

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH-II  
KOLKATA

APPEAL/256(KB)2022

*(An Application under Section 58 and Section 59 of the Companies Act, 2013, read with rule 70 of the National Company Law Tribunal Rules, 2016.)*

IN THE MATTER OF:

1. MAMUM RASHID, son of Late Dr. Haroon Rashid, residing at 37, Mcleod Street, Elliot Road, Circus Avenue, Kolkata - 700017.
2. AMIN RASHID, son of Late Dr. Haroon Rashid, residing at 37, Mcleod Street, Elliot Road, Circus Avenue, Kolkata - 700017.

...Petitioners

Verses

1. M/S. AL HAJ AMIR HASAN PROPERTIES PRIVATE LIMITED, Mercantile Building, 9/12 Lal Bazar Street, Kolkata - 700001.
2. KHAWAR ALI,  
Director of M/s. Al Haj Amir Hasan Properties Pvt. Ltd., residing at 1 Kyd Street, Kolkata - 700016, West Bengal.

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3. **TANSEEM KAUSAR ALI**, Director  
of M/s. Al Haj Amir Hasan  
Properties Pvt. Ltd.,  
residing at 40 Palace Court,  
1 Kyd Street, Kolkata -  
700016, West Bengal.

4. **UZMA ALI**,  
Director of M/s. Al Haj Amir  
Hasan Properties Pvt. Ltd.,  
residing at Chowringhee  
Mansions, 30 Chowringhee  
Road, Park Street, Circus  
Avenue, Kolkata - 700016,  
West Bengal.

...Respondents

**CORAM: Mr. Labh Singh, Hon'ble Member (Judicial)**  
**Ms. Rekha Kantilal Shah, Hon'ble Member (Technical)**

**Present:**

Mr. Rishav Banerjee, Adv. ] For Petitioners  
Ms. Bidisha Achari, PCS ]  
Mr. Moulinath Moitra, Adv. ]

Mr. Joy Saha, Sr. Adv. ] For R-1  
Mr. Jitendra Agrawal, Adv. ]

None present for respondent no. 2 to 4

Date of Pronouncement: 22.6.2026

**O R D E R**

**Labh Singh, Member (Judicial)**

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1. The present Company Appeal has been filed by the Petitioners, who are the sons and legal heirs of the Late Roshanara Begum, under Section 58 and 59 of the Companies Act, 2013 (for short 'the Act') read with Rule 70 of the National Company Law Tribunal Rules, 2016, (for short "the Rules") to obtain an order directing the Respondent No. 1, i.e. M/s Al Haj Amir Hasan Properties Private Limited, to transmit the shares of the Late Roshanara Begum, equally, to the Petitioners being her legal heirs and further seek rectification of the Registrar of Members of the Respondent Company.
2. Sh. Haj Amir Hasan along with his wife Late Hajin Begum Sogra Hasan (both since deceased), were shareholders since incorporation of the Company on 12<sup>th</sup> April, 1960. Respondent No. 1 was incorporated under the provisions of the Companies Act, 1956, as a Private Limited Company having its registered office at 9/12, Lal Bazar Street, Kolkata - 700001, West Bengal, initially with an authorised capital of Rs. 25,00,000/- (Rupees Twenty-Five Lakh) divided into 25,000 equity shares of Rs 100/- (Rupees Hundred) each.
3. The entire share capital was held by the family members themselves being a family business. After the demise of the late Sh. Haj Amir Hasan and the late Smt. Hajin Begum Sogra Hasan, their share devolved on their legal heirs namely Mr.

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Shaukat Ali, Mr. Mahmud Ali, Mr. Hamid Ali and Ms. Roshanara Begum.

4. On 03.11.2001, Ms. Roshanara Begum died intestate at her residence 37, McLeod Street, Elliot Road, Circus Avenue, Kolkata - 700017, leaving behind her two surviving legal heirs, the petitioners being her sons. A copy of the Death Certificate is annexed as **Annexure - C**. Thus, upon her demise, the petitioners are the only legatee of Equity Share Holding of Late Roshanara Begum.
5. It is submitted that the shareholding pattern of the respondent Company in the Financial Year of 2004-2005 is, as per the annexed copy of Annual Return of year 2004-2005 at **Annexure - B**, as follows:

Sl. No.	Ledger Folio No.	Shareholder's Name	Father's/Husband's Name	No. of shares
1.	4	Shaukat Ali	s/o Al Haj Amir Husan	1649
2.	6	Roshanara Begum	d/o Al Haj Amir Husan	73
3.	8	Shama Mahmud	w/o Mahmud Ali	1649
4.	9	Tasneem Kausar Ali	w/o Hamid Ali	1649
			<b>TOTAL</b>	<b>5020</b>

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6. It has further been submitted that during the Financial Year of 2005-2006, the share capital of the respondent Company was increased by a fresh issue of 3000 (three thousands) equity shares, with a value of Rs 100/- (Rupees Hundred) each. Thus, the revised shareholding pattern, as per the copy of Annual Return of 2005-2006 annexed as **Annexure - D**, is as follows:

Sl. No.	Ledger Folio No.	Shareholder's Name	Father's/Husband's Name	No. of shares allotted	No. of shares
1.	4	Shaukat Ali	s/o Al Haj Amir Husan	1000	2649
2.	6	Roshanara Begum	d/o Al Haj Amir Husan	0	73
3.	8	Shama Mahmud	w/o Mahmud Ali	1000	2649
4.	9	Tasneem Kausar Ali	w/o Hamid Ali	1000	2649
			<b>TOTAL</b>	<b>3000</b>	<b>8020</b>

7. It has further been submitted that the respondents, on various occasions, were requested to make changes in the Registrar of Members of the Respondent Company. The petitioners had informed the Directors and the other Members of the respondent Company to record their names as the only legal heir of the deceased shareholder and take the

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necessary steps. The petitioners were under the assumption that such necessary action and changes were carried out by the Respondent Company.

8. It is further submitted that more changes in the shareholding pattern of the respondent Company took place in the Financial Year 2020-2021 due to transfer/transmission of shares between the members of the family. Thus, the revised shareholding pattern, as per the copy of Annual Return for the year 2020-2021 annexed as Annexure - E, is as follows:

Sl. No.	Ledger Folio No.	Shareholder's Name	Father's/Husband's Name	No. of shares
1.	6	Roshanara Begum	d/o Al Haj Amir Hasan	73
2.	9	Tasneem Kauser Ali	w/o Hamid Ali	1325
3.	10	Drakhshan Zarin Ali	w/o Khawar Ali	2649
4.	13	Ehtesham Ali	s/o Hamid Ali	1324
5.	14	Uzma Ali	w/o Shahid Ali	125
6.	15	Naufal Saeed	s/o Shahid Ali	600
7.	16	Md. Nabeel Seed	s/o Shahid Ali	600
8.	17	Md. Abdullah Ali	s/o Sajid Ali	662

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9.	18	Md. Abdurrahman Ali	s/o Sajid Ali	662
			<b>TOTAL</b>	<b>8020</b>

9. It has further been submitted that the petitioners were deprived of such fresh issue of capital. They were also not given any opportunity to address this issue which is injustice to them. There has been transmission of shares for other Members but the same was not carried on for the petitioners after the demise of their mother. Thus, the petitioners submit that there is a clear intention of keeping them away from the affairs of the respondent Company and depriving them of their legitimate claims.
10. It has further been submitted that the name of the late mother of the petitioners has not yet been removed from the list of shareholders as well as on the Register of Members maintained by the respondent Company under Section 88 of the Act.
11. The petitioners, vide a letter dated 07.05.2022 along with their Legal Heir Certificate, informed and asked for transmission of late Smt. Roshanara Begum's equity shares as per Section 56 of the Act. The petitioners, vide another email dated 13.05.2022, delivered upon registered email

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address of the of the respondent Company, again requested for the transmission of shares. The copies of the postal receipt and the email is annexed as **Annexure - H**.

