

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 144 of 2019

IN THE MATTER OF:

Kaushik Ghosh

...Appellant

Versus

Noor Alam & Ors.

...Respondents

Present:

For Appellant :

**Mr. Puneet Singh Bindra and Mr. Kanishk Kejriwal,
Advocates**

For Respondents :

**Mr. Rahul Auddy, Mr. Rishav Banerjee and
Mr. Abhay Anand, Advocates**

ORDER

17.07.2019 On 10th July, 2019, this Appellate Tribunal taking into consideration the submission made on behalf of the 'Resolution Professional' passed the following order:

“Learned counsel appearing on behalf of the ‘Resolution Professional’ submits that the ‘Terms of Settlement’ given by the Appellant on behalf of the Promoter was considered under Section 12A of the Insolvency and Bankruptcy Code, 2016 by the ‘Committee of Creditors’, which has voted with 75% of the voting shares. Thus, we find that the ‘Terms of Settlement’ has not been approved by 90% voting shares and, therefore, we are inclined to hear the appeal on merit.

Learned counsel for the Appellant should get ready for addressing this Appellate Tribunal on merit.

*Post the case ‘for orders’ on 17th July, 2019.
The appeal may be disposed of on the next date.”*

Learned counsel appearing on behalf of the Appellant submits that the Appellant has already raised the validity of counting of the voting shares of some of the 'Financial Creditors', which is pending for consideration before the Adjudicating Authority. The Appellant has instructed the counsel to withdraw the appeal, who place the application before the Adjudicating Authority. However, the observations as made on 10th July, 2019 may come in the way of the Appellant, we are of the view that the Adjudicating Authority will consider the question of voting share of the same of the 'Financial Creditor'.

In view of the stand taken, we allow the Appellant to withdraw the application to pursue the matter before the Adjudicating Authority, as noticed above. We may mention that in the order dated 10th July, 2019, we have noticed the submissions made by the 'Resolution Professional' and not decided the issue on merit, and, therefore, we observed that we are inclined to hear the appeal on merit. Learned counsel for the 'Resolution Professional' submits that the Adjudicating authority has reserved the order and certain developments took place after hearing the petitions. However, we are not inclined to express any opinion except to clarify the order dated 10th July, 2019.

The appeal is disposed of as withdrawn with aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

[Kanthi Narahari]
Member (Technical)

/ns/sk