

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 05<sup>th</sup> April, 2017, 10.30 A.M**

Name of the Company		Rabindra Nath Ghosh & Ors. -Versus- Jayatarama Cold Storage Pvt.Ltd. & Ors.	
Under Section		<b>397/398</b>	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1. Mr Ratnanko Banerji  
Sr Adu.
2. Smt Ronjabon Sen  
Adu.
3. Arif Ali  
Adu.
4. Sayantak Das  
Adu.

} For Petitioners.

Has. adu.  
5/9/17

1. Retobroto Mitwa
2. Amviva al shatteja

} Pro  
Apostrophus

3.4.12

1. Kuldeep Mallik / For R1  
2. P. P. Bishwal

5/4/11

P.T.O.

## ORDER

Per Sri Vijai Pratap Singh, Member(J)

This I.A. 127/2017 has been filed in connection with C.P. no.33/2015 for relief of the Company Petition along with prayer for injunction restraining the respondent no.23 or the respondent nos. 4,8 and 11 as Directors thereof or any respondent from dealing with or disposing of or alienating in any manner in assets of the respondent company including the assets sold by means of purported sale deed by 2015 or creating any charge or further charge with respect to any such asset till disposal of the instant application.

Brief facts of the case are that the petitioner filed C.P. no.33/2015 on 20.08.2014 against the respondents under section 397, 398, 402, 403 and 406 of the Companies Act, 1956 on the allegation of oppression and mismanagement by the respondents.

In the Company Petition, the petitioner has stated that he collectively holds 1,50,000 shares forming 15% of the total paid up share capital of the company. The petitioner has further stated that the respondent no.1 company since its incorporation in 2004 was a closely held entity and majority shares of the company were held by the family members of petitioner no.1 and the respondent nos. 2 and 4. The petitioner has stated that R1 company is a quasi-partnership firm represented by equal sharing of management between two significant shareholding groups and the company was carrying on the business of running of cold storage of potato from time to time. In the Company petition, the petitioners have alleged that due to wrongful and illegal acts of the respondents which are also oppressing to the petitioners and in gross disregard of obligations that the respondents owe to the petitioners as shareholders and part of the management of the company and as




such it is just and equitable that the Company should be wound up in view of the complete breakdown in mutual trust and faith between the respondents and the petitioners. On this basis, the petitioner has filed the above-mentioned petition alleging acts of oppression and mismanagement by the respondents. It appears from the Order-sheet that on 26.02.2015, the then Company Law Board passed an order of *status quo* regarding the shareholding of the respondent no.1 till the next date of hearing. In the said order, it has been observed that the State Bank of India vide notice dated 16.05.2013 under SARFAESI Act demanded approximately Rs.3 crore on account of loan taken by the respondent no.1 company and hence, the charge is already created in favour of State Bank of India over the assets of the company and thereby the said property cannot be alienated by the respondents without the satisfaction of the said charge but on 27.03.2015 the Bank requested petitioner nos.1 to 6 to collect the original title deed and it was informed by the bank that company's liabilities had been discharged. The petitioner has claimed that the company is currently under the control of the respondent nos.19 and 20. The petitioners apprehend that by discharging the loan, the respondents had admitted to deal with and dispose off the assets of the company to the detriment of the company. On making further enquiries, the petitioners came to know that the respondent nos. 4,8 and 11 of the company were also directors of M/s. Haranchandra Cold Storage Private Ltd. and a charge of Rs.6.12 crores had been created on 19.01.2015 in favour of UCO bank and petitioners claimed that the respondents are in collusion with each other and they had incorporated the said Haranchandra Cold Storage Private Ltd. for the purposes of diverting the company's business and customers to that company. On the above basis, the petitioners claimed that M/s. Haranchandra Cold Storage Private Ltd. is a necessary party in this case. So, it should be included as a respondent. At the request of the

petitioner, Haranchandra Cold Storage Private Ltd. was included as respondent in this case.

In the petitioner, the petitioner has filed this present I.A. for amendment of the petition and sought injunction restraining the respondent no.23 or respondent nos. 4,8 and 11 from dealing with or disposing off or alienating in any manner in any asset of the respondent no.1 company.

The respondents have sought time to file reply. Ten days' time is granted to the respondents for filing the reply in this I.A. and thereafter Rejoinder, if any, may be filed within ten days. No interim order of injunction is granted as prayed for in I.A. no.127/2017 connected with C.P. no.33/2015. The issues raised in the I.A. will be heard and disposed of along with the C.P., which is scheduled for hearing on 27.04.2017.

  
(S. Vijayaraghavan)  
Member(T)

  
(Vijai Pratap Singh)  
Member (J)

Signed on this 5<sup>th</sup> day of April, 2017