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LEGAL HEIR VS. NOMINEE: JUDGEMENT TIME AGAIN!

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The National Company Appellate Tribunal, New Delhi (NCLAT) in the recent case of *Oswal Greentech v Mr Pankaj Oswal and Ors* (Company Appeal (AT) No 410 of 2018) while deciding on the issue of maintainability of a petition alleging oppression and mismanagement of a company, held that upon the death of a shareholder, the shares vest with his/her legal heirs and not with the appointed nominee of such shares. The nominee of shares merely holds the shares till the matter of vesting is decided in favour of the legal heirs.

Background

The facts leading up to the above case were that, one Mr Abhey Kumar Oswal (Original Shareholder) held certain shares (Shares) in M/s Oswal Agro Mills Limited (Company). In terms of Section 72 of the Companies Act, 2013 (Act), on 18 June 2015, the Original Shareholder had made a nomination against these Shares in favour of one Mrs Aruna Oswal (Nominee). Section 72 of the Act essentially accords on a holder of securities, power to nominate a person on whom his securities shall vest in the event of his death. The nomination undertaken in the instant case was witnessed by two witnesses and specifically provided that "This nomination shall supersede any prior nomination made by me/us and also any testamentary document executed by me/us".

The Original Shareholder died intestate on 29 March 2016, leaving behind four legal heirs (as determined in accordance with Hindu Succession Act, 1956). Following the death of the Original Shareholder, the Nominee, on 4 April 2016, made a request to be registered as the holder of the Shares, which was approved by the Company.

One Mr Pankaj Oswal (Legal Heir) filed a company petition before the National Company Law Tribunal (NCLT) alleging acts of oppression and mismanagement in the affairs of the Company (Petition) on the premise that the Company transmitted the Shares to the Nominee in contravention of law, as the legal heirs of the Original Shareholder were entitled to the Shares. It is pertinent to note that the said Legal Heir had also filed a partition suit before the Hon'ble Delhi High Court (Partition Suit) claiming 1/4th share in the estate of the Deceased in his capacity as one of the four legal heirs which was pending on the date of filing of the Petition.

Interestingly, the Act mandates certain pre-requisites for members to be eligible to file such a Petition- one of them being, that the shareholder must hold at least 1/10th of the issued share capital of the company, unless a specific application for waiver is filed with the NCLT. In the instant case, the Company challenged the maintainability of the Petition as the Legal Heir did not hold 10% of the issued and paid-up capital of the

Company. The Legal Heir contended that by virtue of him being one of the legal heirs of the Original Shareholder and thereby being entitled to 1/4th of his estate including Shares, he effectively, held more than 10% of the shareholding in the Company.

The NCLT appreciated the contention of the Legal Heir and held that the Petition was maintainable.

Being aggrieved by the order of the NCLT, the Company filed an appeal before the NCLAT. Before the NCLAT, the Company contended that the Legal Heir does not have any claim over the Shares in view of the nomination filed by the Original Shareholder and the registration of the name of the Nominee was pursuant to such nomination. Hence, the Legal Heir cannot claim to be entitled to exercise rights in respect of the Shares, including filing a petition for oppression and mismanagement which is a statutory right under the Act. On a plain reading of Section 72 and accompanying rules, a nominee is entitled to all the rights in the securities to the exclusion of all other persons. Even if it is assumed that the Legal Heir was entitled to 1/4th of the Shares, he cannot claim any part of them until it is so decided in the Partition Suit; and the same cannot be claimed as a matter of right in a proceeding under the Act.

The NCLAT referred to the ruling of the Hon'ble Supreme Court in the case of M/s World Wide Agencies Pvt. Ltd [(1990) 1 SCC 536], where it was observed that:

- A legal representative of a deceased shareholder has the same rights as the shareholder, and denying such rights, especially the right to file a petition in the event of oppression and mismanagement in a company, would amount to a hyper-technical approach;
- The purpose of necessity of action would be frustrated if one is to insist that the names of the legal representatives be put on the register of members as a pre-condition to move an application alleging acts of oppression and mismanagement in a company;
- The estate of the deceased steps into the shoes of the deceased shareholder through the legal representatives who shall be able to maintain such a petition and also effectuate transfer of shares;
- In the event of death of a deceased member, a right is said to have devolved on the legal representatives with the name of the deceased member still on the register of the company.

The NCLAT taking note of the above observations upheld the order of the NCLT and ruled that on the death of a shareholder, the shares vest with the legal heirs and not with the nominee. A nomination does not mean that the amount or share belongs to the nominee.

Comment

The instant decision of the NCLAT is in line with precedents by various judicial fora and reiterates the principle that nomination does not amount to beneficial ownership to an asset and the nominee holds the asset for and on behalf of the legal heirs of the deceased. The decision, thus, extends the rights vested with a deceased shareholder to his legal heirs. The Supreme Court's decision in Smt. Sarbati Devi and Another (AIR 1984 SC 346) settled the legal position that nomination is not a Will in law and thus, a nominee could not be considered to be the owner of the property.

However, the law on succession to the proceeds of a life insurance policy is an exception to this general rule. The Insurance Laws (Amendment) Act, 2015 had introduced the concept of a beneficial nominee, providing that nominees being the parents, or spouse, or children, or spouse and children, or any of them, shall be

beneficially entitled to the amount payable by the insurer to the deceased policy holder, and shall not merely be custodians. This is unless it is proved that the holder of the policy, having regard to the nature of title to the policy, could not have conferred any such beneficial title on the nominee.

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