

Incygys Global Consulting PVT. LTD. v Ariston Tek, Inc.

2021 NY Slip Op 32282(U)

October 26, 2021

Supreme Court, New York County

Docket Number: Index No. 651484/2021

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE **PART** **IAS MOTION 63M**

Justice

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INCYGYS GLOBAL CONSULTING PVT. LTD.,

Plaintiff,

- v -

ARISTON TEK, INC., WAVE ERA, INC., HORIZON
CONSULTING, INC., SUBRAMANIYAM RAMAN, SARIKA
BHUMKAR

Defendants.

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INDEX NO. 651484/2021

MOTION DATE 09/06/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

The following read on defendants' motion to dismiss, per CPLR § 3211(a)(3) and BCL § 1312. Plaintiff states causes of action for i) breach of contract, ii) breach of fiduciary duty, iii) unjust enrichment, iv) demand for accounting, and v) corporate dissolution for an amount not less than \$10,000,000. A summons and complaint were filed on March 4, 2021 and defendants filed this pre-answer motion to dismiss on June 4, 2021.

A Virtual Microsoft Teams Appearance was held on October 21, 2021 at 11:00 AM where both parties appeared.

Per the complaint, plaintiff Incygys Global Consulting Pvt. Ltd. ("Incygys") is a private corporation existing by virtue of the laws of India, with a principal place of business in India.

Defendant Ariston Tek, Inc. is a corporation existing by virtue of the laws of New York with a principal place of business in Jersey City, New Jersey.

Wave Era, Inc. is a corporation existing by virtue of the laws of Delaware with a principal place of business in Jersey City, New Jersey.

Horizon Consulting, Inc. is a corporation existing by virtue of the laws of New Jersey with a principal place of business in Jersey City, New Jersey.

Subramaniam Raman is the Chief Operating Officer for Ariston Tek, Inc., Wave Era, Inc., and Horizon Consulting, Inc. Sarika Bhumkar is a Wave Era, Inc. Officer and Director.

New York State Supreme Court has jurisdiction per the Ariston Tek, Inc. and Wave Era, Inc. shareholder agreement.

CPLR § 3211(a)(3) states, “Motion to dismiss the cause of action. The party asserting the cause of action has no legal capacity to sue.”

New York Business Corporation Law § 1312(a) provides:

A foreign corporation doing business in this state without authority shall not maintain any action or special proceeding in this state unless and until such corporation has been authorized to do business in this state and it has paid to the state all fees and taxes imposed under the tax law or any related statute, as defined in section eighteen hundred of such law, as well as penalties and interest charges related thereto, accrued against the corporation. This prohibition shall apply to any successor in interest of such foreign corporation.

Defendant’s affirmation states, “Incygys is an unauthorized foreign corporation that was doing business in New York by transferring, assigning or otherwise placing consultants that both live and work in New York. Therefore, Incygys does not have the legal capacity to sue and it is respectfully requested that the Court grant Defendant’s motion dismissing Plaintiff’s Complaint” (see NYSCEF Doc. No. 8 Pars. 8 – 9).

Defendant submits the affidavit of defendant Subramaniam Seetha Rama, “In or about October 2016, Abhilash Palachola and I started having discussion about working together ...

Abhilash was an owner of Incygys ... Abhilash represented to me that he and Incygys owned an entity called Alphasoft Technologies Inc... Abhilash explained to me that Incygys had expertise in back office work for placements for IT consulting and staffing firms and that he could grow the business of Wave Era and Ariston” (see NYSCEF Doc. No. 12 Pars. 3 – 6).

BCL § 1312(a) deprives foreign corporations of the legal capacity to sue in New York and prevents the courts from adjudicating the merits of their claims when they do not have the appropriate authorization (see *United Envtl. Techniques, Inc. v. State Dept. of Health*, 88 N.Y.2d 824, 825 [1996]).

Plaintiff submits the affidavit of Abhilash Palachola, President of Incygys. Said affidavit states, “Incygys does not do business in the State of New York. Incygys has never physically performed services in New York. Incygys has never had an office in New York State. Incygys has never had any staff physically located in New York. Incygys has never owned real estate in New York. Incygys was formed in about 2015 to provide back-office operation services, such as payroll services and information technology consulting, from its offices located in Jubilee Hills, Hyderabad, Telangana, India. Incygys is a company that exists by virtue of the laws of India” (see NYSCEF Doc. No. 17 Pars. 4).


Plaintiff’s memorandum of law states, “[d]efendants try to link Incygys’ business activities to a company named Alphasoft Technologies Inc. At Abhilash’s direction, in November 2016, Alphasoft transferred 20 employees to defendant Wave Era. Incygys and Alphasoft are separate and distinct. (Abhilash Aff. ¶ 5.) In any event, Wave Era is incorporated in the State of Delaware, and its principal place of business is in the State of New Jersey. (Silverberg Aff. Ex. A) Alphasoft, therefore, did not transfer employees to a New York

company. Based on the above, Incygys does not conduct “systematic and regular” activity in New York (see NSYCEF Doc. No. 20).

Since Business Corporation Law § 1312 constitutes a statutory barrier to the foreign corporation’s right to bring suit, the party seeking to impose the barrier, in order to rebut the presumption that the corporation does business in its state of incorporation rather than New York, has the burden of proving that the foreign corporation’s activity in New York is systematic and regular. The burden of showing “doing business” is therefore a heavy one since a lesser showing might infringe on Congress’ Constitutional power to regulate interstate commerce (see *Airtran NY, LLC v. Midwest Air Group, Inc.*, 46 AD3d 208, 214 [1st Dept 2007]). In the instant matter at this juncture defendant has failed to met that burden.

ORDERED that defendant’s pre-answer motion to dismiss per CPLR § 3211(a)(3) in relation to BCL § 1312(a) is DENIED.

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry.

10/26/2021 DATE	 LAURENCE L. LOVE, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE