

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

COMPANY APPEAL (C/Act)/03/KOB/2024

*(Under Section 58(3) Read with 59 of the
Companies Act, 2013)*

Date of Institution : 11.04.2024

Order delivered on: 24.11.2025

***In the matter of: M/s Whispering Kera
Ecological Homestay Pvt. Ltd.***

Memo of parties:

Ms. Isabelle Fabienne Perret - Gentil,

D/o.Perret -Gentil,

Avenue Edouard - Rod 61 1007,

Lausanne, Switzerland J

Represented by:Mr. Vishal Kumar

... Appellant

-Vs-

**1. M/s. WHISPERING KERA ECOLOGICAL
HOMESTAY PRIVATE LIMITED**

Represented by its Director,

ST.Frederick Adimalathura,

Chowara P.O., Kottukal,

Trivandrum – 695501.

2. PAULOSE AMBROSE NETTO,

ST. Frederick Adimalathura,

Chowara P.O., Kottukal,

Trivandrum - 695501.

3. REGISTRAR OF COMPANIES, KOCHI

Company Law Bhawan,

BMC Road, Thrikkakara,

Kochi - 682021

... Respondents



Coram:

HON'BLE MEMBER (JUDICIAL)

SHRI. VINAY GOEL

HON'BLE MEMBER (TECHNICAL)

SMT. MADHU SINHA

Appearances:

For the Appellant : Ld. Senior Counsel, Mr. Santhosh Mathew,
Ld. Counsel, Mr. Lavkesh Bhambani and
Ld. Counsel, Mr. Sanjay Vashishtha

For Respondent Nos 1&2 : Ld. Counsel Mr. Bijoy Pulipra

For the Respondent No.3 : Junior Technical Assistant, Mr. Savy J Alapat

ORDER

Per Coram

1. The present Company appeal under section 58(3) Read with 59 of the Companies Act, 2013, has been filed by the appellant seeking the following reliefs: -

- A. To issue a direction to the 1st Respondent Company and the 2nd Respondent, to carry out transmission of 6000 shares held by Late Ms. Sylvaine Perret-Gentil in the 1st Respondent Company to Appellant.
- B. To issue a direction to the 1st Respondent Company and the 2nd Respondent, to rectify the register of members of the 1st Respondent Company so as to reflect 6000 shares in the name of the Appellant herein.

Interim Relief: -

- A. To restrain the 2nd respondent from exercising any rights in respect of 6000 shares held by late Ms. Sylvaine Perret-Gentil;
- B. To permit the appellant to attend all the General Meetings of the 1st respondent and to exercise voting rights in respect of 6000 shares which she is entitled to;
- C. To refrain the Respondents from alienating the property of the Company pending consideration of the Company Appeal.



2. The respondent company was incorporated on 21.12.2017 under the provisions of the Companies Act, 2013. The company operates an Ayurvedic Resort/Clinic situated in its property measuring 24 Ares and 80.00 Sq. M., in Re.Sy.No.180/3, Kulathur Village, Thiruvananthapuram District. The appellant's sister, Ms. Sylvainne, is a major shareholder of the respondent company, holding 6,000 shares, as reflected in the company's annual return and Memorandum of Association.
3. It is submitted by the appellant that Ms. Sylvainne Perret-Gentil passed away on 02.08.2023 at the age of 61, leaving behind her mother, Ms. Francine Louise, and her sister, the appellant. Following her death, a Succession Certificate/Certificate of Inheritance was issued by the Justice of the Peace of the District of Lausanne, Switzerland. The death of Ms. Sylvainne caused great distress to the appellant and her mother, and the appellant was initially unaware of the affairs of the respondent company. The appellant's mother, Ms. Francine Louise Perret-Gentil, has also executed a No Objection Certificate consenting to the transfer of the shares held by the deceased Ms. Sylvainne Perret-Gentil in favor of the appellant.
4. The appellant stated that Ms. Sylvainne Perret-Gentil met the 2nd respondent, Mr. Paulose Ambrose Netto, during her visit to Kovalam, and together they decided to start an Ayurvedic Spa/Clinic, leading to the incorporation of Whispering Kera Ecological Homestay Private Limited on 21.12.2017. Relying on the assurances of the 2nd respondent, Ms. Sylvainne invested a total of Rs.3,66,89,156/- towards the purchase of land, building, furniture, and equipment, partly using funds borrowed from her mother. After the property was purchased on 31.01.2018, the 2nd respondent began sidelining Ms. Sylvainne, despite her being the major investor and holder of 6,000 shares, while the 2nd respondent held 4,000 shares. It is further



submitted that no physical share certificate was ever issued to Ms. Sylvainne by the company.

5. The appellant further submitted that from February 2019 onwards, the 2nd respondent ceased cooperating with Ms. Sylvainne, failed to renew the homestay licence, and began using the company property for his personal benefit, leading Ms. Sylvainne to lodge a police complaint on 01.04.2019 before the Poovar Police Station. No Annual General Meetings have been held, nor have any statutory returns been filed by the company after the year ending 31.03.2018. Following Ms. Sylvainne's death, the 2nd respondent threatened the appellant and failed to cooperate regarding transmission of shares. Though he sought the death and succession certificates by email dated 13.01.2024, he took no action thereafter, compelling the appellant to formally request transmission of shares by email dated 15.02.2024.
6. It is submitted on behalf of the appellant that upon receiving her request for share transmission, the 2nd respondent sought physical copies of the documents, which were duly dispatched by the appellant. However, despite receiving the documents, the respondents have failed to take any action to effect the transmission of shares to the appellant. As the appellant, who resides in Switzerland and is ailing, has no alternate remedy, she has appointed Mr. Vishal Kumar as her authorized representative through authorization dated 08.04.2024. The continued inaction of the respondent company is causing serious prejudice to the appellant's shareholder rights. It is further submitted that since the late Ms. Sylvainne Perret-Gentil and the 2nd respondent were the only promoter directors, no other person has any interest in the company, and therefore, the requirement of advertisement under Rule 35 of the NCLT Rules, 2016 may be dispensed with.



Submissions on behalf of the Respondents: -

7. The Respondent No. 1 submitted that the Power of Attorney executed by the Appellant in favour of Mr. Vishal Kumar is invalid, illegal, and inadmissible. The instrument, executed outside India, has neither been duly stamped under Sections 3(c), 18, and 35 of the Indian Stamp Act, 1899, nor adjudicated by the Collector within the mandatory three-month period. Consequently, it cannot confer any legal authority to maintain or prosecute the present Company Appeal. Being unstamped, unadjudicated, and deficient in formalities, the Power of Attorney is statutorily barred from evidence under Sections 33 and 35 of the Act. Therefore, the Appeal, being based on such an invalid instrument, is not maintainable and deserves to be dismissed in limine.
8. It is further submitted that the Company Appeal is not maintainable under Sections 58(3) and 59 of the Companies Act, 2013, as the Appellant has failed to establish legal ownership of the shares or any refusal by the Company to effect transmission. The Respondents acted in good faith, providing clear instructions (Annexures A-8 and A-10) and requesting duly authenticated documents, including original share certificates, notarized and apostilled certificates, and statutory approvals, which the Appellant failed to furnish. The Appellant also ignored the procedure under the Articles of Association for obtaining duplicate share certificates.
9. The 1st respondent submitted that the Company Appeal is legally untenable as the Appellant has failed to comply with mandatory statutory and regulatory requirements, including FEMA provisions, submission of original or properly notarized/apostilled documents, and consistency in identity and succession records. The Respondent Company acted diligently, raising



deficiencies and seeking clarifications, and its insistence on proper compliance cannot be construed as refusal under Section 58 of the Companies Act, 2013. The Appellant's documents contain material inconsistencies, and her claims of non-response are factually incorrect. In the absence of lawful transmission of shares, the appeal under Sections 58 and 59 is meritless, procedurally defective, and liable to be dismissed.

10. It is submitted that the Appellant's claim regarding a Rs.52,00,000/- contribution by the deceased shareholder, allegedly used for property acquisition, is irrelevant to the transmission of shares under Section 58, as there is no documentary proof of allotment or compliance with FEMA and ECB regulations. The deceased's financial contributions are properly reflected in the Company's records, and any non-compliance with foreign exchange laws falls outside the Tribunal's jurisdiction. The Respondent Company remains willing to effect transmission to lawful heirs but cannot do so due to insufficient and non-compliant documentation.

11. It is submitted that the Appellant's claims are legally untenable and irrelevant to a Section 58 appeal, which is strictly confined to examining the legality of the Company's refusal to register a transfer or transmission of shares. Allegations of personal disputes, undue influence, or misconduct by Respondent No. 2 are extraneous and beyond the Tribunal's jurisdiction. The deceased shareholder, Ms. Sylvaine Perret Gentil, was financially independent and in full control of the Company, while Respondent No. 2 acted only as a caretaker and non-executive director, following her directions. The Appellant's assertions regarding alleged investments, loans, or foreign remittances—including Rs.52,00,000/- purportedly used for property acquisition—are unsubstantiated, not reflected in statutory records, and raise potential FEMA compliance issues outside this Tribunal's



scope. Physical share certificates were duly issued, and the Appellant has failed to follow the statutory procedure for obtaining duplicates under the Companies Act, 2013 and Secretarial Standard-6.

12. It is further submitted that the Appellant's allegations against Respondent No. 2 are internally contradictory and lack credibility. Her claims of threats are directly contradicted by her admission that Respondent No. 2 requested the death and succession certificates to comply with legal formalities for share transmission. Such personal or hostile allegations are irrelevant to a Section 58 appeal, which is limited to examining wrongful refusal of share transfer or transmission. Following the demise of Ms. Sylvaine, the Board fell below quorum, and Respondent No. 2 lawfully appointed an additional director on 05.03.2025 to maintain statutory compliance and governance. His actions were bona fide, aimed at preserving the Company, and do not indicate any mala fide intent.

13. The Respondent No. 2 stated that the Director Identification Number (DIN) of late Ms. Sylvainne Perret-Gentil was deactivated due to non-filing of DIR-3 KYC, resulting in the 1st respondent company being classified as "Active-Non Compliant." After her demise, only the 2nd respondent remained as director. Steps were taken to appoint Ms. Anna Selvi Paul as an additional director, but the filing of e-form DIR-12 could not be completed since e-form INC-22A (ACTIVE) remains pending. The 1st respondent company acquired its land through loans provided jointly by the 2nd respondent and late Ms. Sylvainne Perret-Gentil. The company has been unable to file financial statements and annual returns for the financial years 2018-19 to 2021-22, as Ms. Sylvainne had not provided the required loan declarations or signed the financial statements. Consequently, the company's operations are at a



standstill, and necessary filings are pending completion of accounts and compliance restoration.

14. Respondent No.2 further submitted that the death certificate of late Ms. Sylvainne Perret-Gentil and the appellant's passport have been received. As per the Certificate of Inheritance, Ms. Francine Louise and the appellant are the legal heirs of the deceased. Although Ms. Francine Louise issued a No Objection Certificate (NOC) for transmission of shares, the document was only endorsed by a lawyer and not duly apostilled as required under the Hague Apostille Convention, 1961. The respondents, therefore, sought a notarized and apostilled NOC to verify its genuineness and ensure it was issued voluntarily. Furthermore, it is stated that the respondents have not rejected the request for share transmission but acted in good faith to protect the rights of the deceased and ensure transfer to the lawful heir.

15. The 2nd respondent stated that the 1st Respondent Company was incorporated on 21.12.2017 by the 2nd Respondent and Ms. Sylvaine Perret-Gentil. During her lifetime, Ms. Sylvaine verbally expressed that all her assets were to be entrusted to her adopted children after her death; however, she did not execute any formal nomination to this effect. Ms. Sylvaine Perret-Gentil passed away on 02.08.2023. It is further stated that the allegation that late Ms. Sylvainne Perret-Gentil invested Rs. 3,66,89,156/- in the Ayurvedic resort, including the purchase of land and building, is false and misleading. The 1st respondent company purchased 24 Ares 80 Sq.M of land and a 2000 Sq.M building for a total value of Rs.49,00,000/-, as evidenced by the registered sale deed produced as Annexure 2. The 2nd respondent has not received any unlawful money from Ms. Sylvainne and is unaware of any financial dealings between her and her mother. Further, R2 denied the allegation that the 2nd respondent had sidelined late Ms. Sylvainne Perret-



Gentil after the property purchase. Ms. Sylvainne held 6,000 equity shares, and all company operations and decisions were carried out transparently with her concurrence. The respondents have provided physical share certificates evidencing her shareholding in the 1st respondent company.

