

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No. 4445/MB/2019

*[Under Section 9 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

TRIGGER FACILITY PRIVATE LIMITED

[CIN- U74140MH2005PTC157011]

Registered Office: Kumar House Kranti Nagar

Near Church Oshiwara, Jogeshwari (W)

Mumbai-400102, Maharashtra.

...Operational Creditor

V/s

LARSEN AND TOUBRO LIMITED

[CIN: L99999MH1946PLC004768]

Registered Office: L&T House

Ballard Estate, P.O. Box-278

Mumbai-400001, Maharashtra.

...Corporate Debtor

Pronounced:24.04.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Hearing: Hybrid

Appearances:

Operational Creditor: Adv. Mr. Murtaza Najmi i/b Adv. Sonia Sunil

Corporate Debtor: Adv. Shyam Kapadia a/w Adv. Rashid Boatwalla,

Adv. Lipsa Unadkat and Adv. Samiksha Rajput

i/b Manilal Kher Ambalal and Co.

ORDER**[Per. K. R. SAJI KUMAR, MEMBER (JUDICIAL)]****1. BACKGROUND**

1.1 This Company Petition bearing C.P. (IB) No. 4445/MB/2019 (Application) was filed on 21.10.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Trigger Facility Private Limited, the Operational Creditor (OC), through Mr. Mohan Nivrutti Bobade, Senior Training Manager of the OC, authorised *vide* Board Resolution for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Larsen and Toubro Limited, the Corporate Debtor (CD).

1.2 The total amount of alleged default is Rs. 2,91,56,214/- (Two Crores Ninety-One Lakhs Fifty-Six Thousand Two Hundred Fourteen Rupees) comprising of the principal amount of Rs. 1,25,84,861/- along with the Interest of Rs. 1,65,71,353/- calculated at the rate of 18% per annum which is based on unpaid invoices issued by the OC towards security/facility services provided to the CD during the period of 2011-2016.

1.3 The date of default mentioned in the Part IV of the Application is 01.07.2011 to 30.06.2016 with Invoice Details along with Work Note as attached. However, during the arguments, the Ld. Counsel for the OC stated that the date of default is 22.10.2018, i.e., the date on which the

last part payment of for Rs. 2,89,162/- allegedly made by the CD to the OC.

2. CONTENTIONS OF OC

2.1 It is submitted that the OC is engaged in the business of providing security services while the CD's business is manufacturing, engineering and construction of infrastructure projects. As per the CD's requirement, the OC rendered security services at various sites of the CD in Mumbai and other cities. This arrangement between the parties was reduced into writing in the form of Letter of Intents (LOIs).

2.2 The OC submitted that it issued various invoices to the CD during the period 2011-2016, with the first invoice bearing No. 2286 dated 01.07.2011 and last invoice bearing No. 5121 dated 30.06.2016. The total outstanding amount based on OC's invoices from 2011 to 2016 is Rs. 1,25,84,861/-. The OC relied upon the invoices dated 01.07.2011 to 30.06.2016 to substantiate its claim.

2.3 It is submitted that, the CD, *vide* its email dated 03.08.2017 to the OC, acknowledged the said claim and sought the pending bills and documents from the OC. However, the CD failed to make payments to the OC's outstanding claims.

2.4 In view of above events, the OC issued the notice dated 07.12.2018 to the CD, under Section 8 of the IBC demanding payment of Rs. 2,91,56,214/- which comprises of principal amount of Rs. 1,25,84,861/- as well as interest of Rs.1,65,71,353/- calculated at the rate of 18% per annum. The CD rejected these claims *vide* its reply dated 17.12.2018,

on the ground of limitation and absence of admitted liability by the CD and sought documents from the OC for reconciliation of accounts as well as amicable settlement of issues.

2.5 It is submitted that there have been attempts for reconciliation of accounts and settlement but the same did not fructify.

2.6 The Ld. Counsel for the OC submitted that it was a running account maintained between the OC and it relied upon the copy of Work Notes regarding services provided at various sites of the CD in Mumbai and other cities, including Pune and Vadodara for justifying the same.

2.7 The OC submits that it has provided the affidavit dated 21.07.2019 under Section 9(3)(b) of the IBC regarding non-receipt of any notice given by the CD over the dispute of the unpaid operational debt along with its Bank Statements from 31.07.2011 till 31.03.2016.

3. CONTENTIONS OF CD

3.1 In its reply dated 02.09.2021, the CD has contested the maintainability of the Application on the following grounds:

- a) The Application is barred by limitation since the alleged date of default as per Part IV is 01.07.2011 to 30.06.2016, which is based on the alleged outstanding invoices. The claim is time-barred as three years had already lapsed from the date on which the alleged outstanding invoices fell due as per Article 137 of the Limitation Act, 1963. The CD submitted that the decision of the Hon'ble Supreme Court in *Sagar Sharma & Anr. Vs. Phoenix ARC Pvt. Ltd. & Anr.* (Civil

Appeal No. 7673 of 2019, decided on 30.09.2019, is squarely applicable in the matter;

- b) The CD had made payments against every invoice raised by the OC as evident from the Work Notes annexed by the OC in its Application which were received and accepted by the OC without any objection. The CD stated that the account maintained by the OC was not running account but rather the Work Notes annexed by the OC in its application is mere tabulation;
- c) There is no document or other evidence to prove running account. The judgments of the Hon'ble NCLAT in *Primee Silicones (Chennai) Pvt. Ltd Vs. M/s. UCAL Fuel Systems Ltd*, [Company Appeal (AT)(CH)(Ins.) No. 299 of 2021], *decided on 17.02.2023* and *S.M. Ghogbhai Vs. Schedulers Logistics India Pvt. Ltd*, [Company Appeal (AT)(Insolvency) No. 281 of 2022, decided on 23.05.2022] are applicable in the matter. The OC itself contradicted its claim over pending dues for services at CD's sites at Bhoiwada and Byculla, *vide* its No Due Certificate dated 05.06.2015, by stating that there are no claims pending from the CD for its project sites at Bhoiwada and Byculla.
- d) The mail dated 03.08.2017 referred to by the OC in the Application is actually related to one of the OC's sister concerns, namely "Task Facility Services Pvt. Ltd. and has no connection with the OC.
- e) There is pre-existing dispute between the parties over payment since the alleged outstanding claims were neither certified nor admitted by the CD, and the OC failed to provide certified copies of pay-sheets

as per the terms of LOIs dated 29.10.2011, 05.09.2012 and 01.01.2013.

4. REJOINDER OF OC

4.1 In its rejoinder dated 22.02.2022, the OC submitted that the account maintained by the OC is a running account and the CD had made part payments towards the OC, which entitles it to seek remedy under Section 18 of the Limitation Act, 1963. The OC relied upon copy of its ledger account as well as statements of its bank account from 01.04.2017 to 31.03.2019.

4.2 The OC contacted the CD through email for seeking payments of its outstanding claims but the CD failed to make payments for the same. The OC has provided copies of emails exchanged between the parties in the year 2018.

4.3 The No Dues Certificate dated 05.06.2015 issued by the OC was related to other invoices for CD's project sites at Bhoiwada and Byculla and not connected with the outstanding invoices of the OC for providing security services to the CD's sites at Bhoiwada and Byculla.

5. ANALYSIS AND FINDINGS

5.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the OC and the CD.

5.2 It has been established that there existed an OC-CD relationship between the parties as the OC was providing security services at the various sites of the CD for a long time. The date of default mentioned in

