

NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P NO. 4(ND)/2016
CA NO.

CORAM:


PRESENT: CHIEF JUSTICE M. M. KUMAR
Hon'ble President

SH. S. K. MOHAPATRA
Hon'ble Member (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF PRINCIPAL BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 22.09.2016

NAME OF THE COMPANY: Mr. Praveen Shankaralyan
Vs.
M/s. Elan Professional Appliances Pvt. Ltd. & Ors.

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

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1	Ashish Haldhe	Advocate	Respondent	

ORDER

This is an application with a prayer for recall of Order dated 11th July 2016 with a consequent relief of restoring CP No. 04(ND)/2016 at its original number. In the application, there are specific averments made that the Petition was taken up for hearing on 1st June 2016 when the Company Law Board was dissolved and the National Company Law Board was constituted in its place. On that day the hearing of the Company Petition was re-notified to 10th August 2016. However on account of some error on the part of Registry, the matter was posted for hearing on 11th July 2016 which resulted in passing the order, in respect of which the present application for recall has been fixed.


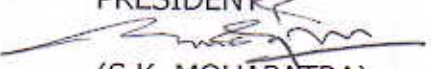


2. Notice of the application was issued. Mr Midha for , Non-pplicant Respondent has put in appearance.

3. After hearing the Learned Counsel for the Parties, we are of the opinion that once the Petition was posted for hearing on 10th August 2016, the hearing on 11-7-2016 was unwarranted. The aforesaid order indicates that non of the parties were present on 11-7-2016 because the hearing was to take place on 10th August 2016. On account of aforesaid error, no hearing could be afforded to the Petitioner and the Tribunal is empowered to recall such an order as per the Provision of Rule 51 of NCLT Rules 2016. Accordingly the order dated 11th July 2016 is liable to be recalled.

4. Mr Midha learned Counsel for the Non-applicant has however referred to Rule 48 of the Rules and has argued that once the Petition has been dismissed on merit then the remedy to recall is not available. A bare perusal of the Rule 48 would reveals that it applies to such cases which are fixed by the bench on a particular date and the parties default to appear. However, in the present case, there was no hearing fixed for 11-7-2016 and therefore, the question of default in appearance would not arise. The provision of aforesaid rules 48 would not apply to the facts of this case.

5. In view of the above, the order dated 11th July 2016 is recalled and the Petition bearing No.04(ND)/2016 is restored to its original number. As Mr Midha is present the requirement of issuance of fresh notice required to be issued is dispensed with. Let the matter be posted for hearing on 20th of October 2016 for hearing a-fresh.


(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT

(S.K. MOHAPATRA)
MEMBER (T)

22.9.2016
(A.K.Arora)