

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
Company Petition No. 89/397, 398 & 111 /CLB/MB/MAH/2015**

Quorum:

**Present: SHRI M.K. SHRAWAT
MEMBER(JUDICIAL)**

In the matter of Section 397, 398 & 111 of the Companies Act, 1956.

BETWEEN

Mr.Mahendra Harikishan Mirchandani & Anr.

... Petitioners

Versus

M/s. Manish Textiles Pvt. Ltd. & Ors

... Respondents

ORDER

Reserved on 26th September, 2016
Order pronounced on 24th October, 2016

1. On the date of the hearing, one of the Directors of the Respondent Company was present in person along with Ld. Advocate Mr. R.R. Sharma for the Respondents. No one from the side of Petitioners were present.

2. At the outset it was informed that the Petitioners remained absent on number of occasions in the past. The reason of absence given was that the Petitioner Nos. 1 and 2 have already transferred their equity shares in favour of the Respondents after receiving the consideration. Hence, the Petitioners have no *locus standi* to pursue this Petition. In respect of transfer of shares, attention has been drawn on the Written Submissions wherein the facts are stated as under: -

"6. The respondents submit that the Petitioner and Mrs. Kavita Chandru Mirchandani have duly transferred their respective shareholding in the Respondent No.1 Company in favour of the Respondent Nos. 2 to 4 by executing necessary and proper documents in their favour and passed receipts for full and final consideration amount duly received from the Respondent Nos. 2 to 4. Thus, the claim of the Petitioner is totally false, frivolous and vexatious as the Petitioner has already transferred his entire respective equity shares of the Respondent No.1 Company in favour of the Respondent No.2 as far back as in the month of January, 2007 and has received a sum of Rs.25,15,000/- (Rupees Twenty Five Lakhs and Fifteen Thousand only) towards the transfer of his entire equity shares as full and final consideration. The Respondents submit that the documents executed by the Petitioner in this regard speaks for itself and falsify the claim of the Petitioner.

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7. *The Respondents submit that the Petitioner transferred his entire equity shares, right, title and interest in the Respondent No.1 Company in favour of the Respondent No.2 and received total, full and final consideration amount being a sum of Rs.25,15,000/- (Rupees Twenty Five Lakhs and Fifteen Thousand only) and passed a receipt in favour of the Respondent No.2 while receiving the said full and final consideration amount towards transfer of his 2500 equity shares and 1/5th share of his deceased mother, i.e. 500 shares of the Respondent No.1 Company in favour the Respondent No.2. Thus, the Petitioner has transferred his entire shares of the Respondent No.1 Company in favour of the Respondent No.2. The Respondents submit that this consideration amount was paid to the Petitioner through the Respondent No.1 Company by the Respondent No.2. Hence, the Petitioner ceased to be member of the respondent No.1 Company since 31/10/2007 onwards. The Respondents crave leave to refer to and rely upon the records filed with the Registrar of Companies (ROC) in this regard. The Respondents submit that the Petitioner has no claim of whatsoever nature in respect of the Respondent No.1 Company since 31st January, 2007 onwards. The Respondents crave leave to refer to and rely upon all the records, including the record of Registrar of Companies (ROC) in this regard.*

8. (i) *The Respondents submit that after securing the loan on account of Respondent No.1 Company, the respondent No.2 paid the share of the Petitioner and the Mrs. Kavita Chandru Mirchandani. The Respondents submit that the Respondents paid a sum of Rs.25,15,000/- (Rupees Twenty Five Lakhs and Fifteen Thousand only) to the Petitioner towards transfer of his entire shares of the Respondent No.1 Company in favour of the Respondent No.2 vide Banker's Cheque dated 18th January, 2007, which was subsequently corrected as '22nd January, 2007' by the Bank bearing Banker's Cheque No. 737664 drawn on Indian Overseas Bank, Bandra Branch. Thus, the Petitioner sold and transferred his entire shares of Respondent No.1 Company to the Respondent No.2 on the receipt of above full and final consideration, which includes the consideration of 500 shares of the mother, which the Petitioner got, after the demise of the mother, being one of the heirs of the deceased. Hence, the value of the said shares of the Petitioner were increased in comparison to the value of the shares of the Mrs. Kavita Chandru Mirchandani. The Respondents crave leave to refer to and rely upon the Receipt dated 18th January, 2007, issued by the Petitioner together with Banker's Cheque dated 18th January, 2007 which was subsequently corrected as 22nd January, 2007. A copy of the said Receipt and Xerox copy of Cheque of Indian Overseas bank, Bandra Branch are hereto annexed and marked as EXHIBITS – II and II-A, The Respondents submit that after securing the Loan Amount in the name of the Respondent No.1 Company at the credit of the Respondent Nos. 2 to 4, the respondent Nos. 3 and 4 paid the share of Mrs. Kavita Chandru Mirchandani from the account of the respondent No.1 and these amounts were paid through the Respondent No.1 Company."*

Likewise, Petitioner No.2 had also transferred her 2,500 equity shares as per following details:-

"8(j) The Respondents submit that similarly Mrs. Kavita Chandru Mirchandani also transferred her 2500 shares of Manish Textiles Pvt. Ltd. Being the respondent No.1 Company in favour of the Respondent Nos. 3 and 4 on the receipt of said sum of Rs.20,25,000/- (Rupees Twenty Lakhs and Twenty Five Thousand only) being the full and final consideration towards the sale / transfer of her 2500 shares of the respondent No.1 Company vide Banker's Cheque no. 737666 drawn on Indian Overseas Bank, Bandra Branch, dated 18th January, 2007, which was subsequently

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corrected as 22nd January, 2007. The Respondents crave leave to refer to and rely upon the same and a copy of said Receipt dated 18th January, 2007 being signed on 30th January, 2007 along with the Xerox copy of the Banker's Cheque are hereto annexed and marked as Exhibit – III & III-A,"

3. It is, therefore, vehemently submitted that on account of above facts that the Petitioners have already transferred their respective share-holdings in favour of the Respondents; this Petition deserves to be dismissed.

ORDER

In a situation when the admitted factual position is that the Petitioners are not inclined to pursue this Petition mainly because of the reasons that the equity shares held by them have already been transferred in favour of the Respondents, as duly enumerated in foregoing paragraphs, they have no *locus standi* to pursue the Company Petition; hence hereby dismissed on account of non-prosecution. The C.P. No. 89/397, 398 & 111 /CLB/MB/MAH/2015 is hereby dismissed. However, no Order as to cost.

Dated: 24th October, 2015

sd/-

Shri M.K. Shrawat
Member (Judicial)

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CORRIGENDUM

In respect of the Order pronounced on 24th October, 2016, inadvertently the date was typed as 24th October, 2015. The same is hereby corrected. The date of the Order henceforth shall be read as "**24th October, 2016**".

Dated: 25.11.2016

sd/-

Shri M.K. Shrawat
Member (Judicial)