

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.303

IA/1422(AHM)2025 in CP(IB)/48(AHM)2023

Proceedings under Section Rule 11 of NCLT Rules,2016

IN THE MATTER OF:

Suwarna Buildcon Pvt Ltd.

.....Applicant

Vs.

Sadbhav Engineering Limited

.....Respondent

Order delivered on: 06/07/2026

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT No.2**

**IA No. 1422/NCLT/AHM/2025
IN
CP(IB) No. 48/NCLT/AHM/2023**

[An Application under Rule 11 of National Company Law Tribunal rules,
2016]

In the matter of:

M/s. Suwarna Buildcon Pvt. Ltd.
CIN: U45200PN2011PTC139359
Having registered office at:
3rd Floor, Office No. 309,
Shoppers Orbit Building-A
S. no. 44A/1, Plot No. 1, Alandi Road,
Visheantwadi, Pune, Maharashtra-411015 Applicant

Versus

M/s. Sadbhav Engineering Limited
CIN: L45400GJ1988PLC011322
Having registered office at:
Sadbhav House,
Opp. Law Garden Police Chowki,
Ellisbridge, Ahmedabad-Gujarat-380006 Respondent

Order pronounced on 06/07/2026

Coram:

**MRS. CHITRA HANKARE,
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

sd/-

sd/-

Appearance:

For the Applicant: Mr. Ankit Pitty, Advocate
For the Respondent: Mr. Ravi Pahwa, Advocate

J U D G M E N T

1. The present application preferred under Rule 11 of the National Company Law Tribunal Rules, 2016 for amendment of CP(IB) No. 48 of 2023.
2. The main application is filed under Section 9 of the IBC, 2016. The Applicant submits that inadvertently the date of default was incorrectly stated. It was clerical and typographical error. The default first arose on 30th April, 2018. The applicant wants to place the accurate date of default to ensure proper adjudication of matter on the basis of factual matrix. It will not introduce any new cause of action. It is submitted that upon the re-verification of records the nature of correction has been arisen. The Petitioner also prayed for condonation of delay in filing of this application, no prejudice will caused to the Respondent by filing the amendment,

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hence prayed for amendment in the petition as per the Schedule-A annexed to the application.

3. The Respondent appeared and submitted that they do not want to file any reply in the matter and seeks time to file written submissions. Thereafter, he only filed written submissions.
4. Perused the written submissions filed by both the parties also heard Ld. Counsels for both the parties. In the written submission the Applicant reiterated that the date of default mentioned due to inadvertently & is typographical/clerical error. It is further submitted that the date of default first occurred on 30th April, 2018 when Corporate Debtor failed to release the payment of Rs. 11,56,07,318/- within 30 days for the work executed during the period of 01.01.2018 to 31.03.2018. The payment certificates quantified the amount payable by the Corporate Debtor. Despite, the certification and acceptance the corresponding payment was not released relevant occurrence default on 30.04.2018.
5. It is further stated that it is settled position of law that an amendment to pleadings can be permitted at any

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stage of the proceedings, so long as the final order has not been pronounced. In order to ensure the real controversy between the parties is effectively and completely adjudicated. In this case no final order is yet passed. It is further submitted that the date of default as mentioned in demand notice does not need to correspond with the date reflected in Section 9 application. The purpose of demand notice under Section 8 of the Code is put to the Corporate Debtor to notice of the existence of debt and occurrence of default and to afford an opportunity to make payment only even if date of default is not mentioned in the demand notice the correction was permissible. It is further stated that while considering the amendment application the merits or demerits of the case need not to seen. It is only necessary to see whether the amendment is necessary for proper adjudication or not? It is further stated that date of default is not a rigid or artificial construct but is a fact based determination which must necessarily emerge from the material placed on record, including invoices, acknowledgment etc.

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6. It is further stated that the proposed amendment does not amount to a change in the cause of action or the foundational basis of the petition. It is merely a correction of an erroneous articulation of already existing facts. The amendment therefore seeks align the pleadings with the correct factual matrix. The Respondent's reliance upon Section 10A is wholly misplaced.

7. The Applicant relied upon following judgments:

- i. *Raj Television Network Ltd vs Thaicom Public Company Ltd, Hon'ble NCLAT.*
- ii. *Dena Bank vs C. Shivkumar Reddy and Anr. (Civil Appeal No. 1650 of 2020), Hon'ble Supreme Court.*
- iii. *Yatra Online Ltd, vs. Ezeego One Travel and tours Ltd. Hon'ble NCLAT*
- iv. *Credbery Advisors India Pvt. Ltd Vs Platinum Holdings Pvt Ltd., Hon'ble NCLAT*
- v. *Puneet P. Bhatia Vs. ASREC (India) Ltd., & Anr. Hon'ble NCLAT.*

8. The Respondent in its written submission stated that the date of default can be altered only in cases of a typographical/arithmetical or clerical error. The present case does not fall within these exceptions. The date of

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default mentioned in the application demand notice as well as Form-D is 08.08.2020. Therefore, now it is not open for the Applicant to take shelter of typographical error in order to substitute the date of default to wriggle out of the rigors of Section 10 A of the Code. The said date was neither inadvertent nor erroneous. The petition is at the stage of final arguments. The proposed amendment is an afterthought its amounts to introducing new and inconsistency case. This change goes to root of the matter. The correction is at belated stage, which is not permissible.

9. The Respondent relied upon following judgements:

- i. *Company Appeal(AT) (Ins.) no. 387 of 2023 Yatra Online Limited vs. Ezeego One Travel and Tours limited*
- ii. *CP(IB) 36 of 2020 Dinesh Kumar Goel Vs. M/s. Shanti Refrigeration Private Limited*
- iii. *Civil Appeal 4050 of 2020 Ramesh Kymal Vs M/s. Siemens Gamesa Renewable Power Pvt ltd.*
- iv. *CP(IB) 52 of 2023 and IA 500 of 2026 Suvarna Buildcon Private Limited Vs. Sadbhav Engineering Limited.,*

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According to Applicant the date of default is inadvertently mentioned in the application and is only a typographical error. From the contentions of the Application as well as written submissions it is crystal clear that consistently the date of default is mentioned as 08.08.2020. The same date is mentioned at various places of the application as well as in the demands. It is pertinent to note that on 08.01.2024, the applicant filed Form-D(NeSL) dated 08.01.2024. The date of default mentioned in the entire certificate is 08.08.2020. When the applicant filed request to NeSL for recording the date of default, it must have been mentioned it correctly. The purpose of filing an application for recording the date of default is authenticated by the agency i.e. NeSL. It cannot be said that it was typographical error in the application made to it as well as in its certificate. As at various documents the same date of default is mentioned; it cannot be just a typographical or clerical error.

10. The date of default mentioned as 08.08.2020 may bring applicant within the ambit of Section 10A of the IBC,

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2016 and if it is so it will certainly change the cause of action to file the main petition. It is true to say that at this stage we need to see the maintainability of the petition on the aspect of date of default. It is also correct to say that the date of default is not unequivocally and can be corrected by way of an amendment. But it is to be seen that whether it is only an error or it affects the whole nature of the petition. The application was filed in the year 2023 , the NeSL certificate of the year 2024 and in the year 2025 this amendment application was filed. There is an inordinate delay in filing application specifically as mentioned above, it is not a typographical or clerical error, it affects the nature of the petition. Hence this amendment cannot be allowed. It certainly alters the nature of the claim and creates new cause of action hence, we pass following order;

ORDER

IA No.1422 of 2025 in CP (IB) No. 48 of 2023 is rejected.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

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CHITRA HANKARE
MEMBER (JUDICIAL)

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