

BEFORE THE COMPANY LAW BOARDNEW DELHI BENCH
NEW DELHIC.A. No. 09/2012 in
C.P. No. 122(ND)/2011PRESENT : JUSTICE D.R. DESHMUKH
CHAIRMAN[C.A. No. 09/2012 in C.P. No. 122(ND)/2011 u/s. 111, 397, 398 & 399 of the
Companies Act, 1956.]

Dr. Pushpa Mohindra

In the matter of

.....Petitioner

Versus

M/s. Sarvatra Road Runners Pvt. Limited & Ors.

..... Respondents

Present on behalf of Parties:

1. Shri Vibhu Bhakru, Sr. Advocate for Petitioner
2. Ms. Anju Jain, Advocate for Petitioner
3. Shri K.K. Rai, Sr. Advocate for Respondent
4. Shri V.N. Sharma, Advocate for Respondent

ORDER(Pronounced in open court on 23rd November 2012)

This order governs CA No. 09/2012 whereby the Respondents have challenged the maintainability of the Company petition u/s. 111, 397, 398, 399 of the Companies Act 1956 on the ground that the petitioner fails to satisfy the eligibility criteria under section 399 of the Companies Act 1956.

(1)




2. I have considered the rival contentions and case law cited. It was not disputed before me by Shri Vibhu Bhakru, Ld. Sr.Counsel appearing for the Petitioner that the Petitioner is not in possession of share certificates pertaining to the 200 equity shares allegedly held by the Petitioner. It was also stated by him that in fact no shares certificates were issued by the company to either party.It is also not in dispute that the name of the Petitioner does not find place in the Register of Members of the Company. It is also not in dispute that Shri K.K. Mahindra who was the Statutory Auditor of the company is the husband of the Petitioner.

3. A careful perusal of the averments mentioned in the petition discloses that the Petitioner is taking advantage of the erroneous Annual Return filed on behalf of the Company for the year ending 31st March 2009 wherein the Petitioner is shown to have held 200 equity shares. The said Annual Return bears the digital signature of authentication by her husband Shri K.K. Mahindra who was the Statutory Auditor of the company during the relevant period. According to the Petitioner Late Smt. K.D. Mahindra held 200 equity shares in the company which out of love and affection she wished to gift to the Petitioner. It is further stated in the petition that in compliance to the wishes of late Smt.K.D. Mahindra the company had transmitted the shares in her name on 18/02/2009 . The Petitioner has further stated in the petition that a revised Annual Return of the company was filed on 06/04/2010 in which the name of the Petitioner was removed as a shareholder.

4. The Respondents have alleged that mis-using the complete faith which the R-2 and R-3 had in Shri K.K. Mohindra, the husband of the Petitioner and the Statutory Auditor of the company had got a semi-blank form of the Annual Return signed by the R-2 & R-3 and the name of the Petitioner was fraudulently inserted by the Statutory Auditor Shri K.K. Mohindra in the Annual Return. Upon learning the above-mentioned fraudulent act, the R-2 & R-3 immediately filed a revised Annual Return of the company and removed Mr.K.K. Mohindra as the Statutory Auditor of the company.



5. Apparently the Petitioner instead of filing any document to substantiate that she is the holder of 200 equity shares of the company is taking advantage of the Annual Return filed by the company after conclusion of the A.G.M. on 30/09/2009 wherein she is shown to be the holder of 200 equity shares. This Annual Return has been admittedly revised and a fresh Annual Return has been submitted as Annexure-4 filed with the petition wherein the name of the Petitioner does not appear as a shareholder of the company. The Petitioner has also not filed any document to substantiate testamentary succession to the 200 equity shares held by late Smt.K.D. Mohindra. Admittedly the name of the Petitioner does not find place in the Register of Members of the Company. The Petitioner has also not filed any proof with the petition to substantiate legal transmission of shares held by Smt. K.D. Mahindra in her favour by the company at any stage. So far as Annual Return Annexure-2 is concerned admittedly the company has filed a revised Annual Return as Annexure-4 wherein the Petitioner is not shown as a shareholder of the company.

6. It is true that the Petitioner has sought rectification of the Register of the company under section 111 but before doing so, the Petitioner is required to move an appropriate application before the company and it is only on refusal by the company that it is open to the Petitioner to make such a prayer. Thus prayer for rectification is premature. It is open to the Petitioner to move an application before the company for rectification of the Register on the ground of testamentary succession to the 200 equity shares held by late Smt. K.D. Mahindra.

7. Accordingly I hold that in view of the revised Annual Return Annexure-4 filed by the company, the fact that the Annual Return Annexure-2 was filed under the digital signature of the husband of the Petitioner who was then the Statutory Auditor of the company and who was removed by the company, the fact that the Petitioner has not filed any document to substantiate her claim to the 200 equity shares held by Late Smt.K.D. Mahindra on the ground of testamentary succession, the fact that no document is filed to show that such shares were legally transmitted by the company at any stage in her favour and as admittedly on the date of petition the name of the



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Petitioner did not exist in the Register of Members of the Company, I am of the considered opinion that the Petitioner is not competent at this stage to file the petition under section 111, 397, 398 & 399 of the Companies Act 1956. It is open to the Petitioner to avail appropriate legal remedy available under the Companies Act 1956 after refusal by the company to register the transmission of 200 equity shares by operation of law through testamentary succession in the name of the Petitioner.

8. In the light of what has been stated above, while allowing CA No.09/2012, the Company Petition is dismissed.



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राजकम जलसिंह / SAUD A. JALSI
न्याय पीठ अधिकारी / Bench Officer
कंपनी शिष्टी बोर्ड / Company Law Board
नया सरकार / Govt. of India
नई दिल्ली / New Delhi


[Justice D.R. Deshmukh]
Chairman