

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
31-05-2024 AT 10:30 AM**

**CP No. 45/241/HDB/ 2023**

**AND**

**IA (CA) 76, 65, 69, 77, 117, 143, 141, 142/2024, IA(CA) 264/2023 &  
Contempt (CA) 05/2024 in CP No. 45/241/HDB/ 2023**

u/s. 241 of Companies Act, 2013

**IN THE MATTER OF:**

Escientia Life Sciences & ors

**...Petitioner**

**AND**

Escientia Advanced Sciences Pvt Ltd & Others

**...Respondent**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**CP No. 45/241/HDB/ 2023**

Learned Senior Counsel Mr Vivek Reddy, for the petitioner present through Video Conference.

Learned Counsel Mr. Tarun G Reddy and Mr Sairam, for respondent No 2 and 3 present physically.

Learned Senior Counsel Mr Arvind Pandian, for Respondent Nos 4 to 6 present through Video Conference.

Learned Senior Counsel Mr. S. Niranjan Reddy, for respondent No 2 and 3 present physically.

Call on 03.06.2024, for hearing.

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**IA (CA) 65/2024**

For hearing, matter adjourned to 03.06.2024.

**IA (CA) 69/2024**

Heard, Learned Senior Counsel Mr S Niranjan Reddy for applicant.

For continuation, matter adjourned to 03.06.2024.

**IA (CA) 77/2024**

Heard, Learned Senior Counsel Mr S Niranjan Reddy for applicant.

For continuation, matter adjourned to 03.06.2024.

**IA (CA) 117/2024**

For hearing, matter adjourned to 03.06.2024.

**IA (CA) 143/2024**

For hearing, matter adjourned to 03.06.2024.

**IA (CA) 141/2024**

For hearing, matter adjourned to 03.06.2024.

**IA (CA) 142/2024**

For hearing, matter adjourned to 03.06.2024.

**IA(CA) 264/2023**

For hearing, matter adjourned to 03.06.2024.

**Contempt (CA) 05/2024**

For hearing, matter adjourned to 03.06.2024.

**IA 76/2024**

**ORDER ON THE PLEA OF PRE HEARING, ON THE NOTICE OF IMPLEADEMENT OF A PARTY.**

1. The 2<sup>nd</sup> Petitioner in the above Company Petition, has filed this seeking for a direction to implead Mr. MSM Mujbeer Rehuman, as the 10<sup>th</sup> Respondent in the present proceedings and for other reliefs
2. When the above IA came up for admission, Ld. Sr. Counsels representing the 4<sup>th</sup> Respondent raised an objection for issuance of notice to the proposed 10<sup>th</sup> Respondent, contending, *inter alia*, that the proposed 10<sup>th</sup> respondent is neither a necessary nor a proper party and the Tribunal can comprehensively and effectively decide the Company Petition without the presence of the proposed 10<sup>th</sup> Respondent, as such it is not necessary to issue notice to the proposed 10<sup>th</sup> respondent.

3. Since the above submission was strongly opposed by the Ld. Sr. Counsel for the Petitioner. Therefore, the short and the only point that requires our consideration is:

**Whether in an impleadment petition, can the respondents on record claim that they have a right to be heard *before* issuance of notice to the party proposed to be impleaded?**

4. We have heard Mr. Vivek Reddy, Ld. Senior Counsel for the Petitioner, Mr. Arvind Pandian, Ld. Senior Counsel assisted by Mr. Rusheek Reddy for R-4 and Shri Niranjan Reddy, Ld. Senior Counsel assisted by Shri Tarun Reddy, Advocate, perused the record and the written submissions.
5. Mr. Vivek Reddy, Ld. Senior Counsel, representing the Petitioner, strongly resisted the objection, contending that there is no requirement of hearing the parties on record on an application filed to implead a party as Respondent before issuance of notice to the proposed party under the Code of Civil Procedure or the NCLT Rules and the only requirement of law in this regard is to *hear the proposed party* before considering the prayer for his/her impleadment as a party to a Lis. As such the objection is thoroughly misconceived and is liable to be dismissed. In support of the above submissions, Ld. Senior Counsel relied on the following decision.

(i) *Xavier Fernandes & Anr. v. State of Goa & Ors.*, LD-VC-CW-91-2020 (Order dated 17.08.2020) | *IMC Limited v. Deendayal Port Trust*, Special Civil Application No. 5694 of 2018 (Order dated 24.07.2018, para 55].

