

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

**I.A.No.06/2017
in
C.P.No. 06/2017**

UNDER SECTION 58 OF COMPANIES ACT 2013

**In the matter of M/s Shri Neel Rajesh Shah
Vs
M/s.Mc.Dowel Holdings Ltd**

Order delivered on 10th July 2017

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)

For the Petitioner (s) Vachun H.U. Advocate

For the Respondent(s) R. Subramanian

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 13.03.2017, 20.04.2017, 21.06.2017, 04.07.2017

O R D E R

This application is filed on behalf of applicant/Petitioner to condone delay of 300 days in filing petition under Section 58 of Companies Act 2013.

Affidavit of General Power of Attorney (GPA) of applicant is filed. She is the mother of the applicant she has averred in her affidavit that the father of the petitioner Shri Rajesh Himmatlal Shah died on 12.09.2003. He was owner and held inter alia several stocks and securities not only in his name but also in the name of his wife Tmt. Srimathi Priti Rajesh Shah. The stocks and securities includes 620 equity shares of the Respondent No.1 Company Petition more fully described in the schedule.

Late father of applicant died leaving behind him his wife, the applicant and his mother by name Kanthaben Shah. It is further averred the applicant approached second respondent for transfer of shares of his late father in his name and produced relevant documents including the succession certificate. However applicant was informed to his surprise that duplicate share certificates were already issued and further the shares were dematerialised in 2013. It is further averred the General Power of Attorney (GPA) who is mother of applicant had asked the second respondent to furnish information with regard to issuance of duplicate share certificates in the place of original shares held by her family. By letter dated 28.03.2015, the Second respondent forwarded copies of documents stating duplicate share certificates were issued in the name of applicant father in 2012-2013 which is in correct as applicant father died in 2003. It is further averred applicant was advised to file Civil Suit for redressal of his grievance. Therefore he instituted a civil suit in the City Civil Court Bengaluru. However the suit was dismissed on the ground applicant to approach this Tribunal for redressal of his grievance by rejecting the plaint.

It is further averred the delay occurred for the said reasons and prayed to condone the delay.

1st Respondent filed counter which is adopted by 2nd Respondent. The averments in the counter in brief that the application is not maintainable. The delay is not properly explained. The claim by the applicant is false.

It is further averred in the counter Mr.Rajesh H.Shah was the holder of 3100 shares of 1st Respondent Company. The 2nd Respondent is the registry of 1st respondent company. It is averred the 2nd respondent received a letter from Rajesh H Shah dated 03.07.2012 who wanted to record his change of address and 2nd Respondent accordingly updated his address in the company records. Again Rajesh H Shah addressed a letter to the 2nd respondent

informing that he did not received any new share certificate and requested to send new share certificate.

It is averred the company cancelled the old share certificates upon amalgamation and issued new share certificates and sent by registered post. The 2nd respondent further informed Rajesh H.Shah that he has to move the 2nd respondent for issuing of duplicate share certificate and accordingly applicant Shri Rajesh H. Shah produced necessary information and documents vide letter dated 25.11.2012. Further Rajesh H.Shah produced necessary information as required by 2nd respondent. Paper publication was also issued both in English and vernacular language. News item were published in the said papers. No response from any quarter. Necessary information was also sent to Bengaluru Stock Exchange and National Stock Exchange. Then duplicate share certificate were issued to Rajesh H.Shah. It is stated that father of original allottee Rajesh H.Shah was Himmath Bhai Shah whereas father's name of applicant is Himmathlal Shah. So they are not one and the same.

It is further averred even after 10 years of death of Rajesh H.Shah the applicant then moved Civil Court which was subsequently dismissed. It is thus contended there was delay in filing main petition / appeal against the order of respondent in refusing to transmit the shares in favour of applicant.

It is further averred that the share certificates issued to Rajesh H.Shah were not returned back and on being informed by Rajesh H.Shah, he was directed to apply for duplicate share certificate. On filing of necessary proof and after following the procedure duplicate share certificates were issued to Shri Rajesh H. Shah and it was also intimated to the Bengaluru Stock Exchange and National Stock Exchange. It is contended petition ought to have been filed under Section 58 of Companies Act 2013 within 60 days from the date of order of refusal dated 11.02.2015. However applicant approached Civil Court and the suit

was dismissed. Actually there was delay of 646 days but not 300 days as alleged. Therefore petition deserves to be dismissed.

Heard both sides. This application is filed to condone the day of 300 days in filing petition under Section 58 of Companies Act 2013. The main petition was filed on behalf of applicant questioning the refusal of transmission of shares in favour of him which were said to have been standing in the name of his late father.

The brief case of the applicant the disputed shares were held by his late father Rajesh Himmatlal Sha. It is the case of applicant his father died on 12.09.2003. It is his case some differences arose in the family regarding succession and that finally the dispute was settled and entire share certificates of his late father were allotted to him.

Therefore he moved the Hon'ble High Court for issuing succession certificate and obtain the same in December 2014. It is his case thereafter he approached the 2nd respondent for transmission of shares but he was informed that duplicate share certificates were already issued in the name of Rajesh H. Shah by observing the due procedure. It is the case of applicant how respondents issued duplicate share certificates in favour of his father in the year 2015 when his father died in 2003. He had filed Civil Suit against respondents but suit was rejected on the ground he has to approach this Tribunal under Section 58 of Companies Act 2013. Thus there was delay.

It is the case of respondent that duplicate share certificates were issued to the original owner by observing the due procedure and after being satisfied with the claim of the original owner. The respondents also questioned the claim of applicant to the share certificates in the suit on the ground that his father name is totally different than the name in which share certificates were issued. The respondents questioned the possession of share certificates by applicant. Further respondents questioned conduct of the applicant in approaching the

company with delay of several years. Finally it is contended that the delay is not properly explained.

The delay said to have occurred in as applicant was approaching the Hon'ble High Court for grant of succession certificate after settlement of internal dispute among the family members. Secondly it is alleged a Civil Suit was filed which was ultimately rejected or dismissed on the ground suit was not maintainable. Then only applicant approached this Tribunal with delay. The applicant should have been diligent and should have taken steps to avoid delay or atleast minimise the delay. No doubt there is not dispute, the applicant approached Hon'ble High Court for succession certificate which is also necessary for seeking transmission of shares and further filed Civil Suit. Under the said circumstances the delay is properly explained but however applicant to pay cost to the respondents. The delay can be condoned on payment of costs to the other side.

In the result the application is allowed condoning the delay subject to condition the applicant to pay costs of Rs.1000/- to the respondents on or before 14.7.2017 failing which stands dismissed.

18/7/17
(RATAKONDA MURALI)
MEMBER, JUDICIAL

DATED: MONDAY THE 10th DAY OF JULY 2017