



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IBC)/1557(CHE)/2023 in IBA/386/2020

(Filed under Rule 154 read with Rule 11 of NCLT Rules, 2016)

In the matter of M/s. Capricorn Food Products India Limited

Maa Kudargarhi Steel Private Limited

Rep. by its Authorized Representative

Mr. Mukesh Goyal

Ring Road No.2, Opp Bajrang Alloys,

Village Sarora, Raipur,

Chattisgarh – 493 221

BM Food

Rep. by its Authorized Representative

Mr. Mukesh Goyal

Bilaspur Road, Mittkala,

Jogi Bandha, Ambikapur,

Chattisgarh – 497 001

... Applicants

-Versus-

J. Karthiga

Resolution Professional of

Capricorn Food Products India Limited

Sri Nivas, New No.1, Old No. 1052,

41st Street, Korattur, Chennai – 600 080

... Respondents

Present:

For Applicant

:

Kalyan Jhabakh, Advocate

For Respondent

:

T. Ravichandran, Advocate



CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

Order Pronounced on 12th September 2023

ORDER

(hearing conducted through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

The present Application has been filed by the Successful Resolution Applicant of M/s. Capricorn Industries Limited under Rule 154 of NCLT Rules, 2016 seeking relief as follows;

- (i) Allow the present Application; and*
- (ii) Pass necessary directions for rectification of the order dated July 12, 2023 passed in IA(IBC)/1052(CHE)/2022 in IBC/386/2020 to include the entitlement of the Applicant to raise fund in form of debt to make payment of the amount(s) in terms of the resolution plan;*
- (iii) Pass necessary directions directing that the date of approval of the resolution plan of the Applicant shall be construed to the date on which the orders in the present Application are passed:*
- (iv) And/or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice*

2. This Tribunal vide order dated 12.07.2023 passed in IA(IBC)/1056(CHE)/2022 has approved the Resolution Plan submitted by the Applicant.

S. Venkatesh

[Signature]



3. The Applicant has referred to para 4 of the order, wherein it is recorded as follows;

4. SOURCE OF FUND

As per the Resolution Plan, the Resolution Applicant proposes to infuse the entire Resolution Amount of Rs.79.39 Crores through own funds. In support of the same, the Net worth Certificate of the Resolution Applicant certified by a Chartered Accountant is placed at page No.236 and 237 of the Application and the same is captured hereunder;

4. It is stated that the said para does not record the position, as entailed in the Resolution Plan, since as per the Resolution Plan the Applicant is entitled to raise funds in the form of debt. In support of the same, he referred to Clause 9.5 of the Resolution Plan, which is as follows;

9.5 Payment towards Secured Financial Creditor:

9.5.1 RA will infuse a total of Rs 79.14 Crores towards payment of Secured Financial Creditors using its owned funds. Resolution Applicant shall have an option to take support in the shape of debt (if required) from any lenders /financial institutions for the payment of the CD FC Settlement Payment and the Loan Assignment Payment as envisaged in the Resolution Plan

S. V. K. Srinivasan

[Signature]



5. The Applicant states that while approving the Resolution Plan, this Tribunal has inadvertently recorded that the Applicant proposes to infuse the entire resolution amount through own funds. It is stated that on account of the same, the Applicant is unable to avail any loan facility / funds in the form of debt from any banking and / or financial institution. Under such circumstances, the present Application has been moved by the Applicant before this Tribunal on 10.08.2023.

6. Heard the submissions made by the Learned Counsel for the Applicant.

7. The present Application has been filed under Rule 154 of NCLT Rules, 2016 seeking rectification of the order dated 12.07.2023. This Tribunal in para 4 of the Order has observed that the Resolution Applicant shall infuse the entire sum of Rs.79.39 Crores through its own funds.

8. As per the terms of the Resolution plan, the Resolution Applicant is required to infuse a sum of Rs.79.39 Crores within a period of 30 days

S. Venkatesh



from the date of approval of the Resolution Plan. The summary is as follows;

S. No.	STAKEHOLDER	AMOUNT PAYABLE	SOURCE OF FUNDS
1	CIRP Cost (if required) (within T + 30 days)	In full	Infusion by RA through owned funds
2	Workmen and Employees (Within T +30 days)	Rs.0.20 Crore	Infusion by RA through owned funds
3	Operational Creditors, excluding employees and workmen along with Statutory Dues (Within T + 30 days)	Rs.0.05 Crores	Infusion by RA through owned funds
4	Secured Financial Creditors ** (Within T +30 days)	Rs.69.14 Crores	Infusion by RA through owned funds
4	Loan Assignment payment to Secured Financial Creditors (Within T +30 days)	Rs.10 Crores	Payment by Assignee against assignment of debt
	TOTAL RESOLUTION AMOUNT **	Rs.79.39 Crores	

9. The Resolution Plan order dated 12.07.2023, no-where restrains the Applicant to avail any loan in the form of debt from any banking and / or financial institution. In fact, para 4 of the order dated 12.07.2023 never referred to Clause 9.5 of the Resolution Plan. It was only an observation made referring to the table as extracted *supra*. Further, the Resolution Plan as a whole has been approved by this Tribunal, save otherwise certain modification in relation to the continuation of Applications pertaining to PUFÉ Transactions.

S. V. Ashwin



10. Upon perusal of prayer (iii), it would manifest the fact that the Applicant is using this application as a dilatory tactics in order to delay payments to the Financial Creditors.

11. We are of the view that there is no substance in the present Application. Further, it is seen that the Resolution Plan was approved on 12.07.2023, present Application has been filed only on 10.08.2023, which itself shows that the object of filing the present Application is not bonafide.

12. The observation made in para 4 of the order dated 12.07.2023, is only to the effect that the Resolution Applicant has the capability to implement the Resolution Plan. Failure to capture a portion or clause in the Resolution Plan in the order dated 12.07.2023 does not mean that the Applicant is not entitled to raise funds in the form of debt to make payment of the amounts in terms of the Resolution Plan.

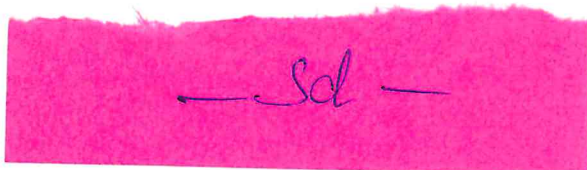
13. Further, the averments made by the Applicant in para 13 of the Application that on account of such inadvertent omission in recording the entitlement of the Applicant to raise debt for payment of amount(s),



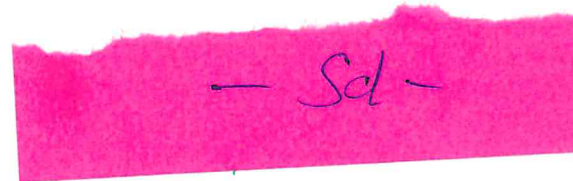
in terms of the Resolution plan, the Applicant is unable to avail any loan facility / funds in the form of debt from any banking and / or financial institution, is not supported or corroborated by any documentary evidence.

14. Hence, we are of the view that the present Application filed by the Applicant is frivolous and vexatious in nature. Thus, the order dated 12.07.2023 passed by this Tribunal cannot be modified as sought for by the Applicant.

15. Accordingly, the present Application stands **dismissed**. No order as to costs.



VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

Raymond