

National Company Law Tribunal

Allahabad Bench

CP NO. 22/ND/2013

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.11.2017

NAME OF THE COMPANY: Pioneer Power & Engineering Pvt Ltd,

SECTION OF THE COMPANIES ACT/I & B CODE: 397/398 of the Companies Act of 1956

<u>Sl. NO.</u>	<u>Name</u>	<u>Designation</u>	<u>Representation</u>	<u>Signature</u>
1.				
2.	Jannayadn	Advocate	Respondent	Jannayadn

NO.22/ND/2013

The case is taken up in respect of hearing and further order in application bearing CA No.196/2017 seeking for some correction to be made in the order passed in the CA No.78 of 2017. By which this Court granted permission to carry necessary amendment in CP No.22/ND/2013 as well as in the company application no.25/2017. However, due to some error occurred in such order is not workable. Hence, desired amendment in the main company petition cannot be carried.

It is also submitted that, if such correction of the order is not made, then the petitioner will have to suffer irreparable loss & injury.


We have heard the submission of learned counsel for the parties and perused the previous proceedings dated 19.09.2017 and records of this case, whereby this Court disposed of by pronouncing an order in CA No.78 (filed Under Rule 34 read with Rule 11 of the National Company Law Tribunal Rules, 2016 and under Order 6 Rule 17 of the Code of Civil Procedure) and thus allowed to carry necessary amendment to insert new paras 3(A) to 3(H) in the main company petition, which is not relevant nor was prayed for the main company petition and due to some inadvertence such has been mentioned in the order of the CA while such amendment

was requested and relevant to a pending CA No.25/2017 for the purpose of taking on record some additional documents and proposed amendment to be carried after para 3 by inserting para 3(A) to 3(H). Hence, our order is not properly worded. Such error erupted in the order due to some inadvertence is noted and accordingly the same is rectified. Thus, our order passed in CA No.78/2017 to be read for the purpose of carrying amendment in the company application no.25/2017 to bring some additional documents on record and to introduce new paras after para 3 as proposed in the CA No.78/2017. Such amendment is permitted for the reason as stated in our order dated 19.09.2017 which need to be read together with this order.

Equally the respondents are granted liberty to file counter affidavit/reply to such amended CA No.25/2017. The petitioner is further advised to file a fair amended copy of the CA No.25/2017 and to serve an advance copy thereof to the opposite counsel/party. Thus, our order passed in CA No.78/2017 is suitably amended and accordingly CA No.78/2017 stands disposed of.

The matter is further taken up for passing an order in CA No.79/2017 praying further amendment in the main company petition because of proposal to file certain additional documents alongwith the main company petition as these documents could not be procured earlier. Hence, could not brought to the pleadings of the main company petition. Thus, the petitioner has proposed an amendment in para no.7.49 of the main company petition by adding/inserting some additional para nos.7.49 to 7.49(h) with the additional prayer/relief clause to be incorporated/added in final relief clause in the main company petition and to be incorporated as XIII (A & B) and in clause XII (A & B).

It is a matter of record, common grounds were taken in both amendment applications. Therefore, common arguments were heard and this Court passed an order in CA No.78/2017 by allowing the same and observed as such, which is



equally relevant for consideration and disposal of the present application also. The same are being reproduced for the sake of convenience herein below: -

“We have heard the rival submission made by the learned counsel for both the parties e.g. Sh. Ajay Bhanot, Ld. Sr. Advocate alongwith Sh. Siddharth Singhal and Sh. Nishant Mishra, Advocates for the respondents. We have also perused the document annexed with the present company application.

By considering the facts & circumstances of the present application, prima facie we are of the view that there would be no serious prejudice to the interest of the respondent company in case we allow the present amendment application because the respondents would be able to get a fresh opportunity for filing consequential amendment and reply to the main company petition. Further, at this stage of deciding amendment application. It would not be appropriate for this court to go into the merits of the proposed amendments and pleadings, those are seriously disputed and denied by the respondent in their paragraph wise reply, unless such denial is duly incorporated in the formal reply to the main company petition through a consequential amendment in the reply/written statement of the respondent company. Further, we find that by incorporating such pleadings, the nature of the present proceedings is not going to change nor it change the nature of the cause of action arose in the present matter. Therefore, we do not find adequate force in such objection to disallow the proposed amendments. That apart, respondents' further objection as the applicant alone signed the company application, therefore, the proposed amendments do not find support from the other applicants and is not tenable at this stage because such issue can be taken very well at the time of formal/consequential reply to the main company petition for deciding the legality and admissibility of the proposed amendment (in the petition) for want of necessary instruction and proper authority from the other



applicants. After doing so, such issue can be dealt with and decide in accordance with law by this Court.

Notwithstanding the above, we find some substance in such argument of the respondent that the present application seems to be filed at belated stage by the petitioner for seeking proposed amendment in the main company petition, which will lead to fresh exercise of completion of pleadings and this cannot be treated as a healthy practise in view of the provision of the Companies Act, 2013, however, in order to avoid multiplicity of the proceedings that may arise, in case such amendment is not allowed by this Court, the applicant may file another company petition on some other grounds, hence, in order to provide substantial justice to the parties concern. We feel the present application deserves to be allowed and inconvenience caused, if any, to the respondent to be compensated by the appropriate cost.

In the light of the above stated discussion, the present application is allowed with a cost of Rs.10,000/- payable to the respondents.”

Therefore, in the light of the above stated findings, we do not find any ground to reject the proposed amendment as sought for in respect of the main company petition. Because, we are of the view that the respondent would get further/fresh opportunity for filing their consequential reply and to make a consequential amendment in the reply to the CA No.25/2017 as well as to the main company petition. Further, the inconvenience caused to the respondent has already been considered by this Court by way of cost which has already been imposed on petitioner to make payment of Rs.10,000/- to the respondents. Hence, the present CA No.79/2017 is also allowed to carry amendment as proposed in the amendment application (no.79/2017) in the main company petition. Such amendment to be carried within four weeks from the date of receipt of the copy of the order.




The petitioner is further advised to file a fair, amended copy of the company petition alongwith all annexures to this Court and further to serve a fresh amended copy alongwith annexures to the respondent, so as to enable him to carry consequential amendment and consequential reply in the company petition no.22/ND/2013 and company application no.25/2017 and accordingly disposed of and necessary consequential amendment/reply to the amendment application to be filed by four weeks from the receipt of a fair copy of the amended petition and company application.

CA No.196/2017 is allowed and accordingly stands disposed of.

The matter be listed on 12.12.2017.

Dated:10.11.2017

Typed by:
Kavya Prakash Srivastava
(Stenographer)

A handwritten signature in black ink, appearing to be 'H.P. Chaturvedi', is written over a horizontal line. The signature is stylized and cursive.

H.P. Chaturvedi,
Member (Judicial)