

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-2
IB-658/ND/2020
IA/3010/2022

IN THE MATTER OF:

M/s Zebronics India Private Limited

Vs.

Times Internet Ltd.

.....Respondent

....Applicant

SECTION

URule 11 of NCLT

Order delivered on 27.04.2023

CORAM:

**SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.
IA/3010/2022 in IB-658/ND/2020 **is allowed.**

Sd/-

**(RAHUL BHATNAGAR)
MEMBER (T)**

Sd/-

**(P.S.N PRASAD)
MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI
I.A. 3010/2022
IN
COMPANY PETITION (IB) No.658/ND/2020**

Application under Rule 11 of NCLT Rules, 2016

In the matter of:

M/S ZEBRONICS INDIA PVT. LTD.

No. 118 Poonamallee High Road

Vepery, Chennai –

600084

...Applicant/Operational Creditor

Versus

M/S. TIMES INTERNET LTD.

Express Building, 9-10,

Bahadurshah Zafar Marg

New Delhi-

110002

...Respondent/Corporate Debtor

CORAM:

SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Adv. Mr. Gaurav Kumar
For the Respondent : Adv. Mr. Manish Shrivastava,
Adv. Manpreet Kaur

Order Pronounced on: 27.04.2023

ORDER

PER: SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

1. The present Applicant has been filed by the Applicant under Rule 11 of NCLT Rules, 2016 praying for the following reliefs:
 - i. To allow the applicant to amend the insolvency Application in IB-658/ND/2020 in according with the proviso to sub-section 5 of the section 9 of the Insolvency and Bankruptcy Code, 2016
 - ii. To pass any other order/direction as this Hon'ble Adjudicating Authority may deem fit and proper in the fact and circumstances of the case
2. The brief fact as averred by the Applicant for filing the present Application are as follows

- i. It is submitted that an Insolvency Application IB-658/ND/2020 was filed under FORM-5 of Insolvency and Bankruptcy (Application to adjudicating Authority) Rules, 2016 by the Applicant for initiating CIRP against the Respondent for default in repayment of Rs. 21,05,680/- (Rupees Twenty One Lakhs Five Thousand Six Hundred and Eighty only) on 19.02.2020.
 - ii. It is further submitted that due to clerical error caused inadvertently, it was mistyped as “Payment is due from Invoice No: 182419 dated 31.12.2015 to Invoice No.183646 dated 06.01.2016” under Sr. no. 1& 2 of Part IV, Wherein it needs to be mentioned as “Payment is due from Invoice No. ON113664 dated 02.03.2015 to Invoice No. ON000079 dated 12.04.2016”.
- 3.** The Respondent has filed its Reply against the said Application. The main objection raised by the Respondent are as followed:
- i. That the Respondent submitted that the Amendment Application is nothing, but a *mala-fide* attempt by the Applicant to mislead this Hon’ble Tribunal and the present application is misconceived ground that “*there has been clerical error caused inadvertently*” in the voices and the date of such invoices.
 - ii. Further the Respondent stated that even if invoice(s) alleged to be in default is taken to be correct for sake of arguments, whilst denying, the application under Section 9 is not maintainable as

value of the said alleged invoices during alleged default period as mentioned in Paragraph no. 1 of Application [at page of 6 of the' Application under Section 9] is Rs. 2,432 only i.e., less than Rs. 1,00,000/-. Relevant extract of the reply i.e., paragraph no. 6 (viii) is reproduced below for convenience of this Hon'ble Tribunal;

“Even otherwise and whilst denying that any invoices were received by the Corporate Debtor from the Petitioner prior to demand notice issued on 22.01.2020, it is submitted that the alleged list of invoices placed at page nos. 135 to 157 of the Application would reveal that except alleged invoice nos. ON182419, ON183646, ON183647 and ON183647, all other invoices do not pertain to period 31.12.2015 to 06.01.2016 i.e., alleged period of default. It is also important to point out that cumulative value of the above said four invoices ON182419, ON183646, ON183647 and ON183647 is only Rs. 2,432 (Rupees Two Thousand Four Thirty-Two Only), hence, no proceeding under Section 9 of IBC, 2016 is maintainable for an amount of default of Rs. Rs. 2,432 (Rupees Two Thousand Four Thirty-Two Only).”

- iii. Respondent further submitted that in rejoinder filed by the Petitioner the Petitioner has neither (i) denied the above said fact as raised in paragraph No. 6(viii) of the Reply nor (ii) has

taken a stand that *"there has been clerical error caused inadvertently"* in period of default. If the purported reason i.e., "clerical error" was correct, the Petitioner ought to have stated the said fact in Rejoinder and ought to have taken steps to rectify such defect immediately after it came to knowledge of the Petitioner. On the contrary, the Petitioner sought to justify the alleged date of invoice and/or alleged number of invoices. Hence, the alleged reason given by the Petitioner for amendment is neither correct nor bona fide and is nothing but an afterthought.

- iv. As per the Respondent, it is admitted fact that the number as mentioned in the Application under Section 9 are the same as mentioned in purported demand notice dated 04.01.2020 (issued on 22.01.2020). The Application under Section 9 is based on said Demand Notice issued by the Applicant. It is not the case of the Applicant that the invoice numbers and dates were also incorrectly mentioned in the Demand Notice and hence, defective and fatal to initiation of any proceeding based on such Demand Notice. It is case of the Respondent that even if the stand of the Claimant is taken to be correct, no application under Section 9 can be filed based on such notices
- v. Corporate Debtor submitted that the present application is liable to be dismissed on the sole ground that none of the conditions as contemplated under Order VI Rule 17 of Civil Procedure

Code, 1908 or any principal analogous to the same is satisfied, therefore The Application filed by the Petitioner is not maintainable under Insolvency and Bankruptcy Code, 2016.

- 4.** The Applicant has filed the rejoinder and stated following facts:-
- i. The Applicant stated that the contention of the Respondent throughout the reply is that an error/mistake in Demand Notice would render such Demand Notice defective and as a result no Application under section 9 of the “Code” can be filed against the Corporate Debtor. It is submitted that such a contention does not have any force in law, since it is the accepted stand that any error/mistake in a Demand Notice does not imply that the same is defective.
 - ii. Further Applicant submitted that the Sr.1 and 2 of the Demand Notice dated 04.01.2020 it was mistakenly mentioned as “Payment is due from Invoice No: 182419 dated 31.12.2015 to Invoice No: 183646 dated 06.01.2016” whereas the same should have been mention as “Payment is due from Invoice No: ON11664 dated 02.03.2015 to Invoice No: ON000079 dated 12.04.2016.” Though the above was result of a clerical error caused inadvertently, such an error does not effect the “Total amount of Debt” and the “Amount claimed to be in default”

mentioned in both the Demand Notice as well as the Insolvency Application filed under section 9 of the IBC.

- iii. Applicant stated that the corporate Debtor has also failed to prove that prejudice was suffered to it as result of such defect. Eventually any contention of the Respondent that an Insolvency Application based on the Demand Notice cannot be initiated, becomes irrelevant and unsustainable.
- iv. Further submitted that the respondent is put to a question if the demand was only Rs.2,432 why at all did it pay Rs. 1,99,637/- vide DD (as Respondent had itself acknowledge in Para 8(c) in page 9 of the reply dated 10.01.2022 , thus clearly manifesting that the Corporate Debtor is merely trying to make rake up irrelevant stuff in order to stall the process.
- v. Applicant submitted that the respondent is ignorantly trying to apply the provision of the CPC, 1908 for a proceeding under the Adjudicating Authority, a statute whose jurisdiction is clearly defined by the IBC, 2016. Therefore, it is the IBC which is required to be looked into to determine whether the Applicant is entitled to amend the CP(IB)-658/ND/2020 and not the provision of CPC, 1908, the provision of which an Adjudicating Authority is not bound by.

Analysis and Findings

5. We have heard the parties and perused the case records, averments made in the application and reply filed by the parties. The relevant documents annexed with the respective submissions have also been examined.

6. It is pertinent to note that under Rule 34: General Procedure of (NCLT Rules, 2016) defined as follows:

"In a situation not provided in these rules, the Tribunal may, for reason to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice..."

7. Further it was noted that the Rule 155 of the NCLT Rules provides general power to amend defect or error in any proceeding before the Tribunal, as quoted below: -

"155. General power to amend: - The Tribunal may, within a period of thirty days from the date of completion of pleadings, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."

8. From the plain reading of the above stated provisions, it is thus clear that the Bench/Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner on such terms as may think fit. It further provides that such

amendment should be necessary for the purpose of determining the real question in controversy between the parties. The object of the Rule is that the Court should try the merit of the case that come before them and should, consequently, allow all the amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to other side.

9. The Hon'ble NCLAT in the matter of **Rajendra Bhai Panchal Vs. M/s Jay Manak Steels & 1 Anr.** Company Appeal (AT) (Insolvency) No.592 of 2020 held:-

“40. It is to be remembered that a mistake in a ‘Demand Notice’ does not Necessary mean that it is defective. If a ‘Corporate Debtor’ wants to question the validity of demand it is for him show that the prejudice was suffered by it as result of defect.”

“41. If there is a mistake in the demand but the creditor is clearly owed the statutory minimum figure or more, the fact that the debt is misstated may not automatically invalidated the demand as per decision “Cardiff Preserved Coal & Coke Co. ‘V. Norton 36 LJ Ch 451

10. The above position of law is clear on the premise that an inadvertent clerical error/mistake which does not have any effect on the ultimate clearly owed statutory minimum figure, cannot render the Demand Notice defective.

11. It is pertinent to state that the proceeding under the Adjudicating Authority, a statute whose jurisdiction is clearly defined by the IBC, 2016, and not the provision of CPC, 1908, therefore provision of CPC, 1908 the Adjudicating Authority is not bound by as averred by the Respondent in his reply. Also, the Corporate Debtor has failed to prove the prejudice was suffered to it as result of such defect.

12. Accordingly, the present application i.e., I.A./3010/ND/2022 stands allowed and amended Application filed by the applicant in C.P.(IB) 658/ND/2020 is taken on record.

Let a copy of order be served to parties.

Sd/-

(SHRI RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-

(SHRI P.S.N. PRASAD)
MEMBER (JUDICIAL)