IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301
C.P.(IB)/15(AHM)2021

Order under Section 9 IBC

IN THE MATTER OF:

M/s. Windlass Engineers & Services Pvt. Ltd. **........Applicant**
V/s
M/s. Anupam Industries Ltd. **........Respondent**

Order delivered on: 22/12/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

-Sd- -Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
(COURT-I)
CP(IB) No. 15/9/AHM/2021

(Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

<u>In the matter of:</u>
M/s. Windlass Engineers & Services Pvt. Ltd.
(CIN: U74991DL2007PTC290424)
Having its registered office at:
Y8A, G/F, Y Block,
Internal Road, Hauz Khas,
Near MCD School, New Delhi – 1100016.

……. Petitioner/Operational Creditor

V/s.

M/s. Anupam Industries Limited
(CIN: U29199GJ1998PLC034888)
Having its registered office at:
138, GIDC Estate,
Vithal Udyognagar, Gujarat-388121.

……. Respondent/Corporate Debtor

Order Pronounced On: 22.12.2023

<u>Coram:</u>
MR. SHAMMI KHAN (MEMBER JUDICIAL)
MR. SAMEER KAKAR (MEMBER TECHNICAL)

<u>Appearance:</u>
For the Operational Creditor: Mr. Nisarg Shah, Ld. Adv. a. w.
Mr. Anuj N Narula, Ld. Adv.
For the Corporate Debtor: Mr. Kamlesh Vaidankar, Ld. Adv.

O R D E R

[Per: Bench]

1. The present Company Petition No. 15 of 2021 is filed by the Operational Creditor, M/s. Windlass Engineers and Services Private Limited under Section 9 read with Rule 6 of the Application to Adjudicating Authority Rules, 2016 with a request to initiate Corporate Insolvency Resolution Process in respect of M/s. Anupam Industries Limited to appoint Interim Resolution Professional ("IRP").

2. From the perusal of Part-I of the application, it is seen that the applicant herein is M/s. Windlass Engineers and Services Private Limited, having its registered office at: Y8A, G/F, Y Block, Internal Road, Hauz Khas, Near M.C.D. School, New Delhi – 1100016.

3. The Corporate Debtor is one M/s. Anupam Industries Limited, having CIN: U29199GJ1998PLC034888. The Corporate Debtor was incorporated on 29.10.1998 and having registered office at: 138, GIDC Estate, Vithal Udyognagar, Gujarat – 388121.

4. The application is affirmed by one Mr. Atul Bansal who is authorised by the Board Resolution dated 05.06.2020 which is annexed as Annexure- "B".

5. It is seen that the Operational Creditor has not mentioned any name of the proposed IRP in the matter and left the matter to the discretion to this Tribunal. This application was filed on 29.01.2021.

6. From the perusal of Part-IV of the application, it is seen that the Operational Creditor is claiming an amount of Rs.1,24,53,209/- which comprises of Rs.80,83,990.84/- being a principal amount and Rs.43,69,218/- as the interest calculated at the rate of 24% p.a. that arose because of certain transactions, for which the Corporate Debtor had, from time to time, placed purchase orders for the purchases of equipment, goods and materials. The copies of various purchase orders are attached as Annexure- “C”. The Operational Creditor had supplied goods and services and raised various invoices amounting to Rs.1,19,79,177.12/- upon the Corporate Debtor. It is stated that the invoices were accepted without any demur or protest whatsoever.

7. It is stated that from 31.03.2018 to 19.06.2018, the Corporate Debtor made payments aggregating to Rs.38,95,186.28/- which were adjusted towards the total outstanding dues. A

sum of sum of Rs.80,83,990.84/- is outstanding principal on the date of the application.

8. It is stated that as per the invoices, the Corporate Debtor was liable to pay the interest at the rate of 24% per annum for the delayed payments, such interest is calculated as Rs.43,69,218/- till 31.07.2020.

