

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) No. 277 of 2017**

**IN THE MATTER OF:**

**1. Silvertone Constructions Private Limited,  
15, Brabourne Road,  
Kolkata – 700 001.**

**2. Jupiter Finvest Private Limited,  
14/2, Burdwan Road,  
Kolkata – 700 001.**

**....Appellants**

**Vs**

**1. Eastern Manufacturing Private Limited,  
1, Ali Hyder Road, Post Office, Titagarh,  
24 Parganas (North),  
West Bengal – 743 186.**

**2. Narayanan Sisupalan,  
Flat No.401, 113, N. S. Bose Road,  
Kolkata – 700 040.**

**3. Sujay Seal,  
24/2, Sharat Palli,  
(Griha Na 16-24) Sthir Para Road,  
Kankinara, Jagaddal,  
24 Parganas (North),  
West Bengal – 743 126.**

**4. Pawan Jain,  
24, Chunapukur Lane,  
Kolkata – 700 012.**

**5. Jay Prakash Tibrewal,  
493-B-1, G T Road,  
G Block, Flat – 601, Howrah,  
West Bengal – 711 102.**

6. **Sanjay Gupta,  
Part No. 228, Dumdum Municipality,  
Kolkata – 700 028.**
7. **Sunbeam Vanijya Private Limited,  
21A, Shakespeare Sarani,  
Kolkata – 700 017.**
8. **A. N. Mehta & Co.,  
13, Pollock Street,  
Kolkata – 700 001.**
9. **M/s. Mooldhan Advisory Systems  
Private Limited,  
14/2, Burdwan Road,  
Kolkata – 700 027.**
10. **M/s. Namokar Vinimay Private Limited,  
14/2, Burdwan Road,  
Kolkata – 700 027.**
11. **M/s. Gulnar Dealcomm Private Limited,  
Tower House, 2A, Chowringhee Square,  
5<sup>th</sup> Floor, Kolkata – 700 069.**

**....Respondents**

**Present:**

**For Appellants: Mr. Arvind Kumar, Ms. Henna George,  
Advocates**

**For Respondents: Mr. Ashok Kumar Jain, Mr. Pankaj Jain,  
Mr. Ankit Kohli, Advocates for Respondent  
No. 1.  
Mr. Gaurav Kejriwal, Mr. Atanu Mukherjee,  
Advocates for Respondent No. 7.**

## **JUDGEMENT**

### **BANSI LAL BHAT, J.**

This appeal has been preferred against order dated 3<sup>rd</sup> July, 2017 passed by National Company Law Tribunal, Kolkata in Company Petition No. 495 of 2012 whereby and whereunder NCLT, Kolkata (hereinafter referred to as the 'Tribunal') has allowed the application being C. A. No. 448 of 2012 filed by Respondent no.7 deleting its name from array of parties.

2. C. A. No. 448 of 2012 came to be filed by Respondent no.7 when Company Petition No. 495/2012 was pending adjudication before the Tribunal. Through the medium of aforesaid application, the Respondent no.7, inter-alia, prayed for striking out the name of Respondent no.7 from Company Petition No. 495 of 2012. The Appellants resisted the application filed by Respondent no.7 seeking deletion from the array of respondents.

3. The stand taken by Respondent no. 7 before the learned Tribunal was that it was not the shareholder of the Respondent no.1

company and it had no concern whatsoever with the Eastern Manufacturing Pvt. Ltd. Respondent no.7 maintained before the Tribunal that it had entered into a transaction with the Eastern Manufacturing Co. Ltd. and had been wrongly arrayed as party respondent in the main petition. Respondent no.7 also maintained that it had entered into a Conversion Agreement dated 29<sup>th</sup> May, 2009 with M/s The Eastern Manufacturing Co. Ltd. for using the jute mill of the company situated at Titagarh, 24 Parganas (North) and made huge investments for installation of new machinery. It further maintained that the Appellants had filed Company Petition No. 495 of 2012 against “M/s Eastern Manufacturing Pvt. Ltd.” and not against “M/s Eastern Manufacturing Co. Ltd.”. Based upon these facts Respondent no.7 sought deletion from array of Respondents as it was in no way related with the “Eastern Manufacturing Pvt. Ltd.” figuring as Respondent no.1 in the main petition.

4. The Appellants resisted the application on the grounds that a Conversion Agreement had been fraudulently executed with the object of taking away the Conversion Agreement from premium in which the Appellants and their group had 53.40 percent shareholding to a concern where the Appellants had no stake.

5. On consideration of the respective stands adopted by the contesting parties learned Tribunal noticed that the Appellants had made a self-contradictory statement qua the Conversion Agreement which was entered into by Respondent no.7 with M/s Eastern Manufacturing Co. Ltd. whereas the Company Petition was filed by the Appellants against Eastern Manufacturing Pvt. Ltd and others. According to the learned Tribunal, the appellants, apart from a bare denial, failed to clear the stand which was self-contradictory. The learned Tribunal was of the view that Respondent no.7, prima facie, had no link with Eastern Manufacturing Pvt. Ltd. In view of this finding learned Tribunal found that Appellants petition filed under section 111, 235, 397, 398, 399, 402 and 403 of The Companies Act, 2013 was not maintainable against Respondent no.7.

6. The impugned order has been assailed on various grounds set out in the memo of Appeal. It is contended that the finding recorded by the learned Tribunal is erroneous and the effect of such finding is that the Appellants have been non-suited qua Respondent no.7. It is further contended that a small error in the nomenclature of Respondent no.1 does not render Respondent no.7 as an improper and unnecessary party, when documents forming part of C.P. No.

