

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

IA No. 5435/2023

In

C.P.(IB)/232(MB)/2023

*Application filed under Section 60(5) of the
Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of the NCLT Rules, 2016*

Central Bank of India Limited

Having address at- Chandramukhi, Nariman
Point, Mumbai – 400021 and P-56, Nagpur,
MIDC, near BSNL Office,
Ahmednagar - 414111.

... Applicant

V/s

Superfine Metals Private Limited

Having address at- Plot No. E-29, Supa MIDC,
Village Supa, Tal.: Parner, District-
Ahmednagar- 414302

... Respondent

IN THE MATTER OF

Central Bank of India Limited

... Financial Creditor

V/s

Superfine Metals Private Limited

... Corporate Debtor

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In
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Order Delivered on :- 06/05/2024

Coram:

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

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

Appearances:

For the Applicant : Adv. Rahul Sarda

For the Respondent : Adv. Rohit Gupta a/w Lalit Katatiya
and Mahtab Katariya

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This IA has been filed by the Applicant seeking permission to amend the Company Petition in terms of Schedule of amendment (Exhibit A) annexed with the IA.
2. In nutshell, it has been claimed that the Applicant/Financial Creditor seeks to bring on record certain additional documents and also to correct certain statements in the Company Petition including the date of default. The Applicant seeks to restrict its contention regarding default having been

committed by Corporate Debtor only to two facilities viz. Cash Credit Facility and Ad hoc (CC) limit.

3. The Applicant states that the Applicant/ Financial Creditor has sanctioned and disbursed credit facilities under 4 different types of viz. Cash Credit Facility, Term loans facility, Funded Interest Term Loan (FITL) and Ad hoc (CC) limit. The Applicant seeks to restrict its contention regarding default having been committed by Corporate Debtor only to two facilities viz. Cash Credit Facility and Ad hoc (CC) limit. It is the case of the Applicant that there is a clear case of debt and default in relation to these credit facilities and the default in these two facilities has not been committed within the period prescribed under section 10A of the Insolvency and Bankruptcy code, 2016 (“IBC”).
4. The Applicant states that a Corporate Debtor ought not to be permitted to escape the rigours of the law merely on account of any bona fide and inadvertent errors of the Financial Creditor.
5. The Petitioner states that all the documents and averments which are now sought to be made are within the knowledge of the Corporate Debtor. Hence,

no prejudice shall be caused to the Corporate Debtor if the amendment as prayed for is allowed.

6. The Applicant states that irreparable harm and injury would be caused to the applicant if reliefs were not allowed where as no such prejudice will be caused to the Corporate Debtor as the Corporate Debtor shall have sufficient opportunity to defend the Company Petition on its merits. The *prima facie* case is also in favour of the Applicant/Financial Creditor and the legal position that an applicant is allowed to amend the Company Petition and bring additional documents on record to support its case stands concluded in favour of Applicant/ Financial Creditor.

Reply filed by the Respondent:-

7. In reply, the Respondent denies all the allegations, averments and contentions in the captioned Application for being false and misleading. The Applicant by way of present application does not seek to amend the Present Petition, but is seeking to substitute the Form 1 which essentially amounts to filing a new Petition.
8. The Respondent states that the Applicant is not only reducing the claim by way of amendment but is also pleading an entirely different case qua these

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two facilities in terms of debt sanctioned, granted, commission of default and date of default. More Particularly, the amount in default qua the facilities have been reduced without providing any explanation thereof.

9. The Respondent states the Applicant has stated in Petition that first default occurred on 29th November 2020 when the account was classified as NPA and that a recall notice dated 2nd January 2023 was sent to the Respondent. However, now it is the Applicants case that the default occurred on 10th March 2020 and 24th March 2020.

10. The Respondent states that assuming for the sake of argument that the date of default in a Petition under Section 7 can be amended, even in such a case only the date can be permitted to be 'changed' to bring it in line with the pleadings in the Petition, on the ground that the same has been wrongly mentioned due to an inadvertently error. However, a petitioner cannot be permitted to incorporate entirely new pleadings qua default and the date on which it was committed under the garb of amending the date of default. The Applicant is not amending the date of default alone but is changing the nature of the Petition by way of amendment of pleadings.

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11. The Respondent states that in order to overcome the bar under Section 10A, the Applicant has stated in the Application that the account was classified as NPA on 29 November 2020 as the period of three months from the RBI directives expired on this date. The said case of the Applicant behind classifying the account as NPA has been stated for the first time in the present Application and is clearly only an afterthought to deprive the Respondent of its valid defence under Section 10A.

12. The Respondent states the Applicant's submission that 24th March 2020 is the date of default for the Ad Hoc facility is contrary to its own records. More particularly, the sanction letter dated 26th December 2019 for Ad Hoc limit states that the facility is valid for a period of 90 days and the letter dated 21 March 2020 addressed by the Applicant to the Respondent states that the facility is due for closure on 26th March 2020 meaning thereby that the date of default would be 26th March 2020 which would again fall within the 10A period and, therefore, cannot be claimed in the present Petition under Section 7.

