

BROAD GUIDELINES FOR DRAFTING COMPANY PETITION/WRITTEN STATEMENT/REPLY AND ANNEXURES

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PRACTICAL ASPECT REGARDING DRAFTING AND FILING OF COMPANY PETITIONS/APPLICATIONS

1. While drafting the petition, the following points needs to be kept in the mind:-
 - a). Name of the Petitioner/Appellant and its full address;
 - b). Name of the Respondent and its full address;
 - c). Specify the Sections/Regulations/Rules of NCLT/ provision of CPC under which the Company Petition/Company Application has been filed;

2. The first para should always be, brief description of the Petitioner/Appellant Company - such as nature of the Company, business of the Company.

3. The second para should deal with the person signing the petition being authorized and attach either a Board Resolution or copy of Power of Attorney by virtue of which the person signing the petition has been authorized.

4. The third para should deal with brief description of the Respondent – such as the name of the Company, nature of the Company, in brief the business being dealt with by the Company.

5. It is always advisable to put the brief background in one go so that the Court after reading the background is able to understand the whole case of the Petitioner.

6. The Petitioner presenting its case in piecemeal manner and in different para, makes it difficult for the Court to understand, what the case of the Petitioner is.

7. In support of the pleadings, the Petitioner must attach the following documents:-

- a). Certificate of Incorporation;
- b). Board Resolution/Power of Attorney in favour of the person signing and filing the Company petition;
- c). Copies of the (i) Balance Sheets for the last three years (along with Money Receipt) depending upon the nature of the case and copies of (ii) Annual Returns for the three years depending upon the nature of the case.

The money receipt is required to be filed to demonstrate to the Court that the returns have been filed in time and there were no delay – Many a times it is not clear to the Court as to whether the returns have been filed in time or returns/documents for the past period have been filed one go.

d). Any return/form/document, which is sought to be challenged in the Company Petition, is required to be annexed along with the Petition (with money receipt).

e) Some information,(which may not be available with the Petitioner) may taken out from the various Government Department under the RTI Act.

f). The certificate of the Chartered Accountant would be required to show where there is a dispute about the contribution, investment, loan or on any other issue having financial bearing - being brought in by any of the parties.

g). A certificate from the PCS may be necessary in support of the fact that the Company has been maintaining statutory records and all entries have been made up-to-date or the extracts of the resolution is form part of the original minute book or to show that the meetings have been duly called, convened and held.

h). In case the Opposite Party has taken a particular stand in the written statement in terms of equity share, loans, investment or other financial contribution, arrange to obtain copies of his bank account statement and also his income tax returns and find out as to whether all the investments/loan/contributions has been shown in the Income Tax returns or not?

i). The Income tax returns/bank statements so procured need not be filed but to be shown only at the time of hearing.

8): Legal/factual plea to be taken in the Company Petition to be identified. Each plea be taken one by one and against each plea, narrate the factual position, the position of law and how the Petitioner comply with or if the allegations are against the Opposite Party, please specify in clear and unambiguous manner how the Opposite Party has violated the provisions of law.

9): At the time of drafting of company petition, the provisions of Order VI CPC to be kept in the mind.

10): Please specify by way of separate para as to when the cause of action has accrued to the Petitioner. If there are continuing cause of actions, specify the various dates as and when each time cause of action has arisen in favour of petition, to demonstrate that the Company Petition is within the time prescribed under the law of limitation.

11): Please also deal in a separate para that the Company Petition so filed by you is within time.

12): In case on the same subject matter (which is the subject matter of the present Company Petition) if there are any previous litigations, brief details of those previous litigations.

13): One para should be written to show as to how the Court has territorial jurisdiction to try and decide the case in which the petition is filed.

14): The Prayer clause should be very exhaustive so as to cover all prayers. All prayers should be set out to avoid objection being raised by the Opposite Party or by the Court itself that a particular relief, prayer has not been sought by the Petitioner. One para reading as – follows be added after the main prayer clause.

