

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL GUWAHATI BENCH

I.A.No.01/2017
&
I.A.No.02/2017
In
T.P.No.25/397/398/GB/2016
(C P No.992/2011)

Deba Kumar Hazarika & Anr.

... Petitioners

Versus

M/S Assam Chemicals and
Pharmaceutical Pvt. Ltd. & Ors.

... Respondents

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

Date of hearing : 17th February 2017.

Name of the Company	M/S Assam Chemical & Pharmaceutical Pvt. Ltd.		
Under Section	397/398		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

ORDER

I.A.No.01/2017 & I.A.No.02/2017

I.A.No.01/2017 has been filed by the applicants, namely, S/Shri Rajendra Nath Rajbongshi, Anup Kumar Deka, Kanak Ch. Das, Ajit Deka & Rajani Das respectively seeking their impleadment in connected company petition Viz. C.P.No.992/2011, now, re-registered as T.P.No.25/2016 as respondents stating that they are necessary parties in the aforesaid company petition and, therefore, no effective order can be passed in such a proceeding in their absence.

2. I.A. No.02/2017 has been filed by the applicants, namely, S/Shri Madhab Das and Ashim Sarma seeking similar relief.

3. I have heard Mr A. Das, learned counsel for the applicants in I.A. No.01/2017 and Mr R. Sarmah for the applicants in I.A.No.02/2017.

4. Before proceeding further, I find it necessary to peruse the relevant part of the application in I.A.No.01/2017 seeking impleadment of the applicants therein as respondents in C.P.No.992/2011 (corresponding to T.P.No.25/2016). For ready reference, relevant parts of the application are reproduced below:

"(ii). That the applicants most humbly state that the petitioners have filed C.P. No. 992/11 before the Company Law Board, Kolkata assailing, inter-alia the issue of shares after 14/11.09 by the Respondent No.3 Company to the shareholders of the Respondent No.3 Company and also alleging about passing of fraudulent Resolutions and the same on being rejected vide order dated 20/03/2014 by the learned Company Law Board was assailed before the Hon'ble Gauhati High Court vide company Appeal No. 3/14, whereinafter, the Hon'ble High Court vide its judgment and order dated 09/05/2016 had remanded the matter for facilitating the shareholders of Respondent No.3 Company to participate in the proceedings pertaining to adjudication of C.P. No. 992/11.

(iii) That the applicants most humbly state that thereafter, Company Law Board (CLB) was abolished and the National Company Law Tribunal (NCLT) was established, hence, the proceedings of C.P.No. 992/11 was transferred to NCLT, Guwahati Bench and the same was registered and numbered as T.P. No.25/2016.

(iv) That the applicants most humbly state that the applicants have come to know from a fellow shareholder that in terms of the order of the Hon'ble Gauhati High Court a paper publication was carried out in a local English daily namely, "The Sentinel dated 01/11/2016" and a local vernacular daily namely, "Niyamiya Barta dated 01/11/2016" for informing the shareholders as regards the continuance of the proceedings before this Hon'ble Tribunal pertaining to this instant case. Though the aforesaid paper publications lacks clarity and are not as per the requirement of Rule 35 of the NCLT Rules. But even then, the applicants on being advised had preferred this instant application for impleading as a party respondent, in view of the fact that the applicants are the shareholders of the Respondent No.3 Company and any order passed in TP No.25/2016 would adversely affect the interest of the applicants.

(v) That the applicants most humbly state that the presence of the applicant before this Tribunal to effectually and completely adjudicate and settle all question involved in T.P. No. 25/2016.

(vi) That in the event the applicants are not allowed to be impleaded as a party Respondents in T.P.No. 25/2016 the same would result in miscarriage of justice as well as violation of principles of natural justice, inasmuch as well as , the applicants would be condemned unheard, whereas, it is well settled proposition of law that no one should be condemned unheard.

(vii) That the applicants most humbly state that in the event of the applicant is allowed to be impleaded as party respondent in TP No.25/2016 the petitioners may be directed to furnish a copy of the paperbook of TP No. 25/2016 (C.P.No. 992/11) upon the applicants herein.

5. Learned counsel for the applicants submits that the applicants are the allottees of equity shares which the company had issued to them on following strictly the prescription of law, laid down in that regard for which the company had issued them the share certificates. What is important to note is that the company even started giving them the dividends accrued on the shares purchased by them. Being so, the applicants are necessary party in the aforesaid proceeding.

