

237

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

CORAM

Ms. Manorama Kumari  
Hon'ble Member (J)

Shri S. Vijayaraghavan  
Hon'ble Member (T)

Company Petition No.40/2017

In the matter of :

Application under section 14 of the Insolvency and  
Bankruptcy Code, 2016

And

In the matter of:

Keshav Sponge & Energy Private Limited (KSEPL)  
(Corporate Debtor/ Corporate Applicant) having its  
Office at 6/2, Moira Street, Halwasiya Mansion,  
3<sup>rd</sup> floor, Kolkata – 700 017

... Corporate Debtor/ Corporate Applicant

Counsels on Record:

1. Mr. Nilesh Sharma ] For the Corporate Debtor/Applicant

Date of the hearing : 13.02.2017  
Date of Pronouncing the order : 16.02.2017

ORDER

This Company Petition has been filed by Corporate Debtor M/s. Keshav Sponge & Energy Private Ltd. supported by an affidavit to initiate Corporate Insolvency Resolution Process. The application has been submitted in form 6 as provided under the Insolvency and Bankruptcy Code 2016. The applicant has stated in the application that he has given this application on the basis of

Resolution passed by Board of Directors dated 18.01.2017 to initiate Corporate Insolvency Resolution Process before the NCLT. The applicant has also filed the copy of Board Resolution as Annexure-4. The applicant has also submitted a detailed note before the BIFR in Annexure-10, wherein it is mentioned that as per proviso to section 4 of SICA Repeal Act, company in respect of which such reference stands abated may make a reference to the NCLT under the Insolvency and Bankruptcy Code 2016 within 180 days from the commencement of the Insolvency and Bankruptcy Code 2016. It has been stated in the application that reference made to the BIFR in view of the proviso to section 4 of SICA Repeal Act stands abated and he is at liberty to submit application within 180 days from the commencement of Insolvency and Bankruptcy Code 2016 to NCLT. The applicant has also submitted a list of financial creditors and operational creditor which is annexure 15(Colly) at pages 302 to 308 of the application. It has been stated in the application that the company is in default of about Rs.81.74 crores with respect to financial creditors which is at Annexure-5 (page 16) of the application. The particulars of the financial creditors and operational creditors is given in the table below including secured and unsecured creditors, which is at Annexure 12 (pages 203 to 268) with the application.

#### Financial Year 2014-15

Financial Creditors	-	Rs.81.74 crores
Operational Creditors	-	<u>Rs. 3.74 crores</u>
Total	-	Rs.85.48 crores

Company has also been making loss as could be seen from the balance-sheet 2015-16 on account of its operation. Accumulated losses at the end of the financial year 2015-16 also shows accumulated loss of Rs.20,00,58,068/- compared to Rs.2,76,58,499/- at the end of March, 2015. The applicant has also given a list of creditors regarding the default committed with respect to amount due to the creditors (both financial as well as operational creditors), as required under section 10 of the IBC, 2016. The figures reveal that there is little possibility of the company paying back the

principal amount of borrowings in its entirety as well as the interest accrued thereupon from operations of the company.

In the circumstances mentioned above, we admit the petition for initiating the Corporate Resolution Process and declare a moratorium and public announcement as stated in section 13 of IBC 2016. The relevant sections 13 and 14 are reproduced below for the purpose of convenience.

### ***13. Declaration of moratorium and public announcement***

*(1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order-*

*(a) declare a moratorium for the purposes referred to in section 14;*

*(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and*

*(c) appoint an interim resolution professional in the manner as laid down in section 16.*

*(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional.*

### ***14. Moratorium***

*(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction*

of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

Necessary public announcement as per section 15 of the IBC, 2016 may be made by the Company.

Company has also resolved to appoint Mr. Adesh Kumar Mehta, to be appointed as Interim Resolution Professional and submitting a resolution plan to NCLT as required under the IBC Act which is at Annexure-11 of the application. Mr. Adesh Kumar Mehta has submitted his consent as stipulated in Form-2 of the NCLT Rules. The details and registration number given in Petition, is as follows:

Mr. Adesh Kumar Mehta  
10/63, Old Rajender Nagar,  
New Delhi – 110 060  
mehta\_adesh@yahoo.com  
Regn. No.IBBI/IPA-002/IP-00046/2016-17/1264

The applicant/petitioner has also certified the fact that Mr. Adesh Kumar Mehta is fully qualified and permitted to act as an Interim Resolution

gj  
skm

Professional in accordance with Code and the Associated Rules and Regulations.

The application for initiation of Corporate Insolvency Resolution Process is accepted and Mr. Adesh Kumar Mehta, is hereby appointed as Interim Resolution Professional. He will initiate the process as per the Rules.

List the matter on 1-3-2017 for further orders.



(Manorama Kumari)  
Member (J)



(S. Vijayaraghavan)  
Member(T)

Signed on this 16 the day of February, 2017