NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

T.P. No. 33/397-398/NCLT/AHM/2016(New)
C.P. No. 9/397-398/CLB/MB/2013(Old)

Coram : HON'BLE MR. M.K. SHRAWAT
MEMBER (JUDICIAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 05.12.2016

Name of the Company: Pankaj S. Patel
V/s.
Mohanty Bhaskar Chandra

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

order
Annexed - Seperate reasoned order pronounced today
MKShrawat 5/12/16
(M.K. SHRAWAT)
Member (Judicial)

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD BENCH, AHMEDABAD

TP No. 33/397-398/NCLT/AHM/2016

COMPANY PETITION NO. 09/397-398/CLB/MB/2013

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

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

BETWEEN:
Pankaj Somabhai Patel & Anr. … Petitioners

Versus

Mohanty Bhaskar Chandra & Ors. … Respondents

PETITIONER:
1. Mr. Pankaj Shambhubhai Patel
2. Mr. Sailesh Shambhubhai patel

RESPONDENTS
1. Mr. Mohanty Bhaskar Chandra
2. Mr. Ashok Dhar
3. M/s. Times Life Science Pvt. Ltd.

PRESENT ON BEHALF OF THE PARTIES:
None for the parties

ORDER

Pronounced on: 05.12.2016

1. The Company Petition in question is enlisted for hearing today as per the cause list, however none is present from either side. Records of the case have revealed that in the past, as well, no one has ever appeared. It is evident from the records that since inception after filing the petition on 13.06.2011, before the then CLB Benches, the matter remained unrepresented.

2. That as per the records only the said petition, that too filed on 13.06.2011, is available. Moreover, there is no proof of service of the petition on the other side, nor there is any evidence of mention of this petition by the Petitioner ever in the past. There is no reply from the side of the respondents. In other words, the Petitioner had never bothered about this petition after filing, even either to serve on the Respondents or even to mention it in the court.

3. Prima facie there was a reason behind non-prosecution. It appears that the non-appearance was because of certain past development happened in a parallel case wherein as well the Petitioner is the same i.e Mr. Pankaj S. Patel. That could be one specific reason which has caused the petitioner not to peruse this petition anymore.

4. In the past an order has been passed by Company Law Board, Mumbai Bench bearing Company Petition No. 67 of 2014, delivered on 02.01.2015, titled as *Shri Pankajbhai Shambhubhai Patel (Petitioner) & Anr. Versus M/s. Time Life Science Pvt. Ltd. & Ors (Respondent).* through which the said petition was dismissed. The relevant portion from the findings are reproduced for ready reference.

> *3. Despite notice, none appeared on behalf of the Respondents. Consequently, the mater was heard ex-parte.*
>
> *4. Having heard the submissions advanced by the Ld. Counsel appearing for the Petitioners, I have come to the conclusion that this company petition is not a bonafide petition. According to the Petitioner's own case, the alleged act of oppression and mismanagement were committed in the year 1998-1999.*
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> *5. On perusal of the petition, it is further noted that various criminal cases including that of a complaints filed under Section 138 of the Negotiable Instrument Act, in the year 2000, were filed against the Respondent Nos. 2 & 3 with respect to the events and acts since beginning from 1998-1999 purportedly committed by*

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the Respondent No. 1. Therefore, it cannot be said that the Petitioners were not aware of these acts. Even, according to the Petitioner's own case, they have also filed Civil Suit, bearing Suit No. 595 of 2011, in the Court of Civil Judge, Sr. Division, Baroda against the Respondent No. 2 and two others to whom the Respondent No. 2 has illegally sold the Company's land by misusing forged and fabricating documents. Furthermore, as is seen from the reliefs clause of the Petition, the petitioners have sought cancellation of various Returns filed by the Company with the Registrar of Companies in the year 2010 and 2011. This petition case to be filed on 18.07.2014. However, the Petitioners have not offered any sound and convincing reason as to why they approached the CLB after such inordinate lapse of time. It is, therefore, established that the petition patently suffers from acute delay and laches on the part of the Petitioners, and on this ground the Petitioners are not entitled for any discretionary reliefs sought by them in the petition.

