukhbhai Nakrani and Grace Software Holdings, L.P.
6	28 th March 2019	Shareholders' Agreement by and amongst Resilient Innovations private limited, Ashneer Grover, Shashvat Mansukhbhai Nakrani, persons whose names are listed inschedule 1 (other existing shareholders), Grace Software Holdings, L.P., Beenext2 PTE. Ltd., Sci Investments VI and Sequoia Capital India Trust.
7	15 th August 2019	Share Subscription Agreement by and amongst Resilient Innovations private limited, Ashneer Grover, Shashvat Mansukhbhai Nakrani, Beenext2 PTE. Ltd., Sci Investments VI, Redwood Trust, Grace Software Holdings, L.P., Ribbit Cayman in Holdings V, Ltd., Steadview CapitalMauritius Limited and ABG Capital.
8	15 th August 2019	Shareholders Agreement by and amongst Resilient Innovations private limited, Ashneer Grover, Shashvat Mansukhbhai Nakrani, persons whose names are listed in schedule 1 (other existing shareholders), Beenext2 PTE. Ltd., Sci Investments VI, Redwood Trust, Grace Software Holdings, L.P., Ribbit Cayman in Holdings V,



		<i>Ltd., Steadview Capital Mauritius Limited and ABG Capital.</i>
9	13 th Feb 2020	<i>Amended and Restated Shareholders' Agreement by and amongst Resilient Innovations private limited, Ashneer Grover, Shashvat Mansukhbhai Nakrani, persons whose names are listed in schedule 1 (other existing shareholders), Beenext2 PTE. Ltd., Sci Investments VI, Redwood Trust, Grace Software Holdings, L.P., Ribbit Cayman in Holdings V, Ltd., Steadview Capital Mauritius Limited, ABG Capital, Coatue pe Asia 27 LLC, Amplo Opportunities I, L.P. and Amplo II, L.P.</i>
10	13 th Feb 2020	<i>Share Subscription Agreement by and amongst Resilient Innovations private limited, Ashneer Grover, Shashvat Mansukhbhai Nakrani, Grace Software Holdings, L.P., Ribbit Cayman in Holdings V, Ltd., Steadview Capital Mauritius Limited, ABG Capital, Coatue pe Asia 27 LLC, Amplo Opportunities I, L.P. and Amplo II, L.P.</i>
11	10 th Feb 2021	<i>Amended and Restated Shareholders' Agreement by and amongst Resilient Innovations private limited, Ashneer Grover, Shashvat Mansukhbhai Nakrani, persons whose names are listed in schedule 1 (other existing shareholders), Beenext2 PTE. Ltd., Beenext Accelerate Fund PTE. Ltd., Sci Investments VI, Redwood Trust, Grace Software Holdings, L.P., Ribbit Cayman in Holdings V, Ltd., Steadview Capital Mauritius Limited, ABG Capital, Steadview Capital Opportunities PCC Cell 0121-004, Coatue PE Asia 27 LLC, Coatue PE Asia 46 LLC, Amplo Opportunities I, L.P. and Amplo II, L.P.</i>
12	10 th Feb 2021	<i>Share Subscription Agreement by and amongst Resilient Innovations private limited, Ashneer Grover, Shashvat Mansukhbhai Nakrani, Beenext Accelerate Fund PTE. Ltd., Grace Software Holdings, L.P., Ribbit Cayman in Holdings V, Ltd., Steadview Capital Mauritius Limited, Coatue PE Asia 27 LLC, Coatue PE Asia 46 LLC, Amplo Opportunities I, L.P. and Amplo II, L.P.</i>
13	10 th Feb 2021	<i>Share Purchase Agreement by and between Coatue PE Asia 27 LLC, Coatue PE Asia 46 LLC, Persons Listed in Schedule IV of this Agreement (Sellers) and Resilient Innovations private</i>



		<i>limited.</i>
14	4 th Aug 2021	<i>Share Subscription Agreement by and amongst Resilient Innovations private limited, Ashneer Grover, Shashvat Mansukhbhai Nakrani, Sequoia Capital Global Growth Fund III – Endurance Partners L.P, BP-E Ribbit Opportunity V LLC, Coatue PE Asia 62 LLC, Amplo Opportunities I L.P., Amplo II, L.P., Internet Fund VII. PTE. Ltd., DF International Partners II LLC, DF International Partners V LLC, SFSPVI LTD. and IP X Resilient, Ltd.</i>
15	4 th Aug 2021	<i>Amended and Restated Shareholders' Agreement by and amongst Resilient Innovations private limited, Ashneer Grover, Shashvat Mansukhbhai Nakrani, Beenext2 PTE. Ltd., Beenext Accelerate Fund PTE. Ltd., Sci Investments VI, Redwood Trust, Sequoia Capital Global Growth Fund III – Endurance Partners, L.P, Grace Software Holdings, L.P., IP X Resilient, Ltd, Ribbit Cayman IN Holdings V, Ltd., BP-E Ribbit Opportunity V LLC, Steadview Capital Mauritius Limited, ABG Capital, Steadview Capital Opportunities PCC Cell 0121-004, Coatue PE Asia 27 LLC, Coatue PE Asia 46 LLC, Coatue PE Asia 62 LLC, Amplo Opportunities I, L.P., Amplo II, L.P., Internet Fund VII PTE. Ltd, SFSPVI Ltd., DF International Partners II, LLC and DF International Partners V, LLC.</i>
16	6 th Aug 2021	<i>Share Purchase Agreement by and between Coatue PE Asia 62 LLC, Persons Listed in Schedule IV of this Agreement (Sellers) and Resilient Innovations private limited.</i>

16. The written statement also draws attention to the minutes of board meeting of RIPL dated 02nd July, 2018, which states as follows :-

“RESILIENT INNOVATIONS PVT LTD

CIN: U74999DL2018PTC331205

Regd. Address: 90/20, Malviya Nagar, New Delhi – 110017, India.

Email: hello@bharatpe.com, Phone No.: +91-8980358300

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF RESILIENT INNOVATIONS PRIVATE LIMITED IN THEIR MEETING HELD AT REGISTERED OFFICE OF



THE COMPANY AT 90/20, MALVIYA NAGAR, NEW DELHI – 110017
ON MONDAY, 2nd DAY OF JULY, 2018 AT 11:00 AM.

TRANSFER OF EQUITY SHARES(S)

RESOLVED THAT pursuant to applicable provisions of the Articles of Association of the Company, in view of receipt of the duly signed letter of intent to transfer & signed share transfer form of Mr. Shashvat Mansukhbhai Nakrani for effectuating the transfer of 2447 Equity Shares of the Company having a face value of Rs. 10/-, the transfer of 2447 Equity Shares having a face value of Rs. 10/- each in the Company by Mr. Shashvat Mansukhbhai Nakrani to Mr. Ashneer Grover, be and is hereby approved and taken on record.

RESOLVED FURTHER THAT the Directors of the Company, be and are hereby severally authorized to take all necessary actions to ensure that the transfer of the above said equity shares of the Company is completed including endorsing the transfer on the original share certificate in favour of Mr. Ashneer Grover.”

FOR RESILIENT INNOVATIONS PIVATE LIMITED

-sd-
BHAVIK KOLADIYA
DIRCTOR
DIN: 08090416
ADDRESS: 3B, SIDSAR ROAD, KAMINIYA NAGAR,
ADHEWADA BHAVNAGAR, TAKHTESHWAR,
GUJARAT 364002”

17. It is further averred in the written statement that in the above circumstances, the transaction in question conforms to Section 20 of the Sale of Goods Act and the property in the concerned goods (shares) stood transferred to the defendant inasmuch as the contract in question was (i) an unconditional contract (ii) in respect of specific goods; (iii) the said goods were in a deliverable state.

18. It is averred that even the plaintiff’s version conforms to Section 20 of the Sale of Goods Act, 1930. It is consequently averred that the reliefs sought by the plaintiff are contrary to the Sale of Goods Act, 1930 and the



plaintiff has lost his right of lien in respect of the shares in question.

Submissions of the respective Counsel

19. In the above background, learned senior counsel for the plaintiff has primarily contended that the title in the goods (shares) was not transferred to the defendant on account of non-payment of sale consideration. Reference is made on the various provisions of the Sale of Goods Act, 1930 (“SOGA”) to contend that “payment of price”, like “delivery of goods” is a statutory condition of any contract of sale, notwithstanding whether the same is a contractual condition.

20. It is further emphasized that for determining whether the property in goods has passed, the terms of contract have to be given precedence. Reliance has been placed on Section 12(2) of the Sale of Goods Act to contend that since there has been a breach of condition of contract of sale, which is essential to the main purpose of the contract, the same gives a right to the innocent party to treat the contract as repudiated.

21. It is further contended that if the condition of the payment of price is breached by the buyer then the seller is an unpaid seller under Section 45 of the Sale of Goods Act. It is contended that the remedies of an “unpaid seller” whose property has not passed, are prescribed under Section 46(2) of the Sale of Goods Act which provides for the specific remedies which are “in addition to the other remedies”.

22. Reliance is also placed on *Benjamin’s Sale of Goods*¹, in which it has been stated as under:-

“Although the seller may have delivered the goods to the buyer, he may be entitled to recover possession from the buyer under an express term of the contract; or where, before the property in the goods has passed to the

¹11th Edition, paragraph 16-091



buyer, he justifiably terminates the contract on account of the buyer's breach. When the buyer has possession of the goods but not the property in them, he is the bailee of the seller who may be entitled, either under the terms of the contract or under the ordinary law of contract, to determine the bailment and demand the immediate return of the goods, if the buyer commits a breach of his obligations under the contract... .."

23. It is further contended that this remedy to seek return of goods is otherwise also provided in Section 65 of the Indian Contract Act, 1872 (hereinafter, the "ICA"), which will also apply in view of Section 3 of SOGA which states that the provisions of the ICA will apply, subject to inconsistency with the SOGA. Once a contract, which is voidable at the option of a party, has been rendered void, the consequences under Section 65 of ICA would ensue.

24. It is contended that the property in the plaintiff's shares cannot get transferred to the defendant without payment of the purchase consideration, given that the initial agreement, pursuant to which the plaintiff's shares were to be transferred to the defendant, was an "agreement to sell".

25. It is further submitted that the defendant has not filed any document/material to dislodge any onus which lies on him to prove that the cash was paid to the plaintiff "then and there". As regards the execution of Form SH-4, it is contended that "Form SH-4" (issued under Section 56 of the Companies Act, 2013) is a prescribed standard form which by itself is not proof of payment of cash, nor can it be said to be a receipt for cash payment. Since it is a prescribed form, no person can alter its contents. Therefore, even when consideration is not received, or is to be received on a future date, even then the form will reflect the words "Consideration Received", although it may not have actually been received.

26. It is further contended that records of a company which are



maintained under the Companies Act, 2013, are not determinative in any manner whatsoever of the title in shares.

27. Strong reliance is placed on *Pawan Hans Helicopters v. Aes Aerospace Ltd.*², to contend that the title of the shares has not passed to the defendant.

28. It is further contended that the defendant's averments regarding the conduct of the plaintiff remain to be tested at trial and not at the present stage, especially when there is no documentary proof produced by the defendant to establish payment of purchase consideration to the plaintiff. It is also submitted that in another suit filed by Mr. Bhavik Koladiya, in respect of the transfer of his shares to the defendant, the defendant has given undertaking that he will not, *inter alia*, deal with the disputed shares in any manner whatsoever during the pendency of that case. It is submitted that the plaintiff is seeking parity with the said order.

29. As regards the various shareholder agreements in which the defendant has been shown to be a shareholder of the plaintiff's shares, it is contended that the said agreements do not give any representation to the third parties with respect to the fact that the defendant is the legal owner of the shares in question.

30. Finally, it is contended that irreparable injury shall be caused to the plaintiff if the interim injunction as sought is not granted. It is contended that the balance of convenience is in favour of the plaintiff.

31. *Per contra*, learned counsel for the defendant has also extensively relied upon the various provisions of the Sale of Goods Act, 1930, to contend that a stipulation as to the time of payment is generally not

² 2008 (103) DRJ 174



considered a condition essential to the main purpose of the Contract; it is contended that the Sale of Goods Act is replete with Sections wherein the rights of the parties to postpone payment or postpone delivery without the postponement affecting passing of title is recognized.

32. It is submitted that the plaintiff has not been able to demonstrate how a stipulation as to the time of payment of Rs. 24,470/- was essential to the contract. It is further averred that the plaintiff's own legal notice dated 18.03.2023 states that "You have even failed to pay the purchase consideration to our Client within a reasonable period of time after the agreement was entered into". It is contended that this statement itself demonstrates that the plaintiff had agreed to postpone the receipt of consideration and hence the plaintiff's contention that the stipulation with respect to time of payment was a condition essential to the main purpose of the contract, is clearly misconceived.

33. It is further submitted that the plaintiff not only executed "Form SH-4" but also executed a series of documentation recognizing the rights of the defendant. It is contended that the plaintiff never reserved any rights of disposal whatsoever but rather assented to the unconditional appropriation of the shares and further recognized the defendant as a member/shareholder on the basis of the shares purchased by the defendant from the plaintiff; "Form SH-4" dated 02.07.2018 acts as a "document of title to goods" as defined in Section 2(4) of SOGA. This is why when a share transfer form is executed; and also the transferee's name is recorded in the register of shareholders; then the inexorable conclusion is that the title of the shares has passed and the delivery of the shares has taken place and that the transfer is complete. Reliance is placed on the following observations in ***Howrah Trading***



Company vs. CIT³:

“7. The position of a shareholder who gets dividend when his name stands in the register of members of the company causes no difficulty whatever. But transfers of shares are common, and they take place either by a fully executed document such as was contemplated by Regulation 18 of Table A of the Indian Companies Act, 1913, or by what are known as ‘blank transfers’. In such blank transfers, the name of the transferor is entered, and the transfer deed signed by the transferor is handed over with the share scrip to the transferee, who, if he so chooses, completes the transfer by entering his name and then applying to the company to register his name in place of the previous holder of the share. The company recognises no person except one whose name is on the register of members, upon whom alone calls for unpaid capital can be made and to whom only the dividend declared by the company is legally payable. Of course, between the transferor and the transferee, certain equities arise even on the execution and handing over of a ‘blank transfer’, and among these equities is the right of the transferee to claim the dividend declared and paid to the transferor who is treated as a trustee on behalf of the transferee. These equities, however, do not touch the company, and no claim by the transferee whose name is not in the register of members can be made against the company, if the transferor retains the money in his own hands and fails to pay it to him.”

Reliance in this regard has also been placed on the judgement of the Supreme Court in ***CIT vs. Bharat Nidhi Limited***⁴ and ***Maneckji Pestanji Bharucha and Anr. vs. Wadilal Sarabhai and Co***⁵.

34. It is contended that in the present case as can be seen from the averments in the suit; the contract has been performed in its entirety; the share transfer form namely Form SH-4 has been executed and further the name of the defendant has been entered into the register of shareholders. Hence, it is evident that the title to the shares had passed to the defendant. It is further a settled principle of law specifically in the context of the transfer of shares; where shares have been transferred (in the sense that the title to

³AIR 1959 SC 775

⁴ 1982 ILR 1 Del 64

⁵1926Vol 94 1.C.824 (PC)



the shares have passed) and the consideration for such transfer has not been paid; the only remedy available to the seller is that to sue for price.

34. The defendant also relies upon the series of agreements whereby the plaintiff and the defendant sold their shareholding to external investors, in which the defendant has been duly reflected to be a shareholder. It is emphasized that there was no demur or protest whatsoever at any stage as regards the shareholding of the defendant in the concerned company.

35. On the basis of the above, it is contended that the plaintiff has failed to make out a *prima facie* case. It is further stated that the balance of convenience is also not in favour of the plaintiff and it is in fact the defendant who will suffer an irreparable loss, if any injunction was to be granted to the plaintiff.

Analysis and Conclusion

36. Having considered the respective submissions made on behalf of the parties, I find no merit in the case set up by the plaintiff for the purpose of the reliefs sought in the present application. The reasons are enumerated hereunder.

Documentation issued in respect of the transfer of shares to the Defendant; delivery of the shares and the subsequent conduct of the parties

37. It is the plaintiff/applicant's own case in the plaint that it entered into an agreement with the defendant for transfer of 2247 equity shares in RIPL together with all rights attached to them (plaintiff's shares) and to this end, an agreement is stated to have been arrived at between the parties on 02.07.2018. On the same day, the plaintiff admittedly executed a "Form SH-4" in favour of the defendant in respect of the plaintiff's shares. The said



“Form SH-4”, as duly executed between the parties has been reproduced hereinabove. A perusal of the same reveals that it clearly sets out the distinctive number of shares, the full name and particulars of the transferor and the transferee and details of the “consideration received”. The averment made in the plaint to the effect that although in the duly executed “Form SH-4”, consideration has been reflected to have been “received”, even though the plaintiff had not, as a matter of fact, received such consideration, is in utter contradiction to what is expressly recorded in the duly executed “Form SH-4”.

38. It is notable that “Form SH-4” has been prescribed under the Companies (Share Capital and Debentures) Rules, 2014. Rule 11 thereof provides as under:-

“11. Instrument of transfer—

(1) An instrument of transfer of securities held in physical form shall be in Form No. SH-4 and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within sixty days from the date of such execution.

(2) In the case of a company not having share capital, provisions of sub-rule (1) shall apply as if the references therein to securities were references instead to the interest of the members in the company.

(3) A company shall not register a transfer of partly paid shares, unless the company has given a notice in Form No. SH-5 to the transferee and the transferee has given no objection to the transfer within two weeks from the date of receipt of the notice.”

39. Thus, the information which is incorporated in “Form SH-4” is statutorily mandated; there is also a statutory presumption that the correct information has been mentioned.

40. It is also relevant to note that under Section 88 of the Companies Act, 2013 read with the Companies (Management and Administration) Rules,



2014, companies are obliged to maintain a register of members for each class of equity shares. Under Rule 5(1) of the Companies (Management and Administration) Rules, 2014, the entries in the registers maintained under Section 88 of the Companies Act shall be made within 07 days after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares/debentures or any other securities, as the case may be.

41. It is thus evident, that the transfer of shares in favour of the defendant and the consequent entry/recordal of the defendant as a shareholder of the concerned company was pursuant to approval by the Board of Directors or a duly constituted committee of the said Board. The Board Resolution dated 02.07.2018, which was admittedly passed in the present case, has been reproduced hereinabove.

42. It is also notable that Rule 3(1) and Rule 3(2) of the Companies (Management and Administration) Rules, 2014, *inter alia*, provide as under:-

“3. Register of members.-(1) Every company limited by shares shall, from the date of its registration, maintain a register of its members in Form No. MGT-1.”

(2) In the case of a company not having share capital, the register of members shall contain the following particulars, in respect of each member, namely:-

(a) name of the member; address (registered office address in case the member is a body corporate); e-mail address; Permanent Account Number or CIN; Unique Identification Number, if any; Father's/Mother's/Spouse's name; Occupation; Status; Nationality; in case the member is a minor, name of the guardian and the date of birth of the member; name and address of nominee;

(b) date of becoming member;

(c) date of cessation;

(d) amount of guarantee, if any;



(e) any other interest if any; and

(f) instructions, if any, given by the member with regard to sending of notices etc.”

43. It is not the plaintiff’s case that the defendant has not been reflected in the register of members maintained by the concerned company in the statutorily prescribed Form MGT-1 for the entire period after July 2018, till date.

44. Further, Rule 8 of the Companies (Management and Administration) Rules, 2014 provides as under:-

*“8. **Authentication.**- (1) The entries in the registers maintained under section 88 and index included therein shall be authenticated by the Company Secretary of the company or by any other person authorised by the Board for the purpose, and the date of the Board Resolution authorising the same shall be mentioned.*

(2) The entries in the foreign register shall be authenticated by the Company Secretary of the company or person authorised by the Board by appending his signature to each entry.”

45. Thus, any entry in the register of shareholders of a company is statutorily required to be authenticated in the manner prescribed in the aforesaid rule. There is a statutory presumption that such authentication was carried out in the present case, during which process, there is no plea of any doubt being expressed or any objection being raised by the plaintiff or any other person as to the inclusion of the defendant in the register of members of the concerned company.

46. Thus, the transfer of shares in favour of the defendant and the subsequent inclusion of the defendant in the register of members of the plaintiff was pursuant to a statutorily recognised process. For the purpose of the present application, there can be no presumption against the validity of the transfer in favour of the defendant pursuant to a statutorily mandated



process, especially when the execution of “Form SH-4” by the plaintiff is admitted and it is not the case of the either of the parties that the concerned company has not adhered to the provisions of under the Companies (Management and Administration) Rules, 2014 and the Companies (Share Capital and Debentures) Rules, 2014.

47. The law regarding the manner of effectuating transfer of title of shares is also no longer *res integra* and has been the subject matter of numerous judicial pronouncements.

48. In *Maneckji Pestonji Bharucha and Anr. v. Wadilal Sarabhai and Co.*⁶, the Privy Council was concerned with a situation where blank transfer Forms had been executed by the registered holders of shares of a company. In that context, it was observed by the Privy Council as under:-

“So soon, therefore, as Arajania, acting for Bharucha, handed Gora the certificates and transfers and Gora accepted them and gave the cheque, the goods became ascertained goods, the sale was complete and the property passed. From that time onward Bharucha and Arajania could only sue Gora on the cheque, or for the price of the shares unpaid in respect that the cheque had not been honoured. They had no longer any jus in re of the certificates and transfers. They had no statutory lien, for they had parted with possession, and, consequently, as they had no contract with Defendants Nos. 2 and 3, they could not sue them for delivery of the shares, whether the Defendants had got good title as against Gora or had not.”

49. The said judgment was cited with approval in *Commissioner of Income Tax, Delhi (Central) v. M/s. Bharat Nidhi Ltd.*, (1982) ILR 1Delhi64. In that case, the Court was concerned with the issue whether transfer of shares could be effectuated without delivery of the shares and without execution of a share transfer form. It was held in that case that for the purpose of a valid transfer, there must be a valid transfer form, wherein

⁶1926 Vol 94 I.C.824 (PC)



the shares must be specified by serial numbers. The Court noticed the judgement of this Court in *Seth R. Dalmia v. The Commissioner of Income Tax*- (1971) ILR 1 Delhi 30(4), wherein it was held that even execution of blank transfer form would result in transfer of equitable ownership of the shares, and that the transfer would be complete once the name of the transferee is entered in the registers of the company. The relevant observations in *Bharat Nidhi* (supra) are as under :

*“6. Goods are moveable property in terms of Sale of Goods Act. When and at what time a property can pass on to the buyer is laid down in Chapter III. Section 19 provides that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred; and for the purpose of ascertaining the intention of the parties to the contract regard shall be had to the conduct of the parties. Sub-section (2) of Section 19 elaborates that the rules in Sections 20 to 24 are to be looked at for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 21 provides that where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state the property does not pass unless such thing is done and the buyer has notice thereof. The Tribunal has however, not referred to Section 21 because according to it Section 20 which provides that if there is an unconditional contract for the sale of specific goods in a deliverable state the property in goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or time of delivery of the goods, is postponed and opined that the mere fact that the payment was not made on 5-2-1948 or that the delivery of shares was not made does not mean that the property did not pass on to the buyers in February, 1948. This however, omits to notice that in terms of Section 21 unless shares were specified by serial numbers which can be identified it cannot be said to be a contract for sale of specified goods as contemplated by Section 21 of the Act, as they would remain unascertained. See (1928 ILR 50 Allahabad 695 (1) A.W. Domingo v. L.C. De Souza. It is by now well established that only a person who is on the register is in full sense of word the owner of the share. But the title to get on the register consists in possession of a certificate together with transfer signed by the registered holder”. Vide (AIR 1926 PC 38) (2) *Maneckji Pestonji Bharucha v. Wadilall Sarabhai & Company*. An agreement to transfer shares in a company accompanied with the actual instrument of transfer which has not been completed so far as the transferor could complete it does not amount to a transfer deed sufficient to cause title to pass. By itself it would be*



nothing more than an enforceable agreement to convey and until the transfer endorsement is signed the shares would be unascertained goods and would not be in a deliverable state. Vide (AIR 1941 Madras 769) (3) Kuppiah Chetty v. Saraswathi Ammal. In what circumstances legal ownership or equitable ownership passes to the buyer has been the subject matter of good deal of case law. But we need not dilate on this because almost a similar matter raising these very points has been the subject matter of a decision of this court namely ILR (1971) I Delhi 30 (4), Seth R. Dalmia v. Commissioner of Income-Tax, which was very fairly and properly brought to our notice by the counsel for the assessee, Mr. Bishamber Lal himself. In that case also the sale was again by the present assessee Bharat Nidhi and was on the same terms as in the present case. There also no money was paid at the time of entering into agreement in February, 1948 nor were the shares transferred. It was recognised by the assessee that under the Companies Act unless the shares are registered with the company the person who is registered with the company continues to be the owner and the company will not recognise the person as an owner unless registration takes place. Realising this argument had been sought to be raised that even if shares continued to be registered in the name of the vendor (as in the present case undoubtedly the said shares continued to be registered in the name of the assessee), as there was at least an unconditional contract for sale of the beneficial ownership of the shares. The bench accepted that equitable ownership could pass but held that the equitable ownership shares can be transferred by the owner by signing a blank transfer form and handing over the share scrips to the transferee. The bench observed:

“It would, therefore, follow that equitable ownership in shares can be transferred by the owner by signing a blank transfer form and handing over that transfer form alongwith the share scrips to the transferee. So far as the company of which the shares are the subject matter of transfer is concerned, it would not recognise the transferee as the owner of the shares till such time as the transfer is registered and the name of the transferee is entered in its registers as the owner of those shares. It would be only after his name is entered in the registers of the company as owner of the shares that the transferee would acquire legal ownership in the shares.” [R. Dalmia's case (supra.)].

In the present case admittedly there is not even a suggestion that any transfer forms or the share scrips were handedover to Mrs. Jain or Mr. Dalmia by the assessee. The argument, therefore, that equitable ownership in the shares was transferred to the assessee on 5-2-1948 must be repelled. That without the specification of the shares the contract for sale for specific goods as contemplated by Section 21 of the Sale of Goods Act cannot be held to be complete was also accepted by the said Division Bench. We can find no difference at all not only on the points of law but frankly more or less even on the question of facts, between the instant case and the above case.”



50. Again, in *Howrah Trading Co. Ltd. v. Commissioner of Income Tax, Central, Calcutta*⁷, it was, *inter alia*, held as under :-

“7. The position of a shareholder who gets dividend when his name stands in the register of members of the company causes no difficulty whatever. But transfers of shares are common, and they take place either by a fully executed document such as was contemplated by Regulation 18 of Table A of the Indian Companies Act, 1913, or by what are known as ‘blank transfers’. In such blank transfers, the name of the transferor is entered, and the transfer deed signed by the transferor is handed over with the share scrip to the transferee, who, if he so chooses, completes the transfer by entering his name and then applying to the company to register his name in place of the previous holder of the share.....”

