

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.386 of 2017

[Arising out of order dated 21.09.2017 passed by National Company Law Tribunal, Ahmedabad Bench in IA No.19 of 2017 in TP No.123/397-398/NCLT/AHM/2016]

IN THE MATTER OF:

**Mr. Pravinbhai Manibhai Patel
8, Satyam Apartments,
13, Sampatrao Colony
Alkapuri, Vadodara – 390 007**

**...Appellant
(Original Respondent No.2)**

Versus

**1. Mr. Kanakbhai Ratilal Patel
57 Wavetree Road,
Streatham Hill,
London SW 2 3 SL (UK)
Having Local Address at
C/o. Mr. Sureshbhai P. Patel
“Panch Bungalows”,
Behind Pankaj Parikh’s Hospital,
Near Shastri Park,
Anand – 388 001,
Gujarat**

**...Respondent No.1
(Original Petitioner)**

**2. Mr. Ashish Pravinbhai Patel
8, Satyam Apartments,
13, Sampatrao Colony,
Alkapuri, Vadodara – 390 007
Gujarat**

**...Respondent No.2
(Original Respondent No.3)**

**3. Balajikrupa Estates Private Limited
8, Satyam Apartments,
13, Sampatrao Colony,
Alkapuri, Vadodara – 390 007
Gujarat**

**...Respondent No.3
(Original Respondent No.1)**

4. **Rama Lifespace Private Limited**
101, Yuva Complex,
Near Dr. Batra's Clinic
Gotri Road, Vadodara – 390 007
Gujarat

...Respondent No.4
(Original Respondent No.4)

5. **Mr. Chimanbhai Dahyabhai Patel**
Box 40916, Nairobi 00100 KE
Having local address at
C/o. Mr. Pravinbhai Ratilal Patel
8, Satyam Apartments,
13, Sampatrao Colony,
Alkapuri, Vadodara – 390 007
Gujarat

...Respondent No.5
(Original Respondent No.5)

6. **Mr. Bhupendrakumar Ravjibhai Patel**
19, Dwarika Society,
Behind Narmada Guest House,
Race Course Circle,
Vadodara – 390007
Gujarat

...Respondent No.6
(Original Respondent No.6)

Present: Shri Tushar P. Hemani, Advocate and Shri Mohit R. Balani,
CA for the Appellant

Shri Pavan S. Godiawala, Shri Shwetank Sailakwal, Shri M.S.
Vishnu Sankar and Shri Vatsalya. S., Advocates for the
Respondents

ORAL JUDGEMENT

07.05.2018

A.I.S. Cheema, J. : We have heard counsel for both sides. In this matter, Company Petition was filed before the then Company Law Board and came up as T.P. before NCLT, Ahmedabad Bench. Company Petition

was filed by Respondent No.1 – Original Petitioner on 5th October, 2015 making grievances of oppression and mismanagement against the Respondents in the Company Petition. Present Appeal is by Original Respondent No.2 against Impugned Order dated 21.09.2017 of NCLT permitting filing of consent letters which would enable Petitioner to maintain petition.

2. It appears that the Petitioner is shareholder of 6.66% shareholding. He required 10% of the shareholding or 18,000 shares while he had only 12,000 shares. He filed petition claiming consent letters of other shareholders are being attached. Subsequently, the Original Petitioner filed application - Company Application No.19/2017 (Appeal Page – 66) proposing to add 2 of the Directors who had been left out as Respondents 5 and 6 and further stated in the application (Para – 4) as under:

“It is further respectfully submitted that, due to oversight the consent letters supporting the petition was left out and has not come up on record though stated in the petition at paragraph (2) in Particulars of the Petitioner(s) at page 6 but due to inadvertence and oversight the copy of the consent letters could not be produced along with the “Exhibit 4” with the Company Petition. It is most humbly submitted that, the copy of the consent letters be permitted to be produced along with the petition and necessary amendment be permitted to

produce the copy of the consent letter at Exhibit 4 and permit the applicant – Petitioner to number such copy of the consent letters as page nos. 80A onwards as part of the Exhibit 4, A COPY OF THE CONSENT LETTERS are marked as Exhibit “I” to the present application.”

3. In the Company Application, he had earlier mentioned :-

“(2) PARTICULARS OF THE PETITIONER(S)”

Mr. Kanak Patel, is a son of Mr. Ratilal Manilal Patel, occupation : business, being the equity shareholders holding 12,000 number of equity shares of the “Company” residing at the address mentioned in the cause title. The other members – shareholders of the “Company” holding in aggregate 35,000 number of equity shares of the Company being aggrieved and dissatisfied with the ongoing acts and conducts of oppression and mismanagement of the erring Respondents’, gave consent to the Petitioner to initiate appropriate complaint/petition before the Hon’ble Company Law Board/Tribunal for ongoing oppression and mismanagement committed by the erring Respondents’ and accordingly the Petitioner along with other dissenting members holding in aggregate 47,000 Number of equity shares which are fully paid up and are members of the “Company” hereby prefer the present petition. **The copy of the consent letters and audited balance**

sheet as made available are collectively marked as “Exhibit 4”.”

4. The application was heard by NCLT and 2 Directors who had been left out were permitted to join. Regarding that aspect, there is no dispute being raised before us.

5. However, regarding the permitting of filing of the consent letters, various disputes were raised before NCLT and are being raised before us. The learned counsel for the Appellant – Original Respondent No.2 is submitting that the Company Petition purported to file consent letters of 35,000 shares but, however, no such consent letters were attached with the Company Petition. According to him, Petitioner subsequently tendered the consent letters (copies of which have been filed at Page – 72 to 79 in the Appeal). Referring to these documents, it is argued that these are undated documents and they were not even notarized. Referring to the consent letters at Pages - 75 to 79, it is stated that even distinctive numbers or folio number, etc. were not mentioned and they are relating to one Surendra Patel having 1250 shares and thus the 3 persons represented basically one shareholder and even the transmission had not come on the record of the Company. The learned counsel referred to his reply filed in NCLT (Appeal Page – 80) and claimed that the Appellant had raised contentions on the ground that the concerned rules applicable for filing the consent letters have not been followed. It is argued that even if the then applicable CLB Regulations, 1991 are

perused and Regulations 14, 15 and 18 are seen, the Annexure - III of the Rules Item No.27 prescribes requirement of letter of consent as well as statement of particulars to be given. Learned counsel submitted that no doubt format for letter of consent is not there but the required statement of particulars requiring certain particulars and details has not been given. Against this, the learned counsel for the Respondent No.1 – the Original Petitioner has submitted that Petitioner did not have any intention to create documents or else when the application to bring on record the letters of consent was filed, the Original Petitioner could have easily entered the dates etc. but he did not do so. He states that inadvertently, the letters of consent remained to be attached and thus request was made to attach the same. The learned counsel for the Respondent No.1 – Original Petitioner states that the persons whose consent letters were tendered and have now been accepted are family members of the Original Petitioner and the Petitioner had followed the necessary rules as required by the Company Law Board Regulations and thus on technicalities the petition should not be thrown out.

6. Coming to the Impugned Order, the learned NCLT has dealt with the rival contentions raised and referred to the fact that the Company Petition did mention regarding the attaching of the consent letters. It observed in para – 7 and 8 as under:-

“7. It is the version of the Applicant herein that due to inadvertence and oversight the Consent Letters of the

other shareholders could not be enclosed along with Exhibit 4 although it is stated as enclosed with Exhibit 4 of the main petition. The main objection of the Respondent is that the Consent Letters were not in existence when the Petition was filed and they were later on brought into existence. The contention of the learned Counsel for the Petitioner/Applicant is that the consenting shareholders are none other than the family members of the original-Petitioner and therefore the non-existence of Consent Letters as on the date of filing of the Petition does not arise. The controversy, whether the Consent Letters were in existence as on the date of filing of the Petition or they were brought into existence subsequently, is not an issue to be adjudicated in this Application. Petitioner specifically stated in the Petition that shareholders holding 35000 equity shares gave Consent Letters. A perusal of the Consent Letters filed along with this Application show that they do not bear any date. No doubt, they are not notarized. The genuineness or otherwise of the Consent Letters also need not be gone into in this Application.

8. Another aspect raised by the Respondent is that the persons who gave Consent Letters are not there in the List of shareholders. This is also a matter that need not be

probed in this Application at this stage. When there is an averment in the Petition that Consent Letters were filed and when they were not in fact filed, and when it is stated by the Applicant that it was due to oversight, in such circumstances, there is no point in refusing the request of the Petitioner to file Consent Letters. The question whether the filing of the Consent Letters, after the filing of the petition, is sufficient compliance of Section 399 of the Companies Act, 1956 or not, is also a matter that need not be gone into in this Application. The proposed Amendment, namely the filing of the Consent Letters, is not against the pleadings on record. The proposed Amendment is not going to change the cause of action. The proposed Amendment is not going to cause any prejudice to the contentions of the Respondents. Respondents are at liberty to contend that valid consent is not there and the Consent Letters are not valid, and the contention, that consent Letters filed subsequently and not filed along with the Petition, cannot be taken into consideration in deciding the eligibility aspect.”

7. Thus the NCLT did not go into the various controversies being raised and stated that those were not the issues for the purpose of adjudicating the application and it kept open the doors for Respondents

(including present Appellant) to raise the dispute regarding valid consent. What NCLT in effect has done is to accept the consent letters on record and the grievances raised by Respondents have been left open.

8. The learned counsel for the Appellant has submitted that the NCLT should have decided these contentions and the Appellant could not be made to face the Company Petition unless the Original Petitioner complies with the requirements as were prescribed under Section 399 of the old Companies Act, 1958. We find that the NCLT has exercised discretion and taken on record the consent letters tendered by the Original Petitioner which Petitioner claimed to have been left out inadvertently at the filing though Petitioner claimed that the same were being filed. It will not be appropriate for us to interfere with the Impugned Order on the discretion exercised and the contentions being raised regarding the maintainability can be dealt with even at the time of final disposal of the Company Petition. When the learned NCLT takes up the matter to finally decide the Company Petition, even if at that stage, NCLT comes to the conclusion in the Final Judgement that there was any technical difficulty or defect in presentation it can decide the same before deciding or dealing with the merits, and act accordingly.

9. One other contention raised by the learned counsel for the Appellant is that in Para – 9 of the Impugned Order, the NCLT has decided the question of limitation. We find that what Para – 9 of the Impugned Order states is that Company Petition was filed on 5th October,

2015, and the new Companies Act, 2013 came into force on 01.06.2016 and that under the old Act, there was no provision which said that the provision of Limitation Act was applicable. This does not mean that the learned NCLT has closed its doors to the averments which are open for the present Appellant namely – whether or not there were delay and latches.

10. There is no substance in the present appeal. The appeal is dismissed. No order as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

/rs/gc