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SANCTITY OF A RESOLUTION PLAN APPROVED BY THE COMMITTEE OF CREDITORS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

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1. INTRODUCTION

The repeal of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) was followed by a pathbreaking legislation called as the Insolvency and Bankruptcy Code, 2016 (IBC, 2016). IBC, 2016 was enacted with a noble aim to fix the insolvency issues of the corporate entities (Corporate Debtor) more swiftly and efficiently. The major difference between SICA and IBC, 2016 is the time bound character of IBC, 2016. All steps proposed under IBC, 2016 accordingly, have fixed timelines. Even after the lapse of more than seven years since IBC, 2016 came into picture, its efficiency is haunted by the finality of the Resolution Plans despite approval by the Committee of Creditors (CoC). But, timely approval of the Resolution Plan becomes very crucial keeping in mind the objective of IBC, 2016 and the betterment of the insolvent entity i.e. the Corporate Debtor. Recently, in the case of *Deccan Value Investors*¹, despite serious allegations raised by the Resolution Applicant regarding misrepresentations by the Resolution Professional, the Supreme Court has preserved the sanctity of a Resolution Plan which has been approved by the CoC and which was yet to be approved by the Adjudicating Authority.

2. INFORMATION MEMORANDUM

An Information Memorandum² is prepared by the Resolution Professional (RP) and contains all the relevant information necessary for drafting a resolution plan, such as the company's assets and liabilities. Thus, it assumes great importance in the insolvency resolution process. The RP owes a duty to act fairly and in utmost good faith and to provide correct information regarding the Corporate Debtor in order to enable the Resolution Applicant to submit a viable and feasible Resolution Plan.

3. WHAT IS A RESOLUTION PLAN?

The Resolution Plan⁴ is a plan or a proposal comprising various steps which contemplate the resolution of the insolvency of the Corporate Debtor. Practically speaking, it forms the bedrock of the entire process stipulated under IBC, 2016 and lays down the foundation on which the distressed Company shall run henceforth. It has to cross the hurdle of sanction at two stages, first stage being the requisite majority⁵ of the Committee of Creditors (CoC)⁶ and second stage being the Adjudicating Authority viz. National Company Law Tribunal (NCLT).⁷ Approval of a Resolution Plan by the NCLT is the crowning moment subsequent to which the Corporate Debtor is blessed with a

1. *Deccan Value Investors L.P. v. Dinkar Venkatasubramanian* 2024 SCC OnLine SC 804.

2. The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 5(10).

3. The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 29(1).

4. The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 5(26).

5. The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 30(4).

6. The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 21.

7. The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 31.

fresh lease of life under the aegis of a new management. In order to ensure the timely completion of the entire process, in the case of *Ebix Singapore Private Ltd.*⁸, the Supreme Court has taken a view that once the CoC has approved the Resolution Plan, it is final and cannot be further modified or withdrawn as the same is not provided for under IBC, 2016. But, then, a question that crops up in mind is why a Resolution Applicant, having once submitted a Resolution Plan, will want to back out from the same. There must be some compelling circumstances behind such a decision.

4. THE JOURNEY OF APPROVAL OF RESOLUTION PLAN IN THE CASE OF METALYST FORGINGS LTD.

Deccan Value Investors L.L.P. and D.V.I. PE (Mauritius) Ltd. (jointly called as, Deccan Value) submitted its Resolution Plan for the Company, Metalyst Forgings Ltd. on the basis of the information and the representations of the RP. The said resolution plan was approved by CoC with the desired voting percentage.

4.1 PROCEEDINGS BEFORE NCLT, MUMBAI

Subsequent to approval of the Resolution Plan by CoC, Deccan Value realised that there were certain discrepancies in the two sets of information provided by the RP, prior and post approval of the Resolution Plan by CoC, such as production capacity and historical financials. Deccan Value, in such a scenario, was not in favour of pursuing the Resolution Plan which already stood approved by CoC since new facts which had now come into light, would have a crucial impact on the viability of the Resolution Plan. Deccan Value was constrained to approach the NCLT, Mumbai for seeking cancellation of the entire process of bidding and finalisation

of the Resolution Plan. Deccan Value tasted victory in NCLT with a minor setback that the Bid Bond Guarantee submitted by it, was forfeited.⁹ The NCLT also passed an order of inviting fresh bids in view of the fact that there were some other interested bidders.

4.2 PROCEEDINGS BEFORE NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT)

The NCLT order was assailed by the CoC and Deccan Value before the National Company Law Appellate Tribunal. Vide detailed judgment, the Appellate Tribunal affirmed the NCLT order and held that NCLT does not have the power to compel any unwilling Resolution Applicant to comply with the approved Resolution Plan.¹⁰

4.3 PROCEEDINGS BEFORE THE SUPREME COURT

The matter was then taken up to the Supreme Court by all the parties, i.e. Deccan Value, CoC and the RP. All the Civil Appeals¹¹ were clubbed and heard together at length. The Supreme Court affirmed the law laid down in the case of *Ebix Singapore Private Ltd.*¹² The main thrust of the argument raised in favour of withdrawal was that before approving any resolution plan, the NCLT has to be satisfied that the Resolution Plan contains provisions for its effective implementation.¹³ But, the said argument was rejected on the premise that since an approved Resolution Plan is binding on all parties as also all the creditors who are not a part of CoC, in such a situation, NCLT cannot allow unilateral modification or withdrawal of the Resolution Plan subsequent to approval by CoC. The Court also proceeded to hold that giving misleading information by the RP cannot be construed as fraud on his part. The Court leaned in favour of the RP

8. *Ebix Singapore Private Ltd. v. Committee of Creditors of Educamp Solutions Ltd.* 2021 SCC OnLine SC 707.

9. Judgment/Order dated 27.09.2019 passed by NCLT, Mumbai in MA No. 1272/2018 & MA No. 956/2018 in CP 1555 (IB)/MB/2017.

10. Company Appeal (AT) (Insolvency) No. 1276 of 2019.

11. Civil Appeal Nos. 2801/2020, 2432/2020 and 2642/2020.

12. *Supra* note 8 at 2.

13. The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 31(1).

and observed that Mott Macdonald Report contained various disclaimers and was followed by various conditions and it was the responsibility of Deccan Value to evaluate the value, authenticity and worth of the Mott Macdonald Report in question. It was observed that a Resolution Plan is not drawn by an ordinary person. The entire exercise is undertaken by financial experts who evaluate and assess the complete situation with caution. The Court also strongly felt that objections as raised in this case after the Resolution Plan has been able to get muster with CoC, ought to be rejected except where there are allegations of fudging or concealment of records. Thus, the ground of misrepresentation by the RP was brushed aside by the Court and the accountability of RP in providing genuine information was given a go-bye. The entire liability of presenting a Resolution Plan was casted on the Resolution Applicant who is supposed to be cautious at every step as submitting a resolution plan is discretionary.



5. CAN THE RP ABANDON HIS DUTY TO PROVIDE CORRECT AND MATERIAL INFORMATION?

In this case, the Supreme Court has clearly supported the theory of obligation of ‘true picture of risk’ and emphasised the obligation of the RP to provide information on “best effort” basis. But, the requirement to conduct due diligence by the Resolution Applicant does not absolve the RP to fulfil its statutory duty and the requirements of IBC, 2016 to provide correct and material information as the same is nothing but playing fraud on the Resolution Applicant and the same ought to be discouraged. Even in auction cases, it has been held that even a confirmed sale can be set aside if the same is hit by fraud or collusion.¹⁴

6. CONCLUSION

The Supreme Court’s judgment in the case of *Deccan Value Investors*,¹⁵ has not only set a critical precedent but, in many ways, is also a milestone in building insolvency jurisprudence in India. It *firstly* confirms the importance of the binding nature of the Resolution Plans under the IBC 2016, as it holds that the approval of the Resolution Plan by the CoC is purely born out of IBC, 2016 only and therefore, is not a pure contract. *Secondly*, it holds that the finality of the Resolution Plans is necessary once the CoC approves it. *Thirdly*, this, in many ways, would limit the unlimited scope for the withdrawal and/or modification of the Resolution Plans, which, if once allowed, shall become a never-ending mission. *Fourthly*, this decision is also crucial for ensuring both (i) the certainty and (ii) the efficacy, which are the two important pillars of insolvency jurisprudence, under the insolvency resolution process, to be groomed under IBC, 2016. *Fifthly*, the finality of the Resolution Plan would also provide much-needed (i) clarity and (ii) stability to the stakeholders who are involved in this

14. *Valji Khimji & Co. v. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd* (2008) 9 SCC 299

15. *Supra* note 1 at 1.

whole process of corporate debt restructuring. However, one should also notice the other side of the coin. It is a settled law that interpretation of a statute cannot be such which leaves a party remediless. The interests of a Resolution Applicant who is ready and willing to invest the hard earned monies in an insolvent entity cannot be jeopardised by such a mala fide conduct of the RP who does not even give a fair and clear picture of the Company and as such the entire process is vitiated by fraud. Therefore, though with caution, the Court has allowed modification or withdrawal of resolution plan in an egregious case where (i) the *data* and (ii) the *facts* are (i) *fudged* and (ii) *concealed*. This case, on one hand, preserves the sanctity of a Resolution Plan right from its approval by CoC in order to discourage the successful Resolution Applicants from resiling from their commitments, while on the other hand, it casts a heavy burden on the Resolution Applicants to conduct a rigorous and extensive investigation and detailed scrutiny of the information pertaining to the Corporate Debtor prior to submission of the Resolution Plan in order to avoid any piece of bad luck in carrying forward and implementing the Resolution Plan.

