

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

**Company Appeal (AT) (Insolvency) No. 25 of 2020**

**IN THE MATTER OF:**

**Landmark Realty**

**...Appellant**

**Vs.**

**Siroya Developers Pvt. Ltd.**

**...Respondent**

**Present: For Appellant: - Mr. Ankur Singhal, Advocate.**

**O R D E R**

**10.01.2020**— The Appellant- ‘Landmark Realty’ filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) which has been rejected by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by impugned order dated 4<sup>th</sup> November, 2019 on the ground of pre-existence of dispute.

2. From the record, we find that the Demand Notice under Section 8(1) of the ‘I&B Code’ was issued on 19<sup>th</sup> January, 2019. The ‘Corporate Debtor’ appeared and brought to the notice of the Adjudicating Authority that the Appellant has filed Civil Suit for recovery of the money against the ‘Corporate Debtor’, being Suit No. 1149 of 2018, on the file of Bombay City Civil Court at Dindoshi, Mumbai.

3. Learned counsel for the Appellant submits that the Respondent has not disputed the claim. On the other hand, by their letter they have admitted the claim. However, such issue cannot be determined by the Adjudicating Authority, the ‘Corporate Insolvency Resolution Process’

Contd/-.....

being not a litigation or money suit or recovery proceeding as held by this Appellate Tribunal in “***Binani Industries Limited vs. Bank of Baroda & Anr.— Company Appeal (AT) (Insolvency) No. 82 of 2018 etc.***”

4. As admittedly money suit has been filed by the Appellant against the ‘Corporate Debtor’ prior to the Demand Notice dated 19<sup>th</sup> January, 2019 and is pending, the Adjudicating Authority rightly rejected the application under Section 9.

5. However, the order passed by the Adjudicating Authority or this Appellate Tribunal cannot be relied upon for determination of the suit pending before the Court of Competent Jurisdiction.

For the said reason, while we condone the delay of 9 days in preferring the appeal, dismiss the appeal.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

Ar/g