13. Even otherwise, the Applicant has misrepresented to this Tribunal that Ad Hoc facility was a debt granted/disbursed to the Respondent. Instead, the Ad Hoc facility was never granted as a 'debt' and/or disbursed to the

Respondent. Instead, since the Applicant had unreasonably debited interest and charges aggregating to Rs. 3.70 cr. to the Respondent's account, the Respondent at the instance of the Applicant had vide its letter dated 20 December 2019 made a request to the Applicant to grant ad hoc limits of Rs. 3.70 cr. for a period of 90 days so that the Applicant was able to rectify its mistakes and the account is not reflected in default category during that period.

14. It is thus clear that the amount under the Ad Hoc limit herein cannot form part of the present Petition under Section 7 as it was not even a debt disbursed to the Respondent and was, thus, not a financial debt, as disbursement is a pre-condition for a debt to qualify as a 'financial debt'.
15. Even otherwise, the purported default under this facility was never committed by the Respondent. It was the obligation of the Applicant to rectify their mistake of overcharging the Respondent's account, and thus reverse the Ad Hoc facility. However, since the Applicant failed to fulfil its obligation, the account became a default account. Therefore, under no circumstances, can the default under the Ad Hoc limit on 26th March 2020 or otherwise, be attributed to the Respondent.

16. It is further submitted that as in March 2020, the aggregate amount overdue qua the Cash Credit facility was only Rs. 47 lakhs. Therefore, if 10 March 2020 is to be taken as the date of default, the amount in default for the Cash Credit facility can only be the aforesaid amount overdue as on that date and not more than that. In so far as the remaining amount claimed to be in default is concerned, the same was defaulted upon only subsequent to March 2020 as per the Applicant's case, and, therefore, the date of default for the same would be during the 10A period and claim in respect of that cannot form part of the Petition under Section 7 of the Code.

17. In view of the above, it is submitted that even if the amendment is allowed, the Applicant would be in a position to only claim an amount of Rs. 47 lakhs for the cash credit facility as the remaining amount is defaulted during the 10A period.

Analysis and Findings:-

18. We have heard the Counsel for the parties and gone through the record.

19. By way of this amendment, the Applicant/Financial Creditor is seeking to restrict its case with regard to the default committed by the Corporate Debtor only qua two facilities i.e. Cash Credit facility and Ad hoc (CC) limit in

respect of default which is claimed to be falling outside the period prescribed under Section 10A of the IB Code, 2016.

20. On the contrary, the case set up by the Respondent in this case is that the Applicant is attempting to set up an altogether new case by way of an amendment which is not permissible under the law. According to the Counsel for the Respondent, originally the default in respect of all the facilities was treated to be 29.11.2020 when the account of the Respondent was classified as NPA and a recall notice dated 02.01.2023 was sent to the Respondent. As against this, according to the Counsel for the Respondent, now the Applicant is claiming the date of default as 10.03.2020 and 24.03.2020. Counsel for the Respondent has further argued that the default took place on 10.03.2020 and 24.03.2020 in respect of Case Credit facility and Ad hoc (CC) limit facility respectively is not correct and is inconsistent with the already pleaded case that the account turned NPA in November, 2020. According to the Counsel for the Respondent, even the claim of the Applicant regarding date of default in respect of Ad hoc facility to be 24.03.2020 is contrary to its own record and, therefore, the amendment should not be permitted. Counsel for the Respondent has further argued that in fact the so-called Ad hoc facility of Rs. 3.70 crores was never granted and in fact the same was shown to have granted

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only to adjust and rectify some mistakes and errors committed by the Applicant Bank while debiting the amounts.

21. Having heard the Counsel for the parties and after going through the record, we are of the considered view that by way of this application, the Applicant seeks to amend the Petition only to restrict its claim in respect of two facilities i.e. Cash Credit facility and Ad hoc (CC) Limit. The claim of the Applicant is that the default in respect of these two facilities does not fall within the period covered under 10A of the IB Code, 2016 whereas this position has been vehemently resisted by the Counsel for the Respondent who claims that even the default in respect of these facilities is also covered under the 10A period. However, it is a question of fact as to whether or not the bar under Section 10A period is applicable to the facilities i.e. Cash Credit facility and Ad hoc (CC) limit which would be decided on merits and on this ground, in our considered view, at this stage, the proposed amendment cannot be declined.

22. As a result of above discussion, the proposed amendment in the Petition is allowed and the amended Petition incorporating the proposed amendments shall be filed and a copy shall be served upon the Respondent. The

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Respondent shall be at liberty to file a fresh reply, if any, within a period of the three weeks, thereafter the matter will be listed for final arguments. **IA No. 5435/2023 is allowed and disposed of** in the aforesaid terms.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)