

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**NEW DELHI****I.A. NO.303/2020****IN****COMPANY APPEAL (AT) NO.184 OF 2019****In the matter of:****M. Appayya & Ors****Appellant****Vs****M. Chandra Sekhar Rao & Ors****Respondent****Mr. Anshuman Sharma, Mr D.V. Shiva Prasad, Mr. Vishesh Dhundia,
Advocates for Appellant.****Mr. S. Chidambaram, PCS, Mr. P. Nagesh, Mr. Shivam Wadhwa, Advocates
for Respondents.****ORDER**

25.02.2020- This order shall govern the disposal of I.A. No.303/2020. The Respondents in Company Appeal (AT) No.1 has filed Company Petition against the appellant for oppression and mismanagement under Section 241, 242, 59 and 62 of the Companies Act, 2013. NCLT vide order dated 6.6.2019 allowed the petition and passed the directions :-

- a) That Extra Ordinary General Meeting conducted on 23.3.2017 as illegal and consequently the resolutions passed there at as null and void and do not bind the Company and its shareholders.
- b) That the Board Meeting held on 28.2.2017 and 25.3.2017 as illegal and the resolution passed there at do not bind company and its shareholders.

c) That 1st Respondent Company is directed to rectify the register by cancelling shares allotted to Respondents 2-6 in pursuance of resolution passed in the EGM dated 23.3.2017.

d) The allotment of shares in favour of Respondents 2 to 6 in pursuance of Board Resolutions of Respondent No.1 company dated 25.3.2017 is set aside.

e) That the shares held by shareholders prior to impugned allotment i.e. 25.3.2017 stands restored.

2. Being aggrieved with this order, appellants have filed the appeal before this Tribunal. During the pendency of appeal, Respondent No.2, Mr. M. Nagaraja Rao died on 4th August, 2019. His legal representatives i.e. Mrs M. Nagachandrika, wife, Mr. M. Rama Krishna, son and Ms M. Sravani, daughter have been brought on record. Now the legal heirs filed an application through Power of Attorney holder Mr. M.V. Ramana Rao under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 which is registered as IA No.303/2020 seeking the following reliefs:

a) Direct the respondents to effect the transmission of 268 shares held by Late M. Nagaraja Rao of the Company in favour of applicants jointly herein.

b) Till the transmission is completed permit the applicants to exercise voting rights with respect to shares held by Late M. Nagaraja Rao jointly treating them as co-owners.

c) Direct the company to issue share certificates to the applicants after effecting the transmission.

d) Any other order or orders in the circumstances of the case.

3. Legal representatives of deceased Respondent No.2 i.e. applicants stated in the application that in this appeal the order passed by the NCLT has been stayed till disposal of this appeal. If the stay is not in operation the applicant's group would be controlling 50.3% of the capital of the company and the Respondents group would be controlling 49.7% of the capital of the company. Appellants herein are making their efforts to disturb the fine equilibrium of shareholding of the company. Hence in the interest of justice it is necessary that transmission of shares be effected without any further delay. It is also stated that the applicants wrote a letter to the company on 4.11.2019 and the company has replied on 8.11.2019. The appellants are refusing the transfer the shares held by deceased Respondent No.2, therefore, the legal representatives of the deceased Respondent No.2 have moved this application seeking transmission of shares at the earliest.

4. Appellants in reply of the application opposing the application on the ground that one stranger Mr. M.V. Ramana Rao purportedly acting on behalf of Respondents has filed a mis-founded application seeking direction for transmission of 268 shares held by deceased Late M. Nagaraja Rao. It is stated that the application and the documents enclosed therewith are self contradictory and legally untenable. Mrs M Nagachandrika wife of deceased Respondent No.2 vide letter dated 4.11.2019 demanded that the shares of erstwhile Respondent No.2 be transferred in her name whereby a copy of the

Will purportedly executed by Mr Nagaraja Rao is attached with the letter. In support of Will a letter of administration, probate of will from the Court has not been attached. On 16.1.2020 Mr. M. Ramana Rao claiming to be the POA of all three legal heirs of the deceased Respondent No.2 stating that the shares of late Respondent No.2 be transferred in the name of legal heirs.

5. Thus there are two contradictory prayers has been made for transmission of the shares. Apart from in accordance with Section 56 of the Companies Act, 2013 no transmission of security will be carried out in record of the company unless there is appropriate instrument of transfer in such form as may be prescribed. Hence the application is liable to be dismissed.

6. We have heard learned counsel for the parties. The company is a closed family running company whereby the decisions were always made in formal manner amongst the brothers who were part of the same household and common kitchen. The entire share capital for the company was provided by the family members including the brothers. In this context we have considered the application and MR. Ramana Rao is POA holder of the applicants. He has filed the application alongwith POA. In the application for transmission of shares, the three legal heirs requested that the shares of late Respondent No.2 be transmitted in their name jointly. It means Ms N. Nagachandrika is not claiming any right through will. Therefore, probate or letter of administration is not required. We are of the view if the original shares certificates are produced alongwith the original POA and the application by the applicants then the company should be able to transmit

268 shares held by late Respondent No.2 jointly in the name of legal heirs.
Hence the application is allowed.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

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