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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010612752024

+ **C.A.(COMM.IPD-PAT) 74/2024**

ENVIRO AMBIENT CORPORATION

.....Appellant

Through: Mr. Pravin Anand and Dr. Neeti Wilson, Advocates.

versus

ASSISTANT CONTROLLER OF PATENTS

.....Respondent

Through: Mr. Sumit Nagpal, SPC with Mr. Tanmay Saini, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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03.08.2026

I.A. 39644/2024

1. This application is filed on behalf of the Appellant under Section 151 CPC seeking condonation of delay of 04 months and 10 days in filing the appeal.
2. For the reasons stated in the application, the same is allowed. Delay of 04 months and 10 days is condoned.
3. Application stands disposed of.

C.A.(COMM.IPD-PAT) 74/2024

4. This appeal is filed on behalf of the Appellant under Sections 116 and 117(A) of the Indian Patents Act, 1970 ('1970 Act') read with Rule 6 of the Delhi Intellectual Property Rights Division Rules, 2022 for setting aside the



impugned order dated 30.01.2024 passed by the Respondent, whereby Appellant's Patent Application No. IN201917020705 dated 24.05.2019 has been rejected for grant of patent.

5. To the extent necessary, the facts as pleaded are that Appellant, who claims to have 25 years' experience in green technologies, filed US priority application 62/428,907 on 01.12.2016 and US priority application 62/541,484 on 04.08.2017 followed by PCT application no. PCT/IB2017/001590 on 01.12.2017. Appellant filed national phase application in India bearing no. IN201917020705 on 24.05.2019 for invention titled '*CARBON DIOXIDE CAPTURE DEVICE AND METHOD*'. A total of 71 claims were filed of which 1-24 are method claims and claims 25-71 are system claims.

6. It is stated that a request for examination was made by the Appellant before the Patent Office on 25.11.2020 and First Examination Report (FER) was issued on 18.02.2021, to which response was filed by the Appellant on 10.08.2021. After the hearing on 13.11.2023, written submissions were filed by the Appellant on 28.12.2023 and vide order dated 30.01.2024, Respondent refused the application on two grounds: (a) lack of novelty under Section 2(1)(j) owing to prior art D1; and (b) lack of inventive step under Section 2(1)(ja), in light of prior arts D1-D6.

7. Challenging the impugned order, Mr. Pravin Anand, learned counsel for the Appellant submits that even without going into the merits of the claimed invention, the impugned order deserves to be set aside on the sole ground that it is non-speaking, unreasoned and cryptic. It is trite that a non-speaking and unreasoned order is untenable in law and that it is the obligatory duty of the Patent Controller to advert to all relevant points and



issues raised by the Applicant and deal with them and then pass a speaking order, reflecting reasons that have weighed with the Controller to come to a conclusion that the application for grant of patent lacks merit and deserves rejection and this context refers to the decision in ***Kranti Associates Private Limited and Another v. Masood Ahmed Khan and Others, (2010) 9 SCC 496***, where the Supreme Court held that the judicial trend in India has always been to record reasons even in administrative decision, if such decisions affect anyone prejudicially. Mr. Anand asserts that this Court has consistently and repeatedly remanded matters in patent appeals for fresh considerations owing to the fact that the Controller of Patent had passed unreasoned orders.

8. Drawing the attention of the Court to the impugned order, Mr. Anand points out that the order runs into over 15 pages but 3/4th of the order only contains references to the objections raised in the FER; claims extracted as such; and prior arts and thereafter without any discussion/analysis a conclusion is drawn by the Respondent that the arguments of the Appellant on claims 1-71 are not found satisfactory and convincing in view of cited documents and thus the objections are found relevant. He thus submits that on this ground alone, the order deserves to be set aside.

9. Mr. Anand further submits that carbon dioxide is a significant green house gas and increased concentrations leads to global warming and is generated from various sources such as power plants, factories, automobiles etc. Carbon dioxide capture technologies can greatly reduce the carbon dioxide which is emitted into the atmosphere and the captured gas can be put to use in chemical industry or carbonated beverages etc. The traditional methods of capture, however, have several drawbacks, one of them being



that amine based technologies are expensive. Respondent heavily relied on D1 for rejecting the application for lack of novelty overlooking that Appellant had itself relied on D1 which uses amine solutions and high speed water droplets in a high energy collusion, which not only require high energy consumption but specialized machinery and therefore, alternative methods for carbon dioxide capture are needed and which is what the present invention does.

