

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA.

C.P. No. 407/KB/2017

CORAM

Shri V.P. Singh
Hon'ble Member (J)

Shri Jinan K.R.
Hon'ble Member (J)

In the matter of :
Sections 58 and 59 of the Companies Act, 2013
And

In the matter of :
Sujoy Kumar Mukhopadhyay
.....Petitioner

Versus

1. ITC Limited
 2. Shri Shiba Pada Biswas
 3. Shafali Biswas
 4. Delalvala Biswas
 5. Registrar of Companies, West Bengal.
-Respondents.

1. Mr. Chhatrapal Sugandh, Advocate - for the petitioner

Judgment delivered on : 19-1-2018

ORDER

Per Shri V.P. Singh, Member (Judicial)

The present petition has been filed under sections 58 and 59 of the Companies Act, 2013 (the Act) praying, inter alia, that the original 12 equity shares

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of Rs.10/- each fully paid up of ITC Limited, the R.1 bearing distinctive numbers from 248399460 to 248399471 (both inclusive) which have now become 540 equity shares of Re.1/- each fully paid up after split and bonus issues, be transferred from the existing three joint shareholders viz. Shib Pada Biswas, Shafali Biswas and Delalvala Biswas in favour of the petitioner, Sujay Kumar Mukhopadhyay. Other consequential directions have also been sought for. As per array of the parties in the instant petition, the petitioner is stated to be residing at Vill. Biswanathpur, P.O. Deganga, 24 Parganas (North) and is working at the agriculture fields having no educational background, the Respondent No.1 (ITC Ltd.) is a public limited company within the meaning of the Companies Act, 2013 and having its registered office at Kolkata and that its shares are quoted at the NSE and BSE, the Respondent No.2 (Shiba Pada Biswas) is residing at Vill. Basabati, P.O. Khasbalanda, 24 Parganas (North), the details of Respondent No.3 (Shafali Biswas) and Respondent No. 4 (Delalvala Biswas) are not furnished in the petition and the Respondent No. 5 is the Registrar of Companies, West Bengal, having his office at Kolkata.

2. The petitioner's case is that he bought 12 equity shares of Rs.10/- each of ITC Limited (R-1) from Shri Shiba Pada Biswas (R-2) on the 11th May, 2005 at Haroah in the State of West Bengal and the consideration of the said 12 shares fixed at Rs.20,000/- (Rupees twenty thousand only), was paid in cash to R-2. After receiving the consideration money, the R-2, R-3 and R-4 all the three joint shareholders filled up, stamped and signed the Transfer Deed and gave it to the petitioner. The R-2, R-3 and R-4 jointly owned the subject 12 shares of ITC Limited (R-1) and hence, all the three shareholders had signed the original Transfer Deed on 11th May, 2005. The original Transfer Deed along with the original share certificate was handed over by the R-2 to the petitioner on the 11th May, 2005 at Haroah in the State of West Bengal. The petitioner kept the original Transfer Deed of the said 12 shares of R-1 and the original share certificate with himself. He was under the impression that the Transfer Deed and the share

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certificate would only be required as and when the shares would be sold by him and he kept the original share scrip No. 2488747 and the original Transfer Deed duly completed, signed and stamped by the R-1, R- 2, R- 3 and R-4 with himself upto 21st December, 2016. On 21st December, 2016, the petitioner personally approached the company (R-1), and gave the original share certificate along with the original Transfer Deed which was duly filled up, stamped and signed by all the three transferors being R-2, R-3 and R-4 complete in all respects. After receiving the original share certificate No. 2488747 along with the original Transfer Deed, the company refused to transfer the shares through its letter dated 11th January, 2017 with the intimation that they were not in a position to transfer the shares in favour of the petitioner for the following reason:

“The company’s ordinary shares of the face value of Rs.10/- each have been sub-divided on 28th September, 2016 into ordinary shares of the face value of Re.1 each and the company has also issued Bonus Shares in 2005(1:2) and 2010 (1:1). Accordingly, the existing share certificates in respect of the ordinary shares of Rs.10/- each stand cancelled with effect from 28th September, 2005.

- The 120 shares of Re.1/- each issued in lieu of the aforesaid 12 shares of Rs.10/- each. Subsequently after issuing of Bonus shares in 2005, 2010 and 2016 the aforesaid shares converted to 540 shares of Re.1/- each.

R-1 has advised the petitioner to contact with the registered shareholders in this regard and returned the Transfer Deed without taking any action. R-1 has also retained the share certificate for 12 shares of Rs.10/- for physical cancellation.

On the advice of the R-1, the petitioner tried to find out and contact with the R-2 but did not succeed. As such, he again wrote a letter to the R.1 on 30.01.2017 demanding transfer of the said shares. The R-1 instead of transferring the shares gave a reply vide its letter dated 23rd February, 2017, stating its inability to effect transfer in the absence of the valid documents for transfer of shares. Further, the respondent has asked the petitioner to obtain a Court Order to effect transfer

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of share to him. The petitioner sent the letter dated April 8, 2017 through his Advocate to the first shareholder and first transferor Shri Shiba Pada Biswas, the R-2, demanding a fresh Transfer Deed in the current Transfer Form No. SH-4 for 540 shares of ITC Limited vide the speed post consignment No. EW144860505IN. The said letter was received by the first shareholder and first transferor Shri Shiba Pada Biswas, the R-2 on the 11th April, 2017. Even after receipt of the letter from the petitioner, the R-2, jointly in collusion with the R-3. & R-4 did not deliberately take any steps to issue fresh and current Transfer Deed in the Form SH-4 for 540 shares as demanded by the petitioner. The R-2 has not sent any reply to the petitioner nor contacted him in any. Such conduct of R-2, R-3, & R-4 was malafide and deliberately made with the ulterior motive of unlawfully retaining and enjoying the benefits of and accruing to the shares already sold by them. When, in spite of his best efforts, the petitioner did not succeed in getting fresh and current Transfer Deed, he tried and took the step for revalidating the old Transfer Deed from the office of Registrar of Companies, West Bengal, the R-5. The petitioner filled up, signed and completed the Form No. 7C under the Companies Act, 1956 pursuant to section 108 (1D) of the Companies Act, 1956 being the application for extension of time under section 108 (1D). The application fee of Rs.100/- was paid by the petitioner to the said Form. All the complete documents, viz. the application dated 19th April, 2017 of the petitioner to the Registrar of Companies, West Bengal, the R-5, Form No. 7C duly filled up, signed and completed in all respect along with the G.A.R. receipt of the S.R.N. U12706255 dated 18.04.2017, were sent by the petitioner to the R-5 by speed post on 21st April, 2017. The petitioner enquired at the office of R-5 and was informed that the said consignment was received by them. When the petitioner did not get any action or any reply from the Registrar of Companies, West Bengal, the R-5, he again sent one letter dated 22nd May, 2017 to them. The petitioner once again tried to get the shares transferred through the R-1 and had sent a letter dated 29th May, 2017 demanding transfer of 540 shares in his favour. The said letter of the petitioner was sent by speed post on 15th June, 2017 and it was received by the

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R-2 on the 16th June, 2017, but the R-5 did not respond to the requests and demands of the petitioner nor gave any reply or response to his letters. The R-2 also did not meet the demand of the petitioner who bought the subject 12 equity shares of Re.1 from the R-2, R-3 and R-4 after paying full consideration money.

3. The petitioner has filed an affidavit dated 15.11.2017, enclosing the service through postal receipts dated 14.07.2017 upon R-1, R-2 and R-5. The said affidavit is placed on record. However, when the matter was called on 10.01.2018, none of the respondents as shown in the array of parties of the instant petition, has put in their appearance. Accordingly, the matter was heard ex parte of the respondents.

4. Heard the Ld. Advocate appearing for the petitioner, perused the records and considered the submissions made by the Advocate.

5. It would be relevant to quote the provisions of sub-section (1) of section 56 of the Companies Act, 2013 which reads thus:

Section 56(1)

“A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose name are entered as holder of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:”

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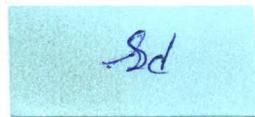
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6. It is the mandate of the above provision of law that the company shall not register a transfer of securities of the company unless a proper instrument of transfer, in the prescribed form, duly stamped, dated and executed by or on behalf of the transferor and the transferee, has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution along with certificate of securities. It is an admitted position that the petitioner could not comply with the said requirements as mentioned in the letter dated 11.01.2017 of R-1 followed by another letter dated 23.02.2017 of R-1. In the second letter dated 23.02.2017, R-1 has clearly stated its inability to effect transfer of shares in the absence of the valid documents for transfer of shares. The petitioner has not been able to adduce any documentary evidence showing compliance of the statutory requirements as advised by R-1 in its letter dated 11.01.2017.

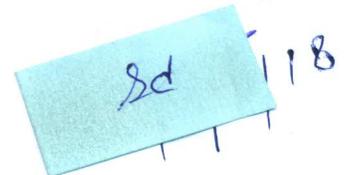
7. For the reasons abovementioned, we are of the considered view that the petitioner has not been able to follow due procedure of law and comply with the statutory requirements as envisaged under sub-section (1) of section 56 of the Companies Act, 2013 and in absence of such compliance, the petition does not merit any consideration. Accordingly, the petition fails and is hereby dismissed.

8. No order as to costs.

9. Urgent certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.



(Jinan K.R.)
Member (J)



(V.P. Singh)
Member (J)

Signed on this 19th day of January, 2018.