

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

(TP No. 19/397/398/GB/2016 (CP No. 182/2014))

Basudev Bagchi & Ors.

- Petitioners

-Versus-

Shasi Kumar Tea Co. Pvt.Ltd & Ors.

- Respondents

PRESENT

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

Date of hearing : 01.03.2017

Name of the Company	
Under Section	397/398

Sl. No.	Name & Designation of Authorized Representative.(in Capital Letters).	Appearing on behalf of	Signature with date
---------	---	------------------------	---------------------

ORDER

Heard Mr. S.A.Sikdar, learned counsel for the petitioners. The learned counsel for the petitioners submits that on the last occasion, the learned counsel for the respondents, referring to the order dated 22.02.2017, passed by the Hon'ble High Court in CRP (I/O) No.21/2017, submitted that Hon'ble High Court was pleased to stay the further proceeding in TP No. 19/397/398/GB/2016 (CP No.182/2014) with further directions to dispose of TP No. 19/397/398/GB/2016 (CP No.182/2014) in the manner specified therein. In view of such submission from the side of the respondents, this Tribunal was pleased to pass the following order on 24.02.2017.

"Both sides are present.

Mr. S.Dowarah, one of the respondents in the present in the present proceeding (TP No. 19/397/398/GB/2016 (CP No.182/2014) has submitted an affidavit stating therein that the order dated 9.2.2017, rendered in MA No.01/2017 arising out of T.P. No. 19/397/398/GB/2016 (CP No.182/2014), had been challenged before the Hon'ble

High Court having filed a civil revision petition which was registered as CRP (I/O) No. 21/2017 and Hon'ble High Court was also pleased to dispose of such proceeding rendering some directions therein to this Tribunal requiring the later to dispose of the case in hand in a certain manner. However, due to paucity of time, the deponent could not obtain certified copy of the order dated 22.02.2017, rendered in the proceeding aforesaid.

The deponent, therefore, submits this court to adjourn the proceeding for some time. It may be stated here that the present proceeding is fixed today for pronouncement of order.

However, in view of aforesaid developments, I find it necessary to adjourn the same for some time.

In view of above, the present proceeding stands adjourned till 1st March, 2017.

List the matter on 1st March, 2017".

The learned counsel for the petitioners referring to the order dated 22.02.2017, passed by the Hon'ble High Court, rendered in CRP No. (I/O) 21/ 2017, now, submits that the Hon'ble High Court was pleased to dismiss the CRP (I/O) No. 21/2017 having found the same to be without any merit. A certified copy of the order dated 22.02.2017 in CRP No. (I/O) 21/ 2017 is also produced before this court.

Being so, the submission, so made by the learned counsel for the respondents before this court on 24.02.2017 was without any substance which is nothing but a serious abuse of process of law, contends learned counsel for the petitioners.

I have perused the order dated 22.02.2017 of the Hon'ble High Court aforesaid. The relevant parts of the order aforesaid is reproduced herein below: -

"As recorded in the order dated 31.01.2017 passed by the learned Tribunal, which is contained in the order dated 09.02.2017, there can be no two opinion that the hearing in the proceedings of TP No. 19/397/398/GB/2016 corresponding to CP No. 182/14 was concluded on 31.01.2017. Hence, it is expected that the petitioners herein had been heard on the issue of maintainability as well. The learned counsel of the petitioners has urged that a question of law as regards maintainability can be raised at any stage of trial or even after conclusion of hearing because if the court or a tribunal has no jurisdiction, it goes to the root of the matter and the resultant judgment of a court having no jurisdiction would be a nullity. In this regard, this court is of the view that is a trite law that the issue of maintainability is generally required to be raised at the preliminary stage and not after conclusion of the hearing. If the said issue of maintainability was left out from the scope of hearing at the conclusion of the trial i.e. till 31.01.2017, the same cannot be allowed to be raised by filing Misc Application on 07.02.2017, after hearing in the main case is concluded. The court is afraid that if such applications are allowed to be entertained after conclusion of trial, when the case is reserved for judgment, the hearing will be prolonged and endless as



it would give any party to a trial/proceeding, a handle to argue the issue of law on piecemeal basis even after conclusion of the hearing, but in this regard, no straight jacket formula can be prescribed and it would be open for the respective court to apply its mind whether or not to entertain such a plea at a belated stage. However, in the present case in hand, the learned Tribunal had held that the proceeding was not maintainable, as such, this court exercising power under Article 227 of the Constitution of India is not inclined to unsettle the said decision when the case is awaiting verdict. It is further seen that it is only a note by the Registry in M.A.No.1/2017, as recorded in order dated 09.02.2017 that if any party is aggrieved, they may prefer an appeal before the appropriate forum as per prescription of law for redressal of their grievance. A court or a Tribunal is not obliged to fix each and every petition for hearing as projected by the learned counsel for the petitioner and the court and the tribunals have the authority to pass such orders as it may deem fit if the application has been brought/listed on board as a business for the day and called out, without waiting for the party or the learned counsel to address if when found not present on call. By the impugned order dated 09.02.2017, the learned Tribunal has rightly concluded that the said proceeding was not maintainable and, as such, this court does not find any infirmity in the impugned order dated 09.02.2017. Moreover, having concluded the hearing on 31.01.2017 in the main case and having already dismissed the MA No. 1/2017, there is no infirmity by the learned Tribunal in not waiting for the learned counsel for the petitioners herein on 16.02.2017 as sought to be projected in this case.

"Needless to say that if the petitioners have argued on the issue of maintainability, it would be premature to doubt that the learned tribunal would not address the same, but if the said issue as not raised at the conclusion of hearing, the learned Tribunal will not be obliged to re-open the issue, which will invariably lead to commencement a de-novo hearing. In the opinion of this court, no case is made out either to interfere with the order impugned herein or to stay the proceedings of TP No. 19/397/398/GB/2016 corresponding to CP No. 182/14, as it would amount to prevent the said learned Tribunal from passing the judgment, which was reserved. Hence, the petitioner is not found entitled any further chance of hearing as there is no challenge to the order dated 31.01.2017 passed in TP No. 19/397/398/GB/2016 corresponding to CP No. 182/14, reserving the case for passing judgment".

"Thus, this is not a case to invoke the extraordinary superintending jurisdiction of this court under Article 227 of the Constitution of India. Hence, this application stands dismissed".

In view of above, this proceeding is posted on 03.03.2017 for pronouncement of order.

Registry is directed to inform all concerned.

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