

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.A. No. 203/2015
in
C.P.No. 130/2014

CORAM:

Shri V. P. Singh
Hon'ble Member (J)
Shri S. Vijayaraghavan
Hon'ble Member (T)

In the matter of Section 59 of the Companies Act, 2013;
AND

In the matter of: Bakul Keshavlal Chandaria Petitioner
Versus
CESC Ltd. Respondent

Date of concluding the hearing : 14/09/2016

Date of pronouncing the Order: 6-10-16

Parties on Record :

Mr. Deepak Kumar Khaitan, Pr. C.S.]	For Petitioners
Mr. Anil Murarka, Pr. C.S.]	For Respondent

ORDER

Per Shri Vijay Pratap Singh, Member (J)

This application is for amendment of the Company Petition No. 130/2014, Bakul Keshavlal Chandaria -versus- CESC Ltd. which has been moved on behalf of the Applicant/Respondent company for and Ashok Kumar

S. Vijayaraghavan

[Signature] 1

Mulji Shah being the legal and natural heirs of Late Mulji Rajpur Shah as proper and necessary parties, in absence of which the issue raised in the Company Petition No. 130/2014 cannot be properly adjudicated.


In the said application, the applicant / respondent has stated that the petitioner's father late Keshavlal Kanji Chandaria, being the first holder and jointly purchased 20,000 (twenty thousand) Ordinary Stock of Pound 1 each and 5,000 (five thousand), 6% Cumulative Preference Shares of face value of Pound one each of Calcutta Electric Supply Corporation Ltd. in 1970 with his brother-in-law Mr. Mullji Rajpur Shah.

Pursuant to a scheme of arrangement sanctioned by the Hon'ble Calcutta High Court in 1978 CESC issued the following shares against the aforesaid shareholding of both the joint holders:

(i) 33,758 (thirty three thousand seven hundred fifty eight) Equity Shares of Rs. 10/- each.

(ii) 8,439 (eight thousand four hundred thirty nine) – 7.5% Cumulative Preference Shares of Rs. 10/- each.

Bank of Baroda - London by its letter dated 27th April, 1971 confirmed of holding the appropriate shares in safe custody for both the joint holders.



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Mr. Sudhir Kumar Mulji Shah, son of late Mulji Rajpur Shah has filed with the Company copy of 3 (three) Debit Advice of Bank of Baroda – London in respect of debit of his father's then joint account with the Petitioner's father late Keshavlal Kanji Chandaria. Mr. Mulji Rajpur Shah by way of his last Will bequeath all his immovable and movable properties to his widow Mrs. Amritben Mulji Shah and two sons Mr. Ashok Kumar Mulji Shah and Mr. Sudhir Kumar Mulji Shah.

The petitioner's father late Keshavlal Kanji Chandaria, being one of the joint holder in respect of these shares by his letter dated 4th June, 1980 had instructed Bank of Baroda – London to register the shareholdings of late Mulji Rajpur Shah in the name of his 3(three) legal heirs in equal proportion.

The petitioner's father late Keshavlal Kanji Chandaria, being first joint holder in respect of the aforesaid shares by his another letter dated 21st December 1981 to Bank of Baroda – London, requested for transfer of 16,879 (sixteen thousand eight hundred seventy nine) Equity Shares of Rs. 10/- each and 4,219 (four thousand two hundred nineteen), 7.5% Cumulative Preference Shares of Rs. 10/- each being one half share of total shares, (Equity and Preference Shares) of the Respondent company being held by him jointly with late Mulji Rajpur Shah to legal heirs, Mrs. Amritaben Mulji Shah, Mr. Ashok

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It has been observed from the documents that 16,879 (sixteen thousand eight hundred seventy nine) Equity Shares of Rs. 10/- each of CESC being represented by a share certificate other than share certificate no. E810137 (E – eight lac ten thousand one hundred thirty seven) was not the assets / property of Petitioner's father late Keshavlal Kanji Chandaria and by own admission of Petitioner's father late Keshavlal Kanji Chandaria in his various letters to the Bank of Baroda – London, he is deemed to be the owner of only 16,879 (sixteen thousand eight hundred seventy nine) Equity Shares of Rs. 10/- each being represented by a share certificate no. E810137 (E – eight lac ten thousand one hundred thirty seven) and 4,219 (four thousand two hundred nineteen), 7.5% Cumulative Preference Shares of Rs. 10/- each of CESC.

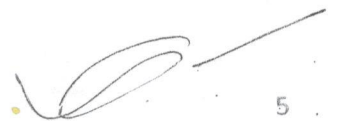
A hand-drawn sketch of a curve with a cusp, resembling a parabola opening to the right, and a separate straight line segment to its right.

The claim of the Petitioner in respect of 16,879 (sixteen thousand eight hundred seventy nine) Equity Shares of Rs. 10/- each of CESC being represented by a share certificate other than share certificate no. E810137 (E-eight lac ten thousand one hundred thirty seven), appears to be contrary to the action taken by his late father Keshavlal Kanji Chandaria for transfer of same to the legal heirs of his brother-in-law late Mulji Rajpur Shah.

The 16,879 Equity Shares of CESC being represented by a share certificate other than a share certificate no. E810137 was transferred to the legal and natural heirs of late Mulji Rajpur Shah before the Will of Petitioner's father late Keshavlal Kanji Chandaria was proved in the Hon'ble High Court of Kenya at Nairobi on 5th September, 2012.

The information by the Petitioner about the Order passed by the Hon'ble High Court of Kenya at Nairobi in relation to grant of Probate of Written Will on 8th May, 2013 has no relevance in the instant case and the same cannot cover 16,879 Equity Shares of Rs. 10/- each of CESC represented by a share certificate other than share certificate no. E810137. The petitioner is not the rightful owner of the 16,879 Equity Shares being represented by a share certificate other than share certificate no. E810137, which was transferred to the legal and natural heirs of late Mulji Rajpur Shah after complying various provisions of the Act.

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As per records available with the Respondent Company, it is also found that a Power of Attorney was executed by the petitioner's father late Keshavlal Kanji Chandaria on 22nd January, 2010 at Nairobi, Kenya appointing Mr. Sudhir Kumar Mulji Shah, son of late Mulji Rajpur Shah as his attorney and to do or execute in his name and on his behalf or otherwise for the purpose as mentioned therein in respect of 33,758 (thirty three thousand seven hundred fifty eight) Equity Shares of Rs. 10/- each of CESC having Folio No. ECO9602, Certificate Nos. 54344 to 55019, Distinctive Nos. 4161896 to 4195653. Subsequent to execution of Power of Attorney by Petitioner's father late Keshavlal Kanji Chandaria on 22nd January, 2010, Mr. Sudhir Kumar Mulji Shah by his letter dated 8th February, 2010 forwarded the original of same to the Respondent Company along with the requisite papers and Demand Draft of Rs. 800/- to CESC to issue duplicate share certificate in respect of its total 33,758 Equity Shares of Rs. 10 each. Mr. Sudhir Kumar Mulji Shah by his letter dated 27th May 2010 has forwarded the fresh Affidavit, Indemnity and copy of Public Notice appeared in UK newspaper for issue of 2 (two) duplicate share certificate each comprising of 16,879 Equity Shares of Rs. 10/- each

The petitioner's father late Keshavlal Kanji Chandaria executed a stock Transfer Form on 12th November, 2010 for transfer of 16,879 of Equity Shares of Rs. 10/- each of CESC in favour of Mr. Sudhir Kumar Mulji Shah & Mr.

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Ashok Kumar Mulji Shah being the legal and natural heirs of late Mulji Rajpur Shah. The said Stock Transfer Form was duly certified by the Notary Public at Kenya on 12th November, 2010.