495 of 2012 sufficiently identified Respondent no.1 as the company with whom Respondent no.7 had entered into Conversion Agreement. Per Contra respondents support the impugned order on the ground that M/s Eastern Manufacturing Private Limited and M/s. Eastern Manufacturing Co. Limited are different juristic entities and the Appellants having fail to demonstrate that there was a nexus between Respondent no.7 with Eastern Manufacturing Private Limited, Respondent no.7 was not a proper and necessary party.

7. Heard learned counsel for parties and perused the record. The question arising for consideration is whether pending adjudication of Company Petition no.495/2012 filed by the Appellants before the learned Tribunal, proceedings against Respondent no.7 could be justifiably scuttled on the ground that it had no link with Respondent no.1, therefore was liable to be struck out as being an unnecessary appendage. For determination of this question, it has to be borne in mind that in civil jurisprudence Plaintiff/Petitioner is the “Dominus Litus” and is entitled to array a person, juristic or otherwise, as a party defendant/ respondent, regard being had to the nature of the lis and the relief claimed therein. The court enjoys ample powers to add a proper or necessary party if inadvertently left out or strike out

a defendant/ respondent whose arraignment is neither proper nor necessary for adjudication of the issues raised in the Lis. If a respondent comes forward with a plea that he or it has been improperly and unnecessarily arrayed in the Lis as a party respondent, amounting to abuse of process of law, the onus lies on such respondent to establish that his or its arraignment is not essential for the just decision of the case and that the issues raised in the matter can be effectively and completely adjudicated upon in his or its absence. The question raised for determination has to be answered in the light of these principles.

8. It is the Appellants case before the Tribunal that the Jute Mill of Respondent no.1 has been illegally transferred to Respondent no.7. Appellants have described the statutory name, the registered office address and Corporate Identity Number (CIN) of Respondent no.1 based on the records of Registrar of Companies. It emerges from the record that the registered address of Respondent no.1 is 1, Ali Hyder Road, Post Office Titagarh, 24 Parganas (North), West Bengal. Identity of the Respondent no.1 is sufficiently established with reference to its address and CIN number as reflected in the Annual Returns filed by the company with the Registrar. The inter-se

agreement between Respondent no.1 and Respondent no.7 dated 29<sup>th</sup> May, 2009 in regard to conversion of “The Eastern Jute Mill”, records the name and style of Respondent no.1 as “The Eastern Manufacturing Company Limited”. In the Annual Returns, the name and style of Respondent no. 1 is described as “Eastern Manufacturing Company Private Limited”. In the notice issued for convening the Annual General Meeting of members on 28<sup>th</sup> September, 2006, the name and style of the Respondent no.1 is described as “The Eastern Manufacturing Company Limited”. Similar position emerges from notice regarding Annual General Meeting fixed for 28<sup>th</sup> September, 2007. From the Memorandum of Association of “The Eastern Manufacturing Company Limited” forming part of the record, it comes to fore that the “Eastern Manufacturing Company Limited” is an existing entity since 1929 with “Indian Jute Shoe (1927) Limited” being its forerunner. Perusal of the conversion agreement also brings it to fore that Respondent no. 1 and 7 entered into a conversion agreement with regard to Eastern Jute Mill, wherein the company is clearly and adequately identified with reference to its location and address. There is bulk of material on record to indicate that “The Eastern Manufacturing



Company Limited” and “Eastern Manufacturing Private Limited” are one and the same entity. It is to be noted that there is no dispute in regard to the address of Respondent no.1. Certainly there is some difference in the name and style of Respondent no.1 in some documents as the word “The” is missing and word “Private” is added. However, there is ample material on record to demonstrate that “The Eastern Manufacturing Company Limited” and “Eastern Manufacturing Private Limited” is one and the same entity which has entered into conversion agreement with Respondent no.7. Minor typographical errors in the nomenclature of the company cannot detract from the fact that the name, CIN number and address of Respondent no.1 has been clearly stipulated in the statutory documents forming part of records. The agreement dated 29<sup>th</sup> May, 2009 is relied upon by both parties in respect of their respective stands. The disputed agreement relates to Jute Mill of Respondent no.1 located at 1, Ali Hyder Road, Post Office Titagarh, 24 Parganas (North), West Bengal which is clearly and sufficiently identified. Respondent no.1 and 7 have not come forward with an alternate location or address for the aforesaid Jute Mill. Appellants have alleged that the aforesaid Jute Mill has been transferred by

Respondent no.1 to Respondent no.7 in pursuance of conversion agreement. At the time of arguments we clearly asked Counsel for Respondent no.7 – “Are you in possession of the Company at the address given as of Respondent no.1?” And the learned Counsel stated – “Yes”. Considering all this and stand taken by Appellants, deletion of Respondent no.7 from the array of respondents would prejudicially affect the Appellants. Moreover, the Appellants cannot be denied the opportunity to explain and establish that despite of difference in nomenclature, the company is one and the same. Nor can the Appellants be denied an opportunity to seek an amendment to rectify the error in the name and style of the Respondent no.1. The Tribunal overlooked the material facts. Viewed thus, we hold that Respondent no.7 is a necessary party. The finding recorded by the Tribunal in passing the impugned order cannot be supported. It being erroneous is liable to be set aside.

9. In view of the foregoing discussion this Appeal is allowed and the impugned order is set aside, with costs quantified at Rs.50,000/- (Rupees Fifty Thousand Only) to be paid to Appellants by Respondent no.7.

10. The Tribunal shall make endeavors for disposal of the Company Petition expeditiously.

(Justice A.I.S. Cheema)  
Member (Judicial)

(Justice Bansi Lal Bhat)  
Member (Judicial)

(Balvinder Singh)  
Member (Technical)

NEW DELHI  
24<sup>th</sup> November, 2017

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