



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. 6012/ND/2022

IN

Company Petition No. (IB)-71(ND)/2019

IN THE MATTER OF:

Edelweiss Assets Reconstruction Company Limited

... Applicant/Financial Creditor

Versus

Pawan Doot Estate Private Limited

... Respondent

AND IN THE MATTER OF IA. NO. 6012/ND/2022:

Edelweiss Assets Reconstruction Company Limited

... Applicant

VERSUS

Mr. Darshan Singh Anand

Resolution Professional of

Pawan Doot Estate Private Limited

C/o Sumedha Management Solutions Private Limited

Address at :

B-1/12, 2nd Floor,

Safdarjung Enclave

New Delhi - 110029

... Respondent

Order Delivered on: 18.01.2023

SECTION: Section 60(5) of IBC 2016

CORAM :

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. IPS Oberoi for SRA

For the Respondent : Sr. Adv. Sudhir Makkar, Adv. Aditya Vashisht

For the RP : Adv. Ruchi Goyal



ORDER

PER: SHRI. L. N. GUPTA, MEMBER (T)

The present IA No. 6012 of 2022 has been filed by Edelweiss Assets Reconstruction Company Limited (hereinafter, referred to as the “**Applicant**”/ “**EARCL**”), who is a Financial Creditor and one of the members of the CoC of Pawan Doot Estate Pvt. Ltd. (hereinafter, referred to as “**Corporate Debtor**”/ “**CD**”) under Section 60(5) of IBC, 2016, read with Rule 11 of NCLT Rules, 2016 seeking the following reliefs:

- “a) Defer the passing of any order in respect of IA No. 1077/2020 i.e. application for approval of resolution plan for a period of Four weeks till a final outcome of the Settlement Proposal can be achieved and can be informed to this Hon'ble Tribunal;*
- b) Pass any other and further order(s) which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case.”*

2. To put succinctly, the facts of the present case are that Sh. Darshan Singh Anand (hereinafter, referred to as “**RP/Respondent**”) had filed an Application bearing No. IA-1077/ND/2020 under Section 30(6) of IBC, 2016 for seeking approval of the Resolution plan submitted by a consortium of Mr. Pradeep Kumar Lathar and M/s. Mehar Footwear Private Limited [hereinafter referred to as “**Successful Resolution Applicants**”/“(SRA)"]. The said Application was heard by this Adjudicating Authority and reserved for orders on 02.12.2022.



3. Through the present IA, the Applicant has sought deferment of passing of orders reserved in IA-1077/ND/2020 (which is an application for Approval of Resolution plan) by 4 weeks. It is stated by the Applicant/EARCL that:

3.1. A “Settlement Proposal” under Section 12A of the IBC has been received from the promoter of the Corporate Debtor, namely, Mr. Hem Singh Bharana, which has already been accepted by the management of the Applicant/EARCL and also by the competent authority of the Canara Bank, and the response from the remaining member of the CoC i.e., Bank of India on the said Settlement Proposal is awaited.

3.2. This Tribunal vide its Order dated 23.11.2022 has dismissed another IA-5694/2022 filed by the said Promoter - Mr. Hem Singh Bharana, seeking hearing of the application for approval of Resolution Plan in abeyance in view of the pendency of consideration and voting on the said Settlement Proposal by the CoC of the Corporate Debtor. Thereafter, this Tribunal has finally heard the Resolution Plan application i.e., IA-1077/2020 and reserved the same for orders. Therefore, the Applicant apprehends that any order passed at this stage by this Tribunal while the Settlement Proposal is at the final stage of either approval or rejection by one remaining member of the CoC, may be severely prejudicial to the interest of all the CoC members and would defeat the primary objective of value maximization under the IBC.

3.3. During the pendency of the CIRP, Mr. Hem Singh Bharana, promoter of the Respondent had approached the members of the CoC,



namely, EARCL, Canara Bank and Bank of India for settlement of the debt of the Respondent. Based on discussions, the Promoter submitted a Settlement Proposal dated 31.05.2022, whereby it has proposed to pay a total amount of INR 16.37 crore (“Settlement Consideration”) towards one-time settlement of the debt. Further, vide the said Settlement Proposal, the Promoter has proposed an upfront payment of 15% of the settlement consideration and pay the balance amount within 90 days from the date of the order passed by this Tribunal permitting withdrawal of CIRP of the Corporate Debtor under Section 12A of IBC.

3.4. The aforesaid Settlement Proposal submitted by the Promoter of the Respondent was discussed at length in the joint Lenders Meeting (“JLM”) held on 18.07.2022. The members were apprised of the fact that the Settlement Proposal received from the Promoter is better as compared to the Resolution Applicant's Plan in the CIRP in respect of timelines and the amount provided under the plan. In the said meeting, it was decided that the upfront amount is required to be increased from 15% to 20% of the settlement consideration. In the event the said proposal is accepted by the CoC and subsequently, if the Promoter fails to deposit the balance settlement consideration within 90 days of the order of this Tribunal permitting withdrawal of CIRP under Section 12A IBC, the said upfront payment of 20% deposit shall be forfeited.

