

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

TP No. 02/446/GB/2017

M/s. National Building Construction Corporation(India) Ltd

-Petitioner

-Versus-

The Official Liquidator

- Respondent

PRESENT

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

Date of Order : 04.04.2017

Name of the Company	
Under Section	446

Sl. No.	Name & Designation of Authorized Representative.(in Capital Letters).	Appearing on behalf of	Signature with date
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ORDER

Heard Mr. Aswini Thakur, learned Senior Counsel, assisted by Ms. J.R.Thakur, learned counsel appearing on behalf of the applicant/ petitioner.

The facts necessary for disposal of present proceeding, in short, are that one M/s. National Building Construction Corporation (India)Ltd, hereinafter referred to as petitioner, had supplied Ready Mix Concrete to M/s. Double Dee Constructions (P) Ltd (hereinafter referred to as winding up company) at an agreed rate and consideration thereof was to be paid in accordance with arrangement made between the parties. It has been stated that the company was to pay an amount of Rs. 71, 63,850/- to the petitioner which was to be paid within 30 days from receipt of the RMC.

The company received the entire RMC without any objection and also accepted the bill of the petitioner-creditor. The petitioner had received 2(two) cheques both dated 12.12.2009 for an amount of Rs. 20(twenty) lakhs each drawn on the Punjab National Bank, but upon presentation, the cheques were dishonoured by the Bank due to insufficient fund in the account of the company. Since, the winding up company did not repay the debt to the petitioner company, the petitioner company had initiated a winding up proceeding against the respondent company under the Companies Act of 1956 which was registered as C.P.No.8 of 2010.

On hearing the learned counsel for the parties, Hon'ble Gauhati High Court was pleased to pass an order dated 06.06.2012 in C.P.No.8 of 2010, directing the Official Liquidator, amongst other things, to take immediate possession of the assets and the properties of the winding up company. The relevant paragraphs of the order of the Hon'ble Gauhati High Court are reproduced below: -

" para 14. In the result, the winding up petition is allowed. The respondent company accordingly be wound up and the Official Liquidator is accordingly directed to take immediate possession of the assets and properties of the respondent company".

"Para 15. Let the Registrar General inform the Official Liquidator under Rule 109 of Company (Court), Rules 1959 in form 50 and draw up necessary orders under Rule 111 in form 52 under the Companies (Court) Rules 1959".

"Para 16 The petitioner company is directed to take steps to advertise the order for winding up of the respondent company by the Company Court in Form 53 under Rule 113 of the Companies (Court) Rules 1959. The advertisement be published in "The Assam Tribune" and the "Dainik Janambhumi".

While the Liquidation process was going on, the petitioner herein has filed a suit before the Delhi High Court in 2013 seeking realization of money from the winding up company. However, in due course, Hon'ble Delhi High Court came to know that the company aforesaid has already been wound up under the order of the Hon'ble Gauhati High Court.

Since a company underdoing liquidation process cannot be permitted to be sued, without obtaining leave from the concerned High Court which ordered the winding up of the company, Hon'ble Delhi High Court had directed the petitioner to approach Hon'ble Gauhati High court seeking leave for continuation of the suit already instituted against the aforesaid company.

In view of above, the petitioner has approached Hon'ble Gauhati High Court and filed a petition seeking leave for continuation of the suit against the aforesaid company vide Co. Appl. No. 1/2017. However, Hon'ble High Court has transferred said proceeding to this court in view of notification dated 07.12.2016 vide order dated 18.01.2017 in Co. Appl. No. 1/2017. For ready reference, said order is also reproduced below: -

Heard Mr. A. Thakur, learned counsel for the petitioner. He submits that this application is filed under the provision of Section 446 (1) of the Companies Act, 1956 praying for leave to proceed with the pending suit before the Delhi High Court. This Court finds that by virtue of the notification dated 7.12.16, the National Company Tribunal, Guwahati Bench have the jurisdiction to entertain such application under the Companies Act, 2013.

In view of above, Mr. Thakur prays for withdrawal of this petition with liberty to approach the jurisdictional Court/Tribuna.


The petition is closed on withdrawal with the liberty as prayed for".

In view of the above, the petitioner has filed the instant petition before this Bench of NCLT.

List this proceeding on 11.04.2017 for further orders.

Petitioner is directed to take steps in the matter of service of notice on the respondent (the Official Liquidator). Needless to say that notice must accompany a copy of the petition along with all other connected documents.

Registry is also directed to send notice of this proceeding to the Official Liquidator for information and necessary action.



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

Samir