

Series 1

CASE STUDIES OF SUCCESSFUL RESOLUTIONS UNDER IBC



Indian Institute of Insolvency Professionals of ICAI
(IIPI)

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**Indian Institute of Insolvency Professionals of ICAI (IIPI)
New Delhi**



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Email: iiipi.pub@icai.in

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FOREWORD

The IBC is aimed at rescuing ailing businesses as going concern rather than simply recovering dues through liquidation. It provides a safe exit to promoters of the corporate debtors in case of genuine business failures as well as rescues the sinking corporates. The resolution, therefore, is at the core of the IBC Ecosystem which warrants a highly interdisciplinary and practical approach. Therefore, practical knowledge in the form of best practices matter a lot in managing a Corporate Debtor (CD) as Going Concern, resolving it through competitive resolution plan, and executing the resolution plan.

It's a matter of great pleasure that the Indian Institute of Insolvency Professionals of ICAI (IIPI) is bringing out the publication "Case Studies of Successful Resolutions Under IBC". On this occasion, I congratulate IIPI in taking the initiative to bring out the publication "Case Studies of Successful Resolution Under IBC" which is based on case studies of CDs successfully resolved through resolution plans. I hope this will go a long way in enhancing the knowledge of IPs for discharging their professional responsibilities as Interim Resolution Professional (IRPs), and Resolution Professional (RPs).

I put on record my sincere appreciation to professional members of IIPI, CA. Bhuvan Madan, CA. Dinkar Venkatasubramanian, CA. Rajiv Chakraborty, Mr. Satish Kumar Gupta, CA. Shailendra Ajmera, CA. Sumit Binani, and CA. Vijay Kumar V. Iyer for contributing case studies of their respective assignments. As all the case studies have been peer reviewed by eminent IPs, I appreciate their valuable inputs in improving the outcome.

I also extend my appreciation to team of IIPI led by CA. Rahul Madan, Managing Director, for bringing out this publication.

I am sure this publication would be of great help to the IPs and other stakeholders.

Dr. Ashok Haldia
Chairman, IIPI-Board

Date: 12th November, 2021

Place: New Delhi



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CHAPTER-1

CIRP of Essar Steel India Limited (ESIL)

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, inter-personal skills to manage stakeholders with different interest and ability to resolve conflicts are very important competencies of insolvency professional. The present Case Study, sponsored by IIPI, has been developed by Satish Kumar Gupta, Resolution Professional of ESIL.

*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...***

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.

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.

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.

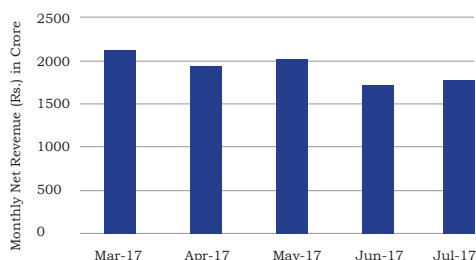
In April 2016, lenders of ESIL retained SBI Capital Limited and ICICI Securities Limited as advisors for the purpose of induction of a strategic/financial investor in the company. However, above efforts did not succeed mainly inter alia on account of concerns of inter-dependence of ESIL's operations 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 1: 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:

- a. 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

- b. Remuneration of top professional management was not approved by banks as per Sections 196 and 197 of the Companies Act, 2013

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 widespread 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.

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/>

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. 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.

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.

3. NCLT, Ahmedabad Order admitting ESIL into insolvency <https://ibbi.gov.in/> 2nd August 17 in the matter of Essar Steel sLtd CPIB No 407 NCLTA hm 2017.pdf

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,

4. 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

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 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.

- 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.

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.

- 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 handing 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, 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.

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

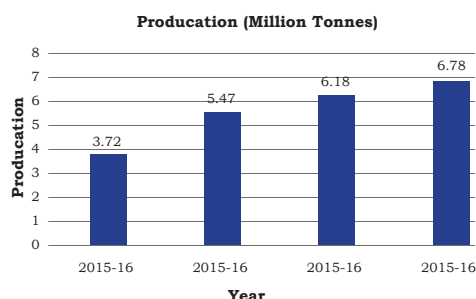
The monthly measurement and monitoring led to generation of the largest profits during CIRP under IBC. CoC therefore first time under IBC stipulated in Request for Proposal (RFP) that profits earned during CIRP will go to the financial creditors account unlike many other IBC contemporary accounts wherein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

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 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 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 2: CDs 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 3: Claims of Creditors

| Sl. No. | Category of Creditor | Amount Claimed (Rs in crore) | Amount Admitted (Rs in crore) |
|--------------|--|------------------------------|-------------------------------|
| 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.

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 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

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

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.

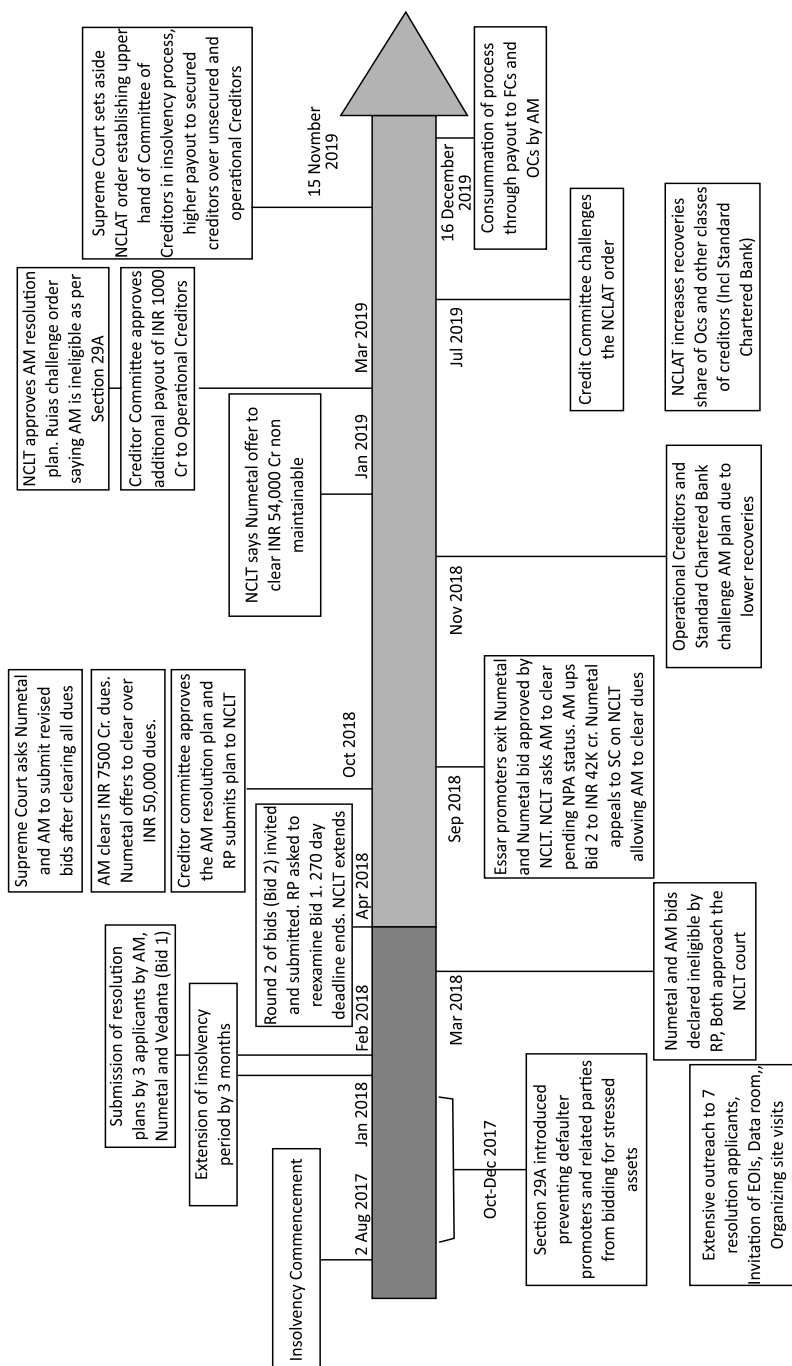
8.2. NCLT decision: On April 19, 2018, NCLT held that to determine eligibility, the date of commencement of the CIRP of ESIL i.e. August 2, 2017 is relevant. It directed that CoC of ESIL (CoC) to follow due procedure while rejecting the bids of ArcelorMittal and Numetal and CoC to give an opportunity 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

Graph 4: Timeline of CIRP



Source: Compiled from CIRP events

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 Supreme Court⁷ vide its order dated October 4,

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.

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
- 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

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*

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

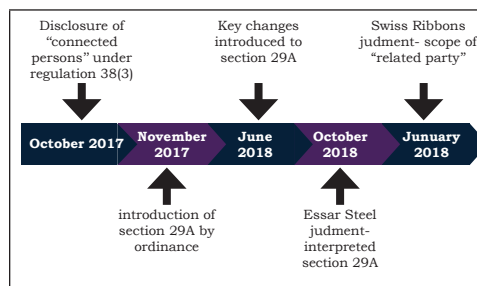
Thus, SC concluded that both ArcelorMittal and Numetal were not eligible to bid for ESIL under the IBC. In rendering this landmark decision, SC touched upon various management and control issues and in doing so, as mentioned in the judgement itself, laid down the law on Section 29A for the first time.

3.6. 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 5: 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

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/>

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 side 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.

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

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

(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 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. 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

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 6: 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 in spite 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.
- 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 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,

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-q3-11580491473058.html>

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>

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.



CHAPTER-2

CIRP of Amtek Auto Limited

The biggest challenge in running the Corporate Debtor (CD) - Amtek Auto as a Going Concern (GC) was its complex group structure. In addition to having plants in various states of India, the company had under its direct holding, multiple operational units across the globe including Japan, Thailand, Spain, and Germany amongst others. These overseas units operated as independent companies with little to no operational control of the CD. Besides, there was lack of a uniform Management Information System (MIS) to track metrics at the company level and most of the plants had their own format for business reporting, resulting in 15+ excel sheets in as many different formats to be tracked to gauge daily performance. This had resulted in some of the units operating in silos resulting in lack of uniformity across major organizational metrics.

*The Committee of Creditors (CoC) had over 90 plus members including almost all the major lenders. Furthermore, the operations had to shut down from March 2020 to May 2020 due to nationwide lockdown caused by the COVID-19 pandemic leading to nil or very low sales in the Q1FY21. However, it recorded a V-shaped recovery in its sales thereafter. In the present case study, sponsored by IIPI, Dinkar Venkatasubramanian, the Resolution Professional of Amtek Auto Ltd. and his colleagues Mukul Dalmia and Riya Goel have presented a descriptive analysis of the CIRP of the Corporate Debtor and stepwise solutions to the problems faced during the process to run it as GC which culminated into final resolution. **Read on to know more...***

1. Introduction

The National Company Law Tribunal (NCLT) vide order dated 24th July 2017 initiated the Corporate Insolvency Resolution Process (CIRP) of Amtek Auto Limited (Amtek) under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016 and appointed Mr. Dinkar Venkatasubramanian as Interim Resolution Professional (IRP) in this case who was later confirmed as Resolution Professional (RP).

In addition to the domestic operations spread across 15 plants, panning through Haryana, Himachal Pradesh, Maharashtra, Madhya Pradesh and Tamil Nadu, the Corporate Debtor (CD) under its direct and indirect holding was also operating multiple operational units across the globe including Japan, Thailand, Spain, Germany amongst others at the time of initiation of CIRP. This Case Study is divided into three stages – Pre-CIRP Performance, CIRP and Post-CIRP. Each stage had its own set of challenges which required out-of-the-box approach to resolve them. This case study seeks to enumerate the various stages of the Resolution Process of Amtek Auto, the challenges surmounted during the process to finally arrive at a successful resolution in July 2020.

2. Profile of the Corporate Debtor/ Company

Established in 1985, Amtek specializes in forging, aluminium casting and machining for applications in the engine, transmission driveline and chassis segments. Amtek caters to sizeable wallet shares of major Original Equipment Manufacturer (OEMs) in India namely, Maruti Suzuki India (MSIL), Honda Motorcycle and Scooters (HMSI), Tata Motors, Ford Motors, J.C. Bamford Excavators (JCB), Ashok Leyland, Eicher etc. and the world's top Tier 1 customers namely, Sriram Pistons, Hitech Gears, Unimotion, Valeo etc.

The group has developed a strong engineering and manufacturing know-how spread across 15 operational plants, panning through Haryana, Himachal Pradesh, Maharashtra, Madhya Pradesh and Tamil Nadu. A brief on various manufacturing facilities in India is given below:

Diversified and de-risked business model:

Manufactures products that cater to the PV, 2W, CV, Tractor and Non-Auto Segments, for both Domestic and International markets Has long lasting relationships with leading OEM and Tier-1 suppliers: Marquee and diversified

customer base of leading OEM's and Tier-1 suppliers across India and Overseas with associations of 20+ years

State of the art engineering and manufacturing capabilities including continuous heat treatment technology, Machining iron castings, aluminium castings as well as forgings and precision laser fracturing technology.

One of the biggest complexities of the resolution of Amtek Auto's process was its group structure, which is spread across Japan, Spain, Germany, Thailand amongst others, which added to the challenges with respect to establishing communication channels across geographies.

3. Pre-CIRP Performance

3.1. Performance During Past Three Years:

The CD was stuck in multiple financial distress wherein revenue were declining and liabilities increasing:

- a. The company sales declined from FY 2015 to FY 2017 due to macroeconomic factors.
- b. Also, PAT declined due to large interest cost and restructuring with lenders failed.
- c. The lenders were then forced to take Corporate Debtor to CIRP process.

3.2. Reasons of Financial Stress: Major reasons for Financial stress were as following:

- a. Aggressive mis-timed ambitions of inorganic growth resulted in poor utilization of funds and capital expenditures with long gestation period returns were incurred.
- b. For further Acquisitions and Capital expenditures, Amtek continued to pile on Debt onto its Balance Sheet, which after a point in time became unsustainable as the International Operations started stagnating and at the same time the Domestic Operations could not sustain the y-o-y debt obligations;
- c. In FY17, the Debt to EBITDA level rose to ~32x, which was way higher than the automotive component industry average.
- d. Frequent Misses in payment of debt obligations led to trust deficit between the erstwhile management and the lenders.

- e. Acute Working Capital challenge led to poor schedule adherence and business losses and added to the trust deficit with the customers.\
- f. Complete breakdown of MIS and financial controls worsened the situation further.

4. Corporate Insolvency Resolution Process (CIRP)

4.1. Appointment of IRP/RP

National Company Law Tribunal (NCLT), vide order¹ dated 24th July 2017 initiated the Corporate Insolvency Resolution Process (CIRP) of Amtek Auto Limited under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016. The Adjudicating Authority (AA) appointed Mr. Dinkar T. Venkatasubramanian as the Interim Resolution Professional (IRP) of the Corporate Debtor (CD) vide order dated 27th July 2017. He was later confirmed as Resolution Professional (RP) by the Committee of Creditors (CoC) in its meeting held on 22nd August 2017 under provisions of the code.

4.2. Initial Assessment

Post receipt of the order from the NCLT, the IRP along with authorized representatives from EY (the firm providing support services to the IRP) met with the incumbent management team of the corporate debtor, to take charge of its assets.

The IRP along with his team met the key executives of the company and took a download of the existing business operations and the organization structure. The IRP also informed the management regarding the provisions of the IBC, 2016 and laid down the roadmap for maintaining the going concern of the business during CIRP and for future co-ordination and expectations from the incumbent management.

The meeting also helped in identifying key Point of Contacts for critical functions and enabled creation of shadow teams within IRP's team to monitor and own these critical functions, including treasury, HR, plant operations, sales & marketing etc.

1. C.P. (IB) No. 42/Chd/Hry/2017), (NCLT Chandigarh Bench).

The CD's unit locations were spread across the country –09 in National Capital Region (NCR), 03 near Pune and 01 each in Bhopal, Hosur, Chennai, Rudrapur and Baddi. These teams established contact with the operations team on ground and laid the action plan to win the confidence of all the local stakeholders including but not limited to employees, suppliers, customers, statutory bodies etc, to ensure going concern of the business. Additionally, the company had under its direct holding, multiple operational units across the globe including Japan, Thailand, Spain, and Germany amongst others. These units operated as independent companies with little to no operational control of the corporate debtor. One of the bigger challenges initially for the RP was to establish ongoing communication channel with these entities and establish informational and operational control over them.

The teams deployed at operational locations established contact with the operations team on ground and laid the action plan to win the confidence of all the local stakeholders to ensure the CD continues as Going Concern (GC).

During these meetings and visits, the IRP and team managed to understand the key intricacies of the business and potential concerns/ risks in maintain the going concern of the business, some of which have been highlighted here:

- a. **Massive scale of operations with 15+ operational domestic plants in 7 locations across the country:** The Company had strategically built plants around the major automotive belts across India to be able to cater to all major OEMs. While this enabled the company to be a major supply source for top OEMs, it also resulted in some of these units operating in silos resulting in lack of uniformity across major organisational metrics.
- b. **Large employee base with salary delays for both on-roll and contractual employees:** With over 6000+ employees (on-rolls + contractual), the company was a major source of employment and livelihood in the country. Working capital

constraints and cash crunch had resulted in salary delays of 2-3 months across locations and as such, a lot of uncertainty among the employees; the uncertainty further increased on account of insolvency commencement resulting in further unrest among the workforce.

- c. **Working capital challenges and cash crunch:** In the immediate 12-15 months preceding the commencement of insolvency, the company faced severe cash crunch due to reducing business operations which eventually resulted in payment delays across stakeholders including employees, suppliers, statutory agencies and of course financial creditors. Maintaining going concern of such a massive company with limited availability of cash was going to be an uphill task for all involved.
- d. **Trust deficit with customers and risk of business loss:** The Company was a major supply source for most of the large OEMs in the country. The automotive industry works on a JIT model with minimal inventory being stocked at the OEM end and rather relying on steady supply of parts from ancillary suppliers daily to enable production. The business performance of the company was on the downturn and the schedule adherence levels of top customers had been low resulting in a panic situation amongst OEMs. The news of insolvency commencement further elevated concerns of these OEMs on the ability of the company to be able to supply material to keep their line operational. Some high-level assessment estimated OEM line stoppage risk estimated @ INR 30 bn/day (400mn USD/day), a threat which grew larger with the commencement of insolvency. The threat of key customers pulling out, making the business unviable was ever-increasing. Moreover, given the current financial condition of the company, most of the OEMs had barred the company from consideration for new product development. This could have a substantial impact on the going concern of the business in the medium to long term

as a lot of components being produced by the corporate debtor were in the last leg of their product life-cycle and not being empaneled for new product development would effectively result in business loss for the next 8-10 years, depending on the platform (average platform life for OEMs ranges from 6-10 years and as such loss of a platform would result in business loss for the entire life cycle of the business).

- e. **Complex group structure marred with related party linkages across the supply chain:** The components being machined by the company underwent several processes and assemblies before being supplied to the OEMs as finished product. While the company supplied the final machined product, key predecessor processes in the value cycle like casting, forging and supply of critical assembly elements were stationed in other group companies, all with their own sets of problems and majority of them eventually getting admitted into their respective CIRPs. This complex structure provided the promoters with considerable leverage and the possible threat of business disruption by withholding supplies from feeder units housed in other promoter-controlled entities.
- f. **Cash stuck in inventory and receivables:** assessment of balance sheet and financials indicated substantial amounts locked up in inventory, majority of which was found to be slow-moving / non-moving. Considerable amounts of receivables were due from related entities as well which seemed non-recoverable. Exports accounted for a substantial portion of the company's sales and had long collection cycles of between 90-135 days. This further increased the pressure on the cash cycle of the company with more than 3 months' worth of export sales outstanding at any given point, but minimal credit period with the part suppliers for these components.
- g. **Large creditor base with substantial overdue across suppliers:** On account of the working capital challenges and the cash crunch faced by the company for at least 12 to 24 months prior to the CIRP initiation, the overdue to all suppliers and transporters were piling up to multiples of crores. Additionally as Amtek was amongst the First Big 12 mandates on which CIRP was initiated, there was no precedent with respect to the process for the stakeholders, which increased the risk perception in the eyes of the vendor base and made them jittery, making it that much more difficult to maintain the business as a going concern.
- h. **Non-uniformity between different plants / verticals and lack of inter-departmental co-operation:** Given the large scale of operations, having a uniform enterprise resource planning system was a necessity for the company. However, the company continued to follow old / archaic systems with individual locations running their preferred ERPs for collating, tracking and presenting information. No uniform MIS existed to track metrics at the company level and most of the plants had their own format for business reporting, resulting in 15+ excel sheets in as many different formats to be tracked to gauge daily performance. While the company strived to take a professional approach in running its business, lack of apt and uniform technical support resulted in co-ordination lacunae between key functions, often impacting the overall business growth and sensibility.
- i. **Procurement of key consumables and spares through a potentially promoter-controlled entity:** All the consumable and spares, lubes etc were procured through a single entity which acted as an aggregator from different original part suppliers. Investigation revealed instances of over-valued purchases, no adherence to supply schedules resulting in production outages, and monopolisation resulting in inferior quality of products being supplied. At the outset, it became a challenge to overhaul the entire procurement function to address this risk and ensure that all business dealings were at arm's length and for the benefit of the company.

- j. **Poor upkeep of plant and machinery resulting in quality complaints from the customers:** One of the first areas to get impacted in any cash downturn cycle is the maintenance of plant and machinery, which gets neglected until it gets to the point of no return. The company was no different with preventive maintenance having been disposed of a long time before insolvency commencement. This resulted in rapid deterioration of the industry-leading equipment which enabled the company to gain the business of the top OEMs in the country. Poor quality had become an incessant and unacceptable issue for customers, thereby increasing the threat of business loss from key customers.

In their bid to out-compete competitors and win majority of the market share to aid growth, the company booked orders at low margins and at break-even levels in some cases.

- k. **Predatory pricing strategy to gain business resulted in poor margins which became unsustainable in some components:** In their bid to out-compete competitors and win majority of the market share to aid growth, the company booked orders at low margins and at break-even levels in some cases. However, as OEMs started diverting part orders to secondary suppliers, the scale of operations came down, making supply of some components a loss-making affair, while majority of the other components continued to be low margin. Getting price increases from customers thus was imperative for successful operations, which was further made difficult due to lack of trust in customers.
- l. **Managing 90+ members in one of the largest committee of creditors in a CIRP:** Given the debt size and the varied debt profile, the company's lender base included almost all major lenders, NBFCs, ARCs, investment agencies and quite a few trusts and debenture holders. Efficiently

managing the expectations and addressing the queries and concerns of such a large and diverse base of stakeholders was a never-before challenge for everyone involved.

Because of the working capital challenges and the cash crunch faced by the company for at least 12 to 24 months prior to the CIRP initiation, the overdue to all suppliers and transporters were piling up to multiples of crores.

4.3. Concerns/challenges faced by the IRP/RP

- a. The complex business structure of Amtek required involvement of multiple related parties for completing a single order from a Customer. These inter-linkages worked back both ways with the supplier entities also majorly dependent on the corporate debtor for ~60-80% of their sales. As such, the ongoing stress at the corporate debtor was also evident in the back-end entities, hampering their operations and further impacting the operations of the corporate debtor, thus turning into a vicious circle. Subsequently most of these back-end entities were also dragged into their respective insolvencies shortly.
- b. Also, the company had warehouses and factories in different geographies including outside India, which added a layer of complexity in understanding and operating the business of the corporate debtor.
- c. RP and his team had to understand this complex structure quickly and then build trust and relation with multiple stakeholders, which required:
 - i. Converting the hostile working environment to a more constructive environment at all the plants and for continuation of business during CIRP process.
 - ii. Maintaining the morale of employees during this transition period and retain good employees while letting go some other on account of non-performance.

- iii. Managing customers and suppliers to continue business during CIRP period.
 - iv. Managing day to day operations despite huge outstanding dues of suppliers and various statutory bodies.
 - v. Maintaining sustainable operations and keep the Company afloat as a going concern amidst the above challenges.
- d. Large lender base further added to the complexity in swift decision making as the CIRP process progressed.

4.4. Measures taken to address Challenges, Improve the Financial Position, Maintain Sustainable Operations and achieve Optimal Resolution

The measures taken by the IRP/RP and the team were for meeting these challenges and maintain sustainable operations for an optimal resolution at the earliest.

These measures were undertaken to ensure protection and security of the Corporate Debtor and continue plant operations and generate positive cash flows to achieve sustainability of the company as a going concern.

Table 1 : Measures taken to address Challenges, Improve the Financial Position, Maintain Sustainable Operations and achieve Optimal Resolution

| Measures Taken | Process Followed | Key Values achieved |
|--|---|--|
| Takeover and secure assets of the Corporate Debtor | <ul style="list-style-type: none"> Plant visit across locations and taking charge Communique to all stakeholders including employees, customers, suppliers, lenders and requisite public announcements Taking charge of bank accounts and initiating the change in signatories across operative accounts Appointment of relevant legal advisors to guide the RP in the CIRP process and ensure compliance Taking possession of all company related documents including cheque books, company seals, letter heads, public websites, backup of data servers etc. | <ul style="list-style-type: none"> In accordance with the law, IRP took control of and secured Assets and initiated the CIRP |
| Making all stakeholders familiar with process and mapping expectations/way forward | <ul style="list-style-type: none"> Informing all stakeholders of the various relevant provisions of IBC and defining the new normal for smooth operations Ongoing process with multiple meetings across hierarchies and stakeholder universe viz employees, vendors, transporters, customers etc Motivate the employees and win their trust to provide the requisite support Re-establishing trust with customers/suppliers to ensure business continuity and going concern | <ul style="list-style-type: none"> A sense of ownership amongst employees with a zeal to turn the company's fortunes around Increased level of trust in suppliers /customers based on promises of professionalism and transparency |

Case Studies of Successful Resolutions under IBC

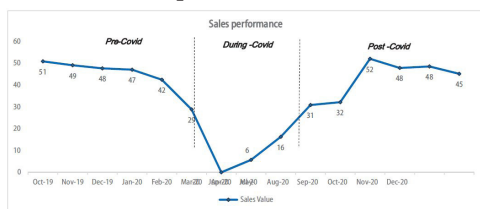
| | | |
|--|---|--|
| Uniformity of processes across plants and locations | <ul style="list-style-type: none"> Establishment of uniform MIS formats across locations to better track business metrics started tracking production numbers, procurement, expenses, break-down levels on a daily basis followed by weekly calls with individual plants to analyse and discuss the performance | <ul style="list-style-type: none"> Sense of ownership with defined individual responsibilities; Plant heads made responsible for their plants' financial performance and not just operational metrics Pro-active and efficient tracking of issues including machine breakdown |
| Interim funding and customer advances: Liquidity Management | <ul style="list-style-type: none"> Interim Finance proposal was pursued with the CoC multiple times, highlighting the need of cash for sustenance and to enable a quick resolution; CoC approved the same after 3 rounds of rejections in CoC voting Identified optimal usage of funds Built customer confidence and cultivated trust to provide advances secured against future supplies to maintain and improve operations Optimized working capital by rationalizing inventory and negotiating with creditors and debtors Implement 13-week rolling cash flow forecast to optimize cash utilization | <ul style="list-style-type: none"> Raised INR 165cr+ (20mn USD) as interim finance from financial institutions and as customer advances; the same was successfully repaid from the cash flows of the company Reduced inventory levels by improved collection terms with major customers Improved cash reserve coverage to satisfactory levels |
| Focus on machine maintenance and quality improvement; creation of production plans | <ul style="list-style-type: none"> Real time tracking of machine health on the back of improved Management Information Systems; undertook timestudy to identify issues and created an action plan for improving quality including machine maintenance and implementation of standard tooling Creation of a short-term production priority plan, in line with the working capital availability and the objective of retaining business of top OEMs | <ul style="list-style-type: none"> Increased uptime resulting in increased production and better schedule adherence Substantial decrease in rejection rates internally and at customer end |
| Continued engagement with customers | <ul style="list-style-type: none"> Built customer confidence and cultivated trust on the back of improved supply performance and quality metrics Regular update meetings with key customers to keep them abreast of the ongoing of the process and alleviate concerns, if any | <ul style="list-style-type: none"> Increased customer confidence resulting in minimal loss of business Creation of buffer stock as stipulated where possible |
| Price increase negotiations with OEMs | <ul style="list-style-type: none"> Undertook margin analysis at the product level which aided in the identification of low, medium and high margin product categories, thus enabling a tailor-made approach for each product / customer Basis the margin analysis study, created a targeted list of customers to approach for price increases on the back of the confidence build-up by reducing quality issues and improving schedule adherences | <ul style="list-style-type: none"> Price increases received from multiple customers, as high as 40% for certain components Resulted in an addition of margin and cash inflow on a monthly basis |

| | | |
|---|---|--|
| Engagement with suppliers and customers to ease working capital cycle | <ul style="list-style-type: none"> Two-pronged approach—engaged with vendors and negotiated payment terms and received cash discounts where payment terms not available; approached customers to crash payment terms for a short-term basis to improve liquidity and advances where available | <ul style="list-style-type: none"> Regained payment terms with multiple suppliers and reduced collection terms with 4 large OEMs Working capital requirement reduced by ~ INR 10 Cr on a monthly basis |
| Revamping of the procurement function | <ul style="list-style-type: none"> Using the available resources, a strategic sourcing team was created to take care of procurement needs of all plants Multiple redundancies identified in the procurement function and resources were reassigned to build a healthy base of vendor universe thereby resulting in reduced reliance on potentially promoter controlled | <ul style="list-style-type: none"> Improved availability of material, more cost-effective Standardisation of spares and consumables to the extent possible across facilities, resulting in fungibility between plants and lower inventory levels Created common order/stock pool by cluster |
| Workforce optimization | <ul style="list-style-type: none"> Workforce optimization in prolonged CIRP proceedings phase Did a root cause analysis and addressed the issue of employee attrition by implementing an incentive based payroll structure Reassignment of workforce in-turn realigning people to functions and departments in compliance with their skill set | <ul style="list-style-type: none"> The per month workforce CTC optimized during CIRP Right man for the right job – increased employee morale |
| Cost Optimization and Production Planning and Ramp up | <ul style="list-style-type: none"> Understand process leakages like wastages, rejections etc monitoring the same to bring it into acceptable range as per industry benchmarks Implement SOPs across the organization Pricing negotiation with customers and suppliers Plant wise cost budgeting and resource planning Invested in Capex to meet customer requirements and to meet new business regulations | <ul style="list-style-type: none"> Steady & sustained improvement Production ramped up across locations, which led to higher schedule adherence |

4.5. Operational Performance of CD during CIRP

- a. **Turnaround of the operations by bringing in the right expertise and strong project management:** Achieved higher schedule adherence and reduction in breakeven levels during CIRP period.
- b. **Regular maintenance & repair activities fuelled growth and increased the value of the asset for achieving resolution:** Managed capex investments from internal accruals and achieved no line stoppages.
- c. In Q1 FY21 as the Government imposed a nationwide lockdown amidst the COVID-19 pandemic, the plants were closed from March'20 to May'20 thereby leading to Nil/very low sales in the quarter.
- d. During this time, RP and his team worked with the company for cost optimization measures to reduce various costs and come out with safety manuals and be prepared for a smooth re-start of operations.
- e. Post COVID, the Company has seen a V-shaped recovery in its sales has a sustainable order book and has improved its schedule adherence across OEMs.

