

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**Comp. App. (AT) (Ins.) No. 640 of 2023
& I.A. No. 2122 of 2023**

In the matter of:

M/s. Sheetal Impex Pvt. Ltd.

....Appellant

Vs.

Shree Swastic Sales Corporation Pvt. Ltd.

...Respondent

For Appellant

**Mr. Vivek Jain, Ms. Suchitra Kumbhat, Mr.
Abhinav Jain, Ms. Honey Kumbhat, Advocates.**

For Respondent

ORDER

20.09.2023: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the order dated 15.03.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III by which order the Adjudicating Authority rejecting Section 7 Application filed by the Appellant as barred by time. Application under Section 7 filed on 04.02.2020. The Adjudicating Authority has held that it is barred by time.

3. Learned Counsel for the Appellant submitted that there was confirmation of the account by Corporate Debtor on 01.04.2016 and further TDS deduction was made on 09.06.2016. It is submitted that Application filed on 04.02.2020, thus, was not barred by time.

4. We have heard Learned Counsel for the Appellant and perused the record.

5. Copy of the Legal Notice dated 10.02.2017 has been filed by the Appellant himself in Appeal as Annexure-F. Paragraph 3 of the notice states as follows:-

“3. On 01.04.2015, Our Client had sent you the above referenced letter which was duly acknowledged by the Authorised Signatory on your behalf and thereby confirming your liability to pay Our client a balance of Rs.41,90,989/- (Forty One Lacs Ninty Thousand Nine Hundred Eighty Nine only) as on 01.04.2015 along with 9.25% interest payable on it.”

6. According to the own case of the Appellant, the amount became due on 01.04.2016. Counsel for the Appellant has referred to the letter dated 01.04.2016 for confirmation of the accounts from 01.04.2015 to 31.03.2016. Even if it is accepted that after the confirmation of the accounts, Financial Creditor got a fresh period of limitation, the Application having been filed on 04.02.2020 was barred even after 01.04.2016.

7. Insofar as the TDS deduction on 09.06.2016, we are of the view that the said deduction cannot give any extension to the limitation period.

8. Learned Counsel for the Appellant further submits that the issue of limitation was never raised and matter was heard and thereafter matter was reserved.

9. It is well settled that the application which is barred by time has to be rejected by the Court even if no defence of limitation was raised. We are of the

view that the Adjudicating Authority has rightly dismissed the Application Section 7 as barred by time. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

Anjali/nn