

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH

IA No. 22 of 2017  
(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	397/398

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

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: -

For vacating/ modifying/ altering of the ex-party order dated 23.01.2017 against the applicants i.e. respondent Nos. 2, 3 and 4, in CP No. 1/2016 and to allow the applicants to participate in the proceedings of the company petition No. 1/2016 for the ends of justice and further allow the applicants to file reply/written statement and/or pass such order as this Tribunal deem fit and proper.

The grounds on which the present application has been filed seeking re -calling of the order dated 23.01.2017 has been incorporated in paragraphs f, g, h, and I of the application. For ready reference, the grounds are reproduced below: -

*“ f) That the aforesaid company petition was taken up by the Hon’ble Tribunal on 22.12.2016 on being mentioned by counsel for the petitioner. The Hon’ble Tribunal by order dated 22.12.2016 issued notice to the respondent (present applicants) and also passed interim order restraining the respondents from alienating in any manner the fixed assets of the company or from creating a Third Party interest on such fixed assets of the company till returnable date, i.e. 23.01.2017.*

*g) 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.*

*h) 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.*

*i) 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”.*

The learned Advocate for the applicants submits that there are enough materials on record which clearly demonstrate that on 23.01.2017, the applicants could not appear before this Tribunal for some very valid and genuine reasons. Being so, if the order dated 23.01.2017, directing that connected company petition would proceed ex party against the present applicants, is not re-called, the applicants would not be able to participate in the proceeding

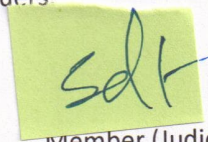
and in that event, they will suffer enormous loss which cannot be compensated in terms of money.

In that connection, I have also heard Mr. A.K.Roy, Senior FCS, who strongly opposed the prayer made by the applicants in this application stating that the applicants/ respondent Nos 2, 3 and 4 in the connected petition remained absent on 23.01.2017 quite intentionally which is evident from the various materials on record. Therefore, their contention that on the date aforesaid, they could not appear before the Tribunal for some valid reasons for which an order was rendered on that day stating that the connected company petition would be heard ex party is nothing but a huge lie. He, therefore, urges this Tribunal not to accept the prayer made by the applicants in this application.

I have considered the submissions, advanced by legal representatives of the parties. On going through the records carefully, I have found that the application seeking recalling of the order dated 23.01.2017 is required to be accepted in the interest of justice.

Accordingly, the ex-party order dated 23.01.2017, passed by this Tribunal against the respondent Nos. 2, 3 and 4 is hereby recalled.

List the matter on 16.06.2017 for further orders



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

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