

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 700
CS 25/2021

In the matter of:

Nur Invest Capital B.V.

1st plaintiff

(A company incorporated and existing under the laws Of Netherlands and jointly represented by (a) Mr. Marat Rzagaziev of Horticultural Partnership Mamyr, house 107, Almaty. Kazakhstan and (b) Align B. V., company Incorporated under the laws of the Netherlands

And

Mrs. Gulnara Sarenova of 144 Abell House, 31 John Islip Str. London, SW1PSFE, United Kingdom

2nd plaintiff

V/S

Hightech Seed Investments II Ltd
Represented by its director at its registered office at Room 306, Vitoria, Mahe, Seychelles

Defendant

Neutral Citation: B.V Capital Invest Nur & Sarsenova Gulnara and Ltd II Investments Seed Hightech (CS No. 25 of 2021) [2021] SCSC 700 (28 October 2021)

Before: Andre J

Summary: International Business Companies Act (section 62 (1) (5) and 66) – Transfer of registered shares

Heard: 28 July 2021

Delivered: 28 October 2021

ORDER

The following Orders are made:

[1] The defendant company Hightech Seed Investments II Ltd is hereby directed to rectify its records and register the registered transfer of shares pursuant to the instrument of transfer between the 1st and 2nd plaintiffs and from the register of members of the defendant company to remove the name of the 1st plaintiff and enter the name of the 2nd plaintiff instead.

[2] Cost is granted as prayed in favour of the 1st and 2nd plaintiffs as against the defendant.

[3] The Registrar is hereby directed to serve a copy of the judgment of the defendant company with immediate effect.

JUDGEMENT

EX-PARTE

ANDRE J

Introduction

[1] This Judgement arises out of plaint of the 23 March 2021 for directing the rectification of the records of the defendant company; register the transfer of registered shares pursuant to the ‘instrument of transfer’, and from the register of members of the defendant company to remove the name of the transferor/1st plaintiff and enter the name of the transferee/2nd plaintiff instead and an Order as to costs against the defendant.

[2] The matter proceeded ex-parte as against the defendant company following their non-appearance albeit being duly served.

General background

[3] The defendant company is an international business company (company number 099632) incorporated in Seychelles.

[4] The 1st plaintiff owns 595 ordinary shares in the defendant company and has sold 595 ordinary shares to the 2nd plaintiff.

[5] The instrument of transfer dated the 27 October 2020, signed by the transferor (ie: the 1st plaintiff transfers all of its registered 595 ordinary shares in the defendant company to the 2nd plaintiff.

- [6] The said instrument of transfer of the registered shares was sent to the defendant company for registration through a letter dated 30 November 2020.
- [7] There is a statutory duty that a company shall, on receipt of an instrument of transfer, enter the name of the transferee of the share in the register of members.
- [8] The defendant company has no reason to refuse the transfer of the registered share as per the instrument of transfer afore-said.
- [9] In breach of that statutory duty, the defendant has failed to enter the name of the transferee of the share, (ie: the name of the 2nd plaintiff, in the register of members thereby causing prejudice against the plaintiffs.
- [10] The prayers sought by the plaintiffs are as at paragraph [1] above.

Evidence

- [11] Two witnesses testified in support of the plaint, namely, the 1st and the 2nd plaintiffs.

The 1st plaintiff represented by Mr. Marat Rzagaziev testified in a gist, that he could represent the 1st plaintiff's company by virtue of power of attorney (*Exhibit P1 and P2*). That the 2nd plaintiff is an incorporated company in Seychelles with registration number 099632 (*Exhibit P3*). That the 1st plaintiff owes 595 ordinary shares in the defendant company (*Exhibit P4*) and that the 1st plaintiff sold his said shares to the 2nd plaintiff (*Exhibit P5*). That Exhibit P5, was subsequently sent to the defendant company for registration letter for registration (*Exhibit P6*) and Exhibit P6 also referred to a previous share transfer made (*Exhibit P7*) and which Exhibit P7 was replaced by Exhibit P5. That there is a statutory duty on the defendant company to register the same transfer as per Exhibit P5 and the 2nd plaintiff to be registered as member shareholder. That to his knowledge, there is no excuse for the defendant company not to register the transfer as per Exhibit P5 and also to register the 2nd plaintiff as the shareholder and hence moving as per prayers above for breach of such duties.

- [12] The 2nd plaintiff was represented by one Azhigariyeva as per power of attorney (*Exhibit P8*). She testified in a gist as follows:

That the 2nd plaintiff purchased the shares of the 1st plaintiff in the defendant company (*Exhibit P5*) and the 2nd plaintiff signed the document of transfer and she identified the signature of the 2nd plaintiff on the said instrument whose signature she testified she knew. That the said transfer was not registered by the defendant company for no reason whatsoever and that by omitting to do so, the defendant company breached its statutory duty to register the said transfer and caused prejudice to the 2nd plaintiff. Thus, she moved as per prayers at paragraph [1] (*supra*). She also moved for costs.

Discussion on the law and Findings

[12] Section 62 (1) of the International Business Companies Act provides that:

‘Subject to subsections (2) and (3) and section 66, registered shares in a company shall be transferred by a written instrument of transfer- (a) signed by the transferor; (b) signed by the transferee; (c) containing the name and address of the transferee.

[13] The evidence of the 1st and 2nd plaintiffs indicate the scenario of events between the transferor and transferee Exhibit P5 substituting Exhibit P7.

[14] In the absence of any evidence the contrary from the defendant company to show otherwise, Exhibit P5 constitutes a written instrument of transfer under the said section 62 (1) and the registered shares must be transferred.

[15] Section 62 (5) of the International Business Companies Act further provides that:

‘Subject to its memorandum or articles and section 63, the company shall, on receipt of an instrument of transfer, enter the name of the transferee of the share in the register of members unless the directors resolve to refuse or delay the registration of the transfer for reasons that shall be specified in the resolution.’

[16] It is evident in the absence of evidence to the contrary from the defendant company, that the defendant company had to upon receipt of the instrument of transfer, enter the name of the transferee namely, the 2nd plaintiff in the register of members of the defendant company.

Conclusion

[16] Following the above discussions and findings, the plaint is upheld that the Court hereby orders as follows:

[1] that the defendant company Hightech Seed Investments II Ltd is hereby directed to rectify its records and register the registered transfer of shares pursuant to the instrument of transfer between the 1st and 2nd plaintiffs (*Exhibit P5*) and from the register of members of the defendant company to remove the name of the 1st plaintiff and enter the name of the 2nd plaintiff instead.

[2] Cost is granted as prayed in favour of the 1st and 2nd plaintiffs as against the defendant company.

[3] The Registrar is hereby directed to serve a copy of the judgment on the defendant company with immediate effect.

Signed, dated, and delivered at Ile du Port on 28 October 2021.

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ANDRE J

