

National Company Law Tribunal

Allahabad Bench

CP No. (IB)45/ALD/2017

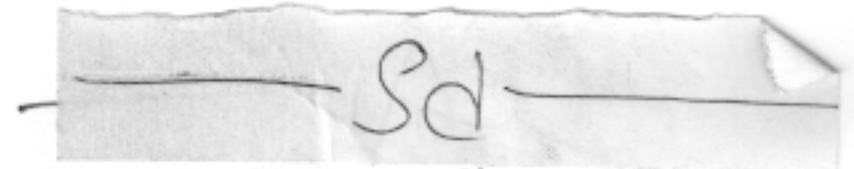
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.02.2018

NAME OF THE COMPANY: I.E.L. Supervisor Association v/s Union of India
SECTION OF THE COMPANIES ACT/ I & B CODE: 252, Schedule 8 of I & B Code of 2016

<u>Sl. NO.</u>	<u>Name</u>	<u>Designation</u>	<u>Representation</u>	<u>Signature</u>
<u>1.</u>	Sudeep Harkauli	Adv	Respondent Company	[Signature]
<u>2.</u>				

CP NO.(IB)45/ALD/2017

The case is fixed for appropriate order in respect of the present I & B petition. The order is in process of dictation, hence, the matter is adjournment to after lunch session for pronouncement of order.



**H.P. Chaturvedi,
Member (Judicial)**

AFTER LUNCH 04:00 PM

Sh. Sudeep Harkauli, Advocate for the respondent company is present. The case is fixed for order on maintainability of the present I & B petition, wherein the argument on behalf of counsel for both the parties have earlier been heard. The issue arises in the present matter for consideration of this Tribunal is that as to whether the present reference filed under Section 252 Schedule 8 of the I & B Code can be preferred by someone other than a company being an Association of worker/employees of the company. That apart an objection has been raised as to whether the present petitioner is having locus standi for filing the present reference under the above stated provision to challenge the draft rehabilitation scheme as has been approved by the BIFR. Instead of the Respondent Company itself which has already accepted the above stated rehabilitation scheme and is already acting in terms & conditions contained therein. Moreover, the objection raised before us was as to whether, the present petitioner IEL Supervisors Association is really in legal

existence, despite its deregistration by an order of Registrar Trade Union dated 06.01.2011 against which an appeal is stated to be pending before a higher forum, but the final outcome thereof is not yet known. Moreover, the petitioner/applicant itself through its President and its reply to the objection dated 20.08.2017 has taken such plea that the association (IEL Supervisors Association) has made such reference raising dispute before this Tribunal for the betterment of members of its association and employees of the company for which the Registration of Association under Trade Union Act is not mandatory **as per the Hon'ble Supreme Court's decision dated 04.05.1960 passed in Civil Misc. Appeal No.848 of 1959 (AIR 1530 Supreme Court 1328)**. Thus, Sh. Gupta being President of the Association claims eligibility for filing of the present reference application and not necessarily as being President of a registered Trade Union.

We carefully considered the above stated rival submission placed before us by the learned counsel for both the parties with respect to objection and maintainability of the present nature of petition/reference filed under Section 252 Schedule 8 of the I & B Code.

A plain reading of the relevant provision of Schedule 8 of the 252 of the I & B Code reads as under, **"that a company in respect of which such appeal or reference or enquiry stands abated under this Clause may make a reference to the NCLT under the I & B Code within 180 days from the commencement of the I & B Code.**


In view of the above stated provision, the question arises here that the present petition can exclusively be filed by a company and not otherwise any person as the relevant provisions of the Code are silent in this respect and there is no an express authority to an institution/person other than the company for filing such application. Hence, even assuming so that the present association is a recognized and deemed to be registered workmen union during the pendency of such appeal, whether it is entitled to for filing the present reference application inconformity with the statutory provision of the I & B Code, which is an issue of considerable debates.

In addition to the above, we would like to observe that the Hon'ble High Court while passing its order in a petition filed by the IEL Supervisors Association (herein the present petitioner) in WC No.10954/2011 on 27.05.2011 has taken a conscious note, clarifying such that the petitioner association is not a recognized union by the company and it is not in dispute that the petitioner registration under the Trade Union Act has been cancelled by the Registrar of the Trade Union vide its order dated

06.01.2011 and against which an appeal, as per the petitioner is still pending. Such being the position, the Hon'ble High Court passed such direction while disposing of a writ petition that any objection raised by the members of the petitioner's association as contemplated under the relevant provision of Act of 1985 filed against the draft rehabilitation scheme shall be considered by the BIFR before finalising the rehabilitation scheme.

It is evident that BIFR in compliance of direction and order of the Hon'ble High Court provided an opportunity to the petitioner for filing its objection and considered the same before sanctioning of the scheme.

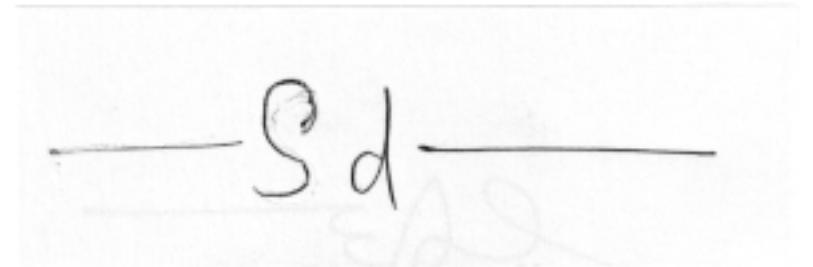
Subsequent, thereto the petitioner being aggrieved with such decision of the BIFR sanctioning the scheme preferred another writ petition in the Hon'ble Allahabad High Court by way of writ petition no.47394/2012, wherein the Division Bench of the Hon'ble High Court pleased to disposed of the same by issuing further direction to the petitioner to file a statutory appeal within the stipulated period to the AAIFR and in such position no objection raised if any, with regard to the delay in any filing of the such appeal shall be entertained by the AAIFR and the appeal would be decided in accordance with the law give such impression that prima facie the Hon'ble High Court did not reject the eligibility of the petitioner for filing such appeal before the AAIFR. Since, the proceeding before the AAIFR & BIFR stands abated by virtue of the provision of the I & B Code, 2016 came into effect, the petitioner has made the present reference. Hence, we are of the view that at this stage that it would not be appropriate to determine the issue of maintainability of the present petition we keep this issue open to be decided alongwith other issues involved which relates to maintainability of the present petition specifically, the locus standi of the petitioner/association for filing the present petition under Section 252 Schedule 8 of the Code, when the Act specifically provide for filing the such reference by the company alone and not by any other such issue can be dealt with after hearing the counsel for both the parties. That apart we feel necessary to get more clarification from the petitioner in this respect that how many of its member of the association are present employee of the respondent company and out of them how many have accepted the scheme and had decided not to oppose the sanctioning of the Rehabilitation Scheme and out of which how many given express authority to Mr. Gupta being President of the Association to represent their case to challenge the scheme sanctioned and approved by the BIFR. Therefore, a detail clarification to be furnished in form of affidavit by enclosing necessary documents and particulars about their employment with the respondent company. Such affidavit is required to



be filed by four weeks before the registry by serving an advance copy thereof to the counsel for the respondent, so as to enable him to file counter, if any.

The petitioner is further required to clarify as to whether it has challenged the order of the BIFR dated 21.02.2007 before higher/statutory forum by which the respondent company was declared sick, as such order appears to be foundation of the subsequent order passed by the BIFR for sanctioning of the rehabilitation scheme. In case such order dated 21.02.2007 is not found to be challenged then what would be the legal consequence thereof.

Hence the matter is adjourned for further clarification and hearings. The matter to be listed on 23rd March, 2018.



**H.P. Chaturvedi,
Member (Judicial)**

Dated:23.02.2018

Typed by:
Kavya Prakash Srivastava
(Stenographer)