

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

**Company Appeal (AT) (Insolvency) No. 213 of 2021**

**IN THE MATTER OF:**

**K.C. Industries**

**...Appellant**

**Versus**

**Prasol Chemicals Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant:        Mr. Tushar Gujjar, Mr. Mayur Khandeparkar and Mr.  
                                 Darpan Sachdeva, Advocates.**

**For Respondent:**

**O R D E R**  
**(Through Virtual Mode)**

**23.03.2021:**        This appeal is preferred against order of dismissal of application filed by the Appellant – Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code'). In terms of impugned order dated 20<sup>th</sup> December, 2019, the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench dismissed the Appellant – Operational Creditors application on the ground that the claim was hit by the law of limitation and even on merit the application did not lie as in the event of set off being given to sales tax dues of the Appellant which exceeds its claim, nothing was payable by the Corporate Debtor to the Appellant – Operational Creditor, such payment being payable to the Sales Tax Authorities.

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2. Learned counsel for the Appellant submits that the claim of Appellant is not hit by limitation. It appears that the last invoice was raised by the Appellant on 13<sup>th</sup> August, 2013 whereas the application under Section 9 was filed on 16<sup>th</sup> April, 2019 which is clearly beyond the period of three years prescribed as limitation period under Article 137 of the Limitation Act governing application under Section 9 of the I&B Code.

3. That apart, there has been a dispute in regard to the liability as the amount due to the Sales Tax Authorities from Appellant is admittedly Rs.70.42 Crores whereas its claim is slightly in excess of Rs.31 Lakh and with the set off given to sales tax dues, nothing remains payable by the Corporate Debtor to the Appellant. Learned counsel for the Appellant submits that the amount of sales tax dues has not been paid by the Corporate Debtor to the Sales Tax Authorities. We are of the view that the dispute raised in regard to the liability on this score cannot be said to be illusory or a moonshine.

4. Even the appeal is not filed within the prescribed period of limitation in terms of the provisions of Section 61(2) of I&B Code. The ordinary period of limitation prescribed is 30 days, which can be extended by 15 days on sufficient cause being assigned for not filing the appeal within 30 days. The Appellant has filed I.A. No.

489 of 2021 seeking condonation of delay of 411 days in filing the present appeal. The period of lockdown and extension granted in terms of order passed in *suo moto* jurisdiction effective from 23<sup>rd</sup> March, 2020 in the wake of outbreak of COVID 19, which ceased to operate on 18<sup>th</sup> March, 2021, being taken into consideration for the purposes of exclusion, the question for consideration would be whether the appeal has been preferred even within extended period of limitation. Admittedly, the Appellant- Operational Creditor was the Applicant before the Adjudicating Authority. The impugned order came to be passed on 20<sup>th</sup> December, 2019. Reckoned from such date till the imposition of lockdown and commencement of period of exclusion viz. 23<sup>rd</sup> March, 2020, the period comes to 93 days, which far exceeds the extended period of limitation of 45 days.

5. Admittedly, Appellant has not even applied for certified copy of the impugned order and even if the contention of not being provided with free copy of impugned order is accepted, it being the Applicant before the Adjudicating Authority and having knowledge of passing of impugned order dismissing its application and not choosing to apply for even a certified copy cannot be heard to say that there is sufficient cause preventing it from preferring the appeal within the prescribed period of limitation or extended period of 45 days.

6. Having conspectus of all relevant factors, we find that the instant appeal is barred by limitation. Even on merit, we do not find any flaw in the impugned order. The appeal is accordingly dismissed. I.A. No. 489 of 2021 also stands dismissed.

**[Justice Bansi Lal Bhat]**  
**Acting Chairperson**

**[Dr. Ashok Kumar Mishra]**  
**Member (Technical)**

*am/gc*