**NATIONAL COMPANY LAW TRIBUNAL**
**AHMEDABAD BENCH**
**AHMEDABAD**

**IA No. 7/2016 in TP No. 109/397-398/NCLT/AHM/2016 (New)**
**CP No. 77/397-398/CLB/MB/2015 (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 2.1.2017**

Name of the Company: Pinakin Kharwar
V/s.
Rudraksh Synthetics Pvt. Ltd.

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

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

**ORDER**

None present for both parties.

Order pronounced in open court. Vide separate order attached.

2.1.17

**(BIKKI RAVEENDRA BABU)**
**MEMBER JUDICIAL**

Dated this the 2nd day of January, 2017.

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**
**AHMEDABAD BENCH**
**AHMEDABAD**

**CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER (JUDICIAL)**

**IA No. 7/2016**
**In**
**TP No. 109/397-398/NCLT/AHM/2016 (New)**
**CP No. 77/397-398/CLB/MB/GUJ/2015 (Old)**

1. Rudraksh Synthetics Pvt. Ltd.
2. Naresh Thakordas Mandlewala
3. Hemant Thakordas Mandlewala....Applicants/Original Respondents 1 to 3

v.

Pinakin Kharwar.....Respondent/Original Petitioner

This Interim Application having come up for hearing before this Tribunal on 17.10.2016 in the presence of Mr. Dhiren Dave, PCS for Applicant and Mr.S. Suriyanarayanan, Advocate for Respondents and having stood over for consideration till this date, this Tribunal pronounced the following final order on 2.1.2017.

## FINAL ORDER

1. Parties in this Petition are referred to as they are arrayed in the Petition as Original Petitioner and Original Respondents.

2. Original Respondents 1 to 3 filed this Application questioning the maintainability of the T.P. 109/2016 on the ground that the Original Petitioner is not having one-tenth of the issued share capital of the Original First Respondent Company and on the grounds that the reliefs prayed cannot be granted in a Petition filed under sections 397-398 of the Companies Act, 1956.

3. The main Petition is filed under Section 397-398 alleging oppression and mismanagement by Respondents 2 and 3 in the affairs of the first Respondent Company, which is prejudicial to the interest of the Company and to the Original Petitioner as shareholder.

4. This Application is filed stating that in view of Section 399, Original Petitioner has no right to apply for the reliefs under Sections 397 and 398 stating that he is not having one-tenth of the issued share capital and the Original Petitioner has not filed the consent letter of his wife and on the ground that Rule 88 of the Company Law Board Rules have not been complied with.

5. First Respondent Company is having issued share capital of 15,41,100 shares of Rs. 10 each. According to the Original Respondents, Original Petitioner is having only 3,000 shares of Rs. 10 each and therefore Original Petitioner has no right to apply under Sections 397-398.

6. In answer to the said allegations, in the Reply filed in this Application and as well as in the main Petition, it is clearly stated that Petitioner is having 3,00,000 shares and his wife is having 2,00,000 shares, thus a total of 5,00,000 shares out of 15,41,100 shares of First Respondent Company as on the date of the filing of the Company Petition.

7. In order to substantiate the same, it is necessary to refer to Pages 110 to 123 of the Company Petition. A perusal of the share certificates contained in Pages 110 to 123 of the main Petition clearly show that Petition is having 3,00,000 shares and the wife of the Petitioner is having 2,00,000 shares in the First Respondent Company as on the date of the filing of the Petition.

8. As an answer to the point raised by the Learned CS for the Original Respondents that a letter of consent given by the wife of the Original Petitioner has not been enclosed to the Petition as required under Rule 88 of the Company Law Board Regulations, it is necessary to refer to Special Power of Attorney dated 21.9.2015 given by the wife of the Petitioner by name Preeti Kharwar to the Original Petitioner wherein, a clear authority and consent has been given by Mrs. Preeti Kharwar to the Original Petitioner to file this Company Petition. The said SPA is at pages 124 to 126 of the main Petition.

9. Now again the question is whether the above-said SPA given by Mrs. Preeti Kharwar to the Petitioner is in compliance of Rule 88 of the Company Law Board Regulations. No doubt Rule 88 says letter of consent signed by the rest of the members authorising the Original Petitioner to present the Petition shall be annexed to the Petition. Where there is a clear cut recital in the SPA authorising the Petitioner to file this Petition, it is more than a consent letter. In fact, on this aspect, Learned Advocate appearing for the Original Petitioner relied upon a decision in *J.P. Srivastava and Sons Pvt. Ltd. and Ors. v. Gwalior Sugar Co. Ltd. and Ors.* reported in AIR 2005 SC 83, at para 48.

10. In that decision, it is clearly held that the object of prescribing a qualifying percentage of shares in Petitioners and their supporters to file Petitions under sections 397-398 is clearly to ensure that frivolous litigation is not indulged in by persons who have no real stake in the Company. In that decision it is also held that if the Court is satisfied that Petitioners represent a body of shareholders holding the requisite percentage it can assume that the involvement of the Company in litigation is not lightly done and that it should pass orders to bring to an end the matters complained of and not reject it on technical requirement.

11. In the case on hand, the SPA given by the wife of the Petitioner clearly gives authorisation to file this Petition and it is more than a consent letter. Therefore, Petitioner is having every right to file the main Petition and there is sufficient compliance of Section 399 of the Companies Act, 1956 and Rule 88 of the Company Law Board Regulations. In the main Petition and as well as in the Reply to this Application it is clearly averred by the Original Petitioner that himself and his wife are having 32.66% shares in the First Respondent Company as on the date of filing this Petition and the same is substantiated.

12. The Learned PCS appearing for the Original Respondents pleaded and vehemently contended in this Application that none of the reliefs prayed come

within the purview of sections 397-398 of the Companies Act, 1956 and therefore the main Petition is not maintainable.

13. In answer to this point, in the Reply it is stated that all the reliefs prayed come within the purview of sections 397-398 of the Companies Act, 1956 and even if it is otherwise, this Tribunal has got ample power and discretion to mould the reliefs and section 402 of the Act also gives such power to the Tribunal.

14. Learned PCS appearing for Original Respondents cited the following decisions in support of his contentions: -

i. *Hanuman Prasad Bagri & Ors. v. Bagress Cereals (P.) Ltd. & Ors.* [2001] 41 CLA 258 (SC)

ii. *V.S. Krishnan & Ors. v. Westfort Hi-tech Hospital Ltd. & Ors.* [2008] 83 CLA 371 (SC)

iii. *M.S.D. Radharamanan v. M.S.D. Chandrasekara Raja & Anr.* [2008] 84 CLA 361 (SC)

iv. *Mithra Thomas Kanagaratna Dewars v. Legends Surface Developers (P.) Ltd. & Ors.* [2010] 97 CLA 428 (CLB)

15. In the above-said decisions, the findings of the Hon'ble Supreme Court and Company Law Board, depending upon the facts and circumstances of those cases are as follows: -

i. Single act of removal of Director from the Company does not constitute oppression

ii. The mere unfairness does not constitute oppression.

iii. The contravention of law may not per se be oppressive whereas conduct involving illegality and contravention of the Act may suffice to come to a conclusion of oppression and mismanagement.

iv. Mala fide design and collusion to strangulate the business of the company is a gross abuse of process of law.

16. Those findings in the above said citations were arrived at after evaluating and appreciating the material available on record.

17. In the case on hand, in the main Petition there are allegations of increasing the share capital without the knowledge of Petitioner and conducting of Board Meetings without the knowledge of the Petitioner. Whether the allegations made by the Petitioner in the main petition constitute acts of oppression and mismanagement or not can only be decided after the final hearing. Whether the reliefs prayed in the main petition can be granted or not depend upon the finding on facts and application of applicable law. Therefore, this is not the stage to decide those aspects.

18. In the Application, Original Respondents sought for relaxation of *ad-interim* relief with regard to shareholding.

19. The following is the order dated 29.9.2015 passed by the Company Law Board, New Delhi Bench: -

> "on the Company Petitions 76(GUJ)/2015 & 77(GUJ)/2015 moved by the Petitioner primarily seeking for a restraint order on proposal to remove him as Director from the Company by invoking Section 169 of the Companies Act, 1956, for having the Respondents side given an undertaking to maintain status quo over the shareholding and fixed assets of the Company, the same being agreed by the Petitioner counsel, this Petition is posted for filing Reply by the Respondents within six weeks hereof, Rejoinder, if any, within six weeks thereof, subjecting the Petitioner's removal to the outcome of the main Petition."

20. As can be seen from the above-said order, it is an outcome of an undertaking given by the Original Respondents. The Original Respondents did not state any new facts which warrant them to withdraw the undertaking. Therefore, the Prayer made in this Application to relax the *ad-interim* relief with regard to shareholding is a misconceived one.

21. In view of the above discussion, this Application is dismissed by directing the Original Respondents to pay cost of Rs. 5,000 to Original Petitioner on or before 25.1.2017.

02.1.17

**SRI BIKKI RAVEENDRA BABU**
**MEMBER (JUDICIAL)**

Dated this the 2nd day of January, 2017