

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

**T.P. No.04/397/398/GB/2016**  
**[ Arising out of C.P. No.994/2011]**

Under Section: 397/398 of the Companies Act, 2013

In the matter of:

Kanubhai Patel & Ors.

... Petitioners

-versus-

Doloo Tea Co. (I) Ltd. & others

... Respondents

Order delivered on 15<sup>th</sup> September, 2017.

**Coram:**

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

**For the Petitioners:**

Mr. S. N. Mitra, Sr. Advocate  
Mr. D. N. Sharma, Advocate  
Mr. A. Choudhury, Advocate  
Mr. N. Dasgupta, Advocate  
Mr. S. S. Roy, Advocate  
Ms. D. Chatterjee, Advocate

**For the Respondents:**

Mr. S. Sen, Advocate	- for Respondent No.1
Mr. A. Banerjee, Advocate	- for Respondent No.1
Mr. R. Mullick, Advocate	- for Respondent No. 1
Mr. G. Khandelia,	- for Respondent No.1
Mr. A. Das, Advocate	- for Respondent No.14
Mr. S. K. Medhi, Sr. Advocate	- for Respondent No.15
Ms. J. Tripathy Advocate	- for Respondent No.15

**ORDER**

Mr. S. N. Mitra, learned Sr. Advocate assisted by Mr. D. N. Sharma, Mr. A. Choudhury, Mr. N. Dasgupta, Ms. D. Chatterjee and Mr. S. S. Roy, Advocates appeared today for and on behalf of the petitioners.

On the other hand, Mr. S. Sen, learned Sr. Advocate assisted by Mr. A. Banerjee, Mr. R. Mullick and Mr. G. Khandelia are present representing the respondent No.1, Mr. Anirban Das, Advocate is present representing Respondent No.14, Mr. S. K. Medhi, Sr. Advocate and Ms. J. Tripathi, Advocate are present representing respondent No. 15.

Mr. S. K. Sen, counsel for the respondent No.1 completed his arguments in respect of issue of maintainability of the present proceeding in hand. While arguing the case, Mr. Sen has drawn attention of the Bench to a decision of NCLAT, New Delhi dated 03-02-2017 rendered in the case of Cyrus Investment Pvt. Ltd. & Anr. Vs Tata Sons Ltd. and others in Company Appeal (AT) No. 17, 18 and 19 of 2017, to contend that the question of maintainability of an issue as raised in a particular proceeding, the Tribunal is first required to decide the



maintainability point before going for other controversies. In this connection attention of the Bench has also been drawn to Para 422 of the aforesaid order, which is reproduced herein below for ready reference:

*"42. In the aforesaid circumstances, if the Tribunal has fixed the Company Petition for hearing both on the question of maintainability and if so required on merit, we find no reason to interfere with such order passed by Tribunal. However, we are of the opinion that during the final hearing the question of maintainability should be decided first and if it is answered in negative, against the appellants, the question of waiver of the petition be decided if any strong ground has been made out to claim exception under proviso to sub-section (1) of Section 244. In case, aforesaid issues are decided in favour of the appellants, then the Tribunal can decide the case on merit."*

He, therefore, urges this Bench to decide the question of maintainability first before deciding the proceeding on merit.

In this connection, Mr. Mr. S. N. Mitra, learned counsel appearing for the petitioners referring to another decision dated 24<sup>th</sup> January, 2017 rendered by the NCLAT, New Delhi in Company Appeal (AT) No.17 of 2016 in the case of Anup Kumar Agarwal & Anr. Vs Crystal Thermotech Ltd. & Others has submitted that in a proceeding, when question of maintainability is raised along with other controversies, all the points should be heard together. In this regard, he has drawn attention of the Bench to Para 31 of the above order, which is reproduced herein below for ready reference: -

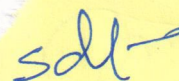
*"31. The question of oppression and mismanagement and maintainability in the present case is a mixed question of facts and law. As the petition was filed on the ground that the shareholding of the applicant(s) has been brought down below 1/10<sup>th</sup> of the total shareholding of a Company by oppression and mismanagement, Tribunal was required to decide the question of maintainability at the time of final hearing of the Petition. Both the merit and question of maintainability were required to be decided together. On hearing the parties, in case the Tribunal forms opinion that there was no oppression and mismanagement on the date of cause of action as alleged by the applicant then in such case it was open to the Tribunal to dismiss the petition as not maintainable in view of Section 399 of the Companies Act, 1956."*

Since, Mr. Sen, learned counsel for the respondent No.1 raised the point that this Tribunal is duty bound to decide the point of maintainability first, which is objected by Mr. S. N. Mitra, learned counsel for the petitioners referring to the aforementioned judgment of the NCLAT, New Delhi dated 24<sup>th</sup> January, 2017, I am of the considered opinion that this point be discussed during final hearing on the next date.

Here, it may be stated that at one point this proceeding, this Bench was of the opinion that since the matter regarding maintainability of the proceeding in hand involves both question of law as well as question of facts, hence, such a matter (maintainability of the present proceeding) is required to be considered along with all other disputes in the present proceeding when the matter is finally taken up for hearing.

Accordingly, this Bench requests all the parties to remain present on the next date.

List this matter on 09-11-2017 as well as on 23-11-2017 for further hearing.



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

Dated, Guwahati, the 15<sup>th</sup> September, 2017

*Deka/15-09-2017*