IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, COURT NO. II

KOLKATA

I.A. (I.B.) No. 392/KB/2025

IN

C.P. (I.B.) No. 24/KB/2024

An application under Section 60(5) of the Insolvency and Bankruptcy Code of India, 2016, read with Sections 18 & 25 and Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

KUNDAN MINERALS AND METALS LIMITED,

3 Scindia House, Second Floor,

Janpath, Connaught Place,

New Delhi – 110001.

...Applicant

Verses

1. **MR. SANDEEP KHAITAN,** Resolution Professional of Shree Hanuman Sugar & Industries Limited, 2nd Floor, Sanmati Plaza, Opposite IDBI Bank, G.S. Road, Guwahati, Assam – 781005.
2. **STRESSED ASSETS STABILIZATION FUND TRUST**, IDBI Tower, 3rd Floor, WTC Complex, Cuffe Parade Colaba, Mumbai, Maharashtra – 400005.

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DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (I.B.) No. 392/KB/2025
IN
C.P. (I.B.) No. 24/KB/2024

3. **OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED**, Kohinoor Square, 47th Floor N.C. Kelkar Marg, R.G. Gadkari Chowk Dadar (West), Mumbai, Maharashtra – 400028.

...Respondents

CORAM: Mr. Labh Singh, Member (Judicial)
Ms. Rekha Kantilal Shah, Member (Technical)

Present:

Mr. Joy Saha, Sr. Adv.	**] For the Applicant**
Mr. Shaunak Mitra, Adv.	**]**
Mr Prithu Garg, Adv.	**]**
Mr. Ashutosh Arvind Kumar, Adv.	**]**
Mr. Aryan Bhat, Adv.	**]**
Mr. Devarajan Raman, CS.	**] For the RP**
Ms. Tannya Baranwal, Adv.	**]**
Ms. Vansika Khaitan, Adv.	**]**

Date of Pronouncement:09.07.2026

O R D E R

Labh Singh, Member (Judicial)

1. The present application has been filed by the applicant against the Respondents under Section 60(5) of the

Insolvency and Bankruptcy Code, 2016 (for short 'the Code') seeking directions upon respondent No. 1 to exclude several assets, plant, machinery and equipment, from the present Corporate Insolvency and Resolution Process(for 'CIRP') of the Corporate Debtor as the applicant is having its claim on the said assets.

2. The applicant Kundan Minerals and Metals Limited, formally known as Eastern Sugar and Industries Limited, is an erstwhile sister concern of the Corporate Debtor. Respondent No. 1 is the Resolution Professional of the Corporate Debtor, who was appointed by this Tribunal vide order dated 27.09.2024 in C.P. (I.B.) No. 24/KB/2024. The Respondent No. 2 is the Lead Financial Creditor in the applicant's CIRP and is also the petitioner in the present company petition. The respondent No. 3 is the Purchaser/Assignee of Respondent No. 2 in respect of the debt owned by the Corporate Debtor. The Corporate Debtor is Shree Hanuman Sugar & Industries Limited, who is currently undergoing CIRP process.

3. The applicant had taken on lease the sugar mill/factory (hereinafter being referred to as the 'scheduled property') from the Corporate Debtor vide Lease Agreement dated 28.08.1994. The scheduled property comprises land admeasuring 24 Bighas 15 Cottahs and 2 Dhurs situated in

Mouza Beriarpur and Belbanwa Thana and land admeasuring 162-17-3.1/4 situated in Village Baraipur, P.S. Motihari No. 196 and 187, Motihari, East Champaran, Bihar. The lease agreement was executed for a term of five sugarcane crushing seasons which was extended vide subsequent lease deed dated 31.05.1999 for another 30 crushing seasons.

4. It is submitted that after taking possession of the scheduled property, the applicant made significant investments such as installation of Plant, Machinery, Equipment and Allied Structures and carried out operations till 2004-2005.

5. On 31.05.2006, the applicant and the Corporate Debtor executed a Deed of Surrender of Lease which included the provisions stating that the latter would purchase the assets by paying the value of assets as per the Principal Agreement. In the absence of any payment from the latter, the purchase would never be completed, and the assets will remain on the scheduled property and in possession of the Corporate Debtor.

6. This Tribunal, vide order dated 11.02.2022 passed in **C.P. (I.B.) No. 1632/KB/2018**, admitted the applicant in the Corporate Insolvency Resolution Process under the Code. The Resolution Professional of the applicant published an

information memorandum on 20.07.2022 revised on 25.07.2022. The information memorandum has the assets accounted for in the audited books of account of the applicant and having a book value of Rs. 51.97 crores in the financial years of 2018-19, 2019-2020, 2020-21 and 2021-22.

7. It has been further submitted that the Virtual Data Room was created by the RP containing an itemised list of the assets. This Tribunal, vide order dated 04.10.2023, approved the Resolution Plan for the revival of the applicant. Therefore, vide the same order dated 04.10.2023, all assets of the applicant stood permanently vested in the applicant and were free from any liabilities and encumbrances.

8. It has further been submitted that the applicant had sent hired security to take possession of the assets, but they were forced to leave the premises by the security hired by respondent No. 1. Subsequently, respondent No. 1 published a Form ‘G’ along with the advertisement on 10.01.2025 which includes the assets claimed by the applicant.

9. It is further submitted that in the annual reports filed by the Corporate Debtor for the year 2005 to 2024, it is stated that the assets that were to be acquired by the Corporate Debtor was covered by the Resolution Plan of the applicant and thus, such acquisition would stand nullified. Thus, it

is the applicant's stance that the sale of assets that were contracted to be sold now stands cancelled, thus, the assets were owned by the applicant.

10. It has further been submitted by the applicant that respondent No.1 has, without any due diligence into the title of the assets, included the property in question with the Corporate Debtor's assets and that respondent No. 2, the lead CoC member in the applicant's CIRP, was aware of this information but did not raise any concerns.

11. The applicant, in support of its application, has relied upon a copy of Certificate of Change of Name issued by Ministry of Corporate Affairs Annexure A-1, a copy of the lease deed dated 28.08.1994 Annexure A-2, a copy of the Deed of Surrender Annexure A-3, the copy of the Applicant's IM Annexure A-4, a copy of the list as found in the Virtual Data Room Annexure A-5, A copy of the Resolution Plan dated 17.11.2022 Annexure A-6(Colly), a copy of the order dated 04.10.2023 Annexure A-7, and a copy of the Form 'G' dated 10.01.2025 along with the advertisement as Annexure A-11 and Annexure A -12.

12. Therefore, a prayer has been made to allow the present application.

13. Respondent no. 1 appeared in pursuance of notice issued by this Tribunal and filed his reply raising preliminary objection that the present interlocutory application is not maintainable at law and facts. The present Petition has been filed in gross abuse of the process of law and the same is liable to be dismissed in limine.

14. Respondent No. 1 submits that insofar as the main plea of the applicant that the assets in the scheduled premises belong to the applicant, the applicant has failed to establish the claim as no invoices or receipts of purchase of the instant assets have been put on record as evidence. This claim is entirely based on the information memorandum of the RP appointed during the ESIL's CIRP, wherein neither the assets were particularly mentioned nor were the location disclosed. The Respondent No. 1 was not the member of the CoC and thus, was not able to dispute the addition of the assets listed in the 'IM'.

15. It has further been replied that the applicant had not taken any steps to acquire possession of the assets when the Resolution Plan for ESIL was approved on 04.10.2023. It is quite sudden that the applicant is claiming title after commencement of the CIRP of the Corporate Debtor on 27.09.2025. The scheduled property was leased to another

company before the applicant's lease. Thus, the latter's claim that a skeleton factory was leased and they had to install the equipment is without any merit. The lease deed dated 22.08.1994 records that the premises comprised the building and structures fixed and any movable assets which formed a part of the Sugar Mill. The deed of surrender dated 31.05.2006 further states that the ESIL would have to relinquish all of the leased estate and deliver possession and any interest would stand extinguished as if the lease was never granted.

16. It has further been replied that the last crushing season for the ESIL was for the year 2003-04, after which it ceased operations. From 2006 onwards, the Corporate Debtor gained control and further made additions to the plant and machinery and from the year 2014, the premises remained non-operational. The ESIL disclosed, in the Annual Reports filed for the year 2005 and 2006, its plan to enter into lease with another sugar factor. Following the shutdown of the sugar business, there was significant capital expenditure primarily on plant and machinery between the financial years of 2004 to 2012 amounting to about Rs. 47.25 crores. Thus, given the timing and the circumstances, these

additions could not have been added to the Scheduled Property.

17. It has also been replied that there is an addition of Rs. 67.97 crores, during the operation of the lease, to the plant and machinery. During the year 2006-007 till 2011-12, there was an addition of assets of Rs. 33.86 crores and a corresponding sale of Rs. 52.62 crores.

18. IT has further been replied that 'ESIL' had negligible revenue in the financial year of 2005 and none in the year 2006. After cancellation of the lease, the 'ESIL' has earned revenue till the financial year of 2014-2015 and there is no revenue or addition of any assets from the financial years of 2015-16 to 2022-23. After the acquisition of ESIL by the Applicant, Rs. 67.14 crores of assets were written off. ESIL was acquired by the applicant for Rs. 5.10 crores as against a net block of Rs. 51.98 crores as per the books.

19. It is further submitted that the respondent, vide an email dated 13.11.2024, sought clarification from the applicant on the ownership of the assets and asked for ESIL's fixed assets register, IM and any other identification reports from ESIL's resolution process; however, the applicant failed to respond. Thus, the answering respondent looks at this as a move to withhold information. The answering

respondent also emphasises that the applicant has maintained security on the scheduled premises during ESIL's CIRP process but still failed to segregate and identify the claimed assets.

20. Respondent no. 1, in support of his reply, has relied on a copy of the annual report of the ESIL for the financial years of 2003-04, 2011-12 and 2024-25 Annexure-A and the copy of the email dated 13.11.2024 **Annexure – B.**

21. The applicant filed its rejoinder to reply filed by the respondent no. 1 denying the content of the reply affidavit and reasserted the facts pleaded in the present application. Which are not reproduced in entirety for sake of brevity.

22. It has been submitted in rejoinder that the applicant incurred expenditure for renovation, modernisation and expansion which were from the applicant's funds. The clause 7 of the deed mandated the Corporate Debtor to pay for the value of these renovations and additions. It is also stated that the applicant has the right to retain possession until payment is successful. Further, vide the lease of surrender dated 31.05.2006, the scheduled property was surrendered not the title of the assets added.

23. The approval of the Resolution Plan for the applicant's CIRP vide the order dated 04.10.2023 is conclusive proof that the title of the assets is vested with the applicant. The assets were added in the IM after due diligence by the responsible RP and approved by the CoC. Thus, the respondent cannot attack this order by demanding precursor documents.

24. It has further been submitted that the write-off stated by the respondent is misinterpreted as it occurred during the CIRP restructuring and is a technical financial adjustment required to implement the Resolution Plan. These were mere entries in the books of accounts. It is related to book-value, not the physical existence of the lega title of an asset.

25. It has further been submitted that the capital expenditure of Rs. 67.63 crores, during the financial year 1996-97 ,is due to renovation and modernisation of the scheduled premises as it is the period when the applicant was in lawful possession of the same. The contention that the expenditure was used for another site is nothing but conjecture as no documentary evidence was produced to support his claim by the Respondent.

26. Heard Learned Counsel appearing on behalf of the applicant and the respondents. We have gone through the pleadings of

the parties and documents placed on record. We have duly appreciated the law applicable on the facts and circumstances of the present case.

27. The question arises whether the applicant's right, title and interest over assets in question installed in the scheduled premises could be excluded from the CIRP process.

