

S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
20-02-2024 AT 10:30 AM**

IA (IBC) 1576/2023 in CP(IB) No.115/9/HDB/2020
u/s. 9 of IBC, 2016

IN THE MATTER OF:

Coleta Software Solutions Pvt Ltd

...Operational Creditor

VS

Covidh Technologies Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA (IBC) 1576/2023

Orders pronounced. In the result, **this application is allowed** to the extent indicated in the order.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I**

**IA (IB) 1576 OF 2023
IN
CP (IB) No. 115/9/HDB/2020**

Under Section 60(5) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Rule 11 of National Company Law Tribunal Rules

Between:

Ganapa Narsi Reddy
Successful Resolution Applicant,
R/o. 303, Padma Apartments,
Sumitra Nagar, Kukatpally,
Near Kanakadurga Temple, Hyderabad – 500 072.

... Applicant/Successful Resolution Applicant

Versus

BSE Limited,
PJ Towers, Dalat Street,
Mumbai – 400 001, India

... Respondent

In the matter of:

M/s. Coleta Software Solutions Pvt. Ltd.,

... Petitioner/Operational Creditor

And

M/s. Covidh Technologies Ltd.

... Respondent/Corporate Debtor

DATE OF ORDER: 20.02.2024

CORAM:-

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri. Charan Singh, Hon'ble Member (Technical)

PARTIES/COUNSELS APPEARANCE:-

For the Applicant : Shri Maligi Madhusudhana Reddy, CA, FCA

PER: BENCH

ORDER

1. This Application is filed by the Applicant/ Successful Resolution Applicant under Section 60(5) of the Insolvency and Bankruptcy Rules, 2016 read with Rule 11 of NCLT Rules praying to modify the Order dated 10.01.2022 approving resolution plan with revised shareholding pattern as required under Rule of 19A (5) of the Securities Contracts (Regulation) Rules, 1957 by maintaining the public shareholding of 7.24% of the equity resulting implementation of the resolution plan as approved under 31 of the Insolvency and Bankruptcy Code, 2016 and to pass any other order/ orders this Tribunal may deem fit and appropriate in the interest of justice.

2. **The averments put forth by the Applicant are:**

2.1 It is averred that this present application is filed by the Applicant/ Mr. Ganara Narsi Reddy who is the Successful Resolution Applicant submitted that the Resolution Plan for revival of Corporate Debtor which was approved by its Committee of Creditors (CoC) and approved by this Hon'ble Tribunal vide IA No. 393/2021 Orders dated 10.01.2022.

2.2 It is averred that this Tribunal ordered initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor on 05.01.2020 which is annexed as (**Annexure No.1**) herein admitting an application under Section 9 of the Code by one of its Operational Creditor and appointed Mrs. Narala Varalakshmi as Interim Resolution Professional and later was appointed as Resolution Professional by the CoC.

2.3 It is submitted that the Resolution Professional published Expression of Interest, the Applicant herein i.e., Mr. Ganapa Narsi Reddy expressed interest and after confirming its eligibility and providing requisite

documents, the Resolution Applicant submitted its Resolution Plan and on 06.07.2021 the CoC conducted 4th meeting which is annexed as **(Annexure No.2)** and the Resolution Applicant having paid the total plan value of Rs. 30.00 Lakhs as approved by the CoC. The Resolution Applicant has proposed to reduce the 100% of the existing paid-up share capital of the Corporate Debtor through the implementation of the Resolution Plan. Copy of the Resolution Plan along with details of the capital reduction as proposed is in **Annexure No.3**.

2.4 It is averred that the Resolution Professional filed an IA(IB) 393/2021 for approval of the said Resolution Plan and on 10.01.2022 the same was approved by this Tribunal which is annexed as **Annexure No.4** and the Resolution Plan has been successfully completed by the Successful Resolution Applicant. The erstwhile Resolution Professional handed over the assets, properties, accounts and other related information to the SRA as per the approval order.

2.5 It is stated that as per the approved Resolution Plan the Applicant (SRA) completed the cancellation of the 100% of the existing shareholding including public shareholding and allotted shares to SRA in compliance with the approved Resolution Plan relating to all the shareholders.

2.6 It is further stated that the Applicant herein has filed an application for listing of 3,00,000 equity shares as allotted to the SRA and after cancellation of old shares pursuant to the Resolution Plan approved by this Tribunal. The application is filed under Rule 19A (5) of the Securities Contracts (Regulations) Rules, 1957 for relisting of shares was not considered by the BSE Ltd on account of the non-maintenance minimum public shareholding of 5% at the time of filing of application of relisting of shares/securities. As per the above said Rules, every listed company shall maintain public shareholding of at least five percent as a result of implementation of the resolution plan approved under Section 31 of the IBC, 2016 at the time of submission of application for relisting of the equity shares/securities.

2.7 It is further averred that the Applicant (SRA) had approached the Stock Exchanges for revival of the listing of the Company's Securities with filing of appropriate application and fee along with other the documents with BSE Limited (Respondent) which are mandatorily to be submitted to the Stock Exchanges for relisting shares along with the Order passed by this Tribunal. The BSE Limited (Respondent) could not proceed the

same due to non-compliance of Rule 19A as amended in Rule 19A(5) of the Securities Contracts (Regulations) Rules, 1957.

2.8 It is further stated that as per the Rule 19 A (5) of the Securities Contracts (Regulation) Rules, 1957 has not proscribed the minimum public share shareholding at the time of submission of application prior to 18th June, 2021. The listing guidelines before this amendment is as given below:

***“Where the public shareholding in a listed company falls below twenty-five percent, as a result of implementation of the resolution plan approved under Section 31 of the IBC, 2016, such company shall bring the public shareholding to twenty-five percent 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”.
Proviso to the above rule further says: -***

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

As per the above Rule there is no minimum percentage of the public shareholding at the time of filing of application for relisting of shares of the Corporate Debtor.

2.9 It is stated that without considering the recently amended Rule 19A(5) of the Securities Contracts (Regulations) Rules, 1957 the Resolution

Applicant has submitted the Resolution Plan on 29.06.2021. The above Rule was amended by the Securities Exchange Board of India was amended the Regulations dated 18th June, 2021 every listed company must have a **minimum of 5% of public shareholding at the time of filing of application for relisting of equity shares**. The relevant extract from the Securities Contracts (regulation) Rules, 1957 as given below:

Rule 19 A (5) of Securities Contracts (Regulation) Rules, 1957

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

The copy of the Amended Rule 19A(5) of the Securities Contracts (Regulations) Rules, 1957 is attached as **Annexure No.5**.

2.10 It is stated that the approved resolution plan of the Applicant the entire shareholding of the existing shareholders including public shareholding has been cancelled and reduced to ‘Nil’. It was sheer misfortune of the Applicant the amendment came into been just a few days before the Applicant submitted his resolution plan. This seriously impacts and

jeopardize the applicants plans to takeover and run the company with tradable sheers.

2.11 It is further submitted that the Applicant has been advised to approach this Tribunal and pray for relief by way of directions to Respondent to consider the relisting of company shares. On 14.06.2023 mail received from BSE regarding necessary amendment to shareholding which is annexed as **Annexure No.6**. The Applicant prays to approve the following amendment to the approved Resolution Plan:

S.No.	Clause 8 Chapter VII in the Earlier Resolution Plan	Changes proposed in the Resolution Plan
1	The existing share capital of CD is Rs. 10,60,00,000/- (Rupees Ten Crores Sixty Lakhs only). These are shares of face value of share is Rs. 10/- each. This 100% of the shar capital shall be cancelled.	Cancellation and reduction of existing shareholding of the Promoters shareholding is at 100% and reduction of public shareholding by 3 shares to every 1000 shares held by the public shareholder. i.e., person who holds 1000 equity shares will retain 3 equity shares after initiation of the capital reduction under public shareholding category.

2.12 The revised shareholding pattern after consideration of the above amendment in the shareholding of the company as follows:

S. No.	Category	No of Shares Pre- CIRP (Rs.10/- each)	% of Share holding	No of Shares Post-CIRP (Rs. 10/- each)	% of Share holding
1	Existing Promoter Shareholders	27,92,682	26.35%	-	-
2	Existing Public Shareholders	78,07,318	73.65%	23,422	7.24%
3	New Allotment to SRA under this resolution plan (Promoter category)	-	-	3,00,000	92.76%
	Total	106,00,000	100.00%	3,23,422	100.00%

The company is adhering to the above rule of 19A(5) Securities Contracts (Regulation) Rules, 1957 by maintaining a public shareholding of 7.24% of the expanded equity as a result of the implementation of the resolution plan and as per the terms and conditions as approved under 31 of the Insolvency and Bankruptcy Code, 2016.

2.13 It is further stated that the Resolution Applicant has categorically expressed its intention to continue the listing of the Company on the BSE Stock Exchange, and not to go for delisting thereby wanting to provide a source of liquidity for existing shareholders, to maintain investor confidence in the company, and potentially enable the company to raise additional capital. The company has viable business plan and is committed to remaining a going concern.

2.14 It is further submitted that the very objective of submitting this Resolution plan for the Corporate Debtor, which is a listed entity, by the SRA is to avail the benefits of listing the securities with the Stock Exchanges. Therefore, if the amendment as prayed for is not allowed, the SRA would be put to severe hardship and irreparable loss.

2.15 It is further stated that the Hon'ble National Company Law Tribunal, New Delhi Bench has approved the amended resolution plan in the matter of M/s. Redhex IT Solutions Private Limited V. M/s. India Stuff yarn Limited in IA-730/2023 in (IB) 2602 (ND)/2019. The relevant extract of the order is as below:

“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 shareholders of M/s. India Stuff yarn Limited (“Corporate Debtor”), this Adjudicating Authority finds that the only impediment in the 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

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 Soloman 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.”

The copy of the Order is attached as **Annexure No.7.**

2.16 It is further stated that the amendment to the Resolution Plan does not prejudice any stakeholders of the Corporate Debtor nor do the changes cause any hardship or loss to anyone. It is stated that this Adjudicating Authority having jurisdiction to entertain or dispose of this application under Section 60(5) in consideration of the facts and events during the insolvency resolution of the corporate debtor.

“Section 60: Adjudicating Authority for Corporate Debtor.

(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.”

3. This is an application filed by the SRA seeking modification to the approved Resolution plan (order dated 10.01.2022), in view of the fact that Rule 19A(5) of Securities Contracts(Regulation) Rules, 1957 came into existence on 18.06.2021, few days before submission of resolution plan i.e on 29.06.2021 and compliance to the same could not be incorporated in the resolution plan by the resolution applicant. It is submitted that the Resolution plan was approved by Adjudicating Authority which was not complied with Rule 19 A(5) of the Securities Contracts(Regulation)Rules, 1957.

Rule 19 A(5) of the Securities Contracts(Regulation)Rules, 1957 is reproduced as under:

“Where the public shareholding in a listed company falls below twenty-five percent, as a result of implementation of the resolution plan approved under Section 31 of the IBC, 2016, such company shall bring the public shareholding to twenty-five percent 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”.

Proviso to the above rule further says: -

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

4. Now the applicant has approached for re-listing of the Company on BSE and respondent i.e BSE has refused to relist on account of non-compliance of Rule 19A(5) of the Securities Contracts (Regulation) Rules, 1957.
5. In view of the above facts, the Applicant prays to approve the amendment to the approved Resolution plan considering that inadvertently the Resolution Applicant could not include the provision to comply with the above said rule in the resolution plan as it was notified few days before the submission of resolution plan and further considering that this amendment sought by applicant does not prejudice any stake holders of the corporate debtor nor do the changes sought by the applicant, cause severe hardship and irreparable loss to any one. The Applicant prays to approve the following amendment to the approved resolution plan which is as follows:

S.No.	Clause 8 Chapter VII in the Earlier Resolution Plan	Changes proposed in the Resolution Plan
1	The existing share capital of CD is Rs. 10,60,00,000/- (Rupees Ten Crores Sixty Lakhs only). These are shares of face value of share is Rs. 10/- each. This 100% of the share capital shall be cancelled.	Cancellation and reduction of existing shareholding of the Promoters shareholding is at 100% and reduction of public shareholding is by 3 shares to every 1000 shares held by the public shareholder. i.e., person who holds 1000 equity shares will retain 3 equity shares after initiation of the capital reduction under public shareholding category.

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.

S. No.	Category	No of Shares Pre- CIRP (Rs.10/- each)	% of Share holding	No of Shares Post-CIRP (Rs. 10/- each)	% of Share holding
1	Existing Promoter Shareholders	27,92,682	26.35%	-	-

2	Existing Public Shareholders	78,07,318	73.65%	23,422	7.24%
3	New Allotment to SRA under this resolution plan (Promoter category)	-	-	3,00,000	92.76%
	Total	106,00,000	100.00%	3,23,422	100.00%

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

SD
Charan Singh
Member Technical

SD
Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Sridher/Pavani