

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

T.C.P No. 65 /(MAH)/2015
M.A. No. 169/2017

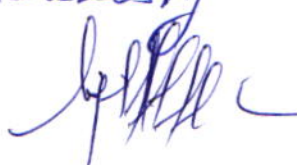
CORAM: Present: SHRI B.S.V. PRAKASH KUMAR
MEMBER (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 01.09.2017

NAME OF THE PARTIES: Mr. Fiddali Mithiborwala
V/s.
M/s. Majolica Impex Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 58, 397/398 of the Companies Act
1956 and 241/242 of the Companies Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
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1.	Harshil Agarwal,	Adv Respondents	Harshil A
2.	Suzan Gupta	Adv Petitioner	

COMMON ORDER

MA 168/2017 in TCP 64/58,397-398/NCLT/MB/MAH/2015

MA 169/2017 in TCP 65 /58,397-398/NCLT/MB/MAH/2015

MA 170/2017 in TCP 66/58,397-398/NCLT/MB/MAH/2015

MA 171/2017 in TCP 67 /58,397-398/NCLT/MB/MAH/2015

MA 173/2017 in TCP 68 /58,397-398/NCLT/MB/MAH/2015

On Main Company Petitions being dismissed for default, these Petitioners initially filed separate applications for recall of the orders dated 02.05.2017 dismissing for default, seeking prayer to pass appropriate order or modify the order passed on 02.05.2017 to ensure that the Company petition Nos. 64 to 68/2015 are listed for hearing before the Hon'ble Tribunal after appeals filed by the Petitioners before Hon'ble Supreme Court are heard.

On those applications came before this Bench, on 5.6.2017, this Bench directed the Respondents side to file reply within one week thereof and rejoinder, if any, after one week thereof. Accordingly, the Respondents filed their replies and the Petitioners filed rejoinders in those five applications filed in five company petitions, i.e. 64 to 68/2015. Thereafter, the Petitioners' Counsel on 27.6.2017, and on 4.8.2017 sought for adjournments of hearing on these applications.

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Today the same counsel filed another common application MA 366/2017, saying that though he took time on the last date of hearings with a view to seek extension from Hon'ble NCLAT, but on considering legal position, the Petitioners counsel is since of the view that Honorable NCLAT itself passed orders on 06.04.2017 to dispose of these cases on or before 31st May 2017, it would not extend time to these cases dismissed for default, therefore the Petitioners side has filed the present Application seeking expeditious disposal of the Company Applications pending for modification/set-side of the orders dated 2.5.2017.

When this Bench has opened the applications sought modification to the order dated 02.05.2017 passed by this Bench, it has noticed that the Petitioners made allegations against this Bench instead of mentioning what is the sufficient cause that deprived him from attending the Petitioner Counsel to appear and argue their case on 2.5.2017. The allegations in the affidavit are as follows:

- "1. That since the first list of 53 matters was to be taken up first, and chances of the second list being taken up were remote, Associate Counsel appearing for the Petitioners fairly made a mention and also handed over an application seeking a deferment of the hearing by a few days as the Petitioner had filed an Appeal before the Hon'ble Supreme Court which was showing in the then advance list of the 5th May, 2017.*
- 2. That the Hon'ble Tribunal did not entertain the mentioning and asked the Associate Counsel to wait for the Petitions to be called out.*
- 3. That as the first list was still being taken up and about 10 cases still remained to be taken up in the said first list at around 4.30 p.m. Associate Counsel stepped out of the court room for a few minutes. On his return, he found that the Tribunal had risen and dates were given in all the other matters.*
- 4. That on enquiring the date given in item no.9 of the second list, the Associate Counsel was asked to come and check on the next day, as the official staff was very busy with pressure of last minute work due to approaching summer vacations.*

Contd3/-

5. That the Associate Counsel went to the Tribunal the next day, i.e. 3.5.2017, to find out the date given in the Petitions and was made to wait the entire day by the staff. An application for inspection of the file to inspect the order passed in the Petitions was also not entertained as the Associate Counsel was informed that the order was not signed. At around 4.30 p.m. on 3.5.2017, after the Tribunal had risen, the Associate Counsel was informed by staff that the Petitions were dismissed in default but the order of dismissal has not been signed as yet. Counsel tried to meet the Deputy Registrar of the NCLT for a copy of the order on 4.5.2017, but he also seemed helpless as order dated 2.5.2017 was not yet signed. Counsel was requested to come on the subsequent day i.e. 5th May, 2017. On the subsequent day, i.e. on 5th May, 2017, Counsel was again informed by the court staff and the Deputy registrar that the Order has not yet been signed hence certified copy could not be issued and inspection could not be allowed. However, the case status uploaded on the website of Tribunal showed the status of the case as being dismissed in default. It is pertinent to mention that while the status of the Petitions are shown as being dismissed in default on the website of the Tribunal, curiously, the order passed on that day has not been uploaded on the website.

