

**In the National Company Law Tribunal,**  
**Kolkata Bench, Kolkata**

**Company Petition (I.B.) No.40/KB/2017**

In the matter of:

An application under Section 10 of the Insolvency and Bankruptcy Code, 2016 read with relevant Rules of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

Keshav sponge and Energy Pvt. Ltd.

.... Corporate Debtor

Order Delivered on 14<sup>th</sup> November 2017

**Coram:**

**V. P. Singh, Member (J)**

**Jinan K.R., Member (J)**

For the Resolution Professional

: 1. Mrs. Manju Bhuteria, Advocate  
2. Mr. Saubhik Chowdhury, Advocate  
3. Mr. Dripto Majumdar, Advocate

Resolution Professional

: Mr. A.K. Mehata

For the Corporate Debtor

: 1. Mr. Sidhartha Sharma, Advocate  
2. Mr. Arun Gupta, FCA

**ORDER**

**Per Jinan K.R., Member (J)**

This CP (IB) 40 of 2017 has been filed by Corporate Debtor M/s. Keshav Sponge & Energy Pvt. Ltd under section 10 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as I & B Code, 2016] for invoking corporate insolvency resolution process. This petition was admitted by this Tribunal vide its order dated 16/02/2017 and Mr. Adesh Kumar Mehta was appointed as an

interim resolution professional (in short, IRP) to perform the function as IRP under the I & B Code, 2016. Upon appointment of the IRP, public announcement was made by IRP as specified under Sec.13 read with Sec.15 of the I & B Code, 2016 invited claims as per the provision of the Code. IRP constituted a Committee of Creditors and after convening meeting IRP has filed first progress report on 25/7/2017.

2. Ld. Counsel for the IRP submits that he had convened meeting of Committee of Creditors on 18/3/2017, 26/6/2017, 10/8/2017 and on 9/9/2017 but despite his efforts to formulate a resolution plan before the expiry of the period of 180 days, he could not submit a resolution plan thereby at the request of the Committee of Creditors, the period of submission of resolution plan has been extended for a further period of 90 days with effect from 15/8/2017. Being satisfied that committee of creditors unanimously passed a resolution dated 10/08/2017 for extension of the period this Tribunal extended the resolution period for 3 months up to 13/11/2017.

3. When this case was taken up on 10/11/2017 for submission of resolution plan Ld. Counsel for the resolution professional (in short RP) submits that RP continued his efforts to find the ways and means to revive and re-habilitate the company which can be revived through a resolution plan keeping in view the interest of all stake holders, but CoC could not approve the resolution plan and hence filed the final progress report on 10/11/2017.

4. On perusal of the report submitted by the RP along with his final report dated 15/9/2017, it is understood that the resolution plan has been considered by the Committee of Creditors in the meeting held on 9/9/2017 and it was again considered in the Committee of Creditors on 10/10/2017 and that upon receipt of revised resolution plan from the resolution applicant and after serving copy of the resolution plan to the members of Committee of Creditors, discussed in detail at the meeting held on 7/11/2017 i.e. fifth meeting held by Committee of



Creditors. On scrutiny of the progress report and upon hearing Ld. Counsel on both side we are satisfied that despite efforts on the side of RP, the Committee of Creditors could not approve the resolution plan which was put in the presence of all the members of Committee of Creditors in the meeting convened on 7/11/2017.

5. According to the Ld. Counsel for the RP, plan submitted by the applicant / corporate debtor and promoter Mr. Avinash Chandra Gupta was rejected by the unanimous decision of Committee of Creditors with liberty to the resolution applicant to give improved resolution plan so that it may be considered before the expiry of extended period. The minutes of the Committee of Creditors dated 7/11/2017 has been produced before this Tribunal and on perusal of the resolution and the connected records submitted along with the report we are satisfied that the resolution plan submitted by the applicant was not approved by the Committee of Creditors and that when it was put to vote which has been submitted to all the members of the Committee of Creditors having 100% voting share in value and thereby there is no resolution plan arrived at in the instant case.

6. The extended period for submission of resolution plan to be expired on 13/11/2017. Accordingly, Ld. Counsel for the RP submits that an order for liquidation can be passed in the instant case.

7. At this juncture Ld. Counsel for the resolution applicant submits that the plan submitted by the resolution applicant/promoter shall be re-considered by this Tribunal and an opportunity is to be given to the promoter for revival of the company. According to him liquidation value arrived at by the valuers being Rs.32.73 crore and company being a going concern at present and because of the promise given to him by the CoC he already spent 6 crores for seeing that it is a going concern this Tribunal shall approve the plan in the interest of all stakeholders and in the interest of the welfare of workmen around 150 persons and nearly 600 persons who are directly or indirectly dependent upon the

operation of the company for their livelihood. He would further submit that if the plan is approved it would envisages maximum payments to financial creditors and operational creditors and meets with all the requirements of the I & B Code.

8. The above submission of the Ld. Counsel for the resolution applicant cannot be considered because the Committee of Creditors unanimously voted against the plan which has been considered by the Committee of Creditors in detail. It is also understood that opportunity has been given to the resolution applicant for submission of revised resolution plan. In spite of submission of revised resolution plan the Committee of Creditors did not inclined to approve the plan and, as such, Sec.33 [1] of the I & B Code, 2016 come into force. Therefore, the submission of the Ld. Counsel for the resolution applicant cannot be entertained by this Tribunal under any of the provision of I & B Code, 2016 and hence liable to be rejected.

9. Ld. Counsel for the RP also submits that in case this Tribunal going to make an order for initiation of the liquidation as per Sec.33[1] of the I & B Code, the Committee of Creditors did not willing to continue the existing resolution professional as the liquidator and proposed name of Mr. Anil Agarwal. In support of the above submission copy of resolution passed in the CoC annexed with the report at page 125 has been brought to our notice. On perusal of the resolution we are satisfied that the name of Mr. Anil Agarwal a resolution professional was approved by the Committee of Creditors unanimously for his appointment as a liquidator. Since the Committee of Creditors unanimously has approved Mr. Anil Agarwal as the liquidator for initiation of liquidation, the resolution professional already appointed is to be replaced under Sec.34 [4] of the I & B Code. Accordingly, we are replacing the resolution professional Mr. Adesh Kumar Mehta and appoint Mr. Anil Agarwal as liquidator.



10. In view of the above discussion we hereby order liquidation of the corporator debtor in the manner as laid down in Chapter III of the I & B Code with the following further orders: -

- i. Mr. Anil Agarwal is appointed as the liquidator.
  - ii. Issue public announcement stating that the Corporate Debtor is in liquidation.
  - iii. Copy of this order may be communicated to the Registrar of Companies for taking adequate steps.
  - iv. Copy of this order should be sent to the Insolvency and Bankruptcy Board of India through Speed Post and E mail.
  - v. The order of moratorium passed under Sec.14 of the I & B Code, 2016 shall cease to effect by the provision of sub-section [4] of Sec.14.
  - vi. A fresh moratorium starts under sub-section [5] of Sec.33 of the I & B Code.
  - vii. The order of liquidation passed under Sec.33 of the I & B Code shall be deemed to be notice of discharge to the officers, employees and workmen of the corporate debtor.
  - viii. The liquidator is hereby directed to proceed with the process of liquidation in the manner as laid down in Chapter III of the Liquidation process for corporate persons.
11. Urgent Photostat certified copies of this Order, if applied for, be supplied to parties upon compliance of all requisite formalities.

List the matter on 13/12/2017.

  
**Vijai Pratap Singh,**  
**Member (J)**

  
**Jinan K.R.**  
**Member (J)**

Signed on 14<sup>th</sup> November 2017