

[2024] 3 S.C.R. 1044 : 2024 INSC 321

**Deccan Value Investors L.P. & Anr.**

**v.**

**Dinkar Venkatasubramanian & Anr.**

(Civil Appeal No. 2801 of 2020)

06 March 2024

**[Sanjiv Khanna and Dipankar Datta, JJ.]**

### **Issue for Consideration**

Whether the judgment dated 07.02.2020 passed by the National Company Law Appellate Tribunal which upholds the order dated 27.09.2019 passed by the National Company Law Tribunal is legally flawed and unsustainable; Whether the reasons or grounds taken by the successful resolution applicants in the instant case qualify and can be treated as a fraud on the part of the resolution professional.

### **Headnotes**

**Insolvency and Bankruptcy Code, 2016 – s. 62 – On facts and to justify withdrawal, it was submitted that in the instant case, the successful resolution applicants were prevented, and were handicapped because of lack of information or rather fraud on the part of the resolution professional – Propriety:**

**Held:** The Supreme Court in Ebix Singapore Private Limited, has *inter alia* held that the resolution applicant cannot withdraw or modify the resolution plan, after the same is approved by the Committee of Creditors – It is immaterial that post approval by the Committee of Creditors, there is consideration under Section 31(1) of the Code by the adjudicating authority for final approval – The judgment in Ebix Singapore Private Limited elaborates and sets out several reasons why the resolution applicant cannot be permitted to withdraw or modify the resolution plan after approval by the Committee of Creditors, and before an order under Section 31(1) of the Code is passed – These reasons include delay, consequences of the delay and the uncertainty and complexities that would arise in the Corporate Insolvency Resolution Process, which are unacceptable and not contemplated in law – Even the terms of the resolution plan, will not permit withdrawal or modification in the absence of a

**Deccan Value Investors L.P. & Anr. v.  
Dinkar Venkatasubramanian & Anr.**

statutory provision, that allow withdrawal or amendment in the resolution plan after approval by the Committee of Creditors – The reasons or grounds taken by the successful resolution applicants in the instant case do not qualify and cannot be treated as a fraud on the part of the resolution professional – This is not a case where misinformation or wrong information was given to the resolution applicants – The impugned judgment dated 07.02.2020 passed by the NCLAT, upholding the order passed by the NCLT, dated 27.09.2019 is set aside – The resolution plan, as submitted by the successful resolution applicants is approved. [Paras 4, 5, 8, 17]

**Insolvency and Bankruptcy Code, 2016 – Resolution Plan – Preparation of:**

**Held:** Resolution plans are not prepared and submitted by lay persons – They are submitted after the financial statements and data are examined by domain and financial experts, who scan, appraise evaluate the material as available for its usefulness, with caution and scepticism – Inadequacies and paltriness of data are accounted and chronicled for valuations and the risk involved – It is rather strange to argue that the superspecialists and financial experts were gullible and misunderstood the details, figures or data – The assumption is that the resolution applicant would submit the revival/resolution plan specifying the monetary amount and other obligations, after in-depth analysis of the fiscal and commercial viability of the corporate debtor – Pointing out the ambiguities or lack of specific details or data, post acceptance of the resolution plan by the Committee of Creditors, should be rejected, except in an egregious case were data and facts are fudged or concealed – Absence or ambiguity of details and particulars should put the parties to caution, and it is for them to ascertain details, and exercise discretion to submit or not submit resolution plan. [Para 15]

**Case Law Cited**

*Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited and Another* [\[2021\] 14 SCR 321](#) : (2022) 2 SCC 401 – relied on.

**List of Acts**

Insolvency and Bankruptcy Code, 2016.

**Digital Supreme Court Reports****List of Keywords**

Resolution Plan; Withdrawal or modification of resolution plan; Misinformation or wrong information; Financial experts; Inadequacies and paltriness of data; Revival/resolution plan; Principle of “clean slate”; Fiscal and commercial viability.

