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IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - VI
IB-1799/ND/2019

IN THE MATTER OF:

Parisi Grand Smooth Logistics Limited,
Unit G & H, 9/F,
Dragon Ind. Bldg.,
93 King Lam Street, Lai Chi Kok,
Kowloon, Hongkong – 999077.

...Applicant

VERSUS

Agile International Logistics & Supply Chain Pvt. Ltd.,
Khasra No. 28/03/2, Plot No. 7,
Samalkha Extension,
Delhi – 110037.

...Respondent

Order Delivered on:20.02.2020

CORAM:
DR. P. S. N. PRASAD, MEMBER(JUDICIAL)
DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)

PRESENT – Akshay Srivastava, Advocate for Applicant
Harpreet Singh Uppal, Yash Prakash Saran, Kashid Jain, Advocates for Respondent

21/02/2020

राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
नई दिल्ली पीठ
New Delhi Bench

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ORDER

Per Dr. V. K. Subburaj (Member Technical)

1. This is an application filed by Parisi Grand Smooth Logistics Ltd. ("Applicant") invoking the provision of Section 9 of Insolvency and Bankruptcy Code, 2016 ("the Code") against Agile International Logistics & Supply Chain Pvt. Ltd. ("Respondent") for initiating Corporate Insolvency Resolution Process ("CIRP") of the Respondent for a claim of Rs.87,37,711/- for the alleged default by the Respondent Company in clearing the dues of the Applicant.

2. The Applicant has averred as follows:

   i. The Respondent had approached the Applicant with a business proposition related to freight forwarding and logistic services, assuring then that the same would be mutually beneficial. Pursuant to these assurances the Applicant entered unto an international agency agreement with the Respondent signed by the Respondent in New Delhi on 21.10.2015 and the Applicant in Hong Kong on 02.11.2016.

   ii. As per the agreement the Respondent and the Applicant were to provide freight forwarding services in each other's territories and they were to raise the invoices according to Clause 3 of the agreement which is as under:

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"Rates and charges shall be supplied on request, and shall be in accordance with agreed tariffs when relevant to joint services operated by Agent A and or Agent B individually. Such tariff shall be agreed and shall be part of the Working Agreement drawn up to cover such Agent A/Agent B agreements. Freight quoted by one party to the other will be NET OF PROFIT. The selling party will try to achieve the best possible selling prices and will inform the other party accordingly."

iii. Pursuant to the abovementioned clause the Applicant raised several invoices upon the Respondent between 21.01.2016 and 11.04.2016 amounting to HKD 1,074,859.85 and USD 1,862.867 amounting to Rs.87,37,711/-.

iv. As per Clause 6 of the Agreement, payment of the invoices for services rendered were to be made on a monthly basis and that all invoices raised in one month were to be paid no later than thirty days after the end of the month in which they were raised. The agreement also mentioned that whenever the outstanding amount was in excess of USD 10,000/- the invoices had to be paid within 7 days of invoice date outside the normal system. However, the respondent failed to abide by the terms of the agreement.

v. After several demands from the respondent to clear the outstanding amount the Respondent paid an amount of HKD 110,000 towards partial payment of the amount due and the Applicant raised a credit

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note in favour of the Respondent reflecting the said payment dated 14.07.2016 and bearing transaction number CN16-5062.

vi. After making the abovementioned payment an amount of HKD 964,859.85 and USD 1,862.87 was due from the Respondent to the Applicant amounting to Rs.87,37,711/-. Subsequent to the payment, the Applicant vide various communications called upon the Respondent to clear the amount due and the representative of the Respondent kept giving constant assurance to the Applicant that the outstanding dues will be cleared shortly however the same was never paid and the amount is outstanding till date.

vii. Thereafter, the Applicant issued demand notice dated 20.03.2019 on 22.03.2019 in the form of Form 3 under Section 8 of the Code calling upon the Respondent to clear its outstanding dues with a period of 10 days of receipt of demand notice. The notice was delivered on 25.03.2019 but the Respondent neither made the payment nor replied to the demand letter.

3. The Respondent has made the following averments in its reply:

i. The present application under reply filed by the Applicant is barred by limitation since the date of invoices as mentioned in the application by the Applicant are between 21.01.2016 and 11.04.2016 and the date of the present application is 16.07.2019

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which is beyond the period of limitation. Therefore, the present application is not maintainable.

ii. The Applicant has concealed the fact that it has received a sum of Rs.1,26,49,989 from the Respondent. The Applicant has failed to file the ledger statement of the Applicant as per law. the statement that has been filed by the Applicant is not in consonance with the law of the land.

iii. The Applicant has failed to file a certificate from the bank/financial institution as required by the Code.

iv. The applicant has also concealed the fact that the Applicant filed a criminal case against the Respondent regarding the same issue under Section 200 and 156(3) of the Code of Criminal Procedure which has been dismissed by the concerned court.

v. Since the beginning of the business relationship, the Applicant never complied with the basic and standard rules of logistics due to which the Respondent had to suffer huge loss of business, future business and clients. Ina short span of 5-6 months, the Applicant not only delayed and withheld the shipments of the Respondent's customers on numerous occasions but also made erratic changes in the schedule of pricing that had to be levied on the customers by the Respondent.

vi. The Applicant in the demand notice dated 20.903.2019 stated that the amounts are due under invoices dated from 21.01.2016 to

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National Company Law Tribunal
नई दिल्ली पीठ
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11.04.2016 whereas in a previous legal notice dated 21.122016 the Applicant stated that the amounts are due under invoices dated 14.07.2016 to 28.12.2016. Thus, the change in the date of the invoices with respect to the same amount in itself shows the ulterior motive of the Applicant.

4. We have perused the documents filed by the parties and heard their arguments. The issues to be decided is whether the application is barred by limitation, whether the amount is actually due and payable and whether there exists a pre-existing dispute between the parties. The email dated 30.09.2016 sent by the Respondent to the Applicant answers the first two issues in favor of the Applicant. The Respondent acknowledged the existence of the debt vide this email and requested for further time for making the payment. This shows that the Respondent had accepted that the amount is due and payable. Further, the Respondent has not filed anything to show that this statement was disputed by the Respondent later on. Further, since the acknowledgment vide email has been made on 30.09.2016 and the application has been filed on 18.07.2019, the application is within the period of limitation and is maintainable.

5. The Respondent has not placed on record anything to show that disputes were raised by the Respondent prior to issue of the demand notice under

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Section 8 of the Code. Thus, this contention of the Respondent appears to be baseless, made with the intention of escaping the present process.

6. For the reasons mentioned above the present case seems fit to be admitted. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

> *"(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization 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 Respondent.*

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(2) *The supply of essential goods or services to the Respondent 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."*

7. From the list of interim resolution professionals ("IRP") made available by IBBI, Mr. Anurag Nirbhaya (email id: anurag@canirbhaya.com) is being confirmed by this Bench as the IRP in the present matter. He shall take such further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

— Sd —

(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

— Sd —

(Dr. P.S.N. PRASAD)
MEMBER (JUDICIAL)

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New Delhi Bench

21.2.2020
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003

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