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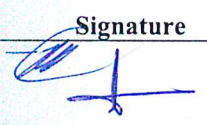
**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATHI BENCH**

PRESENT: HON'BLE JANAB MOHAMMED AJMAL - MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 27.11.2019 AT 10.30 AM

TRANSFER PETITION NO.	IA NO. 33/2019 (AMR) in TCP (IB) NO. 79/9/AMR/2019 IA NO.48/2019(AMR) in TCP NO. 79/9/AMR/2019
COMPANY PETITION/APPLICATION NO.	CP(IB) NO. 32/9/HDB/2018
NAME OF THE COMPANY	Kei-Rsos Maritime Ltd
NAME OF THE PETITIONER(S)	Docking And Engineering Co (VSP) Pvt Ltd
NAME OF THE RESPONDENT(S)	Kei-Rsos Maritime Ltd
UNDER SECTION	9 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
V. Venkat Ramas Reddy YASH VARDHAN Ch. Srinivas A. D. Kumar	Advocate Advocate	898541395	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

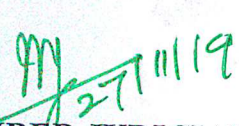
ORDER

IA No. 33/2019 (AMR) in TCP (IB) No. 79/9/AMR/2019:

Counsel for the Petitioner is present. Orders pronounced vide separate sheets. The Application is allowed.

IA No. 48/2019 (AMR) in TCP (IB) No. 79/9/AMR/2019.

Counsel for both sides are present. Heard. Orders as per separate sheets.


MEMBER JUDICIAL.

NCLT Amaravati Bench
IA No. 48/2019
In TCP (IB) No. 79/AMR/TP/2019
{CP (IB) No. 32/9/HDB/2019}

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT HYDERABAD**

*** **

**IA No. 48/2019/AMR/2019
in TCP (IB) No. 79/9/AMR/2019
(CP (IB) No. 32/9/HDB/2019)**

In the matter of M/s M/s KEI-RSOS MARITIME LIMITED

and

*In the matter of an Application under Section 60(5) read with Section
19(2) of the Insolvency and Bankruptcy Code, 2016.*

Between:

Mr. Anand Chandra Swain,
Interim Resolution professional
In M/s Kei-Rsos maritime Limited
D.No. 70-17A/2/9B,
Sasikanth Nagar,
Kakinada - 533 003,
Andhra Pradesh`

... **Applicant**

And

Committee of Creditors,
Rep. by Indian Bank, SAM Branch,
Chennai South, II Floor,
55, Ethiraj Salai, Egmore,
Chennai – 600 008.

... **Respondent**

Date of Order: 27.11.2019.

C O R A M:

Hon'ble Janab Mohammed Ajmal, Member Judicial

Appearance:

For the Applicant (RP) : Sri V. Venkat Rami Reddy, Advocate.
For Respondent (CoC) : Sri G. P. Yash Vardhan, Advocate.

*9/11/2019
27/11/19*

ORDER

This Application by the Interim Resolution Professional (IRP) of the Company undergoing Corporate Insolvency Resolution Process (CIRP) seeking direction to the Committee of Creditors (CoC) to cooperate with him and to approve the expenditure incurred during the CIRP period.

2. The events that led to the present Petition may be briefly stated. This Tribunal by an Order dated 28.08.2019 directed initiation of the CIRP of the Company namely "M/s KEI-RSOS MARITIME LIMITED" and appointed the present Applicant as the IRP. It is contended in the present Application that in pursuance of the order and in furtherance of the CIRP, the Corporate Debtor Company incurred certain expenditures for conducting its operations in the field of Single Point Mooring (SPM), Port Operation and Management and Towing etc. The first meeting of the CoC meeting was held on 01.10.2019 at the Office of the sole Financial Creditor namely Indian Bank, SAMB, Egmore, Chennai. The said Financial Creditor however sought two days to get approval from its Head Office. The CoC however, kept quiet for thirty days and only on 30.10.2019 sent an e-mail dissenting to all the resolutions. The CoC also decided to replace the IRP. In view of these developments the applicant filed the present petition seeking direction to the CoC to cooperate with him and approve the expenditure incurred during this period. The sole CoC member has filed counter to the Application. It has disputed the averments made in the application and has raised questions as to the way the CIRP has hitherto been conducted. It is also mentioned that the details of the expenditures have not been given. Thus it was not possible on the part of the CoC to verify and approve the same.
3. The counsel for the parties as well as the IRP have been heard in the matter. It is submitted during the hearing that the next CoC meeting is slated to be held on 02.12.2019. The IRP undertook to file all the necessary documents and materials in support of the expenditure incurred by the Company undergoing CIRP before the CoC for necessary scrutiny

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and assessment. The learned Counsel for the CoC submitted that the CoC has no quarrel to cooperate with the IRP within the frame work of the Code and the Regulations made thereunder. Considering the submissions the Application is disposed of with the following directions. Hence, ordered.

ORDER

The Applicant (IRP) is directed to place all relevant documents and materials in support of the expenditure incurred by the Company undergoing CIRP before the CoC on 02.12.2019. The CoC shall verify and assess the documents and would take necessary steps for their approval in accordance with law. The CoC shall cooperate with the IRP to ensure the smooth conduct of the Company's business / cooperations during the CIRP period.

The Interim Application is disposed of.


MOHAMMED AJMAL
MEMBER JUDICIAL

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

*** **

IA No. 33 of 2019
in TCP (IB) No. 79/9/AMR/2019
[CP (IB) No. 32/9/HDB/2018]

**In the matter of an Application under Section 60(5) of Insolvency and
Bankruptcy Code, 2016**

and

IN THE MATTER OF M/s KEI-RSOS MARITIME LIMITED

Between

Mr. Anand Chandra Swain
Interim Resolution Professional
M/s Kei-Rsos Maritime Limited

... **Applicant**

and

1. Mr. Shyam Pradhan
General Manager,
Crowe Boda & Company Private Limited
Marker Bhavan,
1, Sir V. Thackersey Marg,
Churchgate,
Mumbai – 400 020.

2. Mr. Rabin Sathaye,
Senior Executive Director
Crowe Boda & Company Private Limited
Marker Bhavan,
1, Sir V. Thackersey Marg,
Churchgate,
Mumbai – 400 020.

... **Respondents**

Date of Order: 27.11.2019

CORAM:

Hon'ble Janab Mohammed Ajmal, Member Judicial

Appearance:

For Applicant: Mr. V. Venkata Rami Reddy, Advocate and Mr. Anand Chandra Swain, IRP.

For Respondents: Ms. Ashwini Sinha, Mr. M. Sridhar, Mr. D.V.A.S. Raviprasad and Mr. S.V.S.S. Sivaram, Advocates.

ORDER

This is an Application seeking orders of restraint against the termination of the Insurance cover of the Company undergoing Corporate Insolvency Resolution Process (CIRP) provided by the respondents.

2. This Tribunal by an order dated 28.08.2019 admitted the Company Petition i.e. TCP (IB) No.79/9/AMR/2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code for short) and appointed the Applicant as the Interim Resolution Professional (IRP) in respect of Corporate Debtor i.e. M/s Kei-Rsos Maritime Limited (the Company for short). The Company is engaged in the field of Single Point Mooring operations and is under contract with oil refineries, such as Mangalore Refinery and Petro Chemicals and Vedanta Limited, Cairn. Both the refineries are dealing with essential commodities such as petrol, diesel, kerosene, etc. The shipping business/operation of the Company covers a distance of 12-16 nautical miles into the sea with number of seafarers (crew) to handle such specialized jobs in and under the sea. The Company has been undertaking the jobs for the last 3½ years and would continue for another 1½ years as per the contracts.
3. The Ship Owners Protection Limited, London (SOPL) provided Protection and Indemnity (P & I) insurance cover to two ships namely COROMANDEL SUPPORTER III (Offshore Tug) and COROMANDEL SUPPORTER IX (Anchor Handling Tug) of the

