

National Company Law Tribunal

Allahabad Bench

CP NO.73(ND)/2016

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 02.02.2017**

NAME OF THE COMPANY: Sartek Machinery Pvt Ltd & others


SECTION OF THE COMPANIES ACT: u/s 397/398 of Companies Act,1956

<u>Sl. NO.</u>	<u>Name</u>	<u>Designation</u>	<u>Representation</u>	<u>Signature</u>
<u>1.</u>				
<u>2.</u>				

Order dated 02.02.2017

CP No. 73(ND)/2016 Sartek Machinery Pvt Ltd & Others

Vide order dated 02.02.2017 today separately pronounced.
The matter is listed for further directions on 3rd March,2017.
List on 03.03.2017.


SH.V.S.R. AVADHANI (Judicial Member)


SH. H.P. CHATURVEDI (Judicial Member)

Dated 02.02.2017

C.P. No 73(ND)/2016: Anil Agarwal & Ors vs M/S Sartek Machinery Pvt. Ltd. & ORs

The case is fixed for orders in respect of present Company Petition. As there was no representation from Respondent counsel on last occasion, the argument of Shri Adesh Tondon learned PCS for petitioner were heard. The matter was reserved for orders.

In the present matter CA No. 10 of 2016 was filed by respondent for seeking relief to refer to Arbitration with reference to Arbitration clause contained in Article of Association of the Company. The respondent had also prayed for setting aside the exparte order passed against them.

Having heard the submissions of the counsel this Tribunal vide its order dated 27.10.2016 while disposing the C.A., duly permitted the respondent to file their reply in C.P. within stipulated time, thus it has partly allowed the CA. However, this tribunal declined to grant another prayer for referring dispute to arbitration holding such that the relief based on oppression and Mismanagement can be granted under Company's legislation by the specially constituted statutory tribunal and cannot be granted by Arbitration irrespective of arbitration agreement between the parties or a clause in The Article of Association. Tribunal declined to refer the parties for Arbitration and fixed the case for further hearing on merits in respect of main C.P.

We have gone through the record of proceedings and examined the contents of the, company petition. Petitioners through this C.P sought the relief that the respondents be directed to buy back the shareholding of the petitioners at a value determined by independent valuer and relieve the petitioners as director from the company ;or that ,all the stock of the company along with the creditors liabilities be divided in equal proportion between the Petitioner Group and Respondents; and if the company is declared as a defunct company under the provision of Companies Act, 2013 and necessary proceedings be followed by both petitioner and respondents.

The petitioners, while alleging several acts of oppression and mismanagement against the respondents in the company petition have stated that it is a case of creation of complete deadlock in respondent's company. According to them the alleged act of oppression and mismanagement as pleaded in the CP involved lack of probity / fair dealing by Respondent No. 2 and 3 and they have alleged fraudulent conduct and that, such facts justify to make winding up of company. However, as per petitioner winding up will prejudice to the interest of petitioner and company therefore they have sought intervention of this tribunal. It has also been alleged that the registered office of the company has been shifted to another premises in the city without intimating the petitioner and without calling Board of Director meeting. That apart it has also been alleged that respondents are not complying with the directions of C.L.B. for signing cheque jointly and maintain joint operation of Bank account and therefore company is unable to pay salary, rent to the creditors which resulted in lot of unrest among employees / suppliers because the Respondent No.2 signed post joint operation cheque till June, 2014

Therefore, these factors have made impossible to the company to make any payment to supplier's/ creditors. Company is unable to make payment of salary, Rent, Bills etc. We have considered the above stated issues which are questions of disputed facts. It is also matter available on Record, that both the parties have lodged FIR and instituted Criminal proceeding against each other , which is

subjudice before a competent criminal court. Therefore, prima facie we feel, that there remains least possibility for smooth functioning of company in future.

Petitioners have also decided to withdraw themselves from the affairs of the company from the appointed date. Presently respondent company seems to be defunct but conclusive proof thereof is not available on record.

Although in the present matter respondent did not choose to file any counter or reply to the main C.P. but documents annexed to C.P show that Hon'ble Allahabad High Court (by its order dated 17.07.2015 in criminal matter) once has advised the parties for exploring possibility of amicable settlement. Such observation was made on the request from the counsel for both the parties.

It also appears from the record of case that the Respondent No 2 has undergone some bypass surgery and current status of his health is not known as to whether he is in a position to participate in Company's Affairs, or otherwise. That apart, there is serious allegation that respondent No 2, shifted the Registered Office of Company without giving intimation to Registrar of Companies as it has not been updated in the Website/ portal of Ministry of Corporate Affairs Portal.

Considering the above stated facts and circumstances of the case we feel necessary to ascertain correct factual position available on the records of R.O.C. and to call for a report from Registrar of the Companies (Kanpur) Therefore, with a view to ascertain current position about the present status of company viz, whether it is functioning or became a defunct. Further a report/ financial statement is also called for from Respondent No 4 e.g. ICICI Bank about the loan status and repayment capacity of the respondent Company. These reasons are inevitable to pass appropriate orders in the C.P. with the parameters of Companies Act, 2013.

The Matter would be examined thereafter for necessary order/s.

List the matter 03.03.2017.


MR. V.S.R. AVADHANI, JDL. MEMBER


MR. H.P. CHATURVEDI, JDL. MEMBER

Dated 02.02.2017