

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO. 124(ND)14
CA. NO.

CORAM:


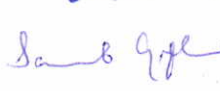
PRESENT: SH. R. VARDHARAJAN
HON'BLE MEMBER (J)

SH. M.K. HANJURA
HON'BLE MEMBER (J)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 17.10.2016**

NAME OF THE COMPANY: M/s. Jasmohan Singh & Ors. V/s. M/s. Walco Engineering Ltd.

SECTION OF THE COMPANIES ACT: 397/398

| <u>S.NO</u> | <u>NAME</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u> |
|-------------|---------------------|--------------------|-----------------------|--------------------------------------------------------------------------------------|
| 1. | Deefar Kachta | Adv. | Respondent No. 6 |  |
| 2. | SOURABH GUPTA, ADV. | <u>ORDER</u> | PETITIONERS |  |

By this order we propose to dispose of an application for setting aside the order dated 18-3-2015 of this tribunal whereby Respondent no. 6 has been set ex-parte.

Heard and considered

The sum and substance of the application of the Respondent No. 6 is that she is suffering from Osteoporosis, which has over a period of time, led to knee damage and serious fractures that are very painful and have hampered her mobility to a great extent. She is also suffering from Hypertension and is under regular medication for the same. She (the respondent No. 6) has proceeded to the state that the final hearing on the captioned Petition is yet to commence and as such no prejudice will be caused to the Petitioner if the Order dated 18.03.2015 is set aside and opportunity is granted to the respondent no. 6 to file her reply to the company petition. The application is buttressed with an affidavit of the Respondent No. 6.

The Petitioner has resisted and controverted the application of the Respondent No. 6 inter- alia on the grounds that her absence from the Tribunal has been wilful and deliberate. The documents placed on record by the respondent in support of her application reflect her mala fide intentions. The application does not spell out any cause for her absence from the Tribunal and that it is denied for want of knowledge that she was/is sick. On these and other grounds the petitioner has craved the indulgence of this Tribunal in directing the dismissal of the application.

Contd.....

5 The arguments put forward by the learned counsel representing the petitioner appear to be spurious when tested on the touchstone of the averments set up by the Respondent No. 6 in her petition. The Respondent No. 6 an old, aged and a frail lady alleged to have been suffering from multiple diseases prior to and after the inception of the petition cannot be thrown out to protect and plead her cause particularly when nothing substantial has been done in the petition right from the date she was placed under ex-parte. On this analogy, no prejudice will at all be caused to the petitioner if the Respondent No. 6 is relegated back to the position which she had in the petition before the date of the initiation of ex-parte proceeding against her subject, however, to the payment of the costs as costs are a panacea that apply as a balm and heal the sores of litigation. It needs must be said that there are a catena of judicial pronouncement wherein it has been held that in spite of the Court having proceeded ex parte earlier the defendant is entitled to appear and participate in the subsequent proceedings as of right.

Viewed in the context of what has been said above the order dated 18-03-2015 where by Respondent No. 6 has been placed under ex-parte is set aside subject to the payment of costs reckoned and calculated at Rs.5, 000 which shall be deposited in the library fund maintained by this tribunal. The Respondent No. 6 shall be at liberty to file her reply to the main petition within a period of 2 weeks where after no further opportunity shall be provided.

Learned counsel for the petitioner has stated that he has moved an application for the appointment of administrator. Learned counsel for the petitioner shall provide the copy of the said application to the learned counsel representing the other side and the learned counsel representing the other side seeks and is given a week's time finally to file his response to the said application. List on 24.10.2016.

Sd/-

(R.Varadharajan)
Member (Judicial)

Sd/L

(Maharaj Krishan Hanjura)
Member (Judicial)