



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
CP(IB)/43(AHM)2021

Order under Section 9 IBC

IN THE MATTER OF:

Bharat Industrial Projects Pvt. Ltd
V/s
Anupam Industries Ltd.

.....Applicant

.....Respondent

Order delivered on: 03/01/2025

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

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CHITRA HANKARE
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH (COURT-II)**

CP (IB) No.43(AHM)/2021

(Under Sec 9 of the Insolvency and Bankruptcy Code, 2016)

Bharat Industrial Projects Pvt. Ltd.

...Applicant

Versus

Anupam Industries Ltd.

....Corporate Debtor

Order pronounced on 03.01.2025

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

Bharat Industrial Projects Pvt. Ltd.

Having address at:

Shanti Memorial Hospital Lane,

Uditnagar, Rourkela: 769012, Dist:

Sundargarh, Odisha state

...Applicant/Operational Creditor



Versus

Anupam Industries Ltd,
138,G.I.D.C, Vithal Udyognagar,
388121, Via: Anand, Gujarat India

.....Respondent/Corporate Debtor

Appearance:

For the Applicant: Mr. Chakradhar Panigrahi, party in person

For the Respondent: Mr. Kamlesh Vaidankar, Adv.

JUDGEMENT

1. Under consideration, is an application filed by the Operational Creditor viz. Bharat Industrial Projects Pvt. Ltd. under Sec. 9 of Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "IBC, 2016") against the Corporate Debtor viz. Anupam Industries Ltd seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP).
2. In Part II of the application, it is stated that the Corporate Debtor was incorporated on 29.10.1988 with authorized share capital of Rs.54,00,00,000/- and paid up share capital of Rs.53,79,43,260/- as on 31.03.2018. In Part III of the



application, no name of IRP has been proposed by the applicant. In Part IV of the application the default amount is stated to be Rs.2,73,54,640/- due to the execution of an order the debt fell due. Demand notice under Section 8 of the IBC dated 23.10.2020 was duly received by CD on 02.11.2020 which was not replied.

3. The applicant submitted that it is a registered MSME unit bearing Udyog Aadhaar Registration Number OD30F0001015 under DIC, Rourkela engaged in repair, maintenance, erection and commissioning of various types of cranes. The applicant got an order from Corporate Debtor to erect 22nos. of E.O.T Cranes of various capacities at the premises of Rourkela Steel Plant, Rourkela. The applicant further submitted it carried on the job inside Rourkela Steel Plant and the Corporate Debtor was paying the bills but all of a sudden stopped paying the bills from 30.01.2017 and later paid Rs.10,00,000/- (Rupees Ten Lakhs) only on 10.01.2018 when applicant filed an application before the Honourable Micro and Small Enterprises Facilitation Council, Odisha, Cuttack the arbitral forum under the



provisions of the Micro, Small and Medium Enterprises Development Act, 2006.

4. It is submitted that the arbitral forum has passed an award in applicant's favour on 16.11.2019 directing the Corporate Debtor to pay Rs.2,73,54,640.21 as principal and interest amount of Rs.1,17,76,604.34 calculated upto 31.08.2018 with directions to pay further interest at the rate of three times of the bank rate as notified by Reserve Bank of India from time to time till realization of entire dues. It is further submitted that upon non-payment of the outstanding dues Applicant served a demand notice dated 23.10.2020 attaching invoices on the Corporate Debtor and after receipt of the demand notice on 02.11.2020, the Corporate Debtor has neither brought anything to such as existence of any dispute regarding the operational debt nor provided any document evidencing payment of operational debt within the stipulated period of 10 days. Hence this present application.
5. The Respondent submitted that the Applicant has filed the present Petition on the strength of the ex-parte Arbitral Award dated 16.11.2019 passed by the Hon'ble MSME Tribunal,



Odisha. The said Award has already been quashed and set aside by the Ld. District Court, Sundargarh and the said judgment has been confirmed by the Hon'ble High Court of Orissa. Thus, as on date there is no Award or claim of the Applicant against Respondent. However, the matter was remanded back by the Ld. District Court, Sundargarh was listed for hearing before the Ld. MSEFC, Cuttack which rejected the application of the Petitioner on the basis of the Order passed by Hon'ble High Court of Orissa dated 24.08.2023. However, in the Order dated 08.10.2024 passed by the Ld. MSEFC, Cuttack, it remitted the matter to MSEFC, Rourkela for further action at its end.

6. The respondent further submitted that the applicant, who was given the sub-contract by the Respondent to carry out the work, had abandoned the work incomplete and hence the Respondent had to get it completed by appointing a new vendor. This breach of contract resulted in huge financial losses to the Respondent in various forms. However, before the Respondent could initiate any action against the Petitioner, the Petitioner filed case against the Respondent before the MSME Tribunal, Odisha and obtained an ex-parte Award against the Respondent. That as



the aforesaid Award was under challenge before the appropriate forums at relevant point of time, the Respondent had no opportunity to raise its claim. However as soon as the said Award was set aside, the Respondent immediately filed Commercial Suit No.26/2024 before the Hon'ble Commercial Court, Anand. The Applicant has appeared in the said Commercial Suit and has filed its Reply dated 28.06.2024. The Hon'ble Commercial Court was pleased to grant time to the Respondent to file its Rejoinder. However, since the Hon'ble Commercial Court was on leave on 03.08.2024, the Rejoinder was not placed on record. That subsequently, the applicant engaged Adv. N.R. Pandya at Anand Court and filed an application to allow it to file its detailed Reply. The matter was posted before the Commercial Court on 05.12.2024 and has now been adjourned to 20.12.2024 for hearing the application filed by the applicant who is the Defendant in that suit. Thus, the Commercial Suit No.26/2024 filed before the Hon'ble Commercial Court at Anand is pending adjudication about the disputed facts. Therefore, the present Petition is nothing but the



abuse of process of law and hence is required to be dismissed in limine.

7. Heard both the parties and perused the documents on record.
8. The present Petition is filed on the strength of the ex-parte Arbitral Award dated 16.11.2019 passed by the Hon'ble MSME Tribunal, Odisha. The applicant initiated conciliation proceedings and subsequently arbitral proceedings before the MSME, Cuttack which passed an ex-parte Award dated 16.11.2019 in favour of the Applicant in MSEFC Case No.09/2019. The Respondent challenged the said Award by way of Arbitration Petition No.05/2022 u/s 34 of the Arbitration and Conciliation Act, 1996 filed before the Ld. District Court, Sundargarh which quashed and set aside the aforesaid Award vide its judgement dated 29.10.2022 in favour of the Respondent herein. However, the Ld. District Court, while quashing the said Award, remanded the matter back to the MSME Council. Therefore, the Respondent filed a Review Petition No.01/2022 before the Ld. District Court. However, the Ld. District Court rejected the said Review Petition. Therefore, the Respondent filed an Appeal before the Hon'ble High Court



of Orissa in the form of Arbitration No.9 and 11 of 2023. The Hon'ble High Court of Orissa has vide its Judgment dated 24.08.2023 has upheld the Judgment of Ld. District Court quashing and setting aside the aforesaid Award and has set aside the limited part of the said Judgement whereby the Ld. District Court had remanded back the matter to MSME Facilitation Council. Thus, the Arbitral Award has been set aside by the Ld. District Court, Sundargarh and the same judgment been confirmed by the Hon'ble High Court of Orissa.

9. It is well-settled position of law that once the Arbitral Award is challenged in Section 34 of the Arbitration and Conciliation Act, 1996, the Petition under Section 9 of IBC is not maintainable. In the matter of K. Kishan vs M/S Vijay Nirman Company Pvt. Ltd. - Civil Appeal No. 21824/2017, the Hon'ble Supreme Court held that if an application u/s 34 of the Arbitration and Conciliation Act, 1996 is pending, the Petition u/s 9 of IBC is not to be admitted. The Hon'ble Supreme Court in the said judgment also further observed that even though there is not stay on the Arbitral Award, still the IBC Petition filed on the basis of such Award is not to be admitted.



10. In *Hindustan Construction Company Ltd. v. Union of India* MANU/SC/1638/2019, it was held, "..... The moment challenges are made to the arbitral awards, the said amount said to be due by the operational debtor would become disputed, and therefore be outside the clutches of the Insolvency Code."
11. In the present case, the Arbitral Award has not only been challenged by the Respondent but the Respondent has succeeded before the Ld. District Court as well as before the Hon'ble High Court of Orissa.
12. In *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* (2018) 1SCC 353 it is held that, 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 defense which is mere bluster. However, in doing so, the authority does not need to be satisfied that the defense is likely to succeed. The authority 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.

13. Considering the above mentioned facts, the submissions of parties, it is clear that the applicant has failed to prove the ingredients required for initiation of Corporate Insolvency Resolution Process against the respondent. In view of the above, we pass the following order:

ORDER

CP(IB) 43 of 2021 is rejected.

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**DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

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**CHITRA HANKARE
MEMBER (JUDICIAL)**

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