

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 317 of 2017

IN THE MATTER OF :

Tubos de Acero de Mexico, SA
A Company incorporated and existing
under the Laws of Mexico,
having its office at :
Km 433.7 Carr. Mexico-Veracruz,
Via Xalapa (91697)
Veracruz, Ver. Mexico

... Appellant

Versus

Oil Country Tubular Limited,
A company incorporated and existing under
And existing under the Companies Act, 1956
and having its registered office at :
108, Kanchenjunga, King Kothi Road,
Hyderabad – 500001, Telangana

... Respondent

Present: Shri Sanjeev Puri, Senior Advocate with Shri Aditya Chatterjee
and Ms. Aishwarya Modi, Advocates for the Appellant.

Shri Sri Harsha Peechara and Shri Ashish Tiwari, Advocates for
the Respondent.

J U D G E M E N T

25.01.2018 This appeal has been filed by Original Petitioner against the impugned order dated 13th July, 2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad (hereinafter referred to as 'NCLT') in C.P. No. 24/59/HDB/2017.

2. The Appellant incorporated Company under the Laws of Mexico sought rectification of the Register of Members claiming that the Appellant was joint-holder of shares as mentioned in the Company Petition in which the first holder was 'Tamtrade Ltd.'. Tamtrade Ltd. was Grand Cayman

Company and a subsidiary of Appellant. The Appellant claimed before NCLT that the shares were held by the Appellant in which Tamtrade Ltd. was the first holder and the Appellant was the joint-holder. The copy of the share certificates is at Annexure –A4 in the appeal. The Appellant claimed before the NCLT that on 29th September, 1994 it had entered into a Share Sale Agreement with Tamtrade Ltd. (Copy of which is at Page 141 of the appeal memo at Annexure-A5). Tamtrade Ltd. was dissolved on 30th September, 1999 of which Dissolution Certificate is on record (Copy of which is at Annexure –A6 at Page 147 of the Paper-Book). The Appellant claimed that the Respondent was approached for rectification of the Register of Members but the Respondent refused and thus the company petition was filed.

3. Being aggrieved by the impugned judgement, whereby the NCLT, *inter alia*, referred to Laws of Cayman Islands in order to decline the request of the Appellant, the present appeal has been filed.

4. We have heard the learned counsel for both sides. The learned counsel for the Appellant submits that the Appellant had entered into the Share Sale Agreement with Tamtrade Ltd. and copy of the document is available on record, which clearly shows that the present shares held jointly by the Appellant and the Respondent company were agreed to be sold and transferred to the Appellant by Tamtrade Ltd. and the first clause of the agreement itself makes it clear. The learned counsel fairly submits that the Appellant after such agreement should have really moved the

Respondent Company earlier for rectification of records in view of the purchase the Appellant had made. The counsel submits that the Appellant, a foreigner with disadvantage of distance, remained under impression that when it is a joint holder of the shares and Tamtrade Ltd. had already transferred its rights to the Appellant, it was not necessary for the Appellant to take further steps. Learned counsel submits that subsequently Tamtrade Ltd. came to be dissolved on 30th September, 1999 regarding which a Dissolution Certificate has been filed with the appeal (Copy of which is at Annexure- A6 at Page 147). Thus, according to the learned counsel, the Appellant becomes the surviving company and by transmission, the Appellant was entitled to be considered as the sole shareholder of the shares in dispute. Learned Counsel submits that the Appellant approached the Respondent in the year 2012 but the Respondent, vide Annexure –A 20 on 9th October, 2012, stated that it cannot accede to the request of the Appellant for transfer of the shares in the joint name due to non-compliance of the requirements of the laws of this country. Learned counsel submits that in this letter, the fact that the shares were jointly held by Tamtrade Ltd. and the Appellant, was not disputed. Learned counsel submits that after this letter, the Appellant, who is placed in Mexico, entered into correspondences with the Respondent as well as Reserve Bank of India (RBI) and ultimately the RBI, by letter dated 24th November, 2014 (Annexure – A 24) informed the Appellant that the matter was outside the purview of the Foreign Exchange Management Act, 1999 ('FEMA') and it was for the Respondent

to register the said shares in favour of the Appellant after satisfying itself regarding the sole ownership of the Appellant. Learned counsel submits that this was followed by further correspondence but as the Respondent vide letter dated 17th April, 2015 (Annexure –A30) asked the Appellant to seek declaration of ownership from appropriate forum, the Appellant moved the NCLT. The learned counsel submits that the NCLT has wrongly declined the prayers of the Appellant.

5. Learned counsel referred to Table –‘A’ of Schedule-I - Regulation 25 of the Companies Act, 1956, which reads as under :-

Transmission of shares

“Regulation 25. (1) *On the death of a member, the survivor or survivors where the member was a joint holder, and his legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.*

(2) *Nothing in clause (1) shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.”*

6. Learned counsel submits that in addition to the above, the Articles of Association of the Respondent Company itself in Article 69 specifies as under :-

“In the case of the death of anyone or more of the persons named in the Register of Members as the Joint-holders of any share, the survivor or survivors shall be the only persons recognized by the Company as having any title to or interest in share, but nothing herein contained shall be taken to release the estate of a deceased joint holder from any liability on shares held by him jointly with any other person.”

7. Thus, according to the learned counsel, when the Regulations provide and the Articles of Association have adopted these Regulations, the Articles of Association are binding on the Respondent and the Respondent could not have declined to recognize the Appellant as the survivor for rectification of the Register of Members.

8. The learned counsel relied on the case of **Ram Govind Misra Vs. Allahabad Theatres (P) Ltd. and Others - (1985) SCC OnLine All 1084** in which Paragraph 7 reads as under :-

“7. Section 28(2) of the Companies Act lays down that, in the case of any company limited by shares which is registered after the commencement of this Act, and in so far the articles do not exclude or modify the Regulations contained in Table “A” of Schedule-1 of the Companies Act, those regulations shall, so far as, applicable be the regulations of the company in the

same manner and to the same extent as if they were contained in a duly registered articles. Similar provisions existed in the corresponding Sections 17 and 18 of the Companies Act, 1913 as well. Regulation 25 of Table "A" to Schedule I to the Companies Act, 1956 and corresponding Regulation 21 of Table "A" to Schedule I to the Companies Act, 1913 lay down that on the death of a member, the survivor or survivors where the member was a joint holder and his legal representative where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the share. There is nothing on the record of this case to show that there was anything in the articles of the company which excluded or modified the applicability of Regulation 25 of Table "A", Schedule I to the Companies Act, 1956 or of Regulation 21 of Table "A" Schedule I of the old Companies Act. According to the aforementioned regulation, where shares are held jointly and one of such joint shareholders dies, it is the survivor who alone is to be recognised as having title to the said shares. The question of a legal representative of a shareholder becoming entitled to the shares arises only in a case of a sole shareholder."

9. The learned counsel submitted that the legal position on this count of entering names of the survivor was considered even in the case of **Afzal Khan & Anr. Vs. Mehboob Ayub Khan & Ors. - 2016 SCC OnLine Bom 1445**. The learned counsel referred to Paragraph 23 of that judgement to submit that the High Court accepted that the Company Law Board in that matter rightly relied on Article 25 of the Articles of Association of that Company while dealing with the death of one of the joint-holders, relevant portion of which reads as under :

“On sufficient cause so far as the refusal to transmit is concerned, the CLB rightly relied on Article 25 of the Articles of Association of the Company, under which, in case of death of one or more joint holders, the survivor/s is/are the only person/s recognized as having title to or interest in the shares. In the case of a will, Article 28(f) of the Articles came into play. The CLB held that the company was bound to follow its Articles and could not have denied transmission/registration of the shares in the sole names of Mehboob and Yasmin”.

10. It has been submitted that the NCLT should have allowed the petition in terms of Prayer 8(b) (Page 283) of the petition and should have directed the Respondent Company to rectify Register of Members. The Prayer 8(b) reads as under :-

“(b) to direct the Respondent Company to rectify its Register of Members by deleting the name of Tamtrade Ltd. in Reg. Folio No. OCT701946 bearing certificate no. 1485 in respect of 14,97,000 equity shares of the Respondent Company bearing distinctive no.(s) 5483001 - 6980000 and in its place record the name of the Petitioner, Tubos De Acero De Mexico S.A. the Second Shareholder, as the sole shareholder.”

11. The learned counsel further submitted that the Appellant is ready to give Indemnity Bond to the satisfaction of the Respondent Company to safeguard the interest of the Respondent Company in case any liability is fastened on the Respondent because of such rectification of Register.

12. Learned counsel for the Respondent fairly submitted that the Respondent Company has neutral approach to the problem. Learned counsel, however, submitted that the Company Petition sought rectification of the Register of Members and not claimed rights by way of transmission. Before NCLT, transfer of share rights on the basis of Share Sale Agreement was claimed and not on the basis of amendment due to dissolution of Tamtrade Ltd. Learned counsel further submitted that apparently the Appellant hopelessly delayed taking steps. In spite of Share Sale Agreement of 1994, the Appellant did not move the Respondent Company till 2012. Even after the Tamtrade Ltd. was dissolved in 1999,

steps were taken only in 2012, when the Respondent Company was moved and even thereafter there was much delay as the Company Petition was filed only in 2017. According to the learned counsel, the first time Respondent refused was on 17th April, 2015 but the Company Petition was filed only on 20th January, 2017. The counsel further submitted that under Section 124 (6) of the Companies Act, 2013, the Respondent Company has already taken steps and the concerned shares have been transferred to the Investor Education and Protection Fund on 6th December, 2017.

Sub-Section (6) of Section 124 of the Companies Act, 2013 reads as under :-

“124. Unpaid Dividend Account –

xxx

xxx

xxx

(6) All shares in respect of which dividend has not been paid or claimed for seven consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed :

Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.”

The learned counsel for the Respondent fairly states that they leave the matter to the Tribunal to take appropriate decision.

13. Looking to the provisions of Regulation 25 pointed out by the learned counsel for the Appellant as well as the Articles of Association on similar lines, we find that the Respondent is bound to recognize the Joint holder - survivor of the share(s) in case of the joint-holding. No doubt, the Appellant was not prompt in taking decision to take steps but after Tamtrade Ltd. got dissolved in 1999, the rectification of transmission was required to be done. Although there is delay, the right is a continuing right and it would not be appropriate to throw out the Appellant when request of rectification of Register is made. In view of the Appellant surviving on dissolution of the Tamtrade Ltd., the Register needs to be rectified by way of transmission. We find that the submissions made by the learned counsel for the Appellant have substance and the same could not have been ignored by the NCLT while dismissing the company petition. Learned counsel for the Appellant is submitting that if the appeal is allowed, they will move the Authorities under the Investor Education and Protection Fund to seek transfer of shares as per Proviso and the benefits in the name of the Appellant.

14. For the above reasons, the appeal is allowed in terms of the Clause (b) of Prayer 8 of the Company Petition reproduced above. The Appellant is entitled to be treated as Sole Shareholder of the shares in dispute and admissible benefits. The Respondent will rectify the Register of Members

once the Appellant moves the Investor Education and Protection Fund Authorities and has orders of transfer in its favour. Before rectification by Respondent, the Appellant will submit the original Share Certificates along with Indemnity Bond to the satisfaction of the Respondent to protect the interest of the Respondent in case any liability is fastened on the Respondent.

There shall be no order as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

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