

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH

T.A.No.33/2016 (C.A.No.87/2011)

In

TP No.02/397/398/GB/2016  
(C P No.05/2010)

Hasmukh Bhai Petal & Others ... Petitioners

-Versus-

Doloo Tea Co. (India) Ltd. and Others ... Respondents

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

**Date of Order:** 16<sup>th</sup> March 2017.

Name of the Company	Doloo Tea Co. (India) Ltd. and Others
Under Section	397/398

Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

**ORDER**

T.A.No.33/2016 (C.A.No.87/2011)

Heard Mr D. Roy Chowdhury and Mr K. Chakraborti, learned counsel for the petitioners/applicants. Also heard Mr A. Banerjee and Mr R. Mullick, learned counsel for respondent No.1/non-applicant.

2. This application has been filed seeking following reliefs:

- "a) *The respondent no.9 be directed to deposit the original title deeds of the tea estate of the company with the Bench Officer of the Company*

*Law Board or with such other fit and proper as to this Hon'ble Board may deem fit and proper.*

- b) Injunction restraining the respondents and/or its men and/or servants and/or agents and/or each of them from dealing with and/or disposing of and/or surrendering the leasehold right of the tea estate of the company or any part or portion thereof in favour of the State of Assam and/or from creating third party right in favour of any other person in any manner whatsoever.*
- c) Ad interim order in terms of prayers above.*
- d) Costs of and incidental to this application be paid by the respondents.*
- e) Such further or other order or orders be passed and/or direction or directions be given as to which this Hon'ble Board may deem fit and proper."*

3. Learned counsel for the petitioners/applicants submits that Doloo Tea Company India Limited (in short, 'Company') has 1400 hectares of land approximately as Tea Estate which is situated at Cachar, Assam. However, respondents/non-applicants, it is alleged, in collusion and conspiracy with each other are even trying to alter the status of the company as a leaseholder in respect of the Tea Estate and, therefore, the respondents/non-applicants have been trying to make the company surrender the leasehold rights and/or cause the State of Assam to execute fresh deeds in favour of third parties by taking away the leasehold right of the tea estate or a portion of it.

4. It is further alleged that in the event the respondents succeed in causing the company to give up its leasehold rights and/or causing the State of Assam to take away such leasehold rights and give it to third parties, the company, its shareholders including the petitioners/applicants to suffer irreparable loss and prejudice which cannot be compensated in terms of money alone.

5. It is also alleged that respondent No.9 namely, M/s Asharam Leasing & Finance Private Limited, had obtained the original title deeds of the tea estate from the Bank of the company but said respondent No.9 is not entitled to have such original documents. It is apprehended by the petitioners/applicants that respondent No.9 may in collusion with other respondents allow such original deeds to be misused and/or acted upon in a manner so as to denude the company of its valuable assets. For ready reference, relevant part of the application is reproduced below:

*"Your petitioner states that the company enjoys the said approximately 1400 hectares of land as leasehold right given by the State of Assam. The respondents in collusion and conspiracy with each other are now seeking to alter the status of the company as a leaseholder in respect of such tea estate. The respondents are now trying to make the company surrender the leasehold rights and/or cause the State of Assam to execute fresh deeds in favour of third parties by taking away the leasehold right of the tea estate or a portion of it. In the event the respondents succeed in causing the company to give up its leasehold rights and/or causing the State of Assam to take away such leasehold rights and give it to third parties, the company, its shareholders including your petitioners will suffer irreparable loss and prejudice which may not be compensated in terms of money alone.*

*The respondent no.9 has taken the original title deeds of the tea estate from the bank of the company. The respondent no.9 is not entitled to such original documents. It is apprehended by your petitioner which apprehension is just and reasonable that the respondents in collusion and conspiracy with each other will allow such original title deeds to be misused and/or acted upon in a manner so as to denude the company of its valuable asset."*

6. It is submitted that it is a fit case where the petitioners/applicants are required to be given the reliefs sought for in the instant application.

7. Mr A. Banerjee and Mr R. Mullick, learned counsel for respondents/non-applicants, however, oppose the application stating that the petitioner/applicant could not make out a prima facie case. Moreover, the petitioners/applicants also fail to show that in the event of prayer being rejected, they stand to suffer irreparable loss. They also could not establish that balance of convenience would be maintained in between the parties if the relief sought for is granted.

8. The learned counsel for the respondents/non-applicants further submits that though the apprehensions of the petitioners/applicants are misplaced, he makes an assurance on behalf of the respondents to the effect that the respondents or their men and/or servants and/or agents and/or each of them are not going to dispose of or surrender leasehold rights of the tea estate or company or any part thereof in favour of the State of Assam.

