

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.840-841 of 2019

IN THE MATTER OF:

Abstract Logixtix Pvt. Ltd.

...Appellant

Versus

Nuddea Plantations Pvt. Ltd. & Ors.

...Respondents

For Appellant: Shri Madhusudhan Sarkar and Shri Sukesh Ghosh, Advocates

**For Respondents: Shri Soumitra Lahiri, Advocate (R-2)
Ms. Smriti Churiwal and Shri Jaivir Sidhant,
Advocates (R-3 – COC)
Shri Ashok Kumar Singh and Shri Pradip
Kumar Mondal, Advocate (R1 and R5)**

ORDER

05.12.2019 Heard Advocate - Shri Madhusudhan Sarkar. Also heard Advocate – Shri Ashok Kumar Singh for Respondent Nos. 1 and 5 and Advocate - Shri Soumitra Lahiri for Resolution Professional as well as Ms. Smriti Churiwal for Respondent No.3. The Appeal is against Impugned Orders dated 26th June, 2019 and 10th July, 2019 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench) which read as under:-

Order dated 26th June, 2019

“ORDER

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."

Order dated 10th July, 2019

ORDER

Ld RP alongwith the Ld. Counsel for the RP appears. 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."

2. The learned Counsel submits that the Appellant is a Financial Creditor who had earlier filed Form B when the insolvency proceedings were initiated against Nuddea Plantations Pvt. Ltd. It is stated that when the Appellant filed the claim as Operational Creditor, the Resolution Professional had expressed opinion that the claim was in the nature of Financial debt. The learned Counsel states that consequently the Appellant had again filed Form 'C' on the basis of being a Financial Creditor on 3rd April, 2019 which was within the time prescribed. The Counsel states that before considering the claim of the Appellant as a Financial Creditor, the Resolution Professional moved the Adjudicating Authority under Section

12A of the Insolvency and Bankruptcy Code, 2016 (IBC – in short) that the original Applicant – Operational Creditor was withdrawing the Application which had been filed with consent of the Committee of Creditor (COC). The Counsel submits that the Appellant had moved the Adjudicating Authority also but the Adjudicating Authority refused to hear the Application of the Appellant before hearing the Application of the Resolution Professional for withdrawal of the proceeding and thereafter, disposed of the Application by allowing withdrawal of CIRP process. It is argued that when COC approved the withdrawal, there was no agenda.

3. The Resolution Professional, who is present in person, states that earlier the withdrawal Application had been received by e-mail on 20th March, 2019 which was placed before the COC on 22nd March, 2019 and in Item No.9, the COC had given consent with 100% voting for the withdrawal. The RP refers to other Minute of COC, which meeting took place on 1st April, 2019 in which specific item was there as Agenda Item No.4 and its decision is as under:-

“Item No.4:

To approve withdrawal, under section 12A of Insolvency and Bankruptcy Code, 2016, of application, admitted under section 9 of Insolvency and Bankruptcy Code, 2016, based on an application in Form FA dated 19th March, 2019 (received by Resolution Professional on 25th March, 2019) made by the applicant K N Chaudhury & Co Private Limited in accordance with regulation 30A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, with 100% voting share of the Committee of Creditors and directing the

Resolution Professional to submit the application under sub-regulation (1) to the Adjudicating Authority on behalf of the applicant, within three days of such approval as specified under regulation 30A(4)

In reiteration to the decision of the second Committee of Creditors meeting held on 22nd March, 2018, the financial creditor gave their in principle consent, with 100% voting share, subject to completion of formalities including reimbursement of CIRP cost, to withdraw the CIRP under Section 12A of Insolvency and Bankruptcy Code, 2016, of application, admitted under Section 9 of Insolvency and Bankruptcy Code, 2016, based on an application in Form FA dated 19th March, 2019 (received by Resolution Professional on 25th March, 2019) made by the applicant K N Chaudhury & Co Private Limited in accordance with regulation 30A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. However, as some formalities pertaining to payment of CIRP expenses remain pending, the Committee of Creditors keeps on hold its final approval and the Resolution Professional is directed to convene meeting of the Committee of Creditors immediately after receiving intimation pertaining to payment of cost incurred for purposes of regulation 31(c) and (d) till the date of application.”

4. The two Minutes tendered at Bar by the Resolution Professional present are marked as 'X' and 'Y' for identification. It is stated that subsequently, the Adjudicating Authority has acted upon the withdrawal Application moved which was approved by COC and the concerned Section 9 proceeding has already been disposed. Even otherwise, the Appellant admittedly submitted Form – 'C' claiming to be Financial Creditor on 3rd April, 2019 and before that already the COC as was constituted, had in principal approved the withdrawal and this being so, and as COC has not raised objection, we do not go into the niceties. We

do not find any reason to entertain this Appeal at the instance of present Appellant to upset the withdrawal action which has been already completed. If the Appellant has claim as Financial Creditor or Operational Creditor, it would be open for the Appellant to take recourse to appropriate proceeding as per law, on its own.

The Appeal is disposed of. No costs.

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

[Kanthi Narahari]
Member (Technical)

[V.P. Singh]
Member (Technical)

/rs/md