Chart-1 : Sale Monthly (In Cr) showing a V-shaped Recovery in the Company's performance



Source: Monthly Results; Management Information Note:

1. All sales numbers include component sale and scrap sale and excluding ARGL which was under a separate CIRP process and sold in Dec'19 after which ARGL business with Amtek was stopped.
2. Pre-CIRP data has not been shared as the RO had no control over the reported financials prior to CIRP.
3. The growth depicted above is mirroring that of the two-wheeler and tractor segment across the industry.

4.6. Resolution Process of the CD

The RP published an advertisement for inviting expression of interest for the corporate debtor on 30th August 2017 and subsequently received interests from several applicants. Out of the several interest and plans received the CoC approved the resolution plan by Applicant 1 in April 2018 and the RP filed an application with the AA for approval of the Resolution Plan by Applicant 1.

The NCLT upon an application filed under Section 30(6) of the IBC approved the resolution plan submitted by Applicant 1 vide order² dated 25th July 2018 which was later permitted to be withdrawn by the NCLT vide order dated 13th February 2019 on default in implementation by Applicant 1. The NCLT advised that the H2 bidder from the previous bidding process be given the first chance, with respect to the resolution and granted additional 55 days for the purpose of calculating CIRP of 270 days and a further period of 10 days for serving notice to H2 bidder.

In May 2019 in order to maximise the value of the corporate debtor for all stakeholders, the CoC submitted to the NCLAT that several

2. (C.A. No. 114 of 2018 in C.P (IB) No. 42/Chd/Hry/2017), (NCLT Chandigarh Bench).

3. Company Appeal No. 219 of 2019 & Ors, NCLAT.

interests have been received for resolution of the corporate debtor and prayed for them to be considered. Accordingly, the NCLAT permitted³ the CoC to consider plans if filed by one or more persons. On requests by the CoC to grant additional time, the NCLAT did not consider extending/ excluding the period for starting a fresh process and directed NCLT to pass appropriate liquidation orders in the matter of the corporate debtor on 16th August 2019.

However, on appeal by the CoC, the Supreme Court stayed the liquidation proceedings pursuant to order⁴ passed by NCLAT vide order dated 6th September 2019. Subsequently, the Supreme Court vide several orders from September 2019 to February 2020 permitted the RP to invite fresh orders from prospective resolution applicants. The Resolution Plan by Applicant 2 was approved by the CoC on 11th February 2020 and the same was filed by the RP with NCLT for approval in June 2020. Subsequently after due process, vide order dated 09th July 2020, the NCLT approved the resolution plan of Applicant 2 for Amtek Auto Limited (AAL) under Section 31 of the IBC.

5. Post CIRP period

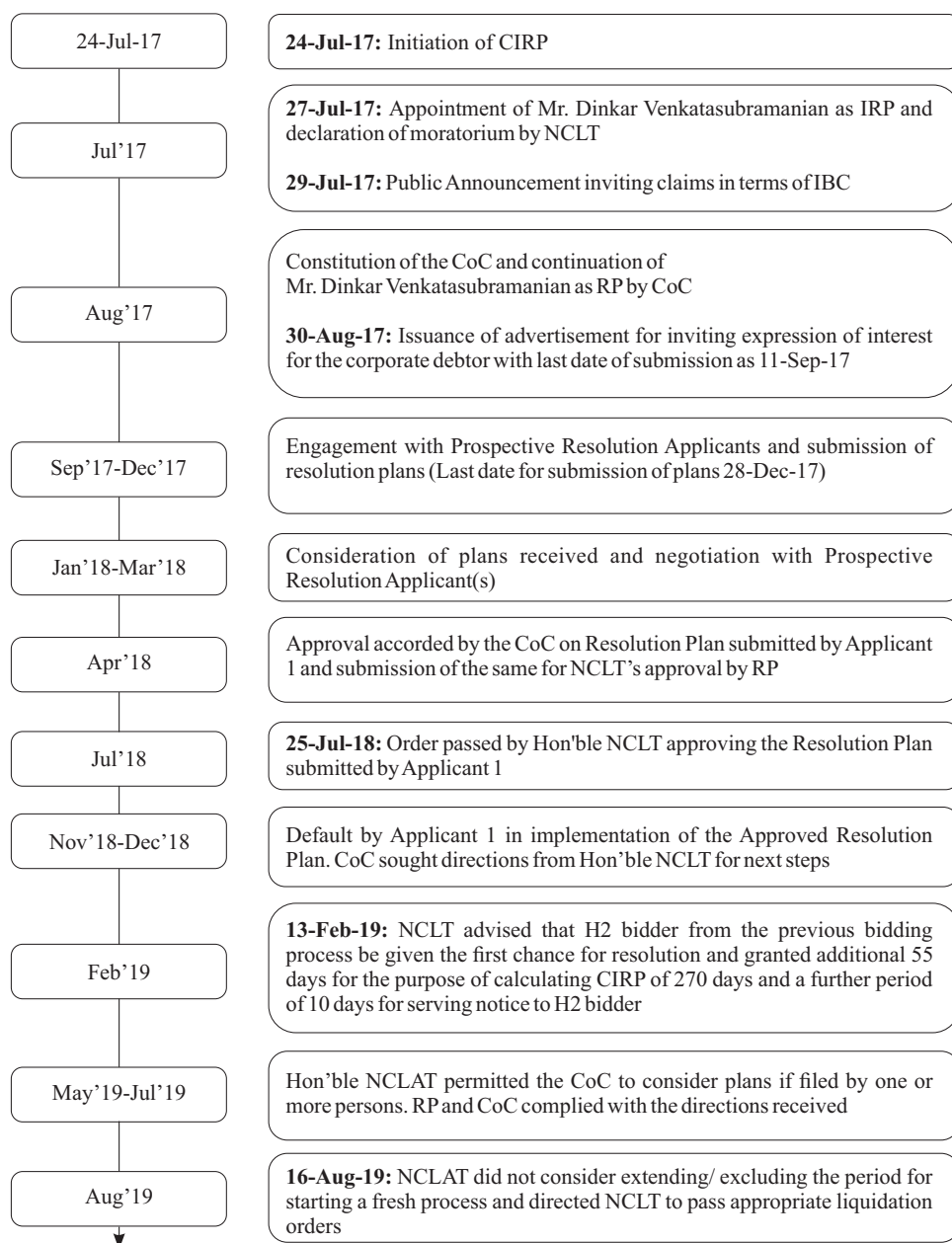
The Company is continuing to run as a going Concern by the Implementation and Monitoring Committee as per the terms of the Approved Resolution Plan with sustainable Business. The company has a positive outlook for the next quarter and beyond and has been able to increase its share of business from some customers especially in the Tractor and two wheeler industry, which has contributed to the V- shaped recovery in the Post-COVID period.

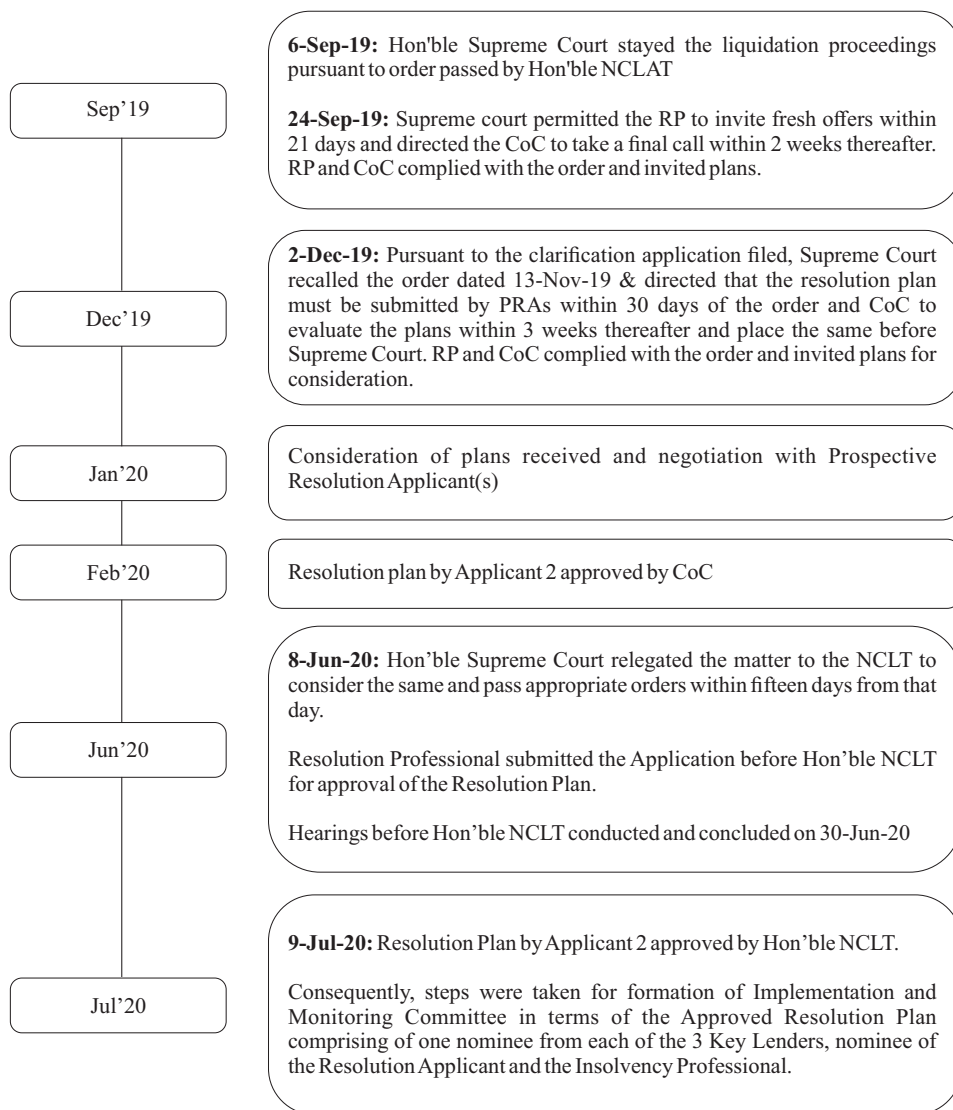
- a. The recovery in the auto segment and the Company has been fuelled by tractor segment, heavy industrial equipment segment, twowheeler and personal vehicle segment.
- b. The Company has been able to capitalize on the growth potential and has high schedules for fourth quarter of FY 21

4. Civil Appeal No. 6707 of 2019, SC.

- c. Continuous efforts are being made to optimise workforce leading to reduction in monthly CTC ~30 days currently
- d. Cash coverage continues to improve from as low as 2 days at the initiation of the CIRP to
- e. Amtek has managed to improve confidence across stakeholders and continues to have a sustainable order book from all marquee OEMs.

Graph 1: CIRP / Key Operational Milestones Timeline





CHAPTER-3

CIRP of Monnet Ispat & Energy Limited (MIEL)

Monnet Ispat and Energy Ltd. (MIEL) is one of the 'Twelve Large Accounts', the CIRPs of which were initiated by banks on directions of the Reserve Bank of India (RBI). The Resolution Plan of MIEL yielded 123% of its value of assets at the time of CIRP commencement date i.e., liquidation value.

The major reasons behind MIEL's financial stress have been influx of cheap Chinese steel products, impact on account of government policies in making available key natural resources namely coal & iron ore for the steel industry, de-allocation of coal mine by the Supreme Court in September 2014, delay in ramp-up of the integrated steel plant, and higher interest rates among others. There were 39 members in the CoC, total admitted claims were ₹ 11,014.92 Crore. The CoC after considering the feasibility and viability of the Resolution Plan approved the same with 98.97% vote share but subject to certain conditions.

*The present case study, sponsored by IIPI, has been conducted and developed by Shri Sumit Binani and his Professional Advisors Shri Ashish Chhawchharia, and Shri Surendra Raj Gang. Shri Binani has handled the MIEL account as IRP, RP, and Monitoring Agent for implementation of the Resolution Plan. In this Case Study, the author has covered various stages pertaining to the CIRP of MIEL and has summarized the key highlights including challenges faced during the process. **Read on to know more...***

1. Introduction

MIEL had availed fund based and non-fund-based loan facilities from various banks and financial institutions including the State Bank of India (SBI), the lead creditor, and its erstwhile associate banks, viz. State Bank of Patiala, State Bank of Mysore, State Bank of Bikaner and Jaipur, State Bank of Hyderabad, and State Bank of Travancore.

The company had been facing financial stress since few years before being considered as Non-Performing Assets (NPA) and admitted to insolvency, due to several factors including influx of cheap Chinese steel products, impact on account of government policies in making available key natural resources namely coal & iron ore for steel industry, de-allocation of coal mine by the Supreme Court in September 2014 and also various other factors e.g., delay in ramp-up of the Integrated Steel Plant, higher interest rates etc. Due to default in repayment of the loans and pursuant to a directive¹ of the Reserve Bank of India (RBI) on June 15, 2017, the process was initiated for resolution of the Company.

Pursuant to the petition filed by the SBI, a Financial Creditor (FC) of the Corporate Debtor (CD), under Section 7 of the Insolvency and

Bankruptcy Code, 2016 (IBC) for initiation of CIRP, the National Company Law Tribunal (NCLT), Mumbai Bench vide its order on July 18, 2017, admitted the CD into CIRP and appointed Shri Sumit Binani as its Interim Resolution Professional (IRP). He was later confirmed as the Resolution Professional (RP) in the first meeting of the Committee of Creditors (CoC) on August 23, 2017. The MIEL was amongst the first list of 12 large cases referred¹ by the Reserve Bank of India (RBI) for initiation of CIRP.

