IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
SPECIAL BENCH
COURT - 1

ITEM No.13

IA/12(AHM)2022 in CP(IB) 221 of 2019

Order under Section Rule 11 r.w 154 NCLT,2016

IN THE MATTER OF:

Pradip Overseas Ltd ....**Applicant**
V/s
Ravi Kapoor Erstwhile RP of Pradip Overseas Ltd ....**Respondent**

Order delivered on ..27/04/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The matters were heard almost in the month of March but orders could not be pronounced because Technical Member was not available. Technical Member will not be available for another couple of weeks, hence, matter cannot be kept pending for pronouncement because hearing was concluded almost a month ago. Hence orders are pronounced invoking Rules 151 of NCLT Rules,2016 with consent of other Member.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

MADAN B GOSAVI
MEMBER (JUDICIAL)

THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1

IA 12 of 2022 in CP(IB) 221 of 2019

[An application under Rule 11 r.w. Rule 154 of the NCLT Rules, 2016]

In the matter between:

Pradip Overseas Limited
A company incorporated under the
Companies Act, 1956.
Having its registered office at:
104, 105, 106, Chacharwadi, Vasna,
Opp. Zydus Cadila, Sarkhej Bavla Highway,
Changodar, Ahmedabad-382213. **.......Applicant**

Versus

Shri Ravi Kapoor,
Erstwile Resolution Professional of
Pradeep Overseas Limited
Having its registered office at:
402, Shaival Plaza, Nr. Gujarat College,
Ellisbridge, Ahmedabad-380006. **......Respondent**

In the matter of:
Standard Chartered Bank
Having its Principal Office at:
1, Basinghal Avenue, London,
EC2V 5DD anda Branch Office
At Crescenzo 7th Floor, C-38/39
G Block, B/h. MCA Club Bandra
Kurla Complex, Bandra (E)
Mumbai-40051 **.....Financial Creditor**

Versus

M/s. Pradip Overseas Limited
Chancharwadi Vasna, Opp. Zydus
Cadila, Sarkhej-Bavla High Way,
Tal: Sanad, Ahmedabad-382213... **.....Corporate Debtor**

Order reserved on : 15.03.2022
Order pronounced on : 27.04.2022

Coram: MADAN B. GOSAVI, MEMBER (J)
KAUSHALENDRA KUMAR SINGH, MEMBER (T)

Appearance:

For the Operational Creditor : Ld. Adv. Mr. Ravi Pahwa
For Corporate Debtor : Ld. CA Mr. Hiten Parikh

ORDER

[Per: Bench]

1. The instant application has been filed by M/s. Pradip Overseas Limited-Applicant under Rule 11 r.w. Rule 154 of the NCLT Rules, 2016 seeking rectification of order dated 14.10.2021 passed by this Adjudicating Authority in IA 549(AHM)2021 in CP(IB) 221/2019.

2. The applicant submitted that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process on 09.11.2020 and Suspended Management submitted its Resolution Plan to acquire the Corporate Debtor being MSME. The CoC approved the same. Thereafter, this

Adjudicating Authority approved the said Resolution Plan vide its order dated 14.10.2021 in IA 549(AHM)2021.

3. The main contention in this application is that as per para 4.6.1 of the Resolution Plan, the Corporate Debtor was a listed company under the BSE, and NSE and the Corporate Debtor had to be de-listed from the BSE and NSE in accordance with the order of this Adjudicating Authority r.w. Regulation 3(3) of the SEBI (De-listing of Equity Shares) Regulations, 2009, and the process of de-listing shall be completed by the Monitoring Committee in accordance with the aforesaid para of the Resolution Plan. However, this Adjudicating Authority vide order dated 14.10.2021, inadvertently, directed the Resolution Applicant to maintain the public shareholding at a minimum 5% which is applicable on the listing company.

   I. Para 4.6.1 of the Resolution Plan reads as under:

      "4.6.1 De-Listing
      As an integral part of the Resolution Plan, with effect from the date of de-listing approved by the BSE Ltd ("BSE") and the National Stock Exchange of India Ltd. ("NSE"), the equity shares of the Corporate Debtor shall be de-listed from BSE and NSE in accordance with the order of the Hon'ble NCLT read with Regulation 3(3) of the SEBI (De-listing of Equity Shares) Regulations, 2009. The intimation to Stock Exchanges for de-listing will be made by the Monitoring Committee within

one working day of the effective date- i.e. the Hon'ble NCLT approval date of the Resolution Plan. Thereafter the required application would be filed by the Corporate Debtor for de-listing of the equity shares from the Stock Exchanges within 10(ten) working days of the effective date."

II. Para 10(10)(X) of the order dated 14.10.2021 is as under:

"...X. On the effective date and with effect from the appointed date, the entire existing share capital of the Corporate Debtor shall stand extinguished without any payment (including any cancelled value of the said equity shares or preference shares) to shareholders of the Corporate Debtor holding such existing share capital. The Resolution Applicant would be entitled to issue new equity share capital in accordance with the provisions of the Companies Act, 2013 read with rules and regulations made there-under. However, the Resolution Applicant shall maintain public shareholding at minimum 5% as per the norms prescribed by IBBI and remaining 95% share capital shall be held by Resolution Applicant...."

4. The Monitoring Committee vide its communication dated 23.10.2021 made the communication of the order of this Adjudicating Authority dated 14.10.2021 for de-listing of securities to the BSE and NSE and an application which was required to be filed for de-listing of securities was also sent through an e-mail dated 30.10.32021 to the BSE and NSE. The NSE and BSE vide its letter dated 11.03.2022, 09.03.2022 respectively allowed the de-listing of securities of the Corporate Debtor w.e.f. 16.03.2022. Hence, the

securities of the Corporate Debtor have been de-listed from the NSE and BSE.

5. We have heard the Learned Counsels for both sides and perused the material available on record. It is noted that this Adjudicating Authority vide its order dated 14.10.2021 [at para-10(10)(X)] has already given a direction for extinguishment of the share capital of the Corporate Debtor without any payment (including any cancelled value of the said equity shares or preference shares). However, this Adjudicating Authority, given a direction to the Resolution Applicant to maintain the public shareholding at minimum 5% which is not applicable as against the Corporate Debtor. As it has been proposed in the Resolution Plan (at para 4.6.1) for de-listing of the securities from NSE and BSE as per applicable Regulations and directions of this Adjudicating Authority after the approval of the Resolution Plan. The same has already been complied with by the Monitoring Committee and the NSE and BSE have delisted the securities of the Corporate Debtor. Hence, we are of the considered view that the direction with respect to maintain the minimum 5% public

shareholding is merely a typographical error and it will not affect the object or any implications of the Resolution Plan. Accordingly, we allow the present application and direct to read para-10(10) (X) of the order of this Adjudicating Authority dated 14.10.2021 in IA 459 (AHM)2021 as under:

> **"10(10)(X).** On the effective date and with effect from the appointed date, the entire existing share capital of the Corporate Debtor shall stand extinguished without any payment (including any cancelled value of the said equity shares or preference shares) to shareholders of the Corporate Debtor holding such existing share capital. The Resolution Applicant would be entitled to issue new equity share capital in accordance with the provisions of the Companies Act, 2013 read with rules and regulations made thereunder."

6. Accordingly, IA No. 12 of 2022 in CP(IB) 221 of 2019 stands allowed and disposed of.

-SD-

(KAUSHALEDRA KUMAR SINGH)
MEMBER (TECHNICAL)

(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Rajeev Sen/Stenographer