Part IV of the Application and the demand notice dated 07.12.2018, is 01.07.2011 to 30.06.2016, being the dates of invoices. The invoices produced by the OC with the Application indicate that these are in respect of security services provided at various sites of the CD such as Bhoiwada, Byculla, Navi Mumbai, etc. However, in the demand notice, the OC has claimed payments in respect of different sites such as Dhule, Crown Mill, Malad, Sales Bhoiwada, Airoli, Koperkhairne, Powai, Worli, Saat Raasta, Rehab Worli, Vadodara, Kalamboli, Byculla, Seawood and Pune. In the reply to Section 8 notice dated 17.12.2018, the CD has taken a defence that the invoices claimed in the demand notice were not certified as per the LOIs and that there is no admitted liability by the CD. It is seen from the LOIs dated 29.10.2011; 05.09.2012; and 01.01.2013 that the invoices raised by the OC were to be certified by competent authority such as Time Officer, Project Accountant and Project Manager, upon submission of documents like attendance certificate proving deputation of security guards on a given day; workmen-wise details of PF; ESIC; and service tax challan of the previous month, acknowledged by the authorities along with a certification by a chartered accountant of the current month's invoice. The CD has contended that without the above, the amounts could not have been ascertained for release to the OC. We find that the OC has not disputed the agreed terms and conditions as mentioned in the LOI, rather accepted the same under para 11 of its rejoinder, wherein the OC has stated that though it was agreed between the parties that there are separate invoices and LOI of each site, it should be treated as one contract/transaction. Hence, we hold that in

order to make payment, the OC ought to have complied with the terms and conditions of the LOI. Further, we find that the OC had issued No Dues Certificate dated 05.06.2015 to the CD with respect to Bhoiwada and Byculla sites. We find that there is nothing to show that the No Due Certificate relates to any other site.

5.3 Although it has been reiterated by the OC that the date of default is from 01.07.2011 to 30.06.2016 repeatedly in the demand notice and in Part IV of the Application, during arguments, the Ld. Counsel for the OC termed it as typographical error and submitted that the actual date of default is 22.10.2018, as on this date, the OC received part payment of Rs. 2,89,162/- from the CD. According to the Ld. Counsel for the OC, Section 18 of the Limitation Act, 1963, is attracted for reckoning a new period of limitation from 22.10.2018. The Ld. Counsel relied upon the bank statement of OC dated 22.10.2018, as annexed to the rejoinder to substantiate this argument. However, the CD submitted in its Affidavit-in-reply that this payment was in the context of its project site at Jalgaon, Maharashtra, which has no relation with the sites as claimed by the OC in the demand notice and the Application. It is an admitted fact that the parties had long-standing relationship and the OC had undertaken security services for many of the CD's sites. Since the OC does not have a consistent case as to the date of default and the payment dated 22.10.2018 does not indicate as against which site it was made, we are unable consider it as part-payment in respect of any operational debt. In short, in the absence of any other valid ground for considering 22.10.2018 as the date of default, the OC's contention cannot be

accepted. The email communications referred to by the OC also do not point to any acceptance of debt and liability by the CD. All the OC's outstanding claims are related to the period of 2011-2016, with the latest invoice dated 30.06.2016, the limitation period shall commence from 30.06.2016, and the fact that the present Application was filed on 21.10.2019, makes it barred by limitation.

5.4 Now the question is whether we need to get into the other claims and contentions of parties when the very question of limitation is found against the OC. In an application under Section 9 of the IBC, the issue regarding limitation assumes greater importance for admission. When the very root of the Application is cut by the law of limitation, no purpose would be served if we venture into discussing the contentions and rival contentions of parties. Although the Limitation Act, 1963 (Act), was made applicable to the IBC by way of insertion of Section 238A w.e.f. 06.06.2018, the Hon'ble Supreme Court had unequivocally declared in *B.K. Educational Services Private Limited Vs. Parag Gupta and Associates* [(2018) ibclaw.in 32 SC], that the provisions of the Act were applicable from the inception of the IBC. Hence, we hold that no purpose would be served in discussing other grounds for admission, when the Application is already hit by Article 137 of the Act. It is not the endeavour of this Adjudicating Authority to give new lease of life to time-barred debts. Considering the above, we conclude that this Application is not fit for admission as the claims of the OC are time-barred.

ORDER

The petition bearing CP (IB) No. 4445/MB/2019 filed by Trigger Facility Private Limited, the OC, under Section 9 of the IBC read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating CIRP in respect Larsen and Toubro Limited, the CD, is **rejected**.

We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the OC before any other judicial forum shall not be prejudiced on the grounds of rejection of this Application.

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//Tanmay Jain//