



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 786/2022
And
CP (IB) No. 477/Chd/Hry/2019**

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy Rules, 2016**

In the matter of CP (IB) No. 477/Chd/Hry/2019:

Sphinx Security Services Private Limited
through its Director/Authorized Signatory
Sh. Akhil Kinha
having its registered office at
C-125, Mayfield Garden, Sector 52,
Gurgaon, Haryana.

...Petitioner-Operational Creditor

Vs.

M/s Quickdel Logistics Private Limited
through its Director Sh. Anand Rai
having its registered office at
Unit No. 1101, 11th Floor, Spaze I, Tech Park,
Tower A-2, Sohana Road, Sector 49,
Gurgaon, Haryana-122103
having its alternative Registered Office at
C-007, LGF, Sushant Lok-1,
Gurgaon, Haryana-122009

...Respondent-Corporate Debtor

And

In the matter of IA No. 786/2022:

M/s Sphinx Security Services Private Limited
through its Director Sh. Manu
having its registered office at
F-332, Lado Sarai, New Delhi-110030

...Petitioner-Operational Creditor



Vs.

M/s Quickdel Logistics Private Limited

having its registered office at
Unit No. 1101, 11th Floor, Spaze I, Tech Park,
Tower A-2, Sohana Road, Sector 49,
Gurgaon-122018
through its Director Sh. Anand Rai

...Respondent-Corporate Debtor

Judgment delivered on: 03.07.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner- : Mr. HPS Bhinder, Advocate
Operational Creditor

For the Respondent- : 1) Mr. Murari Kumar, Advocate
Corporate Debtor/ 2) Mr. Devansh Khanna, Advocate
Applicant in IA No.
786/2022

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT in CP (IB) No. 477/Chd/Hry/2019

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **Sphinx Security Services Private Limited** through its Director/Authorized Signatory, Sh. Akhil Kinha (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in the case of **M/s Quickdel Logistics Private Limited** (for brevity 'Corporate Debtor' / 'Respondent').

2. The Corporate Debtor, namely, **M/s Quickdel Logistics Private Limited**, is a Company incorporated on 28.05.2013 under the provisions of the Companies Act with CIN No. U63000HR2013PTC049345 with its



registered office at Gurgaon, Haryana, India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached as IA No. 1029/2019.

3. The facts of the case, briefly, as stated in the petition are that Operational Creditor was engaged in providing security and housekeeping services. parties enter into an agreement dated 29.07.2015 whereby the operational creditor was required to provide 472 security guards and the corporate debtor was bound to pay dues by the 5th of every month. Parties entered into another agreement dated 01.09.2015 and subsequent agreement dated 04.04.2016 whereby the earlier agreement dated 29.07.2015 was renewed. The Operational Creditor raised invoices and contacted the corporate debtor through emails dated between 18.10.2016 and 21.11.2016 seeking outstanding payment. The Operational Creditor issued a Legal Notice dated 06.05.2017 which was undelivered with a report that the occupier of the property had left the property. Another Legal Notice dated 28.07.2017 was issued including Rs. 10,34,507/- amount pertaining to the GoFill Account of Corporate Debtor but only part payment was made. The Operational Creditor filed a complaint dated 05.11.2016 registered vide No. 1423-P dated 07.11.2016 before the Deputy Commissioner of Police, West Gurgaon, Haryana regarding cheating and fraud committed by Corporate Debtor. corporate debtor vide its email dated 24.08.2016, admitted its claim and promised to clear all outstanding payments before 15.09.2016. Vide letter dated 20.10.2016, Corporate Debtor terminated Service Security Agreement dated 29.07.2015 and house-keeping Agreement dated 01.09.2015. The Operational Creditor filed an application



under Section 11 of the Arbitration and Conciliation Act seeking the appointment of an arbitrator vide Case No. ARB-222/2017 before Punjab & Haryana High Court and the same is still pending. The Operational Creditor came to know about the pendency of CIRP against the corporate debtor initiated by Walsons Services Pvt. Ltd. and submitted its claim dated 13.02.2019 before IRP. An appeal was filed by Anand Rai against the Corporate Debtor which was settled prior to the constitution of CoC.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 1,71,61,683/- (Rupees One Crore Seventy One Lakhs Sixty One Thousand Six Hundred and Eighty Three Only) inclusive of interest @ 18% p.a. The date of default is from July 2016 to October 2016 as mentioned by the operational creditor, however, no exact date has been provided. Copy of Security Services Agreement (Annexure-II & IV), House Keeping Agreement (Annexure-III), Revised Rates Commercial (Annexure-V), Emails by Operatinal Creditor (Annexure-VI), Legal Notices (Annexure-VII & VIII), Complaint (Annexure-IX), Email sent by Corporate Debtor (Annexure-X & XI), Invoices (Annexure-XIV) is attached with the main petition.

5. A demand notice in Form 4 is stated to be issued by the operational creditor on 7.03.2019 and the same was delivered to the corporate debtor by the operational creditor vide registered post as the postal receipt is attached at Annexure-XVI of the petition. The reply dated 25.03.2019 to the demand notice was sent by the corporate debtor wherein it is stated that neither there is any unpaid debt nor they fall under the operational creditor. there was complete misappropriation of goods/shipment



by security guards. The invoices were not supported by the documents confirming the payments of ESIC, EPF, Service Tax and Minimum Wages Act, and attested attendance register. No amount is due and payable. An FIR against the vendors/ management with EOW Delhi was lodged. An investigation report was also filed with the economic offense wing Delhi against Mr. Pawan Kalkal, handling the vigilance team and M/s Sphinx (Annexure XVII).

