

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK

IA No. 246/CB/2023

-In-

CP (IB) No. 111/CB/2020

In the Matter of:

An application filed under Rule 55 and Rule 11 of NCLT Rules, 2016 filed by the Applicants;

**-And-**

In the Matter of:

**STATE BANK OF INDIA**, Stressed Assets Management Branch-1 12<sup>th</sup> Floor,  
Jawahar Vyapar Bhawan 1, Tolstoy Marg, New Delhi- 110 001;

**... Applicant**

**-Versus-**

1. **INDRANI PATNAIK**, A-6, Commercial Estate, Civil Township, Rourkela - 769 004;
2. **INDIAN BANK**, SAM Branch, 17 (First Floor) Parliament Street, New Delhi - 110 001,
3. **UCO BANK**, FCC Branch (1945), UCO Bank Building, 5 Parliament Street, New Delhi 110 001;
4. **BANK OF BARODA**, Stressed Asset Management Branch, 4<sup>th</sup> Floor, Rajendra Bhawan, Rajendra Palace, New Delhi- 110 008;
5. **ICICI BANK LIMITED**, ICICI Bank Tower, NBCC Place, Bisham Pitamah Marg, Pragati Vihar, New Delhi, 110 003;
6. **UNION BANK OF INDIA**, Stressed Asset Management Branch, Unit No. 603 B, Konnectus Tower, Bhav Bhuti Marg, Opp. New Delhi Railway Station, Ajmeri Gate Side, New Delhi- 110 001;
7. **ASIA OPPORTUNITIES (III) MAURITIUS LIMITED**, 5, President John Kennedy Street, Rogers House, Port Louis, Mauritius;
8. **PUNJAB NATIONAL BANK**, Zonal Sastra Centre, 1<sup>st</sup> Floor, 7 Bhikaji Cama Place, Africa Avenue, New Delhi- 110 066;

**Respondents**

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-In-

INDIAN BANK,

... Financial Creditors

-Versus-

OCL IRON AND STEEL LIMITED,

... Corporate Debtor

Appearances through video conference: -

For Applicant

Mr. S. S. Das, Sr. Adv for

Mr. Shantanu Das, Adv.

For Respondent (s)

Mr. Gautam Mishra, Sr. Adv for

Mr. Anuj Singh, Adv. For R1

Mr. S. Sourav, Adv. For R2 to R7

Order reserved on: 27.09.2023

Order pronounced on: 11.10.2023

*Coram:*

**Shri P. Mohan Raj**

:

**Member (Judicial)**

**Shri Kaushalendra Kumar Singh**

:

**Member (Technical)**

**ORDER**

1. This application is filed under the caption Rule 55 and 11 of NCLT Rules, 2016 to grant leave to file rejoinder in main I.A.No.149/CB/2023.

2. **The brief facts of the case necessary to dispose of this application are as follows:** The corporate debtor OCL IRON AND STEEL LTD was admitted into CIRP by an order of this Authority dated 20.09.2021 in section 7 of IBC, 2016 petition filed by Indian Bank. Mr. Vijaykumar V. Iyer was appointed as the Resolution professional. The applicant and respondents 2 to 7 constituted CoC. The Resolution plan submitted by the 1<sup>st</sup> respondent was approved by the CoC with 88.98% voting. The applicant and 8<sup>th</sup> respondent voted against the resolution plan. In the 18<sup>th</sup> and 19<sup>th</sup> CoC meeting the manner of distribution of upfront amount was discussed and mechanisms was worked out. The provision is made in the resolution plan for payment to the dissenting creditors. The plan was approved by this Adjudicating Authority in I.A.No.275/CB/2022 on 20.03.2023. After approval of the resolution plan in the 4<sup>th</sup> monitoring committee meeting it was decided how to make distribution of amount for both assenting and dissenting creditor. Aggrieved by the decision of the monitoring committee the applicant preferred an

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I.A.No.149/CB/2023 claiming the amount as provided under section 30 (2) (b) R/w 53 (1) of IBC, 2016. The Respondents 2 to 7 filed their common counter questioning the maintainability of I.A.No.149/CB/2023 because of non-joinder of monitoring committee as a party and submitted that the mandatory provision of Act as alleged by the applicant is not applicable to this case since dissenting financial creditor has approved the distribution mechanism in the 18<sup>th</sup> and 19<sup>th</sup> CoC meeting.

3. The present application I.A.No.246/CB/2023 is filed by the applicant in I.A. No.149 of 2023 to take on record the rejoinder filed to the reply filed by respondents 2 to 7 in I.A. No.149/CB/2023. The application I.A. No.149/CB/2023 is filed for direction against the respondents to make minimum payments to the applicant as dissenting financial creditor under section 30(2)(b) R/w section 53 of IBC 2016. The respondents 2 to 7 filed their reply dated 10.07.2023 to I.A.No.149/CB/2023 with frivolous and baseless objections. The applicant stated in this application that after filing reply by respondents 2 to 7, come in possession of the minutes of the monitoring committee which are necessary to bring on record for true and correct facts, therefore the applicant seek leave to file rejoinder in response to reply dated 10.07.2023 of respondents 2 to 7. Also, certain fresh developments have happened in the present case which warrants attention of this Authority. For proper adjudication rejoinder to be taken on record.

4. The respondents 2 to 7 filed their common reply in this I.A. No. 246/CB/2023 and opposed to receive the rejoinder. The respondents stated that the applicant by rejoinder try to develop its case, the rejoinder intend to file is beyond the scope of rejoinder. The applicant tries to patch up the lacuna viz non-joinder of necessary party by way of taking a plea that after the filing of I.A. No. 149/CB/2023. The applicant by rejoinder cannot make out a third/new case. The application to be dismissed.

**Point for consideration is:**

**Whether leave to be granted to take the rejoinder on record?**

5. Initially this Authority inclined to dispose of the application in casual manner without going in depth in order to avoid delay, however on the

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respondents' side insisted to pass an order on merit, the senior counsel who appeared for the respondents rely upon the order of this Authority dated 07.11.2022 passed in I.A. No. 248/CB/2022 in C.P. No. 20/CB/2022 **Magnum Sea Foods Limited vs Ashadeep Aquaculture Private Ltd**, and submitted that the said citation is squarely applicable to this case here also the applicant under the garb of rejoinder try to file this application to introduce new facts and subsequent events to avoid filing amendment and to receive additional documents applications. In the supra citation in paragraph 9 it is observed as follows:

*For the reasons stated above, it is concluded that the additional pleadings filed by the applicant under the caption Rejoinder is not a rejoinder at all, in the absence of raised any new point in the reply the right to file rejoinder does not arise to the applicant, it is obvious that under the garb of rejoinder applicant filed this application to introduce new plea, and to get rid of filing amendment and to receive additional document applications, hence the application is not maintainable the same is liable to be dismissed thus this point is answered. This is an application fit to impose cost, however since it appears that the application has been filed on the wrong legal advice, we declined to impose cost upon the applicant.*

The respondents' counsel further stated that the writ petition filed challenging the supra order of this Authority is pending before the High court of Orissa. Thus, the matter is under sub judice.

6. The parties to litigation are permitted to file their pleadings, primarily plaint/petition/ and Reply/counter are considered as pleadings. The Respondent is entitled to file his reply to the averments made in petition. If the respondent introduced a new case in reply, then only the applicant will be permitted to file rejoinder. Filing the rejoinder is not routine, the right to file rejoinder accrues to petitioner only if the respondent filed a reply in such a manner introducing new case or adding additional facts. Filing rejoinder to reply cannot be permitted in

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routine manner. The leave to be granted after scrutinizing the application and reply.

Pleading is defined in Rule 2 (19) of NCLT Rules, 2016 as follows:

*2.(19) "pleadings" means and includes application including interlocutory application, petition, appeal, revision, reply, rejoinder, statement, counter claim, additional statement supplementing the original application and reply statement under these rules and as may be permitted by the Tribunal;*

7. The applicant filed this application under Rule 55 R/w 11 of NCLT Rules, 2016 to take on record the rejoinder. Rule 42 of NCLT Rules, 2016 specifically deals with rejoinder, but Rule 55 of NCLT Rules, 2016 speaks about the subsequent pleadings. What is rejoinder, when the leave to be granted to file rejoinder, are explained in Rule 42 of NCLT Rules, 2016. Rule 42 of NCLT Rules, 2016 runs as follows:


*42. Filing of Rejoinder. - Where the respondent states such additional facts as may be necessary for the just decision of the case, the Bench may allow the petitioner to file a rejoinder to the reply filed by the respondent, with an advance copy to be served upon the respondent.*

Thus, the specific provision Rule 42 is available in the NCLT Rules 2016, seeking leave to file rejoinder. The Rule 55 quoted by the applicant is pertaining to the filing of supplemental pleading to the original pleadings. The appropriate Rule seeking leave to file rejoinder is Rule 42 of NCLT Rules, 2016. It is established rule that wrong quoting of provision of law is not fatal to the proceeding and the court can decide the application under the applicable provision of law, accordingly this application seeking the permission to take the rejoinder on record is dealt under Rule 42 of NCLT Rules, 2016.

7. The reading of the supra rule explains that in the event of any additional facts brought by the respondent in its reply, the leave may be granted to the applicant to file rejoinder to meet the additional facts brought in reply. In our case

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the applicant filed the application seeking relief that the applicant must be paid as dissenting financial creditor as provided under section 30(2)(b) R/w53 of IBC, 2016. For which the respondent filed reply stating that since the dissenting financial creditor has approved the distribution mechanism in the 18<sup>th</sup> and 19<sup>th</sup> COC meetings and after acceptance of the resolution plan cannot take a different stand. The respondent also stated in the reply that since the applicant challenge the distribution mechanism decided on the 4<sup>th</sup> meeting of the monitoring committee held on 04.05.2023, but the monitoring committee is not arrayed as party hence the application to be dismissed. Thus, it is obvious that no additional or new case/facts introduced by the respondents in their reply consequently the applicant has no right to file rejoinder.

8. When the applicants are permitted to file rejoinder and not permitted to file rejoinder are explained by Rajasthan High Court in **State of Rajasthan and others vs Mohamed Iqbal and others AIR 1999 Raj 169, as follows:**

*Furthermore, the principles of filing a rejoinder were summarized most effectively in this case wherein the HC of Rajasthan laid down the following principles:*

*“a) The plaintiff cannot be allowed to introduce new pleas by way of filing rejoinder, to **alter the basis of his** **plaint.***

*b) In rejoinder, the plaintiff can be permitted to explain the **additional facts which have been incorporated** in the written statement.*

*c) The plaintiff cannot be allowed to come forward with an **entirely new case** in his rejoinder.*

*d) The plaintiff cannot be permitted to **raise inconsistent pleas** to alter his original cause of action.*

*e) Application under Order 8, Rule 9, CPC cannot be treated as one under Order 6, Rule 17 (Amendment of pleadings), CPC as both is contextually different.”*



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The leave can be granted to file rejoinder to explain the additional facts if any incorporated in reply, but here admittedly there is no plea that the respondent introduced additional/new facts in their reply, hence granting leave does not arise at all.

9. The applicant itself in the application stated that since after filing of the reply the applicant came into possession of minutes of monitoring committee, hence he filed this application for rejoinder. The applicant also stated that certain fresh developments have happened in the case and wants to bring it to the attention of this Authority. Thus, the reasons stated by the applicant for filing rejoinder is unsustainable, because Rule 42 is clear that the rejoinder can be filed only to the additional facts found in reply filed by respondent and not for any other purpose. For the mere denial of averments of reply re-joinder need not to be filed. The petitioner cannot be deemed to have admitted the reply averments simply because petitioner had not filed the re-joinder.

10 The events happened after filing of the suit/petition or the applicant came to know certain facts subsequent to filing of suit or petition are not a ground to file rejoinder. There is substantial difference between filing the rejoinder and filing the supplementary/additional pleadings. If the rejoinder is taken on record, the respondent has no right to file response to rejoinder. This is evident that there is no provision in the NCLT Rules, 2016 permitting the respondent to file his version in response to rejoinder. Hence leave to file rejoinder be granted only after scrutiny of petition and reply. The pleadings end with rejoinder.

11. Rule 55 of NCLT Rules, 2016 deals with filing of subsequent pleadings. The Rule 55 of NCLT Rules, 2016 runs as follows:

*55. Pleadings before the Tribunal. - No pleadings, subsequent to the reply, shall be presented except by the leave of the Tribunal upon such terms as the Tribunal may think fit.*

12. When the petitioner/Applicant is permitted to file pleadings subsequent to reply the respondent has right to file additional reply to the subsequent pleading, such a right is not provided when the rejoinder is filed by the petitioner, because

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rejoinder is filed only in response to additional fact stated by the respondent. The applicant already filed I.A. No. 285/CB/2023 and kept in pending for an amendment and to receive additional documents, to insert the same contents what he prayed in this application to take on record as rejoinder.

13. In these circumstances the application to grant leave to file rejoinder is not in accordance with Rule 42 of NCLT Rules, 2016, since the ingredients of Rule 42 of NCLT Rules, 2016 are not complied with the application is liable to be dismissed.

14. In fine the Application I.A. No. 246/CB/2023 is **DISMISSED**.

15. Registry is directed to send e-mail copies of the order forthwith to all the party's concern.

16. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

17. File be consigned to records.



**Shri Kaushalendra Kumar Singh**  
**Member (Technical)**



**P. Mohan Raj**  
**Member (Judicial)**

Signed on this 11<sup>th</sup> of October, 2023.

Kaushal\_P.S.