

**NATIONAL COMPANY LAW TRIBUNAL  
DIVISIONAL BENCH  
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI  
NATIONAL COMPANY LAW BOARD, CHENNAI HELD ON 08/03/2017 AT 10.30 AM**

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**PRESENT: SHRI. K. ANANTHA PADMANABHA SWAMY, MEMBER – JUDICIAL  
SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL**  
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**APPLICATION NUMBER** :  
**PETITION NUMBER** : TCP/150/2016  
**NAME OF THE PETITIONER(S)** : Madhu Dadha & 2 others  
**NAME OF THE RESPONDENT(S)** : M/s Dadha Securilockers Private Limited & 4 others  
**UNDER SECTION** : 397/398, 237, 402 & 403  
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S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
			REPRESENTATION BY WHOM
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	1. G. Garghna Kumar	Counsel for petitioners	
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**ORDER**

1. Counsel for petitioner present. No representation on behalf of respondents. Respondents have already been set ex parte vide order dated 3.1.2017. The Company Petition came to be filed before CLB under Sections 237, 397, 398, 402, 403 and other applicable provisions of the Companies Act 1956 and numbered as C.P.No.67 of 2014. The same has been transferred to NCLT and renumbered as TCP No. 150 of 2016. We have heard the counsel for the petitioner. The respondents have also filed an interim counter on 3.12.2014 wherein it has been prayed that the matter may be referred to Arbitral Tribunal in terms of Section 8 of the Arbitration and Conciliation Act 1996. The respondents have filed an Application on 10.12.2014 seeking <sup>an</sup> some relief for referring the matter to the Arbitral Tribunal. As per the general principle that has so far been followed by the different courts, it is well settled position that the matter

complained of under sections 397 and 398 along with other applicable provisions of Companies Act 1956, cannot be referred to Arbitral Tribunal because the NCLT has got special and wide powers to deal with such matters and the Arbitral Tribunal being a private forum is not competent to deal with the matters of such nature. Therefore, we reject the application of the respondents filed for referring the matter to the Arbitral Tribunal.

2. The reliefs sought for in the petition are as follows:-

*(a) To appoint an expert to investigate into the affairs of the first respondent company and to make a report as to the accounts as well as the dealings of the company conducted by the 2nd to 5th respondents and to surcharge the 2nd to 5th respondents for negligence, manipulations and the loss caused to the company on account of the said dealings.*

*(b) To pass orders for conduct of Audit of Accounts of the Company for the years ending 31.03.2001, 31.3.2002 and 31.03.2003 by independent auditors and convene Annual General Meetings for the said years by appointing an Adhoc Chairman for the said meetings;*

*(c) To remove the 4th respondent from the post of Managing Director and Director of the respondent-company."*

3. Now, looking to the pleadings made and the reliefs sought for in the petition, it is necessary to appoint an expert person to conduct an investigative audit of accounts of R1 company w.e.f. 31.3.2006 to 31.3.2014 because the reliefs (a) and (b) are same and similar. Counsel for the petitioner has also suggested the name of M/s.R.Subramaniam and Company, Chartered Accountants, No: 6 (36), Krishnaswamy Avenue, Luz, Mylapore, Chennai - 600 004.

4. Therefore, we appoint the said Chartered Accountant and direct the CA to conduct investigative audit of R1 Company w.e.f. 31.3.2006 to 31.3.2014 within a period of three months from the date, the order of this Bench is received. The Chartered Accountants are given liberty to expand the scope of work by looking into the income and expenditure of the R1 company, siphoning off and misuse of the funds of R1 company by the respondent. The Petitioner is directed to extend all support and provide necessary documents to the Chartered Accountant. The Chartered Accountant is also authorised to summon the Managing Director and other persons responsible for the management of R1 company for seeking relevant information and documents. The Chartered Accountant is at full liberty to seek an appropriate direction of this Bench in case the Respondent causes any obstruction or does not co-operate with him in the performance of his functions. The Chartered Account shall fix his remuneration as per the practice in vogue and the petitioner is directed to make payment of his fee so fixed.

5. The Registry is directed to send a copy of this Order to the Chartered Accountant for compliance. On receiving the report of the Chartered Accountant, the Registry shall place the matter before this Bench for further appropriate direction in the light of the prayer <sup>case</sup> (c) of the petition. Order pronounced in open court.

  
CH. MOHD SHARIEF TARIQ  
MEMBER (JUDICIAL)

  
ANANTHA PADMANABHA SWAMY  
MEMBER (JUDICIAL)