

COURT-1

NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

C.P. No. 197 /2013

Present: Hon'ble Member (J) Manorama Kumari

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 29<sup>th</sup> September, 2016, 10.30 A.M

Name of the Company		Tara Chand Bhar & Ors. -Versus- S.A.Cold Storage Pvt.Ltd. & Ors.	
Under Section		397/398	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1. RATNANKO BANERJI, SR. ADVOCATE
2. SIDHARTHA SHARMA,
3. URMILA CHAKRABORTY,
4. JOYDEEP DUTTA


Advocates for  
Petitioner

1. PATITA PARANBISHWAL, ADV

R. 2 & 4

J. Dutta  
Adv.

29.09.16.

  
29/9/16

P.T.O

29-09-2016 – CP No. 197/2013 – CA 342/2016 – CA 29/2014 – Tara Chand Bhar & Ors Vs. SA Cold Storage Pvt. Ltd & Ors.

ORDER

The Ld. Lawyer on behalf of the petitioners as well as on behalf of the respondents are present.

The matter is fixed for order.

The substitution petition filed by the petitioner bearing No. CA 342/2016 is allowed.

The legal heirs of Late Tara Chand Bhar is allowed to be substituted in place of ~~Late~~ Tara Chand Bhar. (deceased)

✓ The Ld. Lawyer of the respondents prayed for some time to file the reply.

Office is directed to correct the Title page accordingly. However, the petitioner has submitted that they have given the amended petition with the corrected Title page filed in the Office.

Fixing 22-11-2016 for final hearing.

(MANORAMA KUMARI  
MEMBER(J))

BEFORE THE  
NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, KOLKATA

CA No. 342/2016  
In CP No.197/2013

CORAM

Ms. Manorama Kumari  
Hon'ble Member (J)

*In the matter of the Companies Act, 1956 : Sections 235, 397, 398, 399, 402, 406 and 407*

*In the matter of : Tara Chand Bhar & Ors  
Versus  
M/s. SA Cold Storage Pvt. Ltd. & Ors*

..... Petitioners

..... Respondents

Parties on Record :

Mr. Ratnanko Banerjee, Senior Advocate  
Mr. Sidhartha Sharma, Advocate  
Ms. Urmila Chakraborty, Advocate  
Mr. Joydeep Dutta, Advocate

| For the Petitioners

Mr. Partha Bishwal, Advocate

| For the Respondents No. 2 & 4

Dates of Hearing

: 26<sup>th</sup> August, 2016 & 15<sup>th</sup> September, 2016

Date of Order

: 29<sup>th</sup> September, 2016

**ORDER**

*Chari*  
Arising out of Company Petition No. 197/2013 filed by the legal heirs of deceased Tarachand Bhar being the Petitioner No.1 of CP Application 197/2013, the present Company Application No. 342/2016 came up for hearing before this Bench on 15<sup>th</sup> September, 2016.

Heard both side at length in CA No. 342/2016 wherein the Applicant came up with the application for substituting (i) self, namely, Mrs. Durga Bhar, w/o. Late Tara Chand Bhar, (ii) Mrs. Kasheshwari Bhar, mother of Late Tara Chand Bhar and wife of late Shib Chandra Bhar, (iii) Mr. Piyush Bhar, son of late Tara Chand Bhar and (iv) Ms. Pampa Das, daughter of Late Tara Chand Bhar and wife of Mr. Ashok Das being the legal heirs and successors of Late Tara Chand Bhar who was the petitioner No.1 in the main Company Petition CP No. 197/2013.

The petitioner submitted that petitioner No. 1, late Tara Chand Bhar died on 13.07.2014 leaving behind the legal heirs and successors as above said who are the lawful and valid shareholders in respect of 13000 shares of and in the Company and are entitled to be substituted in place of petitioner No.1.

The petitioner further submitted that prior to the demise of late Tara Chand Bhar, talks of settlement were going on in between the contesting parties.

However, despite all the best efforts, the settlement could not be arrived at and thereafter, direction for exchanging of affidavits in Company Application and Company petition were reiterated.

The Applicant further states that since talks on compromise was going on in between the parties, they have not filed the substitution application and also necessary amendment application before the then Hon'ble company Law Board.

The petitioner submitted that immediately after the talks of settlement were failed they have come with the substitution application and as such it is delayed because of the above said settlement talks.

The petitioner further submits that the delay on is part o in filing of the substitution application is completely circumstantial and not due to any negligence or latches on the part of the petitioner as there was/were chances of settlement

On the other hand, the respondents placed their objection on the ground that it barred by law of Limitation and the case is abated. They have, however, admitted that talks on compromise was going on and there was every likelihood that the matter would be settled but for one or the other reasons the settlement talks failed.

*Attni*



In view of the above fact, as well as in view of the fact that the respondent conceded to the fact that there was/were talks of settlement going on between the parties, as such, the petitioner cannot be debarred from filing of the substitution application ; more so, when the Court is for granting equity and justice.

However, on perusal of the record, it reflects that the delay was not intentional on the part of the petitioner but it is due to the reason that compromise talk was going on and on the anticipation that the matter will be settled amicably, the petitioner did not file any application for the substitution though it is an established principle that substitution is to be filed within 90 days from the date of the death.

But as per Rule 53 of the NCLT, it is provided that if any good and sufficient reason is shown, the Tribunal may allow the substitution of the legal representation of the deceased at any time before disposing of the petition.

In my considered opinion, for the ends of justice, the petition is allowed as there was no intentional negligence and/or laches on the part of the petitioner, for proper adjudication of the case.

The Court master is directed to correct the Title Page of the Company Petition No. 197/2013.

Sd—

MANORAMA KUMARI  
MEMBER(J)