NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 325/2023
(IA No.991/2023)
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the Impugned Order dated 26.07.2023 in IA (IBC)/733(CHE)/2022 in IBA/491/2020, passed by the 'Adjudicating Authority', National Company Law Tribunal, Chennai Bench)

IN THE MATTER OF:

M/s Raj Television Network Limited
Represented by its Managing Director
Raajhendhran. M
No. 32, Poes Road,
2nd Street, Teynampet
Chennai – 600 018
Ph. No. 9840043466 **…Appellant**

Versus

M/s. Thaicom Public Company Limited
Represented by its Power Attorney Holder
Mr Gouri Prasad Das
New No. 63/21, Old No. 41/103
Rattanathibet Road
Nonthaburi – 11000
Thailand **…Respondent**

Present:

For Appellant : Mr. T.K. Bhaskar, Advocate
For Mr. Mayan H Jain, Advocate

For Respondent : Mr. Abishek Anand, Advocate
For Mr. K. Moorthy, Advocate

J U D G M E N T
(Virtual Mode)

Justice M. Venugopal, Member (Judicial):

Background

The Appellant/Respondent/Corporate Debtor, has preferred the instant Company Appeal (AT)(CH)(Ins.) No.325/2023, before this Tribunal, as an 'Aggrieved Person', in respect of the impugned order dated 26.07.2023 in IA(IBC)/733(CHE)/2022 in IBA/491/2020 passed by the Adjudicating Authority/National Company Law Tribunal, Division Bench – I, Chennai.

2. While passing the impugned order, dated 26.07.2023, in IA(IBC)/733(CHE)/2022 in IBA/491/2020 (filed by the Respondent / Petitioner/Operational Creditor) u/s 60(5) of the I&B Code, 2016) the Adjudicating Authority / Tribunal, at paragraph No. 4 had observed the following:-

> *"4. Heard the submissions made in detail. This Tribunal is of the view that the amendment as prayed for by the Applicant is necessary in the interest of natural justice. Further, it is seen from this Tribunal order dated 10.06.2022 in IBA/491/2020 that liberty was granted to file an amendment application and in accordance to the same, this present application has been filed."*

and resultantly, allowed the 'Application', by permitting the Respondent / Petitioner/Operational Creditor, Part-IV of Form-A, within 7 days, from the date

of pronouncement of this order, and file the necessary 'amended copy', with the Registry, of this Tribunal".

Appellant's Contentions

3. According to the Learned Counsel for the Appellant / Respondent/Corporate Debtor, the Respondent/Petitioner/Operational Creditor, had originally issued a 'Demand Notice' dated 25.09.2019, to the Appellant and in fact, the Respondent / Petitioner/Operational Creditor, had not mentioned the date when the default took place, being a mandatory one, for any petition/application seeking to initiate 'Insolvency Proceedings'.

4. It is brought to the fore that six months' later, the Respondent / Petitioner/Operational Creditor, had preferred an application u/s 9 of the I&B Code bearing No. IBA 491/2020 dated 16.03.2020 in Form 5 annexed to the Section 9 application /petition had mentioned the 'date of default' as 23.10.2012 also, that the 'pleadings' were completed, as on 18.11.2021. Later, 'seven hearings', took place and the Respondent / Petitioner, had never had any issue', in regard to the 'date of default', mentioned in Section 9 Application of the I&B Code, 2016.

5. The Learned Counsel for the Appellant, points out that the Respondent / Petitioner, has an 'afterthought' had projected an 'Interim Application' to amend

part IV of form 5, thereby the Respondent / Petitioner, was seeking to change the date of default from 23.10.2012 to 03.08.2018.

6. It is represented on behalf of the Appellant, that the only reason mentioned in the application, by the Respondent /Petitioner, for changing the date of default was at para V(vi) of the Application by stating that as a result of a typographical error, the date was mistakenly mentioned as 23.10.2012 instead of date on which the debt amount fell due on 03.08.2018.

7. It is the version of the Appellant, that the application was filed with an inordinate delay of 2 and half years, from the date of filing of the main Section 9 application, under the I&B Code. Also that, the Adjudicating Authority / Tribunal had passed the non-speaking order allowing the interim application filed by the Respondent / Petitioner.

8. The prime grievance of the Appellant is that since proof of default' is the conditions precedent, for filing of Section 9 application under the Code, this, in itself was sought to be changed and the Adjudicating Authority/Tribunal was pleased to allow the erroneous application, without assigning any other reasons.

9. The Learned Counsel for the Appellant, points out that the Adjudicating Authority/Tribunal had failed to appreciate that a plaintiff', cannot be permitted

to rectify any false, in his case by filing the additional documents with an inordinate delay.

10. The Learned Counsel for the Appellant, contends that the Adjudicating Authority, had failed to consider the judgement of the Hon'ble Supreme Court, in the matter of ***Ramesh Kymal vs. Siemens Gamesa Renewable Power Pvt. Ltd.,*** reported in ***MANU/SC/0061/2021*** wherein at paragraph 10, it is observed as under:-

> *"10. Sub-section (1) of Section 8 of IBC stipulates:*
>
> > *8. Insolvency resolution by operational creditor.- (1) an operational creditor may, on the occurrence of a default, deliver a demand notice of the unpaid operational debt or a copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.*
>
> *Under Section 9(1), the operational creditor may file an application before the Adjudicating Authority for initiating the Corporate Insolvency Resolution Process ("CIRP"), after the expiry of a period of ten days from the date of delivery of the notice (or invoice demanding payment) Under Sub-section (1) of Section 8, if the operational creditor does not receive payment from the corporate debtor or a notice of the dispute Under Sub-section (2) of Section 8. The Appellant having specified 30 April 2020 as the date of default, this appeal must proceed on that*

basis. It is necessary to make this clear at the outset because an attempt has been made during the course of the submissions by Mr. Neeraj Kishan Kaul, learned Senior Counsel appearing on behalf of the Appellant, to submit that though the demand notice mentions the date of default as 30 April 2020, the "actual first date of default" was 21 January 2020 when the letter of resignation was tendered and that the "second date of default' was 23 March 2020 when the sixty days' notice period from the letter of resignation submitted by the Appellant concluded. This attempt to set back the date of default to either 21 January 2020 or 23 March 2020 is plainly untenable for the reason that it is contrary to the disclosure made by the Appellant in the demand notice which has been issued in pursuance of the provisions of Section 8(1) and Section 9 of the IBC. The demand notice triggers further actions which are adopted towards the initiation of the insolvency resolution process. The question which needs to be resolved is whether Section 10A would stand attracted to a situation such as the present where the application Under Section 9 was filed prior to 5 June 2020, when Section 10A was inserted, and in respect of a default which has taken place after 25 March 2020."

11. The Learned Counsel for the Appellant, adverts to the judgment of this Tribunal dated 26.04.2023, in the matter of ***Ramdas Dutta Vs. IBDI Bank Limited (Company Appeal (AT)(Ins.) No.1285 of 2022)*** wherein at paragraph 18 and 19 it is observed as under:-

"18. There is no dispute that the Bank did not mention the date of default in Part IV of Form 1 i.e. the application filed under Section 7 of the Code and disclosed the date of default only in its supplementary affidavit which was filed pursuant to the order passed by the Adjudicating Authority. The Bank has mentioned the date of default as 31.08.2013 in the affidavit. It has also mentioned the date of NPA as 31.03.2014. The Bank has tried to change the date of default as 31.03.2014 which in fact has been mentioned as the date of NPA. The period of limitation, counted from 31.08.2013 i.e. date of default would continue till 31.08.2016 and shall expire w.e.f. 01.09.2016. The Bank failed to produce any evidence of acknowledgement of debt on the part of the Appellant during the period from 31.08.2013 to 31.08.2016. Faced with these difficulties, the Bank has tried to project the date of NPA i.e. 31.03.2014 as the date of default to take it up to 31.03.2017 so that it may use the payment of Rs. 2.75 Lakh made on 29.03.2017 in the account as acknowledgment under Section 19 of the Act in order to gain further period of three years from that date i.e. 29.03.2017 till 29.03.2020 to bring the application filed under Section 7 of the Code on 18.10.2019 within the period of limitation.

