

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

Contempt Application No.02/2018

In

T.A.No.34/2016 (C.A.No.461/2015),

I.A.No.52/2018

In

T P No 07/2016 (C P No.969/2012)

Under Section 397/398 of the Companies Act, 1956

In the matter of:

Gomukhi Constructions (P) Ltd. ... Petitioners

-Versus-

North East Shuttles (P) Ltd. ... Respondents

Coram:

Hon'ble Mr Justice P K Saikia, Member(J)

.....

ORDER

Date of Order: 25th September 2018

Contempt Application No.02/2018

Mr S.K. Gupta, PCS & Mr N. Sharma, PCS, learned legal representatives of the applicant/petitioner are present. Mr A. Saha, learned Advocate represents contemnor No.3 namely, Shri Uma Sankar Rai who is also present in person. Mr H. Das, learned Advocate is present on behalf of contemnor No.2, Mr Phizo Nath. Mr Phizo Nath is also present in person.

2. Shri Ashim Nath, contemnor No.4 could not be present before this Bench today. In that connection, he has sent an email assigning the reason as to why he could not be present before this Bench today.
3. Mr Uma Sankar Roy, contemnor No.3 has filed an authorization wherein it was stated that Mr Roy has been authorized to file the affidavit-in-opposition in the present proceeding on behalf of Ms Shoba Kikakara Mani, contemnor No.1 as well.
4. On the last occasion, Registry was directed to send notice to Ms Shoba Kikakara Mani, contemnor No.1 and Shri Ashim Nath, contemnor No.4 as well as Shri Phizo Nath, contemnor No.2 requiring them to be present before this Bench today. Registry has accordingly submitted a note stating that it has complied with the directions, rendered by this Bench in its order dated 11.09.2018.
5. Mr S.K. Gupta, legal representative for the applicant/petitioner, submits that as required by this Bench, he also sent a message to Ms Shoba Kikakara Mani, contemnor No.1 on WhatsApp furnishing a copy of the entire order, rendered by this Bench on 11.09.2018. Mr Gupta further submits that the said message was received by Ms Shoba Kikakara Mani but in spite of that she has not appeared before this Bench today.
6. The conduct of Ms Shoba Kikakara Mani, contemnor No.1, appears to be quite inexcusable and same needs to be viewed seriously. However, before taking any punitive action against her reportedly for her defying the direction of this Bench rendered on the last occasion, Mr S.K. Gupta, learned PCS, is asked to file an affidavit stating that as per the direction of this Bench in its order dated 11.09.2018, he had taken steps and also got it transmitted to Ms Shoba Kikakara Mani by way of WhatsApp.
7. The Registry of this Bench is also directed to submit a report regarding compliance of direction qua transmission of copy of the order dated 11.09.2018 to the said contemnor. Necessary order regarding further action to be taken on Ms Shoba Kikakara Mani would be passed on receipt of the Registry's report as well as the affidavit from Mr S.K. Gupta, learned PCS.
8. In view of the above, this proceeding be listed for hearing on 13.11.2018.

I.A.No.52/2018

Mr S.K. Gupta, PCS & Mr N. Sharma, PCS, learned legal representatives of the applicant/petitioner are present. Mr A. Saha, learned Advocate represents contemnor No.3 namely, Shri Uma Sankar Rai who is also present in person. Mr H. Das, learned Advocate is present on behalf of contemnor No.2, Mr Phizo Nath. Mr Phizo Nath is also present in person.

This proceeding has been initiated on the basis of supplementary affidavit which was a part of the Contempt Application No.02/2018. Therefore, this proceeding is redundant and unnecessary and, therefore, same is accordingly disposed of. However, Registry is directed to tag the supplementary affidavit aforesaid with the connected Contempt Proceeding.

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9. Mr S.K. Gupta, PCS & Mr N. Sharma, PCS, learned legal representatives of the applicant/petitioner are present. Mr A. Saha, learned Advocate is present on behalf of non-applicant/contemnor No.3 and Mr H. Das, learned Advocate for the non-applicant/contemnor No.2. Mr Uma Sankar Roy, non-applicant/contemnor No.3 is also present in person. Mr Sanjib Bordoloi, Special Officer and Mr Ashokananda Das, Assistant to the Special Officer are also present before this Bench today.

10. This Bench on the last occasion, had directed the non-applicants/respondents to be present before this Bench today in order to render necessary help in trying to retrieve the engines of the aircraft which have reportedly been sent to a foreign country for repair although evidently there was no order from this Bench allowing the applicant in M.A.No.01/2016 or any other authority of the respondent company (North East Shuttles Pvt. Ltd.) to take the engines of the aircraft out of the country for the purpose of repair so as to make the aircraft aforesaid airworthy so as to get an airworthiness certificate on completion of aforementioned exercise.

11. Shri Uma Sankar Roy, non-applicant/contemnor No.3 (who at one stage, stated on oath that he is the Managing Director of the company) and Shri Phizo Nath, non-applicant/contemnor No.2 have tendered their attendance before this Bench today in compliance of the direction rendered on the last occasion. Shri Ashim Nath, non-applicant/contemnor No.4 who was also asked to remain present today could not be present before this Bench today since he is said to have been suffering from serious illness.

12. Though Ms Shoba Kikakara Mani, non-applicant/contemnor No.1 was also directed to remain present today before this Bench, she, as stated above, defies such direction. As indicated in Contempt Application No.02/2018, necessary order would be rendered qua her refusal to carry out the direction in the order of this Bench aforementioned in due course on receiving required information from the Registry as well as Mr S.K. Gupta, learned PCS.

13. Mr Phizo Nath, non-applicant/contemnor No.2 submits that he will render all assistance in bringing back the engines now in a foreign country to the country. In that connection, Mr Phizo Nath has also urged this Bench to render necessary direction to the company in extending him necessary help in that regard. He further prays that the company be directed to bear the expenditure involved in bringing back the engines of the aircraft to the country.

14. However, at this moment, there are some confusions about the composition of Board of Directors of the respondent company since Shri Uma Sankar Roy has reportedly resigned from the post of Managing Director of the company. Shri Uma Sankar Roy further informs that Ms Shoba Kikakara Mani, contemnor No.1 had also resigned from the post of Managing Director/Director of the company in the meantime.

15. Thus, it appears that the respondents/contemnors have given very contradictory information about the composition of the Board of Directors of the respondent company. In fact, it is not known if there is any properly constituted Board of Directors to conduct the affairs of the aforesaid company. In view of above, the Regional Director, N.E. Region, Shillong is also requested to appear before this Bench along with all the necessary information on the next date.

15. A copy of this order along with other relevant documents be furnished to the Regional Director to enable him to furnish this Bench necessary information about the composition of the Board of Directors of the respondent company at present.

16. In view of the above, for the time being, following directions are given to Shri Phizo Nath:

- a) *Shri Phizo Nath shall first bring one engine of the aircraft from the foreign country. Once the first engine is brought back, the leased engine shall be returned to the lessor for facilitating the retrieve of the second engine to the country. Once the leased engine is received by the lessor, Mr Phizo Nath would do the needful to bring back the second engine to the country.*
- b) *For the time being, the expenditure, involved in bringing back the original engines and returning the leased engine to the lessor as well as in bringing back the second engine to the country shall be borne by Shri Phizo Nath.*
- c) *Shri Phizo Nath is given two months to comply with the above directions.*

15. Mr S.K. Gupta, learned PCS, representing the applicant/petitioner, however, submits that the leased engine be returned to the lessor only after bringing back both the engines to the country. However, after hearing the parties, I find it necessary to stick to the arrangements which I have recorded hereinbefore as far as bringing back the engines of the aircraft is concerned.

16. Shri Phizo Nath submits that once the first engine is brought back to the country, he would be required to visit the aircraft and in that connection, some order needs to be given to the Special Officer to allow him to have access to the aircraft for the purpose of replacement of the leased engine by the original one. The Special Officer submits that he has no objection if permission, as sought for by Mr Phizo Nath, is granted. Resultantly, the Special Officer is requested to allow Mr Phizo Nath to visit the aircraft for the purpose aforesaid.

17. Mr Sanjib Bordoloi, Special Officer, has informed that in terms of the order rendered on the last occasion, the applicant/petitioner had already deposited Rs.10 lacs in two instalments of Rs.5 lacs each in the concerned Bank account. The

Special Officer, by his report dated 24.09.2018, gave a detailed account in respect of the expenses, incurred in carrying out the work, assigned to him.

18. He has also submitted another email dated 24.09.2018 addressed to this Bench stating that an amount to the tune of Rs.1,45,483.23 (Rupees One Lakh Forty-Five Thousand Four Hundred Eighty-Three and paise Twenty-Three only) would again be required for carrying out the remaining work, assigned to him. Registry is, accordingly, directed to instruct the concerned bank to release the amount from the account aforementioned on following the procedure arranged before.

19. It may also be stated that the landlord had kept the office of the respondent company under lock and key for not getting the rent in respect of the aforesaid premise over a long period of time and refused to open the office unless he is paid the entire arrear rent, although, in the meantime, Shri Ashim Nath made a commitment that he would pay Rs.1 lakh towards the arrear rent by 10.09.2018.

20. However, Mr Phizo Nath informs this Bench that he would take necessary steps to get the office opened at least for a day or so, so that the remaining documents, necessary for carrying out the work, assigned to the Special Officer could be located for being delivered to the latter.

21. This Bench believes the assurance made by Shri Phizo Nath and expects that Mr Phizo Nath will do everything possible to ensure that the office is kept opened at least for a day or two, so that the documents necessary for carrying out the remaining work assigned to the Special Officer could be obtained.

22. He further assured that the office will be opened within 7 days from today. Necessary information in that connection, would be furnished to the Special Officer through Mr H. Das, learned Advocate well in time.

22. List this matter along with Contempt Application No.02/2018 on 13.11.2018.

Solt

Member (Judicial)
National Company Law Tribunal,
Guwahati Bench,
Guwahati.

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