

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 381 of 2018**

**IN THE MATTER OF:**

**ATC Telecom Infrastructure Pvt. Ltd.**

**...Appellant**

**Vs.**

**State Bank of India**

**...Respondent No.1**

**Videocon Telecommunications Ltd.**

**...Respondent No.2**

**Present: For Appellant: - Mr. Sanjay Jain, Senior Advocate with Mr. Rajshekhar Rao, Mr. Anandh Venkataramani, Mr. Yuvraj Sharma and Ms. Sneh Suman, Advocates.**

**ORDER**

**19.07.2018**— The Appellant, an ‘Operational Creditor’ challenged the admission of the application preferred by the ‘State Bank of India’ under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) whereby and whereunder the ‘Corporate Insolvency Resolution Process’ was initiated against the ‘Videocon Telecommunications Ltd.’- (‘Corporate Debtor’).

2. The main plea taken is that the application of the State Bank of India in Form 1 was not complete as it has not disclosed the various facts in Form-1. It is also alleged that the application was filed by the State Bank of India in collusion with the ‘Corporate Debtor’. When it was brought to the notice of the learned Senior Counsel for the Appellant that the ‘Operational Creditor’ has no locus to challenge the application under Section 7 and the appeal is not maintainable as ‘Operational Creditor’ cannot be said to be an aggrieved person and the question of collusion cannot be determined in a ‘Corporate Insolvency Resolution Process’ and

Contd/-.....

only the shareholders of the 'Corporate Debtor' can raise such issue, learned counsel for the Appellant on instruction sought permission to withdraw the appeal with liberty to move before the Adjudicating Authority (National Company Law Tribunal) if the claim of the 'Operational Creditor' is not considered in accordance with law or before an appropriate forum after completion of the 'Corporate Insolvency Resolution Process'.

3. Taking into consideration the facts and circumstances of the case, we allow the Appellant to withdraw the appeal with liberty as sought for but without any liberty to challenge the same very impugned order.

4. If the Appellant- 'Operational Creditor' moves before the Adjudicating Authority and or any court of Competent Jurisdiction for appropriate relief, this order will not come in the way of the Appellant and the Adjudicating Authority or the court of Competent Jurisdiction may decide the same uninfluenced by the order passed by this Appellate Tribunal. The appeal is dismissed as withdrawn. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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