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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

IA 23, 24, 25, 26/2016 In TP No. 125/397-398/NCLT/AHM/2016 (New)
CP No. 34/397-398/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 29.05.2017

Name of the Company: Ashok Kumar Khosla
V/s.
PGH International Pvt. Ltd. & Ors.

Section of the Companies Act: Section 397-398 of the Companies Act, 1956

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Kunal B Vaishnav	Advocate	Org. Petitioners	
2.				

ORDER

Learned Advocate Mr. Kunal Vaishnav present for Original petitioners. None present for Original Respondents.

Common Order in IA's pronounced in open Court. Vide separate sheet.

Dated this the 29th day of May, 2017.

29/5/17
BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

NATIONAL COMPANY LAW TRIBUNAL
AMEDABAD BENCH
AHMEDABAD

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

IA 23/2016, IA 24/16, IA 25/2016, 26/2016
TP No. 125/397-398/NCLT/AHM/2016 (New)
C.P. No. 34/397-398/CLB/MB/2016 (Old)

IA 23 of 2016 in TP 125 of 2016

Peoples General Hospital International P. Ltd. and others
Through authorised signatory
Col. Ashokkumar Khurana (Retd.)
Bhopal 462 003 (M.P) **Applicant/Respondent No.1**

Ashok Kumar Khosla **Petitioner**

Versus

PGH International Private Limited & Others **Respondent**

IA 24 of 2016 in TP 125 of 2016

Suresh Narayan Vijay
Bungalow No. 4, Vijaydwar
Near Peoples Campus
Bhanpur Byepass Road
BHOPAL 462 037 (M.P.) **Respondent 2/applicant**

Ashok Kumar Khosla **Petitioner**

Versus

PGH International Private Limited & Others **Respondent**

IA 25 of 2016 in TP 125 of 2016

Sarvajanik Jankalyan Parmarthik Nyas
Through its authorised signatory I.H. Siddiqui
People's Campus, Khanpur
BHOPAL 462 037 (M.P.) **Respondent 4/Applicant**

Ashok Kumar Khosla **Petitioner**

Versus

PGH International Private Limited & Others **Respondent**

IA 26 of 2016 in TP 125/2016

P.G. Infrastructure & Services P. Ltd.
Through its Director, Ruchi Vijaywargia
People's Campus
Karond – Bhanpur Bye-pass
Village Raslakhedi, Tahsil Huzur
BHOPAL 462 037 (M.P.) **Respondent 5/Applicant**

Ashok Kumar Khosla **Petitioner**

Versus

PGH International Private Limited & Others **Respondent**

Appearance:

1. Learned Advocate Mr. Hamesh Naidu with learned advocate Mr. Vivek Shah present for petitioner

2. Learned advocate Mr. Amalpushp Shroti present for respondent No. 2. Learned advocate Mr. L.J. Golani present for respondent 4 and 5

FINAL ORDER

Dated: 29-05-2017

IA 23 of 2016 in TP 125 of 2016

Original 1st respondent filed this petition on the ground of limitation, on the ground that the issues involved in this company petition are involved in various other forums both civil and criminal, on the ground that Mr. Ashok Kumar Khosla has no jurisdiction to try this petition, on the ground that petitioner approached court with uncleaned hands, on the ground that no petition is maintainable against respondent 3.

IA 24 of 2016 in TP 125 of 2016

Original second respondent filed this application on the ground of petition is barred by limitation. There is no cause of action and there is privity of contract between the parties, issues involved in this petition are pending before other forms, petition is not maintainable as respondent 3 is no more, petitioner approached court with uncleaned hands and original petitioner is not confident to file the petition.

IA 25 of 2016 in TP 125 of 2016

Original respondent No. 4 filed this application on the ground that he is wrongly impleaded, there is no cause of action to file this petition and the status of Shri Ashok Kumar Khosla, signing the petitions is under challenge.

IA 26 of 2016 in TP 125 of 2016

Original 5th respondent filed this petition on the ground that petition is barred by limitation, no cause of action to file the application, no concern with the investments made by petitioner, Ashok Kumar Khosla signing the petition is under challenge, this Tribunal has no jurisdiction etc.

1. Challenge made by original respondents 1, 2 & 4 in these three applications mainly relate to the following aspects: -

(i) Limitation and delay latches

(ii) Authority of Ashok Kumar Khosla to sign on the petitions

(iii) Non-maintainability of the petition on account of death of Respondent 3.

(iv) Suppression of material facts and approaching the Tribunal with uncleaned hands

2. <u>Limitation and delay latches in filing petition:</u> -

It is stated in the application that on 24.01.2011 petitioner asked for clarification with regard to diversion of funds to the trust and thereafter only on 08.01.2015 this petition is filed alleging oppression and mismanagement. It is stated that no action was taken by the petitioner between 2011 and 2015 and, therefore, the petition is barred by limitation. It is also stated that the delay in filing the petition is fatter and the petition is disentitled for the discretionary reliefs sought for to invoke equitable discretion of the Tribunal under section 402 of the Companies Act, 1956 or 242 (2) of the Companies Act, 2013.

3. There is no limitation period prescribed under the Companies Act, 1956. The period of limitation as prescribed under the Companies Act, 1956 is only applicable to the appeals made to Appellate Tribunal. Section 433 of the Companies Act, 2013 which came in to effect on 01.06.2016 plays on Provisions of Limitation Act are applicable to the proceedings under the Companies Act, 2013.

4. It is relevant to mention here that this petition was filed in January 2015 under section 397 and 398 of the Companies Act, 1956. Thereafter, no period of limitation is provided under section 398 and 399 of the Companies Act. This petition being filed before 01.06.2016 under section 397 and 398, no period of limitation is there for filing this petition.

5. As can be seen from the sequence of events narrated in the reply filed by the petitioner last cause of action was on 26.03.2014 and 05.04.2014 when fresh settlement discussion took place. As can be seen from the annexures there was settlement talks on 10.10.2013, 23.06.2014 and 05.04.2016. Moreover, the petitions contain events that commenced from 2003 to 2014. Therefore, petitioner allege that it is continuous act of oppression and mismanagement. Although no period of limitation is provided several instances have been stated in the petition which were promptly denied by the respondents in their reply. The question of limitation, if at all there, it is applicable and it can become mixed question of facts and law. Therefore, it is held that no limitation is provided for filing this petition in January, 2015 under section 397 and 398 of the Companies Act, 1956. Even assuming that limitation act is applicable for the rights of facts and circumstances it assumes it would a mixed question of fact and law.

6. Coming to the aspect of delays and latches unless and until the events relegation made by the parties are closely scrutinised by making reference to the documents, context of the parties and consequences of the actions, it is not possible to judge whether the delay and latches are there on the part of the petitioner or not and it is voluntary delay or delay in action on account of any other factor can be judged only after initial hearing of the matter.

7. It is stated in the applications that Ashok Kumar Khosla signed the affidavits on behalf of the petitioner company stating that he was present in New Delhi on 08.01.2015 but the affidavit was notarized at Mumbai on the same date. It is also stated that Ashok Kumar Khosla has no knowledge of the facts relating to the affairs of the petitioner company since he became director only on 07.02.2012 that too after twelve years of commencement of the petitioner company.

8. It is stated that ownership and Directorship Ashok Kumar Khosla in the petitioner company is under challenge and a complaint has been lodged with Fraud Squad, Economic Crime Unit, Royal Police Gibraltar for investigation. Therefore, Ashok Kumar Khosla's status in the petitioner company is under challenge and, therefore, he cannot file affidavit in support of this petition.

9. There are so many allegations made against Ashok Kumar Khosla in respect of settlement agreement dated 6th September, 2012 and in relation to Bhopal indemnity.

10. It is also stated that the present petition is in violation of settlement agreement. These are all the matters which are to be resolved only at the time of final disposal of the petition.

11. On the ground that the status of Ashok Kumar Khosla in petitioner company is in dispute or at challenge, the petition cannot be thrown out at the threshold.

12. It is not disputed that Respondent 3 died. Simply because petitioners without knowledge of death of respondent 3 made him one of the parties it may not be a ground to reject the petition at the threshold. Petitioner is directed to remove name of respondent 3, however serial number shall be maintained in the same way.

13. It is stated that pendency of civil suit is suppressed by the original petitioner. It is further stated that on that ground petition deserves to be dismissed.

14. Perusal of the petition disclosed that original petitioner mentioned about Civil Suit No. 1178-A/2012 before the District Court, Bhopal for declaration, injunction and damages. Therefore, on the ground of oppression of a Civil Suit, there is no need to dismiss the original petition.

15. In the application it is also pleaded that non convening of Extra Ordinary General Meeting under Section 100 of the Companies Act is not a ground to allege oppression and mismanagement. According to the applicant, non-convening of Extra Ordinary General Meeting has not caused any prejudice to the original petitioner and therefore it cannot be called as an act of oppression. Whether non-convening of Extra Ordinary General Meeting as per requisition is an act of oppression and mismanagement can be decided only after final hearing of the original petition. Therefore, application cannot be dismissed.

16. In view of the above ~~circumstances~~ discussion, I see no ground to dismiss the original petition without conducting a final hearing.

17. Interim Applications 23 of 2016, 24 of 2016, 25 of 2016 and 26 of 2016 stand dismissed. No order as to cost.

29/5/17

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this the 29th day of May, 2017.