



INSOLVENCY & BANKRUPTCY

Whether a resolution plan can be modified post approval?

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Under the Insolvency and Bankruptcy Code, 2016 (“**I&B Code**”), a Corporate Insolvency Resolution Process (“**CIRP**”) is initiated with an order of the Adjudicating Authority (“**NCLT**”) admitting an application by a creditor or debtor. As soon as the application under relevant sections of the I & B Code is admitted, a Resolution Professional (“**RP**”) is appointed by the NCLT.

The RP then constitutes the Committee of Creditors (“**CoC**”) as provided under the I&B Code. Further, prospective resolution applicants are invited to submit a resolution plan and thereafter, the plan is voted and approved by the CoC and the NCLT respectively. Once approved, the resolution plan is binding on all the stake holders.

In *QVC Exports Pvt. Ltd. vs RP Deloitte Touche Tohmatsu India LLP*^[i] (dated:- 28th January 2020) a resolution plan was submitted jointly by the appellants during the CIRP, which was approved unanimously by the CoC and subsequently by the NCLT. The resolution plan provided for the percentage of shareholding of each of the applicants and accordingly, fresh equity shares were issued to applicants.

After a period of thirteen months, one of the joint applicants approached the NCLT to obtain orders for rectification of a mistake in the resolution plan, regarding the shareholding of both the applicants. The NCLT passed orders to rectify the said resolution plan and for re issuance of the equity share capital according to the rectified resolution plan.

Aggrieved by the order, the other joint resolution applicant approached the National Company Law Appellate Tribunal (NCLAT).

Allowing the appeal the NCLAT made the following observations:-

*** NCLT did not hear both parties before passing the order**

The resolution plan was submitted by two applicants jointly and hence an application for a change in the resolution plan affecting the rights of the other party, should have been applied by both parties and not unilaterally. The NCLT erred in passing orders in favor of one party only.

*** Resolution Plan once attained finality cannot be modified**

Relying on the Supreme Court order in *Rahul Jain v. Rave Scans (P) Ltd*^[ii], which held that a resolution plan once attained finality cannot be modified by the order of the tribunal, the NCLAT observed that the tribunal erred at passing an order which modified the resolution plan substantially affecting the rights of other parties.

The NCLAT also relied on *R G G Vyapar Pvt Ltd v Arun Kumar Gupta*^[iii], where the appellate court itself held that the NCLT has no power to reopen a resolution process under section 31 of the I&B Code.

*** Rule 11 of NCLT rules does not apply**

Rule 11 of the NCLT Rules, 2016 entails the inherent powers of the tribunal. However, the NCLAT held that Rule 11 cannot be applied for reopening or modifying an approved resolution plan by the NCLT. After approval of the plan, the powers of the NCLT are confined to Section 60 of the I&B Code.

Pressing on the limited powers of the NCLT after approval of the resolution plan, the NCLAT held as follows:-

“Since rectification of the resolution Plan does not involve the question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code, therefore it is not permitted to modify the Resolution Plan under the guise of inherent powers of the Tribunal.”

Hence the NCLAT held that the NCLT does not have the jurisdiction to amend an approved resolution plan and hence set aside the order of the NCLT and allowed the appeal.

^[i]Company Appeal (AT) (Insolvency) No. 1351 of 2019

^[ii](2019) 10 SCC 548

^[iii]Company Appeal No.509 of 2018