16. It is submitted by the 2nd respondent that the 1st respondent company's operations were conducted transparently with the concurrence of late Ms. Sylvainne Perret-Gentil. Delays in finalizing accounts and filing annual returns for 2018-19 to 2021-22 were due to her unavailability and non-submission of required loan declarations. The 2nd respondent has sought necessary documents from the appellant, including a death certificate, succession certificate, and NOC, duly notarized and apostilled, but the appellant submitted only color copies. Share transmission has been assured, subject to proper compliance, and the respondents have acted in good faith to protect the rights of the late Ms. Sylvainne and ensure transfer to the lawful heir.

17. It is submitted that the Appellant has failed to comply with the Tribunal's directions by submitting only notarised photocopies of Apostilled foreign documents instead of originals. Such notarisation, without personal verification of originals or the deponent, is legally invalid under the Notaries Act, 1952 and established case law. Photocopies of Apostilled documents have no evidentiary value under Indian law and cannot be accepted for share transmission. Consequently, the documents produced by the Appellant are inadmissible, defective, and cannot form the basis for any legal action.

18. Further, the respondents stated that under the Indian Evidence Act, 1872, only originals constitute primary evidence, and secondary evidence is inadmissible only under specific exceptions, which the Appellant has not



demonstrated. Notarisation of copies without verification of originals is legally invalid, and such documents have no evidentiary value. For share transmission under the Companies Act, 2013 and applicable Secretarial Standards, the Company must verify original, authenticated documents to satisfy statutory duties. Accordingly, the documents produced by the Appellant are legally insufficient, inadmissible, and cannot be relied upon for any purpose.

19. The respondents submitted that the Appellant has approached the Tribunal without full disclosure, relying on a Power of Attorney and Indemnity Bond that are defective, unauthenticated, and legally unenforceable. Despite repeated directions and leniency, the Appellant has failed to produce original, duly Apostilled, and authenticated documents required for lawful share transmission. The Respondents have acted in good faith and in compliance with the Tribunal's orders. Any delay in transmission arises solely from the Appellant's non-compliance, not from refusal by the Respondents, who are legally obliged to ensure that only complete and verified documents are accepted for transmission under the Companies Act, 2013.

Rejoinder filed by the Appellant: -

20. The appellant stated that the 2nd Respondent, who was only a tour guide, manipulated the Appellant's sister, Sylvaine into investing in India under false pretenses, misrepresented his personal status and diverted income from the Resort without accounting to her. The allegations that Sylvaine had adopted children and failed to update DIR-3KYC are incorrect. She duly filed Form MGT-7 for the period ending in 2018; however, subsequent accounting was obstructed by the 2nd Respondent.



21. The Appellant contends that Sylvaine invested substantial amounts into the 1st Respondent Company and related accounts for business purposes, but the 2nd Respondent misappropriated funds for personal use, withheld financial statements, and exercised emotional and financial control over her. He further neglected Sylvaine after exhausting her assets and attempted to induct a family member as director to block the Appellant's legal claim. The demand for originals of certain documents by the 2nd Respondent is unnecessary and appears dilatory; the Appellant is willing to produce originals before the Tribunal and participate in hearings via VC with her valid power of attorney holder.

22. The Appellant submitted that the Power of Attorney, now notarized and Apostilled, is valid and is presumed to have been duly executed under Section 85, relying upon the judgment of the Hon'ble High Court of Delhi in *Kamla Rani and Ors. vs. Texmaco Ltd.*, wherein the Court held that authentication by a Notary Public gives rise to a mandatory presumption that the document was properly executed, placing the onus on the opposite party to prove otherwise. It is further stated that the NOC, issued by the Appellant's 87-year-old mother, cannot be Apostilled by nature, and questioning its validity is perverse. Indian law under Section 85 recognizes notarized documents, and Apostille is not mandatory. All necessary documents have been produced for lawful transmission of shares under Section 56 of the Companies Act and the Company's Articles of Association. The 2nd Respondent's attempt to appoint his family member is solely intended to block the transmission of shares to the Appellant.

23. The appellant submitted that the Company's Articles require two directors for a valid quorum, but business was transacted on 05.03.2025 and 07.03.2025 without it, rendering such actions invalid. To show authority to



appoint Ms. Anna Selvi Paul as director, the deceased director was falsely shown as active, misleading both the 3rd respondent and the MCA. Additionally, the Company improperly held an Annual General Meeting on 30.09.2023 without following the required procedure, evidencing a pattern of fraudulent acts by the minority to oust the majority shareholder.

24. It is further submitted that the Power of Attorney dated 08.04.2024 executed by the Appellant in favor of Mr. Vishal Kumar is valid, duly apostilled, and notarized in India with a revenue stamp. Respondent No. 1's challenge on alleged non-payment of stamp duty is baseless, and even if any deficiency existed, it is curable under Section 33 of the Stamp Act, 1899, as supported by Supreme Court and High Court precedents. The PoA was submitted to the Tribunal within four days of execution, making the appeal fully maintainable.

25. The appellant submitted that the Appellant fully complied with Sections 58(3) and 59 of the Companies Act, 2013 by providing all required documents—including the death certificate of Sylvaine, heir certificate, proof of identity, and a no-objection certificate—to Respondent No. 2, both electronically and physically. Despite this, the Respondent failed to act, compelling the Appellant to file the present appeal within the 60-day period prescribed under Section 58(3). Therefore, Respondent No. 1's contention of non-compliance is baseless.

26. The Appellant had already provided all documents requested by Respondent No. 2 for the transmission of shares. Respondent No. 1's claim that a FEMA permission was required is baseless, as it was never requested earlier and is legally unnecessary for the sector in which the Company operates. The objection is merely an afterthought to block the Appellant's rightful claim of

6,000 shares.



27. The appellant further submitted that Rule 13(3) of the FEMA Rules, 2019, is irrelevant as it applies to NRI/OCI transfers, not the transmission of shares from a deceased foreign national to her legal heir. Alleged discrepancies in the names of the Appellant and her mother are unfounded, as official Swiss documents and the Appellant's passport confirm their correct names. Furthermore, Respondents attempted to manipulate the Company's board by adding a director and showing the deceased as active, clearly aiming to block the Appellant's lawful claim to 6,000 shares.

28. The Registrar of Companies, Kerala (RoC), has filed its report without raising any objections. The RoC reported that, as per the list of shareholders attached to the latest Annual Return (Form MGT-7A) for the financial year ended on 31.03.2023 (made up to 30.09.2023), it is observed that the company, M/s Whispering Kera Ecological Homestay Private Limited, has two individual shareholders. Ms. Sylvaine Perret-Gentil is shown at Serial No. 2. The details of the shareholding pattern of the appellant and Respondents are as follows:

Name	No. of equity shares	Amount per share	Total amount
Ambrose Paulose Netto (Director)	4000	10	40,000/-
Sylvaine Perret-Gentil (Director)	6000	10	60,000/-

Findings: -

29. We have heard both sides and also gone through the materials available on records.

At the outset, we would like to quote few lines from the order passed by the Hon'ble High Court of Kerala in the dispute pertaining to the same company



between the deceased Ms. Sylvainne Perret-Gentil and respondent No. 2. The relevant portion of the said judgment in Bail Application. No. 6641 of 2019 filed by R2 is reproduced here as under:

4. The learned Prosecutor has opposed the grant of bail and has pointed out that the allegations are serious and grave, and that the custodial interrogation of the petitioner is necessary for the smooth and effective conduct of investigation in this case, and further that allegations as the instant one bring bad reputation to the entire State which is trying to promote tourism as a meaningful source of livelihood for many persons in the State, etc

31. The said short and crisp observations made by the Hon'ble High Court of Kerala, though brief, are indeed serious and carry significant implications for the economy of the State as well as the entire country. We are required to honestly visualise the impact of such observations; however, the facts gathered from the pleadings and documents of both parties reflect a scenario which, if commented upon in detail, may invite further controversies. This Tribunal, therefore, intends to confine the scope of its adjudication within the ambit of Sections 58 and 59 of the Companies Act, 2013, and must record that the respondents were required to honour the spirit of the orders passed by the Hon'ble High Court of Kerala.

32. Both parties have submitted their written submissions and primarily raised the following concerns in their respective written submissions.

On behalf of the Appellant: -

- (i) Ingredients of Section 58(3) of the Companies Act, 2013 has not been fulfilled;
- (ii) Power of Attorney dated 08.04.2024, executed in favour of the Appellant's authorized representative, is defective on account of being allegedly unstamped / insufficiently stamped.



On behalf of Respondent Nos. 1 & 2:-

- (i) **Absence of Refusal to Transmit Share:** The Petition is premature because the Company has not refused transmission of shares; the delay arose solely from the appellant's failure to submit the original, duly attested and apostilled documents required for processing.
- (ii) **Invalid Power of Attorney:** The Appeal cannot be maintained because the Power of Attorney executed abroad was never properly stamped or adjudicated within the required three-month period, making it legally invalid. Since an invalid Power of Attorney gives no authority to act, the Appeal is liable to be dismissed.

