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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**IA 108/2017 In TP No. 61/397-398/NCLT/AHM/2016 (New)
C.P. No. 16/397-398/CLB/MB/2014 (Old)**

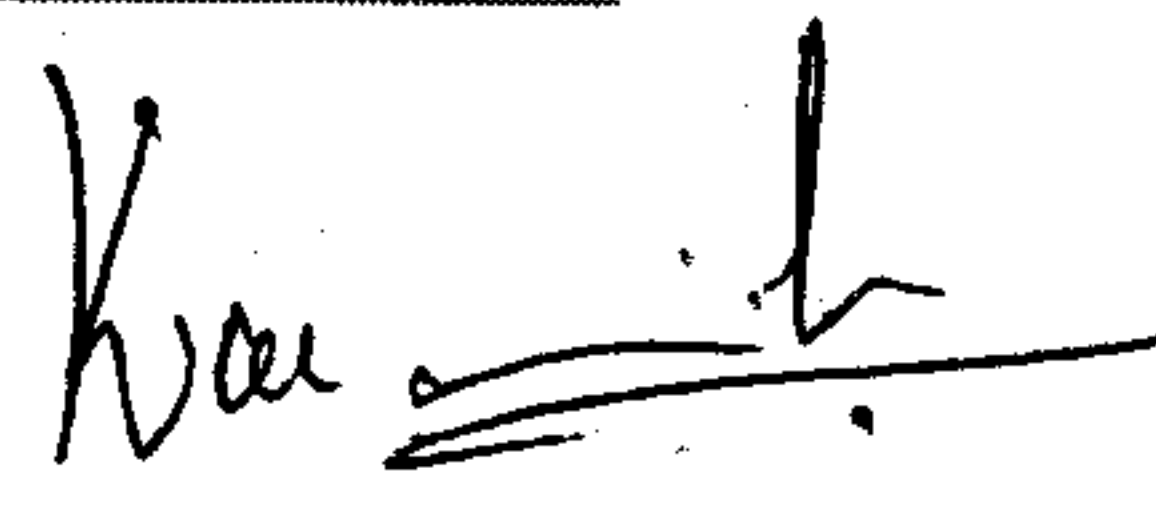
Coram:

**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 18.05.2017**

Name of the Company: Dr. Nitin Modi & Ors.
V/s.
Sobhagya Hospital & Research Centre 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. | Kunal P Vaishnav | Advocate | Resp No. 1 & 3 |  |
| 2. | | | | |

ORDER

None present for Petitioner. Learned Advocate Mr. Kunal Vaishnav present for Respondents no. 1 and 3. None present for other Respondents.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 18th day of May, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

IA No.108/NCLT/AHM/2017

In

T.P. No. 61/397-398/NCLT/AHM/2016

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 18th day of May, 2017

In the matter of:

1. Dr. Nitin Modi,
2. Dr. Hari Prasad Yadav,
3. Dr. Sandeep Julka,
4. Dr. Ravi Nagar : Applicants.

Appearance:

Shri Manoj Munshi, learned Advocate for Applicant/Original Respondents No. 4 and 7.

Dr. H.P. Yadav, Respondent No.5 present in person.

Shri Kunal Vaishnav, learned counsel for Respondents No. 1 and 3.

FINAL ORDER

Pronounced on 18th day of May, 2017

1. Respondents No. 4 to 7 in T.P. No. 61 of 2016 filed this Application under Rule 11 read with Rule 154 and 155 of the National Company Law Tribunal Rules, 2016 seeking modification in the order dated 22nd March, 2017.



2. The facts, in brief, that are germane for the disposal of this Application are as follows;

2.1. T.P. No. 61 of 2016 (CP No. 16 of 2014) was disposed of by the Company Law Board by its order dated 15.12.2014 basing upon the Consent Terms which are embodied in Annexures "A" and "B". Thereafter, there were certain disputes in implementation of the Consent Terms. That made Petitioners No. 2 to 4, Respondents No. 4 to 7, Respondents No. 1 and 3 and Respondent No.2 to file applications seeking directions from the Company Law Board which were transferred to this Tribunal. This Tribunal, after hearing elaborate arguments, passed Common Order in all those Applications on 22nd March, 2017.

3. Now, Respondents No. 4 to 7 filed this Application

- i. to recall and modify the order dated 22nd March, 2017 in order to hold that Respondents No. 2 and 3 have committed breach of Clause 4, Clause 7 and Clause 8 of Annexure "B";
- ii. to recall and modify Paras, 42, 43, 48 and 50 of the order dated 22.3.2017 to the extent as stated in Paras A, B, C, D, E and F of the Petition;
- iii. to recall the direction to deposit entire sale consideration by demand draft in the name of Respondent No.1 Company with the Registry of this Tribunal on or before 13.7.2017 as the same was not contemplated in the Consent Terms Annexure "B".

4. This Tribunal, on 15.5.2017 directed the Applicants to serve notice on all the professionals appearing in the matter and

file proof of service. It appears that the Applicants have not filed any proof of service of notice on all the professionals appearing in the matter. However, it appears that the Applicants gave notice of this Application before filing of this Application. In this Application, on behalf of Respondent No.3 adjournment was sought for on 15.5.2017 and it was posted on 17.5.2017 for hearing before admission. Since the Application is taken up for hearing on the aspect of admission, there is no need to insist upon notice to all the contesting parties.

5. The point for consideration is whether this Application can be admitted.

6. This Application is filed under Rule 11 read with Rules 154 and 155 of the NCLT Rules. Rule 11 of the Rules deals with insolvency powers of the Court. Rules 154 of the NCLT Rules deal with rectification of orders in case any clerical or arithmetical errors are there in the order arising out of accidental slip or omission. Rule 155 deals with the power to amend the pleadings. Therefore, both the Rules are not applicable for the prayers made in this Application. Rule 11, no doubt, gives inherent powers to this Tribunal to pass orders as may be necessary to meet the ends of justice or to prevent abuse of the process of the Tribunal.

7. As can be seen from the contents of the Application, it goes to show that it is not filed to meet the ends of justice or to prevent abuse of process of the Tribunal. It appears that this Application is filed only to see that the order is amended as per the contentions of the Respondents No. 4 to 7. This Tribunal in its order dated 22nd March, 2017 pointed out only certain breaches that were committed in implementation of the Consent Terms to the extent that it is necessary for giving appropriate directions or orders. Simply because there is no reference to the breach of Clauses 7 and 8 of Annexure "B" in order, it

cannot be said that it is an apparent mistake on the face of the record. During the course of arguments, learned counsel for the Applicants referred to Section 420. ^{of C.A. No. 2013} Sub-section (2) of Section 420 says that the Tribunal may rectify any mistake apparent from the record if the said mistake is brought to the notice of the Tribunal by the parties and shall make amendment accordingly. In the case on hand, as already said, there is no mistake apparent on the record.

8. The prayer to recall Paras, 42, 43, 48 and 50 of the order dated 22.3.2017 is not at all warranted in the facts of the case. The direction to decide the entire sale consideration is the order passed by this Tribunal, after considering the entire facts and circumstances of the Consent Terms. However, the claim of the Respondents No. 4 to 7 regarding professional fee is still open in view of the order of this Tribunal in Paragraph No. 50, which is as follows;

“This Tribunal, while appointing the Managing Committee, will give appropriate directions to the Managing Committee in respect of professional charges”

Therefore, there are no grounds to admit this Application. Moreover, this Application is not at all maintainable.

9. In the Result, this Application is dismissed at the admission stage itself.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

*Pronounced by me in open court on
 this the 18th day of May, 2017.*

RMR, PS.