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Company under respective certificates of insurance dated 08.02.2019 for the period commencing Noon GMT 20.02.2019 to Noon GMT 20.02.2020. Crowe Boda and Company Private Limited is the Indian representative and agent of the SOPL. The respondents respectively are the General Manager and the Senior Executive Director of the said Indian representative. The respondents vide email dated 16.10.2019 terminated the insurance coverage citing the reason of admission of the Company Petition by this Authority. The Applicant sent an email on 17.10.2019 stating that the Company is under the protection of the Moratorium under Section 14 of the Code. The IRP as per Section 25 of the Code, is required to preserve and protect the assets and interest of the Company including its business operations. The respondent No. 2 vide his email dated 19.10.2019 intimated that the Rules of the SOPL are automatic and there was no discretion to alter them. He reiterated termination of P & I cover of all the vessels of the Company w.e.f. 28.09.2019. It is submitted by the Applicant that the P & I cover is essential to the operations of the Company and services it renders through its ships. Unless the P & I cover subsists it would not be possible for the Company to continue its operations. Consequently, the Company itself would come to a deadlock and the purpose of CIRP would be frustrated. The Applicant accordingly seeks stay of the operation of the termination letters under emails dated 16.10.2019 and 19.10.2019. Hence, the Application.

4. The Applicant places reliance on the decision of the Hon'ble Apex Court in (i) **Principal Commissioner of Income Tax vs. Monnet Ispat & Energy Limited: (2018) 147 CLA 300 (SC)**; (ii) **Alchemist Asset Reconstruction Company Ltd. vs. Hotel Gaudavan Private Limited: (2018) 16 SCC 94**; and (iii) **Innoventive Industries Limited vs. ICICI Bank and others: (2017) 140 CLA 39 (SC)**.

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5. The Respondents filed a common counter challenging the Application. It is stated that the Application is not maintainable having been filed against the employees of a company i.e. Crowe Boda & Co., the Indian representative of the Protection and Indemnity Club i.e. Shipowners' Protection Limited. The applicant is seeking order against a foreign entity upon which this Tribunal has no jurisdiction. Besides no order can be passed against SOPL in its absence in the proceedings. The Certificates of insurance dated 08.02.2019 itself provided that the cover is subject to Rules of the Association. The Company (CD) having accepted the same had subjected itself to the Rules and thus now cannot question it. The cessation clause of the certificate *inter alia* provided that the insurance would cease on the event of commencement of the proceedings under any Bankruptcy and Insolvency law to seek protection from its creditors and to reorganise its affairs. In addition clause 66 of the Club Rules, 2019 provided a two stage arbitration in London on the event of a dispute arising between the member of the Club or between any members or the Association, subject to the English Arbitration Act, 1996. Viewed from any perspective, the Application cannot succeed. It is further pleaded that the insurance cover is not an essential service under the Code and hence could not be enforced. The claim of protection under the moratorium is misconceived and cannot be accepted. The Application therefore deserves to be rejected.

6. In support of their contentions, the Respondents relied upon (i) **Mr. G. Ramchandran, RP vs. Oil and Natural Gas Corporation Limited in MA/456/2019 (NCLT, Chennai Bench)** and (ii) **Swastik Gases Private Limited vs. Indian Oil Corporation Limited: (2013) 115 CLA 174 (SC)**.

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7. Counsel for both the parties and the IRP have been heard at length. There is no quarrel that the ships of the Company (CD) were insured by the SOPL for the period from 20.02.2019 to 20.02.2020. The Company in which the respondents hold senior executive positions is the representative/agent of the SOPL for its Indian operations. The P&I cover provided in accordance with the Rules of the Association included but was not limited to Collision with other vessels, Liability in respect of seafarers, Loss or damage to property, Pollution, Towage and Wreck liabilities. It is also not in dispute that the Rules of the SOPL *inter alia* provided that a member shall forthwith cease to be insured by the Association in respect any or all vessels entered by him or on his behalf upon the happening of any of the following events. The Rules proceed to lay down conditions in respect of, the member being an individual or a corporation. The cessation of insurance in respect of a corporation *inter alia* provides that the insurance would cease to have effect upon its (Corporation's) commencing proceedings under any Bankruptcy and Insolvency Laws to seek protection from its creditors or to reorganise its affairs. The respondents apparently have terminated the P & I cover under the said Rule.

