

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**TP 93-A/2016 with TP No. 93/397-398/NCLT/AHM/2016 (New)
CA 74/2015 with C.P. No.17/397-398/CLB/MB/2015**

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 30.08.2017**

Name of the Company:


Bhupendra patel & Ors.

V/s

Hotel Satyaketu Pvt. Ltd. & Ors.

Section of the Companies Act:

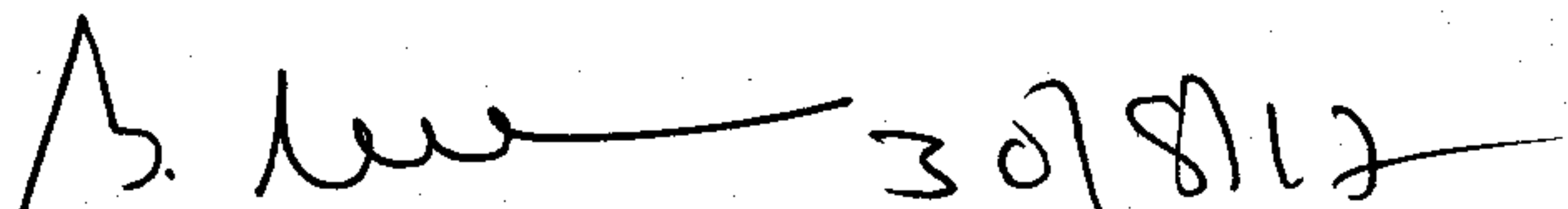
Section 397-398 of the Companies Act, 1956;

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	DHIREN R. DAVE	PCS	Petitioners	
2.				

ORDER

Learned PCS Mr. Dhiren Dave present for Original Petitioners. None present for Respondents.

Order pronounced in open Court. Vide separate sheet.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 30th day of August, 2017.

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

**TP No. 93-A/2016 with T.P. No. 93/397-398/NCLT/AHM/2016
(New)**

CA 74/2015 with CP No. 17/397-398/CLB/MB/2015 (Old)

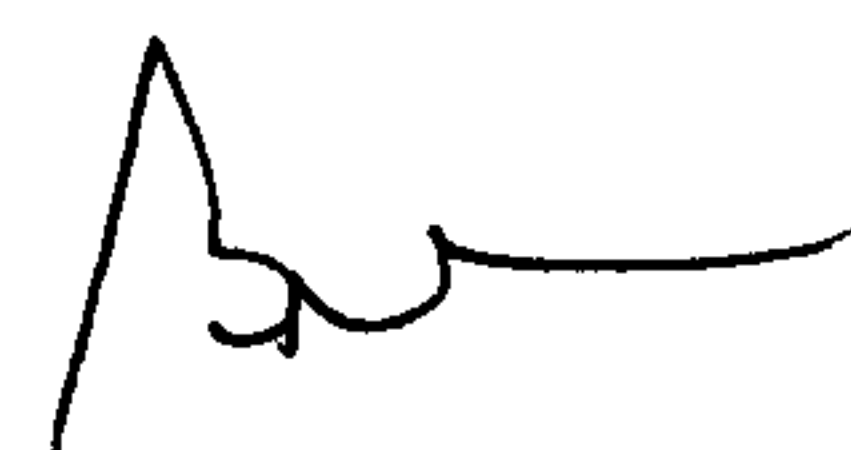
In the matter of:

1. Bhupendra Patel,
A-21, Vishwakrupa Society
Opp: Gurudwara
Sumul Dairy Road,
Surat-395008
2. Pushpak Patel
E/2 Yogicharan Housing Society
B/h Gurudwara,
Sumul Dairy Road,
Surat-395008
3. Ragini Patel
E/2 Yogicharan Housing Society
B/h Gurudwara,
Sumul Dairy Road,
Surat-395008
4. Purnimaben P. Patel
103, Jal Sagar Apartment
Vania Vad, College Road,
Nadiad,
Dist-Kheda.

: Petitioners.

Versus

1. Hotel Satyaketu Pvt.Ltd.,
Sayajigunj,
Near Railway Station,
Baroda
2. Hemaben V. Patel
35, Shri Niketan Soc.,
Sumul Dairy Road,
Surat-395003



3. Satyaketu V. Patel
35, Shri Niketan Soc.,
Sumul Dairy Road,
Surat-395004
4. Tulsi V. Patel
35, Shri Niketan Soc.,
Sumul Dairy Road,
Katargam
Surat-395004
5. M.D. Baid & Co.,
2005-A, Lift No.5,
Rathi Palace, Ring Road,
Surat-395002
6. Priyanka Sharma
Flat No.305, 'A' Wing,
Vraj Bhumi Apartment,
B/h Patel Pragati Wadi
Honey Park Road, Adajan,
Surat-395009

: Respondents.

Order delivered on 30th August, 2017.**Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).****Appearance:**

Mr. Dhiren R. Dave, learned PCS for original Petitioners.
Mr. Kunjal Dalal, learned PCS for Respondents No. 3 and 4.
None present for other Respondents.

ORDER

1. Hotel Satyaketu Pvt.Ltd., originally a partnership Firm, has been converted into a Company, under the provisions of the Companies Act, 1956 on 16th September, 2002 having its Registered Office at Baroda. The Authorised Share Capital of the 1st Respondent Company is Rs. 4,00,00,000 divided into 40,00,000 equity shares of Rs. 10 each. The Paid-up Share Capital of the 1st Respondent

Company is Rs. 10,00,000 divided into 1,00,000 equity shares of Rs. 10 each. The Main Object of the 1st Respondent Company is to run hotel and restaurants.

2. Petitioners are partners in the original partnership firm as narrated in the Memorandum of Association and Articles of Association of the 1st Respondent Company. Petitioners are shareholders of the 1st Respondent Company since its incorporation. Petitioners No. 1 to 4 are holding 2000 equity shares each in their names. Husband of Petitioner No.4 Late Shri Mahendrabhai Patel was also holding 2000 equity shares. According to the Petitioners, Petitioner No.4 as legal heir of her husband is entitled to 2000 equity shares of her late husband under a Pedhinama of late Shri Mahendrabhai Patel.

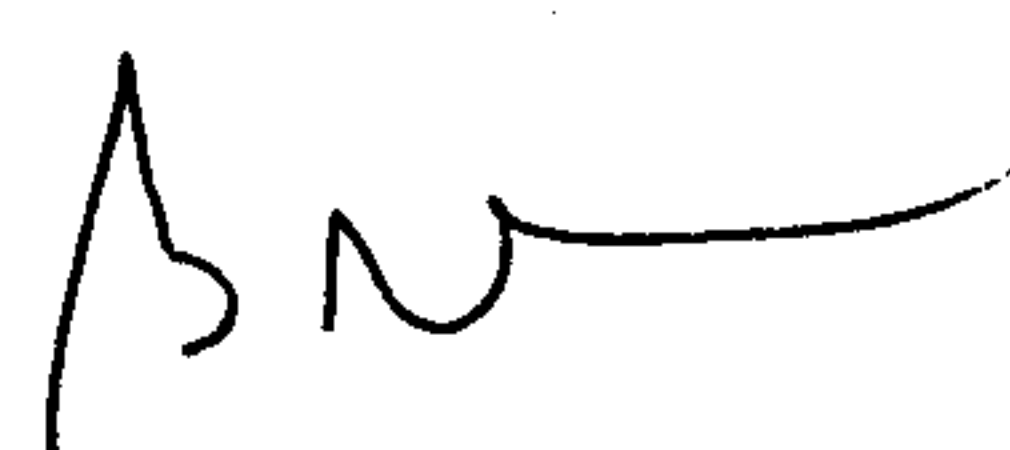
3. Respondent No.2 is the Director of the 1st Respondent Company and holding 40000 equity shares. Respondents No. 3 and 4 are also Directors of the Company, but are not holding any shares. Respondent No.5 is a Company Secretary who filed Annual Return dated 29.9.2012 showing particulars of transfer of shares challenged in this Petition. Respondent No.6 is the Company Secretary who filed Compliance Certificate for the year 2012.

4. According to the Petitioners, they being the partners in the Partnership Firm and thereafter being shareholders in the 1st Respondent Company they were promised to give a place in the Board of Directors after the Hotel started functioning. However, the Respondents denied to induct the Petitioners as 'Directors'. Respondents even denied to repay the funds invested by the Petitioners. Petitioners having surprised with the attitude of the Respondents, verified the Website of the Ministry of Corporate Affairs and found that the shares of the Petitioners were transferred without following the procedure. Petitioners state that they never offered their shares for sale; they never executed Share Transfer Forms; no payment was made to them for purchase of shares; and the

procedure contemplated for transfer of shares has not been followed. In the Annual Return dated 29.9.2012 it was shown that the shares of Petitioners No. 1 to 4 and of husband of Petitioner No.4 were transferred. Further according to the Petitioners, the husband of Petitioner No.4 late Mahendrabhai Patel expired in 2008, but it is shown that his shares have been transferred in the year 2011-2012. Petitioners filed copy of Death Certificate of late Shri Mahendrabhai Patel. Before filing the Petition, Petitioners wrote letters to 1st Respondent Company seeking clarification about transfer of shares, but no reply was received from the Company. Petitioners being the shareholders and biggest creditors of the Company their interest must be protected by the Respondents. Respondents by denying the rights of the Petitioners as shareholders and removing their names from the Register of Members without sufficient cause and by denying access to the affairs of the Company committed acts of oppression and mismanagement. The removal of Petitioners as 'shareholders' from the Register of Members of 1st Respondent Company resulted in change in ownership and is an act of oppression.

5. Petitioners are seeking to correct the Register of Members and thereby include their names in the Register of Members, and to appoint Petitioners No. 1 and 2 as 'Directors'. Petitioners also pray to conduct a bid for value of shares and whoever bids for higher value may be allowed to purchase the shares of others. Petitioners No. 3 and 4 gave General Power of Attorney appointing Petitioner No.2 as their Agent.

6. It is the case of the Petitioners that there are several Members in the 1st Respondent Company and Petitioners being 4 (four) in numbers they are entitled to file this Petition. Petitioners also pleaded that the shareholding of Petitioners No. 1 to 5 is more than 10 per cent of the Paid-Up Share Capital and on that ground also they are eligible to file this Petition.



7. Respondent No.3 filed Reply. Respondent No.3 stated that Petitioners did not pay any subscription towards 2% of the Capital of the 1st Respondent Company as consideration. It is the case of Respondent No.3 that Petitioners were admitted as subscribers, only to fulfil the criteria for minimum 7 Members and it was never intended to make them as a part of management team. As per the terms of understanding between the family members the share transfer deeds and share certificates were handed over to late Shri Vithalbai Patel for the purpose of transfer of shares of Petitioners and on the basis of those instruments transfer of shares of Petitioners were registered on 27.02.2012 in accordance with Section 108 of the Companies Act, 1956. The transfer of shares had taken place between the Petitioners and late Shri Vithalbai Patel. Respondent No.1 only effected and approved the transfer of shares on the basis of the instruments received from the transferees. It is further stated that unless the deed of transfer is accompanied by the relevant share certificate the transfer of shares could not be effected, since endorsement shall be made on the reverse of the share certificates about the transfer of shares. Petitioners after expiry of about 3 years of removal of their names they are now complaining about it without any basis. During the life time of late Shri Vithalbai Patel this issue was never raised by the Petitioners. Shri Vithalbai Patel died on 04.4.2014. Petitioners in order to have a claim of share in the separate property of late Shri Vithalbai Patel have started various litigations against Respondent No.2 and their children and this is one of the said litigations.

8. Respondents No. 2 to 4 as 'Directors' and 100 per cent shareholders are managing the affairs of the 1st Respondent Company. Petitioners having sold their shares and surrendered their share certificate have approached this Tribunal with unclean hands. There is no material change in the management of the Company as alleged by the Petitioners. It is stated that the power of attorney given by Petitioners No. 3 and 4 in favour of Petitioners No. 2 is only for the purpose of rectification of names in the Register of Members; but not

filing petitions under Section 397 and 398. Petitioners were allowed to have inspection of records of Respondent Company. In the Annual Return filed on 29.9.2012 transfer of shares to Petitioners has been disclosed. The same is available in the Ministry of Corporate Affairs website, and it forms part of the public record. Petitioners also inspected the Register of members and noted the Entries in the Register of Members transferring the shares in the names of the Petitioners. As per the records of the 1st Respondent Company as on the date of the petition, Respondent No.3 holds 40000 equity shares and Respondent No.4 holds 30000 equity shares in the 1st Respondent Company and thereby Respondents hold 100% equity share capital of Respondent No.1 Company. Petitioners have no right to interfere in the affairs of the Company having transferred their shares. In fact Respondents No. 2 to 4 have advanced unsecured loans to the 1st Respondent Company. As per records of the Company and in pursuance of Clause 20 of Articles of Association instrument of transfer was returned to late Shri Vithalbhair Patel who deposited the instrument of transfer with Respondent No.1 Company for transfer of share in his name. The Annual Return has been taken on record by Registrar of Companies. Respondents stated that there is no Clause in the Articles of Association of the Company to maintain the share of the Petitioners as 10% shareholding. Respondents also denied their averments that the 1st Respondent Company is a conversion of Partnership Firm. According to the Respondents as on the date of the Petition Respondent No.3 is holding 40000 equity shares and the Respondent No.4 is holding 30000 equity shares of the 1st Respondent Company. Respondent No.2 is holding 30000 equity shares of 1st Respondent Company. Thereby all the Respondents No. 2 to 4 are holding 100% shareholding in the Respondent Company. Respondents also denied the averment that the Company borrowed amounts from the Petitioners. Respondents stated that the Petitioners failed to produce any document to show that they are having shares in the 1st Respondent Company as on the date of filing of the Petition. The Respondents along with late Shri

Vithalbhai Patel, who is husband of Respondent No.2 and father of Respondents No. 3 and 4 were holding 90% shareholding in the Company since incorporation and their holding became 100% after transfer of Petitioners' shares in the name of late Shri Vithalbhai Patel. Therefore, there is no material change in the ownership of the Company, and therefore it is not an act of oppression or mismanagement. Respondents stated that the shares have been transferred from the Petitioners to late Shri Vithalbhai Patel and therefore Petitioners cannot call upon Respondents No. 2 to 4 regarding the consideration.

9. Heard the arguments of learned PCS for the Petitioners and of learned PCS for the Respondents No. 3 and 4.

10. This is a combined Petition seeking rectification in Register of Members of 1st Respondent Company, and complaining oppression and mismanagement in the conduct of affairs of 1st Respondent Company.

11. In the Petition, originally the Section of law mentioned is Sections 111, 111A, 397, 398 and 402 of the Companies Act, 1956. It appears that Sections 111 and 111A were struck off and Section 58 of the Companies Act, 2013 is mentioned.

12. Sections 111 and 111A of the Companies Act, 1956 correspond to Sections 58 and 59 of the Companies Act, 2013.

13. The averments made in the Petition and the reliefs prayed clearly go to show that the Petition is filed for the relief of rectification of Register of Members of 1st Respondent Company which is squarely covered by Section 59 but not by Section 58. Therefore, this Petition has to be treated as a Petition under Section 59. In fact, Sections 58 and 59 of the Companies Act, 2013 came into force from 12.9.2013. The period of limitation is provided for filing petitions under Section 58 of the Act of 2013. No period of limitation is provided for filing a Petition under Section 59 of the Companies Act, 2013.

Section 433 of the Companies Act, 2013, which says that the provisions of Limitation Act are applicable to the proceedings or Appeals before the Tribunal or the Appellate Tribunal, came into force only with effect from 1.6.2016. This Petition was presented before the Company Law Board, Mumbai Bench on 24th February, 2015. Therefore, the provisions of Limitation Act cannot be made applicable since Section 433 of the Act came into force with effect from 1.6.2016 only. Even otherwise, the transfer of shares in this case took place on 27.2.2012. This Petition is filed on 24.2.2015. Therefore, this Petition is filed within three years from the date of transfer of impugned shares.

