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NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-2863 (ND) 2019

In the matter of
SUNIL KUMAR

.....Operational Creditor/Applicant

VERSUS

NESA INDIA PRODUCER COMPANY LIMITED

.....Corporate Debtor/ Respondent

SECTION: 9 of IBC, 2016

ORDER DATE: 25.11.2019

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

ORDER

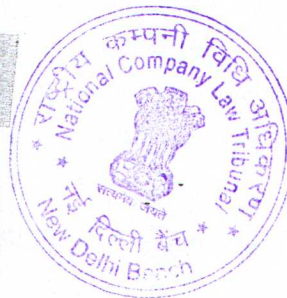
Per Ms. Sumita Purkayastha (Member Technical)

In the abovementioned case, an order was pronounced on 18.11.2019.

The Tribunal has examined the order and found that it does not pertain to this case. The order be amended and replaced. The Amended order be issued in today's date. The order on record be treated as deleted.

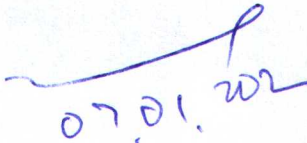

Sumita Purkayastha

Member (T)




Ina Malhotra

Member (J)


07.01.2020


Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003

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NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-2863 (ND) 2019

In the matter of

SUNIL KUMAR

House No. D-157, Gali No. -10,
Near Shanti Dal Public School,
Harphool Vihar Jai Vihar Phase-3,
Bapraula, West Delhi, Delhi-110043.

.....Operational Creditor/Applicant

VERSUS

NESA INDIA PRODUCER COMPANY LIMITED

Corp. Off.: 103 KH.No. 47/22
Akash Vihar Nangloi,
Near Kali Mata Mandir,
New Delhi-110041.

.....Corporate Debtor/ Respondent

SECTION: 9 of IBC, 2016

Order delivered on:18.11.2019

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- Adv. Deepak Anand, for the Petitioner

Adv. Manas Tripathi & Mr. Ashfaq Alam(Director) for the
Respondent



07.01.2020

by

ORDER

Per Ms. Sumita Purkayastha (Member Technical)

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.
2. The Operational Creditor applied for the job in the Respondent Company on 08.01.2019. Thereafter, the Operational Creditor was appointed vide appointment letter dated 10.01.2018 for the post of Executive at the Delhi Office of the Respondent Company, with a gross salary of Rs. 15,000/- per month. Another employee Mr. Mohit was appointed vide appointment letter dated 05.02.2018 for the post of field Executive at the Delhi office of the Respondent Company, with a gross salary of Rs. 18,500/- per month. The salary was paid in cash to the employees.
3. As per averments made in the Application, the respondent Company stopped paying salary to its employees. Thereafter, the Respondent Company vide Demand Notice dated 04.10.2019 demanding Sh. Ashfaq Alam (Director) of the respondent Company for the payment of the arrears of the Salary from the month of February, 2019.
4. After receiving the Demand Notice dated 04.10.2019, Sh. Ashfaq Alam, Director of Corporate Debtor issued letter dated 07.10.2019 acknowledging the debt and requested for further time to make payment due to financial difficulty

(IB)-2863(ND)2019



5. In view of the Corporate Debtor's failure to reduce or liquidate its liability, the present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) of Code are on record to corroborate his case.
6. We have gone through the documents filed by parties. While going through the documents Tribunal observed that the Corporate debtor is liable to pay the salary from February, 2019 as shown in the reply to the Demand Notice dated 04.10.2019 in annexure-7 and admits the same vide letter dated 07.10.2019. Vide order dated 06.11.2019, the Director admits the claim of the petitioner and states that on account of financial difficulties, he is unable to liquidate the outstanding dues. Keeping in view of the categorical admission made by the Director and his submission that he is unable to liquidate the debt in the petition raised for grant of the prayer made in the present petition. Considering the circumstances this Tribunal is inclined to admit this petition and initiate CIRP of the Respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

(a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*



[Handwritten signature]

(b) transferring, encumbering, alienating or disposing of by the corporate debtor or 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.

Further:

(2) 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.

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

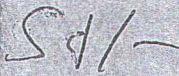
Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

8. The Operational Creditor has not proposed the name of any IRP.


Accordingly, we appoint Mr. Sudhanshu Gupta, an Insolvency



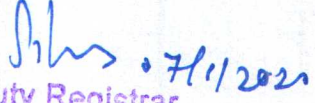
- Professional, registration no. IBBI/IPA-002/IP-N00216/2017-18/10668 email- sg_1973@rediffmail.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.
9. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
10. Copy of the order be sent to both the parties as well as to the IRP.
11. To come up on for further consideration.



Sumita Purkayastha
Member (T)



Ina Malhotra
Member (J)


Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003