

**THE NATIONAL COMPANY LAW TRIBUNAL  
COURT VI, NEW DELHI**

**I.A. 107/2019**

**IN**

**Company Petition No. (IB) – 2097/(ND)/2019**

*Application under Rule 11 Read with Rule 155 of NCLT  
Rules, 2016*

**In the matter of:**

**Blue Star Limited**

.....Applicant

VERSUS

**Upal Buildtech Pvt. Ltd.**

...Corporate Debtor

**CORAM:**

**SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER  
(TECHNICAL)**

For the Applicant: Mr. Amit Agarwal, Adv

For the Respondent: Mr. Amit Gupta, Adv

I.A. 107/2019

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Company Petition No. (IB) – 2097/(ND)/2019

**ORDER**

**PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

**Order Pronounced on:19.01.2023**

1. This is an application filed under Rule 11 read with Rule 155 of NCLT Rules, 2016 praying for the following reliefs:

- i. Allow the present application and allow the amended portions as mentioned in this Application to be taken on record;*
- ii. Pass such other/further orders or further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. The Applicant in the application has averred as follows:

- i. It is submitted that the Applicant while filing the Application under Section 9 of the IBC, in Form 1 as prescribed under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has inadvertently and wrongly mentioned certain dates and the

Applicant humbly seeks to rectify the same by way of this Application.

- ii. It is submitted that while the Applicant has indeed annexed correct documents along with the Application, however the Application inadvertently and wrongly mentioned certain dates and the Applicant accordingly humbly requests the Ld. Tribunal to allow it to correct the relevant portion of para 5 of “synopsis and list of dates and events” which shall now read as follows:

*"That the Applicant inter alia vide its emails dated 07.06.2016, 31.08.2016, 22.09.2016, 23.11.2016, 24.03.2017, 24.08.2017 as well as letters dated 13.09.2016, 26.11.2016 and 23.03.2017..."*

- iii. That further it is most respectfully submitted that the Applicant while filing the Application under Section 9 of the IBC, in Form 1 as prescribed under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, had inadvertently mentioned the date on which the default had occurred in Part IV of the Application as 01.07.2015. It is pertinent to mention the date on which default occurred was on 01.12.2015, on

which date the liability of the Corporate Debtor became due which is apparent from the dates the invoices annexed with the Application were raised by the Applicant. The applicant has placed on record the amended Part IV and prayed to take the same on record.

3. Consequent to the notice issued by this Tribunal the Corporate Debtor has filed its reply which is stated as under:

- That the instant application has been filed malafidely with a view to introduce/ make a new submissions ground of defense which was not earlier pleaded by the Applicant and introduced a new case on behalf of the Applicant.
- The Corporate Debtor submits that the instant application has been filed belatedly and malafidely by the Applicant and instant application has been filed belatedly and malafidely after the lapse of the 30-days period stipulated by Rule 155 of the National Company Law Tribunal Rules, 2016.
- That even if the Applicant had wrongly, inadvertently mentioned certain dates, it should have rectified the same at the earliest available opportunity i.e., it should

have mentioned the same in its rejoinder filed on 05.11.2019. However, there is not even a whisper about any dates being wrongly mentioned in the Application as filed by the Applicant in the first instance. The said averment by itself clearly demonstrates the malafide in preferring the instant application and making averments regarding incorrect dates

- That the Applicant is seeking to amend its application to save it from being barred by limitation. In the reply of the Corporate Debtor, it was categorically mentioned that the Applicant had itself stated in Part IV of the Application that 01.07.2015 has to be considered as the date on which the default has occurred on the part of the Corporate Debtor. Therefore, in view of the said averment of the Applicant, the Corporate Debtor had clearly submitted that the Application filed by the Applicant on 28.08.2019 before this Hon'ble Tribunal for initiating CIRP against the Corporate Debtor is clearly hit by Article 137 of the Limitation Act and is hence barred by limitation. Reliance in this regard was also placed on the judgment dated 11.10.2018 passed by the

Hon'ble Apex Court in the case of *B.E. Educational Services Private Limited vs. Parag Gupta and Associates*, Civil Appeal No. 23988 of 2017.

- That in the instant application the Applicant is seeking to amend its averment to save its application from being hit by Limitation. That vide the instant application under reply the Applicant is not merely seeking a correction of an inadvertent/ typographical or clerical mistake but infact is trying to make a new ground/ case to save its application from being hit by Article 137 of the Limitation Act.
- That in view of the aforesaid submissions, it is humbly prayed that the instant application under reply preferred by the Applicant be dismissed with heavy costs
- That it is further submitted that in the event the instant application is allowed by this Tribunal, then the Corporate Debtor may be permitted to file an additional reply affidavit in response to the amended application.

4. We have gone through the documents on record filed by both the parties and arguments advanced by counsels of both

the parties. The Counsel for the applicant is praying to amend part IV & part V as prescribed under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as well as some portions of “list of dates and events”

It is pertinent to refer to the judgement of the Hon’ble Supreme Court in the matter of *Dena Bank (Now Bank of Baroda) Vs. C. Shivakumar Reddy & Anr.* 2021 SCC OnLine SC 543 held that there is no bar in law to the amendment of pleadings in an application filed under IBC, 2016 or to the filing of additional documents, apart from those initially filed along with application. In the absence of any express provision which either prohibits or sets a time limit for filing of additional documents.

The Corporate Debtor in its reply to this application has stated that the applicant is seeking to amend its averment to save its application from being hit by Limitation. We make it clear that it is upon the Adjudicating Authority to determine whether the application is barred by limitation or not after going through the documents filed by the applicant in support of their pleadings. Mere amending the date of default in part

IV of the Form 1 does not save the applicant from limitation. Hence, we allow the applicant's prayer to amend Part IV & Part V of Form 1 as well as relevant portion of Synopsis with List of Date and Events.

In the interest of justice and fair play, we allow the Corporate Debtor's prayer to file an additional reply affidavit in response to the amended application.

5. Based on the documents placed on record before this Tribunal and on the submissions made by the Ld. Counsels of the applicant, I.A No 107 of 2019 stands allowed.

Let copy of the order be served to the parties.

**(Rahul Bhatnagar)**  
**Member (Technical)**

**(P.S.N Prasad)**  
**Member (Judicial)**