

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) Nos. 840-841 of 2019

IN THE MATTER OF:

Abstract Logixtix Pvt. Ltd.

...Appellant

Versus

Nuddea Plantations Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant : **Mr. Madhusudhan Sarkar and Mr. Sukesh Ghosh,
Advocates**

For Respondents : **Mr. Dilip Kr. Niranjana, Advocate for 2nd Respondent**

**Mr. Smriti Churiwal and Mr. Jaivir Sidhant,
Advocate for 3rd Respondent (J.M. Financial)**

O R D E R

03.09.2019 Having heard learned counsel for the appellant and being satisfied with the grounds, the delay of 3 days in preferring the appeal is condoned.

I.A. No. 2552 of 2019 stands disposed of.

This appeal has been preferred by the Appellant – ‘Abstract Logixtix Pvt. Ltd.’, who claims to be a ‘Financial Creditor’, against order dated 26th June, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, as quoted below:

“Ld. RP appears. Ld. Counsel for the Corporate Debtor appears. Ld. Counsel for one of the creditors appears. Ld. Counsel for the CoC appears. It is brought to my notice the order passed by the Hon’ble NCLAT dated 09.04.2019 whereby this authority is directed to

consider the application for withdrawal and this authority is bound by the order of the Hon'ble NCLAT. In view of this, the application for withdrawal be placed for hearing first, then other matters. Matter to appear for further consideration on 26.08.2019."

The Appellant has also challenged the order dated 10th July, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, whereby the application under Section 12A have been accepted and application of withdrawal has been allowed. The order dated 10th July, 2019 reads as follows:

"Ld. RP alongwith the Ld. Counsel for the RP, Ld. Counsel for the CoC appears. Ld. Counsel on behalf of the corporate debtor appears. CA(IB) 835.KB/2019 is filed by the RP and original applicant for withdrawal of this proceeding under section 12A of IBC. CoC in its meeting dated 08.04.2019 by 100% votes gave approval for permitting the withdrawal. In view of this, withdrawal is allowed in view of this, CA(IB) 835/KB/2019 stands disposed off. Operational Creditor may file proceeding independently. All other pending applications will come on 26.08.2019."

Learned counsel for the Appellant submits that the Appellant initially filed a claim under 'Form B' but when it was pointed out that he is a 'Financial

Creditor' and on the suggestion of the 'Resolution Professional', filed 'Form C' within the time which is apparent from the *e-mail* dated 3rd April, 2019 (page 158). It is submitted that in spite of the same, the Appellant has not been treated as 'Financial Creditor', and not made a member of the 'Committee of Creditors', otherwise though the Appellant has 28% of the voting share but without settling the claim of the Appellant, the withdrawal is allowed.

Let notice be issued on the Respondents.

Mr. Dilip Kr. Niranjana, Advocate for 2nd Respondent and Mr. Smriti Churiwal, Advocate for 3rd Respondent appear and accept notice. They may file reply-affidavit within 10 days. Rejoinder, if any, may be filed by the Appellant within a week thereof.

Let Notice be issued on rest of the Respondents. Requisites along with process fee, if not filed, be filed by 4th September, 2019. If the appellant provides the *e-mail* address of respondents, let notice be also issued through *e-mail*.

Post the appeal 'for orders' on **30th September, 2019**. The appeal may be disposed of on the next date.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc