NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 277 of 2024

[Arising out of the Order dated 29.11.2023, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Ahmedabad Bench) in Ahmedabad in C.P. (IB) No. 133(AHM)2022]

IN THE MATTER OF:

Heena Metal Private Limited
Through Mr. Sunilkumar Kantilal Shah,
The Director and Authorised Signatory,
117, Kika Street, Gulal Wadi,
Mumbai, Maharashtra – 400004 **...Appellant**

Versus

Global Extrusions Pvt. Ltd.
Through the Director
Mr. Manojbhai D. Akabari,
Plot No. 238, GIDC Phase – II, Dared,
Jamnagar, Gujarat – 361005 **...Respondent**

Present:

For Appellant : Mr. Ravi Raghunam & Mr. Namanjeet Singh Bhaha, Advocates

For Respondent : Mr. Kuldeep K Adesara, Advocate

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016, (the "Code") against the order dated 29.11.2023 ("Impugned Order") passed by the Hon'ble National Company Law Tribunal whereby the Appellant's Insolvency Petition - C.P. (IB) No. 133(AHM)2022 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") has been dismissed.

Appellants case:

2. The Appellant/Operational Creditor [Heena Metals] is engaged in the business of manufacturing and trading of ferrous and non-ferrous metals. The Appellant has two units – one at Mumbai and one at Jamnagar. However, the Jamnagar unit was closed in 2020. The Respondent/Corporate Debtor [Global Extrusions] is engaged in the business of manufacturing copper and zinc alloys based brass rods, tubes, nut clamps etc. As part of their business activities, the parties were regularly purchasing and selling goods to each other and the crucial transactions are explained below:

25.05.2016 to 27.06.2017 *Sales*	The Appellant had supplied materials to the Respondent from their Jamnagar Unit, and raised numerous invoices between <u>26.05.2016 to 27.06.2017</u> in all amounting to Rs. 79,44,085/-. [page 69-83]. [Table of Invoices @page 29]
11.03.2019 to 02.01.2020 *Purchases*	The Appellant purchased materials from the Respondent and the amount of purchase was adjusted from the outstanding invoices raised against by the Appellant on the Respondent [page 84-85, 91-98] After adjusting the purchases and sales, a debt of Rs.73,59,095/-was outstanding against the invoices of Jamnagar Unit [averment @page 133].
17.10.2018 to 27.05.2019 *Sales*	The Appellant had also supplied materials to the Respondent from their Mumbai Unit and raised four invoices in all for Rs.49,70,041/- [page 86-90] [Table of Invoices @page 30] These four Invoices provided for interest @24% on late payment [@page 86 bottom – Terms and Conditions]

3. It is claimed by the Appellant that since the Appellant's Jamnagar Unit was closed in the year 2020, it was mutually agreed between the Appellant

and the Respondent that the credit balance of Rs. 73,59,059/- with respect to the Jamnagar Unit will be transferred to the Mumbai Unit of the Appellant. The Respondent's ledger for the Mumbai Unit notes the above understanding between the parties [page 101]. Further, the Respondent's ledger for the Jamnagar Unit for the period from 01.04.2019 to 31.03.2020 admits an amount of Rs.73,59,095/- as due on 01.04.2019 which constitutes a clear acknowledgement of debt under Section 18 of the Limitation Act, 1963 [page 102]. The Respondent gave an acknowledgement / confirmation on the Appellant's Ledger admitting an outstanding amount of Rs.1,19,67,353/-. [page 100].

4. Thereafter, the Appellant issued a Demand Notice dated 22.11.2021 to the Respondent u/s. 8 of the Code and the same was delivered on 25.11.2021. [page 104-116]. The Respondent issued a preliminary reply on 05.12.2021 [page 117-118]. The Respondent thereafter sent the Reply to the Demand Notice on 31.12.2021 [page 119-125].

5. The Appellant filed C.P. (IB) No. 133(AHM)2022 u/s. Section 9 of the Code against the Respondent before the Ld. Adjudicating Authority, Ahmedabad for an operational debt of Rs.1,44,39,812/- (Principal Debt of Rs. 1,19,67,353/- and Interest of Rs.24,72,466/-). [page 126-143]. However, the Adjudicating Authority, Ahmedabad dismissed the Insolvency Petition.

6. The Appellant contends that the finding that *certain invoices raised* by the Corporate Debtor mentioned at paragraph 4 of the reply to demand notice dated 22.11.2021 [page 119/ 122] *are not accounted is erroneous* since the

Ledger Account of the Appellant accounts for the 7 invoices of the Respondent and shows that the same was adjusted against the amounts owed by the Respondent to the Appellant [page 99]. Even the Ledger Account jointly signed by both parties accounts for all these 7 invoices [page 100]. This has not at all been considered by the Ld. Adjudicating Authority. It is also contended that even if the invoices at page 122 are read with page 99, it will be evident that one of the Respondent's invoices amounting to Rs.2,75,143 is not mentioned at page 122. Further, if the amounts against the 7 invoices mentioned at page 122 are added, it will come to Rs.18,87,995 and not Rs.21,63,138 (since the invoice for Rs.2,75,143 is missed out in that table). The Appellant even accounted for the invoice which was not mentioned by the Respondent in their reply notice, and the principal outstanding debt owed by the Respondent was arrived at after accounting all the invoices of the Respondent. The Appellant had bonafide filed copies of all the invoices raised by the Respondent before the Ld. Adjudicating Authority, Ahmedabad along with their Insolvency Petition as Exhibit – E1 [kindly see reference at page 135]. The same invoices are also filed with the present appeal as ANNEXURE –A/5 (COLLY) as they formed part of the record of the Ld. Adjudicating Authority, Ahmedabad. Hence, even the observation at page 65 (paragraph 10) of the Impugned Order that no rebut is given by the Appellant despite the reply of the Corporate Debtor leaves doubt of a plausible dispute is incorrect.

7. The finding that invoices amounting to Rs.73,59,059 are out of limitation period is incorrect. 15 invoices were raised between 26.05.2016 to 27.06.2017. Assuming but not admitting that the limitation is to be

calculated from 26.05.2016, it is submitted that the Insolvency Petition filed on 03.05.2022 was within the period of limitation since the Respondent's own accounts (ledger account) for the period from 01.04.2019 to 31.03.2020 admits a sum of Rs.73,59,059/- as outstanding on 01.04.2019 and on 31.03.2020 [page 102 and 101]. Even the Ledger jointly signed by the Appellant and the Respondent acknowledges the amount of Rs.73, 59,059/- as outstanding [page 100]. The acknowledgment of debt by the Respondent, in their own books of accounts, being made within three years from 26.05.2016 i.e., on 01.04.2019 and thereafter again on 31.03.2020, extends the period of limitation by a further three years. Hence, the Insolvency Petition filed on 03.05.2022 was within the period of limitation. The Ld. Adjudicating Authority, Ahmedabad has nowhere noticed the above documents though they were undisputedly filed before the Ld. Adjudicating Authority, Ahmedabad. In fact, in the order dated 06.11.2023 [page 153] passed by the Ld. Adjudicating Authority, Ahmedabad it is observed that there was no categorical denial of the ledger account that was jointly signed by the parties, yet the same has not been considered while passing the Impugned Order.

8. Alternatively, the Appellant is entitled to exclusion of the period from 15.03.2020 to 28.02.2022 while computing the period of limitation. As part of their business activities, the parties were regularly purchasing and selling goods to each other [averment @page 131; Admitted by Respondent @page 120(para 2)]. The last purchase of Rs.71,504/- was made by the Appellant (Jamnagar unit) on 11.03.2019, and this amount was adjusted against the

Appellant's invoice dated 25.05.2016, and as a result a sum of Rs.4,79,450/- remained outstanding against this invoice. The debt thus became due on 11.03.2019 [page 108 r/w. page 133]. The last purchase of Rs.1,40,765/- was made by the Appellant on 02.01.2020 and this amount was adjusted against the earlier outstanding invoices and thus Rs.3,10,259/- is outstanding against the Appellant's invoice dated 17.10.2018 [page 110 r/w. page 134-135]. In the above circumstances, the Appellant has computed the invoices raised by their Jamnagar Unit as being due on 11.03.2019, and the invoices raised by their Mumbai unit as being due on 02.01.2020 in the Chart of Computation [page 103]. This is permissible since the parties were mutually dealing with each other on a regular basis and the accounts were maintained as a running account (barter system of adjusting sales made by the Appellant to the Respondent, from the purchases made by the Appellant from the Respondent) [Kindly see **Devesh Saraf vs. Rama Tent House & Anr., CA (AT) (Ins) No. 51 of 2023, judgment dated 11.10.2023** (para 3, 4, 9)]. Hence the period of limitation would commence on 11.03.2019 and/or 02.01.2020, and due to the Covid-19 Pandemic and the order dated 10.01.2022 passed by the **Hon'ble Supreme Court of India in M.A. No. 21 of 2022 in MA 665 of 2021 in SMW(C) No. 3 of 2020**, the *period from 15.03.2020 to 28.02.2022 has to be excluded* while computing the period of limitation. Thus, a balance period of limitation of approximately 2 years (period of limitation elapsed was 11.03.2019 to 14.03.2020) was available for the Appellant, and thus, the Insolvency Petition filed on 03.05.2022 was within the period of limitation.

9. Alternatively, the Appellant is entitled to the benefit of Section 25(3) of the Indian Contract Act. Even as per Section 25(3) of the Indian Contract Act, 1872 an agreement to pay a time barred debt is enforceable in law. In the present case the Appellant's ledger with the acknowledgement / confirmation given by the Respondent for an outstanding of Rs.1,19,67,353/- [page 100] falls under Section 25(3) and is an enforceable operational debt [Pleading at page 41 (para 9.6), Appeal].

10. The Appellant therefore prays to allow the present appeal, set aside the Impugned Order, and admit C.P. (IB) No. 133(AHM) 2022.

Respondent's Case:

11. The tabular statement given for details of invoice date wise with amount due as given in page no. 17 of the Impugned Order whereby, the entire payment of Rs. 73,59,059/- is an amount due from 25.05.2016 to 27.06.2017 and this entire amount is related to Jamnagar unit. From the account statement annexed by the Appellant in its Appeal at Page no. 100, the Appellant has shown the transaction from 01.04.2019 including opening balance of the Mumbai unit and the sale and purchase by the appellant in the Mumbai unit during course of 01.04.2019 to 02.01.2020. In the above said account, the Appellant has transferred the entire amount of their supply of Jamnagar unit on 31.03.2020 (Rs. 73, 59,059/-). This entire amount is nothing but a time barred debt as far as the Corporate Debtor is concerned since all the invoices in the above amount pertaining to period of 28.05.2016 to 27.06.2017. Therefore, the outstanding which has been shown in the account statement as Rs. 1,19,67,353/- is inclusive of time barred debt of Rs. 73,59,059/-, which is not in dispute.

12. Furthermore, as per the Answering Respondent, whenever they have demanded the outstanding dues payable to them by the Appellant regarding their supplies at Mumbai unit, the Appellant has been denying the payment on the premise of Jamnagar unit despite the fact that entire amount had become time barred. The Appellant has mischievously transferred the entire amount of Jamnagar supply wherein, the invoices had become time barred on dated 31.03.2020 so that it can mislead the 1d. Adjudicating Authority, Ahmedabad as if it is a current dues payable within three years of filing of petition by the Appellant.

13. However, the Ld. Adjudicating Authority, Ahmedabad could find out from the fact that the entire Rs. 73,59,095/-is related to invoices, which have become due much before three years of filing and entire amount was time barred.

14. Further, there are dispute, regarding the sale which has been made at Mumbai unit to the Appellant and not been considered. This is a dispute which has been referred and as such, outstanding claimed by the Appellant is in dispute and which is at higher side as some -invoices for sale made by the Answering Respondent has not been considered.

15. Whatever principal outstanding is claimed by the Appellant, after adjusting the time barred debt of Rs.73,59,095/ it falls much below the threshold limit of Rs. 1 Crore. It may also be noted that there is a no specific acknowledgement of debt as stipulated under Section 18 of the Limitation Act, 1963. In fact, in response to Demand Notice dated 22.11.2021, in the Reply

dated 31.12.2021 filed by the Answering Respondent, it has clearly been mentioned that the entire amounts of Rs. 73,59,095/- of Jamnagar Unit is time barred and there is no acknowledgement of debt and on the contrary, it is contended as time barred for Jamnagar Unit and not payable. The Answering Respondent is asking payment for its Mumbai unit treating that nothing is payable for Jamnagar unit as the entire debt is time barred. Even the statements, are only reflection of entries of the total amount but the same is not specifically acknowledged as an outstanding dues by the Answering Respondent. Furthermore, without prejudice to the above, the last invoice which is time barred is dated 27.06.2017 and as such, the three years period of last invoice has expired on 26.06.2020 and there is no statement of entries as alleged as ledger account copy is on record prior to above date.

16. There is no specific acknowledgement of debt except for ledger copies without any acknowledgement. As such, the petition is not maintainable after excluding the time barred outstanding /debt. Even the statements / ledger copies on record are in any case after the expiry period of three years though according to us these are not acknowledgement of debt but still even if considered, then also limitation would not extend as after the expiry period any such document cannot extend the limitation period. It is settled law 'that any acknowledgement after the date of expiry of limitation period i.e., three years, would have no effect and limitation would not extend on the: basis of such acknowledgement. [**Refer Sampuran Singh & Ors. V. Niranjan Kaur & Ors.- Supreme Court**].

17. In view of the fact that no interest was payable as there are no terms and conditions for interest payment as per the invoices and the interest has been arbitrarily calculated without any liability on the part of the Answering Respondent to that effect.

18. Therefore, in sum and substance, there is no infirmity in the Impugned Order and this Hon'ble Appellate Authority may kindly confirm the Impugned Order.

Appraisal

19. We have heard the counsels of both sides and perused materials placed on record.

20. The issue before us is whether in this case the Appellant meets the threshold and whether any dispute exists and for that reason the petition is not to be admitted in insolvency under Section 9 of the Code.

21. The Appellant had filed C.P. (IB) No. 133(AHM)2022 dated 03.03.2022 under Section 9 of the Code against the Respondent for an operational debt of Rs.1,44,39,812/- (Principal Debt of Rs.1,19,67,353/- and Interest of Rs.24,72,466/-). The Appellant submits that by the Impugned Order, the Adjudicating Authority has erroneously dismissed the Insolvency Petition filed by the Appellant under Section 9 of the Code.

22. The Appellant contends that the finding at paragraph 10 of the Impugned Order that certain invoices raised by the Respondent are not accounted for, and there is a doubt of a plausible dispute is erroneous for following reasons:

- All the invoices mentioned in paragraph 4 of the Respondent's Reply Notice dated 31.12.2021 are clearly mentioned in the Appellant's ledger and also in Appellant's ledger with the acknowledgement / confirmation given by the Respondent for the period from 01.04.2019 to 31.03.2020.

- The principal debt of Rs.1,19,67,353/- is arrived at after deducting the sum of Rs.21,63,138/- from the outstanding of Rs.1,41,30,491.42/-.

- When the sums mentioned against all the invoices set out in paragraph 4 of the Respondent's Reply Notice dated 31.12.2021 are added, it comes only to Rs.18,87,995/- (as against Rs.21,63,138/- mentioned therein). This is because the Respondent missed out one invoice and gave wrong figures for the Invoice bearing no.187. However, the Appellant had bonafide disclosed in their Ledger, even the invoice that was left out by the Respondent, and has shown the correct calculation for Rs.21,63,138/-. The Appellant had also filed all these invoices adding up to Rs.21, 63,138/- alongwith their Insolvency Petition.

- The Appellant further contends the finding at paragraph 12 of the Impugned Order that the invoices totally amounting to Rs.73,59,059/- are time barred is erroneous due to following reasons:

    - The Respondent's ledger for the period from 01.04.2019 to 31.03.2020 admits an amount of Rs.73,59,095/- as due on 01.04.2019 which constitutes a clear acknowledgement of debt under Section 18 of the Limitation Act, 1963.

    - The Respondent has further admitted that a sum of Rs.1,19,67,353/- as outstanding to the Appellant (which includes the sum of Rs.73,59,059/- being the amount transferred from the Jamnagar Unit account to the Mumbai Unit's account) and this is clearly evident from the following documents: (i) Appellant's ledger with the acknowledgement / confirmation given by the Respondent for the period from 01.04.2019 to 31.03.2020; (ii) Appellant's Ledger for the period

01.04.2019 to 31.03.2020; (iii) Respondent's Ledger for the period from 01.04.2019 to 31.03.2020.

- Also, the Adjudicating Authority, while reserving orders in the Insolvency Petition has noted as follows:

> "…
> With the consent of both the parties, we have heard the arguments and perused the records. The documents annexed to page No. 77, with the petition jointly signed by both the parties, was admittedly not categorically denied in the reply by the Counsel for the respondent.
> ….
> Meanwhile, Learned Counsel for the applicant is directed to place on record the original copy of the document annexed at page No. 77, within seven days, as well as a synopsis by both the sides, within the pleadings."

- Though the original was submitted by the Appellant, however, the Adjudicating Authority, failed to consider this crucial document i.e., the Appellant's ledger with the acknowledgement / confirmation given by the Respondent for the period from 01.04.2019 to 31.03.2020 while passing the Impugned Order.

23. From the above arguments the Appellant contends that through the Respondent's Ledger for the period from 01.04.2019 to 31.03.2020 there is an admission of an amount of Rs.73,59,095/- as due on 01.04.2019, which constitutes a clear acknowledgement of debt under Section 18 of the Limitation Act, 1963. Further the said acknowledgement is before the expiry of the period of three years from the date of the invoices raised from 28.05.2016 to 27.06.2017 and the Appellant had filed the Insolvency Application on 03.05.2022 before the Adjudicating Authority, well before the expiry of the limitation period. Thus, amount pertaining to period of

28.05.2016 to 27.06.2017 is not time barred debt as far as the Corporate Debtor is concerned.

24. Rebutting the arguments canvassed by the Appellant, Respondent contends that the outstanding which has been shown in the account statement as Rs.11967353/- is inclusive of time barred debt of Rs.73,59,059/-. Appellant has mischievously transferred the entire amount of Jamnagar supply wherein; the invoices had become time barred on dated 31.03.2020 so that it can mislead the Adjudicating Authority as if it is a current dues payable within three years of filing of petition by the Appellant. Whatever principal outstanding is claimed by the Appellant after adjusting the time barred debt of Rs. 73,59,095/- it falls much below the threshold limit of Rs. 1 crore.

25. The main dispute is regarding Jamnagar unit. We note the crucial sales invoices as claimed by the Appellant [@29APB] are noted as below:

S.No.	Invoice No.	Date	Amount
1.	TD/001	25.05.2016	10,64,476
2.	TD/002	26.05.2016	10,63,966
3.	TD/003	28.05.2016	10,67,713
4.	TD/004	30.05.2016	10,61,071
5.	TD/011	26.06.2017	3,58,097
6.	TD/012	26.06.2017	3,89,236
7.	TD/013	26.06.2017	3,79,505
8.	TD/014	26.06.2017	3,50,312
9.	TD/015	26.06.2017	3,69,774
10.	TD/016	27.06.2017	3,50,410
11.	TD/017	27.06.2017	3,69,775
12.	TD/018	27.06.2017	3,60,044
13.	TD/019	27.06.2017	3,89,236
14.	TD/020	27.06.2017	3,26,251
15.	TD/021	27.06.2017	44,219
	TOTAL		**79,44,085**

26. We find that the above sales invoices have been added to the Mumbai unit's accounts and outstanding of operational debt of Rs.1,44,39,812/- (Principal Debt of Rs.1,19,67,353/- and Interest of Rs.24,72,466/-) has been accordingly worked out. There is a dispute regarding the accounting process adopted by the Appellant. Appellant claims that as part of their business activities, the parties were regularly purchasing and selling goods to each other [averment @page 131; Admitted by Respondent @page 120(para 2)]. The last purchase of Rs.71,504/- was made by the Appellant (Jamnagar unit) on 11.03.2019, and this amount was adjusted against the Appellant's invoice dated 25.05.2016, and as a result a sum of Rs.4,79,450/- remained outstanding against this invoice. The debt thus became due on 11.03.2019 [page 108 r/w. page 133]. The last purchase of Rs.1,40,765/- was made by the Appellant on 02.01.2020 and this amount was adjusted against the earlier outstanding invoices and thus Rs.3,10,259 is outstanding against the Appellant's invoice dated 17.10.2018 [page 110 r/w. page 134-135]. In the above circumstances, the Appellant has computed the invoices raised by their Jamnagar Unit as being due on 11.03.2019, and the invoices raised by their Mumbai unit as being due on 02.01.2020 in the Chart of Computation [page 103]. This is permissible since the parties were mutually dealing with each other on a regular basis and the accounts were maintained as a running account (barter system of adjusting sales made by the Appellant to the Respondent, from the purchases made by the Appellant from the Respondent) [Appellant relies on **Devesh Saraf vs. Rama Tent House & Anr., CA (AT) (Ins) No. 51 of 2023, judgment dated 11.10.2023**]. We first delve into this issue. Firstly, the Respondent has denied the acceptance of unilateral transfer

