

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Shri V. P. Singh
Hon'ble Member (J)

Shri S. Vijayaraghavan
Hon'ble Member (T)

Company Petition No.03/2017

In the matter of :

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

And

In the matter of:

Nicco Corporation Limited, an existing company within the
meaning of the Companies Act, 2013 and having its
registered office at Nicco House, 2, Hare Street,
Kolkata- 700 001

... Petitioner

Counsels on Record:

1. Mr. Jishnu Chowdhury] For the petitioner
2. Mr. Rahul Auddy]

Date of the hearing : 16.01.2017

Date of Pronouncing the order : 18-01-2017

ORDER

Per Sri Vijai Pratap Singh, Member(J)

This Company Petition has been filed by Corporate Debtor M/s. Nicco Corporation 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 16.12.2016 to initiate Corporate Insolvency Resolution Process before the NCLT. The applicant has also filed the copy of Board Resolution as Annexure-III. The applicant has also submitted a detailed note before the BIFR in Annexure-IV, 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 5A and 5B respectively. It has been stated in the application that the company is in default of about Rs.320.42 crores with respect to financial creditors. The particulars of the financial creditors and operational creditors is given in the table below including secured and unsecured creditors.

Financial Year 2015-16

| | | |
|----------------------|---|------------------|
| Financial Creditor | - | Rs.3,204,198,192 |
| Operational Creditor | - | Rs. 845,851,105 |
| Total | - | Rs.4,050,049,297 |

Company has also been making loss as could be seen from the balance-sheet 2014-15 on account of its operation. Accumulated losses at the end of the financial year 2015-16 also shows accumulated loss of Rs.26,646.52 lakhs compared to Rs.21,081.02 lakhs at the end of March, 2015. The company is having a negative cash flow for the year ended 31.03.2016 and also in the financial year ended 31.03.2015. 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

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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. Kunal Banerjee, Cost Accountant to be appointed as Interim Resolution Professional and submitting a resolution plan to NCLT as required under the IBC Act which is at Annexure-III of the application. Shri Kunal Banerjee 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. Kunal Banerjee
Shome & Banerjee
5A, Nurulla Doctor Lane, 2nd floor,
Kolkata – 700 017
banerjee.kunal@gmail.com
IBBI/IPA-03/2016-17/12

The applicant/petitioner has also certified the fact that Mr. Kunal Banerjee is fully qualified and permitted to act as an Insolvency Professional in accordance with Code and the Associated Rules and Regulations.

The application for initiation of Corporate Insolvency Resolution Process is accepted and Shri Kunal Banerjee, is hereby appointed as Interim Resolution Professional. He will initiate the process as per the Rules ~~and~~ list the matter on 24.01.2017 for further orders. R


(S. Vijayaraghavan)
Member(T)


(Vijai Pratap Singh)
Member (J)

Signed on this 18th ~~the~~ day of January, 2017