T.P. No. 115/634A/NCLT/AHM/2016 (New) C.A. No. 90/634A/CLB/MB/2015 (Old)

# NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD BENCH, AHMEDABAD T.P. NO. 115/634A/NCLT/AHM/2016 (New) C.A. NO. 90/634A/CLB/MB/2015 (Old)

CORAM:	SHRI M.K. SHRAWAT MEMBER (JUDICIAL)				
In the matter of Section 634A of the Companies Act, 1956.					
Kumar Jiwanlal Patel (Makadia) S/o Jiwanlal G. Patel (Makadia) 405/1, G.I.D.C. New Colony Opp. Lions School, Ankleshwar 393 002.	) ) .) Applicant				
V/s					
<ol> <li>M/s. Patel Oil &amp; Chemicals Pvt. Ltd. 6012 G.I.D.C. Estate Ankleshwar 393 002.</li> <li>Jitendra Mukundrai Patel S/o Mukundrai M. Patel</li> </ol>					
28 Divya Darshan, New Colony G.I.D.C., Ankleshwar 393 002.					
3. Sumanrai Mukundrai Patel S/o Mukundrai M. Patel 1 AGF, Jalkamal Co-op. Hsg. Society Ltd., New Colony G.I.D.C., Ankleshwar 393 002.	) ) ) ) ) )				
<ol> <li>Monaben Sumanbhai Patel         W/o Sumanbhai Patel         Plot No. 503 Jalkamal Society No.2         Flat AGF 1, New Colony         G.I.D.C., Ankleshwar 390 3322.</li> </ol>	<pre>) ) ) ) ) ) )</pre>				

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5.	S.M. Patel HUF		
	Plot No. 503 Jalkamal Society No.2		
	Flat AGF 1, New Colony		
	G.I.D.C., Ankleshwar 390 3322.		
	Ramaben Gautambhai Patel		
	W/o Dr. Gautambhai Patel		
	1784/A-1, Panchil Society		
	Sardar Nagar, Bhavnagar 364 002.		
7.	Vivek Gautambhai Patel		
	S/o Gautambhai Patel		
	1784/A-1, Panchil Society		
	Sardar Nagar, Bhavnagar 364 002.		
8.	G.M. Patel HUF		
	Plot No. 1784 Panchil Society		
	Bhavnagar 364 002.		Respondents

# ORDER

Reserved on : 09.12.2016 Pronounced on : 20.01.2017

- 1. On the question of implementation of an Order of Company Law Board, Mumbai Bench (C.P. No.59 of 2012 dated 17<sup>th</sup> November, 2014) the Application now under consideration was moved by the Applicant on 31<sup>st</sup> March, 2016. On the past few occasions when this Application was posted for hearing the Respondents have sought timeto seek clarification on the issue of implementation of the Order of the CLB, Mumbai Bench (supra). After providing sufficient opportunity now this Application is enlisted for final hearing.
- 2. From the side of the Applicant Ld. Representative has stated that an Order was passed on 17<sup>th</sup> November, 2014 by the CLB, Mumbai

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Bench (C.P. No.59 of 2012) wherein several directions have been given while finally disposing of the Petition, however, the grievance of the Applicant is that the direction no. **vii** has not been followed by the Respondents, hence liable for contempt. He has clarified that this Application, therefore, revolves around the non-compliance of the following direction:-

- "vii. It is, however, clarified that the Company may allot further shares by holding a valid EOGM in accordance with the provisions of the Act, and in terms of the Articles of Association of the Company. Company is also free to sell its assets in transparent manner, in accordance with law. However, the Petitioners shall be given an opportunity to match the offer."
- 3. On the other hand, from the side of the Respondents, it is contested that the Applicant appeared to be not confident about the alleged non-compliance because inordinate delay was made in filing this Application in the year 2016 although the Order of the Hon'ble CLB, Mumbai Bench was passed in the year 2014. In addition to the question of lapse of time, the respondents have also stated that an Appeal was preferred before the Hon'ble High Court, Ahmedabad, therefore in a situation when an Order is subjudice before the High Court, then the implementation of an Order of the lower forum stood automatically stayed. Under this impression, the Order of Hon'ble CLB is like in a suspended animation. The Ld. Representative of the Respondents has placed on record few interim 'Oral Orders' of the Hon'ble Gujarat High Court in O.J. Appeal No. 12 of 2015. At this very juncture, it is worth to mention that none of the said Orders of the Hon'ble High Court has so far stayed the said Order of the CLB, Mumbai Bench.

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- 4. Having heard the submissions of both the parties, as well as on due consideration of the facts of this case, prima facie it appears that the Respondents are at fault in not obeying the directions of the respected coordinate Bench. While delivering the final verdict, the CLB Bench has held that 'the Petitioner has successfully established his allegations regarding the acts of oppression and mismanagement (reproduced from para 39 of the Order). The directions were unambiguous that a valid EOGM is to be convened to allot further shares. The Petitioner has, therefore, asked the Respondent No.1 Company by several letters to furnish copy of 'Register of Members'. The copies of the said letters are on record. The compliance was not made by the respondents on the ground that an Appeal has been preferred before the Hon'ble High Court. This ground or reason of the Respondent for non-compliance of an Order is unjustifiable, especially when the directions of an Order of the lower forum has not been stayed by the higher forum of the judiciary. As on date, no such Order of the Hon'ble Gujarat High Court is placed before me to demonstrate that stay has been granted for implementation of the Order of the CLB (supra). Merely filing an Appeal ipso facto does not put any bar on the implementation of an Order. No cogent or convincing reason has been given by the Respondents in not implementing the directions of the CLB.
- 5. The next issue is alienation of immovable properties of Respondent No.1 Company. In the said Order, it was directed that the Petitioner should be given an opportunity to match the offer if the Respondent No.1 Company is alienating its assets. In one of the hearings held before the NCLT Bench, Ahmedabad on 29<sup>th</sup> September, 2016, it is very strange that the Ld. Representative of the Respondents

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has stated that a Resolution was passed by the Board of Directors to alienate the immovable properties of the Respondent No.1 Company. The apprehension of the Applicant is, therefore, reasonable because no opportunity appears to have been granted to match the selling price of the property as directed.

- 6. On account of the above circumstances, the Applicant / the Original Petitioner has also pleaded to hold the Respondents for guilty of contempt. On due consideration of the totality of the circumstances, it is directed as under:-
- (i) That instead of initiating contempt proceedings against the Respondents, as an alternate, it is hereby ordered that the Respondents shall pay a sum of ₹10,000/- (Rupees Ten thousand only) to the Applicant as cost of the litigation. It is expected that this fine / cost may prevent the Respondents for future non-compliance. I have taken this view following the ratio laid down by the Hon'ble Gujarat High Court in the case of Jitesh Trading Company vs. Gita Fabrics P. Ltd (1996) 86 Comp Case 453 Guj. Order dated 19.9.1995.
- (ii) That it is hereby ordered that the Respondents shall not alienate or deal with the assets of the Respondent No.1 Company without proper notice to the Petitioner. The Respondents shall strictly abide the aforesaid direction while selling the assets by giving an opportunity to the Petitioner to match the offer of expected consideration.

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- (iii) That the Applicant / Petitioner shall be supplied a copy of the 'Register of Members' being a lawful right enshrined under the Act within 15 days on receipt of this Order.
- (iv) That on fulfilment of the aforesaid directions, the Respondents shall furnish a compliance report to the Assistant-Registrar / Bench-Officer NCLT, Ahmedabad immediately thereafter.
- 7. The C.A. No. 90/634A/CLB/MB/2015 (Old)/2015 is finally disposed of. The main Petition shall now be listed for hearing on **6<sup>th</sup>** March, **2017**.

Dated: 20.01.2017

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M.K. SHRAWAT

Member (Judicial)