

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Dy. No.1(60) of 2018

(IA No. of 2018)

&

Dy. No. 1(61) of 2018

(IA No. of 2018)

IN

T.P. No.01/111/397/398/GB/2016

[Arising out of C.P. No.619/2010]

Under Section: 397/398 of the Companies Act, 1956

In the matter of:

Asharam Leasing & Finance (P) Ltd. & others ... Applicants/Petitioners
(Substituted by M/s. Prithvi Tea Co. Pvt. Ltd.)

-versus-

Doloo Tea Company (P) Ltd. & others ... Non-applicants/Respondents

Order delivered on 15th February, 2018

Coram:

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

For the applicants/petitioners : Mr. S. K. Medhi, Sr. Advocate
Ms. J. Tripathy, Advocate

For the non-applicants/respondents : Mr. G. Khandalia, Advocate
Mr. Arik Banerjee, Advocate
Mr. Rajib Mullick, Advocate

O R D E R

DY. No.1(60) of 2018

Heard Mr. S. K. Medhi, learned Sr. Advocate assisted by Ms. J. Tripathy, Advocate, appearing for the applicants/petitioners. Also heard Mr. Arik Banerjee, Mr. Rajib Mullick and Mr. G. Khandalia, learned Advocates appearing for the non-applicants/respondents.

2. This Bench of the Tribunal on the last occasion has passed the following order on 30th January, 2018.

"Dated, 30th January, 2018

"O R D E R

Heard Mr. S. K. Medhi, Sr. Advocate assisted by Ms. J. Tripathy, Advocate, appearing for the petitioners. Also heard Mr. G. Khandalia, Advocate appearing for the respondents No.1 and 7. This Bench of the Tribunal on the last occasion has passed the following order on 18th December, 2017: -

"ORDER

Date of Order: 18th December 2017

Mr S.K. Medhi, learned Sr. Advocate, assisted by Ms J. Tripathi & Mr S. Dutta, learned Advocates are present on behalf of the petitioners. Mr A. Banerjee, Mr R. Mullick & Mr G. Khandelia, learned Advocates are present representing the respondent No.1 company. None appears for the remaining respondents.

2. The Registry of this Bench has informed that pursuant to the directions of this Bench, notices were sent to all the original as well as the newly impleaded respondents and notices were duly served upon as well. However, despite notices having been duly served on all the respondents, except respondent No.1 company, none of the other respondents responded to the notices so sent to them.

3. Mr S.K. Medhi also submits that respondent No.2 had committed some other serious illegalities in running the affairs of the respondent No.1 company. However, they were not aware of those illegalities before, since the petitioner got himself substituted in place of the original petitioner only on 30.08.2017.

4. According to Mr S.K. Medhi, unless those facts are brought on record the allegations in the present proceeding cannot be adjudicated properly. Therefore, he submits that he may be allowed to file an Interlocutory Application seeking incorporation of all those illegalities/irregularities allegedly committed by respondent No.2 in running the affairs of the company in the connected company petition.

5. In that connection, I have also heard Mr A. Banerjee, learned Advocate for respondent No.1 company.

6. The prayer of Mr S.K. Medhi is allowed. The petitioner shall file necessary application within two weeks from today listing all the alleged illegalities/ irregularities in running the affairs of the aforesaid company. In that event, copies of the application as well as the connected documents be served on the non-applicants/ respondents for their reply thereto. The non-applicants/respondents may file their reply within two weeks therefrom supplying simultaneously copies thereof to this Bench as well as the applicant/petitioner.

7. Registry will receive such application if the same is filed in accordance with the prescription of law and Rules framed thereunder.

8. List this matter on 30.01.2018.

9. In the event of Registry finding the proposed application filed in accordance with law, the application shall also be listed on 30.01.2018."

2. Mr. S. K. Medhi, learned counsel for the petitioners submits that the order dated 18-12-2017 could not be followed since some of the documents could not be collected by the petitioners. However, on getting all the documents, they have filed an application as directed by this Bench on 25-01-2018 with the Registry, but the Registry has not processed the same, since the said application was not filed within the time limit specified by this Bench and is not placed before this Bench today. However, in terms of the requirement under Rule 23 (5) of NCLT Rules, 2016, the copies of the application have already been sent to the respondents.

3. According to Mr. Medhi, learned counsel for the petitioner, the respondents No.1, 7 and 10 have also received the same. It is not known whether the copy of the application sent to the other respondents

have been received or not, although the same have been sent with registered post on 25-01-2018. Mr. Medhi has however, submits that he may be allowed to file an application seeking extension of time to the petitioners, as required under Rule 53(16) of the NCLT Rules, 2016 and, therefore, he prayed that ten days' time may be granted for the same.

4. In that connection, I have also heard Mr. Khandalia, the learned counsel appearing for the respondents No.1 and 7. On hearing both the parties, the petitioner is granted ten days' time for filing application for extension of time. On submission of the application by the petitioners, the Registry will examine the same and thereafter, place the same before the Bench.

5. In case, the application so filed by the petitioners, is found to be as per prescription of law, the Registry would fix the matter on 15th February, 2018 for further orders."

3. Mr. S. K. Medhi, learned counsel for the applicants/petitioners submits that there was delay in submitting an application regarding incorporation /bringing on record, some new facts/documents and in this regard a separate application has been filed praying for condonation of delay in submitting the aforesaid application.

4. In that connection, I have also perused the Registry's note that the application seeking extension of time has been filed within the time fixed by this Bench vide Order rendered on 30th January, 2018 and view of this, the application is admitted.

5. Since the prayer for incorporation of new facts / documents, as sought for, has already been allowed vide Order dated 18th December, 2017 and since the application seeking extension of time has also been filed within the time limit, this application is allowed and disposed of accordingly.

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6. Referring to the Order of this Bench dated 30-01-2018, Mr. S. K. Medhi, learned counsel for the applicants/petitioners submits that in terms of the directions of the Bench, the copy of application seeking incorporation of some new facts in the connected company petition, has been served on the non-applicants/respondents and as such application was dispatched to the postal department on 25-01-2018. In support of such contention, an affidavit has also been filed.

7. Mr. Medhi further submits that while the non-applicants/respondents No.1, 7 and 10 have received such application, it was not known whether application so sent to other non-applicants/respondents, had reached the destination or not. In view of above, he submits before the Bench to list the matter after some time so that, in the meantime, thirty days' period as contemplated in law for entertaining legal presumption about such application having been served, is expired. He further submits that the copies of the application were sent by Regd. Post with A/D.

8. The learned counsel for the non-applicants/respondents ^{No.1} submit that they are not going to file any reply to the prayer in the application, seeking amendment of the connected company petition. On the other hand, the learned counsel for the respondents No.7 and 10 has prayed for some time, so that he can file reply to the aforesaid application.

9. The learned counsel for the respondents No.7 and 10 are directed to file reply within a period of ten days from today, supplying simultaneously, copy thereof to the petitioners/applicants. If so advised, the applicants/petitioners, may file rejoinder within a period of five days therefrom.

10. List this matter on 05th March, 2018.



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

Dated, Guwahati, the 15th February, 2018
Deka/15-02-2018
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