

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

IA No. 2630/2023

In

CP No.918/MB/2020

Under Rule 154 of National Company Law
Tribunal Rules, 2016

Mr. Bhavesh Rathod

Erstwhile Resolution Professional/Member of
Monitoring Committee of IGOPL Offshore
Private Limited

.... Applicant

In the matter of

IGOPL Offshore Private Limited

Having registered office at :- Floral Deck Plaza,
A-Wing, 6th Floor, Opp. Seepz, Andheri (East),
Mumbai- 400093

....Corporate Debtor

Order Delivered on :-07.11.2023

Coram:

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

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

Appearances:

For the Applicant :Adv. Yahya Batatawala

ORDER

Per: Coram

1. The instant Interlocutory Application is filed by Mr. Bhavesh Rathod, the erstwhile Resolution Professional and Member of the Monitoring Committee of IGOPL Offshore Private Limited under Rule 154 of National Company Law Tribunal Rules, 2016 seeking the following reliefs:
 - (a) Allow the present Application by deleting the words, “The relief, which is not expressly granted above, shall not be construed as granted” in paragraph 9 of the Impugned Order;
 - (b) Allow the present application by appropriately clarifying/modifying paragraph 9 of the Impugned Order;
 - (c) Any other or such other reliefs as this Hon’ble Tribunal may deem fit and proper in the interest of justice.

Brief facts of the case

2. IGOPL Offshore Private Limited, a company registered under the Companies Act, 1956 (**the Corporate Debtor**) was admitted to Corporate Insolvency Resolution Process (**CIRP**) on 15.11.2021 which culminated in the approval of a Resolution Plan submitted by Jubilant Enpro Private Limited (**Successful**

Resolution Applicant) by this Tribunal vide its order dated 11.11.2022. (**Plan Approval Order**).

3. As per Applicant, substantial steps towards implementation of the Approved Resolution Plan have been taken and an amount of approximately Rs. 24 crores has already been expended by the SRA.
4. During the implementation of the approved Resolution Plan, the SRA raised a query regarding the terminology of the Plan Approval Order contained in Paragraph 9 of the said Order and observed that the language used therein was neither in consonance nor in harmony with the reading of the Plan Approval Order in its entirety or intent, nor inter-alia with the law as amended to promote resolution through the provisions of the Bankruptcy and Insolvency Code, 2016 (**the Code**).
5. For case of reference, Paragraph 9 of the Plan Approval Order is set out below:-

“As to the Reliefs and Concessions stated in Clause 1.7 and 1.8 of the Resolution Plan, the exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted. As regards the other reliefs and concessions as sought for, which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016 is granted to the Resolution Applicant. With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted. Further in terms of

the Judgement of Hon'ble Supreme Court in the matter of Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan. In view of the same, this plan is hereby approved.”

6. The Applicant has submitted that the language excerpted above being “*With regards to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above shall not be construed as granted. The exemptions, if any, sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted*” could not have been the intent of the Plan Approval Order.

7. The Applicant has further submitted that it could not have been the intention of the Tribunal to reject the reliefs and concessions which can be applied for/granted as per applicable law, and instead created an anomalous situation by inserting the words – “The relief which is not expressly granted above shall not be construed as granted”. In order to communicate the true intent and spirit of the Plan Approval Order, the Applicant requested for deletion of the following sentence:-

‘The relief which is not expressly granted above shall not be construed as granted’

8. The Applicant has highlighted the incoherence in the language used could lead to certain difficulties at the time of implementation of the Resolution Plan. The Applicant, therefore, has urged that the above clarification/modification in

the terms of the Approved Resolution Plan would be consistent with the letter, spirit and intent of the Code as well as the Plan Approval Order.

Analysis and Decision

We have thoroughly considered the submissions of the Applicant.

9. In the Resolution Plan, the SRA had sought many reliefs and concessions for the Corporate Debtor which include, inter alia, the matters relating to licenses and approvals held by the Corporate Debtor, holding of annual general meeting for the financial year ending on March 31, 2021, appointments and resignations of directors, levy of stamp duty, belated filing of tax returns, non-compliances of Corporate Debtor prior to CIRP, entitlement to carry forward the accumulated business losses and unabsorbed depreciation, reliefs in respect of tax liabilities, increase in the authorised capital and issue of fresh equity, cancellation of existing share capital of the Corporate Debtor etc.

