NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA-3754/ND/2020
IN
Company Petition No. (IB)-1510(ND)2019

IN THE MATTER OF :

M/s. Ester Industries Limited **....Operational Creditor**

Versus

M/s Kanik Electronics Pvt. Ltd. **....Corporate Debtor**

AND IN THE MATTER OF :

Deepika Bhugra Prasad
Resolution Professional,
Kanik Electronics Private Limited
E-6A, LGF, Kailash Colony
New Delhi-110048 **...Resolution Professional/Applicant**

Versus

1. **Mr. Kapil Gupta**
   Suspended Director
   House No. 349, Section 15 A
   Gautam Buddha Nagar,
   Noida-201301, UP **...Respondent No. 1**

2. **Ms. Sonia Kapil**
   Suspended Director,
   House No. 349, Sector-15 A
   Gautam Buddha Nagar
   Noida-201301, UP **...Respondent No. 2**

Order Delivered on : 12.10.2020

Under Section: 33(2) of the IBC, 2016.

CORAM:

CH. MOHD. SHARIEF TARIQ, MEMBER (J)
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Prateek Kushwaha, Advocate

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

This is an Application filed by Ms. Deepika Bhugra Prasad, the Resolution Professional of M/s Kanik Electronics Private Limited (hereinafter referred as 'Applicant)' under Sections 33(2) of the Insolvency and Bankruptcy Code, 2016 for seeking the following main reliefs :

> *"1. Order requiring the Kanik Electronics Private Limited having CIN:U31900DL2012PTC231966, to be liquidated in the manner as laid down in Chapter III of the Insolvency & Bankruptcy Code 2016;*
>
> *2. Appoint the Applicant, Deepika Bhugra Prasad as the Liquidator in the Liquidation of Kanik Electronics Pvt. Ltd. ."*

2. Facts of the case in brief are that the Operational Creditor, M/s Ester Industries Ltd. has filed an Application bearing No. (IB)-1510(ND)/2019 under Section 9 of the IBC, 2016 for initiating the Corporate Insolvency Resolution Process (CIRP) of Kanik Electronics Pvt. Ltd. The said Application was admitted by this Tribunal vide its Order dated 30.09.2019 and Mrs. Ashu Gupta was appointed as the Interim Resolution Professional (IRP).

3. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in the Form-A, which was published in the newspapers namely, the Financial Express (English) and Jansatta (Hindi) on 18.10.2019. The public announcement was also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

4. The Interim Resolution Professional constituted the Committee of Creditors (CoC) on 07.11.2019 comprising of a sole Financial Creditor namely, HDFC Bank Limited.

5. That subsequently, the CoC had preferred an Application for replacement of the IRP Mrs. Ashu Gupta with Ms. Deepika Bhugra Prasad as RP. That this Tribunal vide Order dated 13.01.2020 had confirmed the appointment of Ms. Deepika Bhugra Prasad as Resolution Professional.

6. It is submitted by the Applicant that the Form-G was published on 27.12.2019 for inviting Expressions of Interest. It is further submitted that no EOI was received in response to the publication.

7. It is further submitted by the Applicant/RP that she had suggested to the CoC for re-publication of the Form-G but the CoC did not consider the agenda item.

8. It is stated by the Applicant that as per the Reports filed by the Registered Valuers, the Average Fair Value of the Corporate Debtor is Rs 9,80,24,925 and the Average Liquidation Value is Rs 6,86,27,297.

9. It is further stated by the Applicant that in the 5th Meeting of CoC held on 25.03.2020, the following Resolution was put up for consideration and vote before the members of CoC. The details of the Resolution are reproduced below :

> **Resolution No. 3**
>
> **To consider and pass the resolution to liquidate the Corporate Debtor.**
>
> **Facts & Explanatory**
>
> **As discussed, the publication of fresh EOI in Form-G was not approved by the members in the COC in the previous meeting. The members of the COC were of the opinion that best efforts have been made but no resolution could be found for the same.**
>
> **Since the 180 days period of the CIRP of Kanik Electronics Private Limited shall end on 28.3.2020, the Liquidation of the Corporate Debtor may take place under the provisions of Section 33 (2) of the Code which states as follows:**

Section 33 (2) "Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent. of the voting share]to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i),(ii) and (iii) of clause (b) of sub-section (1)."

Resolution:

To consider and if found fit, to pass with or without modification the following Resolution

"**RESOLVED THAT** Kanik Electronics Private Limited, the Corporate Debtor having CIN number U31900DL2012PTC231966 having its registered office at D-404 Nagarjuna Apartments Mayur Kunj Delhi - 110096 be liquidated under section 33(2) of Insolvency and Bankruptcy Code, 2016 as no appropriate resolution could be found during Corporate Insolvency Resolution Process commenced on 30.09.2019 vide an order of Hon'ble NCLT, New Delhi Bench".

"**FURTHER RESOLVED THAT** Mrs. Deepika Bhugra Prasad, the Resolution Professional be and hereby authorized to file an application for liquidation of the Corporate Debtor before the Hon'ble NCLT."

"**FURTHER RESOLVED THAT** Mrs. Deepika Bhugra Prasad, the Resolution Professional in the case of Corporate Insolvency Resolution Process of Kanik Electronics Private Limited be and is hereby appointed as liquidator for carrying out the liquidation process of Kanik Electronics Private Limited."

10. It is submitted by the Applicant that the aforesaid Resolution was passed by 100% voting share. It is added that the voting was done through the process of e-voting, which took place from 27.03.2020 to 28.03.2020.

11. That the RP has also filed her written consent dated 25.03.2020 to act as Liquidator as required under Section 34(1) of the IBC, 2016.

12. In the circumstances and there being no other alternative, this Bench is inclined to accept the resolution of the COC and order Liquidation of the Corporate Debtor.

13. In sequel to the above, the Application is allowed, ordering Liquidation of the Corporate Debtor, M/s. Kanik Electronics Private Limited in the manner as laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions :

a. Ms. Deepika Bhugra Prasad, having IBBI Registration No. IBBI/IPA-003/IP-NOO0110/2017-18/11186, is appointed as Liquidator, who has given her written consent to act as Liquidator in terms of Section 34 (1) of IBC 2016;

b. The Liquidator, is directed to issue public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

e. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any.

f. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

g. The Registry is directed to communicate a copy of the Order to the Operational Creditor, the Corporate Debtor and Liquidator Ms. Deepika Bhugra Prasad at the earliest but not later than seven days from today.

h. A copy of this Order be sent by the Registry and Liquidator to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the

Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days.

i. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record;

14. IA-3754/ND/2020 filed in IB-1510(ND)/2019 is **allowed** in the aforesaid terms.

-Sd-

(L. N. Gupta)
Member (T)

-Sd-

(Ch. Mohd. Sharief Tariq)
Member (J)