

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Dy.No.478
CP No. 17/140/GB/2017

Under Section: 140 of the Companies Act, 2013.

In the matter of:

N.C.Karnany & Company, Chartered Accountants
Karnany Circle, Dewal Road, Jorhat 785001, Assam

-Petitioner

-versus-

New Timonhabli Tea Co(P) Ltd.,
a Company Incorporated
Under the Companies Act, 1956,
and having its registered office at Seuni All,
A.T. Road, Jorhat-785002, Assam.

- Respondents

Coram:

PRESENT

HON'BLE MR.JUSTICE P.K.SAIKIA , MEMBER (JUDICIAL)

For the Petitioners: Ms. Richa Agarwal, Company Secretary.

O R D E R
31.08.2017

This petition under Section 140 of the Companies Act, 2013 read with Rule 34, 64, 66, 67, 70, 71, 73, 74, 75, 77, 78, 79, 80, 81, 83, 86 and 87 of the National Company Law Tribunal Rules, 2016 is filed by M/s. N.C. Karnany & Company, Chartered Accountants, Karnany Circle, Dewal Road, Jorhat, Assam seeking the following reliefs: -

- "a Declare that the removal of petitioner firm as auditor of Respondent Company as illegal;*
- b Declare that the appointment of M/s A.B.Sharma & Co as auditor of respondent company as illegal.*
- c. Direct the Respondent Company to change its auditor under Section 140(5) of the Companies Act, 2013*
- d. Declare the petitioner firm as Auditor of Respondent Company".*

Heard Ms. Richa Agarwal, C.S. appearing for the petitioner Firm who submits that the petitioner has been appointed as statutory auditor by M/s. New Timonhabhi Tea Company Limited, (hereinafter referred to as Respondent Company) vide letter dated 26.09.2015, issued by the authorized signatory of the respondent company. For ready reference, the said letter dated 26.09.2015 is reproduced below:

" M/s.N.C.Karnany & Company

*Chartered Accountants
Karnany Circle, Dewal Road
Jorhat – 785001, Assam.*

Date: 26.09.2015

Dear Sir,

Sub: Intimation of Re-appointment as Statutory Auditor of the Company

We are pleased to inform you that based on your consent letter and necessary declaration under Section 139, 141 and all other applicable provisions of the Companies Act, 2013 and rules made thereunder, the shareholders in the last AGM of the Company held on 26th September, 2015, has appointed you as Statutory Auditor of the Company for a block of 4 years i.e. from the conclusion of the Annual General Meeting related to F.Y. 2014-15 to the AGM related to F.Y.2018-19, subject to ratification by shareholders at every Annual General Meeting of the company.

*The above is for your information and record.
Thanking you,*

*Yours faithfully
FOR NEW TIMONHABI TEA COMPANY LTD*

*SD/-
(Authorized Signatory) "*

Ms. Richa Agarwal, C.S. further submits that the Respondent Company had removed the petitioner from its office as being its statutory auditor in complete violation of provisions of Section 140(1) and 140(4) of the Companies Act, 2013 and in its place, appointed M/s. A.B.Sharma & Company as the statutory auditor of the aforesaid company.

In that connection, my attention has been drawn to the Annexure A-6, Annexure A-7, Annexure A-8 and Annexure A-9 to the petition. For ready reference, Annexure- 6, Annexure- 7, Annexure- 8 and Annexure- 9 are also reproduced below: -

Annexure -A6.

" Dear Sir,

We have decided to appoint an Audit Firm based at Guwahati for the audit of our company
M/s. New Timonhaba Tea Co. Pvt. Ltd for the current financial year.

Hence you are requested to send us your resignation letter at the earliest.

Awaiting an early response and thanking you.

Yours faithfully

L.N.Choudhury

For New Timonhaba Tea Co.Pvt Ltd",

Annexure -A7.

"To

M/s. N.C. Karnany & Co.

Chartered Accountants

Karnany Circle, Dewal Road

Jorhat-785001

03/04/2017.

Dear Sir,

Sub: NOC against our appointment as Statutory Auditors of
M/s. New Timonhaba Tea Co.Pvt.Ltd.

We have been appointed as the statutory Auditors of the above named company for the year
ended 31/03/2017.

You being the previous Auditors, kindly let us know whether you have any professional
reservation/objection in our such appointment.

Your cooperation in this regard will be highly appreciated.

Thanking you

Yours faithfully

For

A.B.Sharma & Co

Chartered Accountants

FRN 318036E

(AB Sharma)

Proprietor".

Annexure -A8

"We wish to inform you that in accordance with the provisions of Section 139 read with Rule
3(7) of the Companies Act, 2013, the shareholders of the company in the Annual General
Meeting of the company held on 28th September, 2016 have resolved not to ratify your
appointment/re-appointment as Statutory Auditor of the company..

Accordingly you have vacated the office as Statutory Auditors of the company with effect from
the date of last Annual General Meeting.

M/s. A.B.Sharma & Co., Chartered Accountants, have since been appointed as our Statutory Auditor.

The above is for your information and record.

For New Timonhabhi Tea Co.Pvt. Ltd.
L.N.Choudhury
Director"

Annexure -A9

To
M/s. A.B. Sharma & Co.
Chartered Accountants
96/97, Meer Market
3rd Floor, Kamarpatty
Guwahati 781001.

12.04.2017

Sub: NOC for appointment of Statutory Auditors of M/s. New Timonhabhi Tea Co Pvt Ltd
Sir,

Your letter dated 03.04.2017 received on 12.04.2017

Please note that we were appointed as Auditor in the F.Y. 2014-15 for 5 years i.e. upto the F.Y.2018-19. We have not received any communication from M/s New Timonhabhi Tea Co.Pvt Ltd for removal from the office of Auditors for the F.Y. 2016-17.

This is for your information.
Thanking you,
Yours faithfully

For N.C.Karnany & Co
Chartered Accountants
(Firm Registration No. 305103E)
Sd/-
(Madhavi Karnany)
Partner".

Ms. Richa Agarwal, submits that Section 140(1) of the Act of 2013 says that the statutory auditor appointed under Section 139 of the Act of 2013 may be removed from its office before the expiry of his term but same can be done only after adopting a special resolution by the company, and that too, after obtaining previous approval of the Central Government in that behalf in prescribed manner. More importantly, before taking action under Section 140(1), the auditor concerned must be given a reasonable opportunity of being heard.

Further, Section 140(4)(i) says that special notice shall be required for a resolution at an Annual General Meeting to appoint someone as auditor. However, all those procedures were given a complete go by in case of removal of the petitioner herein as well as in the appointment of M/s. A.B.Sharma & Company as the statutory auditor of the respondent company. Therefore, the removal of the petitioner from its office as well as the appointment

of M/s. A.B.Sharma & Company as the statutory auditor of the respondent company in place of the petitioner are required to be declared null and void.

I have carefully gone to the petition as well as the connected documents annexed thereto.


The petition is admitted for hearing.

Issue notice, returnable on 18.09.2017.

The Registry is directed to send the copies of the petition along with other connected documents to the respondent.

On receipt of the copies of the petition and other connected documents, the respondent may file rejoinder within 7 days from the date of receipt of the petition and other connected documents and on receipt of the copy of the rejoinder from the side of the respondent, the petitioner may file sur rejoinder, if so advised, within 5(five) days from the date of receipt of the copy of the rejoinder.

List the matter on 18.09.2017 for orders.


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

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