2. Profile of the CD

Monnet Ispat & Energy Limited (MIEL), the CD or Company was, one of the leading sponge iron players in India, which eventually graduated to an integrated steel making facility. It also had expertise in the business of mineral beneficiation and had partnerships with leading global players.

Incorporated in the year 1990 as Monnet Ispat Limited, the company was principally engaged in manufacture and sale of steel intermediaries

1. Live Mint (2017): RBI tells banks to file cases against 12 big loan defaulters in a month, June 17 (<https://www.livemint.com/Politics/bTsvgLK63zmErEicmlbf3I/Bhus-han-Essar-Steel-among-12-firms-being-moved-to-insolvenc.html>)

e.g., Sponge Iron, Billets, Ferro alloys and long (rebar's) steel products through its facilities at Raipur and Raigarh. Its main finished products included TMT, Billets, DRI, Pellets, Structural Steel, Plates and Coils (Future Products) and Ferro Alloys. The company had two plant facilities located in Raipur and Raigarh.

MIEL's products were catering to Automobiles, Infrastructure, Construction, Equipment and Machinery Manufacturing, Ships and Railways, and Electrical Equipment, etc.

MIEL's products were catering to Automobiles, Infrastructure, Construction, Equipment and Machinery Manufacturing, Ships and Railways, and Electrical Equipment, etc.

Table 1: Pre-CIRP Financial Performance

| Particulars | Amount in ₹ Crores | |
|----------------|--------------------|------------|
| | FY 2015-16 | FY 2016-17 |
| Net Sales | 2,021 | 1,373 |
| EBITDA | -369 | -86 |
| Loss After Tax | -1,705 | -1,734 |

Source: Annual Report of MIEL, FY 2016-17.

3. Corporate Insolvency Resolution Process (CIRP)

3.1. Initiation of CIRP

NCLT Mumbai through an order² on July 18, 2017, admitted the CIRP of the MIEL and appointed Shri Sumit Binani as Interim Resolution Professional (IRP). The same was made available on the website of the NCLT on July 24, 2017. After the receipt of the order, the IRP along with his team immediately visited the office of the CD at New Delhi. IRP appointed Grant Thornton (GT) as his professional advisor. After being confirmed as RP by CoC, the RP confirmed GT as professional advisor or RP Support Team w.e.f. July 24, 2017. GT provided support services by nominating a team of professionals right from the commencement of CIRP. The erstwhile management was cooperative and facilitated smooth take over.

2. Live Mint (2017): Bankruptcy proceedings against Monnet Ispat, Alok Industries get NCLT nod, July 19 (<https://www.livemint.com/Industry/KuE9WpmdwB20kpoNdg9i4J/Bankruptcy-proceedings-against-Monnet-Ispat-Alok-Industries.html>)

The requisite team members were deployed at the respective plant locations at Raigarh and Raipur to assist in managing the operations of the CD. Considering the scale of operations and activities to be carried out during the CIRP, respective teams were formed for overseeing the activities of plant operations including sector specialists, procurement and payment approval process, sales, Management Information System (MIS) and other reporting, claim verification, legal matters, treasury and collection, human resource and payroll, financial accounting, and taxation. Besides, insurance advisors were also engaged for assessing the extent of insurance coverage of the CD.

Upon initiation of the CIRP, the IRP and his support team met key management personnel and understood operations and immediate priorities. Considering that the IBC was new and evolving, its awareness and the impact was not known to various stakeholders. The IRP and his support team therefore also reached out to various stakeholders, such as customers, raw material suppliers, employees of the CD, labour contractors, other vendors, creditors, government authorities and apprised them about the commencement of CIRP of the CD and its impact. They were also appraised that all the necessary approvals would be reviewed by IRP or his authorised team members. Besides, the team took particular effort to explain the concept of moratorium, submission of claims, embargo on payment relating to pre-CIRP period to creditors as well as various government departments. The RP along with the RP Support Team also undertook the following key activities as mentioned below:

Customers were also assured that in case of any complaints raised by them because of inferior quality and non-adherence to the delivery timeline, it would be addressed instantly.

(a) Formation of CoC

There were 39 members in the CoC, with total admitted claims was ₹ 11,014.92 Crore out of which the State Bank of India had maximum admitted claim amounting was

₹ 2,265.63 Crore with 20.78% voting share. The other big creditors were ICICI Bank Ltd., IDBI Bank Limited, and Indian Overseas Bank etc. ICICI Bank Limited's admitted amount was ₹ 902.54 Crore with 8.28% voting share, IDBI Bank Limited had admitted amount of ₹ 740.73 Crore and 6.79% voting share, and Indian Overseas Bank with the claim admitted amount of ₹ 458.87 Crore and 4.21% voting share. Requisite assurance was accorded to the Banks, OCs and company employees that there would be no disruption in the ongoing process and the payment process would be streamlined. Customers were also assured that in case of any complaints raised by them because of inferior quality and non-adherence to the delivery timeline, it would be addressed instantly. The RP Support Team assisted the IRP/RP in reviewing the pricing methodology of customers and vendors. The CoC in its meeting on August 23, 2017, confirmed the IRP as RP for the CD to conduct the CIRP.

(b) Analysis of CD Operations and Preparing Strategy for CIRP

The respective plant personnel apprised his team about the nature of facility, current capacity, and the extent of enhancement in the capacity level, status of operations at both the plant locations. The support team also assisted the IRP/ RP in carrying out assessment pertaining to the supplier and technology utilised and at the respective plant units. Extensive deliberation was done on the capacity utilisation of all the units and process of eliminating the bottlenecks being observed in the process. Besides, technical experts also assessed the product range of both the units in comparison to the current demand and supply level both in the domestic and international market. The RP support team also reviewed compliance status of all the environmental rules and regulations of Central and State governments and set up a system to ensure their timely compliance. Furthermore, major focus was also accorded to the process for procurement of raw material and quality which played role in operations of the CD. The RP team also evaluated maintenance schedule of the plants and communicated various suggestions to senior

plant personnel for improvement. Thereafter, periodic maintenance activities were carried out at all the units. For better compliance and management, daily meetings of the plant head and heads of departments (HODs) were initiated. The minutes of meeting (MoM) of these meetings used to be shared with IRP and his team. Besides, 'plant performance review meetings' were started on weekly and monthly basis.

Assurance was given to the workers and employees that their salaries for CIRP period would be cleared without any delay. The intent of the IRP and his team was to encourage open door policy.

(c) Communication with the Employees

Since there were many employees' exits in six months prior to the commencement of CIRP, it was necessary to address employees' concerns, make them aware about the process, and assure them that the endeavor of the IRP/ RP & his support team would be to continue the operations and maintain the CD as a going concern (GC). The IRP/ RP assisted by his support team conducted an open house session for the employees of the CD at the corporate office, which was live streamed at all the plant locations of the CD. The intent of this session was to apprise the workers and employees about the basic provisions of the IBC with a view to curtail the psychological pressure of job insecurity and to build a cohesive environment for a successful resolution of the Company. Assurance was given to the workers and employees that their salaries for CIRP period would be cleared without any delay. The intent of the IRP and his support team was to encourage open door policy. There were around 4,000 employees including ~1,800 contractual staff at initiation of CIRP.

(d) Deployment of Company Security Personnel and Mapping with the External Security Supervisors

The RP Support Team assessed the current deployment of the company security personnel at all the locations of its operations, status of the various check posts at plant locations. The security head of the company was duly

informed about the change in the reporting mechanism. External security supervisors were appointed and adequately mapped with the company security personnel. The appointed security supervisors were directed to provide daily reports to the RP team and also about any untoward incident within the plant premises.

(e) Correspondence with External Stakeholders

The IRP/RP duly assisted by his team reached out to the various external stakeholders such as customer representatives, selling agents, raw material suppliers, contractual workers, vendors, statutory authorities. They were apprised about relevant procedures of CIRP, CoC and the revised processes of decision making in the Company.

(f) Banking, Procurement and Payment Related Functions

The IRP took control over all the operative and non-operative bank accounts of the CD. Requisite communication was sent to the respective branches of the bank for updating in the list of authorised signatories. One bank account at the respective site was kept operational for routine and small transactions with the instruction of transferring any balance above the specified limit to the Trust & Retention Account (TRA) account. The respective company personnel were apprised that all expenses are incurred with prior approval from RP Team as per the delegation of authority matrix approved by IRP/RP and CoC. Procedure of reporting bank balance on daily basis was also established for direct oversight on fund allocation. Mechanism was also established for approval and monitoring of procurement/ purchase order process.

(g) Accounting, Finance and Legal Functions

Timely completion of books of accounts and its reconciliation with physical status and site accounts was also one of the objectives of the RP Support Team. With the recent introduction of GST at that time, another major area of focus was on the transition and streamlining various processes to ensure that the invoices were promptly booked to enable timely filing of GST returns. IRP/ RP and support team also took an update on the status of the ongoing

direct and indirect tax related litigations and assessments, and details of major statutory disputed demands.

The RP Support Team also engaged with the legal team of the CD to understand key litigations, arbitrations, and awards. Key performance indicators of the respective HODs were aligned with the performance of the CD.

3.2. Operational Challenges to run CD as GC

(a) Incomplete Facilities at Raigarh Plant

Some of the facilities of the CD as on the date of its CIRP commencement date were not commissioned due to financial constraints. The commissioning and operationalisation of Electric Arc Furnace, Slab caster, Plate Mill and Lime Kiln required additional significant capital expenditure. As the CD did not have the required finances, it was found feasible to operate the blast furnace only after the aforesaid downstream facilities are commissioned so that hot metal from the Blast Furnace can be used in the Melting Furnace to make steel. However, the same was not possible due to paucity of funds and status quo was maintained.

Production cost of the company had been significantly higher than industry benchmarks. The Company had very high conversion costs, overheads, and marketing expenses.

(b) High Fixed and Conversion Costs

Production cost of the company for 2017-18 was ₹1245 crore which had been significantly higher than industry benchmarks. The Company had very high conversion costs, overheads, and marketing expenses. Due to small-scale operations of less than 1 MTPA, the company lacked economies of scale. It was suggested that once the operations are stabilised at the optimum level capacity, the cost structure could be rationalised due to increased turnover. This would lead to higher operating margin.

(c) Operational Efficiency of Raipur Unit

The unit was designed to produce 0.15 MTPA finished products from 0.23 MTPA steel making units. The plant was set up in 1993

and had a less-efficient route of steel making, i.e., Induction Furnace route. Substantial capital expenditure was required to be infused to complete the said requirements.

(d) Working Capital

At the CIRP commencement date, the CD did not have sufficient working capital and only part of the company's integrated facility at Raigarh was operational due to working capital constraints. Substantial portion of the working capital was stuck in the slow-moving receivables. Due to negative news about the company, majority of the suppliers were reluctant to accord any credit on the supply.

3.3. Key Legal Matters Related to CIRP

(a) Moratorium under IBC, 2016 Vs. Income Tax Act

This case was finally decided by the Supreme Court³ on August 10, 2018, on appeal filed by the Income Tax Department against the order of Delhi High Court. In the instant case, the Income Tax Department has challenged the moratorium granted to the CD from recovery of Income Tax to the tune of ₹152.99 Crore. This case was among few cases where overriding effect of the IBC got reinforced over other enactments.

In the instant case, question to decide before the High Court was whether the order given by the Income Tax Appellate Tribunal (ITAT) against the CD will be stayed by the moratorium applicable under Section 14 of the Code. While addressing the question in affirmative, High Court had quoted the judgment of the Supreme Court in the matter of *M/s Innoventive Industries Ltd. v. ICICI Bank* wherein the Supreme Court has observed that Section 238 of the IBC unambiguously provides that the IBC will apply, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 14(1)(a) of the Code states, inter alia, that on the 'Insolvency Commencement Date' the Adjudicatory Authority (AA) shall by

order declare moratorium for prohibiting 'the institution of suits or continuation of pending suits or proceeding against the CD including execution of any judgment, degree or order in any court of law, tribunal, arbitration panel or other authority'. Following the precedence of the *Innovative Industries Ltd vs. ICICI Bank Case*, the Delhi High Court held that the execution of the order of the ITAT in respect of the tax liability would be stayed until the approval of the Resolution Plan. The Delhi High Court adjudged the similar question in *CCT South Delhi vs. Monnet Ispat & Energy Ltd.*, wherein relying on the order of the above-mentioned case, held that the moratorium period would be applicable to the execution of Order passed by the ITAT.

Dismissing the appeal filed by the Income Tax department, the Supreme Court held that the Section 238 of the IBC has overriding effect on anything inconsistent in any other enactment, including the Income Tax Act. The Supreme Court cited the order in the matter of *Dena Bank vs. Bhikhabhai Prabhudas Parekh and Co. & Ors.* (2000), to clarify that Income Tax dues, being of the nature of Crown Debts, do not take precedence even over secured creditors who are private persons.

(b) Short-Term Open Access for Wheeling of Power

On an application moved by the RP to direct Chhattisgarh State Power Distribution Company Ltd. (CSPDCL) and Chhattisgarh State Power Transmission Company Ltd. (CSPTCL) to provide short-term open access permission for wheeling of power from Raigarh plant of the CD to its Raipur plant. The NCLT extended its earlier order⁴ dated October 09, 2017, until further orders, on payment of the prescribed fee. The status quo was maintained till the implementation of the Resolution Plan.

(c) Termination of Gare Palma, Coal Block

MIEL had received allocations for captive coal mines which were later de-allocated as per the order of the Supreme Court of India.

3. NCLT, Mumbai (2017): CP No. 1139/(MAH)/2017 and M.A. No.470/2017, November 27, 2017 (<https://www.legitquest.com/case/parties-state-bank-of-india-v-monnet-ispat-energy-limited/193C87>)

4. NCLT, Mumbai (2018): MA 199/2018, MA 223 /2018, MA261/2018 in CP 1L39/2017, April 04.

Subsequently, MIEL, participated in fresh round of auctions, conducted by Ministry of Coal, Government of India in January 2015 and emerged successful bidder for Gare Palma IV/7 coal block in Mand Coalfields, Chhattisgarh which an opencast mine with total mineable reserves of 60.47 million metric tonnes (MMT). This mine was again cancelled by the Ministry due to non-submission of Performance Bank Guarantee by MIEL. The RP had filed an application before the NCLT praying to keep the status unchanged during CIRP. However, this petition was dismissed by NCLT vide order dated January 16, 2018. Thereafter, an appeal was preferred before the NCLAT which was also dismissed on the ground that the government was incurring revenue loss of about ₹ 314 Crore annually.

The RP and his team ensured that Corporate Social Responsibility (CSR) initiatives undertaken by the Company prior to CIRP commencement date are continued to the extent possible.

(d) Claims by ICICI Bank, IFCI Limited and Standard Chartered Bank

Three lenders – ICICI Bank, IFCI Ltd. and Standard Chartered Bank – approached the NCLT against the decision of the RP to not include them as Financial Creditors (FCs).

ICICI Bank contended that the bank had lent \$75 million (~₹ 486 Crore) to Monnet Power Company Limited (MPCL), a subsidiary of MIEL in external commercial borrowing (ECB) in which MIEL was a guarantor. The company had raised that money to build a power plant in Odisha. As the corporate guarantee was invoked after filing of the CIRP application, the RP did not include this claim under the category of Financial Creditor (FC). Similarly, IFCI had lent ₹ 158 Crore to MPCL where MIEL was corporate guarantor. In pursuant to the order⁵ of the AA on April 04, 2018, the claims were admitted by the RP.

(e) Stay on CoC scheduled for Voting on the Resolution Plan

ICICI Bank Limited filed a petition before NCLT on March 27, 2018. After hearing the RP counsel, the Court adjourned the matter to April 03, 2018, and restrained the RP

from convening the CoC meeting. In view of this sudden development, the CoC meeting scheduled on April 03, 2018, for voting on the Resolution Plan could not be held. In the next hearing, the NCLT disposed of the matter with directions to the RP to admit the claims pertaining to uninvoked guarantees and also allowed to convene the CoC meeting.

The CD reported a positive EBITDA of about ₹ 70 Crores in FY 18, as compared to reported losses in the past two years which were ₹ 291 Crores in FY 16 and ₹ 52 Crores in FY 17.

Pursuant to this order, additional claims of State Bank of India, ICICI Bank Limited, IFCI Limited, Standard Chartered Bank and IndusInd Bank were admitted and the revised list of creditors was shared with the Resolution Application (RA). Subsequently RA revised the Resolution Plan to include impact of above additional claims. In order to ensure that the amounts payable to the assenting FCs of the CD (as currently provided in the Resolution Plan) in respect of the Accepted Debt of ₹ 10,123.95 Crore are not altered and parity of treatment for the Additional Claims of ₹ 777.92 Crore, the RA proposed additional amount for the additional claims against corporate guarantee.

4. Performance of the CD during CIRP

- The turnover of the CD in FY 2017-18 was recorded at ₹ 1,419 Crore which was ₹ 1,375 Crore in the immediate previous FY 2016-17.
- The Company reported a positive EBITDA of about ₹ 70 Crores in FY 2017-18, as compared to reported losses in the past two years which were ₹ 369 Crores in FY 2015-2016 and ₹ 86 Crores in FY 2016-2017.
- By the end of CIRP, the RP Team was not only able to maintain the existing term deposits but also increased the same from ₹ 20 Crores to a level of ₹ 115 Crore.
- Streamlined salary payout to all levels of employees.
- Managed an agitation cum strike by the employees at the Raigarh plant site including demands from workers to form an employees' union.

5. Ibid.

- f. Restarting of Atmospheric Fluidised Bed Combustion (AFBC) Boiler at Raigarh unit after more than one year. AFBC Boiler offers benefits like fuel flexibility, high efficiency, low emissions and reduced cost as compared to other alternatives. This also helped in the consumption of surplus F grade coal available at the Raigarh unit and the surplus power could be wheeled to Raipur unit. The RP team assessed the additional start-up cost of running the AFBC as per the plan, safety measures at the site, periodical monitoring of the progress to get the desired results and proper regulation on supply of coal. The restart process helped the company in not only liquidating the 26,000 MT low grade coal but also saved cash flow up to ₹ 6.5 Crore.

5. Continuation of CSR Initiatives

The RP and RP Support Team, addressing the interest of nearby villagers and public at large, ensured that Corporate Social Responsibility (CSR) initiatives undertaken by the Company prior to CIRP commencement are continued to the extent possible. Some of the major CSR activities carried out, with appropriate approvals from the CoC, during the CIRP are as follows:

- a. Supported health care facilities at 15 beds Maina Devi Hospital in Raipur and 27 beds hospital in Raigarh.

Resolution Plan was successfully implemented in a record time of 30 days including payment under plan of CIRP cost to FCs and issuance of equity shares to the FCs.

- b. Assistance to Monnet DAV Public Schools at Raipur and Raigarh. Besides, conducting various literacy campaigns in nearby villages with the mission to achieve 100% literacy.
- c. Providing training courses in diverse spheres of crafts and skills such as stitching, embroidery, knitting for women, white phenyl making, candle making, backyard poultry farming etc. for sustainable livelihood and women empowerment. Besides sewing machines were also distributed among needy women.

- d. Beautification and landscaping of airports at Raipur.

6. Resolution Process of the CD

At the time the concept and proforma of advertisement for Expression of Interest (EOI) and Request for Resolution Plan (RFRP) were in nascent stage. MIEL was the first among the Twelve Large Accounts⁶ to issue advertisement for EOI. It was also among a few CDs to come up with a detailed RFP

EOI was invited from prospective investors for investment in MIEL through resolution plans vide advertisement dated September 16, 2017. In response, eight prospective resolution applicants shown interest. MIEL was among very few CDs in Twelve Large Accounts which received interest from such credible potential investors. As per the invitation, November 17, 2017, was fixed as the date for submission of resolution plans.

On November 07, 2017, the Insolvency and Bankruptcy Board of India (IBBI) notified amendments, inter alia, to Regulations 38 and 39 of the CIRP Regulations and subsequently on November 23, 2017, the Government of India amended the IBC through the IBC (Amendment) Ordinance, 2017 and prescribed eligibility criteria for submission of a resolution plan by inserting Section 29A in the IBC. In view of the above amendments in the CIRP Regulations and the Ordinance, many potential resolution applicants requested for extension of the last date for submission of resolution plan. Accordingly, the last date for submission was first extended to November 27, 2017, and thereafter, till December 12, 2017, to enable the potential resolution applicants to submit resolution plans. Though four potential resolution applicants had shown extensive interest, finally RP received only one resolution plan from a consortium consisting of 'AION Investments Private II Limited' and 'JSW Steel Limited' (AION-JSW).

As the period of 180 days was to end on January 13, 2018, the CoC, decided to seek

6. Insolvency and Bankruptcy News (2021): Twelve Large Accounts, April-June 2021, p.18. <https://www.ibbi.gov.in/uploads/publication/f4656f120a5161c281c40189353824.pdf>

extension for 90 days primarily to understand and negotiate on the resolution plan. Subsequently, the RP filed a petition before the AA under Section 12 of the IBC. The same was allowed on January 19, 2018. Thereafter, CoC meeting was scheduled on March 31, 2018, but it could not be convened due to the order of AA on the petition of ICICI Bank. [See, 4.3 (e)]. Though the CIRP was at advanced stage, the RP was not able to convene the CoC meeting, and extension of 90 days was about to expire. Finally, the AA vacated its previous order on April 04, 2018.

After detailed deliberations and submission of records, the RP agreed to accept the claim of ICICI Bank which were considered as due from the date of CIRP commencement. Furthermore, pursuant to the order of AA, the next CoC meeting was convened on April 07, 2018, for voting on the Resolution Plan submitted by AION-JSW. The CoC after considering the feasibility and viability of the Resolution Plan approved the same with 98.97% vote share but subject to certain conditions which were mentioned in the 'Letter of Intent' issued to the RA on behalf of CoC. However, 2.03% vote shareholders did not cast their votes. Thus, the Resolution Plan was submitted to the AA within the stipulated time of 270 days. The RP and RP Support Team was engaged in regular dialogues with various stakeholders to complete the CIRP on time. Thus, MIEL became first among a few CDs to get approval for the Resolution Plan.

7. Implementation of the Resolution Plan

In pursuance to the terms of the 'Letter of Intent' issued to the RA, it deposited the amount of upfront payment and also completed replacement of the necessary bank guarantees as per the Resolution Plan and amendment letter thereto. Subsequently, the process of releasing the payments to the FCs was initiated and the Resolution Plan was successfully implemented in a record time of 30 days including payment under plan of CIRP cost to FCs and issuance of equity shares to the FCs. This was done with coordinated and integrated efforts of the RP Support Team,

Secretarial Team, Legal Team of Monnet Ispat, and team of the RA.

8. Preferential, Undervalued, Extortionate and Fraudulent (PUFE) Transactions

The RP filed an application under Section 43 of the IBC pertaining to preferential transactions before submitting the Resolution Plan before AA for approval. Two transactions aggregating to ₹ 29 crore were identified to be preferential in nature.

These preferential transactions were related to the loans the CD availed from two purportedly related parties amounting to ₹ 24 Crore and ₹ 5 Crore at an interest rate of 18% p.a. and 15% p.a. respectively within two years look back period prior to initiation of CIRP. The same were paid with interest to the related party lenders around three to four months prior to initiation of CIRP.

Though not in a position to repay its debts due to financial stress, the CD was found to be extending preferential treatment to its related party creditors by repaying their loans along with interest just months prior to CIRP initiation i.e., while the CIRP petition was pending before AA. The RP sought directions from the AA to issue orders to related preferential creditors for refund. In its order on July 25, 2018, the AA allowed the petition but partially. The AA held that the beneficiary creditors were not related parties within the

The AA held that the beneficiary creditors were not related parties within the meaning of related party under the IBC. However, it concluded that the transaction of ₹ 23 Crore preferential in nature.

meaning of related party under the IBC. However, it concluded that the transaction of ₹ 23 Crore was preferential in nature. In case of the second transaction of ₹ 5 Crore, only ₹ 2.84 Crore was admitted as a preferential transaction within the meaning of Section 43 of the IBC. The respective creditors were ordered to refund the aforesaid sums along with relevant interest to the CD within 30 days of the order. An appeal against the said order is currently pending adjudication before the Supreme Court.

9. Status of the Company

In FY 2019-20, the Company had restarted production at the 2 million tonne per annum pellet plant at Monnet Ispat and Energy and ramped up the Direct Reduced Iron (DRI) utilisation and will be ramped up progressively. Resolution of the Company by JSW Steel and

AION is playing a pivotal role in the turnaround of the company and is significantly optimising the operations. Leading with guidance on strategy, operations, and Environmental, Social and Governance (ESG) practices, the JSW Steel management is helping the

Table 2: Performance Overview in Post CIRP

| S.No. | Overview | FY 2020-21 (₹Crore) | FY 2019-20 (₹Crore) | FY 2018-19 (₹Crore) |
|-------|------------------|------------------------|------------------------|------------------------|
| 1. | Revenue | 4,187 | 2,638 | 1,879 |
| 2. | Net Profit /Loss | (104) | (488) | (1,900) |
| 3. | EBIT | 170 | (234) | (3,015) |

Source: JSW Ispat Special Products Ltd. (<https://www.moneycontrol.com/india/stockpricequote/steelspongeiron/jswispatproducts/MI16>).

production to its optimal capacity to bring down the cost. DRI plant was operating at lower capacity Monnet was buying iron ore and pellet from open market and now the cost will come down after commissioning of the pellet plant. While DRI plant is working at its full capacity, the pellet is now operating at 60 per cent

company in becoming truly better, every day. With the guidance and support from JSW Steel, company is able to harness the latest industry knowledge, market intelligence, training expertise and experience across all business functions.

Table 3: Date of Major Events in CIRP of MIEL

| S.No. | Date of event | Description of Activity |
|-------|--------------------------|--|
| 1. | 18-07-2017 | Order passed by NCLT for CIRP commencement of MIEL. |
| 2. | 24-07-2017 | Order communicated to the IRP regarding his appointment. |
| 3. | 26-07-2017 27-07-2017 | Public announcement to invite proof of claims from the Financial Creditors (FCs) of the CD. |
| 4. | 31-07-2017 | Appointment of two registered valuers. |
| 5. | 07-08-2017 | Last date for submission of proof of claim as per the PublicAnnouncement. |
| 6. | 14-08-2017 | Based on the claims received and verified by the RP, a list of FCs was finalized. |
| 7. | 16-08-2017 | Constitution of the Committee of Creditors (CoC) |
| 8. | 21-08-2017 | The first list of FCs and report on constitution of CoC filed with NCLT. Due to claim being received from a new FC, the list of FCs was updated and accordingly the CoC was reconstituted. |
| 9. | 22-08-2017 | Preparation of information memorandum |
| 10. | 23-08-2017 | First meeting of CoC held, where the CoC confirmed the appointment of IRP as RP. |
| 11. | 16-09-2017 | An advertisement inviting EOIs from interested investors was published in newspapers. |
| 12. | 25-09-2017 | Last date for submitting EOI. |

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| | | |
|-----|--------------------------|--|
| 13. | 26-09-2017 | Third meeting of CoC was held. In this meeting, the CoC members discussed the criteria for evaluation of resolution plans. |
| 14. | 26-09-2017 to 10-10-2017 | Signing of Non-Disclosure Agreement (NDA) with potential resolution applicants. Request for proposal document inviting resolution plans from qualified persons was issued to the potential resolution applicants who had executed the NDA. |
| 15. | 17-11-2017 | Last date for submitting resolution plans. The date for submission of resolution plan was initially extended till November 27, 2017, and thereafter, till December 12, 2017, to enable the potential resolution applicants to submit resolution plans in due compliance of section 29A introduced vide IBC (Amendment) Ordinance, 2017. |
| 16. | 12-12-2017 | One resolution plan received from a consortium consisting of AION Investments Private II Limited and JSW Steel Limited. |
| 17. | 16-12-2017 | CoC decided to seek extension of the period of CIRP for a further period of 90 days under section 12 of the IBC and authorized the RP to file an application before the AA. |
| 18. | 09-01-2018 | NCLT passed an order extending the CIRP period by 90 days. |
| 19. | 01-03-2018 | AION-JSW consortium submitted a revised resolution plan. |
| 20. | 26-03-2018 | The RP through email informed the members of the CoC that a meeting of Coc will be convened on March 31, 2018. |
| 21. | 27-03-2018 | NCLT passed an order on an application of ICICI Bank Limited, a FC, granting a stay on the meeting of the CoC to be held on March 31, 2018, till further directions. |
| 22. | 04-04-2018 | NCLT vacated its earlier order dated March 27, 2018, of stay on holding a meeting of the CoC and directed the admission of claims filed by ICICI Bank, IFCI, and Standard Chartered Bank. |
| 23. | 07-04-2018 | Eighth meeting of the CoC was held where the Resolution Plan submitted by the AION-JSW was considered. |
| 24. | 09-04-2018 to 10-04-2018 | The Resolution Plan of AION-JSW was approved by the CoC with 98.97% majority voting share. |
| 25. | 13-04-2018 | In accordance with section 30 (6) of the IBC, application was filed before AA seeking approval for the Resolution Plan. |
| 26. | 24-07-2018 | Resolution Plan approval by AA. |
| 27. | 31-08-2018 | Completion of the handover of MIEL to the successful RA and take-over of the control by the new management. |



CHAPTER-4

CIRP of Binani Cement Limited (BCL)

Binani Cement Limited (BCL), a flagship subsidiary of Binani Industries was engaged in the production and sales of cement with a brand name of 'Binani Cement' and clinker in Rajasthan, Maharashtra, Haryana, Delhi and some other states of India. In pursuance of insolvency application of the Bank of Baroda (the Creditor), the Kolkata Bench of the National Company Law Tribunal (NCLT) vide an order on July 25, 2017, admitted CIRP (Corporate Insolvency Resolution Process) of the Company (the Debtor). The NCLT also appointed Mr. Vijaykumar V. Iyer (Vijay) as the Interim Resolution Professional was subsequently confirmed as the Resolution Professional by the Committee of Creditors. Mr. Vijay and his team successfully completed the CIRP of the company that resulted in a 100% recovery for the lenders. The team, with the support of stakeholders, restarted manufacturing and sale operations reinforcing the going concern status of the Company. This enabled the team to market the company, generate interest and obtain six compliant resolution plans before handing it over to Ultratech Cement Ltd, the successful resolution applicant.

