

CANADA

SUPERIOR COURT

(Commercial Division)

*Bankruptcy and Insolvency Act, R.S.C. 1985,
c. B-3)*

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE BANKRUPTCY OF :

N°: 500-11-

SONACT GROUP LTD., a corporation organized under the laws of Canada, having its head office at 206-560 Henri-Bourassa Blvd. West, Montreal, province of Quebec, H3L 1P4

Debtor

and

PREMUDA SPA, a corporation organized under the laws of Italy, having its head office at 22, Via Fieschi, 3, 16121 Genova GE, Italy

Petitioner

and

MNP LTD., licensed insolvency trustee, having an office at 2300-1155, René-Lévesque West Blvd., Montreal, Province of Quebec, H3B 2K2

Trustee

APPLICATION FOR A BANKRUPTCY ORDER
(Section 43 of the *Bankruptcy and Insolvency Act* (the "BIA"))

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF THE COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTRAL, AND/OR TO THE REGISTRAR OF THIS COURT, THE PETITIONER HEREBY RESPECTFULLY SUBMITS:

I. BACKGROUND & PARTIES

1. The Petitioner, Premuda SpA ("**Premuda**") is a corporation organized under the laws of Italy which provides global maritime freight transportation services as

appears from an excerpt of the Italian Business Register communicated as **Exhibit P-1**;

2. The Debtor, Sonact Group Ltd. ("**Sonact**") is a corporation organized under the Business Corporation Act (CQLR c. S-31.1) having its only office located at 206-560 boul. Henri-Bourassa West, as appears from an excerpt of the Quebec Business Registry for Sonact communicated as **Exhibit P-2**;
3. On December 23, 2015, Premuda commenced London Arbitration Proceedings against Sonact, as appears from Premuda's request for arbitration dated December 23, 2015, **Exhibit P-3**;
4. As detailed in the request for arbitration, Exhibit P-3, the arbitration claim originated from Premuda's charter of the "Four Island" vessel to Sonact for a charterparty on an amended Asbatankvoy form to carry a cargo of fuel oil from Kavkaz to Nakhodka;
5. More precisely, Premuda claimed USD \$600,000 as an agreed settlement for demurrage and heating costs which had accrued under the charterparty plus the applicable interests and costs;
6. As shown in the request for arbitration, Exhibit P-3, the Arbitral Tribunal's jurisdiction to decide the dispute that Premuda submitted to arbitration stems from an arbitration clause provided for at Clause 24 of the amended Asbatankvoy form, as appears from paragraph 2 of the Final Arbitration Award (the "**Arbitration Award**") communicated as **Exhibit P-4**;
7. The Arbitration Agreement was also included in Clause 24 of the amended Asbatankvoy form as appears from paragraph 2 of the Arbitration Award, Exhibit P-4;
8. Following the request for arbitration, Exhibit P-3, three arbitrators, Mark Hamsher, John Schofield and Christopher Moss (the "**Arbitration Tribunal**"), were named to hear Premuda's claim against Sonact;
9. In 2017, after the Arbitration Tribunal had been duly constituted, both Premuda and Sonact exchanged written pleadings, exhibits and authorities in support of their factual and legal arguments in the arbitration, as appears from paragraphs 4 to 6 of the Arbitration Award already communicated as Exhibit P-4;
10. Although Sonact had requested an oral hearing, the Arbitration Tribunal ruled that it was not necessary or appropriate to have an oral attended hearing as appears from paragraph 8 of the Arbitration Award already communicated as Exhibit P-4;

11. In short, the Arbitration Award granted the claim against Sonact in ruling that Premuda was entitled to recover the USD \$600,000 settlement agreement for demurrage and heating costs, plus interests from April 15, 2015, as appears from paragraph 40 of the Arbitration Award, Exhibit P-4;
12. In addition, the Arbitration Award also granted Premuda's costs for the arbitrators' fees and expenses, administrative expenses (together totaling GBP £22,829) and Premuda's legal costs on the indemnity basis;
13. Following the Arbitration Award, Sonact appealed this decision before the High Court of Justice, Business and Property Courts of England & Wales, Queen's Bench Division (the "**High Court**") in matter n° CL-2018-000049 under section 67 of the Arbitration Act 1996;
14. The High Court dismissed Sonact's application and confirmed the Arbitration Award in case n° CL-2018-000049 as appears from said judgment, **Exhibit P-5**;
15. Following this ruling, the High Court ordered Sonact to pay Premuda's costs for the appeal in the amount of GBP £60,000 as appears from the High Court's judgment rendered on December 14, 2018 (the "**Appeal Cost Award**"), communicated as **Exhibit P-6**;
16. Following the High Court's judgment, Premuda submitted its Arbitration Schedule of Costs, copy of which is communicated as **Exhibit P-7**;
17. In October 2019, the Arbitration Tribunal granted 100% of the costs submitted by Premuda in Exhibit R-5 which totaled an amount of GBP £60,356.92 plus the cost of the Award totaling GBP £6,670 (the "**Arbitration Cost Award**"), as appears from this award communicated as **Exhibit P-8**;
18. Considering the foregoing, based on the Arbitration Award and the Arbitration Cost Award, Sonact currently owes Premuda USD \$600,000 plus interest at the rate of 4.5% per annum compounded at three monthly rests from April 15, 2015 until the date of payment;
19. As for the Arbitration Cost Award, Sonact owes Premuda GBP £60,356.92 for legal costs and GBP £22,829 for arbitration costs plus interest at the rate of 4.5% per annum compounded at three monthly rests from December 8, 2017, as well as GBP £6,670 plus interest at the rate of 4.5% per annum compounded at three monthly rests from October 23, 2019;
20. In addition, based on the Appeal Cost Award, Sonact owes GBP £60,000 to Premuda;

21. In total, Sonact owed CAD \$1,240,800.90 to Premuda following the Arbitration Award, Arbitration Cost Award and Appeal Cost Award without considering the interests accrued since February 7, 2020;
22. On November 7, 2019, Premuda's British counsel sent a notice to Sonact requesting the payment of the Arbitration Award, Arbitration Cost Award and the Appeal Cost Award, as appears from a copy of this notice communicated as **Exhibit P-9**;
23. However, Sonact failed and/or refused to pay the amounts due to Premuda which left the latter forced to seek forced execution of the Arbitration and Cost Awards against assets owned by Sonact;
24. In light of the foregoing, on Premuda filed an Application for Recognition and Enforcement of an Arbitration Award Made Outside of Quebec (the "**Application for Recognition**") before this Court based on section 652 C.p.c. as appears from a copy of this Application communicated as **Exhibit P-10**;
25. Although the Application for Recognition was duly served to Sonact by bailiff, the latter failed to respond, appear or contest the Application for Recognition;
26. On August 26, 2020, the Honorable David R. Collier, J.C.S., granted Premuda's Application for Recognition as appears from a copy of the judgement communicated as **Exhibit P-11**;
27. As per the judgment rendered by the Honorable David R. Collier, J.C.S., the Arbitration Award was declared to have the same force and effect as a judgment rendered by the Superior Court of Quebec and Sonact was ordered to pay Premuda CAD \$1,240,800.90;
28. Following this ruling, Premuda's counsel served the judgment to Sonact by bailiff on November 4, 2020, as appears from the recorded minutes of service by bailiff communicated as **Exhibit P-12**;
29. Nevertheless, Sonact still failed to pay the amounts owed to Premuda although the judgment was never appealed, whereby it is final and enforceable;
30. Consequently, Premuda, through its Quebec counsel, retained Garda World to perform a verification of Sonact assets in Quebec in order to execute the judgment;
31. As appears from the asset verification report, Sonact appears to have no known assets or bank account in Quebec against which Premuda can clearly execute the judgment as appears from the report from Garda World communicated as **Exhibit P-13**;

32. Following the receipt of the Garda World report, exhibit P-14, Premuda attempted to bring third party attachments proceedings against Sonact's revealed credit facilities in Belgium and the Netherlands, without success;
33. Thus, to this day, the Debtor has failed to pay the debt of more than \$1,000 owed to the Petitioner;
34. Prior this proceeding, on August 25, 2021, Sonact was provided with a final notice advising it that an Application for Bankruptcy would be filed if it did not reimburse the sums owed to Premuda as appears from a copy of this notice communicated as **Exhibit P-14**;
35. However, Sonact has failed to respond to this final notice as well as to all other notices and legal proceedings in Quebec since February 2020;

II. ACT OF BANKRUPTCY

36. As per Section 42, paragraph (j) of the BIA, the Debtor committed an act of bankruptcy in that it has ceased to meet its liabilities generally as they became due, notably the amounts owed to the Petitioner as per the judgment of August 26, 2020, and has continued to do so for the last six (6) months;
37. To the Petitioner's knowledge, there are no other known creditors of the Debtor as per the Garda World report, Exhibit P-13;
38. Based on the foregoing, this Motion meets the criteria set forth in section 43 of the BIA since the Debtor owes a debt exceeding \$1,000 and has committed an act of bankruptcy in the six months prior to the presentation of this Application;

III. CONCLUSIONS

39. Considering the foregoing, it is therefore in the interests of justice that the present Application be granted and that a Bankruptcy Order be rendered against the Debtor in order to allow for the appointment of a Trustee under the BIA;
40. MNP Ltd. (Guillaume Camirand, CPA, CA, CIRP, LIT) doing business at 1155, René-Lévesque Blvd West, 23rd floor, Montreal, Quebec, H3B 2K2, is qualified to

act as the Trustee of the Debtor and has accepted to act as such as appears from an acceptance letter from MNP communicated as **Exhibit P-15**;

41. The present application is well founded in facts and in law.

WHEREFORE, THE PETITIONER PRAYS, BY JUDGMENT TO INTERVENE HEREIN, THIS HONOURABLE COURT TO :

- [1] GRANT** the present Application for a Bankruptcy Order;
- [2] ISSUE** a Bankruptcy Order against Sonact Group Ltd. (the “**Debtor**”) as found at Exhibit P-16 (subject to completion on the date of judgment);
- [3] DECLARE** the Debtor bankrupt;
- [4] DESIGNATE** MNP Ltd. (Guillaume Camirand) doing business at 1155, René-Lévesque Blvd West, 23rd floor, Montreal, Quebec, H3B 2K2, Trustee of the bankrupt Debtor; and
- [5] THE WHOLE** with costs.

Montreal, December 6, 2021

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