

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**ITEM No. 102**  
**CP 49/241- 242/PB/2023**

**IN THE MATTER OF:**

Himangini Singh (Legal heir of Late Shri KJS Ahluwalia) & Ors. .... Petitioner

v.

KJS Cement (I) Limited & Ors .... Respondent

**Order Under Section 241(1)-242 (4) & 58(3)**

**Order delivered on 02.03.2023**

**CORAM:**

**JUSTICE RAMALINGAM SUDHAKAR**  
**HON'BLE PRESIDENT**

**SH. AVINASH K. SRIVASTAVA**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Petitioner : Sr. Adv. Mukul Rohatgi, Sr. Adv. Abhishek Manu Singhvi, Ar. Adv. U.K. Chaudhary, Sr. Adv. P. Nagesh, Saurabh Kalia, Sameer Chaudhary, Sameer Rohatgi, Madhav Goel, Sarvik Singhai, Siddharth Tandon, Mansumyer Singh, Akshay Sharma, Advocates

For the Respondent : Mr. Apurva Bhumesh

**ORDER**

**Per Oral: JUSTICE RAMALINGAM SUDHAKAR**

1. The Petitioners being 10 in number have filed this Petition under Section 241 & 242 seeking various reliefs. Petitioner No. 1 is the daughter of late Mr. KJS Ahluwalia (**KJSA**), Petitioner No. 2 is the wife of late Mr. KJSA and Petitioner Nos. 3 to 10 are companies controlled by family members of late Mr KJSA. The main interim prayers sought for are extracted below:-

***a) Pass an order restraining the Respondent No Company from Convening the Extraordinary General Meeting scheduled for 06.03.2023 of Respondent No. 1 Company for change of***

***name of Respondent No. 1 Company till the final disposal of the present petition;***

***b) Pass appropriate orders directing the respondent company to transmit and register the transmission of 55,97,768 shares held in the name of Late Shri KJS Ahluwalia in favour of the Petitioner No. 1 and rectify the register of members forthwith to enable the Petitioner No. 1 to exercise voting rights in relation to the said shares;***

.....

***d) Restrain the Respondents from convening Board Meetings/Annual General Meetings/Extraordinary General Meetings of Respondent No. 1 Company without express permission of this Hon'ble Tribunal till the pendency of the present petition;***

.....

***f) Direct that the status quo with regard to the shareholding and Board of Directors be maintained except to the extent as prayed for herein till the disposal of the present petition;***

2. The brief facts of the present case are that the Respondent No. 1 Company was originally incorporated in the name of Diwan Lime Company Pvt. Ltd. and it was bought over by Mr. KJSA and family in the year 2007 and was recorded in the Register of the Companies as KJS Cement (I) Pvt. Ltd. (**'the Company'**) on 15.11.2007. It is averred that KJSA invested over Rs. 460 Crore and gave a loan of Rs. 130 Crore to the Company whereas Respondent No. 2 made nil contribution. The Company thereafter on 24.02.2009 was classified as a Public Limited Company based on its turnover as per applicable laws. The Company however remained a closely-held

family Company whose shares being held by a group of persons and family owned Companies who are parties in the present petition as recorded above.

3. On 31.03.2018, the shareholding pattern of the Company changed on account of 15,000 Compulsory Convertible Debentures of value 15,00,00,000 (Rupees Fifteen Crores Only) being converted into equity in favour of R-2. Due to this the shareholding of R-2 went up from 52.88% to 58.19% and the shareholding of the founder i.e KJSA came down from 26.52% to 23.53%. As to how that happened is one of the issues raised in the petition and at present, it is not necessary to deal with the same.
4. The controversy in the present case arose after the demise of Mr. KJSA on 15.10.2021 who left behind three undisputed legal heirs namely his widow, married daughter and one minor adopted son. The legal heirs certificate is at Annexure P-18. The widow and other legal heirs claim that they were in discussion with the uncle of Petitioner No. 1 i.e. R-2 brother of late KJSA who is now in the management of the affairs of the R-1 Company. It appears that series of discussions were going on between the family members as to how to resolve the claims of legal heirs on the demise of late Sh. KJSA.
5. Be that as it may, by a notice dated 17.01.2022, the R-1 company represented by the management issued a notice for increase of the share capital from Rs. 23,78,59,510/- (Rupees Twenty Three Crore Seventy Eight Lakh Fifty Nine Thousand Five Hundred Ten Only) to Rs. 26,66,04,450/- (Rupees Twenty-Six Crore Sixty Six Lakh Four Thousand Four Hundred Fifty Only) by way of rights issue (Annexure P-19, Vol. – 3 page 451). In this notice, it is alleged by all the petitioners that the rights issue letter of offer dated

17.01.2022 was received by them on 24.01.2022 whereas the rights issue offer had already opened on 21.01.2022 and the closing date of the rights issue offer was 06.02.2022.

