

NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH COURT-I

IA No. 1036/2024 in CP (IB) NO. 192/Chd/Pb/2023

Punjab National Bank

Through its Senior Manager,
Sh. Surender Jangra
Circle Sastra Center, PNB House,
Plot No. 455, Phase-III, Model Town,
Bathinda-151001

...Applicant/ Financial Creditor

Versus

M/s Satluj Spintex Limited,

Reg. Office at Post Office Bazar,
Near Post Office, Bathinda-151001.
Corporate Office at Village Gehle,
Talwandi Sabo, Mansa-151505

...Respondent

Judgment Delivered on: 06.06.2024

Section: 60(5) of the IBC, 2016.

CORAM:

SH. L. N. GUPTA, HON'BLE MEMBER (T)

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)

PRESENT

For the Applicant : Advocate Harsh Garg

For Respondent : Advocate Vishal Tanwar

Judgment

PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)

The present IA No. 1036/2024 has been filed by the Applicant Punjab National Bank u/s 60 (5) of IBC, 2016 *to amend the pleadings* in its original Section 7 petition bearing CP (IB) NO. 192/CHD/PB of 2023 and to allow the present Application filed with the *amended application in Form-I*, appended therewith. The last para of the IA reads thus:

8. That the amended application in Form-1, along with affidavit is appended herewith as **Annexure-2**.

It is therefore respectfully prayed, that the present application may kindly be allowed and applicant may be allowed to amend the pleadings in view of the facts and circumstances of the matter.

2. The Applicant has submitted in its application that the main petition was fixed for 16.04.2024 for filing Rejoinder of the Applicant Financial Creditor. It is further stated that in the Reply to the main Petition, the Corporate Debtor mentioned that the Petition was barred under Section 10A of the IBC, 2016 as the date of default mentioned by the Applicant Bank is falling within the restricted period of Section 10A of IBC, 2016.

3. It is further stated by the Applicant that in the main Section 7 petition, the Applicant Bank mentioned the date of default as 31.01.2021, whereas Date of NPA was 02.05.2021. And the Applicant Bank wishes to amend the said section 7 petition while restricting its amount of debt only

to the extent of "Working Capital Term Loan Facility" (WCTL) sanctioned to the Respondent/CD for an amount of Rs. 46 Crore on 04.03.2021. Under this facility, the amount was re-payable by the CD in 48 monthly installments with 12 months' moratorium with re-payment starting from 31.03.2022, but the account was declared as NPA on 02.05.2021 due to the percolation i.e., when other accounts of the CD were declared NPA on 02.05.2021 and as such this account was also declared NPA. The aforesaid default is continuing and as such date of default for the purpose of Section 7 petition can be taken as 02.05.2021.

4. Further, the Applicant has appended the amended application in Form-I at Annexure-2 (from pages 15-33) of the present Application.

5. The Applicant Bank has further stated that in the Record of Default issued by NeSL, the date of default is recorded as 02.05.2021, whose authenticity the debtor cannot dispute. It further states that in a section 7 petition, date of default or pleadings can be amended at any stage of the matter. The National Company Law Tribunal (NCLT), New Delhi Bench in PHL Fininvest Private Limited v/s Kay Jay Leasing Limited allowed an application for amendment of the date of default and held that the amendment of pleadings in a CIRP application filed under Section 7 of IBC can be done at any stage of the matter. The Applicant has relied upon the judgment of the Hon'ble Apex Court in the case of **Dena Bank (Bank of Baroda) versus C. Shivakumar Reddy and Another (2021 10 SCC 330)**.

6. On issuance of the notice, the Respondent filed its reply dated 02.05.2024 contending mainly the following:

6.1 The main Section 7 petition was filed by the Applicant Bank on 27.06.2023 and it was only when the answering respondent filed its detailed reply, the Applicant Bank is now trying to change the very nature of the petition which cannot be done at this juncture of time as per whims and fancies of the Applicant Bank.

6.2 An application for amendment can be allowed to be made by a party only in a case where there are new facts, that arose after filling of the insolvency petition, which is not the case presently. The applicant bank was very much aware of the all the averments made in the petition. The 'Doctrine of Waiver' is applicable in the present matter and the bank, who voluntarily waived its right of raising such averments at the time of filing the original insolvency petition cannot be allowed to backtrack from the same at this fag end.

6.3 The present application is not in accordance with the Punjab and Haryana High Court's Notification No. 253-Genl./XI. Y.1 dated the 12th November, 1951/7th December, 1951 which states that in case any application for amendment is filed by any party, in that case the said application shall state the specific amendments which are sought to be made, indicating the words or paragraphs to be added, omitted, or

substituted in the original pleading. Thus, on this ground alone, the present application is liable to be dismissed.

6.4 It is appalling that the Applicant Bank at this juncture of time is stating that the date of default in the NESL record is 02.05.2021, while in the main insolvency application, it mentioned 31.01.2021 as the date of default. Thus, the applicant bank has accepted itself that the insolvency petition was defective and is liable to be dismissed.

6.5 The legislature while incorporating Section 10(4) has categorically mentioned that where the Adjudicating Authority crystallizes that an application is liable to be rejected being 'incomplete', then a notice can be given to the applicant to rectify its defects within 7 days from the date of receipt of notice. Thus, from this alone it is evident that the rectification is allowed only in a case of 'incomplete' details and under the garb of this, the applicant bank cannot be allowed to amend its entire pleadings and change the basic nature of the petition that to once the corporate debtor has filed its detailed reply.

6.6 The Applicant Bank has revised the claim amount from Rs. 394,22,27,684/- to Rs. 53,17,94,106/- and date of default from 31.01.2021 to 02.05.2021 by relying on the WCTL facility to the tune of Rs. 46 Crore sanctioned on 04.03.2021. In this regard, it is worth to state that the said facility is also a part of the main insolvency petition and the Bank voluntarily claimed the date of default of the said facility to be 31.01.2021.

Thus, the bank cannot be allowed to change the same as per its own convenience after becoming aware of the fact that its insolvency petition is going to be dismissed as the corporate debtor has proved in its reply that the same is not maintainable.

7. We heard the submissions of both parties and perused the pleadings on record, including the Judgements filed by the parties. The present IA No. 1036/2024 has been filed by the Applicant Punjab National Bank u/s 60 (5) of IBC, 2016 for the amendment of Form-1 / pleadings including the amount of debt, and the date of default mentioned in the main Section 7 petition bearing CP (IB) NO. 192/CHD/PB of 2023, after the Corporate Debtor therein pointed out in its Reply dated 02.05.2024 that the date of default relied upon by the applicant is falling within the restricted period of Section 10A and therefore, the main Section 7 petition was debarred under Section 10A of IBC 2016.

Per contra, the Respondent has contended that (a) under the garb of amending the pleadings/ Form-1, Applicant Bank is now trying to change the very nature of the petition, that cannot be done at this juncture; (b) and which cannot be allowed once the CD has filed its detailed Reply; (c) the Applicant Bank has revised the claim amount from Rs. 394,22,27,684/- to Rs. 53,17,94,106/-; and the date of default from 31.01.2021 to 02.05.2021 by relying on the WCTL facility of Rs. 46 Crore. It is worth mentioning that the said WCTL facility was also a part of the claim filed vide the main Petition, in which the Bank voluntarily relied on 31.01.2021 to be the date

of default; (d) by amending the date of default, the applicant bank itself has accepted that the main insolvency petition is defective and is, therefore, liable to be dismissed; and (e) the rectification of a defect is allowed only in a case of 'incomplete' details in case of a Section 7 Application.

8. Now, the question which emerges before this Adjudicating Authority is whether the Applicant can be allowed to amend the pleadings/ Form-1 involving, inter alia, change in the amount of debt and date of default specially when the Respondent has already filed reply and pointed out therein that the debt is barred by Section 10 A. In other words, and to be more specific, **Whether the Applicant can be allowed to change the “date of default” to get over the lacunae in its original petition regarding the statutory bar faced under Section 10A of IBC due to a particular date of default i.e., 31.01.2021, chosen therein.**

9. From the record, we find that the Applicant Bank has filed the main Section 7 petition CP(IB) No. 192/Chd/PB/2023 on 27.06.2023 and the Respondent had filed reply on 12.03.2024. It is in the reply to the main petition, the Corporate Debtor pointed out that the said petition was barred under Section 10A of the IBC, 2016 as the date of default mentioned by the bank is falling within the restricted period mentioned under Section 10A of IBC, 2016. It is in this context, the Bank by preferring this Application is proposing to amend the pleadings including the date of default. If we compare the “amount of default” and “date of default” mentioned by the Applicant Bank at Serial No. 2 of Part IV of both the Original Form-1 filed IA No. 1036/2024 in CP (IB) NO. 192/Chd/Pb/2023

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with CP(IB) No. 192/Chd/PB/2023 on 27.06.2023 and the Revised Form-1 filed with the present IA No. 1036/2024, the position emerges like this:

“Amount claimed to be in default” and “the Date on which the default occurred” – Comparison of 02 Form(s)-1

Particulars	As per the Form-1 filed with the “Main Petition”	As per the Revised Form-1 filed along with “Present IA”
Date of filing of Application <small>(as per DMS)</small>	27.06.2023	16.04.2024
Amount of default	Rs. 394,22,27,684/-	Rs. 53,17,94,106/-
Date of Default	31.01.2021	02.05.2021

10. The Applicant Bank has relied upon the Judgment of the Hon’ble Apex Court in **Dena Bank (Bank of Baroda) versus C. Shivakumar Reddy and Another (2021 10 SCC 330)**, the relevant para of which reads thus:

"144. 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."*

(Emphasis placed)

Thus, we find that as per the Judgment (supra), though there is no bar on amendment of pleadings, when there is an inordinate delay, subject to the facts and circumstances of the case, the Adjudicating Authority may decline the request of an applicant to file additional pleadings and/ or documents, and proceed to pass a final order. Here in the present case, we observe that it is with an admitted intention to overcome the bar faced under Section 10A of IBC due to a particular date of default (i.e., 31.01.2021) chosen, after having come to know from the Reply filed by the Respondent in the main petition, the Applicant Bank, after a lapse of nearly nine and a half months since filing of the application, at the Rejoinder stage, is seeking to amend the pleadings including the Date of Default.

11. In this context and in order to examine the specific question - **Whether the “date of default” can be changed**, we refer to the Judgment dated 09.02.2021 of the **Hon’ble Apex Court in Ramesh Kymal vs M/s. Siemens Gamesa Renewable Power Pvt. Ltd.** (2021) 3 SCC 2024, the relevant extracts of which reads thus:

“10. Section (1) of Section 8 of IBC stipulates:

“8. Insolvency resolution by operational creditor.—(1) an operational creditor may, on the occurrence of a default, deliver a demand notice of the unpaid operational debt or a copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.”

*Under Section 9(1), the operational creditor may file an application before the Adjudicating Authority for initiating the Corporate Insolvency Resolution Process (“CIRP”), after the expiry of a period of ten days from the date of delivery of the notice (or invoice demanding payment) under sub-Section (1) of Section 8, if the operational creditor does not receive payment from the corporate debtor or a notice of the dispute under sub-Section (2) of Section 8. **The appellant having specified 30 April 2020 as the date of default, this appeal must proceed on that basis.** It is necessary to make this clear at the outset because an attempt has been made during the course of the submissions by Mr Neeraj Kishan Kaul, learned Senior Counsel appearing on behalf of the appellant, to submit that though the demand notice mentions the date of default as 30 April 2020, the "actual first date of default" was 21 January 2020 when the letter of resignation was tendered and that the “second date of default” was 23 March 2020 when the sixty days’ notice period from the letter of resignation submitted by the*

