

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

**I. A. No.3219 of 2023
IN
C. P. No. 431/IB/C-III/2023**

Under Section 60(5) of Insolvency and Bank

Filed by

Marvel Realtors and Developers Limited

Applicant/Corporate Debtor

Vs.

Catalyst Trusteeship Ltd.

...Respondent/Financial Creditor

In the matter of

Catalyst Trusteeship Ltd

...Financial Creditor

Vs.

Marvel Realtors and Developers Limited

....Corporate Debtor

Order delivered on: 30.04.2024

Coram:

MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)

SH. CHARANJEET SINGH GULATI, HON'BLE MEMBER (T)

For the Financial Creditor: Adv. Shyam Kapadia a/w Adv. Yash Dhruva i/b

MDP Partners

For the Corporate Debtor: Adv. Amir Arsiwala a/w Adv. Farzeen C. Pardiwalla

Per: LAKSHMI GURUNG, MEMBER (J)

ORDER

1. The present application has been filed by Marvel Realtors and Developers Limited (“Applicant / Corporate Debtor”) seeking condonation of the delay of 1 day in filing the affidavit in reply dated 27.06.2023 and to take same on record. The bench passed an order on 12.06.2023 which is as follows:

No reply is filed by the Corporate Debtor in the main company petition as well as in the above application. Corporate Debtor is directed to file reply by serving an advance copy on the other side within two weeks failing which corporate debtor’s right to file reply shall stand forfeited.

*List this matter on **27.06.2023.**”*

2. It is submitted by the Applicant that due to certain logistical difficulties, its Authorised Representative was unable to obtain the important documents relevant to the present matter expeditiously. As a result, the Reply on behalf of the Applicant could not be filed within the time period prescribed by this Tribunal. Therefore, the Applicant was only able to get the reply notarised on 27.06.2023 and the copy of the said reply served upon the Petitioners on the same day vide email dated 27.06.2023. Despite having served the copy of the reply on the petitioner, the Applicant could not upload the reply before 27.06.2023 because of certain technical difficulties faced at the time of filing the said reply on

the NCLT e-filing portal. However, the Applicant was able to e-file the said reply letter on the same day.

3. After hearing the submissions and going through the averments and orders, we condone the delay of one day in filing the reply and reply is taken on record which is annexed to this Application.
4. With the above directions, I.A. 3219/2023 is **allowed and disposed of** accordingly.

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)
/rks/

Sd/-

MS. LAKSHMI GURUNG
MEMBER (JUDICIAL)

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

**I. A. No.3237 of 2023
IN
C. P. No. 431/IB/C-III/2023**

Under Section 60(5) of Insolvency and Bank

Filed by

Catalyst Trusteeship Ltd

Applicant/Financial Creditor

Vs.

Marvel Realtors and Developers Limited

...Respondent/Corporate Debtor

In the matter of

Catalyst Trusteeship Ltd

...Financial Creditor

Vs.

Marvel Realtors and Developers Limited

....Corporate Debtor

Order delivered on: 30.04.2024

Coram:

MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)

SH. CHARANJEET SINGH GULATI, HON'BLE MEMBER (T)

For the Financial Creditor: Adv. Shyam Kapadia a/w Adv. Yash Dhruva i/b

MDP Partners

For the Corporate Debtor: Adv. Amir Arsiwala a/w Adv. Farzeen C. Pardiwalla

Per: LAKSHMI GURUNG, MEMBER (J)

ORDER

1. The present application has been filed by Catalyst Trusteeship Limited (“Applicant / Financial Creditor”) seeking amendment of the Company Petition wherein the date of default is sought to be inserted in Part-IV of the petition as 05.06.2022.
2. The Applicant submits that the date of default has not been mentioned in Part-IV of the Company Petition due to inadvertence and not done intentionally or deliberately.
3. The Corporate Debtor has filed reply stating as follows:
 - 3.1. The petitioner is seeking the amendment which would completely modify the very nature of the present case which is impermissible under the law. Corporate Debtor further submits that the perusal of un-amended Part-IV of the petition shows that the Applicant has admitted that the date of default as 31.12.2020.
 - 3.2. The report of information utility shows that the date of default is 31.12.2020. The present application has been preferred at a belated stage and is an afterthought.
 - 3.3. The applicant allegedly claims to have missed out on mentioning the date of default under Part-IV of the main Company Petition. This statement is false as the petition under Part-IV states that the amounts became due for the first time, in respect of the principal and interest for the quarter ended on 31.12.2020. It was only after the CD raise the objection of maintainability of the petition being barred under Section 10A of the Code.

- 3.4. That major amendment has been sought without actually substantiating the circumstances due to which Applicant/Petitioner was unable to mention the alleged date of default at the time of drafting and filing of the petition.
4. Heard Ld. counsel for the parties and perused the record.
5. The main ground for opposing the present application is that by inserting the date of default the applicant is changing the very nature of the present case which is legally impermissible. It is the contention of the Respondent is that the amendment is moved after filing of the reply pointing out that the petition is barred by Section 10A of the Code, merely to overcome the maintainability issue raised by the Corporate Debtor.
6. The applicant submits that the provisions of Code of Civil Procedure, 1908 (CPC) are not applicable to the proceedings under IBC. Even under CPC, Order-VI Rule-17 of CPC permits the Court at any stage to allow amendments liberally.
7. Considering the rival contentions of the parties, we are of the considered view that provisions of CPC are not strictly applicable to the proceedings before this Tribunal, which is constituted under Section 408 of the Companies Act, 2013

Section 424 of Companies Act, 2013 relating to procedure before the Tribunal is reproduced below:

Section 424

“(1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act 1[or of the Insolvency and Bankruptcy

Code, 2016 (31 of 2016)] and of any rules made hereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.”

8. This tribunal is guided by the principles of natural justice subject to the provisions of IBC. There is no bar under IBC in allowing amendment of the petition. It is trite law that all amendments are to be allowed liberally which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. It is also true that any amendment, which proposes to change the very nature of the suit, may not be allowed.
9. In the present case, it is seen from the Part-IV of the petition that description of various facilities have been mentioned with amounts due and due dates of payments. Out of different dates one is within the 10A period and two dates are beyond the 10A period. But there is no specific date of default mentioned in Part-IV of the petition.
10. We are of the opinion that even if we allow the amendment by inserting date of default in Part-IV, no prejudice would be caused to the respondent as at this stage we are not deciding the case on merits and what is the real date of default and whether it is barred by Section 10A period or not will be decided at the time of hearing the main Company Petition.
11. In view of the same, we allow the amendment by inserting the date of default as 05.06.2022.

Accordingly, I.A. 3237/2023 is **allowed** in above terms and **disposed of**.

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

Sd/-

MS. LAKSHMI GURUNG
MEMBER (JUDICIAL)