

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 1720/KB/2024

In

Company Petition (IB) No. 1632/KB/2018

***An application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016, read with Rule 11 of the National
Company Law Tribunal Rules, 2016.***

IN THE MATTER OF:

Stressed Asset Stabilization Fund

... Financial Creditor.

Versus

Eastern Sugar & Industries Limited

... Corporate Debtor.

And

IN THE MATTER OF:

**Kundan Minerals and Metals Limited (formerly known as Kundan
Care Limited)**

... Applicant.

Versus

National Stock Exchange of India Limited, Mumbai

... Respondent.

Date of Pronouncement: October 24, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

Appearance:

For the Applicant:

**Ms. Manju Bhuteria, Adv.
Mr. Rudraman Bhattacharya, Adv.
Mr. Saptarshi Banerjee, Adv.
Mr. Suryaneel Das, Adv.
Mr. Chiranjit Pal, Adv.
Ms. Srishti Das, Adv.**

For the Respondent:

**Mr. Satadeep Bhattacharya, Adv.
Mr. Karanjeet Sharma, Adv.**

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ORDER

Per: D. Arvind, Member (Technical)

1. The court congregated through hybrid mode.
2. Heard the Ld. Counsels for both parties.
3. The Applicant Kundan Minerals and Metals Limited (formerly known as “Kundan Care Limited”), who is the Successful Resolution Applicant (SRA) of the Corporate Debtor Eastern Sugar & Industries Limited, by way of this application preferred under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code” against the Respondent National Stock Exchange of India Limited, Mumbai, has sought the following reliefs:
 - a) *Allow the present application.*
 - b) *To declare that the SRA is well within its rights to cure defaults made by the RP so as to remain a going concern and meaningfully conclude the CIRP after the RP has become functus officio and that such right shall include the applicant’s right to raise public shareholding to 5% in compliance with regulations of SEBI.*
 - c) *Any other order(s) may deem fit and proper.*

Facts in a nutshell:

4. That, on 04.10.2023, this Adjudicating Authority approved the Resolution Plan submitted by the SRA – Kundan Care Limited in respect of the Corporate Debtor Eastern Sugar & Industries Limited who was admitted in CIRP on 11.02.2022.
5. While approving the resolution plan, this Adjudicating Authority has granted liberty to move any application if required in connection with the implementation of the plan.

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6. Under Clause D of the Addendum dated 23.11.2022 to the Resolution Plan dated 17.11.2022 for the Corporate Debtor, carries out the details of the proposed resolution/ transaction structure concerning Capital Restructure and continued listed entity as follows:

“Corporate Debtor has total 2,91,50,100 shares. Shares of Corporate debtor are listed on the platform of Bombay Stock Exchange (BSE), & National Stock Exchange(NSE), Resolution Applicant proposes to cancel entire promoter group holding of equity/preferential without any consideration in terms of proposed resolution plan. Further the equity held by public is proposed to be reduced from INR 10 per share to INR 1 per share, pursuant to capital

restructuring under the Resolution Plan shareholding of CD after approval of plan by NCLT is proposed to be under:
Shareholding prior and post CIRP period for existing shareholders:

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Sr. No.	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1.	Equity				
	a) Existing Promoters	14,78,039	0	05.07%	N.A.
	b) Pledged with SASF (Treated as public)*	1,15,000	5750	0.39%	0.01%
	c) Public	2,75,57,061	1377853	94.54%	2.28%
	Total Equity	29150100	1383603	100%	2.29%
2	Preference	NIL	NIL	NIL	NIL
	Total Equity	29150100	1383603	100%	2.29%

*5% for public shareholding

Total Shareholding after CIRP is proposed as under:-

Sr. No.	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Existing Shareholders (except shares pledged to SASF)	2,90,35,100	1377853	99.61%	2.28%
2	Pledged with SASF (Treated as Public)	1,15,000	5750	0.39%	0.01%

For Kundan Minerals and Metals Limited


Director / Authorised Signatory



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3	Resolution Applicant or it's Subsidiaries or Associates or Group Companies or trusts.	0	5,91,00,000	0%	97.71%
	Total Equity	29150100	60483603	100%	100%

- Promoter/Guarantor have pledged shares with SASF which have been invoked. The shares pledged to SASF shall be treated as public shareholding and shall be given due treatment as given to public shareholder in the resolution plan.”

Copies of the Original Resolution plan and the Addendum thereafter is conjointly annexed hereunder and marked “A”.

7. The approved resolution plan provides the reduction of the public shareholding to 2.28% which is claimed as contrary to Rule 19A (5) of the Securities Contracts (Regulation) Rules, 1957, hereinafter referred to as “SCR Rules” which says that:

Continuous Listing Requirement.

19A. (1) Every listed company [other than public sector company] shall maintain public shareholding of at least twenty-five per cent.:

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(5) Where the public shareholding in a listed company falls below twenty-five per cent, as a result of implementation of the resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), such company shall bring the public shareholding to twenty-five

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per cent within a maximum period of three years from the date of such fall, in the manner specified by the Securities and Exchange Board of India:

Provided that, if the public shareholding falls below ten per cent, the same shall be increased to at least ten per cent, within a maximum period of [twelve] months from the date of such fall, in the manner specified by the Securities and Exchange Board of India.

*Provided further that every listed company shall maintain public shareholding of **at least five per cent** as a result of implementation of the resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016.*

8. The Applicant contends that the Rule 19A (5) of the SCR Rules, was amended on 18th June 2021, and post amendment the Regulations provide that where the public shareholding in a listed company falls below 25% as a result of implementation of the plan, the SRA will ensure that public shareholding is increased within a time bound manner. It further provides that public shareholding in a listed company should not fall below 5% as a result of the implementation of the resolution plan.

9. The Applicant further contends that providing a reduction of public shareholding to 2.28% in the approved resolution plan was an inadvertent error on the part of the Resolution Professional (RP) and unless such error is rectified the listing facilities cannot be continued. Hence this application.

Applicant's submissions:

10. The learned counsel for the applicant would submit that the rules itself expects the SRA to increase the public share gradually but,

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in a time-bound manner, to be in conformity with the SEBI Regulations.

11. Further, it is submitted that there can be no bar in changing the shareholding to conform with the law after the approval of the resolution plan by the Adjudicating Authority. In the resolution plan approved by this Adjudicating Authority, there is an inadvertent error on the part of the RP, which is curable in nature, but such technicalities cannot be allowed to defeat substantive justice in a manner that the SRA despite clearing all the creditor's dues will not be allowed to revive the corporate debtor as a going concern. It is stated that the non-availability of the listing facilities would prevent the SRA from raising funds from the public and that will seriously impact and jeopardize the applicant's plan to revive the company upon takeover.

12. It is contended that the said change does not prejudice anyone else as the SRA is reallocating shares from its own shares to the public and thus no one can be aggrieved by such an act.

13. It is further contended that the NSE is a statutory body under the Securities Contract (Regulation) Act, 1956 whereas SEBI is the market regulator under the same act. Thus, the respondent NSE cannot object to complying with regulations under the same Act.

Per contra, submissions made by the Respondent National Stock Exchange of India Limited:

14. The Learned Counsel for the respondent would per contra submit that the resolution plan proposed the reduction of public shareholding to 2.28% is in violation of Rule 19A (5) of the SCR Rules.

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15. It is contended that the SCR Rules were amended on June 18, 2021, to include the 5% minimum public shareholding Rule i.e., Rule 19A (5), which was way before the submission of the resolution plan before CoC i.e., on 17.11.2022. the applicant SRA cannot be excused from complying with a provision of law that was in existence when the plan and its addendum was submitted.

16. Further, it is contended that after approval of a resolution plan by the Adjudicating Authority, it cannot be altered or modified. Reliance is placed on the judgment rendered by the Hon'ble Apex Court in ***M.K. Rajagopalan v. Sr. Periasamy Palani Gounder*** reported in **2023 SCC OnLine SC 574**; ***SREI Multiple Asset Investment Trust Vision India Fund v. Deccan Chronicle Marketeers*** reported in **2023 7 SCC 295** and ***Ebix Singapore Private Limited and Ors. vs. Committee of Creditors of Educomp Solutions Limited and Ors.*** reported in **MANU/SC/0628/2021**.

17. It is further submitted that even if it were assumed that the act of the respondent has prejudiced the rights of the applicant, such act is not in relation to insolvency resolution and thus, this Adjudicating Authority lacks the jurisdiction to adjudicate upon the present dispute or the claim of the applicant preferred through the present application. Thus, the present application is not maintainable.

18. We have duly considered the rival contentions and gone through the documents on record.

Analysis and Findings:

19. It is discernible that:

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19.1. Rule 19A (5) of the SCR Rules were amended on 18.06.2021.

19.2. The resolution plan dated 17.11.2022 and its addendum dated 23.11.2022, submitted by the applicant SRA were approved by the CoC with 98.73% of voting shares on 27.11.2022.

19.3. This Adjudicating Authority approved the resolution plan on 04.10.2023.

19.4. In compliance of Regulation 42(4) of SEBI (LODR) Regulations, 2015, the SRA informed the BSE limited and the National Stock Exchange of India Limited (NSE), through a letter dated 06.05.2024, annexed at pages 150-151 to the application, that in its board meeting, the board of directors of the company has fixed **May 20, 2024**, as **“Record Date”** for the purpose of effecting reduction of capital as per the Order dated 04.10.2023.

19.5. The Board of Directors further in its board meeting dated 29.05.2024, passed a resolution proposing the reduction of paid-up share capital of the corporate debtor. It was decided to reduce public shareholding from 2,91,50,100 shares to 30,24,949 shares. The Board Meeting dated 29.05.2024, is annexed at pages 154-155 to the application.

19.6. The NSE on 20.06.2024, through a letter, annexed at page 152 to the application, asked for certain clarifications from the applicant SRA in respect of the difference in the number of shares being allotted to the public between the Adjudicating Authority's

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approved plan and the resolution of board of directors in its meeting dated 29.05.2024.

19.7. On 10.07.2024, the NSE further issued a letter, annexed at page 24 to the Reply Affidavit, requesting the corporate debtor to provide the details pertaining to such differences in the numbers of public shares.

19.8. The corporate debtor through a letter dated 15.07.2024, annexed at page 25 to the Reply Affidavit, informed the NSE that they have increased the public shareholding from 2.28%, as provided in the Resolution Plan to 5% as proposed in the Board Resolution, to the comply with the provisions under Rule 19A (5) of the SCR Rules, 1957, to maintain minimum public shareholdings requirement of 5%, as a result of the implementation of the resolution plan approved under Section 31 of the I&B Code, 2016.

19.9. On 06.08.2024, the NSE further informed the corporate debtor regarding the variation of the public shares in respect of the approved plan and the board resolution and asked to provide a revised plan approved by us considering the treatment of 'capital restructuring' as per board resolution.

20. We culled out the main allegation against the corporate debtor as raised by the respondent NSE is that the shareholdings being allotted to the public as provided in the resolution plan approved on 04.10.2023, by us is 2.28% which is non-compliant with the mandate as enshrined under Rule 19A (5) of the SCR Rules.

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21. We noted that in terms of Clause 6.1 of the resolution plan dated 17.11.2022, the public shares were proposed to be reduced to 14,57,505 which was further reduced to 13,77,853 through the addendum dated 23.11.2022 (Clause D).

22. We further noted that the Board of Directors vide its resolution dated 29.05.2024, approved the allotment of 30,24,949 equity shares to the existing public shareholders pursuant to the reduction of share capital which provides the voting share held after the approval of the plan is 4.98%.

23. It is a trite, axiomatic, and settled position of law that once a resolution plan is approved by the CoC and subsequently, approved by the Adjudicating Authority, the same cannot be modified or changed. But we find that the present situation is quite different. The present application has been preferred for modification of a particular clause relating to public shareholdings which does not conform with Rule 19A (5) of the SCR Rules which mandates that every listed company shall maintain a public shareholding of at least 5% as a consequence of the implementation of the resolution plan approved by the Adjudicating Authority.

24. We find that it was the duty of the RP to examine the resolution plan received by him to confirm that the plan or any part of the plan was not in violation of any existing laws in terms of Section 30(2)(e) of the I&B Code.

25. As per Section 30(2) of the I&B Code, *the resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—*

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(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

[Explanation. -For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

26. The intention of the legislature behind inserting clause (e) to Section 30(2) is very lucid that the resolution of a corporate debtor must be in a lawful manner and sans any violating any existing laws. Thus, mere failure to discharge the duty by RP in respect of verification of substantive rules of maintaining minimum 5% public shareholding in the plan, which is approved by this Adjudicating Authority, a resolution of the corporate debtor as well as the implementation of a resolution plan should not be jeopardized.

27. We find that in an identical circumstance has already been dealt with by the Coordinate Bench NCLT, Hyderabad (Bench – I) in ***Ganapa Narsi Reddy v. BSE Limited*** in **I.A. (IB) No. 1576 of 2023** in **C.P. (IB) No. 115/9/HDB/2020** order dated 20.02.2024, wherein the Coordinate Bench has allowed the application of the SRA praying to approve the amendment to the approved resolution plan to comply the

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rule 19A (5) of SCR Rules. The Co-ordinate Bench passed an order that:

“6. We are inclined to consider the prayer as sought for by the Applicant. Therefore, we grant leave as sought by the Applicant and after granting this relief the revise share holding pattern of the corporate debtor will be as under which will be in compliance to the above Rule of 19 A(5) Securities Contracts (Regulation) Rules, 1957.

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7. In view of the above observations this Application is allowed and disposed of.”

(Emphasis Added)

28. Now, in respect of the approval of the amended resolution plan, we find that the Coordinate Bench NCLT, New Delhi (Court No. III) has approved the amendment of resolution plan in a matter of **Mr. Mohd. Nazim Khan v. M/s. Redhex IT Solutions Private Limited & Anr.** in **IA-730/2023 in (IB) 2602 (ND)/2019**. The exact dictum of the order is reproduced as under:

“3. Analysis and Findings:

i. We have heard the Ld. Counsel appearing for the Applicant from time to time. We have also perused the documents on record.

*ii. We are of the considered view that after the approval of the Resolution Plan, the Adjudicating Authority is not empowered to amend any clause/provision of the Resolution Plan already approved by the CoC as well as by the Adjudicating Authority. **However, considering the circumstances and in the Interest of the***

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shareholders of M/s. India Stuff yarn Limited (“Corporate Debtor”), this Adjudicating Authority finds that the only impediment in the implementation of the Resolution Plan is the issuance of shares which is proposed to be issued in the dematerialization account of the shareholders as per the clause of the Approved Resolution Plan as some of the shareholders are not having any dematerialization account in their name, due to which the implementation of the Resolution Plan is delayed. Hence, in the interest of justice, we hereby direct Mr. MOHD. NAZIM KHAN Chairman of Monitoring Committee of M/s. India Solomon Holdings Limited to consider the issuance of shares to the shareholders in physical form as, if is not possible to issue 95,550 (Ninety Five Thousand Five Hundred Fifty) equity shares to 541 allottees of the Corporate Debtor in the dematerialization account subject to the receiving of NOC for the issue of shares to the shareholders in physical form.

iii. Further, the Chairman is directed to submit the status report after three (3) months from the pronouncement of this Order, giving the details of the shareholders to whom the shares have been issued in the physical form along with their NOC. Thereafter, we also advise the chairman as well as the shareholders to make their best endeavors to get the shares in the dematerialization account, but as time is the ultimate essence in the implementation of the Resolution Plan and in the interest of justice, we allow the Chairman to issue the shares in the physical form as well subject to the condition of their NOC.

4. Order

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*i. In light of the above facts and circumstances, the Application bearing IA-730/2023 filed by Mr. MOHD. NAZIM KHAN Chairman of Monitoring Committee of M/s. India Solomon Holdings Limited filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 stands **allowed.**"*

(Emphasis Added)

29. In respect of jurisdiction to amend the plan, we find that Section 60(5)(c) of the I&B Code has catered to jurisdictional authority to entertain or dispose of the present application in consideration of the facts and circumstances herein. We would refer to the provisions in verbatim as under:

Section 60: Adjudicating Authority for corporate persons.

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Section 60(5): *Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—*

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

*(c) **any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.***

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30. Further, Rule 11 of the National Company Law Tribunal, 2016, (“**NCLT Rules**” in short) provides an ‘Inherent Powers’ to the Adjudicating Authority to pass an order to meet the ends of justice or to prevent abuse of the process of the Tribunal. We would refer to Rule 11 of NCLT Rules, 2016 as under:

Rule 11. Inherent Powers. –

*Nothing in these rules shall be deemed to limit or otherwise affect the **inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.***

31. We also note that the modification sought in the resolution plan approved on 04.10.2023, is not for any change or modification of plan value or its distribution. The modification is in fact beneficial to the public shareholders at large.

32. We further note that while approving the resolution plan on 04.10.2023, in I.A. (IB) No. 1550/KB/2022 in CP (IB) No. 1632/KB/2018, we have granted a liberty at para 44 of the Order **for moving any Application if required in connection with implementation of this Resolution Plan.** Thus, we are of the view that the instant application is well within its jurisdiction and maintainable accordingly.

33. Hence, we feel it appropriate to allow the reliefs sought herein by the applicant SRA and allow the amendment of the resolution plan approved by us on 04.10.2023, as sought for.

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34. In view above, the present application being **I.A. (IB) No. 1720/KB/2024**, preferred by Successful Resolution Applicant of Eastern Sugar & Industries Limited, corporate debtor herein, is **allowed** and **disposed of**, in terms of Section 60(5) of the I&B Code read with Rule 11 of the NCLT Rules, 2016.

35. Certified copy of this order, if applied for with the Registry, be supplied to the parties upon compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 24th Day of October 2024.

Bose, R. K. [LRA]