6. That the above facts give rise to a serious doubt about the status of the Petitions filed by the Petitioner, especially when they were not heard on 2.5.2017, clearly because the Hon'ble Tribunal was still taking up the first list at 4.30 p.m. Moreover, the manner in which the status of the case has been uploaded, without the order being signed and uploaded on the website, also raised various doubts as the Respondents have been openly bragging that they have 'managed' things at the Tribunal.

7. The Petitioner submits that the Tribunal was already informed about the filing of the appeal before the Hon'ble Supreme Court at 10.30 am on 2.5.2017 and a deferment of a couple of days was sought. Thus the question of dismissing the Petitions in default without showing deference to the Hon'ble Supreme Court ought not to have arisen. Moreover, even if the Petitions had been called out after 4.30 p.m. hearing on the same could not have been concluded on the same day and hence the Petitions would still have had to be kept for hearing on another date.

8. The Petitioners submit that if at all the Petitions have indeed been dismissed, without giving the Petitioners an opportunity of being heard and without waiting for the appeals to be heard by the Hon'ble Supreme Court, the said order deserves to be recalled and the Petitions restored as the same would be violative of the principles of natural justice. The Petitioners would also be entitled to restitution if any advantage has been taken by any party of the illegal order of dismissal".

Since I as a Member in CLB initially heard this matter, I know the historical facts of the case where one brother filed these petitions against other brothers and his brother-in-law, who is none other than first Petitioner wife's brother.

Looking at the relation between the Petitioner-1 and the Respondents, I suggested for reconciliation among the parties, in pursuance thereof, the parties voluntarily came forward for arrangement among themselves. In view of the arrangement entered into between them, this Bench recorded the same and asked them to proceed further so that the dispute within the family could get resolved. All this has been done without even looking as to whether these Company Petitions are maintainable or not. Then these Petitioners (Husband and wife) backed out from the settlement recorded by this Bench, then on an application from the petitioners, this Bench passed orders on 23.08.2016 saying one of the parties to the consent terms cannot unilaterally back out from the understanding entered among them. On which, the petitioners went for an appeal, in the said appeal, the Honorable NCLAT, on 19.10.2016, reversed the order of this Bench with a direction to this Bench **to dispose of these Company petitions within three months from thereof, holding if the parties do not co-operate, the Tribunal to proceed exparte and pass final orders.**

But whereas, these Petitioners instead of arguing main case, the petitioners counsel filed Amendment Applications in all five company petitions, since applications were filed ignoring the directions of Honorable NCLAT, when this Bench decided all the amendment applications on merits, these Petitioners again filed appeals over the orders dated 6.2.2017, on which the Honorable NCLAT, vide order dated 6.4.2017, rejected the appeals with a direction to this Bench to dispose of the Company petitions by 31.5.2017.

Contd5/-

Soon after the aforesaid order Honorable NCLAT passed, as I said above, this matter came up for hearing on 24.4.2017, when this Bench asked the petitioners counsel to argue the case, he sought time on the ground that he filed an appeal before the Hon'ble Supreme Court against the order dated 6.4.2017 passed by the Hon'ble NCLAT. Since time was there up to 31.5.2017 for disposal of this case as directed by NCLAT, these cases were posted for hearing on 2.5.2017, hoping that this Petitioners counsel would make his submissions on 2.5.2017. Though the Hon'ble NCLAT upheld the order passed in amendment applications, the Petitioner till date has not filed amended petitions in CP 65, 67 and 68. Instead of filing Amended Petitions, he started saying that since he filed appeals before the Hon'ble Supreme Court on the order passed by NCLAT on 6.4.2017, he would not file amended petitions. It is a point to be noted, Honorable Supreme Court till date not granted stay in the appeals filed by the petitioners.

Since the vacation was starting from 4.5.2017, we were under the impression that in case we completed hearing in this matter; we would be in a position to pass orders in vacation. Since the Petitioners did not come forward either for filing the amended Company Petitions or to make submissions in the Main cases, this bench was compelled to dismiss these Company Petitions for default. It is also to be noted here, that on 02.05.2017, some junior counsel appeared in the forenoon session asking adjournment, then we made it clear to him, it would not be possible to postpone hearing in this case, the case was to be argued, saying so, we kept it back hoping he would argue the case in the afternoon session, in the afternoon session he was not present.

In the backdrop of this checkered history, these Petitioners filed these Restoration Applications making allegations attributing unfairness to this Bench in dealing with this matter, looking at such allegations against this Bench, I am of the view that I could not take up this matter for hearing, especially when party has no confidence upon this Bench.

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Therefore, this Bench hereby recuses hearing of these matters by reporting refusal to Honorable President of NCLT kind consideration.

Accordingly, this Bench hereby recused hearing this matter.

Sd/ -

B.S.V. PRAKASH KUMAR
Member (Judicial)