



ITEM No301  
CP(IB) 828 of 2019

**Proceedings under Section 9 IBC**

**IN THE MATTER OF:**

Vishal Carrier

.....Applicant

V/s

Anupam Industries Ltd

.....Respondent

**Order delivered on 06/06/2023**

**Coram:**

Mr. Deep Chandra Joshi, Hon'ble Member(J)

Mr. Ajai Das Mehrotra, Hon'ble Member(T)

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

SD/-

SD/-

**AJAI DAS MEHROTRA  
MEMBER (TECHNICAL)**

**DEEP CHANDRA JOSHI  
MEMBER (JUDICIAL)**



**THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD**

**COURT - II**

**CP (IB) 828/NCLT/AHM/2019**

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

**In the Matter of:**

**Vishal Carrier**

**Applicant/  
Operational Creditor**

**Versus**

**Anupam Industries Limited**

**Respondent/  
Corporate Debtor**

**Order Pronounced on: 06/06//2023**

**Coram:**

**DEEP CHANDRA JOSHI  
MEMBER(JUDICIAL)  
AJAI DAS MEHROTRA  
MEMBER (TECHNICAL)**



## **MEMO OF PARTIES**

### **Vishal Carrier**

Plot No. 9-A/4, GIDC Estate

Sangita Compound

Vitthal Udyognagar

Anand 388 121

Gujarat State

...

**Applicant/Operational Creditor**

**Versus**

### **Anupam Industries Limited**

Unit-1, 138-139, GIDC Estate

Vitthal Udyognagar

Anand 388 121

Gujarat State

...

**Respondent/Corporate Debtor**

### **Appearance:**

For Applicant : Mr. Rushabh Shah, Advocate

For the Respondent : Ms. Nilu Vaidankar, Advocate



## ORDER

1. This application is filed on 13.11.2019 under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Vijay Jayantibhai Patel, proprietor of **M/s. Vishal Carrier** (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency Process (CIRP) against **Anupam Industries Limited** (for brevity 'Corporate Debtor').
  
2. The applicant is a proprietorship concern of Mr. Vijay Shantilal Patel having GST No. 24ADOPP8876C172 registered under the Micro, Small and Medium Enterprise Act, 2006 engaged in transportation business and having its office at Plot No. 9-A/4, GIDC Estate, Sangita Compound, Vitthal Udyognagar, Anand 388 121, Gujarat State.
  
3. The corporate debtor is a limited company, incorporated on 29.10.1998 under the provisions of Companies Act, 1956 duly registered with Registrar of Companies, Ahmedabad, Gujarat State with CIN: U29199GJ1998PLC034888, having registered office at Unit -1, 138-139, GIDC Estate, Vitthal Udyognagar, Anand 388 121,



Gujarat State. The authorised share capital of the corporate debtor is Rs. 54,00,00,000/- and paid up share capital of the company is Rs. 53,79,43,260/-. The corporate debtor is engaged in the business of manufacturing of machinery.

4. It is submitted by the applicant that the corporate debtor placed various purchase orders seeking transportation services of the applicant pursuant to which transportation services were provided by the applicant. Services amounting to a total sum of Rs. 49,91,492/- were rendered by the applicant out of which the corporate debtor had made payment of Rs. 22,42,500/-. On 25.05.2017 the corporate debtor had made payment of Rs. 2,08,000/-. According to the books of account of the applicant, the total outstanding dues is to the tune of Rs. 25,27,992/-. In spite of repeated reminders the corporate debtor failed to make payment of the operational debt. Therefore, the applicant approached State Level Facilitation Council under Section 18 (1) of the Micro, Small and Medium Enterprise Development Act, 2006 (MSMED Act). The Council started initial proceedings under Section 18 (2) of the MSMED Act, however, the conciliation efforts failed and consequently the Council referred the matter to Gujarat Chamber of Commerce & Industry for conducting Arbitration proceedings under the Arbitration and Conciliation Act, 1996.



Throughout the Arbitration proceedings the corporate debtor remained absent. After considering the documents available on record, the Sole Arbitrator passed a detailed award dated 03.05.2019 allowing the claim of the applicant for the following amount-

| Particulars  | Amount Rs.   |
|--------------|--------------|
| Claim amount | 25,27,992.00 |
| Interest     | 46,08,850.27 |
| Cost         | 3,00,000.00  |
| Total        | 74,36,842.27 |

Copy of the above referred award was sent to the corporate debtor by registered post on 04.06.2019 and the same was delivered to the corporate debtor on 06.06.2019. Despite repeated reminders, the corporate debtor failed to pay the awarded amount. Rs. 74,36,842.27 (Rupees seventy-four lacs thirty-six thousand eight hundred forty-two and paise twenty-seven only) due and payable by the corporate debtor as on 03.05.2019 along with interest as per Section 15 and Section 16 of the MSMED Act, 2006.

5. On not receiving the payment of the long outstanding, the applicant issued demand notice in form 3 dated 10.10.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016. Applicant has produced a copy of track report evidencing delivery of the said notice to the



corporate debtor on 12.10.2019 as per the address available in master data of the corporate debtor.

