

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT – V**

COMPANY APPEAL NO. 1043/58/ND/2019

Under Section 58 and 59 of the Companies Act, 2013 read with Securities and Exchange Board of India Act, 1992.

IN THE MATTER OF:

MITTAL PORTFOLIOS PRIVATE LIMITED

Regd office: 5055 -56,
Bazar Sirkiwalan, HauzQazi,
Chawari Bazar, Delhi - 110006

.... Petitioner

Versus

1. CAMAC COMMERCIAL COMPANY LIMITED

1st Floor, Express Building,
9-10, Bahadur Shah Zafar Marg,
New Delhi - 110003

.... Respondent No. 1

2. NICHE TECHNOLOGIES PRIVATE LIMITED,

(Registrar & Share Transfer Agent),
Office: 3A, Auckland Place 7th Floor
Room No. 7A&7B, Kolkata
West Bengal 700017

.... Respondent No. 2

Order Delivered on: 28.04.2026

CORAM:

**SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)**

**MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Mr. Kausik Chatterjee, Ms. Samridhi, Advs
For the Respondent : Mr. Kaustubh Punj, Mr. Rahul Malhotra, Mr.
Chirag Goyal, Advs.

ORDER

1. This Company Appeal 1043 of 2019 is filed by Mittal Portfolio Private Limited under Section 58 and 59 of the Companies Act, 2019 seeking following reliefs: -
 - a. An order directing the respondent company to issue in favour of the Petitioner Share Certificates for its 125 shares having face value of Rs. 10 each, in such form and manner as this Hon'ble Tribunal may deem appropriate, in lieu of 250 shares of Sahu Properties Limited under the Folio No. 176 having face value of Rs. 5 each originally issued in favour of B. Gulab Chand Bora upon transmitting the same in favour of the legal heir of the said B. Gulab Chand Bora namely Narender Bora and thereupon giving effect to the transfer thereof in favour of the petitioner;
 - b. An order directing the respondent company to rectify its Register of Members and enter the name of the petitioner therein against its 125 shares having face value of Rs. 10 each issued in the petitioner's favour in lieu of the 250 shares of Sahu properties Limited under the Folio No. 176 having face value of Rs. 5 each originally issued in favour of B. Gulab Chand Bora;
 - c. An order directing the respondent company to confer upon the petitioner all the accruals of the subject shares, if any, together with an interest – past, *pendent lite* and future, there on at the rate of 18% per annum with effect from march 30, 2011 till the disposal of this Application;
 - d. An order penalizing the respondent for non-compliance of the relevant provisions of the Companies Act, 2013, Securities and Exchange Board of India Act, 1992 and Rules and Regulations framed thereunder from time to time;
 - e. The cost of the present proceedings;
 - f. Such further order or orders be passed and/or direction or directions be issued as this Hon'ble Tribunal deems appropriate in the interest of justice;

2. Submissions on the behalf of Appellant:

- i. The present Appeal seeks direction for transmission and consequent transfer of 125 equity shares (₹10 each) of Camac Commercial Company Limited, arising out of 250 shares (₹5 each) originally held in Sahu Properties Limited by late Mr. B. Gulab Chand Bora, who expired on 29.06.1987. Upon amalgamation in 2002, the entitlement stands converted to 125 equity shares of the Respondent Company.
- ii. It is submitted that upon the death of a shareholder, ownership in the securities vests immediately in the legal heirs. One of the legal heirs, having executed a “No Objection Certificate” in favour of Mr. Narender Bora, the said Narender Bora validly sold the shares to the Petitioner on 18.12.2010 for valuable consideration, supported by duly executed transfer documents.
- iii. The Respondent being a listed entity is bound by applicable provisions of the Companies Act, 2013, SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956, and relevant SEBI circulars governing transmission and transfer of securities. The Petitioner has, since 2011, made repeated applications for exchange, transmission, and transfer, and has furnished all requisite documents as called for from time to time, including the Will, indemnity, affidavit, and other supporting records.
- iv. The SEBI circulars dated 28.10.2013, 15.09.2016, and 06.11.2018 clearly relaxed the documentary requirements, particularly where the value of securities is below ₹2,00,000/-. In the present case, the value of shares is approximately ₹73,375/-, and therefore insistence on additional documents such as probate, succession certificate, or further confirmations is contrary to the said circulars.
- v. The Respondent’s repeated insistence on additional documents, despite full compliance by the Petitioner, is arbitrary, unreasonable, and in violation of binding regulatory framework. The refusal dated 22.03.2019 is based on an erroneous interpretation of SEBI circular dated 06.11.2018 and fails to consider provisions enabling transfer in cases of non-cooperation or unavailability of transferor.

