

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No.163 of 2017

IN THE MATTER OF:

Bhikhunhai J. Patel & Anr.

...Appellants

Vs

Hetshri Dairy Pvt. Ltd. & Ors.

...Respondents

**Present: For Appellants:- Mr. Arun Saxena and Ms. Nalini,
Advocates.**

**For Respondents: - Mr. Rajnish Sinha and Ms.
Arunima Bose, Advocates.**

ORDER

29.05.2017- From impugned order dated 5th April, 2017 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad, in TP No. 74/397-398/NCLT/AHM/2016, we find that as per Annual Return filed by the Respondents, the Appellants are not having 1/10th Shares and they are not having 1/10th number of members. The Tribunal observed that if the Form No.2 filed by the Appellants gives correct picture, there is no need to look into annual return for the year 2000 filed by the Respondent no.2. Therefore, the Tribunal held that Appellants are not eligible to file the petition under section 397 & 398 of the Companies Act, 1956.

2. Ld. Counsel for the Appellants tried to convince that the Appellant has more than 1/10th shares and that the annual return filed by the respondents were fabricated one. However, such submissions cannot be accepted in the absence of any record to suggest that the Appellants as

on the date of the filing of the Company Petition have more than 1/10th shares. In the circumstances, there being disputed question of fact no relief can be granted. In absence of any merit this appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member(Technical)

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