

ATTENDANCE-CUM-ORDER SHEET OF HEARING
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**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH**

TA No.07/2016 (CA No.126 of 2016)

TA No.27/2016 (CA No.460 of 2014)

&

TA No.08/2016 (CA No.123 of 2014)

In

TP No.13/397/398/GB/2016

(CP No.186 of 2013)

Under Section 397/398

In the matter of

Sharmila Shetty

...

Petitioner

Versus-

B & A Ltd. and Others

...

Respondents

**CORAM**

Hon'ble Mr. Justice P K Saikia, Member(J)

**ORDER**

**13<sup>th</sup> July, 2017.**

1. Heard Mr. J. Roy and Ms. Sumi Kakati, learned counsel representing the applicant/petitioner. Mr. R. Banerjee, learned senior counsel, Mr. Aniruddha Roy, learned counsel and Mr. Amit Kumar Sahewalla, learned counsel appear before this Tribunal representing the respondents.

2. Referring to an application, filed today, Mr. Roy, counsel for the applicant/petitioner submits that this case needs to be adjourned till 17.07.2017 as there was a communication gap regarding the posting of the proceeding in hand today, and that too, for final hearing. In that connection, it has been submitted that this Tribunal passed orders in this proceeding and in all other connected proceedings on 09.05.2017 directing the applicant/petitioner to remain present personally or



through counsel/ duly authorised agent so that the disputes in these proceedings could be heard without fail.

3. However, since the order dated 9.5.2017 was communicated to the applicant/petitioner only yesterday and since there was a communication gap regarding the posting of present proceeding today for hearing, the counsel for the applicant/petitioner have urged this Tribunal to defer the present proceeding for hearing to an another date.

4. It may be stated here that aforesaid orders (viz the orders rendered on 9.5.2017) were passed having regard to the fact that the proceedings in question remain posted over a long period of time for hearing etc and such delay was mainly for the adjournments, sought for by the parties, more particularly, the applicant/petitioner of the present proceedings. I propose to aver to all those orders at appropriate time and place.

5. The submission, so advanced from the side of applicant/petitioner, was hotly disputed by the learned counsel for the respondents stating that the argument, advanced seeking adjournment, is premised not only on falsehood but is also designed to mislead the Tribunal. In support of such contention, it has been submitted that the order dated 9.5.2017 was delivered to the respondents not only by speed post but also by e-mail as well.

6. The e-mail, so sent by this Tribunal, was received by the respondents on 12.05.2017 whereas the order sent by registered post was received on 29.05.2017. In support of such contention, my attention has been drawn to the e-mail dated 12.05.2017 and the document, issued by postal department, to show that said registered letter was received by respondents on 29.05.2017. There is nothing on record, according to the learned counsel for the respondents, to show that such e-mail and document issued by postal department were not reliable for any reason whatsoever. Such revelations firmly demonstrate that the respondents have resorted to huge lies in seeking adjournment of the proceeding in hand—argues counsel for the petitioner.

7. It has also been contended that even if one assumes for the sake of argument for a moment that what is being stated by the counsel for the applicant/petitioner in the aforesaid



petition is wholly correct, yet then, such an application cannot be accepted since said application was not filed in accordance with the prescription in the Rule 23(5) of the NCLT Rules, 2016.

8. For ready reference, said Rule is also reproduced below:

*"In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorised representative".*

9. Since the prescription in the aforesaid Rule was also not followed in preferring the application seeking adjournment in this proceeding today, on this count too, the application seeking adjournment is required to be rejected, argued Mr. R. Banerjee, Senior counsel appearing for the respondents.

10. I have considered the rival submission having regard to the materials on record. In order to appreciate the present proceeding, I find it necessary to have a look at the orders, passed by this Tribunal in this proceeding and all other connected proceedings on 9.5.2017.

11. For ready reference, the orders, passed by this Tribunal on the last occasion, same being 9.5.2017, in TA No.07/2016 (corresponding to CA No.126 of 2016). TA No.27/2016 (corresponding to CA No.460 of 2014) and TA No.08/2016 (corresponding to CA No. 123 of 2014) are reproduced below: -

"T.A.No.07/2016 (C.A.No.126/2016)"

The applicant remains absent without taking any steps. On the other hand, Mr R. Banerjee, learned Sr. Advocate as well as Mr A. Roy, Mr R.K. Rai and Mr A.K. Sahewalla, Advocates appear before this Tribunal representing the non-applicants/respondents.

*Seen the order passed by this Tribunal on the last occasion as well as on several earlier occasions. On perusal of those orders, it is found that the applicant/petitioner on almost all earlier occasions prayed for adjournment on one ground or other which sufficiently delay the disposal of the proceeding in hand. In this connection, I find it necessary to reproduce some of the earlier orders, more particularly, the order dated 07.03.2017. For ready reference, order dated 07.03.2017, passed by this Tribunal, is reproduced below:*

*"Heard Ms M. Kakati and Mr A. Hasan, learned counsel for the petitioner/applicant. They submit that this application may be adjourned for some time on the ground that the learned Sr. Counsel engaged could not appear before this court today due to his preoccupation in some other urgent matters.*

*Also heard Mr R. Banerjee, learned Sr. Counsel for the opposite party/respondents assisted by Mr A. Roy, Mr R.K. Rai and Mr A.K. Sahewalla, Advocates. Mr Banerjee objects*



to the prayer for adjournment stating that several adjournments have already been granted to the learned Sr. Counsel for the petitioner/applicant on one pretext or other but the learned Sr. Counsel for the petitioner/applicant never appears before this court till date. He further submits that delay in hearing the present proceeding also causes a lot of complications and, therefore, he prays before this court not to allow the prayer for adjournment.

I have perused the record and found that on earlier occasions also, adjournments were granted in order to enable the learned Sr. Counsel for the petitioner/applicant to appear before this court.

On consideration of the submissions and having regard to other facts found on record, I adjourn this proceeding till 09.05.2017 on the condition that no further adjournment on any ground will be entertained on the next date.

List the matter on 09.05.2017."

Unfortunately, today too, the applicant remained absent, and that too, without taking any steps.

Reluctantly, I adjourn the matter till 13.07.2017.

It is made clear that if the applicant/petitioner is found absent on the next date, necessary order on the prayer made in present proceeding would be passed in accordance with law".

T.A.No.27/2016 (C.A.No.460/2013)

The applicant remains absent without taking any steps. On the other hand, Mr R. Banerjee, learned Sr. Advocate as well as Mr A. Roy, Mr R.K. Rai and Mr A.K. Sahewalla, Advocates, remain present before this Tribunal representing the non-applicants/respondents.

For the ends of justice, the matter is adjourned till 13.07.2017.

It is made clear that if the applicant/petitioner is found absent on the next date, necessary order on the prayer made in present proceeding would be passed in accordance with law".

"T.P.No.13/2016 (C.P.No.186/2013)

The petitioner remains absent without taking any steps. Heard Mr R. Banerjee, learned Sr. Advocate, assisted by Mr A. Roy, Mr R.K. Rai and Mr A.K. Sahewalla, Advocates, who all appear before this Tribunal today on behalf of the respondents.

List this matter on 13.07.2017 along with other connected proceedings.

It is made clear that if the applicant/petitioner is found absent on the next date, necessary order on the prayer made in present proceeding would be passed in accordance with law.



*Registry is directed to issue notice to the petitioner regarding posting of this matter on 13.07.2017 by Registered Post with A/D as well as by email"*

12. In that connection, I also find it necessary to go through the orders passed in those proceedings on 07.03.2017 . Said orders are also reproduced below:

*" Heard Ms M. Kakati and Mr A. Hasan, learned counsel for the petitioner/applicant. They submit that this application may be adjourned for some time on the ground that the learned Sr. Counsel engaged could not appear before this court today due to his preoccupation in some other urgent matters.*

*Also heard Mr R. Banerjee, learned Sr. Counsel for the opposite party/respondents assisted by Mr A. Roy, Mr R.K. Rai and Mr A.K. Sahewalla, Advocates. Mr Banerjee objects to the prayer for adjournment stating that several adjournments have already been granted to the learned Sr. Counsel for the petitioner/applicant on one pretext or other but the learned Sr. Counsel for the petitioner/applicant never appears before this court till date. He further submits that delay in hearing the present proceeding also causes a lot of complications and, therefore, he prays before this court not to allow the prayer for adjournment.*

*I have perused the record and found that on earlier occasions also, adjournments were granted in order to enable the learned Sr. Counsel for the petitioner/applicant to appear before this court.*

*On consideration of the submissions and having regard to other facts found on record, I adjourn this proceeding till 09.05.2017 on the condition that no further adjournment on any ground will be entertained on the next date.*

*List the matter on 09.05.2017".*

13. It may be stated here that on many earlier occasions too, this proceeding stood adjourned either on the prayer of the learned counsel for the applicant / petitioner, vide order dated 4.11.2016 and 16.01.2017 or for applicant's/petitioner's remaining absent without taking any step whatsoever vide order dated 9.9.2016.

14. A conjoint reading of those orders leaves no manner of doubt whatsoever that the further progress of the present proceeding and all other connected proceedings become impossible mainly for the attitude and conduct of the applicant/petitioner which is why this Tribunal was constrained to pass the order dated 9.5.2017 in the aforesaid proceeding requiring the applicant /petitioner to remain present before this Tribunal either personally or through her duly authorised agent and also to take necessary steps for further progress of same indicating the consequence that was to follow on her failure to comply with the directions in the aforesaid orders.



15. Unfortunately, today too, the applicant /petitioner has prayed for time stating that due to non-furnishing of the copies of the orders, rendered in aforesaid proceeding in time and also for a communication gap regarding posting of the date today, the applicant /petitioner has found it difficult to participate in the hearing of the proceeding in hand. However, such contention is wholly untenable.
16. This is because of the fact that there is indisputable evidence to show that the copies of the orders, passed on 9.5.2017, were sent to the applicant/petitioner by speed post as well as by e-mail. There is also undeniable evidence to show that while the applicant/petitioner received the e-mail on 12.05.2017, the order, sent by speed post, was received by her on 29.05.2017. Such revelations not only show the falsity of the ground, advanced for seeking adjournment today but also become proof to the fact that the applicant /petitioner is trying to mislead the Tribunal as well as the counsel engaged by her.
17. In the face of such revelations and also in the teeth of the directions in the orders rendered on 9.5.2017, it would be preposterous to accept the prayer made by the applicant /petitioner seeking deferring the hearings in the proceedings aforesaid to an another date.
18. Even otherwise, such application seeking adjournment is required to be rejected since in preferring said application, the provisions, incorporated in Rule 23 (5) of the NCLT Rules, 2016, were not complied with inasmuch as said sub -Rule requires that when an application is filed in a pending proceeding, applicant needs to furnish copy thereof to the opposite party or his duly authorised agent which was admittedly not done in the instant case. Therefore, on this count as well, the present application is liable to be rejected.
19. Resultantly, this Tribunal has no other option but to dismiss the proceeding.
- TA No.27/2016 (CA No.460/2013)**
20. Heard Mr. R. Banerjee, learned Sr. Advocate, assisted by Mr. A. Roy, Mr. R.K. Rai and Mr. A.K. Sahewalla, Advocates, who all appear before this Tribunal today on behalf of the respondents. The applicant/petitioner is represented by Mr. J. Roy and Ms. Sumi Kakati, learned



counsel who prayed for adjournment on the grounds which were recorded in T.A.07 of 2016 (corresponding to CA 126 of 2016).

21. The grounds, so taken, are already considered and found untenable for reasons more than one vide order dated 13.07.2017 in TA No. 07 of 2016.

22. In view of above, on the same grounds, this proceeding too stands dismissed.

**TP No.27/2016 (CA No.460/2013)**

23. Heard Mr. R. Banerjee, learned Sr. Advocate, assisted by Mr. A. Roy, Mr. R.K. Rai and Mr. A.K. Sahewalla, Advocates, who all appear before this Tribunal today on behalf of the respondents. The applicant/petitioner is represented by Mr. J. Roy and Ms. Sumi Kakati, learned counsel who prayed for adjournment on the grounds which were recorded in T.A.07 of 2016 (corresponding to CA 126 of 2016).

24. The grounds, so taken, are already considered and found untenable for reasons more than one vide order dated 13.07.2017 in TA No. 07 of 2016.

25. In view of above, on the same grounds, this proceeding too stands dismissed.

**TA No.08/2016 (CA No.123 of 2014)**

26. Heard Mr. R. Banerjee, learned Sr. Advocate, assisted by Mr. A. Roy, Mr. R.K. Rai and Mr. A.K. Sahewalla, Advocates, who all appear before this Tribunal today on behalf of the respondents. The applicant/petitioner is represented by Mr. J. Roy and Ms. Sumi Kakati, learned counsel who prayed for adjournment on the grounds which were recorded in T.A.07 of 2016 (corresponding to CA 126 of 2016).


27. The grounds, so taken, are already considered and found untenable for reasons more than one vide order dated 13.07.2017 in TA No. 07 of 2016.

28. In view of above, on the same grounds, this proceeding too stands dismissed.



**TP No.13/2016 (CP no.186/2013)**

29. Heard Mr. R. Banerjee, learned Sr. Advocate, assisted by Mr. A. Roy, Mr. R.K. Rai and Mr. A.K. Sahewalla, Advocates, who all appear before this Tribunal today on behalf of the respondents. The applicant/petitioner is represented by Mr. J. Roy and Ms. Sumi Kakati, learned counsel who prayed for adjournment on the grounds which were recorded in T.A.07 of 2016 (corresponding to CA 126 of 2016).
30. The grounds, so taken, are already considered and found untenable for reasons more than one vide order dated 13.07.2017 in TA No. 07 of 2016.
31. In view of above, on the same grounds, this proceeding too stands dismissed.

  
Member (Judicial)  
National Company Law Tribunal  
Guwahati Bench,  
Guwahati

Tdr/samir