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The logo for Epiq, featuring the word "epiq" in a lowercase, sans-serif font. The letter "i" has a blue dot, and the letter "q" has a blue tail that curves upwards and to the right.

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Scope of Judicial Review: Approval of a Resolution Plan – The Deccan Saga

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INTRODUCTION:

The Insolvency and Bankruptcy Code (“IBC”) was enacted with an aim to redress the staggering woes and glitches endured by corporate persons, partnership firms, and individuals in India, owing to scattered bankruptcy laws, in a time bound and transparent manner. However, despite the robust mechanism as envisaged under IBC, the judicial interference at times resulted in unwanted delay of approval coupled with modifications, if any, of a Resolution Plan as duly approved by the Committee of Creditors (CoC). The Hon`ble Supreme Court of India /Apex Court in the case of SREI Multiple Asset Investment Trust Vision India Fund v Deccan Chronicle Marketeers & Ors¹ has reiterated the scope of limited judicial intervention while approving a resolution plan and conclusively settled the issue as regards “whether a Resolution Plan approved by Committee of Creditors (“CoC”) can be altered after obtaining such approval”.

The Hon`ble Apex Court held that “once the Resolution Plan stands approved, no alterations/modifications are permissible. It is either to be approved or disapproved, but any modification after approval of the Resolution Plan by the CoC, based on

its commercial wisdom, is not open for judicial review unless, it is not found to be in conformity with the mandate of the IBC Code”.

FACTS OF THE CASE:

A Petition was filed by Canara Bank against Deccan Chronicle Holdings Ltd. (“Corporate Debtor / CD / DCHL”) and the Corporate Insolvency Resolution Process (“CIRP”) was initiated under the provisions of IBC against CD as per the Order passed by the National Company Law Tribunal (“NCLT/ Adjudicating Authority/AA”) Hyderabad Bench. Resolution Professional (“RP”) filed an interlocutory application on behalf of CD seeking declaration that CD is owner of the Brand Name / Trademarks “Deccan Chronicle” (English) and “Andhra Bhoomi” (Telugu) (“Trademarks”) and it forms part of assets of CD, the said application was opposed by a Partnership Firm “Deccan Chronicle Marketeers” (“Firm”) and others on the ground that only right to use the trademarks as a licensee was granted to CD and not ownership rights.

Meanwhile, Resolution Plan (“said Plan”) was submitted by SREI Multiple Asset Investment Trust Vision India Fund a Successful Resolution Applicant (“SRA”) being the Financial Creditor of CD and having 6.71% of the total



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outstanding admitted financial debt against CD. Clause 11.12 of the said Plan laid down that AA to pass necessary Orders /give direction to the effect that CD has perpetual exclusive rights to use the trademarks specified therein without any financial implications for purposes of running its business. The said Plan was approved by CoC with 81.39% of voting rights as found in compliance with sections 30(2) and 30(4) of IBC read with regulation 39 of IBC (Insolvency Resolution Process of Corporate Persons) Regulations, 2016("IBC Regulations")

AA approved the said Plan conditionally under sections 30(6) and 31 of IBC read with Regulation 36(4) of IBC Regulations, subject to a condition in reference to rights over brand name /trademarks of the CD. Pursuant to which AA allowed the said application holding that CD has exclusive right to use the Trademarks and also made a declaration that CD was owner of the Trademarks. This Order was challenged by the said Firm & Others before

the Hon`ble National Company Law Appellate Tribunal ("NCLAT") and was set-aside on grounds that it amounted to modification of the said Plan. Further that the order passed is illegal as AA has transgressed the jurisdictional limits and is impermissible in law as it is not in terms of Section 60(5) of IBC. SRA challenged the NCLAT Order in the Hon`ble Apex Court and Hon`ble Apex Court upheld the same.

HELD:

A. CD was never the owner of the Trademarks but a mere licensee and only had right to use the said trademarks. Thus, the only right available to SRA was to use the brands/ Trademarks exclusively but not the ownership rights of trademarks of the CD.

B. CoC approved only perpetual exclusive right of CD to use the brands and nowhere had it indicated regarding the right of ownership over trademarks /brands of CD. The said Plan submitted

by SRA more particularly the Clause 11.12, only sought right to use the trademarks and it was only after the approval of the said plan that ownership has been claimed by the RP. Thus, Order passed by AA upholding exclusive right of CD to use the trademarks alongwith a declaration that Trademarks belonged to the CD does not reconcile with the said Plan, tantamounts to modification of the said Plan which is indisputably impermissible in law.

C. Hon`ble Apex Court placed reliance on *Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Another*² where it was held that "Enabling withdrawals or modifications of the resolution plan at the behest of the successful resolution applicant, once it has been submitted to the adjudicating authority after due compliance with the procedural requirements and timelines, would create another tier of negotiations which will be wholly unregulated by the statute."



D. Thus, any modification after approval of the Resolution plan by the CoC based on its commercial wisdom is not open for Judicial Review unless, it is found to be not in conformity with the mandate of the IBC Code.

CONCLUSION:

Hon`ble Apex Court`s Order has not only settled the law pertaining to modification of Resolution Plan after obtaining approval but also clarified that the jurisdictional bounds of Adjudicating Authority do not get extended on basis of Section 238 and Section 60 (5) of IBC. The said order has also recognised the legal position that ownership rights cannot be positively sought in the form of a declaration by the AA under an approved resolution plan.

Thus, the Order of the Hon`ble Supreme Court has reemphasised on the supreme role of the CoC and instilled confidence of the Creditors in giving finality to the terms of an approved resolution plan based on their commercial wisdom dealing with the assets of the Corporate Debtor. The said order shall indeed have a positive impact on the resolution mechanism provided under the IBC and encourage as well as promote entrepreneurship & investment opportunities in India. ¹

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¹(2023) ibclaw.in 32 SC
²2022) 2 SCC 401