

Date: January 06, 2020

The Secretary Listing Department BSE Limited PJ Towers, Dalal Street, Mumbai - 400 001 Script Code: 532696	The Secretary Listing Department National Stock Exchange of India Limited Exchange Plaza, 5th Floor, Plot No. C/1, G Block, Bandra Kurla Complex, Bandra (East), Mumbai 400051 Script Code: EDUCOMP
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Sub: Submission of NCLT Order January 02, 2020

Ref. Intimation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Dear Sir/Madam,

This Letter is an intimation to Stock Exchange in respect of application filed by M/s. Ebix Singapore Pte. Ltd., Successful Resolution Applicant, with Hon'ble National Company Law Tribunal, Principal Bench at New Delhi ("NCLT") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking for withdrawal of its Resolution Plan already approved by the Committee of Creditors of the Corporate Debtor, M/s Educomp Solutions Limited.

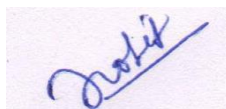
On January 02, 2020, the application filed by Resolution Applicant seeking withdrawal of the resolution plan was listed before the Principal Bench, NCLT for the pronouncement of order. The Hon'ble NCLT directed that the prayer of Resolution Applicant for withdrawal of Resolution Plan is allowed with cost of Rs. 1 lakh to be paid by the resolution applicant into the corpus of the Corporate Debtor. The Hon'ble NCLT has further granted extension of 90 days from 16.11.2019. The NCLT directed that the Resolution Professional and the members of Committee of Creditors are directed to expedite the possibility of achieving resolution of the stressed assets of the corporate debtor within the extended period. (NCLT Order enclosed)

The copy of Order, dated January 02, 2020, is enclosed for your reference.

This is for your information and record.

Thanking You.

Yours Sincerely,



Mohit Maheshwari
Authorized Signatory

Encl.: Copy of NCLT Order

Educomp Solutions Limited
(CIN: L74999DL1994PLC061353)
Corporate office: 514, Udyog Vihar, Phase III, Gurgaon – 122001, Haryana (INDIA).
Tel.: 91-124-4529000.
Registered Office: 1211, Padma Tower I, 5, Rajendra Place, New Delhi-110008.
Web site www.educomp.com; email: investor.services@educomp.com

THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI

C.A. 1816 (PB)/2018
IN
Company Petition No. (IB) – 101 (PB)/2017

In the matter of:

M/s. EBIX Singapore PTE LTD.

Applicant

Versus

Mr. Mahender Kumar Khandelwal

Resolution Professional

AND

In the matter of:

M/s Educomp Solutions Limited

Corporate Debtor

*Under Section 60 (5) of the Insolvency and Bankruptcy Code,
2016*

Judgment delivered on: 02.01.2020



Coram:

**MR. CHIEF JUSTICE (RTD.) M. M. KUMAR,
HON'BLE PRESIDENT**

**MR. S. K. MOHAPATRA,
MEMBER (TECHNICAL)**

PRESENTS:

For Resolution Applicant: Mr. Arvind Nayar, Sr. Adv,
Mr. Gautam Swarup, Mr. Anurag Rawal,
Ms. Upsana & Mr. Miilnd Mohul Ghosh,
Ms. Pragati Banka, Mr. Jayant Mehta &
Ms. Moulshree Shukla, Mr. Sumesh
Dhawan, Ms. Vatsala Kak & Ms. Geetika
Sharma, Advocates.

For the Ex-directors: Mr. U.K. Chaudhary, Sr. Adv,
Mr. Sumesh Dhawan, Ms. Vatsala
Kak & Mr. Dhruv Gupta,
Advocates.

For CA-2257(PB)/19: Ms. ITI Agarwal, Advocate.

For the RP: Ms. Anisha Mahajan, Advocate.



ORDER

S. K. Mohapatra, Member

1. The successful Resolution Applicant, M/s EBIX Singapore PTE. LTD. has filed the present application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 seeking for withdrawal of its resolution plan already approved by the committee of creditors of the Corporate Debtor, M/s Educomp Solutions Limited and for refund of the earnest money.
2. The case of the applicant in a nutshell is that it had submitted a resolution plan vide communication dated 27.01.2018 which was subsequently revised on 19.02.2018 (as amended vide amendment dated 21 February 2018). The Resolution Applicant also furnished a sum of Rs. 2 Crores by way of a Bank Guarantee towards earnest money deposit for the insolvency resolution process along with submission of the Financial Proposal.
3. Thereafter the said resolution plan submitted by the applicant was approved by the Committee of Creditors by 75.36% majority votes. Subsequently, the Resolution



Professional filed an application dated 07.03.2018 under Section 30 (6) of the Code, seeking approval of the Resolution Plan as approved by the Committee of Creditors.

4. The Resolution Applicant has sought for withdrawal of the Resolution Plan dated 21.02.2018, on account of several factors, inter alia, including:

(a) Inordinate lapse of time in the conclusion of the Corporate Insolvency Resolution Process initiated against the Corporate Debtor;

(b) Apprehensions of the Resolution Applicant as to erosion of the commercial viability of the Resolution Plan;

(c) Apprehensions as to severe mismanagement of funds, fraud and misconduct of the affairs of the corporate debtor during the period of 2014-2018;

(d) Investigations against the company by the Special Frauds Investigation Office and other governmental agencies; and

(e) On account of specific contractual stipulations forming the basis of the Resolution Plan, that the said plan would be valid for a mere period of six (6)



months from the date of its filing, leading to invalidity of the same by way of lapse of time.

5. The Committee of Creditors has filed Reply on 21.10.2019 raising objection that the withdrawal of a duly approved resolution plan will create uncertainty in the Corporate Insolvency Resolution Process and may not be permitted at this advanced stage. It is contended that the terms of the Resolution Plan are now binding on the Resolution Applicant and withdrawal of the Resolution Plan at this stage is not supported by the Code or by the various dicta governing operability of the provisions thereof.
6. One of the main objections raised by the CoC in its reply is that the relief claimed in the present application is barred by the 'Doctrine of Constructive Res Judicata'; as the prayer of applicant for withdrawal of the resolution plan has already been rejected by this Tribunal.
7. It is pertinent to note here that previously the applicant had filed two applications *inter alia* with similar prayer for withdrawal of the resolution plan submitted by the applicant vide CA No.1252/2019 filed on 05.07.2019 and CA No.1310/2019 filed on 12.07.2019.



8. The initial application filed by the applicant on 05.07.2019 bearing CA No.1252 (PB)/2019 inter alia contained the following prayer: -

*“Grant the Resolution Applicant sufficient time to re-evaluate its proposals contained in the resolution plan, and also to suitably revise/modify and/or **withdraw its Resolution Plan.**”* (emphasis given)

9. The said Application being CA No.1252 (PB)/2019 was dismissed vide order dated 10.07.2019. The entire text of the dismissal order dated 10.07.2019 is reproduced below for the sake of completeness: -

“CA No.1252 (PB)/2019

This is an application filed by one Ebix Singapore Pte. (sic.) limited seeking re-valuation of the Resolution Plan submitted by it before the Resolution Professional.

No ground for considering the prayer sought in the application is made out.

The application is dismissed as such.”



10. Learned senior counsel on behalf of CoC relying on several judgements argued that the applicant has already raised the very same issue of withdrawal of resolution plan earlier and the same having being considered and rejected and the dismissal of CA No.1252 (PB)/2019 being final, the applicant cannot be allowed to re-agitate the self-same matter again.
11. No doubt there was a prayer for withdrawal of resolution plan amongst others in CA No.1252 (PB)/2019, the prayer for revaluation was specifically declined dismissal order dated 10.07.2019. While dismissing CA No.1252(PB)/2019 the prayer for withdrawal of resolution plan was neither considered nor was ever dealt with. The issue of withdrawal of the resolution plan by the Applicant has never been considered consciously on merit and/or adjudicated upon in CA No.1252(PB)/2019.
12. *Doctrine of Constructive Res Judicata* does not apply to the issues/points, or any 'lis' between parties that has not been decided previously, and despite being pleaded, has not been considered by a court/tribunal and expressly dealt with in the order so passed.



13. Even a bare perusal of the Order dated 10.07.2019 would indicate that the issue of withdrawal of the Resolution Plan by the Resolution Applicant was not dealt with on merit and that no decision has either been passed or attained finality as regards allowing the party to withdraw the Resolution Plan.
14. It is also pertinent to note here that the Resolution Applicant had subsequently taken up the prayer for withdrawal of the Resolution Plan in the Application bearing CA No.1310 (PB)/2019. While dealing with the said Application, liberty was given to the Applicant vide order dated 01.09.2019 to re-file an application for withdrawal of the Resolution Plan. This direction further confirms that there was no conscious adjudication in CA No.1252(PB)/2019 on the issue of withdrawal of the resolution plan by the Applicant.
15. The question of applying res judicata therefore cannot arise in the present application seeking withdrawal of the resolution plan.



16. The CoC in its Reply has additionally averred that withdrawal of a duly approved resolution plan will create uncertainty in the corporate insolvency resolution process and may not be permitted at this advanced stage. It is contended that the terms of the Resolution Plan are now binding on the Resolution Applicant and there is no provision which allows a Resolution Applicant to withdraw a Resolution Plan once the same has been accepted and approved by the committee of creditors.

17. Respondent CoC have also contended that in terms of the mandate of Section 25(2)(h) of the Code "*No change or supplemental information to the Resolution Plan shall be accepted after the Resolution Plan Submission Date*". Therefore, it is contended that the Resolution Applicant having submitted, negotiated and consented to a resolution plan, after due acceptance of the condition, cannot now be allowed to approbate and reprobate and seek the withdrawal of its mutually consented resolution plan. In this respect applicant has relied on clause 7 of the Resolution Plan which envisages that the resolution plan



was valid for a term of six months from the date of submission of the plan.

18. It is also the contention of the CoC that considerable amount of money and time has already been invested in reviving the business of the Corporate Debtor and running the CIR Process, which would entirely go to waste if withdrawal of the resolution plan as sought in the present application is accepted. It was strenuously argued that allowing such a prayer of withdrawal of resolution plan would render the entire CIR Process a nugatory, thus, wasting the money, resources and time already invested in the process.

19. In this regard applicant has submitted that withdrawal of a Resolution Plan has been permitted by NCLT, Mumbai Bench in the case of Satyanarayan Malu vs. SBM Paper Mills M.A. 1396/2018, 827/2018, 1142/2018, & 828/2018 in C.P. (IB)-1362(MB)/2017. It is argued that there is no absolute bar under any of the provisions of the Code for the withdrawal of the Resolution Plan.



20. In the instant case the Resolution Plan is still pending before the Adjudicating Authority for approval. Under the provisions of Section 31 of the Code, a Resolution Plan becomes binding only after acceptance of a plan by the Adjudicating Authority.
21. Hon'ble Appellate Tribunal in the case of Deccan Value Investors L.P. v. Dinkar Venkatasubramanian in Company Appeal (AT) (Insolvency) No.222 of 2019 directed that *application for withdrawal of the resolution plan filed by the Resolution Applicant is to be decided before passing order under Section 31 of the Code.*
22. Accordingly, the present application for withdrawal of the resolution plan filed by the Resolution Applicant is to be decided first before passing any order under Section 31 of the Code.
23. Section 30 (2) (d) of the Code mandates the Adjudicating Authority to ensure that there are effective means of enforcement and implementation of the Resolution Plan. Similarly, the proviso to sub-section (1) of Section 31 of the Code mandates Adjudicating Authority to ensure effective implementation of the resolution plan. The



object in approval of the resolution plan is to save the corporate debtor and to put it back on its feet. An unwilling and reluctant resolution applicant, who has withdrawn his resolution plan, neither can put the corporate debtor back to its feet nor the effective implementation of its resolution plan can be ensured.

24. No doubt the withdrawal of the resolution plan at this advance stage has caused great prejudice to the creditors/stake holders and legal consequences on the withdrawal of the resolution plan shall follow as per law. The Resolution Professional and CoC are free to take action as per law consequent upon withdrawal of the resolution plan by the resolution applicant including on the issue of refund of the earnest money deposited by the applicant.

25. Be that as it may compelling an unwilling and reluctant resolution applicant to implement the plan may lead to uncertainty. The object of the Code is to ensure that the Corporate Debtor keep working as a going concern and to safeguard the interest of all the stake holders. The provisions of the Code mandate the Adjudicating Authority to ensure that the successful resolution applicant starts



running the business of the Corporate Debtor afresh. Besides Court ought not restrict a litigant's fundamental right to carry on business in its way under Article 19 (1) (g) of the Constitution. Once the applicant is unwilling and reluctant and itself has chosen to withdraw its resolution plan, a doubt arises as to whether the resolution applicant has the capability to implement the said plan. Uncertainty in the implementation of the resolution plan cannot also be ruled out.

26. In the facts the prayer for withdrawal of resolution plan is allowed with cost and also subject to other legal consequences as per law.

27. It is relevant to note here that the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated vide order dated 30.05.2017 passed in IB-101(PB)/2017. Under third proviso to sub-section (3) of Section 12 of the Code the corporate insolvency resolution process period has expired on 16.11.2019.

28. Ordinarily the Corporate Insolvency Resolution Process period must be completed within the outer time limit provided under the Code. However, in exceptional cases in



order to achieve a resolution and to avoid to drive the corporate debtor into liquidation, Adjudicating Authority (NCLT) can extend the outer time limit provided under the Code.

29. It is relevant to refer to the decision of the Hon'ble Supreme Court in Civil Appeal No. 8766-67 of 2019 in the matter of Committee of Creditors of Essar Steel India Limited Versus Satish Kumar Gupta & Ors. decided on 15th November 2019, where it was *inter-alia* held that:

“Thus, while leaving the provision otherwise intact, we strike down the word “mandatorily” as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant’s right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date,



including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso



to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation.” (emphasis given)

30. In the facts the Corporate Insolvency Resolution Process period in the present case is further extended by 90 days from 16.11.2019. The Resolution Professional and the members of Committee of Creditors are directed to expedite the possibility of achieving resolution of the stressed assets of the corporate debtor within the extended period.



31. C.A. 1816(PB)/2019 is partly allowed in the aforesaid terms with cost of Rs. 1 lakh to be paid by the applicant into the corpus of the Corporate Debtor.

Let copy of the order be served to the parties.

—Sd—

(M.M. KUMAR)

PRESIDENT

—Sd—

(S.K. MOHAPATRA)

MEMBER (TECHNICAL)