

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

IA/349/(CHE)2021 IN IBA/386/2020

*(Filed under Sec. 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rules 11,
13,14 & 15 of the NCLT Rules, 2016*

In the matter of Capricorn Food Products India Private Limited

Vijaya Krishna Agro Food Processing Pvt Ltd,
Rep by its Managing Director,
Mr.Gadde Vijayakumar,
42-2/1-25, 1st Lane,
Devi Nagar, Gandhi Nagaram,
Vijayawada, AP- 520 003

... Applicant

-Vs-

J.Karthiga,
IRP of the Capricorn Food Products India Limited
Sri Nivas, New No.1, Old No.1052,
41st Street, Korattur, Chennai – 600 080

... Respondent

Present:

For Applicant : *Mr.Rohan Rajasekaran, Advocate*
For Respondent : *Mr.T.Ravichandran, Advocate*

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

Order Pronounced on 12th July 2023

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This IA/349(CHE)/2021 is an Application filed on 12.04.2021 by
an Applicant under Section 60(5) of the Insolvency and Bankruptcy

Code, 2016 read with Rules 11, 13, 14 & 15 of the NCLT Rules, 2016 seeking relief as follows;

- a) *Setting aside the rejection of the Applicant's claim and directing the Respondent to accept the entire claim of the Applicant to the tune of Rs.50,50,448/- (Rupees fifty lakhs fifty thousand four hundred and forty-eight only); and*
- b) *For such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.*


FACTS OF THE CASE:

2. It is averred in the Application that the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor viz. Capricorn Food Products India Limited by this Tribunal on 13.11.2020. Pursuant thereto, the IRP caused Paper Publication dated 17.11.2020 and the last date for submission of claim was fixed on 28.11.2020.

3. It is averred that the Applicant had lodged its claim dated 24.11.2020 to the Respondent in Form B along with supporting documents evidencing existence of an operational debt. Vide E-mail dated 10.12.2020, the Respondent had replied stating that the Applicant's claim had been validated and that the IRP had submitted the list of creditors to this Tribunal.

4. On perusal of the said list of creditors dated 06.12.2020, the Applicant was shocked to note that his claim was rejected with the following comments of the Respondent: *"claim rejected as claim amount already adjusted against packing material as per CD records"*.

5. The Applicant had immediately issued E-mail dated 11.12.2020 to the Respondent strongly denying that the packing materials could have been adjusted against the claim amount. The Applicant had further stated that the said entry, if any in the books of the Corporate Debtor, are purely fabricated and was never intimated to the Applicant nor accepted by it.

6. Further, it is stated that there was no debit note issued by the Corporate Debtor nor any entry made by the Corporate Debtor in their GST returns to the effect that any adjustment was made towards packing material. Further that, the packing material belonging to the Applicant were labelled in the name of the Corporate Debtor and lying with the Corporate Debtor in a rusted and dented condition since 2018. Hence, the same could not have been used for others and adjustment could not have been possible. While attaching to the E-mail, pictures of the rusted and dented packing material, the Applicant had requested the Respondent to admit their claim. 

7. The Respondent had noted the contentions of the Applicant vide E-mail dated 11.12.2020 and had assured to look into it with a request to provide further documents such as ledger account. The Applicant had duly furnished the ledger and balance confirmation of the Corporate Debtor vide reply E-mail on the very same day. Thereafter, several reminders were issued to the Respondent seeking the updated status of the Applicant's claim. Apart from E-mail dated 24.12.2020 issued by the Respondent stating that the IRP had noted the Applicant's objection, was studying the documents with a Chartered Accountant and would revert shortly, no response had been received thereafter to any of the representations of the Applicant.

8. Since the various documents sought for by the Respondent was provided, the Applicant was under the impression that the claim will be accepted in full. However, on the perusal of the website on the Corporate Debtor, the applicant was shocked to note that in the updated list of creditors dated 11.02.2021, there was no change in the status of the Applicant's claim. The Applicant was hence constrained to issue a notice dated 24.03.2021 through their counsel wherein the logic of allegedly writing off the entire debt of Rs.50,50,448/- for packing materials worth Rs.12,00,000/- was questioned. Further, a



personal hearing was sought for by the applicant to explain and provide clarification to any queries of the Respondent in reaccepting the claim of the Applicant.

REPLY FILED BY THE RESPONDENT :

9. The Learned Counsel for the Respondent filed the counter wherein it was stated that the Respondent after having gone through the documentary evidence provided by the Applicant and after perusing the records available with the Corporate Debtor had come to the conclusion that no amount is payable. As per the records available with the Corporate Debtor, the Applicant is in possession of packing materials and stock of the corporate debtor as per the following details:

1	Stock belonging to the Corporate Debtor with the Applicant	Rs.12,75,593.87
2	Packaging Material	Rs.33,63,954.93
	Total	Rs.46,39,548.80

10. It is stated that the applicant has not produced any order of the Court or Tribunal that this amount is payable by the Corporate Debtor. In the absence of an adjudication on the claim and in view of the fact that no amount is payable and the amounts are adjusted as per the accounts of the Corporate Debtor, the Applicant was not in a position

to admit the claim. The relevant records and communications with regard to the adjustments are enclosed as Annexure - R1 of the counter typeset.

11. It is stated that this Tribunal in its summary jurisdiction cannot decide on the disputed questions of fact and the Applicant herein has to approach only the competent civil court for adjudication of its claim.

REJOINDER FILED BY THE APPLICANT:

12. The Applicant has filed the Rejoinder wherein it was stated that the alleged entries in the books of the Corporate Debtor in respect of adjusting against packing materials is purely fabricated and was never intimated to the applicant nor accepted by it. No debit note was ever raised nor any entry in the GST returns of the Corporate Debtor to the effect that adjustments were made towards packing materials.

13. With respect to the para 5 of the counter, the applicant replied in its rejoinder that this Tribunal does not possess jurisdiction to decide the matter and that a competent civil court ought to adjudicate the claim. Since moratorium u/s14 is in force, no suits or other proceedings can be filed against the corporate debtor. Further, the applicant placed reliance in the matter of *Gujarat Urja Vikas Nigam*



Ltd vs Amit Gupta 2021 SCCOnline SC 194 wherein the Hon'ble Supreme Court while examining the residuary jurisdiction and jurisdiction of the NCLT u/s 60(5) of the Code has held that in issues or disputes where there is any nexus with the insolvency proceeding, the NCLT would have absolute jurisdiction to deal with such matters. Hence, the applicant is seeking the reliefs to be allowed.

FINDINGS OF THIS TRIBUNAL:

14. Heard the submissions made by the parties and perused the pleadings placed on record. It is seen from the books of the Corporate Debtor that no claim amount is payable to the Applicant. The Applicant has not placed on record any document to show that the goods have been delivered to the Corporate Debtor. It is an admitted fact that the Applicant is in possession of packing materials and stock of the Corporate Debtor. In the absence of any documents substantiating that the goods have been supplied by the Applicant to the Corporate Debtor, the claim of the Applicant cannot be admitted. Thus, the RP was right in placing reliance on the books of accounts of the Corporate Debtor and thereby rejecting the claim of the Applicant.



15. Further, the Resolution Plan in respect of the Corporate Debtor was approved by the CoC with 87.86% and pending adjudication before this Tribunal in IA(IBC)/1052(CHE)/2022. As per the said Resolution Plan, the claim of the Operational Creditor is admitted to the tune of Rs.28.67 Crores. As against the said admitted claim, the Resolution Plan provides payment of Rs.5 Lakhs to the Operational Creditor, which is 0.17% of the admitted claim. Hence, in the present case, even for the sake of argument, the claim of the Operational Creditor is admitted, the Operational Creditor would be paid only a sum of Rs.8,500/-.

16. Be that as it may, in view of the aforesaid facts and circumstances of the case, we are of the view that the RP has rightly rejected the claim of the Applicant. Accordingly, this Application filed by the Applicant stands dismissed. No costs.

— sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

— sd —

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT