

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT V**

I.A. 1696 OF 2023

IN

C.P. No. (IB) 809 OF 2021

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

Filed by

SREI Equipment Finance Limited

...Applicant

In the matter of:

SREI Equipment Finance Limited

**...Petitioner/Financial
Creditor**

vs.

Nirmal Lifestyle Limited

...Corporate Debtor

Order Dated: 19.12.2023

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearance (Physical):

For the Applicant: Adv. Rohan Agrawal

For the Respondent: Adv. Simil Purohit

ORDER

Per: Madhu Sinha, Member (Technical)

1. The above application I.A. No. 1696 OF 2023 is filed by SREI Equipment Finance Limited (hereinafter referred to as the “**Applicant**”) seeking direction against Nirmal Lifestyle Limited (hereinafter referred to as the “**Respondent**”) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 And Rule 11 of NCLT Rules, 2016 (hereinafter called as “**the Code**”), praying for following reliefs:

- a. To pass an order allowing the Applicant to amend the Company Petition in terms of the Schedule 1 to the present Application alongwith consequential amendments as necessary;*
- b. That this Hon’ble Tribunal be pleased to pass an order replacing the Statement of Accounts at Exhibit K of Company Petition at Page 423 with Annexure A herein;*
- c. That this Hon’ble Tribunal be pleased to pass an order and the Applicant be permitted to carry out all the amendments;*
- d. That this Hon’ble Tribunal be pleased to allow the rectifications of errors in Form-I for initiation of Corporate Insolvency Resolution Process.*
- e. For such further and other reliefs as the nature and circumstances of the case may be required.*

Brief facts of the application

2. The Present Applicant bearing no. I.A. 1696 of 2023 is filed by SREI Equipment Finance Limited seeking order permitting the Applicant to amend the Company Petition bearing no. C.P. 809 of 2021 to rectify certain inadvertent typographical errors.
3. The Company Petition No. 809 of 2021 was filed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor i.e. Nirmal Lifestyle Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016. However due to inadvertence there were certain typographical errors in the Form – I of the Company Petition No. 809 of 2021. Hence filed the present Interlocutory Application No. 1696 of 2023 to rectify the same.
4. The details of the errors in the Form – I of the Company Petition No. 809 of 2021 is as under:
 - a) Part IV of Form – I, column 2 in the table showing days/dates of default, two dates of default which occurred on 05.02.2020 and 05.03.2020 remained to be mentioned and missed inadvertently. However, the correct date of default i.e. 05.02.2020 has been mentioned in the Part IV of the Petition.
 - b) The Statement of Accounts of the Corporate Debtor maintained in the books of accounts of the Applicant annexed at “Exhibit K” at page 423 of the Company Petition No. 809 of 2021 be replaced with the statement of Accounts annexed in the Present Interlocutory Application as “Annexure A”. The statement at “Exhibit K” to the Company Petition erroneously

indicates that an amount of Rs. 1,12,50,000/- was collected by the Applicant towards the recovery. However, the Respondent has not made any payments to the Applicant and no such instalments were collected by the Applicant. The extract of the corrected/ rectified Statement of Accounts annexed as "Annexure A" is as under :

Annexure A

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SREI

Calculation date:	16-05-2021	ODC	36.50%
Name:	Nirmal Lifestyle Limited		
Contract NO :	179642		

SI No	Transaction Date	Disbursed Amount (Rs.)	Instalment Due Amount (Rs.)	Instalment Collection Amount (Rs.)	Overdue Charges Collection Amount (Rs.)	Overdue Charges (Rs.)
1	05-08-2019	84,23,75,000	-	-	-	-
2	05-02-2020	-	12,50,000	-	-	-
3	05-03-2020	-	1,00,00,000	-	-	36,225
4	05-04-2020	-	1,12,50,000	-	-	3,49,974
5	05-05-2020	-	1,12,50,000	-	-	6,86,444
6	05-06-2020	-	1,12,50,000	-	-	10,79,814
8	05-07-2020	-	1,12,50,000	-	-	14,14,282
9	05-08-2020	-	1,12,50,000	-	-	18,54,854
10	05-09-2020	-	1,12,50,000	-	-	22,61,222
11	05-10-2020	-	1,50,00,000	-	-	25,92,450
12	05-11-2020	-	1,50,00,000	-	-	32,25,715
13	05-12-2020	-	1,50,00,000	-	-	36,66,773
14	05-01-2021	-	1,50,00,000	-	-	43,69,712
15	05-02-2021	-	2,29,00,000	-	-	49,70,346
16	05-03-2021	-	2,29,00,000	-	-	52,62,121
17	05-04-2021	-	2,29,00,000	-	-	67,07,855
18	05-05-2021	-	2,29,00,000	-	-	73,76,312
19	16-05-2021	-	-	-	-	30,09,229
Total		84,23,75,000	23,03,50,000	-	-	4,88,63,328

Overdue Amount (Rs)	23,03,50,000
Principal Outstanding (Rs)	85,86,58,842
Overdue Charges (Rs)	4,88,63,328
Total Amount	1,13,78,72,170



5. The Applicant further places its reliance on the Judgement of the ***Hon'ble National Company Law Appellate Tribunal in the matter of Mr. Satyaprakash Aggarwal & Ors. Versus Vistar Metal Industries Pvt. Ltd. (2018 SCC Online NCLAT 264)*** wherein it has been held that the Hon'ble Adjudicating Authority is required to give an opportunity to the Petitioner to rectify the defects, if any.
6. In response to the above Application, the Respondent has submitted that the Interlocutory Application bearing No. 1696 of 2023 has been filed at a belated stage with the intent to amend the cause of action, date of default and statement of account. The said application has been preferred by the Petitioner only after having the benefit of knowing the defence taken by the Respondent during the arguments with regards to the defects in the Petition. The Petitioner has countered the submission of the Respondent and has submitted that the amendments neither materially changes the nature of the Petition nor introduce a new cause of action of the Petition. Further submitting that the Respondent has committed the default in repayment of the instalments from 05.02.2020 and the same is pleaded in the Part IV of the Company Petition as the date of default stated is also 05.02.2020. Therefore, no prejudice would be caused to the Respondent if the amendments are sought in the present Interlocutory Application.
7. With respect to the contention of the Respondent that the application suffers delay, the Applicant submits that the Respondent was undergoing a Corporate Insolvency Resolution Process between 05.08.2021 to 09.02.2022 and 20.12.2022 to 12.04.2023 which falls

under the moratorium period. Therefore, during the moratorium the I.A. could not be instituted against the Respondent.

8. The Respondent submits that the Present Interlocutory Application is barred by limitation as the same has been preferred in April 2023 which is over three years from the date of alleged default in payment of instalment due on 05th February 2020. The Applicant's own case is that the date of default as mentioned in Part IV of the Petition is 05th February 2020. However, the Application is preferred in April 2023 which is an afterthought and after three years therefore cannot be permitted.
9. The counsel for the Respondent further submits that the application is in contravention of the Code of Civil Procedure, 1908 (**CPC**). Though the CPC is not strictly applicable to the proceedings before this Tribunal as these are summary proceedings, the principles of natural justice enshrined therein ought to be followed. The order VI Rule 17 of CPC bars any application where the party applying for the amendment cannot show that in spite of due diligence it could not have raised the matter before commencement of the trial. Order VI Rule 17 of CPC is reproduced as under:-

“[17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the

party could not have raised the matter before the commencement of trial.”

Thus, the Proviso indicates that once the trial commences, no amendments should be allowed except where it is found necessary on account of the subsequent events like a change in law subsequent to the framing of the issues or on account of any fact coming to the knowledge of the applicant after framing the issue which he could not have discovered with due diligence before the issues were framed. Therefore, in the Present case no exceptional circumstances or subsequent facts exist as the Petitioner has stated that he said application is filed owing to simpliciter inadvertence and typographical errors.

10. The Applicant has in this respect, referred to the Supreme court Judgement in the Matter of ***Life Insurance Corporation of India Vs Sanjeev Builders Private Limited & another (2022 SCC Online SC 1128)*** which held and observed that the delay in filing an application for amendment of the proceedings cannot be a ground for rejecting the Application for the amendment.
11. The Applicant also places reliance on the Judgement passed by ***the Hon'ble NCLAT in the matter of Mr. Satyaprakash Aggrawal & Ors versus Vistar Metal Industries Pvt. Ltd. (2018 SCC Online NCLAT 264)*** wherein it has been inter alia held that the Hon'ble Adjudicating Authority is required to give an opportunity to the Petitioner to rectify the defects, if any.
12. The Applicant further relies upon on the Judgement of Hon'ble Supreme Court in the matter ***of Dena Bank (now Bank of Baroda)***

versus C. Shivakumar Reddy & Another ((2021) 10 SCC 330)

holding that the amendment or additional documents can be brought on record of the Tribunal till such time the tribunal passes the final order. The relevant para of the same is as under:

“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.”

Findings:

13. Heard the counsels and perused the record.
14. After perusal of the records and from the above stated facts and circumstances the Petitioner seeks to amend its petition filed under CP No. 809 of 2021 via I.A. 1696 of 2023.
15. The Applicant seeks amendment in Part IV of Form – I of the CP No. 809 of 2021 wherein, the table in column 2 of Part IV shows the date of default. However, the two dates of default i.e. 05.02.2020 and 05.03.2020 were omitted to be mentioned in the table inadvertently. The Respondent however objected to the same I.A. and stated that the I.A. is filed at a belated stage with the intent to amend the cause of action. This Bench observed that the Petitioner has mentioned date of default as 05.02.2020 in Part IV of the company petition already and seeks to incorporate the same in the table in column 2 of Part IV. Since, the date of default is already mentioned by the Petitioner in its Part IV, the same would not amend the cause of action for the Respondent nor the date of default is getting changed hence will not affect the primary characteristics of the Petition.
16. The second amendment sought by the Applicant is the Statement of Accounts of the Corporate Debtor maintained in the books of accounts of the Applicant annexed at “Exhibit K” of the Company Petition No. 809 of 2021 be replaced with the statement of Accounts annexed in the Present Interlocutory Application as “Annexure A”. The submission of the Applicant is that the statement at “Exhibit

K” to the Company Petition erroneously indicates that an amount of Rs. 1,12,50,000/- was collected by the Applicant towards the recovery. However, the Respondent has not made any payments to the Applicant and no such instalments were collected by the Applicant. However, the Respondent contended that he had filed an I.A. 1089 of 2021 in the captioned Petition and has raised objections and challenged the maintainability of the C.P. 809 of 2021. The respondent submits that the Petitioner had advanced facilities to the Respondent as well as to its sister concern i.e. Nirmal Lifestyle (Kalyan) Pvt. Ltd. (“**NLKPL**”) and according to the Petitioner the Respondent and NLKPL had both defaulted on the first two instalments of the Respective loan (1st instalment on 5th February 2020 and 2nd instalment on 5th March 2020) for an aggregate amount of Rs. 2,25,00,000/- which was due from the Respondent and NLKPL. And with the view to recover the same the Petitioner agreed to advance the loan of Rs. 2,25,00,000/- to Sujyoti Development Pvt. Ltd. (“**SDPL**”) vide sanction letter dated 15.06.2020. Accordingly the Petitioner and SDPL also entered into a loan agreement wherein the NLKPL was a co-borrower. As per the understanding, the loan advance to the SDPL would be utilized to repay the outstanding instalment of Respondent and NLKPL, each for the month of February and March 2020 which aggregated to Rs. 2,25,00,000/-. However, the SDPL loan was never disbursed. In the Present case the Petitioner sought to conceal the monetary transaction between SDPL and the Petitioner itself. The Petitioner had received the aggregate amount to the tune of Rs. 2,25,00,000/- (Rs. 1,12,50,000/- towards the first two instalments of the Respondent and its sister concern i.e. Nirmal Lifestyle Kalyan Pvt. Ltd., each) which have been adjusted by it and in view thereof the Petitioner has sought to replace the Statement of Accounts so that

it may avoid letting this tribunal know how facilities were granted to the Respondent and SDPL. This bench observes that the Respondent has raised the objections of maintainability in I.A. 1089 of 2021 & the same shall be dealt with in that I.A. only. Moreover, this bench vide this order is allowing the Petitioner to make his own case however not prejudicing the rights of the Respondent nor going into the merits of the case. This bench is confining itself to the prayers of the present Application without going into the facts and circumstances of the I.A. 1089 of 2021. The Respondent has the liberty to put forward the details of the payments if any made to the Petitioner while dealing with the I.A. 1089 of 2021.

17. In the present case, the petitioner can be permitted to bring on record an amendment before passing of the final order. This Bench further places its reliance on the Judgement of Hon'ble Supreme Court in the matter **of Dena Bank (now Bank of Baroda) versus C. Shivakumar Reddy & Another ((2021) 10 SCC 330)** has held that the amendment or additional documents can be brought on record of the Tribunal till such time the tribunal passes the final order. The relevant para of the same is as under:

“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.”

In view of the above, this bench is of the considered view that since the Final order in CP No. 809 of 2021 has not yet been passed, the Applicant can be granted permission to amend its Petition as prayed for.

18. In view of the above facts, the Interlocutory Application Number 1696 of 2023 is **allowed and disposed of**.

SD/-

Madhu Sinha
Member (Technical)
/Abhay/

SD/-

Reeta Kohli
Member (Judicial)