In reply, the petitioner has refuted and disputed all the contentions raised by the applicant and reiterated the averments made in the petition. It has also been stated that the parties proposed to be added have not shown any interest in the matter and in any case no party can go beyond records and it is a matter of record that shares are still pending in the name of the petitioner's deceased father and that necessary probate Order has been passed by the Hon'ble High Court of Kenya. The applicant company cannot go beyond its own register of members and whatever are matters of record cannot be undone by either party and if there is any fraud conducted by either then such other party has the liberty to deal with the same in accordance with the law. Further the Applicant/Respondent has admitted that 16,879 Equity Shares of Rs. 10 each vide Certificate No. E810137 are still in the name of the Petitioner's deceased father as per their own records and it is also a matter of record that necessary probate has been granted. The petitioner shall make a formal application to the Respondent Company for transmission of shares which it claims that it has already transferred to another party and upon receiving the reply thereto necessary application shall be preferred before this Hon'ble Bench. If the Applicant is at all a neutral party then it will not be prejudiced by

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transmission of the shares from Petitioner's deceased father to the Petitioner, which is in accordance with the law. The reply of the Respondent cannot enlarge the scope of the main petition by making further prayers. The Respondents will not be prejudiced if the prayer in the main Company Petition is granted. The parties proposed to be added have not shown any interest in the matter and in any case no party can go beyond records and that the Company cannot go beyond its own register of members.

The respondent/applicant in the main Company Petition no.130/2014 has filed this C.A. No. 203/2015 for impleading Shri Sudhir Kumar Mulji Shah and Ashok Kumar Mulji Shah, as the legal representative and natural heirs of late Shri Mulji Rajpur Shah. The respondent /applicant has filed this application on the basis that purported petition under section 59 of the Companies Act cannot be decided in absence of necessary and proper parties, because any order that may be passed by this Court may cause prejudice to non-parties, while implementing the order by the respondent company. Respondent/applicant submits that the purported petition cannot be decided/ adjudicated without having considered the averments/settlement of Mr. Sudhir Kumar Mulji Shah and Ashok Kumar Mulji Shah, being the legal and natural heirs of late Shri Mulji Rajpur Shah.

S. S. Rajgopal

[Signature]

In reply to the above, petitioner of the Company Petition has submitted that the instant application cannot be taken on record because it has been signed and filed by the persons who are not duly authorized. It has also been submitted that the instant application cannot be taken on record because the petitioner has filed which is formal in nature. The petitioner/respondent by this application has failed to explain on which basis he is claiming the application which has been signed and filed by the persons who are not duly authorized.

The applicant/respondent has filed Rejoinder in support of the application wherein the averment of the application has been reiterated. The applicant/respondent no.1 of the petitioner has mentioned in Rejoinder that the alleged dispute in question is between two brother-in-laws i.e. late Shri Keshavlal Kanji Chandaria and other, petitioner's father, late Shri Mulji Rajpur Shah. The petitioner's father late Shri Keshavlal Kanji Chandaria along with his brother-in-law late Mulji Rajpur Shah, has purchased 20,000 Ordinary Stock of one pound each, (Five thousand 6% Cumulative Preference Shares of face value of one pound each) of Calcutta Electric Supply Corporation in the year 1970. Bank of Baroda, London vide its letter dated 27th April, 1971 confirmed to the petitioner's father late Shri Keshavlal Kanji Chandaria about the receipt of share certificate in respect of these shares and holding the same in safe custody on behalf of him and Mulji Rajpur Shah. The applicant/respondent no.1 has filed copy of letter of Bank of Baroda-London as R-1 with the Rejoinder

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affidavit. The applicant has further submitted that Shri Sudhir Kumar Mulji Shah, son of late Shri Mulji Rajpur Shah has filed with the respondent company, copy of Debit Advice of Bank of Baroda-London, in respect of debit of his father's from joint account with the petitioner's father late Keshavlal Kanji Chandaria. A copy of aforesaid Debit Advice of Bank of Baroda-London has been annexed with the rejoinder affidavit of the respondent company as R-2. The petitioner's father late Shri Keshavlal Kanji Chandaria, being one of the joint holders in respect of these shares by letter dated 4th June, 1980 had instructed Bank of Baroda-London to register the share holding of late Shri Mulji Rajpur Shah in the name of three legal heirs in equal proportions along with copy of Will of late Mulji Rajpur Shah. A copy of the said letter and a copy of the Will have been annexed by the respondent company as R-3 and R-4 with the Rejoinder. Petitioner's father late Shri Keshavlal Kanji Chandaria by a letter dated 24.09.1980 addressed to Bank of Baroda- London reiterated his commitments for transfer of 50% of shares of the total shares of the respondent company held by him jointly with late Mulji Rajpur Shah, to his legal heirs. Petitioner's father late Shri Keshavlal Kanji Chandaria by another letter dated 21.09.2081 to Bank of Baroda-London, requested for transfer of 16879 equity shares of Rs.10 each and 4219 Preference shares of Rs.10 each, being one half share of the total shares jointly purchased and held by him with late Shri Mulji Rajpur Shah to his legal heirs. Petitioner's father late Shri Keshavlal Kanji Chandaria had issued Power of Attorney dated 22.01.2010 appointing Shri



Sudhir Kumar Mulji Shah and his Attorney for splitting 33758 equity shares of Rs.10/- each of the respondent company into two duplicate share certificates of 16879 equity shares and to receive the same from CESC Ltd. after splitting up and also to take stock transfer of 16879 equity shares being one half of 33758 equity shares by respondent company in the joint name of legal heirs of late Shri Mulji Rajpur Shah. The respondent company has mentioned in its Rejoinder the names of Shri Sudhir Kumar Mulji Shah and Shri Ashok Kumar Mulji Shah as legal heirs of late Shri Mulji Rajpur Shah, who are holding share certificates of Rs.10 each of the respondent company on the strength of Power of Attorney issued by petitioner's father late Shri Keshavlal Kanji Chandaria on 22.01.2010. The respondent no.1 company has filed this impleadment application on the basis that the heirs of late Shri Mulji Rajpur Shah, i.e. Shri Sudhir Kumar Mulji Shah and Shri Ashoke Kumar Mulji Shah are necessary and proper parties and the petition cannot be decided effectively without adding them as parties in the petition.

In this case, legal heirs of late Shri Mulji Rajpur Shah, Shri Sudhir Kumar Mulji Shah and Shri Ashok Kumar Mulji Shah are holding the share certificates in respect of 16879 equity shares of Rs.10 each of the respondent company on the strength of Power of Attorney issued by petitioner's father late Shri Keshavlal Kanji chandaria on 22.01.2010 whether the alleged Power of Attorney is effective or not, can only be decided at the time of deciding the



company petition on the basis of certain documents filed with the application. It is clear that Shri Sudhir Kumar Mulji Shah and Shri Ashok Kumar Mulji Shah, the legal heirs of late Shri Mulji Rajpur Shah are holding the share certificates in respect of 16879 equity shares of the respondent company on the strength of Power of Attorney issued by petitioner's father late Shri Keshavlal Kanji chandaria dated 22.01.2010. The petitioner has filed Company Petition no.130/2014 under section 59 of the Companies Act on the basis of legal heirs of late Shri Keshavlal Kanji Chandaria and it is also on record that Shri Keshavlal Kanji Chandaria and Shri Mulji Rajpur Shah have jointly purchased the shares. A proper party in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. A necessary party is one without whom, no order can be made effective. Therefore, it is clear that heirs of late Shri Mulji Rajpur Shah, Shri Sudhir Kumar Mulji Shah and Shri Ashok Kumar Mulji Shah are proper and necessary parties and their addition as respondents in the petition are necessary for effective and proper adjudication in the matter. Therefore, on the basis of records available before us, we are of the view that without adding Shri Sudhir Kumar Mulji Shah and Shri Ashok Kumar Mulji Shah as parties in the case, no effective order can be passed and their presence is necessary for completion and final decision on the question involved in the proceedings. Therefore, application deserves to be allowed and objection of the respondent petitioner deserves to be rejected. Application in CA No.203/2015 is

S. S. Jeyaraj

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hereby allowed and petitioners of C.P. No.130/2015 are hereby directed to
implead Shri Sudhir Kumar Mulji Shah and Shri Ashok Kumar Mulji Shah as
respondents


(S. Vijayaraghavan)
Hon'ble Member(T)


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

Signed on this 6th day of October, 2016