NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

IA.No.13/2017 in
TP No. 24/397-398/NCLT/AHM/2016 (New)
C.P. No. 22/397-398/CLB/MB/2012(Old)

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.02.2017

Name of the Company: Niklesh T. Nihalani
V/s.
Rohit Dyeing & Printing Mills Pvt. Ltd. & Ors.

Section of the Companies Act: Section 397-398 of the Companies Act, 1956

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	DHIREN R. DAVE	PCS	Petitioner	
2.				

ORDER

Learned PCS Mr. Dhiren Dave present for Petitioner. None present for Respondents.

Order pronounced in open Court vide separate sheet.

28/2/17

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 28th day of February, 2017.

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 28th day of February, 2017

I.A. No. 13 of 2017

IN

T.P. No.24/397-398/NCLT/AHM/2016(New)

C.P. No.22/397-398/CLB/MB/2012(Old)

In the matter of: -
Nilesh Tirathdas Nihalani,
2-A, Ratnamilan Apartment,
Ravidham Complex,
Surat – 395 007. ... Applicant
(Orig. Petitioner)

Versus

1. Rohit Dyeing And Printing
Mills Private Limited,
S-545, Upper Ground,
J.J. A/c Market,
Ring Road, Surat - 395 002.

2. Rohit Tulsi Nihalani,
803, Royal Palace,
Ghod Dod Road,
Surat – 395 007.

3. VRV Trading Co. Private Limited,
161/1, Mahatma Gandhi Road,
1st Floor, Bangur Building,
Room No.27B,
Kolkata – 700 007.

4. Singhvahini Tradelink Private Limited,
C/o Laxmikant Fulfagar,
2B, Pretoria Street,
Shakespeare Sarani,
Kolkata – 700 071.

5. Rangmahal Suppliers Private Limited,
131, C. R. Avenue,
1st Floor, Kolkata – 700 003.

6. Kamyabi Commercial Private Limited,
161/1, M. G. Road,
1st Floor, Kolkata – 700 007.

7. Sonchiri Commercial Private Limited,
432, G. T. Road (N),
Howrah – 711 101.

8. Nimmi Tulsidas Nihalani,
803, Royal Palace,
Ghod Dod Road,
Surat – 395 007. ... Opponents
(Orig. Respondents)

Appearance: -

Mr. Dhiren R. Dave, PCS, for the Applicant (Orig. Petitioner).
Dr. S. K. Jain, PCS, for Opponents (Orig. Respondents) 1, 2, 3, 7 and 8.

ORDER
(Date:28.02.2017)

1. The original petitioner in T.P. No.24 of 2016 filed this application requesting the Tribunal to summon Mr. Narayandas Thadani, Mr. Kishan Ahuja and Mr. Vasudev Savlani for cross-examination on points of conflict.

2. It is stated in the application that the dispute between the original petitioner and the original respondents had been referred to arbitration several times, but the original respondents have denied the said fact. It is further stated in the application that in the interest of justice, it is necessary to cross-examine the arbitrators and mediators on points of conflict.

3. In this application, before admission, notice has been given to the learned Company Secretary appearing for the respondents.

4. Heard arguments of learned Company Secretary for the applicant-original petitioner and learned Company Secretary for the opponents-original respondents.

5. It is stated in the original petition that in the year 2008, one Mr. Prakash Rohera was appointed as Arbitrator to resolve the family dispute, but the dispute could not be resolved since the 2nd respondent did not agree for solution suggested by the said Arbitrator. In April 2009, Mr. Naribhai Thadani and Mr. Dolatbhai Thadani were appointed as Arbitrators to settle the family disputes between the petitioner and the 2nd respondent. In May 2011, Mr. Kishan Ahuja and Mr. Ram Dasani were appointed as Arbitrators to settle the family disputes. But the 2nd respondent again denied to accept the arbitration award dated 16.02.2011.

6. It is stated in the reply that the 1st respondent and the 2nd respondent were not the parties to the purported arbitration proceedings. The purported arbitration award dated 16.02.2011 is filed only with a view to mislead this Tribunal.

7. Learned Company Secretary appearing for the applicant stated that Mr. Vasudev Savlani, one of the Arbitrators, filed an affidavit, which is enclosed to the rejoinder in M.C.A. 106 of 2015, which is at pages 9 to 12. It is stated in the affidavit of Mr. Vasu Savlani that there was an arbitration and, in the process of the said arbitration and on the request of the Arbitrators, the applicant-original petitioner signed balance-sheets of earlier years, during which capital of the 1st respondent-company was increased and the petitioner was put to minority. It is also stated in the said affidavit that the applicant-original petitioner signed the balance-sheets with a view to facilitate legal compliance with the Registrar of Companies and with a view that the arbitration proceedings may not get hampered.

8. The respondents denied the averments in the said affidavit.

9. The applicant-original petitioner did not file the affidavits of Mr. Narayandas Thadani and Mr. Kishan Ahuja, who are said to be arbitrators.

10. The point for determination is whether there is any need to summon Mr. Vasudev Savlani, Mr. Narayandas Thadani and Mr. Kishan Ahuja, who acted as Arbitrators in the arbitration proceedings, to appear before this Tribunal to give evidence either examination-in-chief or in cross-examination.

11. The fact which the applicant wants to prove before this Tribunal is that he signed on the audited Annual Accounts for the year ended on 31.03.2010 and 31.03.2011 relating to the 1st respondent-company only at the instance of the Arbitrators, but not approving the contents of the Annual Accounts.

12. The request of the applicant is that the above named three persons may be called for cross-examination. It is pertinent here to again mention that already Mr. Vasudev Savlani gave an affidavit in support of the plea of the applicant-original petitioner. The respondents denied the contents of the affidavit of Mr. Vasudev Savlani. Therefore, it is for the respondents to call Mr. Vasudev Savlani for cross-examination, if they choose to do so. Hence, this Tribunal does not find any reason to summon Mr. Vasudev Savlani either for examination-in-chief or for cross-examination by the applicant-original petitioner.

13. The applicant stated the name of another mediator as Mr. Narayandas Thadani. But, as can be seen from paragraph 6.5 at page 6 of the petition, the correct name of the mediator is Mr. Naribhai Thadani. It is stated by the learned Company Secretary appearing for the applicant that Mr. Narayandas Thadani is also known as Mr. Naribhai Thadani, which fact has not been stated anywhere in the pleadings so far filed in these proceedings. Even assuming that Mr. Narayandas Thadani and

Mr. Naribhai Thadani are one and the same person, there is no need to call him for cross-examination by the applicant-original petitioner. If the applicant choose to bring his evidence on record, nothing prevented the applicant from filing the affidavit of Mr.Narayandas Thadani/Mr. Naribhai Thadani and Mr. Kishan Ahuja.

14. Coming to Mr. Kishan Ahuja, even according to the averments in paragraph 6.8 of the petition, Mr. Kishan Ahuja was appointed as Arbitrator in May 2011. According to the applicant, he signed audited Annual Accounts of the 1st respondent-company for the years 31.03.2010 and 31.02011 when the share capital was increased. Therefore, when Mr. Kishan Ahuja was appointed as mediator only in May 2011, his evidence is not relevant for the purpose for which the applicant wants to summon Mr. Kishan Ahuja.

15. Learned Company Secretary appearing for the applicant-original petitioner, in support of his contentions, cited the following decisions: -

(1) *Sister Mina Lalita Baruwa v. State of Orissa, 2013(0) GLHEL-SC 55070*

(2) *Jamatraj Kewalji Govani v. State of Maharashtra, 1967(0) GLHEL-SC 12591.*

15.1 The first decision relied upon by the learned Company Secretary for the applicant relates to the powers of the Court to

summon any person and to put any question by the Court, which is governed by Section 165 of the Evidence Act. The said decision is not applicable to the facts of this case.

15.2 The second decision relied upon by the learned Company Secretary for the applicant is rendered under Section 540 of the Old Code of Criminal Procedure, which is not at all applicable to the facts of the case.

16. In view of the above discussion, there is no merit in this application. This application is dismissed. No order as to costs.

28/2/17

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced in open court on
this 28th day of February, 2017.

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