

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**C.P.No. 03/KB/2017**

**CORAM**

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

**And**

**Shri Jinan K.R, Hon'ble Member (J)**

In the Matter of:

An 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 700001.

**....Applicant**

**And**

In the Matter of:

Kunal Banerjee, the Resolution Professional of Nicco Corporation Limited, a Company under the meaning of Companies Act, 2013 and having its registered office at Nicco House, 2, Hare Street, Kolkata 700001.

Representative attended on 13/10/2017:

1. Shri Kunal Banerjee, Resolution Professional (RP)
2. Shri Shantanu Ghosh, Representative of RP

3. Shri Rahul Auddy, Advocate, Nicco Corporation Ltd.
4. Shri Susmit Ghosh, Nicco Corporation Ltd.
5. Shri Avishek | Guha, Advocate, Technology Development Board
6. Shri Surajit Sen, M/s. Shreekunj Securities Pvt. Ltd.

Date of pronouncing of the Order: 17-10-2017

### **O R D E R**

#### **Per Shri Vijai Pratap Singh, Member (Judicial)**

The company application filed by Nicco Corporation Limited u/s 10 of IBC 2016 was admitted on 18<sup>th</sup> Jan 2017. Sri Kunal Banerjee appointed as IRP, who was later on confirmed as Resolution Professional by COC. Resolution Process was to be completed by 16/07/2017. By recommendation of COC further 90 days, time was extended on 13.7.2017 for submission of resolution Plan which ended on 14/10/2017.

Resolution Professional has finally submitted a report on 12<sup>th</sup> Oct 2017 stating that the Resolution Process has failed in the COC meeting DT.6<sup>th</sup> Oct 2017. It is further noted that in the 6<sup>th</sup> meeting of COC on 6<sup>th</sup> Oct 2017, the Resolution Plan for the revival of the Corporate Debtor was put to the vote, and 88.38% of the members of the COC voted against the resolution plan, and only 11.62 percent of the members of the COC voted in favour of the Resolution Plan. Thus, the Resolution Plan has failed and not approved by the COC.

It is pertinent to mention that the advocate representing M/S Shreekunj Securities Pvt Ltd, the strategic investor, submits that that he has already given a Resolution Plan to the R.P., but no decision was taken on his proposal. He made a request that RP may be directed to call a meeting of COC to consider his proposal.

Learned RP has stated in his report that on 9<sup>th</sup> Oct 2017 he received a proposal from one strategic investor M/S Shreekunj Securities Pvt Ltd. who had shown his interest to invest in the company. However, they were yet to submit a complete proposal, and as a result, nothing could be circulated to the members for their consideration before the meeting.

It is further stated in the report that after the failure of Resolution Plan on the request of some of the members of the COC, 7<sup>th</sup> meeting of COC was called to discuss the future course of action on the failure of Resolution Plan, which held on 11<sup>th</sup> Oct 2017.

It is further stated in the minutes of the 7<sup>th</sup> meeting of COC that Resolution Professional /Chairman has clarified his position on this matter for not continuing as liquidator thus members of COC requested that they have initiated the process for identifying a suitable Resolution Professional to act as Liquidator, which will be decided shortly.

Since statutory time limit of 270 days for submission of Resolution Plan has failed therefore corporate Debtor shall go under liquidation as per provision Chapter 3 of Insolvency & Bankruptcy Code, 2016 read with

Insolvency and Bankruptcy Board of India (Liquidation Process Regulation), 2016. Copy of the order may be sent to Registrar of Companies.

The liquidator shall issue a public announcement stating that the corporate debtor Nicco Corporation Pvt Ltd. is in liquidation.

The order of Moratorium passed under Section 14 of the IB Code shall cease to affect the proviso to sub section (4) of Sec 14.

A fresh Moratorium starts under sub section (5) of Sec 33 of IBC.

The order of liquidation passed under section 33 shall be deemed to be notice of discharge to the officers, employees and workmen of the corporate debtor

Sri Kunal Banerjee has shown his inability to work as liquidator, therefore, we appoint Sri Vinod Kothari, PCS, as Liquidator. He shall proceed with the process of Liquidation by the procedure prescribed under Chapter IIIrd of Liquidation Process for Corporate Persons.

Sd/-  
17/10/17

(Jnan, K.R.)  
Member (Judicial)

Sd/-  
17/10/17

(Vijai Pratap Singh)  
Member (Judicial)

Signed on this the 17<sup>th</sup> day of October, 2017.