

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH

IA No. 24 of 2017 in  
CP No. 01/241(1)/242(4)/243(1) (B)/GB/2016

Sanjeeb Kumar Chakraborty & ors.

-Applicants

-Versus-

Shanta Prasad Chakraborty & ors

- Respondents

**PRESENT**

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

**Date of Order : 17.05.2017**

Name of the Company	
Under Section	5 of L.A. 1963.

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

**ORDER**

**IA No. 24 of 2017**

Heard Mr. Gautam Rahul, learned Advocate appearing for the applicants. Also heard Mr. A.K.Roy, Senior FCS and Mr. S.K.Baid, CS, for the non-applicants/petitioners. Mr. S.Bharali and Ms. Mridusmita Goswami, learned Advocates for the non-applicant/ respondent No.1 and Mr. Sumit Binani, FCA and Mr. A. Baruah, learned counsel representing the non-applicants / respondent Nos. 5 and 6 are also heard.

This application has been initiated seeking the following reliefs: -

*To condone the delay of 55 days in preferring I.A.No.22/2017 in CP No.01/2016 or pass such order(s) as may deem fit and proper by this Tribunal.*



The grounds of delay in approaching this Tribunal seeking recall of the order dated 23.01.2017 have been narrated in paragraphs D, E, F, G, H, and I of the application. For ready reference, same is reproduced below:

*"D. That the applicants received notice from Hon'ble Tribunal and on 23.01.2017 Sri J.M.Hazarika, Advocate appeared for the respondent No 1 company. However, s applicants were initially were under impression that as the case is against the R-1 company their individual presence in the case may not be necessary. Further as the applicants are residents of Sibsagar they could not come down to Guwahati prior to 23.01.2017 due to insufficient time and instruct the counsel who appeared for R-1 company on 23.01.2017. On 23.01.2017 there was no representation on behalf of the applicants and Hon'ble Tribunal passed order directing that the proceeding shall proceed ex-parte against the present applicants i.e. respondent Nos. 2,3 and 4.*

*E) That the applicants states that they have received notice from Hon'ble Tribunal on 11.01.2017 and immediately thereafter they did not get sufficient time to come to Guwahati and consult with counsel for taking appropriate steps in the case. During that period due to Magh Bihu festival and due to personal difficulties the applicants faced difficulty in coming to Guwahati and upon telephonic discussion with counsel J.M.Hazarika applicant No.1 sent Vakalatnama by courier only for R-1 company. The applicants were prevented by sufficient cause and they could not appear before Hon'ble Tribunal on 23.01.2017.*

*F) That applicant could come to know about the order dated 23.01.2017 from Sri J.M. Hazarika, counsel appearing for R-1. It is pertinent to mention that on 24.01.2017 counsel Sri Janmoni Hazarika's father expired in Bihpuria, Lakhimpur District and he was out of station for more than a month. On 2.3.2017 Sri Janmoni Hazarika, Advocate served a notice upon Sri Sanjoy Kumar Baid, counsel for petitioner's stating that he is going to seek further time for filing reply for R-1 as his father expired and he was out of station".*

*G). That applicant thereafter discussin with their present set of counsel could understand that as in the company petition many allegation has been levelled against them and it is necessary for the applicant to appear in the case and prove their case. Many allegation levelled in the company application are of such nature which applicants can only answer. Further relief prayed in the company petition if granted will affect the applicants adversely.*

*H). That the applicants has already preferred an Interlocutory Application being I.A. No. 22/2017 before Hon'ble Tribunal 20.4.2017for setting aside/alteration/modification of order dated 23.01.2017 and to allow the applicants to appear in the proceeding as respondents. However there is a delay of about 55 days in approaching Hon'ble Tribunal considering period of limitation as 30 days. The applicants has been prevented by sufficient cause from presenting the Interlocutory application I.A. No. 22/2017 within the period of limitation.*



*I) . That applicants came to know about the order dated 23.01.2017 on in the first week of February 2017 from Sri J.M. Hazarika, Advocate. On 24.01.2017 Janmoni Hazarika's father expired in Bihpuria and he was Bihpuria, Lakhimpur for a month. As all the applicants are from Dibrugarh, they came to Guwahati in the 3<sup>rd</sup> of March and contacted the present set of counsel. The present set of counsel after receiving the brief from the applicants took some time for the purpose of preparing the Interlocutory Application being IA No. 22/2017 and same was filed before the Hon'ble Tribunal on 20.4.2017.*


*J). It is also stated that Hon'ble Tribunal by exercising its inherent power under Rule 11 of National Company Law Tribunal Rules 2016 for ends of justice may be pleased to condone the delay otherwise applicants will be highly prejudice.*

*K). That the applicants has not been negligent and has approached this Hon'ble Court at the earliest possible. On account of the aforesaid facts and circumstances as has been narrated hereinabove it is submitted that applicants has been prevented by sufficient cause from presenting I.A No. 22/2017 within the period of the Limitation . It is prayed that Hon'ble Tribunal by exercising power conferred by section 5 of the Limitation Act may be pleased to condone the delay of 55 days in filing the IA No. 22/2017".*

It has been submitted by Mr. Gautam Rahul , learned Advocate for the applicants-respondents that though they had received a notice issued from this Tribunal in connection with the connected company petition yet due to certain reasons beyond their control , the applicants were not in a position to appear before this Tribunal on 23.01.2017 and to file reply against the petition for which this Tribunal was pleased to pass an order stating that said proceeding would run ex party against the respondent Nos. 2 , 3 and 4 , vide order dated 23.01.2017.

Quite importantly, for some equally compelling reasons which were already incorporated in the present proceeding, (which were also recorded herein before), the applicants could not submit the application seeking re-call of the order dated 23.01.2017 in time. The applicants, therefore, urge this Tribunal to condone the delay of 55 days in preferring the connected application.

Mr. A.K.Roy, Senior FCS , on the other hand, objected to the prayer made by Mr. Gautam Rahul, Advocate contending that the applicants could not place before this Tribunal any material----  
--much less convincing material----- to demonstrate that there are sufficient reasons for the applicants for not approaching this Tribunal seeking recall of the order dated 23.01.2017 rendered in the connected petition in time. More importantly, the grounds taken to show that on 23.01.2017, the applicants could not appear before the Tribunal are found to be quite vague and unclear.





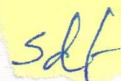
In that connection, it has been stated that there is evidence to show that the applicants received notice of the connected proceeding on 11.01.2017. The company (respondent No.1 in the connected company petition) too received notice from this Tribunal pertaining to such petition around the same time and having received the same, the company approached the Tribunal on 23.01.2017 seeking further time to file reply to the petition.

When respondent No.1 on receipt of the notice from the Tribunal in connection with the petition aforementioned could appear before this Tribunal and took further necessary steps in accordance with law, there is no point whatsoever for the present applicants not to appear before this Tribunal on the date aforesaid. According to Mr. Roy, since the grounds, so assigned for condonation of delay are found to be vague inadequate and unclear, the present application is required to be rejected.

I have considered the submissions, advanced by both the parties and found that the delay of 55 days in preferring the connected application needs to be condoned paving the way for preferring necessary application seeking recall of the order dated 23.01.2017 in the connected company petition.

Accordingly, the delay of 55 days in preferring the connected application is condoned .

Resultantly, the application is allowed and disposed of.



Member (Judicial)  
National Company Law Tribunal  
Gauhati Branch, Guwahati.

samir