

(2024) 03 NCLT CK 0008

In the National Company Law Tribunal

Case No : RCP IB ?1 /ND/2024 & IA ? 1080/2024

M/s Armour Security (India) Private Limited

APPELLANT

Vs

M/s Ambience Private Limited

RESPONDENT

Date of Decision : 05-03-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 8, 8(1), 8(2), 9
Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016 — Rule 6

Citation : (2024) 03 NCLT CK 0008

Hon'ble Judges : Bachu Venkat Balaram Das, Member (J); Atul Chaturvedi, Member (T)

Bench : Division Bench

Advocate : Karan Gandhi, V. Anush Raajan, Pradyumn Yadav

Final Decision : Dismissed

Judgement

Atul Chaturvedi, Member (Technical)

1. The present application has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as ?IBC, 2016?) R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, M/s. Armour Security (India) Private Limited is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as ?CIRP?) against the Corporate Debtor viz., M/s. Ambience Private Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as ?IRP?). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

Pleadings of Operational Creditor

2. The Operational Creditor/Petitioner has averred as follows: -

a) It is submitted that, the Applicant Company is engaged in the business of providing security guards services in the name and style of M/s. Armour Security

(India) Private Limited and the Corporate Debtor is engaged in the business of construction and development of residential societies, apartment and buildings. The Operational Creditor had good business relation with M/s. Ambience Private Limited viz., Corporate Debtor.

b) It is further submitted that, the Corporate Debtor had entered into an Agreement dated 01.05.2017 with the Applicant Company. As per the terms of the Agreement the Applicant provided security service at Ambience Tiverton, Sector -50, Noida. Further, as per the abovementioned Agreement the Corporate Debtor mostly on phone calls and orally requested the Operational Creditor for providing the security services.

c) It is further averred that, the Operational Creditor has executed the work to the entire satisfaction of the Corporate Debtor and Corporate Debtor never raised any complaint regarding the services provided by the Operational Creditor. The Corporate Debtor used to make payments on account basis and later Corporate Debtor started delaying the payments on one or another pretext.

d) It is further averred that, the Operational Creditor has reminded the Corporate Debtor to discharge its debt but despite several requests and demands for payment of outstanding dues the Corporate Debtor has failed to pay the overdue Operational Debt. The Operational Creditor having no recourse has issued a demand notice dated 14.01.2020 under Section ? 8 of IBC 2016, in Form 3 for the demand of Rs. 89,96,392/-. The Corporate Debtor has replied to the Demand Notice on 22.01.2020.

Pleadings of Corporate Debtor

3. In response to the contentions raised by the Operational Creditor/ Applicant, Corporate Debtor has raised various counter contentions which are as follows: -

a. It is submitted by the Ld. Counsel appearing for the Corporate Debtor that after believing the representation and assurances made by the Operational Creditor that they have extensive experience in providing security service the Corporate Debtor entered into an agreement for providing the security service dated 01.05.2017 with the Operational Creditor. Further, under the said security service agreement, the Operational Creditor has agreed that it shall provide the staff with the following strength (i) Security guard ? 20 in number, (ii) Security Supervisor ? 1 in number at the Corporate Debtor construction housing project.

b. It is further submitted that, it was agreed between the parties that the Operational Creditor shall provide adequate required number of competent, trained and uniformed personnel and shall ensure that to operate the services as per the agreement. It was also agreed that in case it is proved that the any theft/ loss occurred due to negligence of security staff of the Operational Creditor, the Operational Creditor shall compensate the Corporate Debtor for the loss caused.

c. It is further averred that, the Corporate Debtor made several complaints to the Applicant/Operational Creditor against the loss of goods and theft and security

personnel and security staff for their shortage in number, which was never resolved. There are pre-existing disputes between the parties, which the Operational Creditor seeks to side-step by filing the instant Application under Section ? 9 of the code. It is further averred by the Corporate Debtor that, the existence of pre-existing dispute is evident from a series of emails sent by Corporate Debtor to the Operational Creditor.

Our findings and decision

4. We have heard the arguments advanced by the Ld. Counsel appearing for the Operational Creditor as well as for the Corporate Debtor and also perused the records.

5. The Operational Creditor's claim is based on the facts that, the Applicant and the Corporate Debtor entered into a security service agreement dated 01.05.2017 and as per the terms of the Agreement the Applicant provided security service at Ambience Tiverton, Sector -50, Noida. On the contrary, the Corporate Debtor submitted that, the applicant has failed to adhere with the terms and condition of the agreement as the Applicant company has failed to deploy sufficient number security guards, gunmen and supervisor (staffs) on site and due to shortage of manpower the Corporate Debtor has suffered huge loss in the business.

