

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. No. 1697/I&BP/2017

Under section 9 of the IBC, 2016

In the matter of
Balaji Marketing Agencies
....Applicant

v/s.

Sanika Chemicals Pvt. Ltd.
....Respondent

Order delivered on 13.02.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)

For the Petitioner : Mr. Ankur Kumar, Adv. of AZY Laws.

For the Respondent: None.

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Oral Order dictated in the open court on 12.02.2018

It is a Company Petition filed u/s 9 of the Insolvency & Bankruptcy Code against the Corporate Debtor namely; Sanika Chemicals Pvt. Ltd. by the Operational Creditor namely; Balaji Marketing Agencies, on the ground that the Petitioner supplied goods to the Corporate Debtor on 20.02.2017 by raising invoice bearing No. 1302 dated 20.02.2017 for an amount of ₹2,57,726 basing on a Purchase Order vide No. SC/PR/EQP/16-17/130 dated 19.02.2017 given by the Corporate Debtor herein, Petitioner's Counsel further says, for having the Corporate Debtor defaulted in making payment on 20.02.2017, the Petitioner issued notice u/s 8 of the IBC on 05.10.2017 demanding payment of dues outstanding ₹2,57,726 as reflected in the invoice raised by this Petitioner against the Corporate Debtor. For there being no reply from the Corporate Debtor, the Petitioner has filed this Company Petition for initiation of Corporate Insolvency Resolution Process against this Corporate Debtor.

2. None appeared on behalf of the Corporate Debtor despite the notice has been served upon them by the Petitioner.

3. On perusal of the Company Petition filed by the Petitioner, this Bench has noticed that this application has been filed showing default date as 20.02.2017 i.e. the date, on which the Petitioner raised invoice against this Corporate Debtor but whereas inward report comes from the Corporate Debtor to the Petitioner in respect to the goods purportedly delivered, discloses that three items received on 21.02.2018, apart from this, receipts given by computerised weigh bridge also discloses as weighed on 20.02.2017 & 21.02.2017, whereby there could not be any chance to say that these goods were reached to the Corporate Debtor on 20.02.2017 itself to say that Corporate Debtor defaulted in making payment on 20.02.2017.

4. This Petitioner is over anxious in filing this Company Petition showing date of invoice as date of default, which was even before goods reached to the Corporate Debtor. Moreover, the Petitioner has not filed any affidavit as mentioned u/s 9(3)(b) of the IBC stating that the Corporate Debtor has not given reply to the section 8 notice given by the Petitioner.

5. In view of these reasons, this Bench having come to a conclusion that there are defects in this case in respect to default date, on the top of it, affidavit having not filed as envisaged u/s 9 stating reply has not been given by the Corporate Debtor, this Company Petition is hereby dismissed as misconceived with liberty to this Petitioner to take appropriate action in accordance with law.

Accordingly, this application is hereby **dismissed**.

Sd/-

B. S.V. PRAKASH KUMAR
Member (Judicial)