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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**Ivn. P No. 1 of 2017 in TP No. 119/397-398/NCLT/AHM/2016 (New)
CP No. 23/397-398/CLB/MB/2015 (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 27.10.2017**

Name of the Company: Nasreen Kowsar & Anr.
V/s.
DB Shapriya Construction 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>
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1.

2.

ORDER

None present for Original Petitioner. None present for Original Respondent No.1.
None present for Original Respondent No.1.

Common Order in Intervening petition no. 1/2017 and IA 32/2017 pronounced in
open court. Vide separate Sheets.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 27th day of October, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AMEDABAD BENCH
AHMEDABAD**

**IA 32 of 2017
Intervening Petition No. 1 of 2017 in
TP No. 119/397-398/NCLT/AHM/2016 (New)
CP No. 23/397-398/CLB/MB/2015 (old)**

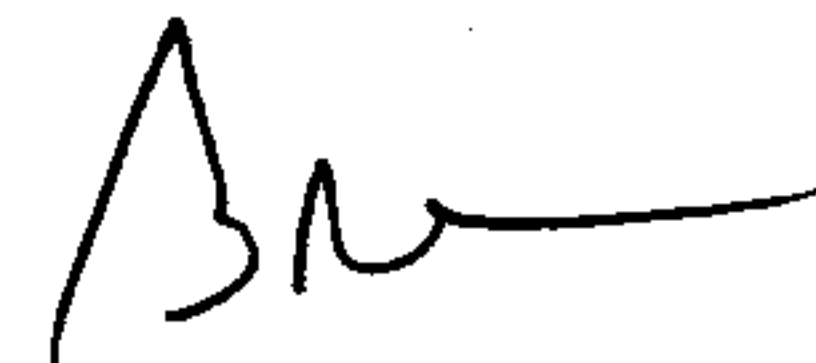
In the matter of:

Mr. Dhiren Pratapmal Bhandari
Flat No. 203, Twins Corner CHS Ltd.
Plot No. 1, Sector 17, Nerul
Navi Mumbai – 400 706

Petitioner

VERSUS

1. DB Shapriya Construction Limited.
310 Devpath Complex
Behind Lal Bungalow
Off. C.G. Road, Navrangpura
Ahmedabad 380 009
2. Mr. Kishor D. Shapriya
C/o. DB Shapriya Construction Ltd.,
C/o. DB Shapriya & Co. Ltd.
27-28 Nyerere Road, P.O. Box 3221
Dar es Salaam, Tanzania
3. Mr. Amish Kishore Shapriya
9, Linden Lea, Westfield Park
Pinner Middlesex, HA 5 4 JH
United Kingdom
4. Mr. Ashish Laxmiswarup Srivastava
972, Sector – A, Pocket "B"
Vasankunj, New Delhi 110 070



5. Mr. Dipackumar Chandrakant Kotak
Plot No. 872 Upanga, Dar es Salaam
Na, United Republic of Tanzania

6. Dr. B.S. Sreekumar
254 Alykhan Road
Upanga, Dar es Salaam, 948,
Tanzania

Respondents

Order delivered on 27th October, 2017

CORAM: Hon'ble Mr. Bikki Raveendra Babu, Member Judicial

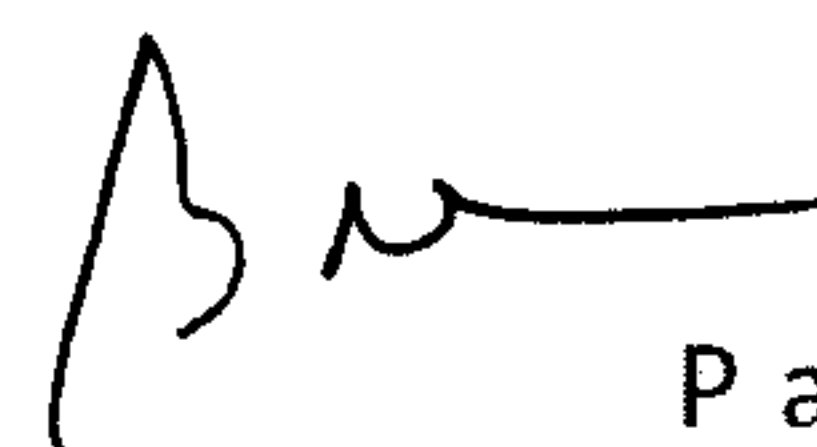
Appearance:

For the petitioners: Learned PCS Mr. M.P. Sharma
And intervener petitioner

For the respondent no. 1: Learned PCS Mr. Kunjal Dalal

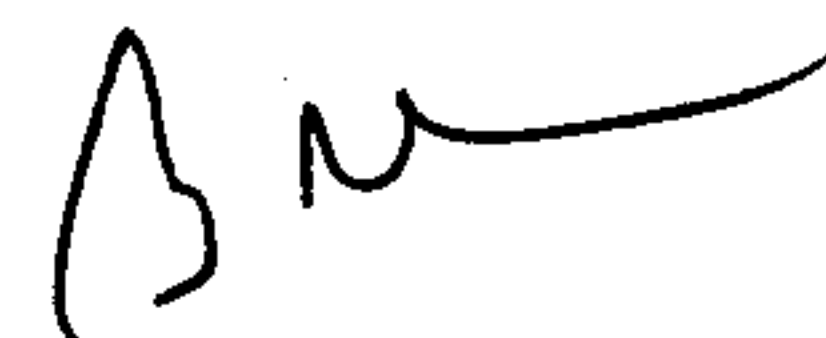
COMMON ORDER

01. Original respondent No. 1 filed IA No. 32 of 2017 challenging the maintainability of the petition on the ground that the petitioners are not eligible to file this petition.
02. Ms. Nasreen Kowsar and Ms. Pratiksha Bhandari who are also shareholders in the first respondent company have filed Intervening Application No. 1 of 2017.
03. It is the case of the original respondents that original petitioner is having only one equity share of face value of Rs. 10/-each constituting 0.001% of shareholding of the first respondent



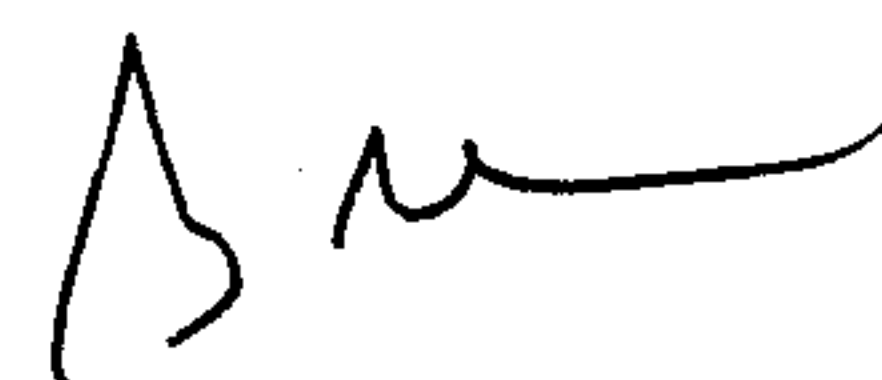
company and, therefore, he is not eligible to file this Company Petition under Section 399 of the Companies Act, 1956. It is also the case of the original respondents that as on date of filing Company Petition, there are 13 shareholders in the first respondent company as per the register of members and, therefore, the original petitioner being one in number is not eligible to file this Company Petition under Section 399 of the Companies Act, 1956. It is the case of the original petitioner that as Director of the first respondent company he has got right under section 397 and 398 of the Companies Act, 1956 to file this petition before The National Company Law Tribunal. In support of contention of original petitioner, he relied upon decision in K.N. Bhandari and Ors. vs. Trackparts of India Ltd. and Ors. reported in 2001 104 CompCas 611 CLB and Bajrang Jalan and Ors. vs. Mahabir Prasad Jalan and Ors. reported in AIR 1999 Cal 156.

04. Another contention of original petitioner is that although petition is filed under Section 241 and 242 of the Companies Act, 2013, the Company Law Board admitted the petition under section 397-398 and, therefore, this petition is in order.
05. It is the case of the intervening petitioners that the first respondent company through respondents No. 2 and 3 have fraudulently negotiated with them for surrendering the shares acquired by them by virtue of subscription and investment in the first respondent company. It is also the case of the



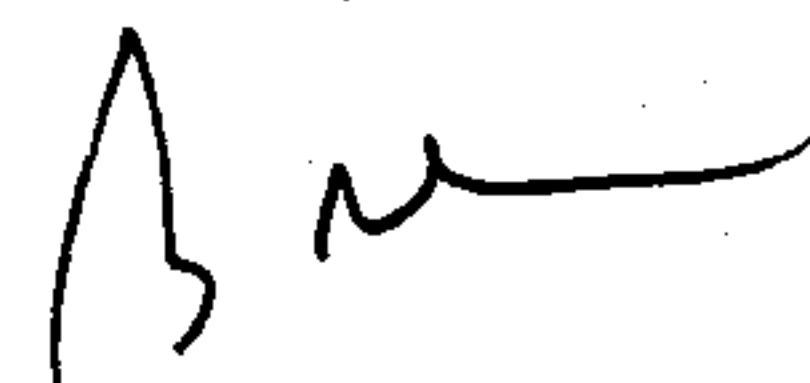
intervening petitioners that the first respondent company have indulged in malpractices by withholding the payment of legitimate unpaid salary due to the intervening petitioners inspite orders of Labour Court. It is also the case of the interveners that the first respondent company failed to serve notice of meetings, copies of proceedings and copies balance sheets on them. According to interveners they are necessary party to the present petition that is pending before this Tribunal in TP No. 119 of 2016 and it is also stated that if the relief prayed in the petition is not granted in favour of the petitioner, they would suffer damage, injury, prejudice and great hardship. It is stated that one of the interveners Ms. Nasreen Kowsar was also appointed as employee of the first respondent company as Senior Accounts Officer – Admin. Cum Site Accountant in the pay scale CTC Rs. 5,04,000/- per annum and she was working in the same post since June 2012 and she was not paid salary arrears from December 2014 till October, 2015 totalling Rs. 5,83,470/-. It is also a grievance of the interveners that they have not been issued share certificates. According to the interveners there are seven members in the first respondent company since inception and the interveners together with petitioners become three members and all the three members forms nearly 42% of the members in the company and, therefore, they are qualified to file this petition.

06. Objection of the original respondents in the intervening application is that the application has been made without proper



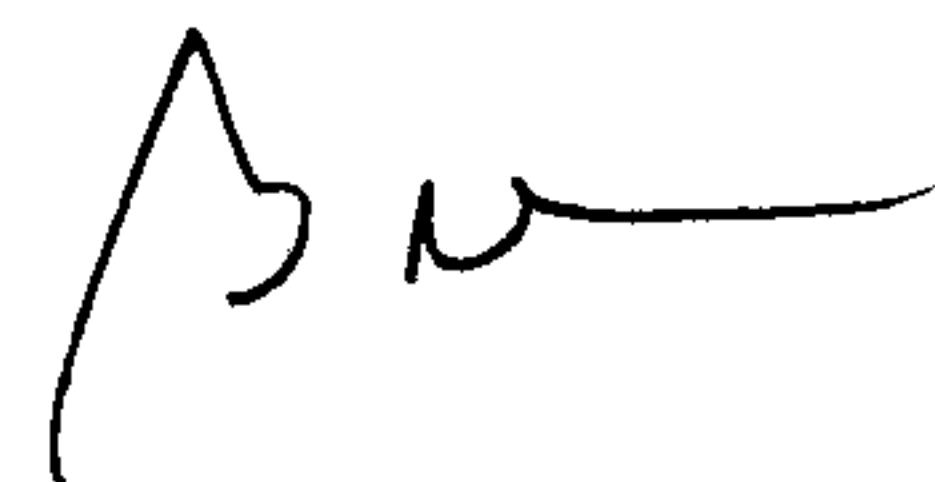
power of attorney and the power of attorney filed with the application has been obtained after signing of the petition. It is also stated that there is no provision in CPC permitting the interveners to file this petition and they themselves got added as petitioners. It is the case of the original respondents that interveners were entered as subscribers to Memorandum of Association and Article of Association of the first respondent company at the time of incorporation only to meet the minimum seven members required for incorporating a public limited company. According to original respondents, interveners have not subscribed any amount in the shares of the first respondent company. Non-payment of salary to one of the interveners is not a matter of oppression and mismanagement and that cannot be decided by NCLT. It is the plea of original respondents that in case interveners were allowed to come on record as petitioner, it would have bearing on the result on maintainability of CP 119 of 2016.

