

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 885 of 2025

IN THE MATTER OF:

Swaminarayan Diamonds Pvt. Ltd.

...Appellant

Versus

Canara Bank

...Respondent

Present:

For Appellant : Mr. Varun Singh, Mr. Vera Gaur and Mr. Bhairavi S.,
Advocates

For Respondent : Mr. Yash Dhruva and Ms. Ruchita Jain, Advocates for
Financial Creditor.

ORDER
(Hybrid Mode)

23.06.2025: Heard Mr. Varun Singh Learned Counsel for the Appellant as well as Mr. Yash Dhruva Learned Counsel for the Respondent and perused the record.

The instant appeal has been preferred by the Appellant against the impugned judgment / order of the Adjudicating Authority i.e. National Company Law Tribunal, Mumbai Bench, Court-VI dated 28.05.2025 whereby liberty has been granted to the applicant to amend the Form No.1 in order to change the date of default with a further liberty to the Respondent (Appellant herein) to file a Reply vis-à-vis the amended Form-1, within a period of seven days from the date of receipt of the amended Form-1.

Learned Counsel for the Appellant while drawing the attention of this Court towards the impugned order as well as the other pleadings, copy of which has been placed on record, submits that by passing the impugned order

the Adjudicating Authority has taken away a valuable defence of the Appellant and has permitted the Applicant to amend the date of default and the manner in which the impugned order has been passed would itself show that no opportunity of being heard has been provided to the Appellant to put forth his objections vis-à-vis the intended amendment.

It is further submitted that without moving any formal amendment application, the Appellant has been granted liberty to submit an amended Form -1 with a new date of default. It is also submitted that the impugned order is devoid of any reason and therefor is not sustainable and be set aside.

Learned Counsel for the Appellant in support of his submissions has relied on the following judgments passed by co-ordinates Benches of this Tribunal:

i) Inakshi Sobti & Ors. Vs. Starlight Systems (I) Pvt. Ltd. & Anr. in Company Appeal (AT) (Ins.) No. 359 of 2024

ii) Vasavai Power Services Pvt. Ltd. Vs. Canara Bank Ltd. in Company Appeal (AT) (CH) (Ins.) No. 228 of 2025

Learned Counsel representing the Respondent however submits that by providing a liberty to the Applicant (Respondent herein) to submit amended Form No. 1 the Adjudicating Authority has only permitted the Applicant to clarify its earlier stand, with regard to the date of default.

It is further submitted that the bank account of the Corporate Debtor was declared NPA on 06.07.2024 and it was in this perception keeping in view the date of default as 90 days prior to this, the same was mentioned as 05.04.2024, however, later on it was discovered that the first date of default is 10.04.2024, however, both these dates are falling within the period of

limitation and thus the judgments relied on by Learned Counsel for the Appellant is not applicable to the facts of the present case.

Learned Counsel for the Respondent has also relied on judgment of this Bench passed in ***Company Appeal (AT) (Insolvency) No. 1278 of 2024 - Sanjeev Ranjeet Das Vs. M/s Punjab National Bank and Anr.*** decided on 16.07.2024.

We have considered the submissions made by Learned Counsel for the parties and have also perused the record including the impugned order passed by the Adjudicating Authority.

In ***Dena Bank v. C. Shivakumar Reddy and Another [(2021) 10 SCC 330]***. In this case, Dena Bank has filed an application under Section 7 of the IBC with the NCLT/ Adjudicating Authority. The bank's petition was based on the default date related to a Non-Performing Asset (NPA). Dena Bank later proposed to rely on new default date and has sought amendment. Hon'ble Supreme Court while discussing the nature of proceedings under IBC opined that amendments to the application moved under Section 7 of the IBC or submission of additional documents could be made any time before the final order admitting or rejecting the petition is passed under Section 7, however such amendments should not manipulate the limitation period subject to any acknowledgement of debt by the Corporate Debtor. It is also opined that in the proceedings under the CIRP before the NCLT, there is no scope for filing elaborate pleadings and an application is filed under Section 7 of the IBC in the prescribed form, which cannot be compared with the plaint in a suit and also cannot be judged by the same standards, as a plaint in a suit, or any other pleadings in a Court of law. It was clarified that under the provisions of Section 7 of the Code, NCLT can allow amendments to pleadings anytime before the final order is passed.

Relevant paragraphs No. 26, 73, 74, 75, 76, 77, 91, 93 and 144 of **Dena Bank v. C.**

Shivakumar Reddy and Another (Supra) for convenience are extracted as under:

“26. A third issue which arises for adjudication of this Court is, whether there is any bar in law to the amendment of pleadings, in a Petition under Section 7 of the IBC, or to the filing of additional documents, apart from those filed initially, along with the Petition under Section 7 of the IBC in Form-1.

73. Since a Financial Creditor is required to apply under Section 7 of the IBC, in statutory Form 1, the Financial Creditor can only fill in particulars as specified in the various columns of the Form. There is no scope for elaborate pleadings. An application to the Adjudicating Authority (NCLT) under Section 7 of the IBC in the prescribed form, cannot therefore, be compared with the plaint in a suit. Such application cannot be judged by the same standards, as a plaint in a suit, or any other pleadings in a Court of law.

74. Section 7(3) requires a financial creditor making an application under Section 7(1) to furnish records of the default recorded with the information utility or such other record or evidence of default as may be specified; the name of the resolution professional proposed to act as an Interim Resolution Professional and any other information as may be specified by the Insolvency and Bankruptcy Board of India.

75. Section 7(4) of the IBC casts an obligation on the Adjudicating Authority to ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor within fourteen days of the receipt of the application under Section 7. As per the proviso to Section 7(4) of the IBC, inserted by amendment, by Act 26 of 2019, if the Adjudicating Authority has not ascertained the existence of default and passed an order within the stipulated period of time of fourteen days, it shall record its reasons for the same in writing. The application does not lapse for non-compliance of the time schedule. Nor is the Adjudicating Authority obliged to dismiss the application. On the other hand, the application cannot be dismissed, without compliance with the requisites of the Proviso to Section 7(5) of the IBC.

76. Section 7(5)(a) provides that when the Adjudicating Authority is satisfied that a default has occurred, and the application under sub-section (2) of Section 7 is complete and there is no disciplinary proceeding pending against the proposed resolution professional, it may by order admit such application. As per Section 7(5)(b), if the Adjudicating Authority is satisfied that default has not occurred or the application under sub-Section (2) of Section 7 is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application, provided that

the Adjudicating Authority shall, before rejecting the application under sub-section (b) of Section 5, give notice to the applicant, to rectify the defects in his application, within 7 days of receipt of such notice from the Adjudicating Authority.

77. *The Corporate Insolvency Resolution Process commences on the date of admission of the application under sub-section (5) of Section 7 of the IBC. Section 7(7) casts an obligation on the Adjudicating Authority to communicate an order under clause (a) of sub-section (5) of Section 7 to the financial creditor and the corporate debtor and to communicate an order under clause (b) of sub-section (5) of Section 7 to the financial creditor within seven days of admission or rejection of such application, as the case may be. Sections 8 and 9 of IBC pertain to Insolvency Resolution by an operational creditor and are not attracted in the facts and circumstances of this case. Section 10 pertains to initiation of Corporate Insolvency Resolution Process by the Corporate Debtor itself, and is also not attracted in the facts and circumstances of the case.*

91. *On a careful reading of the provisions of the IBC and in particular the provisions of Section 7(2) to (5) of the IBC read with the 2016 Adjudicating Authority Rules there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed.*

93. *Furthermore, the proviso to Section 7(5)(b) of the IBC obliges the Adjudicating Authority to give notice to an applicant, to rectify the defect in its application within seven days of receipt of such notice from the Adjudicating Authority, before rejecting its application under Clause (b) of sub-section (5) of Section 7 of the IBC. When the Adjudicating Authority calls upon the applicant to cure some defects that defect has to be rectified within seven days. There is no penalty prescribed for inability to cure the defects in an application within seven days from the date of receipt of notice, and in an appropriate case, the Adjudicating Authority may accept the cured application, even after expiry of seven days, for the ends of justice.*

144. *There is no bar in law to the amendment of pleadings in an application under Section 7 of the IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 of the 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 documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal.”

Thus it is evident from the above placed law that the nature of proceedings under IBC is different than ordinary civil adverbial litigation and thus a distinct approach is required, while dealing with cases under the IBC. Significantly proviso to Section 7(5)(b) of the IBC empowers the Adjudicating Authority to give notice to an applicant, to rectify the defect if any, in its application within seven days of receipt of such notice from the Adjudicating Authority, before rejecting its application under Clause (b) of sub-section (5) of Section 7 of the IBC. Thus there is an obligation on the Adjudicating Authority to ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor in order to take a decision with regard to admission or dismissal of such application. However, the discretion required to be exercised by the Adjudicating Authority in disposal of any request to amend the application or Form No. 1 must be exercised on sound settled principles.

In this regard the law laid down by the Hon'ble Supreme Court in ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Ors., MANU/SC/1093/2022***, may also be recalled and paragraph 70 of the report, where in the principles for dealing with amendment applications have been summarised, is reproduced as under:

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 Code of Civil Procedure operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred Under Order II Rule 2 Code of Civil Procedure is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule the Code of Civil Procedure.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(V) In dealing with a prayer for amendment of pleadings, the court should avoid a hyper-technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(X) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where,

however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi and Ors., MANU/DE/2236/2022)”

Coming to the facts of the present case the Adjudicating Authority by passing the impugned order has only given liberty to rectify the date of default and an opportunity has also be given to Appellant to file reply with regard to such amendment and a decision under Section 7 of the IBC pertaining to the admission or rejection of the application is yet to be taken by the Adjudicating Authority, after considering all the material/ documents available on record. In our considered opinion no valuable right of the appellant is being defeated by the permitted amendment, as the appellant has been provided an opportunity to file all the evidence to contradict the claim of the applicant with regard to the date of default and a decision pertaining to application moved under Section 7 of the IBC is yet to be taken by the Adjudicating Authority. We are of the considered view that the amendment permitted by the Adjudicating Authority is integral for deciding the Petition and no prejudice has been caused to the Appellant in any manner, whatsoever. On the contrary, such amendment appears to be conducive to the pursuit of justice.

The judgments which have been relied on by Learned Counsel for the Appellants appears to be pertaining to the different set of facts as in these

cases the question of maintainability of the petition was before this Tribunal keeping in view, the provisions contained under Section 10A of the IBC or the issue of limitation and by the proposed amendment a valuable right which has occurred in favour of the Respondent was being taken away by the intended amendment.

In our considered view the factual matrix is quite different so far as the instant case is concerned. By the proposed amendment pertaining to which the Applicant has been given liberty by the Adjudicating Authority appears to be of consequential and clarificatory nature. The original date of default which was mentioned in Form No.1 was 05.04.2024 and the date which has been mentioned in the amended Form-1 i.e. first date of default is 10.04.2024 and both these dates falls within limitation. More so, the Appellant before us (Respondent before the Adjudicating Authority) has also been given opportunity to file a Reply vis-à-vis the amended Form No.1.

It is to be recalled that under the Scheme of the IBC, a duty has been cast on the Adjudicating Authority, taking into account all the pleadings submitted by the party and the documents filed with the same to assess the ingredients of Section 7, in order to arrive as to whether there was any debt and whether default has occurred and if both the ingredients are satisfied then the duty of the Adjudicating Authority is to take a decision under Section 7 of the Code.

Keeping in view all the facts and circumstances of the case we are of the considered view that no illegality appears to have been committed by the Adjudicating Authority in giving liberty to the Applicant to submit an amended

Form No.1. More so, when a consequential opportunity has been given to the Appellant to file his reply / response with regard to such amended Form No.1.

Thus, for the reasons mentioned above the Appeal in our considered view lacks merit and is hereby **dismissed**. The Adjudicating Authority is requested to move further in order to take a decision under Section 7 of the IBC.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

pks/rr