



**NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH COURT VI**

Item No. P3.

I.A. (IBC) No. 3245/2025 in C.P. (IB)/412(MB)2025

CORAM:

**SHRI SAMEER KAKAR**  
**HON'BLE MEMBER (TECHNICAL)**

**SHRI NILESH SHARMA**  
**HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF HEARING (HYBRID) DATED **04.08.2025**

NAME OF THE PARTIES:           **Gannon Dunkerley & Company Limited**  
**Vs**  
**RDC Concrete (India) Private Limited**

**Under Section 60(5) of the IB Code, 2016 read with Rule 55 of the National Company Law Tribunal Rules, 2016.**

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**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate sheet. Detailed order is being uploaded on the NCLT portal today.

**Sd/-**  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**NILESH SHARMA**  
**MEMBER (JUDICIAL)**

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**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH-VI**

**I.A.(IBC) No. 3245/2025 IN CP (IB) No. 412/MB/2025**

*[Under Rule 55 of the National Company Law  
Tribunal Rules, 2016.]*

IN THE MATTER OF:

**Gannon Dunkerley & Company Limited,**

Having its Registered Office at:

New Excelsior Building, 03<sup>rd</sup> Floor,

A.K. Nayak Marg, Fort, Mumbai-400 001.

**.... Applicant**

Vs.

**RDC Concrete (India) Private Limited,**

Having its Registered Office at:

701, 7th Floor Thane One, Ghodbunder Road,

Majiwada, Thane-400 610.

**.... Respondent**

IN THE MATTER BETWEEN:

**RDC Concrete (India) Private Limited**

**...Operational Creditor/(OC)**

Vs.

**Gannon Dunkerley & Company Limited**

**... Corporate Debtor/(CD)**

**Order Pronounced: 04.08.2025.**

**CORAM:**

**HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)**

**HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)**



**Appearances (in Hybrid Mode):**

For the Applicant : Adv. Sumesh Dhawan i/b Amir Arsiwala a/w Adv. Rahul Gupta.

For the Respondent : Adv. Revathi Mannivannan a/w Deepti B. Mistry.

**ORDER**

***[Per: CORAM]***

1. The present Interlocutory Application is being preferred by the Applicant under Rule 55 of the National Company Law Tribunal Rules, 2016, seeking leave and liberty of this Tribunal to place on record certain additional documents that are essential for the fair and complete adjudication of the issues raised in the said Company Petition. The reliefs sought in the application are as follows:

- i. Allow the present Interlocutory Application and be pleased to take on record the additional documents filed by way of an Additional Affidavit, in support of its defence in the captioned Company Petition;
- ii. Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.

**Facts of the case as pleaded by the Applicant:**

2. According to the Applicant, the documents sought to be introduced form part of the contemporaneous correspondence and evidentiary material



demonstrating the existence of bona fide, substantial and pre-existing disputes between the parties, issues that directly impact the maintainability of the Petition.

3. The present Application is filed by Mr. Anilkumar Hiralal Pandey, the authorized signatory of Gannon Dunkerley & Co. Ltd., who is authorised by the Board Resolution dated 05<sup>th</sup> May, 2022 to act on behalf of the Applicant herein.
4. The Applicant states that the purpose of the present application is limited to the liberty for bringing on record a comprehensive set of contemporaneous documents which are vital to the fair adjudication of the present Company Petition. These documents substantiate the Corporate Debtor's consistent stand that there existed serious and ongoing disputes between the parties much prior to the issuance of the statutory demand notice. They also establish that the Operational Creditor's claim is not only disputed but is also exaggerated and unsubstantiated in law and on facts.
5. The Applicant/Corporate Debtor by way of an Additional Affidavit seeks to place on record extensive project-wise correspondence exchanged between the parties in relation to four major project sites, namely: TSK, JSL, UTCL--Cuttack, and MPWI-Farakka. These communications detail the chronology of supply issues, non-performance, quality deficiencies, interruptions in Ready-



Mix Concrete (RMC) supply, and the repeated grievances raised by the Applicant with the Petitioner.

6. The Applicant/Corporate Debtor also seeks to place on record reconciliation statements, internal notes, and cost assessments prepared across different project sites. These documents capture the financial implications of RDC's failure to supply adequate and quality concrete in a timely manner. They include comparative assessments showing variance between quantities billed by the Petitioner and quantities actually accepted or certified by the Applicant's clients. These records form the basis of the recoverable amounts claimed by the Applicant and support its defence that no admitted liability exists. The Applicant states that the Applicant has already prepared the requisite additional affidavit having the abovementioned documents annexed to it.
  
7. Furthermore, the Applicant has collated third-party purchase invoices and payment records demonstrating the procurement of Ready-Mix Concrete from alternate vendors at higher rates during critical stoppage periods. These invoices are corroborated with site reports and correspondence showing how, due to the Petitioner's inability to maintain continuity of supply, the Applicant had to urgently mobilise other suppliers to avoid termination of its own contracts by its end-clients. The financial burden of such alternate procurement forms part of the losses now claimed. These losses are not



speculative but are well-documented, and are crucial to demonstrate the direct causation between the Petitioner's breach and the Applicant's financial injury.

8. These documents, though referred to and partially annexed in the Affidavit in Reply, were not filed in entirety earlier due to the voluminous nature of the records and the need for collation from multiple project offices. The Applicant has now completed this exercise and seeks the Hon'ble Tribunal's leave to place these materials on record to assist in the complete and fair adjudication of the matter. The documents sought to be filed form part of the same transactional relationship and go to the root of the dispute. They are directly relevant to the question of maintainability of the Petition and more specifically, whether the alleged debt is disputed within the meaning of Section 9 of the Code.
  
9. The Applicant submits that this application is being made in good faith and without any intent to delay the proceedings. The voluminous nature of the documents and the need to retrieve and collate them from various regional and project offices had initially constrained the Applicant from filing them earlier. Now that the same have been compiled and organised, the Applicant seeks leave of this Hon'ble Tribunal to bring them formally on record for the purpose of just, fair, and complete adjudication of the matter.



10. In light of the above, and considering the serious financial and reputational consequences involved in a petition under Section 9 of the Code, the Applicant prays that this Hon'ble Tribunal be pleased to exercise its discretion under Rule 55 of the NCLT Rules, 2016, and allow the present application, and take the additional documents as annexed to the Additional Affidavit on record.

11. **Reply by the Respondent/Corporate Debtor**: Since the case was fixed for hearing on 29.07.2025, and this Bench has decided to reserve the matter for deciding the question of maintainability of this IA, no reply has been taken from the Respondent on affidavit. However, the learned Counsel for the Respondent has been orally heard in the matter. The main contentions of the learned Counsel for the Respondent during the course of hearing are summarised hereinbelow:

- i. The present application is nothing but a dilatory tactic adopted by the Applicant. Counsel for the Respondent submits that the case is fixed for final arguments, and at this stage, the present application to produce the additional documents on record is far belated. Therefore, this application should not be entertained as it will only delay the admission of the Corporate Debtor into CIRP
- ii. Learned Counsel for the Respondent submits that the documents sought to be produced on record of this Tribunal now, were always in its custody.



The Applicant has not explained the delay or given any satisfactory reason as to why these documents are being produced now or could not be produced while filing the reply to the Petition.

- iii. Learned Counsel for the Respondent objects to the captioned IA and prays that the same may be dismissed with costs as it cannot be entertained at this belated stage.

### **FINDINGS AND ANALYSIS**

12. We have heard the learned Counsel for the Applicant as well as the learned Counsel for the Respondent.

13. The Applicant has filed the present application under Rule 55 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking leave of this Tribunal to bring on record the additional documents by way of an Additional Affidavit.

14. Upon perusal of records in the captioned Company Petition, we find that Affidavit-in-Reply dated 02.05.2025 filed by the Corporate Debtor was taken on record by this Tribunal vide Order dated 05.05.2025. Subsequently, the Affidavit-in-Rejoinder dated 26.05.2025 filed by the Operational Creditor was tendered in court on 09.06.2025. Upon the completion of pleadings, this Bench, vide Order dated 09.06.2025, directed both parties to file their respective brief written submissions along with citations, if any, prior to the



next date of hearing scheduled on 27.06.2025. On the hearing dated 27.06.2025, both parties expressed their willingness to explore the possibility of an amicable settlement. Accordingly, this Bench recorded that a settlement meeting between the Operational Creditor and the Corporate Debtor was fixed for 10.07.2025 at 3:00 PM at the registered office of the Corporate Debtor. The parties were directed to apprise the Tribunal of the outcome of the said meeting by way of a joint *pursis*. Thereafter, vide Order dated 17.07.2025, it was recorded that the settlement attempt had failed. It was further noted that both parties had already filed their respective Written Submissions. At that belated stage, the learned Counsel for the Corporate Debtor submitted that an Interlocutory Application had been filed on 16.07.2025, seeking to bring on record additional documents, which was yet to be numbered.

15. The Applicant seeks to place on record certain additional documents by way of an Additional Affidavit, asserting that such documents are necessary to establish the existence of pre-existing disputes between the parties. The list of documents sought to be introduced is as follows:

- i. Annexure A Colly: A copy of the complete set of third-party purchase invoices;
- ii. Annexure B(Colly): Copies of the correspondences exchanged between the Respondent and the Petitioner concerning the TSK Project (Tata Steel, Kalinganagar);



- iii. Annexure C (Colly): Copies of the correspondences exchanged between the Respondent and the Petitioner concerning the JSL Project (Jindal Stainless, Jajpur);
- iv. Annexure D (Colly): Copies of the correspondences exchanged between the Respondent and the Petitioner concerning the UTCL Project (Ultratech Cement, Cuttack);
- v. Annexure E (Colly): Copies of the correspondences exchanged between the Respondent and the Petitioner concerning the MPWI Project (Mitsubishi Power Works, Farakka);
- vi. Annexure F: A copy of the email dated 3rd of June 2024 a/w its attachment addressed by the Respondent to the Petitioner;
- vii. Annexure G: A copy of the email dated 20th June 2024 addressed by the Petitioner to the Respondent;
- viii. Annexure H: A copy of letter dated 5th July 2024 addressed by the Respondent to the Petitioner.

16. Upon consideration, we observe that the Applicant had adequate opportunity to place the aforesaid documents on record at two prior stages:

(a) Along with the reply to the statutory demand notice dated 30.07.2024, which was replied to by the Corporate Debtor vide the Reply Letter dated 08.08.2024; and

(b) At the time of filing the Affidavit-in-Reply dated 02.05.2025.

Despite these opportunities, the Applicant failed to bring these documents on record. It is further noted that a period of approximately 76 days (2 months and 15 days) elapsed between the filing of the Affidavit-in-Reply and the filing



of the present application on 17.07.2025. The Applicant herein (i.e. the Corporate Debtor in the captioned Company Petition) has failed to show that the aforesaid documents were not in its custody/possession or despite due diligence, the Applicant could not discover them or that there was a sufficient cause by which the Applicant was prevented from placing those documents on record of this Tribunal.

17. The Applicant has attempted to explain the delay in Paragraph 13 of the application, stating:

*“These documents, though referred to and partially annexed in the Affidavit in Reply, were not filed in entirety earlier due to the voluminous nature of the records and the need for collation from multiple project offices. The Applicant has now completed this exercise and seeks the Hon'ble Tribunal's leave to place these materials on record to assist in the complete and fair adjudication of the matter.”*

However, this explanation is unsatisfactory. The record reveals that the Applicant was served with the court notice and a copy of the petition on 22.04.2025. The Corporate Debtor filed its reply within the prescribed 10-day period. If the documents were indeed voluminous and required collation from multiple sources, the Applicant ought to have sought an extension of time to file a comprehensive reply. No such request was made. There is no mention or whisper in the pleadings of the Corporate Debtor in the captioned Company Petition, about voluminous nature of the above listed documents or



even craving leave to produce the same at a later stage. The present explanation, therefore, appears to be an afterthought and does not justify the belated filing of the above listed documents.

18. Counsel for the Applicant has relied upon the judgment of Hon'ble Supreme Court in Dena Bank v. C. Shivakumar Reddy to contend that the pleadings can be amended or additional evidence can be adduced even after the completion of pleadings. **The Hon'ble Supreme Court of India in Dena Bank v. C. Shivakumar Reddy and Anr. [Neutral Citation: 2021 INSC 380]**, has *inter-alia* held as follows:

*"144. There is no bar in law to the amendment of pleadings in an application under Section 7 of the IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 of the IBC in Form-1. In the absence of any express provision which either prohibits or sets a time limit for filing of additional documents, it cannot be said that the Adjudicating Authority committed any illegality or error in permitting the Appellant Bank to file additional documents. **Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the Adjudicating Authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order.** In our considered view, the decision of the Adjudicating Authority to entertain and/or to allow the request of the Appellant Bank for the filing of additional documents with*



*supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal.” (Emphasis Supplied)*

19. Thus, on reading of Dena Bank Judgment (supra), it is clear that the Adjudicating Authority has discretion to allow or decline the request of the Applicant to file additional pleadings and/or documents depending on the facts and circumstances of the case. Therefore, while there is no bar to the filing of additional documents on record after completion of pleadings, however, the same is not a matter of rule but a matter of discretion which is vested in the Adjudicating Authority. The adjudication of Section 9 application being a time bound process, we are required to act with circumspection before giving leave or liberty to any party to amend its pleadings or to bring additional documents on record.

20. Learned Counsel for the Applicant has drawn our attention to the decision of **Hon’ble NCLAT in Swaminarayan Diamonds Pvt. Ltd. Versus Canara Bank [vide Order dated 23.06.2025 in CA(AT)(Ins.) No. 885 of 2025]**, wherein the order of this Bench permitting the amendment in Form No. 1 was upheld by the Hon’ble NCLAT. Thus, the learned Counsel relying upon the aforesaid precedent, submits that the Respondent may be allowed to bring additional documents on record even after completion of pleadings. However, we find that the reliance upon the aforesaid precedent by the Ld. Counsel for the Applicant is misplaced. In the aforesaid case, the liberty was granted to



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the financial creditor therein to amend Form 1 only to change the date of default. In the instant case, the Applicant herein seeks to produce additional documents on record. Therefore, the case law relied upon by the Ld. Counsel for the Applicant is factually distinguishable and has no relevance to the facts and circumstances of this case which stand on entirely different footing.

21. Under the facts and circumstances of the present case and in view of the foregoing findings and discussions, we do not deem it appropriate to grant leave to the Applicant/Corporate Debtor to produce additional documents on record of this Tribunal by way of an Additional Affidavit or otherwise. Accordingly, **we hereby dismiss IA(IBC) No. 3245(MB)/2025** in the captioned Petition leaving parties to bear their own cost.

Sd/-  
**SAMEER KAKAR**  
**(MEMBER TECHNICAL)**  
LRA Sunny

Sd/-  
**NILESH SHARMA**  
**(MEMBER JUDICIAL)**