

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

**Company Appeal (AT) (Insolvency) No. 216 of 2019**

**IN THE MATTER OF:**

**M/s. Lasa Engineers Private Limited** **...Appellant**

**Versus**

**M/s. Devas Engineering Systems Private Limited** **...Respondent**

**Present:**

**For Appellant :** **Mr. Shashi Kiram Shetty, Senior Advocate with Ms. Anuparna Bordoloi, Ms. Sheffali Chaudhary, Mr. R. Manjunath, Mr. Mahesh Thakur and Mr. Srinivas Murthy, Advocates.**

**For Respondent:** **Mr. T. Srinivasa Murthy, Mr. Anandh K., Mr. Gaurav Choudhary, Advocates.**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

The Appellant- 'M/s. Lasa Engineers Private Limited'- ('Operational Creditor') filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'M/s. Devas Engineering Systems Private Limited'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai, by impugned order dated 21<sup>st</sup> January, 2019 dismissed the application on the ground that there is no debt payable in fact as the account balance shows that 'NIL' amount is

payable by the 'Operational Creditor'. Further the Adjudicating Authority held that the claim was barred by limitation.

2. Learned counsel for the Appellant submitted that the claim filed by the Appellant was not barred by limitation.

3. It was submitted by counsel for the Appellant that subsequently on issuance of Legal Notices dated 18<sup>th</sup> July, 2016 and 17<sup>th</sup> July, 2017 in Form 4, the Respondent sought to take a stand that the claim is barred by limitation.

4. Learned counsel for the Respondent referred to a communication made by the Respondent- M/s. Devas Engineering Systems Private Limited'- ('Corporate Debtor') to the 'Operational Creditor' dated 5<sup>th</sup> August, 2013 wherein the 'Corporate Debtor' intimated that the balance as on 5<sup>th</sup> August, 2013 was 'NIL'. It is stated that no objection was made thereafter.

5. Having heard learned counsel for the parties and on perusal of the record, we find that that the communication made by the 'Corporate Debtor' on 5<sup>th</sup> August, 2013 shows that there is no amount payable to the 'Operational Creditor', which was not disputed by the 'Operational Creditor'.

6. Subsequently, when Legal Notice issued by the 'Operational Creditor' on 18<sup>th</sup> July, 2016 followed by Legal Notice dated 17<sup>th</sup> July, 2017, the 'Corporate Debtor' has taken specific plea that otherwise also the claim is barred by limitation.

7. In the present case, before issuance of the Demand Notice under Section 8(1) on 26<sup>th</sup> December, 2017, the 'Corporate Debtor' has disputed

the claim and taken plea that it was barred by limitation. Such plea having been taken by the 'Corporate Debtor' prior to 26<sup>th</sup> December, 2017, we hold that there was a pre-existence of dispute.

8. For the reasons aforesaid, no interference is called for against the impugned order. In absence of any merit, the appeal is accordingly, dismissed. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice A.I.S. Cheema ]  
Member (Judicial)

[ Kanthi Narahari ]  
Member (Technical)

NEW DELHI

13<sup>th</sup> November, 2019

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