

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 827 of 2019

IN THE MATTER OF:

Logix City Developers Pvt. Ltd.

...Appellant

Versus

Netambit Home Options Pvt. Ltd.

...Respondent

Present:

For Appellant : Mr. Nitish K. Sharma, Advocate

O R D E R

19.08.2019 The Appellant (Corporate Debtor) has preferred this appeal against order dated 7th August, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Court-III, which reads as follows:

“Learned AR for the petitioner is present. It is brought to the notice of this Tribunal that vide Order dated 06.03.2019 the Corporate Debtor was set ex-parte and on 03.07.2019, cost of Rs. 10,000/- was imposed and the same should have been paid within 7 days from the date of said order. However, it is represented by Ld. AR for the petitioner that the said order has not been complied as a condition precedent for ex-parte order being set aside.

Taking into consideration the above, we are not in a position to consider the reply as filed by the

Corporate Debtor. In the circumstances, the Order dated 06.03.2019 stands restored.

Heard the petitioner. Order is reserved.”

2. The case of the Appellant is that the Respondent – ‘Netamabit Home Options (P) Ltd.’ filed an application under Section 9 of the ‘I&B Code’ against the Appellant – ‘Logix City Developers (P) Ltd.’ (Corporate Debtor). On 6th March, 2019 when the matter was taken up, the Adjudicating Authority passed the following order :

“The corporate debtor has been duly served.

None is present on behalf of the corporate debtor. They are, therefore, proceeded ex-parte.

To come for arguments on 01.04.2019.”

3. The Appellant (Corporate Debtor), thereafter appeared and filed an application for recall of the order dated 6th March, 2019 which was allowed by order dated 3rd July, 2019 subject to payment of cost of Rs.10,000/-, as quoted below:

“Learned AR for the petitioner and Ld.

Counsel for the Corporate Debtor are present.

Application in CA No. 220/2019 has been filed

seeking to set aside the ex-parte Order dated

06.3.2019 due to non-appearance of the

Corporate Debtor despite notice. However, in

order to decide the case on merits, we set aside

the ex-parte order and allow the Corporate

Debtor to file reply in the case in the interest of

justice, hence, this application stands allowed, however, subject to payment of cost of Rs. 10,000/- to Ld. AR of the Non-applicant/petitioner within 7 days from today. It is brought to the notice by Ld. Counsel for the Corporate Debtor that reply has been filed on 10.06.2019. Hence, subject to the payment of above cost, reply will be taken on record.

Post the matter on 07.08.2019 for reporting compliance and enquiry.”

4. In spite of the order passed by the Adjudicating Authority, the Appellant (Corporate Debtor) failed to pay cost of Rs. 10,000/- and, therefore, the said order was recalled by the impugned order dated 7th August, 2019, as quoted above.

5. From the impugned order we find that the case was heard *ex-parte* and the order was reserved. We are of the view that at least oral hearing should have been given to the ‘Corporate Debtor’ to find out as to whether a ‘debt’ is payable in law or in fact or whether there is an ‘existence of dispute’. However, it is informed that the Appellant has filed a written submissions before the Adjudicating Authority. Therefore, instead of giving notice to the Respondent and deciding the case on merit, we direct the Adjudicating Authority that it should take written submission on record filed by the Appellant and consider it. The Appellant may file reply-affidavit subject to payment of cost of Rs. 10,000/- by 21st August, 2019. However, if no cost is paid, no such opportunity of reply-affidavit is required to be given to the Appellant.

6. However, if order of admission is passed in the meantime, it will be open to the Appellant to challenge the same.

The appeal stands disposed of with aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc