

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
08-05-2024 AT 10:30 AM**

**CP No. 5/59/HDB/2020**

**AND**

**IA(CA) 23/2024 in CP No. 5/59/HDB/2020**

u/s. 59 of Companies Act, 2013

**IN THE MATTER OF:**

Girish Sanghi

**...Petitioner**

**AND**

Sanghi Cements Ltd & another

**...Respondent**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)**

**SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**IA No. 23/2024:**

1. This Interlocutory Application is filed on behalf of 1<sup>st</sup> Respondent in the Company Petition, *namely*, M/s Sanghi Cements Ltd, for leave to file additional documents mentioned in the list enclosed to this Application.

2. According to the Applicant, the Applicant earlier had filed IA 235/2023 praying this Tribunal to permit the Applicant to bring on record an additional affidavit and the very same documents the receipt of which is sought in this application and said IA was partly allowed, ordering that additional affidavit alone be received and refused to receive the documents on the ground that procedure mandated under law for receiving additional documents was not followed by the Applicant. In this backdrop the present Application is filed for leave to receive the very same additional documents.

3. According to the Applicant the reason for not filing these documents earlier is that the additional documents sought to be received are the documents which the applicants have now been able to locate from their company records. It is further submitted that the records in question are almost 10 years old and as such, the Applicants are filing whatever relevant information/documents it has now been able to locate.

4. The Respondent filed counter opposing the Application contending, inter-alia, that the Applicant is trying to bring some irrelevant additional documents on record without there being a pleading in respect of these additional documents, as according to the Respondent the same is impermissible under law. In support of their submissions, the Respondent relied on the following ruling:-

**Bachhaj Nahar Vs Nilima Mandal & Anr (2008) 7 SCC 491.**

“The principles laid down in Bhagwati Prasad 11 and Ram Sarup Gupta (supra) referred to above and several other decisions of this Court following the same cannot be construed as diluting the well settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded”.

It is further contended that the so-called reason stated in the application for not filing the documents earlier, is neither tenable nor sustainable and on this ground alone the application is liable to be dismissed. In support of this plea, the Respondent relied on the following ruling:-

**Union of India Vs Ibrahim Uddin & Anr (2012) 8 SCC 148.**

29. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

30. The words "for any other substantial cause" must be read with the word "requires" in the beginning of sentence, so that it is only where, for any other substantial cause, the Appellate Court requires additional evidence, that this rule will apply, e.g., when evidence has been taken by the lower Court so imperfectly that the Appellate Court cannot pass a satisfactory judgment.

31. Whenever the appellate Court admits additional evidence it should record its reasons for doing so. (Sub-rule 2). It is a salutary provision which operates as a check against a too easy reception of evidence at a late stage of litigation and the statement of reasons may

inspire confidence and disarm objection. Another reason of this requirement is that, where a further appeal lies from the decision, the record of reasons will be useful and necessary for the Court of further appeal to see, if the discretion under this rule has been properly exercised by the Court below. The omission to record the reasons must, therefore, be treated as a serious defect. But this provision is only directory and not mandatory, if the reception of such evidence can be justified under the rule.

32. The reasons need not be recorded in a separate order provided they are embodied in the judgment of the appellate Court. A mere reference to the peculiar circumstances of the case, or mere statement that the evidence is necessary to pronounce judgment, or that the additional evidence is required to be admitted in the interests of justice, or that there is no reason to reject the prayer for the admission of the additional evidence, is not enough compliance with the requirement as to recording of reasons.

5. It is further submitted that the documents now sought to be brought on record are fabricated and hence cannot be received. It is stated that when the purported notice for EOGM, which is now sought to be filed, since not filed statutorily, the same cannot now be received. Thus, contending the Respondent prayed for dismissal of the Application.

6. In the light of the contest as above, the point that emerges for our consideration is:

Whether the reasons pleaded by the applicant for filing the additional documents belatedly, constitute 'substantial cause'? If so, for what relief?

**7. We have heard, Mr. Harshit Ratra, Ld. Counsel for the Applicant and Ms. Kopal Sharraf Ld. Counsel for the 1<sup>st</sup> Respondent, perused the record, the written submissions and the case law.**

8. At the outset, it is to be stated that post conclusion of the oral submissions in the main CP were concluded on 06.09.2023 and when the matter at request, has been posted to 27.09.2023 for filing written submissions which the respondent herein alone has filed, the 1<sup>st</sup> respondent in the Company Petition has filed IA 235/2023 for receiving additional documents mentioned in the list annexed thereto, which application was disposed of in the manner afore stated.

Thus, the present application is the second application in a row by the 1<sup>st</sup> Respondent in Company Petition to take on record additional documents, post completion of the oral submissions in the CP.

9. The Company Petitioner has specifically challenged the allotment of shares to 2<sup>nd</sup> Respondent stated to have been made on 21.03.2014 and prayed to declare the said allotment as illegal and also sought rectification of the Register of Members. However, a perusal of the counter filed on 05.02.2020 by the Applicant herein in the Company Petition, shows that there are no pleadings concerning the documents which the applicant is now intending to file. Therefore, relying on the ruling of Hon'ble Supreme Court in *Bachhaj Nahar Vs Nilima Mandal & Anr* (2008) 7 SCC 491, wherein it was held that;

“The principles laid down in *Bhagwati Prasad 11* and *Ram Sarup Gupta* (supra) referred to above and several other decisions of this Court following the same cannot be construed as diluting the well settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded”.

and prayed the Tribunal to dismiss the application.

10. “It is quite clear from the above ruling that, it is the well settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded”.

11. We have noticed that, there are no pleadings in the counter filed by the applicant regarding the documents now sought to be filed. The ruling relied on by the 1<sup>st</sup> Respondent in *Bachhaj Nahar Vs Nilima Mandal & Anr* (2008) 7 SCC 491, is therefore, applicable to the present case.

12. In so far as the reasons put forth in the application for not filing the documents earlier when examined the same are found to be unconvincing and unacceptable as such the same cannot constitute sufficient cause.

13. Hon'ble Supreme Court judgement in re Union of India Vs Ibrahim Uddin & Anr (2012) 8 SCC 148.

*29. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.*

*30. The words "for any other substantial cause" must be read with the word "requires" in the beginning of sentence, so that it is only where, for any other substantial cause, the Appellate Court requires additional evidence, that this rule will apply, e.g., when evidence has been taken by the lower Court so imperfectly that the Appellate Court cannot pass a satisfactory judgment.*

*31. Whenever the appellate Court admits additional evidence it should record its reasons for doing so. (Sub-rule 2). It is a salutary provision which operates as a check against a too easy reception of evidence at a late stage of litigation and the statement of reasons may inspire confidence and disarm objection. Another reason of this requirement is that, where a further appeal lies from the decision, the record of reasons will be useful and necessary for the Court of further appeal to see, if the discretion under this rule has been properly exercised by the Court below. The omission to record the reasons must, therefore, be treated as a serious defect. But this provision is only directory and not mandatory, if the reception of such evidence can be justified under the rule.*

*32. The reasons need not be recorded in a separate order provided they are embodied in the judgment of the appellate Court. A mere reference to the peculiar circumstances of the case, or mere statement that the evidence is necessary to pronounce judgment, or that the additional evidence is required to be admitted in the interests of justice, or that there is no reason to reject the prayer for the admission of the additional evidence, is not enough compliance with the requirement as to recording of reasons.*

14. We are therefore of the view that, in the absence of any sufficient cause for not filing these documents earlier being established by the petitioner, the documents cannot be allowed to be introduced belatedly, especially when the oral arguments of both sides concluded and written submissions on behalf of one party has been received.

15. Thus, the Application is devoid of any merit or substance, therefore, the same is liable to be dismissed.

16. Accordingly, the same is hereby **dismissed**, however without costs.

**SD/-**  
**MEMBER (T)**

**SD/-**  
**MEMBER (J)**

S.No.6

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**ORDER**

**CP No. 5/59/HDB/2020**

**For filing written submissions by the Petitioner as a last chance call on  
09.05.2024.**

**SD/-**

**MEMBER (T)**

**SD/-**

**MEMBER (J)**