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed by Diary No. 1865 dated 09.03.2020. The corporate debtor has filed an objection/reply to the petition has been filed with IA No. 786/2022 contending that the petition is not maintainable in view of the arbitration clause and further, the facts mentioned in the reply to the demand notice have been reiterated. Furthermore, it is mentioned that the Arbitration proceeding between the parties was a pre-existing dispute. There is no unpaid operational debt. There was a police complaint that the applicant had did vide dated 05.11.2016. Therefore, there was a pre-existing dispute as well as the existence pendency of an Arbitration proceeding much before the receipt of the demand notice dated 07.03.2019.

7. The rejoinder was filed by the operational creditor vide Diary No. 00118/3 dated 08.07.2022 wherein it is stated that the facts mentioned in the petition.

8. The short written submissions have been filed by the petitioner vide Diary No. 01575 dated 29.04.2023 and was refiled vide Diary No.



00118/4 dated 20.04.2023 and by the respondent corporate debtor vide diary No.00118/6 dated 21.04.2023.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice was served upon the corporate debtor. The demand notice dated 7.03.2019 was delivered to the corporate debtor by the operational creditor vide registered post as the postal receipt is attached at Annexure-XVI of the petition. The reply dated 25.03.2019 to the demand notice was sent by the corporate debtor. Therefore, the demand notice was duly served upon the corporate debtor.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of the compliance affidavit filed vide Diary No. 6497 dated 21.11.2019 by learned counsel for the operational creditor that there is no notice given by the Corporate Debtor relating to the dispute of unpaid operational debt.

The application under Section 11 of the Arbitration and Conciliation Act seeking the appointment of an arbitrator vide Case No. ARB-222/2017 before Punjab & Haryana High Court was filed which was withdrawn later on by the petitioner. An FIR against the vendors/ management with EOW Delhi was lodged. An investigation report was also filed with the economic offense wing Delhi against Mr. Pawan Kalkal, handling the vigilance team and M/s Sphinx (Annexure XVII).

The dispute existed between the parties much before the issuance of the demand notice dated 07.03.2019. Although, the arbitration proceedings have



been withdrawn by the petitioner before the Hon'ble Punjab and Haryana High Court, yet there is no dispute about the provision of arbitration clause in the agreement dated 29.07.2015. The reliance can be placed upon the judgment of Hon'ble Supreme Court **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353** wherein it was held that:

“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

43.We have seen that a “dispute” is said to exist, so long as there is a real dispute as to payment between the parties that would fall within the inclusive definition contained in Section 5(6).

45. Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability”.

(Emphasis Supplied)



The definition of a 'dispute' as provided in the Insolvency and Bankruptcy Code, 2016 is as follows-

*"5. Definitions. – In this Part, unless the context otherwise requires, –
(6) "dispute" includes a suit or arbitration proceedings relating to–
(a) the existence of the amount of debt;
(b) the quality of goods or service; or
(c) the breach of a representation or warranty;"*

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 07.03.2019 attached as (Annexures XV and XVI) was duly served on the corporate debtor. However, the period of limitation would begin from the date of default as mentioned July 2016 to October 2016 by the operational creditor, although, no exact date has been provided, yet it is evident from the record that the date of default can be taken as October 1, 2016. This application was filed vide Diary No. 4513 on 12.09.2019. Therefore, the present petition is filed within limitation.

12. As a sequel to the above discussion and the facts as well as circumstances since there is a pre-existing dispute and arbitration clause between the parties regarding the amount claimed by the petitioner, the petition is liable to be rejected, in terms of Section 9 of IBC, 2016. The petition consequently stands dismissed, however, with no order as to costs.

IA No. 786/2022

13. The present application is filed by the applicant-corporate debtor under Section 8 of the Arbitration and Conciliation Act, 1996 read with Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 to refer the parties to arbitration as per express Terms and conditions of contract with regard to an Arbitration Clause.



14. The brief facts of the application are that the parties entered into an agreement dated 29.07.2015 which was renewed by the Security Service Agreement dated 04.04.2016 whereby its Clause No. 22 parties agreed to the terms of the contract i.e. any dispute arises the claim to be settled by invoking arbitration. The Operational Creditor by sending a Legal Notice dated 06.05.2017 requested for the appointment of an Arbitrator before the Punjab and Haryana High Court and the same was withdrawn vide order dated 06.04.2022 by the Operational Creditor.

15. The reply was filed by the operational creditor vide Special Diary No. 259 dated 26.07.2022 and was refiled vide Diary No. 01575/1 dated 08.09.2022 wherein it is stated that the respondent Company did not behave unprofessionally and there was no delay in making payments. All payments were made against the invoices. There was no issue of non-payment of any dues. The Security Services Agreement provided by the petitioner was not satisfactory and never fulfilled the scope of work and the same resulted in the loss of shipments, deployment of incompetent guards, and many documents like attendance sheets, and challans were never produced. There was no dispute regarding receipt of the email dated 15.02.2016 related to the termination of the Security Services Agreement dated 04.04.2016. The petitioner has not received any legal notice dated 06.05.2017 and has not invoked the arbitration clause. The short written submissions were filed on behalf of the Operational Creditor vide Diary No. 01575/2 dated 27.12.2022.

16. Therefore, in view of the discussions in the main petition, the parties are at liberty to approach the appropriate forum for the adjudication of



the dispute in hand. Therefore, the present application is allowed and stands disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 03, 2023
VN/TB