6. Ld. Senior Counsel, further submits that the proposed 10<sup>th</sup> Respondent is a necessary and proper party to the present Lis, this Tribunal, can straight away order notice to the proposed 10<sup>th</sup> Respondent.

7. Ld. Sr. Counsel also relied on the following rulings, in support of his submissions.

(i) *[Ratnagiri Gas & Power Pvt. Ltd. v. RDS Projects Ltd. & Ors., [2012] 9 S.C.R. 690, para 26]*

(ii) *[Vidur Impex & Trader Pvt. Ltd. & Ors. v. Tosh Apartment Pvt. Ltd. & Ors., [2012] 10 S.C.R. 307, para 36].*

(iii) *[Kasturi v. Ivy Amperumal & Ors., [2005] 3 S.C.R. 864, para 6 |*

(iv) *Udit Narain Singh Malpaharia v. Additional Member of the Board of Revenue [1963] Supp. (1) S.C.R. 676, page 681 |*

(v) *Public Service Commission. Uttaranchal v. Mamta Bisht & Ors., [2010] 7 S.C.R. 289, para 7]*

(vi) *[P.J. Mathews & Ors. v. C. Mohanan Pillai, Company Appeal (AT)(CH) No. 22 of 2021 (Order dated 07.07.2021), paras 18 – 20]*

8. Mr. P.H. Arvind Pandian, and Mr. S. Niranjana Reddy, Ld. Sr. Counsels, for the 4<sup>th</sup> respondent, at the outset submitted that, the proposed 10<sup>th</sup> Respondent is neither a necessary nor a proper party and the Tribunal can comprehensively and effectively decide the Company Petition without the presence of the proposed 10<sup>th</sup> Respondent. Hence, the petition itself is misconceived and is liable to be dismissed *in limine*. Ld. Senior Counsels further stated that the object behind filing IA 76/2024 is to harass and put unnecessary pressure on the proposed 10<sup>th</sup> Respondent who is an employee

of the 1<sup>st</sup> Respondent and a stranger to this *Lis* . According to the Ld. Sr. Counsels, no reliefs are claimed against him as none of his legal rights, (if any), of the proposed respondent are being decided in the present *Lis*. In support of the submissions, Ld. Senior Counsel placed reliance on the following rulings.

1. *Mr. Gajendran vs. Naargo Industries Private Limited & Ors.; Comp App (AT) (CH) No.62/2023* dated 20 September 2023. Paragraphs 51 to 57, 66 and 73 are relevant and relevant extract of paragraph 73 is quoted below:

*“73. ...Orders’, ‘Rules’ of ‘Civil Procedure Code, 1908’ are ‘in applicable’, pertaining to the ‘Matters’ under the Companies Act, 2013, even the ‘Fetters of CPC are ‘Civil Procedure Code, 1908’ are inapplicable’, are ‘not binding’, and in fact that ‘Tribunal’ / ‘Appellate Tribunal’, can ‘regulate its own procedure and apply its Principles’, considering the facts and circumstances ....”*

2. *M/s. Gazala Engineering Pvt. Ltd. Vs M/s. Tyco Fire & Security India Pvt. Ltd., C.A. No. 1387 of 2023 in COP No. 144 of 2011* dated 28 June 2013. Paragraphs 4 to 6 are relevant and relevant extract of paragraph 4 is quoted below:

*“2. By this Application respondent is seeking issuance of Notice to proposed respondent No. 2 i.e., Bank of Maharashtra, Pune to implead it as Respondent No. 2.....*

4. *.....Merely, because secured creditor of petitioner i.e., Bank of Maharashtra has initiated proceedings against the present petitioner, would not entitle the respondent to rope-in the said secured creditor in these proceedings and neither the said Bank is a necessary party nor a proper party in these*

*proceedings. This application has been filed with an intention to protract the present proceedings on one pretext or the other....”*

9. It is trite law, that for an effective, complete and proper disposal of a Lis, the presence of necessary and proper parties to the said Lis, is the *Sine qua non*. Therefore, the suitor who is the *dominus litis*, is expected to implead all the necessary and proper parties while initiating legal proceedings before a Court/Tribunal or a Quasi-Judicial Body.
10. Order 1 Rule 10 of Code of Civil Procedure, which deals with the impleadment parties to the Civil suits by the parties or court, is not made applicable to the proceedings under the Companies Act, before this Tribunal.
11. However, the Hon’ble Supreme Court of India, in *State Of Rajasthan vs Uchhab Lal Chhanwal* , 2013 (13) SCALE 272, held that,  
  
