

National Company Law Tribunal

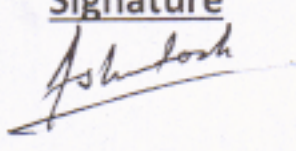
Allahabad Bench

CP NO 111/ND/2012

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 02.03.2017

NAME OF THE COMPANY: Model Tanners India Pvt Ltd

SECTION OF THE COMPANIES ACT: U/S 397/398 of Company act of 1956

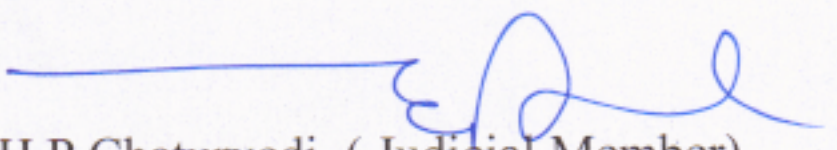
Sl. NO.	Name	Designation	Representation	Signature
1.	ASHUTOSH KUMAR	ADV	Petitioner	
2.	ANIL SHUKLA	ADV	"	
	Ved Prakash Singh (on behalf of Nishant Mishra (Adv))	ADV	Respondent	Ved Prakash Singh

Order dated 02.03.2017

CP NO 111/ND/2012 M/S Model tanners India Pvt. Ltd.

Parties are represented by their respective counsel they have pointed out that learned administrator Shri. Nagesh did not receive a copy of previous order dated 24.01.2017 passed by this court the order is not uploaded in the website. The Registrar is directed to look into matter and to ensure that the previous order passed by the division bench of this tribunal be uploaded urgently. further a copy of this order to be communicated to the administrator Shri Nagesh with request to submit report within four weeks. The petitioner is at liberty to serve a copy of this order to Shri Nagesh personally.

The Matter be listed on 24.03.2017.

  
H.P Chaturvedi ( Judicial Member)

Dated 02.03.2017



**National Company Law Tribunal**

**Allahabad Bench**

**CP NO.111(ND)/2012**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 24.01.2017**

**NAME OF THE COMPANY: M/s Model Tanners(India) Pvt Ltd**

**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>Order dated 24.01.2017</u>			
<u>2.</u>	<u>CP No. 111(ND)/2012 M/s Model Tanners (India) Pvt Ltd</u>			

The cases is fixed today for order/orders in respect of Company Petition No. 111 (ND)/2012 and Company petition No. 32 (ND)/2014 on the question of giving direction to the Learned Administrator-cum-facilitator on his report dated 12.10.2016.

We have perused the record of both the Company Petitions along with Court proceedings. It is a matter of record that Shri Nagesh Ld. Administrator-cum facilitator has submitted his final valuation report dated 12.10.2016 which was filed on 18.10.2016, pursuant to a direction of this Tribunal issued in respect of the assets of the respondent company Model Tanners (India) Pvt. Ltd. The respondent No.2 and 3 Shri Marghoob Alam and Shri Maqsood Alam respectively have filed their objection to the valuation report prepared and submitted by the Administrator-cum-facilitator. As per the respondents the report of the Ld. Administrator-cum-facilitator is not acceptable to them, and should not be acted upon. We feel that before reaching to a final conclusion on its acceptability or otherwise. It would be appropriate that a copy of the objection filed by the parties be forwarded also to Shri Nagesh the Administrator-cum-facilitator so that he may file his comments or can make his Say, on the said objection, if he desire so.

A perusal of the Administrator's report dated 12.10.2016 shows that it is silent on and not specific in respect of some vital issue of dispute involved among parties and is subject matter of the present company petitions. This pertains for making appropriate division of the quota of effluents discharge as per MOU dated 24.03.2011. The kind attention of the Ld. Administrator-cum-facilitator is drawn to the previous observations made by the Company Law Board, New Delhi specifically in its order dated 12.05.2015, the relevant portion thereof may be reproduced herein below:-

*Per conference  
24/1/17*



*"Petitioner in CP NO.111/12 submits that since the respondents side has not been allowing the petitioner to get the effluents discharged, though the petitioner since 2011 is permitted to avail effluent discharge utility, nothing has happened so far enabling the petitioner run his business, because the companies doing leather processing and export business cannot run unless effluent discharge is allowed. The petitioner could not make use of this facility for the last four years.*

*Respondents counsel says they made an application to Banther Industrial Pollution Control Company, Uttar Pradesh Pollution Control Board and Central Pollution Control Board for grant of permission to release 60 KL effluent discharge by Model Exim.*

*This court is of the view, mere applying to an authority will not enable the petitioner to utilize this facility unless follow up action is there. It is needless to say that paramount consideration to CLB is to see companies run their business, therefore, the Respondents cannot shirk away saying an application has been moved, because the respondents have been utilizing this facility and running their business without any hindrance as before but whereas the petitioner who is real brother of R3 could not use effluent discharge facility for the last four years.*

*On seeing the urgency lying in the submissions of the petitioner, this Bench hereby puts this responsibility upon Administrator to look into this issue, and do needful, so that, the petitioner could also run his business as his brother running. If for any case, it does not happen within three weeks, the petitioner is at liberty to move an application seeking the same before this Bench."*

In addition to the above stated direction it may also be seen that the company petitioner had earlier moved a CA No. 201 of 2015 seeking certain directions from the Company Law Board to be issued to the respondent Company to pass a board resolution to such effect eg. for transferring of 60 KL effluent discharge capacity from Model Tanners Unit at Banthar to Model Exims, Banthar and for withdrawal certain letters which were written by respondent No. 2 and 4 of the (Model Tanners) of the State Pollution Control Board, Lucknow. In that application the Company Law Board vide its order dated 18.09.2015 has pleased to direct to all the concerned parties to cooperate with Ld. Administrator-cum-facilitator for making compliance of Memorandum of Understanding and also to make necessary follow up action in case an order is passed by the Ld. Administrator-cum-facilitator, such direction was issued on the basis of an assurance given by the Ld. Administrator that compliance of MOU would not become a problem and he would pursue all the parties to the MOU

Keeping in view of the above said assurance the said CA 201 of 2015 was accordingly disposed off.



It appears from the report that the Ld. Administrator-cum-facilitator has lost sight of such observations/direction given the Company Law Board while submitting his final report on 18.10.2016. His report appears to be silent on follow up action taken if any by him and to find some solution for the dispute of effluent discharge capacity to be utilised by the respective parties and to make compliance of MOU. As his report can be accepted and acted upon by this tribunal, hence we feel these company petitions cannot be finally disposed of till we receive further comments/supplementary report from Ld. Administrator-cum-facilitator

In view of the above, we once again reiterate the previous direction given by the Company Law Board. The Administrator is further instructed and advised to workout for proportionate division of capacity of effluent discharge or to explore the possibilities of finding solution among the parties of the MOU. The Ld. Administrator-cum-facilitator is also at liberty to ascertain the factual position in this respect from UTPCC, UP Pollution Control Board, and other institution/unit as the case may be and also may enquire about third party claim/interest involved therein for using effluent discharge capacity in the CTP.

The Administrator-cum-facilitator to submit his further supplementary report within four week from the receipt of the copy of this order.

The case is also taken up for orders in intervention application No. 19 and 20 of 2016 in CP No. 111 (ND) 2012 and CP No. 32 (ND) 2014 respectively which is filed by a third party intervener M/s. Iqbal Leathers Private limited who has claimed that interest of his tannary is being seriously prejudiced with respect to implementation of the memorandum of understanding (MOU) dated 24.03.2011 until and unless the applicant is heard by this tribunal. It is contended that petitioner and respondents to the present company petitions have colluded with each other in order to confer the right to use the facilities effluent discharge in common treatment plant by way of transfer of its some shares through the MOU, which are said to be pledged with the applicant Mr. Iqbal Leathers Private limited. As it is having substantial shareholding in UPTCC shares transferred to it by M/s Sultan Leather Finishers Pvt Ltd. Hence it has some interest in the affair of the company and if any order is passed in the present proceedings for division of shareholding and capacity to utilise the effluent discharge in M/s Sultan Leather Pvt Ltd. It would adversely effect the right of applicant. Therefore, it seeks to participate in the present proceeding. The respondent company M/s Model Tanners (India) Pvt Ltd has filed its counter reply to the above said applications clarifying and contending that the contention of MOU dated 24.03.2011 nowhere provides for any division of share of UPTCC alleged to be originally held by M/s Sultan Leather Finishers Pvt Ltd.



Therefore, as per the respondent company the applicant of the intervention application is no way connected with the outcome of the present company petitions and the present intervention application is totally misconceived and liable to be rejected. It is further contended that the MOU dated 24.03.2011 no where mentions about the division of share of UPTCC allegedly pledged by M/s Sultan leather finishers Pvt Ltd to the applicant company. Therefore, question does not arise for obtaining sanction from this Court for making division of the same. It is also contended by the respondent No.1 company that there appears some dispute between the applicant intervener and UPTCC in the Civil Court to which the respondent company is not a party. Hence, the respondent company has prayed for dismissal of the intervention application with exemplary cost.

We carefully considered rival contention made by both parties in the present intervention application. We are of the view that the intervener applicant is not directly concerned with Memorandum of Understanding entered between the company petitioners and the respondents. If his interest is likely to be affected with the outcome of these company petitions then it can adequately be taken care of if he is allowed to watch the proceeding rather than formally impleaded as a respondent party. Moreover, this tribunal has already called for a supplementary report from the Administrator-cum-facilitator on the subject of division of utilities of effluent discharge capacity in common treatment plant among the parties concerned to the present company petitions. The appropriate order on intervention petition or involvement of a third party claim can be passed after perusing the report of the Ld. Administrator-cum-facilitator. Hence, in present an interim order is passed that applicant/Intervener Mr. Iqbal Leathers Pvt Ltd is permitted to participate in the present proceedings until further order.

List the case for the report of the Administrator-cum-facilitator on 02.03.2017.

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

 24/01/2017  
SH. H.P. CHATURVEDI (Judicial Member)

Dated 24.01.2017