

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

IA.No.2613 of 2023

In

C.P. (IB) 152/MB/2018

Under section 9 of the Insolvency and
Bankruptcy Code, 2016 Read with Rule 11 of
NCLT Rules, 2016

Grim Tech Project India Private Limited

85, Akhand Anand Society, Near Sardar
Bridge, Adajan Roan, Surat – 395009,
Gujarat

..... Applicant/ Operational Creditor

In the matter between

Grim Tech Project India Private Limited

..... Petitioner/ Operational Creditor

Versus

Gammon India Limited

Having address at: - Gammon House,
Veer Savarkar Marg, Prabhadevi,
Mumbai - 400025

..... Respondent/Corporate Debtor

And

**Gammon Engineers and Contractors
Private Limited**

Having address at: - Gammon House,
Veer Savarkar Marg, Prabhadevi,
Mumbai - 400025

..... Proposed Respondent

Order Delivered on :- 26.04.2024

Coram:

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

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

Appearances:

For the Operational Creditor : Adv. D Banerjee a/w Adv. Ketan M

For the Corporate Debtor : Adv. Bhuvan Singh

ORDER

Per: - Coram

1. The present Interlocutory Application is filed by the Applicant to replace Gammon India Limited ('the Original Respondent') with Gammon Engineers and Contractors Private Limited ('Proposed Respondent') in the Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 claiming to be an Operational Creditor for the defaulted principal amount of Rs.2,14,12,448/- due under the outstanding bills together with interest @ 18% per annum from 14.01.2015.

Facts of the case as stated by the Applicant in the Application: -

2. Pursuant to Work Order No. GIL/8934/WO/Piling/Dahej dated 25.01.2011 entered into between the Applicant and the Original Respondent, the Original Respondent vide its letter dated 20.01.2011 requested the Applicant to proceed and start mobilization work. Accordingly, the Applicant started raising running bills (Tax Invoices) which were duly certified by the Original Respondent. Since the Original Respondent failed and neglected to pay the dues, the Applicant through their advocate sent a statutory notice dated 13.01.2015 under Section 433 and 434 of the Companies Act, 1956 which was duly received by the Original Respondent. The Original Respondent vide letter dated 22.01.2015 replied to the statutory notice and requested the Applicant to produce documentary evidence. Subsequently, the Applicant vide his letter dated 17.09.2016 reduced the claim by Rs. 90,43,984/-as service tax was not required to be paid in Special Economic Zone.
3. Since the Original Respondent failed and neglected to pay the dues, the Applicant filed a Company Petition No. 862 of 2016 before the Hon'ble Bombay High Court. After notification of the Code, the said Company

Petition was transferred to the present Tribunal on 22.08.2017 but the same got abetted.

4. The Applicant, thereafter, sent a demand notice in Form-3 under the Code dated 06.11.2017 to the Original Respondent claiming an amount of Rs. 3,17,99,851.07/- and filed the Petition under Section 9 of the Code on 18.01.2018. The Original Respondent filed a reply in the Company Petition on 24.04.2018 and annexed a copy of its reply dated 21.11.2017 issued to the demand notice.
5. In June 2021, the parties argued the matter and reserved the matter for orders. The parties were directed to file written submissions. The Applicant states that the Original Respondent for the first time pointed out in the written submissions that Civil EPC undertaking of the Original Respondent was demerged to the Proposed Respondent pursuant to a Scheme of arrangement between Original Respondent and Proposed Respondent vide Order dated 22.03.2017 with effect from 31.03.2017 ('the Scheme'). It is stated that the project relating to which the services of the Applicant were hired was also transferred to the Proposed Respondent.
6. In the circumstances, the Applicant filed this application seeking to replace the Original Respondent with the Proposed Respondent.

Submissions of the Applicant: -

7. The Applicant submits that it came to know of the change in the liability towards the Applicant only when the written submissions were filed by the Original Respondent on 28.09.2021. The Applicant submits that the amendment is required to correctly and effectively decide the Petition and grant appropriate redressal in the exercise of the powers under the Code.
8. The Applicant also submits that this Tribunal has jurisdiction to allow amendments in the pleadings at any stage of the proceedings, if the same is just and necessary.

Submissions of the Proposed Respondent: -

9. The Proposed Respondent. i.e. Gammon Engineers and Contractors Private Limited submitted its reply and denied all the averments contained in the Company Petition as well as in the present application for amendment.
10. The Proposed Respondent stated that the Work Order for piling work was given by the Original Respondent for which the first invoice was issued on 06.02.2011 and the last invoice was issued on 28.09.2013.

Thereafter, the Applicant issued a statutory notice under Section 434 of the Companies Act, 1956 which was replied to by the Original Respondent vide its reply dated 22.01.2015. Thereafter, the Applicant filed a Company Petition for winding up against the Original Respondent which stood abetted on 22.08.2017.

11. By virtue of an Order dated 22.03.2017 passed by this Tribunal a Scheme was sanctioned whereby certain projects including the project relating to which services were rendered by the Applicant were transferred to the Proposed Respondent.
12. In response to the demand notice dated 06.11.2017, a reply was issued on 21.11.2017 and the claim of the Applicant was denied thereunder. It is stated that the transfer of the project under the Scheme was brought to the notice of the Applicant in the reply dated 21.11.2017 and denied the case of the Applicant that it came to know of the sanctioning of Scheme only through the written submissions filed in June 2021.
13. It is submitted that this Tribunal cannot allow an amendment at this belated stage as Applicant had not issued the demand notice under Section 8 of the Code to the Proposed Respondent and hence, this Tribunal cannot assume jurisdiction to substitute the Proposed Respondent in the Company Petition.

14. It is also contended that as per Rule 155 of the NCLT Rules, 2016 any amendment to rectify a defect in the proceedings must be made within the period of 30 days from the date of completion of proceedings. On account of the same, the present application is barred by limitation. Further, it is contended that there is no application seeking the condonation of delay in filing the present application. Under the circumstances, the present application is liable to be dismissed.

Analysis and Findings: -

15. We have heard the Counsel for the parties and perused the documents on record.
16. The case of the Applicant is that it came to know of the Scheme sanctioning transfer of certain projects from the Original Respondent to the Proposed Respondent for the first time when the written submissions were filed by the parties in June 2021. Per contra, the Proposed Respondent has contended that it had issued a reply dated 21.11.2017 to the demand notice whereby informed the Applicant about the Scheme and annexed a copy of the Reply letter in the reply filed in the Company Petition. It is, however, noted that the Original Respondent in its reply also stated that the reply letter dated 21.11.2017

was returned by the Postal Authorities with remark “left”. Thus, it cannot be assumed that the Applicant was aware of the facts stated in the Reply letter dated 21.11.2017.

17. It is pertinent to observe that the Proposed Respondent has issued reply to the demand notice and filed reply to the present application. Thus, the Proposed Respondent is fully aware of the proceedings from the very beginning.
18. So far the other contentions raised by the Proposed Respondent such as the claims under the invoices are time barred for the purpose of invoking Section 9 of the Code, lack of jurisdiction or defects in the proceeding initiated under Section 9 of the Code or the demand notice under Section 8 of the Code was issued only to the Proposed Respondent, etc. are concerned, the same shall be considered and decided in the Company Petition and not while deciding the present application. It is well-established principle that where amendment is sought to avoid multiplicity of suits, or where the parties in the plaint/petition are wrongly described, the amendment should be allowed and the courts/tribunals have wide discretion in the matter of amendment of pleadings.

19. In the light of the above discussion, we are of the view that the proposed amendment to substitute Proposed Respondent deserves to be allowed. Accordingly, **IA No. 2613/2023 is allowed** permitting the Applicant to substitute the Respondent i.e. Gammon India Limited with Gammon Engineers and Contractors Private Limited.

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**