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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 1416 OF 2021
IN
TESTAMENTARY PETITION NO. 2936 OF 2018**

Rustom Adi Kanga	...Petitioner
<i>Versus</i>	
Tide Water Oil India Ltd	...Respondent
<i>And</i>	
Pestonji Dushawji Dadabhoy Kanga	...Deceased

**Mr Karl Tamboly, with Sheetal Shah, i/b Mehta & Girdharlal, for the
Petitioner.**

**CORAM: G.S. PATEL, J.
DATED: 18th August 2021**

PC:-

1. The 1st Respondent is absent despite service and despite having been sent a copy of my previous order dated 10th August 2021. The application seeks the following reliefs.

(a) That Respondent No. 1 be ordered and directed to issue a Share Certificate(s) and to execute and do all deeds and acts necessary for the transmission in favour/name of the Applicant in respect of 2400 shares in Respondent No. 1 Company under Certificate No. 10 bearing Distinctive No. 6381-7580 being 1200 shares and under Certificate No. 14685 bearing Distinctive No. 1748781-1749980 being 1200

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shares, held by the Deceased in Respondent No. 1, within 2 weeks of passing of the Order or any such reasonable time as this Hon'ble Court deems fit;

(b) That the Respondent No. 1 be ordered and directed to issue Entitlement letter to reclaim dividends and shares from the IEPF (Since dividends and share have been transferred to IEPF) in respect of 2400 Shares in Respondent No. 1 Company under Certificate No. 10 bearing Distinctive No. 6381-7580 being 1200 shares and under Certificate No. 14685 bearing Distinctive No. 1748781-1749980 being 1200 shares, in favour of the Applicant, held by the Deceased in Respondent No. 1, within 2 weeks of passing of the Order or any such reasonable time as this Hon'ble Court may deem fit;

(c) Pending the hearing and final disposal of the Interim Application, the Respondent No. 1 be ordered and directed to disclose on oath all benefits in the nature of bonus shares/ dividend/ interest/ other accurla and/or other monetary benefits declared by the Respondent No. 1 in respect of shares in Tide Water Oil India Limited (Respondent No. 1) from 1927 till date of passing of the Order;"

2. The facts are somewhat peculiar. The Applicant is the grand nephew of one Pestonji Dushawji Dadabhoy Kanga ("**Pestonji**"). The 1st Respondent ("**Tide Water**") is a company in which Pestonji held 2400 shares. The 2nd Respondent is the Investors Education and Protection Fund ("**IEPF**") established by the Central Government. Paragraph 4 of the Plaint sets out the exact shareholding of Pestonji in Tide Water.

3. Pestonji died intestate in Mumbai on 14th August 1927. He was survived by his widow Maneckai. They had no children. His parents died before him.

4. Maneckai died in 1950. She never re-married. Pestonji had no siblings but had only one brother Rustom. Rustom himself died in 1950 and was survived by his widow, Piroja, and their son, Adi. Piroja died in 1994. Adi died intestate on 1st April 2013. He was survived by his widow, Vira, and his son, Rustom Adi Kanga, the Petitioner today. Vira died on 27th October 1999.

5. Thus, the Petitioner (“**Rustom**”) is the only lineal descendant of the original owner of the Tide Water shares, Pestonji. Rustom learnt of these shares when he was told about this by one Ajit Lobo.

6. On 31st October 2018 Rustom filed Testamentary Petition No. 2936 of 2018 (the present Petition) for a Succession Certificate. The Succession Certificate was issued on 16th April 2019.

7. Having got that certificate, Rustom applied on 21st December 2018 to MCS Share Transfer Agent Ltd with a request to Tide Water to transmit the shares to his name and re-issue the share certificate/s. By an email of 20th February 2019, Tide Water informed Rustom of the requirements to complete the transmission process. Not having sufficient details, on 4th June 2019 Rustom asked Tide Water to provide the distinctive numbers and the details of the shares so that the necessary form could be completed.

8. Tide Water replied on 7th June 2019 and furnished the necessary information. On 22nd October 2019, Rustom sent a complete transmission form and other documents to Tide Water. On 16th December 2019, Rustom asked Tide Water to send a draft of the Affidavit it needed. It seems that on the records of Tide Water, the name entered was PD Kanga; and Rustom, therefore, asked Tide Water to send him a draft of the Affidavit to confirm that PD Kanga was the same as Pestonji Rustomji Dadabhoy Kanga. On 5th January 2020, Rustom told Tide Water that he was in the process of making the Affidavit and asked if the original shares were still with Tide Water. Tide Water confirmed that the original shares were still with it by its email dated 15th January 2020. On 3rd February 2020, Rustom sent Tide Water two Affidavits in completion of the transmission process.

9. Abruptly, and for the first time, on 21st February 2020, Tide Water emailed Rustom saying that the shares were held in the joint name of Mr PD Kanga and one FD Kanga. This was the first such intimation since Rustom began the transmission process. Rustom has no record whatsoever of FD Kanga and does not know who he is. By a letter dated 10th July 2020, Rustom's lawyers wrote to Tide Water asking for documentary proof of this so-called second shareholder and the details in the share register (among other details). If this was not available, the demand was that the shares should be transmitted without delay. On 8th September 2020, Tide Water through its transfer agent said that each of the share stood in the names of PD Kanga jointly with FD Kanga. The transfer agents confirmed from the original share certificates and 1200 shares were with Tide Water. On 7th October 2020, Tide Water emailed

Rustom's lawyers with the format of an Affidavit to delete the name of FD Kanga from the register of members of Tide Water. Rustom's lawyers sent this under a covering letter of 23rd December 2020. On 23rd January 2021, Tide Water, through its transfer agent, said that all the documents had been received and were under review.

10. Surprisingly, by a letter dated 24th February 2021 addressed to Rustom's lawyers, Tide Water said that it was unable to process the transmission because the request "did not conform to the applicable statute". Which statute was being violated or transgressed and in what fashion was left entirely to the imagination. No one knows even today what Tide Water intended.

11. Paragraph 5 of the Application states that there is no FD Kanga in the family at all. Pestonji Kanga was sole holder of the shares. These details have been repeatedly confirmed. Rustom is a Class-II heir and is entitled to the estate of the deceased. He holds a Succession Certificate issued by this Court.

12. I am unable to understand why Tide Water has remained away despite service of the notice. Surely if it had something to say touching upon receipt of a legal or statutory issue, it was obliged to respond and to appear today. This practice of parties invoking legal rights or statutes but refusing to come to Court to substantiate them must be deprecated. There is nothing that I can find on the record before me to show that FD Kanga was in fact the second holder, or, for that matter that there was in fact ever a second holder of these shares.

13. Mr Tamboly on instructions makes a statement, which I accept as an undertaking to the Court, that if there is any claim made by FD Kanga or any lineal descendant of FD Kanga to these shares, Rustom will indemnify and hereby agrees to indemnify Tide Water fully to absolve it of all financial and other liabilities. Nothing further could be required.

14. Tide Water may retain a copy of this order on its record. This will suffice in place of an indemnity. I do not want an objection from Tide Water insisting on an indemnity or formal letter of indemnity before a Notary. A statement made by a Counsel on instructions to a Bench of a High Court must surely take precedence over any notarized document.

15. Tide Water cannot refuse transmission. At any rate, it cannot refuse transmission on these facts, and certainly not with the undertaking and indemnity that I have noted and accepted above.

16. The Application is, therefore, made absolute in terms of prayer clauses (a), (b) and (c), noted above.

17. The necessary transmission is to be effected within two weeks of service of copy of this order on Tide Water.

18. I am putting Tide Water to notice that failure to comply with this order will be construed as a deliberate and wilful disobedience of this order and, therefore, a contempt of Court, and will be dealt with as such. If Tide Water has any reservations or needs any

clarification, it must seek an order of this Court. It cannot simply refuse to abide by this order.

19. The Interim Application is disposed of in these terms. There will be no order as to costs.

20. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)