

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - I**

ITEM No.302  
C.P.(IB)/23(AHM)2024

**Order under Section 9 IBC**

**IN THE MATTER OF:**

Ispat Traders (India) Private Limited  
V/s  
Anupam Port Cranes Coropration Limited

.....Applicant

.....Respondent

**Order delivered on 09/04/2024**

**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 the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-I**

**CP (IB) No.23/AHM/2024**

*(An application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**In the matter of: Anupam Port Cranes Corporation Ltd.**

**M/s. Ispat Traders (India) Private Limited,  
(CIN: U52342GJ2008PTC052787)**

Having Registered Office at:  
Narsinhji's Estate, Yamuna Mill Road,  
Pratapnagar, Vadodara,  
Gujarat – 390004.

**..... Petitioner/ Operational Creditor**

**VERSUS**

**M/s. Anupam Port Cranes Corporation Limited  
(CIN: U29100GJ2011PLC067084)**

Having Registered Office at:  
Plot No.138, GIDC Industrial Estate,  
Vithal Udhyognagar,  
Anand, Gujarat – 388121.

**..... Respondent/ Corporate Debtor**

**Order Pronounced On: 09.04.2024**

**CORAM:**

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)  
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

For the Petitioner : Mr. Pratik Thakkar, Ld. Adv.  
For the Respondent: : Dr. Kamlesh Vaidankar, Ld. Adv.

**ORDER**  
**[Per: Bench]**

1. The present application is filed on 26.12.2023 by the Applicant M/s. Ispat Traders (India) Private Limited (hereinafter referred to as '**Operational Creditor**') against the Respondent M/s. Anupam Port Cranes Corporation Limited (hereinafter referred to as '**Corporate Debtor**') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC, 2016**") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "**IB (AAA) Rules, 2016**") for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as "**IRP**") and declare the moratorium for having defaulted payment of the operational debt of Rs.1,15,05,718/-. The first date of default is said to be 21.06.2023 and last to be 11.07.2023.
  
2. The Applicant/Operational Creditor has prayed for the following reliefs:-
  - (i) *"To admit the application and pass an order for initiating the Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016,*

- (ii) *To cause a public announcement of the initiation of the Corporate Insolvency Resolution Process and Calling for submissions of claim under Section 15 of the Code; and*
- (iii) *To declare a moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code, 2016 in terms of Section 13 Insolvency and Bankruptcy Code, 2016.*
- (iv) *Any other relief which Hon'ble tribunal deems fit in the facts and circumstances of the present case.”*
3. A perusal of Part-I of the Form-V the Applicant/Operational Creditor is one M/s Ispat Traders (India) Private Limited having CIN No. U52342GJ2008PTC085787. Applicant/Operational Creditor was incorporated on 01.02.2008 and having registered office at Narsinhji's Estate, Yamuna Mill Road, Pratapnagar, Vadodara, Gujarat-390004. This application is filed through its Director by Mr. Ronak J Shah who has been authorised by Board Resolution dated 02.10.2023 which is annexed at **Annexure-3**.
4. On perusal of Part-II of the Form-V reveals that the Respondent/Corporate Debtor is one M/s Anupam Port Cranes Corporation Limited Private Limited having CIN No. U29100GJ2011PLC067084. The Respondent/Corporate Debtor was incorporated on 12.09.2011 and having registered

office at Plot No.138, GIDC Industrial Estate, Vithal Udhyognagar, Anand, Gujarat – 388121.

