IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-(Court-I)
KOLKATA

I.A. (I.B.C) No. 1265/KB/2024
IN
C.P.(I.B.) No. 701/KB/2019

In the matter of:

Chinar Steel Segment Center Private Limited

...Applicant

Versus

Mr. Samir Agarwal & Ors.

...Respondents

Date of pronouncing the order: 03/09/2024

Appearances (through hybrid mode):

For the Applicant : Mr. Rohit Kumar Keshri, Advocate
: Mr. Koshal Agarwal, Advocate
: Mr. Ankit Chaurasia, Advocate

Coram:

Bidisha Banerjee : Member (Judicial)

Balraj Joshi : Member (Technical)

ORDER

Per: Balraj Joshi, Member (Technical)

1. The present application has been filed by the applicant namely Chinar Steel Segment Center Private Limited under Section 60(5) of the Insolvency and Bankruptcy Code 2016 along with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking the following reliefs:

(a)The 2,05,00,000(Two Crore Five Lacs) No. of equity shares of the Corporate Debtor declared extinguished and ISIN along with the physical and demat shares be treated as cancelled;

(b) That a direction upon the NSDL to record the name of the Applicant after extinguishment of shares of the Corporate Debtor;

(c) That a direction upon the CDSL to record the name of the Applicant after extinguishment of shares of the Corporate Debtor

(d) That a direction upon the Registrar of Companies, Kolkata, Ministry of Corporate Affairs, to change the CIN of the company to that of an unlisted company and issue a new Certificate of Incorporation

(e) to pass any such further orders as this Hon'ble Board may deem fit and proper in the interest of justice.

Facts of the case:

2. The Applicant has stated in its application that the Corporate Debtor was admitted into CIRP on 27.09.2019 whereby Respondent No.1 was confirmed the IRP and then as RP. The Corporate Debtor went into liquidation vide order dated 29.04.2020 and the RP was subsequently appointed as the liquidator.

3. Thereafter, the Respondent No.1 published an e-auction notice for sale of Corporate Debtor as a going concern wherein the Applicant appeared as H1 bidder and was confirmed as the successful auction purchaser and letter of intent and sale certificate were issued to the applicant.

4. The Applicant states that it had also submitted an Acquisition Plan and had proposed to take over the entirety of the share capital. It is stated that there was a categorical provision for providing extinguishment of entirety of share capital to NIL and allotting 100% of the share capital to the applicant or its nominees.

5. Subsequent to the acquiring of the Corporate debtor viz. Bhaskar Shrachi Alloys limited as a going concern, the Applicant had filed an IA being I.A(I.B.C) No. 144/KB/2021 praying for several concessions and reliefs, the same were granted accordingly and the IA was disposed of. The Applicant was informed that the shares of the Corporate Debtor were listed in Calcutta Stock Exchange which ceased to carry on trade since 21.03.2014. Upon enquiry it came to the knowledge of the applicant that the said shares stood suspended on and from Financial Years 2013-2014.

6. The Applicant states that from a perusal of status of shares of the Corporate Debtor and the reliefs and concessions sought for in I.A(I.B.C) No. 1216/KB/2023, it is evident that without delisting and extinguishment of shares by the Depositories namely, National Securities Depository Limited (NSDL), Central Depository Services (India) Limited (CDSL), the reliefs cannot be granted. The said reliefs cannot be given effect to until and unless the said shares are extinguished and cancelled. The Respondent No.4 will not record the name of the applicant in the register of member of member of the Corporate Debtor unless the said shares are extinguished and cancelled.

7. **The Calcutta Stock Exchange vide a letter dated 11.01.2024 had allowed to delist the shares and also this Hon’ble Tribunal vide order dated 19.01.2024 in I.A(I.B.C) No. 1216/KB/2023 approved the same.**

8. Despite the status of shares being delisted, the Corporate Identification Number (CIN) of the Corporate Debtor as appearing in the Master data remains that of a Listed Company.

9. It is the case of the applicant that when it approached NSDL and CDSL for extinguishment of the equity shares and issuing fresh shares in favour of the applicant, they refused to do the same as they claimed that the order of this Hon’ble Tribunal nowhere records that the shares of the Corporate Debtor stand extinguished and got cancelled, therefore the applicant has filed the present application.

Analysis

10. We have examined the matter in the light of submissions made by the Ld. Counsel appearing for the applicant and perused the pleadings.

11. It is to be noted here that Successful Auction Purchaser namely Chinar Steel Segment Center Pvt.Ltd. by way of an application being IA No. 144/2021 had sought for certain reliefs and concessions passed upon the acquisition of plan. Various reliefs and concessions were granted by this Adjudicating Authority vide order dated 26th Feb. 2021 The relevant portion of the order is reproduced hereunder:-

4.	*Issue a direction /order thereby directing that the Replacement and reconstitution of the existing board of directors of the Corporate Debtor with the new board of directors can be done without any requirement of any board/ shareholders resolution or any other corporate approval.*	Granted
5.	*Issue a direction /order thereby directing that consolidation of the issued and paid up equity share capital of the Company and issuance of the shares as contemplated in the acquisition plan can be done without any requirement of any board/ shareholders resolution or any other corporate approval.*	Granted
6.	*Issue a direction / order thereby directing that restructuring and increase in the authorised share capital of the Company can be done without any requirement of any board/ shareholders resolution or any other corporate approval.*	Granted
7.	*Issue a direction/order thereby directing that upon restructuring of the company/ corporate debtor, the*	Granted

	company shall be entitled to say any other trading by putting into use its resources.	
8.	*Issue a direction/order thereby directing that amendment and replacement of the MOA and AOA of the Company/ Corporate Debtor can be done without any requirement of any board/ shareholders resolution or any other corporate approval.*	Granted
12.	*Issue a direction /order thereby directing that the Applicant Company be granted at least a period of 2 (two) years from the effectiveness of the plan to complete/immunity from completing all pending compliances under Applicable Laws, including but not limited to filing its various returns with the Income-tax Department, Ministry of Corporate Affairs, Value Added Tax Returns, GST returns, Asansol Durgapur Development Authority, etc.*	Granted
39.	*Issue a direction/order thereby directing that Restructuring and increase in the authorised share capital of the CD as aforesaid without any requirement of any board/ shareholders resolution or any other corporate approval.*	Granted
40.	*Issue a direction/order thereby directing that Amendment and replacement of the MOA and AOA CD[of the Corporate Debtor] without any requirement of any board/shareholders resolution or any other corporate approval.*	Granted

12. As is seen from the above as well as corresponding pleadings, the company had acquired the Corporate Debtor namely M/s Bhaskar Shrachi Alloys Limited through a legal process envisaged in IBC 2016 and as such acquired the company as a going concern in Liquidation.

13. In this regard it is pertinent to mention that the main motive of the IBC, 2016 is to resolve the stressed companies viz. the Corporate Debtor while also maximizing their value and ensuring that the Corporate Debtor is made to

stand on his feet by way of facilitating Successful resolution applicant (SRA) and or a Successful Auction Purchaser (SAP).

14. Towards this end, the said waiver and concessions have been granted to the SRA/SAP. It is relevant to note the relief granted at S.no. 6 above which allows the applicant to restructure and increase the authorised share capital of the Company without any requirement of any board/ shareholders resolution or any other corporate approval. However we find that when the Applicant approached the Depositories i.e. NSDL and CDSL for extinguishment of the Equity shares and issue Fresh Shares in favour of the Applicant herein, the Depositories herein the Respondent No.2 and 3 in the instant Application refused to do as they are claiming that the Order of the Adjudicating Authority nowhere records that the shares of the Corporate Debtor extinguished and got cancelled".

15. Even though it has not been specifically mentioned that the shares of the Corporate Debtor would stand extinguish and was cancelled, which would enable the NSDL and CDSL to consider the extinguishment of the shares of the CD from their respective depositories based on the reliefs and concessions granted by this Adjudicating Authority, it is nonetheless that the applicant who has landed in the shoes of the Corporate Debtor is free to restructure the shareholding as deemed appropriate by it for running the affairs of the Corporate Debtor.

16. It is also noted from the pleadings in this application that the shares of the company were also listed at Calcutta Stock Exchange. However, same has been delisted for running and request by the Company before the said Exchange. A letter in this regard received from Calcutta Stock Exchange Ltd. is placed at page nos. 113 and 115 of the application.

17. In view of the above and in the light of the overall aim of the IBC, 2016, it is essential that management of the Company of afforded a flexibility in

organizing commercial financial as well as corporate governance activities as deem fit and necessary by the new management. Towards this end, we grant the following prayers:-

a. *The 2,05,00,000 (Two Crore Five Lacs) No. of equity shares of the Corporate Debtor declared extinguished and ISIN along with the Physical and demat shares be treated as cancelled;*

b. *That a direction upon the NSDL to record the Name of the Applicant after extinguishment of shares of the Corporate Debtor;*

c. *That a direction upon the CDSL to record the Name of the Applicant after extinguishment of shares of the Corporate Debtor.*

d. *That a direction upon the Registrar of Companies, Kolkata, Ministry of Corporate Affairs, to change the CIN of the Company to that of an unlisted company and issue a new Certificate of Incorporation.*

18. We make it clear that it will be open to the NSDL and CDSL to follow the necessary procedure and observe due formalities for effecting the extinguishment of the existing shares and reorganizing the share capital so that the management is able to carry on the business as per the plan submitted by them with the affairs for buying the CD as a going concern namely the Acquisition plan, which has been duly attached to the letter of intent issued by the liquidator at page 120 of the application.

19. Subsequent to the extinguishment of the Shares capital and reorganizing the same the applicant shall take up the matter of change of CIN with the RoC . who shall consider the request expeditiously as per law.

20. With these above directions, **I.A No. 1265/KB/2024** is accordingly allowed and disposed of.

21. A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

(Balraj Joshi)	**(Bidisha Banerjee)**
Member (Technical)	**Member (Judicial)**

This order is pronounced on 3rd day of September, 2024.

FA_LRA