

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1493 of 2019

In the matter of:

**Bihar State Construction Corporation Ltd.
Employee Union**

....Appellant

Vs.

Bihar State Construction Corporation Ltd.

....Respondent

Present:

**Appellants: Mr. Nilanjan Chatterjee and Mr. Niladree Chatterjee,
 Advocates.**

Respondents:

ORDER

07.02.2020: Learned Counsel for the Appellant has invited our attention to page no. 238 to 246 of the Paper Book to demonstrate that Special Leave Petition filed by some Employees Unions of the Corporation of the State of Bihar were disposed of by the Hon'ble Apex Court in terms of the Order dated 23rd July, 2018 with observations that the State Government has taken action with respect to employees of various Corporations. Learned Counsel referred to the additional affidavit filed on behalf of State of Bihar before the Hon'ble Apex Court in this regard wherein at Para 7 it is stated that the Government of Bihar has decided through resolution dated 14th March, 2018 to absorb such employees of 16 non-functional Corporations, who have not attained the age of retirement, as One Time Settlement (OTS) of the long pending issue. Learned Counsel for the Appellant submits that Respondent – 'Bihar State Construction

Corporations Ltd.’ happens to be one of the above referred non-functional Corporations and it being a State Government Company cannot wriggle out of its liability in terms of undertaking given before the Hon’ble Apex Court.

It is further submitted that the impugned order is bad in as much as it has failed to take note of the fact that the Respondent sought initiation of Corporate Insolvency Resolution Process to bypass the judicial orders as also defeat the legitimate rights of the Appellant. Reference is also made to the fact that the Respondent intended to go for winding up, as resolved in the Annual General Meeting, which is clearly gatherable from the prayer in the petition and not for seeking resolution.

There is no appearance on behalf of the Interim Resolution Professional. Let a fresh notice be issued on Interim Resolution Professional directing him to appear in person and file a Status Report in regard to the resolution process which is underway. We are of the considered opinion that State of Bihar is a necessary party in whose absence the issue raised cannot be completely and effectively adjudicated upon. We direct the Appellant to implead the State of Bihar through its Chief Secretary as party Respondent No.3. Appellant to file particulars of the newly impleaded Respondent No.3 within one week and make necessary addition etc. in the appeal paper book.

Issue notice on the IRP and newly impleaded Respondent No. 3 by Speed Post. Requisites alongwith process fee be filed by the Appellant.

Post the case 'for admission (after notice)' on **2nd March, 2020**.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

[V. P. Singh]
Member (Technical)

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