

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

T.A.No.34/2016 (C.A.No.461/2015),
M.A.No.02/2016

&

M.A.No.03/2017

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 Construction (P) Ltd. ...Petitioner

-Versus-

North East Shuttles (P) Ltd ... Respondents

Coram:

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

.....

ORDER

Date of Order: 23rd October 2017

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

1. Mr S.K. Gupta, Sr. PCS and Mr N. Sharma, PCS are present for the applicant/petitioner. Mr H. Das, learned Advocate remains present before this Tribunal representing non-applicant/respondent No.4. Though no one has appeared on behalf of the non-applicant/respondent No.1 before this Tribunal today, Mr H. Das, learned Advocate submits that Mr A. Saha, learned Advocate for non-applicant/respondent No.1 as well as respondent No.3 could not appear today since he has been suffering from some illness since last couple of days.

2. However, Mr S.K. Gupta, Sr. PCS submits that respondent No.3 had died long back and, therefore, question of Mr Saha representing respondent No.3 who is no more does not arise at all. Mr Gupta further submits that this fact has been made known to Mr A. Saha, learned Advocate representing non-applicant/ respondent No.1, on several occasions.

3. Mr H. Das, learned Advocate for non-applicant/respondent No.4 further submits that since Mr A. Saha, learned Advocate for non-applicant/respondent No.1 could not appear before this Tribunal today, therefore, Mr Saha could not submit the reply/objection to the proposal, submitted by the Special Officer but the same would be submitted before this Tribunal on the next date.

4. Mr Gupta, Sr. PCS, responding to the aforesaid prayer from the side of non-applicants/respondents submits that the aforesaid proposal seeking adjournment verbally is not known to the procedure prescribed under the NCLT Rules, 2016. He further submits on very many earlier occasions too similar verbal prayers were made seeking adjournments on one ground or other. In support of such contention, my attention has been drawn to the Rule 153 of the NCLT Rules of 2016.

For ready reference, said provision is reproduced below:

"Where any period is fixed by or under these rules, or granted by Tribunal for the doing of any act, or filing of any document or representation, the Tribunal may, in its discretion from time to time in the interest of justice and for reasons to be recorded, enlarge such period, even though the period fixed by or under these rules or granted by the Tribunal may have expired."

5. He further submits that once an application, petition etc. is received by the Registry, Registry needs some time to examine the same to ascertain if such application/petition is filed in accordance with the prescription rendered under the Rules. Therefore, if the application is filed on the next date, Registry would not be able to examine such application etc. to ascertain if the application/petition has been filed in accordance with the prescription of law.

6. According to Mr Gupta, on the last occasion, this Bench was pleased to grant time to file reply/objection to the proposal submitted from the side of special officer appointed by this Bench requiring him to help this Tribunal in executing the final order rendered by CLB, Kolkata on 14.11.2014 in C.P.No.969/2012 and such reply/objection was to have been filed on or before 23.10.2017. For ready reference, relevant part of the said order is reproduced below:

T. A. No.34 of 2016

"Heard Mr. S. K. Gupta, FPCS and Mr. Narayan Sharma, PCS appearing for the applicant/petitioner. In terms of the order rendered by this Bench on 04-09-2017, AVM Sanjib Bordoloi AVSM (Retired), the Special Officer appointed by this Bench, has submitted a proposal in order to facilitate this Bench in executing the order passed by the Company Law Board, Kolkata dated 14-11-2014 passed in C.P. No.969/2012.

"In this connection, I have also heard Mr. A. Saha, learned counsel for the respondents No.1 and 4 as well as Mr. Hiranya Das, learned counsel for the respondent No.4, who submit that those respondents would submit objections to the proposal/procedure submitted by the special officer. The prayer is allowed and the non-applicants/respondents are directed to submit reply/objection to the proposal submitted by the special officer supplying simultaneously a copy thereof to the applicant/petitioner.

"In view of above, list this matter along with other connected proceedings on 23-10-2017.

7. According to Mr Gupta, in the terms of Rule 153 of the NCLT Rules, 2016, the respondents/non-applicants were to file necessary application in accordance with requirement seeking enlargement of time to file the reply/objection to the proposal submitted by the Special Officer aforesaid. However, in seeking extension of time, all those requirements were given a go by.
8. Referring to various orders rendered by this Tribunal on earlier occasions, it has been submitted that it has been habit of the non-applicants/respondents to make verbal requests on very many occasions seeking various reliefs from this Bench. Such a practice not only put the applicant/petitioner to serious difficulties in objecting such verbal prayer but also profoundly delayed the disposal of present proceeding and all the connected proceedings as well.
9. Mr S.K. Gupta, Sr. PCS further submits that he has received the hard copy of the affidavit-in-opposition objecting the proposal submitted by the Special Officer in the meantime. When the non-applicants/respondents could send hard copy to the applicant/petitioner, there cannot be any earthly reason as to why same could not be submitted before this Tribunal till today. For all those reasons, Mr Gupta submits before this Bench not to accept the prayer seeking enlargement of time.
10. I have considered such submissions in the light of various orders passed by this Bench in the present proceeding and other connected proceedings. It is found that on earlier occasions too, the non-applicants/respondents had prayed for different

reliefs including enlargement of time verbally, a procedure which is, however, not approved by the procedures, prescribed under the NCLT Rules, 2016.

11. However, considering the fact that Mr A. Saha, learned Advocate for 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.

12. List this matter on 06.11.2017 for hearing.

M.A.No.02/2017

13. Mr S.K. Gupta, Sr. PCS & Mr N. Sharma, represent the applicant/petitioner. Mr H. Das, learned Advocate is present on behalf of non-applicant/respondent No.4. None for non-applicant/respondent No.1.

14. On the last occasion, the non-applicants/respondents were granted time to submit sur rejoinder that too by 09.10.2017 simultaneously supplying copy thereof to the other side. However, till date no sur rejoinder has been filed nor any prayer for extension of time has been made. In view of the above, it needs to be held that non-applicants/respondents are not interested in filing their sur rejoinder.

15. List this matter on 06.11.2017 for hearing along with the other connected proceedings.

16. It is made clear that since this proceeding and the other connected proceedings are awaiting disposal for a long time, this Bench will not grant any adjournment to any of the parties on any account.

M.A.No.03/2017

17. Mr S.K. Gupta, Sr. PCS & Mr N. Sharma, PCS are present representing the non-applicant/petitioner. Mr H. Das, learned Advocate is present for the non-applicant/respondent No.4. Mr A. Saha, learned Advocate for the applicant/

respondent No.1 remained absent today. However, on the verbal prayer of Mr H. Das, learned Advocate for non-applicant/respondent No.4, this case is adjourned till next date.

18.. Mr S.K. Gupta, Sr. PCS, however, submits that he is not going to file any sur rejoinder and, therefore, this case may be heard at the earliest convenience of this Tribunal.

19. In view of the above, list this matter on 06.11.2017 along with the other connected proceedings.



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

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