

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 359 of 2017

IN THE MATTER OF:

Bhupendra Patel & Anr.

.. Appellants

Versus

Hotel Satyaketu Pvt. Ltd. & Ors.

.. Respondents

Present:

For Appellant:

**Shri Dhiren R. Dave, PCS and Ahsan Ahmad
Advocates**

For Respondents:

**Dr. U.K. Chaudhury, Senior Advocate, Ms. Manisha
Chaudhary, Ms. Avanti Tiwari Chandale, Shri Karan
Malhotra, Shri Mansumyer Singh and Shri Himanshu
Viz Advocates**

ORDER

15.11.2017 This appeal has been preferred by Appellants Bhupendra Patel and Pushpak Patel against the order dated 30th August, 2017 passed by National Company Law Tribunal (hereafter referred to as '**NCLT**') Ahmedabad Bench, Ahmedabad in C.P. No. 17/397-398/CLB/MB/2015. By the impugned order the Tribunal rejected the petition preferred by the Appellants and two others under Section 397, 398 of the Companies Act, 1956 read with Section 58 and 59 of the Companies Act, 2013.

The case of the Appellants is that the First Respondent – Hotel Satyaketu Pvt. Ltd. (hereinafter referred to as **‘Company’**) originally was partnership firm which was converted into a Company under the provisions of Companies Act, 1956 on 16th September, 2002, having registered office at Baroda. The authorised capital of the Company was Rs. 4,00,00,000/- divided into 40,00,000 equity shares of Rs. 10/- each. The Appellants were partners in the original Partnership Firm and after it was made Company in the Memorandum of Association and Articles of Association, the Appellants and two others were shown as shareholders holding 2000 equity shares each in their respective names. Husband of Purnimaben P Patel (4th Petitioner before the Tribunal), late Mahendrabhai Patel was also holding 2000 equity shares. The grievance of the Appellants was that though their names were recorded in the Register of the Companies for years together, in the year 2012 when Annual Return in September, 2012 was filed, their shares were shown to have been transferred.

It is in the aforesaid background the Company Petition under Sections 397, 398 of the Companies Act, 1956 read with Section 58 and 59 of the Companies Act, 2013 was preferred with allegation of ‘oppression and mismanagement’ and for striking down the names of the persons in whose favour the shares were shown to be transferred and to enter the names of the Appellants and two other petitioners as shareholders. The Tribunal, by impugned judgement dated 30th August, 2017 having rejected the petition, the present appeal has been preferred.

Learned Counsel appearing on behalf of the Appellants submits that the name of the Appellants and two others including deceased husband of the

4th Petitioner were shown as shareholder in the Article of Association which continued for 10 years and it was suddenly deleted by showing their shares transferred in favour of others without any basis. No transfer form was signed by any of the Appellants and two other shareholders and the Respondents illegally shown the shares transferred in the name of others which amounts to 'oppression and mismanagement'.

Learned Counsels appearing on behalf of the Respondent Nos. 1 to 4 submits that the Tribunal has taken into considerations all the objections which have been raised by the Respondents and taking into consideration the fact that no share is available with the Appellants, rejected the claim.

Admittedly, when the petition under Section 397 and 398 of the Companies Act, 1956 was filed i.e., on 24th February, 2015, the Appellants were not the members of the Company, their names having been struck down from the records as far back as on 27th February, 2012. In this background the Application under Sections 397 and 398 of the Companies Act, 1956 at their instance, were not maintainable.

In so far as petition under Section 59 of the Companies Act, 2013 is concerned, it was maintainable and the Limitation Act, was not applicable as on 24th February, 2015 when the petition was filed. The petition was also filed within 3 years from the date of transfer.

When confronted, learned Counsel for the Appellants accepted that no shares were handed over to the Appellants or two other persons including the husband of the 4th Petitioner. It is stated that they were the partners in the partnership firm and therefore their names were recorded as shareholders holding 2000 equity shares each. Admittedly, the partnership firm was

converted into a Company on 16th September, 2002 and for more than 13 years back, no share certificates were issued in favour of the Appellants and two others though they were shown to be shareholder in Article of Association.

In view of the fact that the Appellants do not hold any share certificate and it was not issued in their favour since inception of the Company i.e. on 16th September, 2002, on the basis of some other records, it cannot be held that they were the shareholders or record their names as shareholders.

We find no merit in this appeal, it is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/akc/uv