BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

SPECIAL BENCH, NEW DELHI

C.P. NO. IB- 1279/(ND)/2018

IN THE MATTER OF:

M/s Kamal Metals Private Limited

....Petitioner

Vs.

M/s M. K. Peacock Mineral Water Private Limited ...Respondent

SECTION: Under Section 9 of the Insolvency and Bankruptcy Code, 2016

Order delivered on: 26.07.2019

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR

Hon'ble President

Dr. V.K. SUBBURAJ

Hon'ble Member (Technical)

PRESENTS:

For Petitioner : Mr. Anuj Kumar Solanki, P.C.S

For Respondent : None

MEMO OF PARTIES

M/s Kamal Metals Private Limited
Having its registered office at:
OPP Verka Milk Plantbye
Pass Amritsar-143001 (Punjab)

...Applicant/ Operational Creditor

VERSUS

M/s M.K. Peacock Mineral Water Private Limited
Having its registered office at:
S-410, Greater Kailash, Part-II,
New Delhi-110048 (Delhi)

...Respondent/ Corporate Debtor

ORDER

M. M. KUMAR, PRESIDENT

1. The Petitioner claiming to be Operational creditor has filed the instant Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent M/s M.K. Peacock Mineral

Water Private Limited (for brevity the 'corporate debtor'). The total amount claimed as unpaid debt is Rs. 24,02,218/- only. In addition to interest at the rate of 24% per annum amount to Rs. 12,93,497/- has already been included. The total amount including interest claim is 36,95,715/- and working computation of unpaid amount has already been provided as Annexure-4. The amount is stated to be in default since the date of default is somewhere in 2016 as different invoices were issued in the aforesaid year 2016.

2. The petitioner sent notice under Section 8 to the Corporate Debtor (Annexure-7) on 29.08.2018 by speed-post along with the copies of all the invoices and the same has been duly received. In compliance of the provisions of Section 214 & 215 of the Insolvency & Bankruptcy Code, 2016, the petitioner also intimated the NeSL National E-Governance Services Limited which is an information utility. (Annexure with the provisions of Section 214 (e)). The information utility get the information received from the various persons authenticated by all concerned parties before giving such information. In other words, the information sent by the

petitioner has been authenticated by confronting the same to the Corporate Debtor.

3. The total default amount on 18.04.2016 recorded by the information utility amount is 36,95,715/-. Accordingly, there is presumption of truthfulness in the plaint made by the petitioner. It is pertinent to mention that no reply raising the dispute was found. Neither any information that in this was furnished to the information utility in terms of provisions of Section 9(3)(d) or Section 8(2).
4. As no dispute has been registered by the Corporate Debtor with the information utility namely NeSL there is a presumption in law that the amount claimed and authenticated by information utility is due and payable.
5. Reply to the petition has been filed and in Para No. 3 stand now taken is that the raw material supplied was defective and in that regard allegations in Para No. 3 which reads as under.

"3. That the abovesaid raw material is then processed and put into the Injection Moulding Machine which manufactures 'Preform" which is then further processed in a blowing machine to create final product i.e. plastic bottle. The Corporate Debtor had purchased the new Injection Moulding Machine with the

brand name 'Ferromatik Milacron' in the year 2007-08. It is pertinent to mention here that the business between the CD and OC was running smoothly and the payments were made from time to time since the year 2007 till the end of 2015. However, by the end of the year 2015 the OC started mixing inferior quality of raw material and supplying the same to the CD. The said fact was revealed to the CD when the Injection Moulding Machine got dysfunctional on account of the usage of the bad quality raw material and ultimately had to be sold in scrap. The CD had to incur huge loss on the repair and consequent sale of the same. Without any delay, the said fact was brought to the notice of the OC but initially OC was reluctant to owe its responsibility and kept on making one excuse after the other and promising enquiry into the same. After a lot of persuasion, the officials of the OC assured of the good quality of the raw material to be supplied in the future and promised to make good the loss suffered by the CD on account of the loss to the abovesaid Injection Moulding Machine. Believing the representations made by the OC and considering the long standing business relationship with the OC, it was decided by the CD to keep doing business with the

OC on the abovesaid assurance. As such, the OC continued supplying the raw material to the CD. True Copy of sale invoice of the Moulding Machine 'Ferromatik Milacron is being annexed herewith and is marked as Annexure4"

6. A perusal of the aforesaid para would show that the Corporate Debtor is involved in manufacturing of plastic bottles and the Operational Creditor supplied material known as 'Relpet Resin' which is moulded in the Injection Moulding Machine. The allegations made is that by the end of the year 2015, the Operational Creditor started mixing inferior quality of raw material and the aforesaid fact was revealed to it, as the Injection Moulding Machine was dysfunctional on account of the usage of the bad quality raw material. There is nothing in this regard to show that any such defect was already pointed out earlier nor no reply has been filed to the Demand Notice under Section 8 nor any dispute is registered with the information utility. Accordingly, we are constrained to observe that the defence pleaded as wholly unacceptable and is moon-shine.

7. As a matter of fact the Corporate Debtor has averred to settle the dispute with the Operational Creditor and is willing to

making payment to the bills in that regard, the averment made in Para 4 are relevant and has alleged the highly exaggerated interest on the amount of tax invoices has been claimed. However, till date neither any settlement nor any such offer has been made as a consequence of discussion, petition is admitted and Corporate Insolvency Resolution Process is initiated in respect of the Corporate Debtor.

8. Mr. Rajiv Bajaj, is appointed as IRP who has filed this written communication as per the rules.

9. As a consequence of the application being admitted in terms of Section 9(5) of the Code the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Respondent:

    a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

2. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

> (2) The supply of essential goods or services to the respondent 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.

3. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

> (4) 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 respondent under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

10. The Applicant is directed to pay a sum of Rs. 2,00,000/- to the Interim Resolution Professional ("IRP") upon the IRP filing the necessary declaration form as required under the provisions of the Code to mete out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. Based on the above terms, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named who is figuring in the

list of resolution professionals forwarded by IBBI be also furnished with copy of this order forthwith by the registry.

Sd/-

(M. M. KUMAR)

PRESIDENT

Sd/-

(Dr. V. K. SUBBURAJ)

MEMBER (TECHNICAL)