

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal (AT) (Insolvency) No. 1459 of 2019**

**IN THE MATTER OF:**

**Shelendra Kumar Sharma**

**...Appellant**

**Vs**

**DSC Ltd.**

**...Respondent**

**Present:**

**For Appellant: Mr. Rajesh Srivastava and Mr. Sumit Kansal,  
Advocates.**

**For Respondent:**

**ORDER**

**16.12.2019:** The Appellant, an employee of 'M/s DSC Ltd.', as an Operational Creditor moved application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') for initiation of Corporate Insolvency Resolution Process against its employer 'M/s DSC Ltd.' (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-VI taking into consideration given facts and that the Applicant has filed his Form 26AS with regard to certain financial years when the TDS was deposited by the consortium, as opposed to the previous financial years when TDS was deposited by the Respondent, rejected the application being not maintainable.

2. Learned counsel appearing on behalf of the Appellant submits that even if the salary of recent year is taken into consideration, which is more than Rs.1 Lakh, it having not been paid by the Corporate Debtor, the application under Section 9 was maintainable.

3. From application under Section 9 filed by the Appellant we find that the appellant has shown particulars of the claim under following heads - Salary for the period December, 2014 to March, 2015, which is barred by limitation; Reimbursement of amount for FY 2014-15 as per SAP Ledger Statement, which is also barred by limitation; Salary for the period August, 2016 to March, 2017 plus TDS; TDS of certain period; Leave encashment for July, 2013 – March, 2017.

4. However, the Adjudicating Authority noticed that the claim for the period April, 2016 to March, 2017 do not pertain to the Corporate Debtor – ‘M/s DSC Ltd.’ but to M/s DSCL – FENGSHUN-WANAG Consortium’ as stated by Appellant in Form-5.

5. In view of such infirmity, we observe that the application was filed by the Appellant with an intent to receive the dues from the Corporate Debtor and not with intention for resolution or liquidation, therefore, we hold that the Adjudicating Authority rightly rejected the prayer of the Appellant. So far as the question as to whether the documents are forged or not is concerned, it cannot be determined by the Adjudicating Authority (National Company Law Tribunal) or this Appellate Tribunal and therefore, the Adjudicating Authority rightly not deliberated on such issue.

6. In absence of any merit, the appeal is dismissed.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

[Justice Venugopal M.]  
Member (Judicial)

*am/gc*