

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI Company

Appeal (AT) No. 177 of 2020

(Arising out of Impugned Order Dated 26.02.2020 passed by Hon'ble National Company Law Tribunal, Bengaluru Bench in C.P No. 196/BB/2019)

In the matter of:

1. **Positiveedge Technology Pvt. Ltd**
Through its Director and Authorized Signatory
Suresh Singh Sainger
No.597, Maple, 15th Cross,
Ring road, 6th Phase, J.P.Nagar
Bengaluru, Karnataka - 560017 **...Appellant No.1**

2. **Shivendra Singh Sainger**
Through his Power of Attorney Holder
Suresh Singh Sainger
C-383 (SFS), Sheikh Sarai, Phase- 1.
Malviya nagar, Delhi - 110017 **...Appellant No.2**

Vs.

1. **Asmita Katdare**
W/o Late Santanu Mondal,
1933, Palmer, Dr.Pleasanton,CA94588,
United States of America
C/o Mrs. Rekha Katdare
W/o Late Mr. Ravindra katdare,
No.61/33, Raja Griha, Bharat Niwas Colony
Errandwana, Pune,
Maharashtra - 411004 **...Respondent No.1**

2. **Siona Mondal**
(Minor-Through her mother
And guardian Asmita Katadare)
D/o Late Santanu Mondal,
1933, Palmer, Dr. Pleasanton,
CA 94588,
United States of America
Also at:
C/o Mrs. Rekha Katdare

**W/o Late Mr. Ravindra katdare,
No.61/33, Raja Griha, Bharat Niwas Colony,
Errandwana, Pune,
Maharashtra – 411004**

...Respondent No.2

Present:

For Appellant: Mr.Sharukh Ejaz and Mr. Nilotpai Bansal Advocates.

For Respondent: Mr. Manu Kulkarni, Mr. Saransh Jain, Mr. Shloka Narayanan, Mr. Tejpal Singh Rathore, Advocates. Poovayya and Co.

JUDGMENT

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The present appeal is preferred under Section 421 read with Section 58 and 241 of the Companies Act, 2013 against the impugned order dated 26.02.2020 passed by National Company law Tribunal, (‘for short Tribunal’) Bangalore Bench in CP No. 196/BB/2019.
2. The Appellant is aggrieved by the impugned order of the Tribunal as the Tribunal has directed to the Appellant No.1, Company to give effect to the transmission of shares of late Mr. Santanu Mondal, the deceased Director and Shareholder of Appellant No.1 Company in favour of Respondents by rectifying its register of members and also to pay all consequential benefits on par with other shareholders with effect from 01.05.2017.
3. The Tribunal has passed the impugned order dated 26.02.2020 as the Appellant Company is exercising arbitrary powers conferred on the

Company and its Directors as per Article of Association of this Company and it amounts to oppression. The deceased Director, Mr. Mondal died on 18.04.2015 and the Respondents submitted all requisite documents as earlier as on 01.04.2017 hence they are deemed to be shareholders of the Appellant Company w.e.f. 01.05.2017 and are also entitled for all consequential benefits on par with other shareholders of the Company and have also observed that succession certificate is required to be produced only when succession is in dispute and not supported by relevant evidence.

4. The Appellant against the impugned order has prayed for setting aside the impugned order dated 26.02.2020 passed by the Tribunal.
5. The Appellant has made the following submissions:
 - a. The Appellant No.1 is a Private Limited Company, the Appellant No.2 is a Director of the Appellant No.1 Company since 2nd November, 2009. The deceased Director, late Mr. Santanu Mondal, was an active shareholder and a vigilant Director of the Appellant No.1 Company who passed away on 18.04.2015 in United State of America. Respondent No.1 is wife of Late Mr. Mondal while Respondent No.2 is minor daughter of Late Mondal. It is also stated that Late Mr. Mondal has surviving parents.
 - b. Late Mr. Santanu Mondal was also a Member of another Company in USA Positiveedge Solutions LLC, a sister concern of Appellant No.1

Company in USA. The Second Appellant on 20.12.2016 has purchased the shares of the respondents at an agreed consideration in respect of the shares of the sister concern i.e. Positiveedge Solution LLC.

- c. The Appellants are alleging that the respondents are putting pressure on the Appellants for transmission of 5000 equity shares erstwhile held by Mr. Mondal in the Appellant No.1 Company without complying with the Indian Laws Intestate Succession. The Appellants have also stated that as per the laws of Intestate Succession Application in the State of California, USA the surviving spouse and surviving issue exclude all other possible heir to the state of the deceased by as per Indian Law for Intestate Succession to the property of the Hindu, the mother of the deceased is also a class-I heir and thus inherits alongwith surviving spouse and issues of the deceased. As per the Appellant, the mother should have been given a share and show also a succession certificate is required. The Appellants have also stated that the Article of Association of the company is conferring discretion upon the Board of Directors in such transmission matters. Since the Appellant has failed to provide succession certificate so they have not agreed for the transfer of shares.

