

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

**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

Coram:

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

ORDER

Date of Order: 18th September 2017

Mr P.K. Roy Choudhury & Mr A. Bhattacharjee, learned Advocates for the petitioner are present along with Mr S. Bose, CA appointed by the petitioner. On the other hand, Mr U.K. Barman, learned Advocates along with Mr M. Jain, CA are present for the respondents. The petitioner and respondent No.2 are also personally present.

2. In terms of the order passed by this Tribunal on the last occasion, Mr S. Bose, CA has submitted a report, copy of which has been furnished to the respondents.

3. In the report, the financial statement, projected from the side of the respondents, has been seriously disputed by the petitioner. For ready reference, the report is reproduced below:

- "1. The Company, Vivik Cylinder Pvt. Ltd. has started incurring losses after taking the IBP, Sarpara Project in March, 2016. As the company was having a average of 49.62% surplus in profit after paying the Haulage Wages, Provident Fund and Employees State Insurance in the year 2015-16 which result in a gross profit of about Rs.13739110/-. After taking the Sarpara Project, the company surplus in gross profit dropped from 49.62% in 2015-16 to 3.57% in 2016/17 which resulted in drop of gross profit of 46.04% (49.62-3.57). The impact of the said Project has pulled down the gross profit of the Company on total Turnover of Rs. 32705587/- @ 46.04% * = 1,50,57,652/- (Drop in Gross Profit % * Total Revenue).

Detailed Calculation Enclosed

2. There are certain payments not related to regular business and increase in certain expenses which resulted in loss: -
- Travelling Expenses made to Shirtry Yatra- Rs.1,27,474/- which is for personal purpose as no bills found in the NCLT.
 - Advocate Fees of Rs.1,21,678/- not related to business, which should be borne by the concerned director(s)
 - Donation made for an amount of Rs.52,000/- which is not a business expense.
 - Employees salary also increased from 30000 per month in the year 2015-16 to 95000/- per month in the year 2016-17. Due to which there is increase in salary of Rs.7,80,000 ((95000-30000)*12) in the year 2016-17.
 - Truck Expenses given to Khanin Deka and S. Agarwal & Sons (HUF) of Rs.10,09,680/- appeared to be vague and not justifiable. Also truck expenses has been increased from Rs.6,91,500 in 1015-16 to Rs.3,18,180/- (1009680-691500) in FY 2016-17.

Due to the above reason, there is loss of Rs.13,99,332/- which is not related to business and increase in expenses is shown as Business Expense which resulted in loss.

3. There is no physical existence of Labour Colony which is shown in the balance sheet of Vivek Cylinders Pvt. Ltd. at the Original Cost of Rs.13,50,000 as told by the director, Mr Rupak Mahanta.
4. Due to non availability of the bank statements of transaction at the NCLT and late receipt of Bank Statement on 16th September, 2017 Evening we are not able to confirm the balances of Hemaprabha Devi and Kaziranga Creations.

Due to the above points, the company has suffered losses to the extent of Rs.1,78,06,984/-."

4. The report submitted from the side of the petitioner has been contested and opposed by the respondents.

5. This Tribunal, after passing the final order dated 07.04.2017 had directed exit of respondent No.2 from the company on she being paid her dues, if any. In order to facilitate the exit of respondent No.2, this Tribunal had passed several orders. In the meantime, for running of the company on day to day affairs basis, a particular committee was also constituted.

6. Heard Mr P.K. Roy Choudhury, learned Advocate and Mr S. Bose, CA for the petitioner. Also heard Mr U.K. Barman, learned Advocate along with Mr M. Jain, CA for the respondents.

7. Learned counsel for the parties pray that one more opportunity may be given to the parties to settle the dispute between them amicably. The Committee, already constituted earlier, will continue to function as before.

8. However, as agreed to by the parties, the petitioner will draw an amount of Rs.21,21,949/- plus Rs.27,000/- from the company's account, the cheque of which has already been handed over to the petitioner.

9. It has also been submitted by the learned Advocates for the parties that an amount of Rs.41 lakhs has been deposited by the IOC in the company account for payment of labour wages. Out of the aforesaid amount, the committee will disburse an amount of Rs.33,24,665/- towards arrear payment and Rs.5,36,000/- towards EPF payment.

10. List this matter on 11.10.2017.

Sd/-

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

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