

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**Contempt Case (AT) No. 04 of 2018
In
Company Appeal (AT) (Insolvency) No. 82 of 2018**

IN THE MATTER OF:

Binani Industries Limited

...Applicant

Vs.

Mr. Vijay Kumar V. Iyer & Anr.

...Contemnor-Respondents

Present: For Appellant: - Dr. U.K. Chaudhary, Senior Advocate with Mr. Arvind Gupta, Ms. Heena George and Mr. Himanshu Vij, Advocates.

For Respondents:- Mr. Anand Chhibtav and Mr. Gopal Jain, Senior Advocates with Mr. Prashant, Mr. Pranshu Paul and Mr. Gaurav Mankotia, Advocates for 1st and 2nd Respondents.

Mr. Tushar Mehta, Senior Advocate with Mr. R. Sudhinder and Ms. Amrita Sarkar, Advocates for 'Committee of Creditors'.

Mr. Sanjiv Sen, Senior Advocate for Bank of Baroda.

ORDER

26.03.2018 – Learned Senior Counsel for the Applicant submitted that in terms of Section 24 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) read with Regulations 19, 21(3), 35, 36 & 39(2) of the Insolvency and Bankruptcy Board of India

Contd/-.....

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the 1st Contemnor- 'Resolution Professional' was required to serve seven days' notice in advance along with relevant documents whereas notice was issued to the Board of Directors a day prior to the meeting i.e. on 13th March, 2018. The relevant documents including the 'Resolution Plan' was not made available otherwise the (Suspended) Board of Directors would have pointed out that there is a better 'Resolution Plan' submitted by another 'Resolution Applicants' which should have been accepted in place of the 'Resolution plan' approved by the 'Committee of Creditors' on 14th March, 2018.

2. Having heard learned Senior Counsel for the Applicant while we find that this Contempt Petition has been filed by the Binani Industries Limited, and the (Suspended) Board of Directors are not competent to represent the Binani Industries Limited, the Contempt Petition by Binani Industries Limited is not maintainable.

3. However, we give liberty to the (Suspended) Board of Directors to raise all the aforesaid issues, if they have any grievance against the proceeding of the 'Committee of Creditors' dated 14th March, 2018 before the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench

before which the matter is likely to be listed on 27th March, 2018 under Section 31 of the 'I&B Code'.

4. We make it clear that in this case we have not expressed any opinion about the role to be played by the (Suspended) Board of Directors and the intention of the legislature to allow the (Suspended) Board of Directors to be present in the meeting of the 'Committee of Creditors', though they have no voting right. With the aforesaid observations, the Contempt Petition is dismissed.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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