8. Essential Services is defined under Regulation 32 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the Regulations). Section 14(2) of the Code provides that during the moratorium period the essential goods and services specified under Regulation 32 of the Regulations shall not be terminated or suspended or interrupted. Regulation 32 envisages that the essential goods and services referred to into Section 14(2) of the Code shall mean electricity; water; telecommunication services; and information technology services. It is accordingly contended that insurance would not come within the purview of the essential services contemplated under Regulation 32. In this

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connection reference is made to order of the NCLT Chennai Bench in **Mr. G. Ramachandran** (supra). Therein the Hon'ble Bench declined to accept the submissions that supply of gas would be an essential service. The purpose of appointment of IRP/RP is to see that the company undergoing CIRP is kept operational and maintained its optimal activity for a successful resolution. A successful resolution would result in the thriving continuation of the Company. In turn the company as a going concern would not only sustain itself but would contribute to the economy and maintain employment of its workers and not drive them into desperation. Essential goods and services defined in Regulation 32 of the Regulations are inclusive and not exclusive or exhaustive. Essential services for one company may differ from that of another. The word 'essential' according to the Merriam Webster Dictionary means 'of utmost importance: Basic, Indispensable, Necessary'. Operation of the tugs and ships is essential to the existence and operation of the Company under CIRP. The Company derives its sustenance from the income of such operations. In case the operations are suspended, the Company itself would not only lose its significance but may cease to exist. In that event the very purpose of Resolution would be lost. The Tugs and Ships with men and materials could not venture into the sea without a P & I cover. Such insurance cover is germane and indispensable for the activities and operations of the Tugs and Ships. Thus in the peculiar facts and circumstances of the case the continuous insurance coverage is an essential service for the Company under CIRP. The Company cannot run its trade and activities without such cover. The reference cited by the respondents being distinguishable on facts would not be of any aid. In **Swastik Gases** (supra), the Hon'ble Court *inter alia* held that when the parties under the contract have intended that courts at a particular place would have jurisdiction, the disputes if any, arising out of the contract would essentially have to be decided in such courts. In the instant case

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however, there is no dispute. Besides the present Application seeks necessary protection for the continuance of the activities of the Company. Therefore, the decision would not any application. In **Monnet Ispat** (supra) the Hon'ble Apex Court in consideration to section 238 of the Code held that it would have overriding effect on anything inconsistent in other enactments. In the present application no other enactment is shown to have been in conflict with the provisions of the Code. The decision is not relevant for the present purpose. Same is the case with **Alchemist** (supra). In **Innoventive** (supra) the Hon'ble Court has also reiterated the overriding effect of Section 238 of the Code. Other observations with regard to Section 7 of the Code are not pertinent for our purpose.

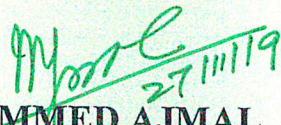
9. In view of the foregoing discussions it is therefore clear that uninterrupted insurance coverage over the Tugs and Ships of the Company under CIRP is critical for its survival. Ongoing operations of the Company would attract viable resolution plan and entail a successful resolution. Therefore, continuous P & I coverage is imperative for its viability as a going concern. The impugned letters of the respondents terminated the insurance to the Tug and Ship. The SOPL having appointed a representative/agent in India would be subject to the Indian laws. The principal is responsible and vicariously liable for the actions of its agent. The condition to which recourse has been taken for terminating the contract provides that when Bankruptcy and Insolvency proceedings is commenced to seek protection from its creditors or reorganise its affairs. In the instant case the CIRP has not been ordered for providing protection to the Company from its creditors or to reorganize its activities. Prima facie therefore, the clause could not be applicable. Even otherwise insurance services being essential for the very existence of the Company, the same could not have been terminated without at least a

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notice to the Company. The Authority is satisfied that the Company deserves protection of its orders. Hence ordered.

ORDER

The Application be and the same is allowed on contest. The operation of the email dated 16.10.2019 and 19.10.2019 issued by the respondents shall remain stayed till completion of the CIRP process or 20.02.2020 whichever is earlier.


MOHAMMED AJMAL
MEMBER JUDICIAL