NATIONAL COMPANY LAW TRIBUNAL, CUTTACK BENCH, CUTTACK

ORDER SHEET OF THE HEARING ON 2nd MARCH, 2021, 10:30 A.M.

CP (IB) No. 152/CTB/2019

Present: 1. Hon'ble Member, Ms. Sucharitha R. (J)
2. Hon'ble Member, Shri Satya Ranjan Prasad (T)

Name of the Company	Unigold System -Vs- Fortune Spirit Ltd.
Under Section	9 IBC

Coram: 1. Hon'ble Member, Ms. Sucharitha R. (J)
2. Hon'ble Member, Shri Satya Ranjan Prasad (T)

For Petitioner (s) Rohit Sharma

For Respondent (s) L.D. Sahoo, Adv.

ORDER

Heard, both the Counsels. This application is filed under Section 9 of the IBC, 2016 for recovery of a sum of Rs. 55,66,694.76 (Rupees Fifty-Five Lakh Sixty-Six Thousand Six Hundred Ninety-Four and paise Seventy-Six Only). The total amount claimed by the petitioner includes principal and interest at the rate of 18%. The petitioner states that the petitioner supplied Mono Cartoons and Labels to the Corporate Debtor and raised invoices (as stated in Page No. 43 of the application) for the period 19.05.2015 to 09.12.2016. The total 17 no. of invoices were raised by the petitioner. The petitioner is claiming this amount due and payable. The proprietary concern of the petitioner has also issued demand notice under Section 8 of the IBC dated 23.02.2019. This application for initiation of CIRP against the Corporate Debtor was filed on 18.11.2019. Ld. Counsel for the petitioner submits that the entire account between the Corporate Debtor and the petitioner was running account. Hence, out of various supplies made by the petitioner, the said 17 invoices enclosed along with this application, are due and payable. In support of the claim, petitioner has also filed Bank Statements at page No. 124 and at Page No. 166 of the application. The Bank Statements at Page No. 124 is for the period from 15.05.2017 to 29.05.2017.

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The Ld. Counsel for the respondent states that this application is filed by the proprietary concern and this is well settled principle of law that this application by the proprietary concern is not maintainable under IBC. Second Defence taken by the Ld. Counsel for the respondent is that the document enclosed at Page No.105 of the application has an acknowledgment dated 16.02.2019 by way of E-mail, which is false document. Furthermore, there were also delay in the supplies of the materials by the petitioner and more importantly this application is time barred.

We have heard the Ld. Counsel for both the parties and have gone through the documents along with the application filed by the respondent. The 17 invoices are dated between 19.05.2015 to 09.12.2016. No documents have been filed by the petitioner to satisfy this Adjudicating Authority that the details provided by them pertain to a running account. Other than the last invoice dated 09.12.2016 for a sum of Rs. 33, 660/-/- (Rs. Thirty-three thousand six hundred and sixty only), all other invoices are beyond the period of 3-years. Petitioner has claimed the entire amount based on the said17 invoices. However, the16 invoices out of 17, detailed at Page No. 43, which are from 19.05.2015 onwards, are clearly time barred. The only invoice which is within the period of limitation as per the date of application, is the last invoices dated 09.12.2016 claiming the amount of Rs. 33, 660/- (Rs. Thirty-three thousand six hundred and sixty only). The Ld. Counsel for the petitioner submits that the last payments towards these invoices were received on 17.05.2017. On 17.05.2017 the Corporate Debtor paid a sum of Rs. 2,00,000/- (Two Lakh). However, at the time of arguments also the Ld. Counsel for the petitioner states that the said Rupees two lakh payment received from the Corporate Debtor is not towards the outstanding in of those 17 invoices referred to and filed along with the application. The Rs. two lakh payment was made towards various other payments pending between the petitioner and the respondent. Ld. Counsel for the petitioner relied upon the Bank Statement enclosed at Page Nos. 124 and 166 of the application.

From the perusal of the Bank Statements, this is clear that Bank Statement for the period from 05.05.2017 to 29.05.2017 and 25.02.2019 to 16.10.2019 only have been filed in the support of the claim. The invoices are from the period of 19.05.2015 to 09.1.2.2016 but no Bank Statements pertaining to this period have been enclosed along with the petition. Ld. Counsel for the Petitioner state that Rs. 2,00,000/-(Two Lakh) received from the Corporate Debtor on 17.05.2017 was already adjusted towards dues and therefore only the balance amount is claimed in the application.

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Ld. Counsel for the respondent brings to the notice of this Adjudicating Authority that there is no basis for the claiming of interest by the petitioner. The petitioner in the application has claimed 18 % as the interest per annum though he is not entitled to any interest. The petitioner has failed to satisfy this Adjudicating Authority on the total amount due and payable. It is clearly a time barred debt. Since, the period of the invoices is from the date 19.05.2015 to 09.12.2016 and 16 out of 17 invoices filed by the petitioner are clearly time barred the argument of the Ld. Counsel for the petitioner on the issue of limitation that Rupees two lakh has been received on 17.05.2017 is negated. As per the judgement of the Hon'ble High Court and Hon'ble NCLAT this application ought to have been filed within the period of three years from the date of default of invoices.

Ld. Counsel for the respondent state that the statutory pecuniary jurisdiction of NCLT has been raised from Rupees One Lakh to Rupees One Crore and in this context also the application is not maintainable. However, this point is declined. The application was filed much before the pecuniary jurisdiction of the NCLT was raised to One Crore. At the given point of time when application was filed on 18.11.2019, any debt due and payable above Rs. 1,00,000/- (One Lakh) under Section 7, 9 and 10 , this adjudicating authority had jurisdiction to adjudicate. The amendment does not stopple this Adjudicating Authority to hear the application filed prior to the amendment.

Hence, this application is clearly barred by limitation. Furthermore, petitioner has not filed the Statement of Account for the entire period of transactions to satisfy this Adjudicating Authority that the amount was due and payable.

Accordingly, this CP (IB) No. 152/CTB/2019 is **DISMISSED.**

Sd

Shri Satya Ranjan Prasad
Member (T)

Sd

Ms. Sucharitha R.
Member (J)

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