10. The reliefs and concessions sought as above were dealt with by the Tribunal in Paragraph 9 of the Plan Approval Order. The reliefs and concessions relating to payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan were specifically stated as not granted. In the same way, the reliefs and concessions which exempt the Corporate Debtor from liability for any offences committed prior to the commencement of CIRP and as stipulated under Section 32A of the Code is specifically granted to the SRA. With respect to other concessions and reliefs, it is stated that most of them are subsumed in the reliefs granted above, but the relief which is not expressly granted above shall not be construed as granted and the exemptions, if

any, sought in violation of any law in force, to such exemptions shall be construed as not granted. Considering the above, the Applicant is seeking to bring more clarity in Plan Approval Order by deleting a sentence- “The relief which is not expressly granted above shall not be construed as granted”. The impact of such deletion could be that one can hold that all or most of the reliefs and concessions sought by SRA in the Resolution Plan got subsumed in the order approving the Resolution Plan.

11. In the above background, the primary issue arising for our consideration is whether this Tribunal has power and jurisdiction to delete a sentence from the Plan Approval Order pursuant to an application filed under Rule 154 of the National Company Law Rules, 2016 (**NCLT Rules**) which reads as under:

“154. Rectification Order – (1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification.”

A bare reading of Rule 154 of NCLT Rules makes it clear that the power of Tribunal under the said provision is limited to rectification of clerical and arithmetical errors arising from any accidental slip or omission. The scope and ambit of the above Rule cannot be extended to review the terms of the Plan Approval Order to substitute a view, howsoever strong the reasons may be. The order can very well be subjected to appeal before a higher forum but cannot be changed or modified by the same forum.

12. In the above context, the judgement of the Hon’ble Supreme Court in *Dwaraka Das v. State of M.P and Another; (1999) 3 SCC 500*, is extremely relevant. In that case, the Court while considering Section 152 of the Civil

Procedure Code, 1908 (CPC), (which is *pari materia* with Rule 154 of the NCLT Rule), held as follows:

“Section 152 C.P.C. provides for correction of clerical arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, court or the tribunal becomes functus officio and thus being not entitled to vary the terms of the judgments, decrees and orders earlier passed. The correction contemplated are of correcting only accidental omission or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 for which the proper remedy for the aggrieved party is to file appeal or review application. It implies that the Section cannot be pressed into service to correct an omission which is intentional, how erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the province of Sections 151 and 152 of the CPC even after passing of effective order in the Us pending before them. No Court can under the cover of the aforesaid sections modify, alter or add to the terms of its original judgment, decree or order. In the instant case, the trial court had specifically held the respondents-State liable to pay future interest only despite the prayer of the appellant for grant of interest with effect from the date of alleged breach which impliedly meant that the court had rejected the claim of the appellant in so far as pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be accidental omission or mistake as was wrongly done by the trial court vide order dated 30th November, 1973. The High Court was, therefore, justified in setting aside the aforesaid order by accepting the revision petition filed by the State.”

13. Therefore, the Apex Court held that no Court can under the cover of the Sections 151 and 152 of the CPC, modify, alter or add to the terms of its original judgement, decree or order. The provision of Rule 154 of NCLT Rules is similar to Section 152 of the CPC. In the present case, Tribunal would have had good reasons to state that the relief which is not expressly granted above shall not be construed as granted. The incorporation of the said term in the operative portion of the Plan Approval Order cannot be treated as a clerical mistake or arithmetical error arising from any accidental slip or omission.

14. From the above discussion, we hold that the Tribunal cannot, in exercise of powers conferred under Rule 154 of the NCLT Rules, delete certain words, as prayed for by the Applicant, from the order dated 11.11.2022 passed by the Adjudicating Authority approving the Resolution Plan. As a result, the I.A. No. 2630/2023 is dismissed being devoid of merit.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)