

The Journey of Resolution of Essar Steel India Limited (ESIL) under IBC

The resolution of Essar Steel India Limited (ESIL), the largest of the 12 accounts in the first list referred to insolvency under the IBC, 2016 (Code) by the Reserve Bank of India (RBI) in June 2017, has been significant for the financial eco-system from various dimensions. Apart from the single largest resolution under IBC, it resulted in the highest ever realization from a stressed asset to the banks in terms of quantum and percentage of amount realized by creditors.

ESIL was admitted into corporate insolvency resolution process (CIRP) on August 2, 2017 and Satish Kumar Gupta was appointed as Interim Resolution Professional (IRP) who was confirmed as Resolution Professional (RP) by the Committee of Creditors (CoC). During the course of resolution of ESIL, IBC as a resolution mechanism for stressed assets has been comprehensively tested in a large and complex account like ESIL with two rounds of litigations going right up to the Supreme Court thereby establishing the credibility, effectiveness and transparency of the CIRP. Besides, during the CIRP several precedents were established in litigations and courts interpreted/clarified various key issues under the IBC which have added value to the IBC regime.

It also demonstrated that not only CoC regime can be implemented successfully under IBC, but operational excellence can also be achieved during this period. This journey also shows that other than multi-domain knowledge, interpersonal skills to manage stakeholders with different interest and ability to resolve conflicts are very important competencies of insolvency professional.

The case is interesting with sunshine and clouds in its path and is valuable for IBC ecosystem for constructive roles played by various stakeholders for the maximization of value of assets in spite of having, at times, conflicting objectives. Read on to know more...




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Introduction

Essar Steel India Limited (ESIL), an integrated steel producer with an installed steel-making capacity of 9.6 million tonnes per annum (MTPA), was promoted by the Ruia/Essar group. ESIL, in top four steel manufacturers in India and the largest integrated steel manufacturer in the Western India, has manufacturing operations strategically located in the Western India in close proximity to the major steel market. Its product portfolio includes hot rolled steel, cold rolled steel, galvanised and colour coated coils, plates, pipes, etc.

ESIL has produced steel used in some of India's most iconic public works projects such as the Bogibeel Bridge (India's longest railway bridge) on Brahmaputra River in Assam and Chenab Bridge on Chenab River in Jammu & Kashmir. It also produces bullet proof steel used in warships, battle tanks, armoured vehicles and steel used in many of India's most recognizable automobile and industrial products.



CASE STUDY
Essar Steel India Limited
(ESIL) under IBC

Performance Analysis of
M/S Essar Steel India Limited (ESIL)
Pre, During and Post CIRP

Case Study by
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Sponsored by
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ESIL's manufacturing facilities primarily comprise:

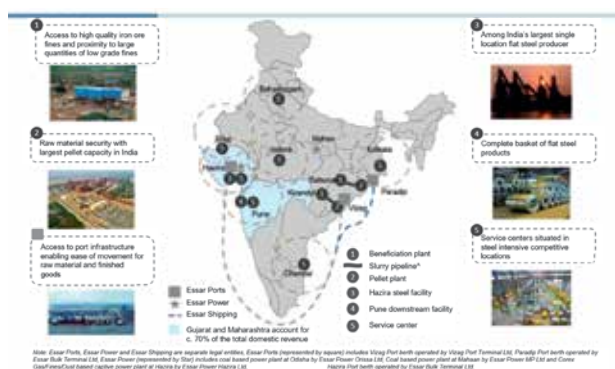
1. Beneficiation plant at Kirandul and Dabuna (Odisha and Chhattisgarh) and pelletisation plants at Paradip and Vizag (Odisha and Andhra Pradesh).
2. Integrated steel complex situated in Hazira, Surat, Gujarat;
3. Downstream capability hub located in Pune, Maharashtra; and
4. Seven service centres in various parts of India to cater to needs of its end-customers

The equity share capital of ESIL, an unlisted company, was 97.5% owned by the Ruia group (the promoters) and the balance by the public shareholders.

1. Complexity of ESIL's Operations

Unlike other fully-integrated steel manufacturers, ESIL's facilities are spread over Eastern and Western India. Iron fines are converted into slurry and carried through pipelines to pellet plants. ESIL's Paradip and Vizag pellet plants are linked to iron ore mines through 253 kms and 267 kms slurry pipelines from Dabuna to Paradip (Odisha) and Kirandul to Vizag (Andhra Pradesh) respectively. Above pipelines provide very significant competitive cost advantage to ESIL as transporting through slurry pipeline is cost effective and environmental-friendly mode. Pellets are thereafter transported through ships from pellet plants to ESIL's steel manufacturing plant at Hazira, Gujarat.

Graph 1: Steel Facilities of ESIL at the time of CIRP



Source: ESIL Operational Information

ESIL's Hazira steel plant is the only plant in the world to have three crucial iron-making

technologies at a single location – blast furnace, direct reduced iron (DRI) or midrex, and corex or smelting reduction process.

In view of spread out of various facilities, logistics plays very important role in ESIL's operations. Ports, shipping infrastructure are owned by separate legal entities of the promoter group and in some of these entities ESIL had non-majority shareholding. Each entity has its own set of lenders and has independent contract for providing services to ESIL. The Essar Ports Ltd includes Vizag Port Berth operated by Vizag Port Terminal Ltd, Paradip Port Berth operated by Essar Bulk Terminal Paradip Ltd, Hazira Port Berth operated by Essar Bulk Terminal Ltd. Power suppliers include coal based power plant at Odisha by Essar Power Orissa Ltd, coal-based power plant at Mahan, Madhya Pradesh by Essar Power MP Ltd, gas-based 500 MW Bhandar Power Limited and Corex Gas/Fines based captive power plant at Hazira operated by Essar Power Hazira Ltd. The title of slurry pipeline between Dabuna and Paradip, which was very critical for operations of ESIL, was disputed.

Above structure of operations and ownership resulted in a lot of inter-dependence of operations of ESIL on other Essar group companies. Any potential acquirer would be carefully evaluating such structure as any non-cooperation from these companies will put the operations of ESIL into jeopardy.

2. How did ESIL reach here? Major problems which led to Financial Distress

ESIL's financial problems were a result of expansion of plant facilities fuelled by debt, addition of plants based on availability of natural gas for production. ESIL's DRI units were dependent on the supply of natural gas for production. Due to fall in gas production in India, ESIL did not get its critical fuel and had to purchase the shortfall of gas at spot prices, which was at times three times higher than the earlier contracted price. As a result, the financial performance of ESIL suffered on account of sudden escalation of input costs (primarily gas), an overly dispersed supply chain, highly leveraged balance sheet and strong competition.

To mitigate its dependence on natural gas, ESIL operationalized 2 Corex production modules at Hazira, thus replacing about 30% of ESIL gas requirement through own generated Corex gas. It also shifted from gas-based power to coal based power for meeting its requirement and established 400KV transmission system to facilitate ESIL's connectivity to the National Grid to source power from across the country at competitive prices. ESIL also undertook various capital expenditure projects to mitigate above risk as well as to improve its competitive edge which overleveraged its balance sheet. Many of these projects could not be completed due to liquidity issues. ESIL's performance suffered adversely on account of high debt with operations at low-capacity utilization due to shortage of working capital. The account of ESIL also became Non-Performing Asset (NPA) with its banks.

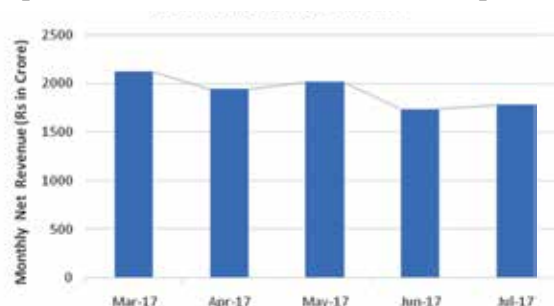
In April 2016, lenders of ESIL retained SBI Capital Limited and ICICI Securities Limited as advisors for the purpose of induction of a strategic/financial investor in the company. However, above efforts did not succeed mainly inter alia on account of concerns of inter-dependence of ESIL's operations on group entities and disputed ownership of one of the slurry pipelines.

3. ESIL's Pre-Corporate Insolvency Resolution Process (CIRP) Performance

In October 2016, ESIL's promoters submitted a restructuring proposal to the banks which included restructuring of debts, infusion of funds by the promoters, conversion of a portion of debt into share capital, segregation of sustainable and unsustainable debt, etc. Pending decision on the debt restructuring proposal, the banks permitted 'holding on operations' arrangement to the company. The 'holding on operations' facility from the working capital consortium banks, enabled the company to conduct its day-to-day banking operations like opening of Letter of Credits (LCs) upon funding of 100% cash margin, issuance of bid bond and other guarantees, etc. Above restructuring scheme could not be finalized as no agreement on terms of restructuring could be reached between the promoters and banks.

In the period leading to insolvency, ESIL developed significant structural and operating problems.

Graph 2: ESIL Performance in Pre-CIRP period



Source: ESIL performance in FY 2017-18

Most obvious was the huge unsustainable debt the Company had accumulated. By mid-2017, ESIL had total debt of approx. Rs 50,000 crore with annual interest payments more than a few multiple of the Company's EBITDA. Under such circumstances, following actions inter alia worsen the situation as in most of the distressed cases:

- Most of the cash generated by ESIL was appropriated by its lenders towards its defaulted dues leaving little for ESIL to upkeep its assets or increase its capacity utilization; and
- Remuneration of top professional management was not approved by banks as per Sections 196 and 197 of the Companies Act, 2013

Most of ESIL's steel capacity were dependent on the supply of natural gas for production. Due to fall in gas production in India, ESIL did not get its critical fuel and had to purchase the shortfall of gas at higher prices, which increased its cost of production and led to liquidity issues.

On account of liquidity constraint, the senior management was managing crises on a day-to-day cash management strategy as they attempted to keep the Company afloat. At the same time, ESIL had not provided any salary raise to its employees during FY2017, whereas its competitors were providing an annual increment of about 7%, which affected its employee's morale.

4. Pre-CIRP Litigations

On June 16, 2017, RBI directed banks to initiate insolvency procedure against 12 large

loan defaulters. The State Bank of India (SBI) and Standard Chartered Bank (SCB) filed application under Section 7 of IBC, 2016 for initiating CIRP against ESIL with Adjudicating Authority (AA) i.e., NCLT, Ahmedabad. However, ESIL challenged reference to IBC by the banks and filed writ petition in Ahmedabad High Court. ESIL contended that its operations are very complex, involve large number of stakeholders and highlighted potential risk to its operations and value under the hands of Interim Resolution Professional (IRP). Infact, during early days of IBC in May 2017, in one of the IBC account, Starlog Enterprises Limited, its directors had raised issue of mismanagement of the company's operations by IRP and NCLAT had declared the appointment of IRP as illegal on other grounds¹. Due to above, there were wide-spread apprehension that the promoters of companies referred to IBC will not co-operate and CIRP processes will not be smooth. On July 17, 2017, Gujarat High Court dismissed ESIL's writ petition² and thereafter hearings for admission of insolvency application commenced at NCLT.

5. Commencement of CIRP

5.1. Initiation and Appointment of IRP/RP

At the time of admission in NCLT, ESIL again inter-alia contends whether IRP can manage such complex operations. NCLT stated that as per the Code, IRP runs the operations along with the existing management and admits insolvency petition³ on August 2, 2017. With August 2, 2017 as Insolvency Commencement Date (ICD), NCLT appointed Satish Kumar Gupta as IRP. It was therefore really a testing time of IBC and for IRP/RP and lenders as any failure or disruption in operations or value loss could have led to loss of credibility to the process under IBC as was contended by the promoters in legal proceedings.

On initiation of CIRP, IRP issued a public announcement under Section 15 of the Code.

1. NCLAT Order in Company Appeal (AT) (Insolvency) No. 5 of 2017 in the matter of *Starlog Enterprises Limited v. ICICI Bank Limited* May 24, 2017

2. Gujarat High Court order in the matter of *Essar Steel India Ltd v. Reserve Bank of India* dated July 17, 2017 <https://indiankanoon.org/doc/28218075/>

3. NCLT, Ahmedabad Order admitting ESIL into insolvency <https://ibbi.gov.in/2ndAugust17inthematterofEssarSteelSLtdCPIBNo407NCLTAhm2017.pdf>

From ICD, the management of the affairs of ESIL vested with IRP and the powers of the Board of Directors were suspended and were exercised by IRP. As per Section 20 of the Code, IRP has to make every endeavour to protect and preserve the value of the property of the company and manage the operations of the company as a going concern. IRP verifies the claims received and forms the CoC. The CoC confirmed the appointment of Satish Kumar Gupta as the RP in its first meeting.

On account of liquidity constraint, the senior management was managing crises on a day-to-day cash management strategy as they attempted to keep the Company afloat. ESIL had not provided any salary raise to its employees during FY 2017, whereas its competitors were providing an annual increment of about 7%, which affected morale of its employees.

With the context given, as may be visualized, IRP faces numerous challenges of hostility from many quarters including aggrieved creditors and has to ensure co-operation from various stakeholders such as promoters, management, creditors, etc. to ensure the value preservation as well as to continue the operations of the company under such demanding circumstances. Subsequent paras delineate various measures and steps taken to ensure meeting of the above objectives.

5.2. Communication with Stakeholders including employees of ESIL

Immediately on initiation of insolvency, communication was sent to all stakeholders informing them about CIRP and asking to file claims wherever applicable. Meetings, discussions, townhall meetings, etc were held with senior management, Key Managerial Personnel (KMP) of the Corporate Debtor (CD) i.e., ESIL, employees, vendors, customers to explain the process of CIRP, its impact and how the resolution of the company will be beneficial to these stakeholders. Their roles as delineated in IBC were also clearly communicated. ESIL personnel were informed of new authorization and were also made aware that any non-compliance and non-cooperation would be dealt with under Section 19 of the Code.

Statutory authorities, in particular, were communicated of commencement of CIRP and its impact on their dues was explained so that no coercive action would be initiated by them. These authorities were also advised to file their claims.

Transparency and fairness plays important role in RP's functioning. RP faces conflicts on a daily basis for running operations and has to take decisions. Whenever there was a situation in which a difficult decision was to be made by RP or conflict among different stakeholders, decision was taken based on the basis of two principles, firstly which complied with laws and, secondly which maximized the value of the company. RP was supported by its team, management, legal teams etc. Above enshrined principles provided guidance to RP and his team while taking decisions and enabled us to take right decision which stood scrutiny over a period.

As IBC was under evolution, communication was initially mostly meant to be in terms of the compliance and educating various stakeholders of the provisions of the Code and impact thereof. However, with time, communications became bidirectional and purposeful. Various issues and concerns were noted in meetings with various stakeholders that enabled us to deal with some of the critical issues with co-operation of these stakeholders. Above process ensured active support, less disputes and obviated much litigation.

6. Challenges in Managing the CD (ESIL) as a Going Concern (GC)

The most challenging part initially faced as IRP was to manage ESIL as a 'Going Concern' (GC) after its admission into insolvency. First and foremost, challenge was the liquidity position of ESIL and its adverse impact on operations.

6.1. Liquidity Issues and its impact on operations

As per the Code, the creditors' claims are frozen as on Insolvency Commencement Date (ICD). As a result, all suppliers of ESIL demanded payment of their old dues before resumption of supplies and quite a few vendors threatened to cut-off supplies/services. Thereafter, after explaining constraint under the provisions of IBC, most of vendors/suppliers agree to supply

raw materials/goods against cash payment only or with almost no credit period. Major bulk raw materials such as coke, iron ore, gas, graphite, zinc, etc. are largely purchased by ESIL on cash basis only or imported by opening Letters of Credit (LCs).

ESIL's ground stock level (days of consumption) of key bulk raw materials with long lead times on ICD was running less than minimum level for smooth operation. Any disruption in plant operation will cause stoppage of plant for several days as shutting down and re-starting of a steel plant is time consuming and costly exercise. ESIL's Accounts Payables had increased by Rs 900 crore from March 2016 to July 2017. Post-ICD, banks also restricted opening of LCs for import of critical raw materials only against 100% to 110% cash margin.

Sudden adverse impact on liquidity threatened ESIL's operation but also led to lower production of value-added products. Lack of liquidity also impacted off-take of materials from ships at port and ESIL suffered additional cost of demurrage. Lower production volume, procurement of inputs at spot prices and other factors increased the cost of production per tonne.

Pre-CIRP, the lenders to the company had established a centralised Trust and Retention Account (TRA), wherein all collections were being received. Above TRA account also facilitated recovery of part collection of cash flows, called tagging, by existing lenders thereby reducing cashflows available with the company.

ESIL's requirement of funds therefore post-ICD increased significantly. The senior management of the company worked out infusion of Interim Financing of Rs 1,500 crore for disruption free operations at current run rate which after detailed granular assessment was scaled down to Rs 775 crore. In absence of such facility, it was expected that ESIL's production run rate will fall by about 20% to level of 400 KT (Kilo Tonnes) per month from 480 KT in July 2017 and EBITDA will fall drastically.

It therefore became imperative to improve liquidity by raising finance or credit lines to arrest ramp-down of capacity on account of low inventory of raw materials, thereby threatening its going concern basis. In a situation like

insolvency, raising large interim finance was not feasible as ESIL account was an NPA with banks and market for such finance did not largely exist. Therefore, instead of looking at external sources, focus was on looking internally to generate liquidity. Immediate challenge was to stabilise production by ensuring payments to vendors and ensuring availability of adequate raw materials to boost throughput.

6.2. Measures taken to improve Liquidity

a) Credit Lines from Third party Suppliers:

ESIL had Cash and Carry facilities from MSTC Limited (MSTC) and other trade financiers for supply of bulk suppliers of raw materials which were revived. The purchase of major raw materials such as imported coal, coke; iron ore fines and pellets by ESIL required cash/advances or LCs which required availability of sufficient free cash flows. The working capital limit of ESIL from banks was fully drawn. In order to have access to working capital to fund raw materials, ESIL and MSTC entered into a Cash & Carry mechanism wherein MSTC opened LCs and financed ESIL's raw material requirements. These goods were retained by MSTC at site as custodian and released to ESIL only after payments on cash and carry basis. This arrangement obviated need for ESIL to open LCs, block cash and enabled ESIL to pay for raw materials at the time of its requirement. MSTC established credit line to the tune of Rs 850 crore, which it progressively released fully as ESIL's operations grew.

b) No adjustment/ tagging by banks: In view of liquidity issues and commencement of CIRP, banks were requested to defer tagging of amounts from bank account which banks agreed to. Tagging was eventually stopped after NCLT, Chandigarh order in case of Amtek Auto Limited⁴ which held that any amount lying in the current account of the company has to be placed at the disposal of the RP without any scope of an adjustment in the manner. Above decision enabled companies under IBC to utilize their internal cashflows for operations and maintain going concern basis. An amount

of about Rs 6 crore received by an NBFC during CIRP were recovered through legal process and was finally refunded to ESIL.

In order to have access to working capital to fund raw materials during CIRP, as one the measure ESIL and MSTC Limited entered into a Cash & Carry mechanism wherein MSTC opened Letter of Credits and financed ESIL's raw material requirements. These goods were retained by MSTC at site as custodian and released to ESIL only after payments on cash and carry basis.

c) Support of certain working capital banks:

As the account of ESIL was NPA, working capital banks do not open LCs/issue guarantees despite 100% margin being provided as any additional exposure is also treated as NPA. However, SBI, Canara Bank, IDBI Bank, ICICI Bank, Punjab National Bank etc. continued to provide support to operations of the company by opening LCs/issue guarantees. SBI also supported ESIL by renewing the guarantee for mining lease of iron ore wherein ESIL was declared a preferred bidder earlier.

d) Optimisation of working capital and reducing costs:

Strict monitoring of utilisation of funds as provided under the Code mainly for maintaining ESIL's going concern basis was done. In addition, following measures were taken to improve liquidity position:

- (i) Better inventory management and product-mix to lower requirement of working capital;
- (ii) Review of all major procurement/capital expenditures spends to reduce sourcing costs;
- (iii) Reducing costs of outward freight by direct negotiation with transporters;
- (iv) Renegotiating natural gas costs through bulk purchasing;and
- (v) Optimization of power cost using cheaper sources such as Indian Energy Exchange (IEX) and cheaper power off-take from some of the group companies.

e) Shorter credit periods and discounting of LC backed sales bills:

Exports of ESIL

4. NCLT Order in CA No.142/2017 IN CP (IB) No.42/Chd/Hry/2017 in the matter of *Corporation Bank v. Amtek Auto Limited* dated October 13, 2017

ranged from 15-20% of its total sales due to its focus on value-added products. During year 2017-18, ESIL achieved exports of 18% of total sales. Exports which entailed long credit period or to buyers with irregular payment record were not encouraged.

CoC also approved discounting of LC backed export sales bills for quicker realization of export sales to further improve liquidity. Marketing team kept its focus on exports even during periods of buoyant domestic market. This enabled ESIL to maintain its export volumes even during period when domestic market realizations declined from November 2018 onwards.

The impact of participative management during CIRP was soon felt on the operations of ESIL as senior management felt empowered to suggest solutions and take decisions with shared values to maximize value.

- f) Support from major customers:** Major customers also provided advances to ESIL to tide over liquidity issues. ESIL being a manufacturer of quality value-added steel had major automobile manufacturers such as Maruti Udyog, Tata Motors, Mahindra & Mahindra, Volvo Eicher, JCB, etc. as its major customers. These long-term customers were anxious whether ESIL would be able to continue its commitment of supplies during insolvency without any disruption. Initial period of insolvency is very vulnerable period as not only customers are anxious but competitors also attempt to gain additional market share. Automotive customers that buy from ESIL typically do so on a six monthly basis and needed to be re-assured about regular supplies. However, looking at stabilisation of production in a short time, these customers not only continued their purchase but also increased their off-take within a few months to absorb ESIL's additional production.
- g) Measures to improve performance:** Any liquidity crunch results in low asset upkeep and not undertaking adequate maintenance expenditures for plant & machinery to operate at optimal levels, which can lead to unsafe conditions as volume throughout is ramped up. Therefore, in addition to

stabilisation of production, it was ensured that normal capital expenditure and repairs of plant and machinery are also taken on time. For example, repairing of Corex Module 2 was undertaken at a cost of Rs 35 crore with CoC approval. During CIRP, production from 3rd Strand CSP (Compact Strip Production) Caster was stabilized and it achieved rated capacity in its very first year of operation – with this ESIL became the first company in the world with three CSP Casters attached to single CSP Mill. Above measures not only enabled management team to increase throughput but also in a safe manner. Similarly, various, de-bottlenecking exercises were implemented at minimal costs to increase production, utilise resources better and to reduce costs.

6.3. Key to Success – Human Resources

“Clients don’t come first. Employees come first. If you take care of your employees, they will take care of the clients”, this age-old adage of Richard Branson holds true when it comes to management of human capital in any corporate entity.

ESIL suffered low morale of employees as most of them were anxious about uncertainty of the fate of the company and their jobs. In addition, their monthly salaries were considerably delayed. Realising the need for boosting morale of the personnel, it was ensured that salaries were paid on time. In addition, remuneration of some of the KMPs was regularised with the consent of CoC as per the Companies Act, 2013 which were pending for a long time in pre-CIRP period.

Though, salary can’t be the only factor which can motivate, given circumstances, it was the best action to take as ESIL’s human resources could have tapped into full potential of its available resources. In a distressed situation, decision making and allocation of resources becomes top-driven and involvement of employees is first casualty. It was therefore imperative to build positive momentum by empowering people to act. By having regular Management Committees meetings along with senior management with exhaustive agenda, it was ensured that operational decision making don’t suffer as Board was suspended. The impact of participative management was soon felt as senior management felt empowered to

suggest solutions and take decisions with shared values so as to maximize value. RP's team also worked in tandem with the personnel of ESIL.

Employees' trust and co-operation was fully gained in a short time. It was ensured that employees' salaries were paid on first of every month against 15-20th day of month pre-IBC period. Further, their anxiety on fate of the Company also got addressed as production volumes stabilised. Annual average increments of 5.4% and 7.5% were given to employees for years 2018 and 2019 respectively. As a result, during CIRP, continuity of leadership was ensured and no major talent was lost which could have disrupted operations.

ArcelorMittal retaining most of ESIL's senior management and other personnel after its takeover is a testimony to the professionalism displayed by the personnel of ESIL during CIRP and dispelled the myth of non-cooperation of employees during insolvency.

6.4. Mantra for Promoters' co-operation

Shielding ESIL against the inter-connectedness with other group companies like Essar Ports Limited, Essar Shipping Limited, Essar Power Limited etc. whose discontinuance of services could have disrupted the operations of ESIL, was crucial for running CD as a GC. Continuance of Group companies' support in operations – ports, power, shipping, etc. at the time of ICD was very important. This is because, there were apprehensions that group companies' support may not be available and operations of ESIL will come to grinding halt. As financial position of some of the group companies were not satisfactory, lenders of these companies had also decided to take them to insolvency proceedings, if they defaulted, for joint resolution or group insolvency.

As production levels at ESIL increased on month on month basis, volumes handled by these entities also increased correspondingly. While on ICD, a number of these entities were handling volume below minimum guaranteed levels (MGL), some of these entities were under stress on their payments to banks and were Special Mention Accounts (SMAs). With improvement in volumes at ESIL, the financial position of these entities also improved significantly with enhanced volumes mostly above MGL

and therefore, it was in these companies' own interest to co-operate with ESIL in continuing and supporting ESIL operations. As most of these services contract were at arm's-length basis, CoC also approved these related party transactions under Section 28 (1) (f) of the Code. As these Essar Group entities also performed better, economic interest of the promoters was aligned with disruption free operations of ESIL.

With improvement in volumes at ESIL, the financial position of group entities providing services to ESIL also improved significantly with enhanced volumes mostly above Minimum Guaranteed Level and therefore, it was in their own interest to co-operate with ESIL in continuing and supporting ESIL operations and economic interest of ESIL and promoters got aligned thereby resolving issue of inter-connectedness and disruption to the operations

On account of EBIDTA generated during initial period of CIRP, utilisation of cash and carry facilities from third parties, absence of tagging by banks, strict end-use monitoring of cash, measures taken to reduce costs and working capital cycle along with support of CoC and most of other stakeholders resulted in improved cashflow position. Timely current payment to vendors enabled ESIL to stabilise its production in a short time. This also infused confidence to vendors and customers in ESIL's ability to sustain its production volumes. Stabilization phase was followed by consolidation and growth phase over a period of time. As a result of all these measures, ESIL achieved its highest monthly production of 600 KT. Further, yearly production of ESIL⁵ increased from 5.47 million tonnes (MT) in year 2016-17, 6.18 MT in year 2017-18 to its highest ever production of 6.78 MT in year 2018-19. ESIL achieved 23 percent increase in total income of Rs 31,974 crore in FY2019 as compared with total income of Rs 26,028 in FY2018.

During CIRP, it was ensured that ESIL's business results were presented to/shared with CoC on a monthly basis. Information on production, sales, cost, net sales realisations,

5. Annual Report - Essar Steel India Limited for years 2016-17, 2017-18 and 2018-19

EBITDA per tonne, changes in working capital, variance analysis, bottlenecks, payments made to related parties, etc were shared with CoC for their review, suggestions and co-operation wherever required.

Operations at higher capacity utilization level along with profits generated demonstrated to bidders of ESIL that the plants of ESIL can be run at higher capacity and production can be increased further with minimal capital expenditure. This enthused and enabled bidder to provide higher offers for ESIL in their resolution plans.

The monthly measurement and monitoring led to generation of the largest profits during CIRP under IBC. CoC therefore first time under IBC stipulated in Request for Proposal (RFP) that profits earned during CIRP will go to the financial creditors account unlike many other IBC contemporary accounts wherein either profits went to successful resolution applicant or there is ambiguity around it.

The introduction of MIP (Minimum Import Price) and quality standards by the Government of India resulted in better sales realization and contained oversupply situation in the Indian steel market. Steel prices recovered and remain steady for most of 2018. That enabled ESIL to push up its production and to ensure suppliers are paid on time customers as mostly automakers absorbed the additional output. MSTC cash and carry facility reduced over a period of time with plough back of earnings and at the end of CIRP, utilization of above facility was almost nil.

Operational turnaround demonstrated that ESIL's plant could be run without hindrance

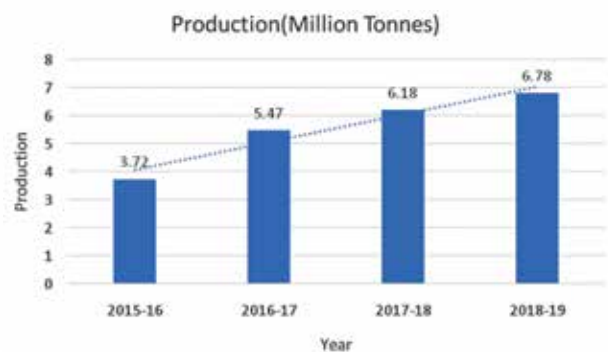
Graph 3: Progression of CD during CIRP Period



Source: ESIL CIRP Performance Report

in spite of inter-connectedness of group's facilities. In the past, the plant had not achieved production of above 6 million tonnes in a year and therefore higher production capacity of ESIL was untested. Operations at higher capacity utilization level along with profits generated demonstrated to bidders that the plants of ESIL can be run at higher capacity and production can be increased further with minimal capital expenditure. This enthused and enabled bidder to provide higher offers for ESIL in their resolution plans.

Graph 4: CD's production during CIRP



Source: ESIL Annual Reports 2018-19

7. Resolving Claims of Creditors

Total claims of Rs 82,541 crore were submitted, out of which claims of Rs 54,565 crore were admitted on verification. A summary of ESIL's claims submitted and admitted is as follows:

Graph 5: Claims of Creditors

(Rs in crore)

Sl. No.	Category of Creditor	Amount Claimed	Amount Admitted
1	Financial Creditors	55,440	49,473
2	Operational Creditors other than Workmen and Employees	27,081	5,074
3	Operational Creditors - Workmen and Employees	20	18
Total		82,541	54,565

Source: ESIL CIRP List of Creditors

During CIRP, many FCs assigned their claims, more than 15% of claims of FCs, to foreign

distressed investors and Edelweiss Asset Reconstruction Company (EARC). HDFC Bank and Axis Bank assigned their claims to SC Lowy, Bank of Baroda, Laxmi Vilas Bank, etc. to EARC and Bank of Baroda and IDBI Bank to Duetsche Bank (DNA Article dated July 19, 2018- Foreign funds lapped up Essar Steel Loans from banks). Infact, on account of delays in closure of insolvency, SBI also initiated sale of its financial assets in January 2019, post-CoC approval of the Resolution Plan and its filing in NCLT; however, same was dropped subsequently.

As may be observed, a large number of claims of creditors were not admitted on account of these being disputed or having other issues in terms of provisions of IBC. Significant number of litigations was pursued by these aggrieved creditors. The HDFC Bank, of which initial claim till ICD was accepted, subsequently got a foreign decree against ESIL in a London Court in respect of its ECB. Subsequently, it re-filed higher claim amount with RP as per decree to be admitted. As the revised claim was not as per provisions of IBC, the same was rejected. It was followed by proceedings in AA wherein HDFC prayed for its higher amount to be admitted and challenged appointment of RP whereas RP also filed for violation of moratorium under Section 14 of the Code. Eventually, HDFC Bank assigned its claim admitted as on ICD to SC Lowy.

It is important for an IRP/RP to verify the claim documents, in particular claims including assigned to third party should be properly stamped as per Section 5 (7) and 5 (20) of the Code which require such debt to be legally assigned and give the creditor an opportunity to pay requisite stamp duty so that claim can be admitted. In ESIL, one of the major claims of Rs 5,325 crore filed by a related party creditor both as financial and operational creditor was not duly stamped. Above creditor undertook to pay differential stamp duty to authorities and to furnish duly stamped documents to RP. However, above creditor failed to submit stamped documents and therefore above claim was not admitted. There was no challenge to the non-admission of above claim by the creditor.

Some of the major precedents established in respect of claims as per on SC Order⁶ dated November 15, 2019 are as follows:

- a) **Under/Non-Stamped Document:** The RP rejected the claim of the Appellant on the grounds of non-availability of duly stamped agreements in support of their claims and the failure to furnish proof of making payment of requisite stamp duty as per Indian Stamp Act, 1899 despite repeated reminders sent. NCLT and NCLAT had agreed with the above finding and SC upheld the above position though the claimant had paid the requisite stamp duty post-NCLAT judgment.
- b) **Disputed Claims:** Various disputed claims filed by operational creditors (~Rs 14,000 crores) were asked to be registered by NCLT and were admitted by NCLAT in its judgment dated July 4, 2019. SC held that RP was correct in admitting the claim at a notional value of Re 1 due to the pendency of disputes with regard to disputed claims. Notional value was admitted to keep such creditors involved in CIRP of ESIL.
- c) **Claim filed after approval of resolution plan:** SC held that NCLAT rightly rejected the claim in view of the fact that said claim was filed after the completion of the CIRP period. However, the NCLAT's judgment which left it open for the creditor to pursue the matter in terms of Section 60(6) was set aside.
- d) **Clean slate:** SC clarified that re-agitation of undecided claims cannot be permitted and that all claims must be submitted to and decided by RP so that prospective Resolution Applicant (RA) knows exactly what needs to be paid to take over and run the business. This ensures that successful resolution applicant starts running the business of the company with a "clean slate". Above is an extremely important judgment for successful Resolution Applicant's point of view so that it is not saddled with legacy claims.

8. Journey to Successful Resolution Plan of Arcelor Mittal Group

Based on Expression of Interest (EOI) issued in October 2017, various interested bidders carried out detailed due diligence of ESIL over

6. 2019 SCCOnline SC 1478 – Supreme Court judgment dated November 15, 2019 in the matter of CoC of Essar Steel India Ltd v. Satish Kumar Gupta

a period of almost 3 months. As a part of due diligence, RAs conducted various visits to the manufacturing units of ESIL, had structured meetings with the senior management of ESIL. Thereafter, in December 2017, Request for Proposal (RFP) was issued by RP after approval from CoC. In terms of RFP, ArcelorMittal, the largest producer of steel in the world and Numetal Limited, a company formed by the promoters of ESIL, submitted their resolution plans for ESIL along with requisite Earnest Money Deposit (EMD) of Rs 500 crore on February 12, 2018. The Graph 7 depicts entire insolvency process timeline.

8.1. Introduction of Section 29A: While due-diligence process was ongoing, in order to prevent the promoters of defaulting companies from submitting resolution plans, the Government of India introduced an ordinance for amending the IBC on November 23, 2017 which introduced Section 29A setting out the eligibility criteria which must be satisfied in order for a person to be able to submit a resolution plan. The above Ordinance was replaced by the IBC (Amendment) Act, 2018 on January 18, 2018 (First Amendment). Section 29A of the Code as introduced by the First Amendment provided that a person will not

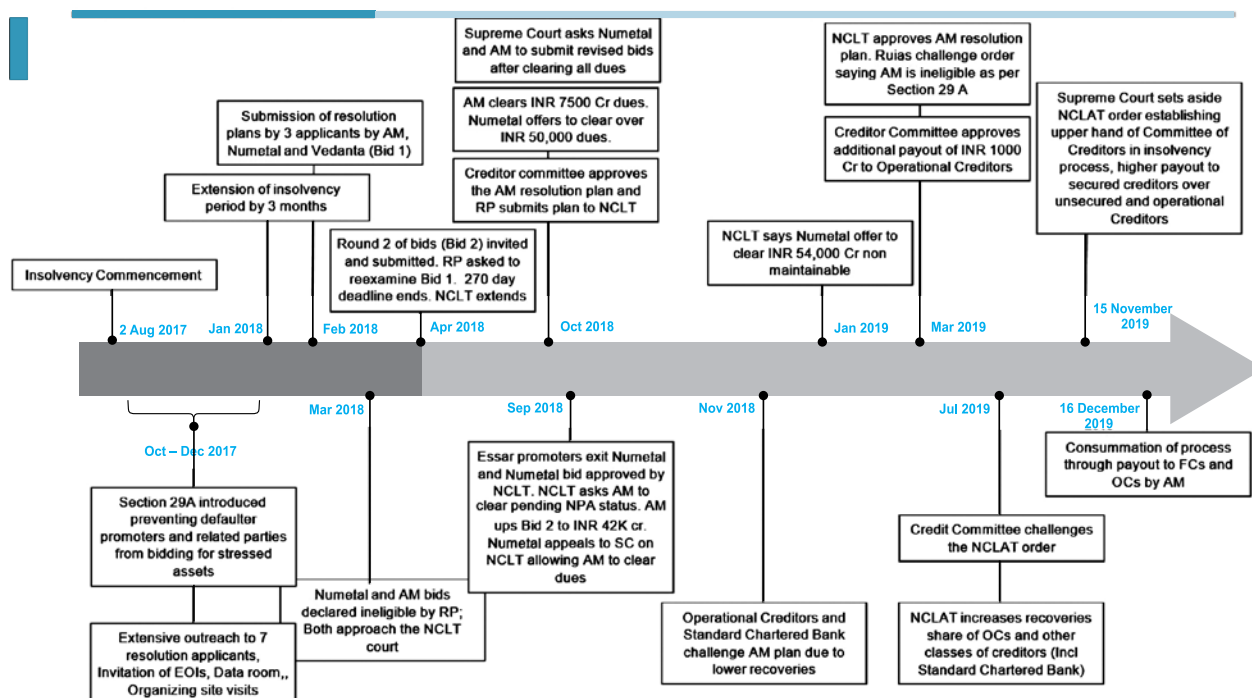
be eligible to submit a resolution plan if such person or any other person acting jointly or in concert with such person or any connected person of such person fell within any of the criteria specified in Section 29A.

Based on media reports and apprehending that it would be held ineligible, Numetal, one of Resolution Applicant (RA), filed an application before NCLT on March 20, 2018 for obtaining stay on the process. NCLT orders that any decision of CoC in respect of eligibility will be subject to order passed by NCLT.

On examination of submitted resolution plans, on March 21, 2018, RP found both RAs, ArcelorMittal and Numetal ineligible to submit resolution plan for ESIL under various provisions of Section 29A and decision was conveyed to RAs. CoC decides to call fresh resolution plans. Accordingly, fresh resolution plans were submitted by ArcelorMittal, Numetal and a new RA, Vedanta Resources Limited. Thereafter, multiple litigations were initiated by RAs which revolved around challenging other RAs' eligibility and establishing their own eligibility.

8.2. NCLT Decision: On April 19, 2018, NCLT held that to determine eligibility, the date of

Graph 6: Timeline of CIRP



Source: Compiled from CIRP events

commencement of the CIRP of ESIL i.e. August 2, 2017 is relevant. It directed that CoC of ESIL (CoC) to follow due procedure while rejecting the bids of ArcelorMittal and Numetal and CoC to give an opportunity to both the bidders to remove their disability by paying the overdue amounts.

The CoC on May 8, 2018 after hearing both RAs found both ArcelorMittal and Numetal ineligible and held that in order to be considered eligible, both the bidders should pay the overdue amounts and interest pertaining to the NPAs of their related companies.

8.3. NCLAT Decision: On September 7, 2018, NCLAT pronounced its order in the appeal filed against the order of NCLT. NCLAT inter-alia held the following:

- a) At the time of submission of the first resolution plan on February 12, 2018, Numetal was not eligible under Section 29A as Aurora Enterprises Limited (AEL), held by Rewant Ruia, was one of the shareholders of Numetal. However, at the time of submission of the second resolution plan on March 29, 2018, Numetal was eligible to submit a resolution plan as AEL was no longer a shareholder of Numetal, and the remaining shareholders were eligible under Section 29A.
- b) AM Netherlands (a related party of Arcelor Mittal) was the promoter of Uttam Galva Steel Limited (UGSL) on the date when UGSL was classified as an NPA. Even though AM Netherlands sold its shares in UGSL thereafter, it would continue to be ineligible till payment of all overdue amounts relating to NPA account of UGSL is made. Further, LN Mittal Group (a connected person of Arcelor Mittal) had been the promoter and in the management and control of KSS Petron Limited (KSS Petron) since 2011. KSS Petron has been classified as an NPA by several banks. By merely selling all shares in KSS Petron, the ineligibility under Section 29A cannot be cured till payment of all overdue amounts relating to NPA account of KSS Petron is made.

8.4. Supreme Court's Judgement: Against the order of NCLAT, appeal was filed before the SC by RA. After hearing all parties in detail, the

The HDFC Bank, of which initial claim till ICD was accepted, subsequently got a foreign decree against ESIL in a London Court in respect of its ECB. Subsequently, it re-filed higher claim amount with RP as per decree to be admitted. As the revised claim was not as per provisions of IBC, the same was rejected.

Supreme Court⁷ vide its order dated October 4, 2018 put an end to multiple and also frivolous litigations by RAs even before any of the plans has been approved by CoC thereby maintaining focus on approval of resolution plan first. The actionable portion of the judgement could be summarized as follows:

- a) RA has no vested right that his resolution plan be considered by the CoC, in light of which no challenge can be preferred before the NCLT by an RA, at a stage where (a) the Resolution Plan has been turned down by the RP for non-compliance of Section 30 (2) of the Code, or (b) a Resolution Plan as presented by RP is not approved by CoC. A challenge can be preferred only once a Resolution Plan is approved by the NCLT, before the NCLAT and thereafter the SC.
- b) Purposive interpretation of Section 29A necessitates the lifting of corporate veil, so as to determine the eligibility of 'person' submitting a resolution plan. Above principle can be applied even to group companies so that one is able to look at the economic entity of the group as a whole.
- c) Antecedent facts reasonably proximate to the time of submission of resolution plan can always be seen, to determine whether the persons referred to in Section 29A are, in substance, seeking to avoid the consequences of the proviso to sub-clause (c) before submitting a resolution plan.
- d) Relevant time for disqualification is at the time of submission of the resolution plan
- e) Interpretation of 'persons acting jointly or in concert' - to be seen whether certain persons have got together and are acting "jointly" in the sense of acting together

7. 2018 SCC Online SC 1733 – Supreme Court judgment dated October 4, 2018 in the matter of *ArcelorMittal India Pvt. Ltd v. Satish Kumar Gupta*

f) Issue and interpretation of ‘management’ and ‘control’ with respect to Section 29A of IBC are as follows:

- (i) “management” refers to the de jure (or actual) management of a CD in accordance with law
- (ii) “control” in Section 29A(c) denotes only positive control, which means that the mere power to block Special Resolutions of a company cannot amount to control.

g) Cure of ineligibility under Section 29A(c) – this ineligibility can only be removed if RA makes payment of all overdue amounts with interest thereon relating to the NPA in question before submission of a resolution plan.

8.5. Final Decision of SC in respect of eligibility of Resolution Applicants

Numetal was held ineligible as per Section 29 A(c) for both resolution plans on account of presence of Rewant Ruia, a person deemed to be ‘person acting in concert’ (PAC) with Ravi Ruia, promoter of ESIL. SC noted the content of affidavit submitted by trustee of Trust which owned shareholding of Numetal : “that the Trustee hereby confirm that AEL or Rewant Ruia neither are nor will, following the implementation of Resolution Plan, be a promoter of or have control over or have any management rights in the RA or ESIL....”

The SC further stated in its order that “the RP, after looking at this affidavit, correctly noted that statements of such a nature would not have been made by a truly independent trustee of a discretionary trust, which demonstrates that the trustee was under the complete control of promoters, this in turn indicates that Prisma Trust is one more smokescreen in the chain of control, which would conceal the fact

ArcelorMittal was held ineligible as per Section 29 A(c) on account of UGSL as follows:

- a) Shares of AM Netherlands in UGSL were sold at a time reasonably proximate to the date of submission of the Resolution Plan in order to get out of the ineligibility under Section 29A(c) and its proviso. Both AM India and AM Netherlands (promoter of UGSL) managed and controlled by LN Mittal and are deemed to be PAC.

ArcelorMittal was further held ineligible on account of KSS Petron as follows:

- a) Fraseli, a group company of L N Mittal, exercised positive control over KSS Global and in turn KSS Petron
- b) Sale of shareholding in KSS Global was a transaction reasonably proximate as in UGSL

Thus, SC concluded that both ArcelorMittal and Numetal were not eligible to bid for ESIL under the IBC. In rendering this landmark decision, SC touched upon various management and control issues and in doing so, as mentioned in the judgement itself, laid down the law on Section 29A for the first time.

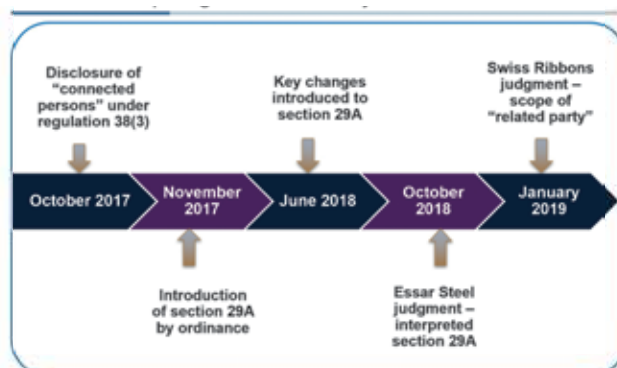
8.6. The Way Forward for Arcelor Mittal and Numetal:

Above landmark decision at one point of time came to derail the CIRP process of ESIL as both bidders were disqualified. However, the opportunity given by SC under Article 142 of the Constitution to both ArcelorMittal and Numetal to pay off their dues relating to their NPAs in order to become eligible to bid for ESIL, provided way to pursue the resolution.

In terms of Section 43, 45, 50 and 66 of IBC, RP determined four avoidance transactions aggregating amount of Rs 299 crore, applications for which were filed with AA.

On October 18, 2018, ArcelorMittal in compliance with SC Order paid about Rs 7,500 crore to lenders of UGSL and KSS Petron to become eligible. Meanwhile, ArcelorMittal also obtained approval of Competition Commission of India (CCI) as per provisions of IBC for the acquisition of ESIL.

Graph 7: Key milestones of Section 29A during course of CIRP of ESIL



Source: Compilation from Regulations and Court orders

CoC evaluates resolution plans of ArcelorMittal and Vedanta on the basis of approved evaluation matrix and decides on ArcelorMittal plan as H1 or the highest bidder. CoC further negotiates with ArcelorMittal and approves its plan with more than 90 percent majority of CoC members. RP issues Letter of Intent to ArcelorMittal on behalf of CoC and ArcelorMittal submits Performance Bank Guarantee of Rs 3,950 crore in favour of CoC. On October 26, 2018, RP submits approved resolution plan of ArcelorMittal to NCLT for its approval.

Meanwhile, the promoters had also offered a settlement proposal to CoC through Essar Steel Asia Holdings Limited (ESAHL). CoC decided that same is not in terms of IBC and hence did not consider the same. In January 2019, NCLT rejected the settlement proposal of ESAHL filed under Section 60(5) of IBC as non-maintainable and held that ESAHL did not have a locus standi to make an offer for debt resolution as an RA. NCLT continued hearing approval of resolution plan of ArcelorMittal as approved by CoC which was challenged by many creditors.

On account of delays, on January 26, 2019, Mr. Amitabh Kant, CEO, Niti Aayog wrote in his article “No pendency for Insolvency”⁸ that “the Essar Steel matter is a case in point, bogged down by delays linked, in large part, to litigations, to the point where it has been more than 530 days since it was admitted to the NCLT. Each day of delay is estimated to cost lenders a staggering Rs 17 crore in interest losses.”

8.7. NCLT Decision

ArcelorMittal’s resolution plan was conditionally approved by the NCLT, Ahmedabad Bench on March 8, 2019. In its order, the NCLT suggested that the CoC reconsider the manner of distribution of funds proposed to be paid under ArcelorMittal’s resolution plan to ensure higher recovery to OCs and Standard Chartered Bank (SCB).

In deference of the NCLT order, CoC approved setting aside of an amount up to a maximum of Rs 1,000 crore for OCs from their share in addition to amount being paid to OCs as per the Resolution Plan and retained the amount payable to SCB under the plan. Subsequent to approval of resolution plan by NCLT, a monitoring committee consisting of four

members from CoC and four members from ArcelorMittal with RP as Chairman was formed to manage day-to-day affairs of ESIL.

8.8. NCLAT Decision

The order of the NCLT was challenged before the NCLAT by various creditors. By an order dated July 4, 2019 (NCLAT Order), the NCLAT:

- a) approved ArcelorMittal’s resolution plan;
- b) held that a resolution plan should not differentiate between FC and OCs in the manner of payment of dues. The NCLAT ruled that the waterfall mechanism envisaged under Section 53 of the Code (applicable to the liquidation of a corporate debtor) could not be applied during the CIRP;
- c) modified the distribution of amounts proposed to be paid to various creditors under such resolution plan so that all creditors (secured, unsecured and operational) were treated equally (resulting in approximately 60.7% recovery for all creditors);
- d) increased the admitted claims of OCs to almost four times the original amount by admission of disputed claims etc.;
- e) granted OCs whose claims had not been admitted by the NCLT or the NCLAT the liberty to institute or continue appropriate proceedings against ESIL even after the conclusion of its CIRP thereby adding more than Rs 14,000 crore of claims; and
- f) held that the guarantees issued in respect of ESIL debt could not survive after the conclusion of CIRP as the underlying debt stood discharged.

Major FCs were aggrieved with disregard of their security interests as they felt that NCLAT order would make secured lending unattractive resulting in catastrophic consequences on the Indian banking sector. In addition, NCLAT decision that the distribution of amounts under a resolution plan is not a commercial decision also affected the rights of CoC. Aggrieved with the decision, the FCs amongst others challenged the decision of the NCLAT before the SC.

8. Amitabh Kant, ‘No Pendency for Insolvency’, *The Economic Times* dated January 26, 2019 <https://economictimes.indiatimes.com/blogs/et-commentary/no-pendency-for-insolvency/>

The delay in finality of resolution plan was causing anxiety to all stakeholders. On August 3, 2019, SBI Chairman Mr. Rajnish Kumar⁹ said “Every quarter I am looking towards the sky and ask God when we will get all those decisions and recover that amount. Every morning I pray to God”.

9. Subsequent Legislative Developments

While the appeals before the SC were pending, the IBC (Amendment) Act, 2019 dated August 6, 2019 (IBC Amendment Act) was introduced to:

- a) modify the minimum payment to OCs under a resolution plan to the higher of the liquidation value and the amount payable to such creditors if the resolution amount was distributed in accordance with Section 53 of the IBC; and
- b) provide for the minimum payment of liquidation value to dissenting FCs, and (iii) state that the CoC could determine the manner of distribution of funds under a resolution plan which could take into account the respective priority of creditors under Section 53(1) of the IBC.

An explanation to Section 30(2) (b) of the IBC was also introduced, which expressly clarified that a distribution in accordance with such section would be considered to be “fair and equitable”. In Rajya Sabha, the Finance Minister said that the new changes to the IBC had been brought to clarify the interpretation problems that have arisen due to NCLAT ruling in ESIL insolvency case¹⁰.

Writ petitions were filed by SCB and certain OCs challenging the constitutionality of the IBC Amendment Act. Creditors aggrieved by NCLAT order and challenge to IBC Amendment 2019 were tagged along with ESIL Resolution Plan proceedings in the SC.

10. Impact of Supreme Court’s Judgement on November 15, 2019 on CIRP of ESIL

Through a judgment dated November 15, 2019, the SC settled several issues that plagued the insolvency resolution process in India since the

inception of the IBC such as treatment of FCs and OCs, supremacy of CoC and the scope of review of the CoC’s decisions. This could be summarized as follows:

- a) The SC Judgment unequivocally held that the principle of “equality” could not be interpreted to mean that all creditors (irrespective of their security interest or their status as OCs or FCs) would be entitled to equal recovery under a resolution plan. The SC Judgement held that even within a class of secured FCs, differential treatment based on the value of security of such creditors would be permissible. The SC observed that if the security interest of the creditors was to be disregarded, such creditors would, in many cases, be incentivized to vote for liquidation rather than resolution of the corporate debtor. This would defeat the key objective of the IBC, i.e., to facilitate the revival of stressed assets.

Production of ESIL increased from 5.47 Million Tonnes (MT) in 2016-17, 6.18 MT in 2017-18 to its highest ever production of 6.78 MT in 2018-19 in spite of many challenges. Highest ever monthly production of 618 KT was achieved by ESIL in December 2019.

- b) With respect to OCs, the SC recognized that the IBC itself contemplated OCs as a separate class of creditors. Certain safeguards, such as, priority in repayment were also built into the IBC to ensure the fair and equitable dealing of such OCs rights. Accordingly, the SC Judgement held that, as long as the provisions of the IBC were complied with, the CoC could approve resolution plans which provided for differential payment to FCs and OCs.
- c) While the SC Judgment provides that the ultimate discretion of deciding the distribution of funds lies with the CoC, it states that such decision should indicate adequate consideration of the objectives of the IBC. The SC held that the NCLT and NCLAT can under no circumstances trespass upon a commercial decision of the

9. The *Economic Times* dated August 3, 2019, <https://inshorts.com/en/news/every-morning-i-pray-to-god-sbi-chief-on-%E2%82%B916000-cr-recoveries-1564841131269>

10. The *Business Standard* article dated September 23, 2019, https://www.business-standard.com/article/economy-policy/mca-defends-ibc-amendments-sticks-to-strict-deadlines-in-supreme-court-119092300088_1.html

majority of the CoC. The SC has clarified that the NCLT and the NCLAT have not been endowed with the jurisdiction to act as a court of equity or exercise plenary powers. The SC also stressed that while the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors lies with the CoC.

- d) Accordingly, the AA should ensure that the decision of the CoC takes into account the following factors: (i) CD (Corporate Debtor) should be kept as a going concern during the resolution process, (ii) value of assets of the CD should be maximized, and (iii) interests of all stakeholders should be balanced.

10.1. Extinguishment of claims and right to subrogation for payments made under the guarantees

While NCLAT had allowed creditors of ESIL whose claims had not been decided on merits by the NCLT or the NCLAT to pursue their claims against the CD even after the completion of the CIRP, the SC unequivocally held that all “undecided” claims of the CD stand extinguished once a resolution plan was accepted. The SC Judgment recognized that a prospective resolution applicant would need to know the total debt of the CD before acquiring it and start the business of the CD on a “fresh slate”. It also held that there would be no right to subrogation in respect of any amounts paid under the guarantees extended in respect of the debt of the CD under the resolution plan.

10.2. Utilisation of profits of ESIL during the CIRP

The RFP issued in terms of the Code and consented to by ArcelorMittal and the CoC provided that the distribution of profits made during the CIRP would not go towards the payment of the creditors. The NCLAT, however, directed that the profits of the CD during the CIRP be distributed among all FCs and OCs on a pro-rata basis of their claims, provided that such amount did not exceed the admitted account of their claims. The SC set aside this direction and held that as per the RFP, the distribution of profits made during the CIRP could not be applied towards the payment of debt of any of the creditors.

10.3. Time period for completion of

resolution process pursuant to the IBC (Amendment Act), 2019

IBC Amendment Act required all CIRP to be “mandatorily” completed within a period of 330 days from the ICD. For the resolution processes already underway, including if subject to litigation, a maximum period of 90 days from commencement of the IBC Amendment Act had been granted for completion of the process. The SC read down such provision by removing the word “mandatorily” before the stated timelines. The SC held that ordinarily the process should be completed within the prescribed timelines, failing which liquidation proceedings would be commenced. However, the AA could exercise judicial discretion and provide relief in exceptional cases where the failure to adhere to such timelines could not be attributed to any fault of the litigants.

The SC Judgment rightly set aside the principle of equality of all creditors as laid down in the NCLAT Order. The SC notes that the equality principle cannot be stretched to treating unequals equally, as that will destroy the very objective of the IBC. The NCLAT Order, if upheld, would have resulted in similar recovery for secured and unsecured creditors even though secured creditors are able to lend at lower interest rates only because of their ability to fall back on the security provided by the borrowers.

The SC’s ruling on extinguishment of all past claims (including undecided claims) also brings much respite to bidders, who may otherwise have been unwilling to invest in insolvent companies under the IBC on account of threat of being subject to significant undisclosed liability and possibility of endless litigation upon acquisition of the insolvent company.

11. Conclusion of CIRP

On December 15, 2019, AMNS India, the 60:40 joint venture of world’s largest steelmaker, ArcelorMittal and Japan’s Nippon Steel Corporation, completed acquisition of ESIL by payment of Rs 42,785 crore after more than 800 days of initiation of insolvency proceedings. In addition, AMNS India also committed to infuse about Rs 18,000 crore into ESIL for improving its operations and revival prospects in the form of capex, etc. Mr. Aditya Mittal, President and CFO of ArcelorMittal, was appointed as Chairman of AMNS India and Mr.

Dilip Oommen, earlier MD and Dy CEO of ESIL, took over as its new CEO.

Mr. LN Mittal, Chairman and CEO of ArcelorMittal, a seasoned acquirer of steel companies globally, said: The acquisition of Essar Steels is an important strategic step for ArcelorMittal India has been identified as an attractive market for our company and we have been looking at suitable opportunities to build a meaningful production presence in the country for over a decade. Both India and Essar's appeal are enduring. Essar Steel has sizeable, profitable, well-located operations and the long-term growth potential for the Indian economy and therefore Indian steel demand, are well known. The transaction also demonstrates how India benefits from the Insolvency and Bankruptcy Code, a genuinely progressive reform, whose positive impact will be felt widely across the Indian economy.

Graph 8: Final distribution of proceeds to different classes

Particulars	Percentage
Secured FCs	90.95%
Secured FC- Standard Chartered Bank	1.72%
OCs with claim < Rs 1 crore	100%
OCs with claim > Rs 1 crore	20.49%
Workmen	100%

Note: The % in the graph shows the percentage of claim filed by the respective creditor (s). This distribution is as per the SC judgement November 15, 2019.

12. ESIL's Successful Resolution Achievements and Highlights under IBC

The successful resolution of ESIL demonstrated that complex operations can be managed and run successfully on 'going concern' basis by RP and CoC during CIRP thereby validating "Creditors in Control" regime in India. The myth and fear that employees of CD will not co-operate in resolution with IRP/RP was disproved. This could be summarized as follows:

- a) **Operational turnaround during insolvency period:** Production of ESIL increased from 5.47 MT in 2016-17, 6.18 MT in 2017-18 to its highest ever

production of 6.78 MT in 2018-19 inspite of many challenges. Highest ever monthly production of 618 KT was achieved by ESIL in December 2019.

- b) ESIL achieved total income of Rs 31,974 crore in FY 2018-19 as compared with total income of Rs 26,028 in FY2017-18 thereby achieving an increase of 23 percent in total income. As submitted by CoC in the SC, payments of more than Rs 55,000 crore including taxes were made to operational creditors during CIRP for supplies and services. ESIL was fully compliant in payment of its statutory dues during CIRP.
- c) Recovery of amount of Rs 7,500 crore by lenders of UGSL and KSS Petron paid by ArcelorMittal to its lenders in October 2018 to cure its ineligibility.

Graph 9: Financial Health of ESIL during post-CIRP



Source: ESIL Annual Reports

- d) Realisation of more than Rs 42,500 crore by creditors of ESIL, highest realization under IBC in a single account. Most FCs realised about 100% of principal outstanding and 90% of claim. Such single recovery improved profitability of lenders involved and had a salutary impact of financial ecosystem with major banks reporting their higher profits as may be observed from the following reports:

- (i) As reported by livemint on January 31, 2020¹¹, SBI, the country's largest lender, reported its highest quarterly profit as it wrote back provisions on bad loans owing to recovery of Rs 11,000 crore from the resolution of bankrupt

11. Livemint article dated January 31, 2020 <https://www.livemint.com/companies/company-results/essar-steel-resolution-helps-sbi-post-its-best-quarterly-profit-ever-in-q3-11580491473058.html>

ESIL. Net profit of SBI rose 41% to Rs 5,583 crore in the December 2019 quarter from Rs 3,954 crore in the year earlier.

- (ii) Further, Livemint on January 25, 2020¹² reported that the private sector lender ICICI Bank reported a 158% year on year jump in net profit owing to one-time gain from ESIL resolution, which led to lower provisions. The bank's standalone net profit at the end of 31 December 2019 stood at Rs 4,146 crore as compared to Rs 1,605 crore during the same period a year ago.
- e) Many under-performing group companies' assets providing services like port, power, etc performed much better and were able to meet their commitments to their lenders.
- f) It was also the largest Merger & Acquisition transaction of the year 2019 and the largest Foreign Direct Investment (FDI) for the year having attracted FDI from ArcelorMittal, the largest producer of steel in the world.
- g) Many legal precedents set in judicial orders of NCLT, NCLAT and SC which interpreted IBC for its smooth implementation in other accounts. Mr. Rajnish Kumar, Chairman, SBI stated that the Essar case had settled very issue in the IBC process (Business Standard – December 16, 2019).

13. Post- acquisition events and performance of AMNS India

Any overseas acquisition for an acquirer is always challenging. However, ArcelorMittal had its plan for ESIL well laid out for its transfiguration. Towards this end, AM/NS India continues to invest in securing backward and forward linkages and acquiring various assets as follows:

- a) In February 2020, AM/NS India bagged Thakurani iron ore block in Keonjhar district, Odisha with an estimated reserve of about 179 million tonnes and commenced mining operations in July 2020 to supply iron ore to its plants.
- b) In March 2020, Bhandar Power Limited, a 500 MW natural gas-based power plant located in Hazira, Gujarat for captive use to ESIL plant and part of the Essar Group,

was acquired by AMNS from EARC through SARFAESI route, thereby securing major source of cheaper power. ESIL benefitted from cheaper source of power as gas price has reduced significantly.

Supreme Court vide its order dated October 4, 2018 put an end to multiple and also frivolous litigations by RAs even before any of the plans has been approved by CoC thereby maintaining focus on approval of resolution plan first.

- c) In July 2020, ArcelorMittal also acquired Odisha Slurry Pipeline Infrastructure Limited through bidding in CIRP process by payment of about Rs 2,350 crore to its creditors. However, litigations in respect of approved plan and other issues in respect of above pipeline continue.
- d) As per release from ArcelorMittal, despite the Covid-19 pandemic, AMNS India did well in first three full quarters of 2020 since ESIL acquisition – it clocked \$423 million (~ Rs 3,000 crore) as EBITDA in the January-September 2020 period. The Hazira unit produced 4.7 MT of crude steel during the nine-month period, of which the highest output was in the September quarter at 1.8 MT. AMNS India has already announced a plan to enhance the finished steelmaking capacity at Hazira to 12-15 MTPA.

Dr. MS Sahoo, Chairman, IBBI observes in IBBI Newsletter for quarter ended December 2019, "The IBC bifurcates the interests of the company from its promoters with a primary focus to ensure revival and it provides a competitive, transparent market process, which identifies the person who is best placed to rescue the company and selects the resolution plan which is the most sustainable under the circumstances. The process puts the company in the hands of a credible and capable management".

The resolution of ESIL achieved the objectives of the reforms undertaken by way of IBC and ESIL business emerged stronger and durable after going through intense pressure and heat under IBC.

12. Livemint article dated January 25, 2020: <https://www.livemint.com/companies/company-results/icici-bank-q3-net-rises-158-to-rs-4-146-cr-asset-quality-improves-11579945921469.html>