NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

T.A.No.34/2016 (C.A.No.461/2015)
&
M.A.No.02/2017
In
T P No 07/2016
(C P No.969/2012)

Under Section 397/398 of the Companies Act, 1956

In the matter of:

Gomukhi Constructions (P) Ltd. ... Petitioners

-Versus-

North East Shuttles (P) Ltd. ... Respondents

Date of Order: 13th February 2018

Coram:

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

.....

ORDER

Date of Order: 13th February 2018

T.A.No.34/2016 (C.A.No.461/2015)

Mr S.K. Gupta, Sr. PCS and Mr N. Sharma, PCS represent the applicant/petitioner. Nobody represents non-applicants/respondent No. 2 before this Bench today. Mr H. Das, learned Advocate for non-applicant/respondent No.4 submits that Mr I. Saha and Mr A. Saha, learned Advocates, for non-applicant/respondent No.1 could not be present before this Bench today since they had to attend some other important matters before the Hon'ble Calcutta High Court today.

2. Mr Gupta submits that Mr Sanjib Bordoloi AVSM (Retired), Special Officer, has been on the job, assigned to him and as such, he could not remain present before this Bench today. But since, Mr S. Bordoloi is on the job aforesaid, no further order needs to be passed in the present proceeding.

3. In view of above, list this matter on 28.02.2018.

M.A.No.02/2017

4. Mr S.K. Gupta, Sr. PCS and Mr N. Sharma, PCS submit that the argument from the side of applicant/petitioner in this proceeding has already been advanced long back and, therefore, this proceeding is required to be adjudicated upon as early as possible in view of directions rendered in Section 422 of the Companies Act, 2013. Mr H. Das, learned Advocate for non-applicant/respondent No.4, submits that since Mr I. Saha and Mr A. Saha, learned Advocates could not come to Guwahati today, due to some other important preoccupations, this matter may be adjourned for some time.

5. Such prayer was objected to by the legal representatives appearing for the applicant/petitioner contending that this proceeding was initiated as back as 25.05.2017 and copy thereof had been furnished to all the non-applicants/respondents well in time. Mr Gupta further submits that the non-applicants/respondents had employed all measures possible to delay the disposal of present proceeding which is evident from various orders, passed by this Bench over a long period of time.

6. In that connection, it has been pointed out that the non-applicants/respondents took a lot of time to submit the pleadings from their side for which this proceeding got stuck at the same stage for a period close to 8 months. A further perusal of the record also reveals that even after the completion of exchange of pleadings and even after the applicant had advanced its arguments long ago, the non-applicant/respondent No.1 keeps on seeking adjournment after adjournment to advance arguments from their side on the dispute under consideration and for all those reasons, this proceeding could not be disposed of although in the meantime a period of almost 8 months has elapsed.

7. In regard to the prayer, seeking adjournment today, it has been submitted by Mr Gupta that learned Advocates appearing for respondent No.1 must have known long before about the posting of proceeding where they were to represent some party/parties thereto before the Hon'ble High Court today. In such a scenario, it would have been apposite on the part of those advocates to give an intimation to the legal representative appearing for the applicant about their inability to remain present before this Bench today so that the applicant/petitioner could have been spared of spending a big amount in defraying the fee as well as the travelling expenses of the Kolkata based legal representative in attending this Bench at Guwahati.

8. In view of above, learned legal representative for the applicant/petitioner fervently submits before this Bench not to grant any adjournment to the non-applicant/respondent No.1 as prayed for and also urged this Bench to dispose of the application under consideration on the basis of materials already available on record since the learned Advocate for respondent No.4 too expressed his inability even to represent said non-applicant/respondent for reasons more than one. I have considered such submission in the light of materials on record.

9. A bare perusal of the various orders, passed in this proceeding, supports the contention advanced by Mr Gupta opposing the prayer from the side of non-applicant/respondent No.1 seeking adjournment in this proceeding today. Equally importantly, on a perusal of records, more particularly, the order dated 18.09.2017 unmistakably, demonstrates that the applicant/respondent No.1 had never cooperated with this Bench in a way expected of it in getting this proceeding disposed of at an early date. In view of above, I have no other option but to grant adjournment as prayed for by non-applicant/respondent No.1 with a cost of Rs.50,000/- to be paid on the next date.

10. Mr H. Das, learned Advocate for respondent No.4, on the other hand submits that the non-applicant/respondent No.4 had never been served with a copy of the present application and, as such, it is not possible on his part to rebut the allegations in the present proceeding. According to Mr Das, such a conduct on the part of applicant/petitioner also demonstrates that the latter does not consider the respondent No.4 to be the necessary party in the present proceeding. He, therefore, submits that the proceeding in hand is not maintainable against him for the reasons aforesaid.

11. Such contentions were disputed by Mr S.K. Gupta, Sr. PCS, alleging that there are enough materials on record to show that all the non-applicants/respondents including respondent No.4 have been furnished with copies of the present application.

12. In support of such contention, Mr Gupta has laid before this Bench various documents including emails in the possession of applicant/petitioner to show that the copy of the application was duly sent to all the non-applicants/respondents including respondent No.4. The fact that the Registry had accepted the application on 25.05.2017 and subsequently, as per order dated 19.06.2017, undelivered speed post to the non-applicants/respondents were submitted to the Registry of this Bench on 20.06.2017 by the applicant/petitioner along with copies of emails sent to them, make such a conclusion inevitable.

13. He further submits that there is authentic and emphatic information on record to show that the respondent No.4 not only received the copy of the application but also prayed for time to file reply which he, however, never submitted before this Bench at any point of time. Quite interestingly, respondent No.4 was even furnished with copy of the rejoinder, submitted by the applicant in response to reply received from the side of respondent No.1 denying the allegations incorporated in the application under consideration. In view of above, it does not lie in the mouth of Mr H. Das, learned Advocate to contend that the respondent No.4 had never ever been served with copy of the application.

14. I have considered such submissions in the light of materials on record. The Registry is to ascertain itself as to whether copy of the application was served on the respondent No. 4. I find it necessary to ask the Registry to submit a report urgently as to whether there was any proof of service of application, under consideration, to the respondent No.4.

15. List this matter on 23.02.2018.

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

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