9. On hearing both the parties, I am of the opinion that till the next date, as assured by the learned counsel for the respondents/non-applicants, respondents are directed not to dispose of and/or surrender the leasehold rights of the company or any part thereof in favour of the State of Assam.

10. In regard to the prayer of the learned counsel for the petitioners/applicants that the respondents/non-applicants should be restrained from creating third party rights in the assets of the company, it has been submitted by the learned counsel for the respondents/non-applicants that such a prayer was heard by the CLB, Kolkata and after hearing the parties, was pleased not to grant such relief.

11. However, such contention was opposed to by the learned counsel for the petitioners/applicants stating that in C.P.No.05/2010, such a prayer was considered by the CLB, Kolkata and was pleased to direct the respondents/non-applicants *"not to increase the shareholding by any rights issue and not to create third party rights over the assets of the company until further orders"*. For ready reference, relevant part of the order dated 19.07.2010 rendered by CLB, Kolkata in C.P.No.05/2010 is reproduced below:

*"As the petitioners have shown prima facie case as to reduction of share holding of the petitioners, the brothers being at loggerheads, the respondents are, on the ground of equity, hereby directed not to increase the share holding by any rights issue and not to create third party rights over the assets of the Company until further orders. This order is subject to the orders passed or to be passed by the Honorable Supreme Court or Honorable High Court will not be operative."*

12. On hearing both the parties on this matter and after going through the relevant records, that direction given in paragraph 14 of the order dated 19.07.2010 rendered by CLB, Kolkata in C.P.No.05/2010 still holds the field and, therefore, no further order on this matter is called for.

13. The petitioners/non-applicants are directed to furnish copy of the application to the learned counsel for the respondents/non-applicants by tomorrow, requiring the respondents/non-applicants to file their rejoinder within 10 days from today with copy thereof to the learned counsel for the petitioners/applicants. The petitioners/applicants are directed to file rejoinder, if any, within one week therefrom supplying copy thereof simultaneously to the learned counsel for the respondents/non-applicants.

14. List this matter on 18.04.2017 for further orders.



15. Mr D. Roy Chowdhury and Mr K. Chakraborty, learned counsel represent the petitioners. Mr A. Banerjee and Mr R. Mullick, learned counsel represent the respondents.

16. Also seen the order dated 29.10.2012 passed by the Hon'ble Apex Court in SLP (C) 27858/2012 arising out of the Judgment and order dated 31.07.2012 rendered by the Hon'ble Gauhati High Court in C.A.No.4/2011. For ready reference, the order of the Hon'ble Apex Court is reproduced below:

*"Issue notice.*

*Since Mr Rana Mukherjee, learned advocate, submits that he has instructions to appear on behalf of the respondents Nos. 1, 5 and 9, service on the said respondents is waived. Service is also waived on respondent Nos. 2 and 3, for whom caveat has been entered. Let the other respondents be duly served in the usual course.*

*"SLP (C) Nos.29001, 29066 and 29566, all of 2012*

*Let notice issue in the other connected matters also.*

*Applications, being I.A.2 of 2012, which have been filed in SLP (C) Nos.29001 and 29066, all of 2012, are allowed. Let the amendments be effected.*

*In the meantime, the impugned judgment and order dated 31<sup>st</sup> July, 2012, passed by the Gauhati High Court in Company appeal No.4 of 2011, and other connected Company Appeals, shall remain stayed."*

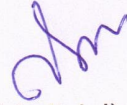
17. In view of the above, this proceeding and all connected proceedings would be heard as expeditiously as possible as directed by the Hon'ble Apex Court.

18. Learned counsel for the respondents submits that respondent No.4, Mangal Chakraborty has died in the month of January 2017. Being so informed, the learned counsel for the petitioners submits before this court to direct the learned counsel for respondents to furnish details of the legal representative of respondent No.4 to the petitioners at an early date so that the petitioners may take necessary steps in the matter of making necessary application for substitution of the legal representative of respondent No.4.

19. Accordingly, the learned counsel for the respondents is directed to furnish detailed information as to the legal representative of respondent No.4 within a period of 10 days from today. On furnishing of such facts to the petitioners, the

petitioners would do the needful in the matter of substitution of legal representative of respondent No.4.

20. List this matter on 18.04.2017 for effecting amendment and for such further necessary orders as this court may deem fit and proper.



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

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