

## National Company Law Tribunal

## Allahabad Bench

C P NO. 2/2008

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 22.11.2017

NAME OF THE COMPANY: *Seema Zafarulla & ors. Vs. Sitapur plywood Manufactures Ltd*  
SECTION OF THE COMPANIES ACT/I & B CODE: *446 of the 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>				

CP NO.2/2008


The case is taken up for pronouncement of order. None is present for the parties. On last hearing dated 26.10.2017, the submission of the OL, Allahabad representing the Central Government were heard. That apart the office of the Director General of Police, New Delhi also submitted *the* status report *to* this Tribunal in respect of some pending cases against the petitioner, wherein a final report/closure report was filed before the Hon'ble Trial Court and the same has been accepted by the Metropolitan Magistrate of Court at Patiala House, New Delhi.

As the present case is received as a transferred case from the Lucknow Bench of Hon'ble High Court and the *petitioners* were not making their appearance before the Hon'ble High Court. Further, the proceeding conducted before the Lucknow Bench of Hon'ble High Court reflects *that* the petitioner counsel is reported no more in the year 2012. Thereafter, neither the petitioner came forward nor made some alternative arrangement by engaging some other counsel nor provided their proper and latest residential address to the registry of Hon'ble High Court, wherein notice could be served. In fact the registry of the Hon'ble High Court pursuant to a direction of the Hon'ble High Court made several attempt to serve a notice to the petitioner on their given address. However, as its office report, no such house/bungalow is found in

such given address e.g. 11/2 Thimaya Road Cantt in Lucknow, which has been claimed to be residence of the petitioner in the present file. Therefore, such notice were returned unserved.

When the matter came to be transferred to this Bench of the NCLT, it directed the registry to issue a fresh notice to all respondents as well as to the Central Government. In response thereto only the office of the OL representing the Central Government and the office of the Director General of Police, State of Delhi, Police Headquarter, New Delhi through its SI made appearance before us. The O/o DGP, Delhi State through its SI has submitted its status report pursuant to a direction issued by this Court.

As per the record of the case, the present application was filed by the absentee petitioners under the provision of Section 446 of the Companies Act, 1956 read with rule 9 of the Companies (Court) Rules, 1959 by seeking a relief to this effect (from the Hon'ble Allahabad High Court and now from this court) for quashing all civil & criminal proceedings pending against them before various Court of Law in the country as far these proceedings relate to the petitioners for the alleged act done on behalf of respondent no.1 company i.e. the M/s Sitapur Plywood Manufacturers Ltd. on such ground that they already resigned from the post of the Directorship of the Company and thus relinquished the charge of the company. Hence, as per them they are not liable for alleged offences to have been committed by the respondent company. Therefore, they should be absolved and relieved from any civil & criminal liability in connection with the affair of the respondent no.1 company. They have further prayed for some other relief also that may be deemed fit to be granted by this Court, in support of their contention an illustrative list of the pending cases against the company and its officers are described in para 27 of the present petition which does not seems to be an exhaustive list. However, the Hon'ble Allahabad High Court



on initial stage of hearing of the present petition considered it sympathetically and further pleased to grant interim order for stay of the criminal proceedings against the present petitioner. So far as it relates to the offences alleged to have been committed by or on behalf of the respondent company M/s Sitapur Plywood Manufacturers Ltd. The Hon'ble Single Bench of the Allahabad High Court <sup>granted</sup> stay until further order which still appears to be in force, since, has not been vacated till date. The extract of the interim order dated 08.07.2008 as passed by Hon'ble Justice Sh. A.N. Verma of the Hon'ble Allahabad High Court, for the sake of convenience may be reproduced herein below:-

*This petition is filed under Section 446 of the Companies Act read with Rule 9 of the Companies (Court) Rules, 1959.*

*The submission of the learned counsel for the petitioners is that the opposite party no.1. M/s Sitapur Plywood Manufacturers Ltd. Has been dissolved under the Company Petition No.73 of 1999 vide judgment and order dated 19.07.2006. Copy of the said judgment has been annexed alongwith contempt petition as annexure no.8. The prayer made by the petitioners (Ex Director of the Company) is that criminal and civil proceedings, in so far as the same relate to them and pending in various courts be quashed.*

*Issue notices to the opposite parties. The petitioners shall take necessary steps as provided under the rules framed under the Companies Act within the time stipulated under the said rules.*

*In view of the aforesaid facts, further proceedings in cases pending against the petitioners if they related to the act, done by them on behalf of the Company shall remain stayed. However, it will be open for the persons, who have filed suits against the Company or their Director to approach the liquidator for redressal of their grievances.*

A perusal of the material available on record goes to show that the present company has been directed to be wind up and stands dissolved by an order of the Company Judge e.g. Hon'ble Bench of the Allahabad High Court. By taking into consideration the above stated facts & circumstances of the present case and to provide substantial justice to the parties concern, The registry of this Tribunal was instructed to furnish its report on probability and possibility to issue a fresh notice

to the petitioner before passing an appropriate order including further continuance of the interim stay in the present matter.


The registry of this Bench of NCLT now submits a report to this effect that recent and proper address of petitioner is not available nor the petitioner took care to approach the registry of Hon'ble High Court by providing updated/latest address nor made any alternative arrangement to engage another counsel, since the earlier counsel reported deceased. Hence, issuing further notice on the given address in record would be not fruitful. There is possibility that the petitioner might have left the house/town and may be settled somewhere other place than the Lucknow. Since, there is no representation from the petitioners in person and in the present matter since inception, nor after the case is transferred to this Court on 20.04.2017, despite several hearing dates were fixed.

That apart the Official Liquidator representing the Central Government on last hearing put forth his submission that the present petition is not being maintainable before this Court in view of Section 279 of the Companies Act, 2013.

Therefore, we are of the view that the present petition is liable to be dismissed in default and for want of prosecution from the petitioner side. Hence, the same is dismissed, consequently, the interim stay order granted by Hon'ble High Court dated 08.07.2008 in favour of the petitioner also stands vacated.

Notwithstanding the above, a liberty is granted to the petitioner to approach appropriate forum as per law to seek remedy due vacating stay order of criminal proceedings.

Keeping in view the circumstances of the present case, it is not made clear to us that how many criminal proceedings are pending against the petitioners or the respondent company (now dissolved). Therefore, the registry of this Tribunal is

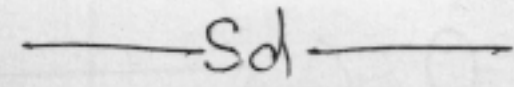


directed to communicate a copy of this order to all the Government respondents as arrayed in the present petition from no.2 to 15.

No order as to cost. The present petition is finally disposed of.

Dated:22.11.2017

Typed by:  
*Kavya Prakash Srivastava*  
(Stenographer)



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