



Committee of Creditors of Educomp Solutions Ltd. V. Ebix Singapore Pte. Ltd. & Anr: NCLAT Judgement Dated 29 July 2020

The Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") in its judgement dated 29 July 2020 has set aside an order of the National Company Law Tribunal, Principal Bench, New Delhi ("**NCLT**") which had *inter alia*, allowed the withdrawal of a resolution plan on the grounds that an unwilling resolution applicant would not be able to effectively implement a resolution plan. This plan had been proposed by Ebix Singapore Pte. Ltd., was approved by the Committee of Creditors ("**CoC**") of Educomp Solutions Ltd., and was pending approval of the NCLT.

The two main prongs of challenge before the NCLAT were on (a) the permissibility of withdrawal and (b) preliminary bar on the application allowed by the NCLT due to *res judicata*, which bars the re-litigation of the same matter between the same parties.

A. Withdrawal

With relation to withdrawal, the NCLAT's judgement sheds light on the following:

Scope of the NCLT's Power to allow Withdrawal

The Appellants had contended that once a resolution plan had been approved by a requisite majority of creditors of the CoC, the NCLT could not encroach on the decision of the CoC, which was empowered to ascertain the feasibility and viability of a plan, and could only assess if the resolution plan complied with the requirements laid down in section 30(2) of the Insolvency and Bankruptcy Code, 2016 ("**Code**"). They also contended that the NCLT's order had conferred sanctity to unlawful conduct by reasoning that an unwilling applicant cannot effectively implement a resolution plan. The Respondents had contended that the NCLT could ascertain if the plan had adequate provisions for implementation, and could also allow withdrawal in exercise of its inherent powers.

The NCLAT held that the NCLT had no jurisdiction to entertain or permit a plea of withdrawal after a resolution plan had been approved by the CoC. The NCLAT also held that the NCLT cannot encroach on the commercial wisdom of the CoC, and can only satisfy itself that the plan complies with the requirements in section 30(2). Further, given the facts of the case where the Request for Resolution Plans ("**RFRP**") had clearly provided that no change in a plan would be permitted after the submission of the resolution plan and that the same was irrevocable, the resolution applicant could not be allowed to withdraw the plan by the NCLT.

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Period of validity of a resolution plan

The Respondents had also contended that they were not bound by the resolution plan as it was only valid for a period of six months as per the RFRP, which was disputed by the Appellants. The Appellants argued that this was only a minimum period for approval by the CoC and after approval of the plan by the CoC, it would be binding on parties, conditional upon the approval of the NCLT, which could only assess compliance with section 30(2).

The NCLAT held that while the plan would not be binding upon parties till it is approved by the NCLT, the NCLT could only assess compliance with section 30(2). It also specifically pointed out that in the facts of the case, the Respondents had continued engagement with the CoC and the NCLT for approval of the resolution plan even after the expiry of six months, and subsequent conduct shows that the plea on validity was not well-founded.

Withdrawal on Account of Delays

The Respondents had contended that on account of the delays, the financial and commercial considerations underlying the resolution plan are no longer viable. The Appellants had contended that the delay had not been caused due to any fault of the CoC.

The NCLAT held that withdrawal of the plan on account of delays in the approval of the application by the NCLT, cannot be allowed. Allowing for withdrawal would permit resolution applicants to take advantage of the situation, and would result in the act of Court harming the stakeholders standing to benefit from the approval of the resolution plan, that could keep the corporate debtor running as a going concern.

Withdrawal due to Subsequent Investigations

The Respondents had also contended that severe mismanagement and irregularities were subsequently uncovered, and various investigations, including by the Serious Frauds Investigation Office and the Central Bureau of Investigation were commenced. This would make the resolution plan commercially unworkable. The Appellants however, contended that the Respondents would not be adversely affected on account of the new section 32A which prevents prosecution of a debtor, and prevents attachment, seizure, etc. of its properties after its management changes to a third-party pursuant to a resolution plan.

The NCLAT held that since all the assets of the debtor would be available to the resolution applicant and the debtor would be granted immunity under section 32A, subsequent investigations would not change the commercial basis of the resolution plan, and withdrawal on this ground would not be tenable.

B. Res Judicata

The Appellants had contended that the Respondents had previously filed another petition asking for certain information and revaluation of the resolution plan basis such information, which was not allowed. Consequently, this would be barred by principles of *res judicata*. The Respondents had argued that they had never sought withdrawal in the previous application, and even the relief sought for revaluation of resolution plan was never dealt with. Since they were denied the relief seeking for information, there was no question that the consequent relief of revaluation of the resolution plan was barred by

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res judicata, and they were constrained to file an application for withdrawal. They also argued that they had been given liberty to the applicant to apply a fresh application on the same cause of action.

The NCLAT held that while the relief for withdrawal was not explicitly sought earlier, the new application would be barred by principles of constructive *res judicata* which requires parties to claim all reliefs as available at the time of filing the first application. The NCLAT also held that the NCLT did not have the power to grant/ reserve liberty to bring a fresh application and so the application would be barred by the principle of '*res judicata*' notwithstanding such liberty. Finally, the NCLAT also held that it would not be legally tenable to argue that the plea of withdrawal was never considered by the NCLT in its earlier order, since the fact that revaluation was not granted points to the fact that the relief of withdrawal was denied.

Impact

This judgement of the NCLAT, by laying down that

- resolution plans cannot generally be withdrawn due to lapse of time or other factors that are not within the control of the parties,
- investigations of offences by a corporate debtor could not be considered to affect the basic commercial feasibility of the plan due to the protections granted by section 32A, and
- the NCLT would not have the power to entertain applications for withdrawal of the plan after approval by the CoC, and after the approval of the plan by the CoC, the NCLT can only look to compliance with section 30(2) of the Code

upholds the sanctity of the resolution process under the Code. The principles laid down in the case will make it significantly more difficult for resolution applicants to attempt to withdraw plans once approved by the CoC. This may also have bearing on several applications for withdrawal of resolution plans, in light of Covid 19. In sum, we expect this judgement will result in greater process and outcome certainty for all stakeholders.

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