

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 390 of 2018

IN THE MATTER OF:

**Harish Jain
S/o Late Shri Om Prakash Jain
R/o House No. 2, Chhoti Baradhari,
Part-1, Garha Road,
Jalandhar (Punjab) – 144001**

....Appellant

Vs

- 1. Haveli Restaurant & Resorts Ltd. & Ors.
Through its Managing Director,
Sh. Satish Jain & Mrs. Bhavna Jain,
Wholetime Directors,
Having Office at:
Village Khajurla,
Jalandhar-Phagwara Highway,
GT Road, Jalandhar (Punjab)**
- 2. Shri Satish Jain
Managing Director
Haveli Restaurant & Resorts Limited,
R/o House No. 13-14,
Chhoti Baradhari,
Part-1, Garha Road,
Jalandhar (Punjab)-144001.**
- 3. Mrs. Bhavna Jain,
Whole Time Director,
Haveli Restaurant & Resorts Limited,
R/o House No. 13-14,
Chhoti Baradhari,
Part-1, Garha Road,
Jalandhar (Punjab)-144001.**
- 4. Sh. Ajit Prasad Jain
Director, Haveli Restaurant & Resorts Limited,
R/o House No. 10,
Chhoti Baradhari,**

**Part-1, Garha Road,
Jalandhar (Punjab)-144001.**

**5. M/s Surinder Mahajan and Associates,
Chartered Accountants
Having Office at:
House No. 74, Vijay Nagar,
Jalandhar (Punjab)
Through its Managing Partners,
Sh. Surinder Mahajan, Chartered Accountant and
Sh. Sudhir Gupta, Chartered Accountant.**

**6. Sh. Gautam Goyal,
Company Secretary,
Having Office at:
535/536, Lahore Gate,
Naya Bazar,
Delhi-110006**

....Respondents

Present:

For Appellant:-Mr. Monish Panda and Mr. Mrinal Bharat Ram, Advocates.

**For Respondent :- Dr. U.K. Chaudhary, Sr. Advocate, Mr. Saurabh Kalia, Mr.
Harshit Agarwal, Mr. Amit Vinayak, Mr. Siddharth
Tandon, Advocates.**

J U D G M E N T

[26th February, 2020]

JARAT KUMAR JAIN, J.

This Appeal has been preferred by Harish Jain against the Judgment dated 28.09.2018 passed by NCLT, Chandigarh Bench, Chandigarh (In Short NCLT) in Company Petition C.P No 138/CHD/PB/2018, whereby the Tribunal dismissed the petition in *limine* with cost of Rs. 50,000/-

2. The Brief Facts of this case are that M/s Asha Builders was incorporated as a Company on 03.09.1997, it was converted to public Ltd. Company by order dated 27.09.2001 and subsequently the name of the Company was changed to Haveli Restaurant Resorts Ltd. vide order dated 18.02.2009. The Company originally incorporated consisted of Appellant and Respondent No. 2 as promoters with total 2000 shares of Rs. 10 each and both of them held 1000 equity share.

3. The Appellant being holder of the 50% of the paid up equity share capital is entitled to file the Petition under Section 241 and 242 of the Companies Act, 2013 (in Short the Act) as he fulfills the condition of requisite number as prescribed in Section 244 of the Act, to maintain the Petition. At the time of incorporation of the Company the authorized share capital was 50 Lakh comprising of 5 Lakh equity shares of Rs. 10/- each whereas at present the authorized share capital of the Company is 5 crores and the paid up capital is 4,54,20,000/- Appellant and Respondent No. 2 were the first Directors of the Company. Now Respondent No. 2 is the Managing Director, Respondent No. 3 wife of Respondent No. 2 is the whole time director, Respondent No. 4 who is real brother of the Appellant and Respondent No. 2, is also Director of the Respondent No. 1 Company, Respondent No.5 is the Chartered Accountant and Respondent No. 6 is the Company Secretary.

4. it is stated that at the time of death of father, Appellant was not even born and he treated Respondent No. 2 as his father Respondent No. 5 the firm of

Chartered Accountants have been handling the accounts of Respondent No. 1 Company since the date of its incorporations. The Appellant therefore, reposed the full confidence and faith in Respondent No. 2 and Respondent No. 5. Taking undue advantage of the confidence and faith Respondent No. 2 and 5 obtained the signatures of the Appellant on various blank papers.

5. In the month of September, 2015 Respondent No. 2 proclaimed in the family meeting that the Appellant is neither the Director nor shareholder of the company. The Appellant inspected the record of the Company from the website of Ministry of Corporate Affairs and on 08.09.2015 and got the certified copies thereof then the Appellant came to know about the illegal increase of share capital and paid up capital without convening the meeting of Board of Directors or of the shareholders of the Company. The Respondents unlawfully increased the equity shareholding of the Respondent No. 2 from Rs. 10,000/- to Rs. 4,54,20,000/- further allotment of shares was without making any offer to the Appellant thus, the shareholding of the Appellant is reduced to Nil.

6. it is alleged that the Respondents filed Form No.32 with Registrar of Companies on 31.10.2011 by attaching forged and fabricated resignation letter of the Appellant showing unlawful cessation of the Appellant from Directorship of the Company. The handwriting expert reported that the signatures of the Appellant on the resignation letter are forged.

7. The Appellant had filed complaint dated 12.09.2015 before the Police and also filed the Civil suit on 28.03.2016 seeking relief of declaration, rendition of

accounts and permanent injunction. The Appellant has filed the Petition under Section 241 and 242 of the Act, against the Respondents that the affairs of the Respondent Company are to be conducted in a manner prejudicial and oppressive to the Appellant and to the stakeholders. Therefore, it is prayed that to restore the original shareholding of the Appellant and to declare his entitlement to the rights issue/bonus issue and dividend and further to allot shares to the Appellant to restore his shareholding of 50% of the present paid up equity share capital of the Company.

8. NCLT after considering the submissions of Appellant and perusing the record held that the Appellant is not eligible in terms of Section 244 of the Act, to maintain the Petition and even the Petition is hopelessly time barred accordingly the Petition is dismissed in *limine* with cost of Rs. 50,000/- to be deposited in the Prime Minister relief fund.

9. Being aggrieved with this order, the Appellant has filed this Appeal.

10. Learned counsel for the Appellant submits that the Respondent No. 2 played fraud upon the Appellant and prepared forged Minutes of Meeting dated 31.10.2011 and also forged letter of resignation dated 31.10.2011 from bare reading of both these documents together it is clear that these documents are incompatible.

11. It is also submitted that there is no evidence on record that the Appellant's shares have been transferred as per Memorandum of Association and the share capital was increased as per Memorandum of Association. The Respondents

failed to produce any evidence that the Appellant was offered subscription of share. The Hon'ble Supreme Court in the case of Dale & Corrington Investment Pvt. Ltd. & Anr. Vs. P.K Prathapan and Ors., (2005) 1 SCC 212, held that Section 81 of the Companies Act, 1956 in the matter of issue of further share capital by a Company does not apply to Pvt. Ltd. Companies the Directors in the Pvt. Ltd. are expected to make a disclosure to its shareholder when further shares are being issued. Whereas Respondent No. 2 fraudulently transferred the shareholding of the Appellant to Respondent No. 2 without his knowledge and increased the authorized and paid up share capital of the Respondent Company. They have also removed the Appellant from the Directorship of Respondent Company.

12. Learned counsel for the Appellant submits that the Appellant acquired knowledge of the acts of oppression and mismanagement in September, 2015 this fact is established from the service request dated 08.09.2015 requesting inspection of records of Respondent Company. It is settled law that in cases involving fraud the period of limitation is to be computed from the date of knowledge of the party. The case is governed by Section 17 (1) of Limitation Act, 1963. Thus, the period of limitation commenced from the date of knowledge of fraud committed by the Respondents i.e., September, 2015 it is also submitted that the cause of action is a continuing in the case of oppression and mismanagement.

13. Learned Counsel for the Appellant further submits that the Hon'ble Supreme Court in the case of Ramesh B Desai (2006) 5 SCC 638 held that question of limitation is mixed question law and fact and whereas, without any enquiry NCLT has dismissed the Petition at preliminary stage as being barred by limitation. It is further submitted that the NCLT erroneously held that complicated questions of facts are involved in this Petition. Therefore, the Tribunal doesnot have the Power to decide such questions. Section 430 of the Act, (w.e.f 01.06.2016) conferred the jurisdiction to NCLT and excluded the jurisdiction of Civil Court in respect of Company matters. Thus, NCLT is competent to deal with any question in respect of Company matters.

14. Learned counsel for the Appellant further submits that the Hon'ble High Court in the case of Vijyan Rajesh 2009 (1) 151 Company cases 413Kerela held that the original shareholding prior to act of oppression is the criteria to determine eligibility, admittedly prior to alleged illegal allotment of shares the Appellant was 50% of shareholder in the total paid up Capital of the Company. Therefore, he is eligible to maintain the Petition otherwise also the Tribunal has to grant opportunity to the Appellant to file waiver Application to cure defect. It is submitted that the impugned order be set aside and the matter be remitted to NCLT for deciding the Petition on merit.

15. On the other hand, learned counsel for the Respondents submitted that the Appellant is neither shareholder nor a member with effect from 24.08.2007 as he transferred his 1000 share against payment and the same is reflected in

the annual return filed by the Respondent Company as on 29.09.2007. Therefore, the Appellant can not maintain the Petition as per the terms of Section 244 of the Act. Learned counsel for the Respondents further submits that the transfer of share is pursuant to an understanding in the family, whereby 100% control of Asha Shoppers Pvt. Ltd. was given to the Appellant and 100% control of Respondent Company was given to Respondent No. 2. To this effect on 28.08.2007 Respondent No. 2 transferred his shares and on 01.08.2012 resigned from the Directorship of Asha Shoppers Pvt. Ltd. similarly the Appellant also transferred his 1000 shares in Respondent Company on 24.04.2007 and resigned from the Directorship of Respondent Company on 31.10.2011. Respondent's resignation and transfer documents are on record and reflected in the annual return and final statements. Therefore, the Appellant in form MGT-14 which was filed by him in regard to Asha Shoppers Pvt. Ltd., did not disclose any interest in the Respondent Company.

16. Learned Counsel for the Respondent submits that the allegation of the Appellant that he came to know only in September 2015 in a family meeting regarding transfer of his shareholding, increasing capital, appointment of Directors is false as in a collateral proceeding titled Sohan Singh Auhja & Anr. Vs. Haveli Restaurant Resorts Ltd. and Ors, such claim is completely disbelieved by this Tribunal.

17. Learned counsel for the Respondent further submits that the capital increases several times between 1998 to 2003 from 20,000/- to 4,54,20,000/-

and this increase reflects in the return of the allotment and annual returns signed by the Appellant in the year 1999, 2001 and 2003. Now the paid up capital is 4,54,20,000/- and the Appellant does not hold single share in the share capital. Therefore the appeal is liable to be dismissed.

18. Having considered the submissions of learned counsel for the parties, we have perused the record. In this Case, NCLT has dismissed the Petition in *limine*. Therefore, the Respondents have no opportunity to place on record material documents. This Tribunal has sent a notice to Respondents and they have placed material documents in support of their defense.

19. The Appellant has taken contradictory pleas that he had full faith on Respondent No. 2 and Respondent No. 5 i.e. elder brother and Chartered Accountant therefore they obtained the signatures of the Appellant on various blank papers. On the other hand, according to the Appellant, Respondent No. 2 prepared a forged Letter of Resignation dated 31.10.11, we have examined this plea.

20. Ld. NCLT in Para 21 of the impugned order discussed that during the course of the argument, learned counsel for the Appellant admitted that at the time Appellant is 40 years of age whereas Respondent No. 2, who is real brother is 43 years of age therefore, there is only age difference of 3 years between the brothers so the assertion that the Appellant was having blind faith on his brother simply because he is 3 years elder cannot be accepted. This finding is not challenged before us. The Appellant has not pointed out any document which he

had put his signature on blank paper and subsequently, it was converted into any valuable document by the Respondent No. 2. Thus, we are unable to accept the plea of the Appellant that he was having blind faith on his brother, Respondent No. 2, therefore, he has signed blank papers.

21. According, to the Appellant Letter of Resignation dated 31.10.2011 is a forged document in this regard he relied upon the handwriting expert report which he himself obtained on 30.12.2015. In the report it is mentioned that the report is prepared on the basis of the alleged forged Resignation Letter dated 31.11.2011 which is photostate copy. It is settled law that the handwriting expert report prepared on the basis of photostate copy of the document cannot be relied upon.

22. Respondent No. 2 for the meeting dated 31.10.2011 sent a notice on 20.10.2011 to all the directors of the Company, with the agenda in which one of the subject was to consider change of Constitution of Board. The Appellant has not denied that he has not served with the notice and agenda of meeting of Board of Directors of the Company which was held on 31.10.2011. He is not shown any reason why he has not attended the meeting on 31.10.2011 in which after due consideration his resignation from the Directorship of the Company was accepted.

23. Now, we have considered the other circumstances which falsify the plea of forged Letter of Resignation dated 31.10.2011 of Appellant.

24. As per the Respondent No. 2 transfer of shares was pursuant to an understanding in the Family, whereby, the 100% control of Asha Shoppers Pvt. Ltd. was given to Appellant and 100% control of Respondent Company was given to Respondent No. 2. To this effect, Respondent transferred his 1000 shares of Asha Shoppers on 28.08.2007 and resigned from the Board on 01.08.2012. Whereas, the Appellant also transferred his 1000 shares of Respondent Company on 24.08.2007 and resigned from the Directorship of Respondent Company on 31.10.2011. Respondents this plea seems to be quite natural the Appellant has failed to produce any document to disbelieve this fact.

25. The Appellant being a director of Respondent Company signed the annual returns of the Respondent Company for the year 1999, 2001 and 2003. Therefore, he cannot take a plea that he has known knowledge about transfer of his shares and increase in paid up capital of the Respondent Company.

26. It is alleged that in the month of September, 2015 Respondent No. 2 proclaimed in the family meeting that the Appellant is neither the Director nor the Shareholder of the Respondent Company. It is a very vague statement, it is not pleaded on which date and before whom, Respondent no. 2 has disclosed this fact. It is also not stated what was the occasion for family meeting when Respondent No. 2 has proclaimed this fact. It is very strange that if the Respondent No. 2 has forged the Resignation Letter then who pursued him to disclose such fact and invite problems for himself.

27. On this same theory Sohan Singh and some others have filed Company Petition under Section 59, in the year 2018 against the same Respondent Company alleging that they came to know illegal transfer of shares through someone else in September, 2015. The Petition was dismissed by the NCLT, Chandigarh that order was challenged in Company Appeal (AT) No. 396/2018 before this Tribunal, whereas, this Tribunal vide order dated 13.11.2018 has dismissed the Appeal holding that there is nothing on record to suggest date on which the Appellant came to know and source of knowledge. The same situation is in this Appeal in which the date and source of knowledge is not disclosed.

28. With the above discussion we are of the view that the Appellant has failed to convince that Letter of Resignation from Directorship dated 31.10.2011 is forged. Therefore, the plea of Appellant that on the basis of the forged Resignation Letter, he has been removed from the Directorship of the Respondent Company is not correct. The Appellant has resigned from the Directorship of the company on 31.10.2011 and to this effect the Form No. 32 has been uploaded on the Website of the Ministry of Corporate Affairs.

29. As we have discussed above, the Appellant has failed to prove that the Resignation Letter is a forged document, it means Appellant himself has resigned from the Directorship of Respondent Company and he has already transferred his 1000 shares on 24.08.2007. Thus, the Appellant is neither a Shareholder nor a member with effect from 24.08.2007 the same is reflected on annual return filed by Respondent Company on 29.09.2007. Therefore, he cannot maintain the

Petition in terms of Section 244 of the Act. Otherwise, also the Appellant is not a shareholder nor a member with effect from 24.08.2007. Therefore, the Petition filed on 08.06.2018 i.e. after 11 years, is time barred as per the Section 433 of the Act.

We are of the view that NCLT has rightly dismissed the Petition, we found no ground to interfere in this order.

Hence, the Appeal is hereby dismissed. No order as to cost.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

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