

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.303 - CP 37 of 2021
With
ITEM No. 304 – IA/69(AHM)2023
ITEM No. 305 – IA/72(AHM)2023

Order under Section 241(1) & 242(4) of Co. Act, 2013

IN THE MATTER OF:

Mrs. Sunandaben Patel

.....Applicant

Vs.

Raymon Patel Gelatine Pvt. Ltd. & Ors.

.....Respondent

Order delivered on: 16/07/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH –I, AHMEDABAD**

**CP/37(AHM)2021
With
IA/69(AHM)2023
And
IA/72(AHM)2023**

In the matter of:

CP/37(AHM)2021

(A Company Petition filed under Section 241, 242 and 244 read with Section 59 of the Companies Act, 2013)

Mrs. Sunandaben Patel

Having address at:

4, Dutt Vihar Society, Param
Bungalow, Jetalpur Road,
Near Kalyan Jewellers,
Alkapuri, Vadodara-390 007.

....Petitioner

Versus

1. Raymon Patel Gelatine Pvt. Ltd.

Having registered office at:

61, Haribhakti Extension, Old Padra
Road, Baroda, Gujarat, Gandhinagar,
Gujarat – 390 015

Having Office at:

91-92 Atlanta, 209 Backbay,
Reclamation, Nariman Point,
Mumbai – 400 021

....Respondent No. 1

2. Mrs. Lopa Pankaj Dave

Director of Respondent No.1

Having residential address at:

Flat No. 301/302, Satnam Sharan

Building, Plot No. 109, Sindhi
Society, Chembur, Mumbai – 400 071.

And also at:-
3601 Brookside Drive,
Bedford, TX 76021 U.S.A.

....Respondent No. 2

- 3. Mrs. Prabhaben Patel Manubhai**
Director of Respondent No. 1
Having residential address at;
39, Kunj Society, Beside
Arunoday Society, Alkapuri,
Vadodara

And also at:-
Flat o. 301/302, Satnam Sharan
Building, Plot No. 109, Sindhi
Society, Chembur, Mumbai – 400 071

....Respondent No. 3

WITH

IA/69(AHM)2023

(An application seeking waiver of requirements specified in Clause
244(1)(a) of the Companies Act, 2013)

In the matter of:

Mrs. Sunandaben Patel
Having address at:
4, Dutt Vihar Society, Param
Bungalow, Jetalpur Road,
Near Kalyan Jewellers,
Alkapuri, Vadodara-390 007.

....Applicant

Versus

- 1. Raymon Patel Gelatine Pvt. Ltd.**
Having registered office at:
61, Haribhakti Extension, Old Padra
Road, Baroda, Gujarat, Gandhinagar,
Gujarat – 390 015

Having Office at:

91-92 Atlanta, 209 Backbay,
Reclamation, Nariman Point,
Mumbai – 400 021

2. **Mrs. Lopa Pankaj Dave**
Director of Respondent No.1
Having residential address at:
Flat No. 301/302, Satnam Sharan
Building, Plot No. 109, Sindhi
Society, Chembur, Mumbai – 400 071.

And also at:-
3601 Brookside Drive,
Bedford, TX 76021 U.S.A.

3. **Mrs. Prabhaben PatelManubhai**
Director of Respondent No. 1
Having residential address at;
39, Kunj Society, Beside
Arunoday Society, Alkapuri,
Vadodara

And also at:-
Flat o. 301/302, Satnam Sharan
Building, Plot No. 109, Sindhi
Society, Chembur, Mumbai – 400 071

....Respondents

AND

IA/72(AHM)2023

In the matter of:

1. **Raymon Patel Gelatine Pvt. Ltd.**
Having registered office at:
61, Haribhakti Extension, Old Padra
Road, Baroda, Gujarat, Gandhinagar,
Gujarat – 390 015

Having Office at:
91-92 Atlanta, 209 Backbay,
Reclamation, Nariman Point,
Mumbai – 400 021

**...Applicant No. 1
(Original Respondent No. 1)**

- 2. Mrs. Lopa Pankaj Dave**
Director of Respondent No.1
Having residential address at:
Flat No. 301/302, Satnam Sharan
Building, Plot No. 109, Sindhi
Society, Chembur, Mumbai – 400 071.

And also at:-
3601 Brookside Drive,
Bedford, TX 76021 U.S.A.

**...Applicant No. 2
(Original Respondent No. 2)**

- 3. Mrs. Prabhaben PatelManubhai**
Director of Respondent No. 1
Having residential address at;
39, Kunj Society, Beside
Arunoday Society, Alkapuri,
Vadodara

And also at:-
Flat o. 301/302, Satnam Sharan
Building, Plot No. 109, Sindhi
Society, Chembur, Mumbai – 400 071

**...Applicant No. 3
(Original Respondent No. 3)**

AND

Mrs. Sunandaben Patel
Having address at:
4, Dutt Vihar Society, Param
Bungalow, Jetalpur Road,
Near Kalyan Jewellers,
Alkapuri, Vadodara-390 007.

**....Opponent
(Original Petitioner)**

Order pronounced on 16.07.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance

For the Applicants :Mr. Karl Shroff, Advocate a. w.
:Mr. Chirag Bhavsar, Advocate &
:Mr. Tanay Mandot, Advocate
For the Respondents :Dr. U. K. Chaudhry, Sr. Advocate a. w.
:Mr Arpit Singhvi, Advocate

COMMON ORDER
(PER: BENCH)

1. **IA/69(AHM)2023** is filed by the Applicant/Petitioner under Section 244(1)(a) of the Companies Act, 2013 seeking following prayers:-
 - a) *That to waive of conditions requirement stipulated under Section 244(1)(a) of the Companies Act, 2013 and permitting the Petitioner to prosecute the Petition and avail rights and remedies under Section 241 of the Companies Act, 2013;*
 - b) *That to permit the Petitioner to continue and proceed with the Company Petition No. 37 of 2021 filed by the Petitioner challenging the oppressive acts of the Respondent Nos. 2 and 3.*
 - c) *Any other order as this Hon'ble Tribunal may deem fit in the interest of justice, fair play and good conscience.*
2. The Applicant/Petitioner states that she is widow of Late Mr. Ramanbhai Bhailal Patel/Respondent (RBP). It is stated that she is the only legal heir of RBP. It is stated that RBP was holding 33.334% shares in Respondent No.1 Company which were illegally transferred by Respondent Nos. 2 and 3 during the lifetime of RBP, without his knowledge and consent.

3. Respondent Nos. 2 and 3 are the present directors and shareholders of the Respondent No.1 Company and have mismanaged the affairs of the Respondent No.1 Company in such a manner which is prejudicial to the interest of Respondent No.1 Company and its shareholders. Respondent Nos. 2 and 3 acting collusively and in utter dereliction of their fiduciary duty, have transferred 33.334% shareholding held by Late RBP in Respondent No.1 Company in favour of Respondent No.3 for a paltry consideration of Rs.1.
4. It is stated that Applicant/Petitioner is the only legal heir and beneficiary under his last registered will dated 11th September, 2018 made by Late RBP.
5. The Applicant (Org. Petitioner) is filing the present application out of abundant precaution and without prejudice to the contention that the Applicant (Org. Petitioner) is even otherwise entitled to maintain the present application in terms of settled law. The present application is made for the limited purpose of seeking waiver of requirements specified in Section 244(1)(a) of the Companies Act, 2013. The Applicant is presently not a member of the Respondent No. 1 Company or holding any shares of Respondent No.1. However, the Applicant (Org. Petitioner) by virtue of being the only legal heir of Late Mr. Ramanbhai Patel who was holding 33.334% shares of Respondent No.1 which were illegally purported to be transferred by Respondent Nos.2 & 3 and the beneficiary of the estate of Late Mr. Ramanbhai Patel both as per the testate and intestacy is entitled under law to challenge the oppressive acts and to maintain the present Company Petition.

6. The acts disclosed in the Petition show a deliberate hijacking of Late Mr. Ramanbhai's shareholding and in law no transfer could have been put through contrary to Late Mr. Ramanbhai's consent. The applicant (Org. Petitioner) is an 81 years old widow and by this, the Petitioner is challenging the illegal usurpation of the shares of Late Mr. Ramanbhai Patel and will suffer grave hardship if the right to the shares is deprived by remitting the alleged transfer and rights issue to go unchallenged.
7. Reply was filed by Respondent Nos.1 to 3 under Diary No. D 5380 dated 22.12.2023. It is stated that the captioned application is not maintainable.
 - a. It is stated and submitted that the Applicant has not made out any case and has not demonstrated any exceptional circumstances for grant of waiver under law. That the Applicant does not have any interest in the company, the Applicant is neither a shareholder nor a member in the company and there exists no extra-ordinary and exceptional circumstances for grant of waiver. In fact, it is admitted by the petitioner/Application Para 4 of his application as under;

“The Applicant is presently not a member of the Respondent No.1 Company or holding any shares of Respondent No.1”
In view of this explicit admission, the present application be dismissed on this admission itself as the essential requirement of waiver, embodied in proviso to Section 244(1) of the Companies Act, 2013 are not complied with.
 - b. It is denied that the Applicant is wife of Late RBP and the only legal heir. The Respondent, thereafter, denied the will dated 11.09.2018 and also that the shares were transferred without the knowledge and consent of Late RBP. It is stated that Late RBP explicitly mentioned in his Will that all his family wealth including

the shares in the Respondent No. 1 Company must vest in Respondent Nos. 2 & 3 only. It is stated that the will dated 11.09.2018 is fabricated.

- c. It is stated that at the time of making that alleged will dated 11.09.2018, the deceased was not the owner of the shares, as the alleged shares have already been transferred on 16.01.2018 in accordance with law. It is stated and submitted that the deceased did not possess ownership of the transferred shares, and therefore, the Applicant herein cannot establish any legal claim based on the alleged will dated 11.09.2018.
- d. It is stated that the Applicant Nos. 2 and 3 have filed a suit being Special Civil Suit No. 398 of 2019 in the Court of Civil Judge, Senior Division at Vadodara seeking declaration, injunction and for declaration to the effect that the purported Will dated 11.09.2018 of the deceased is a fabricated document and the same is currently pending. A copy of the said plaint was filed along with IA No. 72 of 2023.
- e. It is stated that Late RBP had never objected to or challenged the transfer of his shareholding in favour of the Respondent during his lifetime till his death on **06.02.2019** which was much earlier to the date of transfer of the alleged shares which was on **16.01.2018**. It is stated that the shares were transferred for valid and due consideration.
- f. It is denied that the shareholding of Late RBP was illegally transferred. It is denied that the beneficiary of the estate of Late

RBP both as per testate and intestacy is entitled under law to the challenge the oppressive acts and to maintain the present petition. It is stated and submitted that the Applicant herein is not a shareholder of the Respondent Company. It is further stated and submitted that Late RBP had executed a will dated 10.12.2014 whereby Late RBP has categorically stated that the applicant herein would not be entitled to inherit any estate of Respondent No.1 Company. It is further stated and submitted that Respondent Nos. 2 and 3 have filed Civil Miscellaneous Application No. 245 of 2019 before the Court of Civil Judge (S.D.) at Vadodara for probate of will dated 10.12.2014. A copy of the plaint is already on record of this Hon'ble Tribunal, in our IA No.72 of 2023. It is stated and submitted that the Applicant has failed to demonstrate any exceptional circumstances for grant of waiver under law. That the Applicant does not have any interest in the company, the applicant is neither a shareholder nor a member in the company and there exists no extra-ordinary and exceptional circumstances for grant of waiver and hence the present application deserves to be dismissed.

8. **IA/72(AHM)2023** was filed by the Applicant (Original Respondent) seeking the following prayers:

- (A) *That this Hon'ble Tribunal may be pleased to hold and declare that the Opponent herein (Original Petitioner) is not having requisite qualification to file an application under Section 241 and 242 of the Companies Act, 2013;*
- (B) *That this Hon'ble Tribunal may be pleased to dismiss the Company Petition No. 37 of 2021;*
- (C) *For any other reliefs as this Hon'ble Tribunal may deem fit and proper.*

9. The Applicant in this IA is submitting that the Applicant in the Main CP is not having any statutory qualification as per Section 244 of the Companies Act, 2013 which prescribes that only Members can apply for filing a petition under Section 241 of the Companies Act, 2013. It is stated and submitted that the opponent therein is neither a member nor a shareholder of the Applicant No. 1 Company and hence is not having any *locus standi* to file the application under Section 241 of the Companies Act, 2013.
10. It is stated that the Original Applicant in CP No. 37 of 2021 herself stated in the application that she is not holding any shares as on the date of filing of the captioned petition. Thereafter, the Applicant in this IA has repeated the contents of his reply in IA/69(AHM)2023. For the sake of brevity, we are not reproducing the same here.
11. The Applicant, thereafter, has relied upon the following judgments:-
- i. *Hon'ble Supreme Court in the matter of Sangramsinh P. Gaekwad and Ors. v. Shantadevi P. Gaekwad (Dead) through LR. And Ors., (2005) 11 SCC 314;*
 - ii. *Hon'ble Supreme Court in the matter of Aruna Oswal vs. Pankaj Oswal(2020) 8 SCC 79.*
12. The Applicant has attached the Form No. SH-4 pertaining to the alleged transfer of 68,33,500 shares at Page Nos. 556 to 558. It is seen that the said Form SH-4 was executed by one Mrs. Lopa Pankaj Dave (Respondent No. 2 herein) being Power of Attorney holder of Late RBP on 06.01.2018, pursuant to which the Respondent No. 1 Company has transferred the shares on 16.01.2018.

13. The Applicant in main CP has filed written arguments under Diary No. D 5489 dated 10.07.2024. The Respondent has also filed written submissions under Diary No. D 5518 on 11.07.2024.
14. In the written submissions at Para-4, the Applicant in main CP states as under:-
- (a) The Petitioner is presently not a member of the Respondent No.1 Company or holding any shares of Respondent No.1. Section 241 and 244 both require 'members' to apply. In the case of a person who is not a member but a legal heir the entitlement to apply for pointing out acts of oppression and mismanagement is and cannot be in dispute as set out by well settled law.
- (b) The Applicant has further relied upon the following judgments:-
- i World Wide Agencies Pvt. Ltd. & Anr. Vs. Mrs. Margarat T. Desor & Ors. 1990 SCC (1)536, (Paragraphs 10, 23, 26);*
 - ii Manoj Bathla & Ors. vs. Vishwanah Bathla 2019 SCC Online NCLAT 198 (Paragraphs 5, Page 2);*
 - iii Mr. Ashutosh Gupta and Anr. v/s M/s. Modern Planners Pvt. Ltd. and Ors. decided in CP-47/241-242/ND/2021 on 13th June, 2023 by NCLT, Delhi, (Paragraphs 1, 2(iii), 8, 9, 10, 11, 12 and 13);*
 - iv Shippy Budhraj & Ors. vs. M/s. Holy-Land Marketing Private Limited & Ors decided on 22nd March, 2023 by Hon'ble NCLT, New Delhi in CP-36/241-241/ND/2021 (Paragraphs 25, 26, 27);*

(c) The interim order dated 02.05.2024, records as under:-

*“Learned Counsel for the Applicant seeks time to go through the judgment of the Hon’ble NCLAT rendered in the matter **Avanti Metals Pvt. Ltd. Vs. Alkesh Gupta (2024) ibclaw.in 42 NCLAT** and to make further remaining submissions. Ld. Sr. Counsel for the Respondent also seeks liberty to rebut the same.”*

(d) In response to the same the Petitioner in the main CP stated as under :

*“The decision in **Avanti Metals Pvt. Ltd vs. Alkesh Gupta decided on 17th January, 2024 by Hon’ble NCLAT, Chennai Bench (Company Appeal (AT) (CH) No. 87/2023) (Paragraphs 1, 2, 10) (“Avanti”)** is not a precedent on maintainability of the Petition under Section 241 and 242 of the Act. The question of the maintainability of the petition for oppression and mismanagement did not fall for consideration in Avanti’s case. In Avanti’s case, a transmission was sought. The question before the NCLAT was whether proper procedure was followed for transmission as per the Articles of Association and submitting necessary documents. The Articles of that company required production of a succession certificate for title to shares. In the present case, under Article 21 of the Article of Association providing for transmission procedure on demise there is no requirement of production of any succession certificate or probate.”*

(e) It is further stated as under:

If it is to be considered that Avanti Metals was considering maintainability of a Petition for oppression and mismanagement, in that case, it is respectfully submitted that the decision of Avanti is per incuriam as it has not considered the binding decisions of the Hon’ble Supreme Court nor discussed other law on the principles regarding maintainability of petition for oppression by legal heirs. The

observations of the decision, if they are to apply to a case for oppression and mismanagement are obiter. **Refer the following:**