- vi. The interpretation of Indian Succession Act, 1925 and SEBI Circular dated 15th September 2016, the judgement of Hon'ble Supreme Court in *Clarance Pais & ors. V Union of India (2001) 3 MLJ 43* and Hon'ble Delhi High Court Judgment in *Winifred Nora Theophilus v. Lila Deane & Ors AIR 2002 Delhi 6*, the Petitioner held that 'All wills are not required to be probated under the Indian Succession Act, 1925'.
- vii. Upon the death of the last holder of shares, Transfer of ownership to legal heirs happens by operation of Law and not depends on the company to record the name of legal heir in the Register of Members as shareholder, placed reliance on *Margaret T. Desor & Ors. V. Worldwide Agencies Pvt ltd (1989) 66 CompCas 5*, held by Hon'ble Delhi High Court.
- viii. Also, the ownership of the shares is vested in the legal heir immediately, due to which there cannot be any embargo on the legal heir thereafter to sell the said shares to other person. The other person becomes the real equitable owner and the transferee merely holds the shares as trustee. The Affidavit cum indemnity bond, inadvertently written that Mr. B. Gulab Chand Bora died intestate, which was an admitted error on Mr. Narendra Bora's Part.
- ix. The letters dated 16.05.2011, 03.11.2011, 16.02.2012, 06.10.2015, 30.11.2015 and 20.12.2018 were not rejection letter per se to give rise to any cause of action, those letters merely called for further documents. The letter dated 22.03.2019 gives rise to cause of action under Section 58(4) of Companies Act, 2013. The present proceedings were filed on 29.05.2019 that is within 3 years from 22.03.2019, hence the question of limitation does not arise.
- x. It is further submitted that there is no legal bar on a composite request for transmission and transfer. The Petitioner has complied with all procedural requirements, and the Respondent's refusal lacks legal justification.
- xi. The Share Transfer Form executed till 2013-14 did not become obsolete. As per Circular issued by the Ministry of Corporate Affairs,

the transactions related to transfer of shares being 'contract' in nature share Transfer Form executed before 01.04.2014 and submitted in the company within the time prescribed, needs to be accepted by the companies for registration of transfers. It is clarified that there is no tampering of Share Transfer Form.

- xii. The continued inaction and refusal by the Respondent amount to infringement of the Petitioner's statutory rights as a shareholder and are indicative of mala fide intent, causing undue hardship and harassment. Even after furnishing all the required documents, the effective refusal to register the transmission cum transfer request is without sufficient reason.

3. Submissions on behalf of Respondent:

- i) The Respondent is a company is incorporated and existing under Companies Act, 1956. The Sahu Properties Limited, also a Company incorporated under Companies Act 2013 and the Respondent was amalgamated under a Scheme of Arrangement vide High Court of Calcutta Order dated 04.02.2002.
- ii) The present petition is not in compliance of Section 58 and 59 of the Companies Act, 2013. Also the same is barred by limitation. The dispute of facts involved in this case cannot be adjudicated by the present proceeding which are summary in nature.
- iii) If all the required documents are provided by the petitioner, the Respondent can only effect transmission of the shares in question in favour of Mr. Narendra Bora by virtue of circular dated 15.09.2016. The same cannot be transmitted in favour of the Petitioner by placing reliance on the SEBI circular.
- iv) The said SEBI circular dated 06.11.2018 is applicable to the cases of transfer of shares only. However, the case of the Petitioner is of transmission and transfer shares in question which cannot be done legally by placing reliance on the SEBI circular dated 06.11.2018. SEBI circulars dated 28.10.2013 and transmission of shares are not relevant in case.

