

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 233 of 2021

IN THE MATTER OF:

Dwarkadhish Sakhar Karkhana Ltd.

...Appellant

Versus

Pankaj Joshi & Anr.

...Respondents

Present:

For Appellant: Mr. Arun Kathpalia, Sr. Advocate with Mr. Shikhil Suri, Mr. Shiv Kr. Suri, Ms. Shilpa Saini, Mr. Ankit Paleja, Ms. Prerana, Mr. Shadab Jan and Mr. Amit Jatse, Advocates.

For Respondents: Mr. Manish Desai, Advocate for R-1.

Mr. Sumesh Dhawan, Ms. Vatsala Kak, Ms. Vaishnavi Mungekar and Ms. Geetika Sharma, Advocates for R-2.

ORDER
(Through Virtual Mode)

22.03.2021: IA 1029 of 2020 in CP (IB) 2156/MB/2019 of Intervenor – ‘Gangamai Industries & Construction Ltd.’ stands allowed and Expression of Interest (EOI) filed by Appellant – DSKL earlier rejected by CoC but in a later meeting approved by it with 100% voting share has been set aside by the Adjudicating Authority (National Company Law Tribunal) Special Bench, Mumbai Court No. II in terms of impugned order dated 1st March, 2021 as being arbitrary and backdoor entry. The issue raised in this appeal is that the impugned order has been passed without

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arraying the Appellant – DSKL as a party and without affording it an opportunity of hearing. It is submitted by Mr. Arun Kathpalia, learned senior counsel representing the Appellant that approval of EOI of Appellant was based on the commercial wisdom of Committee of Creditors and in consonance with the object of I&B Code viz. maximization of value of Corporate Debtor.

It is further submitted that the impugned order overlooks the judgment given by this Appellate Tribunal in “*Binani Industries Ltd. & Ors. vs. Bank of Baroda & Ors.*” and “*Committee of Creditors of Bhushan Power & Steel Ltd. vs. Mahendra Kumar Khandelwal*” and Judgment of Hon’ble Apex Court in “*Kalpraj Dharamshi & Anr. vs. Kotak Investment Advisors Ltd. & Anr.*”. It is further submitted that the Judgment of this Appellate Tribunal rendered in “*Kotak Investment Advisors Limited vs. Mr. Krishna Chamadia*” relied upon by the Adjudicating Authority stands reversed by the Hon’ble Apex Court.

Issue notice upon Respondent. Notice on behalf of Respondent No. 1 is waived and accepted by Mr. Manish Desai, Advocate. Notice on behalf of Respondent No. 2 is waived and accepted by Ms. Vatsala Kak, Advocate. Service upon Respondents being complete, no further notice be served upon them. Respondents may file their reply affidavits within 5 days. Rejoinder thereto, if any, may be filed by the Appellant within 5 days thereof.

I.A. No. 531 of 2021 is disposed off with direction to the Appellant to provide certified copy of the impugned order within one week of same being made available to it.

Post the matter 'for admission (after notice)' before Court No. II on **6th April, 2021.**

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

am/gc