

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

**CORAM**

**Shri Vijai Pratap Singh**  
Hon'ble Member (J)

**Shri S. Vijayaraghavan**  
Hon'ble Member (T)

**T.P. No.10/2017 connected with C.P. No.1109/2016**

**In the matter of :**

The Companies Act, 1956;

**In the matter of:**

An Application under sections 433, 434 and 439 of the said Act;

And

**In the matter of:**

Ess Dee Aluminium Limited, a company incorporated under the Companies Act, 1956 and having its Registered Office at 1, Sagore Dutta Ghat Road, Kamarhati, Kolkata – 700 058, West Bengal within the aforesaid jurisdiction;

... **The Company**

And

**In the matter of :**

Henkel Adhesives Technologies India Private Limited, a company incorporated under the provisions of Companies Act, 1956 and having its registered office at 10<sup>th</sup> and 11<sup>th</sup> floor, Kesar Solitaire, Plot no.5, Sector-19, Palm Beach Road, Sanpada, Navi Mumbai – 400 705;

..... **The Petitioner**

**Counsels on Record:**

- |                                    |                      |
|------------------------------------|----------------------|
| 1. Ms.Urmila Chakraborty, Advocate | ] For the Company    |
| 2. Ms. Shyantee Datta, Advocate.   | ]                    |
| 1. Ms. Rajarshi Dutta, Advocate    | ]                    |
| 2. Mr. Rahul Auddy, Advocate       | ] For the Petitioner |

Date of Pronouncing the order :

5/4/17

**ORDER**

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

This petition was filed before the Hon'ble High Court at Calcutta under sections 433,434 and 439 of the Companies Act, 1956. This matter has come on transfer from the Hon'ble High Court which is numbered as T.P. No.10/2017. The petitioner has filed this winding up petition against the Respondent Company on the basis of operational debt of Rs.48,20,450.64. The petitioner has claimed that in spite of sending notice, the Respondent Company has failed to make the payment of above dues and the interest of Rs.8,91,783.00 upto 30<sup>th</sup> September, 2016 totalling to Rs.57,12,233.64 In the circumstances, the Petitioner had filed this petition for winding up which has been transferred from the Hon'ble High Court at Calcutta.

Vide Government Notification no. GSR 1119(E) dated 07.12.2017, all petitions relating to winding up under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before the Hon'ble High Court and the petition has not been served on the Respondents, shall be transferred to the National Company Law Tribunal established under sub-section (4) of section 419 of the Act exercising territorial jurisdiction and such question shall be treated as the application under sections 7,8 or 9 of the Insolvency & Bankruptcy Code, 2016 as the case may be and dealt with in accordance with Part II of the Code provided that the Petitioner shall submit all information, other than information forming part of their records transferred in accordance with Rule 7, required for admission of the petition under section 7,8 or 9 of the Insolvency & Bankruptcy Code as the case may be including the details of the proposed Insolvency Professional to the Tribunal within 60 days from the date of Notification, failing which the petition shall abate. This sixty days period has been further extended to six months by Government Notification dated 28<sup>th</sup> November, 2017.


81






In view of the above notification, it is clear that winding up petition which has been received by transfer from the High Court shall be treated as Insolvency & Bankruptcy petition under sections 7,8 or 9 of the Code and the petitioner has to submit all information required for admission of the petition under sections 7,8 and 9 of the Code as the case may be.

In the light of the above notification, we hereby direct the petitioner to submit the application in proper proforma, which is applicable for presenting an application before the Adjudicating Authority under the Insolvency & Bankruptcy Code (Application to Adjudicating Authority Rules, 2016), 2016 within 15 days from the date of this Order.

  
(S. Vijayaraghavan)  
Member(T)

  
(Vijai Pratap Singh)  
Member (J)

Signed on this 5<sup>th</sup> day of April, 2017