

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 355 of 2017

IN THE MATTER OF:

Tulsi Vithalbhai Patel **...Appellant**
The Oasis Hotel, Opp BBC Tower,
Near Railway Station, Sayajiganj,
Vadodara- 390020, Gujarat

Vs

1. Hotel Oasis (Surat) Pvt. Ltd. **....Respondents**
B. No.21, Vishwakrupa Society,
Near Gurudwara, Sumul Dairy Road,
Surat-395004, Gujarat

2. Bhupendra Patel
SY. No. 20-A-B. No. 21,
Shri Vishwakrupa Co. Op. H Soc Ltd.
Sumul Dairy Road, Katargam,
Surat-395004, Gujarat

3. Mr. Pushpak Patel
E-2, Yogicharan Soc,
Sumul Dairy Road, Katargam,
Surat-395004, Gujarat

4. Shantilal Patl
Mahadev Falia Sojitra,
Anand -387240, Gujarat

5. D.N. Motwani & Co.
B/212, Third Floor, Nandan Apartment,
Behind Ravirashmi Society, Ramdevnagar,
Satellite, Ahmedabad-380015, Gujarat

6. Registrar of Companies
ROC Bhavan, Opp. Rupal Park Society,
Behind Ankur Bus Stop,
Naranpura, Ahmedabad-380013, Gujarat

7. Satyaketu Vithalbhai Patel
35, Shree Niketan Soc, Sumul Dairy Road,
Surat-395004

8. Deep Gopalbhai Chokshi
17, Kailash Society, Station Road,
Padra-391440, Vadodra, Gujarat

9. Jalpa Deep Chokshi
17, Kailash Society, Station Road,
Padra-391440, Vadodara, Gujarat

10. Hemaben Vithalbhai Patel
The Oasis Hote, Opp BBC Tower,
Near Railway Station, Sayajigunj,
Vodadara -390020, Gujarat.

Present:

For Appellants: Dr. U. K Chaudhary, Sr. Advocate with Mr. Mansumyer Singh, Mr. Himanshu Vij and Mr. Samridhi Gohia, Advocates.

For Respondents: Mr. Dhiren R. Dave, PCS for Respondents No. 1 to 4. Mr. Sanjib K. Mohanty, Central Government Counsel for ROC, Gujarat.

ORDER

06.02.2018: Heard counsel for both sides. The learned counsel for the appellant submits that the appeal has been filed against impugned orders dated 31.08.2017 whereby the application I.A 252/2017 filed by respondent no. 2 of original petition has been dismissed. The appellant was not party to the application which was filed by the respondent no. 2 in the company Petition, or the company petition.

2. It appears that earlier NCLT had in C.P. 17/2016 passed the following order on 20.01.2017:

“1. The Petition under consideration is stated to be filed on 16th November, 2016 and thereupon enlisted today for admission. Additionally, it has also been prayed that an Interim relief may be granted. The ‘Interim prayer’ is reproduced verbatim as under:

“8. INTERIM PRAYER

1. Petitioners be given access to the company’s business premises and day to day operations & records of the company to make sure of all legal compliances of the company.”

2. From the side of the Petitioner, Ld. Representative has explained the background of the grievances of the Petitioner that on the demise of their elder brother namely Mr. Vithal Patel on 4th April, 2014, the Respondent no. 2 has forcefully taken over the charge of the Company. He has clarified that Respondent no. 2 is son of Late Mr. Vithal Patel. The Petitioner has alleged that R2 has wrongly acted as MD of R1 Company and misused the funds by transferring huge amounts to another Company M/s. Hotel Satyaketu Pvt. Ltd., owned by him. The Petitioner has objected the action of R2 but without any effect. They have also tried to remove R2 as a Director of R1 Company, but against the said decision of the shareholders a case was filed by R2 in CLB and in CP No. 38/2014 obtained stay on the implementation of the said decision. A copy of the said decision bearing C.A. No. 246/2014 in C.P. No. 38/2014 dated 29th

January, 2015 is also placed on record. Be that as it was, the present position is that the affairs of R1 Company are mismanaged because the Income Tax Returns, Sales Tax Returns, etc. have not been filed. Other legal formalities of the Companies Act have also not been complied with, it is alleged. The Petitioners are not allowed to enter into the premises of the R1 Company and not allowed inspection of any records. They are not aware of the AGM or any other meetings of the R1 Company. Ld. Counsel of the Petitioners has pleaded that the R2 be directed to hold the meeting of the Company and the Petitioners be allowed to attend the said meeting.

