

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No.1250 of 2019

IN THE MATTER OF:

Avail Financial Services Ltd.

.....Appellant

Vs.

Sunworld City Pvt. Ltd.

.....Respondent

Present :

For Appellant: Ms. Reema Jain, PCS, Mr. Ankur Dugar, PCA

For Respondents: Mr. Amol Sinha, Mr. Anshum Jain, Mr. Kshitiz Garg, Advocates

O R D E R

05.03.2020 - Heard Learned P.C.S. for Appellant. It is claimed that the Appellant is 'Non-Banking Finance Company' (NBFC) and gave loan and financial facilities to the 'Corporate Debtor'. The loan was provided between 4.12.2015 till 7.5.16. Learned Counsel refers to the Account in 'Bank of Baroda' of the Appellant (p-261) to demonstrate that money as loan which was transferred. The application u/s 7 (p-243) was filed on 5.7.2019. To argue that the 'debt' was within limitation, learned PCS refers to the documents at p-270 and 272 to show that for financial years 2015-2016 and 2016-2017 the 'Corporate Debtor' had deducted TDS to the account of the Appellant. It is argued that this should be treated as acknowledgement.

....contd.

After arguing the appeal partly and on becoming conscious of Section 19 of the Limitation Act, 1963, Learned PCS seeks time to take instructions.

Learned Counsel for Respondent is relying on the judgement in the matter of **'Prayag Polytech Pvt. Ltd.' Vs. 'Gem Batteries Pvt. Ltd.' in Company Appeal (AT) (Insolvency)No. 713 of 2019 dated 24.09.2019** to submit that merely pointing out that TDS was deducted would not be sufficient to conclude that there was *financial debt* and that TDS could be deducted for various reasons.

Considering the request made by the Learned PCS for the Appellant, in the interest of justice, we give time to the Appellant.

For further arguments list the appeal as part-heard on **8th April, 2020** in 'Orders' category.

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

[Justice Anant Bijay Singh]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

ss/m