

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI

CP No. 28/241(1)/242(4)/243(1)(B)/GB/2016]

Shanta Prasad Chakraborty & others ... Petitioners

Versus

M/s. Madarkhat Tea Co. Pvt. Ltd. & others ... Respondents

Under Section: 241/242/243 & 244 of the Companies Act, 2013

Order delivered on 12-02-2018

Coram:

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

For the Petitioners : Mr. A. K. Roy, FCS

**For the Respondents No.1 to 8 : Mr. S. Bharali, Advocate
Mr. M. Das, Advocate
Ms. N. Sultana, Advocate**

ORDER

On being mentioned by Mr. A. K. Roy, learned counsel appearing for the petitioners, the matter is taken up for hearing on interim prayer.

2. Heard Mr. A. K. Roy, learned counsel for the petitioners. Also heard Mr. S. Bharali, M. Das and Ms. N. Sultana, learned Advocates appearing for the respondents No.1 to 8. None appears for respondents No.9 and 10 and that too without any step.

3. Mr. A. K. Roy, learned counsel appearing for the petitioners today advanced a detailed argument to contend that if some interim reliefs, sought for in this petition are not granted, the very purpose for which the present petition is instituted would get frustrated.

4. In this connection, it has been submitted that this Bench on the basis of materials available on record was pleased to pass an order requiring the parties hereto, to maintain status-quo in respect of the assets of the company and also to restrain the members thereon from alienating their shares to any other person/s, thereby creating a third party interest.

5. In that connection, it has been pointed out that the Madarkhat Tea Co. Pvt. Ltd. was incorporated as back as in 1954 with authorized capital of Rs.5,000/- divided into 50 nos. of equity shares of Rs.100/- each. The five original shareholders were Nandeswar Chakravarty, his wife Tarini Devi and their 3 sons

namely, Tara Prasad Chakravarty, Uma Prasad Chakravarty and Bishnu Prasad Chakravarty. Each of those original shareholders held shares in equal number, the number of same, being ten only. All the original shareholders who were also signatories to Memorandum of Association, (in short, MOA) had expired in the meantime.

6. The present petitioners herein are (1) Tara Prasad Chakravarty, (2) his wife and their two sons. The respondents are offspring of Uma Prasad Chakravarty and Bishnu Prasad Chakravarty (since deceased). According to the petitioners, as on today, the aggregate shareholding of the petitioners in the company stands at 28.72%. In the meantime----- some other shareholders, their aggregate shareholding in the company being 15.97%---- died but their shares have not been transmitted or transferred as yet and therefore, the voting right of the petitioners in the company increases to 34 %.

7. It has also been submitted that the father of the petitioner expired in the year 1986 and since then, his heirs, they being the petitioners, could not participate in the management of the company. Equally importantly, though their shareholding in the company stands at 28.72% and although the company has in its possession huge wealth, for the last 30 years, the company never gave the petitioners even a **farthing** forcing them to eke out their livelihood from other resources.

8. In 2015, the respondents No.2 and 3, on behalf of all the respondents, had approached the petitioner No.1 who always represents the other petitioners stating that the company had been passing through some difficult phases which placed the company in dire distress. In order to address such hopeless and desperate situations, the help of petitioners was felt extremely essential.

9. After having parleys with the respondents, focusing on the problems, faced by the company, the parties had resolved to enter into a MOU in order to bail out the company from the crisis, it was in. Pursuant thereto, a family settlement was entered into by the parties. As per such settlement, Bochapathar Tea Estate Pvt. Ltd. was to come to the petitioner whereas Madarkhat Tea Co. Pvt. Ltd. was to go to the respondents, copy of such settlement is annexed with the petition as Annexure-K.

10. However, after such settlement, the petitioners made an enquiry to know the exact assets and liabilities of the Bochapathar Tea Estate Pvt. Ltd. and on making such inquiries, came to know about a series of serious irregularities, committed by the respondents over a long period in running the affairs of the said company. In view of above, the petitioners sought for further clarification from the respondents in order to finalize the said settlement. However, no clarification was found forthcoming from the respondents and as such, the aforesaid settlement could not be finalized.

11. In the meantime, petitioners made more and more enquiry and such enquiry reveal some startling information showing how illegally the affairs of the company are being conducted over long period of time. In that connection, it has been submitted that over a long period of time, a huge amount was realized from the employees of the company as being their contribution towards the PF account but the management failed to deposit such amount to the PF department together with contribution of the company therefor.

12. For such default on the part of the respondents, till 2016, the company owed an amount more than two crores to the PF department which itself is a testimony to the fact of management of the

company has been committing serious crime in running the affairs of the company. In the meantime, the concerned department had also written a letter demanding such outstanding dues. A copy of the letter dated 17th March, 2016 of the PF authorities demanding clearance of the outstanding dues is annexed with the petition as Ext. T.

13. It has also been submitted that on 29-09-2016, a part of Madarkhat Tea Co. Pvt. Ltd---- the area thereof being 782 bighas 0 katha and 01 Lecha was sold to one TEAMAFCO (P). Ltd. for an amount of Rs.8,60,21,000/-However, such a huge amount was not utilized in liquidating the Government dues despite there being huge necessity to clear such Govt. dues. Such episodes speak loud and clear about company being run in a fraudulent and illegal manner.

14. Such alienation is also found untenable in law for other reasons as well. Section 180 of the Act of 2013 says that the Board of Directors of the company can sell, lease or otherwise dispose of the whole or substantially whole of the undertaking of the company etc, only after adopting a special resolution by the Board allowing such alienation. A special resolution can be adopted only when such resolution is approved by the shareholders holding not less than 75% shareholding of the company.

15. According to the petitioners, at all the relevant time, the total shareholding of the petitioners in the company, as stated above, stands at 28.75%. But at no point of time, the petitioners were involved in adopting any resolution for disposing a huge portion of the Madarkhat Tea Estate. Such a conduct on the part of the respondent's amount to violation of direction in Section 180 of the Act of 2013. On this count alone, aforesaid alienation is required to be declared null and void.

16. The Directors of the company are also trustees in relation to the shareholders as well as the properties of the company and, therefore, they are to act in such a way that trust, reposed upon them, does not come under any kind of suspicion at any point of time. However, such trust was thrown to the wind completely in running the affairs of the company. In that regard, it has been submitted that the products of Madarkhat Tea Estate were allowed to be marketed by one Mahalaxmi Trade Agency and same was done not only in violation of law, framed in that regard, but, also making a breach in the trust reposed on the directors.

17. Advancing his argument on this count further, it has been stated that law does not approve related party transactions unless such transactions are brought to the notice of one and all including the shareholders. Referring to an invoice of M/s Mahalaxmi Trade Agency (annexure -W1 to the petition), it has been submitted that the company in the name and style of Mahalaxmi Trade Agency is owned by the respondent No.2 who is one of the directors of the company herein.

18. However, while allowing to market the products of the company by M/s Mahalaxmi Trade Agency, the respondents never made it known to the petitioners that respondent No.2 was the owner of M/s Mahalaxmi Trade Agency. Such episode is one more testimony of affairs of the company being run in total violation of rules and procedures holding the field.

19. Referring to Article 82 of the AOA, it has further been argued that as per aforesaid Article, the number of the directors of the company cannot be more than 7 but less than 3 at any point of time. Said

Article has never been amended. But the records of the company reveals that there are 8 directors of the company, at some point of time, which is a clear violation of the mandate in the AOA of the company.

20. According to the Advocate for the petitioners, all those episodes are forceful testimonies to the fact that the respondents are hell bent in running the affairs of the company not in the manner as prescribed in law and the rules framed thereunder but in accordance with their whims and caprice. If such affairs are allowed to continue, the very purpose of presenting this petition before this Bench would get frustrated and in that event, the petitioners would be left with no other alternative but to return from this Bench empty hand.

21. Mr A.K. Roy, FCS further submits that the petitioners could make out a prima facie case requiring this Bench to grant the interim reliefs, prayed for. He also submits that in the event of refusal to grant interim reliefs, sought for, the petitioners would suffer irreparable loss which cannot be compensated in terms of money. Moreover, the balance of convenience can be maintained between the parties if the reliefs, prayed for, are granted. He, therefore, prays before this Bench that the interim relief/s, prayed for, be granted.

