

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 31 of 2018

IN THE MATTER OF:

Doloo Tea Company (India) Ltd.

...Appellant

Vs.

Gaurangika H. Patel & Ors.

...Respondents

Present:

For Appellant: - Shri Sakya Sen, Shri Arik Banerjee, Shri Rajib Mullick, Shri I. Ghosh and Shri Kunal Singh, Advocates

For Respondents:- Shri Pankaj Bhatia, Shri N. Das Gupta, Ms. Debjani Chatterjee, Shri Nipun Goel, Shri Ravi Panwar, Shri Ashish Chaudhury and Shri Dhruv Sarma, Advocates

O R D E R

02.02.2018 The respondents/petitioners preferred petition under Sections 397 and 398 read with 402 of the Companies Act, 1956 before the erstwhile Company Law Board, the Regional Bench Calcutta in the year 2011 being C.P. No. 994 of 2011. After the constitution of National Company Law Tribunal (hereinafter referred to as the 'Tribunal'), the case was transferred to Guwahati Bench, Guwahati and re-registered as T.C.P. No. 4/397/398/GB/2016. After six years of filing of Company Petition, the appellants, who were the respondents, filed an Interlocutory Application No. 45 of 2017 with the prayer to stay the proceedings. The Tribunal on hearing the parties, by impugned order dated 18th December, 2017, rejected the same with the following observations :

- “15. *I have perused the application seeking stay of the proceeding in TP No. 04/397/398/GB/2016 [arising out of CP No. 994 of 2011] in the light of the arguments, advanced by the parties. On a bare reading of the application under consideration, in the light of the arguments advanced by the applicant/respondent No. 1, it is found that it had objected the continuance of connected company proceeding till the disposal of the execution proceeding on three counts. According to the applicant/respondent No. 1 –*
- (i) the averments, made in the execution proceeding, clearly demonstrate that the petitioners are no longer the title holder in and of the shares of the respondent No. 1 company, the number of the same being 64283, since, the title thereon had already been transferred to RAP group on 01-07-1991 when the RAP group and CAP group had entered into an MOU.*
 - (ii) The applicant further contends that in view of the stand taken by the respondents in the aforesaid execution proceeding, they are, now, prevented from prosecuting the company petition as shareholders of the respondent No. 1 company ----since ---- the stand they have taken in the said execution proceeding undoubtedly demonstrates that the respondents are only the creditors of the company aforesaid. In simple words, the principle of estoppel, now, comes in the way of petitioner’s prosecuting the proceeding in hand as being shareholders of the same.*

- (iii) *It has also been contended that if the proceeding in hand and the proceeding, now pending before the Hon'ble Calcutta High Court, are allowed to proceed simultaneously, there is every possibility of decision in this proceeding and the final result in the execution proceeding, pending before the Hon'ble Calcutta High Court, running counter to each other. Such a situation is not permissible under the law, more so, when the aforesaid proceeding is pending before the Court as high as the highest Court of the State.*
16. *I have considered such submissions in the light of the material on record and the law holding the field. The applicant/respondent No. 1 as well some other respondents, over a long period of time, have been agitating that the non-applicants/petitioners did not have requisite qualification to initiate the connected company proceeding – since – they had transferred their title on the shares in the respondent No. 1 company to the RAP group way back in 1991, some of whom are respondents herein. Since they have no legal qualification to file the said proceeding, under section 397/398 of the Act of 1956, on this ground alone, the connected petition is required to be dismissed.*
17. *This Bench has considered such submissions and found reasons to conclude that the purported question of law, raised from the side of the respondents/applicants, is not a question of law alone; rather it is a mixed question of law and facts and, therefore, such a question cannot be decided in an offshoot arising from the original proceeding. The various orders, passed in different Interlocutory*

applications including one which was rendered on 17-11-2017 in T.P. No. 04/397/398/GB/2016 (CP No. 994 of 2011) with I.A. No. 20/2017 (in T.A. No. 29/2016 – C.A. No. 369/2011) & I.A. No. 16/2017, make such position very clear. For ready reference, the order rendered on 17-11-2017 T.P. No. 04/397/398/GB/2016 (CP No. 994 of 2011) with I.A. No. 20/2017 (in T.A. No. 29/2016 – C.A. No. 369/2011) & I.A. No. 16/2017 is reproduced below:-

xxxx

xxxx

xxxx

18. *Once again, the applicant/respondent No. 1 has urged this Bench to stay the company petition citing pendency of the execution proceeding before the Hon'ble Calcutta High Court. In my view, such a plea is nothing but the extension of very similar prayer, raised on many earlier occasions, which were already held to be mixed question of law and facts and which cannot be decided in a misc. proceeding; rather, the same needs to be addressed on merit on the basis of materials on record along with all other contentions, raised from the said of the respondents.*

xxxx

xxxx

xxxx

22. *A careful perusal of section 10 of the CPC reveals that unless the aforesaid conditions are fulfilled, a subsequent suit cannot be stayed in view of pendency of a former suit, in the instant suit, I have found that almost all the conditions, necessary for application of Section 10 of the CPC, are found conspicuously lacking*

and, therefore, I am of the view that this proceeding cannot be stayed till disposal of the execution proceedings, now, pending before the Hon'ble Calcutta High Court, as prayed for by the applicant/respondent No. 1.

23. *In view of the above, the present proceeding is liable to be dismissed, which I accordingly do. This Bench sincerely hope and trust that the parties to the company petition would render necessary assistance and co-operation in disposing the same at an early date inasmuch as it awaits disposal since 2011.”*

2. Shri Sakya Sen, learned counsel appearing on behalf of the appellant submits that the respondents/petitioners are no longer the title holder of the shares of the company and, therefore, the Tribunal should have stayed the proceedings. However, such submission cannot be accepted, as the issue whether the respondents/petitioners are shareholder or not, if raised, requires to be decided by the Tribunal.

4. Shri N. Das Gupta, learned counsel appearing for the respondents/petitioners submits that the question of maintainability was already raised and not entertained by the Tribunal. However, such submission made on behalf of the respondents/petitioners is disputed by the learned counsel appearing on behalf of the appellants/respondents.

5. In view of the aforesaid dispute and as it appears that the Tribunal has left the question of maintainability for determination at the time of hearing of the main Company Petition, we are not inclined to interfere with the impugned order dated 18th December, 2017.

6. The appellants/respondents are given liberty to raise the question of maintainability at the time of hearing of the main Company Petition. The Tribunal will consider such issue, if not yet decided, by reasoned order simultaneously while considering the main Company Petition.

7. As the matter is pending for more than six years and for one or another reason, the appellants/respondents have not allowed the petition to proceed and in terms of Section 422 of the Companies Act, 2013, the Tribunal was supposed to dispose of the matter within three months, we direct the parties to co-operate with the Tribunal and will not ask for unnecessary adjournments. The Tribunal in its turn will decide the Company Petition preferably within three months from the date of receipt/production of this order. The appeal is dismissed with the aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk