

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

T. A. No.34 of 2016 (C. A. No.461/2016)

**M. A. No.02/2017
&
M.A. No.03/2017
in
T. P. No.07/GB/2016
(Arising out of C.P. No.969/2012)**

Under Section: 397/398 of the Companies Act, 1956

In the matter of

Gomukhi Construction (P) Ltd. & Ors.

... Petitioners

-versus-

North East Shuttles (P) Ltd. & Ors.

... Respondents

Order delivered on 16-11-2017

Coram:

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

For the Petitioners

: Mr. S. K. Gupta, PCS
Mr. Narayan Sharma, PCS

For the Respondents

: Mr. I. Saha, Advocate [Respondent Nos. 1 and 4]
Mr. Hiranya Das, Advocate [Respondent No.4]

ORDER

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

Heard Mr. S. K. Gupta, Sr. PCS and Mr. Narayan Sharma, PCS appearing for the applicants/petitioners. Also heard Mr. I. Saha, Advocate appearing for non-applicants/respondents No.1 and 4 as well as Mr. Hiranya Das, Advocate appearing for the non-applicant/respondent No.4 herein.

2. This Bench on the last occasion on 06th November, 2017 passed the following order: -

"ORDER

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

Heard Mr. S. K. Gupta, Sr. PCS and Mr. Narayan Sharma, PCS appearing for the applicant/petitioner. Also heard Mr. I. Saha, Advocate appearing for non-applicant/respondent No.1 as well as Mr. Hiranya Das, Advocate appearing for the non-applicant/respondent No.4. AVM Sanjib Bordoloi, AVSM (retired), Special Officer, appointed, vide Order dated 04-09-2017 is also present.

2. AVM Sanjib Bordoloi AVSM (retired) was appointed as Special Officer to facilitate this Bench in executing the order dated 14.11.2014 rendered by the Company Law Board, Kolkata (in short CLB Kolkata) in C.P.No.969/2012 and in that connection, this Bench had also rendered necessary directions, vide Order dated 23-10-2017. In response to such directions, the Special Officer had submitted proposals which, in his best judgment, would help this Tribunal in executing the order dated 14.11.2014 effectively and properly.

3. This Bench, however, required the parties hereto to submit objection, if any, against the proposals, so submitted by the Special Officer. However, the non-applicants/respondents had submitted that they would file objection against the proposals so made by the Special Officer but till last date, the non-applicants/respondents did not submit any objection against the proposals so made by the Special Officer. On the last occasion, viz. 23.10.2017, the non-applicants/respondents have again verbally prayed for time stating that due to sickness of the engaged Advocate, the respondents/non-applicants could not file the objection and as such, they prayed for time.

4. In the interest of justice, such verbal prayer seeking extension of time to file objection against the proposals submitted by the Special Officer was allowed. For ready reference, relevant part of the Order of this Bench dated 23-10-2017 is reproduced herein below: -

"11. However, considering the fact that Mr. A. Saha, learned Advocate for the non-applicant/respondent No.1 is said to be sick for last couple of days and since Mr. A. Saha is a Kolkata based Advocate, I, in the interest of justice, accept the verbal prayer seeking adjournment but on condition that the non-applicants/respondents would file their reply/objection to the proposal submitted by the Special Officer at least two days before the next date without fail so that Registry gets some time to scrutinize the same to ascertain if the same is filed in accordance with the prescribed prescription."

5. However, the non-applicant/respondent No.1 has not filed any reply/objection till date. Rather, by an e-mail sent by the learned Advocate for non-applicant/respondent No.1 which was addressed to this Bench, the learned Advocate for the non-applicant/respondent No.1 has again prayed for time to submit objection to the proposals submitted by the Special Officer. Such email was placed before this Bench through Mr. H. Das, learned counsel appearing for the non-applicant/respondent No.4.

6. Such prayer was, however, vehemently opposed to by Mr S.K. Gupta, Sr. PCS appearing for the applicant/petitioner, stating that it becomes a habit of the non-applicants/respondents to seek adjournments without there being any genuine excuse to do so which, in turn, resulted in enormous delay in the disposal of proceeding in hand. A bare perusal of various orders passed by this Bench in the present proceeding and in all other connected proceedings would make such position more than clear.

7. I have considered the submissions in the light of various orders passed by this Bench as well as the email sent by Mr A. Saha, the learned Advocate for non-applicant/respondent No.1 and found that adequate opportunities have been granted to the non-applicants/respondents to submit objections against the proposals submitted by the Special Officer suggesting ways and means for proper execution of the order dated 14.11.2014.

8. Unfortunately, the non-applicants/respondents did not avail of those opportunities and instead prayed for extension of time again and again. What is important to note is that most of the time, such prayers for extension of time were made not in accordance with the requirements, prescribed therefor.

9. However, on considering the submissions, advanced by the learned legal representatives and learned Advocate appearing for the respective parties and also having regard to materials on record

including the e-mail placed before me today, the prayer for adjournment is granted on condition that the non-applicants/respondents shall file objections to the proposals submitted by the Special Officer appointed by this Bench for the purpose aforesaid, within seven days from today, simultaneously supplying copy thereof to the learned legal representatives of the petitioner/applicant.

10. Further, the applicant/petitioner is also directed to submit reply, if any, to the objections, filed by the non-applicants/respondents before this Bench at least two days ahead of the next date.

11. The learned counsel appearing for the non-applicants/respondents have submitted that they have inadvertently sent an affidavit-in-opposition presumably opposing the proposals submitted by the Special Officer qua execution of the order dated 14.11.2014 although no such affidavit-in-opposition had ever been filed before this Bench.

12. They, however, submit that they would not rely on such affidavit-in-opposition and prayed that said affidavit-in-opposition, so sent to applicant/petitioner, may be treated as withdrawn from the side of non-applicants/respondents and in that connection, they would also submit necessary application. This Bench takes note of such submission.

13. List this matter on 16-11-2017 for hearing.

M. A. No.02/2017

14. Pleadings are complete vide Order dated 23-10-2017.

15. List this matter on 16-11-2017.

M. A. No.03/2017

16. Heard Mr. I. Saha, learned counsel appearing for the applicant/respondent No.1 and Mr. H. Das, learned counsel for the applicant/respondent No.4. Also heard Mr, S, K. Gupta and Mr. Narayan Sarma, learned counsel appearing for the non-applicant/petitioner in matter of re-calling the Order dated 11-08-2017. However, arguments remain incomplete.

17. Fix this matter on 16-11-2017.

Sd/-
Member (Judicial)
National Company Law Tribunal
Guwahati Bench: Guwahati.

Dated, Guwahati, 06th November, 2017"

3. In terms of the aforesaid order dated 06-11-2017 of this Bench, the respondents were to submit their reply/objections against the proposal submitted by the Special Officer appointed by this Bench, for facilitating the Bench in getting ways and means for proper execution of the order dated 14-11-2014. They were further directed to supply simultaneously copy thereof to the petitioners herein, for their submitting rejoinder if any and that too, at least two days ahead of next date of hearing.

4. It may be stated here that the respondents were repeatedly granted adjournment to file their response to the proposal submitted by the Special Officer, despite their conduct in prosecuting/resisting claims and counter claims etc., was found to be unsatisfactory. However, such opportunities were given

in order to ensure that they could place on record their views/objections against the proposal submitted by the Special Officer.

5. However, till today the respondents No.1 and 4 did neither file any reply to the proposal submitted by the Special Officer, suggesting ways and means for implementation of the order dated 14-11-2014 rendered by Company Law Board, Kolkata in C. P. No.969/2012, nor did they assign any reason for their inability in complying with the directions rendered in the order dated 06-11-2017 of this Bench.

6. That being so, I am constrained to hold that the respondents are no longer interested in submitting their objections against the proposal submitted by the Special Officer.

7. Registry is directed to list the matter on 05-12-2017 for further orders.

M.A No.2/2017

8. Heard Mr. S. K. Gupta, Sr. PCS and Mr. Narayan Sharma, PCS appearing for the applicants/petitioners. Also heard Mr. I. Saha, Advocate appearing for non-applicants/respondents No.1 and 4 as well as Mr. Hiranya Das, Advocate appearing for the non-applicant/respondent No.4.

9. The learned counsels for the applicants/petitioners herein elaborately argued for initiation of contempt proceeding etc. against the non-applicants/respondents. However, the arguments of the non-applicants/respondents herein are deferred.

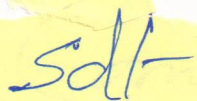
10. Registry is directed to list the matter for further hearing along with TA No.34/2016 (C. A. No.461/2016) on 05-12-2017.

M.A No.3/2017

11. Heard Mr. S. K. Gupta, Sr. PCS and Mr. Narayan Sharma, PCS, who are also present before this Bench today representing the applicants/petitioners herein. Also heard Mr. I. Saha, Advocate and Mr. Hiranya Das are present today representing the non-applicants/respondents No.1 and 4 herein respectively.

12. Arguments in this matter are concluded from both the sides. However, the parties may, if so desire, submit synopsis on their respective arguments within 7(seven) days.

13. Order is reserved.


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

Dated, Guwahati, 16th November, 2017

Deka/16-11-2017/