

September, 29, 2017

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

The Secretary
The Calcutta Stock
7, Lyons Range
Kolkata - 700001

Dear Sir,

Sub: Intimation in pursuance of Regulation 30 of SEBI (LODR) Regulation, 2015

We have intimated vide our letter dated December 05, 2016 (copy enclosed) that a creditor has filed a Winding up petition against the Company with the Hon'ble High Court of Calcutta. A copy of our letter is enclosed.

Hon'ble High Court of Calcutta vide order dated 20th September, 2017 has admitted a winding up petition of a creditor. A copy of the order downloaded from website of Honorable High Court of Calcutta is enclosed.

The Company has not received certified true copy of the order from the Hon'ble High Court of Calcutta.

We request you to take the above on record.

Thanking you,

**Yours faithfully,
For Binani Industries Limited**



**Visalakshi Sridhar
Manager, CFO & 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

December, 05, 2016

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,

Sub: Intimation In pursuance of Regulation 30 of SEBI (LODR) Regulation, 2015

"This is to inform you that a creditor has filed a Winding up petition against the Company with Hon'ble High Court at Calcutta.

The Company is in receipt of the said Petition and will take suitable Legal action in consultation with our legal counsels."

We request you to take the above on record.

Thanking you,

Yours faithfully,
For Binani Industries Limited



Visalakshi Sridhar
Manager, CFO & Company Secretary

Binani Industries Limited

CIN: L24117WB1962PLC025584

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ADVOCATES

PARTNER
I.C.SANCHETI
P. SANCHETI

Date : 23.09.2017

Re: Binani Industries Limited of 37/2, Chinar Park, New Town, Rajarhat Main Road, P.O. Hatiara, Kolkata – 700 157

MD & CEO	MKT PLACE	SECRET	SP&P	HR	INVEST & A/C
RCD					
BSE LTD.					DOT/DOT
27 SEP 2017					DOT 2ND FLR
523 13					DOSS
					DOSS
					URG

LIST OF ASSOCIATES & OFFICES ARE AVAILABLE FOR INSPECTION AT THE OFFICE
MEMBER OF GLOBAL ASSOCIATION OF INDEPENDENT LAWYERS (GAIL)

**IN THE HIGH COURT AT CALCUTTA
Original Jurisdiction
(Original Side)**

C.P. 1066 of 2016

Binani Industries Ltd.

Vs.

Milestone Brandcom Pvt. Ltd.

For the Petitioner:-

Mr. S.N. Mookherji, Sr. Advocate

Mr. Jishnu Saha, Sr. Advocate

Mr. Joyjit Ganguly

Mr. Pradip Sancheti

Mr. S.S. Sarkar

..Advocates

For the Respondent:-

Mr. S.N. Mitra, Sr. Advocate

Mr. D.K. Jain

...Advocates

Judgement on:-

20th September, 2017

I.P. Mukerji, J.

This is a winding up application by Milestone Brandcom Pvt. Ltd., the petitioning creditor, against Binani Industries Ltd., the company. The petitioning creditor is based in Mumbai.

The petitioning creditor says that they were approached by a division of the respondent company, Media Magix to carry out the company's publicity programme across India. It started from 2009 and continued till the financial year 2015-2016. Between 13th November, 2015 and 28th July, 2016 nine invoices were raised by them on the respondent company. For each of the invoices a credit note was issued which meant that the petitioning creditor gave the company a discount of the value of the credit note. In seven out of the nine invoices mentioned in paragraph-15 (a to g)

of the petition, the company deducted tax at source. The petitioning creditor claims that their performance was so impressive that the company by an e-mail dated 27th November, 2015 applauded them with the remark "good show".

I was also shown an e-mail dated 15th February, 2016 from the company to the petitioner saying that the outstanding payable by their bills was Rs. 4.79 crores to which the petitioning creditor replied on the same day that their dues would be around Rs. 7 crores (see page 36 affidavit-in-reply).

By an e-mail dated 16th April, 2016 the company sent a statement of account to the petitioner acknowledging Rs. 5.61,99,496.84 as due and payable by them as on 31st March, 2016.

On 31st May, 2016 the respondent company made payment of Rs. 50 lakhs to the petitioning creditor. The petitioning creditor has brought on record an e-mail dated 21st July, 2016 by the company to them stating that approximately Rs.5 crores were due from them and that they were suffering from financial crisis. The Company sought their co-operation to cope with it. The statement of account annexure-O at page-116 of the petition signed by Smt. Bina Verma a principal officer of the respondent Company, describing Media Magix as a division of Binani Industries Limited, acknowledged that a sum of Rs. 5,75,44,577 was due and payable by the company to the petitioning creditor, as on 29th July, 2016, on 10th August, 2016 Mr. Joey Ghose Managing Director of a subsidiary of the company

emailed the petitioner's CEO Mr. Nabendu Bhattacharyya that the outstanding amount was Rs. 5.7 crores.

On 26th August, 2016 a sum of Rs. 10 lakhs was paid by the company.

This court's attention was also drawn to the document, form no. 26-AS for the assessment year 2016-2017 from which it would appear, according to the petitioning creditor that the company had deducted tax at source in respect of at least 7 out of the 9 invoices raised by the petitioning creditor.

On 13th September, 2016 the petitioning creditor issued through Wadia Ghandy & Co., a firm of Advocates a statutory notice claiming payment for 9 invoices mentioned therein. The invoice value aggregated to Rs. 5,65,44,577/-. They claimed interest @ 18% p.a. amounting to Rs. 33,13,485/-. The company was asked to pay the sum of Rs. 5,98,58,062/- failing which the petitioning creditor would take out winding up proceedings against them. The reply of the company came on 15th November, 2016. The defence was very illusory and technical in nature as would appear from paragraph 6 and 7 of their reply which is inserted herein below:

"6. That various reports filed by the third party consultant for the months of July to November, 2015 in respect of execution of the work order by your client revealed that there were a lot of deficiencies, contradictions and fault in execution of the order. At several sites it was found that the work was not executed as per the specifications and time frame provided by the company. Further, during month of October 2015 and also February 2016, the internal team of my client made a road visit/trip to various destinations in Rajasthan to access and monitor the execution of the work

assigned to your client, specifically with regards to the wall painting. The team was surprised to note that Binani's Bran presence on the said route was minimal and no execution of the work as promised by your client could be seen.

7. That the said facts were brought to your notice through our authorized representative and as a result the bills/invoices raised by you for the said months were subjected to scrutiny by the Audit/Accounts Department of my client which found glaring discrepancies in the bills/invoices raised by your client for the months of July 2015 to October, 2015. In various cases it was found that the estimates were submitted along with bills/invoices and not prior to that and in certain cases it was found that the estimates were given after the raising of the bills/invoices which clearly suggests that no prior approval/sanction for the estimates was obtained from my client. Furthermore, it was observed that there was significant difference in the bills raised and estimates provided thereof. In certain cases, surprisingly, the estimate amount matched the exact bill amount."

Now, let us have a look in detail at the defence of the respondent company.

Mr. S. N. Mitra learned senior Advocate appearing for them took me in detail through the estimates and invoices annexed to the petition and said that they were full of discrepancies, raising doubts about their genuineness. According to the contract between the parties, the petitioner was supposed to give an estimate of the work done. This had to be approved by the company. After completion of the work invoices were to be raised. He showed me some of the estimates and invoices. He brought to my notice that in some invoices the date of the estimate and of the invoices were very close; quite a few invoices were raised on the date of the estimate. He asked the question: If there was not reasonable time for

approval of the estimates, how could the work be done and the invoices be raised? More importantly, how could the invoice be raised on the very day of the estimate? Especially he brought to my notice the invoice dated 26th November, 2015 for the estimate signed by Smt. Bina Verma of the company on 26th November, 2016.

Learned counsel also submitted and this was perhaps his strongest point that the contract of the petitioning was with Binani Industries Limited. The admission relied upon by them was made by a Joey Ghose Managing Director of Binani Cement Limited. He said corporate bodies were separate juristic entities. Mr. Ghose could not admit the liability of the respondent. He added that the confirmation of accounts relied on by the petitioning creditor were all products of fraud.

