

National Company Law Appellate Tribunal

Principal Bench, New Delhi

COMPANY APPEAL (AT) (INSOLVENCY) No. 587 of 2020

(Arising out of Order dated 03rd January, 2020 passed by National Company Law Tribunal, New Delhi, Principal Bench, in C.A. No. 195(PB)/2018 in C.P. (IB) No.-101(PB)/2017).

IN THE MATTER OF:

Committee of Creditors of Educomp Solutions Limited

Through State Bank of India having its office at SBI SAM Branch, B2, Janpath, New Delhi – 110003.

...Appellant

Versus

**Mr. Mahender Kumar Khandelwal,
Resolution Professional of Educomp Solutions Ltd.**

**Having its office at: Educomp Towers, 514,
Udyog Vihar Phase III, Gurgaon – 122001.**

...Respondent

Appellant: Mr. Arun Kathpalia, Sr. Advocate with Mr. Siddhant Kant, Ms. Moulshree Shukla, Ms. Diksha Gupta and Mr. Ishani Mookherjee, Advocates.

**Respondent: Mr. Nakul Dewan, Sr. Advocate with Ms. Neelu Mohan, Mr. Abhishek Sharma, Ms. Anisha Mahajan and Ms. Ashly Cherian, Advocates for RP.
Mr. Ritin Rai, Sr. Advocate with Mr. Gautam Swarup, Ms. Gunjan Jindal, Mr. Kartikeya Jaiswal, Mr. Rajat Sehgal, Mr. Aditya Swarup and Ms. Gunjan Mathur, Advocates for Resolution Applicant.**

J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. This present Appeal has been filed by the Committee of Creditors of the ‘Corporate Debtor’ M/s. Educomp Solutions Limited, aggrieved by the Impugned Order dated 03.01.2020 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi). By the Impugned Order, the Adjudicating Authority has dismissed CA No.

195(PB)/2018 in CP(IB) No. 101(PB)/2017 which is the Plan Approval Application filed by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**Code**'), seeking approval of the Resolution Plan filed by the Resolution Applicant M/s. Ebix Singapore Pte Ltd., as infructuous, on the ground that the Application filed by the Resolution Applicant seeking withdrawal of the Resolution Plan vide I.A. No. 1816 of 2018 has been allowed.

2. The Committee of Creditors/Appellants challenged the withdrawal Order in *Company Appeal (AT) Insolvency No. 203 of 2020* and this Tribunal vide Judgement dated 29.07.2020 allowed the Appeal and set aside the withdrawal Order passed by the Learned Adjudicating Authority.

3. Learned Counsel appearing for the Appellant vehemently contended that the Order impugned in the present case which rendered the Plan Approval Application as infructuous, has been passed only on the basis of the withdrawal Order, which has already been set aside by this Tribunal in *Company Appeal (AT) Insolvency No. 203 of 2020*. Hence, as the main Order has already been set aside, the present Appeal ought to be allowed with the direction of the Learned Adjudicating Authority to dispose of the Plan Approval Application on merits. He also placed reliance on the Judgement of the Hon'ble Supreme Court in *Civil Appeal No. 3224 of 2020* in which the Hon'ble Apex Court has dismissed the Appeal preferred by the Resolution Applicant.

4. Learned Counsel further contended that the present Appeal is not barred by 'Limitation' as the Appellant was the third party to the proceedings before the Adjudicating Authority in the Plan Approval Application and was

only made aware of the Impugned Order of 15.06.2020 during the course of hearing before this Tribunal in *Company Appeal (AT) Insolvency No. 203 of 2020*. He further contended that the date of Order should be construed as meaning the date of communication or knowledge, actual or constructive of the Order sought to be challenged.

5. Learned Counsel appearing for the Resolution Applicant submitted that the Order of this Tribunal in *Company Appeal (AT) Insolvency No. 203 of 2020* dated 29.07.2020 was challenged before the Hon'ble Supreme Court in *Civil Appeal No. 3224 of 2020*. Learned Counsel further contended that this Appeal was barred by 'Limitation' and hence ought to be dismissed. We find force in the contention of the Learned Counsel appearing for the Committee of Creditors that the Appellant was not a party to the Plan Approval Application and the Impugned Order was brought to the knowledge of the Appellant during the course of the hearing before this Tribunal on 15.06.2020; that Committee of Creditors meeting was convened on 20.06.2020 wherein by majority request, the Members approved the filing of the present Appeal and the same was mentioned before this Tribunal vide email on 26.02.2020 and the Appeal was filed on the very same date. Having regard to the facts and circumstances of the case and the submissions made by the Learned Counsel we are of the considered view that this Appeal is not barred by 'Limitation'.

6. Learned Counsel appearing for the Resolution Professional submitted that this present Appeal was filed by the Appellant by way of abundant caution in order to ensure that the Plan Approval Application is remitted back to the Adjudicating Authority to be considered on merits. He further

contended that the Impugned Order is a consequential Order flowing from the Order dated 02.01.2020 and in light of the Judgement dated 29.07.2020 the present Appeal should also be allowed, he also drew our attention to the Judgement of the Hon'ble Supreme Court in *Civil Appeal No. 3224 of 2020*.

Assessment:

7. The Hon'ble Supreme Court in **'Ebix Singapore Pvt. Ltd.' Vs. 'Committee of Creditors of Educomp Solutions Ltd. & Anr.'** reported in **2021 SCC OnLine SC 707** has held as follows:-

"182. Finally, it is also important to note that no clause of Ebix's own Resolution Plans provides them with a right to revise/withdraw their Resolution Plan after its approval by the E-CoC, but before its confirmation by the Adjudication Authority. Clause 9.1 permits withdrawal in the event the Resolution Plan is not approved in its entirety by the NCLT, while Clause 9.7 allows for an amendment for the purposes of implementation of the Resolution Plan but only when the E-CoC approves it with a seventy-five per cent vote. Hence, Ebix did not have any right under their own Resolution Plan to revise/withdraw it.

183. It is also pertinent to note that Ebix did not stop pursuing their Resolution Plan after the expiry of six months, if the true import of the commercial bargain was a withdrawal of the Resolution Plan after six months of its submission. The First Withdrawal Application was filed on 10 September 2019, which was after one year of the alleged expiry of the six-month period. Therefore, even if the submitted Resolution Plan was considered as a conditional offer the terms did not enable a withdrawal of the Resolution Plan in the event that the Adjudicating Authority does not approve it under Section 31 within six months of its submission."

8. The Hon'ble Supreme Court has observed that the existing *'Insolvency Framework'* in India provides no scope for effecting further modification or withdrawal of Committee of Creditors approved Resolution Plans, at the behest of the Successful Resolution Applicant, once Plan has been

submitted to the Adjudicating Authority. In **'Ebix Singapore Pvt. Ltd.'** (**Supra**) the Hon'ble Supreme Court in its conclusion noted that *'a Resolution Applicant, after obtaining the financial information of the Corporate Debtor through the informational utilities and perusing the IM, is assumed to have analysed the risks in the business of the 'Corporate Debtor' and submitted a considered proposal. A submitted Resolution Plan is binding and irrevocable as between the CoC and the Successful Resolution Applicant in terms of the provisions of the IBC and the CIRP Regulations'*. Keeping in view that the Hon'ble Supreme Court has dismissed the Appeal preferred by the Resolution Applicant, in **'Ebix Singapore Pvt. Ltd.'** (**Supra**), we are of the considered opinion that CA No. 195/PB/2018 is to be restored. We hold that the Resolution Applicant is bound by the Plan. The Learned Adjudicating Authority shall proceed in accordance with law and decide the Application under Section 30(6) as expeditiously as practicable having regard to the timelines observed by the Hon'ble Supreme Court in the very same Appeal.

9. For all the aforesaid reasons, this Appeal is allowed and the Impugned Order is set aside. We direct the Adjudicating Authority to restore CA No. 195(PB)/2018 and proceed in accordance with law.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

NEW DELHI
12th November, 2021

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