10. It is explained that the present invention does not use amine solution but uses water to capture carbon dioxide. The invention does not use supersonic speed (Mach 1 or more) of droplets. The subsonic speed i.e., less than Mach 1 and operating pressure of 700 psi to 2000 psi is used for the water to capture the gas and this is achieved by nozzle configuration. All these features together are present in claim 1 along side droplet size of less than 50 microns. The method of present invention therefore essentially provides a stream of gas in one direction while amine free water in droplets of a size 90% less than 50 microns is put to a speed of less than Mach 1 and passed through a plurality of nozzles configured in a single conduit, which create a pre-determined pressure and there is nothing in D1 which is even remotely similar to this invention.

11. It is further urged that Respondent erred in relying upon D1 and made an incorrect comparison of its features with the claimed invention. Respondent has referred to two different pages of D1, cherry picking features to correlate with features of claims 1 and 25 for the purpose of novelty. Respondent has not adverted to detailed submission by the Appellant on how distinct D1 and claimed invention are. In fact, D1 has been referred by the Appellant several times in its patent specification to



highlight the differences and improvements in the claimed invention but the order has been passed oblivious of these distinctions. The stage fogging arrays of D1 are misinterpreted by the Respondent as he has not applied the understanding of Figures 1 and 2 of D1 to apply to Figures 5 and 6, while deciding the instant application. Curiously, even with respect to the objection of lack of inventive step, Respondent has given no reason as to how prior arts D3-D6 are relevant despite several orders of this Court including the directions by the Division Bench in the case of ***F. Hoffmann-La Roche Ltd. & Anr. v. Cipla Ltd., 2015 SCC OnLine Del 13619***, on how the Controller of Patent has to determine lack of inventive step under Section 2(1)(ja) in the claimed invention under consideration. Respondent has also not considered a crucial fact, *albeit* only persuasive, that in several other jurisdictions such as Australia, Japan, South Korea, New Zealand and USA, corresponding patents have been granted.

12. Mr. Sumit Nagpal, learned SPC appearing for the Respondent defends the impugned order and submits that claim 1 is a method claim while claim 25 is a system claim and each and every element of these claims is disclosed in prior art D1. Method claim shows a method of capturing carbon dioxide comprising: “*providing the steam of gas carbon dioxide wherein the gas flows in the first direction*” and “*wherein each of the nozzles has a single conduit configured to receive the essentially amine free water, wherein the fluid dispensed by each nozzle is essentially free of amines...*”. Similarly, claim 25 states “*...wherein each of the nozzles has a single conduit configured to receive the essentially amine-free water, wherein the fluid dispensed by each nozzle is essentially free of amines...*”. Plain reading of D1 shows that it covers the claims under the instant application since it



teaches “...Accordingly, if any energy is applied to the water such as vibration, low frequency wave or heat, the CO₂ molecules can escape to atmosphere. Accordingly, in order to hold the CO₂ molecule in the water, chilled water and/or a water solution such as amines should be present to absorb the CO₂ ...”. Thus, prior art D1 discloses that it can either be chilled water or a water solution, such as amines, to absorb CO₂, which means that CO₂ can be extracted without the use of amines. Further, size of water droplets in D1 and the present invention is similar. Learned counsel points out to other features in D1, which according to him explicitly and implicitly are similar in independent claim 1 and 25 and asserts that the claims lack novelty.

13. In respect of lack of inventive step, it is urged that once the claims lack novelty in view of D1, inventive step cannot be acknowledged and moreover, D3-D6 clearly motivate a person skilled in the art i.e., a person having expertise in design of apparatus for filtering/capturing gas from mixture to arrive at the present invention by doing obvious changes in view of teachings of D1 and thus, on both objections the application has been rightly rejected.

14. Heard learned counsels for the parties and examined their submissions.

15. The instant patent application was filed by the Appellant as a national phase application in India on 24.05.2019 for invention titled ‘*CARBON DIOXIDE CAPTURE DEVICE AND METHOD*’. Two objections have weighed with the Respondent in refusing the application: (a) lack of novelty owing to D1 under Section 2(1)(j); and (b) lack of inventive step owing to D1-D6 under Section 2(1)(ja) of 1970 Act. The first and foremost contention



of the Appellant is that the impugned order is an unreasoned and non-speaking and on this score, I agree with the Appellant. As noted above, the order runs into a couple of pages but substantial part of the order is devoted to extracting the objections raised in FER, simplistic reference to the prior arts and their teachings followed by the aim of the present invention. After elaborating in two pages on the teachings of prior arts, Respondent concludes in one line that D1 discloses features of independent claim 1 and claim 25 and this is followed by an observation that in the absence of at least one differentiating feature in the two claims, the claimed subject matter does not meet the requirement of novelty. As for lack of inventive step, the Respondent has simply observed that a person skilled in the art will be motivated by prior arts D1 and D3-D6 to come to the claimed invention and therefore, the patent cannot be granted by virtue of Section 15 of 1970 Act.

16. Perusal of the documents placed on record in the form of response to the FER as also the written submissions filed post-hearing, leaves no doubt that Appellant has brought forth how the claimed invention in its perception is novel and has inventive step and that none of the prior arts cited proscribe the grant of patent. With the support of several figures, Appellant elaborately brought forth the distinctions in the prior arts and the novel method/system by which carbon dioxide can be captured such that it overcomes the drawbacks existing earlier in the capture technologies and which considerably reduced the carbon dioxide emission in the atmosphere as also that the technology involved in the present invention is comparatively less expensive as compared to amine based technology. Regrettably, none of these issues even find mention in the impugned order leave alone their consideration.



17. As rightly pitched by Mr. Anand, this Court has consistently held that while determining grant of patent and dealing with an objection of lack of inventive step, the Patent Controller must follow the five-step test. Specific attention of the Court was drawn to the judgment of the Division Bench in ***F. Hoffmann (supra)***, in this context. Earlier, a Coordinate Bench of this Court in ***Agriboard International LLC v. Deputy Controller of Patents and Designs, 2022 SCC OnLine Del 940***, had remanded the matter to the Controller for a fresh consideration as the order rejecting the application was unreasoned and specifically observed that while rejecting an invention for lack of inventive step, the Controller must consider three elements: (a) invention disclosed in the prior art; (b) invention disclosed in the application under consideration; and (c) the manner in which subject invention will be obvious to a person skilled in the art and held that without a discussion on these three elements, arriving at a bare conclusion that subject invention lacks inventive step is not permissible, unless the same is absolutely clear.

18. Applying the aforesaid judgments to the instant case, I find that with regard to the objection of lack of novelty, there is no analysis or discussion in the order and by a bald reference to D1 a conclusion is drawn that the objection is valid. Response of the Appellant to the FER as also written submissions containing detailed matrix on the alleged differences have not been considered at all. Similarly for the objection of lack of inventive step, Respondent has neither followed the five-step test nor analysed the instant application by examining the aforementioned three elements. The Respondent was obliged to analyse the existing knowledge and how the person skilled in the art, to be identified, would move from the existing knowledge to the claimed invention. In fact, the rejection is basis the



conclusion on lack of novelty, which as found above, is itself completely bereft of analysis and reasoning. I am of the view that applications for inventions cannot be rejected in such a cursory or callous manner, as many of the genuine inventions may be beneficial in public interest.

19. For all the aforesaid reasons, I find that this is a fit case for remand. Accordingly, the appeal is partially allowed setting aside the impugned order dated 30.01.2024 passed by the Respondent and directing the Respondent to consider the Indian Patent Application No. IN201917020705 afresh and take a decision, after taking into account the response to the FER and the written submissions and also granting opportunity of hearing to the Appellant. The decision will be taken within three months from today.

20. Appeal is disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 3, 2026

S.Sharma