Now, I come to my conclusions.

In at least seven out of the nine invoices the respondent company had deducted tax at source and deposited the same with the government. As held by the Hon'ble Mr. Justice Asim Kumar Banerjee sitting in the Division Bench in the case of Dolly Mazumder & Ors. v. Zee Telefilms Ltd. decided on 7th June, 2013 that deduction of tax at source by the deductor from the amount payable to the payee amounted to admission of liability.

That the invoices and estimates were discrepant occurred to the respondent company only after receipt of the statutory notice. This plea surfaced for the first time in their reply dated 15th November, 2016 to the statutory notice dated 13th September, 2016. Even if Mr. Ghose's

admission is to be disregarded there was clear admission of liability in the company's said email of 16th April 2016 for Rs.5,61,99496.84 as on 31st March, 2016 and of Smt. Bina Verma in her e-mail dated 21st July, 2015 (page 114 of the petition). The statement at Annexure-O at page 116 of the petition is signed by Bina Varma for the company and Abhishek Kabra for the petitioning creditor. It acknowledges a sum of Rs. 5,75,44,577/- due and payable by the company to the petitioning creditor.

The reply dated 15th November, 2016 to the statutory notice dated 13th September, 2016 is splendidly vague. The denial of the petitioning creditor's claim is more on technical and procedural matters than on merits. The denial of the petitioning creditor's claim on merits is very vague.

Furthermore, the company made part payments of Rs. 50 lakhs on 31st May, 2016 and Rs. 10 lakhs on 26th August, 2016. Though it was said on behalf of the company that these payments were made on other accounts, no proof of such payment on other accounts was even remotely furnished by the company.

There is absolutely no doubt in my mind that these amounts were received by the petitioning creditor in part payment of their dues.

If this were a summary suit I would have no hesitation to hold that the purported defence advanced by the company was frivolous and without any substance and would proceed to pronounce a decree against them. In **Smt. Kiranmoyee Dassi and another v. Dr. J. Chatterjee** reported in

AIR 1949 Cal 479 cited by Mr. Mitra, which decision was followed by the Supreme Court in the case of **Mechelec Engineers & Manufacturers v. Basic Equipment Corporation** reported in **AIR (1977) SC 577**, the principles that are applicable for passing a summary decree are stated thus:

"(a) If the Defendant satisfies the court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgement and the Defendant is entitled to unconditional leave to defend.

(b) If the Defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the Defendant is entitled to unconditional leave to defend.

(c) If the Defendant discloses such facts as may be deemed sufficient to entitled him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shows such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the Defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

(d) If the Defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) if the Defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise

secured and give leave to the Defendant on such condition, and thereby show mercy to the Defendant by enabling him to try to prove a decree."

In fact the defence which is sought to be advanced by the company is extremely dishonest. Dishonest because they have made the petitioning creditor work, are now trying to contend that they have not worked and trying to realise money illegitimately from the company. It is so very inherently dangerous to deal with customers of this kind.

The principle in *Mechalac* was applied by Ajoy Nath Ray, J, to adjudge whether a company was unable to pay its debts or they should be allowed to defend itself in a civil proceeding and for passing appropriate orders on the same lines in a winding up application in **SRC Steel (P) Ltd. v. Bharat Industrial Corporation Ltd.** reported in 2005 (4) CHN 343.

The debt of the company towards the petitioning creditor, to my mind is indisputable. The company has no defence whatsoever to the claim of the petitioning creditor. It is liable to be wound up, (see **Madhusudan Gordhandas and Co. v. Madhu Woods Industries (P) Ltd.** reported in AIR 1971 SC 2600 and **Mediquip Systems (P) Ltd. v. Proxima Medical Systems GmbH.** reported in (2005) 124 CC 473).

The winding up application is admitted for the sum of Rs. 5,65,44,577. No agreement regarding interest has been proved. No notice claiming interest, seems to have been issued by the petitioning creditor, before the statutory notice. Therefore, the statutory notice is to be taken as a notice claiming interest under the Interest Act. 1978 Hence, I hold that the petitioning creditor is entitled to the sum of Rs. 5,65,44,577 together with interest @