

ATTENDANCE-CUM-ORDER SHEET OF HEARING

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

C.P. No.14/241/242/GB/2017

Mukesh Goel & Ors.

... Petitioners

-Versus-

M/S Goel Marketing & Distribution
Company Ltd. & Ors.

... Respondents

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

Date of hearing: 15th May 2017.

Name of the Company	M/S Goel Marketing & Distribution Company Ltd. & Ors.	
Under Section	241/242	

Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

ORDER

This matter has been taken on Board on being mentioned by Mr M. Sukhija, learned Advocate for the petitioners. Also heard Mr R. Dubey, learned Advocate representing the respondent Nos.1-5.

2. This petition was received by the Registry of this Bench on 11.05.2017. However, on scrutiny of the petition, Registry had raised some objections and

therefore, the petition was returned for rectification of the defects noticed. For ready reference, the objections, raised are reproduced below:

"Petition under section 241:

1. *Affidavit has to be in the prescribed format, i.e. form 6 of NCLT Rules.*
2. *Please refer to rule 81 of NCLT rules- a consent letter on behalf of all the petitioners jointly filing the petition has to be submitted before the Tribunal*
3. *Petition should be accompanied with NCLT Form 2 – Notice of admission.*

Application under rule 11

Application should be in NCLT Form 1

Affidavit verifying the application should be in NCLT Form 6.

Form 3 on notice of motion is to be submitted.

Petition under section 59

Please check annexure b of NCLT Rules, 2016 for a list of documents to be attached with the main petition under section 59 of the Companies Act, 2013."

3. I have also visited the objections raised by the Registry quoted hereinbefore. The petitioners have now rectified the defects and resubmitted the petition after rectifying some of those defects pointed out. However, defect in respect of allegation under Section 59 of the Companies Act 2013 has not been rectified as yet as is evident from the Registry's note and, therefore, Registry desires the Tribunal to pass necessary order in regard to the defect in the petition which has not yet been rectified.

4. I have drawn the attention of learned Advocate for the petitioners to the aforesaid defect who, however, agrees to delete the aforesaid provisions in regard to allegation under Section 59 from the cause title of the petition and submits that in the petition in hand, the petitioners would confine their case only to the allegations under Section 241/242 of the Companies Act, 2013.

5. In that connection, I have also perused the petition and connected documents and found reason to accept the aforesaid prayer made by the learned Advocate for the petitioners. Accordingly, prayer seeking deletion of Section 59 of the Act of 2013 from the Cause Title of the petition is accepted. The learned Advocate for

the petitioners is asked to make necessary rectification in the cause title of the petition in accordance with prescription of law and Rules made thereunder.

6. Resultantly, the petition is admitted for hearing. Since respondent Nos.1-5 have already entered appearance through their engaged counsel Mr R. Dubey, notice need not be issued to respondent Nos.1-5. However, the petitioners are directed to furnish the counsel for respondent Nos.1-5 copy of the petition and other connected documents during the course of the day. The petitioners are also directed to issue notice to respondent Nos.6 & 7. In that connection, the petitioners are further directed to issue notice to respondent Nos.6 & 7 by Registered Post with A/D and also by sending same by email. Steps be taken within 3 days from today.

7. The learned counsel for the petitioners submits that in this petition, the basic allegations against the respondents are in the nature of mismanagement and oppression having been perpetuated on the petitioners. In that regard, it has been alleged that the petitioner Nos.1 & 2 (hereinafter referred to as P1 & P2) were holding the post of whole-time Director upto a certain period of time. However, due to some personal engagement, both P1 & P2 resigned from the post of whole-time Directors vide resignation letters dated 23.03.2016. However, they continue to work as normal Directors of the company till date. Unfortunately, the respondents had in the meantime removed P1 & P2 from the Board of Directors and same was done in complete violation of law.

8. The learned Advocate for the petitioners has further contended that 3 companies, who are referred to in the petition, were holding the shares in R1 company, their number being 60,000 which were transferred to respondent No.3 who is the wife of respondent No.2 but same was done in complete violation of the provisions of the Act as well as the arrangements made in the Articles of Association (in short, AOA) and Memorandum of Association (in short, MOA).

9. In support of such contention, it has been argued that a special resolution was adopted by the Board of Directors empowering the company to transfer aforesaid 60000 shares only to R3 who is one of the existing shareholders of the company. What is worse is that the aforesaid resolution was adopted in the meeting of the Board of Directors which was convened without even notifying the same to P1

& P2 who were on the Board of Directors of the company on the date on which such meeting was held.

10. Being so, the resolution adopted in the Board Meeting empowering the company to transfer 60,000 shares to R3, as well as the transfer of aforesaid shares to the latter being violative of law and AOA etc. become unsustainable in law and, as such, such resolution as well as transfer of equity shares to R3 are required to be set aside. Therefore, this Tribunal is duty bound to direct the respondents to maintain status quo as on today in respect of shareholding and fixed assets of the company until further orders.

11. In that connection, I have also heard Mr R. Dubey, learned Advocate for respondent Nos.1-5 who has denied all the allegations stating that the resolution vis-à-vis transfer of equity shares to R3 as well as transfer of shares to the latter under the aforesaid resolution were done strictly in accordance with the requirement of law as well as arrangement made in AOA and MOA. Further, P1 & P2 were removed from the Board of Directors on following the prescription of law. Therefore, the present proceeding has no legs to stand on.

12. The learned Advocate for the respondents further submitted that alleged illegalities were committed in March 2016, but then, the petitioners have come up before the Tribunal in May 2017, after a lapse 14 months. The delay in approaching the Tribunal is quite crucial, more particularly, in respect of granting interim reliefs, prayed for in this proceeding. According to the Advocate for the respondents, the delay in approaching the Tribunal itself shows that there is no ground, whatsoever for this Tribunal to grant the interim relief prayed for.

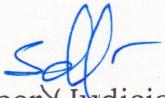
13. Considering the submissions made by the learned Advocates for both the parties and having regard to the averments made in the petition, I find it necessary to direct the respondents that until further orders, they are to maintain status quo as on today in respect of the shareholding as well as the fixed assets of the company.

14. The respondents shall file the reply within 3 weeks from today supplying simultaneously copies thereof to the learned counsel for the petitioners. The petitioners may file their rejoinder, if any, at least 3 days ahead of the next date supplying simultaneously copies thereof to the learned Advocate for the respondents.



15. List the matter 30.06.2017.

16. Copy of the order be handed over to the Advocates for both the parties during the course of the day.



Member (Judicial)

National Company Law Tribunal,
Guwahati Bench,
Guwahati.

nkm