07. Section 399 of the Companies Act, 1956 says that petition under section 397 or 398 of the Companies Act, 1956 can be made by not less than one hundred members of the Company or not less than one-tenth of the total members of the company. In the case on hand, admittedly, petitioners are having only 0.001% of shareholding of the first respondent company. As per the register of the first respondent company there are 13 shareholders as on the date of filing of original petition. Therefore, the sole petitioner who filed CP 119 of 2016 is not at

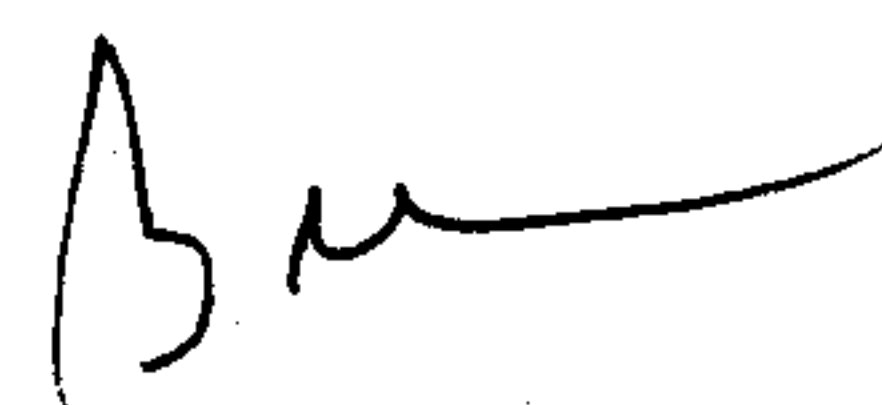


all eligible to file this petition. Here it is necessary to refer to the decisions in K.N. Bhargava and Ors. vs. Trackparts of India Ltd. and Ors. and Bajrang Prasad Jalan and Ors. vs. Mahabir Prasad Jalan and Ors. In the first decision there was a family agreement and it was taken into consideration in deciding the controversy in the decision. In the second decision it has nothing to do with the facts of this case. Therefore, original petitioner is not eligible to file TP 119 of 2016 (Old No. 23 of 2015) under Section 399 of the Companies Act, 1956. There is no provision in the Companies Act 1956 which enables original petitioner to seek waiver of the eligibility criteria to file an application under section 397 and 398 of the Companies Act.

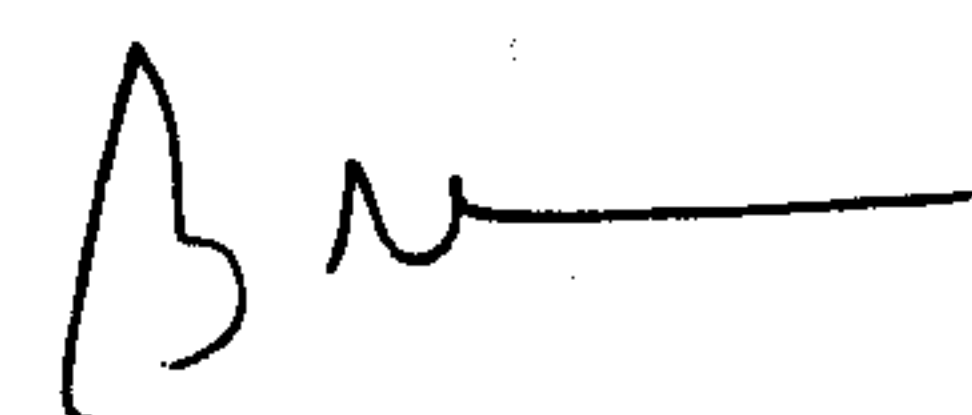
08. Objection of the original respondents that the original petition filed under section 241 and CRPC even before they came into force is not a valid petition, do not merit acceptance for the simple reason that the Company Petition has been admitted under Section 397 and 398 by the Company Law Board. Moreover, wrong quoting of law is not a ground to dismiss a petition without going into substance of the petition and reliefs prayed.
09. In view of the finding that original petitioner is not eligible to file this petition No. TP 119/16 is liable to be dismissed.



10. Now the crucial question is whether interveners can be permitted to implead as petitioners. If interveners are impleaded, then the petitioner would be eligible to file this petition. Therefore, it has become necessary to consider whether there are any merits in the intervening application No. 1 of 2017 filed by Ms. Nasreen Kowsar and Ms. Pratiksha Bhandari. Reading of the intervening application goes to show that their main grievance is salary of Mrs. Nasreen Kowsar has not been paid and amount lent by Ms. Nasreen Kowsar has not been paid. The grievance of the original petitioner in the main petition and the acts of oppression and mismanagement alleged by the petitioner in the main petition are totally different from the grievance of the interveners.
11. It is settled law that petitioner must have the consent of the required members or the members having required percentage of shareholding as on the date of the filing of the petition and it must be there by the date the petition was filed. Subsequent consent by other members or subsequent adding of other members do not fulfil the eligibility criteria laid down in section 399 of the Companies Act, 1956. Therefore, application made by the interveners to implead themselves as petitioners and make the petitioner eligible to file petition under section 397 is nothing but an afterthought. If, really the interveners have got any cause to file a case of oppression and mismanagement, they would have joined hands with the petitioner before filing this petition.



12. It is settled law that a proper and necessary party can be added as party to the pending proceedings. On this aspect, intervening petitioner relied upon the decision in C.M.V. Krishnamachari vs. M.D. Dhanlakshmi Ammal and Ors. and decision of Hon'ble NCLT, Kolkatta Bench in Durga Ray vs. T.D. Kumar and Bros. Ltd. and others. In the judgement of NCLT, Kolkatta bench the question involved is whether legal representatives of deceased members whose name appear in the Register of members and such members satisfy the requirement of 10% of shareholding for the purpose to maintain the application under section 397 and 398 of the Act. Therefore, the above decision is not applicable to the facts of this case. There is no dispute that Madras High Court in C.M.V. Krishnamachari vs. M.D. Dhanlakshmi Ammal and ors. dismissed the application where the petitioner therein filed for impleading himself as a supplemental defendant in a partition suit. In the case on hand, interveners want to implead themselves because the petitioner alone could not satisfy the requirements of section 397 and 398 and it is an afterthought. Therefore, the above decision is not applicable to the facts of this case. Section 399 says that as on the date of filing the petition, criteria prescribed in that section must be fulfilled. Therefore, there are no merits in the intervening application.



13. In view of the above discussion, Intervening petition No. 1 of 2017 is dismissed. IA No.32 of 2017 filed by the first respondent is allowed resulting in the dismissal of TP 119 of 2016.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on the 27th day of October, 2017.