

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

106. IA/2141/2024 IN C.P. (IB)/518(MB)2022

IN THE MATTER OF

Saraswat Co-op. Bank Ltd

VS

SRISTI HOSPITALITY PRIVATE LIMITED

Section 7 of the Insolvency & Bankruptcy Code, 2016

Order Delivered on 07.05.2024

CORAM:

MS. REETA KOHLI
MEMBER (J)

MS. MADHU SINHA
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

RP in person:	Rajan Agarwal (VC)
For the Respondent No. 1:	Adv. Amir Arsiwala (PH)
For the Respondent No. 3:	Adv. Manoj Mishra (PH)
For the Applicant:	Adv. Satwinder Singh (PH)

ORDER

I.A. 2141/2024

1. The prayers in the I.A. are as follows:
 - i. *Pass an order directing a fair valuation of the property of the Corporate Debtor, to be carried out by an independent valuer;*
 - ii. *Pass an order declaring the COC minutes recognizing the Respondent No. 3 as the successful resolution applicant as void;*
 - iii. *Pass an order declaring the CIRP process of the Corporate Debtor as null and void;*

iv. Pass such order(s), as this Hon'ble Tribunal may deem just and appropriate in the facts and circumstances of the case.

2. At the outset, the Respondents have raised a preliminary objection stating that the prayer made in the I.A. is not maintainable as the resolution plan already stands approved by the COC on 28.07.2023 and after hearing the same, it stands reserved for orders by the Ld. Tribunal.

3. The Ld. Counsel for the Applicant submits that the Corporate Debtor was not a running concern but was only owner of the commercial property which is situated at Vile Parle and the same was rented out to McDonald's. The Ld. Counsel submits that the value of the said property in the year 2017 was stated to be Rs. 57,65,60,450/- whereas the valuation of the same property in the year 2020 was stated to be Rs. 76.72/- Crores. Both the valuation reports are placed on record. The Ld. Counsel while questioning the wisdom of the COC submits that the entire plan value is stated to be Rs. 32 Cr. and hence the prayer in present application requesting for fair valuation of the property etc. etc. is aptly maintainable.

4. The Counsel has further submitted that he being the MSME should have been given the first opportunity to present his resolution plan which he never got. Even the notice of COC proceedings was not given on regular basis but was informed about few meetings only.

5. On the other hand, the Ld. Counsel for the Respondent has vehemently reiterated that the resolution plan in the present case has already been reserved for orders. The Ld. Counsel has submitted that plan in the present case was approved way back by the COC. In view of the plan already having been reserved for orders, the Applicant does not deserve any indulgence at this belated stage. The Ld. Counsel for the Respondent has relied upon the judgment of the Hon'ble NCLAT in *Company Appeal (AT) (Ins.) No. 1633 of 2023 in the matter of Committee of Creditors Through its Representative Jaga Ath Kar Vs. Anil Tayal Resolution Professional of Horizon Buildcon Pvt. Ltd.* wherein the Hon'ble NCLAT has been pleased to hold that once the resolution plan stands approved, even the prayer of COC for another valuation report does not deserve any consideration as the COC has already deliberated upon the same and so long as the procedure under the Code has been followed and the plan stands approved by the COC no indulgence can be granted. Thus, in view of the above said, the present application merits no consideration.

6. In addition, the Ld. Counsel has also relied upon in "*Company Appeal (AT) (Insolvency) No. 1481 of 2022 in the matter of Hem Singh Bharana Vs. M/s. Pawan Doot Estate Private Limited Through Sh. Darshan Singh (Resolution Professional), Sumedha Management Solutions Pvt. Ltd. and Anr.*" wherein the Hon'ble NCLAT has been pleased to hold as under:

“The law laid down by the Hon’ble Supreme Court as indicated in the above paragraphs is clear that the approval by the COC of a Resolution Plan is not in the realm of contract, but is insulated by the Scheme under the code and thus bind both the Successful Resolution Applicant as well as COC. The Hon’ble Supreme Court in the Ebix itself has laid down timelines provided in the Code have to be adhered to. In event, the submission of the Appellant is accepted that even after the approval of the Plan by the COC, the COC be given power to entertain a Settlement Proposal by the Ex-Promoter, the timelines for the different process and its finality shall be breached. Approval by the COC of a Resolution Plan has to be in accordance with its commercial wisdom and when COC approves a Plan and the Resolution Applicant is prohibited to modify or withdraw from the Plan, same embargo has to be accepted on COC also from changing its stand. The judgment of the Hon’ble Supreme Court in Ebix Singapore lays down that after approval by the COC of a Resolution Plan, COC itself is bound by its decision and cannot be allowed to go back from its decision and pass any other resolution. This has to be accepted to give finality on different steps of the IBC and for timely conclusion of the resolution process.”

7. Thus, the Ld. Counsel has submitted that, in view of the timelines given by the IBC and in view of the fact that the resolution plan has been approved by the COC no indulgence at such belated stage can be granted.

8. In view of the submissions made by the Ld. Counsels and in view of the timelines set out under the IBC, we are of the considered opinion that the application by the Applicant is much delayed. Particularly, in view of the fact that, COC has approved the plan in July-2023 and this Hon'ble Tribunal too has already heard the resolution plan and the plan is reserved for orders.

9. Without commenting upon the merits of the allegations of the Applicant, we deem it appropriate to reject the present I.A.

Sd/-
MADHU SINHA
Member (Technical)
Shubham

Sd/-
REETA KOHLI
Member (Judicial)