

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

I.A.No.02/2016

&

I.A.No.03/2016

In

TP No.22/397/398/GB/2016 (C.P.No.205/2015)

Under Section 397/398 of the Companies Act, 1956

In the matter of

Ram Swaroop Joshi & Ors.

... Petitioners

-Versus-

Buildworth Pvt. Ltd. & Ors.

... Respondents

Coram:

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

ORDER

Date of hearing: 24th November 2017.

I.A.No.03/2017

Mr D. Ghosh, learned Sr. Advocate, Mr S. Chakraborty, learned Advocate and Ms N. Somani, PCS are present for the non-applicants/petitioners. Mr K. Goswami, Mr R. Sarmah, learned Advocates represent the applicants/respondents.

2. This Tribunal passed the following order on the last occasion:

"I.A.No.02/2016

"Heard Mr D. Ghosh, learned Sr. Advocate assisted by Mr S. Chakraborty, learned Advocate, for the applicants/petitioners. Also heard Mr K. Goswami and Mr R. Sarmah, learned Advocates representing the non-applicants/respondents.

"2. This Tribunal, in the course of the proceeding on 18.11.2016, directed the non-applicants/respondents to furnish the statement of accounts pertaining to the company to the applicants/petitioners for their information and necessary action. Mr K. Goswami, learned Advocate for the non-applicants/respondents submits that, in terms of the order dated 18.11.2016, the statement of accounts had already been furnished to the applicants/petitioners.

"3. However, Mr D. Ghosh, learned Sr. Advocate for the applicants/petitioners, submits that the statement so furnished does not meet the directions, rendered in the order dated 18.11.2016 since all the documents, directed to be furnished to the applicants/petitioners were not handed over to the later. He, therefore, prays this Bench to direct the non-applicants/respondents to furnish the detailed draft balance sheet of the company immediately. The learned Advocate for applicants/petitioners further submits that he needs to see the primary documents including the tally accounts for taking further necessary action from his end.

"4. Such a prayer is, however, objected to by the learned Advocate for the non-applicants/respondents stating that at no point of time the applicants/petitioners had prayed the company seeking those documents. But if the applicants/petitioners so feel, they may approach the company with proper application seeking such documents and in that event, the company will consider such application in accordance with law and rules framed thereunder and then render necessary order thereon.

"5. Mr K. Goswami further submits that the next Board meeting is going to be held on 02.11.2017 and the applicants/petitioners may approach the company on the date aforesaid and may make necessary representation in regard to the prayer which they made before this Bench today.

"6. However, Mr D. Ghosh, learned Sr. Advocate submits that the applicant/petitioner No.1 would be out of the State and will be returning only in the 2nd week of November 2017 and, therefore, it would not be possible for the applicant/petitioner No.1 to approach the Board of Directors of the company on 02.11.2017.

"7. On consideration of the submissions, advanced from the side of parties hereto, I feel it necessary to direct the applicants/petitioners to file written application before the company before his leaving the State and in that event, as submitted by the learned Advocate for the non-applicants/respondents, the later would, consider the same in accordance with law and pass necessary order thereon giving detailed reasons thereof in the event of rejection of such application.

"I.A.No.03/2017

"8. Heard Mr K. Goswami and Mr R. Sarmah, learned Advocates for the applicants/respondents. Also heard Mr D. Ghosh, learned Sr. Advocate and Mr S. Chakraborty, learned Advocate for the non-applicants/petitioners.

"9. Mr K. Goswami, learned Advocate for the applicants/respondents submits that he has filed an affidavit before the Registry of this Bench but the same was not accepted by the Registry stating that the matter is in stage of hearing and without permission of the Bench, it is not possible for the Registry to accept the same.

"10. By the aforesaid affidavit, the applicants/respondents have prayed for bringing on record the Board Resolution of 05.08.2015, which, according to Mr

Goswami, has huge bearing in the outcome of proceeding in hand as well as the connected company petition.

*11. Mr D. Ghosh, learned Sr. Advocate for the non-applicants/petitioners submits that he has no objection in bringing on record the aforesaid Board Resolution but he may be given a chance to file objection disputing the contents of the affidavit. Mr Ghosh, therefore, prays for some time to file such objection.

*12. On the hearing the learned Advocates for the parties, the matter is adjourned as prayed for. The non-applicants/petitioners are, however, directed to file the reply/objection to the aforesaid affidavit at least one week ahead of the next date supplying simultaneously copy thereof to the applicants/respondents.

"T.P.No.22/2016

*13. Mr D. Ghosh, learned Sr. Advocate and Mr S. Chakraborty, learned Advocate are present for the petitioners. On the other hand, Mr K. Goswami and Mr R. Sarmah, learned Advocates represent the respondents.

*14. In view of the order passed in I.A.No.02/2016, this proceeding stands adjourned to 24.11.2017 for simultaneous hearing with the other connected proceedings."

3. Mr K. Goswami, learned Advocate for the applicants/respondents, submits that though this Tribunal directed the non-applicants/petitioners to submit their reply at least 7 days ahead of the next date, same was not filed within time. However, said reply was sent to applicants/respondents by email only on 21.11.2017. However, hard copy of the same has been submitted to the Registry of this Tribunal only on 23.11.2017. The Registry has, however, refused to accept the same in view of the time limit fixed in the aforesaid order.

4. Mr D. Ghosh, learned Sr. Advocate for the non-applicants/petitioners, submits that for certain pressing problems, his client was not in a position to submit the reply in time. Mr Ghosh further submits that if the reply is not taken on board, his client will be highly prejudiced. He, therefore, urges this Tribunal to accept the same in the interest of justice.

5. Mr Ghosh further urges this Tribunal to hear the main petition today. But such a prayer is objected to by Mr K. Goswami stating that the question of maintainability of the connected company petition has been raised in this application where exchange of pleadings has not yet been over. Therefore, till the completion of exchange of pleadings in the proceeding in hand, the connected main petition should not be taken up for hearing.

6. I have considered the arguments advanced from the side of the non-applicants/petitioners as well as applicants/respondents. On considering the submissions, I find it necessary to direct the Registry to accept the reply and to scrutinize it during the course of the day and if the Registry finds that the same has been filed in accordance with the prescription of law and Rules framed thereunder, then Registry would tag the same with the record.

7. Mr Goswami prays that the applicants/respondents may be given some time to file rejoinder to the reply filed in the present proceeding.

8. On hearing the parties, I direct the applicants/respondents to file the rejoinder on or before 03.01.2018 supplying simultaneously copy thereof to the non-applicants/petitioners.

9. List this matter on 17.01.2018.

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10. In view of the order passed in I.A.No.03/2017 today, these proceedings be listed on 17.01.2018.

11. On the next date, all the connected proceedings should be heard simultaneously.

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

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