## NATIONAL COMPANY LAW APPELLATE TRIBUNAL NEW DELHI

## Company Appeal (AT) (Insolvency) No. 1465 of 2019

## IN THE MATTER OF:

M/s. Loyal Credit and Investment Ltd.

...Appellant

Versus

M/s. Cosmopolis Properties Pvt. Ltd.

...Respondent

**Present:** 

For Appellant:

Mr. D. Sreenivasan, Mr. P. Elayaraja Kumar and Mr.

G. Ananda Selvam, Advocates

## ORDER

O2.01.2020 The Appellant preferred an application under Section 7 of the 'Insolvency and Bankruptcy Code, 2016 (1&B Code', for short) for initiation of the 'corporate insolvency resolution process' against 'M/s. Cosmopolis Properties Pvt. Ltd.'. The Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai rejected the application on merit.

Learned counsel appearing on behalf of the Appellant submits that the day i.e. 13<sup>th</sup> November, 2019 when the matter was taken up by the Adjudicating Authority, an *ex parte* order was passed without hearing the Appellant. However, we found that in the 1<sup>st</sup> Session when the matter was called for, learned counsel for the Appellant was present and subsequently when the matter was taken up in the 2nd Session, despite repeated calls nobody appears on behalf of the Appellant.

With a view to decide as to whether the matter requires to remand back, we heard the case on merit.

From the record, we find that an award has been passed by the Arbitral

Tribunal in favour of the Appellant - 'M/s. Loyal Credit and Investments Ltd.'

against the Respondent - 'M/s. Cosmopolis Properties Pvt. Ltd. (Corporate

Debtor) on 28th June, 2016. Admittedly, the Respondent has moved an

application under Section 34 of the Arbitration and Conciliation Act, 1996 before

the Hon'ble High Court of Judicature at Madras and the matter is pending.

In the circumstances, we hold that it cannot be alleged that there is a

default and application under Section 7 was not maintainable. However, the

impugned order dated 13th November, 2019 passed by the Adjudicating

Authority (National Company Law Tribunal), Division Bench, Chennai and the

order passed by this Appellate Tribunal will not come in the way of the Appellant

for deciding the issue, which is pending for consideration before the Hon'ble High

Court of Judicature at Madras.

The appeal stands dismissed with aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]

Chairperson

[ Justice Bansi Lal Bhat ] Member (Judicial)

/ns/gc/

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