

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) No. 53 of 2020

IN THE MATTER OF:

**1. Sh. Prokash Datta Through Special
Power of Attorney Holder**

Mr. Rishikesh Datta

Ground Floor Harmony Building,

House No. 10,

Rukmini Nagar Main Raod,

Dispur, Guwahati-781006

.....Appellant No. 1

2. Rishikesh Datta

Ground Floor Harmony Building,

House No. 10,

Rukmini Nagar Main Road,

Dispur, Guwahati-781006

..... Appellant No. 2

3. Krisna Datta

Through Special Power of Attorney Holder

Mr. Rishikesh Datta

Ground Floor Harmony Building,

House No. 10,

Rukmini Nagar Main Road,

Dispur, Guwahati-781006

..... Appellant No. 3

Versus

1. Ikramul Majid

25, Shanti Ram Das Road,

**Rehabari,
P.S-Paltan Bazar, Guwahati-781008**

.....Respondent No. 1

**2. Richard Andrew Willian Leitch
1st Floor, Arati Bhawan,
House No. 68, Nabapur Mazgaon,
Tezpur, District Sonitpur,
P.S and P.O. Tezpur,- 784001**

.....Respondent No. 2

**3. Allahabad Bank
Through Authorized Representative
SRCB Branch
& R.C.B Road Fancy Bazar,
Guwahati, Assam-781001**

.....Respondent No. 3

**4. M/s Cleanopolis Engery System India Pvt. Ltd.
Through Authorized Representative
51/314, Rangapara Binduguri Road
Borpokhiajhar Village
PO Depota, Mouza
Halleshwar Tezpur, Sonitpur
Assam-784502**

.....Respondent No. 4

PRESENT:-

**FOR APPELLANTS:- MR. NAKUL MOHTA, MR. JOHNSON SUBBA,
ADVOCATES FOR APPELLANT.
MR. RISHIKESH DATTA, APPELLANT 2 IN PERSON.**

**FOR RESPONDENTS:- MR. KRISHNENDU DUTTA, MR. ANKUR JAIN, MR. S. DAS, MR. P. SIL, MR S. ROY, ADVOCATES FOR R1 AND R2.
MR. SORABH DAHIYA, ADVOCATE FOR R3**

J U D G M E N T

[13th March, 2020]

JARAT KUMAR JAIN, J.

The Appellants Prokash Datta, Rishikesh Datta and Krishna Datta filed this Appeal against the interim order dated 03.02.2020 passed by NCLT, Guwahati, Bench in CP No. 15/241/242/GB/2019.

2. Respondent No. 1 & 2 herein, filed Petition against the Appellants here in alleging that the Appellants have completely shut down the plant and machinery of the Company and siphoning of funds of the Company for their personal use and unless the plant and machinery is kept in running condition, it would become useless. The Respondents also alleged that in the interest of all stakeholders, the Company shall be managed through the Special Officer or through the Respondent No. 1 & 2 in a functional condition. On these allegations Respondent No. 1 & 2 filed the Petition under Section 241, 242 and 244 of the Companies Act, 2013 against the Appellants in the month of October, 2019 seeking various reliefs including the interim injunction restraining the Appellants from managing the business of the Company, and dealing with or alienating assets and properties including plant and machinery of the Company.

3. After due consideration on 03.02.2020 NCLT has passed the impugned order by which appointed Mr. Jai Prakash Gupta, Special Officer, and directed him to take possession of the Company and its record from the Appellants and to run the company with the help and guidance of the Respondent No. 1 & 2 and banker Allahabad Bank until further orders. It is also directed that the Appellants shall not create any hindrance or obstruction to the Special Officer in discharging his duty and Special Officer shall submit his report within four weeks

4. Being aggrieved with the interim order the Appellants have filed this Appeal.

5. Learned Counsel for the Appellants submits that the Appellants together with other shareholders of the Company hold 66.90% Shares. The Appellants are the Promoters and full time Executive Directors, of the Company for last more than seven years. The Appellants have extended unsecured interest free loan approximately Rs. 2.4 Crores to the Company. Ld. NCLT without *Prima facie* case of oppression & mismanagement ousted the Appellants from the management of the Company and handed over the control of the Company to Special Officer and the Respondents No. 1, 2 & 3 who have no experience of running the Company for this Ld. Counsel place reliance on the Judgement in the case of Rev. C.S. Joseph and Ors. Vs. T.J. Thomas and Ors. (1986 SCC online Ker. 435). The result of the impugned order is that the management of the Company has come to standstill.

6. It is also submitted that the Appellant were busy in the medical treatment of their father in the months of October, 2019 in TATA Medical Centre, Kolkata. apart from this due to protest in the State of Assam against the Citizenship Amendment Bill, 2019 the Advocate engaged by the Appellants was not able to reach NCLT when the matter was called for hearing. Thus, non-appearance by the Appellants was not deliberate or willful.

7. In such circumstances, Learned Counsel for the Appellants submits that at least the impugned order may be modified that Special Officer shall run the Company with the help and guidance of Appellants.

8. Learned Counsel for the Respondents No. 1 & 2 vehemently opposed the prayer and drew our attention towards the order sheets of NCLT dated 08.11.2019, 18.11.2019, 03.12.2019, 06.12.2019 and 17.12.2019 and submitted that after notice the Appellants have deliberately avoided to appear before the NCLT and when the NCLT has passed ex-parte interim order against the Appellants then they have filed the Application for setting aside the ex-parte interim order dated 08.11.2019 and 19.11.2019 when this Application was called on board the Appellants and their Advocate chosen not to appear on 17.12.2019. Therefore, the NCLT has dismissed the Application for non-prosecution.

9. Learned Counsel for the Respondents further submits that Ld. NCLT after elaborate discussion in Para 3 of the impugned order held that the Appellants are not due diligent in defending the matter and are adopting all legal tactics by watching the proceedings behind. It is also held that the Appellants are

conducting the affairs of Respondent Company in a manner which is prejudicial and oppressive to the Respondent Company and all the stakeholders. In such circumstances, Ld. NCLT has passed the impugned order in the interest of Respondent Company and stakeholders.

10. It is also submitted that the control of the Company is assigned to Special Officer, Mr. Jai Prakash Gupta and there is no allegation in the Appeal against him. The Petition fixed for 26.03. 2020 before the NCLT for final Hearing. In such circumstances, it is submitted that the Appeal be dismissed.

11. We have perused the above referred order sheets and the impugned order, we are of the view that from the order sheets it reflects that the Appellants are not defending the Petition with due diligence and they are unable to convince us that the impugned order is prejudicial to the interest of the Company and the stakeholders. By the impugned order, the NCLT has directed Special Officer, to run a Company with the help and guidance of Respondents and banker Allahabad Bank until further orders. This interim order is passed under Section 242(4) which provides that tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the Company's affairs upon such terms and conditions as appear to be just and equitable. There is nothing in this order to presume that the NCLT has handed over the Control of the Company to the Respondents. The impugned order is well within the jurisdiction of NCLT and passed for regulating the conduct of the Company's affairs. The order is just and equitable. Therefore, we

found no ground to interfere in the impugned order particularly, when the Petition is listed for final hearing before the NCLT on 26.03.2020.

12. we hope and trust that Ld. NCLT shall make all endeavor to decide the Petition on merit expeditiously.

Thus, the Appeal is dismissed, however, no order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

NEW DELHI
SC