

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**I.A. No. 567 of 2018
IN
Company Appeal (AT) No. 39 of 2018**

IN THE MATTER OF:

M/s. CMI Limited & Anr.

...Appellants

Vs.

Regional Director (Northern Region) & Ors.

...Respondents

Present: For Appellants: - Mr. Rahul Malhotra, Advocate.

ORDER

10.05.2018- This appeal has been preferred by M/s. CMI Limited & Anr. and on 5th February, 2018, the following order was passed:

“05.02.2018— *The clause (d) of sub-section (1) of Section 233 of the Companies Act, 2013 reads as follows:*

“233. Merger or amalgamation of certain companies. – (1)(d) *the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by*

Contd/-.....

giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.”

2. *The questions arise for consideration in this appeal are:*

- (i) Whether the scheme is required to be approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicating in a meeting convened by the company i.e. who are present in the meeting of the Company or the total creditors or class of creditors of the Company despite notice and their non-appearance in the meeting? and*
- (ii) Whether clause (d) of sub-section (1) of Section 233 is to be read along with clause (a) & (b) of sub-section (1) of*

Section 233 of the Companies Act, 2013?

3. Let notice be issued on Respondents by speed post. Requisite along with process fee, if not filed, be filed by 6th February, 2018. If the Appellant provides the e-mail address of Respondents, let notice be also issued through e-mail.

4. Post the matter on 27th February, 2018 before ‘a larger Bench’ in the 1st Court.”

2. Before the judgment was passed by this Appellate Tribunal, an Interlocutory Application has been filed on behalf of the Appellants, signed by both the parties for simpliciter withdrawal of the appeal unconditionally as they do not want to pursue the present appeal.

3. For the reasons aforesaid, we dismiss the appeal.

I.A. No. 567 of 2018 stands disposed of.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

Ar/uk