

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeals (AT) No.91 of 2017**

**IN THE MATTER OF:**

**Arjandas B. Khatri**

**...Appellants**

**Vs**

**Pure Pharma Ltd & Ors.**

**...Respondents**

**Present: Ms. Reema Jain, PCS for appellants.  
Mr. Vijay Assudani and Mr. Ankit Bhattacjaruua. Advocates  
for the Respondent.**

**ORDER**

12.04.2017- This appeal has been preferred by the appellant against the order dated 31.1.2017 passed by the National Company Law Tribunal, Ahmedabad Bench, Ahmedabad (hereinafter referred to as the "Tribunal" for short) in TP No.114/397-398/NCLT/AHM/2016 (CA No.86/397-398/CLB/MB/2015(Old)). By the impugned order the Tribunal dismissed the application preferred by the appellant under Sections 398 and 399 of the Companies Act, 1956 on the ground that the appellant has no right to apply for reliefs under Sections 397 and 398 since he does not fulfil the pre-requisite of Section 399 of the Companies Act, 1956.

The Tribunal while dealing with the matter has observed as follows:

*"81. Section 399 of the Companies Act, 1956 contemplates consent of the other members in writing to the petitioner that made the application. Regulation 18, Sl.No.27 of Annexure -3 of the Company Law Board Regulations 1981 contemplates that letter of consent given by other members shall be annexed to the petition.*

82. *In the case on hand, no doubt that, the letter of consent has been annexed to the petition but it does not bear signatures of the other three members viz. Smt Shakuntala Khatri, M/s Rohit Khatri and Varun Khatri. Even it is not the case of the petitioner that consent in writing is not necessary. In fact, the petitioner filed consent in writing but it is not duly signed by other members viz. Smt Shakuntala Khatri, M/s Rohit Khatri and Varun Khatri. In order to cover up the same, in the rejoinder, the petitioner relied upon Attorney Deed dated 03.07.2009 which also do not stipulate consent by the other three members. The Attorney Deed gives authority to the petitioner only to deal with the shares of Smt Shakuntala Khatri, M/s Rohit Khatri and Varun Khatri. But that does not amount to consent of other members to file this petition.*”

It is the contention of the appellant that he has given Power of Attorney by other family member shareholder which is sufficient compliance of Section 399 of Companies Act, 1956 and therefore the appellant is entitled to file the petition.

Learned Counsel for the appellant relied upon the original Hindi version of the Power of Attorney dated 3<sup>rd</sup> July, 2009 given by the other shareholders. Learned Counsel appearing on behalf of the Respondent submits that consent in writing under Section 399 of the Companies Act, 1956 means the conscious approval of the action proposed to be taken by the person to whom the consent has been given. He relied on Hon'ble Delhi High Court decision in **Omni India Limited and others Vs Balbir Singh reported in (1989) 66 Company Cases 903**. In the said case the Hon'ble High Court has held as follows:-

*“the word “consent”, according to Webster’s Third New International Dictionary, inter alia, means compliance or approval of what is done or proposed by another, acquiescence, permission, capable, deliberate and voluntary agreement to or concurrence in some act or purpose implying physical and*



mental power and free action. According to Mozley and Whiteley's Law Dictionary, Tenth Edition, "consent" presupposes a physical power, mental power and a free and serious use of them. Examined in the light of these meanings and keeping in view the purpose for enacting section 399, we have no doubt, that the expression "consent in writing" used in Section 399(3) means conscious approval of the action proposed to be taken by the persons to whom the consent has been given. We are also of the view that the writing itself should indicate that the persons who have signed the consent letters have applied their minds to the question before them and on application of minds have given consent for a certain action. Under Section 402 of the Act, the court on an application under Section 307-398 and without prejudice to the generalities of the powers of the court, can grant several types of reliefs. In this background, it is necessary that the writing must indicate that the members giving consent had applied their minds to the allegations to be made and the reliefs sought to be prayed for in the proposed action and have given their consent for seeking those reliefs. This is apparent from the expression "consent" in writing. Had the intention been that the writing should not indicate the application of mind, then there was no necessity for using the term "consent in writing" and mere word "consent" could have been used. To hold that the requisite members can give their consent in writing without applying their minds or without considering the nature of the allegation and the reliefs sought would frustrate the entire purpose of section 399 which prohibits the filing of an application under Section 397 or 398 of the Act, inter alia, by not less than 100 members.

The view taken by us finds support from the decisions of the Allahabad High Court, Madras High Court and Madhya Pradesh High Court. In *Makhan Lal Jain V Amrit Banaspati Co Ltd* (1953) 23 Comp Cas 100: AIR 1953 all 326, a learned single judge held (at Page 102 of 23 Com Cas):

"The expression "consent in writing" obviously implies that the writing itself should indicate that the persons who have affixed their signatures have applied their minds to the question before them and have given their consent to certain action being taken."

In *M.C. Duraiswami V Sakthi Sugars Ltd* (1980) 50 Comp Cas 154, a Division Bench of Madras High Court examined the

*expression "consent in writing" in the background of the requirements of sections 397 and 398. On such examination, it was held (at page 158):*

*"From the very nature of the case, "consent in writing" contemplated in section 399(3) of the Act is a consent to the filing of a particular petition with a particular allegation for a particular relief under Section 397 or Section 398 or under both. There cannot be a blanket consent like a certain member or members consenting to some other member filing a petition under Section 397 or section 398 or under both."*

*Similar view was taken by the Division Bench of Madhya Pradesh High Court in Kilpest Pvt Ltd V Shekhar Mehra (1987) 62 Comp Case 717."*

We have heard the Learned Counsel for the parties and perused the record. From the Power of Attorney dated 3<sup>rd</sup> July, 2009 we find that the members of the family have delegated limited power of attorney in favour of the appellant to sell all their shares, to determine valuation and to do other miscellaneous work to use the money for proper purpose. The power of attorney being specific, and as it do not relate to filing petition under Sections 397, 398 of the Companies Act, 1956, we agree with the findings of the Tribunal that the application filed by the appellant was not maintainable.

We find no merit in this appeal. It is accordingly, dismissed. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Mr. Balvinder Singh)  
Member (Technical)