

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

IA No. 2773/2022

In

C.P. (IB) No. 270/MB/2021

**Under Section 60(5) of Insolvency and
Bankruptcy Code, 2016**

Sangeeta Enterprises

Having address at- 1801/1802, Shree
Heights, 18th Floor, 18th Wadia Street,
Tardeo, Mumbai- 400034

.... Applicant (Original Petitioner)

In the matter of

Sangeeta Enterprises

...Operational Creditor

Versus

Gammon India Limited

...Corporate Debtor

Order Delivered on :- 26/04/2024

Coram:

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

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

Appearances:

For the Applicant : Adv. Siddha Pamecha

For the Respondent : Adv. P.G. Sabnis

ORDER

1. The instant application is filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('the Code') seeking to allow the Applicant for replacing the Corporate Debtor i.e. Gammon India Limited ('Original Respondent') with Gammon Engineers and Contractors Private Limited ('the Proposed Respondent').

Facts of the case as submitted by the Applicant in the Petition: -

2. The Applicant i.e. Sangeeta Enterprises filed a Company Petition No. 270 of 2021 against the Original Respondent under Section 9 of the Code in respect of default in payment of an operational debt of Rs. 1,14,28,812.95/- for initiating Corporate Insolvency Resolution Process against the Original Respondent.
3. It is stated that the Operational Creditor issued a demand notice in terms of Section 8 of the Code dated 21.11.2020 to the Original Respondent before

filing the Company Petition. The proposed Respondent replied to the demand notice vide its letter dated 21.12.2020 wherein it was informed that pursuant to a Scheme approved by this Tribunal on 22.03.2017, the work given by Original Respondent stood transferred to the Proposed Respondent with effect from 31.03.2017.

4. Based upon the reply dated 21.12.2020, the Applicant now seeks amendment of the Company Petition to replace the Original Respondent with the Proposed Respondent.

Submissions of the Original Respondent: -

5. The Original Respondent i.e. Gammon India Limited filed its reply affidavit to the amendment Petition and submitted that the application for amendment is not maintainable in law.
6. It is submitted that in spite of informing the Applicant regarding the sanctioning of the Scheme and consequent transfer of liability in respect of the services rendered by the Applicant vide its reply letter dated 21.12.2020, the Applicant preferred to file the Company Petition against the Original Respondent. Hence, the application for amendment is not maintainable and there is no provisions for replacement of the Corporate Debtor in the Company Petition.

7. It is further contended that the demand notice under Section 8 of the Code was issued to Original Respondent and not to the Proposed Respondent which is a requirement for initiating action under the Code. The amendment is an attempt to fill up a legal lacuna which is not permissible under law as there is substitution of the Corporate Debtor.

Analysis and Findings: -

8. We have heard the Counsel for the parties and perused the documents on record.
9. It is the case of the Applicant that it rendered services to the Original Applicant and bills in respect of the same are still outstanding and this led to the issue of a demand notice and filing of the Company Petition. It is admitted in the application itself that the Original Respondent issued a reply dated 21.12.2020 to the demand notice and informed about the transfer of liability from Original Respondent to Proposed Respondent pursuant to a Demerger Scheme sanctioned by this Tribunal on 22.03.2017 which took effect from 31.03.2017.

10. When the Applicant was duly informed of the change of liability, no explanation or reason is forthcoming nor anything has been stated for filing the application against the Original Respondent instead of the proposed Respondent. Further, no reason has been stated in the application for such belated application for amendment. There is no application for condonation of delay also.
11. In addition to this, it is a requirement under the Code to issue a notice under Section 8 of the Code before filing a Company Petition under Section 9 of the Code. In the present case, the Applicant has not issued any demand notice to the Proposed Respondent despite having been informed about the scheme of Demerger vide order dated 22.03.2017 vide reply dated 21.12.2020.
12. Taking into consideration, the aforesaid circumstances, we find that no case is made out for substitution of Original Respondent by way of the present belated application for amendment. Accordingly, **IA No. 2773/2022** is dismissed being **devoid of merit**.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sushil

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)