

National Company Law Tribunal

Allahabad Bench

CP No. 64/ND/2013,
CA No. 53/2018

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 22.02.2018

NAME OF THE COMPANY: *Mr. Rakesh Mahajan & ors v/s Mrs B.D Mahajan & sons Pvt Ltd*
SECTION OF THE COMPANIES ACT/ I & B CODE: *397/398 of the companies act of 1956*

<u>Sl. NO.</u>	<u>Name</u>	<u>Designation</u>	<u>Representation</u>	<u>Signature</u>
<u>1.</u>	<i>Anil Kumar</i>	<i>PCS</i>	<i>Proxy &</i>	<i>Anil K.</i>
<u>2.</u>			<i>Pet. Counsel</i>	

CP No. 64/ND/2013, CA No. 53/2018

Shri Anil Kumar, PCS proxy for Advocate counsel Shri S.D. Sudhi representing the petitioner. None for the Respondent.

The case is fixed today for passing an order in respect of CA 13/2017 as well as CA No. 13A/2017 filed under section 11 of the NCLT Rules by praying for replacement of the Chartered Accountant Shri R. Nagpal (as appointed by Hon'ble Supreme Court after recording a consensus of both the parties vide its order dated 12.10.2015). Now the petitioner in CP No. 64/ND/2013 has moved another application bearing CA No. 53/2018 in CA No. 64/ND/2013 seeking for direction from this court which are narrated in the prayer clause some more of such application, which are being reproduced herein under;

- i. Direct ROC, Kanpur to provide the details of directorship of the Respondent No.1 Company since 2007.*
- ii. Direct Mr. R Nagpal to submit the comprehensive report of the financial spending and disbursal within two weeks to both of the Directors of the Respondent No.1 company since the appointment of Mr. R Nagpal, so as to assist in expediting the further proceedings.*

- iii. *Direct the Respondent No.2 to furnish the details of reinduction as Director with Respondent No.1 Company and be directed to submit the reason of dismissal from the company as a Director in year 2007/2008.*
- iv. *Pass any order or such order as this court may deem fit and proper in the interest of justice.*


Since subsequent filing of this application and the order that this court may pass, therein may have an impact on disposal of CA No. 13A/2017 seeking replacement of the learned Chartered Accountant and/ or further direction to be issued to him to release the expenses incurred by the petitioner on behalf of the Company as described in the application No. CA No. 13A/2017.

Since, there are some remarks made against the performance of the Chartered Accountant Shri R. Nagpal alleging his biasedness to a particular Director. Therefore, we felt that such the order to be passed after knowing the view and receiving the comments of the Chartered by affording him an opportunity of being heard. Therefore, we direct to issue a notice to the Chartered Accountant Shri R. Nagpal and as well as to the office of the ROC, Kanpur and to other Respondents of the Main Company Petition by granting liberty to file reply in respect of the present application.

We also considered the urgency that may arise in respect of payment of reasonable and valid bills/ claim and which are necessary expenses of the Company during the current Financial year which is going to be over by next months. Hence, bill may be required to be cleared at the earliest as per norms and existing practise.

Moreover, we are having utmost regard and conscious enough about the Hon'ble Supreme Court order dated 13th August 2013 readwith order dated 29th October, 2013 appointing Sri R. Nagpal and pleased to make such observation that if both brothers i.e. Mr. Rakesh Mahajan and Sudhir Mahajan if do not agree to sign a particular cheque for making payment with regard to cost or liability, which is to be made in the course of their business, then the matter shall be referred to Mr. R. Nagpal, the Chartered Accountant and in that event Mr. R. Nagpal will take a decision will make payment i.e. signing the cheque and his decision shall be final and binding.

Subsequent thereto, the Hon'ble Supreme Court in its subsequent



order dated 12th October, 2015 (passed in Civil Appeal No. 67426743 of 2013 was pleased further to grant a liberty to the C.L.B. to consider and decide the issue of replacement of Shri R.Nagpal by observing such;

“ It has been submitted by the learned counsel appearing for the parties that the main matter is to be heard by the Company Law Board(for short “ The CLB”) on 16th November, 2015.


The present applications shall be heard by the CLB. The CLB shall hear the entire matter notwithstanding the fact that we had appointed Shri R. Nagpal, Chartered Accountant by an order dated 13th August, 2013 read with order dated 29th October, 2013. It would be open to the CLB to pass appropriate order even on an application whereby it has been prayed that Shri R. Nagpal be replaced by another person and if thought proper, the CLB may also replace Mr. R. Nagpal, though his appointment was made by this court.

In the meantime, respondents may file the reply to these applications before the CLB.

The applications are disposed of accordingly.”

Thus, it is now settled that this Tribunal after dissolving of the CLB came into existence under the provision of the Companies Act, 2013. Hence, posses necessary jurisdiction to decide the issue of change/replacement of Chartered Accountant.

Since, there are certain remarks about impartialness of Shri R. Nagpal alleging biased in favour of a particular Director. Therefore, we feel such debatable issue can be dealt with after verifying necessary and adequate proof/ evidence produced and after hearing of the counsel. Therefore, at this stage and without hearing him, at this stage would not be appropriate for considering the paramount interest of the Respondent company. However, equally in order to maintain transparency and balancing approach for settling the dues of the Company already raised / or to be raised in further by both the Directors of the Company. Hence, we feel to about some interim measure and to make necessary arrangement by appointing another observer/ Amicus curiae from this Court, who shall also attend the company's Board Meeting along with the Chartered Accountant to consider for sanction of such Bills, raised before him and to take joint decision on such bills which shall be



acceptable to the Respondent Company in case there arise some difference of opinion between the Observer and the Chartered Accountant. Then the matter may be referred to this Court for issue of appropriate direction.

In view of such observation and measures above stated CA No. 13/2017 and CA No. 13A/2017 would be decided later on. After hearing the contention of the Chartered Accountant and as well as hearing of the arguments of the counsel for both the parties in respect of CA No. 53/2018.

Therefore, this court appoint PCS Shri Adesh Tandon as an Observer of this court, he shall be entitled for equal honorarium of Rs. 25,000/- p.m. being paid to the Chartered Accountant and other admissible expenses that may be incurred by him, his Mobile No. and email address are under;

Mobile No. ^{9839100709,} 983100709, email no. adeshtandon11@gmail.co.

A copy of this order be communicated to the learned Observer/Chartered Accountant. They are expected to file monthly report to this court.

The matter to be listed on 22nd March, 2018.

Date: 22/02/2018

Typed by
Jyoti
(Stenographer)



H.P. Chaturvedi,
Member(Judicial)