12. It has further been submitted that during the financial year of 2020-2021, the Board of Directors of the respondent Company offered alarmingly high rates of dividend, at 1684% on the paid-up value of shares. Thus, the total expenditure of the company resulted in Rs. 1,35,05,680/- (Rupees One Crore Thirty- Five, Five Thousand Six Hundred and Eighty only). It is also alleged that a large amount of loan was taken from the respondent Company by related parties, and this loan was termed as 'Short-Term Loans and Advances'. This loan is alleged to have never been paid back.
13. The financial position of the company, as per the Audited Financial Statements for the Financial Year of 2020-2021, is as follows:

Total Revenue	Rs. 35976257
Total Expenditure	Rs. 12453523
Profit/Loss before Tax	Rs. 23522734
Profit/Loss after Tax	Rs. 18195960
Reserve & Surplus	Rs. 61652114

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Tangible Assets	Rs. 18289867
Short-Term Loans & Advances	Rs. 72123114
Dividend paid during the year	Rs. 13505680

A copy of the Audited Financial Statement of the Respondent Company for the financial year 2020-2021 is annexed as **Annexure - F.**

14. Thus, the petitioners seek an order directing the respondent No. 1, i.e. M/s Al Haj Amir Hasan Properties Private Limited, to transmit the shares of the Late Roshanara Begum to the petitioners in equal share being her legal heirs and seek rectification of the Registrar of Members of the respondent Company
15. Respondents appeared in pursuance of the notice issued by this Tribunal and filed their reply raising preliminary objection that the present Company Appeal is not maintainable at law. The same has been filed in gross abuse of the process of law and liable to be dismissed in limine.
16. The present company appeal was filed on 04.07.2022 almost 20 years after the death of the late Roshanara Begum as she died on 03.11.2001. Thus, the present Company Appeal is barred by limitation and liable to be dismissed on this ground alone.

17. On merit, it has been replied that the petitioners themselves failed to apply for any transmission of shares or supply information. They had not produced any documents, nor did they exercise any of the options available to them in the Memorandum of Association and the Articles of Association. It is further submitted that no documents were submitted to prove that the petitioners are the only legatee of the Late Roshanara Begum. A copy of the Memorandum of Association and a copy of Articles of Association is annexed at **Annexure - A (Colly)**.
18. It has further been replied that the issue of fresh capital was not carried out with mala fide intention to reduce the shareholding of Late Roshanara Begum. The petitioners had failed to apply for transmission of shares and in absence of any application, no transmission of shares can be made in the favour of the petitioners.
19. It has further been replied that no alarming rate of dividend was paid, the short-terms loans were not given to related parties and neither the same were left unpaid. The allegations of loans to related parties and the rate of dividend cannot be brought up in the petition filed under section 58 and 59 of Companies Act 2013, but only on an application filed under Section 241-244 of the Act.

20. It has further been replied that the letter and email dated 07.05.2022 and 13.05.2022 were given only to condone and justify the delay in making an application for transmission of the shares. Thus, it cannot be used as the starting point for the limitation period. Therefore, the present petition requires to be dismissed.
21. The petitioners filed rejoinder to reply affidavit filed by the petitioners denying the content of reply affidavit and reaffirming the content of appeal which are not reproduced here in entirety for sake of brevity. It has been stated that the formal intimation for the transmission of shares was given by letter dated 07.05.2022 delivered on 13.05.2022. Thus, the present petition is well within the prescribed limitation period.
22. Heard Learned Counsel appearing on behalf of the petitioners as well as respondents. We have gone through the pleadings of the parties and documents placed on record. We have duly appreciated the law applicable on the facts and circumstances of the present case.
23. It is pertinent to note that there is no dispute about the incorporation of M/S Al Haj Amir Hasan Properties Private Limited, its initial shareholding pattern and the number of shares allotted to Late Smt. Roshanara Begum. There is no dispute about the death of Late Smt. Roshanara Begum. It is

undisputed fact that there is dispute between both the petitioners who claim to be the legal heirs and have filed jointly the present petition.

