

**ATTENDANCE-CUM-ORDER SHEET OF HEARING**

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH**

**C.P. No. 01/241(1)/242(4)/243(1)(B)/GB/2016**

Shanta Prasad Chakravarty & Ors. ... Petitioners

-Versus-

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

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

**Date of hearing: 22<sup>nd</sup> December, 2016.**

Name of the Company	M/S Bochapathar Tea Estate Pvt. Ltd. & Others		
Under Section	241(1)/242(4)/243(1)(b)		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

**ORDER**

On being mentioned by Mr A.K. Roy, PCS, the petition is taken up.

2. Heard Mr A.K. Roy, PCS and Mr S.K. Baid, PCS for the petitioners.

3. This petition under Sections 241, 242, 243 & 244 of the Companies Act, 2013 (in short, the Act of 2013) is filed by the petitioners alleging oppression and mismanagement having been committed by respondents in running the affairs of





M/S Bochapathar Tea Estate Pvt. Ltd, (herein after referred to company) and also the seeking some interim as well as final reliefs. The interim reliefs prayed for are as follows:

- i. That an urgent status quo on all the fixed assets of the said R1 company, including Bochapathar Tea factory, Nandanban Tea Estate and Kailashpur Tea Estate of the R1 company be granted.
- ii. That an urgent status quo on the shareholding pattern of the said R1 company be granted.
- iii. That an urgent status quo on the composition of Board of Directors of the said R1 company be granted.
- iv. That an order for appointment of such number of persons as directors who may be required by the tribunal to report to the tribunal such matters the tribunal may direct, be granted in terms of section 242(2) of the Companies Act, 2013.
- v. That a special officer be appointed on urgent basis to take possession of all the records and title deeds of the assets of the said R1 company.
- vi. That the present Board of Directors be restricted from managing the affairs of the R1 company and an administrator be appointed to takeover and carry on the management of the R1 company or that the board of directors of R1 company be reconstituted comprising equal number of directors representing the petitioners and respondents, till the disposal of the instant company petition.
- vii. That in place of the interim relief as prayed in sub paragraph (v) above, an order be granted instructing R2, R3 and R4 to vacate their offices as director of the said R1 company and that the board of directors of R1 company be reconstituted comprising equal number of directors representing the petitioners and respondents, till the disposal of the instant company petition.
- viii. That the signatories to the bank accounts of the R1 company be reconstituted mandating joint signatories of directors representing the petitioners of the respondents.
- ix. That an independent auditor be urgently appointed to carry out a fresh audit of the affairs of the same R1 company for the financial year ended 31.03.2014 to 31.03.2016.
- x. That an inspection be allowed to be taken by the petitioners with the help of a Chartered Accountant in practice and a Company Secretary in practice/an Advocate to inspect the books of accounts, ledgers, bank statements and other financial records of the R1 company for the financial years ended 31.03.2011-till date and to inspect the title deeds of the fixed assets alongwith physical verification of the fixed assets of the R1 company.
- xi. That a direction be issued on urgent basis to the registrar of companies under the Ministry of Corporate Affairs, Government of India having jurisdiction over the R1



*company to keep all documents and returns, as may be filed by the R1 company, pending for approval or disposal, till the disposal of the instant company petition.*

- xii. *Such other interim direction or interim order as the Honourable Bench may deem fit in the instant matter may be issued."*

4. Referring to the petition and documents, annexed therewith, Mr A.K. Roy, PCS appearing for the petitioners submits that one Shri Nandeswar Chakravarty, way back in 1947, along with his sons, Late Tara Prasad Chakravarty, Late Bishnu Prasad Chakravarty and Late Uma Prasad Chakravarty brought into existence, M/s. Bochapathar Tea Estate Private Limited.. The main object of the company was to engage in tea cultivation, tea production, business in tea and doing business in other related matters .

5. Late Tara Prasad Chakravarty, one of the sons of Late Nandeswar Chakravarty, was the Director of the company, but, in the same year i.e., 1947, he acquired some shareholdings in the company and thus, he became shareholders of the company as well. The company was doing good business for quite a long period of time and over the years, the company also acquired some fixed assets too , such assets being, Nandanban Tea Estate and Kailashpur Tea Estate and Bochapathar Tea Estate.

6. But down the line some time, the company could not do its business in a way as it had been doing over a long period of time. Since the company could not be managed properly, the petitioners herein who are sons and daughters of Late Tara Prasad Chakravarty approached the respondent Nos.2, 3 & 4 (who are said to be son and sons of Late Bishnu Prasad Chakravarty and Late Uma Prasad Chakravarty) and requested them to do something urgently so that the company could be bailed out of the dismal conditions which it was in, and accordingly, the aforesaid parties entered into some negotiations and consequently a "memorandum of understanding" in the form of minutes of meeting, laying down certain terms and conditions for revival of the company was put in place which was also reduced to writing on 01.01.2016.

7. The aforesaid memorandum of understanding dated 01.01.2016 is reproduced below:





"Minutes of the meeting of the shareholders of Madarkhat Tea Company Pvt. Ltd. and Bochapothar Tea Estate Pvt. Ltd. on 1<sup>st</sup> Jan 2016

Attendees: C R Chakrabarty, Sanjib Chakravarty, Tridip Chakravarty, Shanta Prasad Chakravarty, Madhurkrishna Baruahand Sanjay Barkataki.

"In the meeting called for the settlement of property, it was decided unanimously by the shareholders that the Bochapathar Tea Estate Pvt. Ltd. will be taken over by Shanta Prasad Chakravarty and its family members, after all liabilities have been paid off as on the handover date. In lieu of that, Shanta Prasad Chakravarty and its family members will hand over the shares of Madarkhat Tea Company Pvt. Ltd.

The time frame of the handover was not decided and therefore we are suggesting to hold a weekly update meeting every Tuesday in order to accelerate the process of settlement.

It was also decided that the office area of Bochapathar and Madarkhat in Chirang Chapari will be given to CR Chakravarty and Sanjib/Tridip Chakravarty family as part of the settlement.

Please sign this document as an acknowledgement of the agreement.

Shanta Prasad Chakravarty	Sd/-
Madhukrishna Barua	Sd/-
Sanjay Barkataki	Sd/-
Tridip Chakravarty	Sd/-
Sanjib Chakravarty	Sd/-
C R Chakravarty	Sd/-
Dibrugarh	1 <sup>st</sup> Jan 2016






8. Referring to the "Minutes of the meeting of the shareholders of Madarkhat Tea Company Pvt. Ltd. and Bochapothar Tea Estate Pvt. Ltd. dated 1<sup>st</sup> Jan 2016", it has been submitted that all the parties to the meeting put their signatures to the "Minutes of the meeting" which was designed to revive the company. But then, since the respondents namely, respondent Nos.2, 3 & 4 did not do the further needful over a long period of time to materialise the plans incorporated in the minutes of the meeting and that too, in spite of petitioners doing everything possible from their side again and again, the petitioners started harbouring some suspicions about the bona fide of commitments, made by the respondents.

9. In that connection, the petitioners made some enquiries and their enquiries discover some startling revelations. This is because of the fact that such enquiry reveals that the respondent Nos.2, 3 & 4 had already initiated a process for disposal of Nandanban Tea Estate and Kailashpur Tea Estate as well as Bochapathar Tea Factory. In that connection, my attention has been drawn to (i) the discussion held on 25.04.2012 between the representatives of the management of Kailashpur Tea Estate and the union in the Government Labour Office, Dibrugarh and (ii) minutes of the meeting dated 27.10.2016 between the Management, Nandanban Tea Estate and the ACMS.

10. Later, they also came to know that the affairs of the company was being run in such a bad way that even the statutory deposits, like, Provident Fund of the employees were not credited to the proper account over a very long period of time which is also crime under the prevalent law of the land for which concerned authority, same being the Assistant Provident Fund Commissioner, had lodged an F.I.R against the respondents on 06.10.2015.

11 It has also been contended that all those state of affairs were known to the respondent No 4 and 5 who are auditors of the company. But they, despite being under statutory duty and obligation to divulge such information to all the stake holders, chose to remain silent, and that too, when a series of meetings of the company were convened on the dates aforesaid to discuss the health as well as the management of the company.





12. . The PCS appearing for the petitioners contends that such conduct clearly demonstrates that the respondent Nos.2, 3 & 4 in league with the respondent Nos.5 & 6 have run the company in total violation of the prescriptions of law which not only caused oppression to the petitioner but also resulted in mismanagement of the company, as contemplated in section 241/242 of the Act of 2013. Such revelations also show that the petitioners establish a prima facie case requiring the court to grant the reliefs , sought for, by the petitioners in the proceeding in hand

13. Now, the petitioners also apprehend that the aforesaid fixed assets of the company (which are not only the family legacies of the petitioners and other family members but also the assets which they are all emotionally attached to for variety of reasons) and if such assets are disposed off shortly, as is evident from the aforesaid documents, then the petitioners would suffer irreparable loss which cannot be compensated in monetary terms. The above revelations also show that the balance of convenience is in favour of the petitioners and same can be maintained if the reliefs, sought for are granted to the petitioners.

14.. In view of the above, petitioners, among others, pray for an order prohibiting the respondent Nos.2, 3 & 4 from alienating in any manner the fixed assets of the company or from creating a third party interest on such fixed assets till the disposal of the proceeding in hand.

15. On hearing the parties and having regard to the case, projected through the company petition and documents attached therewith, I am, prima facie, of the opinion that some measures are required to be taken to restrain the respondents from alienating in any manner the fixed assets of the company or from creating a third party interest on such fixed assets.

16. Resultantly, the respondents are restrained from alienating in any manner the fixed assets of the company or from creating a third party interest on such fixed assets of the company till next returnable date.

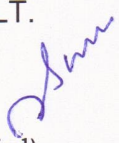




17. It may be stated here that since this order is passed ex-parte on the basis of materials produced before the Tribunal, in the meantime, the aggrieved party, if any, may approach this court seeking alteration /modification etc. of this order, provided they could furnish good evidence to secure such relief. .

18. List this matter on 23.01.2017.

19. The petitioners to take steps within three days in the matter of service of notice in accordance with the prescription laid down in the Rules of NCLT.

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

nkm