IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No. 1183/MB-IV/2020

Under Section 9 of the IBC, 2016

In the matter of

Fortigo Network Logistics Private Limited [CIN: U72200KA2015PTC082767]

...Operational Creditor

v/s.

Eurolife Healthcare Private Limited [CIN: U51900MH1987PTC043106]

...Corporate Debtor

Order Delivered on: 16.05.2023

Coram:

Mr. Prabhat Kumar Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:	Mr. Rashid Boatwalla a/w Ms. Lipsa Unakdat and Ms. Samiksha Rajput, Ld Counsel i/b Manilal Kher Ambalal &Co.
For the Respondent:	Mr. Aman Kacheria a/w Ms. Tanishka Desai i/b Vashi and Vashi , Ld. Counsel.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. The present Application is filed by Fortigo Network Logistics Private Limited (hereinafter referred to as ("Applicant/Operational Creditor") under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process in the case of Eurolife Healthcare Private Limited (hereinafter referred to as "Corporate Debtor") on account of default in repayment of outstanding dues.

2. The Corporate Debtor is in the business of manufacturing of intravenous fluids and has appointed distributors such as the Operational Creditor. Vide a Goods & Consignment Note dated March 20, 2018, the Corporate Debtor sought the transportation services of the Operational Creditor for distribution of their goods/products pan India on the terms and conditions as set out in the Goods & Consignment Note. As both parties were engaged in a series of transactions, it was decided by the Operational Creditor to enter into an Agreement on 1st November 2018 with the Corporate Debtor for transportation of its products to its distributors. Under the said Agreement, the Corporate Debtor was appointed as a transporter for a period of one year for the purpose of transporting the products of the Operational Creditor from its factory to distributors across the country.

    2.1. Subsequently, vide Service Contract dated 1st March 2019 the Corporate Debtor continued to provide Transportation Service "Full Truck load-Surface-By Road" to the Operational Creditor upto 31st

December 2019 as per the terms & conditions more particularly set out therein.

2.2. However, despite the Operational Creditor providing transportation services as per the terms of the Agreement, the Corporate Debtor defaulted in making payments towards the outstanding unpaid freight charges. Time and again, the Operational Creditor requested and reminded the Corporate Debtor by addressing several correspondences and even held a meeting on 15th November 2019 in this regard to discharge the admitted dues of the Operational Creditor. The Corporate Debtor intentionally failed and neglected to comply with its obligations and discharge the dues.

2.3. The Operational Creditor was thus constrained to issue the Demand Notice dated January 28, 2020 under Section 8 of the Insolvency and Bankruptcy Code 2016. The said Demand Notice was responded to on February 08, 2020 which was further replied to by the Operational Creditor on 19th February 2020. However, the Corporate Debtor failed to make payment of the amounts due and payable to the Operational Creditor save and except a nominal sum of Rs. 3,00,000/- on 9th April 2020.

3. The Corporate debtor filed affidavit in reply stating that the said Petition under Section 8 and Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as the "Code") is absolutely frivolous, baseless and without any cogent legal basis; and the present Petition does not comply with the requirement, rules and regulation as laid down under the Code and its allied Rules and Regulation on the said ground the present Petition ought to be dismissed.

3.1. The Operational Creditor has failed to make out a case, fit for initiation of corporate insolvency resolution process (CIRP), against the Corporate Debtor and has attempted to use this Hon' ble Tribunal and the sacrosanct platform as a recovery platform with an intention to threaten and intimidate the Corporate Debtor.

3.2. The amount claimed by the Operational Creditor in the present company petition is disputed by the Corporate Debtor. It is vital to understand that the said dispute and certain relevant and ancillary discrepancies were communicated by the Corporate Debtor to the Operational Creditor.

3.3. The Operational creditor, themselves have acknowledged the said discrepancies and even agreed that there are irregularities in the accounts, the same can be observed in the minutes of the meeting held on 15.11.2019 conducted and convened by Eurolife Healthcare, and attended by Mr. Vivek Malhotra Co-founder, Mr. Bablendu Kumar Key Account manager and Mr. Jothi Paraksh Key Account Manager of the Operational Creditor.

3.4. The outstanding debt mentioned by the Operational creditor in the Email 20th August, 2019, annexed with the Petition, differs from the amount mentioned in the Form 5. It is also important to note that the Summary of the Invoices mentioned in the above captioned Email when calculated comes to a total number of 414 invoices with the total amount of Rs 2,52,64,724/- (Rupees Two Crore, Fifty-Two Lakhs, Sixty-Four Thousand Seven Hundred and Twenty-Four Only). However, on perusal of the present Petition the amount claimed by the Operational creditor stands at Rs. 2,34,25,700/- (Rupees. Two Crore, Thirty-Four Lakhs, Twenty-Five Thousand Seven Hundred Only), which clearly indicates that the Operational creditor is inconsistent with its calculation thus creating discrepancies in its own claims making the petition absolutely unreliable.

3.5. I say that the Operational creditor has further tried to hoodwink the Hon'ble Tribunal by failing to disclose the accurate factual aspect of the present case in its Petition. The Operational Creditor has attached Statement of Account of "FEDERAL BANK" as Annexure D at Page no 21of the Petition, following the same the Operational Creditor has also attached a copy of declaration at Page no 22 made by Ms. Alka Khemka the Company Secretary of M/s Fortigo Network Logistic Pvt Ltd where in Ms Alka Khemka has inaccurately stated that the last payment received from the Corporate debtor was dated 09.04.2020 for an amount of Rs. 3,00,000.00/- (Rupees Three Lakhs Only) and other than that the Operational Creditor has not received any amount from the Corporate Debtor. It is significant to note that the above-mentioned statement is utterly fictitious and untrue.

3.6. The Operational Creditor has failed to inform the Hon'ble Tribunal that the Corporate Debtor on 16.10.2020 made a payment of Rs. 5, 00,000/- (Rupees Five Lakhs Only/-) through NEFT to the Operational Creditor and the same is also reflecting in the Bank Statement.

3.7. It is clearly and explicitly mentioned on invoices that payment becomes due immediately after the invoice is issued. However, the terms of the Agreements dated 01" November 2018 entered between the parties states that the Invoices shall become due after 90 days thus causing discrepancies as to when did the debt essentially fell due.

3.8. The Operational Creditor has claimed an interest of 24% per annum to be charged against the principal amount allegedly owed by the Corporate Debtor to the Operational Creditor. It is pertinent to note that the amount claimed by the Applicant to be the Debt amount in the Operational Creditor is inconsistent.

3.9. The outstanding amount so claimed by the Operational creditor differs from that of the Ledgers maintained by the-Corporate debtor. The said discrepancies in the outstanding amount have been communicated to the Operational Creditor on several occasions. The outstanding claim by the Operational creditor is Rs. 2,34,25,700/- (Rupees Two Crore, Thirty-Four Lakhs, Twenty-Five Thousand Seven Hundred Only). However, the outstanding claim as per. the Ledgers maintained by the Corporate debtor is Rs 1,69,82,357/- (Rupees One Crore, Sixty-Nine Lakhs, Eighty-Two Thousand Three Hundred and Fifty-Seven Only). An Email dated 21* October 2019 was issued by Mr. Parag Shah from Eurolife Healthcare Pvt Ltd to Mr. Bablendu Kumar the Key Account Manager at Fortigo Network Logistics Private Limited informing him about the said discrepancies in the outstanding. Mr. Parag Shah also requested Mr. Bablendu Kumar to reconcile the same from his end in order to settle the said dispute however Mr. Bablendu Kumar the Key Account Manager at the Operational creditor company failed to reply or even comply with the same.

3.10. Thereafter an Email dated 02" December 2019 was also issued highlighting the reconciliation of the ledgers. I further say that following the captioned Email another Email dated 26th December 2019 was issued informing the Operational creditor that there are various invoices which are not traceable by the Corporate Debtor. However, the Operational Creditor payed no attention to the same.

3.11. The dispute regarding the outstanding has already been communicated to the Operational creditor in the Reply to the Demand Notice which was issued on 08th February 2020. it is important to take note that the Operational creditor has made a false statement in its Affidavit on oath that there is no existence of dispute and has committed perjury.

3.12. Even after persistent non-cooperation shown by the Operational Creditor, Mr. Parag Shah from Eurolife Healthcare Pvt Ltd issued another Email dated 19th October 2020 to Mr. Bablendu Kumar the Key Account Manager at Fortigo Network Logistics Private Limited for conducting a meeting in order to reconcile the accounts and invited him to the Corporate debtor's office in order to settle the same. However, Mr. Bablendu Kumar was abortive to pay any attention to the same.

3.13. The Operational Creditor has even failed to annex the copies of the Invoices and ledger accounts with the Demand Notice and the same was also mentioned in the reply issued by us on 08th February 2020, thus not disclosing its accounts making its extremely difficult for the Corporate Debtor to navigate the outstanding.

Findings

4. This Bench heard both the Counsels(s) and perused the material available on record.

4.1. This Bench notes that subsequent to reserving the present petition for orders, the Corporate Debtor came to be admitted into CIRP in another Petition filed u/s 7 of the Code vide order dated 09.05.2023 passed by this Bench. It is trite law that another order subsequent to admission of a corporate debtor into CIRP can not be passed for again admitting the same corporate debtor into CIRP in another petition. Hence, the present petition is rendered infructuous, and dismissed accordingly.

ORDER

5. The petition bearing CP(IB) 1183/MB-IV/2020 filed by Fortigo Network Logistics Private Limited ("the Operational Creditor"), under section 9 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against

Eurolife Healthcare Private Limited ("the Corporate Debtor"), is **Dismissed.**

6. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it barred by the law.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

16.05.2023.