

DIVISION BENCH

S-2

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

IA/476(KB)2021
In
C.P. (IB)/182(KB)2017

Present: 1. Hon'ble Member(J), Shri Rajasekhar V.K.

2. Hon'ble Member(T), Shri Harish Chander Suri

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 13th May, 2021, 10:30 A.M

Name of the Company	GUJRAT NRE COKE LTD.		
Under Section	Sec 60(5) / 10 IBC		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

Counsel / Authorised Representative appeared through video conference:

- | | | |
|----|---|--|
| 1. | Mr. Jishnu Chowdhury, Advocate |] For applicant in IA/476(KB)2021 |
| 2. | Mr. Arjun Asthana, Advocate |] (Gujarat NRE Coke Limited) |
| 3. | Ms. Ujjaini Chatterjee, Advocate |] |
| 4. | Mr. Sumit Binani, Liquidator of Gujarat NRE Coke Limited |] Self
] |
| 1. | Mr. Joy Saha, Sr. Advocate |] For R-1 |
| 2. | Mr. Kuldip Mallik, Advocate |](Liquidator of Bharat NRE Coke Limited) |
| 3. | Mr. Ayush Lakhotia, Advocate |] |
| 4. | Mr. Shashi Agarwal, Liquidator of Bharat NRE Coke Limited |] |
| 1. | Mr. Ajay Gaggar, Advocate |] For State Bank of India |

ORDER

1. Ld. Counsel for applicant in IA/476(KB)2021 present. Mr. Sumit Binani, Liquidator of Gujarat NRE Coke Limited, present in person. Ld. Sr. Counsel/Counsel for R-1 present. Mr. Shashi Agarwal, Liquidator of Bharat NRE Coke Limited, present in person. Mr. Ajay Gaggar, Ld. Counsel for State Bank of India present.

Arguments of Mr Jishnu Chowdhury, ld. Counsel for the applicant

2. In 29.07.2004 (p.38 of the pdf), when Bharat NRE Coke Ltd (hereinafter called Bharat NRE) and Gujarat NRE Coke Ltd (hereinafter called Gujarat NRE) were under the same management, KIDB

allocated 79 acres to Bharat, for 11 years. Clause 17 @p.46 is the right of Bharat to divest with prior permission of KIDB. On 14.03.2007 (p.52), Gujarat is given 32 acres with prior permission of KICB. At that time, Bharat will obtain freehold rights in respect of the land, and Gujarat is expected to pay proportionate share, and thereafter Gujarat can exercise its rights.

3. Between 2007 and 2015, GUJARAT NRE pays consideration for the full 32 acres, expected as per 14.03.2007 document. On 11.03.2015, despite the fact that GUJARAT NRE has paid full consideration, Bharat gets title for the whole 79 acres in its favour. On the same day, another document is executed by which *de novo* right is given by Bharat to Gujarat for a period of ten years. This also has a clause that in the event GUJARAT NRE wants to buy, it can do so without making any further payment, except for administrative costs.
4. On 01.12.2016, there is a further document executed by Bharat NRE in favour of GUJARAT NRE for ten years where the right does not find a mention. Mr Jishnu Chowdhury's contention is that the promoter-directors of GUJARAT NRE have fraudulently deprived the shareholders of GUJARAT NRE.
5. Mr Jishnu Chowdhury pressed for reliefs at prayer (f).

Arguments of Mr Joy Saha, Id senior counsel for the liquidator of Bharat NRE:

6. Mr Joy Saha, Id senior counsel for the liquidator of Bharat NRE, stated that the subject matter of this application and of IA 333/2021 is absolutely identical. Balance of convenience is not to be considered in isolation. Property has been conveyed to Bharat NRE as its absolute property. Therefore, the liquidator is entitled to sell all 79 acres in one lot.
7. In 2007, there is a deed of lease under which Gujarat NRE could have purchased its 32 acres. It did not. It is admitted that in 2015, Bharat NRE took the land in its own name, without any objection being raised by GUJARAT NRE. In 2015, a new lease is entered into, thereby abjuring whatever rights were there earlier.
8. Once a property is conveyed u/s 54 of the Transfer of Property Act, how can GUJARAT NRE come whenever it pleases? Mr Sumit Binani was the IRP, RP and liquidator of GUJARAT NRE. In all these years, the CIRP of GUJARAT NRE began in 2017. It is only now that Gujarat NRE has come forward to get an interim order.
9. Mr Joy Saha submitted that Bharat NRE's liquidator has filed an application in IA 333/2021 seeking eviction of Gujarat NRE and termination of the lease, quite some time ago. All these issues could have been raised by Gujarat NRE there. Today, GUJARAT NRE is seeking to exert a right based on a particular document which has been novated twice at least by its own

admission. At best, the present IA is a claim for specific performance. It is in any event barred by limitation. The claim is at best a chose in action.

10. Therefore, Mr Joy Saha submitted that:

- (1) Both the applications – IA 333/2021 and IA 476/2021 should either be heard together, or IA 333/2021 should be heard earlier because it was filed prior in point of time.
- (2) When application was filed, at that time also there was no urgency on the part of the liquidator of GUJARAT NRE.
- (3) Liquidator of GUJARAT NRE has not stated what steps have been taken by the liquidator of Bharat NRE.
- (4) Gujarat NRE's title has been challenged in IA 333/2021, and that application is pending. The title of the liquidator of GUJARAT NRE is under a cloud. Before that cloud is cleared, how can the liquidator be entitled to an injunction? This is not a court where a specific performance proceeding can be entertained.
- (5) In any event, the agreement of 2007 and 2014 has been novated in 2015. By the last agreement, there has been complete waiver in 2016.
- (6) If it is Bharat NRE's case that the then promoters have acted fraudulently, then there is a provision in law for these matters. Those steps should be taken against the erstwhile promoters.
- (7) The 2016 deed is not disclosed. There is suppression of material information.

Arguments of Mr Gaggar, learned counsel for R2 (SBI)

11. On this 32 acres of land which was sub-leased to GUJARAT NRE, the company has set up a coke processing plant.
12. We were always given the impression that GUJARAT NRE and Bharat NRE were part of the same management. That was why in 2007 there was a lease cum sale agreement – because a sizeable investment was being put up in the GUJARAT NRE plant.
13. Today, we are at liquidation stage. If we are not able to sell the plant along with the land, we would not get anything, because the coke oven plant will have to be dismantled. The land has to be there in order to maximise the land.
14. We have considered the submission advanced from all sides and carefully considered the matter. We feel that there is no pressing urgency at this stage to hear IA No.476/2021, especially since the title of Gujarat NRE to the 32 acres of land has been directly questioned in IA 333/2021 filed earlier in time.

15. Further, since the liquidation process of both Gujarat NRE and Bharat NRE are being considered by the same Bench, we have to see which of the two events will result in overall maximisation of value – whether it is by allowing bifurcation of the land by carving out Gujarat NRE’s claimed share for being sold separately along with the coke plant set up thereon; or by selling the entire parcel of 79 acres together with the coke plant of Gujarat NRE by making the liquidator of Gujarat NRE a confirming party in any sale. We have already taken the first baby steps in this direction by directing that the process of demarcation of boundaries be undertaken by the liquidator of Bharat NRE, in which we have directed the liquidator of Gujarat NRE also to cooperate. Once that process is completed, we will have a clearer picture as to what is required to be done.
16. In this view of the matter, we are absolutely convinced that we will need to take a holistic approach in the matter by hearing both applications – IA 333/2021 and IA 476/2021 – together. Both liquidators will need to eschew “silo mentality” in their respective actions and ensure that their actions are neatly dovetailed since what is at stake is the maximisation of value of the two companies. Therefore, the entire process is required to be taken forward in a spirit of complete cooperation rather than confrontation.
17. At the present moment, we direct that the pleadings be completed by exchanging reply affidavits in IA 476/2021 within three weeks, and rejoinder within three weeks thereafter. In IA 333/2021, the liquidator of Bharat NRE shall file his rejoinder within a period of three weeks.
18. List both these IAs – IA 333/2021 and IA 476/2021 – together on 19.07.2021 for further consideration.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V.K.)
Member (Judicial)

hb.

