

OCD-6

ORDER SHEET

IA No.GA 5 of 2022  
IN  
CS 42 of 2021  
IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ORIGINAL SIDE  
(COMMERCIAL DIVISION)

ZILLION INFRAPROJECTS PRIVATE LIMITED  
VS.  
SASHASTRA SEEMA BAL (SSB) & ANR.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 23<sup>rd</sup> February, 2023.

Mr. Dhruva Ghosh, Sr. Adv., Mr. Soumen Das, Mr. Altamash  
Alim, Advocates for the plaintiff.  
Ms. Anamika Pandey, Advocate for defendant no.1.  
Mr. Z. Haque, Mrs. A. Upadhyay, Advocates for defendant no.2.

The Court : Affidavit-in-reply filed in Court today is taken on record.

This is an application by the plaintiff for amendment of the plaint. The amendments are indicated in red ink in a copy of the plaint which is annexure 'B' to this application.

On considering the amendments prayed for it appears that the plaintiff is relinquishing its claim against the defendant no.1 but wants the presence of the defendant no.1 as a proper party to the suit. The plaintiff had sought for a decree jointly and severally against the defendants in the plaint as originally filed. The plaintiff is now deleting the said portion and claiming decree only against the defendant no.2. The amendment will not

affect the right of the defendant no.2 as the decree was prayed against it in the plaint as originally filed. The nature and character of the suit will also not change on the defendant no.1 being transposed to the category of proforma defendant because the plaintiff is not seeking any relief against the defendant no.1 but only wants the presence of the defendant no.1 as a proper party.

The amendment is, however, opposed by the defendant no.2 on various grounds which includes the ground that this Court in view of the proceedings under the Insolvency and Bankruptcy Code wherein an application has already been admitted does not have the jurisdiction to receive, try and determine the suit. In such a situation, this Court cannot also entertain the amendment application. The defendant no.2 also says that the authority given by the plaintiff to the deponent was neither valid nor in operation at the time when the plaint was verified and the suit instituted on presenting such plaint.

Interestingly the defendant no.2 has not taken out any independent application for rejection of the plaint and/or dismissal of the suit. It is only interested to borrow the shoulder of defendant no.1 to agitate a demurer point.

In the aforesaid facts and circumstances, the amendment as indicated in red ink in a copy of the plaint annexed to this application and marked with letter 'B' is permitted. The plaint should be amended accordingly. The department shall carry out the amendment within a period of three weeks from date. The plaintiff shall have the right to reverify and reaffirm the plaint. The plaintiff shall serve a copy of the amended plaint on the

defendants and/or their advocates.

The objections raised by the defendant no.2 are left open as the same are not necessary to be adjudicated at this stage while deciding the application for amendment. The defendant no.2 shall, however, be free to take such steps as may be advised on the basis of the objections raised in its affidavit-in-opposition filed in this proceeding.

Nothing further remains to be adjudicated in this application.

The application being GA 5 of 2022 is accordingly disposed of.

(ARINDAM MUKHERJEE, J.)