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EXPECTATION OF INHERITANCE DOES NOT OVERRIDE NOMINEE'S RIGHTS – SC WEIGHS IN

24 August 2020

In the ongoing dispute between the Oswal family in relation to nomination of the shares of Oswal Agro Mills Limited, the Supreme Court has set aside the order of the National Company Law Appellate Tribunal (NCLAT).

The NCLAT order held that a petition relating to 'oppression and mismanagement' filed by a shareholder, was maintainable on the premise that such shareholder had a legitimate claim to inheriting the shares of the company. It is important to note that under the Indian Companies Act, 2013 (Companies Act), only an individual with at least 10% shareholding in an Indian company can file a petition on the grounds of oppression and mismanagement in the affairs of the said company.

Background

The late Mr Abhey Oswal held controlling shareholding in a listed company – viz. 39.88% (Shares) in Oswal Agro Mills Ltd (Company). Prior to his demise in March 2016, Mr Abhey Oswal had made a nomination under section 72 of the Companies Act appointing his wife Mrs Aruna Oswal (Nominee) as the nominee for his shares in the Company. Pursuant to this nomination and post her husband's demise, in April 2016, the Nominee was registered as the holder of the Shares.

Mr Pankaj Oswal (Mr Pankaj), the eldest son of Mr Abhey Oswal, challenged the registration of the Shares by the Company in the name of the Nominee and contended that he was entitled to a one-fourth portion of the Shares, i.e. 9.97%, as legal heir of the deceased.

Interceding Litigations

Civil Suit

In February 2017, Mr Pankaj had filed a partition suit with the Delhi High Court (High Court) to adjudicate on the rights in respect of the Shares, vis-à-vis the rights of the Nominee and his rights as a legal heir. The High Court granted an interim injunction and ordered the parties to maintain *status quo* in respect of all properties of the deceased, including the Shares. Accordingly, the Shares continue to be held in the name of the Nominee till final adjudication on merits is concluded.

NCLT Decision and NCLAT Appeal

Further, Mr Pankaj filed a petition under sections 241 and 242 of the Companies Act

with the National Company Law Tribunal, Chandigarh (NCLT), alleging oppression and mismanagement in relation to the minority shareholders in the Company. He contended that his legal entitlement to 9.97% of the Company's shareholding (as a legal heir of Mr Abhey Oswal's estate) coupled with his acquisition of 0.03% of the Company's shareholding in May 2017 allowed him to meet the 10% threshold under section 244 of the Companies Act. Accordingly, he was eligible to file an oppression and mismanagement petition.

The NCLT dismissed an application filed by the Nominee challenging the maintainability of the petition, on the ground that her son Mr Pankaj did not hold 10% of the Company's shareholding. Further, the NCLT held that Mr Pankaj, as the legal heir of the deceased, was entitled to one-fourth portion of the Shares.

The NCLAT affirmed the order of the NCLT.

Supreme Court Decision

Relevant Arguments by Parties

It was argued on behalf of the Nominee that she was the sole nominee of the Shares and that Mr Pankaj could not claim any rights to the Shares, given that a valid nomination under section 72 of the Companies Act had been carried out. This precludes a claim from any other party in respect of the Shares.

Mr Pankaj's counsel contended that nomination made in respect of the Shares was only to allow the Nominee to hold them for the benefit of the legal representatives. Consequently, this nomination would not prohibit a legal representative from maintaining oppression and mismanagement proceedings, even though he is not a registered owner of the Shares.

Discussion by Supreme Court and its Ruling

The Supreme Court noted that, on a *prima facie* review of Section 72 of the Companies Act, securities vested with a nominee are vested absolutely and supersede disposition made by any other law. This interpretation is further buttressed by Rule 19(8) of the Companies (Share Capital and Debentures) Rules, 2014, under which a nominee becomes entitled to receive the dividends or interests and other advantages, including a right to participate in the meetings of the company, to which he would have been entitled to if he were the registered holder of the securities. However, in the absence of a nomination, a legal representative (such as an heir) would be well within his / her right to have a legitimate expectation to a portion of the shares in question and, therefore, to maintain an oppression and mismanagement petition.

In the instant case, the nomination in relation to the Shares was made and registered by the Company. Whether the same is valid or not or whether the legal heirs of the late Mr Abhey Oswal have a supervening right over such Shares is a matter of civil dispute. It is amply clear, however, that on the date of institution of the NCLT petition for oppression and mismanagement, Mr Pankaj did not hold the requisite 10% shareholding in the Company to maintain such a petition. Thus, the Supreme Court held that Mr Pankaj must establish his right of inheritance before a civil court to the extent of his claim on the Shares.

The Court distinguished on facts several other cases which dealt with statutory provisions on property being vested pursuant to a nomination. Since these cases did not concern nomination in respect of shares, the Court did not apply the findings in those rulings to the instant case.

The Supreme Court set aside the NCLT and NCLAT orders with liberty to Mr Pankaj to file the oppression and mismanagement petition afresh. Further, it held that the

decision regarding nomination and inheritance of the shares would have to be decided by the pending civil court litigation in Delhi High Court and that the NCLT or NCLAT were not the appropriate forum for deciding matters of inheritance.

Comments

The question on whether nomination of shares of a company would override the laws of succession has long been debated. Differing views have been taken by single bench decisions of the Bombay High Court. The matter was laid to rest when a division bench of the Bombay High Court delivered a ruling in the case of *Shakti Yezdani v Jayanand Jayant* (2016), holding that nomination made under the Companies Act will not override the law of testamentary or intestate succession and that legal heirs are entitled to such shares. It is pertinent to note that this case is pending in appeal before the Supreme Court. However, the decision by the Bombay High Court is well-reasoned and appears to espouse a sound position of law.

While the Supreme Court has not given any verdict in the present case on the above debate, it has made a *prima facie* observation that a nominee is vested with the shares of a company and such nomination would override any other law, including the law of inheritance. However, the Supreme Court has also held that the claim of the individual in this case having a better title over the shares than the registered nominee, by virtue of being a legal heir, is a matter of civil dispute and has to be decided by the High Court.

The Supreme Court has treated the question of the maintainability of the oppression and mismanagement petition as the real bone of contention in the present case. The Court categorically held that a shareholder must meet the eligibility threshold of holding at least 10% shares in the company before initiating an action of oppression and mismanagement. Any action taken by a shareholder who does not meet this criterion is a '*misconceived exercise*'.

- *Shabnam Shaikh (Partner) and Ipshita Bhuwania (Associate)*

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Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com