3.5. In furtherance of the said settlement proposal, the Promoter has deposited with the Applicant/EARCL, a sum of Rs. 3.27 crore being the upfront payment of 20% of the total settlement consideration vide Demand Draft bearing no. 637758 dated 06.08.2022. The



Applicant/EARCL vide its letter dated 12.08.2022, has duly acknowledged the receipt of the upfront amount as per the Settlement Proposal and has informed the Promoter that the settlement shall be placed before the CoC for its consideration and formal voting process.

3.6. The approval of the Settlement Proposal submitted by the promoter was duly communicated by Canara Bank, being another member of the CoC of the Corporate Debtor, vide its E- mail dated 13.09.2022. In the said E-mail, it is informed that the competent authority of the Canara Bank has approved the said proposal submitted by the ex-promoter for filing the withdrawal application under Section 12A of the IBC.

3.7. The Applicant/EARCL has intimated vide E-mails dated 26.09.2022 and 21.11.2022 to the RP that the lenders are in the process of entering into a settlement with the Promoter and that of M/s. Angad Infrastructure Pvt Ltd. However, despite the above intimations, the RP proceeded ahead with the hearing of the plan approval application.

3.8. The Applicant has further submitted that the final decision from Bank of India on the Settlement Proposal is expected very shortly and, in the meanwhile, this Tribunal may defer passing of any order(s) in respect of the Plan approval application i.e., IA-1077/2020 which was heard on 02.12.2022, in the interest of justice and objectives of IBC.

4. During the course of hearing of the present Application on 22.12.2022, this Bench had raised a query regarding maintainability of the present Application. The Ld. Senior Counsel appearing for the Applicant, in response to the same, stated that the withdrawal of CIRP



under Section 12A of IBC, 2016 can be considered by the CoC at any stage and, even after the approval of the Resolution Plan by the CoC. In order to support its contention, he relied upon the Judgment of the Hon'ble NCLAT passed in the matter of **“Shaji Purushothaman Vs. Union Bank of India & Ors.” in Company Appeal (AT) Insolvency No. 921 of 2019** dated 06.09.2019. He further added that withdrawal of CIRP by CoC is the commercial wisdom of CoC and relied upon the Judgement of the Hon'ble Apex Court passed in the matter of **“Vallal RCK vs. M/s. Siva Industries and Holdings Limited and Others” in Civil Appeal Nos. 1811-1812 of 2022.**

5. The Ld. Counsel, appearing on behalf of the Successful Resolution Applicant (SRA) opposed the prayer made by the Applicant and submitted that the arguments, which have been advanced by the Ld. Sr. Counsel for the Applicant in the present matter, were also advanced during the hearing in the Hon'ble NCLAT on 13.12.2022 of the Company Appeal (AT) (Ins) No. 1481 of 2022 preferred by the promoter against the rejection of IA-5694/2022 by this Adjudicating Authority. He further submitted that the Hon'ble NCLAT has, inter alia, held that an order passed by this Adjudicating Authority on plan approval application shall abide by the result of the said appeal. Ld. Counsel further submitted that the order in the said Appeal is reserved by the Hon'ble NCLAT on 13.12.2022.

6. Ld. Counsel appearing for the RP submitted that the Resolution Plan once approved by the COC, heard and order reserved by this Adjudicating Authority, the question of settlement under Section 12A



does not arise. In this regard, Ld. Counsel for the RP relied on the Judgements of the Hon'ble NCLAT passed in the matter of **“Kalinga Allied Industries India Private Limited Vs. Committee of Creditors & Ors” in Company Appeal (AT) Insolvency No. 689 of 2021 dated 19.12.2022** and the Judgement of the Hon'ble Apex Court passed in the matter of **“Ebix Singapore Private Limited Va. Committee of Creditors of Educomp Solutions Ltd. & Anr”**.

7. We have heard the submissions made by the parties and perused the documents and the judgements placed on record. It is a matter of fact as well as record that the Resolution Plan of the Corporate Debtor in the present matter is approved by the CoC with 100% votes, which means that all the members of the CoC have duly assented to it. The said Resolution Plan upon approval by CoC with requisite majority, as per the provisions of the IBC 2016, is filed by the RP vide IA-1077/2020 for seeking approval of this Adjudicating Authority. Accordingly, this Adjudicating Authority heard the IA-1077/2020 on 02.12.2022 and reserved the same for orders.

8. Whereas the Resolution Plan heard by this Adjudicating Authority has the assent of CoC with 100% votes and the IA No. 1077/2020 is duly preferred by the RP, the present Application seeking deferment of orders is neither filed by the RP nor by the CoC, rather it has been preferred by one of the members of the CoC i.e., the EARCL, who seems to have accepted the settlement proposal of the promoter outside the IBC-provided forum of CoC and has taken upon itself through a parallel route to seek approval from the other members of CoC. Admittedly, the said



proposal has yet to receive the assent of the third member of CoC and is yet to be placed before the CoC and considered by the CoC. We also note that at present, there is no proposal placed before this Adjudicating Authority through RP for withdrawal of the CIRP of the Corporate Debtor under Section 12A of IBC, 2016, even after the lapse of 04 weeks as prayed for.

9. Though there is no proposal of RP or resolution of CoC on record to consider withdrawal of the CIRP of the CD, we would still like to examine, **whether the said “settlement proposal” can even be considered under Section 12A of IBC, 2016, once the Resolution plan is already approved by the CoC and heard conclusively by the Adjudicating Authority?**

10. At this juncture, we would like to refer to the Judgement passed in the matter **of Union Bank of India Vs Kapil Wadhawan & Ors Company Appeal (AT) (Insolvency) No. 370 of 2021 dated 27.01.2022**, wherein **the Hon’ble NCLAT** held the following:

“9.6 Based on the law laid down by Hon'ble Supreme Court in the cases mentioned above, it is clear that;

a) Once the Resolution Plan is approved by a 100 per cent voting share of the CoC. The jurisdiction of the Adjudicating Authority was confined by the provisions of Section 31(1) to determining whether the requirements of Section 30(2) have been fulfilled in the plan as approved by the CoC.

b) Once the requirements of the IBC have been fulfilled, the Adjudicating Authority and the Appellate Authority are duty-bound to abide by the discipline of the statutory provisions. Neither the Adjudicating Authority nor the Appellate Authority



has an unchartered jurisdiction in equity. The jurisdiction arises within and as a product of a statutory framework.

c) The jurisdiction of the Adjudicating Authority is confined by the provisions of Section 31(1) to determining whether the requirements of Section 30(2) have been fulfilled in the plan as approved by the CoC.

d) There was no scope for negotiations between the parties once the CoC had approved the Resolution Plan. Thus, contractual principles and common law remedies, which do not find a tether in the wording or the intent of the IBC, cannot be imported in the intervening period between the acceptance of the CoC and the Approval by the Adjudicating Authority.

9.7 In the instant case, we found that after Approval of the Resolution Plan by the Committee of Creditors, the application was pending before the Adjudicating Authority under Section 31 of the Insolvency and Bankruptcy Code, 2016, for Approval of the resolution plan the Adjudicating Authority accordingly while disposing of the Interim Application, IA no. 2431 of 2020, directed the CoC to consider the 'Ind Settlement Proposal' of the First Respondent, i.e. Applicant/ Promoter, within ten days and take an appropriate decision

9.8 Considering the ratio of the Judgement of the Hon'ble Supreme Court in the case of Ebix Singapore (supra), "there was no scope for negotiations between the parties once the CoC has approved the Resolution Plan. Thus, contractual principles and common law remedies, which do not find a rope in the wording or the intent of the IBC, cannot be imported in the intervening period between the acceptance of the CoC Approved Resolution Plan and the Approval by the Adjudicating Authority."

9.9 The said exercise was beyond the jurisdiction of the Adjudicating Authority hence unsustainable and liable to be set aside."

11. On perusal of the Judgement (Supra), it becomes clear that there is no scope for any settlement/negotiation between the parties, once the CoC has approved the Resolution Plan of the Corporate Debtor.



12. The Applicant had relied upon the Judgement of the Hon'ble NCLAT in the matter of "**Shaji Purushothaman Vs. Union Bank of India & Ors.**" in **Company Appeal (AT) Insolvency No. 921 of 2019**, dated 06.09.2019 but the same cannot be treated as a precedent in view of the fact that the Judgement of Hon'ble NCLAT in **Union Bank of India Vs Kapil Wadhawan & Ors Company Appeal (AT) (Insolvency) No. 370 of 2021 dated 27.01.2022** and the Judgement of Hon'ble Supreme Court passed in the matter of **Ebix Singapore Private Limited Va. Committee of Creditors of Educomp Solutions Ltd. & Anr.**" **Civil Appeal No. 3224 of 2020**, dated 13.09.2021, are of subsequent dates.

13. Hence, we are of the considered view and accordingly, conclude that once the Resolution Plan of a Corporate Debtor is approved by the CoC, there is no scope of settlement/negotiation between the parties. In the instant case not only the Resolution Plan has been approved by the CoC with 100% voting but also the Application filed by the RP seeking approval of the said Resolution Plan has been heard and reserved for orders. Therefore, we are not inclined to allow the present Application.

14. **The IA is accordingly Dismissed.**

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (J)