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**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**IA 19/2017 in TP No. 123/397-398/NCLT/AHM/2016 (New)  
CP No. 26/397-398/CLB/MB/2016 (Old)**

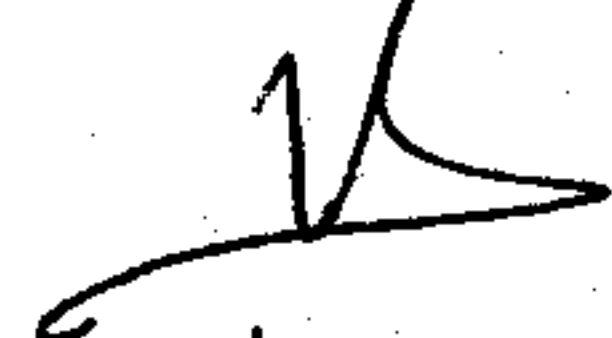

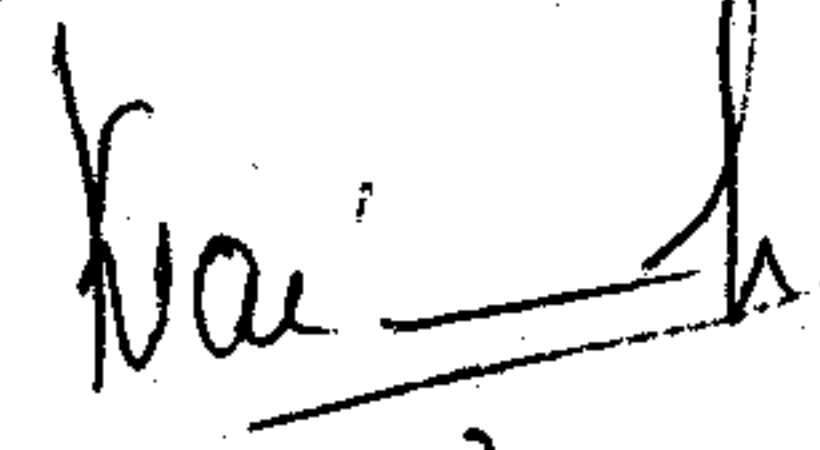
Coram:

**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 21.09.2017**

Name of the Company: Kanakbhai Ratilal Patel  
V/s.  
Balajikrupa Estates 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.	Vaibhavi Parikh.	Advocate	Resp No. 1 to 3.	
2.	Pavan Godiawala	"	petitioner.	
3.	Kunal Vaishnav	Advocate	Resp No. 4	

**ORDER**

Learned Advocate Mr. Pavan Godiawala present for Original Petitioner. Learned Advocate Ms. Vaibhavi Parikh present for Original Respondents Nos.1 to 3. Learned Advocate Mr. Kunal Vaishnav present for Original Respondent No.4.

Order in IA 19/2017 is pronounced in open Court. Vide separate sheets.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 21st day of September, 2017.

**BEFORE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH**

**I.A. No. 19 of 2017**

**In**

**TP No. 123 /397-398/NCLT/AHM/2016**

**CP No. 26/397-398/CLB/MB/2016 (Old)**

**In the matter of:**

Mr. Kanakbhai Ratilal Patel  
Residing at 57, Wavertree Road  
Streatham Hill  
London SW 2 3 SL (UK)  
Having local address at  
C/o. Sureshbhai P. Patel  
"Panch Bungalows"  
Behind Pankaj Parikhs Hosp,  
Nr. Shastri Park  
Anand-388001  
Gujarat.

: Petitioner/Applicant.

Versus

1. Balajikrupa Estates Private Ltd.,  
8, Satyam Apartment,  
13, Sampatrao Colony,  
Alkapuri,  
Vadodara-390007
2. Mr.Pravinbhai Manibhai Patel,
3. Mr. Ashish Pravinbhai Patel  
Both residing at 8, Satyam  
Apartment,  
13, Sampatrao Colony,  
Alkapuri,  
Vadodara-390007
4. M/s. Rama Lifespace Pvt.Ltd.,  
Registered Office at  
101, Yuva Complex,  
Near Dr. Batra's Clinic  
Gotri Road,  
Vadodara-390007

: Respondents.



5. Mr. Chimanbhai Dahyabhai Patel  
Box 40916  
Nairobi KE
6. Mr. Bhupendrakumar Ravjibhai Patel  
19, Dwarika Society,  
B/h Narmada Guest House,  
Race Course Circle,  
Vadodara-390007

: Proposed  
Respondents.

Order delivered on 21<sup>st</sup> September, 2017.

**Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).**

**Appearance:**

Mr. Pavan Godiawala, learned Advocate for Petitioner.  
Ms. Vaibhavi Parikh, learned Advocate for Respondents No. 1 to 3.  
Mr. Kunal Vaishnav, learned Advocate for Respondent No.4.

**ORDER**

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

1.1. Applicant filed Company Petition No. 26 of 2016 before the Company Law Board on 5<sup>th</sup> October, 2015 against Respondents No. 1 to 4 herein alleging certain acts of oppression and mismanagement. The said Petition came to be transferred to this Tribunal and renumbered as "TP No. 123/397-398/NCLT/AHM/2016". During the hearing on 17.10.2016, it was noticed that all the Directors of 1<sup>st</sup> Respondent Company were not shown as Respondents and therefore this Tribunal directed the Petitioner to take steps to bring all the Directors of the 1<sup>st</sup> Respondent as 'Respondents' in the main Petition. Thereafter, the Original-Petitioner filed this Application seeking to add Respondents No. 5 and 6 herein as 'Respondents' in Company



Petition No. TP No. 123 of 2016 and seeking permission to file copy of Consent Letters from the members supporting the Petitioner at Exhibit 4 and carry out the necessary amendments in the main Company petition. It is stated in the Application that all the Directors of the 1<sup>st</sup> Respondent Company are required to be joined as 'party Respondents' in the main Petition. Applicant along with the main Petition at Exhibit 3 furnished List of Directors which includes Respondents No. 5 and 6/proposed parties.

2. It is also stated in the Application that due to oversight, the Consent Letters supporting the Petition are not filed along with Exhibit 4 although it is stated that they were filed. Applicant filed Consent Letters along with this Application and sought to mark them as 'Pages 80-A onwards in Exhibit 4.

3. In this Application, 2<sup>nd</sup> Respondent filed Reply stating that the proceedings in the main Petition are barred by limitation in view of the fact that the cause of action arose on 23.1.2012 and the Company Petition has been filed on 5.10.2015. It is stated in the Reply that since no Consent Letters are in existence Applicant failed to produce the Consent Letters along with the Original Petition and therefore such Consent Letters cannot be allowed to come on record. It is also stated that Consent Letters are not on Affidavit and they are not notarized. It is stated that Consent Letters when compared with list of shareholders do not tally. The Consent Letters consenting shareholders collectively hold only 32500 equity shares as against 35000 equity shares mentioned in the Company Petition. The Consent Letters of Rikin Patel, Hiren Patel and Prinit Patel who individually claim to be shareholders of 1250 equity shares are not even the shareholders in the Register of Members of the Company. In fact, late Mr. Surendra J. Patel who is the father of Rikin Patel, Hiren Patel and Prinit Patel was holding 1250 shares as shareholder of 1<sup>st</sup> Respondent Company. It is further stated that the Respondent Company has not received any intimation or application for transmission of the shares of late Mr. Surendra J. Patel in the names

of Rikin Patel, Hiren Patel and Prinit Patel. It is stated that the Company Petition is filed to wrest control of the Respondent Company from the Respondents. Applicant filed Rejoinder stating that the Original Petition is not barred by law of limitation since it is filed prior to coming into force of section 433 of Companies Act, 2013 which came into force from 1.6.2016. It is also stated in the Rejoinder that the Consent Letters are of the family members and therefore the question of non-existence of Consent Letters is not there. The names of the persons who gave Consent Letters are reflected in the Annual Return and therefore they are the shareholders.

4. The points for consideration are (1) whether the Original-Petitioner/Applicant can be permitted to bring on record Respondents No. 5 and 6 herein as 'Respondents No. 5 and 6' in TP No. 123 of 2016; and (2) whether the original-Petitioner/Applicant can be permitted to bring on record the Consent Letters of the shareholders that are supporting the Petitioner at Exhibit-4 of the main Petition.

5. Insofar as impleading 'Respondents No. 5 and 6' in the main Petition, learned Counsel appearing for the Respondents did not oppose the same. Moreover, this Tribunal, by its Order dated 17.10.2016 directed the Petitioner to bring all the Directors of the 1<sup>st</sup> Respondent Company as "Respondents" in the main Petition. The List of Directors of 1<sup>st</sup> Respondent Company filed along with the main Petition, clearly shows that 'Respondents No. 5 and 6' are also Directors of the 1<sup>st</sup> Respondent Company. The presence of Respondents No. 5 and 6 herein as 'parties' to the main Petition is necessary for deciding the issues involved in the Company Petition. Therefore, original-Petitioner/Applicant is permitted to add proposed Respondents No. 5 and 6 as "Respondent No. 5 and Respondent No.6 in TP No. 123 of 2016.





6. The Company Petition is filed by one shareholder, by name Mr. Kanakbhai Ratilal Patel, who is the present Applicant. In Page No.6 of the Company Petition, it is stated that 35,000 other equity shareholders of the 1<sup>st</sup> Respondent Company gave consent to the Petitioner to initiate the Company Petition against the ongoing oppression and mismanagement committed by the Respondents in the conduct of the affairs of the 1<sup>st</sup> Respondent Company. It is also stated in the Petition that the Petitioner along with other dissenting members in aggregate holding is 47,000 equity shares. It is also mentioned in the Petition that the copies of the Consent Letters and Audited Balance Sheet are made available collectively in Exhibit 4. But, a perusal of Exhibit 4 shows that only the Audited Balance Sheet is there, but not Consent Letters.

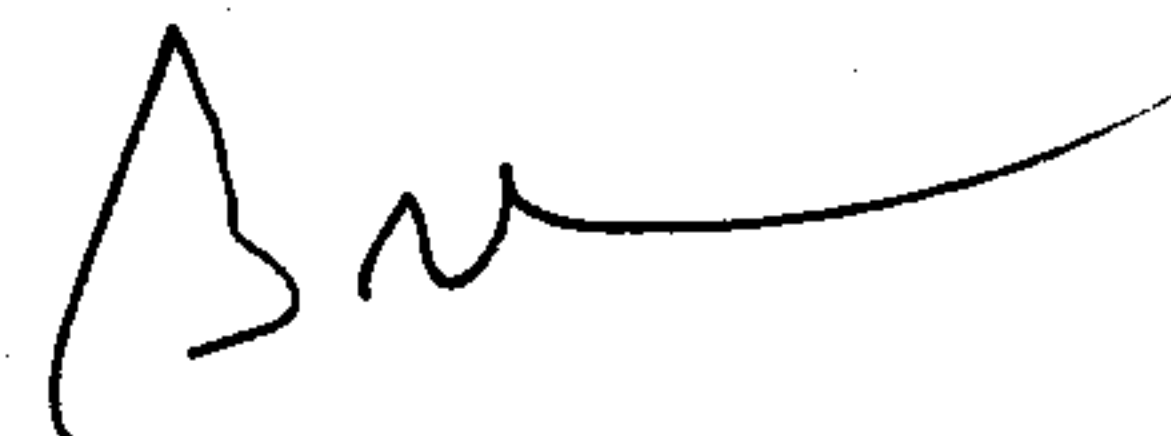
7. It is the version of the Applicant herein that due to inadvertence and oversight the Consent Letters of the other shareholders could not be enclosed along with Exhibit 4 although it is stated as enclosed with Exhibit 4 of the main Petition. The main objection of the Respondent is that the Consent Letters were not in existence when the Petition was filed and they were later on brought into existence. The contention of the learned Counsel for the Petitioner/Applicant is that the consenting shareholders are none other than the family members of the original-Petitioner and therefore the non-existence of Consent Letters as on the date of filing of the Petition does not arise. The controversy, whether the Consent Letters were in existence as on the date of filing of the Petition or they were brought into existence subsequently, is not an issue to be adjudicated in this Application. Petitioner specifically stated in the Petition that shareholders holding 35000 equity shares gave Consent Letters. A perusal of the Consent Letters filed along with this Application show that they do not bear any date. No doubt, they are not notarized. The genuineness or otherwise of the Consent Letters also need not be gone into in this Application.

8. Another aspect raised by the Respondent is that the persons who gave Consent Letters are not there in the List of

Shareholders. This is also a matter that need not be probed in this Application at this stage. When there is an averment in the Petition that Consent Letters were filed and when they were not in fact filed, and when it is stated by the Applicant that it was due to oversight, in such circumstances, there is no point in refusing the request of the Petitioner to file Consent Letters. The question whether the filing of the Consent Letters, after the filing of the petition, is sufficient compliance of Section 399 of the Companies Act, 1956 or not, is also a matter that need not be gone into in this Application. The proposed Amendment, namely the filing of the Consent Letters, is not against the pleadings on record. The proposed Amendment is not going to change the cause of action. The proposed Amendment is not going to cause any prejudice to the contentions of the Respondents. Respondents are at liberty to contend that valid consent is not there and the Consent Letters are not valid, and the contention, that Consent Letters filed subsequently and not filed along with the Petition, cannot be taken into consideration in deciding the eligibility aspect.

9. Coming to the limitation aspect, Section 433 of the Companies Act, 2013 came into force from 1.6.2016. The Company Petition was filed on 5<sup>th</sup> October, 2015. In the Old Act, there is no provision which says that the provisions of the Limitation Act are applicable. Moreover, it is stated in the Petition that the alleged acts of oppression and mismanagement are continuous acts. Therefore, the issue of limitation may not be a ground for not allowing the proposed Amendment.

10. In view of the above discussion, this Application is allowed and the original-Petitioner/Applicant is permitted to bring on record Respondents no. 5 and 6 in TP 123/2016 and amend the Petition by filing the Consent Letters as part of Exhibit-4 numbering them from Page No. 80A onwards.



11. Application is ordered accordingly.

Signature:

A handwritten signature in black ink, appearing to be 'Sri Bikki Raveendra Babu', with the date '21.9.17' written to its right.

**Sri Bikki Raveendra Babu, Member (J).**