24. Respondents have not shown any substantial contention or reasons to decline the transmission of shares. The main contention of the respondents is that the present petition has been filed beyond the limitation period. The petitioners have not been provided proper documents as evidence for them being the only legal heirs of the deceased shareholder.
25. In order to decide the controversy involved in the present petition, it is pertinent to refer the relevant provision of Section 58 of the Act which read as under:

***“58. Refusal of registration and appeal against refusal.***

*(1) If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the*

*transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.*

*(3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.”*

26. Upon a bare perusal of the provision of Section 58 of the Act as reproduced above, it is crystal clear that upon receipt of instrument of transfer or intimation of transmission of shares, the Company, within a period of thirty days, has to send notice of refusal to the transferor and the transferee or to the person giving intimation of such transmission with reasons for such refusal. The transferee, upon receipt of notice of refusal, have to prefer an appeal within 30 days from the date of receipt of notice and in case no notice has been received, within a period of sixty days from the date of transfer or the intimation of transmission as the case may be delivered to the Company.

27. In the instant case, the petitioner's case is that they have informed and requested for transmission of shares on several occasions. A perusal of Article of Association of the Company reveals that a request for transmission needs to be accompanied with proper evidence to prove the applicants as the only legal heirs. The legal heir certificate dated 26.04.2022 was first sent to the respondents vide letter dated 07.05.2022. Thus, the formal intimation for transmission of shares is the letter dated 07.05.2022 which was delivered on 11.05.2022.
28. The petitioners, in support of their case, have relied upon Speed Post Track Report Annexure - I. It is further observed that no reply was furnished by the respondents to any of requests or communication received from the petitioners. The present petition has been filed on 07.07.2022 which is well within the period of limitation.
29. Insofar as transmission of shares is concerned, the provision of Section 44 of the Act provides for transmission of shares and the mode by which it could be transferred. The said provision of Section 44 read as under:

*“44. Nature of shares or debentures:- The shares or debentures or other interest of any member in a company shall be movable property transferable in*

*the manner provided by the articles of the company.”*

30. Therefore, in view of mandate of provision of Section 44 of Act, it is pertinent to note and reproduce the relevant para of the Article of the Association, a copy of which is annexed to the Petition as Annexure - A at pages 36 to 64, which provides as follows:

*“TRANSMISSION OF SHARES.*

*30. (1) On the death of a member, the survivor or survivors where the member was a joint holder, and his legal representatives where he was a sole holder, shall be the only persons recognised by the Company as having any title to his interest in the shares.*

*31. (1) Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the Board and subject as hereinafter provided, elect, either-*

*(a) to be registered himself as holder of the share; or*

*(b) to make such transfer of the share as deceased or insolvent member could have made.*

32. (1) *If the person so becoming entitled shall elect to be registered as holder of the share himself, he shall deliver or send to the Company a notice in writing signed by him stating that he so elects.”*

31. A perusal of above clause of Article of Association (for short ‘AOA’) read with provision of Section 44 of the Act, it is evident that the shares are moveable properties and shall be transferred by the methods prescribed in the ‘AOA’ of the Company. A bare perusal of the ‘AOA’ reveals that the document does not specify any particular document for making an application of transmission of shares upon the death of a Member. Thus, upon submission of appropriate documents, the Board will register the applicant and carry out the transmission of shares.

32. It is pertinent to note that according to Rule 70 of NCLT Rules, 2016, the Tribunal has the power to adjudicate on the question whether a person’s name be included in the register of the Company upon submission of proof of legal heirs of the deceased shareholder. It is also pertinent to note that no objections are raised by the respondents that the petitioners are not the legal heirs of the deceased shareholder. The only contention of the respondent is that there is absence of documents to prove that they are the

only legatees. It is a family company where all the shareholders are well aware about the legal heirs of the deceased shareholder. The respondents have failed to dispute the title or bring to notice any dispute between the legal heirs.

33. Even otherwise, the petitioners have presented a declaration sworn before Learned First Class Metropolitan Magistrate which is Annexure - H at page 264 of the Petition. The said declaration was also submitted to the respondents with the letter dated 07.05.2022, a copy of which is annexed as Annexure - H at page 262. The question arises whether the affidavit of declaration is a valid document which can be taken as evidence of the fact that the transferee is the only legal heir of the deceased. In this context, we refer to the SEBI Circular of 18.05.2022, SEBI/HO/MIRSD/MIRSD\_RTAMB/P/CIR/2022/65, which states the documents required for an application of transmission of share are as under.

“6.2:“Where securities are held in sigal name without any nomination, the following documents shall be submitted:

- (a) duly signed transmission request form by the nominee;

(b) original death certificate or copy of death certificate attested by nominee subject to verification with the original or copy of death certificate duly attested by notary public or by gazetted officer;

(c) self-attested copy of the Permanent Account Number card of the nominee issued by Income Tax Department.

(d) *a notarised affidavit from all legals made on non-judicial stamp paper of appropriate value, to the effect of identification and claim of legal ownership to the securities”.*

6.3 Where where the securities are held in single name without nomination, the following documents shall be submitted:

(a) duly signed transmission request form by the legal heir(s)/claimant(s);

(b) original death certificate or copy of death certificate attested by the legal heir(s)/claimant(s) subject to verification with the original or copy of death certificate duly attested by a notary public or by a gazetted officer;

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(c) self-attested copy of the Permanent Account Number card of the legal heir(s)/claimant(s), issued by the Income Tax Department;

(d) a notarized affidavit, in the format provided in Annexure -D to this Circular from all legal heir(s) made on non-judicial stamp paper of appropriate value, to the effect of identification and claim of legal ownership to the securities.

However, in case the legal heir(s)/claimant(s) are named in any of the documents for transmission of securities as mentioned in serial number 8 in Annexure -A to this Circular, an affidavit from such legal heir(s)/claimant(s) alone shall be sufficient;

a copy of other requisite documents for transmission of securities as may be applicable as per Annexure -A to this Circular, attested by the legal heir(s)/claimant(s) subject to verification with the original or duly attested by a notary public or by a gazetted officer:

34. Thus, the affidavit which is a declaration of oath by a competent authority is sufficient to establish the petitioners as the only legal heirs in this present case. Further, the Article of Association of the respondent

Company does not specify an particular type of document that needs to be produced by the applicants for transmission. It is also pertinent to note that there is no dispute about the petitioners being the legal heirs and amongst present legal heirs. Accordingly, this Tribunal come to the conclusion that the affidavit of declaration sworn before First Class Metropolitan Magistrate should be recognised as proper evidence to establish the petitioners as the only legal heirs of deceased shareholders.

35. This Tribunal, in order to protect the interest of the respondent company from any claims in the future, directs the petitioners to execute an indemnity bond by the petitioners being the legal heirs. On the receipt of such an indemnity bond and after complying other mandatory requirements, the Respondent No. 1 would be under the obligation to transfer the shares in favour of the Petitioners within a period of thirty days.
36. In view of the above said discussion and directions, this Tribunal holds that Company Appeal No. 256/KB/2022 is **allowed and disposed of.**
37. The Registry is hereby directed to send e-mail copies of this order forthwith to all the parties and their counsel for information and to take necessary steps.

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38. Let the certified copy of the order be issued upon compliance with requisite formalities.
39. File be consigned to records.

**Rekha Kantilal Shah**  
**Member(Technical)**

**Labh Singh**  
**Member(Judicial)**

T.Roy (LRA)