

### Transfer and Transmission of Shares (Sec 56)

#### **1. Simplified procedure of transfer**

This section to a very large extent simplified the procedure for transfer of securities. The conditions in Section 108 of 1956 Act that every transfer form should be presented before prescribed authority before its execution by transferor has been done away with. What is now required under the present Act is that for transfer of shares in physical form, form SH-4 to be presented to the company within 60 days of execution along with certificate of securities/ allotment of securities. The above can be lodged either by the transferor or by the transferee.

#### **2. Situation when transfer instrument has been lost or transfer is lodged belatedly**

Here the relevant date of execution is the date on which the transferor executes the transfer form. The share transfer form to be delivered within two months of its execution. Proviso for section 56 (1) states that in case the instrument of transfer has been lost or instrument of transfer has not been delivered within the sixty days from the date of execution the company has discretion to accept the transfer. The present Companies Act puts the responsibility to the transferee who may indemnify the company against any disputes of the title in respect of instrument of transfer which has been lost or belatedly delivered. It is worthwhile to mention that share certificate needs to be lodged, though the instrument of transfer has been lost. In case if the shares certificate is also lost, the right recourse should be to obtain a duplicate certificate after following the procedures and there upon on receipt of indemnity a company may affect the transfer of shares to the transferee. It is important to note that it is the discretion of the board to effect the registration or not.

#### **3. Transfer in case of partly paid shares**

When the transfer is lodged by the transferor with respect to partly paid shares the company must give notice of the transfer application to the transferee in Form SH-5. Unless the transferee gives his no-objection within two weeks from the date of receipt of notice, Company should not transfer those partly paid shares. The reason for this law is that it would be the obligation of the transferee to pay the future calls.

#### **4. Various points of transfer of shares demonstrated by case laws**

##### **a. Completion of Transfer**

When all formalities such as execution of transfer deeds and handing over the certificates are complete - (CIT vs M. Ramaswamy 1985 – 57 Comp Cas 7, Mad), also in (1985 Vasudev Ramachandra Shelat Vs. Pranlal Jayanth Takur 1985 – 45 Comp Cas 43, SC).

## **b. Nature of Provision**

The instrument of transfer, handing over share certificate, duly stamped transfer forms are mandatory in nature. It was held that transfer of shares without compliance of Section 108 (1956 Act) is not valid in the eyes of Law – (Gowri Shankar Neelkanth Gayani Vs. Sulochana – 2015 – 60 Taxmann.com 273, CLB)

## **c. Effect of mere agreement to transfer**

A mere agreement to sell shares does not deprive a member from exercising his right as member. The company can take cognizance of the transfer only when the transfer instrument along with share scrips are lodged with the company – (Martin Castelino Vs. Alpha Omega Ship Management P. Ltd , 2001 – 54 – Comp Cas – 687, 2001 – 41 CLA – 271, 2001 SCL 210 (CLB))

## **d. Lodgment of transfer after that of transferor**

Yes, the same is held to be possible (Anish Seigell Vs. Siemens India Ltd – 2011 – 12 Taxmann.com, 489 CLB)

## **e. Family Arrangements**

Share transfer done on the basis of family arrangement without complying provisions of Law is void – (Perrenial Trading Pvt Ltd Vs. Pankaj Extrusions – 2012, 23 Taxmann.com, CLB) 14.5.2 Where there is an arbitration award it is not necessary for requirement of transfer forms to be executed. Here the award is nothing but an operation of Law – (Dinesh Nagindas Shah Vs. Pankaj aluminium Private Limited – 2010 102, SCL 161 (Bom))

## **f. Limitation period for lodging the transfer**

Limitation to take action three years from the date of knowledge – N S Nemura Consultancy I Pvt Ltd Vs. A Devarajan – 2010- 155 – Comp Cas – 175 (Mad))

## **g. Death of the joint holder**

Only the surviving joint holder would get title and not legal heirs of the deceased – (Jaylakshmi Acharya Vs. Kal Electronics and Consultants Pvt Ltd – 1997 – 13 SCL – 001 CLB)

## **h. Stamping**

If adhesive Stamp on transfer deed is not defaced, a fresh deed needs to be submitted. Company is not obliged to cancel the stamp. As per Section 12 Indian Stamp Act – adhesive stamps should be cancelled at the time of affixation of such stamps and execution of document. If not done it would be deemed to be unstamped document. (Nuddea Tea Co. Ltd Vs. Ashok Kumar Saha (1988) 64 Comp Cas 775 (Cal)) and (Para 55 in Kothari Industrial Corporation Vs. Laser Detergents Ltd (1994) – 1 – SCL – 191 (Mad))

## **5. Transmission of Securities**

Though transfer procedure deals with cases of transaction inter vivos (living persons) in case of transmission (due to operation of law, like court orders, death etc.,) the procedure of

share transfer forms are not required. The company should ensure proper succession certificate regarding the true legal heirs. Normally company does take extra precaution and satisfies itself before effecting the transmission. When a company has notice of death of a shareholder, the right course should be to suspend any payment of dividend, bonus and rights in abeyance till the shares are transferred to the legal heirs and the dividend, bonus and rights shall be given to the legal heirs upon their name being registered in the company's records. In case the shareholder dies leaving a will, then probate of the will is required before effecting the transmission.

## **6. Transmission in case of nomination**

Section 72 provides when a shareholder nominates any person then in case of the death of the shareholder company needs to transfer only to the nominee duly notified. In this case company has no further responsibility. In case of claim or any dispute in this regard the decision of the courts shall be final and binding.

## **7. Dematerialized shares**

In case of transfer of dematerialized shares in a listed company, the company has no role to play. The depository participants would ensure the transfer is effected in accordance with law. In case a depository participant, with intention to defraud a person, transferred the shares illegally it shall be punishable under section 447. This penalty is in addition to any other liability that may attract under Depositories Act 1996.

## **8. Case of a Company limited by guarantee**

A germane question is what happens when the interest of a member in a guarantee company is required to be transferred. The same will be transferred using the Form SH-4 and the guarantee needs to be freshly executed by the new member as the personal guarantee of the transferor will cease.

## **9. Time limit for delivery of security certificates**

Sub section (4) provides the following timeline for the company to deliver certificate of all securities allotted or transferred or transmitted:

- (a) two months from the date of incorporation to the subscribers.
- (b) two months from the date of allotment of shares.
- (c) one month from the date of receipt of intimation by the company in case of transfer or transmission of securities.
- (d) six months from the date of allotment of debentures.

In case of dematerialised allotment of shares, it is the duty of the company to intimate the same to depository participant immediately.

It may be observed though the section deals with securities allotment, but in case of allotment of securities other than those of shares and debentures are not covered. It is

advisable that the company may prescribe deadlines for allotment of other kinds of securities.

Rule 5 provides for issue of any share certificate, a resolution of board is must. Further surrender to the company any letter of allotment or fractional coupons is required before issue of certificate. In case letter of allotment is lost or destroyed the company may impose upon satisfying itself and obtaining a proper indemnity and payment of out of pocket expenses incurred by the company from the allottee before issue of share certificates to him.

## **10. Offence and Compoundability**

In case of default in complying with the provisions of sub section 1 to 5 the company shall be liable for fine a minimum of Rs. 25,000/- but may go upto Rs. 5,00,000/-. In addition to the above every officer of the company who is in default shall be punishable with fine a minimum of Rs. 10,000/- but may extent upto Rs. 1,00,000/-. The offences under this section are compoundable.

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