

19th February, 2018

The Secretary
The Calcutta Stock Exchange Limited,
7, Lyons Range,
Kolkata – 700001.

General Manager - DCS
BSE Limited
Corporate Relationship Department
1st Floor, New Trading Ring,
Rotunda Building, P. J. Towers,
Dalal Street, Fort,
Mumbai – 400 001
Code : 500059

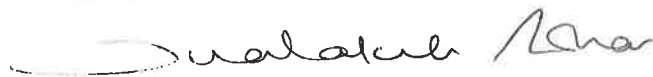
Asst. Vice President
National Stock Exchange of India Limited
Exchange Plaza, 5th Floor,
Plot No. C/1, G Block
Bandra Kurla Complex,
Bandra (East)
Mumbai – 400051
Code: BINANIIND

Dear Sir,

This is to inform you that Binani Industries Limited(BIL) has filed an application under Section 60(5) of the Insolvency and Bankruptcy Code 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 inter alia seeking permission to fully participate in the Insolvency Resolution Process of the Corporate Debtor viz. Binani Cement Limited a subsidiary of BIL to ensure that the resolution process adequately protects and preserves the rights and interests of the Corporate Debtor, all its stakeholders including the Applicant. A copy of the Application filed with National Company Law Tribunal Kolkatta Bench, Kolkatta is enclosed.

Thanking you,

Yours Faithfully,
For **Binani Industries Limited**



Visalakshi Sridhar
CFO, Manager & Company Secretary

Binani Industries Limited

CIN: L24117WB1962PLC025584

Corporate Office: Mercantile Chambers, Ground Floor, 12, J. N. Heredia Marg, Ballard, Estate, Mumbai - 400 001, India.

Tel: +91 22 3026 3000 / 01 / 02 | **Fax:** +91 22 2263 4960 | **Email:** mumbai@binani.net | www.binaniindustries.com

Registered Office: 37/2, Chinar Park, New Town, Rajarhat Main Road, P.O. Hatia, Kolkata - 700 157. India

Tel: 08100326795 / 08100126796 | **Fax:** +91 33 4008 8802

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

I.A. NO. OF 2018
IN
C.P (IB). No.359/KB/2017

(Application under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of the National Company Law Tribunal
Rules, 2016)

IN THE MATTER OF:

Binani Industries Limited

... Applicant

Bank of Baroda

..... Financial Creditor/
Original Applicant

Binani Cement Limited

... Corporate Debtor

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Amrinda Podda
Advocate

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Annebella Pochler
Advocate

Sr. No 13

Through
Anwarul Haq Poddar
Advocate

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

I.A. NO. OF 2018

IN

C.P (IB). No.359/KB/2017

(Application under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of the National Company Law Tribunal
Rules, 2016)



IN THE MATTER OF:

Binani Industries Limited, A company
incorporated under the Companies
Act, 1956 and having its registered
office at 37/2, Chinara Park, New Town,
Rajarhat Main Road, P. O. Hatihara,
Kolkata - 700 157.

... Applicant

In the matter of:

An Application for intervention and for
passing necessary orders;

And

In the matter of:

Bank of Baroda, a body corporate
constituted by and under the Banking



FOR BINANI INDUSTRIES LTD,

14 FEB 2018

[Signature]

Companies (Acquisition and Transfer of Undertakings Act, 1970), with its head office at Baroda House, Mandvi, Baroda, Gujarat and acting through its Corporate Financial Service branch at 1st Floor, Walchand Hirachand, Ballard Pier, Mumbai – 400001, India.

..... Financial Creditor/
Original Applicant

Versus

Binani Cement Limited, A company incorporated under the Companies Act, 1956 and having its registered office at 37/2, Chinar Park, New Town, Rajarhat Main Road, P. O. Hatiara, Kolkata - 700 157

And its corporate office at

Mercantile Chambers, 12, J.N. Heredia Marg, Ballard Estate, Mumbai – 400001 (represented through its Resolution Professional Mr. Vijaykumar V. Iyer)

... Corporate Debtor

FOR BINANI INDUSTRIES LTD.

Vijaykumar V. Iyer



**APPLICATION UNDER SECTION 60(5) OF THE INSOLVENCY
AND BANKRUPTCY CODE 2016 READ WITH RULE 11 OF THE
NATIONAL COMPANY LAW TRIBUNAL RULES, 2016**

1. The present application is being filed by Mrs. Visalakshi Sridhar, the Company Secretary of the Applicant who has been duly authorised by Board Resolution dated 29th January, 2018 to represent the Applicant. The extract of the Board Resolution is annexed hereto and marked as Annexure -1.
2. The present Application is preferred by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("the Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules") in relation to the corporate insolvency resolution process of Binani Cement Limited ("Corporate Debtor/ BCL") since the Applicant is aggrieved, *inter alia*, by the fact that the Applicant has not been allowed to participate or join in the insolvency resolution process of the Corporate Debtor despite being one of the largest stakeholders of the Corporate Debtor and despite having maximum interest over the assets of the Corporate Debtor, as elaborately stated herein below.
3. The Applicant has preferred the present Application, *inter alia*, on the basis that the facts and circumstances of the present



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Visalakshi Sridhar

case establish that unlike most other companies undergoing the Corporate Insolvency Resolution Process (CIRP) where the value of the business and assets is insufficient to discharge the secured financial creditors, leave aside unsecured financial creditors, workmen and employees, statutory dues etc and consequently the CIRP does not in any manner affect the Equity Shareholders whose interest is effectively zero or Nil, in the case of the CIRP of BCL as is more elaborately demonstrated later, there is a reason to believe that even after discharging all liabilities of BCL to all other stakeholders there would be a significant residue of value which belongs to and which would accrue to the Applicant and through the Applicant to its more than 40,000 shareholders as also the nearly 12000 other public shareholders of BCL. Consequently or otherwise, non-inclusion of the Applicant, who is the single largest shareholder of the Corporate Debtor holding more than 98% of its share capital, in the insolvency resolution process of the Corporate Debtor, is unfair, arbitrary, against the basic tenets of natural justice, and in any event, contrary to the Code, and the objective of the corporate insolvency resolution process envisaged under the Code.

4. In the present Application, for the reasons and grounds as elaborately stated herein below, the Applicant is seeking various reliefs before this Hon'ble Bench, to secure or ensure that the CIRP balances the interest of all stakeholders and that

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Vinod Kumar



any single stakeholder holding a large stake of financial loans acquired from the real Lenders or any group of stakeholders such as the financial creditors are not able to benefit themselves at the cost and risk of other stakeholders, including in particular the Applicants. To this end the Applicant is seeking that there should be an effective check on the financial creditors and consequently or otherwise seeking *inter alia*, that:

- (i) the resolution professional appointed in the resolution process of the Corporate Debtor ("Resolution Professional") be directed to provide all information/ documents in respect of the bids/resolution plans being received by the Resolution Professional, (ii) the Applicant be allowed to interact with the bidders/ resolution applicants, (iii) the Applicant be allowed to participate in the insolvency resolution process of the Corporate Debtor and evaluate the bids/ resolution plans submitted by resolution applicants, (iv) the Applicant be allowed to provide its comments and suggestions on the insolvency resolution process, and (v) the Resolution Professional shall ensure that the resolution process adequately protects and preserves the rights and interests of the Corporate Debtor, and all its stakeholders, including the Applicant and the public shareholders of BCL as also of the Applicant.



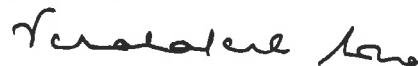
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PARTICULARS OF THE PARTIES

5. The Applicant, Binani Industries Limited ("Applicant/ BIL") is a public company incorporated under the Indian Companies Act, 1956, and is listed in the Bombay Stock Exchange, National Stock Exchange, and Calcutta Stock Exchange. The Applicant has approximately 44437 public shareholders representing about 47.38% of its share capital. The Applicant is the promoter-shareholder of the Corporate Debtor which holds more than 98% of the share capital of the Corporate Debtor. The rest of the share capital is being held by approximately 12,000 public shareholders.
6. Bank of Baroda is one the financial creditors of Corporate Debtor, who has initiated the captioned Company Petition bearing No.359 of 2017 ("Company Petition").
7. The Corporate Debtor is a company incorporated under the Companies Act, 1956, and having its registered office at the location mentioned in the cause title above. In the Company Petition filed by Bank of Baroda against the Corporate Debtor, this Hon'ble Bench passed an order dated 25th July 2017 admitting the Company Petition, and appointing Mr. Vijaykumar V. Iyer as the Interim Resolution Professional. The said Interim Resolution Professional was subsequently appointed as the Resolution Professional ("Resolution Professional") by the

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Committee of Creditors of the Corporate Debtor. The Corporate Debtor is currently being represented through the Resolution Professional.

RELEVANT FACTS

(A) Brief background of the Corporate Debtor/ BCL

8. BCL has been the flagship subsidiary of the Applicant/ BIL, representing the Braj Binani Group. The cement business started operations in 1997, in Sirohi District, Rajasthan, and since then it has seen an exponential growth.
9. BCL owns and operates 6.25 MTPA (Million Tons Per Annum) cement manufacturing capacity in India and its subsidiaries owns and operates 3 MTPA clinker manufacturing capacity in China, and 2 MTPA cement grinding facility in Dubai, besides holding other assets and investments. The plant in India has been operating at optimum capacity since commencement and capacity utilization during the period from 2005 till 2017 is enclosed herewith as Annexure – 2.

(B) Short-term financial problem & initiation of the present proceedings

10. The Applicant states that the financial stress currently being faced by BCL is merely a short-term one. The Applicant further states that this financial problem did not occur due to any
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V. Chaturvedi



operational or business issues, but due to an unexpected and huge tax liability imposed on BCL based on a judgment passed by the Supreme Court on 19th February 2014. The Supreme Court, by the said judgment, reduced after about 16 to 17 years the sales tax exemption obtained by BCL under a State Government Incentive scheme to 25% for 7 years resulting in a demand of Rs. 167 crores exclusive of interest of Rs. 247 crores. This had a cascading effect of huge unexpected tax liability on BCL, freezing of bank accounts by the Rajasthan Sales Tax department, and non-availability of working capital limits.

11. In June/July 2017, Bank of Baroda preferred the captioned Company Petition before this Hon'ble Bench under Section 7 of the Code, and sought initiation of corporate resolution process under the Code on the ground of default in payment of a financial debt. This Hon'ble Bench, by its order dated 25th July 2017, admitted the Company Petition, declared a moratorium, appointed Mr. Vijaykumar V. Iyer as the Interim Resolution Professional, and passed other directions. A copy of the order dated 25th July 2017 is annexed hereto as Annexure - 3.

(C) Corporate Insolvency Resolution Process

12. Since the order dated 25th July 2017 was passed by this Hon'ble Bench, various steps have been taken by the Resolution Professional (assisted by Deloitte Touche Tohmatsu FOR BINANI INDUSTRIES LTD,



Vijaykumar V. Iyer

India LLP ("Deloitte")) in terms of: (a) collection of information, (b) meeting with certain stakeholders of the Corporate Debtor, (c) taking control of assets, (d) preservation of value and going concern status, (e) public announcement, (f) appointment of valuer, and (g) intimation to statutory authorities. These facts are stated without prejudice to the contention of the Applicant that the appointment of the said Mr. Vijaykumar V. Iyer was a disguised and camouflaged appointment of Deloitte Touche Tohmatsu India LLP and was thus fraudulent, illegal and contrary to the Code.

13. The Committee of Creditors ("CoC") was constituted under the Code, and various meetings of the CoC were held since 22nd August 2017, the date on which the first meeting was held. The Resolution Professional, Deloitte and the CoC are currently managing the affairs of the Corporate Debtor. The Applicant craves leave of this Hon'ble Bench to refer to and rely upon the documents/ Information in respect of the actions undertaken so far by the Resolution Professional and the CoC, to the extent the same are provided with the Applicant, as and when required.

(D) Value of the assets of the Corporate Debtor/ BCL

14. The Applicant states that the financial problems being faced by BCL are only of short-term nature, and such problems are expected to be resolved with infusion of requisite working

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capital facility. This is evident from the fact that with the infusion of Rs.100 crore of working capital facility, the plant has been operating at about 50% capacity in the last few months. The plant made an EBIDTA of Rs.22 crore in the quarter ended December 2017 at a capacity utilization of 29%. A copy of the unaudited financial statement of BCL for the quarter ending 31st December 2017 is annexed hereto as Annexure – 4.

15. The Applicant states that the value of BCL's overall assets, both tangible and intangible, is much higher than its overall liabilities. The cement plants have adequate limestone reserves for the next few decades as also for further expansion, and have the state of the art facility with all infrastructural facilities built in. The replacement cost of the Indian plant based on valuation done by ITCOT (JLF appointed valuer) in December 2015 is Rs.17,294 crore (including mines value of Rs.11,729 crore). A copy of the valuation report done by ITCOT is annexed hereto as Annexure – 5.

16. The replacement cost of other cement plants not in possession of mines and mining rights of the type available with BCL is about USD 130/T in India. This translates to Rs.5200 crore for the manufacturing capacity of 6.25 million tonnes in India. BCL's plant is an Integrated unit with 70MW of Thermal Power Plant, Township, Railway siding and other Infrastructure



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facilities in place. The plant has the potential to double the capacity at about only 29% of the cost of a new green field facility. These intangible advantages give significant value to BCL. Based on an equity valuation done by M/s. Kanu Doshi & Associates in March 2017, the value of equity is Rs.183/- per share, and even that does not capture the real value as particularly, the value attributable to intangibles is not considered. A copy of the valuation report prepared by M/s. Kanu Doshi & Associates in March 2017 is annexed hereto as Annexure – 6.

17. The Applicant submits that in the facts and circumstances of the case, the admission of the Corporate Debtor to the Corporate Insolvency Resolution Process (CIRP) is contrary to the philosophy and intent of the Code and is an unfortunate reflection of the misuse of the Code by an unscrupulous Financial Creditor and the circumstances surrounding a new law and the consequential lack of understanding relating to the true intent of the Code and the manner in which the same was to be implemented.

(E) Applicant's participation in the present Insolvency Resolution Process

18. The Applicant states that despite its intrinsic right to participate in the insolvency resolution process, the Applicant has not been allowed to participate in the resolution process.



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19. The Applicant states that, in its capacity as the shareholder of BCL, it did not receive any documents whatsoever, including notices, agendas or minutes, in respect of the meetings of CoC. The Applicant states that some of the suspended directors of BCL, who are also common directors in the Applicant, have received certain documents in respect of the CoC meetings, and participated directly or through representatives in the CoC meetings. However, even the right of participation of the suspended directors has not been respected and

(i) crucial documents have been withheld from them – not enclosed as part of Agenda papers and;

(ii) they have been asked to recuse themselves and stay away when crucial matters were being discussed – evident from the minutes of the 5th, the 6th and the 10th meeting of the CoC.

20. The Applicant states that it was never allowed to participate in and/or provide its comments/ recommendations in respect of the corporate insolvency resolution process. The Applicant did not attend any of the CoC meetings in its capacity as the shareholder of BCL.

21. The Applicant further states that it was not provided with documents/ information in respect of any bids/offers received by the Resolution Professional from the third parties. The



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Applicant has not been given any kind of right of representation or even been invited to make suggestions/ recommendations in respect of the bids/ offers that the Resolution Professional and the COC to consider or accept.

22. The Applicant by way of its letter dated 24th January 2018 addressed to the Resolution Professional, requested that: (a) the Applicant be provided with all the information and documents in relation to the offers/ bids from the resolution applicants, (b) the Applicant be allowed to provide its inputs, and participate in the process of evaluation of offers/ bids received from the resolution applicants and shortlisting/ selection of the resolution plan, and (c) that the Applicant's rights and interests in the Corporate Debtor and its assets be fully protected. A copy of the said letter dated 24th January 2018 is annexed hereto as Annexure – 7.

23. The Resolution Professional, by way of an email dated 1st February 2018 responded to the said letter stating that the corporate insolvency process for the Corporate Debtor is being conducted in accordance with the provisions of the Code, and that in accordance with the provisions of the Code, the limited role of the shareholder/ promoter in the Corporate Debtor is to provide all assistance and cooperation to the Resolution Professional as may be required by him in managing the affairs



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of the Corporate Debtor. A copy of the said email is hereto annexed as Annexure – 8.

24. The Applicant states that, for the reasons and grounds as elaborately stated hereunder, the position taken by the Resolution Professional that the Applicant has only the limited role of assistance and cooperation as and when the Resolution Professional seeks for such assistance or cooperation is contrary to the Code, and the scheme of corporate insolvency process envisaged under the Code. The Applicant states that it has been wrongfully denied of its right to be fully informed about the Insolvency resolution process of the Corporate Debtor, and to participate in the said process. It is relevant to clarify that notwithstanding its intimate and in depth knowledge of BCL, its inherent strength and weaknesses and notwithstanding its interest as the most affected stakeholder, the Applicant has also not been requested by the COC or the Resolution Professional to assist the COC or the Resolution Professional, to assist the COC or the Resolution Professional in the CIRP process. In particular, the Applicant's has not been asked to comment on the values reflected in the bids / Resolution Plans received, on the robustness of the Resolution Plans, on the ways and means by which the performance of the corporate debtor can be enhanced or the Resolution Plans improved.



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V. Lalakhe

25. The actions/ inactions of the Resolution Professional in not allowing the Applicant to participate in the insolvency resolution process of the Corporate Debtor/ BCL is unfair, arbitrary, against the basic tenets of natural justice, and in any event, contrary to the objective of the corporate insolvency resolution process envisaged under the Code, as further elaborated herein below.

SUBMISSIONS ON BEHALF OF THE APPLICANT

- (A) Applicant is one of the key stakeholders of the Corporate Debtor

26. At the outset, the Applicant submits that:

- (a) The Applicant is the single largest shareholder holding more than 98% of share capital of the Corporate Debtor. The rest of the share capital of the Corporate Debtor, approximately 2%, is held by over 12,000 public shareholders. The Applicant, in turn, has over 44,000 public shareholders constituting approximately 47.38% of its share capital. The Applicant, being the largest shareholder of the Corporate Debtor has corresponding rights and interests in the Corporate Debtor.

- (b) The Applicant, besides being the largest shareholder of the Corporate Debtor and having corresponding rights and obligations in the Corporate Debtor, has fiduciary duties



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[Signature]

towards the public shareholders in both the Corporate Debtor and the Applicant.

- (c) The Applicant is the original investor and risk-bearer in the Corporate Debtor, and as such, has rights and interests over both the tangible and intangible assets of the Corporate Debtor.
- (d) The Applicant has the deepest understanding of the business and values of the Corporate Debtor.
- (B) The Code envisages that the Insolvency Resolution Process must balance interests of all the stakeholders of the corporate debtor
27. The Applicant states that the entire objective of the Code is to balance and protect the interests of all stakeholders of the Corporate Debtor. The Preamble of the Code, specifies the objectives of the Code to, *inter alia*, "balance the interests of all the stakeholders". The universe of the stakeholders whose interests need to be balanced and protected under the Code would necessarily include the Corporate Debtor and the shareholders of the Corporate Debtor.
28. The insolvency resolution process under the Code, as referred in the Report of the Bankruptcy Law Reforms Committee, is based on the principles of collective insolvency regime provided

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under the *UNCITRAL Legislative Guide on Insolvency*. The objectives of the said Guide include: (i) striking a balance between liquidation and reorganisation, (ii) ensuring equitable treatment of similarly situated creditors, (iii) provision of timely, efficient and impartial resolution of insolvency, (iv) preservation of the insolvency estate to allow equitable distribution of creditors, and (v) ensuring a transparent and predictable insolvency law that contains incentives for gathering and dispensing information.

29. In view of the above, it is just and equitable, and also mandatory under the scheme envisaged under the Code that the rights and interests of the Applicant is duly considered and dealt with in the insolvency resolution process of the Corporate Debtor.

(C) Under the scheme and framework of the Code, the Applicant has unassailable rights and interests in the insolvency resolution process

30. In the scheme and framework of the Code, the Applicant has several unassailable rights as one of the key stakeholders of the Corporate Debtor.

31. Pertinently, under the overall scheme of the Code, the Resolution Plan must be an inclusive one which balances the rights and interests of all the stakeholders of the Corporate Debtor. Regulation 38 of Insolvency and Bankruptcy Board of



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V. Balasubramanian

India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("IBBI Regulations") provides for "*Mandatory contents of the resolution plan*".

32. The Applicant states that, Regulation 38(1A) of IBBI Regulations was subsequently inserted by way of an amendment on 5th October 2017, particularly to confirm that the Resolution Plan must deal with and protect interests of all the stakeholders. The said Regulation 38(1A) is reproduced hereunder:

"A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor".

33. The Applicant in the present case is one of the major stakeholders of the Corporate Debtor. Particularly in the present case where the accruals through the process of the proceedings under the Code are likely to be greater than the claims of the creditors, the Applicant has a larger right and interest in the insolvency resolution process of the Corporate Debtor. The Applicant has already demonstrated the significant value attributable to BCL considering inter alia its mining rights and reserves, its state of the Art plant, its performance in the past, its subsidiaries and its potential. It is apparent that either the Resolution Professional has failed to appreciate this value or the Resolution Professional desires to favour a Resolution



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Applicant to enable such Applicant to enjoy an undue, unjustified and unearned benefit at the cost primarily of the Applicant and the rights of the Applicant. In spite of this clear and apparent subrogation of the rights of the Applicant, it is evident from newspaper and other reports that Resolution Applicants have accepted and appreciated that the value attributable to a 100% interest in the Corporate Debtor is in excess of the liabilities of the Corporate Debtor so that there is significant value which would accrue to the Applicant, the public shareholders of the Corporate Debtor and the public shareholders of the Applicant.

34. The Applicant further states that even under Section 53 of the Code ("*Distribution of assets*") which provides for distribution of assets in liquidation, the shareholders of the Corporate Debtor have the right and interest over the assets of the Corporate Debtor after payment to creditors and others.
35. In addition to the above, the Applicant states that under the scheme envisaged under the Code, the financial creditors who participate in the Committee of Creditors and evaluate bids from the resolution applicants have rights only to the extent of their respective claims against the Corporate Debtor though they have fiduciary and non fiduciary obligations to all other stakeholders including but not limited to operational creditors and shareholders. Such financial creditors cannot exercise any



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rights whatsoever in respect of accruals under the Code that exceed their claims. This is evident from Section 21 of the Code, which provides that when a financial creditor is also an operational creditor, such person shall be a financial creditor only to the extent of the financial debt owed by the Corporate Debtor. In a case like that of BCL where the value attributable to the business for exceeds its liabilities it is therefore, the duty of the Resolution Professional and the Financial Creditors to consult other stakeholders and look after their interests before formulating or accepting any Resolution Plan. This would, in particular, include consulting with the Applicant but, no such approach has been made to the Applicant.

36. The Applicant submits that under the Code or under any applicable laws, and on just and equitable principles, no person can exercise rights over assets of the Corporate Debtor in respect of its assets or value that exceeds such person's claim against the Corporate Debtor.
37. Strictly without prejudice to any of the above, as elaborated hereinbelow, the Code and/or its Regulations do not abrogate or dilute the rights and interests of the Applicant in respect of the Corporate Debtor under any other laws.
38. In view of the above, the Applicant submits that the Applicant has unassailable rights and interests in the scheme of insolvency resolution process under the Code.



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(D) The Applicant has a paramount role in the insolvency resolution process of the Corporate Debtor

39. The insolvency resolution process envisaged under the Code has two of the most fundamental factors, which are as under:

- (a) Maximisation of value of the assets of the Corporate Debtor while ensuring that it is managed as an ongoing concern; and
- (b) Identifying the debts/ liabilities of the Corporate Debtor and settling such claims in the best interest of the Corporate Debtor and all its stakeholders.

40. The Applicant states and submits that the Applicant has a paramount role in both the aforesaid fundamental factors, and therefore, it is in the best interest of the Corporate Debtor that the Applicant is allowed to fully participate in the insolvency resolution process of the Corporate Debtor.

41. The Applicant further states that both these factors are currently not being undertaken in the best interests of the Corporate Debtor.

- (a) The Liquidation Value of BCL arrived at by the valuer appointed by the Resolution Professional is approximately Rs.2300 crores, whereas the valuation reports prepared by the independent parties (as mentioned above) provided that the replacement cost of the Indian plant alone is

FOR BINANI INDUSTRIES LTD,

V. Mahalingam



Rs.17,294 crore (including mines value of Rs.11,729 crore)). It appears that the valuation done by the valuer appointed by the Resolution Professional are absolutely wrong inter alia on account of the valuers having been misled by / valuers not being provided all relevant information by the Resolution Professional who has a personal interest in undervaluing the Corporate Debtor to benefit himself and / or to benefit Resolution Applicants. Presumably, the valuation reports do not take into account the benchmark value of the plant leave aside the value of the limestone reserves of the Corporate Debtor and its various other intangible assets. This would be evident even from the bids by various Resolution Applicants as per newspaper reports. It is indeed unfortunate that the Applicant, the largest shareholder of the Corporate Debtor has to depend upon unconfirmed newspaper reports (copies of some of which are enclosed herewith as Annexure - 9) which reflect that bidders have valued parts of the Corporate Debtor at values ranging from Rs. 4500 crore to Rs.6000 crore, whereas as demonstrated earlier the mining rights of the Corporate Debtor are alone worth nearly Rs.11,000 crore. It is clear that the bidders / Resolution Applicants are seeking an unfair advantage at the cost of the Applicant and public shareholders to whom the equity interest of the company



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belongs. It is imperative that the Applicant is allowed information so as to enable the Applicant to safeguard its interests against financial creditors and bidders who may otherwise usurp its interests.

- (b) With respect to identifying and verifying the debts/liabilities of the Corporate Debtor, the Applicant submits that various creditors have made wrongful claims in respect of the interest rates applicable, and the amounts payable. The Applicant also believes that various creditors are attempting to exploit the situation of excess accruals under the resolution process by including unreasonable interests and costs. The Applicant strongly believes that the claims accepted by the Resolution Professional in respect of financial creditors are significantly higher than the amounts rightfully payable by the Corporate Debtor.

Thus, the financial creditors have time and again and in particular, after the Applicant has drawn attention to the significant value and potential of the Corporate Debtor increased their claim from Rs.3798 crores which was also over pitched to Rs.4048 crores so as to enjoy unjustified and undeserved benefit and the Resolution Professional has, as a part of his overall failure to perform his duty agreed to such claims.



FOR BINANI INDUSTRIES LTD,

V. Lalit

42. The Applicant is a part of the Braj Binani Group which is one of the pioneers in the cement industry, and it has the right expertise and first-hand knowledge about the Corporate Debtor's assets, both tangible and intangible, and value of such assets. Such expertise and first-hand knowledge of BCL's assets are indispensable for the insolvency resolution process of BCL, and to ensure maximisation of value of the assets.
43. The role of the Applicant will also be paramount in identifying the debts or liabilities of the Corporate Debtor to ensure that the resolution process under the Code is fair, reasonable and in the best interest of the Corporate Debtor and any unjustified and / or unconscionable claims are not considered or admitted.
44. The Applicant, therefore, submits that the corporate insolvency resolution process adopted in the Corporate Debtor is an injustice to the inherent value of the business of the Corporate Debtor, particularly its reserves and the foreign business. It also destroys the value across the board for all stakeholders.
45. The Applicant submits that its role is paramount in the insolvency resolution process of the Corporate Debtor, and it is just, necessary and equitable that the Applicant is allowed to fully participate in the process.
- (E) The Resolution Professional has the statutory obligation to represent the Corporate Debtor and act in its best interest



FOR BINANI INDUSTRIES LTD,

Sanjay Kumar

46. In addition to the objective of the Code as stated hereinabove, the Resolution Professional appointed under the Code has obligations under the Code to protect and preserve the value of the property of the Corporate Debtor, to maximise the value of its assets, and generally to act in the interest of the Corporate Debtor and its stakeholders, particularly, the public shareholders both of the Corporate Debtor and of the Applicant.
47. Section 23(1) of the Code states that the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process. Section 23(2) of the Code further states that the resolution professional shall exercise powers and perform duties as are vested or conferred on the Interim resolution professional under the Code.
48. Under the scheme envisaged under the Code, the interim resolution professional/ resolution professional has a pivotal role during the insolvency resolution process, as in:
- (a) the management of the affairs of the corporate debtor is exercised by the Interim resolution professional/ resolution professional.
 - (b) the powers of the board of directors of the corporate debtor stand suspended and are exercised by the interim resolution professional/ resolution professional.



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- (c) the officers and managers of the corporate debtor report to the interim resolution professional/ resolution professional and provide access to such documents and records of the corporate debtor as may be required.
- (d) the interim resolution professional/ resolution professional represents and acts on behalf of the corporate debtor in legal proceedings.
- (e) the interim resolution professional/ resolution professional can act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents.
- (f) the control and custody of any asset over which the corporate debtor has ownership rights are taken by the interim resolution professional/ resolution professional.

49. Therefore, the interim resolution professional/ resolution professional has wide variety of powers to act on behalf of the corporate debtor. Such powers can only be exercised for the benefit and interest of the corporate debtor. It must be noted that under Sections 20(1) and 25(1) of the Code, one of the important responsibilities/ duties of the interim resolution professional and resolution professional, respectively, is as under:

"20. (1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern."



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V. Lalane

"25. (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor."

50. The Applicant submits that in order to fulfil the abovementioned obligations, and given the facts and circumstances of the present case, it is just and necessary that the Resolution Professional engages with the Applicant and allows the Applicant to participate in the corporate insolvency resolution process of the Corporate Debtor.

(F) The Resolution Professional has wrongfully denied the Applicant to participate in the insolvency resolution process of the Corporate Debtor

51. The Applicant states and submits that:

- (a) The Applicant is a necessary participant in the insolvency resolution process of the Corporate Debtor even under the provisions of the Code.
- (b) The Applicant must also be a necessary participant in the insolvency resolution process of the Corporate Debtor under the principles of equity and natural justice.
- (c) The Applicant, as stated above, has a larger fiduciary responsibility to its shareholders, which comprise significant public shareholders.
- (d) If the Applicant does not seek participation in the insolvency resolution process of the Corporate Debtor, it

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V. Balasubrahmanyam



contrary to the Code, the Code will prevail. The Applicant submits that the rights available to the Applicant under various other laws, including the Companies Act, 2013, are not inconsistent with the provisions of the Code in any manner, and hence such rights must be continued and administered.

54. In this regard, the Applicant submits as under:

- (a) The Applicant has series of statutory rights under various laws including the Companies Act, 2013.
- (b) More particularly, under the Companies Act, 2013, the Board of Directors of a company can exercise its powers in respect of some of the important actions only with the consent of the majority shareholders. This includes under Section 180 (i) sale, lease or otherwise disposal of the whole or substantially the whole of the undertaking of the company. Similarly, any reduction of capital can, under section 66 of the Companies Act, 2013 only be carried out under the authority of a Special Resolution of the shareholders – these provisions are not suspended.
- (c) During the period of corporate insolvency resolution process, it is only the management/ Board of Directors that gets suspended, the rights of the shareholders are neither abrogated nor diluted.



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Vinod Kumar

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- (d) The Resolution Professional, who acts as the Board of Directors/ management during the process of corporate insolvency process is duty bound to seek consent or approvals from the shareholders of the Corporate Debtor, when it is necessary under the other laws.
- (e) The rights available to the shareholders under various laws, including the Companies Act, 2013, are meant for safeguarding interests of the shareholders in the company, including the public shareholders. These rights are paramount to the basic corporate structure, and are unassailable.
- (f) These rights of the Applicant, in its capacity as the shareholder of the Corporate Debtor, are not inconsistent with the provisions of the Code, and are not abrogated by the Code.

55. It is therefore, just and necessary that the rights of the Applicant are recognised, and duly administered.

56. Strictly without prejudice to the above, the Applicant states that:

- (a) Section 30(2)(e) of the Code specifically mandates that, *"the resolution professional shall examine each resolution plan received by him to confirm that each resolution plan does not contravene any of the provisions of the law for the time being in force."*



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V. Narasimha Rao

(b) Regulation 39(6) of the IBBI Regulations provides that "a provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained."

57. The Applicant submits that a joint reading of Section 30(2)(e) of the Code, and Regulation 39(6) of the IBBI Regulations will make it apparent that rights and interests of the shareholders under various other laws as opposed to constitutional documents and other contractual rights are not abrogated by the Code, and that such rights must be given effect to or factored in the insolvency resolution process. Any action contrary to thereof will not only be arbitrary, against principles of natural justice, and unequitable, but also contrary to various laws, including the Companies Act, 2013.

58. The Applicant states that the Central Government issued a clarification dated 25th October 2017 ("Clarification") regarding approval of resolution plans under Section 30 and 31 of the Code. In the respect of the Clarification, the Applicant submits

as under:



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- (a) The Clarification has no status of law and as such it has no legal sanctity as the Code does not empower the Central Government to issue any such clarification.
- (b) The Clarification exceeds the provisions of the Code and attempts to read something into the Code which otherwise is not the objective of the Code.
- (c) The distinction made between an illustration provided in the Clarification in respect of compliance under FDI provisions and the provisions of the Companies Act, 2013 is unintelligible, arbitrary and unconstitutional.
- (d) The Applicant further states that the reference to Section 31(1) of the Code is entirely misplaced because the said provision is subject to conditions being met under Section 30(2) of the Code (which includes the condition stated in Section 30(2)(e)). Section 31(1) of the Code is reproduced as under:

"(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan."



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N. Lalit Kumar

Sub-section (2) of Section 30 specifically mandates that the Resolution Plan "does not contravene any of the provisions of the law for the time being in force". A Resolution Plan which fails to comply with or which is arrived at without the approval of the shareholders / members of the Corporate Debtor required under the Companies Act, 2013 necessarily contravenes the provisions of the Companies Act. None of the provisions of the Code have the effect of validating such an invalid Resolution Plan. In Particular, Section 31 is in terms subject to sub-section (2) of the Section 30 and cannot permit the Adjudicating Authority to approve a Resolution Plan not in compliance with the Companies Act and consequently or otherwise in contravention of the law for the time being in force.

- (e) The Clarification that the approval of shareholders/ members of the corporate debtor which would be required under the Companies Act, 2013 or any other law is deemed to have been given on the approval of the resolution plan by the Adjudicating Authority (NCLT), is an incorrect interpretation of the provisions of the Code, and in any event, cannot be treated as the law.

59. For the above reasons, the Applicant reiterates that it is just, necessary and equitable that the rights and interests of the Applicant are taken properly into account by the Resolution



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Professional, and the Applicant is allowed to participate in the Insolvency Resolution Process of the Corporate Debtor and is allowed to evaluate various bids from the resolution applicants.

(H) The Applicant must have a right of participation or representation in the Insolvency Resolution Process on the basic principles of equity and natural justice

60. The Applicant submits that the rights and interests of the Applicant cannot be dealt with or abrogated unilaterally and arbitrarily either by the Resolution Professional or by the Committee of Creditors without even providing any opportunity of representation to the Applicant, and that such action would be against basic principles of equity and natural justice, and in any event contrary to the scheme envisaged under the Code.

61. The corporate debtor is an entity owned by its various shareholders, and the interest of the shareholders are intrinsically linked with the various actions proposed and taken qua the corporate debtor, its assets and its business.

62. The Applicant states that the well settled principles of natural justice, including that a party must be given an opportunity of being heard before its rights or interests are dealt with by an authority or person authorised under the law, strictly apply to the Code, the insolvency resolution process under the Code and every action that can be taken by the Resolution Professional or the Committee of Creditors under the Code.

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63. In view of the above, it is only just, equitable and necessary that the Applicant is allowed to participate in the corporate insolvency resolution process undertaken by the Resolution Professional and the Committee of Creditors, as a vitally affected party whose concerns and interest, should be taken in to account and provided for.
- (I) The Applicant must be allowed to evaluate the bids or offers from the Resolution Applicants
64. The Applicant states that for the reasons stated hereinabove, both factual and legal, the Applicant must be allowed to participate in the insolvency resolution process and evaluate any bids or offers from the resolution applicants in the interest of the Corporate Debtor and all its stakeholders.
65. The Applicant further states that the rationale behind including only the financial creditors in the committee of creditors but not the operational creditors, was indicated in notes on Clause 21 appended with the Insolvency and Bankruptcy Bill, which is reproduced as under:

"The committee has to be composed of members who have the capability to assess the commercial viability of the corporate debtor and who are willing to modify the terms of the debt contracts in negotiations between the creditors and the corporate debtor. Operational creditors are typically not able to decide on matters relating to commercial viability of the corporate debtor, nor are they

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typically willing to take the risk of restructuring their debts in order to make the corporate debtor a going concern. Similarly, financial creditors who are also operational creditors will be given representation on the committee of creditors only to the extent of their financial debts. Nevertheless, in order to ensure that the financial creditors do not treat the operational creditors unfairly, any resolution plan must ensure that the operational creditors receive an amount not less than the liquidation value of their debt (assuming the corporate debtor were to be liquidated)."

66. Therefore, the main rationale behind including only the financial creditors in the committee of creditors is that: (a) financial creditors have the capability to assess the commercial viability of the corporate debtor, and (b) financial creditors are willing to modify the terms of the debt contracts in negotiations between the creditors and the corporate debtor.

67. In the present facts and circumstances, the Applicant submits that:

(a) The Applicant, being the major shareholder of BCL and having the industry expertise and first-hand knowledge of the assets of BCL (both tangible and intangible), the Applicant has a much better capability than any person to assess the commercial viability of the Corporate Debtor and maximisation of value of its assets.



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V. Narasimha Reddy

(b) The Applicant has direct and intrinsic right in the assets of the Corporate Debtor, particularly in the facts of the present case, as narrated above.

(c) The shareholding of the Applicant in the Corporate Debtor is also likely to undergo a modification under the resolution plan, and they stand in no worse position than the financial creditors in respect of the same.

68. In view of the above and given the rationale provided for including the financial creditors in the committee of creditors to evaluate the resolution plans for the Corporate Debtor, the Applicant states that it is just, necessary and equitable that the Applicant is allowed to participate in the insolvency resolution process of the Corporate Debtor, and to evaluate the bids or offers from the resolution applicants in respect of the Corporate Debtor.

JURISDICTION

69. The Applicant submits that this Hon'ble Bench has necessary authority and jurisdiction to entertain and dispose of the present Application under Section 60 of the Code, which is reproduced as under:



"60. (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal

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Manoj Kumar

having territorial jurisdiction over the place where the registered office of the corporate person is located.

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before such National Company Law Tribunal.

(3) ..

(4) ..

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) ..."

70. The Applicant particularly submits that this Hon'ble Bench has necessary authority under the above provision of the Code to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor



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Signature

under this Code. In view thereof, this Hon'ble Bench has the appropriate authority to entertain the present Application.

71. In addition to the above, the Applicant has also invoked the inherent powers of this Hon'ble Bench under Rule 11 of the National Company Law Tribunal Rules, 2016 to make such orders as may be necessary for meeting the ends of justice, and therefore, this Hon'ble Bench has the jurisdiction to entertain and adjudicate the present Application.
72. The Applicant has not filed any other petition or application with similar reliefs before any other NCLT or High Court or the Supreme Court. The Applicant, however, reserves its right to challenge any provision of the Code or the Regulations or the Clarification issued by the Central Government before the High Courts or the Supreme Court, as and when it deems fit and necessary.
73. The Applicant submits that in view of the facts and law elaborately stated hereunder, it is just, necessary and equitable that the rights and interests of the Applicant as the shareholder of the Corporate Debtor is recognised, and the reliefs as sought herein are granted. The balance of convenience is entirely in favour of the Applicant.

