



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
IA-730/2023
IN
(IB) – 2602(ND)/2019**

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

IN THE MATTER OF:

M/s. REDHEX IT SOLUTIONS PRIVATE LIMITED

..... Operational Creditor

VERSUS

M/s. INDIA STUFFYARN LIMITED

..... Corporate Debtor

AND IN THE MATTER OF:

Mr. MOHD. NAZIM KHAN

Chairman – Monitoring Committee

M/s. India Solomon Holdings Limited

..... Applicant

VERSUS

M/s. REDHEX IT SOLUTIONS PRIVATE LIMITED & Anr.

1. M/s. REDHEX IT SOLUTIONS PRIVATE LIMITED

(CoC Member)

..... Respondent No. 1

2. M/s. SOLOMON HOLDINGS PRIVATE LIMITED

(Resolution Applicant)

..... Respondent No. 2

Order Pronounced On: 24.05.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

**Mr. Mohd. Nazim Khan vs. M/s. Redhex It Solutions Private Limited & Anr.
IA-730/2023 IN (IB) – 2602(ND)/2019
Date of Order : 24.05.2023**



SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Monitoring Committee : Mohd Nazim Khan, Chairman
along with Ms. Garima Kwatra

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. **IA-730/2023** is an Application filed by **Mr. MOHD. NAZIM KHAN** Chairman of Monitoring Committee of M/s. India Solomon Holdings Limited on 04.01.2023, before this Adjudicating Authority under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016, for the directions from this Adjudicating Authority for the issuance of shares to the shareholders in physical form as directed by the Hon'ble NCLAT in its order dated 25.11.2022 in Company Appeal (AT) (Insolvency) No. 1402 of 2022, for seeking the following relief:
 - a) ***“Issue necessary and appropriate directions for issue of shares to the shareholders in physical form.***
 - b) ***Pass any other order that the Hon'ble Tribunal may deem fit.”***

2. **Facts of the Case:**

- a) The Application bearing IA-3383/2021 was filed under Section 30(6) read with Section 31 of IBC, 2016 read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for Approval of Resolution Plan before this Adjudicating Authority and subsequently this Adjudicating Authority approved the Resolution Plan vide Order dated 04.01.2022. Further, The erstwhile Resolution Professional had constituted the Monitoring Agency pursuant to para 10 of the order passed by this Adjudicating Authority dated 04.01.2022, comprising of:

Mr. Mohd. Nazim Khan vs. M/s. Redhex It Solutions Private Limited & Anr.
IA-730/2023 IN (IB) – 2602(ND)/2019
Date of Order : 24.05.2023



- a. Resolution Professional
- b. One Representative of COC; and
- c. One Representative of the Resolution Applicant

The Copy of the Order dated 04.01.2022 along with the approved Resolution Plan is filed along with the Application.

- b) After the constitution of the Monitoring Agency, the erstwhile Resolution Professional convened the First Meeting of the Monitoring Committee on 21st January, 2022 and in the aforesaid meeting Mr. Mohd Nazim Khan, the erstwhile Resolution Professional was appointed as the Chairman of the Monitoring Agency.
- c) The existing shareholding pattern of M/s. India Stuff yarn Limited (“Corporate Debtor”) as on 04.01.2022 (i.e. date of Approval of Plan) and on record date i.e. 19.05.2022, was as follows:

Particulars	No. of Allottees	No. of Shares
(a) Electronic form – CDSL	9	1,24,850
(b) Electronic form – NSDL	16	3,47,600
(c) Physical form	541	95,550
Total	566	5,68,000

- d) The Successful Resolution Applicant i.e. M/s. India Solomon Holdings Limited tried to issue the shares in the dematerialization account of the shareholders of the Corporate Debtor as per para 6.10 (ii) of the Resolution Plan, but it was practically 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 as they were not having any dematerialization account in their name due to which the Resolution Applicant raised the said issue before the Monitoring Committee. The Fourth Meeting of Monitoring Committee was convened on 22.08.2022 wherein the said matter was discussed and Resolution was passed with unanimous consent of all the members of the Committee to substitute the



para 6.10 (ii) of the Resolution Plan with the following subject to the approval of this Adjudicating Authority.

Copy of Minutes of 4th Meeting of Monitoring Committee is filed along with the Application.

The relevant extract of the para 6.10 (ii) is reproduced as under:

“6.10 (ii) Upon completion date and approval of the Plan by the NCLT, all the members of the Corporate Debtor shall become the members of the Resolution Applicant without any change in the number of shares and face value of shares held by the members of the Corporate Debtor and accordingly, the new shares of the Resolution Applicant will be credited to the account of the members of the Corporate Debtor as per the shareholding pattern as reflected in the beneficiary position (BENPOS) on the date of the approval of the Resolution Plan or on the record date, as the case may be without any further act, deed or thing on the part of the Resolution Application.”

- e) There exists a clause i of Para 5.9 of Chapter V of the Resolution Plan duly approved by this Adjudicating Authority which states that the Resolution Applicant can obtain necessary approval on any modification required to comply with the laws in force and to successfully implement the Plan, not jeopardizing the rights of the creditors under the current Plan. The relevant extract of the clause i of Para 5.9 of Chapter V of the Resolution Plan is reproduced as under:

“In the event, it is determined that any provisions of the Resolution plan are unenforceable either on its face or as applied to any claims or transaction and/or in the event any provisions of the Resolution Plan become invalid for reasons other than by breach of any party, the new management of the ISYL may apply to the adjudicating Authority for appropriate as of such



provisions of the Resolution Plan, to satisfaction of the Adjudicating Authority, and such invalidity and/or unenforceability of the provisions of the resolution plan shall not render the whole resolution plan ineffective, unless otherwise directed by the Adjudicating Authority by order.

In case any such modification is required in the Resolution Plan after the receipt of Adjudicating Authority approval, to comply with any laws currently in force or to apply for certain approvals as required under the Resolution Plan or for any other requirements, not jeopardizing the rights of the creditors under the current plan, the new management of the Solomon Holdings Private Limited would obtain necessary approval on any modification required to comply with any laws in force and to successfully implement the plan from Adjudicating Authority, as may be required.”

- f) The Applicant had approached this Tribunal for the approval of the said amendment in the Resolution Plan so that the Resolution Plan can be implemented successfully. However, the said Application was rejected by this Tribunal vide order dated 18.10.2022 in IA-4132/2022, on the ground that subsequent to the approval of the resolution plan, no further amendment is permissible under law, hence the Application was dismissed by this Tribunal imposing a cost of Rs. 10,000/- to be deposited by the Appellant in the Prime Minister’s Relief Fund within a week from the date of the order.

Copy of the order dated 18.10.2022 passed by this Tribunal is filed along with the Application.

- g) Subsequently, an appeal was preferred before the Hon’ble NCLAT under Section 61 of the IBC, 2016 challenging the order on the grounds that this Tribunal has failed to take cognizance of clause



i of Para 5.9 of Chapter V of the Resolution Plan dated 26.06.2021 as approved by this Tribunal vide order dated 04.01.2022, wherein it was approved that the Resolution Applicant can obtain necessary approval on any modification required to comply with the laws in force and to successfully implement the Plan, not jeopardizing the rights of the creditors under the current Plan. Further, the Hon'ble NCLAT vide its judgment dated 25.11.2022 passed in Company Appeal (AT) (Insolvency) No. 1402 of 2022 dismissed the Appeal stating that none of the clauses of the plan is invalid or unenforceable, hence the Resolution Plan is not to be required to be amended. However, the Hon'ble Appellate Tribunal directed the Appellant to make an appropriate application before this Adjudicating Authority for seeking necessary directions for the issuance of physical shares to the shareholders and also set aside the cost imposed by this Tribunal.

The relevant extract of the order dated 25.11.2022 is as follows:

“6- In view of the above, it is open for the appellant to make appropriate application before the adjudicating authority for issuing directions but the prayer for amendment of the plan has rightly been rejected by the Adjudicating Authority.”

Copy of the Hon'ble Appellate Tribunal order dated 25.11.2022 is filed along with the Application.

- h) An observation letter dated 28.12.2022 was received from Metropolitan Stock Exchange regarding the listing of equity shares of M/s. India Solomon Holdings Limited for the relaxation from the applicability of Rule 19(2)(b) of Securities Contract (Regulation) Rules, 1957 which was duly granted. Hence, all the listing compliances relating to Registrar and Share Transfer Agent (RTA), NSDL and CDSL have already been done, ISIN Number has been allotted by NSDL, all documents as demanded by RTA have been shared and payments to all the claimants are



made by the Resolution Applicant, making the best endeavour for successfully implementing the Resolution Plan. Further, the Chairman and the Resolution Applicant are continuously following up with RTA, NSDL, CDSL and RTA for updates.

Copy of the observation letter dated 28.12.2022 issued by Metropolitan Stock Exchange is filed along with the application.

- i) The attention of this Tribunal was also drawn towards Regulation 71 of SEBI (Depository and Participants) Regulations, 2018 which also deals with the handling of physical securities of Listed Entities.

For reference, Regulation 71 is reproduced is as follows:

***“71. Manner of handling share registry work
All matters relating to transfer of securities, maintenance of records of holders of securities, handling of physical securities and establishing connectivity with the depositories shall be handled and maintained at a single point i.e. either in house by the issuer or by a Share Transfer Agent registered with the board.”***

- j) The Applicant has approached this Tribunal for the approval of the amendment in the Resolution Plan so that the Resolution Plan can be implemented successfully.

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 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**

- 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.**



- ii.** The Registry is directed to accept the status report and put up the same status report before the Bench for the final disposal.
- iii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**