- d. The Appellants have also raised that the Tribunal has decided “Civil Right of inheritance of the respondent qua the shares held by the deceased members”. It is a settled principle of law that such an adjudication regarding the rights of inheritance can be made only on a civil suit filed for such adjudication before Civil Court of competent jurisdiction and have cited certain judgments. The Tribunal has entered into the area of discretion granted to the Board of Directors.
- e. Since the Respondents have not produced documents regarding relinquishment of the right of inheritance in the deceased shares on behalf of mother of Mr. Mondal. Hence, the Company cannot transmit the shares to the Respondents.

3. The Respondents have made the following submissions:

- a. The Respondents have alleged that the Appellants have raised several new factual as well as legal submission before this Appellant Tribunal for the first time which were not raised before the NCLT and thereby the Appellants protracting these proceedings. Accordingly, they have submitted the documents filed by the Appellant before NCLT.
- b. The Respondent No.1 and 2 are wife and daughter of late Mr. Santanu Mondal who was holder of 50% shares of Appellant No.1 Company until his untimely demise on 18.04.2015.
- c. The Appellants have already got the shares purchased of Respondents transferred in the US Company based at California without any

problem and accepting the fact that the Respondents were the legal heir of late Mr. Mondal and therefore, entitle to deal with his assets. After repeated request to the Appellant company and the Appellant Director since 20.01.2017, the shares were not transmitted then they have approached the Tribunal on 09.10.2019 and the Tribunal after hearing the parties have passed the impugned order granting relief to the Respondents.

4. The Respondents have also alleged that the Appellants have raised new grounds given hereunder:
 - a. The mother of Late Mr. Mondal is also a legal heir of Mr. Mondal and therefore, the Respondents are not the sole legal heirs entitled to the transmission of the shares. The Respondents have clarified that the mother of Mr. late Mondal who is alive and she has released her rights in the 5000 shares held in her son's name as far as back on 25.12.2015 by way of a letter to the Respondents.
 - b. It is also true that Appellant No.2 and late Mr. Mondal were close friend and the Appellant was also present at the time of demise of Late Mondal where his parents were also there. They were together in the ceremony of demise of Mr. Mondal. The Respondents have gone ahead to the extent that in spite of all this Shares can be transmitted in the name of Respondent No. 1 and 2 as well as the mother of late Mr. Mondal.

c. The Appellants have failed to provide any valid reason not to transmit the shares when all the relevant documents as required by the law has provided. They have also submitted as per section 430 of the Companies Act, 2013 that Civil Court have no jurisdiction in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this act or under any other law for the time being enforce.

5. We have carefully gone through the various submissions made by the parties and are observing as follows:

a. It is very much clear that both the Appellants and the Respondents are known to each other for a long time and knows each other families also. It is not in dispute that the Appellant No.2 has purchased the share of California, US based Company on the same identity from the Respondents. It is also not in dispute that in the objections filed by the Appellant before the Tribunal, they have not raised the issue of mother as an inheritor. The Appellants (Respondent at Tribunal) have raised only the issue of production of probate and appropriate legal heir Certificate from Respondents at Tribunal. The issue of mother of Late Mr. Mondal, legal heir was not raised at Tribunal and hence a new ground. In any case the mother has already released her rights as far as back on 25.12.2015 by way of a letter. Even the Respondents are agreeable that let the shares be transmitted in the

name of the all three (mother, wife and daughter). Identity is not denied, he cannot take a plea topsy-turvy. He is prohibited by his conduct-estoppel by conduct.

b. Section 115 of the Evidence Act, 1872 speaks as follows:

“Section 115. Estoppel – When One person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”

c. In the present case the Appellant company have not assigned a tenable or sound reason as well as taken the correct approach to the issue of transmission. The appellant himself has purchased the shares of the respondents of USA based company at a consideration on the same plea, no doubt, but taking a different plea in India and without communicating in explicit terms when this fact was known to the Appellant no.2 since the date of death of Late Mondal or earlier. Indian Evidence Act, 1872 does not permit taking one stand at one place & a different stand at other place.

d. Companies Act, 2013 vide chapter IV specifically regulates the mechanism for Transfer & Transmission of Securities. Hence, as per

Section 430 of the Companies Act, “Civil Court not to have Jurisdiction” on such issues.

6. In view of the above observations, we do not find any merit in the case and we uphold the order of NCLT, Bengaluru Bench. The Appeal is dismissed. No order as to costs.

**[Justice Jarat Kumar Jain]
Member (Judicial)**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

New Delhi
18th November, 2020
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