6. The Corporate Debtor has, inter alia, raised the contention based on 'pre-existing' dispute. To support its contention, the Corporate Debtor has also placed on record certain correspondence through e-mails dated 18.12.2018, 22.05.2019, 30.07.2019 and 02.01.2020 which are as follows: -

i) Email dated 18.12.2018 at 11:31 AM sent by Ambience/Corporate Debtor to Armour Security Armour Security/Operational Creditor was informed about that there have been instances of theft from the construction site on account of lack of security guards. Armour Security was put on notice that immediate action must be taken against the erring security personnel deployed by Armour Security at the site. Hence, Ambience would be entitled to issue debit note to recover its losses caused by the theft.

ii. Email dated 18.12.2018 at 03:16 PM sent by Armour Security/Operational Creditor to Ambience Armour Security/Corporate Debtor acknowledged in writing that there was lack of security guards deployed by them despite request to increase manpower. Armour Security further acknowledged that there were thefts from the site, and that police complaints have been filed. Armour Security requested for payments to be released, which were accordingly complied with. However, Armour Security failed to recover any money or material against the theft at the site in view of lack of security.

iii. Email dated 30.07.2019 at 01:19 PM sent by Ambience/Corporate Debtor to Armour Security Armour Security/Operational Creditor was warned that abandonment of site within 2 days' notice is not acceptable. A minimum of 30

days' notice was required before withdrawal of services. Armour Security cannot abandon the site at its own sweet will. Armour Security has been paid for Noida and also payment was released for other sites. It is shocking that Armour Security would threaten to abandon site after receiving complete payments up to 30.07.2019. It was reiterated that Armour Security has failed to provide up to date muster roll and was also not taking responsibility to the various thefts that took place at various site on account of lack/quality of services provided by Armour Security.

Further, while perusing the record we find one email dated 02.01.2020 sent by the Corporate Debtor to the Applicant highlighting the issue of short supply of Manpower on site. The relevant extract is reproduced below for reference: -

Dear sir

As we have discussed earlier also there is continues shortage of Security manpower at Noida sector 50 site. Only 12 No of security guard/ security supervisor/ladies guard included in this Manpower. Only 7 no of security guard is there in night shifts.

Requesting sir, it is getting very difficult for me to run the site with short supply of security manpower. As there is chances for theft of wires and other value items are at site. Please increase the manpower as soon as possible.

Thanks & Regards,

Ambience Pvt. Ltd. L-4, Green Park Extension,

New Delhi 110016.

7. These e-mails were sent by the Corporate Debtor to the Operational Creditor pointing out the problem of shortage of manpower/security personnel on site. It can be seen from these emails that the Corporate Debtor highlighted instances of theft from the construction site on account of lack of security guards but all the efforts of the Corporate debtor have fell on deaf ears as the Operational Creditor was not responding at all. It is clear from the correspondence between the parties that there is an undeniable dispute with respect to the shortage of manpower and the quality of service provided by the Applicant.

8. All the e-mails mentioned above were sent prior to the issuance of demand notice u/s 8 (1) of the Code dated 14.01.2020 by the Operational Creditor. Considering the facts and circumstances as reflected from the record, we are of the considered opinion, that the dispute existed between the Operational Creditor and the Corporate Debtor prior to issue of the demand notice u/s 8(1). Hence, we hold that there is a pre-existing dispute pending in between the Operational Creditor and the Corporate Debtor.

9. As there is evidence on record of a pre-existing dispute in the present case which was duly notified by the Corporate Debtor to the Operational Creditor in terms of the provisions of Section ? 8 (2) of the Code, the defence cannot be said

to be spurious, mere bluster, plainly frivolous or vexatious as it clearly emerges from the contemporaneous correspondence between the parties.

10. In view of the aforesaid factual and legal position, we conclude that there is ? Pre-existence of dispute? which was raised by the Corporate Debtor time and again much prior to the service of demand notice under section 8 (1) of IBC and the same was also duly notified by the Corporate Debtor in terms of provisions of Section ? 8 (2) of the Code. Therefore, we deem it appropriate to reject this application filed under section 9 of the IBC, 2016 by the Operational Creditor/ Applicant herein.

11. In the light of the above findings IB ? 1 (ND) 2024 stands dismissed

IA ? 1080/2024: -

In view of the Order dated 05.03.2024 passed in (RCP)IB ?1 /ND/2024 the prayers of this IA ? 1080/2024 does not survive.

IA ? 1080/2024 dismissed as infructuous.