

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Deccan Value Investors L.P. & Anr. Vs. Dinkar Venkatasubramanian & Anr.

Brief Facts

In the present case, by order of the Mumbai Bench of the NCLT, CIRP had been commenced in the case of Metalyst Forging Ltd. (Corporate Debtor). The adjudicating authority received an application from Deccan Value Investors L P and DVI PE (Mauritius) Ltd (the resolution applicants) seeking the withdrawal of the resolution plan due to the resolution professional's dishonesty and lack of information.

The Application has been denied by the adjudicating authority. The NCLT's ruling was overturned by the NCLAT. The parties filed cross appeals with the Supreme Court in accordance with Section 62 of the 2016 Insolvency and Bankruptcy Code.

Decision

The apex court cited its ruling in *Ebix Singapore Private Ltd vs. Committee of Creditors of Educomp Solutions Ltd and Others* (2022) 2 SCC 401, holding that a Resolution Plan cannot be revoked or altered once the Committee of Creditors has approved it. The Supreme Court stated that the Corporate Insolvency Resolution Process will be delayed, unclear, and more complicated if the Resolution Plan is allowed to be changed or withdrawn after Committee of Creditors approval. The Supreme Court upheld Ebix Singapore's position that the Resolution Plan is a product of code rather than a straightforward agreement between two parties.

The Adjudicating Authority's approval of the Resolution Plan binds all parties involved, even those who are not Committee of Creditors members, the Supreme Court stated. There are few and restricted grounds of scrutiny that the adjudicatory authority can use to approve the resolution plan. After the Committee of Creditors has approved the Resolution Plan, the Resolution Applicant cannot unilaterally alter, modify, or withdraw it.

The Resolution Applicant claimed that the Resolution Professional's deception or lack of information rendered it handicapped. Instead of coming from manufacturing, trading accounted for 70% of revenue. The Mott Macdonald Report contained factual errors. Regarding the uninstalled imported components that were stored in the country of sister concern, misleading and deceptive statements were given. While the forensic audit was proceeding, the resolution applicant was duped by false financial data.

The Court further noted that the arguments presented by the Resolution Applicant cannot be interpreted as evidence of Resolution Professional fraud. There has been no false or inaccurate information provided by RP. The information memorandum and virtual data room contained pertinent information; the court noted. The former directors and promoters of the corporate debtor requested that the Matt Macdonald Report be submitted; however, it is accompanied with disclaimers and conditions. The statement that imported press was kept in a subsidiary company has been verified. Transaction audit references were included in the Resolution Plan itself.

Also, that laypeople do not submit Resolution Plans. They are filed following the review of data and financial statements by subject-matter and financial specialists. There is a chance that the corporate debtor's records contain erroneous, disputed, or asymmetric data. It could take some time to complete a transaction audit, and the data might not be available prior to creating an information memorandum or establishing a virtual data room. Information Memorandums cannot be evaluated based on the "true picture of risk" requirement; rather, Resolution Professionals' information-provision obligation must be interpreted based on "best effort."

The Supreme Court reversed the finding of the NCLAT and also approved the Resolution Plan submitted by the Resolution Applicant.

Link of the Order

<https://ibbi.gov.in/uploads/order/af6f09333a560e65e6d621c81a81b9e9.pdf>



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