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NATIONAL COMPANY LAW TRIBUNAL  
SINGLE BENCH  
CHENNAI

(16)

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI  
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 30.08.2018

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL

APPLICATION NUMBER :  
PETITION NUMBER : CP/600/(IB)/2018  
NAME OF THE PETITIONER(S) : NIKITA CONTAINERS PVT LTD  
NAME OF THE RESPONDENT(S) : GALAXY COSMETICS PVT LTD  
UNDER SECTION : 9 RULE 6

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
		REPRESENTATION BY WHOM	

Mohammed Umar. k  
(for Adv. B. Dhanaraj)

Counsel for D.C



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
SIGNLE BENCH, CHENNAI**

CP/600/(IB)/CB/2018

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016 r/w Rule 6 of the  
Insolvency and Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016.

In the matter of

**M/s. Nikita Containers Private Limited.**

*... Operational Creditor*

Vs.

**M/s. Galaxy Cosmetics Private Limited.**

*... Corporate Debtor*

*Order delivered on 30<sup>th</sup> of August, 2018*

CORAM:

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)**

*For Operational Creditor(s) : Mr. Mohammed Umar. K  
for Mr. B. Dhanaraj, Counsels.*

*For Corporate Debtor (s) : Ex-parte*

**ORDER**

**Per: CH. MOHD SHARIEF TARIQ, MEMBER (J):**

1. Under Adjudication is CP/600/(IB)/CB/2018 that  
has been filed by the Operational Creditor under  
Section 9 of the Insolvency & Bankruptcy Code, 2016  
(in short, 'I&B Code, 2016') r/w the Insolvency &

Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. As seen from the record, on 01.06.2018 the Registry was directed to issue notice to the Corporate Debtor and the Operational Creditor was also permitted to take private notice on the Corporate Debtor and the case was posted to 22.06.2018. On 22.06.2018, the notice sent to the Corporate Debtor returned with an endorsement 'left', and hence, the Counsel for the Operational Creditor was directed to take substituted service by publication in newspapers, and the case was posted to 24.07.2018. On 24.07.2018, the Counsel for the Operational Creditor has filed proof of newspaper publication effecting service of notice on the Corporate Debtor. There was no


representation on behalf of the Corporate Debtor, and the Corporate Debtor was proceeded *ex-parte* on 24.07.2018.

3. Heard the learned Counsel for the Operational Creditor and perused the pleadings including the documents placed on the case file.

4. The Operational Creditor has claimed an outstanding debt to the tune of Rs.6,88,958.47p which is inclusive of interest due and payable as on 02.01.2018.


5. The brief facts of the case are that the Operational Creditor is carrying on the business of manufacturing and supplying of Printed Tin Containers. The Corporate Debtor had initiated a business relationship with the Operational Creditor through placement of orders for Printed Tin Containers and Shoulders of various sizes in respect of M/s. Sri Annamalaiyar Products. It was mutually agreed between the Corporate Debtor and Operational Creditor that the payments in respect of

the supplies of products made by the Operational Creditor shall be credited directly by the Corporate Debtor to the account of the Operational Creditor, irrespective of delivery of the products ordered at the site of the manufacturer viz., M/s. Sri Annamalaiyar Products and of the Invoices raised in the name of M/s. Sri Annamalaiyar Products.


6. The Operational Creditor had duly supplied the requirement of the Corporate Debtor in line with the order placed at the premises of M/s. Sri Annamalaiyar Products during the months of April and June, 2015 without any deviation and without any damage. The correspondence between the parties for supply of the material is contained in the document which is placed at page 24 of the typed set filed with the Application. In lieu of the supply made, the Operational Creditor, based on the instructions from the Corporate Debtor, has raised the Invoices in the name of M/s. Sri Annamalaiyar Products. The Invoices are placed at 

pages 17 to 22 of the typed set filed with the Application.

7. The Corporate Debtor has admitted the liability of the Operational Creditor vide communication dated 11.08.2015 stating that the Corporate Debtor is trying to mobilise some funds to make payments to the Operational Creditor and asked for some time, the copy of which is placed at page 25 of the typed set filed with the Application. Thereafter, a cheque has been issued by the Corporate Debtor to the Financial Creditor, as part payment, on 13.02.2017 which got bounced on presentation of the same in the Bank, and the same is reflecting from the document placed at page 36 of the typed set filed with the Application.

8. The Operational Creditor has sent a Demand Notice dated 02.01.2018 under Section 8 of the I&B Code, 2016 to the Corporate Debtor wherein the details of the amount outstanding, Invoices and the correspondences made between the parties including 

the details of cheque are being mentioned in the notice, the copy of which is placed at pages 12 to 14 of the typed set filed with the Application. Learned Counsel for the Operational Creditor has submitted that notice under Section 8 has been sent to the registered office address of the Corporate Debtor on 02.01.2018, the copy of which is placed at pages 15 and 16 of the typed set filed with the Application. However, the postal envelop has been returned with an endorsement 'moved'. The Registered Office address at which the notice has been sent is confirmed from the Company Master Data is placed at page 51 of the typed set filed with the Application.

9. The Operational Creditor has complied with Section 9 (3) (b) & (c) of the I&B Code, 2016, by filing Affidavit, wherein under Para 3, it has been deposed that no notice has been given by the Corporate Debtor to the Operational Creditor regarding any pending litigation or arbitration proceedings initiated by it disputing the unpaid operational debt. The copy of 

the Affidavit is placed at pages 48 and 49 of the typed set filed with the Application. The Certificate issued by the authorised signatory of the Kotak Mahindra Bank has been placed on record at page 50 of the typed set filed with the Application.

10. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This Bench is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt claimed by the Operational Creditor. Therefore, CP/600/(IB)/CB/2018 is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

11. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code,

2016. It is ordered to prohibit 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 (54 of 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.

12. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The

provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

13. Mr. Mathur Sabhapathy Viswanathan is hereby appointed as IRP, as has been proposed by the Operational Creditor. There is no disciplinary proceeding pending against the IRP as is evidenced from Form-2, the copy of which is placed on record. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016, within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

14. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all

assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.

15. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016.

16. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

The address details of the IRP are as follows: -

**Mr. Mathur Sabhpathy Viswanathan,**

Reg. No: IBBI/IPA-001/IP-P00674/2017-2018/11148

No.15/35, Musafar Jung Bahadur Street,

Triplicane, Chennai 600 005

Mobile No. 98840 85514

E-mail ID: [msv8200@gmail.com](mailto:msv8200@gmail.com)

17. Order is dictated and pronounced in open court in the presence of the Counsel for Operational Creditor.

P. ATHISTAMANI

  
**[CH.MOHD SHARIEF TARIQ]**  
MEMBER (Judicial)