

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 1128 of 2022

IN THE MATTER OF:

Shraddha Buildcon Pvt. Ltd.
Versus

...Appellant

The Dhar Textile Mills Ltd.
Present:

...Respondents

For Appellant : Mr. Nakul Diwan, Sr. Advocate with Mr. Neil Chatterjee, Mr. Rohan Naik, Advocates.

For Respondents : Mr. Abhirup Dasgupta, Mr. Ishaan Duggal, Ms. Bhawana Sharma, Advocates.

ORDER

28.09.2022: Heard the Counsel for the parties.

This Appeal has been filed against the order dated 21.07.2022 passed by Adjudicating Authority (National Company Law Tribunal, Indore Bench, Court No. 1) in I.A. No. 88 of 2020 filed by the Appellant. The Adjudicating Authority by the impugned order has rejected the I.A. The CIRP against the Corporate Debtor was initiated by order dated 15.02.2019. The Resolution Plan submitted by the Appellant came to be approved by Committee of Creditors on 07.02.2020. Before the Plan could be approved an application was filed by the Appellant praying that the Plan be sent back to the Committee of Creditors to resubmit the Plan after being satisfied that the Plan has provision for its effective implementation. The Adjudicating Authority approved the Plan by order dated 04.06.2020.

Thereafter, the Appellant has filed the I.A. No. 88 of 2020 the prayer in the application are in the following effect:

1. To kindly permit the resolution applicant to withdraw the resolution plan dated 24.10.2019; and
2. Issue such other or further relief, order or directions as this Hon'ble Tribunal may think appropriate in the interest of justice.

The Said application was heard and rejected by Adjudicating Authority relying on the Judgment of the Hon'ble Supreme Court in "*Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Ltd. & Anr.*" (2022) 2 SCC 401.

Ld. Sr. Counsel appearing for the Appellant submits that the Judgment of the Hon'ble Supreme Court in *Ebix Singapore* (supra) is distinguishable and the cases which came for consideration where the cases where the corporate debtor was to undergo change and were not the cases where the Resolution Applicants due to heavy financial difficulty had prayed for withdrawal from the Resolution Plan.

We have considered the submissions of the Ld. Counsel for the Appellant and perused the record.

The Judgment of the Hon'ble Supreme Court in Ebix Singapore (supra) has noticed the adverse effect on all businesses due to covid-19 pandemic.

Para 161 in this context is referred which is to the following effect:

“161. In the wake of the Covid-19 Pandemic, several resolution plans remained pending before the adjudicating authorities due to the lockdown and significant barriers to securing a hearing. An ordinance was swiftly promulgated on 05.06.2020 which imposed a temporary suspension of initiation of CIRP under Sections 7,9 and 10 IBC for defaults arising for six months from 25.03.2020 (extendable by one year). This was followed by an amendment through the IBC (Second Amendment) Act, 2020 on 23.09.2020 which provided for a carve-out for the purpose of defaults arising during the suspended period. The delays on account of the lockdown were also mitigated by the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020, which inserted Regulation 40-C on 20-4-2020, with effect from 29-3-2020, and excluded such delays for the purposes of adherence to the otherwise strict timeline. Recently, the IBC (Amendment) Ordinance, 2021 was promulgated with effect from 4-4-2021 providing certain directions to preserve businesses of MSMEs and a fast-track insolvency process. There has been a clamour on behalf of successful resolution applicants who no longer wish to abide by the terms of their submitted resolution plans that are pending approval under Section 31, on account of the economic slowdown that impacted every business in the country. However, no legislative relief for enabling withdrawals or renegotiations has been provided, in the last eighteen months. In the absence of any provision under IBC allowing for withdrawal of the resolution plan by a successful resolution applicant, vesting the resolution applicant with such a relief through a process of judicial interpretation would be impermissible. Such a judicial exercise would bring in the evils which IBC sought to obviate through the back door”.

After noticing the adverse effect on all businesses the Hon'ble Supreme Court had laid down that vesting any such power in the Successful Resolution Applicant to withdraw shall be impermissible. Further, to the same effect are the conclusions recorded in paragraph 220 which are to the following effect:

“220. This Court is cognizant that the extraordinary circumstance of the COVID-19 Pandemic would have had a significant impact on the businesses of corporate debtors and upon successful resolution applicants whose plans may not have been sanctioned by the adjudicating authority in time, for myriad reasons. But the legislative intent of the statute cannot be overridden by the Court to render outcomes that can have grave economic implications which will impact the viability of IBC”.

In event the submission of the Appellant is accepted that due to financial difficulty he is unable to implement the plan and he be permitting to go back from the commitments made in the Resolution Plan, it shall have disastrous effect on the entire process undertaken. The IBC process consists of different steps with a ultimate object of reviving the Corporate Debtor. Permitting Successful Resolution Applicant to withdraw after the Plan has been approved will have serious disastrous effect on whole purpose and object of IBC. On the submission made by Counsel for the Appellant that since he had no financial capacity to implement the plan he should have been allowed to withdraw, the Adjudicating Authority has rightly rejected his application.

It is further submitted that financial in-capacity of the Appellant was due to no fault of the Appellant and it was due to subsequent developments. The above argument also cannot entitle the Appellant to withdraw from an approved Resolution Plan.

There is no merit in Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

sr/nn