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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**IA 9/2016 & 14/2016 with
TP No. 131/397-398/NCLT/AHM/2016 (New)
CP No. 60/397-398/CLB/MB/2016 (Old)**


Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**


**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.01.2018**

Name of the Company: Mourad M. Fahim & Anr.
V/s.
MG Well Solutions Project International Pvt. Ltd. & Ors.

Section of the Companies Act: Section 397-398 of the Companies Act, 1956

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.	NAVIN PAHWA WITH RITU SHAH	S.R. Adv	Petitioner	
2.	FOR THAKKAR AND PAHWA	Adv.		

1	Sushma Nagaraj a/w Devashish Tiwari i/b Converse Law	Adv. Adv.	Respondents	
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ORDER

Learned Senior Advocate Mr. Navin Pahwa with Learned Advocate Ms. Ritu Shah present for Petitioner. Learned Advocate Ms. Sushma Nagaraj with Learned Advocate Mr. Devashish Tiwari i/b Converse Law LLP present for Respondents No. 1 to 6.

Heard arguments of learned Counsel for Petitioner and learned Counsel for Respondents on the affidavits of the petitioner filed on 13.07.2017 and 03.08.2017.

Learned counsel for petitioner submitted that filing of affidavits on 13.07.2017 and 03.08.2017 became necessitated on account of certain facts that came to light during inspection of the company.

Learned Counsel appearing for Respondent submitted that majority of the contents of the affidavits relate to new facts that are not stated in the main petition. She further contended that pleadings cannot be amendment without the leave of the court and in support of her contention she had relied upon decision in Gurdoyal Singh & Other in (2002) 2 SCC 445.

Another contention of learned counsel for Respondent is that CP has to be adjudicated basing on the facts averred in the petition and no new facts can be taken into account in adjudicating the petition. In support of the contention she relied upon the decision in Kalinga Tubes reported (1965) 2 SCR 720. There is no dispute about the above stated proposition of law. But new facts that are so prominently connected to the facts already averred can be taken into consideration to decide the controversy effectively and completely.


It appears that after inspection, petitioner thought it to file affidavits with certain facts. This is not the stage to decide whether the facts stated in the affidavits are entirely new facts or they have got any nexus to the facts that had already been averred in the main petition. There is no dispute about the proposition that amendment in the pleadings cannot be made without the leave of the Tribunal. Mere filing of affidavits cannot have effect of amendment of pleadings. If any new facts are there in the affidavits that were filed, the Respondent is certainly having liberty to request the Tribunal not to consider them in the final hearing. To avoid possibility of prejudice to the Respondent, respondent is permitted to file reply affidavit. The issue of introduction of new facts either in affidavits filed on 13.07.2017 and 03.08.2017 as well as the reply affidavits that are going to be filed can be agitated in the final hearing.

The Affidavits filed by the petitioner are received subject to above said observations. Respondent shall file their reply affidavits within three weeks serving a copy in advance to other side.

List the matter on 09.03.2018 for final hearing.


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 16th day of January, 2018.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL