

**National Company Law Tribunal
Allahabad Bench**

CP.No.5 ND/2016 with CA.No.2/2017

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 15.11.2017**

**NAME OF THE COMPANY: Deena Nath Pandey & Ors. v/s Saket Surgicals
(India) Pvt. Ltd. & Ors.**

**SECTION OF THE COMPANIES ACT: U/S 397/398 of the Companies Act,
1956**

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

CP.No.5 ND/2016 with CA.No.2/2017

The case is taken up for the pronouncement of order in CA No.2 of 2017 filed by the applicant. By this application applicants/respondent No.11 and 12 have made a prayer for setting aside the ex-parte order passed against them by the then Company Law Board (CLB) and further be permitted to file their reply to the main company petition.

The applicants claim themselves to be Directors of the Respondent Company, thus, having interest in the affair of the company. They alleged that the petitioners while filing the present company petition have suppressed the material fact with this Court as per the doctrine of "*suppressio veri and suggestio falsi*". They further challenged the authority of Sh. Nawab Ali Siddiqui (Respondent No.2) to represent the Respondent No.1 company and alleged that the respondent no.2 is abusing the management and affair of the company and is misleading to this Court.

The applicants in support of the present application has alleged that they have not been served properly from the petitioner side nor such notices were issued to their proper and correct address, which is given now in the cause title of the present


application as such notices were sent to such address A-4 Janpath, Hazratganj, U.P. which in fact is the office of the Company. Hence, on the basis of improper address and incorrect service furnished by the company petitioner, the Hon'ble Company Law Board wrongly set them ex-parte by its order dated 09.02.2016. Despite, this the fact remains that they were not served at all with a notice. Hence, such ex-parte order needs to be recalled and they should be given an opportunity for filing a formal reply. In addition to this, the applicants have further prayed for dismissal of the present petition being non-maintainable and on the question of *locus-standi* of the present petitioners to file the present company petition against respondents and so also on eligibility and authority of the respondent no.2. Nawab Ali Siddiqui to represent the respondent company in its business they have challenged some fraud with the Respondent Company has been committed in connivance of Mr. Nawab Ali Siddiqui (Respondent No.2) as the affairs of the respondent company are being managed under his guidance and supervision and not by the present applicants (Respondent no.11 &12). The applicants also informed that the company owes some loan of Rs.17.81 Lacs from banks for which the respondent company mortgaged its land and properties in favour of the Lender Bank the State Bank of India, which allegedly was defaulted resulting to raise in the company's loan liability to a sum of Rs.30 lacs, which lead to the Bank to file a recovery in the year 1991 against the respondent company among the others.

It is also contended by the applicants (Respondent no.11 and 12) that at such juncture they came forward to support the company and made arrangement for payment of Rs.20.66 lacs from their own resources (e.g. S.S Medical System) and because of their support only the Respondent company M/S Saket Surgicals (India) Pvt. Ltd. could be able to save itself from impending sale of its properties under the provision of RDDBFI Act, 1993. Thus, the present applicants/respondent no.11 and 12 are having adequate and proper interest in the affair of the company and it cannot be ignored.

Hence, in the interest of justice they should be allowed to contest the present case by recalling the ex-parte order passed against them.


The present application is opposed by the non-applicant (petitioner) stating that these applicants have moved the application at the belated stage they did not make effort to appear before the Court (e.g. before the CLB) despite a proper notice duly served upon them, which is evident from the Hon'ble Company Law Boards order dated 01.04.2016. Hence, it rightly set them ex-parte. The non-applicants/petitioner company put-forth their submission that the applicants deliberately did not come forward early to file the present application, which is filed at this belated stage. Further, the allegations as alleged by them are false and misleading. Hence, the same are denied the petitioner have rightly invoked the provision of Companies Act to make complaint of oppression and mismanagement against the respondents. The Respondents (the company petitioner in the main CP) clarified that the State Bank of India had filed a recovery suit against the respondent company in the Debts & Recovery Tribunal (DRT) which now stands disposed of as settled under the one-time settlement scheme. The State Bank has received the payment of Rs.16 lacs as a full and final settlement of the case. Further such amount was paid by the respondent company through its own arrangement through its other Director and not by the present Applicants (Respondent No.11 and 12). Hence, their such contention is denied being false that they had made payment a sum of **Rs.25.6** lacs to the company to come out from its problems.

It is also clarified by contending that some properties of the company are given on lease under some lease agreement, properly executed, relating documents do not reflect in any manner that some property of the company has now come under the ownership the Respondent No.11 and 12. In view of such objection and their application is liable to be rejected.



We have gone through the averments made by the parties in their respective pleadings in CA No.5/ND/2016, reply/rejoinder to the reply and heard the argument of the learned counsel for both parties. We find that the present applicants (proposed respondent 11 and 12) in the application have raised some debatable issue of disputed facts relating to their interest/in ownership and control of the management of the respondent company, which includes their objection on the authority and eligibility of Mr. Nawab Ali Siddiqui (Respondent no.2) to represent the affair of the respondent company. As such prima-facie seems to be question of disputed facts, hence, needs to be dealt with on its merits after affording an opportunity of hearing to both parties and by perusing relevant material/records of the Respondent company. Hence, the ex-parte against Respondent no.11 and 12 as passed by the then CLB needs to be recalled. The applicants be given a further opportunity to file a formal counter/reply to main company petition including their objection on its maintainability. We feel that by providing such opportunity to the applicants there would be no serious prejudice to the interest of the Company Petitioners as they would also get a chance to file rejoinder to their reply/counter affidavit. That apart the inconvenience caused to them petitioner can be compensated by way of cost.

By perusing the proceedings of the then Company Law Board it may be seen that it passed an Impugned Order setting ex-parte the applicants on 01.04.2016. While, the present application is filed by them on 17.01.2017, thus there is considerable delay in filing of the setting aside application, which is not satisfactory explained. Hence, such application is allowed conditionally that the impugned order dated 01.04.2016 of the Hon'ble CLB is recalled to this extent it relates to Respondent No.11 and 12 with a cost of Rs.10,000/- each payable by the respondent no.11 and 12 to the petitioners. Further, they shall file a reply to the main company petition and the amount of cost to be paid



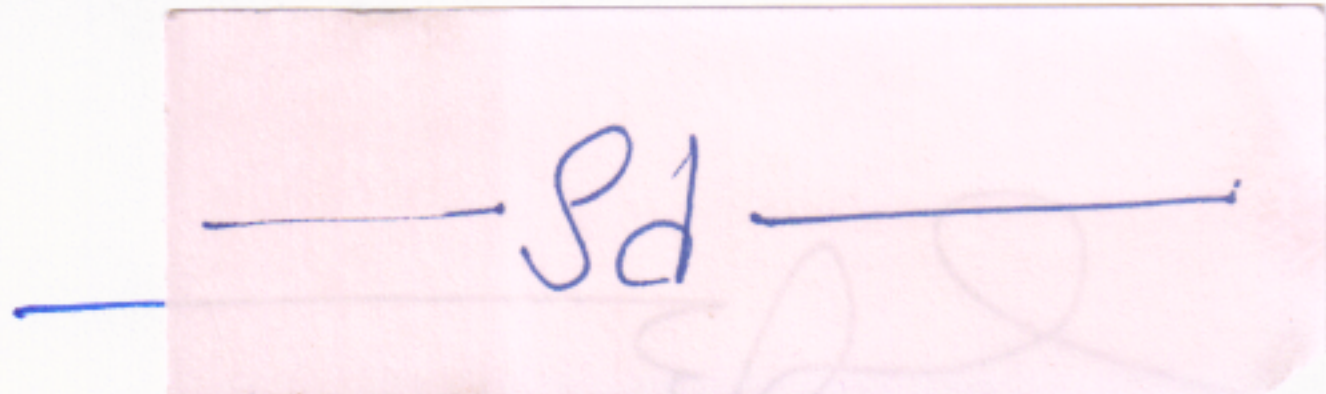
within 4 weeks from the receipt of a copy of this order, on furnishing proof of payment of cost to the petitioner counsel, their counter affidavit/reply would be taken on record.

Notwithstanding the above, it is further made clear that the present application is decided only on the issue of the setting aside the ex-parte order the other in prayers as sought for in the clause **B, C, D** to be considered, at appropriate stage during the course of hearing of main petition when such relief/prayer are incorporated in the formal pleadings of both parties e.g. a formal counter affidavit/reply to the main company petition on behalf of the respondent no.11 and 12 etc. Hence, at this stage it would not be proper for this Court to deal such issue in interim application. The prayer clause **B, C, D** are rejected with such liberally to the applicants (Respondent no.11 and 12) to incorporate in their reply/counter affidavit to the present company petition and agitate at appropriate stage.

With the above stated observation of the present company application is partly and conditionally allowed and stand finally disposed of.

Dated:15.11.2017

Typed by:
Md. Zaid
(Stenographer)


H.P. Chaturvedi,
Member (Judicial)