

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI

I.A. No.6 of 2017

&

T.A. No.40/2016(C.A.No.112/2014), T.A.No.41/2016 (C.A.No.90/2013), T.A. No.42/2016 (C.A.No.322/2011),
T.A.No.43/2016 (C.A.No.264/2012), T.A. No.44/2016 (C.A.No.639/2011), T.A.No.45/2016 (C.A.No.38/2013),
T.A.No.46/2016 (C.A.No.587/2012), T.A.No.47/2016 (C.A.No.715/2010), T.A.No.48/2016 (C.A.No.473/2011),
T.A.No.49/2016 (C.A.No.680/2010), T.A.No.50/2016 (C.A.No.78/2014), T.A.No.51/2016 (C.A.No.155/2000),
T.A.No.52/2016 (C.A.No.421/2011), T.A.No.53/2016 (C.A.No.464/2010), T.A.No.54/2016 (C.A.No.478/2010),
T.A.No.55/2016 (C.A.No.132/2010), T.A.No.56/2016 (C.A.No.376/2011), T.A.No.57/2016 (C.A.No.116/2012),
T.A.No.58/2016 (C.A.No.136/2010), T.A.No.59/2016 (C.A.No.310/2011), T.A.No.60/2016 (C.A.397/2011)

IN

T.P. No.26/397/398/GB/2016
[Arising out of C.P. No.80 of 2010]

Under Section: 397/398 of the Companies Act, 2013

In the matter of:

Kamakhya Kumar Roy

... Petitioner

-versus-

M/s. Bogidhola Tea & Trading Co. Pvt. Ltd. & Ors.

... Respondents

Order delivered on 05th January, 2018

Coram:

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

Petitioner in person

: Mr. Sajay Kumar Singh

For respondents No.1 and 4

: Mr. B. Kaushik, learned Advocate

For respondent No.3

: Mr. N. B. P. Sinha, learned Advocate

ORDER

Mr. Sajay Kumar Singh, the petitioner in person, is present. Mr. B. Kaushik, learned Counsel representing respondents No.1 and 4 and Mr. N. B. P. Sinha, learned counsel representing respondent No.3 are also present. The learned counsel for the respondent No.2 intimated his inability to remain present before this Bench today. He has also prayed for adjournment today.

2. This Bench vide order dated 18th September, 2017, referred the matter to the Mediator appointed by this Bench with the consent of both the parties, for taking steps to settle the dispute in the present proceeding amicably and as such the matter was deferred for further hearing till 18th December, 2017. In the meantime, the Mediators submitted their report stating that since the mediation has failed, they could

not help the Bench in settling their disputes amicably. For ready reference, the order dated 18th December, 2017 is reproduced below: -

"ORDER"

Date of Order: 18th December 2017

The matter is listed today. Seen the report dated 20.11.2017 of the Mediators. For ready reference, the aforesaid report of the Mediators is reproduced below:

"Report

"In the above referred mediation matter, three sittings were held at the office chamber of Justice (Retd.) P.G. Agarwal. All the concerned parties were present. However, in the third sitting held on 20th November, 2017, R-2, Probir Kumar Roy walked out/withdrew from the sitting.

In view of above, the mediation has failed. Inform the Company Law Board accordingly.

It may be mentioned that Probir Kumar Roy has not paid the fee of the Mediator Sri Pawan Kumar Sharma."

2. In that connection, I have also seen the letters of Shri P.K. Roy, respondent No.2, as well as the letter of Mr P.K. Sharma, CA who is one of the Mediators. For ready reference, said letters are reproduced below:

*"Pravir K. Roy,
Executive Director*

(COPY)

Dated: 20/11/17,

To,

*Hon'ble Mr. Justice P.G. Agarwal, (Retd.)
43-A, Kalicharan Bharali Complex,
Opp. Rabindra Bhawan, G.N.B.Road,
Ambari, Guwahati-781001, Assam*

SUB: MEDIATION & CONCILIATION PROCEEDINGS 20/11/2017

Respected

I don't have to tell you as you know that I have deepest respect for you and hold you in very high regards. Today I left Cherrapunji sharp 6.30 am with plans to reach Guwahati by 9.30 am. First I was stuck up in jam in Airforce Station Point that delayed me for 15 minutes then I was stuck up in Umsning in another traffic jam that delayed me nearly 20n minutes. I reached Khanapara at 10.10 am but due to heavy traffic congestion in the entire G.S. Road upto your place I could reach by 11.24 am only, a delay of 24 minutes. I realize that delays are unwelcome but it was beyond my control. I apologized for the delay and said that I came from Cherrapunji but the show of temper and interrogation by Mr Sharma in front of opposite parties and their counsels, despite my repeated apologies and explanation was not tenable to me. I do not know why but from the very first day he was inimical and revealed so by his aggressive behaviour towards me.

I deeply regret if I caused you any anxiety.

Thanking you,

Yours truly,

Sd/-
PRAVIR K. ROY

"BG/HO/07/16-0323,
Dated 21/11/17.

The Registrar I/C,
National Company Law Tribunal,
Guwahati Bench,
4th Floor, Prithvi Planet,
(Behind Hanuman Manidir),
G.S. Road, Ulubari,
GUWAHATI-7

SUB: MEDIATION AND CONCILIATION PROCEEDINGS IN CPSO/2000.

