

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI

TP No.21/2016
(CP No.188/2015)

Under Section: 397/398 of the Companies Act, 1956

In the matter of:

Rupak Mahanta

... Petitioner

-versus-

Vivik Cylinder Pvt.Ltd & Ors.

... Respondents

Order delivered on : 13.10.2017

Coram:

PRESENT

HON'BLE MR.JUSTICE P.K.SAIKIA , MEMBER (JUDICIAL)

For the Petitioner: Mr.P.K.Roy, Advocate
Mr. S.Bose, CA.

For the Respondents: Mr.U.K.Barman, Advocate
Mr. M.Jain, CA.

ORDER

Today Mr. Rupak Mahanta, petitioner herein is personally present before this Tribunal. He is also represented by Mr. Mr.P.K.Roy, Advocate. Vivik Cylinder Pvt. Ltd & others are represented by Mr. U.K.Barman, Advocate. The respondent No.2, Ms Hemaprava .Devi is also personally present today before this Tribunal.

This proceeding was initiated by Mr.Rupak Mahanta, against Vivik Cylinder Pvt.Ltd & Ors.(respondents therein) before the Company Law Board, Kolkata (in short CLB) Kolkata on the allegations that the affairs of the Vivik Cylinder Pvt Ltd had been conducted in an oppressive manner causing mismanagement of the affairs of the company as well and, therefore, the petitioner sought for various reliefs including his

reinstatement as Director of the Company. Such a proceeding was registered as C.P.No.188 of 2015.

During the pendency of the said proceeding before the CLB, Kolkata, the Companies Act, 2013 was brought into operation which abolished the institution of CLB and in its place National Company Law Tribunal (in short NCLT) was brought into existence to deal with various matters including oppression and mismanagement. This is how, said proceeding stood transferred to this Bench of NCLT for taking further necessary action in accordance with the prescription of the Companies Act, 2013.

After the transfer of the proceeding to this Bench of NCLT, same was registered as TP No.21/2016 and parties thereto were directed to appear before this Tribunal for taking such further order or orders as this Tribunal may deem fit and proper. In due course, the parties were heard at length and ultimately the proceeding was allowed granting some of the reliefs sought for by the petitioner, namely, Mr. Rupak Mahanta.

However, thereafter the parties hereto have tried to settle the dispute amicably and, therefore, in course of time, this Tribunal had granted several adjournments to facilitate a compromise between the parties hereto. But then, this Tribunal during the course opined that in the interest of justice, an execution proceeding is required to be initiated for disposing the present proceeding finally. Accordingly, necessary direction was given to the Registry vide its order dated 11th October, 2017.

For ready reference, the said order dated 11th October, 2017 is reproduced below:-

*"NATIONAL COMPANY LAW TRIBUNAL
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Vivik Cylinder Pvt. Ltd. & Ors. ... Respondents

Coram:

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

ORDER

Date of Order: 11th October 2017

Mr P.K. Roy , learned Advocate and Mr S. Bose, CA are present representing the petitioner. On the other hand, Mr U.K. Barman, Advocate and Mr M. Jain, CA. are present for the respondents. Mr R. Mahanta, the petitioner and Ms H. Devi, respondent No.2 are also personally. present

2. The parties hereto submit that the matter in dispute in this proceeding has been settled amicably on certain terms and conditions arrived at by the parties. Such terms and conditions are said to be as under:

- i) The petitioner, Mr R. Mahanta, would pay Rs.1 crore to the Industrial Cooperative Bank in order to liquidate the overdraft loan amount to the tune of Rs.1 crore in the name of Vivik Cylinder Pvt. Ltd.
- ii) Respondent No.2, Ms H. Devi, will withdraw the fixed deposit amounts of Rs.39,60,600/-, Rs.18,65,457/- and Rs.100,000/-.
- iii) Further, respondent No.2 will pay Rs.20,00,000/- towards the liquidity of the statutory liabilities of the company which is stated to be more or less Rs.60,00,000/- as on today. Said amount of Rs.20,00,000/- would, however, be paid by the respondent No.2 once she withdraws the amount of Rs.18,65,457/- from the Industrial Cooperative Bank.

3. However, this Tribunal finds it necessary to direct the parties to reproduce the full terms and conditions of the compromise, arrived at by the parties hereto, in writing before this Tribunal by 13.10.2017 without fail.

