

LEVITES & ASSOCIATES LLC
Raymond A. Levites, Esq.
65 Broadway
Suite 1005
New York, NY 10006
Telephone (212) 688-0500
Facsimile (212) 688-0012
Email: ralevites@leviteslaw.com
nmrendic@leviteslaw.com

Counsel for Unsecured Creditor Alicia Vergara

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:

BIBHU LLC

Debtor.

Chapter 11

Bankruptcy Case No. 17-10042-mg

**OBJECTION TO DISCLOSURE STATEMENT FOR DEBTOR'S PROPOSED
CHAPTER 11 PLAN**

Relevant Background

1. Robert Beard and Bibhu Mohapatra, controlling principals of the Debtor, are married.
2. At least as early as 2014 Mr. Ceferino Sanchez was engaged by and working on behalf of, Debtor, first as a Financial consultant who was also soliciting new investors and then as "Financial Director".

3. Before that, in or about 2013, Kathy Kalesti, a well-known fashion industry consultant was a President of Debtor. (Claim 9-1 of Richard Beard III, Corporate Resolution, page 5)

4. From June 2010 through September 2014 Katelin Kishbaugh, was Studio Operations Manager.¹ (Claim 7-1)

ARGUMENT

The Disclosure Statement Does Not Contain Adequate Information Thus Failing to Satisfy the Requirements of Section 1125 of the Bankruptcy Code

5. The Disclosure Statement does not contain “adequate information” within the meaning of section 1125 of the Bankruptcy Code and should not be approved unless it is modified to provide additional, clarifying, and corrected information.

6. Section 1125(b) of the Bankruptcy Code conditions Debtor’s solicitation of votes on a proposed Chapter 11 Plan on the bankruptcy court’s determination that the disclosure statement contains “adequate information.” The Bankruptcy Code defines adequate information as:

[I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of claims or interests in the relevant class to make an informed judgment about the plan . . .

11 U.S.C. § 1125(a)(1); *In re Zenith Elecs. Corp.*, 241 B.R. 92, 99-100 (Bankr. D. Del. 1999) (disclosure statement must contain information that is “reasonably practicable [to permit an] informed judgment” by holders of claims or interests entitled to vote on the plan); *In re Crowthers McCall Patterns, Inc.*, 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990) (“At the ‘heart’ of the chapter 11 process is the requirement that holders of claims in impaired classes be furnished a proper

¹ <https://www.linkedin.com/in/katelin-kishbaugh-93824823>

disclosure statement ‘that would enable a hypothetical reasonable investor . . . to make an informed judgment about the plan’” (quoting H.R. Rep. No. 95-595, at 408-09 (1977)), reprinted in 1978 U.S.C.C.A.N. 6963, 6364-65).

7. The Disclosure Statement must provide enough information to enable the Debtor’s creditors and this Court to make informed judgments about the Plan. *See, Kunica v. St. Jean Financial, Inc.*, 233 B.R. 46, 54 (S.D.N.Y. 1999) (“The importance of full disclosure is underlaid by the reliance placed upon the disclosure statement by the creditors and the court”) (quoting *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *cert. denied*, 488 U.S. 967 (1988)). Accordingly, it is impossible to “overemphasize the debtor’s obligation to provide sufficient data to satisfy the Bankruptcy Code standard of ‘adequate information.’” *Kunica*, 233 B.R. at 54 (quoting *Oneida*, 848 F.2d at 417).

8. This Disclosure Statement does not.

9. As a preliminary matter the Disclosure Statement (and other sworn documents of the Debtor) appear to set forth as fact certain representations which are or appear to have been incomplete, incorrect or internally inconsistent.

10. To the extent, this Court finds such to have been the case, it must call into question the accuracy, credibility and good faith of other representations in the Disclosure Statements and of forward-looking statements proposed in Debtor’s proposed Plan.²

² Going further there has been at least an apparent lack of compliance with certain of the Operating Guidelines and Reporting Requirements of the United States Trustee. For example only, the Guidelines require the Debtor to have provided the preceding two years of federal income tax returns.

Whatever the Debtor may or may not have provided to the Office of the United States Trustee, its’ Disclosure represents it to have “filed” a copy of the previous year’s tax return pursuant to 11 USC 1116 (1)(A). The Docket seems devoid of any such tax return, redacted or otherwise.

Nor did the Debtor promptly close its bank accounts and open new ones. It waited several months.

11. Notwithstanding Debtor's statement that only Messrs. Beard and Mohapatra are "insiders" 11 U.S.C. Section 101 (A) (31) defines Richard A. Beard III as an insider. He is brother of Robert Beard and brother-in-law of Bibhu Mohapatra and General Partner of the Beard Family Ltd. [Limited partnership] a secured Class I creditor and a 19.34% equity holder.

12. Richard A. Beard III filed a personal Proof of Claim as an "unsecured" creditor on May 30, 2017 (Claim 9-1) for loans totaling \$136,834 of which \$100,000 was principal, and the remainder interest. Unlike Mrs. Vergara's Note neither Note refers to Richard Beard III as either a "senior creditor" nor to any secured status.

13. It therefore warrants attention that Richard A. Beard III is now listed in the Proposed Plan as a Class I secured creditor, qualifying this insider to receive 20% instead of the 5% proposed for Mrs. Vergara.

14. The Debtor's Local Rule 1007-2 Affidavit by Bibhu Mohapatra refers to a "corporate resolution authorizing the Chapter 11 filing... attached to the petition and incorporated". There appears to have been no such resolution. (Docket No. 12)

15. In a similar vein, on the same page Mr. Mohapatra swore that "no salaries or corporate distributions have been received by any officers or directors of the corporation since 2008 to present".

16. The Debtors Disclosure Statement represents at B (ii) that "The Debtor's insiders...Mohapatra and Beard" received only regular consulting and wage payments during the two-year period prior to the Petition Date and 1099 income and "*properly invoiced consulting fees since the Petition Date*". (emphasis added)

17. 11 U.S.C. Section 327 and Fed. R. Bank. P. 2014 require a prior order from this court approving any compensation of consultants by the first meeting of creditors. Mrs. Vergara is unaware of any such Order in respect of either of Messrs. Beard or Mohapatra.

18. Going further, in same Affidavit under Local Rule 1007-2, page 3, Mr. Mohapatra states that “The Debtor is managed through a board of Managers....Alex Beard, Allison Beard Luzier, Robert Beard, Bibhu Mohapatra and Jeffrey Banks”. However, the Debtor in its Disclosure Statement under B (iii) “Management of the Debtor Before and During the Bankruptcy” lists only Bibhu Mohapatra and Robert Beard as former or present “officers, directors, managers, or other persons in control of the Debtor”. Neither the Disclosure Statement nor the Plan refer to, or identify these or any other Managing Directors nor describes their post-petition role, if any, in the management of Debtor.

19. During the course of motion practice in New York Supreme Court, *Alicia Vergara v. Bibhu LLC, Bibhu Mohapatra and Robert Beard*, Index No. 655395/2016, in respect of the successful application of Messrs. Beard and Mohapatra to extend the automatic bankruptcy stay to fraud and other claims against themselves personally their counsel strenuously resisted disclosing to the Court and plaintiff’s counsel Debtor’s Management or Operating Agreement describing it as highly confidential.

20. Having offered a single paragraph from the Operating Agreement in the attempt to establish a contingent indemnification obligation of the Debtor to Messrs. Mohapatra and Beard – one that was never invoked- counsel argued that the rest of the document was irrelevant and that:

“...This is particularly true when there is legitimate fear, based on threats made by the opposing party [Mrs. Veragra], that disclosure of irrelevant portions of the document could be used to carry out a vendetta against the offering party”.

21. Under B (iv) “Events Leading to Chapter 11 Filing “ the Disclosure Statement the Debtor represents that it had been “...unable to hire a financial consultants/managers until shortly prior to the [January 10, 2017 Chapter 11] filing”.

22. In fact, at least as early as 2014 Mr. Ceferino Sanchez was engaged by and working on behalf of the Debtor, first as a financial consultant and then as “Financial Director”.

23. Given the foregoing, this Court should not approve the Disclosure statement in its current form because it fails to adequately and credibly disclose certain material information. That additional information includes without limitation, Debtor’s Operating Agreement, appropriately redacted tax return(s), an explanation of the status of Richard Beard III’s claim, proposed contemplated compensations for Messrs. Bibhu Mohapatra and Robert Beard all are, at minimum required before creditors can make an informed judgment under the Plan.

Debtor’s Proposed Plan is Not Feasible

24. This optimistic Plan cannot offer a reasonable probability of success under Section 1129 (a) (11) in its present form. Among other things it, would require additional capital from the principals and others to initially sustain operations and even the minimal, and unfair, contemplated installment payments.

25. As it is now, confirmation of this Plan seems likely to be followed by the liquidation or further financial reorganization of the Debtor, or any successor to the Debtor under the Plan especially in the absence of any contingent alternative proposal for possible reorganization in the Plan. *See, In re Leslie Fay Cos*, 207 B.R. 764,788 (Bankr. S.D.N.Y. 1997)

26. Even protected by the stay, as evidenced by Debtor’s last filed Operating Report for the Filing Period October 2017 its net profit for the year has been \$3,775.72.

27. The Debtor has, as Plan proponent, made little or no showing of the ability of Debtor's management and contemplated financial advisor going forward, or the adequacy of its capital structure without substantial additional investment by its principals or others nor does the Plan appear to recognize any of the contingencies inherent in it or possible forthcoming economic conditions.

Structure of Classes

28. Finally, bearing in mind provisions of Section 1129 (a)(8) and (a)(10), Debtor's reasons and motives in putting Mrs. Vergara in a class of her own are opaque; and may, upon further consideration, be found to be an attempt to "gerrymander" the classes or artificially impair her claim.

Reservation of Rights

29. Alicia Vergara continues to analyze the Disclosure Statement and Plan. Accordingly, these Objections are submitted without prejudice to, and with full reservation of, Ms. Vergara's rights to supplement these Objections, subject, of course to pending and possible future orders of the court.

Dated: November 20, 2017
New York, NY

Respectfully submitted,
LEVITES & ASSOCIATES LLC

By: R. A. Levites

Raymond A. Levites, Esq.
65 Broadway
Suite 1005
New York, NY 10006
Telephone (212) 688-0500
Facsimile (212) 688-0012
Email: rlevites@leviteslaw.com

Counsel for Unsecured Creditor Alicia Vergara