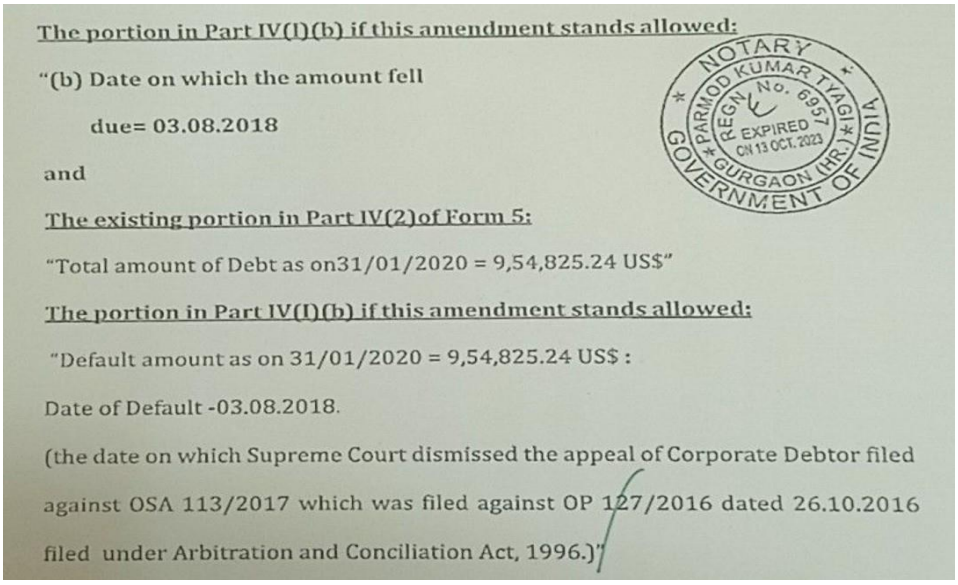
19. The first question is as to whether the date of default can be changed by the Bank? In this regard, it has been held by the Hon'ble Supreme Court in the case of 'Ramesh Kymal Vs. Siemens Gamesa Renewable Power Pvt. Ltd., (2021) 3 SCC 224' that the date of default cannot be changed. It has also been held

in the case of Laxmi Pat Surana (Supra), Babulal Vardharji Gurjar (Supra), B.K Educational Services Pvt. Ltd. (Supra) and Jignesh Shah (Supra) that the period of limitation would be attracted from the date when the default occurs and not from the date of declaration of NPA. Therefore, the date of NPA cannot be taken to be the date of default for the purpose of limitation."

12. The Learned Counsel for the Appellant, submits that the Adjudicating Authority / Tribunal, had not considered any of the 'judgements', relied on by the Appellant's side. However, the Adjudicating Authority / Tribunal, had referred to the 'judgements', cited by the Respondent, and passed the 'Impugned Order' without any basis.

Evaluation

13. At the outset, this Tribunal, pertinently points out, that the Respondent / Petitioner/Operational Creditor, before the 'Adjudicating Authority/Tribunal', had filed IA (IBC)/733/(CHE)/2022, in IBA/491/2022, (filed under Section 60(5) of the I&B Code, 2016, praying for permitting the Respondent/Petitioner, to amend Part IV(1)(b), in Form 5, as per Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 (at page 6 of IBA/491/2020 as under:-


The portion in Part IV(I)(b) if this amendment stands allowed:

"(b) Date on which the amount fell

due= 03.08.2018

and

The existing portion in Part IV(2)of Form 5:

"Total amount of Debt as on31/01/2020 = 9,54,825.24 US$"

The portion in Part IV(I)(b) if this amendment stands allowed:

"Default amount as on 31/01/2020 = 9,54,825.24 US$:

Date of Default -03.08.2018.

(the date on which Supreme Court dismissed the appeal of Corporate Debtor filed against OSA 113/2017 which was filed against OP 127/2016 dated 26.10.2016 filed under Arbitration and Conciliation Act, 1996.)"

14. The Learned Counsel for the Appellant, refers to the decision, in Company Appeal (AT)(Ins.) No. 98/2019, in ***M/s Next Education India Ltd. Vs. M/s. K12 Techno Services Private Limited*** wherein at paragraph 26 it is observed as under:-

> *"26. As we hold that the date of default is 12.03.2011, the correspondence relied upon by the Appellant Counsel is dated 12.09.2015 and is beyond three years of the date of default, we are of the considered view that these documents do not extend the period of limitation. In the present case, the 'Operational Creditor' failed to bring on record any acknowledgement in writing by the 'Corporate Debtor' or its representative within three years of the date of the first default. As the scope and objective of the Code is not to give a fresh lease of life to time barred debts, we are of the considered view that the ratio of the Hon'ble Supreme Court in 'Babulal Vardharji Gurjar' (Supra) is squarely applicable to the facts of this case. Hence, we hold*

that the Application filed under Section 9 is barred by limitation."

15. According to the Respondent / Petitioner the 'debt', which fell due, was stated as 23.10.2012, which was the date on which the Arbitration Notice, was issued to the Respondents. Moreover, on 21.09.2015 a 'Foreign Award' was passed by the sole arbitrator, to and in favour of the Petitioner, whereby the Corporate Debtor was liable to pay the Respondent/Petitioner/Operational Creditor a sum of US$3,84,122.54 with interest @ 10% from 01.02.2014.

16. The Respondent / Petitioner in IA(IBC)/733(CHE)/2022 in IBA/491/2020 had averred that the 'Foreign Award' dated 21.09.2015 was recognised, and was made final, by the Hon'ble Madras High Court, in order dated 26.10.2016 in OP No.127/2016. However, in OSA No. 113/2016 filed by the Appellant's, the Hon'ble High Court of Madras has confirmed the order passed in OP No.127/2016. The Hon'ble Supreme Court in SLP No.19112/2018 on 03.08.2018 had passed an order of dismissal, whereby, the 'Award' dated 21.09.2016, was confirmed and became an enforceable one.

17. The Respondent / Petitioner in IA(IBC)/733(CHE)/2022 in IBA/491/2020 had mentioned that in Form-5 in Part IV, the 'date of default' was mentioned as

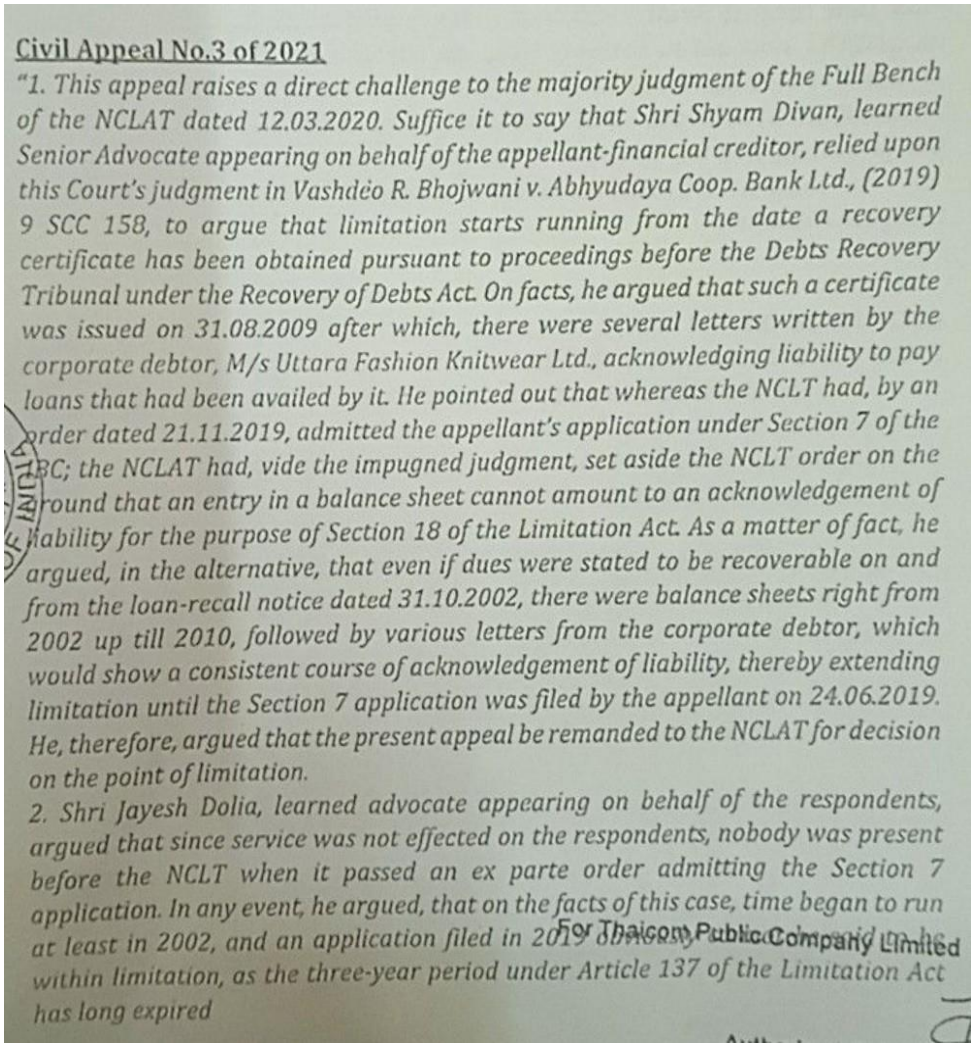
03.08.2018, being the 'date of dismissal', of the SLP No.19112/2018, filed by the Appellant / Respondent.

18. Furthermore, although, these details were captured in the pleadings, but inadvertently has 'typographical' error crept in as the 'date of default' was not clearly mentioned in Part-IV(1)(b) in Form-5, as per Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016. By an inadvertence, it was mentioned that: *"Date on which the debt amount fell due – on 23.10.2012" instead of "Date on which the debt amount fell due - on 03.8.2018" and in Part IV(2) it was mentioned as "Total amount of Debt as on 31.01.2020 = 9,54,825.24 US$" instead of "Default amount as on 31.01.2020 = 9,54,825.24 US$: Date of Default – 03.08.2018".*

19. According to the Respondent / Petitioner, an 'inadvertent, error', is neither 'wilful', nor 'wanton', but due to the 'bonafide' mistake, as mentioned supra. If the 'Amendment', is not permitted, 'serious prejudice' and 'irreparable loss', will be caused to the Respondent / Petitioner. Also, the Respondent / Petitioner, is not setting up any 'new cause of action' or new pleadings, hence, 'no prejudice', will be caused to the 'Corporate Debtor'. Therefore, the Respondent / Petitioner, had prayed, for allowing of the 'amendment of Part IV(1)(b) & IV(2) in Form 5' as

per Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

20. The Respondent / Petitioner / Operational Creditor, in IA(IBC)/733/CHE)/2022 in IBA/491/2020, had referred to the judgment of the Hon'ble Supreme Court in ***Asset Reconstruction Company (India) Ltd. Vs. Bishal Jaiswal & Anr. (vide Civil Appeal No.323/2021 with 4 Others Civil Appeals)***, wherein it is held as under:



Civil Appeal No.3 of 2021

"1. This appeal raises a direct challenge to the majority judgment of the Full Bench of the NCLAT dated 12.03.2020. Suffice it to say that Shri Shyam Divan, learned Senior Advocate appearing on behalf of the appellant-financial creditor, relied upon this Court's judgment in Vashdeo R. Bhojwani v. Abhyudaya Coop. Bank Ltd., (2019) 9 SCC 158, to argue that limitation starts running from the date a recovery certificate has been obtained pursuant to proceedings before the Debts Recovery Tribunal under the Recovery of Debts Act. On facts, he argued that such a certificate was issued on 31.08.2009 after which, there were several letters written by the corporate debtor, M/s Uttara Fashion Knitwear Ltd., acknowledging liability to pay loans that had been availed by it. He pointed out that whereas the NCLT had, by an order dated 21.11.2019, admitted the appellant's application under Section 7 of the IBC; the NCLAT had, vide the impugned judgment, set aside the NCLT order on the ground that an entry in a balance sheet cannot amount to an acknowledgement of liability for the purpose of Section 18 of the Limitation Act. As a matter of fact, he argued, in the alternative, that even if dues were stated to be recoverable on and from the loan-recall notice dated 31.10.2002, there were balance sheets right from 2002 up till 2010, followed by various letters from the corporate debtor, which would show a consistent course of acknowledgement of liability, thereby extending limitation until the Section 7 application was filed by the appellant on 24.06.2019. He, therefore, argued that the present appeal be remanded to the NCLAT for decision on the point of limitation.

2. Shri Jayesh Dolia, learned advocate appearing on behalf of the respondents, argued that since service was not effected on the respondents, nobody was present before the NCLT when it passed an ex parte order admitting the Section 7 application. In any event, he argued, that on the facts of this case, time began to run at least in 2002, and an application filed in 2019 ought not to be said to be within limitation, as the three-year period under Article 137 of the Limitation Act has long expired

For Thaicom Public Company Limited

3. We have already set aside the Full Bench judgment dated 12.03.2020 in Civil Appeal No.323 of 2021. Given the argument of Shri Dolia that service was not properly effected upon the respondents, it would be in the fitness of things to send the matter back to the NCLT for a de novo hearing. Parties are allowed to amend their pleadings, if necessary. The Civil Appeal is allowed in the aforesaid terms."

21. The Respondent / Petitioner in IA(IBC)/733/CHE)/2022 in IBA/491/2020 had referred to the judgment of the Hon'ble Supreme Court in ***Rajendra Narottamdas Sheth & Anr. Vs. Chandra Prakash Jain & Anr. (vide Civil Appeal No. 4222/2020)***, wherein at paragraph 20, it is observed as under:

"20. There can be no doubt that it is the responsibility of the financial creditor to give all particulars relating to the debt due and the date of default, along with the requisite documents, at the time of filing of an application under Section 7 of the Code. A plain reading of Section 7, Rule 4 of the 2016 Rules and Form 1 makes it clear that the Adjudicating Authority may admit an application under Section 7 only if he is satisfied that a default has occurred. The definition of 'default' under Section 3 (12) of the Code refers to non-payment of debts which are "due and payable" in law, meaning thereby that an application under Section 7 of the Code is maintainable only with respect to debts that are not time-barred. (See: B.K. Educational Services Private Limited v. Parag Gupta and Associates) The primary obligation of making out a prima facie case of default is on the financial creditor. There is no necessity for the corporate debtor to provide any information at the stage of admission of the application under Section 7 of the Code, as the burden of showing non-payment of a legally recoverable debt, which is not time-barred, is on the financial creditor. *At the same time, it is clear from the judgments of this Court in Asset Reconstruction (supra) and Dena Bank (supra) that non-furnishing of information by the financial creditor at the time of filing an application under Section 7 of the Code need not necessarily entail in dismissal of the application. An opportunity can be provided to the financial creditor to provide additional information required for satisfaction of the Adjudicating Authority with respect to the occurrence of the default."*

Emphasis supplied

22. Also on behalf of the Respondent / Petitioner, before the Adjudicating Authority / Tribunal, in IA(IBC)/733/CHE)/2022 in IBA/491/2020, a reference was made to the decision of this Tribunal, in ***Vivek Malik, Suspended Director of Amazen Machines Pvt. Ltd. vs. Punjab National Bank Company (vide Company Appeal (AT)(Ins.) No.224/2021),*** wherein at paragraph 17 to 19, it is observed as under:

> *"17. Now keeping in view the different orders passed by the Hon'ble Supreme Court while disposing the matter with regard to "Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Anr" it shows that the pleadings can be brought on record or amended even at the NCLAT stage.*
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> *18. 'Law of Pleadings in India' by Mogha (18th Edition) shows that the pleadings are statements in writing drawn up and filed by each party to a case, stating what his contentions will be at the trial/ hearing and giving all such details as his opponent needs to know in order to prepare his case in answer. According to learned Author, in pleadings, material facts should be stated 'in a concise form'. The pleadings should be concise as well as precise. Pleadings would include contentions raised in Application, Counter, Appeal, Reply, Rejoinder.*
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> *19. Keeping in view the principles with regard to pleadings, it would be necessary to see if in the Application or reply filed, issue with regard to limitation was raised and if the same was*

considered and discussed along with the documents so as to arrive at a decision."

23. Before the Adjudicating Authority / Tribunal, the Appellant / Respondent / Corporate Debtor had averred that the Respondent / Petitioner, as an 'afterthought', is seeking to amend the Part IV of Form 5 and nearly after 2½ years, from the date of filing of main IBA/491/2018.

24. It is the stand of the Appellant / Respondent, that the 'Petitioner' had filed IBA/491/2020 dated 16.03.2023, before the Adjudicating Authority / Tribunal and prior to the filing of the said Application, a Demand Notice, in Form 3 dated 25.09.2019 was issued by the Respondent / Petitioner. A mere perusal of the said 'Demand Notice', would reveal the fact that the Respondent / Petitioner, had not proved his case, as to when the purported sums claimed from the Appellant / Respondent became due and payable. Indeed, the Respondent / Petitioner conveniently, had not mentioned the date, when the 'alleged default', had occurred.

25. The Appellant / Respondent, proceeds to point out, that after six months from the date of 'Demand Notice' in Form 3, which came to be issued, an 'Application' in Form 5, was filed by the Respondent / Petitioner before the Adjudicating Authority / Tribunal on 16.03.2020. In the said Application (at page

6), the Respondent / Petitioner after conveniently omitting, to mention the date of default in Form 3, issued earlier, had 'mentioned a date' on which the amount fell due as on 23.10.2012.

26. According to the Appellant / Respondent, for any 'Application' to be admitted under the I&B Code, 2016, proving the 'existence' of a 'debt and default' is mandatorily, in fact, that Respondent / Petitioner had mentioned 23.10.2012, as the date on which the alleged amounts fell due.

27. The Appellant / Corporate Debtor, before the 'Adjudicating Authority / Tribunal' points out, that the Respondent / Petitioner had placed reliance, of the decision, of the Hon'ble Supreme Court of India, in Dena Bank (Now Bank of Baroda) v. C. Shivkumar Reddy & Anr. (2021) 10 SCC 330, wherein it was held that "there is no bar in law to the amendment of pleadings in an Application under Section 7 IBC or to the filling of additional documents, apart from those initially filed along with application under section 7 IBC in Form 1" and according to the Appellant, this decision is distinguishable, very clearly on the facts and circumstances of the instant case on an.

28. The Appellant / Corporate Debtor, before the Adjudicating Authority / Tribunal that had averred that the present 'Application', was filed in a

'Lackadaisical' manner with an inordinate delay, of around two and half years, without any basis / reason.

29. It is the plea of the Appellant / Corporate Debtor, the Respondent / Petitioner, had failed to consider the 2nd part of paragraph 142 of the decision of Hon'ble Supreme Court in Dena Bank's case, wherein it is observed as under:

> *"142……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."*

30. Before the Adjudicating Authority / Tribunal, the Appellant / Respondent, had prayed for dismissal, of the IA(IBC)/733(CHE)/2022 in IBA/491/2018, because of the fact that 'amendment of pleadings' was sought for, with an inordinate delay of 2½ years.

31. It must be borne in mind that 'Amendments' are allowed in 'pleadings' to avoid, uncalled for 'multiplying of litigations' as per decision of Hon'ble

Supreme Court in *B.K-Narayana Pillai vs Pararneswaran Pillai (2000) 1 SCC 712*.

32. 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.