Madam,

It is humbly submitted that with reference to above, yesterday the conciliation was fixed at Hon'ble Justice P.G. Agarwal (Retd) residence and accordingly I attended the proceedings. Unfortunately, I was late by 24 minutes as I had travelled from Chdrrapunji and because of several traffic jams faced en-route. I immediately apologised to everybody present there and explained the reason. While Justice P.G. Agarwal (Retd), Member heading the Committee of mediators, did not utter a word and looked eager to carry on with the proceedings Shri Pawan Kr. Sharma, CA, the second Member started castigating me. I apologised once again. Despite which he carried on berating me in front of the parties and their counsels. His behaviour was not tenable to me as such I left the proceedings and venue midway. (True photocopy of letter dated 20/11/2017 addressed to Hon'ble Justice P.G. Agarwal (Retd) is enclosed which is self explanatory).

The said Pawan Kr. Sharma from the very first day has been biased to me and misbehaved earlier also but for sake of possibility of settlement of long pending dispute I turned a blind eye to his misbehaviour. But it seems he could not appreciate my restraint as eagerness for settlement and failed his duties to mediate and play a role that was lawfully required. He is not fit to be part of such exercise and I have lost faith in him.

I request you to bring the matter to notice of the Hon'ble Member on the next date.

Thanking you,

Sd/-
PRAVIR K. ROY,
EXECUTIVE DIRECTOR,
(Respondent No.2)

"BG/HO/07/17-0338,
Dated: 08/12/17,

"The Registrar I/c,
National Company Law Tribunal,

Guwahati Bench, 4th floor, Prithvi planet
(Behind Hanuman Mandir),
G.S. Road, Ulubari,
Guwahati-781007

Subject: Mediation and conciliation proceedings in CP 80/2000.

Reference: Letter of Shri Pawan Kumar Sharma No. Nil, dated 04/12/2017.

Madam,

It is humbly submitted with reference to above that I reiterate the contents of my letter dated 21/11/2017 in respect of unbecoming conduct of Shri Pawan Kumar Sharma as a Member of Mediation Committee and Mediator. His allegations are baseless and only an afterthought. In line how would late coming, even if assumed, contribute for one to be in the receiving end of unmindful castigation or for one to shed his professional conduct & competence. Shri Sharma was biased against me from the very first day for reasons best known to him and did not conduct himself in manner required of a person mediating a dispute and with mindset of Mediator. He has falsely attributed jeopardising the mediation proceeding on to me, whereas I am keenest for settlement of the long pending dispute and had prepared the proposal in line with suggestions of Hon'ble Justice P.G. Agarwal (Retd.), Head of Committee of Mediators but could not place it for misbehaviour meted out by Shri Sharma and therefor was forced to leave the venue midway. I cannot understand what is his motive and under what facts he has raised such aspersions which give undue advantage to the opposite parties in this case.

In respect of payment of sitting fee, the cheque sent to Shri Sharma (1 sitting) was not received at his given address.

I am very keen in Mediation and would welcome any step for revival of this process sans Shri Sharma in the Committee.

Thanking you,

Sd/-
PRAVIR K. ROY,
EXECUTIVE DIRECTOR
(Respondent No.2)
To,

04.12.2017

The Registrar I/C,
National Company Law Tribunal
Guwahati Bench,
4th floor, Prithvi Planet,
(Behind Hanuman Mandir),
G.S. Road, Ulubari,
Guwahati-781007
Sub: Mediation and Conciliation Proceedings in CP80/2000

Re: Letter no .BG/HO/07/16-0323 dated 21.11.2017 issued by Shri Pravir Kr. Roy
(Respondent-2)

Madam,

With reference to above, I would like to state that the allegations levelled against me by Shri Pravir k. Roy is absurd, baseless and does not hold any ground. In fact, it would be appropriate to highlight that Shri Roy was late in all the 3 nos. of sittings. Further,

sitting fees as directed by the Hon'ble NCLT and thereafter mutually decided has not been paid by him even for the single hearing. This truly reflects how serious Shri Roy is for the settlement of dispute? Thus, by making a hill out of mole, Shri Roy is doing nothing but merely adopting to jeopardize the entire mediation process.

It is therefore my sincere request to issue suitable directions to the respondent to clear the outstanding sitting fees at the earliest. The total amount due is Rs.36000/- (i.e. Rs.6000-X 2 parties for 3 sittings.)

Thanking you,

Yours faithfully,

Sd/-

CA Pawan Kumar Sharma
Mediator."

3. Copies of this order be sent to all the parties by post as well as by email.

4. Since the mediation has failed, Registry is directed to list T.P.No.26/397/398/2016 (corresponding to C P No.80/2000) on 05.01.2018 along with all the connected proceedings."

3. In this regard, it may be mentioned here that one of the parties had already paid the fee of the Mediator but, his fee from the side of the respondent No.2 still remains outstanding. The learned counsel for the respondent No.2, is hereby advised to deposit the same before this Bench, without further delay.

4. I have perused the connected applications, which were transferred from NCLT (Principal Bench), New Delhi and on perusal of the same, I have found that some of the applications have become redundant by now and, therefore, those applications require no adjudication as such.

5. In this connection, I have also heard the learned counsel present today and also heard Mr. Sajay Kumar Singh, the petitioner who is present in person today. On hearing the parties, I find it necessary to dispose of the transfer application before hearing the main petition, the same being T.P. No.26/397/398/GB/2016 [Arising out of C.P. No.80 of 2010].

6. The Registry is directed to list all the connected applications on 24th January, 2018 necessary orders.

Sd/-

Member (Judicial)

National Company Law Tribunal
Guwahati Bench: Guwahati.

Dated, Guwahati, 05th January, 2018.

Dfka/05.01.2018