

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

IA No.541 of 2017 in
Company Appeal (AT) No. 207 of 2017

[Against the order dated 5th May, 2017 passed by the National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in T.P. No. 31/397-398/NCLT/AHM 2016 (New), C.P. No. 3/397-398/CLB/MB/2013(Old)]

IN THE MATTER OF:

1. **Belfin Spa (A Company incorporated
Under the laws of Italy)
Via Piave-66, Busnago,
Italy.**
2. **Mr. Sergio Bellazzi,
Borgazzi 18
Monza (Mb),
Italia.**
3. **Ms. Rita Bellazi
Borgazzi 18
Monza (Mb),
Italia.**

... Appellants

- Versus -

1. **Cima Shyam Springs Private Limited,
Cooperative House, 3rd Floor,
Old Padra Road,
Vadodara,
Gujarat – 390015.**
2. **Mr. Jaimin Girish Patel,
Cooperative House, 3rd Floor,
Old Padra Road,
Vadodara,
Gujarat – 390015.**
3. **Mr. Hemal Patel,
Cooperative House, 3rd Floor,
Old Padra Road,
Vadodara,
Gujarat – 390015.**
4. **Shyam Management Services Pvt. Ltd.,
Regd. Office at : Madhukunj,**

**GundaFalia, Rajmahal Road,
Vadodara,
Gujarat – 390001.**

- 5. Shyam Marketing Pvt. Ltd.
Regd. Office at : Cooperative House,
3rd Floor, Old Padra Road,
Vadodara,
Gujarat – 390015.**
- 6. Shyam Industries Ltd.,
Regd. Office at : 465, GIDC
RamangavdiPor,
Vadodara – 391243,
Gujarat.**
- 7. Pinakin Raman Amin
Of Indian Inhabitant,
Amin Khadki, MotaGhar,
Varnama,
Vadodara – 391240
Gujarat.**

... Respondents

Present: Shri Armin Wandrewala, Shri Akshay Vani, Shri Manan Jaiswal and Shri Neel Kamal M. Sharma, Advocates for the Appellants.

Dr. U.K. Chaudhary, Senior Advocate with Ms. Avanti Chandeale and Ms. Anisha Mahajan, Advocates for the Respondents.

J U D G E M E N T

A.I.S. Cheema, J. :

1. This appeal was presented on 20th June, 2017 against part of the order dated 5th May 2017 passed by the National Company Law Tribunal, Ahmedabad Bench, Ahmedabad. The application has been filed for condonation of delay of 10 days. The applicants claim that they were under bona fide belief that there was no delay on the basis that they were under the impression that the time was computed from the date they obtained order till the date appeal was lodged. The

applicants claim that they were under bona fide mistake and no harm would be caused in case the short delay is condoned. When this appeal came up earlier before this Tribunal, the learned counsel for the respondents on 11.10.2017 mentioned that on the appeal, the notary has endorsed in Mumbai that he had seen power of attorney dated 13th June 2017 and had endorsed the appeal memo. But that, there is no such Power of Attorney of that date. Learned counsel for the appellants had submitted that the power of attorney had been signed on 19th June 2017 and the notary may have committed the error of date. The appellants were given time and affidavit of the notary came to be filed claiming that 3 power of attorneys were produced before him which were dated 19th June, 2017 and his mentioning of the date as 13th June, 2017 was inadvertent. By orders dated 15.11.2017, we observed that considering the contents of the affidavit of the notary, that aspect requires no further consideration by this Bench.

2. Thereafter, the learned counsel for the Respondents objected to the taking up of this application for limitation on the basis that the appeal was still not properly signed and filed as Bharat Modi who signed the appeal memo on 20th June 2017 did not have the necessary power of attorney in his favour on that date. Considering the submissions of both the sides, on 15.11.2017, we decided to hear the aspect:-

“Whether or not the person who filed the appeal had the necessary power on the date when the appeal was filed and whether the act of power of attorney can be ratified subsequently by the principal.”

