

ATTENDANCE-CUM-ORDER SHEET OF HEARING

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

**TP No.34/391(1)/394/GB/2016
(CP No.14/2016)**

Netgen Power Private Limited

And

Kauntia Consultants & Investments Private Limited

And

N.E. Thermion Private Limited

... Petitioners

Present: Mr Justice P K Saikia, Member(J)

Date of hearing: 4th May 2017.

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| Name of the Company | Netgen Power Private Limited And Kauntia Consultants & Investments Private Limited And N.E. Thermion Private Limited |
| Under Section | 391(1)/394 |

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

Heard Mr A. Nath and Mr N.J. Medhi, learned Advocates for the petitioners. Also heard Mr K. Sanyal, Asstt. Director, Office of the Regional Director, N.E. Region, Ministry of Corporate Affairs, Shillong on behalf of the Central Government and Mr K. Mao, Assistant General Manager, SEBI, Guwahati.

2. Mr K. Mao submits that though Office of the SEBI, Guwahati has received the notice but copy of the petition and other connected documents have not been furnished to them as yet. As such, they are not in a position to respond to the directions rendered by this Tribunal vide order dated 29.03.2017 on the prayer for sanction of the Scheme of Arrangements between the companies. He, therefore, urges this Tribunal to direct the petitioners to serve copy of petition and other connected documents on SEBI, Guwahati immediately for doing further needful from the side of SEBI, Guwahati.

3. In that connection, I have also heard Mr A. Nath, learned Advocate for the petitioners. On interacting with the learned Advocate for the petitioners as well as Mr K. Sanyal, I am satisfied that SEBI, Guwahati has not been served with copy of the petition and other connected documents as yet and, therefore, the petitioner is directed to serve copy of the petition and other connected documents on SEBI, Guwahati by tomorrow i.e., 05.05.2017,

4. On a perusal of the record, it is also found that the petition and other connected documents have not been served as yet on the Income Tax Department, Reserve Bank of India and Official Liquidator. That being the position, the petitioners are directed to serve notice along with copy of the petition and other connected documents on the Income Tax Department, Reserve Bank of India and Official Liquidator by Registered Post with A/D immediately requiring them to respond to the prayer made in this proceeding.

5. Mr K. Sanyal, Asstt. Director, submits that the Regional Director, N.E. Region, Ministry of Corporate Affairs, Shillong, has raised some objection regarding the prayer made in the petition for sanction of the Scheme of Arrangements among the companies. Such objections are incorporated in the report of the Regional Director. For ready reference, report of the Regional Director is reproduced below:

"That I am holding the Charge of the Regional Director, North Eastern Region, Ministry of Corporate Affairs, at Shillong and duly authorized to make this affidavit on behalf of the Central Government. I am well acquainted with the facts and circumstances of the instant case and competent to affirm this affidavit.

"That it is submitted that on examination of the petition which seeks sanction of the Tribunal to the scheme of amalgamation whereby entire undertaking of the

transferor companies together with all assets and liabilities relating thereto are proposed to be transferred to and vested in the transferee company. In this regard, I am to submit that it is noticed from the MOA of the transferor companies that there is no enabling provisions in the said document which permits the said companies to enter into amalgamation, hence, it is prayed that the petitioner transferor companies may be asked to suitably amend the object clause of their MOA to enable the companies to enter into such arrangements. Further, it is also felt that the object clause III (B) (18) also needs to be suitably amended to accommodate the business of transferor companies. Beside this, it is also seen from the report of ROC (a copy of which is endorsed to this office) that ROC has contemplated enquiry under section 12 (1) of the Companies Act, 2013 which has been violated by M/s Netgen Power Pvt. Ltd. for which ROC has issued show cause notice seeking explanation as why enquiry should not be initiated against both transferor and transferee companies under section 12 of the companies Act, 2013 read with Companies (Adjudication of Penalties) Rules, 2014. It is also learnt that the petitioner has not replied to said notice as learnt from ROCs report in the matter.

"The statements made in paragraph 1 are true to the best of my knowledge and those made in paragraph 2 are the information derived from the records of the case. Further I am to submit that it appears that the Company has to serve a copy of the Petition with the concerned Income Tax Department. Hence the petitioners may be directed to file the compliance report of the submission of the said petition with the concerned Income tax Office. Further, the share valuation report from independent auditor is also required to be submitted. Hence, under the circumstances it is prayed that this Hon'ble Tribunal need not pass any order sanctioning amalgamation of the transferor companies with the transferee company until the following compliances as pointed out by this directorate and ROC are complied with: -

(a) Object clauses of MOAs of both transferor and transferee companies (as pointed out in para 2 of this affidavit) are required to be suitably amended to accommodate the amalgamation of the transferor companies with transferee companies.

(b) Prayers made by ROC may be taken into consideration.

Further, this directorate has raised query against one of the transferor company ie M/s Netgen Power Private Ltd. which has taken huge amount as advance

from customer which is due to a company where in the directors are interested. Beside this it is also seen from the balance sheet as at 31.3.2015 under the heading transactions with enterprise over which key managerial personnel exercise significant influence and under the sub heading Loan taken a sum of Rs.8,25,62,988 is shown, which needs to be enquired to find out whether it is a related party transaction. Hence, it is prayed until, satisfactory explanation is received from the concerned company prayer of the petitioner may not be granted."

6. Mr Sanyal further submits that the ROC has also raised some objections in regard to the prayer for sanction of the Scheme of Arrangements and has submitted a report dated 24.04.2017 in that connection. For ready reference, the report of the ROC is reproduced below:

"That this office has learnt through NCLT Registry's letter dated 03.04.2017 that the Registrar of Companies was directed by NCLT, vide its order dated 03.04.2017, to submit a report/representation under Second Proviso to subsection (1) of Section 394 of the Companies Act, 1956 read with corresponding sections of the Companies Act, 2013 and the rules made thereto about the affairs of the Transferor Companies namely M/s Netgen Power Private Limited, having its registered office at 1st Floor, Annada Bhawan, Ulubari, G.S. Road, Guwahati-7, Kamrup Assam and M/s Kauntia Consultants & Investments Private Limited, having its registered office at 1st Floor, Ivory Enclave, R.G.B. Road, Guwahati-21, Kamrup, Assam and transferee company namely M/s N E Thermion Private Limited, company incorporated under the provisions of Companies Act, 1956 and having its registered office at 1st Floor, Annada Bhawan, Ulubari, G.S. Road, Guwahati-7, Kamrup, Assam.

"That in pursuance of Hon'ble NCLT order dated 03.04.2017 and on the basis of copy of scheme served upon the office of the Regional Director on 29.09.2017, the office had called for information u/s 206 (1) of the Companies Act, 2013, vide its letter dated 07.04.2017 from the petitioner companies and allowed 10 days' time to furnish their comments/replies, but no response has been received in this office till date.

*"That incidentally, this office letter dated 07.04.2017 u/s 206 (1) of Companies Act addressed to N.E. Thermion Private Limited has returned undelivered with postal remark **"Not Available, RTS"**.*

*"That this office had also received a letter dated 06.04.2017 from the office of the Official Liquidator, attached to Gauhati High Court at Shillong informing that a letter dated 16.03.2017 u/s 230 of Companies Act, 2013 addressed to M/s Netgen Power Private Limited has returned undelivered with postal remark **"Not Available, RTS"**.*

"That return of letter addressed to the companies shows that the subject companies are not maintaining their registered offices at the addresses

registered with the Registrar of Companies and hence it is a violation of the provision of section 12 (1) of the Companies Act, 2013.

"That therefore, a show cause notice for contravention of section 12 (1) of the Companies Act, 2013 has been issued to the companies vide this office letter dated 07.04.2017 addressed to the Netgen Power Pvt. Ltd. and letter dated 12.04.2017 addressed to N.E. Thermion Pvt. Ltd., to show cause within 15 days as to why not an enquiry should be initiated against the companies u/s 12 (1) read with Companies (Adjudication of Penalties) Rules, 2014 for non-maintenance of registered office.

"That non receipt of satisfactory reply from the companies within the stipulated time may warrant an enquiry to be initiated against the companies' u/s 12 (1) of the Companies Act, 2013 read with relevant rules made thereunder.

"That in the circumstances stated above, this office has not been able to make a representation in the matter.

"That in view of the facts and circumstances it is respectively prayed before this Hon'ble Tribunal that:

- i. The Petitioners may be directed to immediately furnish a copy of the petition as well as Scheme of Amalgamation upon the office of the Registrar of Companies.*
- ii. The Petitioners may be directed to immediately furnish their replies to this office letter dated 07.04.2017.*
- iii. The office of the Registrar of Companies be allowed at least one month's time, after receipt of replies from the companies, to submit its representation in the interest of all concerned and in public interest.*
- iv. The companies may be asked to explain the status of contemplated enquiry u/s 12 (1) of the Companies Act, 2013.*
- v. The Hon'ble National Company Law Tribunal may be pleased to pass such further order or orders as may be deemed fit and proper in the matter."*


7. Thus, it is found that the ROC, Shillong had already issued notice to the petitioners asking them to show cause as to why necessary proceeding should not be initiated against them for violating the provisions of the Companies Act. Similarly, Regional Director, N.E. Region too suggested some modifications in the MOA in order to comply with the requirements of law.

8. The learned counsel for the petitioners have prayed for some time to respond to the show cause notice issued by the ROC and also to do the needful in the Scheme of Arrangement among the companies as indicated by the Regional Director, N.E. Region in his report. Prayer is allowed.

9. In view of the above, list this matter on 16.06.2017.

10. The petitioners are directed to file an affidavit at least 3 days ahead of the next date stating that all the directions in this order have been complied with.

11. The Registry is also directed to send a copy of this order to ROC and the Regional Director immediately by Registered Post with A/D and bv email as well.


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

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