

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

Comp. App. (AT) (Ins) No. 413 of 2023 & I.A. No. 1374, 1375 of 2023

IN THE MATTER OF:
A2Z Infraservices Ltd.

...Appellant

Versus

Reliance Realty Ltd.

...Respondent

Present

For Appellant : Mr. Abhinav Vasisht, Sr. Adv. with Sudhir Sharma,
Akshita Sachdeva, Naman Singh Bagga, Gaurav Rai,
Advocates

For Respondents : Mr. Ankur Kashyap, Adv.

O R D E R
(Virtual Mode)

Per: Justice Rakesh Kumar Jain: (Oral)

12.12.2023: This appeal is directed against the order dated 09.02.2023, passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench), by which an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short 'Rules') against the Corporate Debtor has been dismissed only on the ground of limitation.

2. It is submitted that total debt claimed in the application filed under Section 9 is Rs. 4,09,00,215/- on the basis of various invoices which are from 31.05.2016 to 31.03.2017. It is submitted that the application was filed on 09.05.2019 and in this regard, our attention is drawn to Annexure A-12 which is the case details (status) created by NCLT in which it has been mentioned that the appeal was registered on 09.05.2019, however, the Tribunal while

dismissing the application has observed that the first invoice is dated 31.05.2016 which was to be paid within 30 days up to 31.06.2016 and therefore, the period of three years counted from 31.06.2016 would come to end on 31.06.2019 whereas the petition has been filed on 30.08.2019, therefore, it is beyond the period of limitation. Counsel for the Appellant has argued that there is an error of appreciation of the facts by the Tribunal in making the observation that the appeal has been filed on 30.08.2019 which is contrary to record of the Tribunal itself as per which the appeal filed by the Appellant was registered on 09.05.2019, well within the period of limitation counting from 31.06.2016 to 31.06.2019. It is further submitted that the only reason assigned for dismissing the application is contained in Para 42 of the impugned order and the Tribunal has not decided any other issue.

3. Counsel for the Respondent has although opposed the appeal and tried to persuade us that the application was filed on 30.08.2019 but he could not deny the fact that the record of the Tribunal shows that the appeal was filed on 09.05.2019 and there were rather some defects which were cured later on may be on 30.08.2019 by way of filing an affidavit.

4. After hearing Counsel for the parties and keeping in view of the aforesaid facts and circumstances, we are of the considered opinion that there is a complete fallacy in the approach of the Tribunal in considering the application having been filed on 30.08.2019 whereas the record of the Tribunal says something else that the appeal was filed on 09.05.2019 which was within the period of three years, counted from 31.06.2016 till 31.06.2019.

5. Thus, in our considered opinion, the application filed by the Appellant is within the period of limitation, therefore, the finding recorded by the

Tribunal on the issue of limitation is per se illegal. In view thereof, the appeal is allowed. The impugned order is set aside. The matter is remanded back to the Tribunal to consider the application filed by the Appellant to have been filed within the period of limitation and decide all the issues involved therein in accordance with law. It is made clear that we have not touched the issues on merit in this appeal as the only issue decided by the Tribunal was of limitation. The parties are directed to appear before the Tribunal on **05th January, 2024.**

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

sheetal/ravi