

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-V

I.A. 1981 OF 2023

IN

C.P.(IB) No. 1197 of 2022

In the matter of

**Samata Nagari Sahkari Patsanstha
Maryadit, Kopargaon,**

Samata Marg, Khandaknala, Main
Road, Kopargaon Dist. Ahmednagar
423601.

...Financial Creditor/ Petitioner

Vs

**Souvenir Developers (India) Private
Limited,**

(CIN: U45200MH2004PTC147269)

1, Animesh Marketjanki Nagar,
Wadibhokar Road, Deopur, Dhule,
Maharashtra-424002,

...Corporate Debtor/ Respondent

In the matter of

Samata Nagari Sahkari Patsanstha
Maryadit, Kopargaon

...Financial Creditor/ Petitioner

Vs

Souvenir Developers (India) Private
Limited

...Corporate Debtor/ Respondent

Order Dated: 01.08.2023

Coram:

Hon'ble Sh. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances:

For the Financial Creditor: Ms. Seetalaxmi Swamy, Ld. Counsel

For the Corporate Debtor: None

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The present Application is filed by the Applicant, namely, the Samata Nagari Sahkari Patsanstha Maryadit, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as the "**Code**"] read with Rule 11 of the NCLT Rules, 2016 seeking the following directions:
 1. To allow the present Application
 2. To amend Form-1 amending the date of default
 3. Any other order or direction as made deem fit and appropriate

FACTS OF THE CASE

2. Samata Nagari Sahkari Patasanstha Maryadit Kopargaon (Applicant) is a Cooperative Society registered under Maharashtra Cooperative Societies Act 1960. Souvenir Developers (India) Private Limited (Respondent) is Private Limited Company incorporated under Companies Act, 1956.
3. The credit facility of Rs. 1,00,00,000/- was availed by Respondent vide Loan Agreement dated 03.03.2022 for a period of 3 years repayable in 36 instalments from the date of Loan Agreement.

4. The Applicant has submitted that the first instalment fell due for payment on 30.04.2022. However, the Respondent defaulted in making the payment of the first instalment of the sanctioned credit facilities.
5. It has been submitted by the Applicant that the date of default is required to be reckoned from the date when the demand notice was issued to the Corporate Debtor. The Corporate Debtor has further submitted that as the demand notice was sent on 16.09.2022 for making the payment of outstanding due within 15 days of the receipt of Demand Notice, therefore, the date of default should be 01.10.2022 whereas in the petition it is mentioned as 30.04.2022.
6. The Applicant has submitted that the current amendment will not change the cause of action and the nature of the Company Petition No. 1197 of 2022.
7. We have heard the Counsel for the Applicant and perused the records.
8. It is noteworthy that in Company petition No. 1197 of 2022, the Respondent was proceeded against exparte vide order dated 30.03.2023. When the present IA was listed for final hearing, even on that day the Respondent did not appear.
9. Having heard the Counsel for the Applicant, we are of the considered view that the proposed amendment with regard to change of the date of default can be allowed considering the fact that the proposed amendment will not materially change the cause of action nor will cause any prejudice to the Respondent/ Corporate Debtor.
10. Accordingly, IA 1981 of 2023 is **allowed** to the extent that date of default shall stand amended from 30.04.2022 to 1.10.2022.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)