

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 842 of 2019

IN THE MATTER OF:

Kaushik Ghosh

...Appellant

Versus

Noor Alam & Ors.

...Respondents

Present:

For Appellant :

**Mr. Puneet Singh Bindra, Ms. Simran Jeet and
Mr. Kavish Kejriwal, Advocates**

WITH

Company Appeal (AT) (Insolvency) No. 904 of 2019

IN THE MATTER OF:

Noor Alam & Ors.

...Appellants

Versus

Parth Kamal Sen & Ors.

...Respondents

Present:

For Appellant :

**Mr. Abishek Anand and Mr. Mohan Sharma,
Advocates**

O R D E R

03.09.2019 An application under Section 12A of the Insolvency and Bankruptcy Code, 2016 (for short, 'the **I&B Code**') was placed by the 'Resolution Professional' before the 'Committee of Creditors', which had not been approved the 'Terms and Conditions' with 90% voting shares and thereby, refused to allow

the Applicant/Appellant – ‘Mr. Noor Alam’ to withdraw the application under Section 7 of the ‘I&B Code’.

2. When the matter was placed before the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, the Adjudicating Authority by impugned order dated 30th July, 2019 rejected the application for withdrawal taking into consideration the fact that there is no consensus amongst the creditors of the ‘Corporate Debtor’ for withdrawal of the proceedings. The Adjudicating Authority further observed that if the withdrawal is allowed, then the members of the ‘Committee of Creditors’ will not get their claims.

3. Learned counsel appearing on behalf of the Appellant – ‘Mr. Kaushik Ghosh’ and the Applicant – ‘Mr. Noor Alam’ submitted that the Authorised Representative of the ‘Financial Creditors’ (Debenture Holders) had not acted in accordance with the provisions of Section 25A of the ‘I&B Code’. If voting would have been conducted in proper manner after circulating to all the creditors in terms of Section 25A(2), then the term as proposed in Section 12A of the I&B Code would have been approved with more than 90% of the voting share.

4. Learned counsel appearing on behalf of the Appellant – ‘Mr. Noor Alam’ submitted that one Mr. Pankaj Agarwal was engaged as Authorised Representative by the Appellants as it was impossible for the Appellants to be present in Kolkata for the hearings/meetings of the ‘Committee of Creditors’. He assured the Appellants are appropriately and suitably represented in order to protect the rights of the ‘Corporate Debtor’. It is further informed that the said Authorised Representative had not given information undertaken in the meetings of the ‘Committee of Creditors’. The Adjudicating Authority has also noticed that one Mr. Sneha Khaitan was made Chairperson to call meeting of all

the creditors of the 'Corporate Debtor' and as they were more than 25,000 in numbers and their representatives were not in a position to take proper direction and to ascertain whether 90% of them intend to approve the withdrawal or not. Special Officer filed a report in a sealed cover stating that 75.5% creditors agreed for withdrawal whereas 24.95% voted against the withdrawal.

5. It is submitted on behalf of the Appellant that the Authorised Representative has not taken any opinion of the 'Financial Creditors'. When it is such case, it was even otherwise a fit case to reject the application filed under Section 12A for withdrawal of application under Section 7 of the I&B Code.

We find no merits in these appeals. They are, accordingly, dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc