

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

T P No 04/397/398/GB/2016
(C P No.994 of 2011)

With
T.A.No.29/2016,
I.A.No.16/2017
&
I.A.No.20/2017,

Under Section 397/398 of the Companies Act, 1956

In the matter of:

Gaurangika Patel (on the death of Kanubhai Patel) &
Ors.

... Petitioners

-Versus-

Doloo Tea Co. (I) Ltd. & Ors.

... Respondents

Coram:

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

.....

ORDER

Date of Order: 5th February 2018

Mr S.N. Mitra, learned Sr. Advocate, Mr D.N. Sharma, Mr N. Dasgupta, Ms D. Chatterjee and Mr S.S. Roy, learned Advocates are present on behalf of the petitioners.

2. Mr S. Sen, Mr A. Banerjee, Mr R. Mullick & Mr G. Khandalya, learned Advocates represent the respondent No.1 company. Mr R.K. Mitra & Mr A. Das, learned Advocates, represent the respondent No.14 and Ms J. Tripathi, learned Advocate, represents respondent No.15.

3. The applicant/respondent No.1 company has filed I.A.No.20/2017 seeking the following reliefs:

- "a) An order be passed recalling the order dated 19.04.2017 and the applicant/respondent no.1 be allowed to file rejoinder to the said affidavit-in-opposition of the respondent nos.2 to 5 which is ready for filing;*
- b) Stay of all further proceedings in C.P.No.994 of 2011 T.P.No.04/397/398/GB/2016 till the disposal of the instant application;*
- c) Ad interim order in terms of the above prayers;*
- d) Costs of an incidental to this Application be paid by the petitioners;*
- e) Such further and/or other orders be passed, direction and/or directions be given as to this Hon'ble Tribunal may deem fit and proper."*

4. In the application, the applicant/respondent No.1 company has submitted that in the written statement of non-applicants/respondent Nos.2-5, some information was incorporated which was totally damaging to the claim, advanced by the applicant/respondent No.1 company in the connected company petition.

5. Since the applicant/respondent No.1 company was not aware of such remarks, made by non-applicants/respondent Nos.2-5 in their written statement, the applicant/respondent No.1 company wants that it may be given a chance to rebut some of the remarks which were incorporated in the reply filed by the non-applicants/respondent Nos.2-5. Such a prayer was objected to by the other respondents of the connected company petition.

6. This Bench, on hearing the parties on 19.04.2017, was pleased to reject the arguments advanced from the side of the applicant/respondent No.1 company by its order dated 19.04.2017. Thereafter, the applicant/respondent No.1 company has come up with the present application seeking aforesaid reliefs, more particularly, the recalling of the order dated 19.04.2017 rendered in the connected company petition.

7. I have heard Mr S. Sen, learned Advocate for the applicant/respondent No.1 company and also heard Mr S.N. Mitra, learned Sr. Advocate for the non-applicants/petitioners. Also heard Mr R.K. Mitra and Mr A. Das, learned Advocates for respondent No.14 and Ms J. Tripathi, learned Advocate for respondent No.15.

8. On perusal of the application, it appears to me that by the present application, the applicant/respondent No.1 company has prayed for reviewing the order dated 19.04.2017 rendered by this Bench in the connected company petition. It

is an established proposition of law that under Section 420 (2) of the Act of 2013, this Tribunal has limited power to rectify the errors, apparent from the record but it does not have the power to grant the relief prayed for in this proceeding since granting of such relief would tantamount to review of its earlier order.

9. Further, in the meantime, some other applications have also been filed questioning the maintainability of the connected company petition and such applications were filed by respondent No.1 company and other respondents in T.P.No.04/2016 (corresponding to C.P.No.994/2011) and all those applications have been disposed of in the meantime.

10. In view of the above, I.A.No.20/2017, in my opinion, has become infructuous and the same is, accordingly, rejected and dismissed.

T.P.No.04/2016 (C.P.No.994/2011)

11. Mr S. Sen, learned Advocate for respondent No.1 company, submits that respondent No.1 company has preferred an appeal before the Hon'ble NCLAT against the order dated 18.12.2017, rendered by this Bench in I.A.No.45/2017. Hon'ble NCLAT has registered the said appeal as Company Appeal No.31/2018.

12. Mr S. Sen further submits that said appeal has been disposed of on 02.02.2018 but he could not obtain the certified copy thereto till date. However, according to Mr Sen, Hon'ble NCLAT was pleased to pass a direction asking the respondent No.1 company to file a separate application challenging the maintainability of T.P.No.04/2016 (corresponding to C.P.No.994/2011) with a rider that such application is to be filed within 3 weeks from the date of order.

13. Since Hon'ble NCLAT has allowed respondent No.1 company to file a separate application questioning the maintainability of T.P.No.04/2016 (corresponding to C.P.No.994/2011), Mr S. Sen, learned Advocate, submits that hearing in the proceeding in hand may be adjourned today to enable the respondent No.1 company to file proper application as indicated by Hon'ble NCLAT in its order dated 02.02.2018.

14. Such prayer is objected to by Mr S.N. Mitra, learned Sr. Advocate appearing for the petitioners. In that connection, it has been submitted that this Bench by its order dated 17.11.2017 held that the plea, raised by respondent No.1 company

and other respondents questioning the maintainability of the present proceeding, are nothing but mixed questions of law and fact and, as such, same are to be heard simultaneously when other pleas, raised by the parties hereto, are heard on merit.

15. The aforesaid order passed by this Tribunal was affirmed by NCLAT in its order dated 19.01.2018 rendered in Company Appeal (AT) No.23 of 2018 (Eastern Tea Estates Ltd. Versus Gaurangika Patel & Ors.). Since the order, rendered by this Bench on 17.11.2017 in the proceeding in hand, stood merged with the order passed by NCLAT on 19.01.2018, this Bench, is duty bound to do everything for the further progress of the present proceeding without waiting for respondent No.1 company to file application in terms of the order dated 02.02.2018 i – argues Mr S.N. Mitra, learned Sr. Advocate for the petitioners.

16. Mr S.N. Mitra, learned Sr. Advocate, referring to the order dated 19.01.2018 in Company Appeal (AT) No.23 of 2018, again submitted that the order dated 19.01.2018 was rendered in presence of all the parties including Doloo Tea Company which required one and all concerned to take necessary steps for further progress of the proceeding in hand. Therefore, same is binding on all the parties hereto which includes respondent No.1 company.

17. Mr Mitra disputes the submission advanced by Mr Sen contending that Hon'ble NCLAT, while rendering the order dated 02.02.2018, had stated that respondent No.1 company may file fresh application challenging the maintainability of T.P.No.04/2016 (corresponding to C.P.No.994/2011) provided that such an application has not been filed as yet.

18. In course of submission, Mr S.N. Mitra, learned Sr. Advocate, further contended that while rendering the order dated 02.02.2018 in Company Appeal (AT) No.23 of 2018, Hon'ble NCLAT had never passed any order staying the operation of the order dated 18.12.2017 under which this Bench proposed to hear all the questions of law and facts simultaneously. Therefore, there is no necessity on the part of this Bench not to proceed with the hearing of the present case as sought for by the respondent No.1 company.

19. It is also the case of Mr S.N. Mitra, learned Sr. Advocate, that this Bench had already heard the arguments advanced from the side of the petitioners both on law and facts and thereafter, Mr Sen, learned Advocate for respondent No.1 company

had argued in the present proceeding on number of questions of law in great length, which this Bench had already held to be questions of law and facts and, therefore, same cannot be adjudicated upon as preliminary issues on law alone.

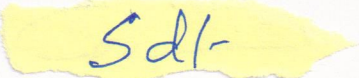
20. More importantly, respondent No.1 company had already challenged the maintainability of the proceeding on counts more than one and all these contentions were addressed by this Bench in its various orders. Therefore, there cannot be any scope for allowing the respondent No.1 company to file fresh application on the maintainability of present proceeding--- argues Mr S.N. Mitra.

21. I have considered the rival submissions. This Bench does not have the opportunity to peruse the order passed by Hon'ble NCLAT on 02.02.2018 in Company Appeal (AT) No.23/2018. However, on consideration of the submissions, advanced from the side of the parties, this Bench forms an opinion that respondent No.1 company has reportedly, been given opportunity to file fresh application to challenge the maintainability of the proceeding in hand and same is required to be done within 3 weeks from the date of the order.

22. However, the learned Advocate for the respondent No.1 company had submitted that he would file such demurer application within 2 weeks from today. Accordingly, the respondent No.1 company is directed to file demurer application within 2 weeks from today supplying simultaneously copies thereof to the petitioners for information and necessary action.

23. The petitioners, if so advised, may file rejoinder thereto within one week therefrom supplying simultaneously copy thereof to the respondent No.1 company.

24. List this matter on 27.02.2018.


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

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