

ATTENDANCE-CUM-ORDER SHEET OF HEARING

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

M.A.No.1/2016
In
T.P.No.07/397/398/GB of 2016
(C P No.969/2012)

North East Shuttles Pvt. Ltd. & Anr. ... Applicants
- Versus -
M/s Goumukhi Construction Pvt. Ltd. & Ors. ... Respondents

PRESENT:

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

Date of hearing: 27th September, 2016.

Name of the Company	North East Shuttles (P) Ltd.		
Under Section	397/398		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

ORDER

This application has been filed seeking the following reliefs:

"a. To allow this application and pass an order thereby recalling/amending the order dated 14.11.2014 passed by the Hon'ble Company Law Board, Kolkata Bench in Company Petition No.969/2012 thereby directing that transfer of the 33% equity shares from M/s Gomukhi Construction Private Limited to M/s North East Shuttles Private Limited be made after complying with the mandatory provisions to be followed during transfer of shares under Section 6, 44, 67, 68 and other relevant provisions of the Companies Act, 2013, the provisions of Companies (Share Capital and Debentures) Rules, 2014 as well as the provisions of Article 3 of the Articles of Association of the applicant No.1 company to secure the ends of justice and equity.

b. To direct M/s Goumukhi Construction Private Limited to arrange for and submit before this Hon'ble Tribunal a proper No Due Certificate from M/s Parichiti Software Private Limited regarding full repayment of the loan of Rs.3,50,00,000/- (Rupees Three Crore Fifty Lakhs) only which was arranged by Goumukhi Construction; and

c) To pass such further order (s) as Your Honour may deem fit and proper."

Heard Mr S. Dutta, learned counsel for applicant Nos.1 & 2.
Also heard Mr S.K. Gupta, CS for the respondent Company.

Facts which give rise to present proceeding and which are necessary for the purpose of such a proceeding, in short, are that respondent No.1 herein (who was petitioner in Company Petition No.969/2012, filed a petition under Section 111, 235, 237, 397, 398, 399, 402, 403, 406 and 407 of the Company Act, 1956 alleging mismanagement and oppression on the part of respondent Nos.1, 2, 3 and 4 therein in managing the affairs of the company namely Goumukhi Construction Pvt. Ltd. (in short, Goumukhi Pvt. Ltd.).

In course of time, respondents in No.969/2012 filed affidavit-in-opposition resisting the claims, made in the aforesaid Company Petition (in short, C.P No. 969/2012). However, said C.P. was disposed of by the order dated 14.11.2014 and same is quoted below:

"ORDER

1) *Parties present today as shown above with their counsel and authorized representatives, acting on instructions, made a positive effort again with my assistance and reached a full and final settlement as per terms agreed below -*

(a) *The petitioner company shall exit from North East Shuttle Pvt. Ltd. on receiving a consideration of Rs.5 crores as per payment chart given below -*

(i) *The respondents undertake to pay the sum of Rs.5 crores to the petitioner company by depositing account payee demand drafts with the Bench Officer, as under -*

(a) *Rs. 1 crore on or before 14/02/2015.*

(b) *Rs. 2 crores thereafter on or before 14/05/2015.*

(c) *Rs. 1 crore thereafter on or before 14/08/2015.*

(d) *Rs. 1 crore thereafter on or before 14/11/2015 respondent;*



(ii) The respondents undertake to pay interest @18% p.a. on the unpaid amount of any instalment from the date it fell due upto the date of payment.

(b) The petitioner shall on or before 14/02/2015 deposit the share certificates along with duly executed transfer deeds in favour of the respondents with the Bench Officer, who shall keep such share certificates along with duly executed transfer deeds in safe custody in a sealed cover.

(c) The share certificates and transfer deeds so deposited by the petitioner shall be released by the Bench officer in favour of the respondents only after the deposit of all the instalments mentioned above in sub-para (i)(a) to (d).

(d) Unless the petitioner deposits the share certificates along with duly executed transfer deeds with the Bench Officer on or before 14/02/2015 the respondents shall be under no obligation to deposit the amount of instalments with the Bench Officer.

(e) After verification that the respondent company has paid off the loan arranged by the petitioner company, the petitioner company shall issue a no due certificate in favour of the respondent company.


(f) The petitioner company shall not indulge in any correspondence or activity detrimental to the interest of the respondent company and render its fullest co-operation in enforcement of the settlement.

(g) The respondents shall maintain status quo as on today on the assets of the company till completion of the settlement terms.

(h) The Bench Officer shall after the deposit of the share certificates along with duly executed transfer deeds by the petitioner, release the periodical deposit of instalments made by the respondents in favour of the petitioner.

(i) The Company Petition No.969/2012 is disposed of in terms of the settlement which is final and binding on the parties and shall be enforceable at the instance of either party under Section 634A of the Companies Act, 1956.

2. Counsel Authorized Representatives for the parties and the Managing Director of R-1 company, after reading the above terms, prayed that the Company Petition No.969/2012 be disposed of on the above terms.



3. I, accordingly, dispose of Company Petition No.969/2012 in terms of the above settlement which shall be binding on the parties and shall be enforceable at their instance under Section 634A of the Companies Act, 1956.

4. Interim order passed on 12/12/2012 stands vacated. All pending Company Applications stand closed.

No order as to costs.

Sd/-
Justice D R Deshmukh
Chairman
Company Law Board"

However, alleging that while the petitioner in said CP had already carried out its obligation under the order aforesaid, respondents therein refused to perform their part of obligation/ duty there under causing huge problems to the petitioner in C.P.No.969/2012 (T.P.No.07/2016), respondent No.1 herein. **The respondent Nos.1 herein, therefore,** filed an application U/s 634(A) of the Company Act 1956 seeking enforcement of order dated 14. 11.2014 which was numbered as C.A.No.461 (renumbered as T.A.No.34/2016).

In the meantime, respondent **Nos.3 and 4 in C.P.No. 969/2012** filed an application which was registered as C.A.No.867/2015 (renumbered as T.A.No.37/2016), seeking the recall of the order dated 14.11.2014, rendered in C.P.No.969/2012.

In such application, seeking recall of the order dated 14.11.2014, rendered in C.P.No.969/2012 (T.P.No.07/2016), it has been contended that the compromise order dated 14.11.2014 was caused to be passed on misrepresentation of facts and law and as such, it was not binding on the applicants in said proceeding.

Now, applicants in M.A.No.01/2016, (who were respondent Nos. 1& 2 in C.P.No.969/2012) approached this court once again seeking the reliefs, which are reproduced herein before. As we have already found that one of the prayers, stated above, was that the applicants be allowed to carry out the necessary maintenance work of the aircraft in question which will, in turn, help the aircraft to secure a renewed Air Worthiness Certificate inasmuch as the validity of current Air Worthiness Certificate would expire on 30.09.2016.

It has been stated that if the applicants fail to carry out mandatory maintenance work of the aircraft in time, the authority concerned would not renew Air Worthiness Certificate of the aircraft which, in turn, will throw the

applicants to plethora of problems and all these, in their cumulative effect, would reduce the air craft to scrap only.

In the present proceeding, notice had been served on the respondent No.1 herein (the petitioner in C.P. 969/2012). Entering appearance on behalf of respondent Nos.1 herein, Mr S.K. Gupta, CS forcefully argues that present proceeding is liable to be dismissed in limine since it is totally devoid of merit and he, therefore, urges this court instead to pass necessary order to enforce the order dated 14.11.2014, rendered in C.P.No.969/2012 (renumbered as T.P.No.07/2016).

I have heard the learned counsel/CS appearing for respective party and have found reason to conclude that the prayer in the application in question needs to be accepted, of course, to a very limited extent since on hearing the parties, this court finds that in the event of failure to renew the Air Worthiness Certificate of the aircraft aforesaid which is due to expire on 30.09.2016 for want of proper maintenance, the aircraft would lose its value on all the counts and in that event, not only the applicants herein but all the parties, involved, would be the great sufferers. This court, therefore, grant the reliefs in the following manner: --

- i) The applicants herein are allowed to carry out maintenance work of the aircraft in question in accordance with the prescribed prescription which would lead to the renewal /obtaining the Air Worthiness Certificate of the aircraft aforesaid.
- ii) Once the maintenance work is carried out in accordance with the established and prescribed procedure and once the DGCA is satisfied with the quality of maintenance work, later may issue the aircraft the Air Worthiness Certificate in accordance with rules and procedure.
- iii) In order to secure the Air Worthiness Certificate, the aircraft in question may be allowed to undertake such number of test fly as may be necessary in the judgment of the authority concerned.

It may be stated here that though the CS appearing for the respondent No.1 herein/ petitioner, initially objected to the allowing of any of the prayers, made in application in hand, subsequently, he fairly agrees to the aforesaid reliefs, granted in favour of the applicants herein.

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Learned counsel for the applicants again submits that the applicants may be permitted to make a search for prospective buyer/ buyers so that the applicants may dispose of to such buyers the aircraft at a competitive price. The learned counsel for the applicants further submits

that the applicants may also be allowed to complete the sale process once the price of the aircraft is settled.

In that connection, I have also heard the CS appearing for the petitioner/ respondent No.1 herein. On hearing the CS/learned counsel for the parties, it is ordered that the applicants are allowed to make a search for a prospective buyer and also to negotiate the terms and conditions of sale of the said aircraft.

However, before effecting the final sale of the aircraft, the applicants would invariably appear before this Court and lay before it the details of such sale for the purpose of passing necessary order thereon in presence of all the parties.

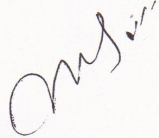
Learned counsel appearing for the applicants herein again submits that since the applicants have to bear the huge expenses in parking the aircraft in the airfield and also in maintaining it in Air Worthiness Condition, they may be allowed to undertake commercial flights to offset the expenses incurred for the purpose aforesaid.

Such prayer was, however, vehemently objected to by the Company Secretary appearing for respondent No.1 herein, who submits that in the event of allowing the aircraft in question to undertake commercial flights, there is every possibility of the aircraft being flown out of the country and in such an eventuality, the respondent company would suffer irreparable loss. On hearing both the parties, on this count too, I find it necessary not to allow such a prayer. Resultantly, said prayer stands rejected.

The respondent No.1 herein may, if so desires, file a reply to the present petition within three weeks from today and the applicants may file rejoinder, if any, within two weeks thereafter.

Registry is informed that notice sent to respondent Nos. 2 and 3 herein are returned with noting "Addressee not found". Applicants would take steps in matter of service of notice upon the respondent Nos 2 and 3 afresh immediately in accordance with the prescription of law.

List this matter on 17.11.2016.


Judicial Member
National Company Law Tribunal,
Guwahati Bench,