

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2801/2020

DECCAN VALUE INVESTORS L.P. & ANR. APPELLANT (S)

VERSUS

DINKAR VENKATASUBRAMANIAN & ANR.RESPONDENT (S)

WITH

CIVIL APPEAL NO. 2642/2020

CIVIL APPEAL NO. 2432/2020

O R D E R

1. This order would decide the cross-appeals under Section 62 of the Insolvency and Bankruptcy Code, 2016¹ 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.

3. In our opinion, the impugned judgment dated 07.02.2020 passed by the National Company Law Appellate Tribunal², New Delhi,

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babita pandey
Date: 2024.03.19
19:01:17 IST
Reason:

1 "the Code" for short

2 "NCLAT" for short

which upholds the order dated 27.09.2019 passed by the National Company Law Tribunal³, 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*"⁴.

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

³ "NCLT" or "adjudicating authority", for short

⁴ (2022) 2 SCC 401

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 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 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 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.

.....J.
(SANJIV KHANNA)

.....J.
(DIPANKAR DATTA)

NEW DELHI;
MARCH 06, 2024.

ITEM NO.101

COURT NO.2

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 2801/2020

DECCAN VALUE INVESTORS L.P. & ANR.

Appellant(s)

VERSUS

DINKAR VENKATASUBRAMANIAN & ANR.

Respondent(s)

(IA No. 67684/2020 - CLARIFICATION/DIRECTION
IA No. 67686/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 67685/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

WITH

C.A. No. 2642/2020 (XVII)

(IA No. 134860/2023 - EARLY HEARING APPLICATION
IA No. 56670/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

C.A. No. 2432/2020 (XVII)

(IA No. 58250/2020 - EARLY HEARING APPLICATION
IA No. 110748/2020 - EARLY HEARING APPLICATION
IA No. 50074/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 79346/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 66456/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 159617/2021 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 49727/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 135055/2021 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 79344/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 58631/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 06-03-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE DIPANKAR DATTA

For Appellant(s)

Dr. A. M. Singhvi, Sr. Adv.
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Mr. Rohan Dakshni, Adv.
Ms. Nikita Mishra, Adv.
Mr. Himanshu Satija, Adv.
Mr. Geetika Sharma, Adv.
Mr. Nidhi Ram Sharma, Adv.
Mr. Aakansha Kaul, Adv.
Mr. E. C. Agrawala, AOR

Mr. S. S. Shroff, AOR
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Mr. Anoop Rawat, Adv.
Mr. Siddhant Kant, Adv.
Mr. Saurav Panda, Adv.
Mr. Nikhil Mathur, Adv.
Mr. Prithviraj Oberoi, Adv.

Mr. Shyam Divan, Sr. Adv.
Ms. Anannya Ghosh, AOR
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For Respondent(s)

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Mr. Rohan Talwar, Adv.
Ms. Nidhi Ram Shrama, Adv.
Ms. Geetika Sharma, Adv.
Ms. Nidhi Ram Sharma, Adv.
Ms. Aakansha Kaul, Adv.
Mr. E. C. Agrawala, AOR

Mr. Shyam Divan, Sr. Adv.
Ms. Anannya Ghosh, AOR
Mr. Brian Henry Moses, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

The appeals are allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY)
COURT MASTER (SH)

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

(Signed order is placed on the file)