



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - I

ITEM No.301
IA/262(AHM)2024 in CP(IB) 255 of 2023

Proceedings under Section 60(5) (c) of IBC, 2016 r/w rule 11 of NCLT Rules,2016

IN THE MATTER OF:

Bank of Baroda

.....Applicant

V/s

Transstadia Holdings Pvt Ltd

.....Respondent

Order delivered on 19/02/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon,ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
(COURT-I)**

**I.A. No. 262 of 2024 In
CP (IB) No. 255 of 2023**

*(Application under Section 60(5) (c) of the Insolvency and
Bankruptcy Code, 2016 r/w rule 11 of NCLT Rules, 2016)*

IN THE MATTER OF:

Bank of Baroda

Head office at Baroda and its Asset
Recovery Branch at Zonal Stressed
Asset Recovery Branch, Meher
Chambers, Ground Floor,
Dr. Sunderlal Behl Marg, Opp.
Petrol Pump, Ballard Estate,
Mumbai-400001.

**Applicant/
Financial Creditor**

VERSUS

Transstadia Holdings Private Limited

Registered office at:
The Arena, Near Kankaria Lake,
Gate No. 3, Kankaria,
Ahmedabad-38002

**Respondent/
Corporate Debtor**

Order pronounced on: 19.02.2024

**CORAM: SH. SHAMMI KHAN (MEMBER JUDICIAL)
SH. SAMEER KAKAR (MEMBER TECHNICAL)**



APPEARANCE:

For the Applicant :Mr. A.K Mishra, Adv.

For the Respondent :Ms. Nisha Ojha, Adv. Ms. Adrita Bhuyan,
Adv.

ORDER

1. The present application is filed by the Applicant before this Tribunal on 02.02.2024 under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of National Company Law Tribunal Rules, 2016 seeking following prayers:-

a. "The Hon'ble Tribunal be pleased to allow Application for amending the section 7 Application and to rectify the errors/mistakes and other changes;

b. The Hon'ble Tribunal may pass such order or orders as the Hon'ble Tribunal deem fit in the present facts and circumstances."

2. Briefly the facts of the matter are that, a section 7 petition filed by the Applicant against the Respondent is pending before this Tribunal and the Applicant through the present application is seeking rectification of certain typographical and clerical errors in the said section 7 petition.

3. The amendments required by the Applicant are as follows:



- a) The details of disbursement for both the accounts which is annexed to the rejoinder as well as to the present application shall form part of Form-1.
- b) The amendments required in Form-1 and Annexure-K/5 are as below:

Sr. No	Page	Existing	Amended
1.	Pg No. 2 of Petition, Part-I of Form-1, Point No.2	Date of incorporation of Financial Creditor is wrongly mentioned	To be rectified as: Bank of Baroda was incorporated on 2 nd March, 1911.
2.	Pg No. 4 of Petition, Part-IV of Form-1, Point No.1	Total amount of debt granted date(s) of Disbursement wrongly mentioned as Rs.2,79,97,14,472.25	To be rectified as: First date of Disbursement for Term Loan-1 A/c. No. 29100600001501 30 th September,2014 First date of Disbursement for Term Loan-2 A/c. No. 29100600001928 30 th March 2017 Details of amounts and dates are described in the table annexed as SCHEDULE.
3.	Pg No. 219 of Petition Annexure -K/5	In the Certificate of the Notional Interest in NPA Account, the monthly rests calculated on outstanding balance is mentioned wrongly	To be rectified as: Monthly rests calculated on the outstanding balance in the said account no. 29100600001501



		as 01.09.2018 to 31.07.2023 for both the accounts.	And 29100600001928 from 31.12.2018 to 31.07.2023 for both the accounts.
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4. The Applicant has relied upon the judgment in the matter of ***Dena Bank (now Bank of Baroda) Vs. Shivkumar Reddy and Anr. (Civil Appeal No. 1650 of 2020)*** wherein the Hon'ble Apex Court observed as follows:

“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 absence of any express provisions 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.”

5. Further, reliance is placed on the judgment passed by Hon'ble Supreme Court in the matter of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr. (Civil Appeal No. 5909 of 2022)*** the relevant paragraph of the said order is reproduced below:



“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any



clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach



without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had



secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)”

6. The Respondent filed its reply to the application before this Tribunal on 09.02.2024. The averments of the Respondent, in brief, are as under:

- a) The Applicant since 31.08.2023 had several opportunities to amend the Petition. However, the Applicant preferred application for amendment only after Reply dated 16.01.2024 and Rejoinder dated 25.01.2024 was filed.
- b) By filing rejoinder to the reply the Applicant admits that there are no discrepancies in the Company Petition and that the Form-1 is correct. The Applicant has filed the present application for amendment only after the Respondent has raised objections to the discrepancies in the Company Petition.
- c) The nature of the amendment sought by the Applicant i.e. changes in contents of Form-1 and changes in Certificate of



Notional Interest shows that the petition is filed only for the sake of recovering money from the Respondent.

- d) The Applicant vide order dated 21.11.2023 was directed to amend form-1 and mention the exact date of default. In compliance of said order the Applicant filed the amended petition on 12.12.2023. The Respondent had already filed its reply to the unamended copy of Company Petition and the pleadings in the same are complete. The amended copy of petition was provided by Applicant to the Respondent only on 07.02.2024 disregarding the procedural requirement which has caused prejudice to the Respondent.
- e) The Applicant through the present application is trying to mislead this Tribunal. The prayer seeking amendment to the certificate annexed at Annexure-K/5 clearly establishes the lack of credibility of such certificate.
- f) The Applicant was already granted an opportunity to carry out amendment however, the Applicant has again approached the Hon'ble Tribunal with the same relief. The Applicant has failed to make out any case for permitting the Application.
- g) The Application is filed belatedly without any valid and sufficient cause.



h) The Respondent states that the averments made by the Applicant with respect to amendment are misleading and the same are denied. Further, the Application lacks severely in providing correct details thus, the Application may prejudice the proceeding hence the same ought not to be allowed.

7. We have heard both the counsels and perused the material available on record.
8. It is noted that the amendments sought by the Applicant pertain solely to typographical and clerical errors, with no introduction of new material into the record. Further, it is seen that no fresh legal argument or facts are presented through the proposed amendment.
9. By relying on the judgments in the matter of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr. (Civil Appeal No. 5909 of 2022)*** as well as ***Dena Bank (now Bank of Baroda) Vs. Shivkumar Reddy and Anr. (Civil Appeal No. 1650 of 2020)*** it can be said that such amendments may be implemented at any point prior to adjudication if they are necessary for adjudicating the matter provided it does not affect the other side and no new case is made out.



10. In view of the above we are of an opinion that the amendments sought by the Applicant are integral for deciding the Petition and no prejudice will be caused to the Respondent in any manner if the same are allowed. On the contrary, such amendments are deemed conducive to the pursuit of justice. Hence, the amendments delineated in paragraph 3 above, as sought by the Applicant, are allowed.

11. The Applicant shall carry out the amendment within 3 days from the date of this order and serve the amended copy of the Petition on the Respondent. The Respondent is at the liberty to file a reply to the extent corresponding to the Applicant's amendment.

12. Accordingly with above directions, **I.A. No. 262 of 2024** stands disposed off.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

Arati-LRA