- v) Among the documents produced by the Petitioner, the Share Certificates which were produced to initiate the transfer of shares of Sahu Properties Ltd. and not of Camac Commercial Ltd. Further the Petitioner was relying solely on the legal heir Certificate and an undated NOC which was for general purpose issued by Smt. Dhapvee Kavar which was not to effect the transfer/ transmission of shares.
- vi) The Respondent also replied to the legal notice issued by the petitioner that the allotted shares shall continue in name of Sh. B. Gulab Chand Bora and the Petitioner has no legal authority to transfer the shares when they have not been transmitted in favour of the rightful heir of the owner. It was also informed that any purported transfer of share by Mr. Narendra Bora to the Petitioner has no force in the eyes of law.
- vii) The affidavit cum indemnity bond is incorrect, as it states that Petitioner is seeking for transmission of 250 shares in name of Sh. Gulab Chand Bora whereas the effective holding is only 125 equity shares. Also no request letter for exchanging the original share certificates of Sahu Properties Ltd. to the Respondent has been made till date by either the petitioner or Mr. Narendra Bora.
- viii) The Lodgement of the share transfer deed was not in accordance with the provision of Companies Act, 2013. It was also informed that the duplicate cum Transmission of shares should be lodged by the legal heirs of the deceased sole Registered Shareholder only. Also no letter of probate has been furnished for the unregistered will of Sh. Gulab Chand Bora.
- ix) The procedure for issuance of share certificate has been laid down. The letter of probate or registered will was required to be submitted along with a letter to exchange the Share Certificate of Sahu properties Ltd. as well as to transmit the same in favour of the legal heir of late Mr. B. Gulab Chand Bora.
- x) The Petitioner has concealed and failed to disclose the fact that it had made a complaint bearing No. SEBIP/DH-18/0000821/1 with

the SEBI SCORES wherein the subject matter was the same as in the present petition. The SEBI disposed of the said complaint vide email dated 21.12.2018 finding no short coming/fault on part of the Respondents herein being satisfied by the response/letter dated 20.12.2018 addressed by the Respondent to the Petitioner.

ANALYSIS

4. We have gone through the documents on record filed and arguments advanced by counsel for the Applicant and Respondent.
5. The present Petition has been filed seeking, inter alia, a direction to the Respondent Company to effect transfer of 125 equity shares, originally issued as 250 equity shares of Sahu Properties Limited in the name of Late Mr. B. Gulab Chand Bora, and to rectify the Register of Members accordingly.
6. It is also pertinent to note that there are material contradictions in the stand taken by the Petitioner. In the initial correspondence, the Petitioner stated that Late Mr. B. Gulab Chand Bora died intestate. However, subsequently, vide letter dated 31.01.2012, the Petitioner relied upon an alleged Will dated 22.01.1985. The question as to whether the deceased died intestate or testate, and the validity of the alleged Will, involves disputed questions of fact which cannot be conclusively adjudicated in the present summary proceedings.
7. As far as the contention relating to probate of the Will is concerned, this Tribunal, vide Order dated 23.06.2020, has already observed that the requirement under Section 213(1) of the Indian Succession Act, 1925 is not attracted in the present case, and therefore probate of the Will is not mandatory. It is also a settled position that even in the absence of probate, a person may claim rights on the basis of a Will. However, such claim must first crystallize into a valid transmission of shares in favour of the legal heir.
8. At the outset, it is necessary to examine whether the Petitioner has satisfied the essential pre-conditions for maintaining an application under Section 58 of the Companies Act, 2013. It is well settled that for invoking

the jurisdiction under the said provision, the following conditions must be fulfilled:

- a) First, there has to be a legal and valid transfer of shares of a company;
 - b) Second, the company has to refuse to register a transfer of shares; and
 - c) Last, on account of a refusal to register a transfer of shares, either the transferor or a transferee, may appeal to the NCLT.
9. In the present case, the Petitioner claims to have purchased the subject shares from Mr. Narendra Bora, purportedly one of the legal heirs of Late Mr. B. Gulab Chand Bora. However, from the material on record, it is evident that the shares in question, consequent to amalgamation, continue to stand in the name of the deceased shareholder, Late Mr. B. Gulab Chand Bora.
10. The records further reveal that the initial request dated 30.03.2011 made by the Petitioner sought transmission and transfer of shares based primarily on a legal heir certificate and a No Objection Certificate purportedly issued by Smt. Dhapeekavar. However, the said documents do not conclusively establish a valid transmission of shares in favour of Mr. Narendra Bora. In absence of such transmission, Mr. Narendra Bora did not acquire a legal title over the 125 equity shares.
11. It is also observed that the shares sought to be transferred were originally those of Sahu Properties Limited and, upon amalgamation, stood converted into 125 equity shares of the Respondent Company. However, no proper request for exchange and transmission of such shares in favour of Mr. Narendra Bora was completed in accordance with the procedure prescribed by the Respondent. The Respondent has consistently maintained that unless the shares are first transmitted in favour of the rightful legal heir, i.e., Mr. Narendra Bora, no subsequent transfer in favour of a third party can be effected. We find merit in this contention.
12. In the absence of a valid transmission in favour of Mr. Narendra Bora, any purported transfer executed by him in favour of the Petitioner does not confer any legal right, title, or interest upon the Petitioner. Such transfer, being without lawful authority, cannot be recognized in the eyes of law. This Tribunal is of the considered view that directing the Respondent to

register transfer of shares directly in favour of the Petitioner, when the shares continue to stand in the name of the deceased shareholder, would be contrary to established legal principles governing transmission and transfer of securities.

13. It has further been observed that the present claim is barred by limitation. The material on record clearly indicates that the Respondent had, for the first time, refused to register the request for transmission and transfer of shares vide its letter dated 16.05.2011. The cause of action, therefore, arose on the said date, and the Petitioner ought to have approached this Tribunal within the prescribed period from the date of such refusal.
14. It is a settled position of law that the provisions of Section 5 of the Limitation Act, 1963 are applicable to proceedings under Section 111(3) of the Companies Act, 1956 (now corresponding to Section 58(4) of the Companies Act, 2013), and thus delay, if sufficiently explained, may be condoned. However, it is equally well established that such applications must be filed within a reasonable period, and in any event, within a period of three years from the date of refusal to register the transfer or transmission of shares.
15. In the present case, the initial refusal having been communicated on 16.05.2011, the limitation period commenced from that date. The Petitioner has failed to demonstrate any sufficient cause for the inordinate delay in approaching this Tribunal beyond the reasonable period of limitation. Also, the shares continue to stand in the name of the deceased shareholder, Late Mr. B. Gulab Chand Bora, and have not been transmitted in favour of the alleged legal heir, Mr. Narendra Bora. In the absence of such transmission, any purported transfer in favour of the Petitioner, being a third party, cannot be recognized in law.
16. This Tribunal is of the considered view that transmission of shares in favour of the rightful legal heir is a condition precedent to any subsequent transfer. In the absence of completion of such transmission, no direction can be issued to the Respondent to register transfer of shares directly in favour of the Petitioner.

17. In view of the foregoing discussion, and considering both the bar of limitation as well as the absence of a valid and lawful transfer, the relief sought by the Petitioner cannot be granted. Therefore, the instant Appeal bearing no. CA 1043 of 2019 stands **dismissed**.
18. Accordingly, CA No. 1043 of 2019 stands **dismissed** and disposed of. Let a copy of the order be served to the parties.

Sd/-

**(ANU JAGMOHAN SINGH)
MEMBER (T)**

Sd/-

**(MAHENDRA KHANDELWAL)
MEMBER (J)**