**Case Arising From**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2801 of 2020

From the Judgment and Order dated 07.02.2020 of the National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) (Insolvency) No. 1281 of 2019

With

Civil Appeal Nos. 2642 and 2432 of 2020

**Appearances for Parties**

Dr. A.M. Singhvi, Guru Krishna Kumar, Shyam Divan, Sr. Advs., Mahesh Agarwal, Rishi Agrawala, Rohan Dakshni, Ms. Nikita Mishra, Himanshu Satija, Ms. Geetika Sharma, Nidhi Ram Sharma, Ms. Aakansha Kaul, E. C. Agrawala, S. S. Shroff, Ms. Misha, Anoop Rawat, Siddhant Kant, Saurav Panda, Nikhil Mathur, Prithviraj Oberoi, Ms. Anannya Ghosh, Brian Henry Moses, Rohan Talwar, Ms. Nidhi Ram Shrama, Ms. Nidhi Ram Sharma, Advs. for the appearing parties.

**Judgment / Order of the Supreme Court****Order**

1. This order would decide the cross-appeals under Section 62 of the Insolvency and Bankruptcy Code, 2016<sup>1</sup> filed by the successful resolution applicants – Deccan Value Investors L.P. and DVI PE (Mauritius) Ltd.; the Committee of Creditors of Metalyst Forgings Limited; and Dinkar Venkatasubramanian - the Resolution Professional of Metalyst Forgings Limited.
2. The company in question, the corporate debtor, is Metalyst Forgings Ltd.

1 “the Code” for short

**Deccan Value Investors L.P. & Anr. v.  
Dinkar Venkatasubramanian & Anr.**

3. In our opinion, the impugned judgment dated 07.02.2020 passed by the National Company Law Appellate Tribunal<sup>2</sup>, New Delhi, which upholds the order dated 27.09.2019 passed by the National Company Law Tribunal<sup>3</sup>, Mumbai Bench, Mumbai, is legally flawed and unsustainable in view of the judgment of this Court in “[\*Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited and Another\*](#)”<sup>4</sup>.
4. This Court in [\*Ebix Singapore Private Limited\*](#) (supra), has *inter alia* held that the resolution applicant cannot withdraw or modify the resolution plan, after the same is approved by the Committee of Creditors. It is immaterial that post approval by the Committee of Creditors, there is consideration under Section 31(1) of the Code by the adjudicating authority for final approval.
5. The judgment in [\*Ebix Singapore Private Limited\*](#) (supra) elaborates and sets out several reasons why the resolution applicant cannot be permitted to withdraw or modify the resolution plan after approval by the Committee of Creditors, and before an order under Section 31(1) of the Code is passed. These reasons include delay, consequences of the delay and the uncertainty and complexities that would arise in the Corporate Insolvency Resolution Process, which are unacceptable and not contemplated in law. Even the terms of the resolution plan, will not permit withdrawal or modification in the absence of a statutory provision, that allow withdrawal or amendment in the resolution plan after approval by the Committee of Creditors. The resolution plan approved by the Committee of Creditors is a creature of the Code and not a pure contract between two consenting parties.
6. During the course of arguments, our attention was drawn to the *proviso* to Section 31(1) of the Code, which postulates that the adjudicating authority, before passing an order for approval of the resolution plan, must satisfy itself that the resolution plan has provisions for its effective implementation. [\*Ebix Singapore Private Limited\*](#) (supra) did examine this provision but rejected the argument on several grounds, including absence of legislative mandate to direct unwilling Committee of Creditors to re-negotiate or agree to withdrawal of the

---

2 “NCLAT” for short

3 “NCLT” or “adjudicating authority”, for short

4 [\[2021\] 14 SCR 321](#) : (2022) 2 SCC 401

**Digital Supreme Court Reports**

resolution plan at the behest of the resolution applicant. The effect of approval by the adjudicating authority under Section 31(1) of the Code makes the resolution plan binding on all stakeholders, even those who are not members of the Committee of Creditors. The scrutiny by the adjudicating authority for grant of approval in terms of Section 31(1), read with other provisions of the Code, is limited and restricted. It does not allow or permit the resolution applicant to unilaterally amend/modify, or withdraw the resolution plan post approval by the Committee of Creditors.

