

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

IA No. 3541/2023

In

C.P. (IB) 259/MB/2024

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 and Rule 11 of the
National Company Law Tribunal Rules,
2016

Rolta Private Limited

Having address at : 211, 21st Floor, Maker
Towers "F", Cuffe Parade, Mumbai- 400070

.... Applicant

Streamcast Education Services Pvt. Ltd.

Having address at : 1st Floor, Unit No. 244-A
RDP 2, CTS No. 1374/B, Village Versova,
SVP Nagar, Telephone Exchange,
Mumbai- 400053

.... Respondent

In the matter of

Rolta Private Limited

..... Petitioner/Financial Creditor

IA No. 3541/2023
In
C.P. (IB) 259/MB/2024

Versus

Streamcast Education Services Pvt. Ltd.

..... Respondent/Corporate Debtor

Order Delivered on :- 16.07.2024

Coram:

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

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

Appearances:

For the Applicant : Adv. Ankit Lohia a/w Adv. Shruti Singhi
i/b Adv. Akash Menon

For the Respondent : Adv. Feroze Patel a/w Adv. Rinu Kallan

ORDER

Per: - Mr. Kuldip Kumar Kareer, Member (Judicial)

1. The present application is being filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC") read with Rule 11 of the National Company Law Tribunal Rules, 2016 by the Applicant/ Financial Creditor above named herein seeking amendment to the captioned Petition.
2. The captioned Petition has been filed under Section 7 of IBC against the Corporate Debtor with respect to the short-term loan disbursed by the

Financial Creditor to the Corporate Debtor, the principal amount of which aggregates to INR 1,50,00,000 (Indian Rupees One Crores Fifty Lakhs Only). The amount of INR 1,50,00,000 was disbursed by the Financial Creditor to the Corporate Debtor in three tranches, viz. (i) INR 50,00,000 on 11th July 2019 (“First Tranche”), (ii) INR 50,00,000 on 15th July 2019 (“Second Tranche”) and (iii) INR 50,00,000 on 01st August 2019 (“Third Tranche”).

3. The payments which were made in the First Tranche and Second Tranche during the month of July 2019 were due and payable on 31 July 2019. Since the Corporate Debtor failed to repay the amounts on due date, the amounts with respect to the First Tranche and the Second Tranche stood defaulted on 1 August 2019. The Third Tranche disbursed by the Financial Creditor was to be repaid on the same day, i.e. 1st August 2019. However, the Third Tranche was not repaid on the said date and accordingly, the Third Tranche stood defaulted on 2nd August 2019. In the alternative and in the event the Corporate Debtor denies for any reason that the Third Tranche was due and payable on 1st August 2019, it is stated that on 19th February, 2020 the parties had agreed that the Third Tranche would be repaid, within a week from 19th February 2020, i.e. on or before 26th February 2020. This is borne out from email dated 17th June 2020 exchanged between the Financial Creditor and the Corporate Debtor. The said, email dated 17th June 2020 records the understanding between the parties that the Corporate Debtor will repay the amount of INR/ 3,00,00,000 (which includes the Third Tranche of the Short Term Loan) within 7 days from 19th February 2020 i.e. on or before 26th / February 2020.

4. Since the Corporate Debtor failed to repay the amounts of the First Tranche and Second Tranche by 31st July 2019, the said Tranches first stood defaulted on 1 August 2019. The Third Tranche was not repaid either on 2 August 2019 or on 26th February 2020, and the same also stood defaulted on the said dates. None of the Tranches of the Short-Term Loan have been repaid by the Corporate Debtor till date.
5. It is trite law that once default occurs, the date of such default does not shift and such date is the date of default for the purposes of IBC. As stated above, the date of default in the present matter first occurred on 1st August 2019 for the First and Second Tranche. The Third Tranche also stood defaulted on 2nd August 2019, or in the alternative on 26th February 2020. In light of the foregoing, the date of default mentioned at Sr. No. 4 in Part IV of the Petition i.e. 4th February 2021 ought to be construed in the light of the above facts and circumstances and should be amended to reflect the correct position in terms of the schedule of amendments annexed herewith. The dates of default are a matter of record. It would be thus in the interest of justice that the true and correct facts, in consonance with the provisions of IBC are placed on record before this Tribunal.
6. The present Application is made bona fide and in the interest of justice. This Tribunal has the jurisdiction to adjudicate upon the present Application. No harm or prejudice will be caused to the Corporate Debtor if the present application is allowed, especially since the Corporate Debtor has not filed a response to the captioned Petition till date. As per the law laid down by Hon'ble Supreme Court, a Petition filed under Section 7 of the IBC can be amended any time prior to admission of such Petition. The balance of

convenience is therefore in favour of the Applicant herein. Hence the application.

Reply filed on behalf of the Respondent:-

7. In reply, the Respondent/Corporate Debtor has denied all allegations and/or contentions and/or submissions made by the Petitioner in the Petition which are inconsistent with and/or contrary to what has been stated herein. Further, nothing shall be deemed to have been admitted for the reasons of non-traverse.
8. It is submitted that the Amendment Application filed by the Financial Creditor deserves to be rejected because it fails to demonstrate any substantial cause or compelling reason to amend the Petition. In fact, a perusal of the Amendment Application evinces that the Financial Creditor does not seek to correct any typographical error or clarify an ambiguous statement, but rather to fundamentally alter the nature and substance of the Petition to circumvent Section 10A Code of the Code.
9. It is further submitted that the Amendment Application has been filed by the Financial Creditor after the Corporate Debtor objected to the maintainability of the Petition owing to Section 10A in the Code. The Financial Creditor, therefore, under the guise of Amendment Application seeks to change the 'date of default' in order to fall outside the period prescribed under Section 10A of the Code.

10. It is submitted that the Financial Creditor, by attempting to change the date of default, is attempting to position its claim outside the ambit of Section 10A. It is not a mere clarification or correction of an error in the original petition, but a substantial alteration that changes the very basis of the claim. The Respondent states that such an attempt to manipulate the right to amendment to one's advantage is a clear abuse of the process of law. The law does not permit parties to alter their claims in such a manner that fundamentally changes the nature and substance of the original petition.
11. It is further submitted that the Financial Creditor's attempt to change the date of default is not based on any new evidence or material facts and is based on the same set of documents that form part of the Petition. The Financial Creditor instead of relying on the alleged date of default after the 'recall notice' seeks to fabricate a new set out of cause of action on piecemeal 'text messages' exchanged before the alleged loans were even disbursed, in order to circumvent Section 10A of the Code. The Financial Creditor cannot be permitted to alter the nature of the Petition based on the same facts and documents in order to undermine the case of the Corporate Debtor and the Amendment Application ought to be rejected. Moreover, The Financial Creditor's claim is based on an alleged 'oral' loan agreement. However, it is a well-established principle of law that in the case of oral agreements, the date of repayment is considered to be from the date of demand unless otherwise reduced to writing by the parties.
12. It is submitted that the demand for repayment was made during the period when Section 10A of the Insolvency, and Bankruptcy Code, 2016 was operational. Section 10A was introduced as a temporary measure to prevent

the initiation of insolvency proceedings for defaults arising during the COVID-19 pandemic. Therefore, in accordance with the law, no insolvency proceedings can be initiated based on a demand made during this period

13. In the end, the Respondent/Corporate Debtor has prayed for the dismissal of the Interlocutory Application.

Analysis and Findings:-

14. We have heard the Counsel for the parties and gone through the record.
15. During the course of arguments, Counsel for the Applicant/Financial Creditor has argued that the law with regard to the amendment of pleading is quite liberal and, therefore, the proposed amendment should be allowed. In support of his contention, Counsel for the Applicant has relied upon *Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others, (2006), 4 SCC 385* whereby the Hon'ble Supreme Court has held that the court should not go into correctness or falsity of the case in the amendment, nor record a finding on the merits of the amendment at the stage of considering the prayer for amendment. Counsel for the Applicant has further relied upon *North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (2008) 8 SCC 511*, whereby it has also been held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real question in controversy between the parties. It was further held that amendments should be refused only when the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.

16. On the other hand, Counsel for the Respondent/Corporate Debtor has argued that the proposed amendment cannot be allowed as by way of the amendment, the Applicant is seeking to change the date of default which is not permissible under law. Counsel for the Respondent has further contended that the present application has been filed by the Applicant to wriggle out of the rigors of Section 10A of the Insolvency and Bankruptcy Code, 2016 and, therefore, the same deserves to be dismissed. In support of his contentions, Counsel for the Respondent/Corporate Debtor has relied upon *Modi Spinning & Weaving Mills Co. Ltd and Another Vs. Ladha Ram & Co. (1976) 4 SCC 320*, whereby it was held by the Hon'ble Supreme Court that inconsistent pleas cannot be made in pleadings and further that if such amendment are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants.
17. We have thoughtfully considered the contentions raised by the Counsel for the parties and have also perused the case law cited by the Counsel for the parties in support of their respective contentions.
18. It is well settled that the law with regard to the amendment of pleading is quite liberal. By way of the proposed amendment, the Applicant seeks to amend the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 to add and explain certain facts with regard to the alleged transaction of loan executed between the parties on the basis of which, the date of default has to be ascertained. There is no written contract with regard to the loan transaction executed between the parties. Therefore, in our considered view, if the proposed amendment is allowed, no prejudice is likely to be caused to the Respondent. Even otherwise, the Hon'ble Supreme Court in *Rajesh*

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Kumar Aggarwal and others Vs. K.K. Modi and others, (2006), 4 SCC 385 whereby it has been held by the Hon'ble Supreme Court that at the stage of the amendment, the court should not go into correctness or falsity of the case in the amendment. Therefore, the admissibility of the Petition under the provisions of the Insolvency and Bankruptcy Code, 2016 shall be determined at the final stage of hearing. Similarly, the point as to whether the Petition is barred under Section 10A of the Insolvency and Bankruptcy Code, 2016 would be decided at the time of admission on the basis of material placed on record. That being so, at this stage, the Applicant cannot be precluded from pleading certain new facts. However, the veracity of such newly pleaded fact will be adjudged at the appropriate stage. Accordingly, we are of the view that the proposed amendment will not cause any prejudice to the Respondent. Therefore, we deem it appropriate to allow the proposed amendment sought by the Applicant.

19. As a result of the above discussion, the **IA No. 3541/2023** for amendment in C.P.(IB) No. 259/2023 **is allowed.**

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)