

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

**IA No.3102/2022**

**In**

**C.P. (IB) No. 216/MB/2018**

Under Section 60(5) of Insolvency and  
Bankruptcy Code, 2016

**Meridian Metala**

**Sole Proprietor: Mr. Asif Siddique**

Having address at- 16, Piru Lane,  
Pathanwadi, Mumbai- 400009

**.... Applicant/Operational Creditor**

**Versus**

**Gammon India Limited**

Gammon House, Veer Savarkar Marg,  
Prabhadevi, Mumbai - 400025

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

**Order Delivered on :- 28/02/2024**

***Coram:***

**Mr. Anil Raj Chellan  
Member (Technical)**

**Mr. Kuldip Kumar Kareer  
Member (Judicial)**

***Appearances:***

For the Applicant

: Adv. Asadali Z Mazgoanwala

For the Respondent

: Adv. Bhuvan Singh a/w Adv. Yash Jain

**ORDER**

***Per: - Anil Raj Chellan, Member (Technical)***

1. The instant application is preferred by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('the Code') to allow the Applicant to carry out amendment in the Company Petition to replace Gammon India Limited ('Original Respondent') with Gammon Engineers and Contractors Private Limited ('the Respondent').

**Facts of the Case**

2. The Applicant, Meridian Metals filed a Company Petition No. 216/2018 against the Original Respondent under Section 9 of the Code for initiating Corporate Insolvency Resolution Process ('CIRP') against the Original Respondent. Thereafter, the Petitioner came to know that the obligations relating to the claim of the Petitioner was transferred from the Original Respondent to the Respondent under a scheme sanctioned by this Tribunal vide its order dated 22.03.2017 ('the Scheme').
3. A demand notice was issued to the Original Respondent on 19.01.2018 as required under the Code and thereafter the present Company Petition was filed against the Original Respondent who also filed its reply to the Company Petition.
4. On 05.04.2022, the Applicant filed an application seeking to replace the Original Respondent with the proposed Respondent.

**Submissions of the Applicant**

5. The Applicant submits that it came to know of the change in the liability towards the Applicant only recently and, therefore, filed the present Application. The Applicant submits that the amendment is required to correctly and effectively decide the Petition and grant appropriate redressal in the exercise of the powers under the Code.
6. The Applicant also submits that this Tribunal has jurisdiction to allow amendments in the pleadings at any stage of the proceedings if the same is just and necessary. The Applicant also states that there was no willful delay and lapses in applying for the amendment.

**Submissions of the proposed Respondent**

7. The proposed Respondent, Gammon Engineers and Contractors Private Limited submitted its reply and denied all the averments contained in the Company Petition as well as in the present Application for amendment of the same.
8. The case of the proposed Respondent is that seven work orders were issued by Original Respondent to the Petitioner during the period from 01.10.2011 to 06.09.2012; pursuant thereto, the Petitioner raised the first invoice on 03.09.2016. In the meanwhile, by virtue of an order dated 22.03.2017 passed by this Tribunal, a scheme was sanctioned whereby certain projects, including the project executed by the Petitioner were transferred to the proposed Respondent. After giving effect to the Scheme sanctioned by this Tribunal, a demand notice was issued to the Original Respondent, on 19.01.2018 as per the mandate

of the Code, and the Company Petition was filed. A reply was also filed by the Original Respondent to the Company Petition. The proposed Respondent contended that this Tribunal has no jurisdiction to entertain an Application against the proposed Respondent under Section 9 of the Code wherein the demand notice was not issued to the proposed Respondent and the required period of 10 days has not elapsed from the date of such notice.

9. It is also submitted that the Application is barred by limitation for the reason that the debt allegedly fell due on 03.08.2013 whereas the present Company Petition has been filed only on 09.02.2018. The present Application for amendment has also been filed only on 05.04.2022. The proposed Respondent further asserted that any amendment to rectify a defect in the proceedings must be made within a period of 30 days from the date of completion of pleadings as per Rule 155 of the NCLT Rules, 2016.

### **Analysis and Decision**

10. We have heard the counsel for the parties and perused the documents on record.
11. The case of the Petitioner is that it provided services to the Original Respondent and was not aware of the Scheme sanctioned by the Tribunal under which the project executed by the Petitioner has been transferred to the proposed Respondent. The petitioner states that it came to know about the Scheme and the transfer of certain projects only recently and hence the Application for amendment is necessary to correctly and effectively decide the Petition. It is also submitted that

amendment can be allowed at any stage of the proceedings if the same is just and necessary.

12. Refuting the aforesaid contentions of the Applicant, it was submitted by the counsel for the Respondent that the Application for amendment has been filed at a very late stage, and the Company Petition as well as this Application are barred by limitation. It is also contended that this Tribunal lacks jurisdiction to entertain this Application for amendment as no notice under Section 8 of the Code was issued to the proposed Respondent for invoking the jurisdiction of this Tribunal under Section 9 of the Code.
13. We have weighed the rival contentions of the Parties. It has been asserted by the Respondent that the period of 30 days stipulated under Rule 155 of NCLT Rules to carry out amendment to rectify any defect or error in any proceedings is applicable in the present case. It is noticed that the amendment was not necessitated on account of a defect or error in the application but on account of discovery of a new fact which was not within the knowledge of the Applicant and, therefore, the said provision, in our view, is not applicable in the present Application. It is not the case of the proposed Respondent that it communicated the sanction and implementation of the Scheme at any stage, at least in response to the demand notice issued to the Original Respondent. It is also relevant to observe that some of the invoices were raised even after sanction of the Scheme to the Original Respondent though no objection or intimation had been given to the Applicant.

14. There is no quarrel between the Parties regarding the sanction of scheme and transfer of the projects executed by the Petitioner. In such a scenario pursuing the Petition against the Original Respondent cannot determine the real question or issue involved, and impleading of proposed Respondent is necessary for deciding the issue involved in the Company Petition.
15. Other contentions raised by the Proposed Respondent such as the claims under the invoices are time barred for the purpose involving Section 9 of the Code and the lack of jurisdiction or defect in the proceeding initiated under Section 9 of the Code are to be decided in the Company Petition and not in the present application. The decisions relied by the Respondent do not apply on the facts and circumstances of the present case. It is well-established principle that where amendment is sought to avoid multiplicity of suits, or where the parties in the plaint/petition are wrongly described, the amendment should be allowed and the courts/tribunals have wide discretion in the matter of amendment of pleadings.
16. In view of the above discussions, we are of the view that the proposed amendment to implead the Respondent in the Company Petition as proper and necessary party in the Company Petition merits consideration and accordingly, the present **IA.No.3102/2022 is allowed.**

Sd/-

**ANIL RAJ CHELLAN**  
**(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**