

DIVISION BENCH

ITEM NO.103

**NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
PRAYAGRAJ**

IA NO.75/2023 IN CP No.154/ALD/2019

CORAM:

- 1. SHRI PRAVEEN GUPTA,
HON'BLE MEMBER (JUDICIAL)**
- 2. SHRI ASHISH VERMA,
HON'BLE MEMBER (TECHNICAL)**

Date of Order: 4th July, 2024

Attendance-Cum-Order Sheet of the Hearing.

NAME OF THE COMPANY	PRADEEP KUMAR TIWARI & ANR V/S DASAK HEALTHCARE PVT LTD & ORS
UNDER SECTION	241/ 242 OF COMPANIES ACT, 2013

COUNSEL APPEARED THROUGH PHYSICAL/ VIRTUAL HEARING:

Sh. Geet Ranjan Ahuja alongwith : *For the Petitioners*
Sh. Shikher Trivedi, Advs.

Sh. Gopal Misra, Adv. : *For the Res. No.3 in main CP &
Applicant in IA No.75/2023*

ORDER

Ld. Counsels representing the parties are present.

IA NO.75/2023

- 1.** This application has been filed for seeking relief of taking on record the counter affidavit/reply already filed by the Respondents in the main company petition on 22nd February, 2023 in the Registry of this Tribunal.
- 2.** The present application has some historical legal background arising out of the fact that the Respondents in the main company petition have not been coming forward during the time when they were put to notice and even they did not bother to file reply/counter affidavit despite repeated notice being issued to them.
- 3.** MA No.23 of 2021 was filed by the Respondents for seeking to file the counter affidavit on the ground that the previous counsel engaged by the

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Respondents did not apprise the litigants about the proceedings taken place before this Tribunal and also did not file the counter affidavit. This resulted into passing of an order dated 14th February, 2022 by this Tribunal, wherein Para No.9 and 10 thereof, a copy of which has also been annexed as Annexure No.1 at Page No.14 of the present application, the following observations have been made:

“9. In these circumstances, to meet the interest of justice which implies that all parties to a dispute be heard as a general principle, we accept this prayer of the applicant/Respondent No.3 subject to payment of cost of ₹2,00,000/- (Rupees two lakh only) to the respondents/petitioners and deposit of a further sum of ₹2,00,000/- (Rupees two lakh only) to the Prime Minister’s National Relief Fund, within a period of two weeks from the date of the order and file proof of compliance with the above orders. A further condition is imposed that the applicant/ Respondent No.3 shall file the reply affidavit within a period of two weeks positively, failing which the right to file reply shall stand closed.

10. To remove any last vestiges of doubt and since the applicant/Respondent No.3 is being put to terms after it was repeated asserted that the applicant was ready and willing to be put to whatever terms this Tribunal may put the applicant to, it is made clear that irrespective of whether the applicant/Respondent No.3 chooses to file any reply affidavit within the said period of two weeks, the costs indicated above shall be paid to the respondents/petitioners and to the Prime Minister’s National Relief Fund, and any failure to do so will invite coercive action from this Tribunal.”

4. Since a cost of Rs.4 lakh was imposed by this Tribunal, the Respondents chose to file a company appeal before the Hon’ble NCLAT which however was dismissed vide an order dated 18th May, 2022 and the SLP filed before the Hon’ble Supreme Court has also been dismissed in terms of an order dated 30th September, 2022.
5. Thereafter, another application was filed CA No.42/2022 for seeking time

to deposit the amount and this Tribunal in terms of an order dated 29th November, 2022 passed the following order:

“CA No. 42/2022

The present application has been filed under Rule 11 of National Company Law Tribunal Rules, 2016 with a prayer to grant atleast six months’ time to the applicant to comply with the order dated 14.02.2022 for depositing the cost. It is stated by the learned counsel for the petitioner that the matter has been taken up to the Hon’ble Supreme Court and the appeal filed by the Applicant was dismissed by the Hon’ble Supreme Court vide order dated 30th September, 2022.

In these circumstances, the two months’ time has already passed after passing of the order by the Hon’ble Supreme Court and now the Applicant is seeking six months more time which is not justified from any angle. So, as a matter of indulgence, he is directed to deposit the cost of Rs.4,00,000/- (Rupees Four Lakhs) as per the order dated 14th February, 2022 within one month, failing which, the appropriate orders would be passed.

The matter be listed on 2nd January, 2023 higher on board.”

6. In pursuance thereof, the respondents deposited the amount of Rs.4 lakh on 21st December, 2022 as per the affidavit dated 17th January, 2023 filed on the e-portal on 9th February, 2023. In the affidavit, it was asserted that the amount of cost of Rs.4 lakh has been paid.
7. As a result thereof, the aforesaid CA No.42/2022 was dismissed as infructuous in terms of an order dated 25th September, 2023.
8. The present application has therefore now been filed on the ground that even though the cost of Rs.4 lakh has been deposited and in the meantime, the counter affidavit has also been filed on 22nd February, 2023, therefore the said counter affidavit/reply may be permitted to be taken on record so as to grant the Respondent an opportunity to defend its case on the strength of the averments made in the reply as well as the documents attached therewith.

9. Notice was issued in the present application, the Ld. Counsel representing the Petitioner/non-Applicant Respondent in the present application objects to the present application to the extent that the respondents in the main petition being the present applicant have not adhered to the terms of the order dated 14th February, 2022 whereby apart from depositing the cost of Rs.4 lakh, they were also to file reply/counter affidavit within a period of two weeks. Even though the reply/ counter affidavit stands filed as on 22nd February, 2023, the same however is not within the stipulated period granted in terms of the aforesaid order. After arguing for some time, the Ld. Counsel representing the Petitioner/ non-Applicant Respondent later, however agreed for taking the counter affidavit of the Respondent/ present applicant on record subject to some stringent condition.
10. In view of the fact that the respondents in the main petition have already deposited the cost and the affidavit/counter reply has also been filed since then on 22nd February, 2023 in the Registry of this Tribunal and the matter is therefore, otherwise right for argument, we therefore deem it appropriate to allow the present application however subject to cost of Rs.50,000/- to be paid in the Prime Minister's National Relief Fund. The said cost would be deposited within a period of 10 days from today. The subject to the payment of the aforesaid cost, the counter affidavit/ reply already filed on 22nd February, 2023 is taken on record.
11. The copy of the counter affidavit is stated to have not been received by the Ld. Counsel representing the Petitioners. The copy thereof would be supplied on the e-mail ID to him.
12. Ld. Counsel representing the Applicant however states that though the copy has already been supplied to the local Counsel, however he undertakes to supply the copy of the said affidavit to the Ld. Counsel representing the petitioner today on the e-mail ID to be shared on the chat box within a period of two days.

13. Let the rejoinder, if any, be filed within a period of two weeks with an advance copy to be supplied to the other side.
14. With the aforesaid observations, the IA No.75 of 2023 is allowed and stands disposed off accordingly.
15. The main CP i.e. CP No.154/ALD/2019 is adjourned for 25th July, 2024 for final hearing and no adjournments would be given to either of the parties for making their submissions.

-Sd-
(Ashish Verma)
Member (Technical)

-Sd-
(Praveen Gupta)
Member (Judicial)

4th July, 2024

Avaneesh Kumar Singh
(Stenographer)