6. Thereafter, the applicant filed application under Section 9 of the Insolvency & Bankruptcy Code, 2016 on 13.11.2019.
7. The corporate debtor filed affidavit in reply inter alia stating that:
  - The application is patently defective as it is filed in the name of a proprietary firm and the authority letter authorising the proprietary firm to file the application is filed by the proprietor himself which is not acceptable in the eyes of law;
  - The claim amount of Rs. 74,36,842.27 is the amount awarded by the Arbitrator appointed by Gujarat Chamber of Commerce and Industry in a reference made by MSME Facilitation Council. If at all the applicant wants to recover the said amount on the basis of the Arbitral Award, then it must file an execution petition.
  - The applicant firm was registered in “E” category i.e. Small Enterprise Category with effect from 31.12.2016, whereas, the date of transactions shown in the application falls between 17.05.2013 to 15.07.2015 during the period in which the applicant was not registered under MSMED Act. As per settled



position, only an entity which is registered under MAMED Act at the time of transaction can avail benefits of the provisions of MSMED Act.

- Except sending one email, the respondent was not properly informed by the applicant about time and venue of the arbitral proceedings. Thus, the entire arbitral proceedings were conducted ex facie in absence of the respondent.
- The learned arbitrator did not appreciate the chain of events and the relevant dates of purchase orders, invoices and registration of the applicant as Small Enterprise under MSMED Act.
- There are serious disputes with regard to services rendered by the applicant.
- The respondent has filed a petition before Hon'ble High Court of Gujarat challenging the validity of the arbitral award.
- As the respondent had not received copy of the arbitral award, a letter was written to the MSME Facilitation Council requesting for a certified copy of the award which is still pending.
- The claim amount in the present petition is based on several invoices which were raised in pursuance of several distinct purchase orders from time to time. The cause of action arising



out of each purchase order is separate and distinct and hence it cannot be clubbed together.

8. The applicant filed rebuttal affidavit inter alia stating that:
  - Copy of arbitral award was served to the respondent on 06.06.2019.
  - The respondent has not raised any dispute prior to issuance of demand notice under Section 8 of the IB Code.
  - It is a settled law that against an arbitral award, when statutory remedy under Section 34 of the Arbitration Act is available, writ petition under Article 226 is not maintainable. Therefore, the writ petition filed by the respondent before Hon'ble High Court is with the sole intention to detail and linger the captioned proceeding before NCLT.
  
9. As per part IV, Form 5 total amount of debt payable by the corporate debtor as on 03.05.2019 is Rs. 74,36,842.27 (Rupees seventy-four lacs thirty-six thousand eight hundred forty-two and paise twenty-seven only) which include interest at the rate of 18% per annum. As stated by the applicant the last payment was made by the corporate debtor on 25.05.2017. Therefore, the application filed on 13.11.2019 is within limitation and not barred by law.



10. Registered office of the corporate debtor is situated in Anand, Kheda District, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.
  
11. In compliance of Section 9 (3) (b) of the IB Code the applicant has filed affidavit to the effect.
  
12. Heard submissions and perused the documents on record. Bare perusal of the demand notice dated 10.10.2019 as well as the petition depicts that the application has been filed for a claim amount of Rs. 74,36,842.27, an amount which is awarded by the arbitrator appointed by Gujarat Chamber of Commerce & Industry in a reference made by MSME Facilitation Council. If at all the applicant wants to recover the said amount on the basis of the Arbitral Award, then it must file an execution petition.

It is pertinent to refer to para 2 of the arbitral award, wherein, in tabular form details of the 48 invoices are listed. First invoice of said list is dated 17.05.2013, whereas, the last invoice is dated 15.07.2015. In other words, the Arbitral Award is based on the 48 invoices raised



by the applicant during the period from 17.05.2013 to 15.07.2015, whereas, the applicant has annexed to the demand notice dated 10.10.2019 only ten invoices of which the total comes to Rs. 24,04,683/- only.

Before considering merits of the application, it is desirable to refer para 3 of the Arbitral Award dated 03.05.2019 which reads as under:

*“3. The claimant submits that total services rendered by the claimant were amounting to Rs. 49,91,492/- and the respondent has made payment amounting to Rs. 22,42,500/- and therefore outstanding amount is Rs. 27,48,992/-. Later on, the claimant again corrected its statement and narrated one more payment by respondent amounting to Rs. 2,08,000/-. So the total outstanding amount is Rs. 25,40,992/-.”*

From the above it is clear that as on the date of Arbitral Award i.e. 03.05.2019, outstanding payable by the respondent stood at Rs. 25,40,992/-.

13. Under the facts and circumstances discussed above, we are of the considered view that the instant application is not maintainable and deserves to be rejected. Accordingly, CP (IB) 828/NCLT/AHM/2019 is dismissed and disposed of.



14. A copy of the order be communicated to the applicant and the corporate debtor. In addition, a copy of the order also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal to forward the compliance report to the Registrar, NCLT.

**SD/-**  
**AJAI DAS MEHROTRA**  
**MEMBER (TECHNICAL)**

**SD/-**  
**DEEP CHANDRA JOSHI**  
**MEMBER (JUDICIAL)**

*Nair/Rahul,LRA*