

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

Company Appeal (AT) (Insolvency) No. 832 of 2023

&

I.A. No. 2579 of 2023

IN THE MATTER OF:

SSP Pvt. Ltd.

...Appellant

Versus

Govind Jee Dairy Milk Pvt. Ltd.

...Respondent

Present:

For Appellant: Mr. Rayendra Beniwal, Mr. Rajat Kashyap, Ms. Shiwangi Gosh, Advocates

For Respondent: Mr. Mohit Chaudhary, Mr. Prakhar Mithal, Advocates

O R D E R

14.07.2023: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order passed by the Adjudicating Authority dated 28th March, 2023 rejecting Section 9 Application filed by the Appellant as barred by time.

3. The Adjudicating Authority in paragraph 18 of the Order made following observations:

“18. The contention of the applicant that the present application is within limitation on account of pratt payment of Rs. 20,00,000/- through RTGS on 16.08.2021 from the Corporate Debtor towards the first instalment of the Settlement Agreement dated 13.08.2021 cannot be accepted as the same was made much after the expiry of original period of three years of limitation falling on

29.10.2017 (i.e., three years from the date of last invoice). From the records, it is evident that last invoice was raised on 29.10.2014 and therefore, the original limitation expired on 29.10.2017. It is seen from record that part payments were made between 30.01.2013 to 29.03.2014 by virtue of which the limitation could not have extended beyond the original date of limitation being 29.10.2017. The next payment was made on 14.02.2018 i.e., after the expiry of original limitation of three years, which in the instant case ended on 29.10.2017. During the period from 30.03.2014 to 13.02.2018 neither any part payment was made by the Corporate Debtor nor any document evidencing the acknowledgement of debt by Corporate Debtor is placed on record.”

4. Learned Counsel for the Appellant challenging the order contends that under the payment, 5% amount was required to be paid after completion and certificate for completion was issued. He submits that in view of the certificate dated 3rd March, 2015, 5% amount was to be paid within one month hence the amount became due on 3rd April, 2015 and payment made on 14th February, 2018 was well within three years. Hence the application was not barred by time.

5. The Adjudicating Authority in the Order has noted invoice and part payments received from Corporate Debtor. The last part payment which was received on 29.03.2014 and thereafter on 14.02.2018 that is beyond three years hence it was held to be barred by time.

6. Submission which has been raised by the Appellant that in view of the certificate dated 03.03.2015 the amount of 5% which was to be paid on *Company Appeal (AT) (Insolvency) No. 832/2023*

completion became due on 03.04.2015. Page 146 which was relied upon by Appellant is a certificate which is not titled as completion certificate nor it gives a date of completion of the project rather the Certificate shows that Corporate Debtor thanks to M/s SSP Team to successful completion of the project and hope for future assistance from M/s SSP if we needed.

7. For purpose of limitation, the said Certificate can not be read as 3rd March, 2015 is date of completion of the project. We thus are of the view that Adjudicating Authority did not commit any error in dismissing the Application as barred by time since the payment made on 14.02.2018 was on expiry of three years from the last payment. Hence we do not find any error in the order passed by the Adjudicating Authority as noted in paragraph 18. All facts have been noticed and it was held that period for limitation expired on 29.10.2017. We thus do not find any error in rejecting Section 9 Application however it shall be open for the Appellant to take such remedy as available in law with regard to their claim in accordance with law.

The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

Basant/nn