

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
T.P NO.28/2016  
IN  
C.P.NO. 22/2011  
IN  
C.A. NO. 01/2015**

***PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL  
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL***

**IN THE MATTER OF THE COMPANIES ACT, 1956  
UNDER SECTION 397/398, 402, 406, 409, 543-545 OF THE COMPANIES  
ACT, 1956**

**Mr. K.P.BOPANNA**

**Vs**

**M/S VECTOR NDT TECHNOLOGIES PRIVATE LIMITED & 3 OTHERS**

**ORDER**

This company Application is filed on behalf of petitioner under Company Law Board Regulations 42, 32, 44 and 46. The averments in the Application in brief are that, by an oversight in the main petition he had inadvertently mentioned at page No.12, sub-para vii of (1) of (I) of (L) that the petitioner was at Delhi on 24/08/2010. The said sub-paragraph was by itself on account of a mix up of dates and it is a typographically error.

The Respondent highlighted this inadvertently error in their counter. It is an editing mistake and pasted inadvertently. Thus the same is neither willful nor wanton but merely incidental. By allowing this application no loss or prejudice would be caused to the Respondent. It is therefore, prayed to order eschewing the first sub-paragraph vii in page 12 and to delete the same in the main petition.

Respondents 1 to 3 filed detailed counter opposing the Application alleging present petition is not in accordance with Regulation 17 of Company Law Board of Regulations 1991. The petition is liable to be rejected on this ground.

01/2

The original petition was filed in the year 2011 . In original petition the petitioner has stated that he was not at Bangalore on 24/08/2010 and on the said date he was at Delhi on a business trip and further he stated that, he would produce tickets etc., in proof of the same before the Bench.

The Respondents on the other hand proved that Petitioner was not at Delhi and he was at Bangalore on 24/08/2010 and it is further proved there was only a Board Meeting on that day and no Extra Ordinary General Meeting. For the first time in the Rejoinder petitioner stated that he erroneously mentioned in the company petition that he was at Delhi on 24/08/2010 and now saying there was a meeting on that day and he attend the said meeting and further stated that it was only a Administrative meeting and not Board Meeting and that he attended the meeting.

It is the case of Respondents the Board decided to Appoint 3<sup>rd</sup> Respondents as Additional Director which was also confirmed by Annual General Meeting. Incidentally the petitioner is not seeking amendment of the main relief, which is claimed basing on Para vii of page No.12 of the Petition. It is not open to petitioner to contend that there was typographical error. Petition is liable to be dismissed.

We have heard the Counsels for petitioner and for Respondents.

In the written submission filed for main petition, the petitioner relied on certain rulings in support of his contention that, the proposed amendment can be allowed even though there is delay.

The Learned Counsel for Respondents 1 to 3 relied on Company Law Board Regulations 1991 and NCLT Rules 2016, apart from commentary to Section 397.

The point for consideration:-

Whether there are grounds for amendment as prayed for?



It is contended on behalf of the petitioner that there is typographically error occurred in 1<sup>st</sup> part of para vii in the company petition filed by the petitioner. The Counsel would contended due to mixing up of dates this error occurred in Para vii. In fact, Petitioner went to Delhi on 24/12/2010 but inadvertently he stated in the petition that he was at Delhi on 24/08/2010. Thus it is typographically error and the said Para can be eschewed by way of Amendment.

Counsel for Respondents opposed for deleting the said paragraph on the ground the present application is filed at a abnormal delay and admission once made cannot be allowed to be deleted by way of amendment.

The question whether proposed amendment is a typographically error and occurred inadvertently so as to permit the petitioner to delete the 1<sup>st</sup> part of Para vii of the petition.

The petitioner filed Company Petition No.22/2011 before Company Law Board in the year 2011. The present application is filed by the Petitioner for more than 4 years after filing company petition. Thus there is an abnormal delay in filing the present petition. Of course, amendment cannot be refused merely on the ground of delay, but it all depends on the facts and circumstances of each case.

An admission made cannot be permitted to be withdrawn by way of amendment.

It is the specific case of petitioner in the Company petition in Para 4 that there was no meeting of the Board or Shareholders of the Company on 24/08/2010. He alleged the declaration filed before Registrar of Companies, Karnataka Bangalore with regards to the Minutes dated 24/08/2010 is false and concocted. In the 1<sup>st</sup> part of Para-vii the petitioner stated that on 24/08/2010 he was in Delhi on official visit of the business of the Company. He was not in Bangalore on that day. He further stated the Flight Tickets, stay details and customer visiting mails are also available. Thus he categorically stated that there was no Board Meeting on 24/08/2010 and further he was in Delhi and there is a proof with him.

The Respondents 1 to 3 filed counter to the main petition in 2011 itself. The Respondents 1 to 3 stated that there was Board Meeting on 24/08/2010 and it was also attended by the Petitioner and it is also stated that the petitioner sent e-mail to the employees on the same day describing the events taken place on that day and a copy was also sent to Respondents. Further the appointment of 3<sup>rd</sup> Respondent was also approved by Annual General Meeting held on 30/09/2010.

As early as in the year 2011, Respondents categorically stated that petitioner attended the meeting on 24/08/2010 and further Respondents relied on the e-mails sent by the petitioner regarding the said meeting held on 24/08/2010.

After Respondents filed their counter the petitioner filed Rejoinder. Wherein he stated that the petitioner was in Bangalore on 24/08/2010 but dates were mixed up inadvertently as he was in Delhi on 24/12/2010. However, he stated that there was no Board Meeting on 24/08/2010 but it was only Administrative Meeting.

After filing rejoinder the Respondents also filed one more reply denying that there was only a Administrative meeting on 24/08/2010 as contended by the petitioner and further petitioner did not speak about the Annual General Meeting held on 30/09/2010 and petitioner also signed in the Resolution of the Annual General Meeting held on 30/09/2010.

Originally, the contention of the petitioner that, there was no meeting on 24/0-8/2010 wherein, 3<sup>rd</sup> Respondent was appointed as Additional Director. His contention that, he was at Delhi on that day. When counter was filed stating that petitioner attended the meeting on 24/08/2010 now he says he was at Bangalore on that day and that he attended the meeting but it was not Board Meeting. He is silent about Annual General Meeting held on 30/09/2010 and resolution passed there on.




It is his admission in the main petition there was no meeting on 24/08/2010 and he was not in Bangalore. This is a crucial admission as important decision was taken in the meeting appointing Respondent 3 as Additional Director which was said to have been ratified in the Annual General Meeting on 30/09/2010. The admission cannot be allowed to be deleted or eschewed by way of amendment.

The learned Counsel for petitioner relied on certain Rulings. The learned counsel for petitioner in his written submission to the main petition contended that no prejudice would be caused to the Respondents if error is rectified by way of amendment and further contended that delay is not a ground to refuse amendment.

After going through the citation and after hearing both sides, there are absolutely no grounds for permitting the petitioner to amend the petition as it is nothing but an admission and is not a mere a typographically error made inadvertently. The main company petition is filed for oppression and mismanagement and petitioner came up with specific contention with specific act of mismanagement against the company, and Respondents with regard to the appointment of 3<sup>rd</sup> Respondent as Additional Director. When such is specific case the same cannot be allowed to be deleted or eschewed by way of amendment.

Therefore, there are no grounds to allow the application and application deserves to be dismissed.

In the result the Application C.A. 1/2015 is dismissed.

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

DATED THIS THE 5<sup>th</sup> DAY OF OCTOBER, 2016