

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

CP No.139/Chd/Pb/2018

**Under Section 59 of the
Companies Act, 2013**

In the matter of:

1. Sohan Singh Aujla, aged 61 years appox. S/o Late Shri Ajit Singh Aujla, R/o VPO Jandu Singha, District Jalandhar
2. Late Shri Ajit Singh Aujla (now deceased) through his son Shri Sohan Singh Aujla, R/o VPO Jandu Singha, District Jalandhar, duly authorized by other Legal Representatives

... Petitioners

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 Khajurla, 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 and Shri Sudhir Gupta

6. M/s Suraj Thapar and Associates, Company Secretaries WG 301, Islamabad, Jalandhar, Punjab- 144001, through its Proprietor/Partner Shri Suraj Thapar
7. Sunita Jain, W/o Shri Ajit Parsad Jain, R/o House No.10, Chhoti Baradhari, Part I, Garha Road, Jalandhar (Punjab)- 144001
8. Madhur Jain, S/o Shri Ajit Parsad Jain, R/o House No.10, Chhoti Baradhari, Part I, Garha Road, Jalandhar (Punjab)- 144001
9. Sonam Jain, D/o Shri Ajit Parsad Jain, R/o House No.10, Chhoti Baradhari, Part I, Garha Road, Jalandhar (Punjab)- 144001

...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

The instant petition has been filed under Section 59 of the Companies Act, 2013 (for short to be referred hereinafter as the 'Act') with a prayer for a declaration that both the petitioners continue to hold 30,000 and 20,000 fully paid-up share, equity shares of ₹ 10/- each, respectively, in the respondent-company from the date of holding till date, with the further directions to rectify the Register of Members and restore the name of the Petitioners as shareholders with a consequential prayer for proportionate allotment of the right/bonus shares to the petitioners in all further allotments or in the alternative to set-aside all further allotment of Right Issue/ Bonus Issue made after the date of holding of the shares by the petitioners. Though

there are two petitioners mentioned in the instant petition, yet the claim is made by the petitioner No.1 Sohan Singh Ahujla, as an original shareholder himself and as a heir/son of Late Shri Ajit Singh Aujla, (deceased), his father.

2. It is stated that petitioner No.1 holds 30,000 equity shares of ₹ 10/- each since May, 2001 and his father was holding 20,000 equity shares from the same time, as reflected in the Annual Returns for the year ending 29.09.2001. Annexure P-2 is the copy of the Annual Return of the company, on the basis of Annual General Meeting held on 29.09.2001 in respect of Asha Builders Ltd., which was the original name of the respondent No.1-company, incorporated in the year 1997. At that time, the capital structure of the company was showing 20,00,000 equity shares of ₹ 10/- each, for which the list of shareholders is attached at Pages 46-53 of the paper book, being part of the Annual Returns. The name of the petitioner No.1- Sohan Singh Aujla and his father, holding aforesaid number of equity shares is reflected at Page 49 of the paper book.

3. It is stated that respondent No.1 was incorporated as a company in the name and style of M/s Asha Builders Private Limited, which was incorporated on 03.09.1997. Later on, it changed its name as 'Haveli Restaurants and Resorts Limited' with registered office at Jalandhar. Therefore, the matters falls within the territorial jurisdiction of this Tribunal.

4. The respondent-company continued to show the aforesaid shareholding of the petitioner in Annual Return, filed with the Registrar of

Companies from May, 2001 upto the year ending 31.09.2011. Form 20-B along with attachment of Annual Return for the year ending 30.09.2011 is at Annexure P/3. The petitioner and his father continued to be shown as shareholders to the above extent and the list of the said shareholders is at Page 72 being part of the document Annexure P-3.

5. It is averred that the petitioners never sold their shares to anyone till date. In the month of September, 2015, a dispute arose between the promoters of the company, namely Harish Jain and his brother Satish Jain, who first subscribed to the Memorandum of Association. On coming to know about the dispute from the newspapers, petitioner No.1 contacted Harish Jain, who told petitioner No.1 that respondent No.2 has committed a fraud with him and unlawfully reduced his shareholding from 50% to NIL and unlawfully removed him from Directorship. The petitioner No.1 therefore, wanted to know about his status in the shareholding and that of his father. Harish Jain supplied petitioner No.1 photocopies of the records and the documents from the portal of Ministry of Corporate Affairs. The petitioner No.1 himself inspected the record on 23.09.2015 and came to know that the petitioner's shareholding was not shown in the Annual Return filed after 30.09.2011. Father of Petitioner No.1 had died on 25.01.2007. Copy of death certificate is Annexure P-7. The petitioner has tried to support his locus standi to file the petition on behalf of his deceased father by impleading him as petitioner No.1 on the basis of Power of Attorney executed by him and his two brothers, stating them to be the only legal heirs of deceased Ajit Singh, authorizing Sohan Singh- petitioner No.1 to take any proceedings in the

Courts of law with regard to 20,000 equity shares belonging to Ajit Singh in the company, particularly for transmission of the shares. The Power of Attorney is dated 06.06.2018, attached with this petition as Annexure P-1.

6. On merits, the ground taken by the petitioner is that the respondents unlawfully increased the paid-up share capital of the company without making offer of the rights shares/bonus shares to the petitioners. When the petitioner had purchased the shares, the share capital of the company was ₹ 43.20 lacs. It is stated that the share capital was increased to ₹ 325.80 lacs as on 30.09.2011; ₹ 329.80 lacs as on 29.09.2012; ₹ 433.80 lacs as on 30.09.2013; and ₹ 454.20 lacs as on 30.09.2014.

7. The company issued 40,000 equity shares at premium of ₹ 90/- per share during the financial year ending 31.03.2012, which fact is evident from Form No.66 attached with the compliance report for the period ending 31.03.2012, copy whereof is at Annexure P-8.

8. It is further stated that the shareholding of the petitioners was reduced to Nil for the period beginning from 01.10.2011 onwards and Form 20-B along with attachment of Annual Returns for the period ending 30.09.2012, 30.09.2013 and 30.09.2014 are at Annexure P-4 to Annexure P-6. List of shareholders in the return filed as on 29.09.2012, does not reflect the name of both the petitioners as shareholders of the company, which is also the position in the subsequent returns, referred to above. The list of shareholders as on 29.09.2012, is at Page 88 of the paper book; for

30.09.2013 at Page 111; and for 30.09.2014 as at Page 130 of the paper book, in none of which, name of the petitioners figure, as shareholders.

9. On 25.03.2016, the petitioners made a complaint to the Police about the fraudulent action of the respondents, but the Police did not take any action. Copy of the complaint is Annexure P-9. The petitioner also filed a criminal complaint before the Area Magistrate titled as "*Sohan Singh Aujla and Others Versus Haveli Restaurant and Resorts Limited and Others*" for the offences of fraud and cheating. That complaint was filed on 05.04.2016, copy of which is Annexure P-10, but it is not the version of the petitioners that the Magistrate has issued any summoning order so far.

10. It is further stated that on 12.04.2016, the petitioner No.1 and legal representatives of petitioner No.2 were forcibly taken to the corporate office of the company and their signatures and thumb impressions were obtained on blank papers, in order to withdraw the criminal complaint. Petitioner No.1 got terrorized and agreed to withdraw the criminal complaint. The news of kidnapping of the petitioners and his family members was also reported in the newspapers, copies of the newspapers clippings are Annexures P-11 and P-12. The criminal complaint is however, stated to be still pending. The petitioner No. 1 then filed a criminal complaint on 16.05.2016 against the respondents titled as "*Sohan Singh Aujla Versus Nitin Kapoor and Others*" for the offences of kidnapping and criminal conspiracy. Copy whereof is Annexure P-13. On the other hand, the Police registered an FIR on the complaint of respondent Nos.1 to 4 on 27.05.2016 and the challan has been presented by the Police on 07.06.2017. The case is now pending.

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

12. The petitioner has tried to bring the case within the period of three years from the date of accrual of cause of action for the acts of fraud and cheating which he came to know from Harish Jain allegedly in the month of September, 2015 and that the instant petition was filed on 12.06.2018, which is stated to be within limitation.

13. 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.352 of 2018 for placing on record the additional affidavit with documents, which include copy of petition bearing No. CP/138/Pb/18 titled "*Harish Jain Versus Haveli Restaurant and Resorts Limited and Others*", pending before this Tribunal. That petition is under Section 241 and 242 of Act, filed by the brother of respondent No.2, who claimed to be the original subscriber to the memorandum of association with 50% of the shareholding. With these additional documents, the petitioner has also filed the Annual Returns for the period ending 31.03.2002 and 31.03.2003 and also the Annual Returns for the years ending 2004 to 2010 which are at Annexures P-20 (colly) and Annexure P-21 (colly).

14. Having given our thoughtful consideration to the contentions raised by the learned counsel for the petitioner, we find the instant petition to

be prima facie on the ground that the petition is barred by limitation and the petitioner No.1 being a shareholder was entitled to notice of Annual General Meetings of the Company, but it is admitted that the petitioner, who is not shown as the shareholder from the year 2012, did not receive any notice of the General Meeting from the company, nor he raised any grievance for about six years before filing of this petition. The statutory compliances by the company have to be made by filing Annual Returns, Balance Sheet and other compliances, which are available on the portal of Ministry of Corporate Affairs. Being in the public domain, the filing of documents itself would amount to notice to the public especially the shareholders, who claim themselves to have interest in the company.

15. As already observed, the list of the shareholders of the respondent-company as on 29.09.2012, attached with Form 20-B (Annexure P-4) by which the balance sheets for the financial year ending 31.03.2012 was filed, shows that the name of petitioner No.1 and his father did not figure as shareholders in the company and this continued in the Annual Returns of the subsequent financial years. Form 20-B (Annexure P-4) was signed on 29.09.2012 by the authorized signatory and it is not the case of the petitioners that the annual returns for the subsequent years were filed with any amount of delay from the date of holding of the Annual General Meeting. So the cause of action, in any case, would arise from the filing of the returns of the relevant years with the Ministry of Corporate Affairs.

16. 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 jurisdictional and the petition 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.

17. 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.

18. 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 31st 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.

19. In view of the above, we find that the instant petition is hopelessly time barred. 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 to recover the 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)