6. When the above notice dated 17.01.2022 came to the knowledge of the Petitioners, Petitioner No. 1 daughter of late KJSA sent a letter dated 01.02.2022 via email on 09.02.2022 to the Board of Directors of R-1 Company and the Company Secretary of R-1 seeking transmission of the shares held by late Sh. KJSA which is at page 463 Annexure P-21. This is a crucial letter where the legal heirs of the late Sh. KJSA seek transmission of shares in their favour as a matter of right and in accordance with the provisions of Companies Act. However, it is pleaded that this letter has not been responded by the Company or the Company Secretary and not acted upon primarily to defeat the rights of the legal heirs of Late KJSA more particularly Petitioner No. 1.
7. On the other hand, the R-1 Company proceeded to go ahead with the allotment of shares of the rights issue and increased the shareholding of the Respondent No. 2 brother of late KJSA & Respondent No. 8 who is the wife of Respondent No. 2. On 06.02.2022, the Petitioner No. 1 raised objection to the rights issue which is Annexure P-20 at page 459-462. There is no response to the same.
8. It is further pleaded that on 09.02.2022, Petitioner No. 1 sought permission of the Company to inspect the records of R-1 Company (Annexure P-24). However, no inspection was allowed to be carried out. Thereafter, on 06.09.2022 an AGM was conducted to give approval to the Board of R-1 Company to issue optionally convertible debentures worth Rs. 1500 Crore in the future and to convert the same into equity shares if needed (Annexure P-25).

According to the Petitioners this again is another act of oppression by the Respondents which is averred in detail in the petition. The petitioners further alleged that though late Mr. KJSA died on 15.10.2021, they were pursuing the matter for transmission of shares in favour of P-1 and in the guise of mediation proceeding, Respondent No. 2 was not allowing Petitioner No. 1 to get the benefit of transmission of shares thereby denying Petitioner No. 1 her rights in the R-1 Company. It is the specific case of Petitioners that while the discussion by way of mediation was going on in the close knit family, the two major acts of oppression namely rights issue and issue of debentures came to be processed by R-1 Company at the behest of R-2 whose intention is to defeat the rights of legal heirs of late KJSA and other Petitioners.

9. To further complicate the issue and deny the rights of Petitioner No. 1 and other shareholders who are Petitioner Nos. 2 to 10, a notice dated 10.02.2023 was issued to convene the EGM of R-1 Company to change name of R-1 company from KJS Cements (I) Ltd. to Sungold Cement India Limited (Annexure -P 26, page 600 Volume 4). The meeting for this is to be held on 06.03.2023. The intention of R-2 who was waiting for the late KJSA to depart was to change the R-1 Company completely and erase the name of the older brother whose blood and sweat was the creation of R-1 Company.
10. On 17.02.2023, the Petitioner again sought inspection of the Company's records which was initially refused on frivolous grounds (Annexures P-27 & P-28). On 21.02.2023, after multiple objections, limited inspection was granted to the Petitioners however copies of the documents were not granted (Annexure P-28). The intention of

Respondent No. 2 was to deny Petitioners access to the R-1 Company and wipe them out.

11. According to the Petitioners, the Company is being run by R-2 by indulging in various acts of oppression against the Petitioner No. 1 and other shareholders i.e. Petitioner Nos. 2 to 10, and R-2 is systematically trying to curtail their (Petitioner's) rights under law. In the guise of mediation, among the Ahluwalia family, the rights of Petitioner No. 1 is throttled as she did not get the transmission of the shares which she is lawfully entitled to under the law. The R-1 Company is taken over and legal heirs of late KJSA are denied all rights & liberties as per law.
12. The rights issue and optionally convertible debentures ought to have been done after the transmission of shares in favour of Petitioner No. 1 whose right is seriously affected. The intention behind the conduct of R-2 in denying the right of Petitioner No. 1 and going ahead with rights issue and debentures issue is to reduce the shareholding of Petitioner No. 1 and other Petitioners so that the voting rights of these persons in the Company will get reduced and they will become minority shareholders and thereby they will have no rights in the conduct of the affairs of the Company. It is pleaded that Petitioners satisfy the requirements specified under Section 244 (1) (a).
13. It is now pleaded by Mr. U. K. Chaudhary, Ld. Senior Counsel that while the operation was continuing and the Petitioner No. 1 was lured by mediation the last straw on the camel's back was the notice to change the name of KJS Cements (I) Ltd. to Sungold Cement India Limited by erasing the name of the Company which has accumulated wealth over the years and has various Trade Marks that are widely known in the market. The Trade Mark

Certificates are annexed to the Petition as 'Annexure P-29'. It is pleaded that the turnover of the Company is in excess of Rs. 1000 Crore as on 31.03.2022 (Page 1578). The goodwill that is developed over the years by R-1 Company enriched by hard labour and toil of late KJSA is sought to be erased by the change of name which will be deleterious to the R-1 Company in the future. The intention of R-2 is to kill the name of the R-1 Company and somehow manoeuvre the entire Company for his personal benefit.

14. Therefore, it is pleaded that the EGM which has been fixed for 06.03.2023 should be restrained so that the name of the Company could be saved as it will create a great chaos in the market. The valuable goodwill which has been gained by the R-1 Company should not be lost. Hence, interim orders are sought for.
15. Mr. Apurva Bhumesh, Ld. Counsel takes notice for Respondents No. 1 to 5 & 8. He pleads for further time to make his submissions before granting of interim order.
16. We have heard the Senior Counsels appearing for the Petitioners. We have considered the issues raised on the merits of the case for the grant of interim relief. The primary issue that is of concern is the change of the name of R-1 Company on the death of Sh. KJSA on 15.10.2021. On the bereavement of Sh. KJSA, there is a request dated 01.02.2022 by Petitioner No. 1 for transmission of shares held by her late father Sh. KJSA and that is recorded by an official email letter addressed to the Board of Directors and Company Secretary of the R-1 Company. If it has not been transmitted, as alleged by the Petitioner, it violates the provision of Section 56 read with Section 58 of the Companies Act, 2013, prima facie it will amount to oppression. The Petitioner's primary plea is that the shares have not been transmitted that is one of the grievance before

this Tribunal. Accepting such a plea, prima facie it can be safely inferred that R-1 Company represented by the Company Secretary and R-2, the Director who are duty bound to effect the transmission of shares in favour of the deceased member's legal heirs if they make a rightful claim to those shares are in violation of the law. If there is no legal impediment and if it has not been done, it will amount to gross abuse of the authority and violation of the Companies Act, 2013. On this premise we accept Petitioner No. 1 plea for interim relief.

17. Further, without going to the process of transmission of shares as sought by Petitioner No. 1, who has also submitted the indemnity bond to the R-1 Company, the issue of right issues and debentures, changing the shareholding pattern of the Company to the detriment of the Petitioner No. 1 who is a rightful heir of late Sh. KJSA and other acts which affects the rights of Petitioners No. 2 to 10 does not appear to be a correct approach by Respondents. It has a serious implication on the rights of shareholders Petitioners No. 1 to 10 more particularly, as R-1 is a closely held Public Limited Company.
18. On this prima facie allegation and averments based on documents relied by the Petitioners, we are of the considered view that the change of name of the R-1 Company which has been established in 2007, and has a huge turnover and market presence as stated earlier and has earned goodwill in the market which should be protected. There appears to be no immediate justification for the change of name, especially in light of serious allegations of oppression levelled against R-2, R-8 and other Respondents by all the Petitioners.

19. The series of acts taken by R-1 Company and Respondents 2 & 8 and others prima facie appear to establish the plea that the claims of Petitioners No 1 to 10 are being denied and the element of oppression is made out prima facie. The non-transmission of shares to Petitioner No. 1 and thereby denying her a voice in the affairs of R-1 Company can be nothing but an attempt to deny Petitioner No. 1 entry into the R-1 Company. It will also amount to oppression.
20. R-1 Company has been there since 2007 and doing well as per balance sheet. No harm will be caused if the impugned EGM is restrained for the present. The balance of convenience is in favour of Petitioners as they stand reduced by various acts of Respondent. Therefore, we are of the considered view that Respondents should be restrained from proceeding further with the proposed EGM to be held on 06.03.2023. Accordingly, the interim prayer 'a' is granted. Consequently, we direct the Respondent No. 1 Company to maintain the status quo with regard to the shareholding of the R-1 Company as on today. This does not preclude Respondent No. 1 Company and the Company Secretary to effect the transmission of shares in favour of Petitioner No. 1 if it is otherwise in order and can be lawfully executed.
21. We direct the Company Secretary, Respondent No. 9 to file an affidavit explaining his conduct in relation to allegation in para 11.6 & 11.7 at page 97 of the petition.
22. Mr. Apurva Bhumesh, Ld. Counsel undertook to file his Vakalatnama today and seeks time to file reply on behalf of his parties. He is directed to file the reply within six weeks as prayed for. He also takes note of the order passed by this Tribunal in open Court and undertakes to inform the R-1 Company and the

Company Secretary not to proceed further with the EGM to be held on 06.03.2023.

List the matter on 18.05.2023.

**-Sd/-**  
**(RAMALINGAM SUDHAKAR)**  
**PRESIDENT**

**-Sd/-**  
**(AVINASH K. SRIVASTAVA)**  
**MEMBER (TECHNICAL)**

02.03.2023  
Lalit Verma