

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

T.C.P No.48/(MAH)/2014  
M.A. No. 346/2017

CORAM:

Present:

SHRI M. K. SHRAWAT  
MEMBER (J)

SHRI BHASKARA PANTULA MOHAN  
MEMBER (J)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 02.11.2017

NAME OF THE PARTIES:

Mr. Surendra Kumar Dalmia

V/s.

M/s. Minerva Dealers Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 397/398 of the Companies Act 1956  
and 241/242 of the Companies Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
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1.	PRANAV SAMPAT, HAABIL. VAHANVATY SHAYAN DASGUPTA i/b KHAITAN & CO	ADV FOR PETITIONERS	<i>Handwritten signature</i>
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2.	K. S. AIYAR Sr. ADV. SHRI U.K. CHAUDHARY	FOR SR DALMIA GROUP of REPS	<i>Handwritten signature</i>
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3.	Nimay Dave, Shanay Shah & Sweety Khitan <del>ilb</del> ilb Bachubhai Munim & CO	For Respondent Nos 2, 547	<i>Handwritten signature</i>
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**ORDER**  
**MA 346/2017 IN CP 48/397-398/NCLT/MB/MAH/2014**

1. In respect of a Petition filed under section 397 & 398 of Companies Act 1956 bearing CP No. 48 of 2014 the Petitioner has filed a Miscellaneous Application bearing No.346 of 2017 on 08<sup>th</sup> August 2017 seeking Order to amend the said Company Petition.
2. From the side of the Applicant Learned Counsel Mr. Pranav Sampat, Mr. Haabil Vahavanty, Mr. Shayan Dasgupta, i/b Khaitan & Co. appeared and by placing reliance on the contents of the impugned application pleaded that certain new facts have surfaced in respect of the prayers made in the main Petition and relief claimed which came to the notice of the Applicant, hence filing this Amendment Application seeking permission to amend the impugned Petition. It is further pleaded that by the intervention of the then CLB, Mumbai Bench, the Petitioner was allowed to inspect some of the records of the Respondent Company. Only after the inspection, which was carried out in the presence of a Court Observer viz. Mr. Nupang Dholakia, Advocate, the Petitioner came to know about certain facts hence seeking permission to place on record all those facts by amending the Petition.
  - 2.1. The Application under consideration consists a Schedule of Contents of amendment yet to take place, if permitted. The Schedule contains insertion of paragraphs in the main Petition, in short only specific amendments claimed are discussed below:-
    - a. To insert a paragraph to supply original share certificates to the Petitioner, alleged to be in possession of a Third party.
    - b. To insert a paragraph to explain the position of TDR by the Respondent Nos.2 and 4 who have allegedly had lackadaisical attitude for obtaining the TDR entitlement from the Government authorities. According to the Applicant, value of the TDR could be worth over ₹150 crores.
    - c. To insert a paragraph to get certain "original title documents" which were alleged to be owned by Respondent No.1 Company in Minerva Chambers.



- d. To insert a paragraph to get business interest in M/s. Azure Tree Township Pvt. Ltd. wherein the Respondents have staked their claim, however, the Petitioner had failed to stake his claim.
- e. To insert a paragraph through which the Petitioner be allowed to know the Company's Shareholding in TFC and issue of duplicate Share Certificates.

2.2. In this Application there are few more amendments to be carried out as demanded by the Applicant.

3. The Respondents have vehemently objected the Application in question and Learned Counsel of the Respondent Mr. U.K. Choudhary, Sr. Advocate, has argued that the Petition was filed on 03<sup>rd</sup> April, 2014 before the then CLB and after a lapse of so many years, now the Petitioner is moving this Miscellaneous Application, that too, for amendment of the main Petition. He has also objected the manner and the time the Amendment is now sought by the Petitioner because of the reason that the pleadings have already been completed and the matter was listed for final hearing. It was a delay tactics on the part of the Petitioner to put pressure on the Respondents. According to the arguments of the Learned Counsel, the Application for amendment is filed with an ulterior motive to prompt the Respondent to place in writing the defence yet to be taken in a criminal proceeding pending against the Respondents. Through this Application, the Petitioner is putting pressure on the Respondents to commit a mistake which can be misutilized in certain other Court cases, especially the criminal case.

3.1. Our attention has been drawn on the list of the documents the Petitioner is now seeking permission to file the same, however, those very documents have already been filed as annexures to the main Petition or replies on record.

3.2. One of the argument of the Learned Counsel of the Respondent is that the motive of the Applicant is to force the Respondent to admit an event, which otherwise, is not in existence, so that the statement of the Respondent being utilized in a criminal proceeding. According to the argument of the Learned

Counsel a litigant is protected by the Constitution and cannot be compelled to make a self-damaging statement which can be used against oneself. According to the learned Counsel Article 21 of the Indian Constitution prescribes this protection.

4. Heard the arguments of both the sides at some length. On careful perusal it appears to be correct that several disputes are subjudice before the Court of competent jurisdiction and the documents are regularly analysed. Hence those documents are not to be allowed to be filed again and again. There is no doubt that the main Petition in question is filed in the year 2014 before the then CLB and the Petitioner had sufficient time to seek permission for amendment, if any, but preferred to remain silent in number of years in the past and filed this Application only in the year 2017. We have examined a comparative chart of the documents which is submitted by the Respondent to demonstrate that most of the documents which are alleged to be the document in possession of the Respondents, however, on an Application directed to give inspection to the Petitioner and thus came to the notice of the Petitioner. Because of this reason, the Petitioner/Applicant is seeking permission but on close examination, this contention of the Petitioner/Applicant appears to be incorrect. The basic question is that under these circumstances is it justifiable to allow amendment? In our view, and also on face of records, nothing new is emerging from the Application in question. The Petitioner is almost repeating all those documents which are stated to be already on record.

5. For our consideration a decision of the Hon'ble Supreme Court in the case of Chakreshwari Construction Private Limited Vs. Manohar Lal (2017) 5 Supreme Court Cases 212 is cited. The law laid down has been examined wherein certain questions have been considered that whether the amendment sought is imperative for effective adjudication?, whether Application for amendment is *bona fide*?, whether the amendment is creating a new cause of action, etc. All these questions thus throw light on the issue of admission of an Amendment Application. We are of the view that considering the guidelines issued this Application do not survive because of the basic reason that the amendment sought is already part



and parcel of the main Petition. Likewise, the evidences now the Petitioner/Applicant is seeking to file are also part and parcel of the main Petition.

5.1. One more decision of the NCLAT, New Delhi in the case of IVRCL Vs. M/s. IOT Utkal Energy Services Ltd. & Others bearing Company Appeal (AT) No.25 of 2017 order dated 29.03.2017 is cited, however, on careful reading we are of the view that this case law supports of the argument of the Respondent that in the absence of any subsequent development having a direct bearing on the main Petition can only be allowed through amendment, otherwise not. It is also held that in a situation Applicant had no knowledge prior to filing of the main Petition and came to know about certain facts only after filing of the Petition then permission be granted for amendment. In this case the Applicant has failed to demonstrate that the amendment is only in respect of certain events and facts came to his knowledge only after filing of the Petition. Rather, most of the amendment as sought were already part of the main Petition.

5.2. As a result, after hearing both the sides and considering the totality of the facts and findings of the case, we hereby reject this Application. However, before we part with, it is necessary to place on record that in the reply the Respondent has fairly stated that if the Applicant is willing to bring on record a document/evidence which is already in existence when the Petition was filed, then with the permission of the Court can do so along with a sworn Affidavit. We are also of the opinion that the Applicant is not to be prohibited in making reference of the documents/evidences referred in this Amendment Application if in existence before filing the Petition now under consideration. If the Bench deem fit, those evidences, if permitted under law, shall be taken into account for necessary adjudication. The Application, is therefore, dismissed subject to the observations made *supra*.

6. Petition to be listed for hearing on 8<sup>th</sup> Dec. 2017

Sd/-

**BHASKARA PANTULA MOHAN**

Member (Judicial)

Date : 02.11.2017

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Sd/-

**M.K. SHRAWAT**

Member (Judicial)