

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No.766 of 2019

IN THE MATTER OF:

Vijay Kumar Choudhary & Anr.

.....Appellants

Vs.

M/s. Educomp Infrastructure & School & Anr.

.....Respondents

Present :

For Appellant:

**Mr. Krishnendu Datta with Ms. Apoorva
Chowdhary, Advocates**

O R D E R

29.07.2019 - The question arises for consideration in this appeal is whether the Adjudicating Authority ('National Company Law Tribunal') in referring the matter to the Central Government or the Insolvency and Bankruptcy Board of India (Board for short) for taking action in terms of Section 236 of the Insolvency & Bankruptcy Code, 2016 ('I&B Code', for short) if the 'Resolution Professional' alleged against the Promoters, Directors or Officers of non-compliance of Section 19(2) of the 'I&B Code' is required to issue notice and hear party as to why matter should not be referred for initiating action u/s 236.

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2. In this connection, one may refer Section 424 of the Companies Act, 2013 wherein it is mentioned that the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the Principles of Natural Justice, and, subject to the other provisions of the Companies Act, 2013 or the 'I&B Code' and Rules.

3. In terms of Section 236, the Central Government or the Board can only file complaint before the Special Court for Punishment u/s 70 of I&B Code. It will be desirable to hear the Central Government and the Chairman of Insolvency and Bankruptcy Board of India.

4. The Appellant is allowed to implead Secretary, Ministry of Corporate Affairs, Government of India, 5th Floor, 'A' Wing, Shastri Bhawan, Dr. Rajendera Prasad Road, New Delhi – 110001, as Respondent No. 3 and the Chairman of the Insolvency & Bankruptcy Board of India, 7th Floor, Mayur Bhawan, Shankar Market, Connaught Circus, New Delhi – 110001 as Respondent No. 4. Necessary corrections be made in the cause title.

5. Let notice be issued on the Respondents by speed post. Requisite along with process fee, if not filed, be filed by 30th July, 2019. If the appellant provides the e-mail address of the respondent, let notice be also issued through e-mail.

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6. Post this appeal for 'admission' (after notice) on **22nd August, 2019** as first case.

7. In the meantime, it will be open to the Appellant to produce this order before the Central Government, Secretary, Ministry of Corporate Affairs and the Chairman of the Board, as Respondent Nos. 2, 3 and 4 respectively to inform that this Appellate Tribunal is considering the issue as to what procedure is to be followed for proposing action u/s 70 or any of the provisions under Chapter VII of the I& B Code.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

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