6. Therefore, if they are not allowed to participate in the proceeding in question after impleading them as respondents therein, the dispute in such proceeding could not be adjudicated appropriately and in that event, the applicants would suffer loss which could not be compensated in terms of money inasmuch as, as stated above, they have huge stake on the outcome of the aforesaid proceeding.

7. In support of such contentions, the learned counsel for the applicants in I.A.No.01/2017 relied on the decisions, rendered by Hon'ble Madhya Pradesh High Court in the case of *Kamta Prasad And Ors. vs Smt. Vidyawati And Ors.* reported in AIR 1994 MP 181. The relevant part of the judgment is reproduced below:

"In fact, Order I, Rule 10(2), CPC empowers the Court to implead any person as party suo motu, who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. True, the plaintiff is dominus litis, but a Court has to see that it may not be that a collusive decree is obtained against the real owner or interested person without impleading him as a party and it may not become final affecting vitally the rights of such person. Therefore, to avoid such a situation and also to avoid multiplicity of proceedings, a Court should permit such a person to be added as a party."

8. Similar view was expressed by Hon'ble Calcutta High Court in *Terai Tea Co. Pvt. Ltd. vs Kumkum Mittal And Others*, reported in AIR 1994 Cal 191 and also by Hon'ble Supreme Court in *Udit Narain Singh Malpaharia vs Additional Member, Board*, reported in AIR 1963 SC 786. Relevant part of the judgment in *Terai Tea Co. Pvt.* (supra) is reproduced below:

"We are, however, unable to accept the contention of Mr. Mukherjee. It is no doubt true that under Order 1, Rule 10 of the Code of Civil Procedure, the Court can suo motu add a party. But, it does not provide that the Court cannot add a party if such a party makes an application in that behalf. Nor does it prevent a third party from being added as a party to suit. An application for addition of party can be made not only by a person having interest in that suit property. What Mr. Mukherjee wants us to hold is that in the case where a person wants to be added as a party, he must show that he is having interest in the suit property. The power of the Court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right."

9. Similar argument was also advanced by the learned counsel for the applicants in I.A.No.02/2017. However, for the sake of brevity and also to avoid a repetition of similar facts and circumstances, I refrain myself from reproducing such arguments advanced from the side of counsel representing the applicants in I.A.No.02/2017.

10. Such contention was opposed to by Mr A.K. Shrivastava and Mr A. Baruah, learned counsel for the petitioners/non-applicants stating that the allotments of shares to the applicants in the aforesaid proceeding were done in complete disregard to the mandatory provisions of law which makes such allotments of shares totally illegal. In support of such contention, my attention has been drawn to the various provisions incorporated in the Companies Act as well as in the Articles of Association of the Company (in short AOA).

11. Drawing my attention to Article 5 of the AOA, it has been contended that Article 5 says that the shares shall be under the control of the Board who may classify/allot or otherwise dispose of the same to such person on such terms and conditions etc. as the Board thinks fit and proper. Similarly, Article 28 provides that, save as provided in the Articles or unless all the members for the time being of the company agree, no shares shall be transferred/issued to a person who is not a member of the company so long the member of the company is willing to purchase the same at a fair value. Referring to Section 3 (iii) of the Companies Act, 1956 it has been contended that a private company has the right to restrict the transfer of its shares to outsiders.

12. My attention has also been drawn to Section 41 of the Companies Act, 1956 to contend that only on fulfilment of conditions, specified therein, a person can be a member of company. Referring to Section 36 of the Companies Act, 1956 it has been stated that memorandum and articles shall bind the company and members thereof to the same extent as if they respectively had been signed by company and by each member.

13. But there is nothing on record to show that aforesaid provisions of law as well as provisions incorporated in AOA were followed before allotting shares to the applicants. In support of such contention, my attention has been drawn to the decision of the Hon'ble Supreme Court in the case of *V.B. Rangaraj vs. V.B. Gopalakrishnan and others*, reported in (1991) 2 Scale 1135 (see para 5).

14. It has also been contended that it is settled law, that before allotting shares in a company, limited by shares, to the outsiders, the shareholders of the company are required to adopt a special resolution in its Extra Ordinary General Meeting (for short, EOGM) authorizing the company to allot shares to the outsiders on the date of such allotment. But there is absolutely nothing on record to show that such special resolution was adopted in the EOGM of the company authorizing the Board of Directors of the company to allot shares to the applicants who are admittedly ranked outsiders on the date of allotment of shares to them.

15. It is also the case of the petitioners/non-applicants that Order I Rule 13 of the Code of Civil Procedure requires that the matter relating to non-joinder or misjoinder of parties are to be agitated before the court at the earliest possible opportunity. If that was not done in time, subsequently, the aggrieved party cannot raise such matter before the court. In the case in hand, the petitioner had instituted the proceeding before the CLB, Kolkata and thereafter, CLB, Kolkata was pleased to issue notice to all parties concerned and the matter was heard at length and disposed of the same as well on merit.

16. At no point of time, while the matter was pending before the CLB, Kolkata, no one raised the plea that the proceeding (C.P.No.992/2011 corresponding to T.P.No.25/2016) was bad for non-joinder of necessary parties. In the face of such revelations, the applicants, now, cannot validly raise the plea that they are necessary party in the proceeding in hand and same cannot be effectively adjudicated without

they being brought on record and without they being heard. In support of their various contentions, the learned counsel for the petitioners has relied on the decision in *Bulu Mazumdar and Ors., Legal Heirs vs. Department of Post Offices*, reported in 2007 (3) GLT 113

17. The learned counsel for the applicants replied to the argument advanced by the learned counsel for the petitioners/non-applicants on law points, contending that such argument is without any basis since they became members of the company inasmuch as they satisfy all the conditions as specified in Section 41 of the Companies Act, 1956. Therefore, the claim that applicants are not members of the company is without any substance.

18. He further submits that the allegation that the applicants had purchased the shares fraudulently, needs a decision and to have a decision on this point, undoubtedly, the applicants are to be heard. Therefore, on this count also the applicants' prayer for impleadment is required to be accepted in order to give them an opportunity to prove their claim that they were allotted shares in the company in accordance with the prescription of law.

19. In regard to the contention that issue relating to joinder/non-joinder of parties, it has been submitted that the right of applicants to be impleaded in the proceeding aforementioned arose in view of remark/opinion rendered by Hon'ble High Court in its Order in Co. Appeal No.03/2014 on 09.05.2016. Aforesaid order requires the petitioners to give paper publication intimating the allottees of 6715 number of shares about the pendency of proceeding before the court/Tribunal and also to place their views before the court vis-à-vis prayers made in the said proceeding.

20. Therefore, the argument to the effect that the applicants cannot raise any objection vis-à-vis their non-joinder as respondents in the proceeding aforesaid is without any substance and the decision relied on by the petitioners on this score cannot have any application to the proceeding initiated by the applicants seeking their impleadment as party respondents in the connected proceeding.

21. From the arguments, advanced by the parties, it appears that while the applicants strongly contended that they are necessary parties in the proceeding which was registered as T.P.No.25/2016 (corresponding to C.P.No.992/2011), the

petitioners/non-applicants claim that they are not even proper parties much less their being parties necessary for due disposal of the disputes in the proceeding aforesaid.

22. Before I proceed further, I find it necessary to have a look at the judgment in Co. Appeal No.3/2014 rendered by the Hon'ble Gauhati High Court on 09.05.2016. Relevant part of the same is reproduced below:

"On this aspect reference may be made to articles 5 & 28 of the articles of association of the company. According to article 5, the shares of the company shall be under the control of the Board of Directors who may classify, allot or otherwise dispose of the same to such person on such terms and conditions as the Board thinks fit and proper. Article 28 says that unless all the members of the company agree, no shares shall be transferred or issued to a person who is not a member of the company so long as a member is will to purchase the same at a fair value. Therefore, the question for consideration before the Company Law Board was legally and validity of issuance of 6715 equity shares of the company on the anvil of articles 5 & 28 of the articles of association which had a bearing on the allegation of mismanagement and oppression in the company by the present management. This was a decision of the management of the company represented by respondent No.5. The allottees are only beneficiaries of the said shares. Therefore, the view taken by the Company Law Board that the allottees are necessary parties does not appear to be the correct view. Be that at it may, since this is the core of the lis the allottees could have been put on notice by issuance of newspaper advertisement to have enabled them to make their submissions. Instead of doing so, Company Law Board declined adjudication which perhaps was not the proper approach. In paragraph 10 of the final order Company Law Board made certain sweeping statements, such as, company petition suffering from many defects, company petition being filed to take revenge for removal appellant No.1 as employee of the company by respondent No.5 by making false allegations against respondent No.5, initiating various illegal actions for removal of respondent No.5 without following the due provisions of law and making appointment of appellant No.1 as Director of the company against mandatory provisions of law.

