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NCLAT: Adjudicating Authority can extend payment timelines in a resolution plan without the concurrence of the CoC

In the recent decision of *Ashok Dattatray Atre & Ors. v. State Bank of India & Ors.*¹ National Company Law Appellate Tribunal (“NCLAT”) has reiterated that the extension of payment timelines under a resolution plan does not constitute a modification thereof, and the National Company Law Tribunal has the power to grant such extension even without the express concurrence of the committee of creditors (“CoC”).

Brief Facts

1. The resolution plan submitted by the appellant was approved by the CoC and by the Adjudicating Authority (“AA”) on April 16, 2021. The total amount under the resolution plan was to be paid in 6 (six) tranches. The period of implementation of the resolution plan was 3 (three) years, expiring on April 16, 2023 (from April 16, 2021).
2. The successful resolution applicant (“SRA” / “Appellant”) paid the first 3 (three) tranches in time. It, however, failed to make payment of the fourth tranche in April 2023 and the fifth tranche in October 2023.
3. The SRA filed an application for an extension of time for making the remaining payment. Separately, the CoC (through SBI) filed an application for liquidation of the corporate debtor based on the SRA’s default. The SRA objected to SBI’s liquidation application.
4. The AA allowed the CoC’s liquidation application and dismissed the SRA’s application for extension on the ground that the AA should refrain from modifying the terms of the approved resolution plan unless the same is concurred by the CoC. Therefore, the AA cannot consider the request for an extension given the CoC’s express prayers for liquidation. The AA further observed that the SRA should have looked at alternate sources of funding to make payments on the committed timelines under the resolution plan.
5. Aggrieved, the SRA filed an appeal before the NCLAT, New Delhi.
6. Before the NCLAT, the Respondent argued, *inter alia*, that the extension of timelines would amount to a modification of the resolution plan which is prohibited in view of the decision of *Ebix Singapore*².

¹ Company Appeal (AT) (Insolvency) Nos. 221 and 222 of 2024, NCLAT, New Delhi (judgement dated April 8, 2024)

² *Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Ltd. & Anr.*, (2022) 2 SCC 401

Issue

Whether the AA has the power to extend the payment timelines of a resolution plan without the concurrence from the CoC?

Findings and Rationale

The NCLAT allowed the appeal, set aside the orders of the AA and allowed the SRA's application for extension of time, on the following basis:

1. The extension of timelines for complying with financial obligations under the resolution plan does not constitute a modification of the resolution plan. The NCLAT relied on its previous judgments in the cases of *Tricounty Premier Hearing Services*³, *GP Global Energy Pvt. Ltd.*⁴, and *Consortium of Jalan and Fritsch*⁵ on the same point. Hence, once there is no modification of the resolution plan, the bar (on modification of plan) laid down by *Ebix Singapore* (supra) does not apply.
2. For the extension of payment timelines, it is not necessary that CoC should express its concurrence. The AA has the power and jurisdiction to allow such extensions.
3. However, the NCLAT held that for any extension beyond the period of implementation (expiring on April 16, 2023), the SRA would be liable to payment of interest at the prevalent rates fixed by SBI.
4. Separately, the NCLAT also allowed the SRA to proceed to sell the (mortgaged) assets of the corporate debtor to make payment under the resolution plan since such sale was contemplated as an 'Alternate Source of Funding' under the resolution plan. The CoC's objection to such a sale was also rejected.

Conclusion

By this decision, the NCLAT eliminates common roadblocks faced by resolution applicants in the dynamic circumstances of the implementation phase of the resolution plan. These important clarifications regarding the non-requirement of the CoC's concurrence and the sale of assets for making payments under the resolution plan would go a long way in making plans more workable and secure investors' interests. It is judgements like these that advocate the need for the AA to be involved even during the implementation of the resolution plan with a pro-implementation approach and to deter resorting to liquidation.

³ *Tricounty Premier Hearing Service Inc. vs. State Bank of India & Ors.*, in Company Appeal (AT) (Insolvency) No.1038 of 2021

⁴ *GP Global Energy Pvt. Ltd. vs. Mr. Sandeep Mahajan and Anr.*, Company Appeal (AT) (Insolvency) No.954 of 2021

⁵ *State Bank of India and Ors. vs. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch and Anr.*, Company Appeal (AT) (Insolvency) No.129 & 130 of 2023

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