

NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. P-3

IA No. 1382 of 2023 IN C.P. (IB)/707(MB)2022

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **05.06.2025**

NAME OF THE PARTIES:

Axis Bank Limited

Vs.

Yashwant Dugdh Prakriya Limited

Under Section 60(5)(a) of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court *vide* separate order. In the result, the above **IA No. 1382 of 2023 in C.P. (IB)/707(MB)2022** is allowed. Detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//FRK//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – VI**

IA No. 1382 of 2023 IN CP(IB)/707/MB/2022

*(Under Section 60(5)(a) of the Insolvency and
Bankruptcy Code 2016 read with Rule 11 of the
National Company Law Tribunal Rules, 2016)*

Axis Bank Limited

Trishul, 3rd Floor, Opposite
Samartheshwar Temple, Law
Garden, Ellis Bridge,
Ahmedabad-380 006 Gujarat.

Branch Office: Axis house, 7th Floor,
Wadia International Centre, Pandurang
Budhkar Marg, Worli, Mumbai-400025,
Maharashtra. **Applicant/Financial Creditor**

-Vs-

Yashwant Dugdh Prakriya Limited

CIN : U15201PN2004PLC019598
AT & Post Shiralatal Shirala Sangli,
Also at :Plot No. B-29, MIDC Shirala,
Tal-Shirala, Dist. Sangli-415 408
Maharashtra.....

.....**Respondent/Corporate Debtor**

Order pronounced on 05.06.2025

CORAM:

SH. NILESH SHARMA, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE (IN V-C MODE)

For Financial Creditor: Adv. Mr. Nausher Kohli a/w Apurva
Sanglikar i/b Nidhi Partners

For Corporate Debtor: Adv. Mr. Viraj Parikh i/b Adv. Mr. Agam H
Maloo

ORDER

[PER: CORAM]

1. This is an Application filed on 06.04.2023 by the Applicant in **C.P. (IB)/707/(MB)2022** seeking the following prayers.

- a. That, this Hon'ble Tribunal be pleased to permit the Applicant/Financial Creditor to amend the Company Petition in terms of Schedule of Amendments at Exhibit B;
- b. That, this Hon'ble Tribunal be pleased to condone delay, if any, in filing the present Interlocutory Application and,
- c. That, this Hon'ble Tribunal be pleased to pass such other orders/ directions as necessary, in the interest of justice.

2. Schedule of Amendment as per Exhibit-B of the IA is reproduced here under:

- (a) Insert the following before the words “The loan account of the Corporate Debtor...” in Point II in Item No. 2 of Part-IV of Form-I at page no. 10:

“Date of Default is 1st February 2020”

- (b) Insert the following in Item No. 8 of Part-V of Form-I at page no. 22:

“Annexed hereto and marked as Annexure X-1 is a copy of printout of Form IA bearing Acknowledgment ID No. IAAA-0423-003667 dated 4th April 2023”

and make consequential amendments to the Index.

- (c) Insert copy of printout of Form 1A bearing Acknowledgment ID No. IAAA-0423-003667 dated 4th April 2023 at page numbers 360-A and 360-B of the Company Petition as Annexure X-1.
3. **C.P.(IB)/707/(MB)2022** in which the present Application has been made, is filed for seeking commencement of CIRP upon the Respondent. The Applicant is seeking amendment to the Form-1 in **C.P. (IB)/707/(MB)2022**.
4. The Corporate Debtor filed its reply to the with a delay on 17.11.2022.
5. It is stated that the Applicant wishes to amend the Part-IV more particularly Item No. 2 being the date of default, which was in the Original Application stated as 01.05.2022 (**NPA date**) to 01.02.2020.
6. Further, the Applicant has sought to amend the petition by inserting the particulars of submission of Company Petition/Application on the online portal of IBBI and attaching with the petition a copy of printout of Form-1A bearing acknowledgment for submission of the said Petition/Application on the online portal. The same is pursuant to the IBBI Circular No. IBBI/LAD/58/2023 dated 04.03.2023.

7. Respondent has filed a reply to the present IA under affidavit dated 03.05.2023 and following contentions have been raised in the said reply: -

- i. The Applicant is seeking amendment to the Application post filing of the reply which was on 17.11.2002. Several hearings have been held post the reply. The Applicant has not filed Rejoinder and vide order dated 02.01.2023, liberty to file rejoinder in the present matter was closed. The Respondent refers to order dated 13.01.2023 which records that “both the counsels are present. They state that the pleadings are complete”.
- ii. It is the contention of the Respondent that petitioner is attempting to reopen the aforesaid orders, the present Application is nothing but an attempt to recall the admissions made by the petitioner in the petition.
- iii. The said Application is an attempt to resile from admissions made by the petitioner in the petition in regard to the date of default, which is stated to be the date of NPA being 01.05.2020 and falls within the Section 10A period. Now the petitioner is claiming that the date of default is in February, 2020 and that the petition is not curative but to hide fatal admissions in the petition.
- iv. The present Application is nothing but attempt to place on record additional documents, which request has already been rejected in the hearing held on 13.01.2023.

8. In light of the above, the Respondent seeks dismissal of the present Application at the hearing held on 06.05.2025.
9. Ld. Counsel appearing for the Applicant has relied upon the judgment in the matter of **Dena Bank (Now Bank of Baroda) VS. C. Shivakumar Reddy And Another (Civil Appeal no. 1650 of 2020) as decided by Hon'ble Supreme Court**, more particularly para 142, which is reproduced herein: -

“There is no bar in law to the amendment to the pleadings in an application under Section 7 of IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 of 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 document with supporting pleadings, and to

consider such documents and pleadings did not call for interference in appeal”.

10. Ld. Counsel for the Applicant says that in terms of the above order he may be permitted to amend the petition which is still to be decided by the Bench.
11. Per Contra Ld. Counsel for the Respondent relies upon an order dated 12.07.2023 of **Ld. Hyderabad Bench of NCLT CA No. 06/2023, CA No. 29/2023 & CA No. 91/2023 In C.P. No. 72/HDB/2008 (T.P. NO. 30/HDB/201) [Under Rule 155 r/w rule 11 of NCLT Rules]** in the matter of M/S Sanghi Textiles Pvt. Ltd., wherein the Ld. Hyderabad Bench did not allow the amendment to the pleadings claimed to be under similar circumstances.
12. We have heard the respective counsels and have gone through the various documents and decisions relied upon by the both the sides.
13. The short point involved in the present Application is whether at this stage when the pleadings are recorded to be completed as per various interim orders of this Tribunal, can the Applicant be allowed to modify the Form-1?
14. Ld. Counsel for the Applicant, referring to the above referred Dena Bank Judgment argues that vide the said judgment, Hon'ble Supreme Court has clearly held that there is no bar in law to the amendments of the pleadings in an Application under Section 7 of IBC or to filing of additional documents apart from those initially

filed along with the Application under Section 7 of IBC in Form-1. Hon'ble Supreme Court further held that 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 Applicant Bank to file additional documents. Though the Hon'ble Supreme Court has held that depending upon the facts and circumstances of a case, when there is an inordinate delay, the Adjudicating Authority may, at its discretion, decline the request of an Applicant to file additional pleadings/documents and proceed to pass a final order. However, in the present matter the proposed amendment is necessary to decide the main petition.

15. Though the pleadings in the matter had been completed, however, in order to resolve the real issues, in our view, it is necessary that amendment in the Form-1 filed by the Applicant Bank is allowed. The Applicant Bank had earlier stated in the Petition that the date of default was the date of NPA i.e. 01.05.2020, however, through the present Application the Applicant has requested for amendment of the Form-1 by changing the default date to 01.02.2020. The amendment sought by the Applicant shall enable it to bring on record the correct date of first default in repayment of dues committed by the Corporate Debtor towards the Applicant. Further, the date of default can be ascertained from the statements of account of the Respondent in the books of the Applicant as

attached as **Exhibit-W** to the Company Petition as also from the Central Repository of Information on Large Credits (CRILC) Report dated 28.04.2022 attached as **Exhibit-K** to the petition.

16. Reliance placed by the Respondent upon the order dated 12.07.2023 of Ld. Hyderabad Bench of NCLT in Sanghi Textiles matter (supra), is of no help to the Respondent as in the said matter the Application for amendments of pleadings was filed after a decade and a half, the amendments sought were with regard to a fresh cause of action and that the said matter did not pertain to proceedings under the provisions of Section 7 of IBC. In the said order, Ld. Hyderabad Bench has also stated that it is settled law that the Tribunal was not competent to allow petition for amendment with regard to separate cause of action in respect of which no pleading was made nor any prayer made in the original Application (under Section 241 in the referred matter). In the present case, however, there is no amendment with regard to a separate cause of action and that the amendment is only with the objective of bringing the correct date of default on record in order to enable this Bench to decide the main petition and for meeting the ends of justice while making the said decision. The said date can also be ascertained based on the other record forming part of the main petition i.e. the Bank Statements as well as from the CRILC Report referred to above. It is also important to note here that the date of NPA, as per the RBI Guidelines, is normally 90 days

after the actual date of default and that if the accounts of the CD were declared as NPA by the Applicant on 01.05.2020, it can easily be ascertained that the date of default was 01.02.2020, which is 90 days prior to the date of NPA.

17. Section 60(5)(a) of the Code read with Rule 11 of the NCLT, Rules allow this Tribunal, in exercise of its inherent jurisdiction to permit the amendment in the Company Petition, as well as, taking additional necessary documents on record. Moreover, the Hon'ble Supreme Court has in the Dena Bank Judgment (supra) upheld the discretion available with the Adjudicating Authority in allowing amendment to the pleadings or filing of additional documents.

18. The said amendments may even be allowed after the completion of the pleadings in the main petition as in this case the same is necessary for deciding the main matter and in fact the amendment is to mention the correct date of default in the petition in place of date of NPA and that the correct date of default can even be ascertained from the documents attached in the petition. As such, the contentions of the Respondent as contained in para 7 above including that the Petitioner is attempting to reopen the earlier orders or to recall the admissions in the Petition and that the default falls within the 10A period, cannot be accepted.

19. In light of the legal position as discussed above, including the Judgment of the Hon'ble Supreme Court, and the facts of the present case, we are of the view that the proposed amendments are

necessary for deciding the main petition in which final order is still to be passed and therefore, the same should be allowed by this Bench by exercising its inherent powers under Section 60(5) read with Rule 11 of NCLT Rules, 2016. However, considering that there was a delay on the part of the Applicant to file the present Application, we deem it appropriate to allow the present Application with the following directions:

- (i) Applicant to amend the Form-1 and to file the amended Form-1 in the registry of this Tribunal within a period of 10 days from the date of this order.
- (ii) The Applicant to serve the amended Form-1 upon the Respondent.
- (iii) The Applicant to deposit a cost of Rs. 50,000/- in the Prime Minister National Relief Fund and submit the proof thereof along with the amended Form-1 within a period of 10 days from the date of this order.
- (iv) Respondent is given liberty to reply to the amended Form-1 within a period of 7 days from the date of receipt of the amended Form-1 by the Respondent.
- (v) Opportunity is given to the Applicant herein to file Rejoinder, if any, within a period of 7 days from the date of receipt of the reply.

20. **Accordingly, IA No.1382 of 2023** is allowed and is disposed off.

21. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)
//Farhan//

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)