IN THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI

Reserved on: 16th December, 2016
Date of Pronouncement: 23rd December, 2016

Company Petition No. 15/01/2016

In the matter of

The Companies Act, 2013 under sections 58 & 59 r/w Regulation 11 of the National Company Law Tribunal, Rules 2016

Anasuya Gupta **.....Petitioners**

Versus

M/s Shree Cements Ltd. & Ors **...Respondents**

CORAM:
MS. INA MALHOTRA, MEMBER (JUDICIAL)

For Petitioner (s) Mr. Pawan Sharma and Ms. Arpita Yadav, Advocates.

For Respondent(s) Representative of Respondent no.2.

ORDER

The petitioner has filed this petition u/s 58/59 of the Companies Act 2013, praying for necessary directions to Respondent no.1 Company to transmit the shares belonging to her late husband in her favour.

2. As per averments made in the petition, Late Mr. Amit Gupta held 200 shares of Rs.10/- each of Respondent no.1, a Company listed on the Bombay Stock Exchange as well as on the National Stock Exchange. Respondent no.2 is its Registrar and Share Transfer Agent. Shri Amit Gupta died on 25.02.2008 leaving behind his wife (the petitioner herein) and two children as his legal heirs. In terms of his Will dated 01.05.2003, he bequeathed all his assets to his wife. The petitioner lodged a formal request with Respondent no.2 for issuance of duplicate shares since

the originals were not traceable and also prayed for transmission in her favour so that she could exercise her right to vote and get dividends as and when declared by the Company. In response to her request, Respondent no.2 required her to furnish certain documents which included the Death Certificate of the deceased, his Pan Card details etc. Despite complying with all formalities and furnishing documents which included the Transmission Form, a Crossed Cheque, Details of the 200 shares, Affidavit of renunciation by the other Legal heirs of the deceased, request for issuance of duplicate shares in addition to furnishing a surety on behalf of her children, Respondent no.2 informed her on 16.12.2009 that her request could not be processed on the basis of the Will unless the same was probated or in the alternative a Succession Certificate was granted to her by a Competent Court.

3. The objections raised by the respondents were duly replied to vide a legal notice informing the respondents that since there was no dispute amongst the legal heirs of the deceased, there was no requirement for grant of a probate of the Will in Delhi.

4. The Respondents in their reply to the petition confirm that the deceased Shri Amit Gupta is a Registered Holder of the 200 shares being Share Certificate nos. 80655, 32597, 32599 & 44362. They further confirm that the request was made by the petitioner, but express their inability to effect the transmission in view of the various circulars and notifications of the Regulatory Authorities as well as in terms of Clause 63 of their Articles of Association. Special emphasis is laid on the relevant portion which reads as:-

> "***Before recognising any executor or administrator the Board may require him to obtain a Grant or Probate or Letters of Administration or other legal representation, as the case may be, form a competent Court in India and having effect in the place where the office is situate".***

5. It is also stated that in accordance with the Secretarial Standards defined for transmission of shares and debentures, (SS-6) issued by the Institute of Company

Secretaries of India (ICSI), transmission of shares should be considered on a probated Will if a nominee has not been appointed. It is also submitted on their behalf that as per practice, the standard requirement of the industry is probate of a Will or grant of letters of administration. Reliance is also placed on Circular No. CIR/MIRSD/10/2013 dated 28.10.2013 issued by SEBI standardizing the procedure for transmission of securities. As per the said circular, if the value of the security is more than Rs.2 Lacs, the Share Transfer Agent should ask for probate of the Will or a Succession Certificate.

6. Ld. Counsel for the petitioner has argued that as per a catena of judgments there is no requirement for a probate of a Will in Delhi in terms of Section 57 and Section 213(1) of the Indian Succession Act. Further, Clause 63 of the Articles of Association also provide that

> ***"in any case where Board in its absolute discretion thinks fit it shall be lawful for the Board to dispense with the production of probate or letters of administration or such other legal representation upon such terms as to indemnity or otherwise as the Board, in its absolute discretion may consider adequate".***

7. Ld. Counsel for the petitioner submits that nothing has been placed before this Bench by the Respondents to show that the matter of transmission was duly considered by the Board of Directors, who then on due application of mind rejected the petitioner's prayer for transmission.

8. Reliance has been placed by the Ld. Counsel for the petitioner on the decision of the Company Law Board in the matter of ***Mrs. Pushpa Vadera v. Thomas Cook (India) ltd. reported in 1996 87 Comp Cas 921 CLB*** on identical facts which categorically held that given the facts of the case there was no need for probate of a Will and even otherwise the Board of Directors never applied their mind declining transmission. The Hon'ble Bench duly directed transmission in favour of the wife of the deceased.

9. Though in routine, companies insist on a succession certificate or a probate of a Will, the same is done with a view to play safe and stand indemnified against any other claims. However, there is no aberration in permitting transmission on furnishing of documents which also include the Indemnity Bond. A case is to be considered on its own merits. In the instant case, late Shri Amit Gupta died in 2008. Till date there is no other Claimant. To withhold the transmission of his property to his natural legal heirs/ or any one of them would not be justified.

10. This Bench also concurs with the petitioner's submissions that no probate of the Will is required in Delhi. The respondent's insistence is unwarranted. There are other documents which can be verified without requiring the petitioner to go through the rigmorale of a protracted trial to prove the Will. The petitioner's relationship with the deceased can be duly be verified through documents. Her Affidavit giving the details of the legal heirs of the deceased and other documents including Undertaking/Indemnity Bond should suffice for the purpose of transmitting the shares held by her husband detailed in para no.4 above, exclusively in her exclusive name.

11. Petition is allowed in terms of the above. No order as to cost. Transmission be effected within 10 days of being put on the net as per statutory requirements.

Sd—

(Ina Malhotra)
Member Judicial