*appellant concluded. **This attempt to set back the date of default to either 21 January 2020 or 23 March 2020 is plainly untenable** for the reason that it is contrary to the disclosure made by the appellant in the demand notice which has been issued in pursuance of the provisions of Section 8(1) and Section 9 of the IBC. The demand notice triggers further actions which are adopted towards the initiation of the insolvency resolution process. The question which needs to be resolved is whether Section 10A would stand attracted to a situation such as the present where the application under Section 9 was filed prior to 5 June 2020, when Section 10A was inserted, and in respect of a default which has taken place after 25 March 2020.”*

(Emphasis placed)

12. Here, we also refer to the Judgment of the **Hon'ble NCLAT** dated 26.04.2023 in the matter of **Ramdas Dutta vs IDBI Bank Ltd. & Anr.** NCLAT Delhi in Company Appeal (AT) (Ins) No. 1285 of 2022, the relevant extracts of which reads as reproduced below:

*“18. There is no dispute that the Bank did not mention the date of default in Part IV of Form 1 i.e. the application filed under Section 7 of the Code and disclosed the date of default only in its supplementary affidavit which was filed pursuant to the order passed by the Adjudicating Authority. The Bank has mentioned the date of default as 31.08.2013 in the affidavit. It has also mentioned the date of NPA as 31.03.2014. **The Bank has tried to change the date of default as 31.03.2014 which in fact has been mentioned as the date of NPA.** The period of limitation, counted from 31.08.2013 i.e. date of default would continue till 31.08.2016 and shall expire w.e.f. 01.09.2016. The Bank failed to produce any*

evidence of acknowledgement of debt on the part of the Appellant during the period from 31.08.2013 to 31.08.2016. Faced with these difficulties, the Bank has tried to project the date of NPA i.e. 31.03.2014 as the date of default to take it up to 31.03.2017 so that it may use the payment of Rs. 2.75 Lakh made on 29.03.2017 in the account as acknowledgment under Section 19 of the Act in order to gain further period of three years from that date i.e. 29.03.2017 till 29.03.2020 to bring the application filed under Section 7 of the Code on 18.10.2019 within the period of limitation.

19. The first question is as to whether the date of default can be changed by the Bank? In this regard, it has been held by the Hon'ble Supreme Court in the case of 'Ramesh Kymal Vs. Siemens Gamesa Renewable Power Pvt. Ltd., (2021) 3 SCC 224' that the date of default cannot be changed. It has also been held in the case of *Laxmi Pat Surana (Supra)*, *Babulal Vardharji Gurjar (Supra)*, *B.K Educational Services Pvt. Ltd. (Supra)* and *Jignesh Shah (Supra)* that the period of limitation would be attracted from the date when the default occurs and not from the date of declaration of NPA. Therefore, the date of NPA cannot be taken to be the date of default for the purpose of limitation.”

(Emphasis placed)

13. Thus, in terms of the Judgments of Hon'ble Apex Court in **Ramesh Kymal Vs M/s. Siemens Gamesa Renewable Power Pvt. Ltd.** (2021) 3 SCC 2024; and of Hon'ble NCLAT Delhi in **Ramdas Datta Vs IDBI Bank Ltd.** Company Appeal (AT) (Ins) No. 1285/2022 (supra), the date of default cannot be changed. In the present case, the Applicant Bank while praying to amend the pleadings is actually seeking to change “the date of default”

which, as we have seen, is not permissible as per the law laid down. Therefore, in sequel to the above, we find that the Applicant Bank cannot be permitted to amend pleadings entailing the “date of default”, and more so, when the intent of the Applicant admittedly, is to get over its lacunae in the main petition regarding the statutory bar faced by it under Section 10A of IBC vis-a-vis the date of default chosen by it therein.

14. Hence, we have no other option but to reject the Application. **The IA-1036/2024 is dismissed accordingly.**

Sd/-

(L. N. GUPTA)
MEMBER (T)

Sd/-

(HARNAM SINGH THAKUR)
MEMBER (J)