

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal(AT)(Insolvency) No. 68 of 2019**

**&**

**I.A. No. 1078, 1091 of 2021**

**IN THE MATTER OF:**

**B. Prashanth Hegde**

**...Appellant**

**Vs**

**State Bank of India &Anr.**

**...Respondents**

**Present:**

**For Appellant:**

**Mr Pranjal Kishore, Advocate.  
B. Prashanth Hegde, Party in Person.**

**For Respondent:**

**Ms Shubhra Kapur, Mr Sanjay Kapur, Mr Arjun  
Bhatia and Mr V M Kannan (State Bank of India),  
Advocates for Respondent No.1.**

**Mr Mukund P. Unny (R.P.),  
Advocate for Respondent No. 2.**

**O R D E R**

**(Through Virtual Mode)**

**15.07.2021**      The Applicant (Respondent No.1) has filed Application for incorporating amendment in Section 7 Application in terms of order of the Hon'ble Supreme Court dated 15<sup>th</sup> April 2021 passed in Civil Appeal No. 3765 of 2021. Paragraphs No. 6, 7 and 8 of the order of the Hon'ble Supreme Court are reproduced below for ready reference:

*"6.      There can be no doubt whatsoever that the Appellant has been completely remiss and deficient in pleading acknowledgment of liability on the facts of this case. However,*

*given the staggering amount allegedly due from the respondents, we afford one further opportunity to the Appellant to amend its pleadings so as to incorporate what is stated in the written submissions filed by it before the NCLAT, subject to costs of Rs.1,00,000/- to be paid by the Appellant to the respondents within a period of four weeks from today.*

*7. We, therefore, allow the Appeal, set aside the judgment of the NCLAT dated 14.10.2020, and restore the Appeal to the file to be decided in light of our judgment in Civil Appeal No. 323 of 2021.*

*8. Interim order passed by this Court on 16.12.2020 stands vacated."*

Hon'ble Supreme Court has afforded one further opportunity to the Appellant to amend its pleadings, to incorporate what is stated in the written submissions filed by it before the NCLAT, subject to costs of Rs.1,00,000/- (Rupees One Lakh) to be paid by the Applicant (Respondent No. 1 herein) to the Appellant (herein) within four weeks from the date of order.

Further, Hon'ble Supreme Court has set aside the order passed by this Appellate Tribunal in Company Appeal No. 68 of 2019 and restored the Appeal to its original number.

In compliance with the above order, Applicant has filed the Application mentioned above and stated that they had paid Rs.1,00,000/- (Rupees One Lakh) vide bankers cheque No. 160929 dated 27<sup>th</sup> April 2021. Copy of the

banker's cheque alongwith covering letter is annexed with the Application as Annexure A3.

Applicant/ Respondent No. 1 has filed amended Application under Section 7 of the IBC before the Adjudicating Authority (NCLT, Bangalore Bench). Copy of the said amended Application is annexed with this Application as Annexure A4.

Applicant/Respondent No.1 has filed a copy of the Amendment Application in terms of the Hon'ble Supreme Court order before this Appellate Tribunal, which is also annexed with this Application as Annexure A5.

In the circumstances, above Applicant/Respondent No.1 has requested to amend the pleadings in terms of the order of Hon'ble Supreme Court dated 15<sup>th</sup> April 2021 in Civil Appeal No.3765 of 2020.

Appellant has filed Reply in response to the amendment Application, wherein it is stated that:

- "a. an amendment can be allowed after commencement of trial; only when the Court is satisfied that the matter could not be raised earlier despite due diligence. No averments regarding due diligence have been made by the Applicant.*
- b. The proviso to Section 7(5)(b) of the IBC is not maintainable.*

- c. *Rule 155 of the NCLT Rules, 2016 allows amendments only if made within 30 days from the date of completion of pleadings.*
- d. *The amendment sought to be made introduces a new case. The same is contrary to pleadings made on affidavit and contentions recorded both before this Ld. Appellate tribunal and the Ld. National Company Law Tribunal, Bangalore.*
- e. *The amendments sought to be made are mala fide and ought not to be allowed."*

We have heard the arguments of the Learned Counsel for the parties and perused the records.

Applicant/Respondent No.1 has filed Amendment Application in compliance with the order passed by the Hon'ble Supreme Court in Civil Appeal No.3765 of 2020, whereby the liberty has been given to the Applicant/Respondent No.1 to incorporate amendments in the pleadings what is stated in written submissions filed before this Appellate Tribunal, subject to payment of the cost of Rs.1,00,000/- (Rupees One Lakh) to the Respondents. Accordingly, the appellant has paid the cost and applied for an amendment.

The Applicant has filed the amended Section 7 Application before the NCLT Bengaluru Bench, and the copy of the same is annexed with the I.A. before this Appellate Tribunal. The objections of the Appellant against the proposed amendment are formal in nature.

Appellant has raised the objection that amendment can be allowed after commencement of trial only when the Court is satisfied that the matter could not be submitted earlier despite due diligence. However, no averments regarding due diligence have been made by the Applicant. Appellant has further contended that Rule 155 of NCLT Rules, 2016 allows amendments only within 30 days from the date of completion of pleadings.

The above objections are not sustainable because the proposed amendment is being done in compliance with the order of Hon'ble Supreme Court.

In the circumstances, I.A. No.1091 of 2021 is allowed. Amendment in the pleadings is accepted in terms of the Hon'ble Supreme Court order. Reply, if any, may be filed within 7 days from today, with a copy in advance to the opposite party. After that, a Rejoinder, if any, may be filed within seven days with a copy to the opposite party.

List on **06<sup>th</sup> August 2021** for argument in Company Appeal (AT)(Ins.) No.68 of 2019.

Meanwhile, till disposal of this Appeal, CIRP/Liquidation proceedings shall remain stayed.

**[Justice Jarat Kumar Jain]**  
**Member (Judicial)**

**[V.P.Singh]**  
**Member(Technical)**

*pks/M.D.*