

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. 05/2017

IN

T.P.NO. 47/2016

DATED: FRIDAY THE 3RD DAY OF MARCH 2017

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

IN THE MATTER OF

M/s STEWART PINNED PRODUCTS PRIVATE LIMITED

I.A. 05/2017 IN T.P.NO. 47/2016

J&D WILKIE LTD.

-

PETITIONER

AND

**STEWART PINNED PRODUCTS
PRIVATE LIMITED AND OTHERS**

-

RESPONDENTS

PARTIES PRESENTED:

- 1) Sri M.S Ganapathy, Counsel for Petitioner
- 2) Sri Vishnu Hegde, M/s Lex Scientia Advocates,
Bangalore- Counsel for Respondents.

Heard on: 09/01/2017, 03/02/2017 and 14/02/2017

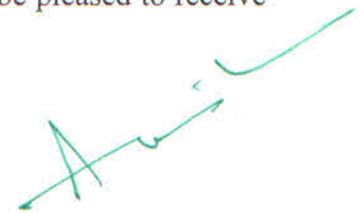
ORDER

This Application is filed under Section 151 of the Code of Civil Procedure Read with Rule 9 of the Companies Rules by one Mr. Pranav Kumar Tiwary who is arrayed as 2nd Respondent in the main petition.

This Application is coming up for hearing before us on 09/01/2017, 03/02/2017 and 14/02/2017 and we pass the following order:-

This Application is filed on behalf of 2nd Respondent with a prayer to receive the documents filed along with Application.

It is averred in the Affidavit that 2nd Respondent is a permanent Managing Director of 1st Respondent Company. It is further averred that, he has already filed documents from Annexure-1 to 59. Now he is filing additional documents basing on subsequent developments and those documents are necessary and essential to prove his contention. It is further averred, the Tribunal may be pleased to receive the documents filed herewith.

Objections are filed on behalf of Respondent who is a petitioner in the main petition M/s J&D Wilkie Ltd., It is averred in the objections that present application is under wrong provisions of law is not maintainable. Application should have been filed under relevant rules of NCLT. It is further averred the Application is filed at a highly belated stage and the Applicant has failed to establish how the proposed documents are relevant. The present Application is filed to delay the proceedings. The Applicant was removed from the post of Director in the Extra ordinary General Meeting held on 9th July 2013 and that he is no longer Director. Further he never acted as permanent Managing Director and that there is no post as permanent Managing Director. It is further averred the Applicant is falsely alleging he is a permanent Managing Director. It is stated the documents now filed are for the period subsequent to the filing of main petition. Further those documents are not at all relevant. It is alleged that the present Application is filed at a highly belated stage. It is the petitioner in the main petition who assumed controller of the Company as day to day operations and started rectifying the defects caused by the Applicant. In this connection Balance sheet was prepared. It is only a statutory audit but not forensic Audit. It, therefore prayed to dismiss the Application.

This is an Application filed to receive 4 documents as Additional documents. The Applicant already filed annexures 1 to 59, By this Application, Applicant prayed the Tribunal to permit him to file 4 more documents as Additional documents as Annexures-60 to 63.

The Counsel for the Applicant/the 2nd Respondent in the main petition would contend that, the additional; documents are arising out of the latest development that took place after the filing of the petition. The Counsel would contend that, the additional documents are necessary to support the case of Applicant and is also of help for rendering justice to the case.

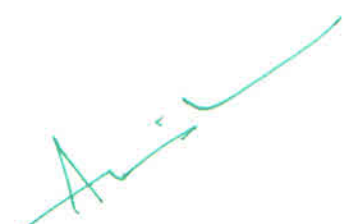
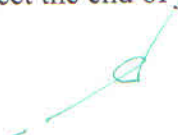
The contention of the Counsel of the opposite party is that, Application is filed at a highly belated stage when main petition is coming for hearing. The mere delay in filing the application to condone delay for receiving the documents is not by itself a ground for dismissing the Application.

It is the case of Applicant these documents came into existence subsequent to the filing of the Company Petition. The documents relied by the Applicant which relate to order sheet in O.S No. 317/2014 on the file of Principal Civil Judge Court at Anekal. This is a suit filed by the Applicant subsequent to the Company Petition. The 2nd document is also connected to O.S No.317/2014, the 3rd document is Audit Report and the 4th document is the Balance sheet. The Counsel for opposite party is not denying the Audit Report and Balance sheet filed on behalf of the company, and also not disputing filing of the suit by the Applicant in the Principal Civil Judge Court at Anekal

The second objection raised by the Counsel for opposite party in this Application that documents are no way connected to or relevant for deciding the main petition. Here the relevancy or otherwise of these documents is not a question to be decided. The scope of this Application is just to grant permission to the Applicant to file additional documents. The relevancy of these documents is a matter for consideration at the time of final hearing. At this stage Tribunal cannot go into the question of relevancy. It is always open to the opposite party to question the relevancy of these documents at the time of hearing. This objection is therefore not sustainable. The third contention of the Counsel of opposite party is that, the present Application is filed under 151 of the Civil Procedure Code read with Rule 9 of the Companies Rule and it is not the relevant provisions and contended that petition is liable to be dismissed.

Mere quoting of wrong provisions of law is not by itself a ground to dismiss the Application. Order 13 Rule 2 of the Civil Procedure Code deals with receiving of documents filed with delay. Therefore, this Application can be treated as one filed under Order 13 Rule 2 of the Civil Procedure Code. Rule 11 of the NCLT Rules empowers the Tribunal to pass such and other order as may be necessary for meeting the ends of justice.

Thus Tribunal has inherent power to pass such order as may be necessary to meet the end of justice.



The main petition is coming up for hearing. Therefore, the present Application can be allowed.

In the result Application is allowed. The Additional Documents are received as Annexures 60 to 63 subject to proof of relevancy.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 30th DAY OF MARCH, 2017