

DIVISION BENCH

ITEM NO.179

NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH

PRAYAGRAJ

IA No.44/2022, IA NO.10/2023, IA NO.44/2023, IA NO.45/2023

& IA NO.84/2023 IN CP No.55/ALD/2022

CORAM:

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

Date of Order: 2nd May, 2024

Attendance-Cum-Order Sheet of the Hearing.

NAME OF THE COMPANY	KIRAN SHARMA V/S ATUL KUMAR SHARMA & ANR.
UNDER SECTION	241/242 OF COMPANIES ACT, 2013

COUNSEL APPEARED THROUGH PHYSICAL/ VIRTUAL HEARING:

Sh. Anoop Trivedi, Sr. Adv. assisted by : *For the Petitioner in main CP*
Sh. Abhinav Gaur and : *& Applicant in IA No.44/2022*
Sh. Utkarsh Malviya, Adv. : *& Respondent in IA No.10/2023,*
IA No.44/2023 & IA No.45/2023

Sh. Pawan Sharma, Adv. : *For Respondent No.1 in main CP*
: *& IA No.44/2022 and Applicant in*
IA No.45/2023 & IA No.84/2023

ORDER

Ld. Counsels representing the parties are present through VC.

- 1.** This is a petition filed U/s 241/ 242 of the Companies Act, 2013 seeking redressal of her grievances of Oppression & Mismanagement against the respondent company as well as its the Directors.
- 2.** During the previous proceedings of this matter, an issue has cropped up with respect to filing the requisite forms for completing the requisite formalities as mandated under the Companies Act, 2013 with the concerned ROC. It is an admitted position of the respective parties that certain Forms like e-form INC 22A (ACTIVE) is required to be filed with the ROC. However, while filing this form, the respondent has objected to counter sign in view of some documents to be supplied to him before hand, in order to enable him to sign on the said requisite forms.

-Sd-

-Sd-

3. It is stated that earlier an order dated 19.09.2022 was passed, where also, this Tribunal has emphasized the necessity to comply with the provisions of the Companies Act, 2013 by filing the requisite e-form INC 22A (ACTIVE). The said order was however challenged by the respondent no.1 before the Hon'ble NCLAT, and with the consent of the parties, the matter was referred back before this Tribunal to decide the matter on merit. Meanwhile, considering the fact that certain forms were required to be filed, an order dated 25.10.2023 came to be passed by this Tribunal, with the consent of the contesting parties, that the statutory compliances as per the Companies Act, 2013 shall be made with ROC both by the petitioner as well as by the respondent no.1 within a stipulated period without however, any prejudice to be caused to anyone on merits and shall not impact the issues under consideration in any manner.
4. It seems that despite passing of this order dated 25.10.2023, based upon the consents given by both the parties, the deadlock in filing of the requisite form continued. Meanwhile, certain other IAs came to be filed by the parties, to which the counter pleadings have also been filed.
5. Keeping in view of the fact that the main petition would require detail consideration, and therefore would also take some time, therefore meanwhile, it is jointly stated by the Ld. Counsels representing the parties that there cannot be any difference of opinion with respect to the compliances of statutory provisions of the Companies Act, 2013 and therefore for that purpose, the respondent no.1 can be provided with the documents, which are forming background to filing of the requisite forms including the one, as referred to above.
6. However, considering the fact that despite previous efforts made by this Tribunal, the deadlock particularly with respect to the compliances has not been resolved, we now deem it appropriate that providing the background

documents to the respondent no.1, could be undertaken, facilitating inspection by the respondent no.1 in the premises of the respondent no.2 company on a fixed date in the presence of a Court appointed Commissioner/ Observer.

7. The Ld. Counsels representing the parties are at addendum that such an arrangement would lead to an amicable preparation of the documents and filing thereof with the ROC.
8. In view thereof, we direct that the respondent no.1 may visit the official premises of the respondent no.2 company on 18th May, 2024 at 12:00 Noon, and the documents would be inspected by the respondent no.1, which are necessary and essential for making preparation and compliances of the necessary form for filing with the RoC, and also sign the said documents after inspecting the documents in presence of the Court appointed Commissioner/ Observer. The copies thereof, which are in the record of the company, would also be provided to the respondent no.1 on the spot, so as to enable him to sign at the requisite form and furnish it/ upload on the e-portal of the ROC in the presence of the Observer. A report on compliance or otherwise of filing of pending statutory forms by respondent no.2 company shall be submitted by the Court appointed Commissioner/ Observer within one week from the date of inspection done by the respondent no.1 on 18th May, 2024.
9. We therefore appoint Mr. Anil Kumar, PCS, having mobile no. 9415306147 and Email ID- purswanianil@gmail.com to act as a Commissioner/ Observer, in whose presence and observations the inspection by the respondent no.1 would be carried out in the official premises. The honorarium of the Commissioner/ Observer @ Rs.25,000/- would be paid along with the incidental expenses and travelling expenses, if any and all the expenses incurred in this regard would be equally divided between petitioner and respondent no. 1 for making the necessary payment.

10. Let the order be complied with in letter and spirit.
11. Needless to say that this exercise of making compliances as per the provisions of the Companies Act by the requisite Form 22A would be without prejudice to the rights of the respective parties in the main petition.
12. Let the main petition to come up for further hearing on 12th June, 2024 higher on Board.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

2nd May, 2024

Kavya Prakash Srivastava
(Stenographer)