6. *Furthermore, it appears that the Petitioners have filed this Petition with ulterior objective with respect to the grievances arising out of the MOU mentioned hereinabove. On this ground also, the Petition deserves to be dismissed as held in the case of RE Ballador Silk Ltd. Ch. D 671 wherein it has been held as under:*

> *"A petition which is launched not with the genuine object of obtaining the relief claimed, but with the object of excreting pressure in order to achieve a collateral purpose is, in my judgement, an abuse of the process of the court, and it is primarily on that ground that I would dismiss the petition."*

7. *I, therefore, hold that the petition suffers from acute unexplained delay and laches. Moreover, the Petition has been filed with collateral purpose. This C.P., therefore, deserves to be dismissed on these grounds alone.*

8. *This Petition is dismissed.*

9. *No order as to costs.*

10. *Interim order, if any, stands vacated.* Mes

11. Company Application, if any, also stands disposed off.

12. Copy of the order be issued to the parties.

Sd/-
A.K. Tripathi
Member (Judicial)

5. I have also compared the facts of the present petition with the facts of the petition already dismissed as referred supra. In the present petition the grievance revolved around one Memorandum of Understanding dated 10.07.1998. The petitioner's grievance was that the terms and conditions of the said Memorandum of Understanding were not fulfilled by the respondents. In this petition there was a reference of a legal proceedings before Sessions Court, Vadodara under Section 138 of Negotiable Instruments Act, 1882. There is an allegation, as well, that the property of the company located at Savli, Vadodara has been sold without proper authorization by the Board of Directors. The petitioner has also made a reference that a Criminal complaint was filed against the respondents in the Sessions Court, Vadodara. The prayer seeking reliefs is also only in respect of an appointment of the Administrator and to bring back the immovable property already sold by the respondents. But the CLB had taken a view that the alleged act of oppression & mismanagement was of the year 1998-1999 however no convincing reason offered for inordinate lapse of time. From the relevant portion reproduced verbatim it is now settled that the Petition of the same nature was held as not a *bonafide* petition.

6. Comparing the facts of this petition with the facts of the petition already dismissed (mentioned supra) vide order dated 02.01.2015, I have noticed that the cause of action had arisen from the Memorandum of Understanding dated 10.07.1998. In the said petition as well the main grievance was that the respondents have not fulfilled the conditions of the Memorandum of Understanding. Apart from few legal grievances, in that petition there was a reference of a compliant

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under Section 190 of Cr.PC filed in the Court of Judicial Magistrate, First Class, Savli, Vadodara. However, the Magistrate has directed the Police Authority to carry out the investigation and submit the report. Being dissatisfied an appeal was moved before the Hon'ble High Court of Gujarat which was dismissed vide order dated 17.01.2012. Further being aggrieved the matter was carried before the Hon'ble Supreme Court of India and vide SLP (Criminal) No. 1909 of 2012 order dated 26.03.2012 that SLP was dismissed. On such identical facts the respected Bench of Company Law Board Mumbai has already dismissed the said petition after assigning the reasons, as reproduced in forgoing paragraphs.

7. Under the circumstances, I hereby conclude and pronounce my findings that in a situation when on identical facts a view has already been taken by the Company Law Board Mumbai in a parallel case of this very Petitioner, then as on date there is no occasion or reason to take any other view, contrary to the view already taken, but to adopt the same view as already taken by the respected Company Law Board Bench, Mumbai. The petition was filed way back in the year 2011 and since then remained unrepresented and unserved on the respondents continuously, itself demonstrate that the petitioner is not willing to peruse this petition. As a result, this petition is hereby dismissed on the same lines that the petition suffers from acute unexplained delays and laches, due to which it has become redundant in the eyes of Law. This petition is hereby dismissed in the light of the reasons assigned herein above, as well as, on the ground of non-prosecution on the part of the petitioner. No order as to Cost. Issue copy of the order.

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Dated: 05.12.2016

Shri M.K. Shrawat
Member (Judicial)