5. On perusal of Part-III of the Form-V reveals that the Applicant/Operational Creditor has named **Mr. Nandish Sunilbhai Vin**, having registration No: AA1/13270/02/301024/106214, having address: C/53, Shanti Niketan Row House, Anand Mahal Road, Opp. Sagar Complex, Beside Sneh Sankul Wadi, Surat, Gujarat – 395009, (**e-mail:** - ip.nandish.vin@gmail.com) under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He has filed his written communication annexed with the Application as Annexure A/4 Colly as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
6. On perusal of Part-IV of the Form-V reveals that total operational debt as claimed by the Applicant/Operational Creditor is Rs.1,15,05,718/-. The first date of default is said to be 21.06.2023 and last to be 11.07.2023.
7. The following facts are not in dispute.
  - (a) The Corporate Debtor had placed a purchase order on 16.06.2023 upon the Operational Creditor for supply

of MS Plates, Bars and other specific equipments (material) mentioned in the said Purchase Order.

- (b) It is stated that the Applicant/Operational Creditor sold and supplied the above stated goods/materials to the Respondent/Corporate Debtor vide various invoices from 20.06.2023 to 10.07.2023 aggregating to Rs.1,23,13,230/-. The Petitioner has annexed the copy of Purchase Order of the Respondent/Corporate Debtor with the present petition as Annexure-A/5 and the copies of invoices, e-way bills and lorry receipts are attached as Annexure A/6 (colly).
- (c) It is stated that the Corporate Debtor rejected the material bearing value of Rs.8,07,512/- and accepted as well as consumed the materials bearing value of Rs.1,15,05,718/- for its business purpose.
- (d) It is stated that as per the invoices, the payment was to be made within 01 (one) day of the date of the invoice. It is stated that the Respondent/Corporate Debtor failed to pay the amount and neglected to pay any amount towards the goods supplied. It is submitted that the default occurred for the invoices dated from 21.06.2023 to 11.07.2023. The Applicant/Operational Creditor has annexed a copy of credit note for sales return dated 28.07.2023 as Annexure A/7 to the present petition.

(e) It is stated that the Respondent/Corporate Debtor received and accepted the goods and not raised any dispute to the quality or quantity of the supplied materials/goods. It is also not in dispute that the Respondent/Corporate Debtor did not pay the outstanding of the said invoices.

(f) It is submitted that the Petitioner/ Operational Creditor issued a demand notice in Form-4 and Form-5 on 06.10.2023 to the Respondent/Corporate Debtor. It is also stated in the pleadings that the Respondent/Corporate Debtor did not raise any dispute of non-receipt of notice. The Applicant/Operational Creditor has annexed copy of the demand notice dated 06.10.2023 to the present petition as Annexure-A/8. A copy of the proof of service of the demand notice is also annexed by the Applicant/Operational Creditor as Annexure-A/9.

8. The counsel for the petitioner has also filed the NeSL certificate stating the Record of Default as 11.07.2023 “Deemed to be Authenticated” in respect of the Respondent/Corporate Debtor.

9. This matter was initially listed on 16.01.2024 in which, notice was issued to the Respondent/Corporate Debtor in writing reply/ petition, if any to be filed within seven (07) days from the receipt of the notice.

10. After service of notice, the Respondent/Corporate Debtor appeared through his counsel on 09.02.2024 and again sought time to file reply which was allowed to be filed within the extended period of seven (07) days with an advance copy to the opposite side.
11. On 28.02.2024, the Respondent/Corporate Debtor again appeared without any reply. However, he filed a purshis on 26.02.2024 vide inward diary no-D1669 along with copy of an email sent to the Applicant/Operational Creditor on 15.02.2024. Through the said email, the Respondent/Corporate Debtor offered to pay the entire debt amount of Rs.1,15,05,718/- within a period of 18 months in equal monthly instalments starting from 01.04.2024 with a request to accept the proposal.
12. However, the counsel for the Applicant/Operational Creditor submitted that his client is not inclined to accept the proposal of payment in monthly instalment of 18 months and sought time to take further instructions in the matter. The matter was again listed on 05.04.2024.
13. On 05.04.2024, Ld. Counsel appearing for the both the sides submitted that there is no settlement arrived between the parties. Ld. counsel for the respondent again reiterated that he has already filed a purshish on 26.02.2024 vide Inward Diary No. 1669 which is recorded in the last order dated 28.02.2024. The respondent has offered through e-mail to pay the entire amount of Rs.1.15 Cr. within a period of 18 months in equal monthly instalments starting from 01.04.2024 with a request

to accept the proposal. However, again, no reply was filed despite opportunities given to the respondent. Hence, right to file reply was hereby closed.

14. We heard the Learned Counsels from both sides. We perused the material available on record.
15. On perused from the record that the Ld. Counsel for the Respondent filed a purshis on 26.02.2024 vide Diary No. D1669. As mentioned in the purshis, an email dated 15.02.2024 was sent by the Respondent to the Petitioner. The Learned Counsel submitted a copy of the email. On perusal of the copy of email, it is stated as under:-

*“That we have been associated with each other in business for a very long time. We really do not appreciate you threatening to push our company in insolvency for recovery of your outstanding. We have done business in past and we have never left you unpaid. Currently, the Company is facing some serious litigations and the business is also under the weather. The Company is facing acute financial crunch which happens in every business and we are not an exception. We are trying to get good orders from established market resources and very likely get some good orders soon. However, as offered you in our discussion, we propose to clear the payment of your principal outstanding dues of around Rs. 1.15 Cr. within a period of 18 months in equal monthly instalments starting from 1 st April, 2024. We request you to please give your acceptance to our proposal by return email.”*

16. 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 despatched by the Operational Creditor on the factory site of the Corporate Debtor for which, necessary invoices are placed before us.
- c. The Corporate Debtor was in a need of material and has placed a written purchase order by agreeing on the terms and conditions.
- d. There is no communication from the side of the Corporate Debtor which speak about any defect in the material.
- e. Demand Notice was duly received by the Operational Creditor on 09.10.2023 by 15:22:36 Hrs. and was never replied by the Corporate Debtor.
- f. From the ledgers, it is evident that there is a clear default from the side of the Respondent/Corporate Debtor.
- g. The email print copy is submitted by the Counsel for the Respondent/Corporate Debtor clearly states that

an amount of Rs.1,15,05,718/- is due and he is not in a position to pay the debt and the same has clearly been mentioned in the email sent to the Petitioner/Operational Creditor.

- h. The last payment made by the Respondent/Corporate Debtor on 11.07.2023, being a date of default. This application has been filed on 26.12.2023, which is well within the limitation.
- i. The amount of debt is Rs.1,15,05,718/-, which is more than the minimum threshold limit required to trigger the Corporate Insolvency Resolution Process.
- j. Hence, we are left with no choice except admitting the Respondent/Corporate Debtor into the Corporate Insolvency Resolution Process. Hence, the order.

17. Thus, present application is complete in terms of Section 9 of the Code. The Applicant/Operational Creditor is entitled to claim its dues, establishing the default in payment of the Operational Debt beyond doubt. The outstanding Operational Debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

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

- (i) The Respondent/Corporate Debtor **M/s. Anupam Port Cranes Corporation Limited** is **admitted** in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- (ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 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.*
- (iii) 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.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) As proposed by the Operational Creditor, we appoint **Mr. Nandish Sunilbhai Vin**, Insolvency Professional, having registration No: AA1/13270/02/301024/106214, having address: C/53, Shanti Niketan Row House, Anand Mahal Road, Opp. Sagar Complex, Beside Sneh Sankul Wadi, Surat, Gujarat – 395009, **e-mail:** ip.nandish.vin@gmail.com under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He shall conduct the Corporate Insolvency Process as per the Insolvency and

Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) 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.
- (vii) 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.
- (viii) 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.

- (ix) 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.
- (x) 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.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) 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.

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

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

19. Accordingly, **CP (IB) No.23 of 2024** 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-  
SAMEER KAKAR  
MEMBER (TECHNICAL)**

**-Sd-  
SHAMMI KHAN  
MEMBER (JUDICIAL)**

AT