



IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT III

I.A. 2804/2022

IN

C.P.(IB)-825(MB)/2022

(Under Rule 11 of the NCLT Rules, 2016)

IN THE MATTER OF,

Comfort Fincap Ltd

(CIN: L65923WB1982PLC035441)

Registered Office at: 22, Camac Street, Block 'B',
Ground Floor, Behind Pantaloons, Kolkata, West
Bengal-700016.

.....Financial Creditor/Petitioner

Vs.

Seven Indian Heads Infrabuild Pvt. Ltd.

(CIN: U45400MH2008PTC181990)

Registered Office at: 10/11/12/13, 2nd Floor, Lake
City Centre, Kapurbawadi Junction, Thane West,
Thane MH 400607 IN.

.....Corporate Debtor/Respondent

Order Reserved On : 16.06.2023

Order Pronounced On : 11.07.2023

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

Appearance:

For the Applicant/Financial Creditor: Adv. J. M. Bhalga

For the Corporate Debtor : Adv. Amir Arsiwala

ORDER

Per: H. V. Subba Rao, Member (Judicial)

1. The above application is filed by the Petitioner/Financial Creditor for amendment of the main Company Petition under Rule 11 of the NCLT



Rules, 2016. The brief facts behind filing the above application are as follows:

- I. *Upon filing the Petition on 26th July 2022, the matter was listed for direction on 22-07-2022. Hereto annexed and marked as Exhibit "A", is a copy of the order dated 22-7-2022. The matter is now listed for hearing on 12th September 2022. The Financial Creditor has brought to the notice that certain facts mentioned in the Petition are defective and needs to be amended and further documents needs to be attached related with purported date of default, total amount of default etc.*
 - a. *As the date of default mentioned in the captioned Petition was inadvertently mentioned wrong as the company has entered into a MOU on 23-3-2021 and wherein the Corporate Debtor was expressly agreed to make payment on or before 10/4/2021. And further agreed to if the conditions of the MOU not fulfilled the Penal interest will be chargeable.*
 - b. *The total amount in default was not calculated as per the above-mentioned MOU and the same is rectified now and attached together with this Application. Annexed hereto and marked as Exhibit "C", is copy of Ledger Account till 31-7-2022. Being, the facts and additional documents are vital to the said Petition, hence, this application to seek your permission to file amendments and additional documents, which may kindly be granted.*
 - c. *Consequently, the records at NESL also needed to be amended in line with the records in the books of the Financial Creditor and accordingly an updated statement of Record of Financial Information - Form C is also need to be updated in the captioned Petition, hence this Application.*
 - d. *The schedule of Amendments required through this Application are mentioned in the Statement of Amendment requested.*



2. The Respondent/Corporate Debtor filed affidavit in reply of Mr. Yogesh Shukhla, Authorized Signatory of the Respondent strongly opposing the above amendment as follows:

- a) *It is pertinent to note that the captioned Application seeking amendments as stated therein, is an after-thought of the Petitioner, which is evident from the flow of events transpired post the filing of the captioned Company Petition. I say that the captioned Petition was filed on the 26th of June, 2022. That the Respondent was served with Notice from this Hon'ble Tribunal on the 8th of August, 2022, and thereafter, an Affidavit-in-Reply to the main Company Petition was filed by the Respondent on the 22nd of August, 2022, along with serving an advance of the same to the Petitioner vide email dated the 22nd of August, 2022. Subsequently, the Respondent was served upon with the captioned Application on the 11th of September, 2022, seeking amendments to the facts mentioned in the main Company Petition. This Hon'ble Tribunal vide its Order date the 4th of October, 2022 passed in the captioned Application, granted time the Respondent to file its Reply to the present Application and directed the matter to be listed on the 9th of November, 2022 for filing Reply of the Respondent and for hearing. It is imperative to note that the Petitioner, without the leave of this Hon'ble Tribunal. the Petitioner has gone ahead and filed a Rejoinder to the Affidavit- in Reply filed by the Respondent in the Company Petition, the same was served upon the Respondent on the 12th of October, 2022.*
- b) *I say that the list of amendments sought to be carried out by way of the present Application, if allowed, would completely modify the very nature of the present case. It appears that the Petitioner has preferred the present Application out of desperation to the get the Company Petition admitted under any circumstances. This also shows that the Petitioner had no documents on record or point of law to counter the statements made by the Respondent in its*



Affidavit-in-Reply to the Company Petition. Without prejudice to the contentions available in law, I say that a bare perusal of the statements made in the Rejoinder dated the 11th of October, 2022, show that the Petitioner has thoroughly relied on the contentions raised herein and is simpliciter a reproduction of the facts and grounds mentioned in the present Application. No reasonable person could have committed a gross mistake of with filing a Company Petition with incorrect details of the very foundation of the cause of action.

3. Heard Adv. J. M. Bhalga, for the Applicant/Financial Creditor and Adv. Amir Arsiwala, for the Corporate Debtor and perused the material available on record. As stated above, the above Interlocutory Application is filed by the Financial Creditor praying this Tribunal to permit them to carry out the following amendments in the main Company Petition.

SCHEDULE OF AMENDMENTS

| Sr. No. | Page No. of Petition | Affected Part | Current Status | Amendment Requested |
|----------------|-----------------------------|---------------------------------------|--|---|
| 1. | 2 | Date of Events- Page 2 of Petition | Sr. No. 6 Date 23-06-2022 Events: Total amount in defaults Rs. 14145006/- | Sr. No. 6 Date: 31-07-2022 Events: Total amount in defaults Rs. 13513884/- |
| 2. | 6 | Part-IV -2- Page 6 of Petition | Total Amount in Default: Rs. 14145006/- (Rupees One Crore Forty-One Lakhs Forty-Five Thousand and Six | Total Amount in Default: Rs. 1,35,13,884/- (Rupees One Crore Thirty-Five Lakhs Thirteen Thousand Eight Hundred and |



| | | | | |
|----|---------------|-------------|--|---|
| | | | Only) annexed hereto and marked as Exhibit "E", is a Copy of Statement of Amount in Default as on 23-06-2022. Date of Default: 23-07-2020 | Eighty-Four Only) annexed hereto and marked as Exhibit "E", is a Copy of Statement of amount in Default as on 31-7-2022. Date of Default: 11/04/2021 |
| 3. | 16 & 17 | Exhibit E | Ledger Account 1-4-2018 to 23-6-2022 | Replace with New Ledger Account 1-4-2018 to 31-03-2023 |
| 4. | 17A & 17B | Exhibit E-1 | Record of Financial Information-Form C Information as on 23-6-2022 | Replace with New Record of Financial Information-Form C Information as on 8-09-2022 |
| 5. | New Page 17 C | Exhibit E-2 | - | Additional MOU- dated 23-03-2021 |
| 6. | Index | Index | | To be added after point 11 as 11A-Exhibit E-2 Page 17 C |

4. Now let us deal with the merits of the above application. The Petitioner filed the main Company Petition claiming an amount of Rs. 1,41,45,006/- by specifically mentioning the date of default as 23.07.2020 in Part-IV of the petition. The documents relied by the Petitioner in support of their claim are demand Promissory Note dated 23.01.2018, copies of cheque return



memo dated 23.07.2020 and record of default issued by NESL in Form-C whereunder the date of default is clearly mentioned as 23.07.2020 which is in accordance with the date of default mentioned in the Company Petition.

5. Now the Petitioner would like to change the date of default as 11.04.2021 instead of 23.07.2020 and the total amount as Rs. 1,35,13,884/- instead of Rs. 1,41,45,006/- as originally mentioned in the Company Petition. The Petitioner would also like to substitute the NESL Certificate, with a new certificate in which the date of default is mentioned as 11.04.2021. In support of the proposed amendment, the Petitioner is relying on a MOU dated 23.03.2021 alleged to have been entered into between the Financial Creditor and the Corporate Debtor.
6. The careful perusal of the above documents along with the proposed amendments makes it very clear that the Petitioner herein is trying to change the whole cause of action including the amount of claim, date of default and the earlier documents that too after pointing out by the Corporate Debtor that the above Company Petition is hit by Section 10A of the Code. It is important to mention here that the present MOU which was sought to be introduced by the Petitioner is dated 23.03.2021 which is more than one year prior to the date of filing of the above Company Petition i.e. 26.07.2022. Therefore, the Petitioner ought not have omitted to file the above MOU along with Company Petition if it is a genuine document as it was already in their custody. Similarly, the Petitioner is also trying to shift the date of default basing on another recent NESL Certificate much after filing the above Company Petition.



7. It is the cardinal principle of law that the amendment of pleadings shall be allowed by Courts and Tribunals liberally. At the same time, it is also a settled proposition of law that an amendment of pleadings cannot be allowed at a belated stage if the proposed amendment totally changes the cause of action and the whole case of the Petitioner. It is also settled proposition of law that an amendment of pleading cannot be allowed which takes away the valuable defence and the plea of limitation available to the other side. It is very clear from the above facts and circumstances that the Financial Creditor is making an attempt to shift the date of default by introducing new documents with new theories and stories that too after pointing out by the Corporate Debtor that the date of default mentioned in the original petition is hit by Section 10A which is not legally permissible.
8. It is appropriate to mention here that Section 7 of IBC prescribes mere filing of an application in a form prescribed under the Rules and the question of filing lengthy pleadings does not arise unlike a suit filed under the Code of Civil Procedure. Similarly, there is no express provision provided in the Code for amendment of pleadings. Rule 11 of NCLT is a mere enabling provision empowering the NCLT to pass any order to prevent the misuse and the abuse of the process of the Code and such an enabling provision cannot be used for filing application of this nature.
9. Therefore, for the aforesaid reasons this Bench is of the considered opinion that the above attempt on the part of the Petitioner in filing the above petition for amendment of the pleadings is nothing but an abuse and misuse of the process of the Tribunal and such attempt shall not be allowed. Accordingly, the above Interlocutory Application is dismissed as devoid of

merits. Since, the above application is dismissed, the above Company Petition also will not stand as the date of default is 23.07.2020 even according to the Petitioner's own case which is hit under Section 10A of the Code.

10. Accordingly, the above Interlocutory Application bearing No. I.A. 2804/2022 as well as Company Petition bearing no. C.P.(IB)-825(MB)/2022 are dismissed.

Sd/-
MADHU SINHA
MEMBER (Technical)

Sd/-
H. V. SUBBA RAO
Member (Judicial)

Shubham