

ATTENDANCE-CUM-ORDER SHEET OF HEARING

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

I.A.No.09/2017
In
C.P. No. 04/97/GB/2017

Angshu Ranjan Chakraborty ... Petitioners

-Versus-

M/S Bochapathar Tea Estate Pvt. Ltd. & Ors. ... Respondents

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

Date of Order: 24th March 2017.

Name of the Company	M/S Bochapathar Tea Estate Pvt. Ltd.		
Under Section	97		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

ORDER

I.A.No.09/2017

This I.A. has been filed by the applicant seeking his impleadment as a party respondent in the connected company petition, same being C.P.No.04/2017.

2. It may be stated that copy of the application had already been furnished to the learned counsel for the petitioners/non-applicants and in response thereto, reply has been filed urging this court not to allow the prayer for impleadment of the applicant herein as party respondent in the company petition aforementioned.

3. Heard Mr A.K. Roy, Sr. PCS for the applicant.

4. Mr A.K. Roy submits that the applicant is a shareholder in M/s Bochapathar Tea Estate Pvt. Ltd. and being so, applicant is a necessary party in the aforesaid petition where the petitioner has sought for a direction from this Tribunal to enable them to convene AGM which could not be conducted during the statutory period or even during the extended period, granted by the concerned ROC.

5. In that connection, it has been submitted that the prayer made in the company petition is not a genuine one since the petitioners are not the Directors of the company responsible for running of the affairs of the company. Rather, they are mere shareholders of the company and, therefore, they are projected by somebody else in order to gain some benefits which the persons responsible for running the company cannot otherwise be granted. Therefore, the applicant has huge stake in the outcome of the company petition and, therefore, he is a necessary party in the proceeding aforesaid.

6. In order to show that the applicant is a necessary party, my attention has been drawn to various provisions in the NCLT Rules, 2016, (In short, Rules of 2016), more particularly, Rule 2 (16), 2 (18) & Rule 45 (1) & (2) of the Rules, 2016. For ready reference, the aforesaid provisions are reproduced below:

*"2 (16) **"party"** means a person who prefers an appeal or application or petition before the Tribunal and includes respondent or any person interested in the said appeal or application or petition including the Registrar of Companies or the Regional Director or Central Government or State Government or official liquidator and any person who has a right under the Act, or the Reserve Bank of India Act 1934 (2 of 1934) to make suggestions or submissions or objections or reply;*

*"2 (18) **"person interested"** means a shareholder, creditor, employee, transferee company and other company concerned in relation to the term or context referred to in the relevant provisions of the Act or any person aggrieved by any order or action of any company or its directors;*

"45. (1) Every party may appear before a Tribunal in person or through an authorised representative, duly authorised in writing in this behalf.

*45 (2) The authorised representative shall make an appearance through the filing of Vakalatnama or Memorandum of Appearance in **Form No. NCLT. 12** representing the respective parties to the proceedings."*

7. According to Mr. A.K. Roy, when one reads the averments in the application in the light of Rule 2 (16) & 2 (18), there cannot be any escape from the conclusion that the applicant is a necessary party for which the applicant has preferred this application in terms of Rule 45 (1) & (2) of Rules of 2016. He, therefore, urges this court to grant the reliefs sought for in this proceeding.

8.. Mr S. Bharali, learned counsel for the petitioners/non-applicants has, however, contested such submission stating that nowhere in the application did the applicant disclose that he is a proper party, much less, he being a necessary party in the aforesaid company petition. In other words, he has miserably failed to show that the proceeding cannot be disposed of effectively without he being impleaded as party respondent in the company petition.

9. On hearing the parties, and ongoing through the pleadings, I am of the opinion that there are enough materials on record to show that the applicant herein is a shareholder in the company aforesaid. Further, from the materials available, it needs to be concluded that the applicant has a huge stake in the outcome of the company petition and, therefore, it is necessary that the connected company petition be decided in his presence.

10.. In view of above, I am of the opinion that the applicant is a necessary party in the connected proceeding and as such, his prayer seeking implement in such proceeding is allowed. Resultantly, the applicant herein is ordered to be arraigned as respondent No.3 in C.P.No.04/2017.

11. Registry is directed to amend the cause title of the petition by impleadment of the applicant herein as respondent No.3.

12. Further, the petitioner in C.P.No.04/2017 is directed to serve a copy of the petition along with all connected documents on the newly impleaded respondent by 27.03.2017.

13. The I.A. is accordingly disposed of.

C.P.No.04/2017

14. Mr S. Bharali, learned counsel for the petitioners and Mr A.K. Roy, Sr. PCS are present.

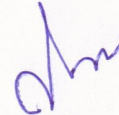
15. In view of the order passed in I.A.No.09/2017, the applicant is ordered to be impleaded as respondent No.3.

16. The respondents will submit their reply within 15 days from today and the petitioners will file their rejoinder, if any, within 2 weeks thereafter. It is needless to say that parties shall exchange their pleadings before the next date fixed.

17. Mr C. Kumar, ROC, North Eastern Region, Shillong is present in court today in terms of the order passed by this court on the last occasion. The ROC submits that since he came to know that the company concerned has not conducted the AGM within the statutory time and also within the time extended, he has already issued show cause notice asking the Directors in default to show cause as to why necessary proceedings should not be drawn against them for violating the provisions incorporated in the Companies Act, 2013.

18. He further submits that the reply to be filed from the side of the Directors in default will decide the future course of action from his side.

19. List this matter on 02.05.2017.



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

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