

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI

C.P. No.01/2016

Under Section: 241(1)/242(4)/243(1) of the Companies Act, 2013

In the matter of:

Shanta Prasad Chakraborty & others ... Petitioners
-versus-
M/s. Bochapathar Tea Estate Private Ltd. & others ... Respondents

Order delivered on 08-11-2017

Coram:

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

For the petitioners	:	Mr. Anjan Kumar Roy, FCS Mr. Sanjay Kumar Baid, FCS
Petitioner No.1 in person	:	Mr. Shanta Prasad Chakraborty
For respondent No. 1 & 2	:	Mr. Surajit Bhjarali, Advocate
For respondent No. 3 & 4	:	Mr. Gautam Rahul, Advocate Mr. Manash Das, Advocate
Respondent No.2 – in person	:	Mr. Sanjeeb Kr. Chakraborty
Respondent No.3 - in person	:	Mr. Chattaranjan Chakraborty

ORDER

1. Heard Mr. S. Bharali and Mr. N. K. Neog, learned counsel appearing for the respondents No.1 & 2 and Mr. Gautam Rahul and Mr. M. Das, learned counsel representing the respondents No.3 & 4 respectively. Also heard Mr. A. K. Roy, FCS and Mr. S. K. Baid, FCS, the legal representatives of the petitioners.
2. The petitioner No.1, Mr. Shanta Prasad Chakraborty as well as the respondent No.2, Shri Sanjeeb Kumar Chakravarty and respondent No.3, Sri Chittaranjan Chakravarty are also present in person before this Bench today.

3. On the last occasion, this bench was pleased to pass the following order on 16-03-2017: -

"ORDER

Mr. Anjan Kumar Roy, FCS and Mr. Sanjay Kumar Baid, FCS, learned counsel representing the petitioners are present. Mr. S. Bharali and Mr. N. K. Neog, learned counsel appearing for the respondents No.1 & 2 and Mr. Gautam Rahul and Mr. M. Das, learned counsel representing the respondents No.3 & 4 respectively are also present before the Tribunal today.

The Petitioner No.1, Sri Shanta Prasad Chakravarty, respondent No.2, Shri Sanjeeb Kumar Chakraborty, and respondent No.3, Sri Chittarancjan Chakravarty are also present in person before this Bench today.

This bench, on the last occasion rendered the following order on 03-10-2017:

"ORDER

Date of Order: 3rd October, 2017

Mr. A. K. Roy, Sr. FCS and Mr. S. K. Baid, FCS are present before this Tribunal representing the petitioners. Mr. S. Bharali and Mr. M. Goswami, learned Advocates are present for respondent Nos. 1 & 2 and Mr. M. Das, learned Advocate represents respondent Nos.3 & 4.

2. *Vide order dated 11.09.2017, this Bench was pleased to post this proceeding today for filing sur rejoinder from the side of the petitioner. However, the parties to this proceeding have informed that a talk of compromise is going on between the parties and therefore, there is every likelihood of the dispute being settled amicably.*

3. *In that connection, the respondents have also submitted a proposal before this Tribunal seeking resolution of the dispute amicably, copy of which was also furnished to the petitioner.*

4. *Mr. A. K. Roy, FCS, on instructions, submits that the petitioner needs some time to examine the proposal advanced from the side of the respondents. Therefore, he prayed that some time may be granted to the petitioner in that regard. Mr. Roy further submits that in order to appreciate the proposal submitted by the respondents some more documents are also required. The documents required are as follows:*

- a) A fresh audit by a reputed independent auditor have to be conducted of the amount of both the companies i.e. M/s. Bochapathar Tea Estate (P) Ltd. & Others and Madarkhat Tea Co. (P) Ltd. from the year 2009-2010 till date.*
- b) A fresh valuation by a reputed independent valuer to be done by both the companies, namely, M/s. Bochapathar Tea Estate (P) Ltd. & others and Madarkhat Tea Co. (P) Ltd.*

5. *List the matter on 16.10.2017 for hearing.*

6. *In the meantime, the parties shall make necessary exercise regarding selection of firms/agencies who would eventually be entrusted to do the audit and valuation of the companies.*

7. *In view of the above submission, filing of sur rejoinder from the site of the petitioner is deferred until further orders.*

8. *Further, as ordered earlier, the mentioning of the company petition pertaining to Madarkhat Tea Co. (P) Ltd. is deferred until further orders.*

9. *It is alleged by the petitioner that respondents are trying to dispose of some of the properties pertaining to the companies aforementioned which is denied by the respondents.*

10. *However, taking into consideration all the matters involved in this proceeding and other connected proceedings, the parties are directed to maintain status quo as on today in respect of the assets of the companies until it is directed otherwise.*

*Sd/- Member (Judicial)
National Company Law Tribunal,
Guwahati Bench,
Guwahati"*

Mr. Bharali and Mr. N. K. Neog, learned advocates representing the respondents No.1 & 2 and Mr. Gautam Rahul and Mr. M. Das, learned counsel representing the respondents No.3 & 4 submit that following the demand notice issued by the Recovery Officer, Assam Tea Employees' Provident Fund Organization, Dibrugarh, they are not in a position to carry out some directions rendered in the order aforesaid.

In that connection, I have heard Mr. A. K. Roy, Sr. FCS, learned counsel for the petitioners coming forward with some proposals seeking resolution to the disputes in the proceedings which are registered as CP No.01/241(1)/242(4)/243(1)(b)/GB/2016 as well as Diary No.567/2017.

The learned counsel appearing for the respondents in both the proceedings, as well as some shareholders present before this Bench representing the respondents, have prayed that oral proposal regarding settlement of the disputes in the aforesaid proceedings, from the side of the petitioners be reduced to writing and be furnished to the respondents for their consideration of the same and doing further needful thereon.

The learned counsel of both the parties, however, assured the Bench that the parties would do everything possible to resolve the disputes in the proceedings in hand, amicably.

On hearing the learned counsel for both the parties, the petitioners side is directed to reduce the proposal from their side seeking resolution of the disputes in the proceedings in hand to writing and is directed to furnish copy thereof to the respondents.

The petitioners have apprised the Bench that some agreements might have been entered into by the company and the respondents regarding discharging some affairs of the company by the third party. Therefore, the respondents may be directed to furnish to this Bench a copy of the agreements allowing some third parties to discharge some of the affairs of the company, with a copy thereof to the petitioners for their information and necessary action.

In this connection, I have heard the Managing Director of the company (respondent No.2) who was also personally present before this Bench today. The respondent No.2 has admitted having entered into an agreement with some third parties allowing it to discharge some of the affairs of the company, but the company had to do it under some serious compulsion.

Therefore, I find it necessary to direct the respondents to furnish to this Bench on or before the next date, copy of agreement entered into with the third party allowing the later to discharge some of the affairs of the company, simultaneously supplying a copy thereof to the petitioners for their information and necessary action.

The respondents have stated that the Recovery Officer, Assam Tea Employees' Provident Fund Organization, Dibrugarh had issued a notice demanding an amount of more than Rs.2.00 Crores as statutory dues, the same being contribution of the company towards provident fund of the employees of the company.

However, if the company is to pay such a huge amount immediately as demand by the aforesaid authority, then, it would come in the way of settlement of the disputes in the proceedings in hands. The respondents have, therefore, urged this Bench to pass necessary directions to the P. F. authorities aforesaid, not to give effect of the aforesaid notice at least for some time.

Since the aforesaid Provident Fund Authority is not a party in the proceedings in hand, this Bench is handicapped in rendering any direction to them without being heard. However, the parties are advised to submit a copy of this order requesting the said authority not to proceed for enforcement of the directions given in the notice aforesaid, at least for some time.

Copy of this order be furnished to the parties for their needful as indicated above.

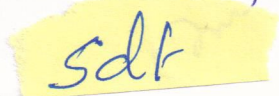
List this matter on 08-11-2017 for further hearing."

4. In terms of the aforesaid order, the respondents herein, have submitted a proposal responding to the proposal from the side of the petitioners seeking resolution of the disputes in the proceedings in hand amicably, a copy of which has also been furnished to the petitioners.
5. The legal representatives of the petitioners have submitted that the proposal which is submitted from the side of the respondents today is signed only by Mr. Sanjeeb Kr. Chakravarty (R-2) and Mr. C. Chakraborty (R-3), but the same has not been signed by the R-4, namely, Mr. Tridip Kumar Chakravarty. Such an infirmity in the proposal submitted from the side of the respondents, before this Bench today, may present some serious difficulties in future in getting the disputes herein, settled amicably.
6. Mr. Bharali and Mr. Gautam Rahul, learned counsel appearing for the respondents No.1 & 2 and respondents No.3 & 4 respectively, on instruction, submit that Mr. Sanjeeb Kr. Chakravarty (R-2-) and Mr. Chittaranjan Chakravarty (R-3), have signed the proposal for and on behalf of all the respondents and being so, such proposal seeking resolution of disputes in this proceeding, is a proposal from all those respondents and therefore, same is binding on all of them.
7. Being so, the apprehension, expressed by the legal representatives appearing for the petitioners are without any basis and, therefore, question of the proposal, submitted before this Bench from the side of the respondents, would pose some problems to the ongoing process of amicable settlement, does not arise at all. Moreover, Mr. Sanjeeb Kr. Chakravarty (R-2) and Mr. C. Chakravarty (R-3), who are present before the Bench today personally, have affirmed the submissions so advanced by the counsel for the respondents. This Bench takes note of such submission and undertaking.
8. The legal representatives appearing for the petitioners again submit that they need some time to consider the proposal submitted from the side respondents today and, therefore, they urged this Bench to grant at least three weeks' time for the purpose aforesaid. On hearing the parties, such prayer is allowed.

9. In terms of the order rendered on the last occasion, the respondents have submitted a photocopy of the power of attorney dated 06-10-2017. However, such photocopy was not filed in accordance with requirement of laws and rules framed thereunder. The counsel for the respondents have prayed for some time to do the same.

10. On hearing the parties, the respondents are directed to submit the said power of attorney before this Bench under an affidavit, at least one week ahead of the next date, supplying simultaneously, a copy thereof to the petitioners for their perusal and needful.

11. Registry is directed to fix the matter on 08-12-2017 for further orders.


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

Dated, Guwahati, the 08th November, 2017

Deka/08-11-2017