"I am afraid, the materials on record do not support such sweeping conclusions arrived at by the learned Member of the Company Law Board. There was no justification to record such findings.

*"In the light of the above discussion, impugned order of the Company Law Board dated 20.03.2014 cannot be sustained and is accordingly set aside and quashed. Mater is remanded back to the Company Law Board, Kolkata Bench for fresh decision on merit in Company Petition No.992/2011. **As a measure of abundant caution, appellants may be permitted to issue newspaper advertisement to bring it to the notice of the allottees of 6715 equity shares of the company about Company Petition No.992/2011 to be heard afresh by the Company Law Board, Kolkata Bench.** Consequently, the questions of law framed except question Nos.3, 4 and 5 are returned unanswered awaiting adjudication on merit. In view of the foregoing discussions question Nos.3, 4 and 5 are answered in the affirmative, negative and in the affirmative respectively." (emphasis supplied by me)*

23. A perusal of the aforesaid order reveals that Hon'ble High Court has opined that the matter in dispute in T.P.No.25/2016 (corresponding to C.P.No.992/2011) may be heard in presence of the applicants and same may be done by bringing the applicants on record in the aforesaid case. The highlighted portion of the order makes such a conclusion inevitable.

24. In view of the above observations of the Hon'ble High Court, it needs to be concluded that the applicants are required to be made parties in T.P.No.25/2016 (corresponding to C.P.No.992/2011) as party respondents since the matter in dispute in the aforesaid proceeding is required to be heard in their presence.

25. Accordingly, the prayers in I.A.No.01/2017 & I.A.No.02/2017 are allowed.

Resultantly, the applicants in both the I.A.s are ordered to be impleaded as party respondents in T.P.No.25/2016 (corresponding to C.P.No.992/2011).

26.. Registry will do the needful immediately.

T.P.No.25/2016 (C.P.No.992/2011)

27. Heard learned counsel for the petitioner. Also heard Mr A.K. Roy, PCS appearing for respondent Nos.3 & 4. Mr A.K. Choudhury, learned counsel submits that he represents the company involved in this proceeding who are arrayed as respondent Nos.3 & 4.

28. Learned counsel for the petitioners submits that the names of respondent Nos.1 & 2 are required to be deleted from the cause title since the company is well represented by respondent Nos.3 & 4. In that connection, I have also heard the learned counsel for the respondents.

29. On hearing both the parties, I find it necessary to delete the names of respondent Nos.1 & 2 since the company is well represented by respondent Nos.3 & 4. Accordingly, it is ordered that the names of respondent Nos.1 & 2 be deleted from the cause title of the petition bearing No. T.P.No.25/2016 (C.P.No.992/2011)

30. It may be stated here that in view of the order passed in I.A.No.01.2017 & I.A.No.02/2017 today, the applicants therein be also impleaded as respondents in the aforesaid company petition.

31. The Registry will do the needful immediately.


32.. Since the applicants in the I.A.s are allowed to be impleaded as respondents, the petitioners are directed to furnish copies of the petition and connected documents to the newly impleaded respondents immediately so that they can file reply to the petition at an early date.

33. The learned counsel for the petitioners undertakes to supply copies of the petition and connected documents to the learned counsel for the newly impleaded respondents within five days from today.

34. Learned counsel for the petitioners further submits that he is not going to file any rejoinder to the reply to be filed by the newly impleaded respondents and as such, he submits that the present proceeding be listed for hearing on the next date.

35. In view of the above, this matter is ordered to be listed for hearing on 07.04.2017.

36. The newly impleaded respondents are further directed to furnish their reply to the learned counsel for the petitioners at least seven days ahead of the next date, fixed, for their perusal and for doing further needful.


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

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