7. On facts and to justify the withdrawal, it was submitted that in the present case, the successful resolution applicants were prevented, and were handicapped because of lack of information or rather fraud on the part of the resolution professional. Four aspects were highlighted: -
  - (a) It was concealed that 70 per cent of the revenue of the corporate debtor came from trading, and not from manufacturing.
  - (b) The Mott Macdonald Report dated 30.09.2016 is factually incorrect and flawed.
  - (c) Misleading and false statement was made with regard to the uninstalled imported components of 12,500 M.T. Press, which were stored in the land of a sister concern – Clover Forging and Machining Pvt. Ltd.
  - (d) The successful resolution applicants were misled in view of the non-reliability of financial data. There was ongoing financial/forensic audit.
8. The aforesaid reasons or grounds taken by the successful resolution applicants do not qualify and cannot be treated as a fraud on the part of the resolution professional. This is not a case where misinformation or wrong information was given to the resolution applicants.
9. We have been taken through the information memorandum, as well as, the data in the virtual data room, access to which was granted to the prospective resolution applicant(s), before they had submitted their resolution plan(s).
10. We have also been taken through the documents, which would show the manufacturing output, as well as the capacity of realisation of the

**Deccan Value Investors L.P. & Anr. v.  
Dinkar Venkatasubramanian & Anr.**

four units of the corporate debtor. The excise returns, as well as the VAT returns etc., were available in the virtual data room.

11. The Mott Macdonald Report was submitted by the said consultants in September, 2016 at the behest of the erstwhile promoters/directors of the corporate debtor. The report itself is hedged with conditions and disclaimers. Value and worth of the report, the data and projections were for the prospective resolution applicants to evaluate.
12. On the aspect of 12,500 M.T. Press, it was clearly stated and noted that the said Press after import, was stored in the shed belonging to Clover Forging and Machining Pvt. Ltd.
13. Submission regarding the non-availability of Floor Space Index (FSI) at the plant in Aurangabad, was made with reference to the statement made by an employee of the corporate debtor. We are not inclined to accept this version of the successful resolution applicant. The corporate debtor has four units, three units in Maharashtra and one unit in Himachal Pradesh. False projection was not made.
14. The resolution plan submitted by the successful resolution applicants refers to the transaction audits being undertaken and acknowledges appropriation of the proceeds, if any available, to the resolution professional on the recoveries being made for prior period. The principle of “clean slate” is well established and known.
15. Resolution plans are not prepared and submitted by lay persons. They are submitted after the financial statements and data are examined by domain and financial experts, who scan, appraise evaluate the material as available for its usefulness, with caution and scepticism. Inadequacies and paltriness of data are accounted and chronicled for valuations and the risk involved. It is rather strange to argue that the superspecialists and financial experts were gullible and misunderstood the details, figures or data. The assumption is that the resolution applicant would submit the revival/resolution plan specifying the monetary amount and other obligations, after in-depth analysis of the fiscal and commercial viability of the corporate debtor. Pointing out the ambiguities or lack of specific details or data, post acceptance of the resolution plan by the Committee of Creditors, should be rejected, except in an egregious case where data and facts are fudged or concealed. Absence or ambiguity of details and particulars should put the parties to caution, and it is for them to

**Digital Supreme Court Reports**

ascertain details, and exercise discretion to submit or not submit resolution plan.

16. Records of corporate debtor, who are in financial distress, may suffer from data asymmetry, debatable or even wrong data. Thus, the provision for transactional audit etc, but this takes time and is not necessary before information memorandum or virtual data room is set up. Financial experts being aware, do tread with caution. Information memorandum is not to be tested applying “the true picture of risk” obligation, *albeit* as observed by the NCLAT the resolution professional’s obligation to provide information has to be understood on “best effort” basis.
17. In view of the aforesaid position, we set aside the impugned judgment dated 07.02.2020 passed by the NCLAT, upholding the order passed by the NCLT, dated 27.09.2019. In other words, we accept the present appeals and it is held that the resolution plan, as submitted by the successful resolution applicants – Deccan Value Investors L.P. and DVI PE (Mauritius) Ltd., is approved.
18. To cut short the delay, parties are directed to appear before the NCLT on 09.04.2024, when further proceedings will take place.
19. Recording the aforesaid, the appeals are allowed in the above terms.
20. Pending application(s), if any, shall stand disposed of.

*Headnotes prepared by: Ankit Gyan*

*Result of the case:  
Appeals allowed.*