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NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-1510(ND)2019

In the matter of

Ester Industries Ltd.
Plot No. 11 - A, Infocity - I,
Sector - 33-34, Gurgaon - 122001
Haryana

...Applicant/Operational Creditor

Versus

Kanik Electronics Pvt. Ltd.
Having its registered office at
D - 404, Nagarjuna Apartments,
Mayur Kunj, Delhi - 110096.

Also at:

Kanik Electronics Pvt. Ltd.
C -8, Sector - 3, Noida - 201301,
Uttar Pradesh.

...Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 30.09.2019

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SH. L.N. GUPTA, HON'BLE MEMBER (T)

Present for the Petitioner.: Mr. Praveen K. Mittal, Ms. Disha Bajaj,
Advocates

Present for the Respondent: Mr. Nidhish Gupta, Advocate

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)



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M/s. Ester Industries Pvt. Ltd.
[Dilshad]

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17/10/19

1. The present petition has been filed by the petitioner as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate its debts.
2. As per averments, the petitioner is engaged in the manufacture of Polyester PBT Chips and Poly Carbonates Resin products. At the request of the Corporate Debtor, they had been supplying goods from time to time under various purchase orders placed on them. A running account was maintained in respect of the transactions made. It is submitted that as on 28.02.2019, a sum of Rs. 1,37,39,440/- was the outstanding amount which was duly confirmed by the Corporate Debtor vide an Acknowledgement of Debt of the same date. Subsequent to the acknowledgement and in a bid to reduce the liability, the Corporate Debtor has paid certain amounts, leaving the outstanding balance as Rs. 1,16,04,986/45.
3. It is submitted that despite repeated request and reminders the Corporate Debtor has failed to pay this amount. A demand notice dated 13.04.2019 was served on the Corporate Debtor, both by email as well as by registered post, to which there was no response. The Operational Creditor has therefore filed the present petition which is in the required format and is duly annexed with compliances under Section 9(3)(b) and 9(3)(c).
5. Upon notice being issued through the process of the Bench, the Corporate Debtor failed to put in appearance and was proceeded ex-parte.



6. The Operational Creditor has relied upon invoices and the statement of account maintained in the normal course of business to corroborate its submissions and Corporate Insolvency Resolution Process of the Corporate Debtor is directed to be initiated. Given the fact that there is no resistance to the present prayer made by the Operational Creditor, nor is there any pre-existing dispute, the prayer made by the operational Creditor merits consideration. Accordingly, the petition is Admitted. A moratorium in terms of Section 14 of the Code comes into effect forthwith, staying:

“(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.

Further, (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) Further, 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.”



7. The Operational Creditor has not proposed the name of the IRP. Accordingly, we appoint Ms. Ashu Gupta, Registration No. IBBI/IPA-002/IP-N00339/2017-2018/10943, Email Id: ashugupta.cs@gmail.com, Mob: - 09899021740, Resident of: New Delhi, as the IRP. Her consent be procured and filed on record by the Operational Creditor. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be duly accounted for by the IRP and shall be reimbursed by the CoC to the Operational Creditor to be recovered as CIR costs.

8. The IRP is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and file his report.

9. Copy of the order be communicated to both the parties as well as to the IRP.

10. To come up on 22nd November, 2019.

Sdr
(L. N. Gupta)
Member (T)



Sd - u
(Ina Malhotra)
Member (J)

Sharma 17.10.19
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003