

National Company Law Tribunal

Allahabad Bench

CP NO. 99/ND/2012  
CP NO. 86/ND/2013

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 12.12.2017

NAME OF THE COMPANY: Bharat Kumar Agarwal vs Bankhandi path Developers Pvt Ltd

SECTION OF THE COMPANIES ACT/I & B CODE: 397/398 of the companies act of 1956

<u>Sl. NO.</u>	<u>Name</u>	<u>Designation</u>	<u>Representation</u>	<u>Signature</u>
1.	Anil Kumar	PCS	Proposed 5th	Anil
2.	Bharat Kumar Ag.	Petitioner in person.	Director in person Bankhandi path Devs. Pvt. Ltd.	Bharat Ag.

CP No. 99/ND/2012. C.P. No. 86/ND/2013

Shri Anil Kumar, PCS, Additional Director/ nominee of this court present in person. Shri Bharat Kumar Agarwal, one of the Director of the Respondent Company are present in person.

It is well reflected in our previous proceedings dated 10.11.2017, that this Tribunal had earlier ordered for notice to be issued to Respondents of the Main Company Petition and invited their response/ comments, if any, on the status report of Sri Anil Kumar, PCS being Nominee/ Additional Director of the Company.

However, today, there is no representation from other respondent except Shri Bharat Kumar Agarwal, a Director of the Company, who is present in person.

It is matter of record that pursuant to the order-cum- further direction of the Hon'ble NCLAT given in its judgment in Appeal dated 23<sup>rd</sup> August, 2017, Shri Dharmendra Kumar Rathore (the Respondent No. 2 in C.P.No. 99/2012) is required to return back the money in the Company's Account, which he unilaterally withdrew from Company's Account. Thus, thereby caused prejudice to the interest of Company.

The Hon'ble NCLAT, while directing Respondent No.2 along with other Directors to compensate the loss of Company by making payment of interest @ 12% pa on such amount, since it is outstanding e.g. from 15.11.2011 to till date. It is matter of record that Hon'ble NCLAT has granted one-month time from the date of its order, to remit back the amount, which does not seems to have been complied with.

The learned Additional Director/Nominee of this Court as well as Shri Bharat Agarwal petitioner in the Main Company Petition No. C.P 99/2012. Further, report that no amount has so far been deposited nor any interest accrued thereon has been paid by Shri Dharmendra Kumar Rathore, (Respondent No.2). Hence, it is a matter of concern.

It is further reported that to the best of their knowledge, no SLP against such order of the Hon'ble NCLAT has so far been preferred before the Hon'ble Supreme Court nor is any stay therein.

Hence, this can be safely presumed that the order of Hon'ble NCLAT readwith the Judgement of this Tribunal with some modification has now reached at its finality. Hence, parties are legally expected to abide by such direction issued by the Hon'ble NCLAT in its later and spirit, until and unless the same is modified/ stayed by it or is reversed by the Hon'ble Supreme Court/Higher Forum.

Therefore, prima facie, we feel that the Respondent No.2 has not complied with the direction of Hon'ble NCLAT and order of this Court.

Therefore, the Registry is directed to issue a fresh show cause notice, along with a copy of this order to the Respondent No.2, Mr. Dharmendra Kumar Rathore on his given address to show, as to why this court should not initiate a consequential action against him on alleged non-compliance of Hon'ble NCLAT's direction, which amount to embezzlement of Company's fund and/or to institute proceeding under section 425 of the Companies Act.

The Registry is further directed to issue a fresh notice to all the Respondents in both Company Petitions.

A copy of this order further be communicated to the Registrar of the Companies, Kanpur along with a copy of the judgement passed by Hon'ble NCLAT along with judgement of this Tribunal with such direction to consider

the request of Additional Director to accept the DIR-12 manually, which relates his appointment as Additional Director/ Nominee Director) appointed by this Tribunal, which is duly confirmed by the Hon'ble NCLAT.

In case, the ROC feels any procedural difficulties, for accepting such request then it may file its comments and to appraise of this court by next date of hearing.

The Nominee/ Additional Director Mr. Anil Kumar may make personal visit the office of ROC, if feel necessary for this purpose.

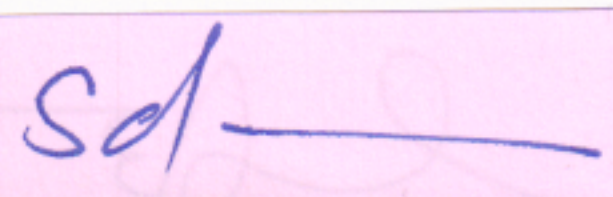
The petitioner Company in C.P. No. 86/ND/2013 is directed to issue a formal notice to the Registrar of the Companies, Kanpur to invite response/ comments, if any, in respect of the present status report filed by the Nominee/ Additional Director of the Company, so as to ensure the compliance of the direction issued by the Hon'ble NCLAT read with the judgment of this Tribunal.

A copy of this order be communicated to the ROC, Kanpur.

The matter be listed on 9<sup>th</sup> January, 2017.

Date: 12/12/2017

*Typed by*  
*Jyoti*  
*(Stenographer)*

  
**H.P. Chaturvedi,**  
**Member(Judicial)**