

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

Company Petition No. **01 of 2012** & Company Petition No. **11 of 2012**

IN

COMPANY PETITIONS NO.01/111/CLB/MB/2012 & 11/111/CLB/MB/2012

In the matter of Section 111 of the Companies Act, 1956

AND

In the matter of Ravi Gum Industries Limited

CORAM:

SHRI M.K. SHRAWAT  
MEMBER (JUDICIAL)

**COMPANY PETITION NO. 01/111/MB OF 2012**

Mr. Hirji Premchand Dedhia,  
Residing at C-5,  
Lincon Appts.,  
Opp. Uttamnagar Garden,  
Maninagar,  
Ahmedabad

.....

Petitioner

**Versus**

Ravi Gum Industries,  
Registered Office: 402,  
SAIA House,  
279, Narshi Natha Street,  
Mumbai-400 009.

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Respondents

**COMPANY PETITIONS NO.11/111/MB/2012**

Ms. Hansaben Hirji Dedhia,  
Residing at C-5,  
Lincon Appts.,  
Opp. Uttamnagar Garden,  
Maninagar,  
Ahmedabad

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Petitioner

**Versus**

Ravi Gum Industries,  
Registered Office: 402,  
SAIA House,  
279, Narshi Natha Street,  
Mumbai-400 009.

.....

Respondents

Present for Petitioner : Mr. Narendra L. Jain, Advocate

Present for Respondent : None appeared.

Date of hearing 18<sup>th</sup> April, 2017

Date of Order 22<sup>nd</sup> May 2017

1. These two petitions respectively filed by the Petitioners viz. Mr. Hirji Premchand Dedhia and Ms. Hansaben Hirji Dedhia are having identical facts, both filed on 06-02-2012 before the erstwhile CLB, hence for the sake of convenience

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clubbed together and hereunder decided by this common order. To keep brevity in mind, facts narrated from the lead petition (CP 01/2012) are mainly reproduced hereinbelow.

2. The Respondent company viz. M/s. Ravi Gum Industries was incorporated in the year 1995 and the Petitioner was appointed as a Director. Out of the total 2,50,000 shares, the Petitioner was allotted 18,436 shares. As far as the position of the another Petitioner Mrs. Hansaben Hirji Dedhia was that she was allotted 13,408 shares only.
- 2.1 In the year 2001, the Petitioner wanted to encash his remuneration required for the purpose of marriage of his daughter however not paid. The Petitioner has stated that the company is constituted by family members. Later on it was bargained that on condition of his resignation the amount could be paid. It was admitted that payment was made through demand draft. However, his brother had informed that the wife of the Petitioner, (Petitioner in CP 11 of 2012) was removed as a partner in a family partnership firm. An amount was also paid to Mrs. Hansaben Hirji Dedhia.
- 2.2 The **Petitioner resigned from the company with effect from 24.08.2001, but continued to be a shareholder of the company.** Since the other Directors and members of the Company were close family members and his father had also assured the Petitioner to protect his interest in the company, the share certificates remained in the possession of the management company. The Petitioner was staying in Ahmedabad to look after the manufacturing activity of the company.
- 2.3 The company had not filed the annual returns, annual information, requisite details in the ROC office for almost 10 years, however, on 10-08-2010 filed altogether returns for 10 years. On enquiry from the ROC office, the Petitioner came to know that his shareholdings have been transferred. The allegation of the Petitioner is that he has never signed any transfer deed, hence the management of the company must have forged his signatures and got the shares transferred. Further the petitioner has alleged that his father was also holding the shares in the company but after his death those shares were also transferred under his forged signatures and forged documents.
- 2.4 On the same lines identically the shares of the Petitioner in CP 11/2012 have also been transferred, allegedly by forged signature. The impugned transfer came to the notice when the returns were submitted for so many years in the office of the ROC in the year 2011. The Petitioner has stated that her husband had made a complaint of forgery in police station (Pydhonie) on 18-10-2011. However, no effective steps had been taken by the police.
- 2.5 The Petitioners have also narrated one more instance that under 'right to information' collected certain information from GIDC, Ahmedabad and came

to know that the management of the company had produced forged share transfer forms alleged to have been signed by the Petitioner claiming that on the basis of the transfer forms the shares of the Petitioners have been transferred. The Petitioners have stated that they were left with no option but to file this petition by seeking relief under the provisions of section 111 of the Companies Act 1956.

**2.6** The Petitioners are seeking direction to the company to rectify "Register of Members" by restoring the names of the Petitioners for the shares 18,436 and 13,408 respectively.

**3.** Before I proceed further it is necessary to place on record that the **Respondent remained non-cooperative throughout the proceedings.** The case records are full of notings of non-attendance of the Respondent although since the filing of the Petitions in the year 2012 number of opportunities were granted. It is worth to devote some time in mentioning the non-appearance of the Respondent consistently recorded in the order sheets. On 7<sup>th</sup> August 2013, the then respected member of the CLB in para 1 had made an observation that "*despite consistent efforts, service upon Respondent No.1 company could not be effected. The registered envelopes received back with an endorsement "closed". The notice sent through courier has been received back with the endorsement "shifted". Despite publication made in newspaper the R1 did not choose to appear. On the website of the ROC, the company is reflecting as "active".*

**3.1** Thereafter an advocate viz. Mr. Jit B. Patel started appearing on behalf of the Respondent as per an evidence on record a letter dated 24-11-2013 asking for an adjournment. On 14-02-2014 advocate Mr. Patel appeared and the matter was adjourned. Thereafter again the Respondent or his representative remained absent, as a result, on 14-09-2016, the Registry was directed to issue notice to the Respondent by fixing the date of hearing on 24-10-2016. On 24-10-2016 Mr. Jit P. Patel for the Respondent was present in the court and the observations made was as under:-

**"CP No.01/111/CLV/MB/2013**

5. *The Petitioners are represented by Ld. Advocate Mr. Narendra L. Jain and the Respondents are represented by Ld. Advocate Jit P. Patel.*

6. *After hearing both the sides for some time, the Bench is of the opinion that the main controversy revolves around the signatures, alleged by the Petitioners as forged, on the Transfer Forms.*

7. *Therefore, in the interest of justice, it is hereby directed to the Respondents to produce in a sealed cover the original Transfer Forms*

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*and the Share Certificates along with the connected evidences to the bench Officer on or before 15<sup>th</sup> November, 2016 so that the genuineness of the signatures can be examined and verified by the authorised agency i.e. Forensic Science laboratory, Mumbai.*

8. *After obtaining said report the matter can be listed for hearing on 23<sup>rd</sup> January, 2017. Date is duly communicated to both the parties."*

**3.2** On 23-01-2017 Petitioner remained present but no one was present from the other side. The Petitioner has informed that though a letter dated 02.01.2017 issued to the Respondent and intimated to produce the relevant documents, as directed on the last date of hearing held on 24-10-2016, but no compliance was made. The case was adjourned directing the Respondent to comply the directions and the date fixed was 21-02-2017. None appeared on behalf of the Respondent, hence a cost of Rs.5,000/- was imposed as per the following interim order:-

**"TCP No.11/111/CLB/MB/MAH/2012**

**TCP NO.01/111/CLB/MB/MAH/2013**

1. *The Learned Representative for the Petitioner is present. No one is present from the side of the Respondent.*
2. *The Petitioner has intimated that inspite of the directions issued by an Order dated 23<sup>rd</sup> January, 2017 the Respondents have not complied with the requisite documents as directed therein. On the last occasion it was observed that in case of non-compliance a cost can be imposed. Considering the past record and the regular non-compliance from the side of the Respondents costs of Rs. 5000/- (Rupees Five Thousand only) in each Petition (CP 11/2012 and CP 01/2013) is imposed to be paid either to the Petitioner or the Legal Representative of the Petitioner on or before the next date of hearing.*
3. *Both the Petitions are adjourned to 8<sup>th</sup> March, 2017 with a direction to the Petitioner to communicate this Order as well as the next date of hearing to the other side. It is also directed to place on record through an Affidavit the proper service to the other side."*

**3.3** When these petitions were again listed for hearing on 08-03-2017, neither the Respondent was present nor any compliance of the earlier directions have been made. To enforce the cooperation of the Respondent again a fine of Rs.15,000/- was imposed with a direction to pay the fine to the Petitioner/legal representative on before 30<sup>th</sup> March 2017. These petitions were listed finally on 18-04-2017. On the said date of final hearing the Petitioner was present and as happened in the past, the Respondent remained absent. Learned

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counsel of the Petitioners has strongly pleaded that the matter is very old therefore should be decided today being listed for final hearing. He has vehemently pleaded that more than enough opportunities were granted to the Respondents. Hence deserve no more opportunity. This bench is left with no option but to proceed ex-parte qua the Respondent to decide these petitions on the merits of the case.

4. Considering the totality of the facts and circumstances of the case as well as the attitude of the Respondent I am of the considered opinion that the Respondent company should comply the directions of this judgement to rectify the "Register of Members" by restoring the names of the Petitioners. The provisions of section 111 of the old Act has empowered the Tribunal to entertain an appeal of the aggrieved person if he ceased to be a member of the company by illegally removing his name from the Register of Members. The Respondent company is directed to comply the directions within 30 days on receipt of this order and submit the compliance report/information to the office of the concerned ROC. In case of non-compliance the company may be liable for damages and other consequential legal action.
5. The Petitioner is hereby directed to serve a copy of this order to the Respondent and place on record of NCLT the proof of service of the order. A copy of this order is also to be delivered in the office of the ROC. The Petitioner shall also recover the fines on the Respondent as imposed during the course of hearing, mentioned supra.
6. Both the Petitions are allowed. Petitions being finally disposed of hence Registry is directed to consign to records.

**Date : 22-05-2017**

**M.K. SHRAWAT**  
Member (Judicial)