

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No. 165 of 2017**

**IN THE MATTER OF:**

**Nishal Rajsakha**

**...Appellant**

**Versus**

**BND Fashions Pvt. Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant :**           **Shri Anсад Randeria, Shri A. Nair, Advocates**

**For Respondents:**       **Shri Rajnish Sinha and Shri Nikhil Jain, Advocates**

**O R D E R**

**21.08.2017**       This appeal has been preferred by the appellant (petitioner) against the order dated 10<sup>th</sup> March, 2017 passed by the National Company Law Tribunal, Ahmedabad Bench, Ahmedabad (hereinafter referred to as the 'Tribunal') in I.A. No. 11/2016. The aforesaid application was preferred by original Respondent Nos. 2 and 3 (respondents herein) on the ground that the petition under Sections 397 and 398 of the Companies Act, 1956 was not maintainable, as the name of the appellant's has not recorded in the register of shareholder. The Tribunal by the impugned order while accepting the submissions made on behalf of the respondent dismissed the company petition with the following observations:

“34.           In the case on hand it is held that the petitioner is not entitled to become a member of 1<sup>st</sup> Respondent Company.

*Therefore, he is not entitled to file a petition u/s. 59 of the Companies Act, 2013 and u/Sec. 397 and 398 of Companies Act, 1956.*

35. *In view of the above said findings this application I.A. 11/2016 filed by Original Respondent No. 2 and 3 is allowed. The company petition No. 69 of 2016 (New Number TP-136 of 2016) stand dismissed. In view of dismissal of TP 136/2016, IAs' 20 and IA 21/2017 are closed."*

2. Learned counsel appearing on behalf of the appellant submitted that the combined application under Section 59 along with Sections 397 and 398 was maintainable, *per contra*, according to the learned counsel for the respondents till the appellant's name is entered in the register of members, the application under Sections 397 and 398 is not maintainable in view of Section 399 of the Companies Act, 1956.

3. Having heard the learned counsel for the parties, while we are of the view that except a member qualified in terms of Section 399 (now Section 244 of the Companies Act, 2013), no other person is entitle to file any petition under Sections 397 and 398 (now Section 241 and 242 of the Companies Act, 2013), the application at the instance of the applicant under Sections 397 and 398 was not maintainable.

4. Insofar as the application under Section 59 of the Companies Act, 2013 is concerned, we are of the view that once the Tribunal held that petition under Sections 397 and 398, was not maintainable, the Tribunal was not required to

decide the merit of the claim under Section 59 of the Companies Act, 2013, which is required to be decided on different criteria. As the petition was not maintainable before the Tribunal, it was not open to the Tribunal to give any finding with regard to the merit of the claim under Section 59 of the Companies Act, 2013.

5. For the reasons aforesaid, the observation of the Tribunal with regard to the merit of the application under Section 59 of the Companies Act, 2013 are set aside. The order dated 10<sup>th</sup> March, 2017 stands modified to the extent above. The application preferred by the appellant under Sections 397 and 398 is dismissed. It will be open to the appellant to ask for appropriate relief before a Court of competent jurisdiction, if he is entitled under the law.

6. The appeal stands disposed of with the aforesaid observations.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Balvinder Singh ]  
Member (Technical)