22. Such contentions have been contested by the learned counsel for the respondents arguing that the instant petition is not maintainable for reasons more than one. Referring to explanation (2) of Section 244 of the Act of 2013, it has been submitted that where any members of a company are entitled to make an application under sub-section (1) of Section 244, any one or more of them having obtained consent in writing of the rest may make the application on behalf and for benefit of all of them.

23. But in the case in hand, the mandatory directions rendered in Explanation (2) of Section 244 as well as Rule 81 (2) of the Rules of 2016 were honored only in violation. In support of such contention, it is being argued that no written consent was obtained by petitioner No.1 from the other petitioners in order to prefer the petition under consideration before this Bench. Such violation alone requires this Bench to dismiss the present proceeding on this count alone.

24. The Advocate appearing for respondents also urges this Bench not to take cognizance of the allegation relating to disposal of some part of the Madarkhat Tea Estate -----since -----the document on the basis of which such an allegation was canvassed before this Bench has never been furnished to the respondents and as such, they are not in a position to suitably reply to such allegation.

25. Such contentions were opposed to by the learned counsel of the petitioners. In that connection, my attention has been drawn to pages 1344 and 1531 of the company petition to contend that the requirement of Explanation (2) of Section 244 as well as the provisions of Rule 81 (2) of the Rules of 2016 have already been complied with, since all the petitioners (Petitioners No.2, 3 and 4) through their individual power of attorney authorized the petitioner No.1 to file the present petition.

25. In regard to other allegation, viz. non-supply of copy of sale deed, it has been submitted that there is little scope to deny the veracity of the sale deed aforesaid. Even if, such sale deed is kept out of the purview of the present proceeding at the moment, the other materials available on record, which have already been alluded to hereinbefore, make out a clear case requiring this Bench to grant the reliefs sought for.

26. I have heard the rival submissions. So far as the contentions of the respondents that the petition is not maintainable, the same is not found to be correct. A perusal of the documents attached with the petition at page 1344 and 1531 makes it more than clear.

27. I have also considered the other submissions advanced from the side of the petitioners and found that even if the sale deed aforesaid is kept outside the preview of the present proceeding, other materials which are already brought to the notice of the Bench prima facie make out a case to show that the dispute in the present proceeding needs adjudication.

28. Further, I am also of the opinion that if the reliefs sought for are not granted, the very purpose of the present proceeding may be frustrated. For the same reasons, I am also of the opinion that the balance of convenience between the parties can be maintained only if some of the reliefs, sought for, are granted.

29. Resultantly, the respondents are directed to maintain status-qua in regard to the fixed assets of the company as on today. The respondents are further directed not to change the shareholding pattern of the company until further orders.

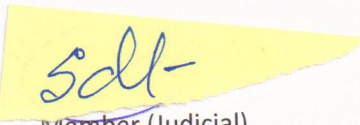
30. Regarding appointment of Special Officer, the matter would be considered on the next date of hearing, depending on the developments in the meantime.

31. The learned counsel for the respondents submitted that he needs some time to file reply. The respondents are allowed two weeks' time to file their reply simultaneously serving copy thereof to the petitioners. The petitioners are also directed to submit their rejoinder if any, within two weeks' time from the date of receipt of reply from the respondents, simultaneously supplying copy thereof to the respondents as well.

32. Both the parties submitted that paragraphs 4 and 5 of the Order rendered by this Bench on the last occasion on 10th January, 2018 do not relate to the present proceeding and, therefore, the same needs to be ignored/deleted.

33. On a perusal of the Order dated 10th January, 2018 passed in the present proceeding, it is found that paragraphs 4 and 5 of the Order rendered by this Bench on the last occasion on 10th January, 2018 do not relate to the present proceeding. Therefore, the paragraphs 4 and 5 of the order dated 10.01.2018 stands deleted.

34. List the matter on 21st March, 2018.


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

Dated, Guwahati, the 12th February, 2018

Deka/12-02-2018

Nkm/15.02.2018