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**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
COURT-III**

IB-905/ND/2019 filed 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 **Valaya Clothing Pvt Ltd.***

Sudhir Sales and Services Ltd.

...Operational Creditor

Versus

Valaya Clothing Pvt Ltd

...Corporate Debtor

Order delivered on 26.11.2019

CORAM:

CH. MOHD. SHARIEF TARIQ,
Member (Judicial)

KAPAL KUMAR VOHRA,
Member (Technical)

For the Operational Creditor: Mr. Nakul Jain, Advocate

For the Corporate Debtor: Ex Parte

ORDER

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

1. The Ld. Counsel for the Operational Creditor (OC) is present. There is no representation on behalf of the Corporate Debtor (CD). As seen from order dated 18.9.2019, the Corporate Debtor was proceeded ex parte and the matter was fixed for final hearing.

2. Under adjudication is an Application numbered as IB-905/ND/2019 that came to be filed by the OC under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016), r/w rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, with the prayers to initiate CIR Process (CIRP) against the CD viz. Valaya Clothing Pvt. Ltd., declare moratorium and appoint Insolvency Resolution Professional (IRP).

3. The Ld. Counsel for the OC submitted that an amount of Rs.2,61,876/- along with interest @ of 15% per annum is outstanding against the CD which is due and payable. It is submitted that the OC, inter alia, is engaged in the business of manufacturing, supply, installation, testing and commissioning of silent D.G. Sets, HP Panels and related work and ~~are~~^{is} one of the pioneer and most reputed manufacturers in the industry. Whereas, the CD is a Company engaged in the business of clothing and had approached the OC for taking on hire 125KVA silent DG Set vide purchase order No. VCPL/RO/001 dated 20.10.2012. As per the terms and conditions of the purchase order, the CD was to pay a monthly rental of Rs.25,000/- plus tax for the DG Set so hired.

Besides this, the CD had undertaken to provide the requisite 'C' Form (s) against each invoice raised by the OC at the earliest point of time.

4. In terms of the purchase order, the DG Set so hired was supplied/delivered to the CD w.e.f. 21.10.2012 onwards, which functioned without any problem and/or fault since its supply/operation. In short, the OC had complied with all the terms and conditions, as mutually agreed between the parties and had supplied the DG Set to the satisfaction of the CD. Accordingly, the invoices were raised from time to time by the OC towards rental of the said DG Set being used by the CD. The invoices were received and acknowledged by the CD, who did not raise any dispute, part payments were released and an amount of Rs.1,86,997/- was unpaid for which repeated requests for payment were made by OC but no response.

5. It is further submitted by the Ld. Counsel for the OC that the CD failed and neglected to provide necessary 'C' Form (s) as undertaken, despite numerous and repeated reminders. In view of it, the OC was constrained to send Debit Note No. 677 dated 03.08.2018 to the CD for an amount of Rs.74,879/- towards the tax liability incurred by the OC on account of default on the part of CD.

6. The OC has placed on record the purchase orders and invoices along with the notice given under Section 8 of the IBC, 2016. The notice under Section 8 of IBC, 2016 was sent on 13.11.2018 through speed post. In addition to that, notice was sent through e-mail on 05.02.2019. The proof of delivery is also placed on record. The CD has not replied to the demand notice sent by the OC.

The OC has also complied with the provisions of Section 9(3) (b) and (c) by placing on record an affidavit wherein under para 7, it is deposed that no notice of dispute has been received by the OC in relation to unpaid debt. The ledger extract is placed at page 87 which mentions that as on 03.08.2018, the closing balance was Rs.2,61,876/-.

7. In the light of the contents of the Application and the documentary evidence placed on record, this authority is satisfied that an amount of Rs.2,61,876/- is due and payable along with interest @ 15% per annum by the CD to the OC, which it failed to pay. The OC has fulfilled all the requirements of law for admission of the Application. Therefore, the Application is **admitted** and the commencement of the CIRP is ordered, which ordinarily shall be completed within 180 days, reckoning from the day this order is passed.

8. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, 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.

9. The supply of essential goods or services of the CD 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.

10. Mr. Deepak Maheshwari is hereby appointed as IRP, as has been proposed by the OC. There is no disciplinary proceeding pending against the IRP as is evidenced from Form-2. The IRP is directed to take charge of the CD's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of I&B Code, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed.

11. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the CD, its Promoters or any person associated with the management of the CD are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the I&B Code, 2016.

12. The OC and the Registry are directed to send the copy of this Order to IRP with immediate effect, so that he could take charge of the CD's assets etc.,

and make compliance with this Order as per the provisions of I&B Code, 2016.

The e-mail and other details of the IRP are as follows: -

Mr. Deepak Maheshwari

Registration No: IBBI/IPA-002/IP-N00531/2017-18/11594

Address: 443, 4th Floor, Tower A2, Spaze IT Park,


Sohna Road, Gurgaon,


Haryana-122001,

Email ID: Deepak@jindagilive.in

13. The Registry is also directed to communicate this Order to the OC, the CD and the concerned RoC.

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


(K.K. VOHRA)
MEMBER (TECHNICAL)


CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)

U.D.Mehta /V