4. Since the matter appears to have come to a close, Mr R. Mahanta, petitioner, is directed to look after the administration of the company in all respects.

4. The Registry of this Bench is directed to initiate an execution proceeding during the course of the day with further direction to lay the same before this Bench on 13.10.2017 for taking further necessary action qua compounding the dispute in the present proceeding.

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

However, referring to the Rule 56 and 57 of the NCLT Rules 2016 submits that in order to initiate an execution proceeding, the parties are to follow the prescription rendered in the aforesaid Rules and, therefore, the Registry on its own had some difficulties in initiating the execution proceeding leading to disposal of the proceeding finally on compromise.

For ready reference, the report of the Registry is reproduced below:-

"NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

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(CP No. 188/2015)

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... Petitioner

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Vivik Cylinder Pvt. Ltd & Ors.

... Respondents.

Hon'ble Member (Judicial)

Through Court order dated 11.10.2017, the Registry of this bench has been directed to initiate an execution proceeding in the above mentioned case during the course of the day with further direction to lay the same before this bench on 13.10.2017 for taking further necessary action.

In view of Rule 56 and 57 of NCLT Rules, 2016 there is some difficulty in initiation of execution proceeding unless holder of an order make necessary application under Rule 56 of the NCLT Rules, 2016.

The above mentioned Rule 56 and 57 of NCLT Rule 2016 is reproduced below for your Lordship's kind perusal.

Rule 56. *Application for execution – for execution of order passed by the Tribunal, the holder of an order shall make an application to the Tribunal in form LCLT -8.*

Rule 57 *issue of process of execution – (1). On receipt of an application under Rule 56 the Tribunal shall issue the process for execution of its order in such form as provided in the Code of Civil Procedure, 1908 (5 of 1908).*

(2) The tribunal shall consider objection, if any, raised by the respondents and make such order as it may deem fit and shall issue attachment or recovery warrant in such form as provided in the Code of Civil Procedure, 1908 (5 of 1908), as the case may be.

Laid for favour of further orders".

I have considered the report of the Registry and found reason to direct the Registry to treat the order dated 11.10.2017 as an execution application. The learned Advocates for the parties have submitted that the parties have already arrived at settlement which has already reduced to writing and are signed by both the parties in presence of the witnesses, namely, Mr. M.Jain, CA and Mr. S.Bose, CA.

For ready reference, the terms and conditions also reproduced below:-

"MUTUALLY SETTLEMENT TERMS AND CONDITIONS ARRIVED AND AGREED BY RUPAK MAHANTA AND HEMAPRAVA DEVI IN THE MATTER OF RUPAK MAHANTA VS. VIVIK CYLINDER PRIVATE LIMITED AND OTHERS IN CASE NO. TP-21/2016 (CP No.188/2015) BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, GUWAHATI BENCH ON THIS 13TH DAY OF OCTOBER, 2017.

1. *That Sri Rupak Mahanta will take over all the management of Vivik Cylinders Private Limited w. e. f. 13.10.2017.*

2. *That Sri Rupak Mahanta on behalf of Vivik Cylinders Private Limited will take over the loan liability of Industrial Co-operative Bank Limited, Noonmati Branch against account number: 1951 OD – to the tune of Rs. 1 cr. In the name of Vivik Cylinder Pvt. Ltd. The land of Vivik Mahanta will be released within 31st October, 2018. The personal guarantee and liability of Hemaprava Devi and Vivik Mahanta towards the loan of Industrial Cooperative Bank, Noonmati branch shall legally cease from the date*

of this settlement and correspondence to this end shall be immediately done by Rupak Mahanta and the new management.

3. That all the fixed deposits standing in the name of Hemaprava Devi with principal amount of Rs.39,60,000/- in SBI – Khanapara as LPG cylinders security with IOCL will be released as under:

- a) Fixed Deposit amounts of Rs.13,00,000/- and Rs.8,87,800/- (both principal amount) maintained with SBI, Khanapara Branch, shall be released within 10 (ten) days from today.
- b) Fixed Deposit amount of Rs.5,20,300/- (principal amount) maintained with SBI, Khanapara Branch, shall be released within 30(thirty) days from today.
- c) Fixed Deposit amount of Rs.12,52,500/- (principal amount) maintained with SBI, Khanapara Branch, shall be released within 30(thirty) days from today.

4. That all the fixed deposits standing in the name of Hemaprava Devi with principal amount of Rs.18,65,457/- in Industrial Cooperative Bank, Noonmati branch against cash credit loan bearing account number OD-1952 will be released in full along with applicable rate of interest till the date of release. It is to be noted that this fixed deposit shall be released at the earliest.

5. That all the fixed deposits standing in the name of Vivik Mahanta with principal amount of Rs. 1,00,000/- in Industrial Cooperative Bank, Noonmati branch against cash credit loan bearing account number OD-1952 will be released in full along with applicable interest till the date of release. It is to be noted that this fixed deposit shall be released at the earliest.

6. That Hemaprava Devi shall pay a sum of Rs. 20,00,000/- (Twenty Lacs only) towards the pending statutory dues of the company. However, this amount shall be paid only when the collateral security of face value of Rs. 18,65,457/- (Eighteen Lacs Sixty five thousand four hundred and fifty seven only) in Industrial Cooperative Bank, Noonmati branch against cash credit loan bearing account number OD 1952 will be released in full along with applicable interest till the date of release.

7. That Hemaprava Devi and Vivik Mahanta will be absolved from all their duties and liabilities in the company be it statutory and operational w.e.f 13.10.2017.

8. That Hemaprava Devi and Vivik Mahanta will be cleared from the personal liabilities and guarantee extended to Industrial Cooperative Bank Limited, Noonmati Branch with immediate effect.

9. That Hemaprava Devi and her associates agree to waive her claim on the unsecured loans of Rs. 26,10,373/- standing in the Books of the Company from today.

10. That all the shares held by all shareholders except Rupak Mahanta in Vivik Cylinders Pvt. Ltd shall be transferred to Shri Rupak Mahanta and persons designated by him. This transfer of shares shall be done as part of the settlement.

11. That Shri Rupak Mahanta has taken over the administration of Vivik Cylinders from 13.10.2017 for all acts and purposes. Shri Rupak Mahanta will be reinstated as Director of the company from 13.10.2017. It is further provided that Shri Rupak Mahanta will appoint Smt Bimala Mahanta as the other Director from his side w.e.f 13.10.2017. Smt Hemaprava Devi along with Vicik Mahanta, Dipali Singh & Barnali Deka shall resign as Directors of the company w.e.f 13.10.2017. It is also agree that all parties to this clause including Rupak Mahanta & Hemaprava Devi will cooperate by providing their signatures, digital signatures, Director Identification Number (DIN) and such letters of appointment and resignation & resolutions as may be needed for such appointment & removal of Directors and change in management. Shri Somesh Bose, CA, is authorised to observe such formalities as stated above and submit requisite form with Officer of the ROC, Shillong within 10(ten) days from today under intimation to NCLT, Guwahati Bench.

12. That parties shall extend necessary support and cooperation in respect of this settlement and smooth handover of the documents and records of the company under intimation to the NCLT. Necessary communications about the change in the management of the company shall be done at all times and at appropriate levels so that the third parties do not face any difficulty in smooth dealings with the company.

The aforesaid settlement has been entered into at NCLT, Guwahati Bench, without any undue influence, coercion and with full conscience and belief and the parties namely Rupak Mahanta and Hemaprava Devi undertake to follow this settlement in full letter and spirit and the parties put their signatures on this settlement deed on this the 13th day of October, 2017.

Sd/-
(HEMAPRAVA DEVI)

Sd/-
(RUPAK MAHANTA)

Witness:

1) Sd/- (Manish Jain), CA

2) Sd/- (Somesh Bose, CA

Since the disputes in this proceeding have been settled amicably on the terms and conditions, arrived at by the parties, on hearing the parties hereto as well as their learned counsel /legal representatives, I am of the opinion that prayer, made by the parties seeking disposal of this present proceeding on compromise arrived at by them is required to be accepted.

The prayer for compromise is accepted and resultantly the present proceeding stands disposed of finally on the basis of the terms and conditions as contained in compromise aforesaid.

It is needless to say that committee constituted by this Bench to run the affairs of the company during the interregnum too stands dissolved.

The terms of settlement reduced to writing shall be a part on record.



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

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