IN THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

COURT NO. 1

ITEM No.302

TP 172 of 2019 [CP(IB) 405 of 2019]

Proceedings under Section 9 IBC

IN THE MATTER OF:

Oswal Pumps Ltd **........Applicant**

V/s

Bhopal Tractors Pvt Ltd **........Respondent**

Order delivered on 17/02/2023

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh, 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-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

A. Bhadauria / Namit

BEFORE THE ADJUDICATING AUTHORITY

NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

TP/172/MP/2019
CP(IB) 405/AHM/2019

[*An application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016*]

In the Matter of:

Oswal Pumps Limited
CIN: U74999DL2003PLC121307
A private limited company incorporated
Under the provisions of the Companies
Act, 1956
Address:
Oswal Estate, NH-1, Kutail Road,
P.O. Kutail, Dist. Karnal,
Haryana- 132037

......Applicant/Operational Creditor

Versus

Bhopal Tractors Private Limited
CIN: U29229MP2000PTC014392
A private limited company incorporated
Under the provisions of the Companies
Act, 1956
Address:
99/100/101,
Sarda Vihar City Center,
Gwalior,
Madhya Pradesh- 474002

......Respondent/Corporate Debtor

Decided On: 17.02.2023

Coram: Dr. Madan B. Gosavi, Member (J)
Kaushalendra Kumar Singh, Member (T)

Appearance:
For Applicant: Ld. Adv. Mr. Madhav Lohati
For Respondent: Ld. Adv. Mr. Uday Joshi

ORDER

1. The present application is filed on 13.06.2019 by Mr. Vinod Kumar Sharma manager of M/s Oswal Pumps Limited (Operational Creditor) under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) to initiate Corporate Insolvency Resolution Process (CIRP) against M/s Bhopal Tractors Private Limited (Corporate Debtor). The default amount stated by the operational creditor is Rs 39,89,321/- (Principle Amount of Rs 22,56,259/- and Interest Amount of Rs 17,33,062/-).

2. The corporate debtor is a private limited company incorporated under the provisions of the Companies Act, 1956, having CIN No. U29229MP2000PTC014392, its registered address is at 99/100/101, Sarda Vihar City Center, Gwalior, Madhya Pradesh- 474002. The corporate debtor is engaged in the business activity of retailer of diesel engines, tractor rotavators, soil cultivators, etc.

3. The averments made by the operational creditor in its application and presented/argued by the learned counsel for the operational creditor are summarized hereunder:

   (i) The corporate debtor and the operational creditor were in a business relationship for the purchase and supply of submersible pumps, monoblock pumps, and electric motors goods which were to be delivered at the place as directed by the corporate debtor. For the same, both parties entered into yearly agreements for smooth and fluent operations.

(ii) The operational creditor supplied the goods to the corporate debtor in the financial year 2014-15. Upon completion of its obligations, the operational creditor raised invoices towards the goods delivered and consumed by the corporate debtor.

(iii) On 22.06.2018 the operational creditor sent an email to the corporate debtor stating that the payments are outstanding since long time and are required to be cleared. After several reminders to the corporate debtor to pay the outstanding dues, the operational creditor sent a final reminder on 23.06.2018 (with reference to previous letter dated 05.12.2014, 06.02.2015, 11.02.2015, 04.03.2015, 10.10.2015, 31.03.2016, 08.11.2016, 10.05.2017, 04.04.2018, 11.06.2018 and 22.06.2018) through registered post.

(iv) Thereafter, a legal notice dated 21.07.2018 was sent to the corporate debtor and the same was delivered on 27.07.2018, the corporate debtor never replied to the same.

(v) The operational creditor issued a demand notice dated 18.03.2019 under the provisions of the Code. The same was delivered to the corporate debtor on 22.03.2019. The corporate debtor replied to the demand notice vide letter dated 01.04.2019, the corporate debtor failed to address in the reply as to why the amount is not paid and raised false and frivolous allegations that the amount of Rs 25,00,000/- was deposited as security deposit as per the clearing and forwarding agreements entered between the parties, but the said agreement has no such clause for any deposit amount.

(vi) Till date the corporate debtor has not paid the due amount to the operational creditor hence this present petition is filed.

(vii) The operational creditor has been receiving the payment from the corporate debtor on *ad hoc* basis against the supplies.

(viii) The operational creditor has been providing statements and ledger to the corporate debtor time to time for receiving claims and outstanding dues. The corporate debtor by its emails has asked for account statement from the operational creditor regarding the claim to the tune of Rs 22,52,409/- with interest on the subject matter for verification and payment of long outstanding claim.

4. In reply submissions made by learned advocate on behalf of the corporate debtor and presented/argued before this Adjudicating Authority are summarized here as under:

(i) The operational creditor approached the corporate debtor conveying that it was desirous of appointing a clearing and forwarding agent in Indore for smooth arrival and dispatch of goods of 'Oswal' brand manufactured by the operational creditor, in the state of Madhya Pradesh and in view of which, the operational creditor was desirous of conducting business with the respondent.

(ii) Thereafter, an agreement dated 02.08.2014 was entered between the parties. In pursuance of the said agreement, the corporate debtor had also deposited a sum of Rs 25 Lakh as security deposit in respect of goods to be transferred by the operational creditor.

(iii) The goods in question were not sold to the corporate debtor by the operational creditor, but the same were transferred. Invoices issued by the operational creditor would go to show that CST/VAT was not charged by the petitioner which evidence is the fact that the transaction was not a sale but a transfer of goods from principal to agent for further sale.

(iv) Form-F (Form of declaration to be issued by the transferee) of the Central Sales Tax (Registration and Turnover) Rules, 1957 demanded by the operational creditor from the corporate debtor, is required to be submitted in case of transfer of goods made from one state to another either to agent or principal. It clearly shows that the operational creditor had transferred goods to the corporate debtor acting as principal and the corporate debtor had received goods as an agent whereby, there was no sale of goods to the corporate debtor.

(v) The goods supplied by the operational creditor were defective goods with regards to which the corporate debtor has time and again been conveying to the petitioner orally inasmuch as the said goods had several manufacturing defects and were not as per standard quality. In view of this, the corporate debtor had made various complaints and telephonic conversations with the regional head and director of the operational creditor regarding poor quality of goods.

(vi) Several visits were made by the representatives of the operational creditor, and it was assured that the goods would be replaced and the amount of security deposit would be refunded.

(vii) Instead of acting upon the assurance given, the operational creditor issued a demand notice dated 18.03.2019 demanding payment under the Code.

(viii) The entire claim made by the operational creditor in the present petition is not sustainable and not admitted by the corporate debtor.

(ix) The date of default as per the present petition is 08.03.2015. the demand notice was issued on 18.03.2019 which was replied by the corporate debtor on 01.04.2019. The said dates clarify the claim is barred by limitation.

5. We have heard the learned counsels appearing for both sides, and have perused the material available on record. It is noted that a clearing and forwarding agreement was entered into between the operational creditor and corporate debtor, based on which goods were supplied and invoices were raised by the operational creditor between 23.08.2014 and 5.02.2015. The operational creditor issued a demand notice on 18.03.2019, claiming a total of Rs 39,89,321/-, (including Rs 22,56,259/- as principal amount and Rs 17,33,062/- as interest). In response to the said notice, the corporate debtor claimed that the agreement between the parties was entered into in the capacity of a principal and agent relationship, wherein the goods were not sold but transferred by the operational creditor to the corporate debtor, and that the transferred goods were not of the requisite quality. The corporate debtor also stated that it had paid a security deposit of Rs. 25 lakh to the operational creditor, and furnished a bank statement to support this claim.

The present petition was filed on 13.06.2019, and the default date as per the last issued invoice is 08.02.2015. The operational creditor argued that the corporate debtor had sent several emails requesting statements to verify the claims, but we find that this does not amount to an admission of the claims, and based on such emails the limitation period cannot be renewed.

Based on the above observations, we are of the considered view that the mere act of requesting statements from the operational creditor by the corporate debtor does not amount to an admission of claims. Consequently, the limitation period does not get renewed, and the present petition is barred by limitation. Accordingly, the present petition is rejected, and stands disposed of.

-Sd-	-Sd-
Kaushalendra Kumar Singh **Member (Technical)**	**Dr. Madan B. Gosavi** **Member (Judicial)**

Surbhi - LRA