33. There is no rule limiting 'amendment' to 'accidental' errors. An 'amendment', which is necessary for the just decision of a case can be allowed. Also that, an 'amendment', in 'general', is not to be refused, in a mechanical and casual manner. In fact, the 'pleadings' can be amended, to substantiate, to elucidate and expand the 'pre-existing facts', 'already existing'.

34. 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.

35. Merits / demerits of the case, set up by the proposed amendment, would not be seen at that time of consideration of application, for amendment, but would be seen at that time of 'trial'.

36. 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, even after the statutory, period of limitation, as per decision of the Hon'ble Supreme Court in *Vineet Kumar v. Mangal Sain (1984) 3 SCC 352*.

37. An 'amendment' is imperative, for a proper, and an effective adjudication of a case. No wonder, an 'Application', for 'Amendment' must be 'Bonafide' is not a 'Malafide'. In fact, the 'Tribunal' / 'Court', shall try the merits of the case, that comes before it and resultantly, permit the 'amendment(s)', that may be necessary for deciding the real controversies / disputes between the parties.

38. An 'amendment', which is necessary for the just decision of a case, can be allowed, as per decision Smt. Ratna Srivastava v. M.M. Bhargava reported in AIR 2011 MP 139.

39. The Court has 'wide powers' to allow an 'amendment of pleadings' and such a power is to be applied liberally, as per decision of Hon'ble Supreme Court in Jaswant Kaur v. S. Subhash Palliwal, reported in (2010) 2 SCC 124.

40. It is not out of place for this Tribunal, to make a pertinent mention, that the 'Adjudicating Authority / Tribunal', in 'IBA/491/2020' had granted Liberty

'to file' an 'Amendment Application' and pursuant thereto, the Respondent / Petitioner / Operational Creditor had filed IA(IBC)/733/CHE)/2022 in IBA/491/2020.

41. Be it noted that, in IBA/491/2020, on the file of Adjudicating Authority / NCLT, Division Bench-I, Chennai, because of creeping in of certain inadvertent typographical error crept in, wherein it was mentioned *"as Date on which the debt amount fell due – on 23.10.2012" instead of "Date on which the debt amount fell due – on 03.08.2018" and in part IV(2), it was mentioned as "Total amount of debt as on 03.01.2020 = 9,54,825.24 US$" instead of Default amount as on 31.01.2020 = 9,54,825.24 US$: Date of Default – 03.08.2018".*

42. Moreover, the Adjudicating Authority / Tribunal, on 10.06.2022, gave Liberty, in IBA/491/2020 to the Respondent / Petitioner, to prefer an 'amendment' an Application and pursuant to which the IA(IBC)/733/CHE)/2022 in IBA/491/2020 was filed by the Respondent / Petitioner.

43. In the present case, even though, the Appellant / Respondent, had 'come out with the plea' that the amendment in pleadings was sought for by the Respondent / Petitioner in IA(IBC)/733/CHE)/2022 in IBA/491/2020 with the inordinate delay of 2½ years, keeping in mind, of a prime fact, that the 'Amendment', 'in pleadings' is in 'imperative one', for a proper, effective and

efficacious adjudication of the controversies, involved in the main IBA/491/2020 on the file of the Adjudicating Authority / Tribunal. Added further, the Adjudicating Authority / Tribunal, had given liberty to the Respondent / Petitioner / Operational Creditor on 10.06.2022 in IBA/491/2020 to file an 'Amendment Application', this Tribunal, comes to a consequent conclusion, that IA(IBC)/733/CHE)/2022 in IBA/491/2020 is a 'Bonafide' one and to 'minimise litigation' between the parties and also that 'No Party', should suffer on account of 'technicalities' of Law, and viewed in that prospective, the allowing of IA(IBC)/733/CHE)/2022 in IBA/491/2020, by the Adjudicating Authority / Tribunal, on 26.07.2023 is free from any legal flaws. Accordingly, the Appeal sans merits.

Result

44. In fine, the ***Company Appeal (AT)(Ins.) No.325/2023*** is dismissed by this Tribunal, for the reasons ascribed in this Appeal. No Costs. The connected IA991/2023 (for stay) is closed.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

11th October, 2023

ss/pks