3. We have heard the counsel for both sides regarding this point raised by the learned Counsel for the Respondents. Learned counsel for the respondent referred to the 3 power of attorneys filed with the appeal in Volume III (Pages 448 – 465). According to the learned counsel, there is no power of attorney which was executed on 19.06.2017. The documents at page 453 and 459 as executed in Italy on 19.06.2017 are only a certificate of the public notary verifying signature of the person who signed power of attorney. According to the learned counsel for Respondents, the document requires apostille from the concerned authority which is dated 22nd June, 2017 as can be seen from the stamp behind page 459. Thus according to the learned counsel on 20.06.2017, when the appeal was filed, Bharat Modi did not have the valid power of attorney executed in his favour. It is argued that apart from this, the power of attorney as filed shows that Bharat Modi accepted the power of attorney on 28th June, 2017 which date and endorsement is authenticated by the notary at Mumbai. The argument is that there was no valid authority in favour of Mr. Bharat Modi on 20.06.2017 and thus the appeal as filed is defective and deserves to be rejected.

4. The learned counsel for Respondents relied on the case of **“Bhagwandas Goverdhandas Kedia vs. Girdharilal Parshottamdas and Co. and others”** (AIR 1966 SC 543). That was a matter where the plaintiff made offer from Ahmedabad by long distance telephone call to defendants at Khamgaon to purchase goods. Subsequently, the question of jurisdiction of the Court at Ahmedabad came up. Learned counsel for the respondents referred to para 4 of this judgement where Hon’ble Supreme Court dealt with the question as to making of an “offer” and “acceptance” of the same with reference to a “contract”. The learned counsel for

the respondents on the basis of the provisions of the Contract Act submits that till Bharat Modi accepted the power of attorney on 28th June, 2017, it cannot be said that he was the power of attorney.

5. Against this, the learned counsel for the applicants-appellants submitted that she has filed translations of the certificate of the notary at Italy. The pages have been added in the paper book volume III between page 459 – 460. The same, learned counsel submitted that the certificates have been flagged by her as 'X', 'Y' and 'Z' to show that the three power of attorneys which she has filed were signed by the appellants 2 and 3 for themselves and the Company Appellant No.1 on 19th June, 2017. The learned counsel submits that after the 3 power of attorneys were signed by the appellants and certificate of the public notary was obtained, these power of attorneys were electronically sent to Bharat Modi and he acted upon them to save limitation to file the appeal. In the meanwhile, the appellants obtained apostille below the power of attorney and the certificate of public notary and the original documents were sent by post to Bharat Modi who could sign them on 28th June, 2017. According to the learned counsel, as the appellants signed the power of attorneys on 19th June, 2017 and electronically the same were conveyed to Bharat Modi, they had conferred the powers to file appeal and Mr. Bharat Modi acted on these documents and when he formally signed the same on 28th June, 2017 his actions got regularized. According to the learned counsel when the appellants are not objecting to the power of attorney they executed and the acts of their power of attorney, the respondents have no locus to question the same.

6. Learned counsel for the appellants – applicants relied on the case of **“Chairman, Life Insurance Corpn. and others vs. Rajiv Kumar Bhasker”** reported in (2005) 6 SCC 188 and referred to para 22 to submit that an agency can be created by necessary implication. Learned counsel for the applicants then relied on the case of **“Jugraj Singh vs. Jaswant Singh and Another”** 1970 (2) SCC 386. That was a matter where one Vernon Seth Chotia executed power of attorney in California, USA authorizing Sardar Kartar Singh Chawla an advocate at Supreme Court to sell the property and to execute sale deed and present for registration. That power of attorney was witnessed by one Daniel E. Cooper. On the strength of that document, Sardar Kartar Singh Chawla executed the sale deed. On 30th May, 1963 in favour of the respondents in the appeal and presented the same for registration and the document was registered. The judgement of the Hon’ble Supreme Court shows that while the suit was pending, because of the challenge to the power of attorney on the ground that it had not been properly authenticated under the law, a fresh power of attorney was executed by Vernon Seth Chotia on 23rd March, 1964 in favour of Sardar Kartar Singh Chawla. Before the Hon’ble Supreme Court, both the power of attorneys were considered. The Hon’ble Supreme Court (in para 8) found that the first power of attorney was ineffective. However, with regard to the second power of attorney in para – 9 and 10 the observations of the Hon’ble Supreme Court were as follows:

“9. The only question is whether the second power of attorney was effective to render valid the transaction of sale and the registration of the document both earlier than the power of attorney. In our judgment, it would be so. Mr. Hardev Singh does not read into this matter the fact of

ratification by Vernon Seth Chotia of his earlier power of attorney. The second power of attorney states in express terms that the first power of attorney was defective and was being ratified. Vernon Seth Chotia also stated in the second power of attorney that the act of Mr. Chawla would be his act which included not only the making of the document but also the presentation of that document. Now the law is quite clear that ratification relates back to the original act provided there is a disclosed principal and this has been stated nowhere better than by Lord Mac Naughton in Keighley, Maxsted and Co. v. Durant(1) quoting Tindal, C. J. in Wilson v. Tumman(2):

"That an act done, for another, by a person though without any precedent authority whatever, becomes then act of the principal, if subsequently ratified by him, is the known and well-established rule of law. In that case the principal is bound by the act, whether it be for his detriment or his advantage, and whether it be founded on a tort or on a contract, to the same effect as by, and with all the consequences which follow from, the same act done by this previous authority. And so by a wholesome and convenient fiction, a person ratifying the act of another, who, without authority, has made a contract openly and avowedly on his behalf, is deemed to be, though in fact he was not, party to the contract."

10. *Relation back of an act of ratification was expressly accepted in this case. Other cases have been summarised in the Manual of the Law and Practice of Powers of Attorney issued by the Council of the Chartered Institute of Secretaries. This follows from the maxim of law "Omnis ratihabitio retrotrahitur et mandate priori acquiparatur"-- that is to say, ratification is thrown back to the date of the act done, and the agent is put in the same position as if he had authority to do the act at the time the act was done by him."*

7. Relying on the above judgement, the learned counsel for the appellant has submitted that act of ratification relates back to the date of action. The learned counsel submitted that in the present matter, as far as the appellants were concerned, when they signed the power of attorneys on 19.06.2017, they had conferred the powers on Bharat Modi and even if the apostille was done on 22nd June, 2017 and formally Bharat Modi accepted the power of attorney on 28th June, 2017, there is an act of regularization as well as ratification. The learned counsel relied on the judgement of **“United Bank of India vs. Naresh Kumar and others”** reported in AIR 1997 SC 3 where Hon’ble Supreme Court had held that where the courts find any suits instituted or defended on behalf of public corporation like bank, public interest should not be permitted to be defeated on mere technicality that person signing plaint was not competent. Learned counsel submitted that although this judgement relates to banks and public interest, the present matter should not be allowed to be defeated on technicalities, looking to the fact that the appellant is a foreign company; the appellants 2 and 3 are foreign citizens and the matter relates to company and economy of the country.

8. Having heard counsel for both sides and having perused the documents we find the respondents standing on technicalities and we find that there is substance in the submissions which are being made by the learned counsel for the applicants – appellants. When the certificate was endorsed by the public notary on 19th June, 2017 certifying that he has personally seen the appellants 2 and 3 signing the power of attorneys, the appellants had executed the power of attorney on that date in favour of Bharat Modi. No doubt the documents got technically complete on 28th June, 2017 but for this mere technicality, we find

it would be unjust to non-suit the appellants. When the appeal was filed on 20th June, 2017 and the appellants proceeded to get the certificate of notary authenticating their signatures dated 19.06.2017, to be apostilled on 22.06.2017, they were in fact ratifying the act of Mr. Bharat Modi, and when Bharat Modi endorsed acceptance on 28.06.2017 he regularised the Act of filing appeal in advance. All this was avoidable. It would have been better to take steps in time to avoid all this confusion. The appellants Nos.2 and 3 for themselves and the company are not objecting to the act of Bharat Modi. Thus in the interest of justice and looking into the facts of present matter we discard the contentions raised by the learned counsel for the respondents.

9. The short delay in filing of the appeal is condoned.

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

[Balvinder Singh]
Member (Technical)

New Delhi

5th December, 2017

/rs/nn