of outstanding balance of Jamnagar unit to the Mumbai unit. Furthermore, even if it is assumed to be accepted, the APB has first four entries – as noted above – which pertain to the year 2016 and total to Rs.42,57,226/- [Rs 10,64,476 + Rs 10,63,966 + Rs.10,67,713 + Rs 10,61,071] and as on the date of filing of the petition in 2022 are time-barred and if we deduct these from the Principal debt of Rs 1,19,67,353/-, the CP doesn't meet the threshold. The exclusion period, as claimed by the Appellant under the orders of Hon'ble Supreme Court of India in M.A. No. 21 of 2022 in MA 665 of 2021 in SMW(C) No. 3 of 2020, i.e. the *period from 15.03.2020 to 28.02.2022 - to be excluded* while computing the period of limitation, is not available for these invoices as three years had already lapsed on 30th May 2019 [basis the invoice no TD/004 dated 30th May 2016. By unilateral adjustment of purchases against earlier invoices as claimed by the Appellant, the Appellant has innovatively tried to surpass the limitation.

27. We have also perused the Ledger account of Respondent-CD-Global Extrusion which is at page 100- which doesn't bear any signature but presumably prepared after 31st March 2020 as the last entry pertains to the journal entry of that date. Very interestingly, the journal entry dated 31st March 2020 has been made, which transfers all the liabilities of the Jamnagar unit into the account in the Mumbai unit- which is claimed to be done by the Appellant based on mutual discussion. Even though it has been signed by both the parties, but the Respondent denies any such understanding. We find that firstly it cannot be treated as acknowledgement of debt as it is just the transfer of the sales and purchase entries of earlier times from its Jamnagar

unit – which had been closed. Whatever dates of those sales and purchases in Jamnagar account will continue to remain with the original date and cannot give new date and new life for limitation purposes to the transactions, basis just a journal entry which just shifts the entries from one account to another as it is, while maintaining the original character of the transactions.

28. Even otherwise, we find that it may not be of any assistance to the appellant for the reason that the first four entries for which journal entry has been made on 31st March 2020 are time barred under the Code and even if it is treated as an acknowledgement, the petition is beyond three years for these entries and this debt is time barred and therefore for these invoices Appellant cannot pursue under code.

29. We also note in this case, though the ledger of Respondent- Global Extrusions is signed by the Respondent but it is not a clear promise to pay ₹1,19,67,353 and in such a situation it cannot be argued that it falls within Section 25(3) of the Contract Act and creates a fresh contractual obligation. In this case, the document is ambiguous and merely an internal ledger and a routine balance confirmation without promise language, thus, we cannot accept it as a Section 25(3) promise, and the operational debt would remain time-barred for IBC purposes.

30. We also find that no interest was payable as there are no terms and conditions for interest payment as per these invoices and the interest has been arbitrarily calculated.

31. The Appellant has also argued that as part of their business activities, the parties were regularly purchasing and selling goods with each other. It also relies on the last purchase of Rs.71,504/- which was made by the Appellant (Jamnagar unit) on 11.03.2019, and this amount was adjusted against the Appellant's invoice dated 25.05.2016, and as a result a sum of Rs.4,79,450/- remained outstanding against this invoice. The debt thus became due on 11.03.2019. Further, the last purchase of Rs.1,40,765/- was made by the Appellant on 02.01.2020 and this amount was adjusted against the earlier outstanding invoices and thus Rs.3,10,259 is outstanding against the Appellant's invoice dated 17.10.2018. Thus, the Appellant has computed the invoices raised by their Jamnagar Unit as being due on 11.03.2019, and the invoices raised by their Mumbai unit as being due on 02.01.2020 in the Chart of Computation. This is permissible since the parties were mutually dealing with each other on a regular basis and the accounts were maintained as a running account (barter system of adjusting sales made by the Appellant to the Respondent, from the purchases made by the Appellant from the Respondent) and relies on **Devesh Saraf vs. Rama Tent House & Anr., CA (AT) (Ins) No. 51 of 2023, judgment dated 11.10.2023**.

32. We find that reliance on Devesh is of no assistance to the Appellant as in the cited judgement there was an acknowledgement in the form of email and their facts are totally different in the present case. Furthermore, Appellant in an innovative attempt to extend the limitation using such adjustment of book entries and that too unilaterally is misleading us and thus the Appellant has been wasting the precious time of the Tribunal.

Order

33. For the reasons noted above, we find that the conclusions arrived at regarding the threshold in the impugned order cannot be faulted upon.

34. We dismiss the appeal. All the related IAs disposed of. No orders as to costs.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
January 09, 2026.

Pawan