

In the National Company Law Tribunal
Mumbai Bench.

CP No.280/241/NCLT/MB/MAH/2017

Under Section 241 of Companies Act 2013

In the matter of

1. Hirji Premchand Dedhia &
2. Smt. Hansaben Hirji Dedhia,
both having address at:
C/5, Lincoln Apartment, Uttamnagar,
Nr. Jain School, Maninagar,
Ahmedabad : Petitioners

V/s

1. Ravi Gum Industries Ltd.
Registered Office at:
402, Saiya House, 279, Narsi Natha Street,
Mumbai – 400009;
2. Girish Premchand Dedhia
102, Riddhi Tower,
Jodhpur Gam, Satellite,
Ahmedabad;
3. Dhanji Premchand Dedhia &
4. Bhanuben Dhanji Dedhia
Nos. 3 and 4 having address at :
408, SambhavnathSudha Park,
Garodinagar Main Highway touch,
Ghatkopar,
Mumbai (East). : Respondent

Order delivered on: 20.11.2017

Coram: 1. Hon'ble Shri M.K. Shrawat, Member (Judicial)
2. Hon'ble Shri Bhaskara Pantula Mohan (Judicial)

For the Petitioner(s): : 1. Narendra L. Jain, Advocate,

Per M.K. Shrawat, Member (Judicial).

ORDER

1. This is a Company Petition filed by the Petitioner under section 241 read with section 242 of the Companies Act 2013 against Respondent Nos.2 (R.2) and Respondent No.3 (R3) for conducting the affairs of the Respondent No.1 (R1) Company in a manner prejudicial and oppressive to the Petitioner members and are against the interest of the

company, apart from being illegal. This case was listed for hearing on several occasions in the past but unfortunately the Respondent has never bothered either to file a reply or to represent the matter either personally or through any Representative. The Petitioner has placed an Affidavit dated 16.8.2017 affirming the service of Petition on the Respondent. According to the "Consignment Tracking Record" the delivery is confirmed. There is one more Affidavit of Service dated 13.10.2017 through which the Petitioner has affirmed that the today's date of hearing (20-11-2017) was duly intimated. Although number of opportunities were granted but the Respondent remained absent throughout. It is worth mentioning at this stage that these very Petitioners earlier had filed a Petition under section 111 of the Companies Act on 06.02.2012 wherein as well, the Respondent was M/s. Ravi Gum Industries. Even at that time this very Respondent remained absent, hence Company Petition No.01 of 2012 & Company Petition No.11 of 2012 were decided vide Order dated 22.05.2017 with the following observations":-

"3. Before I proceed further it is necessary to place on record that the **Respondent remained non-cooperative throughout the proceedings.** The case records are full of notings of non-attendance of the Respondent although since the filing of the Petitions in the year 2012 number of opportunities were granted. It is worth to devote some time in mentioning the non-appearance of the Respondent consistently recorded in the order sheets. On 7th August 2013, the then respected member of the CLB in para 1 had made an observation that "*despite consistent efforts, service upon Respondent No.1 company could not be effected. The registered envelopes received back with an endorsement "closed". The notice sent through courier has been received back with the endorsement "shifted". Despite publication made in newspaper the R1 did not choose to appear. On the website of the ROC, the company is reflecting "active"*."

3.1 Thereafter an advocate viz. Mr. Jit B. Patel started appearing on behalf of the Respondent as per an evidence on record a letter dated 24-11-2013 asking for an adjournment. On 14-02-2014 advocate Mr. Patel appeared and the matter was adjourned. Thereafter again the Respondent or his representative remained absent, as a result, on 14-09-2016, the Registry was directed to issue notice to the Respondent by fixing the date of hearing on 24-10-2016. On 24-10-2016 Mr. Jit P. Patel for the Respondent was present in the court and the observations made as under:-

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"CP No.01/111/CLV/MB/2013

5. *The Petitioners are represented by Ld. Advocate Mr. Narendra L. Jain and the Respondents are represented by Ld. Advocate Jit P. Patel.*
6. *After hearing both the sides for some time, the Bench is of the opinion that the main controversy revolves around the signatures, alleged by the Petitioners as forged, on the Transfer Forms.*
7. *Therefore, in the interest of justice, it is hereby directed to the Respondents to produce a sealed cover the original Transfer Forms and the Share Certificates along with the connected evidences to the bench Officer on or before 15th November, 2016 so that the genuineness of the signatures can be examined and verified by the authorised agency i.e. Forensic Science Laboratory, Mumbai.*
8. *After obtaining said report the matter can be listed for hearing on 23rd January, 2017. Date is duly communicated to both the parties."*

3.2 On 23-01-2017 Petitioner remained present but no one was present from the other side. The Petitioner has informed that though a letter dated 02.01.2017 issued to the Respondent and intimated to produce the relevant documents, as directed on the last date of hearing held on 24-10-2016, but no compliance was made. The case was adjourned directing the Respondent to comply the directions and the date fixed was 21-02-2017. None appeared on behalf of the Respondent, hence a cost of Rs.5,000/- was imposed as per the following interim order:-

"TCP No.11/111/CLB/MB/MAH/2012

TCP NO.01/111/CLB/MB/MAH/2013

1. *The Learned Representative for the Petitioner is present. No one is present from the side of the Respondent.*
2. *The Petitioner has intimated that inspite of the directions issued by an Order dated 23rd January, 2017 the Respondents have not complied with the requisite documents as directed therein. On the last occasion it was observed that in case of non-compliance a cost can be imposed. Considering the past record and the regular non-compliance from the side of the Respondents costs of Rs. 5000/- (Rupees Five Thousand only) in each Petition (CP 11/2012 and CP 01/2013) is imposed to be paid either to the Petitioner or the Legal Representative of the Petitioner on or before the next date of hearing.*
3. *Both the Petitions are adjourned to 8th March, 2017 with a direction to the Petitioner to communicate this Order as well as the next date of hearing to the*

any

other side. It is also directed to place on record through an Affidavit the proper service to the other side.

3.3 When these petitions were again listed for hearing on 08-03-2017, neither the Respondent was present nor any compliance of the earlier directions have been made. To enforce the cooperation of the Respondent again a fine of Rs.15,000/- was imposed with a direction to pay the fine to the Petitioner/legal representative on or before 30th March 2017. These petitions were listed finally on 18-04-2017. On the said date of final hearing the Petitioner was present and as happened in the past, the Respondent remained absent. Learned counsel of the Petitioners has strongly pleaded that the matter is very old therefore should be decided today being listed for final hearing. He has vehemently pleaded that more than enough opportunities were granted to the Respondents. Hence deserve no more opportunity. This bench is left with no option but to proceed ex-parte qua the Respondent to decide these petitions on the merits of the case."

1.1 From the past history it is evident that the Respondent is an established defaulter. Therefore, this Bench is left with no option but to proceed *ex-parte* qua the Respondent and herein below decide this Petition on merits after hearing the Learned Representative of the Petitioner.

2. Facts of the case revealed that R.1 is a Company in which the Petitioners collectively hold 18.84% (18436+13408=31844 shares out of 1,69,000 shares issued by the Company) of the total shares issued of the Respondent No.1 Company. The Petitioner has alleged that the names of the Petitioners were illegally removed from the Register of Members of the Company, in spite of this Tribunal's Orders in Company Petition No.1/2012 and 11/2012 to restore the names of the Petitioners to the Register of Members of the Respondent Company. Since the Respondents have violated the Orders of this Tribunal, the Petitioners have filed the impugned Petition under Clause (a) of Sub-section (1) of Section 244 read with Section 241 and 242 of the Companies Act, 2013.

2.1 The Petitioners have prayed that the Respondents be directed to maintain status quo with respect to a property having address as A-1/14, Vatva GIDC Industrial Estate at

Ahmedabad which was allegedly transferred to one firm viz. Poonam Industries run by Shri Prabhudas Patel.

2.2 The Petitioners admit that in the year 2001, at the request of the Petitioners, the Respondents have agreed to pay some amount to the Petitioners on the condition that the Petitioners would resign from the Directorship of the Company and would also discontinue as Partners from some of the Firms. They have agreed to the same and accepted Demand Draft issued to them in August, 2001. However, the Father (now deceased) of the Petitioner No.1 had reassured the Petitioners that the shareholding in the Company would remain intact and would continue to enjoy all the rights connected therewith. Thereafter due to strained relationships among the family members, there were no proper communication after the death of the Father in the year 2004. It is also stated by the Petitioners that during the years 2001 to 2010, there was no filing done by the Respondent Company with the Registrar of Companies. However, the details regarding the filings were done together in one go in the year 2010 and at that point of time the Petitioners came to know that 18,436 shares held by the Petitioner No.1 and 13,408 shares held by Petitioner No.2 were shown to be transferred in favour of Late Shri Premchand Dharamshi Dedhia, Dhanji Dedhia and Girish Dedhia somewhere in the year 2000-01 that too on the basis of forged share transfer forms. It was stated that the Petitioners had never executed any such share transfer forms. Thereupon the Petitioners moved the then Company Law Board. That Petition was subsequently got transferred to this Tribunal. This Tribunal, in its Order dated 22.05.2017 in Company Petition No.01/111/CLB/MB/2012 & 11/111/CLB/MB/2012 passed the following orders, only relevant portion reproduced below :-

"4. Considering the totality of the facts and circumstances of the case as well as the attitude of the Respondent I am of the considered opinion that the Respondent company should comply the directions of this judgement to rectify the "Register of Members" by restoring the names of the Petitioners. The provisions of section 111 of the old Act has empowered the Tribunal to entertain an appeal of the aggrieved person if he ceased to be a member of the company by illegally removing his name from the Register of Members". The Respondent Company is directed to comply the directions within 30 days on receipt of this

order and submit the compliance report/information to the office of the concerned ROC.

In case of non-compliance the company may be liable for damages and other consequential legal action.

5. The Petitioner is hereby directed to serve a copy of this order to the Respondent and place on record of NCLT the proof of service of the order. A copy of this order is also to be delivered in the office of the ROC. The Petitioner shall also recover the fines on the Respondent as imposed during the course of hearing, mentioned supra."

3. In the light of the past background now in the present Petition the Petitioners have also casted a doubt that the shares of the Father of the Petitioner No.1 seems to have been transferred to one Jignesh Dedhia and Gangaben Dedhia. They claimed that such transfers, if made, would also be void as it is in violation of Articles of Association of the Respondent Company and in violations of the provisions of the Hindu Succession Act, in view of the fact that the Father of the Petitioner No.1 i.e. Shri Premchand Dedhia did not transfer the shares while he was alive and the shares have been transferred mala fidly after his death to defraud the Petitioners and to defeat their rights.

4. It is also alleged by the Petitioners that there is no business activity in the Company and it is existing only on paper. However, to get the increased price for the leased shed claimed to be in favour of the Company, the Respondent No.2 and 3 have acted mischievously from the year 2007-08 and transferred the possession of the property to one Pravin Patel who in turn, had given the possession to one Prabhudas Patel who runs a firm viz."Poonam Industries" from the same address of factory shed of the Company.

5. The Petitioners further stated that the transaction with Poonam Industries is kept hidden by the current Management from the Petitioners as also from all others who are interested in the Company and it has never been reflected in the books till date.

6. As per the Petitioners, there was an effort by the Respondents to get the name of the Company entered in the records of the GIDC, Vatva, Ahmedabad without success as the GIDC required the Respondent Company to present the No Objection of the present petitioners as they were stake holders and the registered partners in the record of the

GIDC. Since this was not forthcoming, the Respondents made two attempts by filing Special Civil Application Nos.14609 of 2011 and 3647 of 2013 in the Gujarat High Court. However, both the Applications were subsequently withdrawn.

7. There was also a move by the Respondents to change the name in the Land Records (GIDC) from Ravi Gum Industries – partnership firm to Ravi Gum Industries Ltd. which was allowed by the Hon'ble Gujarat High Court. However, the judgment passed by the Hon'ble Gujarat High Court is subject matter of challenge by way of Letters Patent Appeal filed by the present petitioners.

8. The Petitioners fear that the Respondent No.2 and 3 might transfer the allegedly immovable assets of the Company to the present occupant i.e. Poonam Industries or to any other person either by transfer of shares of the Company in their name or by actually sub-leasing the property in favour of the said entity.

9. The Petitioners have made the following prayers:-

- "(a) *Restrain the Respondent No.2 and 3 to conduct the affairs of the Respondent No.1 company in a manner in which is prejudicial and oppressive to the petitioner members and the interests of the company.*
- (b) *Restrain the Respondent No.1 Company from transferring the rights in connection with the land being A-1/14, GIDC Industrial Estate, Vatva, Ahmedabad to any person;*
- (c) *Restrain the shares of the Respondent No.1 Company from being transferred to any person other than the existing shareholders;*
- (d) *Pending the admission hearing and final disposal of the Petition, to direct the Respondent No2 and 3 disclose the nature of the arrangement that has been entered into with the present occupant of the Industrial shed mentioned hereinabove.*
- (e) *Take such action under Section 242 of Companies Act, 2013 as the Tribunal deems fit in the interest of justice;*

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- (f) *Any other and further relief deemed just and proper be granted in the interest of justice;*
- (g) *to provide for the cost of this application."*

FINDINGS

10. From the prayer sought for in the impugned Petition, as reproduced supra the main reason for moving this Petition is that the Petitioner is under the apprehension that the valuable immovable property, that is, A-1/14, GIDC, Industrial Estate, Vatva, Ahmedabad would be transferred without the knowledge of the Petitioner. On this issue, we have examined the facts of the case and noticed that the Company was incorporated in the year 1995 by converting a Partnership firm. The authorised capital of the Company was ₹25 lakhs, however, the issued share capital was ₹16,91,000/- only for value of ₹10/- each share, totalling 1,69,100. The Petitioner collectively held 18.84% shareholding i.e. 31,844 shares, as already mentioned in above paragraphs. The Petitioner has, therefore, established the substantial interest as well as title on the said property in question. The Petitioner has placed Balance Sheet of the Company to demonstrate that the property in question is duly reflected in the Book of accounts of the Company. Under the list of "Assets", as per the Balance Sheet of the Company drawn as on 31st March, 2015, the "Land and Building" have duly been reflected respectively for a value of ₹55,834/- and ₹2,15,335/-. It has also been clarified by the Petitioner that a 99 years Lease was in favour of the erstwhile firm which got converted into the Respondent Company. Respondent No.2 and others have approached the GIDC to transfer the Lease Rights from the Partnership firm in the name of the Company. The purpose behind this request of transfer, as alleged by the Petitioner, is to alienate the property by the mode of transfer of shares held by the Respondents in the Respondent Company. However, GIDC vide letter dated 05.04.2014 has declined to consider the request of the Company.

10.1 On account of the attempts made by the Respondents to alienate the Land and Building of the Company without sharing the profits with the Petitioner, this Petition is moved to obtain necessary order so that the Respondents be restrained from alienating

the property in question. The evidences on record and the contents of the pleadings have established that the Petitioners are the shareholders of the Respondent-1 Company, hence the property in question being duly disclosed as its property in the Books of Accounts, therefore, the Respondents are not entitled under law to take a unanimous decision without the consent of the Petitioners. Consequent thereupon, we hereby restrain the Respondents not to deal with the Land and Building in any manner either by creating third party rights or by alienating or transferring in any manner without having written consent and due participation of the Petitioners. This prayer is thus allowed in favour of the Petitioners.

10.2 One more prayer has been made that the Respondent must not conduct the affairs of the Company in a manner which is prejudicial to the interest of the Petitioners. We hereby instruct the Respondents to conduct the affairs of the Company in most transparent manner by permitting due participation of the Petitioners. At this juncture it is worth to mention that vide Order dated 22.05.2017 (*supra*) this NCLT Bench had already directed the Company to rectify "Register of Members" by restoring the names of the Petitioners. As a consequence of the said Order, the Petitioners are legally entitled to participate in the day-to-day affairs of the Respondent Company.

10.3 Accordingly, the main grievances of the Petitioners stood redressed hereinabove. Therefore, the Petition is allowed on the terms enumerated above. No order as to Cost.

To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN

Member(Judicial)

Date : 20.11.2017

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Sd/-

M.K. SHRAWAT

Member (Judicial)