9. On several occasions, the Operational Creditor has pursued the payment and sent several reminders which are marked as Annexure- "D". However, the Corporate Debtor refused to pay. Pursuant to which, a complaint was lodged before the Internet Grievance Monitoring System (Ministry of MSME). However, the applicant was orally communicated that being a Macro Enterprise, such complaint cannot be pursued.

10. A legal notice was issued by the Operational Creditor on 10.06.2020 to the Corporate Debtor, which was duly received by the Respondent on 29.06.2020. A copy of such legal notice is enclosed as Annexure- "F" to the present petition. The same was not replied.

11. On 04.09.2020, the Operational Creditor issued a demand notice dated 06.08.2020 under Section 8 of the I. B. Code, 2016 which was served to the Corporate Debtor on 22.09.2020. The online tracking report of the receipt of Demand Notice is enclosed as Annexures- "G" and "H".

12. It is stated that the demand notice dated 06.08.2020 was never replied by the Corporate Debtor and hence, the present application was filed by the Operational Creditor, M/s. Windlass Engineers & Services Private Limited.

13. The date of default as mentioned is 13.04.2018, i.e. 90 days from the date of last invoice as per the payment terms.

14. The Operational Creditor has relied upon the following documents:

Sr. No.	Particulars	Pages
1	Memo of Parties	A
2	Application on behalf of Operational Creditor to Initiate a Corporate Insolvency Resolution Process under section 8 & 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 along with supporting affidavit	1-24
3	Affidavit under section 9(3)(b) of Insolvency and Bankruptcy Code, 2016	25-27
4	Affidavit under section 9(3) (c) of the Insolvency and Bankruptcy Code, 2016 along with the letter to bank dated 16.12.2020	28-30
5	Affidavit u/s 65A & B of the Indian Evidence Act, 1872	31-33
6	True copy of the Master Data of the Corporate Debtor as available on the Ministry of Corporate Affairs Web Portal.	34-35
7	Copy of the board resolution dated 5.6.2020 authorising Mr. Atul Bansal to act on behalf of the Operational Creditor	36

8	True copy of Various Purchase orders issued by Anupam Industries Limited along with emails and Invoices raised by the Operational Creditors.	37-146
9	True copy of reminders sent by Operational Creditor for making payment	147-175
10	True copy of the complaint lodged with the Internet Grievance Monitoring System (Ministry of MSME)	176
11	True copy of the legal notice dated 10.06.2020	177-183
12	A copy of the demand notice dated 06.08.2020 issued by Operational Creditor (Windlass Engineers & Services Private Limited) to the Corporate Debtor	184-194
13	A copy of the postal receipt along with online tracking report	195-196
14	The working of computation of default in tabular form	197
15	Copy of Transaction receipt bearing Ref. No.1912200002315 of Rs.2,000/- dated 19.12.2020	198

15. Reply was filed on 20.07.2021 which is affirmed by one Mr. Surjit Paul, working as H.R. Head with the Corporate Debtor. The summary of objections is as under:

    (a) Mr. Atul Bansal is not been correctly authorised.

    (b) No Certificate attached in Form-V(a).

    (c) There exists dispute between the parties as substantial portion of the total material sent by the petitioner was defective and was rejected by the respondent during its quality inspection testing.

(d) The respondent has attached letters dated 26.03.2018, 03.04.2018, 23.04.2018, 08.05.2018, 12.05.2018, 17.01.2018 and 04.02.2018 as Annexure- “A” in this regard.

(e) It is stated that the present Petition is based on multiple purchase orders which are separate contracts and thus, the petition is not maintainable. The Respondent has quoted that the Hon’ble NCLAT in the case of ***International Road Dynamics South Asia Private Ltd. V/s. Reliance Infrastructure Ltd.-Company Appeal (AT) (Insolvency) No.72/2017*** as such applicant seeks dismissal of the present application.

16. A rejoinder has been filed on 18.10.2021. It is stated that a bogie of serious dispute as to quality of material supplied by the Petitioner was taken in reply by the Corporate Debtor filed before this Tribunal. The Operational Creditor has stated that they have never received the purported letters dated 26.03.2018, 03.04.2018, 23.04.2018, 04.05.2018, 12.05.2018, 17.01.2020, 04.02.2020 and 08.05.2018 annexed as Annexure- “A” to the reply affidavit. It is further stated that the letters are fabricated with a view to create a false record.

17. It is stated that the Corporate Debtor vide its email dated 24.05.2018 and after the first five purported letters has categorically promised to make payment of pending invoices and no dispute was raised by the Corporate Debtor so as to quality of goods.

18. It is stated that the Corporate Debtor never replied to the demand notice dated 06.08.2020 issued under Section 8 of the I.B. Code, 2016. It is stated that the communication/correspondence between the two parties were by way of email and there has not been any instance of physical letters exchanged between the parties. The emails are Annexed as Annexure-AR-1 Colly.

19. It is stated that the demand notice was correctly issued. The director has been duly authorized to file present application. It is stated that no reminders were received to replace the material by or from the Corporate Debtor side. All the material rejection notices are false and fabricated. It is stated that the material inspection report was signed by the Representative of the Corporate Debtor on 19.11.2018 and clearly mention the acceptance of entire quantity of 32 shafts. Proof of the same is attached as Annexure- AR-3 and AR-6 & 7.

20. An additional affidavit was filed by the respondent on 02.11.2023 under diary no.4371. This additional affidavit was

filed in compliance of order dated 03.10.2023, wherein, the respondent was directed to take instructions whether the rejected material mentioned in the rejection report annexed to the reply have been returned to the applicant or not or still lying with the Respondent. It is stated that the entire rejected material was sold in scrap in different lots by the Corporate Debtor, the details of which are provided on page nos. 2 and 3 of the additional affidavit and are as under:

Sr. No.	Name of Party	Invoice No. & Date	Amount
1	Maruti Enterprise	DS2022100013 dated 25.04.2022	3,67,085/-
2	Maruti Enterprise	DS2022100014 dated 28.04.2022	2,76,050/-
3	Maruti Enterprise	DS202210038 dated 27.06.2022	97,461/-
Total			**7,40,596/-**

21. During the hearing, Learned Counsel for the respondent submitted that the said amount of Rs.7,40,596/- has not been remitted by the Corporate Debtor to the Operational Creditor. However, his client is ready and willing to remit the said amount to the Operational Creditor.

22. During the hearing on 18.10.2023, brief legal submissions on additional affidavit of Respondent were handed over by the

counsel of the applicant herein. It is stated in the submissions that no reason has been explained by the Corporate Debtor as to what prevented the Corporate Debtor from sending alleged rejected material back to the Operational Creditor in keeping with the terms of the purchase order and raise debit-note upon on the Operational Creditor for freight.

23. It is further submitted that the amount of Rs.7,40,596/- admittedly fails to show the actual realisation. Another submission was that the material was sold during pendency of the present application before this Tribunal and no information was shared with the Operational Creditor about the decision of the Corporate Debtor to proceed with the sale of the rejected material and this fact was for the first time brought to the notice of the operational creditor through the said additional affidavit.

24. We have heard the Counsels for both the sides and perused the documents.

25. Following are the undisputed facts in the matter:

(a) It is not in dispute that the material was supplied by the Operational Creditor to the Corporate Debtor. The goods sold or supplied by the Operational Creditor to the Corporate Debtor were duly received.

(b) In terms of the purchase order goods were inspected by the Corporate Debtor on the factory site of the Operational Creditor for which, necessary evidence is placed before us and were duly marked OK.

(c) Various reminders were sent by the Operational Creditor to the Corporate Debtor demanding payment.

(d) The Corporate Debtor was in a need of material and has admitted the payment through **email** on various occasions.

(e) The entire correspondence was through email.

(f) None of the emails from the Corporate Debtor speaks about any defect in the material.

(g) Demand Notice was duly received by the Operational Creditor on 22.09.2020 and was **never** replied by the Corporate Debtor.

(h) For the first time certain dispute was raised by the Corporate Debtor at the time of filing the reply in the present matter and for which, certain letters as referred to the Operational Creditor have been attached along with reply.

The Corporate Debtor has miserably failed to prove that these letters were ever delivered to the Operational Creditor. It is quite surprising that on one hand the Corporate Debtor is raising dispute on quality and on the other hand promising payment for past supply and asking the Operational Creditor to supply the goods.

(i) The Corporate Debtor has sold the rejected goods in scrap in the year 2022, years after date of supply, realising Rs. 7,40,596/- and has never remitted any amount to the Operational Creditor.

(j) It is seen that the terms of the purchase order are very clear that rejection if any, will have to be sent back to the Operational Creditor at the cost of the Operational Creditor, such terms were not followed by the Corporate Debtor.

26. In our view, the entire defence of the Corporate Debtor appears to be moonshine. The Corporate Debtor has miserably failed to prove the existence of any dispute between the parties.

27. As regards the contention of the Corporate Debtor that there are different contracts and the same cannot be clubbed in one application under Section 9, decision of Hon'ble NCLAT in the case of *International Road Dynamics South Asia Private Ltd. V/s. Reliance Infrastructure Ltd.-Company Appeal (AT) (Insolvency)*

No.72/2017 was quoted. The decision of Hon'ble NCLAT was impugned before the Hon'ble Supreme Court and was remanded back to Hon'ble NCLAT which was further remanded back to NCLT. Hon'ble NCLAT clarified vide its order dated 11.12.2018 as under:

> *"We agree to the submissions of the petitioner that claims arising out of a multiple agreement can be filed in a single petition under Section 9 of the I & B Code and it cannot be rejected on this ground."*

The above is recorded in order of NCLT, Delhi in its order in CP No. IB-2135/(ND)/2019 dated 05.05.2021.

As such, the objection of the Corporate Debtor is overruled.

28. The principal amount claimed in the petition Rs.80,83,990.84/- and interest amount claimed in the petition Rs.43,69,218/- due to delay in making payment and as the invoices specify, the rate of interest @24%, we are of the view that the present application is maintainable against the threshold of (Rs.1,24,53,209/-) limitation. Date of default is 13.04.2018 which is under the limitation. Accordingly, we are forced to admit the Corporate Debtor into the insolvency resolution process.

29.Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under: -

(i) The Application bearing **CP(IB) No. 15 of 2021** filed by M/s. Windlass Engineers & Services Pvt. Ltd., (the Applicant/ Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s. Anupam Industries Ltd. (the Corporate Debtor) is hereby admitted and the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code: -

a. *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

b. *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

c. *any action to foreclose, recover or enforce any security interest created by the corporate debtor* *in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

d. *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*

(ii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

(iii) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-Sections (2) and (2A) of Section 14 of IBC, 2016.

(iv) The Operational Creditor has proposed the name of IRP. Hence, this Tribunal hereby appoints **Mr.Chandra Prakash Jain, having Registration No. IBBI/IPA-001/IP-P00147/2017-2018/10311 (Email ID:- jain_cp@yahoo.com).** He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(v) The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under Section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate with the IRP the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(vi) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the submission of claims under Section 15 as required by Section 13(1)(b) of the IBC, 2016.

(vii) The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

(viii) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.

(ix) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

(x) The Operational Creditor is directed to pay an advance of Rs.2,00,000/- (Rupees Two Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per the Rules.

(xi) The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in the MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

(xiii) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

30. Accordingly, **CP (IB) No. 15 of 2021** is hereby allowed and stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-	**-Sd-**
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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