BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P (IB) No. 121/BB/2018
U/s 9 of I & B Code, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016

In the matter of

M/s. M.R. Betgeri,
No.50, A.P.M.C Yard,
Byadgi-581106,
Haveri District. - Petitioner/Operational Creditor

Versus

Maiyas Beverages and Foods Private Limited,
No.53 (Old No. 430), 7th 'B' Main,
30th Cross, 4th Block, Jayanagar,
Bangalore-560011. - Respondent/Corporate Debtor

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

Date of Order: 24th July, 2018

For the Petitioner(s):	Mr. Ajay Shankar, Advocate
For the Respondent:	Mr. G. Sridhar, Advocate.
For Peepul Capital Fund III LLC :	Mr. M.G Nanjappa; N.K. Dilip, B.S. Vivek, Advocates

Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical)**

O R D E R

1. This Company Petition bearing C.P (IB) No. 121/BB/2018 is filed by **M/s M.R Betgeri**, A Partnership Firm (Petitioner/Operational Creditor) u/s 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of I & B (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of **Maiyas Beverages and Foods Private Limited** (Respondent/Corporate Debtor).

2. Brief facts of the case, which are relevant to the issue in question, are as follows:
3. Maiyas Beverages and Foods Private Limited (Respondent/ Corporate Debtor) was incorporated under the Companies Act, 1956 on 23/12/1988 having authorized share capital of Rs 359,00,00,000/- and the paid-up share capital of the Corporate Debtor Company is Rs 298,98,23,600/-.
4. The Operational Creditor had supplied dry chilies and chili powder to the Corporate Debtor during the years 2017 and 2018 and then raised 65 invoices amounting to Rs 4,91,90,966/- for the goods supplied and out of which at present the outstanding amount is **Rs 4,87,10,458.34**. The Corporate Debtor has accepted the goods supplied by the Operational Creditor and has neither raised any dispute relating to the quality of goods nor in relation to the amount claimed in the invoice and as per the terms of the invoice, the Corporate Debtor was allowed a credit period of 30 days from the date of receipt of the goods.
5. When the Corporate Debtor failed to pay the outstanding amount, the Operational Creditor issued legal notice on 26/05/2018, under the provisions of I & B Code, 2016 by demanding to pay the outstanding amount of Rs 4,87,10,458.34. After receiving the Demand Notice on 26/05/2018, the Corporate Debtor did not reply to the demand notice. Therefore, the instant Company Petition is filed.
6. The Respondent/ Corporate Debtor has filed statement of objections on 13th July 2018 by inter-alia contending that:
   (a) The Petitioner/Operational Creditor has supplied dry chilies and chili powder to the Corporate Debtor during the years 2017 and 2018 and that the instant claim of the Applicant has not seriously disputed by the Respondent. The Respondent had on

earlier instances sought for accommodation from the Applicant for payment of the dues and at present the claim lodged by the Applicant is also admitted/acknowledged on the NeSL.

(b) Certain disputes have arisen between the promoter-shareholder and the investor-shareholder which have severely affected the day-to-day running of the business of the Respondent and consequently the operations have been affected leading to virtual dilution of the capacity of the Respondent to meet its trade liabilities and the efforts of the Respondent to source additional funds to continue to run the business have not been successful and due to its inability to raise the required and adequate resources, the business of the Respondent is almost shut, the financial situation of the Respondent has deteriorate drastically and it is facing huge losses. Hence, the Respondent is also facing a liquidity crunch due to business almost having come to a stand-still leading to inability of the Respondent to meet its debts.

7. Heard Shri Ajay Shankar, learned Counsel for Petitioner/ Operational Creditor; Shri G.Sridhar, learned Counsel for Respondent and Shri N.K Dilip; Shri M.G Nanjappa; Shri B.S.Vivek, learned Counsels appearing on behalf of the proposed Peepul Capital Fund III LLC.

8. The learned Counsel for Petitioner while reiterating various contentions raised in the Company Petition has further submitted that the instant Application is strictly followed in accordance with the provisions of IBC, 2016 and moreover the Corporate Debtor also did not dispute the debt in question and the instant Application is filed to initiate Corporate Insolvency Resolution Process (CIRP) against the Respondent/Corporate Debtor. The Respondent admittedly failed to pay the outstanding amount of Rs 4,87,10,458.34 and even the objections filed by the Respondent

shows that he has admitted to being liable and the Petitioner has also complied with all the provisions of I & B Code, and thus has contended that it is a fit case to initiate Corporate Insolvency Resolution Process.

9. We have perused the pleadings of both the parties. The present Application/Petition is filed seeking in accordance with section 9 (2) of I & B Code, 2016. There is no repayment of unpaid operational debt and even though Demand Notice has been issued under the provisions of I & B Code and Rules there under. Therefore, we are satisfied that, it is a fit case to admit the instant Company Petition and to pass other consequential orders for appointment of Insolvency Resolution Professional etc.,

10. Mr. Ashish Kanodia, 5, Hetal Apartment, 1st Floor, Above Arti Scan Centre, N.S Road, Mulund West, Mumbai-400080 Registration No. **IBBI/IPA-001/IP-P00634/2017-18/11106** is proposed as Interim Resolution Professional is eligible to be appointed as IRP and also filed requisite declaration in accordance with the format prescribed by the IBBI-New Delhi.

11. In view of the above facts and circumstances and by exercising powers conferred on this Tribunal U/s 9(5)(i) and other extant provisions of IBC, 2016, the following orders are passed:-

    1) The Company Petition bearing C.P (IB) No. 121/BB/2018 is hereby admitted initiating CIRP in respect of Corporate Debtor;

    2) **Mr. Ashish Kanodia,** 5, Hetal Apartment, 1st Floor, Above Arti Scan Centre, N.S Road, Mulund West, Mumbai-400080 Registration No. **IBBI/IPA-001/IP-P00634/2017-18/11106** is is hereby appointed as Interim Resolution Professional in respect of the Corporate Debtor to carry on the functions as mentioned under the Insolvency & Bankruptcy Code.

3) The following moratorium is declared 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 judgment, 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;

(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.

(e) 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.

(f) 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.

(g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.

(h) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time.

12. Post the case for report of IRP on **31/08/2018**.

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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30/7/18
Deputy/Asst. Registrar
National Company Law Tribunal
Bengaluru Bench