

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

Company Appeal (AT) No. 18 of 2016

**Khanakul Thana Krisijata Pannya
Sarabarahakari & Babsayi Samitee Himghar
Ltd. & Ors.**

....Appellants

Vs.

Krishna Gopal Jana & Anr.

....Respondents

28.11.2016

Present: Mr. Anjan Kumar Roy, FCS appearing for Appellants

Mr. Alok Dhir with Ms. Varsha Banerjee, Advocates for the Respondents

ORDER

Exhibit -A attached to the Company Appeal is the Memorandum of Agreement reached between appellant - M/s Khanakul Thana Krisijata Pannya Sarabarahakari & Babsayi Samitee Himghar Ltd. (Lender) and 1st Respondent - Mr. Krishna Gopal Jana (Borrower). Ms. Sephali Jana - the Respondent No. 2, who is Applicant No. 2 before the National Company Law Tribunal is not a party to the Agreement. In that view of the matter, the Agreement at Annexure - A in no manner will affect the right of Ms Sephali Jana, an independent shareholder having 15.61% of shares to file the petition under Section 397-398 of the Companies Act 1956. As the said petition is maintainable at the instance of Applicant No. 2, Respondent No.

2 herein, even if it is argued that the petition of Applicant No. 1, Mr. Krishna Gopal Jana is kept in abeyance, the petition cannot be held to be not maintainable in view of Section 399 of the Companies Act 1956.

We find no merit in the case. The Company Appeal is accordingly dismissed. The impugned Order dated 29th August 2016 passed by National Company Law Tribunal is upheld.

This Order is passed without prejudice to the right and contention of the parties including first Respondent, Krishna Gopal Jana.

(Justice S.J.Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)