

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. No. 145 /2013

**Present: Hon'ble Member (J) Shri Vijai Pratap Singh
Hon'ble Member (T) Shri S.Vijayaraghavan**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 08th November, 2016, 10.30 A.M

Name of the Company		Tirumala Infrabuild Pvt. Ltd. & Ors. -Vs- IDIO Construction & Industries Pvt. Ltd. & Ors.	
Under Section		397/398	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1.	MR. RAJEEV RANJAN PRASAD (ADVOCATE)	Petitioners	RR Prasad 8/11/2016
2.	MR. SURENDRA KUMAR (ADVOCATE)	Petitioners	Surendra Kumar 8/11/16
3.	MR. NILANJAN CHATTERJEE (ADVOCATE)	Petitioner	Puce 08/11/16

1. KULDIP MULLICK, Adv.

2. URMILA CHAKRABORTY, Adv.

3. PATITA PABAN BISHWAL, Adv.

Respondent
NOS. 1, 2 & 5

8/11/16.

ORDER

Ld. Counsels for both the petitioners and the respondent nos.
1, 2 and 5 are present.

I.A.No. 53/2016 has been filed for correction of the order passed by the Court on 06/10/2016. Ld. Counsels for the petitioners made a request that in the order passed by the Court it has been written that **"it is undisputed fact that demurrer application filed by the respondents is pending wherein the respondents have taken the ground of maintainability of the petition. It is also clear that the same demurrer application was heard before the erstwhile Company Law Board but it was not decided upon and application is pending till date"**.

The petitioners' Counsel submitted that demurrer application was already decided but it was not brought to the notice of the Tribunal. We find that the demurrer application was disposed of by the then Chairman, Company Law Board on 06/02/2015 but this order was not brought to the notice at the time of argument.

It is specifically mentioned in the order on demurrer application that "The petitioners, in the worst case scenario, exceed 1/10th of the total number of shareholders. Therefore, the issue under Section 399(1) or (3) of the Companies Act, 1956, regarding number of petitioners competent to file the petition or grant of consent by the petitioners other than P-2 and P-6 losses relevance. Similarly, subsequent withdrawal by some of the petitioners also does not affect the petition if it was maintainable on the date of filing of the petition. Therefore, the only that remains to be adjudicated is whether P-2 and P-6 had the proper authorization as required by law



from the other petitioners on the date of filing of the petition. Liberty is granted to the respondents to agitate the issue of locus of P-2 and P-6 to file the petition at the hearing which shall be adjudicated as preliminary issue."

"With the above observations, CA No. 520/2013 filed by R-1, 2 and 5 stands disposed of."

On the basis of the order dated 06/02/2015 it is clear that ruling has been given by the then Chairman, Company Law Board and hence the sentence that has been incorporated in our earlier order "that demurrer application is pending regarding maintainability of the petition" is based on incorrect understanding regarding ~~of~~ the non-existence of any order of the Company Law Board to that effect, as it was not brought to our notice. Hence, the instant C.A.No. 53/2016 is allowed and disposed of. Consequent correction is being done in the impugned order. w

List the matter on 14/12/2016 for argument in C.P. and C.A., if any.



(S. Vijayaraghavan)
Member (T)



(Vijai Pratap Singh)
Member (J)