28. Insofar as jurisdiction of this Adjudicating Authority is concerned, the provision of Section 60(5) of the Code provides for the same which read as under:

> ***"60. Adjudicating authority for corporate persons.–***
>
> *xxxxxx*
>
> *(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."*

29. Thus as per Section 60(5) of the Code, this Tribunal is empowered to entertain or dispose of any application, claim or question of law or facts with relation to the Corporate Debtor or the insolvency process.

30. The Hon'ble NCLAT held in the case of *Dynepro Pvt. Ltd. v. V. Nagarajan (2019) ibclaw.in 24 NCLAT*, that when the claim is not against the Corporate Debtor, the Adjudicating Authority does not have the jurisdiction of deciding it. The relevant portion of the judgement is reproduced below:

> *"**21.** In the present case the dispute relating to claim and counter claim as made by one or other parties, is brought to our notice by the Resolution Professional. The Resolution Professional while held that the material belongs to the Corporate Debtor, apart from the Appellants, other parties have also made claim that the same very material belongs to them. As the claim is not against the Corporate Debtor or its subsidiaries but includes inter-se claim for the same very material, such dispute cannot be decided by the Adjudicating*

Authority under Sub-section (5) of Section 60 of the I&B Code."

31. In the instant case, the dispute with regard to title is between the applicant and the Corporate Debtor. The question of title is directly related to the Corporate Debtor and the ongoing insolvency process, bringing it under the ambit of section 60(5) of the Code. Therefore, this Tribunal has jurisdiction to entertain and try the present application.

32. Now coming to the main question involved in the present application, it is an undisputed fact that both the lease deeds dated 28.08.1994 and 31.05.1999 were entered between the applicant and the Corporate Debtor. Subsequently, a deed of surrender was executed by the applicant and the Corporate Debtor on 31.05.2006 to give up peaceful possession of the scheduled premises.

33. It is also noted that there are no invoices or receipts submitted on record by the applicant to claim title of the assets and machinery. Therefore, it is relevant to refer to the relevant clause of the above referred deeds to arrive at conclusion.

34. The Corporate Debtor, vide lease agreement dated 28.08.1994, gave right to the applicant to make additions to the existing fixed assets; and upon expiry of the lease or sooner determination, such additions were to be taken over by the Corporate Debtor at the cost incurred for the additions. The relevant portion of the deed dated 28.08.1994 Annexure A-2, is extracted below:

> *"C. i) The Lessee will be at liberty to make additions to fixed assets and will not be required to pay additional rent on additions so made by the Lessee in the said factory during the term of the lease.*
>
> *ii) On the expiration or sooner determination of the term of the Lease such additions will be taken over by the Lessor at cost incurred by the Lessee less depreciation calculated on straight line method as provided on the date of this agreement and/or in Section 205(2)(b) of the Companies Act,1956."*

35. On perusal of recital of the deed dated 31.05.1999, it is clear that on expiry of the term of lease, any payable amount with respect to the additions to the buildings and structure shall be done to the Lessee, i.e. the applicant. In the event of a default on the part of the Lessor, i.e. the Corporate Debtor, the Lessee shall have the option to hold premises till payment is completed. The relevant

portion of the deed dated 31.05.1999 Annexure A-14, is extracted below:

> *"Notwithstanding anything herein before contained the Lessor shall on the expiry or sooner determination of the term hereby created pay to the lessee amounts payable if any by the lessor to the Lessee under terms hereof on respect of additions to buildings and structures and the Lessee shall on receipt of such amounts as stated in the clause '4' sub-clause (iv) hereinabove yield and deliver up possession of the said plot to the Lessor, and in the event of default on the part of the Lessor, and in the event of have the option to continue to hold the said plots agreed between the parties until payment of the said amounts and further amounts of any that may further be payable by the Lessor to the Lessee for the period after such expiry sooner determination."*

36. However, in the Deed of Surrender dated 31.05.2006, all its leasehold estate and interest were given up and surrendered in favour of the Corporate Debtor consequent upon payment agreed to be paid for the value of the asset and possession was also delivered to the Corporate Debtor. The relevant clause of the deed dated 31.05.2006, **Annexure A-3**, is reproduced as under:

> *"NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration the value of*

the assets as per Principal Agreement to be paid by the Shree Hanuman Sugar & Industries Ltd to Eastern Sugar & Industries Ltd., The said Eastern Sugar & Industries Ltd. as beneficial user of the said factory do hereby give up and relinquish all its leasehold estate and interest in and surrender and deliver possession to the said Shree Hanuman Sugar & Industries Ltd of the said factory comprised in and by the said deed of lease TO HOLD the same as before the lease by the said Shree Hanuman Sugar & Industries Ltd. TO THE INTENT and objects that the said lease shall stand determined and all other rights and interest of the said Eastern Sugar & Industries Ltd. in the said factory under or by virtue of the said lease shall stand extinguished and merged in the reverse unfree hold and inheritance of the factory with immediate effect as if the said lease was never granted nor intended."

37. Thus, as per Surrender Deed dated 31.05.2021, all leasehold estate rights and interest were given up and surrendered in favour of the Corporate Debtor on the basis of deferred payment. Even the possession i.e symbolic possession was also handed over to the Corporate Debtor as the Corporate Debtor was already in physical possession of the assets; however, as per annual reports of the Corporate Debtor for the year 2021-2022 and 2022-2023, it has been shown that all the fixed assets of Eastern Sugar & Industries Ltd will be

acquired by the Corporate Debtor on deferred payment and such purchase would be accounted as and when purchased and will be adjusted against loans or other claims due from the same. The relevant portion of the Annual Report for the financial year of 2021-22 Annexure **A-13** (Colly) at page 1174, is extracted below:

> *"iii. The Company had determined lease with The Eastern Sugar & Industries Ltd., which was terminated w.e.f 1st June, 2006.* ***All the fixed assets of the said lessee company will be acquired on deferred payment basis over a number of years by the Company*** *at a value (to be ascertained) on the date of transfer. Such purchases shall be accounted for as and when the assets are acquired and the amount payable for such purchases / acquisition of fixed assets shall be adjusted against loans given to and other claims due from the lessee company."*

38. It is also relevant to refer the Annual Reports of the financial year of 2022-23 and 2023-24 of the Corporate Debtor, wherein it has been mentioned that all the fixed assets which were to be acquired by the Corporate Debtor was covered in the Resolution Plan of Eastern Sugar & Industries Ltd and thus the acquisition of the same assets have been nullified. The relevant portion of the Annual Report of the

financial year of 2022-23, annexed as **Annexure – 13 (Colly) at page 1246**, is extracted below:

> *"iii. The Company had determined the lease with The Eastern Sugar & Industries Ltd., which was terminated w.e.f 1st June, 2006. All the fixed assets of the said lessee company will be acquired on deferred payment basis over a number of years by the Company at a value (to be ascertained) on the date of transfer. Such purchases shall be accounted for as and when the assets are acquired and the amount payable for such purchases / acquisition of fixed assets shall be adjusted against loans given to and other claims due from the lessee company. All Fixed Assets of Eastern Sugar & Industries Limited which were to be acquired by Shree Hanuman Sugar & Industries Limited is covered in the Resolution Plan, hence the understanding of Eastern Sugar & Industries Limited and Shree Hanuman Sugar & Industries Limited for such purchase/acquisition of fixed assets of Eastern Sugar & Industries Limited stands nullified."*

39. The question arises whether the facts incorporated in annual returns will prevail over the Deed of Surrender dated 31.05.2021 whereby the Corporate Debtor being the lessor and Eastern Sugar & Industries Limited being the lessee entered into the Deed of Surrender dated 31.05.2021.

40. It is undisputed proposition of law that annual returns of a company are having prima facies evidence of the information, and matters recorded therein; however, contrary could be proved by other reliable documentary evidence such as minutes of meeting of the company, financial books and original share certificates and the relevant documents proving the nature of the transaction. In the present case, it is clear more than crystal from deed of surrender dated 31.05.2021 that the Eastern Sugar & Industries Limited, the lessee has given up and surrendered all its leasehold estate and interest in favour of the Corporate Debtor consequent upon payment agreed to be paid of value of the asset. Moreover, the possession was also delivered to the Corporate Debtor. The mere fact in the annual returns that there is acknowledgment on the part of the Corporate Debtor that the Resolution Plan of ESIL included the fixed assets whereby the Corporate Debtor relieved of its responsibility to acquire them does not supersede the legal and valid Deed of Surrender dated 31.05.2021.

41. Hon'ble High Court of Delhi in case of ***Harish Kumar Vs Vinod Kumar & Ors 2024 DHC 9839 DB*** held that "in case of a relinquishment deed or any other document by which title in an immovable property is transferred irrevocably, the

executant of the documents cannot undo such a transfer unilaterally. Even if the parties mutually decide to undo such a transfer, the reversion of the title can be done only in accordance with the modes recognized under the Transfer of Property Act, 1882 ['Act of 1882'] and by way of registered documents mutually executed by the parties. The modes of transfer recognized under the Act of 1882 are in Chapter III, Chapter VI and Chapter VII".

42. It is also settled law that when a Resolution Plan has been approved by the Adjudicating Authority, no changes can be made as it is deemed to have achieved finality. The Resolution Plan of Eastern Sugar & Industries Limited had been approved by this Adjudicating Authority vide order dated 04.10.2023, **Annexure A-7**, and has been successfully implemented. The applicant kept mum at the time when the resolution plan was discussed and approved by the CoC and Adjudicating Authority.

43. It is further observed that in the present case, the machineries are present in the scheduled property having been surrendered by the Eastern Sugar & Industries Limited vide legal and valid Deed of Surrender dated 31.05.2021. It is the duty of the Resolution Professional to take control and custody of all such assets over which the Corporate

Debtor has ownership rights as recorded in the balance sheet etc including tangible assets whether movable or immovable.

> ***"18. Duties of interim resolution professional. –***
>
> *The interim resolution professional shall perform the following duties, namely:–*
>
> *(a) to (e) xxxxx*
>
> (f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including–
>
> (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;
>
> (ii) assets that may or may not be in possession of the corporate debtor;
>
> (iii) tangible assets, whether movable or immovable;
>
> (iv) intangible assets including intellectual property;
>
> (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;
>
> (vi) assets subject to the determination of ownership by a court or authority;
>
> (g) xxxxx

44. Hon'ble Supreme Court in case of **Victory Iron Works Ltd. v. Jitendra Lohia & Anr.**, (2023) ibclaw.in 29 SC observed that the term *"asset"* is not defined under the IBC. The Hon'ble Supreme Court held that "asset" should be understood broadly to include *"property of any kind."* It further held that a *"bundle of rights"* and commercially valuable interests of the corporate debtor would qualify as assets under Sections 18 and 25 of the Code.

45. The property as claimed in the present application is machinery installed in the premises of the Corporate Debtor which has been surrendered in favour of the Corporate Debtor vide Deed of Surrender dated 31.05.2021. Therefore, the Resolution Professional is duty bound to take possession of all assets of the Corporate Debtor including tangible movable and immovable property.

46. Therefore, in view of our aforesaid observation and law applicable thereon, this Adjudicating Authority is of the view that the assets, as listed in the List of Assets in the Information Memorandum and the Virtual Data Room, present in the scheduled property cannot be excluded from the CIRP process of the Corporate Debtor.

47. In the light of the above discussion, **I.A. (I.B.) No. 392/KB/2025** is dismissed being devoid of merits and accordingly, disposed of.

48. The Registry is directed to send copies of the Order forthwith to all the parties and their representative for information.

49. Certified Copies of this order may be issued, if applied for, upon compliance with all requisite formalities.

50. File be consigned to records.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)