NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

TP No. 63/58-59/NCLT/AHM/2016 with TP 63-A/2016 (New)
Co. Appeal No. 18/58-59/CLB/MB/2014 with CA 253/2014 with (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 23.02.2017

Name of the Company: Nirbhai Singh B Bathh USA
V/s.
Gandhidham Developers Pvt. Ltd. & Ors.

Section of the Companies Act: Section 58-59 of the Companies Act, 2013

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

ORDER

Order Pronounced in open Court vide separate sheet.

23/2/17
BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 23th day of February, 2017.

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 23rd day of February, 2017

T.P. No. 63/58-59/NCLT/AHM/2016 (New)

COMPANY APPEAL N18/58-59/CLB/MB/2014 (Old)

In the matter of:-

1. Mr. Nirbhaisingh B. Batth, USA
(Through his constituted attorney
Mr. Tarjitsingh Bakhatawarsingh
Batth, Plot No.46, Sector 8,
Gandhidham – 370201,
Gujarat.) .... Petitioner

Versus

1. M/s. Gandhidham Developers Pvt. Ltd.
Plot No.46, Sector 8,
Gandhidham – 370201,
Gujarat.

2. Ranjitsingh Bakhatawarsingh Batth,
Plot No.46, Sector 8,
Gandhidham – 370201,
Gujarat.

3. Ramandeep Singh Ranjit Singh Batth,
Plot No.46, Sector 8,
Gandhidham – 370201,
Gujarat.

4. Harpreet Singh,
Fateh Transport,
House No.493,
Urban Estate Phase-1,
Model Town, Near Police Line,
Bhatinda,
Punjab. ... Respondents

Appearance:

Mr. Kunjal Dalal, PCS, for the Petitioner.
Mr. Aayog Doshi, Advocate, for the Respondents.

FINAL ORDER
(23.02.2017)

1. Mr. Nirbhaisingh B. Batth, through his Power of Attorney, Mr. Tarjitsingh Bakhatawarsingh Batth, filed Company Appeal No.18 of 2014 before the Company Law Board, Western Region Bench, Mumbai, under Sections 58 and 59 of the Companies Act, 2013. The said appeal, thereafter, has been transferred to this Tribunal and the same has been re-numbered as TP No.63 of 2016. The case of the petitioner, in a nutshell, is as follows:-

2. Mr. Nirbhaisingh B. Batth (petitioner) is a shareholder of the first respondent-company having 147500 equity shares of Rs.10/- each fully paid up. It is alleged by the petitioner that the second respondent has transferred the shares of the petitioner on the basis of a General Power of Attorney given by the petitioner in 1991. The petitioner, in his letter dated 24.04.2014, denied the execution of the Power of Attorney in favour of Mr. Ranjitsingh Bakhatawarsingh Batth (second respondent). The petitioner also, by his letter dated 31.05.2014, stated that the second respondent misused the Power of Attorney by changing some of the pages in the Power of Attorney in order to transfer the shares of the petitioner in the first respondent-company.

3. According to the petitioner, as can be seen from the Annual Return filed by the first respondent-company with the ROC for the AGM dated 29.09.2010, the said shares of the petitioners were transferred to the 4th respondent on 25.02.2010. Further, according to the petitioner, he never transferred his shares to anybody by executing any transfer deed or by giving any Power of Attorney.

4. It is further stated in the petition that, as per clause 15 of the Articles of Association of the first respondent-company, the person proposing to transfer shares shall give notice in writing to the company stating that he desires to transfer his shares, but such procedure has not been followed. According to the petitioner, the transfer of his shares in favour of the 4th respondent is not a valid transfer.

5. The petitioner has, therefore, prayed for the following reliefs in this petition: -

(a) reinstate the name of the petitioner in the Register of members of the company;

(b) deliver the share certificate to the petitioner; and

(c) costs and any other further reliefs.

6. The second respondent, who is one of the Directors of the first respondent-company, filed reply. It is the case of the

second respondent that Mr. Tarjitsingh Bakhatawarsingh Batth (attorney of the petitioner) had syphoned the money of the first respondent-company to the tune of Rs.17,42,980/- by misrepresentation. The first respondent-company initiated legal action for recovery of the said amount from Mr. Tarjitsingh Bakhatawarsingh Batth. The first respondent-company filed a complaint bearing No.21/2012 in the court of Additional Chief Judicial Magistrate, Gandhidham, Kachchh against Mr. Tarjitsingh Bakhatawarsingh Batth. The said complaint was dismissed by the learned Magistrate on the ground that the matter was of civil nature. The first respondent-company filed Revision Petition before the Sessions Court against the order of dismissal of the complaint and the same is pending. It is also the case of the second respondent that all the shareholders, including Mr. Tarjitsingh Bakhatawarsingh Batth, were informed about the transfer of shares of the petitioner in favour of the 4th respondent. According to the second respondent, Mr. Tarjitsingh Bakhatawarsingh Batth also syphoned the money of Surya Salt Pvt. Ltd., which is a sister concern of the first respondent-company, to the tune of Rs.49,15,620/-. The said Tarjitsingh Bakhatawarsingh Batth filed Company Petition No.30 under Sections 397 and 398 of the Companies Act, 1956 with false and frivolous allegations. Mr. Tarjitsingh Bakhatawarsingh Batth, according to the second respondent, also filed similar false and frivolous petitions in respect of other

companies in which the second respondent is a Director, i.e. in respect of Surya Salt Pvt. Ltd. and Bhuj Developers Pvt. Ltd.

7. The second respondent submitted that this petition filed under Section 111A and 113 of the Companies Act, 1956, which was already repealed, is not maintainable.

8. According to the second respondent, the petitioner sold away his entire shareholding of 147500 equity shares at the rate of Rs.10/- per share to the 4th respondent through his attorney Ranjitsingh Bakhatawarsingh Batth (second respondent) by executing a transfer deed dated 16th February, 2010 and the transfer was effected in the Registers of the first respondent-company on 25th February, 2010 in the name of the 4th respondent. It is also the case of the second respondent that the power of attorney given by the petitioner in his favour was in force on the date of execution of the transfer deed. The second respondent stated that since the transfer of shares was effected on 25th February, 2010 in the Registers of the first respondent-company, this petition is barred by limitation. It is also stated by the second respondent that a resolution has been passed by the Board of Directors of the first respondent-company to effect the transfer of shares of the petitioner in favour of the 4th respondent and endorsement was also made on the share certificate. Mr. Tarjitsingh Bakhatawarsingh

Batth, who filed this petition as attorney of the petitioner, is fully aware of all these facts, but he suppressed the same.

9. During the pendency of this petition, the second respondent filed Company Application No.253 of 2014 seeking dismissal of Company Appeal No.18 of 2014. In that application, the original petitioner filed his reply and the applicant therein also filed his rejoinder, wherein both the parties have reiterated the same facts, which they have stated in the petition and in the reply.

10. Heard the arguments of learned Practising Company Secretary, Mr. Kunjal Dalal, for the petitioner and learned Advocate, Mr. Aayog Doshi, for the respondents.

11. Based on the pleadings of both sides and the rival contentions, the following points emerge for determination in this petition :-

(1)Whether this petition (appeal) is filed within time?

(2)Whether the petitioner is entitled to the relief of reinstatement of his name in the Register of members of the company and for delivery of his share certificates?

12. This petition is filed under Sections 58 and 59 of the Companies Act, 2013 on 27th June, 2014. Sections 58 and 59 of the Companies Act, 2013 came into force with effect from 12.09.2013. Section 58 deals with refusal of registration and appeal against refusal. Sub-section (3) of Section 58 provides that the transferee may appeal to the Tribunal against the refusal of registration within a period of 30 days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of such transfer, as the case may be, was delivered to the company. Sub-section (4) of Section 58 deals with public companies.

13. Now, it has to be seen whether the relief prayed in this case by the petitioner comes within the purview of Section 58 or not. According to the petitioner, he is having equity shares of the first respondent-company and his shares were illegally transferred to the fourth respondent by the second respondent, who claims to be the attorney of the petitioner. The relief prayed by the petitioner is to reinstate his name in the Register of the members of the first respondent-company. That means rectification of the Register of members of the first respondent-company. Therefore, the petition filed by the petitioner cannot be treated as one under Section 58 of the Companies Act, 2013.

14. Section 59 of the Companies Act, 2013 deals with rectification of the Register of members. It says that, if the name of any person, without sufficient cause entered in the register of members of a company or after having been entered in the register is, without sufficient cause, omitted therefrom, the person aggrieved or any member of the company may prefer an appeal to the Tribunal. No period of limitation is provided in Section 59 of the Companies Act, 2013. But Section 433 of the Companies Act, 2013 says that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be. The Honourable Supreme Court in the case of ***Kerala State Electricity Board v. T. P. Kunjali, (1976) 4 SCC 634: AIR 1977 SC 282*** held that Article 137 of the Limitation Ac,1963 will apply to any petition or application filed under any Act to a Civil Court. Therefore, Article 137 of the Limitation Act is applicable to a petition or appeal filed under Section 59 of the Companies Act, 2013. In the case on hand, as can be seen from the reply, share transfer deed was signed by the attorney of the petitioner on 16th February, 2010 and the transfer was effected in the Register of members of the first respondent-company on 25th February, 2010 and, therefore, the right to sue accrued to the petitioner on 25th February, 2010 itself and this petition filed on 27th June, 2014 is barred by limitation. It is the argument of the learned Company Secretary for the petitioner that the

petitioner, without there being a plea in the petition, has got knowledge of the transfer of his shares only before the filing of this petition. But the pleadings in page 4 of the petition are as follows :-

> *"Further it is also observed from the Annual Return filed with the ROC for the AGM dated 29/09/2010, that the said shares had been transferred to Harpreet Singh (Holding on behalf of Partnership Firm M/s Fateh Motors) on 25/02/2010. However, petitioner had never transferred his shares to anybody by executing any transfer deed or giving power of attorney in this regard."*

From the above stated pleading in the petition, it is clear that in the Annual Return filed with ROC for the year 2010, it is mentioned that the shares of the petitioner are transferred to the 4th respondent. Therefore, it must be concluded that the petitioner has got knowledge of the transfer of the shares since the date of filing of Annual Return by the first respondent-company relating to year 2010. The plea in the sur-rejoinder dated 16.02.2015 filed in C.A. 253/2014 that the original petitioner has got knowledge about transfer of his shares only in March 2014 is an afterthought to overcome limitation. In the present case it is the action of the 1st Respondent-company which is being impugned. Petitioner did not specifically allege fraud in the petition and invoked Sec.17 of Limitation Act, 1963. Hence right to sue accrued to petitioner on 25-02-2010.

Therefore, this petition presented on 27-06-2014 is not within time and it is barred by limitation.

15. Assuming for a moment that the petition is within time, I proceed to determine the controversy basing on the material available on record.

16. A perusal of the general power of attorney dated 03.01.1991 executed by the petitioner in favour of the second respondent clearly goes to show that the second respondent was given power to sell or dispose of stock in trade also. Clause A.13 of the power of attorney says that the agent is authorised to sell, purchase, pledge, raise money or convert into money or securities for money and transfer and/or exchange and/or otherwise deal in all shares, stocks and other securities, marketable or non-marketable, etc. The petitioner on the one hand says that he has not executed the said General power of attorney and on the other hand says that some pages of the power of attorney are manipulated. The power of attorney is shown as Annexure "A" to the reply. The share transfer forms are shown as Annexure "B" and the copies of the certificates are shown as Annexure "C" to the reply. A perusal of Annexure "B" shows that it was signed by the second respondent as a duly constituted power of attorney of the petitioner. A perusal of the share certificates shows that the shares were transferred from

the petitioner to the 4th respondent on 25.02.2010. As can be seen from the notice dated 23.04.2014 got issued by the petitioner through his attorney, Mr. Tarjitsingh B. Batth, to the first respondent-company, it is clear that the petitioner gave power of attorney to Mr. Tarajitsingh B. Batth on 12th April, 2010 revoking any other power of attorney given to any other person in the past. That means, till 12th April, 2010, even according to the petitioner, the power of attorney dated 03.01.1991 given by the petitioner to the second respondent was in force. The date on which the share transfer form was signed by the second respondent as an authorised attorney of the petitioner was on 16th February, 2010 and the transfer of shares was effected on 25.02.2010, during which time the power of attorney in favour of the second respondent was in force. Therefore, the petitioner has no right to claim for reinstatement of his name in the list of members of the first respondent-company. When the petitioner is not entitled to reinstatement of his name in the Register of members of the first respondent-company, he is not entitled to the share certificate.

17. In view of the above discussion, the petitioner is not entitled to any of the reliefs prayed for in this petition. The petition is dismissed.

18. In view of the final disposal of the petition, there is no need to pass any separate order in T.P.63-A/16 (C.A. 253 of 2014) and is, accordingly, disposed of.

23/2/17

Bikki Raveendra Babu
Member Judicial

Pronounced by me in open court on this
23rd day of February, 2017.

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