**(2022) 03 NCLT CK 0017**

**In the National Company Law Tribunal**

**Case No :** IVN. P. No. 01 Of 2022 in Company Appeal No 02 Of 2022 IVN. P. No. 01 Of 2022

Saroj Kabra APPELLANT

Vs

Elin Electronics Ltd RESPONDENT

**Date of Decision :** 08-03-2022

**Acts Referred:**

Companies Act, 2013 — Section 58, 59
National company Law Tribunal Rules, 2016 — Rule 11, 70
Civil Procedure Code, 1908 — Section 47

**Citation :** (2022) 03 NCLT CK 0017

**Hon'ble Judges :** Rohit Kapoor, Member (J);Harish Chander Suri, Member (T)

**Bench :** Division Bench

**Advocate :** Manju Bhuteria, Urmila Chakraborty, Aditya Kanoria, Dhirendra Nath Sharma, Ravi Pal, Pratyush Ghosh

**Final Decision :** Disposed Of

# Judgement

Harish Chander Suri, Member (Technical)

1. This Court convened via video conferencing.

Company Appeal No. 02 of 2022

2. This is an Application filed by Saroj Kabra, wife of Late Ramesh Chandra Kabra, residing at 7, Tilak Road, Kolkata (‘Applicant’). The Applicant is the mother of Late Aparna Kabra, a spinster, who died intestate on 15 April, 2011 Annexure – B of the Petition. (‘Deceased’). Thus, all the properties of the deceased were inherited by the Applicant i.e., the mother of the deceased.

3. The Applicant has all her life resided at 7, Tilak Road, Kolkata. The deceased also resided with the Applicant during her lifetime at the Applicants’ residence (‘Kabra House’). However, in 2021 the Kabra family in principle agreed to re-develop Kabra House by engaging a developer. Accordingly, the family members have been discarding old goods, furniture and fixtures.

4. It is in this process, the Applicant came across a bunch of papers containing 3,20,000 original share certificated, each of 100 equity shares of the Elin Electronics Limited ('Respondent Company').

5. The Applicant came across the transfer deeds along with supporting resolution and sale bill issued by the recorded member of the said shares i.e., CRB Corporation Limited Annexure – C of the Petition.. The documents also included an award dated 20.11.2010 passed in Aparna Kabra v. Kanhaiya Lala Bothra, (who has also filed an intervener application being IVN. P. No. 01 of 2022 in the said Appeal before this Tribunal) by the Ld. Sole Arbitrator, in which the following orders were passed;

"(a) With effect from 03.05.1996 the claimant is the owner of the 3,20,000 number of shares in Eflin Electronics Ltd having its registered office at 143 Cotton Street, Kolkata, more fully described in Schedule A-2 to the Statement of Claim, [bearing Folio No. 83 Distinctive Numbers 4380001 to 4700000] and is the sole person entitled to the benefits and rights accruing and arising in respect thereof including any rights, dividend, bonus etc.

(b) Permanent injunction restraining the respondent whether by himself or through his men, agents, associates and assigns howsoever from claiming to be the owner of the said shares or from claiming duplicate shares from the company or from transferring, dealing with or alienating or from enjoying any benefit, privileges and rights in respect of the said shares in any manner whatsoever.

(c) Mandatory injunction, mandating the respondent to take steps to have the name of the claimant recorded as the holder of the shares of the said Elin Electronics Ltd., morefully described in Schedule A-2."

6. On inspection about the said shares, the Applicant found that the Respondent Company had on 30 September, 2021 adopted a resolution, where the existing equity shares of Rs.10/- were split into 2 shared of Rs.5/- each. The 3,20,000 shares of the Applicant were split into 6,40,000 equity shares. The Respondent Company had also issued a bonus shares in the ratio 1:2. Thus, the Applicant is now the owner of 19,20,000 equity shares of the Respondent Company.

7. On 07 December, 2021, the Applicant wrote a letter to the Respondent Company, along with all relevant documents, for transferring the ownership of all the shares to the Applicant. However, the Respondent Company vide letter dated 22 December, 2021 refused to record the name of the Applicant.

8. The Respondent Company contended that unless the shares are converted into dematerialized form, the share transfer cannot be done. Further, the Respondent Company had received intimation from the provisional liquidator of CRB Corporation Limited which is still shown as the registered shareholder in respect of the said shares. CRB Corporation Limited has been ordered to be provisionally wound up by an order dated 28th August, 1997 in C. P. No. 280/1997 passed by the Hon'ble High Court of Delhi and the Official Liquidator attached to the High

 

Court at Delhi has been appointed as its provisional liquidator. The Respondent Company further contended that the Liquidator has written a letter dated 15th May, 2000 to the Respondent Company in respect of the said shares which was replied to by the Respondent Company vide its letter dated 23rd May, 2000. However the Respondent Company confirmed that the shares held by the petitioner, post the split and bonus stood at 19,20,000 equity shares.

9. The Respondent Company is taking shelter that since there is no Demat Account the shares cannot be recorded in the name of the Applicant. The Applicant is praying for her name to be recorded in the register of members of the Respondent Company.

Defense by the Respondent Company

10. The share certificates are still in physical form and unless the same is converted, share transfer cannot be done. The Respondent Company was not provided with any proof of the Applicant having possession of the physical share certificates bearing the said distinctive numbers. As such, the Applicant was requested by the Respondent Company to provide evidence of her holding possession of the said physical share certificate.

11. Further, without giving an inspection to the Respondent Company, the Applicant directly approached this Tribunal by filing the purported appeal. Be as it may, the Respondent Company has now taken physical inspection of the share certificates in physical form and that the company is satisfied as to the genuineness and validity of the said share certificates.

IVN. P. No. 01 of 2022

12. This is an Intervention Petition filed by Manoj Bothra, son of late Kanhaiya Lal Bothra (‘Intervener’) praying for ;

(a) Leave be granted to intervene in the Appeal No.2 of 2022 and stay of further proceeding in the said Appeal.

13. The Intervener further submits that Intervener has filed an Application under section 47 of the Civil Procedure Code, 1908, being Misc. Case No. 36 of 2022 and in view of such Application, transferring the ownership of all the shares to the Applicant in Appeal No.2 of 2022 is pre-mature and not maintainable.

Findings and Order

14. We have heard the Ld. Counsel appearing on behalf of the Parties and perused the record.

15. Upon perusal it is apparent that the Applicant in the Appeal No.2 of 2022 is the mother of the deceased, who has died as a spinster and the Applicant is the legal person to inherit the properties of deceased.

16. Further, it is also evident that the shares were held by the deceased in the Respondent Company and the same has been admitted by the Respondent

 

Company in their Reply;

“Respondent Company has now taken physical inspection of the share certificates in physical form and that the company is satisfied as to the genuineness and validity of the said share certificates.”

17. With regard to the IVN. P. No. 01 of 2022, it is pertinent to mention that upon perusal of the Arbitral Award dated 20.11.2010 by the Ld. Sole Arbitrator, the deceased was declared as the legal owners of the said shares. Hence, the Intervener does not hold any ground. Hence, the IVN. P. No. 01 of 2022 stands dismissed.

18. In light of the above, the Respondent Company is directed to transfer/record the ownership of all the 19,20,000 equity shares of the Respondent Company in the name of the Applicant.

19. Company Appeal No 02 of 2022 is, accordingly, disposed of.

20. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

21. File be consigned to record.