

**IN THE NATIONAL COMPANY LAW
TRIBUNAL KOLKATA BENCH (Court-II)
KOLKATA**

CONT.A.3(KB)2023

In

CP/1650(KB)2018

*An application under Section 425 of the Companies Act, 2013 read with
Rule 11 of the NCLT Rules, 2016*

In the matter of:

Binod Kumar, son of Ram Narayan Yadav, resident of Mohalla-Saristabad Naya Toal, P.S. Gardanibag, P.O. G.P.O, District: Patna, PIN 800001.

... .. Depositor/Decree Holder/Petitioner

Versus

1. Kolkata Weir Industries Limited, Village: Jaydebpur, P.O. Darikrishna Nagar, P.S. Diamond Harbour, West Bengal – 743368.

Also at: Sahajahan Khan, son of Moksed Ali Khan, resident of Village: Jaydebpur, Harindanga, Diamond Harbour, South 24 Parganas, PIN 743331.

Also at: Kolkata Weir Industries Limited, 38 No. Kulpi Road, Ward No.12, Baruipur (Padmapukur More), Kolkata – 700144.

Also at: Priya Niket, Naiya Para, Ground Floor, Uttar Hazipur, Diamond Harbour, South 24 Parganas, West Bengal 743331.

Also at: 190/B, Rashbehari Avenue, 2nd Floor, Trangular Park, Kolkata – 700029.

Also at: 38, Kulpi Road, P.S. Baruipur-434, Kolkata – 700144, West Bengal.

2. Ram Krishna Mondal, son of Gyanendra Mondal, Kayalpara, Daspara, Sumanti Nagar-1, Uttar Purbapara, P.S. Sagar, South 24 Parganas, PIN 743373.

3. Lukaman Ansari, son of Ushaman Ansari, resident of Rigudi, P.S. Parha, District: Purulia, PIN 723155.

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4. Lakshmi Kanta Gayen, son of Sarbeshwar Gayen, resident of Chaturtha Gheri Para, Bishalakshipur, Kakdwip, South 24 Parganas, PIN 743347.

... .. Judgment Debtor/Opposite Parties

Date of pronouncement: 3rd May, 2024

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND , HON'BLE MEMBER (TECHNICAL)**

Appearance (via video conferencing/physically)

Mr. Binod Kumar, Petitioner-in-Person] For the Petitioner

Mr. P.K. Dutta, Adv.] For the SEBI

Mr. S.K. Dutta, Adv.]

Mr. Syamantak Banerjee, Adv.]

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court Convened in a hybrid mode.
2. Heard the learned Counsel for the parties.
3. Alleging violation of an order dated 8th June, 2022, this application has been preferred for initiating of the Contempt application against the Respondent/Alleged Contemnors, the reliefs being as under:

It is, therefore, humbly prayed that Your Lordships may be graciously pleased to contempt against the order dated 08.06.2022 and the order dated 06.02.2020 for recovery of the amount due together with interest @12% from the dates due till recovery thereof and to initiate further penal action

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against the respondent Company as passed in Comm. Appeal No. 1485/KB/2020 and Company Petition No.1650/KB/2018.

And

It is further pleased to rectify in order dated 08.06.2022:

- (a) The word “Execution Petition” instead of “Company Appeal”;*
- (b) The word “1296” instead of “996” as per order;*

And

Cost amount be realized from the Opp. Parties and the same may be given to the Petitioner.

And

Pass such other order or orders which Your Lordships may deem fit and proper.

- 4.** The order dated 8th June, 2022 records the following:

“Comp. Appeal No.1485/KB/2020

In

C.P. No. 1650/KB/2018

xxx xxx xxx xxx

- 4. We have considered the submissions made on behalf of the applicant and also perused the record.*
- 5. Section 71(10) stipulates the conditions under which the Tribunal may direct the Company to redeem the debentures. The conditions as indicated are that the Company should have either failed to redeem the debentures on the date of their maturity or failed to pay the interest thereon on their due date. The other conditions to be satisfied before the Tribunal passes an order is that the Tribunal is required to hear the*

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parties concerned. In the present case, the respondents have not chosen to appear before this Tribunal in spite of opportunities granted.

6. *In **Akhil R. Kothakota and another v. M/s Tierra Farm Assets Company Pvt. Ltd.** (Company Appeal (AT) No.39 of 2020 decided on 09.11.2020), the Hon'ble NCLAT has held that section 71(10) provides a clear mechanism for issue and repayment of debentures, including enforcement of payment obligations. Once the factum of default is established, this Tribunal is obligated to pass an order in terms of section 71(10) of the Act. This will be in addition to any action that SEBI may take against the company and its promoters and directors under SEBI Act, 1992.*
 7. *In this view of the matter, this Tribunal hereby directs the repayment of deposits of ₹12,00,000/- (Rupees Twelve Lakh only) plus interest @9% within a period of three months from the date of pronouncement of this order. The Applicant is also entitled to a cost of ₹25,000/- (Rupees Twenty Five Thousand only) to be payable by the Respondent No. 1.*
 8. **Comp. Appeal No.1485/kb/2020 in C.P. No. 1650/KB/2018** shall stand disposed of accordingly.
 9. *Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.”*
5. In the order dated 6th February, 2020 the following order was passed –
- “7. Section 71(10) of the Companies Act, 2013 states **that where a company fails to redeem the debentures on the**

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date of their maturity or fails to pay interest on the debenture when it is due, the Tribunal may, on the application of any or all of debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon. In this case, on the date of maturity, the Company and directors failed to redeem the debentures. Hence, we allow this application and pass following order.”

- 6.** In view of the mandatory orders passed on 6th February, 2022 as well as 8th June, 2022 as extracted (*supra*) and in absence of any justification on the part of the alleged contemnors as to why the amounts have not been paid. This Tribunal issues rule upon the Respondents to show-cause as to why they would not be hauled up in contempt proceedings for violating the mandatory direction of this Tribunal.
- 7.** Registry is directed to issue notice to the Contemnors in terms of order above.
- 8.** List this matter on **4th July, 2024**.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order signed on this, the 3rd day of May, 2024.

Sayon (Steno)