14. In order to establish that Petitioners No. 1 to 4 and husband of Petitioner No.4, by name late Shri Mahendrabhai Patel, are holding shares in the 1st Respondent Company, they filed only the Memorandum of Association. A perusal of the Memorandum of Association, no doubt, shows that Petitioners No. 1 to 4 and late Shri Mahendrabhai Patel are having 2000 equity shares each in the 1st Respondent Company. This Memorandum of Association is dated 29.7.2002.

15. Even according to the Petitioners, their shares and the shares of late Mahendrabhai Patel were illegally transferred in the name of late Vithalbhai Patel, who is the husband of Respondent No.2 and father of Respondents No. 3 and 4. According to the Petitioners, they have not executed any transfer deeds and they have not been paid any consideration for transfer of shares. Petitioners also pleaded that late Mahendrabhai Patel died in the year 2008 and in support of the same filed his Death Certificate also. Petitioners further stated that the shares of late Mahendrabhai were also transferred in the year 2012.

15.1. Regarding the transfer of shares of Mahendrabhai Patel who died in the year 2008, it is the case of the Respondents that Petitioners have handed over the share certificates, and transfer

deeds to late Shri Vithalbai Patel and they were presented to the Company, and the transfer was effected in the year 2012. Shri Vithalbai Patel is no more. Therefore, so far as the transfer of shares of late Mahendrabhai Patel is concerned, it may not be a valid transfer. But there is no legal right for the Petitioners to question about the transfer of shares of Mahendrabhai Patel unless Mahendrabhai Patel gift his shares to one of the Petitioners or Mahendrabhai transfer his shares to Petitioner No.4.

16. It is the Petitioners who approached this Tribunal seeking rectification of names in the Register of members in the 1st Respondent Company on the ground that their names were removed from the Register of Members without sufficient cause. It is for the Petitioners to file the Share Certificates of their shares at least, prima facie, to show that they have not transferred their shares. Petitioners No. 1 to 4 did not choose to file their Share Certificates or the Share Certificates of late Mahendrabhai Patel. It is not even the case of the Petitioners that the share certificates of Petitioners and late Mahendrabhai Patel were stolen or misplaced. Moreover, it is the case of the Petitioner No.4 that as a legal heir she is entitled for the share of late Mahendrabhai Patel on the basis of a Pedhinama. It is stated in the petition that Annexure 'B' is the Pedhinama of late Mahendrabhai Patel at Pages No.16 and 17. A perusal of Pages No. 16 to 18 show that it only gives the Pedigree of Mahendrabhai Patel who died on 15.9.2008. There is no mention in those documents that the shares of late Mahendrabhai Patel were gifted to his wife Petitioner No.4. It is not even the case of the Petitioners that the shares of late Mahendrabhai Patel were transferred in the name of Petitioner No.4 which is effected in the Register of members of 1st Respondent Company after the death of Mahendrabhai Patel. Therefore, the claim of Petitioner No.4, that as a legal heir she is entitled for the shares of Mahendrabhai Patel, is not substantiated. Assuming for a moment that Petitioner No.4 as wife of Mahendrabhai Patel she is entitled for the shares of late Mahendrabhai Patel in the

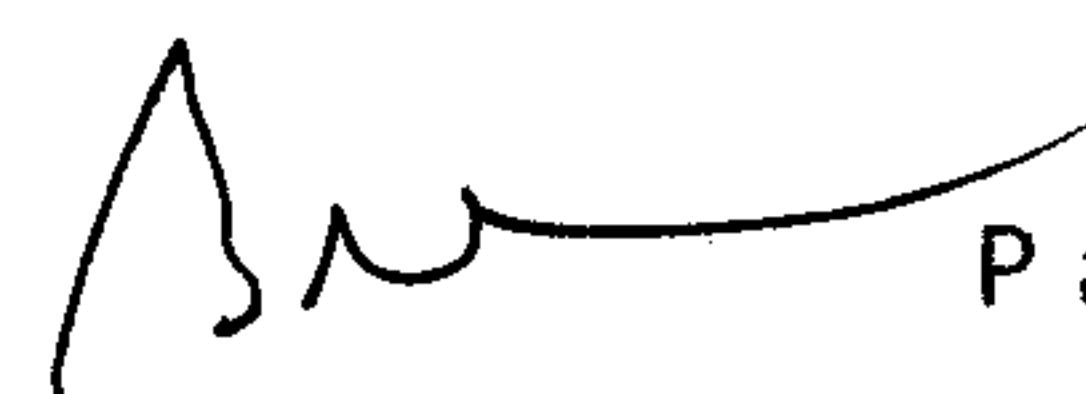
1st Respondent Company, she must be having the Share Certificates of late Mahendrabhai Patel. The Share Certificates of late Mahendrabhai Patel are also not produced. It is not even the case of the Petitioners that no Share Certificates were issued to them by the Company. Therefore, the non-production of Share Certificates by the Petitioners goes to show that their case that they have not transferred the shares appears to be highly improbable.

17. The Petitioners, with the permission of this Tribunal, took inspection of the Registers of the 1st Respondent Company. The said inspection of the Registers of the 1st Respondent Company made by the Petitioners in the presence of their Professional and observer on 16.5.2015 discloses that in the Register of Members, Folio Nos. 3 to 7 reflect the Transfer of shares of late Mahendrabhai Patel, Petitioner No.1, 4, Petitioner No.2 and Petitioner No.3 respectively. The Observer's Report also discloses that the shares of Petitioners No. 1 to 4 and of late Mahendrabhai Patel were transferred in the name of late Vithalbhai Patel. The Petitioners themselves filed Annual Return for the year 2011-2012 of the 1st Respondent Company and in the Annexure annexed to it, it is clearly mentioned that the shares of Petitioners No. 1 to 4 and of Mahendrabhai Patel were transferred to late Vithalbhai Patel and the relevant Form was duly uploaded in the Webside of the Registrar of Companies. Respondent No.6 Company Secretary also give Compliance Certificate for the year 2012. Respondent No.5 Company Secretary filed Annual Return dated 29.9.2012. The Petitioners although stated that Respondent No.6 gave a wrong Compliance Certificate and Respondent No.5 wrongly certified the Annual Return, no material is placed on record to substantiate such allegations.

18. Learned PCS appearing for the Petitioners relied upon a decision of the Hon'ble Supreme Court in ***M.S. Madhusoodhanan Vs. Kerala Kaumudi Pvt.Ltd.***, reported in **2003 (0) GLHEL-SC 16189**. In that decision, in Para No. 166 it is clearly held that when

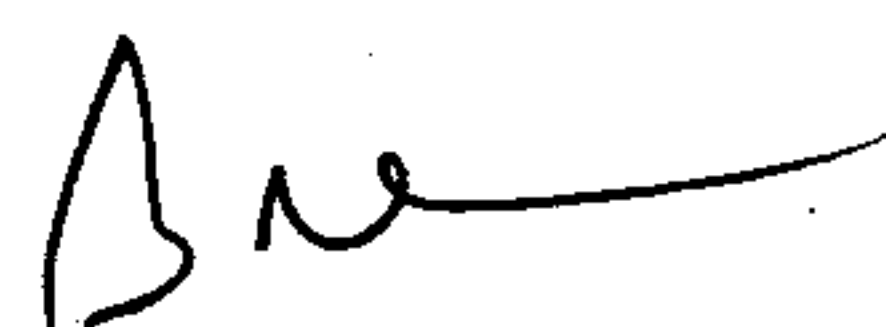


the documents duly maintained by the company recording the transfer of shares had not been disproved, a finding that there are no share transfer deeds and there was no transfer of shares effected cannot be accepted. In that Paragraph, it is also held by the Hon'ble Supreme Court that in the absence of proof of the record that the Registers of the Company were not duly maintained the contention that the provisions of Section 108 of the Companies Act have not been followed cannot be upheld. Therefore, the above decision relied upon by the learned PCS for the Petitioners, in my view, is more applicable to the case of the Respondents than the case of the Petitioners. In the case on hand, the Register of Members and Annual Return show that there was transfer of shares of Petitioners No. 1 to 4 and of late Mahendrabhai Patel to late Vithalbhair Patel. Unless and until the said two documents had been disproved, it is not possible to give a finding that the shares have not been transferred on the ground that Section 108 has not been followed, more so when the Petitioners failed to produce their Share Certificates and the share certificates of late Mahendrabhai Patel. Learned PCS appearing for the Petitioners, in support of his contention that the Tribunal has got jurisdiction to entertain this Petition for rectification in Register of Members, relied upon the decision of the Hon'ble Andhra Pradesh High Court in **T. Rajendra Vs. Aryabhata Solutions Ltd.**, reported in **2016 (2) ALD 329**. In that decision, the Hon'ble High Court of Andhra Pradesh, quoting the decision of the Hon'ble Supreme Court in *Ammonia Supplies Corpn. Vs. Modern Plastic Containers (P) Ltd.*, (reported in 1998 94 CC 310), and referring to the latest provisions of the Companies Act, 2013, ultimately concluded that the issue of fraud has to be decided by the Civil Court, and basing upon the finding of the Civil Court the Petitioners shall approach the Company Law Board for rectification of Register. In the case on hand, it is not even the case of the Petitioners that their signatures were forged on the Transfer Deeds; and it is not even the case of the Petitioners that fraud, undue influence or coercion have been played on them in order to procure

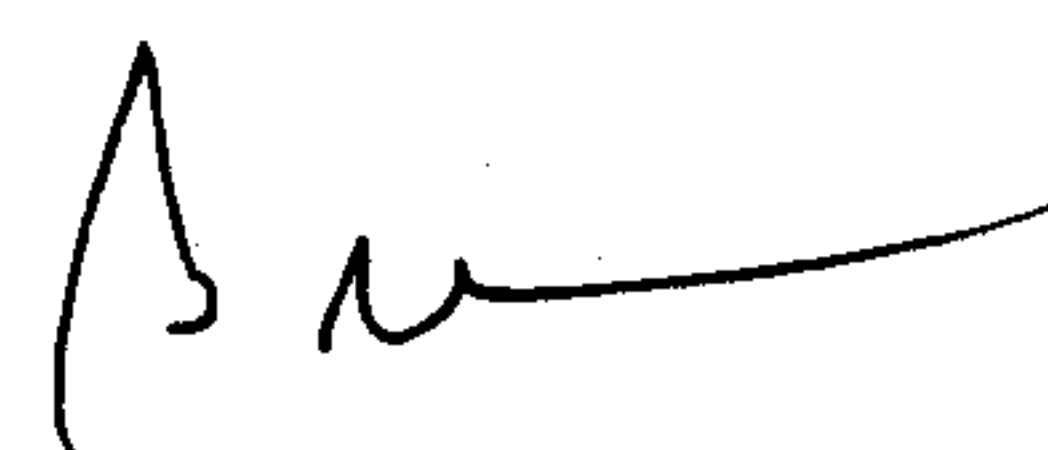


duly signed Transfer Forms from them. It is the case of the Petitioners that they have not handed over Share Certificates and that they have not handed over Share Transfer Forms to any one. But once the share transfer is effected in the Register of Members, unless and until it is disproved the Petitioners cannot obtain relief of rectification of their names in the Register of Members.

19. Now coming to the aspect of delay and laches on the part of the Petitioners, in the case on hand the transfer of shares took place on 27.2.2012 and the same was shown in the Register of Members and as well as in the relevant Annual Return duly certified by the Chartered Accountant and the Compliance Certificate issued by the Company Secretary. According to the petitioners, for the first time, they raised the dispute regarding the transfer of shares only by issuing a letter dated 6.8.2014. That means, nearly for a period of two and a half years Petitioners had not raised their little finger although their names were removed in the Register of Members of 1st Respondent Company and the name of Vithalbai Patel was entered. In view of the fact that the relevant Form was uploaded in the Website of the Registrar of Companies for the relevant year, it can only be said that the Petitioners have got knowledge of the removal of their names from the Register of Members. No reasons were given, much less sufficient reasons, for the delay of nearly 2 ½ years in questioning about the removal of their names from the Register of Members. On this aspect, learned PCS appearing for the Petitioners relied upon the decision of the Hon'ble Bombay High Court in ***Sulochana Neelkanth Kalyani Vs. Takle Investments Company***, reported in **2016 (0) ALJ-MH 173666**. In that decision, it is held that the Company Law Board noted several admitted points for holding the transfer to be in contravention of Section 108. In that case the answering Respondents did not produce the Register of Members of the Company. In that case the purported Annual Returns filed by the Registrar of Companies had not related to the transfers claimed to have been executed. But in the case on hand, the Register of



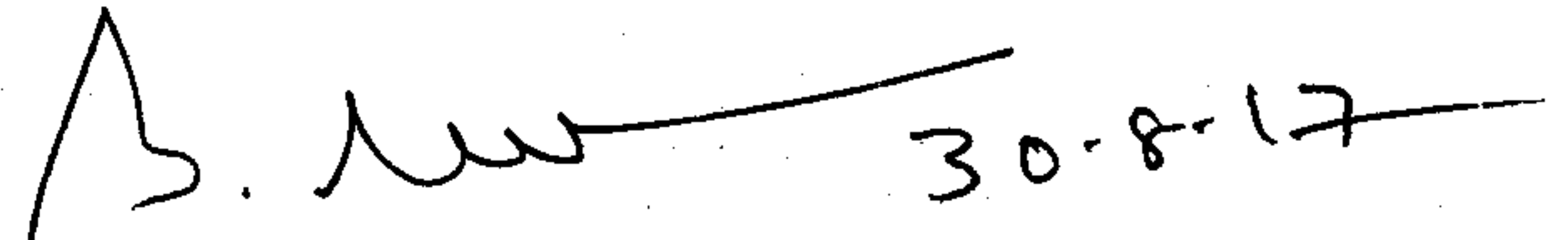
Members discloses transfer of shares of Petitioners No. 1 to 4 and of Mahendrabhai Patel to Vithalbhai Patel in the year 2012 itself and the Annual Returns relate to the impugned shares. Therefore, on the ground that Section 108 has not been followed, the rectification cannot be ordered. In the above said decision, it is also held that delay must give rise to a case of acquiescence, waiver or estoppel. These things would depend upon the facts of each case, as held in the above decision. In the case on hand, Petitioners together with Mahendrabhai Patel were having only 10% shareholding in the Company, and the Respondents and Vithalbhai Patel were having 90% shares in the Company. The origin of the Company is from a Partnership Firm. It appears that strict procedural law has not been followed. It cannot be said that Petitioners have no knowledge of transfer of shares. Petitioners did not give any reason for not questioning the transfer of shares and not applying for rectification of Register of Members till 2015. The Company is running a Hotel. It is doing business. Three years after the transfer of shares, the shareholders are disputing the transfer of shares on the ground that there is no transfer deed especially when the shares are transferred to a person who is no more. Certainly, there is acquiescence, waiver or estoppel on the part of the Petitioners. Moreover, the transfer of shares also gives certain rights to the Transferee of shares in these three years in the business of the Company. From the pleadings of the Petitioners and from the Balance Sheet of Hotel Satyaketu Pvt.Ltd., it appears that it has taken a loan from one Hotel Oasis in which the Petitioners are also shareholders. It appears that unsecured loans have also not been paid by the 1st Respondent Company to the Petitioners and therefore that made the Petitioners to raise the dispute regarding the transfer of their shares in favour of Vithalbhai Patel. Therefore, there is also delay and laches on the part of the Petitioners which certainly, in the facts and circumstances of the case, amounts to acquiescence, waiver or estoppel.



20. In view of the above discussion, the Petitioners are not entitled to the relief for rectification of Register of Members of 1st Respondent Company. Once the Petitioners are not entitled to the relief of rectification of Register of members, they are not entitled to file the Petition alleging oppression or mismanagement. Moreover, a perusal of the Petition shows that no specific allegation of oppression or mismanagement is made except alleging wrong Annual Returns have been filed and wrong Compliance Certificate has been obtained.

21. In the result, the Petition is dismissed. Application TP 93-A (CA 74/2015) is closed. In the facts and circumstances of the case, there is no order as to costs.

Signature:

Handwritten signature of Sri Bikki Raveendra Babu, dated 30-8-17.

Sri Bikki Raveendra Babu, Member (J).