*“Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable.”*  
  
Therefore, applying the same analogy, the principles of Code of Civil Procedure can be followed by this Tribunal.
12. Be it as it may, Rule 37 of NCLT Rules, provides the procedure to be followed whenever Applications/ Petitions filed under the Companies Act, before this Tribunal, and the same is as below;

37. Notice to Opposite Party. -

(1) The Tribunal *shall issue notice to the respondent* to show cause against the application or petition on a date of hearing to be specified in the Notice. Such notice in Form No. NCLT.5 shall be accompanied by a copy of the application with supporting documents.

(2) If the respondent does not appear on the date specified in the notice in Form No. NCLT.5, the Tribunal, after according reasonable opportunity to the respondent, shall forthwith proceed *ex-parte* to dispose of the application.

Rule 2(16) says that, “party” means a person who prefers an appeal or application or petition before the Tribunal and **includes respondent or any person interested in the said appeal or application or petition** including the Registrar of Companies or the Regional Director or Central Government or State Government or official liquidator and **any person who has a right under the Act**, or the Reserve Bank of India Act 1934 (2 of 1934) **to make suggestions or submissions or objections or reply;**

13. Thus, the above Rules which are indisputably, applicable both at the time of filing an application/petition and also during the pendency of a Lis, clearly mandates *notice to a respondent on an application/petition filed*. That apart, *these* rules consciously and conspicuously, did not provide for hearing the respondents who are already on record, **before** issuing notice to the party who is proposed to be impleaded.
14. However, Ld. Sr. Counsel for the 4<sup>th</sup> respondent contends that, as the proposed 10<sup>th</sup> respondent is *neither a necessary nor a proper party* and as the Tribunal can comprehensively and effectively decide the Company Petition without the presence of the proposed 10<sup>th</sup> Respondent, *no notice to the proposed 10<sup>th</sup> respondent* need be issued. This submission in our

considered view is incomprehensible for the above and the following reasons.

- i). Rule 37 read with rule 16 of NCLT, rules, supra, which mandates the Tribunal to issue notice to the “*RESPONDENT*” to show cause against the application or petition, irrespective of the fact, whether the Respondent is a necessary and proper party or not.
  - ii). It admitted by the respondents that the proposed 10<sup>th</sup> respondent is an employee of the 1<sup>st</sup> respondent.
  - iii) One of the reliefs sought for in the Company petition is to quash the proposal of Respondent No.4 for appointment of a Chief Operating Officer and declare the same null and void, and restraining Respondent No.2 to 4 from making any other appointment with similar powers and to declare the appointment of Dr. M.S.M. Mujeebur Rahuman as Chief Operating Officer of the Respondent No.1 Company to be void ab initio for failure to adhere to the Articles of association of the Respondent No.1 Company.
15. In the light of the above reliefs prayed specifically against the proposed 10<sup>th</sup> respondent, *prima facie*, we are satisfied that the proposed 10<sup>th</sup> respondent is a *necessary party* to this *Lis*, hence no order can be passed against the 10th respondent without hearing him and in that view of the matter the submission

that without any notice to the proposed party, the Company Petition can be decided is unsustainable.

16. In the context we usefully rely on the ruling of Hon'ble Supreme Court of India, in *J.S. Yadav v. State of Uttar Pradesh and another*, held that;

*“No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice.”*

17. We hereby make it clear that, since our above observation that the proposed 10<sup>th</sup> respondent is a necessary party is only *prima facie*, a decision on whether or not the proposed 10<sup>th</sup> respondent is a ***necessary party to this Lis***, will be taken after due notice to all the respondents, including the 10<sup>th</sup> respondent.

18. Therefore, in the light of our discussion as above, we hereby overrule the objection as to ‘pre- notice hearing’ of the respondents on record by the 4<sup>th</sup> Respondent. Let notice be issued to the proposed 10<sup>th</sup> Respondent through Registered/speed post/email and also to the other respondents on record, if not already issued.

19. Call on 04.06.2024.

SD/-

Member (T)

*Binnu*

SD/-

Member (J)