

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A.(IBC)/4289/2023
IN
C.P.(IB)No.983/ND/2020

IN THE MATTER OF:

Raj Kumar Sahani	... Applicant
Versus	
Mr. Ashish Singh	
Resolution Professional of	
M/s. Vibrant Buildwell Private Limited	... Respondent

IN THE MATTER OF:

M/s. Dilwara Leasing and Investment Limited	... Financial
Creditor	
Versus	
M/s. Vibrant Buildwell Private Limited	... Corporate
Debtor	

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 24.01.2024

For the Successful	:	Mr. Sumesh Dhawan, Ms. Vatsala Kak, Mr.
Resolution Applicant		Shaurya Shyam, Advs.
For the CoC	:	Mr. Rachit Mittal, Advs

For the RP		Mr. Abhishek Anand, Mr. Karan Kohli, Ms.
		Lubhanshi Rai, Advs.

for the Applicants in		Mr. Anirban Bhattacharya, Adv. with Mr. Rajeev
IA/4289/ND/2023,		Chowdhary, Adv. and Mr. Muneeb Rashid Malik,
IA/4173/ND/2023		Adv

ORDER

PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

The instant interlocutory application is filed on behalf of Mr. Raj Kumar Sahani, ('applicant') who is the ex-director and shareholder of M/s. Vibrant Buildwell Private Limited ('Corporate Debtor') under Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking the following prayer(s):-

- i) Grant leave to the Applicant to place on record the additional documents and grounds mentioned hereinabove;
- ii) Pass any other orders as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the present case.

2. Briefly stated the facts of the present case as averred by the applicant and necessary to adjudicate the present issue are that the applicant had filed an Interlocutory Application i.e., I.A./4173/ND/2023 in C.P.(IB)/983/ND/2020 before this Adjudicating Authority under Section 60(5)(c) of the Code, 2016 challenging the approval of Resolution Plan approved by the Committee of Creditors ('CoC').
3. The Applicant submitted that the Committee of Creditors in its 4th CoC Meeting held on 20.05.2022 had considered and discuss about the Item No.5- Registration of the Corporate Debtor under MSME. The relevant extract of Item No.5 discussed in the CoC Meeting is extracted as follows:-

The Resolution Professional informed the members that he is considering registering the Corporate Debtor as a MSME after contemplating the benefits of the same which eventually would be beneficial for Vibrant Buildwell Private Limited, Corporate Debtor. He further elaborated on the benefits that the Corporate Debtor will enjoy after being registered as a MSME such as Collateral free credit facility, a benefit of 1% on the Overdraft in a scheme that differs from bank to bank, protection against delayed payment from debtors wherein they would be obligated to pay for the services/goods offered by the corporate debtor in within 15 days or else an interest would be levied

on the actual amount and most importantly, concessions on electricity bills.”

4. Further, the applicant submitted that the said decision of the Resolution Professional (‘respondent’) to register the Corporate Debtor as a MSME after commencement of CIRP is per se illegal and has been mala fide taken with the intention to allow the Related Party namely M/s. Bishwanath Traders and Investments Limited (‘Successful Resolution Applicant’) to escape from the clutches of ineligibility contained under Section 29A of the Code, 2016 and seek protection under Section 240A(1) of the Code, 2016. To support its contention, the applicant had placed reliance on **POSCO India Pune Processing Center Pvt Ltd vs. Nagarshetu Powertronics Pvt Ltd. I.A.514 of 2020 in C.P.(IB) 268/NCLT./AHM/2018.**
5. The list of documents the applicant seeks to place on record are annexed as Annexure –A1 to A9 to the present application and the same are as follows:-
 - a) Copy of Minutes of the 1st CoC Meeting dated 21.03.2022.
 - b) Copy of Minutes of the 2nd CoC Meeting dated 09.04.2022.
 - c) Copy of Minutes of the 3rd CoC Meeting dated 12.05.2022.
 - d) Copy of Minutes of the 4th CoC Meeting dated 20.05.2022.
 - e) Copy of Minutes of the 5th CoC Meeting dated 27.06.2022.
 - f) Copy of Minutes of the 6th CoC Meeting dated 15.07.2022.
 - g) Copy of Minutes of the 7th CoC Meeting dated 05.08.2022.
 - h) Copy of Minutes of the 8th CoC Meeting dated 31.08.2022.
 - i) Copy of Minutes of the 9th CoC Meeting dated 18.11.2022.
6. Accordingly the applicant prays that aforementioned documents and grounds be read as part and parcel of the Interlocutory Application i.e., I.A./4173/ND/2023 in C.P.(IB)/983/ND/2020.

7. This Adjudicating authority vide its order dated 11.09.2023 had issued notice to the Respondents i.e., (i) Mr. Ashish Singh, Resolution Professional of M/s. Vibrant Buildwell Private Limited ('Respondent No.1'), (ii) Committee of Creditors of Vibrant Buildwell Private Limited ('Respondent No.2') and (iii) M/s. Bishwanath Traders and Investment Limited ('Respondent No.3') with a direction to file their reply in the present matter.
8. Mr. Ashish Singh, Resolution Professional of M/s. Vibrant Buildwell Private Limited ('Respondent No.1') had filed its reply dated 28.09.2023 and submitted that the present application has been moved with the mala fide intention to cause no justice to the Corporate Debtor but only to derail the process of the CIRPP and stall the approval of Resolution Plan submitted by the Resolution Applicant.
9. The Respondent No.1 submitted that the Applicant herein being the Suspended Director of the Corporate Debtor has no locus standi to raise any objections as to business conducted in CoC Meetings. Further, it was submitted that the Applicant has failed to prove that additional documents were not within the knowledge and possession of applicant at the time of filing I.A. No/ 4173/2023.
10. We have heard Ld. Counsel for parties and perused the averments made in the application. The relevant documents annexed with the application have been examined meticulously.
11. It is a settled position that 'All amendment, ought to be allowed, if the twin conditions are satisfied (i) of not working injustice to other side; (ii) of being necessary, for the purpose of determining the real questions in controversy between the parties. An 'amendment', which is necessary for the just decision of a case can be allowed. In fact, the 'pleadings' can be amended, to substantiate, to elucidate and expand the 'pre-existing facts', 'already existing'. A 'person', will not be refused permission, to 'amend the pleadings', merely because of some mistakes, negligence, inadvertence, or even infraction of rules of procedure, as

the case may be. No person should suffer, in lieu of technicalities of law and to minimise the litigation between the parties.

12. The Hon'ble Supreme Court in case **Vineet Kumar v. Mangal Sain (1984) 3 SCC 352** had held that, "where an amendment, does not constitute and addition of a new case, but amounts to no more than adding to the facts already on record, the 'amendment', would be allowed.
13. In the present case, even though, the Respondent had come out with the plea that the amendment in pleadings was sought for by the Applicant only with an intention to delay the process, however, keeping in mind, that the placing of additional documents in pleadings of I.A./4173/ND/2023 in C.P.(IB)/983/ND/2020 is imperative for a proper, effective and efficacious adjudication of the controversies, involved in the I.A./4173/ND/2023 in C.P.(IB)/983/ND/2020, the **present application I.A./4289/2023 in C.P.(IB)No.983/ND/2020 stands allowed** and additional documents annexed as Annexure-A1 to Annexure-A9 is taken on record and be read as part and parcel of the Interlocutory Application i.e., I.A./4173/ND/2023 in C.P.(IB)/983/ND/2020.

Sd/-

**(DR.SANJEEV RANJAN)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**