33. After going through the written submissions so filed, one thing is very much clear that the parties have limited the scope of adjudication to transfer of shares and rectification in the records of the register of members of the company. Both the parties, at the time of final hearing, have opted not to press other allegations as pleaded in the appeal. So, without going into any criss-cross allegations so made, this order would be within the ambit of the reliefs claimed under Section 58(3) and 59 of the Companies Act, 2013. No observations made in this order would have any bearing on the other proceedings, if any, pending before any court or authority.

34. There is no dispute about the incorporation of M/s. Whispering Kera Ecological Homestay Private Limited, its initial directorship and shareholding between the deceased and Respondent No. 2 in the ratio of 6000:4000 respectively. There is no dispute about the death of Ms. Sylvaine Perret-Gentil. Somehow there is no dispute about the relationship of the appellant with the deceased, and further, there is no dispute that Ms. Francine Louise, mother of the deceased, is also one of the legal heirs of the deceased. Though Respondent No. 2 has come with a plea of adopted



children of the deceased, there is no material on record to prove their existence. Further, there is no rival claim from any corner. At this stage, it would be appropriate to bank upon Section 44 of the Companies Act, 2013, which reads as under:

“44. Nature of shares or debentures:- The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company. “

35. We would like to reproduce the relevant clause of the Articles of Association about the transfer of shares.

TRANSFER AND TRANSMISSION

13. *Any member desiring to sell any of his shares must notify the Board of Directors of the number of shares, the fair value and the name of the proposed transferee, and the Board of Directors must offer to the other shareholders the shares offered at the fair value, and if the offer is accepted, the shares shall be transferred to the acceptor; and if the shares or any of them are not so accepted within one month from the date of notice to the Board of Directors the members proposing transfers shall, at any time within three months, afterwards, be at liberty, to sell and transfer the shares to any person at the same or at higher price. In case of any dispute, regarding the fair value of the shares it shall be decided and fixed by the Company's Auditor whose decision shall be final.*
14. *No transfer of shares shall be made or registered without the previous sanction of the Directors, except when the transfer is made by any member of the Company to another member or to a member's wife or child or children or his heirs, and the Directors may decline to give such sanction without assigning any reason, subject to Section 58 of the Companies Act, 2013.*
15. *The Directors may refuse to register any transfer of share (1) where the Company has a lien on the share, or (2) where the share is not a fully paid up share, subject to Section 58 of the Companies Act, 2013.*

35. A joint reading of Clauses 13, 14 and 15 of the Articles of Association would be beneficial for deciding the issue between the parties. Section 44 of the



Companies Act, 2013 clarifies that shares are to be construed as movable property, subject to the provisions contained in the Articles of Association of the Company. In the present case, it is not the contention of either party that any lien exists over the shares, or that the shares are partly paid-up. Further, this is not a case of sale or transfer of shares for consideration. The Appellant approached the Company for transfer of shares in her capacity as one of the legal heirs of the deceased shareholder, and the other legal heir has already submitted a no-objection to transfer the entire shareholding in favour of the Appellant.

36. Clause 14 of Articles of Association, reproduced supra, is therefore the relevant provision governing such a situation. No prior sanction of the Directors is required, and upon submission of the requisite documents, the transfer of shares ought to have been effected. Even at the time of hearing of this matter, except for certain technical objections, no substantial reason has been shown to decline transfer of shares in favour of the Appellant. At this juncture, it would be appropriate to refer to Rule 70 of the National Company Law Tribunal Rules, 2016, which reads as under:

70. Appeal under sections 58 and 59-

(1) The appeals against the refusal for registration of transfer or transmission of securities under section 58 or for rectification of register of members under section 59 shall be made to the Tribunal by way of a petition in Form No. NCLT. 1 and shall be accompanied by such documents as are mentioned in Annexure B:

PROVIDED that a copy of the appeal shall be served on the concerned company at its registered office immediately after filing of the petition with the Tribunal.

(2) The petitioner shall at least fourteen days before the date of hearing advertise the petition in accordance with rule 35.