For the reasons stated hereinabove, it is also just, necessary and equitable that no resolution plan is approved or finalised by

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Vinod Kumar



the Committee of Creditors or the Resolution Professional or this Hon'ble Bench in respect of the Corporate Debtor till the disposal of the present Application.

75. No prejudice, harm or loss would be caused to the Corporate Debtor or any other stakeholders if the reliefs sought herein are granted in favour of the Applicant. On the contrary, if the reliefs are not granted, serious and irreparable loss, harm and injury would be caused to the Applicant.
76. The present Application is filed within the limitation, and is not barred by any law of limitation.

In view of the facts and circumstances as elaborately stated hereinabove, the Applicant respectfully prays that this Hon'ble Bench be pleased to pass the following orders or directions:

(A) That the Resolution Professional appointed in the insolvency resolution process of the Corporate Debtor be directed to provide all information/ documents in respect of the bids/resolution plans



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V. Vasudevan

that have been received or will be received by the Resolution Professional from time to time.

(B) That the Applicant be allowed to interact with and/or meet the bidders/ resolution applicants, financial creditors and other stakeholders of the Corporate Debtor from time to time.

(C) That the Applicant be allowed to fully participate in the insolvency resolution process of the Corporate Debtor, and to evaluate the bids/ resolution plans submitted by the resolution applicants.

(D) That the Applicant be allowed to provide its comments and suggestions on the insolvency resolution process to the Resolution Profession and/or the Committee of Creditors of the Corporate Debtor.



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(E) That the Resolution Professional shall ensure that the resolution process adequately protects and preserves the rights and interests of the Corporate Debtor, and all its stakeholders, including the Applicant.

(F) Pending the hearing of the present Application, that the Resolution Professional or the Committee of Creditors shall not approve any resolution plan for the Corporate Debtor.

(G) Pass such other orders or directions as may be deem fit and necessary by this Hon'ble Bench in the facts and circumstances of the present case.

And for this act of kindness, your petitioner as in duty bound shall
ever pray.



FOR BINANI INDUSTRIES LTD;

[Handwritten signature]

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**PARTICULARS OF BANK DRAFT EVIDENCING PAYMENT OF
FEE FOR THE APPLICATION :**

Bank Draft No. 384596,

Drawn on Union Bank of India, Baguiati Branch, Kolkata

Dated- 12.02.2018

For Rs.2,000/- (Rupees Two Thousand only)



FOR BINANI INDUSTRIES LTD.

N. Mahanta



2018 488094

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, KOLKATA

I.A. NO. OF 2018

IN

C.P (IB). No.359/KB/2017

(Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of the National Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

Binani Industries Limited, A company
incorporated under the Companies Act,
1956 and having its registered office at
37/2, Chinar Park, New Town, Rajarhat
Main Road, P. O. Hatiara, Kolkata-
700157.

FOR BINANI INDUSTRIES LTD,

... Applicant

In the matter of:

An Application for intervention and for
passing necessary orders;

And

In the matter of:

Bank of Baroda, a body corporate
constituted by and under the Banking
Companies (Acquisition and Transfer of
Undertakings Act, 1970), with its head
office at Baroda House, Mandvi, Baroda,
Gujarat and acting through its Corporate
Financial Service branch at 1st Floor,
Walchand Hirachand, Ballard Pier,
Mumbai - 400001, India.

..... Financial Creditor/
Original Applicant

Versus

Binani Cement Limited, A company
incorporated under the Companies Act,
1956 and having its registered office at
37/2, Chinar Park, New Town, Rajarhat
Main Road, P. O. Hatiara, Kolkata - 700
157

And its corporate office at

FOR BINANI INDUSTRIES LTD,

V. N. Chaudhary



DATE 12 FEB 2018
Advocate & Co.
Advocates
Office Street
Room No - 12
100

FEB 2018



Mercantile Chambers, 12, J.N. Heredia
Marg, Ballard Estate, Mumbai - 400001
(represented through its Resolution
Professional Mr. Vijaykumar V. Iyer).

... Corporate Debtor

AFFIDAVIT UNDER RULE 34(4) OF THE NCLT RULES, 2016 VERIFYING THE APPLICATION

I, Visalakshi Sridhar, Wife of Sridhar Narayanan, aged about 51 years, by faith-Hindu, by occupation- Business, residing at E-2-02, Cypress, Swapnanagari, Mulund (West), Mumbai-400080, presently camping at 10, Old Post Office Street, Kolkata-700001, do hereby solemnly affirm and declare as follows:-

1. THAT I am the Company Secretary of the Applicant above named and am authorized and competent to swear and make this affidavit.
2. THAT the statements made in paragraphs 1 - 76 of the accompanying Petition are true to my knowledge.

Solemnly affirmed at Kolkata

on this 14th day of February,
2018.

Identified by the
Anusaba Podela DEPONENT

Advocate

Before me

NOTARY

Samir Bhattacharya
Notary, Govt. of India
Regd. No.-940/97
City Civil Court, Calcutta



Solemnly Affirmed and
Declared before me U/S 139
CPC / U / S297 (C) CrPC

14 FEB 2018

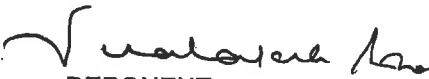
Notary

14.2.18

VERIFICATION

I, Visalakshi Sridhar, do hereby verify and affirm that the contents of paragraphs 1 and 2 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed there from.

Verified at Kolkata on this 14th day of February, 2018.


DEPONENT

Date: 14/02/2018

Place: Kolkata

