

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

IA 5438 of 2023

In

CP(IB) 221 (MB)2023

Application under Section 60(5) of the
Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of the NCLT Rules, 2016

Central Bank of India Ltd.

Chandramukhi, Nariman Point, Mumbai –
400021 and P-56, Nagpur, MIDC, near
BSNL Office, Ahmednagar - 414111.

... Applicant

V/s.

**Superfine Aluminium Technologies
Private Limited**

1267, Pratibha Dalmandai, Ahmednagar,
Maharashtra - 414001.

... Respondents

IN THE MATTER OF

Central Bank of India Ltd.

... Financial Creditor

V/s

**Superfine Aluminium Technologies
Private Limited**

... Corporate Debtor

Order delivered on :- 12.12.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Applicant/FC : Adv. Rahul Sarda

For the Respondent/CD : Adv. Rohit Gupta a/w Prashansa
Agarwal

ORDER

Per: - Coram

1. This IA has been filed by the Applicant seeking permission to amend the Company Petition in terms of Schedule of amendment (Exhibit A) annexed with the IA.
2. In nutshell, it has been claimed that the Applicant/Financial Creditor seeks to bring on record certain additional documents and also correct certain statements in the Company Petition including the date of default as indicated in the Schedule of amendment annexed as Exhibit A in the IA which includes sanction letter dated 06.03.2017, sanction letter dated 14.08.2020, supplemental agreement dated 10.12.2020 etc.
3. The Application has been opposed tooth and nail by the Respondent. In reply the Respondent has stated that in the original Petition the date of default is mentioned as 29.11.2020 and by way of proposed amendment the Applicant is seeking to substitute the date of default as 01.03.2020 instead of 29.11.2020 which is not permissible as the present Petition itself was filed on 01.02.2020. According to the Respondent, by way of the proposed amendment, the Applicant is attempting to file a fresh Petition which cannot be permitted by way

of an amendment. It has also been pleaded that in the Original Petition, the amount of Financial Debt is stated to be Rs. 50 crores whereas in the new Form-1 the same is stated to be Rs. 34.33 crores. Similarly, the amount claimed to be in default originally was Rs. 46.70 crores whereas in the new Form-1 being filed by way of an amendment the amount is substantially reduced to Rs. 1,84,67,000/-. Therefore, according to the Respondent, the Application for amendment has been filed to deprive the Respondent of a valid defence available to it u/s 10A of the Code, 2016. The Respondent has prayed for the dismissal of the Application.

FINDINGS

4. We have heard the Counsel for the parties and have gone through the records.
5. By way of this IA the Applicant is seeking amendment in the Petition u/s 7 of the Code, 2016 with regard to an inadvertent error in the mentioning of the date of default. It has been claimed that the date of default was erroneously mentioned as 29.11.2020 without taking into consideration the supplemental agreement dated 10.12.2020. According to the Counsel for the Applicant, as per the supplemental term loan agreement dated 10.12.2020, the repayment schedule was revised on the request of the Respondent/Borrower and as per the schedule annexed with the said agreement, the revised due date for payment of revised installment of Rs. 1,84,67,000/- was 01.03.2023 and since the said installment was not paid, the default was committed by the Respondent on 01.03.2023 which is liable to be treated as the correct date of default.
6. The Counsel for the Applicant has further contended that while filing

the Petition u/s 7, the supplemental agreement dated 10.12.2020 was not taken into consideration due to inadvertence. As a result, the date of default was wrongly claimed as 29.11.2020 on the basis of the fact that the account of the Corporate Debtor was classified as non performing asset on 29.11.2020 as per the original agreement. The Counsel for the Applicant has further contended that the law with regard to amendment of pleading is quite liberal and therefore, the proposed amendment can be allowed. In support of his contentions the Counsel for the Applicant has relied upon *Bank of India Chennai Larg Corporate Branch and another vs. Coastal Oil Gas Infrastructure Private Limited and another 2020 SCC Online NCLAT 1095* whereby it was held that in case any discrepancy is found in the Application relating to the date of default having been wrongly pleaded by the Financial Creditor, the Adjudicating Authority may ask the Financial Creditor to rectify the same. The Counsel for the Applicant has further relied upon *M/s Kotak Mahindra Bank Private Limited vs. CMI Limited (IA 3768/ND/2022 in CP 481 of 2021 decided on 28.02.2023)* whereby also it was held that Application u/s 7 of the Code, 2016 can be amended and additional documents can be filed by the parties in proceedings u/s 7 of the Code, 2016. In this very case, there is a reference to the law laid down by the Hon'ble Supreme Court in *Dena Bank (Now Bank of Baroda) vs. C Shiv Kumar Raddy and another Civil Appeal No. 1650 of 2020* whereby it was held there is no bar in law to the amendment of pleadings in an application u/s 7 of the Code, 2016 or to the filing of additional documents apart from those initially filed.

7. On the other hand, the Counsel for the Respondent has argued that the proposed amendment cannot be allowed as it totally changes the case of the Petitioner and further that the Petitioner cannot be

allowed to set up altogether new case which is in total contrast and contradiction with the original case set up by the Applicant in the Application u/s 7 of the Code, 2016. The Counsel for the Respondent has further pointed out that if the proposed amendment is allowed and the Applicant is permitted to change the date of default from 29.11.2022 to 01.03.2023, it would put the cart before the horse as the date of default i.e. 01.03.2023 would be a date subsequent to the filing of the Application u/s 7 which was filed on 01.02.2023.

8. The Counsel for the Respondent has further pointed out that the Applicant got issued a notice dated 29.06.2022 under the SARFAESI Act and in the said notice also, there is no reference to the supplemental loan agreement and the date of default/NPA date is mentioned as 29.11.2020. Counsel for the Respondent has further referred to another legal notice dated 21.01.2023 wherein also it is mentioned that the Corporate Debtor committed default in repayment in term loan account which was classified as NPA on 29.11.2020. In this notice also, there is no reference to the supplemental agreement or the date of default being 01.03.2023. According to the Counsel for the Respondent, it was never the case of the Applicant that the date of default is 01.03.2023 and therefore, the amendment cannot be allowed by permitting the Applicant to set up an altogether new case which is in absolute contrast to the case initially set up by the Applicant.
9. In support of his argument the Counsel for the Respondent has relied upon *Life Insurance Corporation of India v. Sanjeev Builders Private Limited 2022 SCC Online SC 1128* whereby it has been held by the Hon'ble Supreme Court that a prayer for amendment can be allowed

unless a time barred claim is sought to be introduced, the amendment changes the nature of the suit, the prayer for amendment is mala fide and by the amendment, the other side loses a valid defence.

10. We have thoughtfully considered the above contentions and have also gone through the records.
11. By way of this Application the Applicant is seeking to change the date of default from 29.11.2020 to 01.03.2023. Incidentally, the Application u/s 7 of IB Code, 2016 which is now being sought to be amended, was filed on 01.02.2023. Admittedly, the date of default gives the Financial Creditor a cause of action to file the Petition u/s 7 of the Code, 2016. If the proposed amendment is allowed, it would amount to saying that the cause of action arose on 01.03.2023 and the Petition was filed on 01.02.2023 meaning thereby the Petition is filed even before the cause of action has arisen.
12. No doubt the law with regard to amendment of pleadings is quite liberal as held in the case law cited by the Counsel for the Applicant, but it is definitely subject to certain conditions and limitations. A plea by way of amendment cannot be raised which is totally opposite to a plea already taken by a party. In the instant case, it has been the definite case of the Applicant that the default took place on 29.11.2020 which is the NPA date. As stated above, the supplemental agreement dated 10.12.2020 was never referred to in the Application u/s 7 of the Code, 2016 nor in the SARFAESI Notice dated 29.06.2022 or legal notice dated 02.01.2023. Therefore, in our considered view the Applicant cannot be allowed to set up an absolutely new case by way of an amendment. More so, the date of default in an Application u/s 7 of the Code, 2016 cannot be a date after the filing of the Application as the Applicant is seeking to

introduce in this case by way of amendment. Therefore, in our considered view, the proposed amendment cannot be allowed.

13. As a result of above discussion, we find that the Application i.e. **IA 5438 of 2023** for amendment is without any merit and therefore, the same is hereby **dismissed**.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)

ANKIT