

**NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD BENCH**

(In Company Petition No.37 (ND) of 2016)  
 Quorum: Mr. H. P. Chaturvedi, Member -Judicial

**Between****Atul Nigam****S/O Late shri Raj Kumar Nigam****D-1905 , Lake Lucerne, Phase -3****Lake Homes- Powai****Mumbai ..... (Petitioner in CP)****And****1. Atsa Educational Pvt. Limited****Reg. Office " ATSA HOUSE"****AWADHPURI , G.T Road****Kanpur- 208024****2. Mr. Sanjiva Dayal****A-602, Twin Tower****Lakhapur****Kanpur- 208024****3. Mrs Vidya Dayal****W/O Mr. sanjiva Dayal****A- 602, Twin Tower****Lakhapur****Kanpur-****208024.....Respondents****ORDER****(Per Mr. H. P. Chaturvedi, Members-Judicial)**

The case is taken for passing a consequential order as there is no representation from both the parties before this tribunal on 13.02.2017, 09.01.2017 and 08.12.2016.

When the present matter came up for hearing on 27.10.2016 the Counsel for Petitioner appeared; but there was no representation




from Respondent side. After hearing him the court proceeded exparte against the Respondents and orders were reserved in respect of the main Company Petition. The matter was fixed for pronouncement of order on 08.12.2015. That day Division Bench of this Tribunal having verified the entire record, came to notice such fact that no notice was served upon Respondents after the record is made over by the Principal Bench to this bench, there it felt that disposing the matter exparte would violate the Principle of Natural Justice.

Therefore, the Counsel for Petitioner who filed vakalat and made appearance before this bench was further directed to issue a fresh notice of appearance to the Respondents and to file proof of service in the Registry. Thus the matter was adjourned to 04.01.2017 for appearance of Respondents. However, that day matter could not be taken over being vacation in this Tribunal and the matter was listed on 9<sup>th</sup>, January, 2017. That day also there was no representation from both the parties nor any proof of service was filed therefore case is reserved for consequential order. On 13.02.2017 matter came up before single bench and that day both the parties remain absent and no notice were found to be issued by the Petitioner to the Respondents despite direction of this Tribunal dated 08.12.2016. Thus the case was adjourned for consequential orders.

We carefully examined the above mentioned factual position of the case as available on record. It is pertinent to mention here that Principal Bench of erstwhile **CLB has pleased to pass an interim direction on 25 May, 2016, by restraining the Respondent from selling transferring alienating, encumbering , mortgaging on creating any third party interest on the land and other immovable properties of Respondent No.1 company including premises known as Atsa house situated at Kanpur.**

It is also a matter of Record that Counsel for Petitioner Mr. Ankush Tondon earlier filed vakalat in this bench on behalf of Petitioner. Later on advocate Shri Arvind Kumar Gupta on behalf of the Petitioner preferred a CA 7 of 2016 on behalf of petitioner alleging such that Respondents are trying to wriggle out compromise





settlement dated 10.04.2014 and threatening to sell shares immediately to undesirable person which is contrary to the terms of settlement. The Petitioner further apprehended that Respondent No.2 may sell his shareholding to some undesirable person who will hamper the functioning of the Company as well as compromise entertained between the parties.

Thus the petitioner has prayed for such direction to be issued against Respondent 2 and 3 by restraining them to sell their shareholding (that is 2949 share) in Respondent No. 1 Company to any third party except mutually agreed person or to Petitioner.

It is matter of record a compromise/settlement dated 10.04.2014 entered between the parties has earlier been brought to the notice of Hon'ble Supreme Court in a pending S.L.P Civil Appeal No. 9319/2010. The said S.L.P. was allowed to be withdrawn on account of such settlement, consequent there to the earlier Company Petition 71/2001 filed by the present Petitioner before C.L.B was allowed to be withdrawn as per CLB's order 09.12.2014.

Later on as a subsequent development took place the present matter the Petitioner of the present Company Petition has further alleged such that the Respondents are not keeping their promise nor making performance of their part of agreement. Thus he filed the present Company Petition.

As this bench has already recorded its finding that no notice are found to be issued to the Respondents either by the Petitioner counsel or by the Registry of this Bench after present Company Petition is transferred to this Bench.

The division bench of this tribunal has already observed such the disposal of the present petition would violate the Principle of Natural Justice Since petitioner and his counsel has failed to issue notice to the Respondents.

Although the present case can be dismissed for non- compliance of this court direction, yet in order to provide substantial justice to the




parties, we feel it would be appropriate that the Registry should issue a fresh notice to both the parties in the present Company Petition. The notice to Petitioner can be served through their advocates who have filed their vakalat before this Bench.

As , In the present mater the Principal Bench of CLB has already issued an Interim Direction on 25 May, 2016 , and the petitioner has further filed Company Application 7 of 2016 before this Bench . For seeking some interim relief on the basis of fact and circumstances as already narrated in preceding paragraphs of this order. Therefore, we are of the view that the Interim direction granted earlier by the C.L.B to be continued .Hence, ***it is further directed that Respondent 1 and Respondent 2 are restrained to sell their shareholding of 2949 shares of Respondent No 1 Company, to a third party until further orders except as per terms of settlement or mutually agreed by the petitioner.***

Both the parties are directed to report by next date of hearing about the status of performance of settlement dated 10.04.2014 arrived at between the parties.

A Report from the office of the Registrar of Companies (Kanpur) to be called for on the present status and affairs of the company. An authenticated copy of this order be forwarded to office of Registrar of Companies as well as to the parties concerned by the Registry for information and necessary action.

The matter to be listed on 27 April, 2017



H.P. CHATURVEDI, MEMBER-JUDICIAL

**Dated 20.3.2017**