51. Thus, even in the case of a blank transfer form being executed, the transferee is entitled to complete the transfer by entering his name and then applying to the company to register his name in the name of a previous holder of the shares. The present case stands on a much higher footing inasmuch as the transfer of shares has been effectuated by following the rigors prescribed in the Companies Act and the statutory Rules framed thereunder. This has not been controverted in the plaint.

52. The subsequent conduct of the parties pursuant to the transfer is also of vital importance in the present case inasmuch as after the transfer was effectuated in favour of the defendant, in the ensuing years, a series of agreements (16 in number) were entered into wherein the plaintiff and the defendant sold their shareholdings to external investors. It has been submitted by the learned counsel for the defendant that in respect of these 16 agreements, a sum of nearly Rs. 4500 crores (Rupees Four Thousand Five Hundred Cores) was infused into the company. In addition, the plaintiff was also paid a personal consideration of nearly Rs. 40 crores by various external

⁷AIR 1959 SC 775



investors.

53. Admittedly, in all these agreements, to which both the plaintiff and the defendant were parties, the defendant was represented to be as a shareholder of the concerned company. It is completely untenable for the plaintiff to suggest that the defendant was wrongly portrayed as a shareholder in all these agreements or that the plaintiff was “induced” to sign these agreements.

Position under the Sale of Goods Act, 1930

54. The contention on behalf of the plaintiff that the title in the concerned shares never passed to the defendant on account of non-payment of consideration and therefore it is permissible for the plaintiff, at this stage, to “repudiate” the contract for sale of shares, is also liable to be rejected, inasmuch as the same is contrary to the scheme of the Sale of Goods Act, 1930.

55. There is no quarrel with the proposition that title in goods (which include shares) is transferred from the seller to the buyer only on sale of goods. This position has been affirmed by the Supreme Court in *Arihant Udyog v. State of Rajasthan*⁸, wherein it has been observed as under :

“19. Section 20 deals with a situation where specific goods are in a deliverable state. In that case property in goods passes to the buyer when the contract is made, even when time of payment of the price or the time of delivery of the goods or both is postponed. In order that Section 20 is attracted, two conditions have to be fulfilled: (i) the contract of sale is for specific goods which are in a deliverable state; and (ii) the contract is an unconditional contract. If these two conditions are satisfied, Section 20 becomes applicable (see Shalimar Chemical Works Ltd. [Agricultural Market Committee v. Shalimar Chemical Works Ltd., (1997) 5 SCC 516]).

20. However, Section 21 is exception to Section 20 which states that where there is a contract for sale of specific goods and the seller is bound to do

⁸(2017) 8 SCC 220



something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such a thing is done and the buyer has notice thereof. Likewise, Section 22 carves out another exception and mentions that even when the specific goods are in a deliverable state but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

21. Section 23 deals with sale of uncertain goods and appropriation, with which we are not concerned here. Likewise, Section 24 deals with a situation where goods are sent on approval or “on sale or return” basis, which is also not relevant for our purposes.

“22. A conjoint reading of the aforesaid provisions makes it clear that title in goods is transferred from the seller to the buyer only on the sale of goods. As to when such a sale fructifies and the property passes is to be ascertained from the intention of the parties having regard to the terms of the contract. If no such intention can be gathered from the terms of the contract, the property in goods passes where the goods are in a deliverable state and there is unconditional contract for sale of specific goods.”

56. There is also no quarrel with the proposition that a contract of sale of goods involves (i) transfer of property in the goods to the buyer, (ii) payment of price/consideration by the buyer to the seller. Necessarily, these are two ingredients of every contract/agreement for sale of goods.

57. However, the validity or existence of a valid contract for sale of goods is not dispelled merely on account of the fact that time of payment of price or the time of delivery of the goods, is postponed. This is evident from the following provisions of the Sale of Goods Act:

“5. Contract of sale how made.—

(1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.”

“11. Stipulations as to time.—



Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.”

“19. Property passes when intended to pass.—

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.”

“20. Specific goods in a deliverable state.—

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.”

58. As such, although, payment of price to the seller is a mandatory condition of any contract for sale of goods, a contract for sale of goods and transfer of title can fructify even where the time of payment of price or the time of delivery of goods, or both, is postponed. As such, the statutory provisions repel the contention of the plaintiff that in the present case, non-payment / postponement of the payment of the price by itself leads to the inference that the contract of sale of shares in the present case did not fructify.

59. Under the statutory framework, for the purpose of passing of title, what is relevant is whether the contract for sale of goods has been concluded, and it is immaterial whether the time of payment of price or the time of delivery of goods or both is postponed.

60. The above position has also been affirmed in paragraphs 19-22 of the



judgement of the Supreme Court in *Arihant Udyog v. State of Rajasthan*⁹ (supra).

61. Thus, what is of relevance in the present case is the conclusion of the contract for sale of shares and not whether payment or delivery or both have been postponed or not. Once the contract for sale of shares is concluded, the rights of an unpaid seller are circumscribed under Section 46 of the Sale of Goods Act, which provides as under:-

“46. Unpaid seller’s rights.—

(1) Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

(a) a lien on the goods for the price while he is in possession of them;

(b) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;

(c) a right of re-sale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.”

62. Section 46 (1)(a) clarifies that an unpaid seller retains a lien on the goods for the price “while he is in possession of them”. Admittedly, the plaintiff in the present case is no longer in the possession of the shares, the same having been delivered to the defendant pursuant to execution of “Form SH-4”. Furthermore, Section 46(2) deals with a situation where property in the goods has not passed to the buyer in terms of a contract of sale.

63. Section 47 of the Sales of Goods Act deals with the Seller’s lien and provides as under:-

“47. Sellers lien:

⁹supra



(1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:—

- (a) where the goods have been sold without any stipulation as to credit;*
- (b) where the goods have been sold on credit, but the term of credit has expired;*
- (c) where the buyer becomes insolvent.*

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.”

A bare perusal of the above provision makes it clear that the same is applicable only when an unpaid seller is in the possession of the concerned goods.

64. For the purpose of the present application, the contention of the plaintiff is that title in the goods has not passed to the defendant despite the fact that:

- (i) the shares have been delivered to the Defendant ;
- (ii) Form SH-4 was duly filled up and executed at the time when the contract was entered into, specifically mentioning details of “consideration received” and the particulars/ distinctive numbers of the shares;
- (iii) the recordal of transfer of shares in favour of the Defendant stood completed in July 2018 itself pursuant to a Board resolution passed by the concerned company, which was well within the knowledge of the plaintiff.
- (iv) the defendant’s ownership in respect of the shares has since been reflected in numerous agreements with third parties to which the plaintiff himself was a party.

65. Even assuming that a sum of Rs. 24,470/- was not paid at the time of execution of Form SH-4 (as alleged), it is evident from the plaintiff’s own



legal notice dated 18.03.2023 that it agreed to postpone the receipt of consideration. The said legal notice inter-alia, states “*you have even failed to pay the purchase consideration to our client within a reasonable period of time after the agreement was entered into.*” As such, the factum of postponement of receipt of sale consideration is admitted. The statutory position (as set out hereinabove), and also noticed in *Arihant Udyog (supra)* is clear to the effect that mere postponement of payment of price does not dispel the existence of a valid contract of sale and passing of title thereunder. At best, the plaintiff has a right to sue for the unpaid consideration and/ or claim damages.

66. In *Suraj Enterprises v. Official Liquidator of Wood Polymers Ltd.*¹⁰, it has been held as under:-

“37... The unpaid seller of goods loses his lien when he delivers the goods and the buyer obtains lawful possession. Hence “when the vendor has given the buyer possession under the contract of sale all his rights in the goods are completely gone; he must recover the price exactly as he would recover any other debt (u), and has no longer any claims on the goods sold superior to those of any other creditor. The delivery and acceptance of possession complete the sale, and give the buyer the absolute unqualified and indefeasible rights of property and possession in the things sold, though the price be unpaid and the buyer insolvent unless, indeed, the whole transaction is vitiated by actual fraud “(v).” Source: Pollock & Mulla — The Sale of Goods Act, Fifth Edition.”

67. The fact that the sale and transfer of shares stands concluded in the present case is also evident from the fact that admittedly, there is no reservation of right of disposal in favour of the seller of the goods (i.e. the plaintiff). In this regard, reference would be apposite to Section 25 of the

¹⁰ (2005) 1 GCD 661



Sale of Goods Act, 1930, which provides as under:-

“25. Reservation of right of disposal.—

(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipts, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits to the buyer the bill of exchange together with the bill of lading or, as the case may be, the railway receipt, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading or the railway receipt if he does not honour the bill of exchange; and, if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

Explanation.—In this section, the expressions “railway” and “railway administration” shall have the meanings respectively assigned to them under the Indian Railways Act, 1890 (9 of 1890).]”

68. In ***Pawan Hans Helicopters v. Aes Aerospace Ltd.***¹¹, this court was concerned with a situation where, in the relevant contract between the parties, it was clearly mentioned that the title in the goods would pass only on the purchaser making the full payment of consideration under the Agreement. This aspect is observed in the said judgment and is reproduced hereunder:

“7....At this juncture, it may be relevant to note that clause 7 of the addendum of 24.09.1999 specifically stipulated that the title in the goods would only pass to the purchaser once the full payment of GBP 9,00,000 under the said agreement is received by the vendor upon the delivery of the package FOB Mumbai for shipment to U. K.”

69. In that context, it was held as under:-

¹¹2008 (103) DRJ 174



“17...The intendment under the said clause is clear that unless and until the petitioner received the full price for the said goods, the property in them would not pass to the respondent and would continue to vest in the petitioner. In the light of Section 19 of the Sale of Goods Act, 1930, it can be safely concluded, at this stage, that the property was intended to pass only upon the full payment of GBP 9,00,000 by the respondent to the petitioner.....”

70. As such, the aforesaid judgment far from supporting the case of the plaintiff, supports the case of the defendant inasmuch as there is nothing whatsoever to indicate that unless and until, the plaintiff received the full price for the shares, the property in them would pass to the defendant, and the same would continue to vest in the plaintiff.

71. In addition to the judgements in *Maneckji* (supra), *M/s Bharat Nidhi* (supra) and *Howrah Trading* (supra), in *Uday Punj vs. Commissioner of Income Tax*, (2012) SCC Online Del 3517, this Court again had occasion to consider as to when a contract for sale of shares could be considered to be concluded. In *Uday Punj*, in the context of sale of shares by existing shareholders of a company to the members of the public, the question that arose for consideration before this Court was whether transfer of the shares stood completed when shares were transferred from the demat account of the selling shareholders into the demat account of the Registrar to the issue, or whether it could be said to be completed only when sale price of the shares was transferred into the account of the selling shareholders, it was held by this Court as under :

“9. Section 19 of the Sale of Goods Act, to the extent it is relevant, provides that where there is a contract for sale of specific or ascertained goods, the property in them is transferred to the buyer at such time, as the parties to the contract intend it to be transferred. It further provides that to ascertain the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. It also provides that unless a different intention appears, the rules contained in Sections 20 to 24



are the rules for ascertaining the intention of the parties, as to the time at which the property in the goods is to pass to the buyer.

Section 20 of the Sale of Goods Act, provides that where there is an unconditional contract for the sale of specific goods in deliverable state, the property in goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both is postponed. Section 21 of the Act provides that where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer had notice thereof.

10. In the case before us, once the shares were transferred from the demat account of the appellant to the demat account of Registrar to the issue, they were in a deliverable state and, therefore, on allotment of shares to the applicants in the public issue, or in any case on credit of shares in their demat account, the property i.e. ownership rights in the shares stood transferred to the applicants in the public issue. The fact that transfer of money which the applicants in the public issue had already paid alongwith the share application, to the bank account of the appellant took place on 06.01.2006 was wholly irrelevant as far as passing of property in the shares was concerned. The fact that the sale consideration had not been transferred to the bank account of the appellant by 05.01.2006 did not have the effect of postponing the passing of property in the shares to the applicants in the public issue.”

72. As such, *prima facie*, there is no merit in the contention of the plaintiff that the contract for sale of shares did not fructify in the sense contemplated under the Sale of Goods Act, 1930, and/or that title therein did not pass to the defendant.

Admission on behalf of the plaintiff in CS(OS) 711/2022

73. Learned counsel for the defendant has drawn attention to the fact that in a civil suit i.e. CS(OS) 711/2022, captioned as Resilient Innovations Pvt. Ltd. v. Madhuri Jain Grover & Ors., the plaint of which has been affirmed and verified by the plaintiff herein as the authorised representative of the plaintiff company in that suit, it has been pleaded as under:-

“16. It is humbly submitted that this leads to the inexorable conclusion



that the Plaintiff had admittedly been paid the purchase consideration by the Defendant as admitted by the Plaintiff himself. Hence under no circumstances can the Plaintiff now claim that the purchase consideration had not been paid by the Defendant when in another suit pending before this Hon'ble Court the Plaintiff, as an authorised representative of the Company, has claimed and affirmed that the Defendant had in fact "contributed" a paltry sum on INR 31,920 to become a shareholder of the Company, the said statement has been reaffirmed by the Plaintiff in his Replication(supported by the duly affirmed affidavit of the Plaintiff) to the Written Statement filed by the Defendant herein. That the relevant para of the Suit captioned as "Resilient Innovations Private Limited v. Madhuri Jain Grover and Ors." bearing CS (OS) No. 771 of 2022 has been reproduced below for the kind consideration of this Hon'ble Court:

"9. Defendant No. 2's association with the Plaintiff began on 2 July 2018, when he became a shareholder of the Plaintiff by contributing a paltry sum of INR 31,920 against which he was transferred 3,192 shares in the Plaintiff company. On 5 November 2018, Defendant No. 2 was appointed as a Director of the Plaintiff. On 12 December 2018, he was appointed as the CEO of the Plaintiff pursuant to an Employment Agreement dated 12 December 2018 ("2018 Employment Agreement"). The 2018 Employment Agreement provides that Defendant No. 2 would be responsible for primarily leading and directing the management of the Plaintiff, with substantial control over its key operational decisions, subject to the overall supervision of the Board."
(Emphasis Supplied)"

74. The aforesaid pleadings have been verified by the plaintiff in the following terms:-

"Page 141- Verification – "I, Shashvat Mansukhbhai Nakrani, the Authorized Signatory of the Plaintiff, do hereby solemnly affirm and verify that the statements contained in Paragraphs 01 to 178 of the foregoing plaint are true to my knowledge and believed by me to be true...."

75. The same is also supported by an affidavit of the plaintiff which inter-alia reads as under:-

"Page 142- Affidavit dated 6th Dec 2022 – "I, Shashvat Mansukhbhai Nakrani... 1. That I am the Authorised Signatory of the Plaintiff and I am fully conversant with the facts and circumstances of the case and hence



competent to swear this affidavit in support thereof That what is stated in Paragraphs 01 to 178 of the Plaintiff have been drafted under my instructions and are true and correct to the best of my personal knowledge...”

76. There is merit in the submissions of the learned counsel for the defendant that the pleadings in the present suit are in direct and utter contradiction to the position enunciated in the aforesaid CS (OS) 711/2022 where it has been categorically admitted that the defendant **“became a shareholder”**, by *“contributing a paltry sum of INR 31, 920 against which he was transferred 3192 shares in the Plaintiff company”*. Thus, the factum and extent of the shareholding of the defendant herein, stands admitted in that suit. This additional aspect, also disentitles the plaintiff to any interim relief.

77. For all the aforesaid reasons, this Court is not inclined to grant an interim injunction in favour of the plaintiff/applicant, as prayed for. However, considering that the shares of the defendant in question are subject matter of the present suit and considering that the plaintiff has also made an alternative prayer seeking damages, it is directed that in case, the defendant proposes to transfer/deal with/alienate the shares in question, prior intimation with regard to any such proposed transaction(s) together with details thereof, shall be provided to the Court.

78. The application stands disposed of with the aforesaid directions.

79. Needless to say, the observations made hereinabove, are only for the purpose of deciding the present application.

SACHIN DATTA, J

DECEMBER15, 2023/r/as