(3) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar on or before the date of hearing:



(4) The Tribunal may, while dealing with a petition under section 58 or 59, at its discretion, make-

(a) order or any interim order, including any orders as to injunction or stay, as it may deem fit and just,

(b) such orders as to costs as it thinks fit, and

(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

(5) On any petition under section 59, the Tribunal may-

(a) decide any question relating to the title of any person who is a party to the petition to have his name entered in, or omitted from, the register;

(b) generally decide any question which is necessary or expedient to decide in connection with the application for rectification.

37. Rule 70 of the National Company Law Tribunal Rules, 2016 empowers the Tribunal to decide questions relating to title, including whether a person's name should be entered in the register, provided the title is clear. In the present case, the Respondents have failed to dispute either the title or the Appellant's relationship with the deceased. In fact, Respondent No. 2 addressed a letter to the Appellant even prior to her formal application for transfer of shares. Thus, in a disguised manner, Respondent No. 2 has admitted the Appellant's relationship with the deceased.

38. The appellant, upon the death of the shareholder Ms. Sylvaine Perret-Gentil, applied for transfer of shares in her name, and along with the certificate of legal heirship of the deceased Ms. Sylvaine Perret-Gentil, the appellant and her mother had been declared as the legal heirs of the deceased shareholder. The appellant, on the basis of the said legal heirship certificate and with no objection from the other legal heir, applied for transfer of 6000 shares in her name and submitted all such documents to the company for transfer of shares, being the legal heir of the deceased. The respondent, upon receipt of such documents, was required under the Articles of Association to do the needful. The Respondent No. 2, after coming to know about the death of his co-shareholder in the company, sent one e-mail dated 13.01.2024 for the



death certificate and for the transfer of shares, citing exigencies on account of various provisions of the Companies Act, 2013. In response thereto, the appellant wrote the following request letter for the transmission of shares.

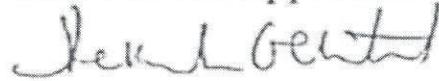
4. No objection from my mother the other legal heir.

I hereby request you to transmit the shares standing in the name of the deceased in my name in the Register of the Members of the Company.

Date:

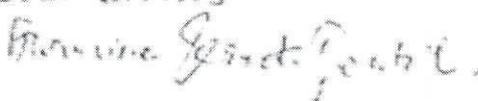
February 13th 2024

Signature of the Applicant



Signature & Address of Witness

1) CARMELA SOLO SOLO 
AVENUE EDUARD-RODÉ
1007 LUSARNE
SWITZERLAND

2) FRANCIANE PERRET-VENTIL
AVENUE HALDIMANDAY
1100 YVERDON-LES-BAINS
SWITZERLAND 

39. Thereafter, Respondent Nos. 1 & 2 sent the following response to the said request.

Whispering Kera

isabelle.perret-gentil
Route de la Grotte 17
1983 Lannaz - CH
+41 79 207 22 44
isabelle.perret-gentil@vtxnet.ch

Début du message réexpédié :

De: paulose Ambrose <pauloseanetto@yahoo.co.in>
Objet: Rép.: Whispering Kera
Date: 15 février 2024 à 17:12:41 UTC+1
À: Perret-Gentil Isabelle <isabelle.perret-gentil@vtxnet.ch>

Madam,

We acknowledge the receipt of your email dated 15/02/2024. In this connection we request you to provide the following physical copy of documents for starting the process of transmission of shares held by Ms. Sylvaine Perret-Gentil.

1. No-objection certificate of other legal heirs, notarized and apostilled by the proper authority
2. Death certificate, notarized and apostilled by the proper authority
3. Certificate of Inheritance, notarized and apostilled by the proper authority

After receipt of these documents, and its legal scrutiny I will forward the indemnity Bond and Affidavit, along with other documents to be signed for share transmission.

Sent from my iPhone

On 15-Feb-2024, at 5:31 PM, paulose Ambrose <pauloseanetto@yahoo.co.in> wrote:

Sent from my iPhone

Begin forwarded message:

40. There is no express denial, but there is no transfer either. The existence of a dispute between Respondent No. 2 and the deceased shareholder, Ms. Sylvainne Perret-Gentil, during her lifetime speaks volumes about the affairs of the Company. The private limited company had only two directors, and the delay in the transfer of shares can be deemed a refusal to transfer the shares for the purpose of adjudication of this instant application.



41. The issue regarding insufficiently stamped power of attorney and other technical issues are curable defects in the light of the judgment of the Hon'ble Supreme Court in **Malaysian Airlines Systems BHD v. STIC Travels (P) Ltd., (2001) 1 SCC 451 (¶5-6)**. The relevant portion of the said judgment is reproduced here as under: -

5. *In my view, the point raised in the IA is not tenable. In a case where the unstamped document (other than bill of exchange) is produced as evidence, within three months of execution, the stamp duty can be collected without impounding and without penalty. If the document is sought to be used as evidence beyond three months, the abovesaid bar of three months shall not apply, and the document can be impounded under Section 33 and stamp duty and penalty are levied, even after expiry of three months.*

6. *According to the decision of the Full Bench of the High Court of Allahabad in Mohd. Amir Ahmad Khan v. Dy. Commr.¹ as affirmed by this Court in Govt. of U.P. v. Raja Mohd. Amir Ahmad Khan and also according to the decision of the Delhi High Court in J.S. Bhalla v. G.J. Bhawnani³ the procedure permitting submission of a document within 3 months of its execution as in Section 18 is for collection of the stamp duty payable on the document. If it is produced as evidence within three months of execution, the stamp duty can be collected under Section 18, read with Section 32, without impounding the document under Section 33. But in case where 3 months have already expired from the date of execution of the document and later on the document is produced before the court as evidence, it is permissible for the court to impound the document and collect the stamp duty and penalty and in such a situation, the time-limit of 3 months provided in Section 18 and clause (b) of Section 32 is not attracted. Therefore, the point raised by the respondent in the abovesaid IA cannot be accepted.*

7. *Now that the stamp duty and penalty have been paid, as directed by this Court on 3-11-2000, an endorsement to the above effect under sub-section (1) of Section 42 is to be made under Section 42(1). Such an endorsement has been made by the Registrar of this Court already on 10-11-2000; I certify that the said endorsement falls within sub-section (1) of Section 42 of the Indian Stamp Act.*



42. So that would not have any bearing or hurdle for getting the shares transferred, and such type of technical objections are not tenable under the present given circumstances.
43. Despite such observations of the Hon'ble High Court of Kerala, though in some other matter but between the same parties, the R2 did everything to delay the transfer of shares in the name of a genuine legal heir.
44. As far as the letter of administration and succession certificates are concerned, the said documents should not be insisted upon, as the deceased died intestate, and as per the legal heirship certificate issued by the competent authority in their native land, the appellant and the mother of the deceased are the only two legal heirs. Further, under such circumstances, as per the law applicable to the appellant, no succession certificate or letter of administration is required. So, that cannot be insisted upon for the transfer of shares.
45. The apostilled documents are government-admissible and legally applicable in India in terms of the directions of the Office Memorandum dated 18.11.2025, passed by the Ministry of External Affairs. So the respondent company is bound by the said office memorandum and should not insist for any other form of documents.
46. Without going into the other controversies, ultimately, the appellant has furnished all those documents to Respondent Nos. 1 & 2 and has facilitated physical verification of all the documents during the course of proceedings on 12.11.2025. The only document which is required otherwise is the indemnity bond executed by the legal heir which is required for transfer of shares as per SEBI guidelines and to protect the interest of the company from any 3rd party claims in future. That indemnity bond has been executed by the



attorney of the appellant. To the opinion of this Tribunal, the indemnity bond should be executed by all legal heirs, including the person who is relinquishing her rights in favour of another legal heir. Because ultimately, all such legal heirs are facilitating the transfer of shares in the name of only one legal heir. So it would be appropriate to direct the appellant and other legal heir to furnish duly executed Indemnity Bond. On receipt of such Indemnity Bond the Respondent Nos 1 & 2 would be under obligation to transfer the shares in favour of the appellant within ten days.

47. In Articles of Association there is no need for any succession certificate for transfer of shares in the name of legal heirs. As such upon issue of legal heir certificate by the competent authority, the Respondents No. 1 & 2 should not insist for succession certificate.

48. With the aforesaid orders, this Company Appeal (C/ACT)/03/KOB/2024 stands **allowed and disposed of**.

49. The Registry is hereby directed to send e-mail copies of this order forthwith to all the parties and their counsel for information and to take necessary steps.

50. Let the certified copy of the order be issued upon compliance with requisite formalities.

51. File be consigned to records.

Sd/-
MADHU SINHA
(MEMBER TECHNICAL)

Sd/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the day of 24th day of November, 2025.

Certified to be True Copy-

Deputy Registrar
National Company Law Tribunal
Kochi Bench

