

**THE NATIONAL COMPANY LAW TRIBUNAL  
"CHANDIGARH BENCH, CHANDIGARH"**

**CP No.138/Chd/Pb/2018**

**Under Section 241 & 242 of  
the Companies Act, 2013**

**In the matter of:**

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

... Petitioner

Versus

1. Haveli Restaurant & Resorts Limited through Shri Satish Jain, Managing Director and Mrs. Bhavna Jain Wholetime Director having Works and Office situated at Village Khajuria, Jalandhar-Phagwara Highway, GT Road, Jalandhar
2. Satish Jain, Managing Director, Haveli Restaurant & Resorts Limited, House No. 13-14, Chhoti Baradhari, Part 1, Garha Road, Jalandhar (Punjab)- 144001
3. Bhavna Jain, Whole Time Director, Haveli Restaurant & Resorts Limited, House No. 13-14, Chhoti Baradhari, Part I, Garha Road, Jalandhar (Punjab)- 144001
4. Ajit Parsad Jain, Director, Haveli Restaurant & Resorts Limited, R/o House No.10, Chhoti Baradhari, Part I, Garha Road, Jalandhar (Punjab)- 144001
5. M/s Surinder Mahajan and Associates, Chartered Accountants, having office at House No.74, Vijay Nagar, Jalandhar, through its Managing Partners Shri Surinder Mahajan, Chartered Accountant and Shri Sudhir Gupta, Chartered Accountant
6. Gautam Goyal, Company Secretary, having office at 535/536 Lahore Gate, Naya Bazar, Delhi- 110006

...Respondents

**Judgment delivered on September 28, 2018**

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)  
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

Present

For the Petitioner :- Mr. Rajinder Mahajan, Advocate

**Per: R.P.Nagrath, Member (Judicial):**

**JUDGMENT**

M/s Asha Builders Limited was incorporated as a company on 03.09.1997 and certificate of incorporation is at Annexure P-1. It was converted to public limited company by order dated 27.09.2001. Vide subsequent certificate issued by Registrar of Companies, Punjab Himachal Pradesh and Chandigarh dated 18.02.2009, the name of the company was changed to Haveli Restaurants and Resorts Limited. The company, when originally incorporated, consisted of petitioner and respondent No.2 as promoters with total 2,000 share of Rs.10/- each and both of them held 1,000 equity shares.

2. It is stated that the petitioner, being the holder of 50% of the undisputed paid-up, equity share capital is entitled to file this petition under Sections 241 and 242 of the Companies Act, 2013 (hereinafter to be referred as the 'Act'). The petitioner also fulfils the condition of the requisite number, as prescribed in Section 244 of the Act. The company has registered office at Jalandhar in the State of Punjab and therefore, the matter falls within the jurisdiction of this Tribunal. Both the petitioner and respondent No.2 are real brothers.

3. The facts, briefly stated, for considering the issue about limitation and eligibility of the petitioner are essentially required to be described at the preliminary stage. At the time of incorporation of the company, the memorandum of association which is part of the document (Annexure P-1) the authorized share capital was ₹ 50,00,000/- comprising of 5,00,000 equity shares of ₹ 10/- each. The present authorized share capital of the company is ₹ 5 Crores and the paid up capital is ₹ 4,54,20,000/- comprising of the equity shares of the face value of ₹ 10/- each. Both petitioner and respondent No.2 were the first Directors of the company. It is alleged that 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 also the brother of the petitioner and respondent No.2, is other director of respondent No.1-company. Respondent No. 5 is the Chartered Accountant and respondent No. 6 the Company Secretary.

4. It is further stated that at the time of death of his father, petitioner 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 the respondent No.1-company since the date of its incorporation. This respondent is even looking into the company law matters, tax matters of the company and all other companies/firms/concerns/HUF concerns of the family which includes the petitioner and respondent No. 2 to 4 and other family members. The petitioner therefore, reposed full confidence and faith in them. Taking undue advantage of the confidence and faith, respondent Nos. 2 and 5 obtained the signatures of the petitioner on various blank papers.

5. In the month of September, 2015, respondent No.2 proclaimed in the family meeting that the petitioner is neither the director, nor shareholder of the company. The petitioner inspected the record of the company from the website of Ministry of Corporate Affairs on 08.09.2015 and got the certified copies thereof. From the Annual Return for the year ending 30.09.2014, attached as Annexure P-3 and Form No.32, filed on 31.10.2011, enclosed as Annexure P-3 and P-4, respectively, the petitioner came to know about the illegal increase of the share capital and paid-up capital without convening and holding meetings of the Board of Directors or of the shareholders of respondent-company. It is stated that the respondents unlawfully increased the equity shareholding of respondent No.2 from ₹ 10,000/- to ₹ 4,54,20,000/-, which he held not only in his own name, but also in benami names. Further allotment of shares was without making any offer to the petitioner. Rather, the shareholding of the petitioner has been reduced to Nil.

6. The basis of the petitioner's claim is that the respondents filed Form No.32 with the Registrar of Companies on 31.10.2011 by attaching a forged and fabricated resignation letter of the petitioner, showing unlawful cessation of the petitioner from Directorship. The petitioner got verified the signatures of the petitioner on the document with the standard signatures from the Handwriting Expert, who reported that the signatures are forged signatures of the petitioner. The copy of the statement made by the Handwriting Expert before the Court of Magistrate in a Criminal Complaint is

at Annexure P-5, with which the opinion of Mr. Arvind Sood, Handwriting and Fingerprint Expert dated 30.12.2015, is also attached.

7. The petitioner had filed a complaint dated 12.09.2015 before the Police for registration of FIR against private respondents, but the police illegally initiated proceedings against the petitioner himself, under Section 182 of the Indian Penal Code by filing a Kalendra, titled as "***State Versus Harish Jain***" before the Magistrate. Those proceedings have been stated by Hon'ble Punjab and Haryana High Court in **CRM-M-15225 of 2016**; "***Harish Jain Versus State of Punjab***" and the matter was pending before the Hon'ble High Court for 08.08.2018. Further aggrieved against the inaction of the police, the petitioner filed a criminal complaint before the Magistrate under various Sections of Indian Penal Code for fraud and cheating on 31.10.2015 in which the statement of handwriting expert was recorded.

8. The petitioner also filed a Civil Suit titled as "***Harish Jain Versus Haveli Restaurants and Resorts***" bearing **Civil Suit No.658 of 2016**, instituted on 28.03.2016, seeking relief of declaration, rendition of accounts and permanent injunction. Copy of the Plaint in Civil Suit is Annexure P-9. It has been ultimately alleged in the instant petition that the affairs of the respondent-company are being conducted in a manner prejudicial and oppressive to the petitioner and to the public interest, and various prayers have been made to restore the original shareholders of the petitioner and to declare his entitlement to the rights issue/bonus issue and dividends and further to allot shares to the petitioner to share his shareholding of 50% of

the present paid up equity share capital of the company, apart from various other prayers including his removal as director of the company

9. We have heard learned counsel for the petitioner for the purposes of admitting the petition for issuance of notice to respondents and have carefully perused the records.

10. When the matter was listed on 11.07.2018, the learned counsel for the petitioner sought time to place on record the documents to show the locus-standi of the petitioner. The petitioner filed CA No.353 of 2018 with the documents supported by his affidavit. These documents are Annexure P-12 (colly), the Annual Returns from the years 1999 to 2003; Annexure P-13 (Colly) Form 20-B alongwith Annual Returns for the years 2004 to 2013.

11. It would be seen from the Annual Returns for the year ending 31.03.2006 for which the Annual General Meeting was held on 30.06.2006 that in Form No.20-B at Page 132 of the paper book of CA No.313 of 2018, the list of Directors of the company (Page 142) include the name of the petitioner and respondent Nos.2 to 4. Similar was the status of directors, as per the Annual Return in Form 20-B at Page 155 for the year ending 31.03.2007. The list of directors is at Page 162 of the said paper book. This status continued upto the Annual Return for the year ending 31.03.2012. The name of the petitioner does not however, figure as the shareholder or a Director in Form No.20-B for the year ending 31.03.2013 as at Page 259 of the paper book of CA No.353 of 2018, which contains the name of the Directors as respondent Nos.2 to 4. List of shareholders for this year is at

page 276 of the said paper book. Similarly, in the list of shareholders upto 29.09.2012, as at page 257 of the paper book, the Annual Return for the year ending 31.03.2012 for which Form No.20-B is at Page 236 of CA No.353 of 2018 the name of the petitioner as shareholder does not exist.

12. Learned counsel for the petitioner vehemently contended that the petitioner should still be considered a shareholder to the extent of 50% and the documents on the basis of which he has been ousted are forged and fabricated. It was urged that this aspect may be considered on merits of the case and not at the preliminary stage. Having given our thoughtful consideration to the contentions raised by the learned counsel for the petitioner, we find the instant petition to be not maintainable on two counts:-

- i. for not fulfilling the eligibility criteria, as required under Section 244 of the Act; and
- ii. on the ground of limitation

13. For dealing with these questions, the petitioner has placed on record copy of Form 20-B obtained from the portal of Ministry of Corporate Affairs, copy of which is at Annexure P-3. The petitioner has also attached copy of balance sheet for the financial year ending 31.03.2014 which were approved in the Annual General Meeting held on 31.09.2014. At Page 70 of the paper book of the original petition, there is a list of 17 shareholders as on 30.09.2014. Out of 17 shareholders the petitioner does not figure. The names of respondent No. 2 to 4 as Managing Director, Whole Time Director and the Director figure in this Form 20-B and the paid-up share capital of the company is Rs.4,54,20,000/- The date of signing of this Form by the

authorized signatory is 30.09.2014. It is pertinent to mention that the date of appointment of respondent No.3 and 4 as Directors of the company is 01.04.2006.

14. It is an admitted case that Form No.32 with regard to resignation of the petitioner accepted by the Board of the Company was filed in October, 2011 and 7 years have elapsed since then. The record available on the portal of Ministry of Corporate Affairs is in the public domain and the petitioner was not heard arguing that for seven years before filing of this petition he was not aware of these documents despite claiming himself to be a 50% shareholder and a Director of the company.

15. The resignation of the petitioner dated 31.10.2011 is at Page 83 of the paper book, but the same is sought to be challenged on the ground that it bears forged signatures on the strength of the statement of the handwriting expert. Though the report of the expert has been placed on record, but the standard signatures with which comparison was made has not been placed on record.

16. In case, the petitioner claims forgery of the signatures, remedy may not lie before this Tribunal for adjudicating upon the complicated question of fact, and the petitioner has already raised all these allegations in the Civil Suit, filed in the year 2006, which is pending in the Courts at Jalandhar. There is a specific challenge to the resignation letter dated 31.10.2011 to be forged and fabricated in the plaint (Annexure P-9). So far as criminal complaint at the instance of the petitioner is concerned,

admittedly the summoning order has not been issued so far, which aspect is otherwise not much relevant to be considered for the present case.

17. Section 244 of the Act says that in case of a company, having share capital of not less than one hundred members of the company or not less than one-tenth of the total number of members, whichever is less, or any member or members, holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all the calls and other sums due on his or their shares can file petition under Sections 241 of the Act. Proviso to the Section says that the Tribunal may on an application made to it in this behalf, waive all or any of the requirements contained in sub-section (1) of Section 244 of the Act so as to enable the members to apply under Section 241. The petitioner has not moved any such application in the instant case for seeking waiver. Rather he claims himself to be still a shareholder to the extent of 50% of the paid-up share capital of the company. In the absence of any such specific application, seeking waiver, may be on the ground of forgery of signatures or want of knowledge, there is no question of entertaining this petition.

18. On the issue of limitation the cause of action in the instant case arose definitely much before the year 2013 as the Annual Returns for the year 2011-12, placed on record was available on the portal of Ministry of Corporate Affairs. The instant petition was filed on 12.06.2018.

19. Section 433 of the Act says that provisions of the Limitation Act, 1963, shall as far as may be, apply to the proceedings or appeals, before the Tribunal or the Appellate Tribunal, as the case may be.

20. The Hon'ble Principal Bench of National Company Law Tribunal, New Delhi, in the case **CP No.108/ND/2016; Esquire Electronics Versus Netherlands India Communications Enterprises Ltd.** decided on 06.10.2016, held that for the petitions based on such allegations, Article 113 of the Schedule to the Limitation Act would apply and the period would be three years from the date when right to sue accrues. It was further held that Section 5 of the Limitation Act with regard to condonation of delay would not apply to the proceedings before the Tribunal as it is the original Court of jurisdiction and the petitions before it under Section 241 and 242 of the Act are in the nature of suits. The adjudication by the Tribunal would result into passing of a decree which is executable by virtue of Sections 424 and 425 of the Act.

21. The petitioner has claimed that he had been treating respondent No.2 as his father because the petitioner was not even born when his father died. This argument, though appears to be attractive, but on being put the question as to what is the age difference between the two brothers, it was admitted by learned counsel for the petitioner that the petitioner is 48 years of age, whereas respondent No.2 is 51 years of age. Therefore, there is only age difference of three years between the brothers. So the assertion that the petitioner was having a blind faith on his brother simply because he is three years elder cannot be accepted.

22. The petitioner has alleged that in good faith his signatures were obtained on various blank papers as he reposed confidence on respondent No.2, his brother and respondent No.5, Chartered Accountant, but he has now tried to set up a version that respondent No.2 and his associates prepared forged and fabricated document of resignation

23. The judgment of ***Esquire Electronics Inc. and another*** (Supra) was taken in appeal before the Hon'ble National Company Law Appellate Tribunal, being **Company Appeal (AT) No.26 of 2016**. The Hon'ble Appellate Tribunal affirmed the view that the provisions of Limitation Act, apply to the proceedings or appeal before the Tribunal or Appellate Tribunal, as the case may be. It was also observed that the Tribunal rightly held that the decisions in the petition under Section 397 and 398 of the Act, are enforceable like decree and for all purposes, is suit within the meaning of Code of Civil Procedure. It was also affirmed that Article 113 of the Limitation Act, providing a period of three years would be attracted.

24. In **Company Appeal (AT) No. 34 of 2016; Praveen Shankaralyam Versus M/s Elan Professional Appliances Private Limited and Others**, decided on 12.01.2017 by the National Company Law Appellate Tribunal, New Delhi, one of the ground taken by the appellant was that the Company Petition having been filed under Section 397, 398 and 402 of the Companies Act, 1956, Section 433 of the Act or application of Limitation Act, 1963, which have come into force since 01.06.2016, will not be applicable. The Hon'ble Appellate Tribunal held as under:-

*"Though the aforesaid submission seems to be attractive and it is assumed that Section 433 of Companies Act, 2013, will not be applicable to the old cases, the appellant/petitioner before the Tribunal cannot escape the ground of delay and laches in preferring the company petition as raised by the respondents. The appellant was removed as Director as back as on 31<sup>st</sup> December, 2010, after notice to the appellant. There is no subsequent cause of action taken place thereafter. The appellant has not explained the delay in filing the company petition though there is delay of more than five years."*

The appeal was thus, dismissed.

25. In the instant case also, as evident from the record obtained from Ministry of Corporate Affairs, the notice of meeting scheduled for 31.10.2011 is dated 20.10.2011 as at Page No.82 of the paper book. There is no mention in the petition about the receipt or non-receipt of the notice of the said meeting fixed for 31.10.2011.

26. In the instant case, the petitioner is silent with regard to the allegations as to when the other shareholders, as per the list of shareholders as on 30.09.2014, were inducted, as per the record available in the portal of Ministry of Corporate Affairs and as to when respondent Nos.3 and 4 were inducted as the Directors.

27. From the above discussion, we find the petitioner to be not eligible in terms of Section 244 of the Act to maintain the petition and even the instant petition is hopelessly time barred. Accordingly, the petition is

dismissed in limine, with costs of ₹ 50,000/-, to be deposited in the Prime Minister Relief Fund within two months of receipt of copy of this order.

Copy of this order be also sent to Registrar of Companies, Punjab, for taking steps for recovery of amount of the costs in case the same is not deposited within the aforesaid time.

Pronounced in open Court.

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

September 28, 2018  
Mohit Kumar

Sd/-  
(Justice R.P. Nagrath)  
Member (Judicial)