- i. *State of UP & Anr. vs Synthetics and Chemicals Lts & Anr. (1991) SCC 139 (Para 40, 41);*
- ii. *Controller, KSRTC vs Mahadev Shetty & Anr. (2003) 7 SCC 197 (Para 23),*
- iii. *Arnit Das vs. State of Bihar (2000) 5 SCC 488 (Para 20);*
- iv. *D J Malpani vs. Commissioner of Central Excise, Nashik (2019) 9 SCC (Para 27).*

- (f) Per Contra, the Respondent in main case stated as under in their written submission:-

Further, in the case of *Avanti Metals Pvt. Ltd. vs. Alkesh Gupta (2024) ibclaw.in 42 NCLAT*, it has been inter alia held that if disputes relating to the probate of the will are pending before the competent forum, then a petition for rectification of register of members is not maintainable. The Tribunal further observed that when there is a dispute as to the heirship of a deceased shareholder, the company could refuse 'transfer of shares' until such dispute is resolved by competent court of law.

15. We have heard both the sides and perused the documents as here been produced before us. Followings are the admitted facts in the matter:-

- I. Late RBP was holder of 68,33,500 equity shares in Respondent No.1 Company.
- II. Late RBP executed a Form SH-4 through which equity shares held by Late RBP for transfer 68,33,500 shares to Respondent No.3 and shares were transferred on 16.01.2018.
- III. The transfer form was signed by Respondent No.2 holding Power of Attorney of Late RBP.

- IV. On 25.04.2018, Late RBP revoked all Power of Attorney issued in favour of Respondent No. 2.
- V. On 11.09.2018, Late RBP executed a registered will in favour of the Applicant/Petitioner herein.
- VI. On 06.02.2019, RBP passed away due to natural causes.
- VII. On 10.05.2019, Respondent Nos. 2 and 3 filed Miscellaneous Application being Application No. 245 of 2019 in the Court of Civil Judge (S.D.) at Vadodara seeking probate of Late RBP's Will dated 10.12.2014 to which objections were filed by the Applicant/Petitioner herein.
- VIII. On 13.12.2019, Suit No. 398 of 2019 was filed by the Respondent Nos. 2 and 3 before Civil Court challenging a Will dated 11.09.2018.
- IX. Late RBP was not a member of the Respondent No.1 Company as on the date of his death.
- X. During his lifetime Late RBP was aware that the impugned shares have been transferred in favour of Respondent Nos. 2 and 3.
- XI. However, the Late RBP never objected during his lifetime to the alleged illegal transferred of the shares.
16. The Hon'ble National Company Law Appellate Tribunal at Chennai in its recent judgment in the case of *Avanti Metals Private Limited vs. Alkesh Gupta in Company Appeal (AT) (CH) No. 87/2023* dated 17.01.2024 at para 14 has held that:-

14. It is needless for this 'Tribunal' to make a mention that a 'Will' is probated by a 'Competent Court' is binding on the parties, unless it is set aside by a 'Competent Forum'. If the 'Probate Proceedings' are pending in a 'Civil Court', then the 'Petition' under the 'Companies Act' for 'rectification of register' would not be maintainable. Where there is a dispute to the hardship of a 'deceased shareholders', the Company could refuse 'transfer of shares', until such dispute is resolved by a 'Competent Court of Law'.

17. After considering the various citations of the rival parties, we are of the view that the ratio as laid down by the Hon'ble NCLAT in the matter of *Avanti Metals Pvt. Ltd. vs. Alkesh Gupta* decided on 17th January, 2024 by Hon'ble NCLAT, Chennai Bench is clearly applicable in the present matter, as rival probate filed by the Applicant/Petitioner and Respondent is presently pending before appropriate Civil Court. The outcome of the same will determine who is going to be the owner of the purported shares of Late RBP.
18. This is also in an admitted position that the shares were transferred during the lifetime of the deceased RBP and he never objected to such a transfer during his lifetime.
19. As on the date of this petition, Applicant/Petitioner is not a member of the Respondent No. 1 Company.
20. As on the date of death Late RBP was not a member of Respondent No. 1 Company.

21. In view of the above, we are constrained to dismissing the waiver application filed by the Applicant/Petitioner being IA/69(AHM)2023. IA/72(AHM)2023 filed by the Respondents is hereby allowed.
22. Since, we have dismissed the IA/69(AHM)2023 seeking waiver under Section 244 of Companies Act, 2013 the main application being CP No. 37 of 2021 is hereby dismissed being not maintainable. No order as to cost.
23. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

SK