

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK**

**IA (IB) No.130/CB/2023**

**In**

**CP (IB) No. 36/CB/2022**

***In the matter of:***

An application under Rule 55 of the National Company Law Tribunal, 2016;

-And-

***In the matter of:***

**Balasore Alloys Limited**, having its registered office at- Balgopalpur, District- Balasore, Odisha- 756 020.

**...Applicant/Corporate Debtor**

-Versus-

**MSTC Limited**, having its registered office at- Plot No. CF 18/2, Street No. 175, Action Area 1C, New Town, Kolkata- 700 156;

**...Respondent/Operational Creditor**

***Coram:***

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

***Appearances:***

For the Applicant : Mr. Sandeep S. Ladda, Adv.

For the Respondent : Mr. Anupam Dash, Adv.

**Order reserved on: 03.07.2023  
Order pronounced on:18.07.2023**

**ORDER**

***Per: P. Mohan Raj, Member (Judicial)***

1. This application has been filed under Rule 55 of the National Company Law Tribunal, 2016 by the applicant herein, who is the Corporate Debtor

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(CD) in the main Company Petition CP (IB) No. 36/CB/2022 for consideration of the Affidavit-in- Sur Rejoinder.

2. The corporate debtor/respondent in main C.P.No.36/CB/2022 has filed this Application seeking leave of the Adjudicating Authority to file Sur-rejoinder along with four documents.
3. The operational creditor filed the main petition under section 9 of IBC 2016 for initiation of CIRP against the corporate debtor. The corporate debtor/Applicant filed its reply. In response to the reply the operational creditor has filed the rejoinder with the leave of the Adjudicating Authority under section 42 of NCLT Rules 2016. Now the corporate debtor filed this application seeking leave of the Adjudicating Authority to file Sur-rejoinder.
4. In the affidavit filed in support of this application the deponent stated that after filing the rejoinder by the petitioner certain developments had taken place, which has recently come to the knowledge of the applicant, to bring those developments to the notice of the Adjudicating Authority the applicant seeks leave of this Authority. It appears that even before filing the main petition under section 9 of IBC 2016 on 08.08.2022 the operational creditor preferred a criminal complaint dated 21.11.2019 before the S.D.J.J.M, Balasore. Further, the operational creditor also filed complaint before C.B.I Kolkata on 22.12.2021, the C.B.I Kolkata on the said compliant registered FIR on 31.12.2022. The petition challenging the said FIR is filed before the High Court of Calcutta is admitted and ordered notice on 04.04.2023. The corporate debtor sent a legal notice dated on 10.04.2023 demanding compensation from the operational creditor. Now the applicant wants to exhibit the documents pertaining to those incidents viz:

- (i) Copy of criminal complaint dated 21.11.2019 filed before the \ S.D.J.J.M, Balasore, Odisha,

- (ii) Copy of FIR dated 31.12.2022,
  - (iii) Copy of order of High Court of Calcutta dated 04.04.2023, and
  - (iv) Copy of Legal notice dated 11.04. 2023.
5. Applicant also wants to record the payments made by the corporate debtor subsequent to filing the petition under section 9 of IBC, 2016. It is stated that the corporate debtor paid the entire principal amount. Thus, the applicant filed this application seeking leave of the Adjudicating Authority to file Sur-rejoinder with four Exhibits A to D.
6. On the respondent side opposed the application mainly on the following grounds:
- (i) When the operational creditor has not raised any new or additional plea in its rejoinder the applicant is not entitled to file sur-rejoinder.
  - (ii) The applicant has not disclosed the exact or approximate date when the applicant came to know about the existence of documents filed along with this application.
  - (iii) Failed to disclose the sources from whom the corporate debtor was able to found out that private complaint case, and
  - (iv) The competent of the deponent to swear affidavit and to file this application.
7. Now we consider the sustainability of the objection raised by the respondent/operational creditor in seriatim.
8. **Objection No. (i):** The respondent filed a rejoinder in response to the reply filed by the corporate debtor dated 19.11.2022. The leave was granted to the operational creditor to file a rejoinder in I.A.No.17/CB/2023, on 16.01.2023 there the corporate debtor said no objection to receive the

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rejoinder. The operational creditor in its counter-filed in response to this application more than once insisted that since sur-rejoinder is not in response to the rejoinder filed by the operational creditor, but some new defence also raised in the sur-rejoinder hence the same shall not be allowed.

9. This argument is without any substance and legal backing. The ordinary meaning of the word sur-rejoinder is second reply by a responding party in an adjudication. Calling the subsequent pleading to rejoinder as sur-rejoinder is a misnomer. Pleading is defined in Rule 2(19) of NCLT Rules 2016 as follows:

“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;

10. In the supra definition there is no reference to sur-rejoinder, only the word rejoinder is mentioned. After the rejoinder there also mentioned an additional statement supplementing the original application and reply. It shows that whatever statement filed by the respondent after the filing of rejoinder is only an additional statement to the original reply. The concept of sur-rejoinder to rejoinder is not permissible. What is rejoinder, when the leave to be granted to file rejoinder and the rejoinder must constitute what is explained in Rule 42 of NCLT Rules 2016 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.

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11. 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 petitioner to file rejoinder to the reply filed by the respondent. Thus, the rule speaks about the filing of rejoinder by the petitioner/applicant. The rule does not whisper anything about the filing of sur-rejoinder by the respondent to rejoinder. This made clear that there would not be any pleading counter to the rejoinder, otherwise, there would not be an end to the pleadings.
12. There is no word 'sur-rejoinder' used or defined in the Code or in Rule. In the absence of word "sur-rejoinder" in the definition of "pleadings" does not mean that there is no avenue to file pleadings after the filing of reply. The latter part of the definition of Pleadings in Rule 2(19) of NCLT Rules 2016 runs as follows:

"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;

13. From the above definition the petitioner and respondent are permitted to file an additional statement supplementing to their original application and reply. The Rule 55 of NCLT Rules, 2016 permitted the parties to file an additional statement with the leave of the Authority. 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.

14. The Rule 55 of NCLT Rules 2016, put pre-condition to obtain leave of the Tribunal to file the additional pleadings. Rule 55 has not laid down any condition on how the subsequent pleadings must be. But Rule 42 specifically states that the rejoinder is to be filed only in response to the reply filed by the respondent. Thus, the rejoinder can be filed only to meet the additional facts brought in reply.
15. Rule 42 has narrow definition; it covers pleadings leading to meet additional facts brought in reply alone. Rule 55 has a wider definition it permits to file any subsequent pleadings supplemental to original pleadings. Under Rule 55 subsequent pleadings supplemental to original pleadings can be filed even if anything omitted to mention in the original pleading and also to bring subsequent facts that happened after filing the original pleadings. In the supplemental pleading to original reply, new facts or omitted facts whatever the facts relate to the dispute can be filed., Even the inconsistent pleading can be filed in the supplemental pleading of reply.
16. The only condition is the subsequent supplemental pleadings must be relevant to the lis, and the parties should not be allowed to file a supplemental pleading to withdraw any admission made in the original pleadings.
17. On the respondent/ operational creditor side rely upon the order of this Authority passed in I.A.No.248/ CB/ 2022 in CP(IB) No.20/CB/2022 Magnum Sea Foods Limited vs Arshdeep Aquaculture Private Ltd dated 07.11.2022. This citation is pertaining to receipt of rejoinder there it is observed that in the absence of any new/additional facts raised by the respondent in reply, the petitioner is not entitled to file a rejoinder. This application is not relating to the receipt of rejoinder as stated in Rule 42 of NCLT Rules 2016.

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18. There is a substantial difference between Rules 42 and 55 of NCLT Rules 2016, accordingly what is applicable to rejoinder is not applicable to the supplemental additional pleading to reply. Even though the applicant captioned the pleading as “Sur-rejoinder” but the provision of law is correctly quoted in Rule 55 of NCLT Rules 2016, the correct nomenclature must be “**Additional statement supplementing the original reply statement**” as used in definition of Rule 2(19) of NCLT Rules 2016. The mere mentioning of incorrect nomenclature of the document is not fatal. No importance can be given to the nomenclature of the document, the court or Authorities has to look at the substance of the document and deal it accordingly.
19. In this case the applicant/corporate debtor not stated that he is filing this sur-rejoinder in response to rejoinder of the operational creditor, instead it is stated in para 3 of the affidavit that “The corporate Debtor/Applicant submits that thereafter the post filing of the Rejoinder by the operational creditor there are certain developments which has recently came to the knowledge of the corporate debtor.” These averments show that the applicant given a reason why the corporate debtor omitted to mention these facts in its original reply and also averred about the subsequent event of proceedings initiated before the High Court of Calcutta. Thus, the reasons stated by the applicant to file this “additional statement supplementing the original reply statement” (in short **Additional Reply**) is satisfactory hence the objection raised by the operational creditor is turned down as unsustainable.
20. **Objection No.(ii):** On the applicant side stated that he came to know the existence of documents A to D after the filing of rejoinder by the operational creditor. The rejoinder was filed in the Registry after serving a copy on the applicant on 10.06.2023 the same was taken on record on 16.01.2023. The

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above statement clearly shows that the approximate period when the applicant came to know the existence of certain documents. Further the two documents “C” & “D” are dated 04.04.2023 and 11.04.2023, arising after filing rejoinder, this application is presented on 24.04.2023 hence there is no delay in filing this application. Even otherwise omission to mention the date or approximate date when the applicant came to know about the existence of document specially when there is no denial of the existence of such document is not fatal. This objection also not sustainable.

21. **Objection No.(iii):** The party presenting the documents or materials before the Adjudicating Authorities to establish his case, need not to disclose the source how he got the material or records, especially when those documents are public documents and available on the public domain. As far as this application is concern first three documents “A” to” C” are available in public domain, and document “D” is notice addressed by the corporate debtor to the operational creditor. In the scenario, this objection is also not valid.
22. **Objection No.(iv):** On the operational creditor side question, the competency of the deponent who sworn the affidavit in support of this application. The additional reply is verified and signed by the authorised person as set out in Rule 26 of NCLT Rules 2016. The affidavit filed in support of the application is in compliance with Part XVI of NCLT Rules 2016. The affidavit can swear by any person knowing the facts, it is not necessarily the party to the proceeding alone needs to be filed. This objection is also not valid.
23. In respect of the receipt of additional pleadings are concern, the first forum or authority of the first instance should adopt a liberal approach. Sufficient opportunity should be given to the parties to present their case effectively. The additional reply and documents are relevant to the dispute, the reason



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stated by the applicant why the documents could not be filed along with original reply is convincing. In respect of receipt of documents filed along with the reply is a concern there is no need to file any separate application to receive the additional documents because Rule 41 of NCLT Rules, 2016 permits the respondent to file the reply to the petition and copies of documents, what applicable to reply is applicable to additional reply also.

24. In the circumstances, the leave is granted. The additional pleading filed with title sur-rejoinder is taken on record as an Additional Reply.
25. In fine this application is **ALLOWED**.
26. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
27. Certified Copy of this order be issued, if applied for, upon compliance of all requisite formalities.

**Satya Ranjan Prasad**  
**Member (Technical)**

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

Signed on this, 18<sup>th</sup> day of July, 2023.

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