

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH – I

KOLKATA

Comp. Appeal No. 1483/KB/2020

In

C.P. No. 1639/KB/2018

An application under section 71(10) and 73(4) & 74(3) of the Companies Act, 2013

In the matter of:

Binod Kumar

...Petitioner

Versus

1. Excella Real Project(I) Limited, “ Shreya Apartment”, 24/4, Atghara Chinar Park, Kolkata, West Bengal-700157, India.
2. Dulal Chandra Nandy, s/o Kalipada Nandy, B/B/1, Taltola, Rajarhat Road, Baguiati, Kolkata-700059
3. Sundarson Roy, s/o K. B. Roy, 10, B G Press Colony, Kolkata - 700060
4. Mihir Saha, s/o Shyamal Saha, GC/11, Rabindra Pally, Baguiati, Kolkata-700059.
5. Ruby Nandy, w/o Kali Pada Nandy, B/B/1, Rajarhat Road, Baguiati, Kolkata-700059
6. Piyali Nandy, w/o Dulal Chandra Nandy, B/B/1, Rajarhat Road, Baguiati, Kolkata-700059
7. Sabita Saha, w/o Mihir Saha, GC/11, Rabindra Pally, Baguiati, Kolkata-700059
8. Atindra Kumar Sarkar, AE - 6, Ground Floor, Kestopur, Kolkata – 700101
9. Sujeet Basu, Excella Mutual Benefit India Ltd., Janshilla Complex, Sharat Chandra Path, Masakchak, Bhagalpur-812001, Bihar.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH – I

*Comp. Appeal No.1483/KB/2020 In
C.P. No. 1649/KB/2018*

10. Dilip Kumar Yadav, Chief Development Officer, Excella Marketing, 7, Rosa Road(South), Third Land, Kolkata-700033
11. Heena Kumari, w/o Santosh Thakur, s/o Swanbar Sharma, New Alkapuri, Near Sanjay Kirana Store, P.S.- Gardanibag, P.O.- Anisabad, Patna-800002.
12. The Deputy Registrar, Office of the Registrar of Companies(West Bengal), Govt. of India, Ministry of Corporate Affairs, “Nizam Palace”, 2nd M. S. O. Building, 2nd Floor, 234/4, Acharya Jagdish Chandra Bose Road, Kolkata-700020
13. The Deputy General Manager, Securities and Exchange Board of India, Udhayog Bhawan, 3rd Floor, East Gandhi Maidan, Patna-800004
14. The Inspector General of Police, Economic Offences Unit, Dr. Shri Krishna Singh Path, Baily Road, Patna-800001(Bihar)

...Respondents

Date of hearing: 19.05.2022

Date of pronouncement: 08.06.2022

Coram:

<i>Shri Rajasekhar V.K.</i>	:	<i>Member (Judicial)</i>
<i>Shri Balraj Joshi</i>	:	<i>Member (Technical)</i>

Appearances (through video conference/physical hearing):

Mr. P.K. Dutt, Adv.	:	for SEBI
Mr. Syamantak Banerjee, Adv.	:	
Mr. S.K. Dutt, Adv.	:	

ORDER

Balraj Joshi, Member (Technical)

1. The court convened *via* hybrid mode.
2. This is an Application by Mr. Binod Kumar (***‘Applicant’***), who seeks an order for execution of the order dated 31 January, 2020 by this Tribunal. The amount involved for recovery is a sum of ₹6,30,000/- (Rupees Six Lakh Thirty Thousand only) plus interest thereon @9%.

3. On 31 January, 2020 the Applicant had obtained a decree from this tribunal under section 73 (4) of the Companies Act, 2013, wherein, this Tribunal had directed the Company i.e., the Respondent No.1 to repay the maturity value of the amount deposited by the applicant with the Company. Thereafter, on 19 February, 2020 and 24 February, 2020 the applicant approached and intimated the judgment debtor i.e., the respondent No.1 along with other respondents about the order of this Tribunal but no action actions were taken by the respondents.
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 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 ₹6,30,000/- (Rupees Six Lakh Thirty Thousand only) plus interest @9% within a period of three months from the date of pronouncement of this

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH – I**

***Comp. Appeal No.1483/KB/2020 In
C.P. No. 1649/KB/2018***

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.1483/KB/2020*** in ***C.P. No. 1649/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.

**BALRAJ
JOSHI**

Digitally signed by
BALRAJ JOSHI
Date: 2022.06.08
18:00:22 +05'30'

**Balraj Joshi
Member (Technical)**

SA., LRA

**Rajasekh
ar V K**

Digitally signed by Rajasekhar V K
DN: c=IN, o=Personal, title=0605,
pseudonym=490a45134c9ad68ed2365dbf55b7
504ee43a5491c9e489ac8d67ba6cfd65cc,
postalCode=600018, st=Tamil Nadu,
serialNumber=f05120aee9b7978ef74f18a3ac75e
b59d05e036c92d850593b5c6edc8a8c7396,
cn=Rajasekhar V K
Date: 2022.06.08 16:58:56 +05'30'
Adobe Acrobat Reader version: 2022.001.20117

**Rajasekhar V.K.
Member (Judicial)**