

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

T. A. No.34 of 2016
In
C. A. No.461/2016
In
T. P. No.07/GB/2016
(Arising out of C.P. No.969/2012)

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

In the matter of:

Gomukhi Construction (P) Ltd.	... Petitioner
-versus-	
North East Shuttles (P) Ltd. & Ors.	... Respondents

Coram:

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

For the Petitioner	:	Mr. S. K. Gupta, FCPS Mr. Narayan Sharma, PCS
For the Respondent	:	Mr. A. Saha, Advocate Mr. I. Saha, Advocate Mr. Hiranya Das, Advocate

ORDER

04-09-2017

Heard Mr. S. K. Gupta and Mr. Narayan Sharma, learned counsel appearing for the applicant/petitioner. AVM Sanjib Bordoloi AVSM (Retired) is also present. Also heard Mr. A. Saha, Advocate and Mr. I. Saha, Advocate appearing for non-applicants/respondents No.1 and 4 and also Mr. Hiranya Das, Advocate appearing for the non-applicant/respondent No.4.

In terms of the order passed by this Tribunal in the last occasion, Mr. Sanjib Bordoloi, a retired Air Force Officer, appears before the Tribunal and agreed to be appointed as Special Officer in order to

facilitate this Tribunal in executing of the order dated 14-11-2014, passed by the CLB, Kolkata in CP No.969/2012.

It may be stated here that this Tribunal proposed to appoint Mr. Sanjib Bordoloi as Special Officer to help this Tribunal in executing the order rendered by CLB, Kolkata on 14-11-2014 in CP No.969/2012, vide order dated 24-08-2017. Such an order, appointing Mr. Sanjib Bordoloi as Special Officer, was passed after giving both the parties hereto, an opportunity to suggest the name of a person or to concur with the name, so suggested by opposite party, who, in their best judgment, could help this Tribunal in effectively executing the order dated 14-11-2014. While, the applicant/petitioner had taken the opportunity, the respondents showed no interest whatsoever in exercising the opportunity given to them in regard to appointment of Special Officer for the purposes aforesaid.

Today, Mr. A. Saha, learned advocate appearing for respondents No.1 and 4 verbally submits that Mr. Bordoloi cannot be appointed as Special Officer since he lacks qualification and experience, necessary for facilitating this Tribunal in executing the order aforementioned. He, therefore, urges the Tribunal to recall the order dated 24. 08.2017 in so far it relates to appointment of Mr. Bordoloi as Special officer for carrying carry out the purposes aforementioned. Such a prayer was vehemently opposed to by the legal representative appearing for the applicant/petitioner.

In that connection, my attention has been drawn to the various orders passed by this Tribunal in the proceeding in hand, more particularly, the order dated 11-08-2017 as well as the order dated 24-08-2017 to contend that the parties hereto, were given enough opportunity to participate in the proceeding leading to appointment of a person as Special Officer to help this Tribunal in executing the order dated 14-11-2014.

However, the non-applicants/respondents had failed to avail themselves of those opportunities and ultimately, on hearing the applicant side, this Tribunal was pleased to appoint Mr. S. Bordoloi as a Special Officer for the purpose aforesaid, subject, off course, to acceptance of such offer by Mr. Bordoloi. A bare perusal of the orders passed by this Tribunal, the order dated 11-08-2017 as well as the order dated 24-08-2017 in particular, make such a state of affairs more than clear.

I have considered the submissions made on this count, having regard to the various orders passed by this Tribunal and found reason to conclude that despite giving enormous opportunity to the parties herein, in helping this Tribunal in finding a suitable officer who could help it in executing order dated 14-11-2014, the non-applicants/respondents took no interest whatsoever in availing of the opportunity

offered to them. But then, the applicant/petitioner participated in such a proceeding and furnished necessary information to the Tribunal for its consideration and doing further needful.

It is worth noting that on the basis of information furnished by the applicant/petitioner, Mr. Bordoloi was appointed as Special Officer for the purpose stated above, subject, off course, to his acceptance of offer made by this Tribunal. Since Mr. Bordoloi has accepted the offer made from the side of the Tribunal, the appointment of Mr. Bordoloi, thus, stands confirmed. In view of above, there is no scope whatsoever to recall the order of appointment Mr. Bordoloi as prayed for by the counsel for the non-applicants/respondents. Resultantly, the verbal submission, advanced from the side of the non-applicants/respondents, is rejected.

I have also heard Mr. Bordoloi, who submits that since the assets which may be required to be sold through public auction/private treaty, include very many assets of the respondent company, he needs some time to evolve a procedure which would ultimately help the Tribunal in disposing the assets of the respondent company in the best possible terms. This is more so, since the assets to be sold through public auction/private treaty include air craft of the respondent company. Such problems get aggravated more and more since there are not too many civil air operators in the country at the moment, interested in flying the air craft owned by the respondent company.

The prayer made by Mr. Bordoloi is accepted. The petitioner is, however, directed to furnish Mr. Bordoloi a copy this order and other relevant documents available on record in order to facilitate the special officer in carrying out the work, assigned to him.

In view of above, list this matter on 18-09-2017.

M. A. No.02/2017
(in TP No.07/397/398/GB/2016)
[arising out of CP No.969 of 2012]

In the matter of:

Gomukhi Construction (P) Ltd.

... Applicant/Petitioner

-versus-

North East Shuttles (P) Ltd. & Ors.

.... Non-applicants/Respondents

Mr. S. K. Gupta, learned counsel appearing for the applicant/petitioner submits that due to personal illness, he could not submit the rejoinder in time and he requires some more time to prepare the rejoinder and he shall submit the same to this Tribunal simultaneously supplying copy of the same to the non-applicants/respondents. Such request of the applicant/petitioner has not been objected to by the non-applicants/respondents.

Prayer is allowed for submission of the rejoinder within one week, simultaneously copy of the same be supplied to the non-applicants/respondents. If so advised, the non-applicants/respondents may also submit sur rejoinder within three days' time from the receipt of the copy of the rejoinder from the applicant/petitioner.

List this matter along with T.A. No.34/2016 on 18-09-2017.

M. A. No.03/2017
(in TP No.07/397/398/GB/2016)
[arising out of CP No.969 of 2012]

North East Shuttles (P) Ltd. & Ors.
-Versus -
Gomukhi Construction (P) Ltd.

.... Applicants/Petitioners

... Non-applicant/Respondent

Heard Mr. A. Saha, Advocate and Mr. I. Saha, Advocate appearing for applicants/respondents No.1 and 4 and also Mr. Hiranya Das, Advocate appearing for the applicants/respondents No.1 and No.4.

Also heard Mr. S. K. Gupta and Mr. Narayan Sharma, learned counsel appearing for the non-applicant/respondent.

The Registry has informed that copies of the present proceeding have already been served on the non-applicant/petitioner. The non-applicant/petitioner is directed to submit reply to the present proceeding within one week from today, simultaneously supplying copy of the same to the applicants/petitioners. The applicants/petitioners, if so advised, may file rejoinder within three days from the receipt of the copy of the reply.