

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

C.P No.19/(MAH)/2015  
IA No. 27/2017

CORAM:

Present: SHRI M. K. SHRAWAT  
MEMBER (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 12.06.2017

NAME OF THE PARTIES: Shri Lakhamchand Gidwani  
V/s.  
M/s. Rohan Packaging Product Limited

SECTION OF THE COMPANIES ACT: 397-398 of the Companies Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
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1.	Anagha Anasingaraju (Ranjit Associates)	Pcs for Petitioners	anagha
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2.	Dr. S.K. Jain a/w Kishor Pedkar For MRK Law Associates	Respondent No. 01 to 5.	
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3.	Sheeja John	Adv. for Resp. no. 9	Sheeja 12/6/17
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4.	SUNIL S SANPUL	Pcs for Resp. no. 6	Sunil 12.06.17
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INTERIM ORDER

INTERIM APPLICATION UNREGISTERED BEARING DIARY NO.  
4480(2017)(TCP No.19-2015)

Petition under consideration was filed before the then CLB Mumbai Bench on 13<sup>th</sup> March 2015, wherein one of the Respondent is a Chartered Accountant Mr. Jagdish Ghumara (R-6). He is aggrieved being made one of the parties among the number of Respondents, as many as 12 in this case.

2. An application has been moved by R-6 on 24<sup>th</sup> March 2017 wherein he has objected his impleadment and a prayer has been made to exempt from the proceedings. Only relevant paragraphs are reproduced below:-

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"1. The applicant Mr. Jagdish Ghumra, (Proprietor of J.H Ghumara & Co, practising Chartered Accountants for last 44 years and having Registration No. 103185W), having its office at B/14, Jessica Natakwal Lane, S.V. Lane, Borivali (W), Mumbai- 400 092.

2. The Applicant is the Statutory Auditor of Respondent No.1 since incorporation of the Company and is conversant with facts. The applicant was appointed as the First Auditor of Respondent No 1.

3. ....

4. The applicant states that during last 44 years since he is working as practising Chartered Accountant, there had been not a single complaint for any negligence or professional misconduct filed with ICAI or any court by any of his clients or Government.

5. ....

6. ....

7. ....

8. The applicant states that he had carried out his responsibility as Statutory Auditor of Respondent No.1 with full integrity and competency and using all available information presented to him. He further states that the Accounts represent the true and fair presentation of the Accounts of Respondent No. 1.

9. ....

10. ....

11. ....

12. ....

13. With reference to Para 7.9 of the Petition, I refute that the Audit Report issued by me for years since 1996 are without any authority and without verifying the record of Respondent No.1 and acting hand in glove with other Respondent for furthering their interests. I say and submit that such allegations are false motivated and malicious and have been made to mislead the honourable Tribunal.

14. With reference to Para 8 (D) of the Petition, I refute the allegations of acting in Hand in Glove with other Respondents. I refute the allegation that the Audit Reports were prepared back dated with mala fide intention by me. I say and submit that the Accounts of Respondent No.1, were duly audited and the Audit Reports were issued by me on the date mentioned in Audit Reports for respective years. I further states that, in the year 2013, Respondent No.1 made a request for reissue of Audit Reports since the earlier documents were not legible and in condition to be uploaded with Ministry of Corporate Affairs, which were not filed by Respondent No 1. I further say and states that during the issuance of Audit Report in the year 2013, the reference to Section 274 (1) (g) was inadvertently and accidentally added in the Audit report for the year 1995-96. I say and states that reference to Section 274 (1) (g) in the Audit Report for FY 1995-96 is pure document editing error.

GROUND OF RELIEF(S) :

1) The applicant strictly refute all allegations against him made by petitioners in captioned Petition. Further applicant had acted only in the capacity as an independent statutory auditor of the Respondent no.1 Company and applicant is not concerned or interested with Respondent no. 2 to 5. Therefore applicant is not a necessary party to this Petition as alleged."

3. Learned Representative of R-6 has pleaded that being a professional acted fairly as per law. He was appointed after due compliance of law in the year 1996 and thereafter carried out the auditing diligently. The allegations are

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baseless to pressurise the Chartered Accountant and other Respondents. The accounts have duly been approved by the Board of Directors as and when the AGM was conducted. So far, there is not a single complaint of professional misconduct against him. The Learned Representative have therefore pleaded that he must be exonerated from all charges and his name be also deleted from the array of parties.

4. Per contra, the Representative of the Petitioner has pleaded that there are number of instances through which it can be demonstrated that R-6 has back dated the report and connived with the other Respondents. He has also pleaded that the presence of R-6 in this case is essential because he is not only a "proper party" but also a "necessary party".

5. Heard both the sides at some length.

6. On this issue a view had already been taken by this Bench in the case of Mr. Shridhar Vasudeo Bedekar & Ors. (Petitioners) AND M/s. V.P. Bedekar And Sons Pvt. Ltd. & Ors. (Respondents) (CA No.171/2014 IN TCP No.26/237, 397-398/NCLT/MB/MAH/2014), vide Order dated 13.02.2017 in which it is held as under:-

*"4. Heard the parties at some length in the light of the Compilation filed and Case Laws referred. As held in number of cited cases, a party can be impleaded if their presence in the litigation is proper as well as necessary depending upon the facts and circumstances of each case. At this preliminary stage, when the Petition is yet to be decided and the elaborate discussion on the issue of oppression and mismanagement is sub-judice; therefore, at the very threshold it is unfair to recuse the Respondents in question from the litigation. There are two sets of Respondents under question. Out of four Respondents, two are professionals i.e. Chartered Accountants. It they happened*

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*to be only the Auditors, then naturally their presence or involvement in the Suit was not necessary. But, in this case, the Petitioner had written several letters to the Auditors informing them the irregularity in the financial statements. No satisfactory response was given by those professionals; therefore, the petitioner was left with no choice but to implead them in this Suit. Not only this, the Petition contains the fact that the Petitioner has filed complaint of professional misconduct. Because of this reason, I am of the conscientious view that let these professionals be parties to the litigation but with an exception that their presence or attendance are not necessary. Alternatively, they can be represented by their respective legal representatives.*

*4.1 In respect of rest of the two Respondents viz. Respondent Nos. 8 and 9, I am of the view that in a situation when the Directors are common and undisputedly subsidiary of the Respondent Company having financial involvements; hence their presence in this litigation is required so that these two Respondents have chance not only to rebut the allegation, but also to establish their non-involvement in any such alleged allegation. At this preliminary stage, when the evidences are yet to be examined, it is neither proper nor justifiable to exonerate / absolve / exempt / drop or to strike off as Respondents from the captioned Petition."*

7. Examined the Petition and other pleadings as available on records. After due consideration prima facie it appears that for effective and adequate adjudication the existence of R-6 in the suit/case is necessitated. There are certain reports claimed to have been submitted by R-6 which are in dispute. For the convenience and to arrive at a correct conclusion his assistance is

needed. At this preliminary stage when certain evidences are yet to be examined it is not justifiable to strike off his name from the array of Respondents. However, being a professional he is exempted to attend every hearing yet to take place before NCLT. Rather, he shall be informed through Respondent in advance if his presence is required during the course of litigation. Leave granted to place on record affidavit in reply in his defence.

8. The application is disposed of accordingly. Now the CP is listed for hearing on **10.07.2017**. Intimate the parties.

Date : 12.06.2017

Sd/-  
**M.K. SHRAWAT**  
Member (Judicial)