

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

CA No. 19/JPR/2023
IN CP No. 18/58-241-242/JPR/2023

IN THE MATTER OF:

MANJULA AHLUWALIA & ORS.

... PETITIONERS

VERSUS

KAMAL SPONGE STEEL & POWER PVT. LTD. & ORS.

...RESPONDENTS

MEMO OF PARTIES

IN THE MATTER OF:

CA NO. 19/JPR/2023

Kamal Sponge Steel & Power Limited,
Kamal Kunj, Ahinsa Circle, Subhash Marg,
C-Scheme, Jaipur, Rajsthan-302001.

...Applicant

VERSUS

Manju Ahluwalia,
W/o Late Shri KJS Ahluwalia,
Resident of A-7, Maharani Bagh,

CA No. 19/JPR/2023
IN CP No. 18/58-241-242/JPR/2023

Sd/-

Sd/-

New-Delhi-110065.

..... Non-Applicant No. 1

Himangini Singh

D/o Late Shri KJS Ahluwalia,
Resident of 75, Friends Colony West,
New Delhi-110065.

.....Non-Applicant No. 2

Pankaj Infotech Pvt. Ltd.

Through its Director,
Mr. Rajeev Verma,
174/A, Maniktalamain Road,
Kankurgachi, Kolkata, West Bengal-700054.

.....Non-Applicant No. 3

For the Applicant : Navin Pahwa, Sr. Adv.
Amol Vyas, Adv.
Danish Akhtar, Adv.
Jasmine Damkewala, Adv.
Ambar Tewari, Adv.
Shray Nargotra, Adv.

For the Non-Applicant(s) : U. K Chaudhary, Sr. Adv.
Saurabh Kalia, Adv.
Sandeep Taneja, Adv.
Sameer Chaudhary, Adv.
Avik Sarkar, Adv.
Mansumyer Singh, Adv.

Order Pronounced On: 23.04.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. This Company Application ('CA') is filed under Rule 11 of the National Company Law Tribunal ('NCLT') Rules, 2016 read with Section 151 of the

Civil Procedure Code ('CPC'), 1908 for vacating the stay as passed *vide* Order dated 04.09.2023 in *CP No.18/58-241-242/JPR/2023*.

2. The Company Petition No. 18/58-241-242/JPR/2023 was filed by *Mrs. Manjula Ahluwalia*, ('Non-Applicant No.1'/'Respondent') Legal heir of Late *Shri KJS Ahluwalia* ('KJS') under Section 241-242 of the Companies Act, 2013 seeking relief against *M/s Kamal Sponge Steel & Power Limited* ('Applicant'/'Company') and others. The present Application has been filed to vacate the interim order dated 04.09.2023. The said interim order was passed by this Tribunal on 04.09.2023 wherein it was directed that any decision taken in the EGM will be subject to the outcome of the main petition in the present matter and the Non-Applicants were directed to furnish the original documents for the purpose of the transmission of the shares of KJS. Copy of the Order dated 04.09.2023 is annexed as Annexure A-1 of the Application.

3. The present Application has been filed vide Dairy No. 2322/2023 dated 21.09.2023 with the following set of facts:

3.1 The Applicant has stated that as per the aforementioned interim order, this Tribunal directed Non-Applicants to furnish the original documents for the purpose of the transmission of the shares, however, nothing has been provided by the Non-Applicants. Rather a public

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notice was issued on 16.09.2023 stating that the original share certificates belonging to KJS had been misplaced/lost.

- 3.2 At the time of the hearing of the main matter, Non-Applicant No. 1 contended that she had the original documents, and based on the same this Tribunal passed the interim order dated 04.09.2023 and directed the Non-Applicants to furnish the original documents for the purpose of transmission of shares. The public notice qua the share certificates in the local newspapers makes it evident that the entire submissions made by the Non-Applicants were false, concocted and there is no specific averment with regard to any act of oppression or mismanagement.
- 3.3 In the view of interim order dated 04.09.2023, the Applicant via E-mail dated 09.09.2023 requested a list of the original documents from the non-applicants in order to transmit the shares in the name of the legal heir. The list of the original documents are as follows;

- 3.3.1 *Transmission Request Form in the prescribed format;*
- 3.3.2 *Original Shareholding Certificate or Allotment Certificate;*
- 3.3.3 *Copy of birth certificate (in case of minors);*
- 3.3.4 *Duly issued Succession Certificate;*
- 3.3.5 *A declaration affidavit (as per SEBI circular) by non-applicants along with an Indemnity Bond by non-claimants*



Copy of the E-mail dated 09.09.2023 is annexed as Annexure A-4 of the Application.

3.4 The Non-Applicants had not submitted any response to the aforesaid E-mail dated 09.09.2023. It is submitted that the Applicant had already passed a board resolution on 07.09.2023 to appoint a Company Secretary ('CS') to do the needful for transmission of the shares to the Non-Applicants. Further, it is stated in the newspaper publication that Non-Applicant No. 1 applied for the duplicate share certificate to the Applicant however no request has been made for the transmission of the shares.

3.5 It is further submitted that the outstanding dues and liabilities are piling up on the Applicant. The Applicant is on the verge of getting its license cancelled by Delhi Metro Rail Corporation ('DMRC') which would result in the closure of the only revenue-generating stream of the Applicant. If the Applicant is not permitted to give effect to the resolution as passed in EGM, the Applicant would have no source to generate any sort of revenue, and that would lead to severe outstanding liabilities and debt.

4. The Respondent has filed its reply vide Dairy No. 2729/2023 dated 20.11.2023 and stated the following:

CA No. 19/JPR/2023
IN CP No. 18/58-241-242/JPR/2023

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- 4.1 It is submitted that Respondent/Non-Applicant No.1 is a widow and class-I legal heir of KJS, the recorded owner of an aggregate of 5,47,510 equity shares of the Applicant Company herein having a face value of INR 10 each which constitutes 28.26% of the paid-up share capital.
- 4.2 A letter had been sent by the legal heirs of KJS on 18.05.2023 requesting the said shares to be transmitted in the name of the Non-Applicants in accordance with the provision of Section 56 of the Companies Act, 2013. In response to the same, the Applicant had addressed a letter dated 07.06.2023 to Non-Applicant No.1 stating that the aforesaid transmission request is not annexed with correct/original documents. The Non-Applicant No. 1 sent another letter on 18.08.2023 whereby additional information as sought by the Applicant was provided. The Applicant had addressed a letter on 01.09.2023 reiterating that the legal heirs of KJS had not annexed the correct documents.
- 4.3 It is pertinent to mention that the Applicant has relied on the *SEBI Circular No. SEBI/HO/MIRSD_RTAMBP/P/IR/2022/65* to contend that documents furnished by the Non-Applicants were incomplete,

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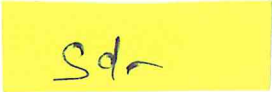
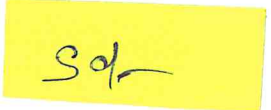
despite the fact that the said circular is not applicable in the present case since the shares of the Company are not listed.

- 4.4 It is submitted that the Applicant prior to the order dated 04.09.2023 nowhere stated its intention to transmit the shares of KJS in favour of the Non-Applicants. Furthermore, the Applicant nowhere states that transmission of the share could not take place only because the Non-Applicants had not provided the original share certificate. Throughout the proceeding, the consistent stand of the Applicant was that the Respondent had not provided the required documents to affect the transmission of the shares.
- 4.5 The Non-Applicants were unable to locate the said original share certificates, the said share certificates had been lost and FIR was also registered on 14.09.2023 to that effect. A copy of the FIR dated 14.09.2023 is annexed as Annexure R-4 of the reply.
- 4.6 The Non-Applicants upon realising that the duplicate share certificate needed to be issued, proceeded to complete all the necessary formalities such as issuance of the public advertisement regarding the loss of the share certificates prior to applying for the issuance of the duplicate share certificates. A Copy of the public advertisement dated 16.09.2023 is annexed as Annexure R-6 (Colly) of the Reply.

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- 4.7 There is no ground made by the Applicant for the vacation of the stay in the order dated 04.09.2023. The only reason for which the Applicant Company wants to vacate the stay is to alienate the assets of the Company and misappropriate the proceeds from such sale/alienation.
5. The Applicant has filed its written submission vide Dairy No. 627/2024 dated 12.03.2024 whereby it is contended that a dispute with regards to the right of inheritance between the parties is eminently a civil dispute and cannot be said to be a dispute as regards oppression of minority shareholders by the majority shareholders or mismanagement. The Applicant has also relied on the following Judgements:
- 5.1. *Sangram Singh P. Gaekwad and Ors. Vs Shantidevi P. Gaekwad (Dead) through LRs. And Ors., (2005) 11 SCC 314*
- 5.2. *Aruna Oswal Vs Pankaj Oswal & Ors. (2020) 8 SCC 79*
- 5.3. *Shakti Yezdani and Another V. Jayanand Jayant Salgaonkar and Others 2023 SCC OnLine SC 1679*
6. The Non-Applicants have also filed their written submission vide Dairy No. 963/2024 dated 18.04.2024 whereby they reiterated the submissions made in the Reply.

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7. On careful perusal of the abovementioned facts, documents placed on record before us, submissions made and arguments advanced, we find that an interim order was passed by this Tribunal on 04.09.2023 wherein the Applicant was restrained to give effect to the decision of the EGM which was to be conducted on 05.09.2023 without taking due permission from this Tribunal. In addition to that, the Non-Applicants were directed to furnish the original documents for the purpose of the transmission of the shares of the KJS.
8. The Non-Applicant No. 1 contends that she lost the original share certificate and to that effect, an FIR was also lodged on 14.09.2023 along with a public announcement for the issuance of the duplicate share certificate in order to transmit the shares of KJS in the favour of Non-Applicants. Moreover, at the time of the passing of the interim order, the status of Non-Applicant No. 1 as the legal heir of KJS was not disputed by the Applicant. It is pertinent to note that, there was no dispute relating to the status of Non-Applicant No. 1 as the legal heir of KJS. At the time of the filing of the main petition, the issue before this Tribunal was the transmission of the subjected shares.
9. In view of section 46 of the Companies Act, 2013 read with the Companies Share Capital and Debenture Rules, 2013, the Non-Applicants are entitled to issuance of duplicate share certificates in case the shareholder satisfies

the Board of the company that they had lost the shares. Section 46 of the Companies Act, 2013 articulates that, *"A duplicate certificate of shares may be issued, if such certificate is proved to have been lost or destroyed; or has been defaced, mutilated or torn and is surrendered to the company."* However, the relief sought in the main petition relates to the transmission of the subjected shares. Section 56 of the Companies Act, 2013, deals with the transfer and transmission of the shares which reads as under:

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"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 names are entered as holders 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.

Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

(2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.

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(3) *Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.*

(4) *Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—*

(a) within a two months from the date of incorporation, in the case of subscribers to the memorandum;

(b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;

(c) within a period of one month from the date of receipt by the company of the instrument of transfer under sub-section (1) or, as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;

(d) within a period of six months from the date of allotment in the case of any allotment of debenture;

Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

(5) *The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.*

(6) *Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.*

(7) *Without prejudice to any liability under the Depositories Act, 1996 (22 of 1996), where any depositor or depository participant, with an*

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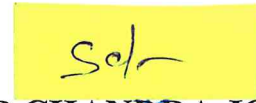
intention to defraud a person, has transferred shares, it shall be liable under section 447."

10. At the time of passing the interim order the Applicant submitted that the Non-Applicants had not submitted the original share certificates, therefore in the absence of the original share certificates, the Applicant could not transmit the shares of the KJS. The question of issuance of duplicate share certificates came into the picture at this juncture only when Non-Applicant No. 1 submitted that the original share certificates had been lost/misplaced. Moreover, no arguments were made by the Applicant to question the position of the Non-Applicants as the legal heir of the KJS at the time of the passing of the interim order.
11. In the instant case the interim order was passed by this Tribunal on 04.09.2023 wherein the Respondents in the main CP were restrained from giving effect to any decisions of the EGM without taking due permission of this Tribunal and the Non-Applicants were directed to submit original share certificates of KJS for the purpose of the transmission of the subjected shares. No other grounds were made by the Applicant at the time of the passing of the said interim order. Moreover, the interim order was passed by this Tribunal not only with regard to the transmission of shares but there was



a prima facie case of the oppression and mismanagement established at the time of passing the interim order.

12. Taking into consideration the entire facts of the case and the law cited above, the stay cannot be vacated on order dated 04.09.2023, therefore, *Company Application No. 19/JPR/2023* deserves to be dismissed on the ground that the status of the Non-Applicant No. 1 as legal heir was never disputed by the Applicant at any point in time at the time of passing of the interim order. The Non-Applicants No. 1 & 2 are the widow and the daughter, respectively, and the class-I legal heir of the KJS as per the Hindu Succession Act, 1956.
13. In view of the foregoing, *Company Application No. 19/JPR/2023* is disposed of.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**