

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 26

IA(I.B.C)/3675(MB)2025 IN C.P. (IB)/571(MB)2024

CORAM:

SH. PRABHAT KUMAR SH. SUSHIL MAHADEORAO KOCHEY
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON 06.10.2025

NAME OF THE PARTIES: INDIAN BANK V/s NIPUN VERMA

Section 95(1) & 60(5) of the Insolvency and Bankruptcy Code, 2016/Rule 11

ORDER

1. Adv. Vaishali Bhilave for the Petitioner present. Adv. Malhar Zatakia and Adv. Neil Moondra i/b Adv. Aishwarya Pawar for the Respondent present.
2. This is an Application filed by the Indian Bank, erstwhile Allahabad Bank, Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016. The Applicant seeks following relief :

- a. *This Hon'ble Tribunal be pleased to allow the Applicant/Financial Creditor to amend the Company Petition as per the Schedule annexed;*
- b. *This Hon'ble Tribunal be pleased to condone the delay, if any, in filing the present Interlocutory Application;*
- c. *For such other and further reliefs as the nature and circumstances of the case may require.*



3. The present Application is filed by the Applicant seeking leave of this Tribunal to amendment date of default in the above mentioned Company Petition.
4. The Applicant has relied upon the decision in case of *Sanjeeb Ranjeet Das vs M/s Punjab National Bank* delivered by this Bench, which was subsequently upheld by Hon'ble NCLAT, Delhi stating that "*It is well settled that parties/ Applicants are entitled to bring additional materials on record, which can be accepted by the Adjudicating Authority for adjudication of Application*".
5. The Applicant states that there was no intention to suppress any material fact from this Tribunal and that the present amendment is necessary for the proper adjudication of the main Petition.
6. The Respondent Personal Guarantor has opposed to such amendment at this stage contending that the time barred cause of action cannot be revived by amendment and has relied upon a decision in case of "*Indrajeet Singh Bindra Vs. Ramesh Kumari and Others 2024 SCC Online Del 8613*", the relevant extracts there from are reproduced hereunder:

"19. The law regarding the powers of the Court to allow an amendment of plaint under Order VI Rule 17 CPC has been laid down by the Apex Court in several judgments. It is well settled that Courts must be extremely liberal in granting the prayer for amendment, however, Court would as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. As early as in 1957, the Apex Court in L.J. Leach and Co. Ltd v. Jardine Skinner and Co., 1957 SCC OnLine SC 68 has observed as under: -



"16. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken in account in exercise of the discretion as to whether amendment should be ordered and does not affect the power of the court to order it, if that is required in the interest of justice."

20. The said judgment has been followed in T.N. Alloy Foundry Co. Ltd v. T. N. Electricity Board, (2004) 3 SCC 392. It is also apposite to place reliance on the judgment of the Privy Council in Charan Das v. Amir Khan, 1920 SCC OnLine PC 51, wherein the Privy Council has held that the power to make an amendment cannot be exercised where its effect is to take away from the Defendant a legal right which had accrued to him by lapse of time. The Court has to be cautious to consider as to whether allowing the amendment would cause injury to the Defendant.

21. It is well settled that limitation bars a remedy and does not extinguish the right. The Courts have to be careful if the remedy which stands extinguished would be permitted to be revived by permitting the amendment then substantial prejudice will be caused to the Defendant by permitting such an amendment and such amendment, therefore, cannot be allowed.

25. The Plaintiff now by way of this amendment is attempting to insert the prayer which, if permitted, will cause prejudice to the Defendants. The contention of Defendants is that the suit has been filed without the prayer for declaration is bad for which an application under Order VII Rule 11 CPC has been filed for rejecting the plaint. The Plaintiff is trying to insert the amendment only to rectify the error in the suit which according to the Defendants is not maintainable in law. The amendment has been sought after seven years of the institution of the suit and after eight years on coming to know that the non est Power of Attorney has been misused. The amendment, if permitted, will prejudice the Defendants as the amendment, if permitted, would date back to the plaint as stated in L.J. Leach (supra). If the application of Defendant No. 8 filed under Order VII Rule 11 is accepted, the suit, had it been filed today, would be barred by limitation and will revive a dead claim which in the opinion of this Court cannot be permitted.



7. The Respondent Personal Guarantor also relied upon a decision in case of
“Aurosagar Estates Private Limited Vs. M.C. Davar Holdings Private Limited 2017 SCC Online NCLAT 372”

30. In any case the Tribunal cannot allow any petition for amendment with regard to a fresh cause of action other than the cause of action for which the petition under Section 241 of the Companies Act, 2013 has been preferred.

31. In “Radhika Devi v. Bajrangi Singh” (1996) 7 SCC 486, the Hon’ble Supreme Court while dealing with Rule 17 of Code of Civil Procedure, 1908, held amendment of plaint seeking to take right of opposition party acquired by bar of limitation cannot be allowed.

32. In the present case, as the amendment sought with regard to a fresh cause of action which has taken place more than three years back on 15th October, 2012, prayer made in amendment petition being barred by limitation, the Tribunal was not competent to allow the amendment.”

8. Heard the learned Counsel and perused the material on record.
9. The decision relied upon by the Respondent is distinguishable on facts. In that case, the amendment was resulting into a fresh cause of action which was already barred by limitation. In the present case, the Applicant has sought amendment in date of default, which this Tribunal is otherwise bound to ascertain. In our considered view, no fresh cause of action comes into existence if the correct date of default is allowed to be stated in the application. Further, no time barred cause of action is getting validated by bringing amendment on record as the limitation aspect with respect to correct date of default is to be adjudicated by this Tribunal even otherwise also after ascertainment of correct date of default. Accordingly, we consider it appropriate to allow the prayer for amendment in date of default as sought in the application.



10. In terms of above, IA(I.B.C)/3675(MB) of 2025 is **allowed and disposed**
of.

-Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

/Nitesh Puri Goswami/

-Sd/-

SUSHIL MAHADEORAO KOCHEY
MEMBER (JUDICIAL)