

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.236 of 2018

[Arising out of orders dated 1st June, 2018 passed by National Company Law Tribunal, Guwahati Bench, Guwahati in I.A. No.17 of 2018 in T.A. No.40 of 2016 (C.A. No.112 of 2014) in T.P. No.26/397/398/GB/2016 (arising out of C.P. No.80 of 2010)]

IN THE MATTER OF:

Shri Pravir Kumar Roy
Executive Director,
M/s Bogidhola Tea & Trading Co. Pvt. Ltd.
Bogidhola Tea Estate, P.O. Latekujan,
Golaghat – 785613, Assam

...Appellant
(Original Respondent No.2)

Vs.

1. M/s. Bogidhola Tea & Trading Co. Pvt. Ltd.
Bogidhola Tea Estate, P.O. Latekujan,
Golaghat – 785613, Assam

...Respondent No.1
(Original Respondent No.1)
2. Sri Abhay Kumar Singh
S/o Late Sri Tarun Kumar Roy
Assam Cottage, Lok Nagar,
Unnao – 209 801, Uttar Pradesh

...Respondent No.2
(Original Respondent No.3)
3. Sri Sajay Kumar Singh
S/o Late Sri Kamakhya Kumar Roy
Maud Tea Estate, P.O. Chabua
Dibrugarh – 786 184, Assam

...Respondent No.3
(Original Petitioner)
4. Smt. Prem Kumari Roy,
Director,
M/s Bogidhola Tea & Trading Co. Pvt. Ltd.
Bogidhola Tea Estate, P.O. Letekujan
Golaghat – 785 613, Assam

...Respondent No.4
(Original Respondent No.4)

Present: Ms. Neha Sharma, Advocate for the Appellant

Shri D. Verma, Advocate for Respondent Nos.1 and 4

Shri Abhay K. Das, Advocate for Respondent No.2

None for Respondent No.3

ORAL JUDGEMENT

29.08.2018

A.I.S. Cheema, J. : The present appeal is for admission. The learned counsel for the Appellant and Counsel for Respondent No.1 and 4 and counsel for Respondent No.2 have been heard. Respondent No.3 has been served but none is present.

2. Looking to the Impugned Order and the fact that the Company Petition of 2000 is still pending, we have with consent of counsel for both sides, taken up this appeal for hearing finally.

3. Heard the counsel for Appellant. She is submitting that she had filed IA 17/2018 (Annexure – A-9 Page – 72) with prayers to call Records. Prayer

(a) needs to be reproduced, which is as under:-

“In view of the facts mentioned above, the humble petitioner/applicant being Respondent No.2 prays for the following relief(s):-

- (a) Pass necessary order / orders allowing the instant application of the Respondent No.2 for calling of all orders and case records pertaining to Company Application No.112/2014 as well as Original Company Petition No.80/2000 from the Hon’ble Company Law Board, New Delhi which are not available with the Registry of this Hon’ble Tribunal

and thereafter hear the applicant (Respondent No.2) in his application dated 09-03-2016.”

3.1 She submits that earlier the matter was before CLB at Delhi having No.80/2000. According to her in the matter when it was before CLB, an application for impleadment of Respondent No.2 - Sri Abhay Kumar Singh in substitution of Late Shri Tarun Kumar Roy was allowed. She states that this was later on sought to be recalled by the present Appellant, who was Respondent No.2 in the Company Petition by filing an application dated 09.03.2016 in the disposed Application No.112/2014, which was not numbered but which was taken up by CLB. A copy of the application is at Annexure - A-3 (Page 46). (Counsel for both sides agree that the number in the document is having typing error. Instead of “Company Application No.112 of 2016”, it should be “No.112 of 2014”). She submits that this application for recall and setting aside of Order dated 8th February, 2016 had been taken up and the Respondents had also filed replies, copies of which are at Annexure – A-4 and Annexure – A-5. She states that Annexure – A3 remained to be heard and decided by CLB. This is not denied by Counsel for Respondents. Counsel for Appellant submits that when NCLT, Guwahati was constituted, the records of the Company Petition were transferred to NCLT, Guwahati but record of this application of theirs did not reach NCLT, Guwahati and thus she moved IA 17/2018. Counsel for Appellant submits that while IA 17/2018 was pending the Appellant was barred from appearance as per Order dated 20th April, 2018 which is at Annexure - A-12 and on her filing another application, NCLT passed Orders dated 15.05.2018 at Annexure – A-15 suo moto modifying its earlier Orders as can be seen at Page – 142.

She states that this modification was in the absence of the Appellant and the Appellant did not know that she could now appear. She submits that on the same date of 15th May, 2018, the NCLT reserved Orders on IA 17/2018 also and later on, has passed the Impugned Order dated 01.06.2018. She submits that her grievance is only that her application dated 09.03.2016 to set aside Order dated 08.02.2016 should have been called and heard.

4. The counsel for Respondent No.2 is pointing out the various conducts of the Appellant as noted by NCLT in the Impugned Order to submit that the Appellant has been prolonging the matter for one reason or the other. The counsel for the Appellant counters such argument of Respondent No.2.

5. Going through the Impugned Order, we find that in this matter for one reason or the other, there has been prolonging of the petition and parties have not let the matter reach finality. It is necessary that the Company Petition is taken up for urgent disposal. We keep in view Section 422 of the Companies Act, 2013, which in fact lays down that endeavour should be made for disposal of the Company Petition, within 3 months of Petition.

6. At the same time, it remains a fact that if an application was filed and entertained by CLB, the same should have been disposed one way or the other and if while transferring the matter to NCLT, Guwahati, the same has remained to be sent, the same should have been called.

7. We are conscious that in June, 2016, when NCLT was established at various places, CLB at Delhi was required to send records to respective places where jurisdiction was conferred on NCLT and now there may be some

element of search and find out involved. In such situation, although NCLT, Guwahati may make an effort to call for the application dated 09.03.2016 and Replied as were filed. However, even in the absence (and without waiting for the originals) in the interest of justice and invoking inherent powers, NCLT can dispose the application which was filed on the basis of copies already available with the parties and which are already on record, treating them as reconstructed. We need to direct this looking to the fact that matter is already sufficiently protracted and we do not want it to further protract chasing and searching the originals of these documents in old CLB records which we are told would be with Registry of NCLT, Delhi.

8. Hence this Order:-

A) For the above reasons, we modify the final Order as in Para – 51 of Impugned Order dated 01.06.2018 as passed in IA 17/2018 and direct that NCLT, Guwahati may request the Registry of NCLT, Delhi to search and send the original records of Annexures - A-3, A-4 and A-5. Appellant will file copies of these Annexures with NCLT, Guwahati, if not already filed.

B) Learned NCLT will without waiting for the originals of these documents, reaching NCLT, Guwahati, hear the Appellant and the Respondents of the present appeal on the basis of copies of Annexure A-3 to A-5.

C) The application (Annexure – A-3) may be disposed by NCLT, with the final disposal of the Company Petition, if so thought fit in its own discretion.

D) Efforts may be made to dispose the Company Petition itself finally, at the earliest.

With these directions the present Appeal stands disposed, with no Orders as to costs.

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

[Balvinder Singh]
Member (Technical)

/rs/nn