Any other order or orders or relief or relieves as this Hon'ble Court deem fit and proper under the circumstances of the whole case be granted.

15): Every petition is required to be filed by the Petitioners. In case, the Power of attorney has been given by the Company to Petitioners/ to one Petitioner such one Petitioner shall have to sign the petition at such number of places as the number of power of attorneys are there. For example, there is a Petitioner No.1 and there are Petitioner No.2 to 5 and the Petitioner No.2 to 5 have executed the Power of Attorney separately in favour of the Petitioner No.1,

the Petitioner No.1 will sign at place and thereafter the Petitioner No1 will also sign at four places to say for and on behalf of the petitioner No.2 to 5 respectively.

Likewise, there shall be five affidavits in support of the Company Petition on a stamp paper of the value (as prescribed under particular state) and the affidavit to be notarized either by Notary Public or by Oath Commissioner. Please note that the execution of the affidavit and its notarization should match and the date of the affidavit shall never be prior to the date of the Company petition.

16): The affidavit should be as per performa prescribed under the present Rule of NCLT Rules.

17): While drafting the reply to the Company Petition, the following points to be kept in mind.

a. raise the following legal issues by way of Preliminary Objections;

b. If the petition is not maintainable – please specify as to how and in what manner the Company Petition is not maintainable;

c. Whether the Company Petition is barred by limitation, please as to how the company petition is barred by law or Section 10 or 11 CPC

d. Whether the Company petition is legally maintainable or not in the light of provisions of Section 9 CPC. Instead of Company Petition, the civil suit is maintainable;

e. If there is a material concealment of facts and documents by the Petitioner, raise objections that the petition is liable to be dismissed on the ground of gross concealment amounting to fraud and the petition is liable to be dismissed summarily without being tried.

- f. While dealing with the merits of the Company petition, if each of the para is factually incorrect or if the Respondent has no knowledge, deny the same, let the onus be upon the Petitioner to prove the same.
- g. In case, after denying the submission, the Respondent must submit what is their case and what plea is required to be taken in support of their defence and also documentary evidence in support of their case.
- h. For preparing reply to the Company Petition, it is absolutely necessary that the detailed and exhaustive cross examination of the Party should be done to find out more and more information regarding what is past happening, present happening, previous litigations, the Petitioners' past history, background need to be asked.

- i. As in the case of petition, while drafting the petition, it is also necessary that the Respondent should also devote 8-10 paragraphs covering the brief background of the whole case of the Respondent for the easy understanding of the case.

- k. Please note that the Respondent should never ever admit the case of the Petitioner or any point raised in their CP/CA unless the documents on which the Respondent himself is relying upon - those documents admit the case of the Petitioner.

1. The petition, reply, Company Application – all are printed on legal size white/green paper and left hand margin space should be one and half inch and the right hand margin should be half inch – top margin should be one and half inch and bottom margin be again half inch.

m. On the Petition/Reply, the last page should be signed by all the Petitioners/Respondents. Company Petition/ written statement/reply should be supported by affidavit of such number of Petitioners/Respondents as they are in the Company Petition. All annexures to the Company Petition/Written Statement should be filed and is not necessary to file originals of the same and reserve the right to file original at the time of personal hearing.

- n. In the prayer clause of the Reply/Written statement, it is prayed that Company Application/Company Petition is liable to be dismissed.
- o. Fee payable at the time of filing the petition be in the form of Pay order in the name of Accounts Officer, NCLT.
- p. If the vakalatnama is given to the advocate, there should be Court Fee stamp (amount depending upon the state) and also advocate welfare stamp be also affixed). Advocate Welfare Stamp is not mandatory in all States.

q. Please note that all petition/written statement/reply/rejoinder/ sur-rejoinder/Company Application are required to be signed and filed by a competent person and must be authorized either by way of Board Resolution or Power of Attorney, a copy of such Board Resolution or Power of Attorney must be attached. Order 29 Rule 1 & 2 mandates that a person who is signing the pleadings, must be authorized to sign, verify and file the pleadings.



THANK YOU