

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI

IA(IBC)/1447(CHE)/2022

IN

CP/IB/130(CHE)/2021

(filed under Rule 11 of the National Company Law Tribunal Rules, 2016)

In the matter of M/s. OHM Srinivasa Paper Boards Private Limited

M/s. Pathy Enterprises

Rep by its Proprietrix – Mrs. Lakshmi,

No. 4/299, 8th Street,

Vengadesapuram, Kottivakkam,

Chennai - 400 041.

... Applicant

-Vs-

M/s. Ohm Srinivasa Paper Boards Private Limited,

Rep by its Managing Director,

Reg Office at:

No. 631, Bye Pass Road,

Thillai Nagar,

Sattur – 626 203.

... Respondent

Order Pronounced on 12th May, 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant: Mr. T. Sri Krishna Bhagavat, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

Under Adjudication is IA(IBC)/1447(CHE)/2022 which has been filed
by **M/s. Pathy Enterprises** (hereinafter referred to as '**Applicant**') under Rule

11 of National Company Law Tribunal Rules, 2016 in relation to an order of dismissal passed in an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code'). The prayer made under the present application is extracted as below:

a) that the error in arithmetic calculation in the order dated 04.11.2022 in IBA 130/2021 be rectified and thus render justice.

2. We have heard Ld. Counsel for the Applicant.

3. This Tribunal vide order dated 04.11.2022 had dismissed the main Application (CP(IB)/130(CHE)/2021) filed under Section 9 of IBC, 2016 seeking to initiate CIRP against the Respondent Company. The relevant portion of the order is extracted as under:

"The only objection which requires consideration is the question of threshold which is required to be met for admitting the present Application. From a perusal of the MoU(s) and ledger account filed by the Applicant, the following emerge:

S No.	Particulars	Amount (In Rupees)
1	Debt as on 28.12.2019 as per MoU	71,00,000/-
2	Value of supply made post the agreement	30,40,000/-
3	Sub-Total	1,01,40,000/-
4	Payment received post the dated agreement (25,00,000 + 3,00,000)	28,00,000/-
5	Outstanding as on date of filing the Application	70,60,000/-

Considering the categorical submission of the Corporate Debtor that the entries in the books of the Operational Creditor reduces the liability of the Corporate Debtor from Rs. 1,01,40,000/- to Rs. 70,60,000/-, we are of the

view that the present application does not meet the statutory threshold of Rs.1,00,00,000/- and therefore fails."

This Tribunal had arrived at the conclusion as to the threshold only based on the materials and documents which were brought on record by the Applicant in support of the main application.

4. Peculiarly, the Applicant has now taken a stand that there was a 'calculation mistake' in the 'MoU' which was filed in support of the main application. During the hearing and adjudication of the main application, there was no submission to the effect that there was any 'calculation error' in the said 'MoU' which is being referred in the present application. There is neither any merit in the application nor any amended 'MoU' has been placed on record.

5. It is abundantly clear that the Applicant is attempting to burden this Tribunal by filing this frivolous and misconceived application. Considering the above circumstances, we are constrained to dismiss this application as frivolous with cost of **Rs. 10,000/- (Rupees Ten Thousand only)** to be paid 'PM National Relief Fund' within 10 Days from the date of this order.

6. Consequently, IA(IBC)/1447(CHE)/2022 stands **disposed off**.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)

V.Shreekumar