3. *From the side of the Respondents, it is vehemently objected that the affairs of the R1 Company have been mismanaged because the financial statements are reflecting better results. The argument is that the Petitioners are not taking interest in the affairs of R1 Company and creating hurdles in the management of the Company. By their behavior the Petitioners are creating problems in running of the Company.*

4. *Considered the allegations and counter-allegations. As on date, the Reply of the Respondents is not on record. Considering the totality of the circumstances narrated, the petition in question requires judicial adjudication, hence admitted. The parties to this litigation are directed to complete the pleadings as early as possible.*

4.1. As far as the decision on 'Interim prayer' is concerned, there are no two opinions that a Company incorporated under the provisions of Companies Act should comply with the statutory obligations within the time prescribed. At this preliminary stage, the Respondents have not established whether the due compliance was timely made. Nevertheless, the requirement of the law U/s 96 of Companies Act 2013 is that AGM should be held within the time specified. Due to this reason, it is hereby directed, by invoking the jurisdiction prescribed U/s 97 of Companies Act, 2013, that AGM should be held of R-1 Company within 15 (fifteen) days on receipt of this order. Considering the nature of dispute among the family members, it is hereby directed that the AGM shall be held at the office of the Company during business hours and the Notice of the meeting should be communicated through proper service intimating the time and the date of the meeting. The Members/ Directors are directed to maintain peace and harmony at the time of AGM so that the ordinary business of the Company should be conducted properly.

5. The apprehension expressed by the Petitioner is that the meeting may not be conducted in lawful manner. As a consequence, I direct the Ld. Regional Director, (NWR) Ministry of Corporate Affairs, 'R.O.C. Bhavan', Naranpura, Ahmedabad to either present himself or depute any officer of his office not below the rank of

Assistant Director, to supervise the AGM. The R1 Company is under obligation to implement the directions of this Order without any fall or deviation. The date, time and place of the meeting should be communicated to the Regional Director, Ahmedabad so that under his supervision the AGM can be conducted.

6. *As a result, ad-interim relief is granted. Let the C.P. be enlisted for hearing on 9th March, 2017. Ordered accordingly.”*

3. The learned counsel for appellant is submitting that there were no qualified directors and 3 out of 4 earlier directors had been disqualified and the 4th director had been removed by the earlier 3 directors which led to the filing of the petition. It was in such situation that the AGM was to be held in compliance of the orders dated 20.01.2017. According to the learned counsel in such situation fresh board of directors was appointed and the AGM was held. Subsequently, when the application was filed by respondent no. 2 (as arrayed in the petition) the same was rejected. It is claimed that the appellant was one of the directors who was appointed in the AGM alongwith 4 others and being aggrieved he has filed this appeal.

4. The learned PCS claiming to represent respondent no. 1 to 4 is submitting that the order dated 20.01.2017 was passed on the request of the petitioners but they were not allowed to hold the meeting regarding which they have filed the I. A. No. 33/2017 in the NCLT which is pending. It is stated that in spite of directions of NCLT dated 20.02.2017 that the AGM should be held

under the supervision of Regional Director, the Regional Director was not informed nor presence ensured. Counsel for appellant states that date of AGM was informed to Regional Director but none remained present. Learned PCS states that there is no record of any intimation sent to Regional Director.

5. The NCLT passed the impugned order which reads as under:

“Learned PCS Mr. Hitesh Buch present for Applicant. Learned PCS Mr. Dhiren Dave present for Respondent in IA 252/2017.

Heard arguments of Learned Counsel for Applicant and Learned Counsel for Respondent in IA 252/2017.

This application is filed by Respondent no. 2 seeking direction to ROC Ahmedabad. Gujarat to enable to applicant to file DR 12 and other forms in connection with Annual General Meeting held on 02.03.2017 by including the name of the applicant and other appointed directors namely Mr. Tulsi Vithaldas Patel, Shrimati Hemaben Vithaldas Patel, Mr. Deep Gopalbhai Chokshi and Mrs. Jalpa Deep Chokshi in the list of Directors and to associate them to Respondent no. 1 Company.

It appears that Respondent no. 2 convened Annual General Meeting purporting to act as per the order of this Tribunal 21.02.2017 which in fact was ordered for statutory compliances only. But applicants and other in the so called AGM passed resolution appointing Respondent no. 2 who ceased to be a director which is under

challenge in an application pending before Hon'ble High Court of Gujarat in a company application and other persons named above as directors.

The above said action on the part of the applicant is not at all in pursuant to the directions of this Tribunal dated 20.01.2017 more so when the application of the Respondent no. 2 to restore him as director is pending before Hon'ble High Court of Gujarat. Therefore, I see no grounds to admit this application.

This application is dismissed.”

6. Both the orders speak for themselves. The appellant was not party in the Company Petition nor the applicant whose application has been rejected. We find that there is no case made out for this Appellate Tribunal to directly entertain the appeal of this appellant and decide the issues which are being raised. It is for the appellant to move appropriate forum for appropriate relief if he is aggrieved. The appellant cannot file the appeal over the rejection of application which was application filed by somebody else. He cannot maintain appeal from order of rejection of an application to which he was not party, nor the company petition in which it was filed.

7. The learned counsel for the appellant says that the Company Secretary cannot appear for the company. The Company Secretary says that the company is represented by the 3 Directors respondent nos. 2 to 4 who are marked as disqualified but on filling of returns their case is under

reconsideration. The Company Secretary however accepts that he has not filed memo for Respondent no.1. We are not entering into this controversy.

8. At the behest of appellant we do not find reason to interfere in the Impugned Orders. The appeal is rejected. No orders as to costs.

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

(Balvinder Singh)
Member (Technical)

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