*The present case study, sponsored by IIPI, was developed by Mr. Vijay with his colleagues, Mr. Alaric Diniz and Ms. Deepali Rai. In this study, the research team has provided a first-hand step by step guide to resurrect a corporate life. **Read on to know more....***

Introduction

Binani Cement Limited (BCL), the Corporate Debtor (CD)/the Company, was engaged in the manufacturing, sales and distribution of branded cement since its foundation in 1996. The case of Corporate Insolvency Resolution Process (CIRP) was admitted against the company under the Insolvency & Bankruptcy Code, 2016 (IBC)/the Code in the Kolkata Bench of the National Company Law Tribunal (NCLT) in July 2017.

During the CIRP, the Resolution Professional (RP), as per the provisions of the Code, successfully restarted the operations of the CD and maintained it as a Going Concern. Besides, the RP also finalized a list of feasible resolution applicants (RAs) for consideration of the Adjudicating Authority (AA) i.e., NCLT, Kolkata Bench. The NCLT, Kolkata Bench finally approved the Resolution Plan of a Resolution Applicant (RA) that had proposed 100% plus resolution to the financial, operational and other creditors. Subsequently, the CD was successfully transferred to the RA.

The present case study fundamentally discusses the operational parameters - the challenges and steps taken for sustained and improved operations, and cash position of BCL during the CIRP, thereby, facilitating a

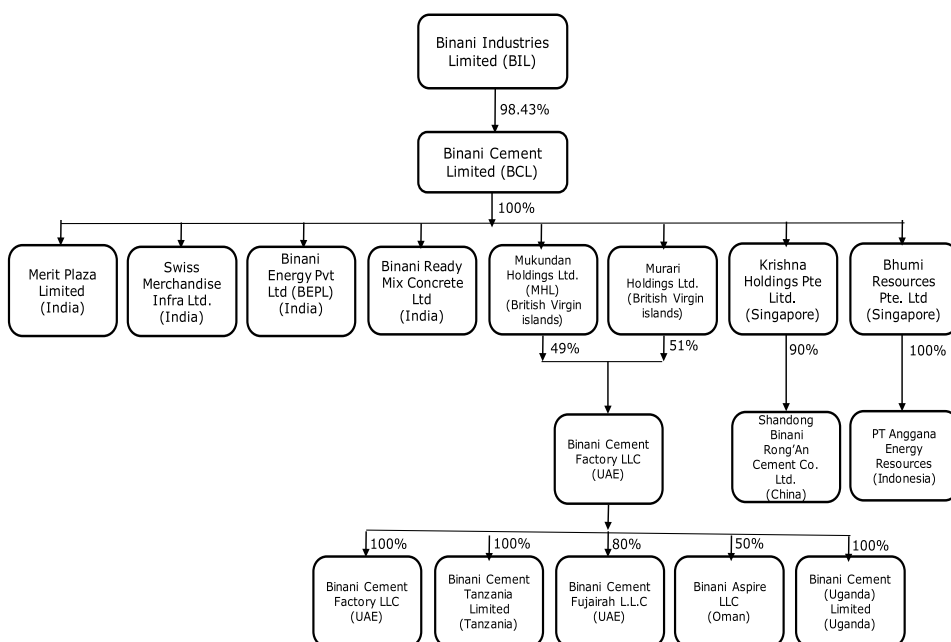
successful resolution as envisaged under the Code.

Company Profile

- Binani Cement Limited, listed at Bombay Stock Exchange (BSE) and National Stock Exchange of India Limited (NSE), was a part of the Braj Binani Group and a subsidiary of Binani Industries Limited (BIL), India.
- BCL used to manufacture and market 'Ordinary Portland Cement' (OPC) (43 and 53 grade)
- The production capacity in India was 6.25 Metric Tonnes Per Annum (MTPA) with 70 MW captive power plants. Besides, it had clinker capacity of 3 MTPA at China and grinding unit of 2 MTPA at Dubai. The total global capacity of the Company was 11.25 MTPA.
- The Company had developed sizeable facilities (~300 hectare of land) and had substantial raw material reserves (limestone mining lease at Amli and Thandi Beri in village-Binanigram (BGR) spread across 256 hectares (ha.) and 468 ha. respectively), and was operating the following cement units in the state of Rajasthan:

Case Studies of Successful Resolutions under IBC

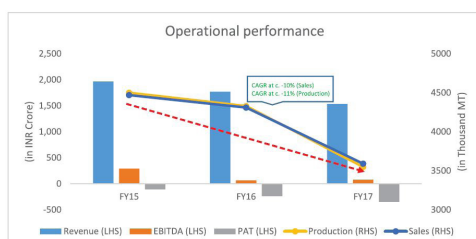
- An integrated unit (IU) of 4.85 MTPA of cement production capacity with 2 lines of cumulative clinker capacity of ~14,200 Tonnes per Day (TDP) in village-BGR, Tehsil- Pindwara, District- Sirohi, Rajasthan.
- The IU had captive power plants of 70MW.
- Additionally, a second plant consisting of grinding unit (GU) with an installed cement capacity of 1.4 MTPA in village-Sirohi, Tehsil- Neem Ka Thana, District-Sikar, Rajasthan.
- Both, the integrated cement unit and the grinding unit, had railway facilities for inward and outward movement of materials.
- The Company had captive limestone reserves which are near BGR, and this was capable of serving its needs for the next 30 years.
- The Company had also acquired coal mines in Indonesia for meeting the energy requirements of its global presence.
- In India, BCL had a widespread distribution network, comprising ~3,000 dealers in core markets (Rajasthan, Gujarat and Haryana) and ~1,100 dealers in non-core markets as on November 2018.
- All the plants were ISO 9001:2008, 14001:2004 and OHSAS 18001:2007 certified.
- Furthermore, the Corporate Debtor had a number of subsidiaries and step down subsidiaries as follows:



Source: Annual Report of FY 2016-17 of BCL

Pre-CIRP Performance

a. Performance in Three Previous Years



Source: Company's Financial Statement

b. Reasons of Financial Stress

| Year | Liquidity Issues | Financial Stress |
|---------|--------------------------------------|--|
| 2012-13 | Overseas expansion | <ul style="list-style-type: none"> Project to expand the company's production base with a new plant in Mauritius was scrapped by October 2012, when Binani Cement could not secure enough land for a site for the factory. The Chinese authorities prohibited further cement capacity expansion in China. |
| 2013-15 | Divestment for debt reduction | <ul style="list-style-type: none"> Binani Industries was under pressure to sell 40% stake in Binani Cement to raise capital. In February 2015, company sought to sell its 1.2 MTPA Neem Ka Thana grinding unit in Rajasthan to further reduce its debt; the deal didn't go through. |
| 2016-17 | Penalties and working capital issues | <ul style="list-style-type: none"> Penalties imposed by the Competition Commission of India impacted ~50 per cent of the company's net profits from 2009 to 2011. Receivables accumulation / unrealized sales for the finished product supplied, majorly to related parties resulting in working capital shortage. |

Source: HDFC securities retail research FY 17-18 dated March 23, 2018.

The lower capacity utilisation had impacted profitability due to paucity of working capital support from the bankers on account of the financial stress within the company. The Earnings before Interests, Taxes, and Depreciation and Amortisation (EBITDA) margins declined from 15% in FY 2014-15 to 5% in FY 2016-17 while the Profit after Tax (PAT) margins had considerably deteriorated from (negative) -5% in FY 2014-15 to (negative) -23% in FY 2016-17. The sales volumes had declined at CAGR of about 10% while the production had declined at CAGR of about 11%.

Apart from the above factors, construction slow down further created pressure on price realization for cement due to over-capacity and lower demand from the commercial real-estate segment. Furthermore, high input costs also impacted profitability negatively.

c. Failure of Corrective Action Plan

The restructuring of the existing term loans was necessitated on account of lackluster demand, decline in realizations, increase in costs and other extraneous circumstances including on account of Rajasthan VAT.

The consortium of banks had agreed to restructure the account under Joint Lenders Forum (JLF) Mechanism. While a Corrective Action Plan (CAP) was finalized by JLF and Master Restructuring Agreement was signed, some of the consortium lenders had not

sanctioned the facilities as per CAP and other lenders who had sanctioned facilities as per CAP did not disburse or partially disbursed the facilities as per CAP. As a result, the CAP could not be implemented in full within the time frame prescribed by Reserve Bank of India.

Due to non-disbursement of facilities and partial implementation of CAP, Company could not honour its debt obligation in time resulting in the CAP being "declared as failed" by the lenders, and the Company being taken to NCLT under the Code.

Corporate Insolvency Resolution Process (CIRP)

a. Appointment of IRP/RP

Pursuant to an application by the Bank of Baroda (Applicant) filed before the NCLT,

Kolkata Bench (NCLT) against Binani Cement Limited in terms of Section 7 of the Insolvency and Bankruptcy Code, 2016 read with its Rules and Regulations, the NCLT, Kolkata Bench appointed Mr. Vijaykumar V. Iyer as the Interim Resolution Professional (IRP) vide its order dated July 25, 2017 (Insolvency Commencement Date, ICD). He was confirmed as the Resolution Professional (RP) by the Committee of Creditors (CoC) pursuant to the voting at the first CoC meeting held on August 22, 2017. The entire CIRP was completed with the active support of financial creditors and other stakeholders. The summary of the CIRP timeline is provided in Annexure 1.

After initial meetings at the corporate office, the IRP team travelled to the plant at BGR and took charge of the assets of the Corporate Debtor on July 29, 2017 as a majority of operations were carried out from the plant location.

b. Initial Assessment

Upon receipt of the NCLT order, the IRP along with authorized representatives from Deloitte Touche Tohmatsu India LLP (DTTI - the firm providing support services to the IRP) met with the applicant bank and with management team/ advisors of BCL at their Corporate Office in Mumbai to take charge of assets of the Corporate Debtor. After initial meetings at the corporate office, the IRP team travelled to the plant at BGR and took charge of the assets of the Corporate Debtor on July 29, 2017 as a majority of operations were carried out from the plant location. These initial procedures including to meet with the promoters, directors, KMPs, to further understand the issues and financial situation of the company – concerns and pain points, to explain the procedure of CIRP and roles & responsibilities of the IRP/RP, and to explain the expectations and cooperation sought from the promoters, directors, KMPs to achieve a successful resolution. Following are some of the key takeaways from these initial discussions.

1. **Plant operations had been stopped prior to ICD:** The cement plant operations had been stopped since July 23, 2017 (before commencement of CIRP) due to non-supply of coal and shortage of working capital. During initial discussions, the management of the Corporate Debtor tried to dissuade the IRP and his team from visiting the plant at BGR citing non-payment of dues and possible local unrest.
2. **Condition of plants:** It was observed by the technical advisors that the general condition of major equipment specifically Kiln 2 and its associated equipment like VRMs and Cement Mills needed extensive repair and maintenance, and which had not been carried out on account of the lack of adequate cash flows in the Company.
3. **Security and safeguarding the assets:** The IRP with his team evaluated the security services and their positioning especially considering the vast area over which the plant facilities were spread, the mining area near the plant and the large number of employees and workmen living within the BGR Township. A security agency was deployed to take over the security requirements and to safeguard plant locations and assets.
4. **Large number of employees:** As on ICD, the total number of employees was ~700 and contract labour were ~2,000.
5. **BCL** was sole source of employment/ income for the employees and workmen at BGR/ NKT. The extent of dependency meant that the non-operation of the plant was a very emotive issue resulting in a highly charged environment.
6. **Key employees of BCL on deputation:** Key employees i.e., Chief Financial Officer (CFO), Company Secretary (CS), marketing manager, bank liaison and operations were not on the rolls of BCL but were employed by BIL (holding company) and were being deputed to BCL.
7. **Majority of the operations carried out from the plant, which was both in a remote location as well as in a sensitive tribal belt:** During initial meetings it was highlighted that except for the deputed employees all other major day to day operations were carried out from the

plants. It was also important to note that the major exits / highways from the plants to the nearby cities were non-operational from sunset to sunrise on account of potential threats from local miscreants.

8. **Marketing, sales and distribution operations were carried out from the Delhi office of the Company:** Though the manufacturing and dispatch activities were carried out from the plant, the marketing, sales and distribution operations were carried out from the Delhi office of the Company which entailed additional monitoring and coordination activities especially given the spread of the markets across Rajasthan, Gujarat, Haryana, Delhi, Punjab, MP and Maharashtra.
9. **Cash and Bank Balance:** Bank balance for operational accounts as on ICD was ~INR 4.0 Crore whereas the minimum fixed cost for the company just for a month was ~INR 9.47 Crore; a shortfall of over INR 5 crores.
10. **Inventories:** As on ICD, reported inventories value was ~INR 60.33 crores (break up as given in Annexure 2). Coal stock as on July 24, 2017 was reportedly 25,311 MT out of which 24,954 MT were lying at port in accordance with high-seas sales agreement; only 357 MT of coal was available at the plant which was insufficient for restarting the plant.
11. **High amount of receivables from related parties:** As on ICD, the company had ~INR 616 Crores of receivables out of which ~INR 590 Crores receivable were from 3 companies which were related parties of the company (indirect relation through common directors with the holding company BIL). Sales were carried out on a credit basis to these parties. Sarawati Sales (SSPL) which owed ~INR 488 Crores to the Company was a Market Organiser (MO), the regional dealer that had a sub-dealer network under the MO, and sales happened in the states of UP, Delhi, Maharashtra, Punjab, and MP through SSPL. The Company had a different arrangement with SSPL as compared to other MOs wherein sales are directly made and invoices are raised to SSPL.
12. **Routing of dealings with transporters via a related party:** The Company had entered into various transactions with transporters via a related party entity Dhaneshwar Solution (DSPL) for all the logistic requirements of BCL. The IRP was informed that transport costs had been paid by BCL to DSPL; however the IRP team learned that the same was still outstanding to be paid to the transporters by DSPL.
13. **Manpower Services by a related party:** Nirbhay Management Services Pvt. Ltd (NMSPL) was providing manpower services to BCL at various locations (BGR, NKT, Jaipur, Mumbai, Ahmedabad etc). These services were pertained to guest house, medical hospital/clinic, school, bagging services at plant, etc. and were essential for smooth continuity of operations. NMSPL was a wholly owned subsidiary of Binani Metals Pvt. Ltd.; a related party to BCL.
14. **Relatively new senior management team:** The senior management team of the Company was relatively new with most of them joining BCL in 2017.
15. **Influence of the promoter:** Promoters had continuing influence on the management team and on other stakeholders. Similar to other debt restructuring and recovery processes, and as the IBC was still in its nascent stage, stakeholders considered the CIRP as a transition period and expected the promoters to come back. There was uncertainty with respect to participation by promoters in the resolution process (this case commenced prior to 29A restrictions), and stakeholders were unclear as to which side to support.
16. **Hostile situation and strike at plant locations by trade unions, transporters, dealers, and market organisers, etc.:** Hostile situation and strike by the various stakeholders was on account of non-payment or delayed payments resulting in non-cooperation and stalling of business activities of the Corporate Debtor. Threats, both physical and otherwise, were made by trade unions and transporters to members of the IRP team.

17. Perception of stakeholders on Company's future post initiation of CIRP: Low morale of all stakeholders due to commencement of CIRP and non-payment or adjustment of their outstanding dues

18. Non-payment of statutory dues: During CIRP commencement, statutory dues pertaining to PF and TDS for the month of March 2017 to June 2017 amounting to INR 3.82 crores remained outstanding.

19. Overseas operations: Only two of the step-down subsidiaries of BCL i.e. Shandong Binani Rong'an Cement Company Ltd. (China) and Binani Cement Factory LLC. (UAE) were cement manufacturing units of which management of BCL have submitted that the operations of China plant was shut down on account of environmental regulations in China and that the operations in Dubai were not profitable.

c. Concerns/Challenges faced by the IRP/RP

1. To protect and preserve a sizeable asset with a large area in a remote location, large employee and workmen residing in the township were attached to the plant.
2. Convert the hostile situation to a more constructive working environment at the plant and in the company upon commencement of CIRP.
3. To restart the plant and maintain sustainable operations in order to achieve optimal resolution.
4. Managing day to day operations despite huge outstanding dues including to various statutory bodies.
5. Managing the large MO/dealer network spread over both core (Rajasthan, Gujarat) and non-core markets (Haryana, Delhi, Punjab, MP and Maharashtra) covering seven states.
6. Addressing the various issues highlighted in the point above and finding solutions to each of them that would be workable and in agreement to the concerned stakeholders.
7. Addressing control over the overseas subsidiaries as a shareholder, as the IBC

gives only 'ownership rights' as recorded in the balance sheet of the Corporate Debtor to the IRP/RP over these entities under the Code.

d. Measures taken to address challenges, maintain sustainable operations and achieve optimal resolution

The measures taken by the IRP/RP and team to meet the challenges and maintain sustainable operations can be considered in terms of short- term, medium-term and long-term measures to achieve optimal resolution at the earliest and not more than the 270 days (180 days + 90 days of extension provided by the Adjudicating Authority) as prescribed in the Code.

Measures taken to address challenges, maintain sustainable operations and achieve optimal resolution along with Processes and Achievements

| S.N. | Short Terms Measures (STMs) | Mid Term Measures (MTMs) | Long Term Measures (LTMs) |
|------|-----------------------------|--------------------------|---------------------------|
| 1 | STM 01 | MTM 01 | LTM 01 |
| 2 | STM 02 | MTM 02 | LTM 02 |
| 3 | STM 03 | MTM 03 | LTM 03 |
| 4 | STM 04 | | |
| 5 | STM 05 | | |
| 6 | STM 06 | | |
| 7 | STM 07 | | |

(i) Short Term Measures (STMs)

The STMs were concerned to ensure protection and security of the Corporate Debtor, while restarting of plant operations and generating positive cash flows to ensure sustainability of the company as a going concern. They could be described in three sub-heads (Measure, Process Followed and Achievements) as follows:

STM 01: Takeover and secure assets of the Corporate Debtor

Process Followed

- Visited all the Company sites i.e., at Mumbai, BGR, NKT and others,
- Intimations were sent to all stakeholders. The banks were intimated for change in authorized signatory and all bank

accounts were taken over, and statutory authorities were intimated regarding the proceedings.

- Appointed external security agency to take care of the assets of the company and to increase security arrangement at plant and offices of the corporate debtor.
- Appointed legal advisors to RP in relation to the legal issues of BCL, insolvency proceedings, drafting of petitions, reply and rejoinder applications and appearances before courts
- Photos and videos of the plant were captured on “as-is -where-is basis”.

Achievements

- Assets were secured for commencing and sustaining operations.

STM02: Imparting knowledge about the CIRP to all stakeholders.

Process Followed

- Imparting education about the Insolvency & Bankruptcy Code and process to be followed for successful resolution of the company to all stakeholders. Multiple meetings were conducted with management of the corporate debtor, employees, vendors, transporters and dealers to patiently and repeatedly explain the CIRP and motivate them to provide the support envisaged from each stakeholder during CIRP.
- This being one of the first cases, the immediate reaction of the stakeholders was that the company was ‘insolvent’ and undergoing ‘liquidation’. Concern was about their outstanding dues and how/ what needed to be done to achieve some settlement; as all groups of stakeholders had substantial amounts outstanding.

Achievements

- Positive outlook for the process and support from stakeholders for sustainable operations.
- Understanding of the CIRP, filing of claims, role and responsibility of the IRP/RP and the stakeholders, and the responsibility and role of the promoters.

- Stakeholders got a sense of the high possibility of a recovery and likely resolution for the company.

STM 03: Meeting with the key stakeholders.

Process Followed: The IRP also held meetings with the following key stakeholders along with the management of the Company to seek their effective support during the CIRP to achieve successful resolution.

- **Management & Employees:** Various plans were discussed with management to restart the production including maintenance activities required and phasing of maintenance activities for sustained operations.
- **Trade union leaders:** Discussed and agreed on strategy to manage the workmen and labour to ensure uninterrupted operations and dispatch of materials.
- **Transporters:** Discussed and agreed settings aside past dues vide the claim mechanism under the CIRP and agreed a modus for payments in relation to dispatches during the CIRP.
- **Market Organizers (MOs) and dealers:** Discussed and agreed options for advance collection to increase liquidity and ensure minimal opportunity for payment default. Additionally, ensured that payment received for future sales are not adjusted against liabilities of the dealers prior to the CIRP.

Achievements

- Dispatch of cement started in August 2017 prior to restarting of the plant with the inventory available at the plant.
- The plant was restarted on August 11, 2017.

STM 04: Preservation of value and going concern status

Process Followed

Business plan was drawn up in consultation with the management and technical team of the Corporate Debtor for/to:

- smooth and efficient running of the operations, gauge maintenance requirement,
- target production/sales volume to achieve breakeven,
- analysis of focus markets,
- monitoring and maintenance of the cash flows, and
- Interim finance requirement.

With liquidity generated out of cement sales made by clearing existing inventory, IRP team restarted plant operations on August 11, 2017.

- Appointed technical consultants to advise RP on technical matters pertaining to day to day operations of the plant and to assist RP on technical, operational, marketing, logistics and management aspects of the company.
- Engaged a separate team to carry out cash flow monitoring for assistance in and management of day to day operations of the Corporate Debtor to result in reduction of surprises and better visibility on business performance and for pre-audit of daily payments, receivables and deviation based on understanding of operational metrics.

Achievements

- Raised an interim finance line of INR 100 Crore.
- Better management of the day to day operations of the company including tracking performance and taking corrective actions on a real-time basis, as required.

STM 05: Restarting of Plant Operations

Process Followed

- Since the plant was non-operational at the commencement of the CIRP, the company was not able to generate production and dispatch for a period of 4 - 5 days which had an impact on cash flows.
- After several discussions, plant operations were resumed, using coal inventory with the Company, by restarting the kiln and captive power plants which also helped in power cost savings.

Achievements

- With liquidity generated out of cement sales made by clearing existing inventory, IRP team restarted plant operations on August 11, 2017 by running the plant.

STM 06: Controlling assets of overseas entities as only a shareholder.

Process Followed

- Taking custody of share certificates of the subsidiaries.
- RP having taken over control of BCL, the holding entity having ownership rights in the subsidiaries, issued letters to the directors of the subsidiaries to take his prior consent for any corporate action in respect of the subsidiaries, and to securing the assets of the subsidiaries.
- Facilitated site visits to overseas plants as requested by the resolution applicants.

Achievements

- The resolution plan considered full value to all creditors while considering control over the subsidiaries.

STM 07: Miscellaneous Measures

Process Followed:

The IRP team also instituted a process with the required checks and balances for monitoring the followings:

- Monitoring of procurement of material and services vide a transparent process while excluding related parties.
- Payments to transporters against dispatches on delivery basis as it were essential to the distribution of the products in the market.
- Transactions with related party, being a provider of essential manpower services to BCL at various locations after the approval of CoC in order to continue their services.
- Overseeing dispatch of finished goods and documentation in respect of cash collection prior to dispatch.
- Follow up for collection of receivables.

- Management Information System (MIS) reporting, the reports which are required by the management to track the performance of the company.

Achievements

- Increased overall capacity utilization of the company by pushing sale of both, cement and clinker.

(ii) Medium Term Measures (MTMs):

The MTMs pertain to sustaining the operations of the Corporate Debtor by ensuring availability of the adequate working capital and cash flow to enable immediate maintenance requirements. The key MTMs are as follows:

MTM 01: Interim Finance

Process Followed

- Interim finance was required to mitigate working capital shortages for managing day to day operations and to incur certain maintenance costs to adequately function above breakeven level.
- The IRP circulated the interim finance proposal to members of the CoC.
- The PSU banks could not support the interim finance proposal on account of the provisioning requirement as per the RBI guidelines.
- One of the CoC members provided a proposal for providing interim finance to the Corporate Debtor.
- After multiple detailed discussions on the achievability of the business plan and the necessity for maintenance expenses to achieve an optimal resolution plan, the term sheet for interim finance was presented.
- The interim finance term sheet was placed before the CoC and discussed in detail and an INR 100 Crore line was approved by the CoC and sanctioned. Accordingly, an inter creditor agreement was executed in October 2017.

Achievements

- Out of the sanctioned amount of INR 100 Crore, INR 85 Crore were withdrawn

for utilization in 2 tranches (INR 55 Cr in October 2017 and INR 30 crore in December 2017).

- Furthermore, INR 20 crore was repaid as part repayment of interim finance availed from cash flows generated.

MTM 02: Continuous dialogue with authorities to ensure smooth functioning of the Corporate Debtor.

Process Followed

- Liaison with VAT authorities, requesting deferment of stringent actions due to non-payment of previous VAT dues pre-CIRP and modus-operandi for making payments given no payment of the prior period.
- Meeting with Indian railways authorities to ensure month on month increase in availability of rakes for cement and clinker dispatches.
- Meeting with Provident Fund (PF) authorities pertaining to unpaid PF dues to discuss situation of the Corporate Debtor and CoC approval taken for PF payments for the prior period.
- Meeting with Indian Railways' authorities for compliance pertaining to Dedicated Freight Corridor.

Achievements

- Ensured smooth functioning of the Corporate Debtor while also having a positive impact from vendors and suppliers to the CIRP.

MTM 03: Employees' Promotions, Bonus and Increments.

Process Followed

- RP proposed promotions and increments which were effective from July 01, 2017 and had an additional cost of INR 20 lac. per month which was 6.41% of the overall Cost to the Company (CTC).
- The proposal was approved by the CoC.
- Out of 381 eligible employees, 85 were promoted.

Achievements

- These actions further reinforced the “going concern” status of the Corporate Debtor and helped boost confidence amongst the employees while eliciting their positive support throughout the process.

(iii) Long Term measures (LTMs):

The LTMs were aimed at improving the value of the Corporate Debtor for the future thereby increasing the possibilities for a successful resolution. The key LTMs used in the CIRP are as follows:

LTM 01: Operations & Maintenance Activities

Process Followed

- Interim Finance was raised to meet the maintenance and repair requirements.
- Oversaw negotiations of credit terms with suppliers and transporters.
- Kiln-2 Maintenance in consultation with Holtec and commenced production from Kiln-2 on February 7, 2018.
- Preventive maintenance of Kiln-1 undertaken in February 2018.
- One captive power plant made operational from October 2017.

Achievements

- Ensured continuity in operations of the Corporate Debtor and maintained it to a sustainable level.

LTM 02: Sales & Marketing

Process Followed

- Continuous communications with employees and dealer network to restore confidence.
- Ensuring consistent material availability throughout the CIRP through proper monitoring of inventory, dispatches and collections.
- Appropriate branding and promotional activities undertaken like dealer’s meet, distribution of Diwali gifts, and wall paintings etc.
- Key marketing employees were retained until conclusion of the CIRP.

Achievements

- Reinstated the sales in non-core markets by creating a dedicated marketing team for these regions.
- Increased capacity utilization by pushing sales of cement and clinker by additionally covering non-core markets as well.

LTM 03: Supply Chain Management

Process Followed

- Regular meeting with key vendors to reinstate continued short term and long term supplies and availability of key raw materials.
- Regular dispatches ensured and payments released in a timely manner to restore the confidence of transporters.
- Monitoring of material delivery and coordination with vendors to ensure non adjustment of previous dues.
- Maintenance of the safety stock level of finished goods and raw materials
- Organized inter-department meetings to address coordination problems.
- Coordination with NMSPL management to ensure continuity of operations.
- Implemented robust dispatch planning and route allocation process.

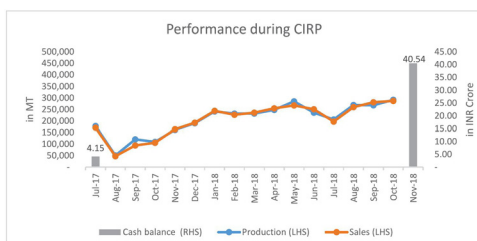
Achievements

- Found out that BIL was supplying Binani branded cement in the Southern Indian market through alternative channels. The activity was stopped immediately.

With pro-active, transparent approach during CIRP and the active support of all stakeholders including CoC members, operations of the plant were improved and sustained throughout the CIRP period.

The process of the sale of the Corporate Debtor generated interest among six global companies, 14 domestic companies, and seven financial bidders. Subsequently, six compliant resolution plans were received by the RP. After approval of the resolution plan, the lenders recovered 100% of their dues. A timeline

along with summary of the key operational milestones is provided in Annexure 1.



e. Operational Performance

- Turnaround of the operations by bringing in the right expertise and strong project management: Cement production and sales volume both grew at cumulative monthly growth rate of ~11% over the CIRP period as compared to CAGR of ~ -11% and ~ -10% for production and sales over FY 2014-15 to FY 2016-17 prior to the CIRP.

RP proposed promotions and increments which were effective from July 01, 2017 and had an additional cost of INR 20 lac. per month which was 6.41% of the overall Cost to the Company (CTC). Out of 381 eligible employees, 85 were promoted.

- Regular maintenance & repair activities fuelled growth and increased the value of the asset for achieving resolution: Overall capacity utilisation remained in the range of ~50% during the CIRP, while substantial repair and maintenance activities were carried out from the cash flows of the Company post approval by the CoC.
- Once core-market operations were stabilised, the RP team focused on non-core markets as well, expanding the market coverage of the Company: Post discussion and consultation with the Company

management and Holtec team, and the approval of the CoC, RP has authorized on boarding of 25 people on contract basis for non-core markets.

Post-CIRP Period

In pursuance to the NCLAT order dated November 19, 2018, Binani Cement Limited, the Corporate Debtor, was transferred to the successful Resolution Applicant and renamed as Ultratech Nathdwara Cement Limited (UNCL) w.e.f. December 12, 2018.

a. UNCL: Key Assets Acquired

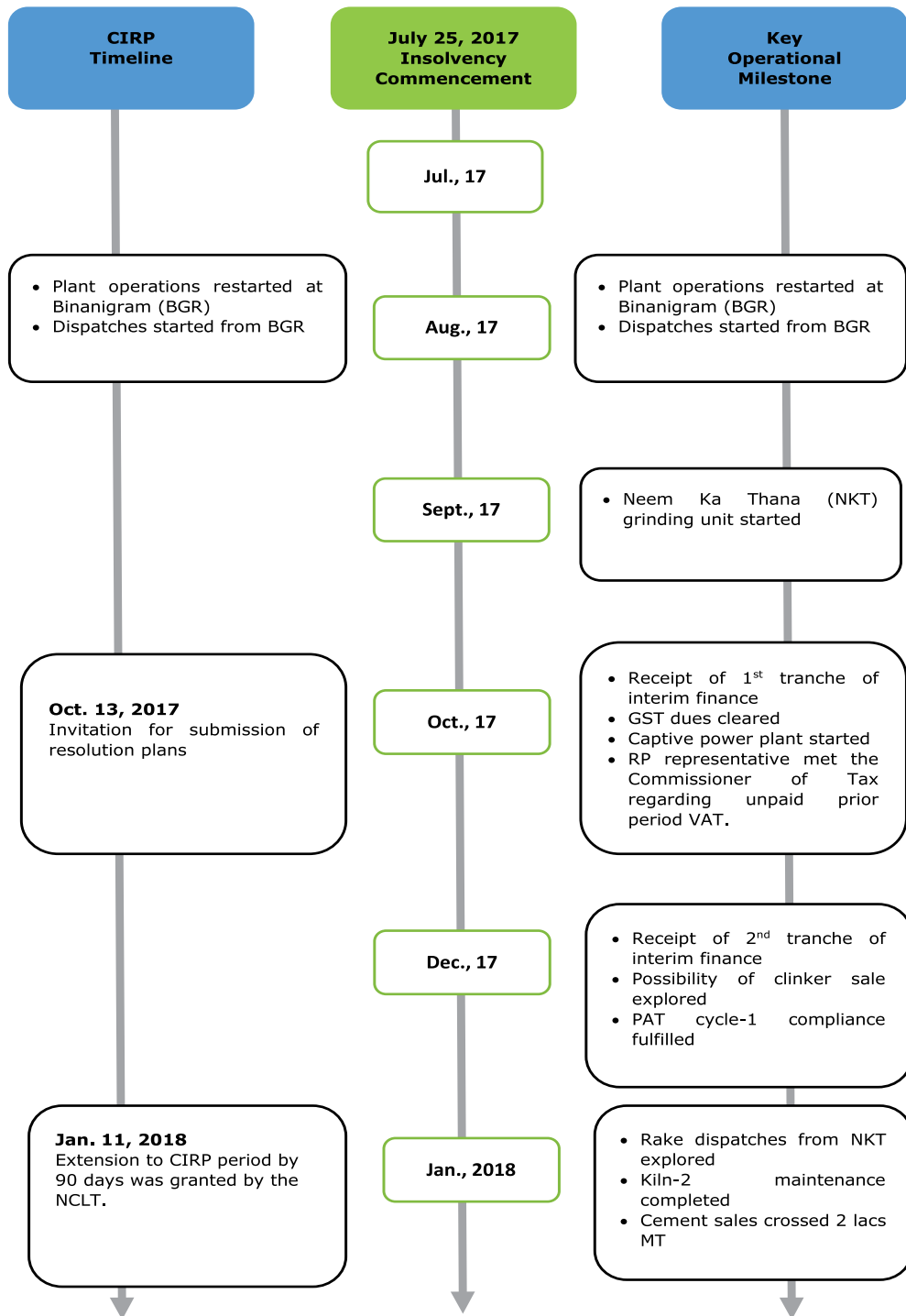
| | |
|-----------------|--|
| Indian Assets | Clinker Capacity-4.59 MTPA in Rajasthan |
| | Cement Capacity- 6.25 MTPA in Rajasthan |
| | Thermal Power Plant- 70MW |
| | Superior Quality Sizeable Limestone Reserves |
| | Latest Technology European Plants |
| Overseas Assets | China- Clinker: 2.0 MTPA, Cement- 0.3 MTPA |
| | UAE: Cement GU: 2.0 MTPA |

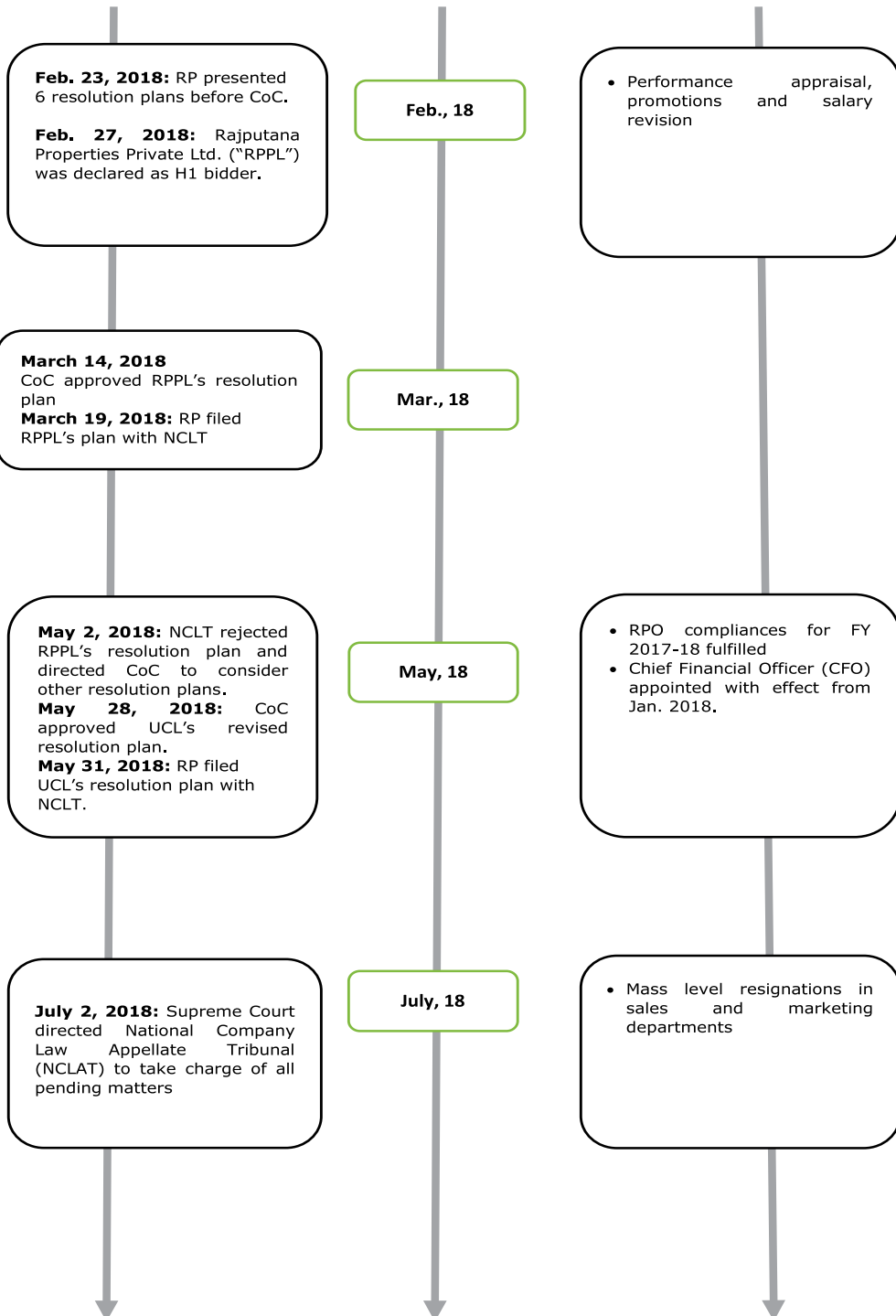
b. UNCL- Integration Update

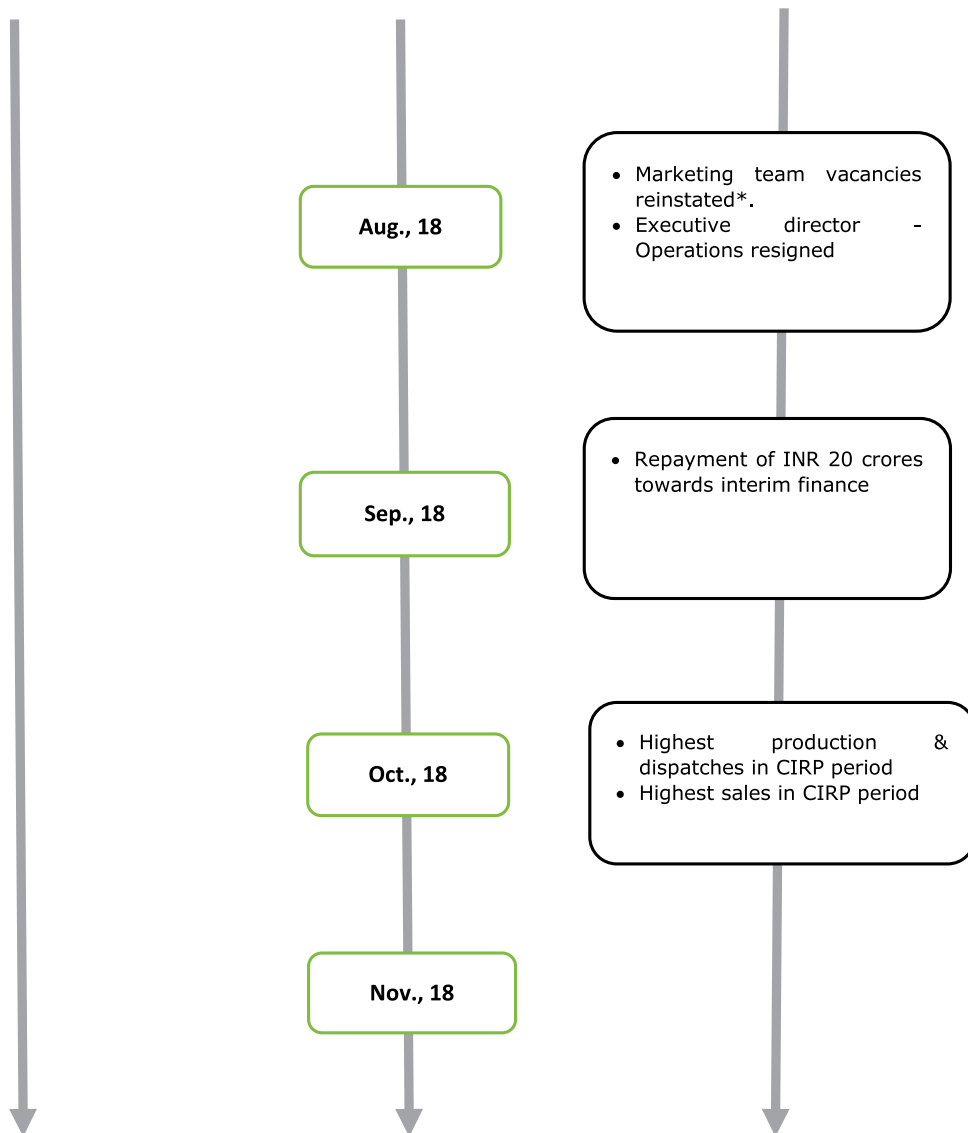
The following update is as per the disclosure of the UNCL in "Results Presentation" for Q2 FY 2019-20:

- Assets consistently generating healthy EBITDA.
- Continuing PAT positive performance in a seasonally weak quarter.
- Cost improvement program in place- Capex initiated for 10.5 MW WHRS.
- Disposal of non -core assets to improve returns.
- Assets generated free cash flows of ~ INR 100 crores in the first half of FY 2019-20.

Annexure 1: CIRP / Timeline of Key Operational Milestones







Nov. 14, 2018: NCLAT approved revised resolution plan submitted by UCL

Nov. 19, 2018: Supreme Court upheld the order passed by the NCLAT

**Reinstated: Reinstatement is in context of reactivating the marketing organisation by reinstating the positions.*

Annexure 2: Major Raw Material and Finished Goods Stock as on Insolvency Commencement Date (ICD)

| Particulars | Unit | As on July 25, 2017 |
|----------------------|------|---------------------|
| Clinker | MT | 2,256 |
| Cement | MT | 23,147 |
| Cement (Depot Stock) | MT | 18,351 |
| Coal (Imported)* | MT | 25,311 |
| PP Bags (OPC & PPC) | No's | 21,93,300 |
| Gypsum | MT | 9,831 |
| Fly Ash / Pond Ash | MT | 4,166 |
| Limestone | MT | 1,01,245 |
| Iron Ore / Red Ocher | MT | 2,378 |
| Silica Sand | MT | 772 |
| Raw Meal | MT | 36,168 |
| Fine Coal | MT | 32 |

Source: Daily Production Report, Post-CIRP



CHAPTER-5

CIRP of Ruchi Soya Industries Ltd.

The Corporate Insolvency Resolution Process (CIRP) of Ruchi Soya Industries Limited (RSIL), the CD (CD) has been an exciting and thought-provoking case of resolution under Insolvency and Bankruptcy Code, 2016 (IBC) with many firsts. It has not only resulted in a successful resolution and turnaround of CD but also established legal precedence and benchmarks in the Indian distressed asset resolution and turnaround space.

RSIL was part of the second list of 28 defaulters that Reserve Bank of India (RBI) flagged for resolution in August 2017. Pursuant to petitions filed by Standard Chartered Bank and DBS Bank Ltd under Section 7 of the IBC, the National Company Law Tribunal (NCLT), Mumbai Bench, vide order dated December 15, 2017 admitted application for initiation of CIRP for RSIL. Shri Shailendra Ajmera, Insolvency Professional (IP) was appointed as Interim Resolution Professional (IRP) who was later confirmed as Resolution Professional (RP) to manage the affairs of the CD. The present Case Study, sponsored by IIPI, has been developed by Mr. Shailendra Ajmera, Resolution Professional of RSIL.

With more than ₹ 12,000 crore of creditor claims, 26 members in the Committee of Creditors (CoC) and 11,000 employees and workers, timely crisis management and stabilization, stakeholder management, strategic focus, and process improvement initiatives during CIRP not only resulted in a successful resolution but also laid a strong foundation for the turnaround of the CD. A joint effort by the CoC, RP, Resolution Applicant, advisors of all parties and dedicated team of the CD led to the successful resolution of RSIL which was being watched very closely.

Read on to know more...

1. Business Profile of the Corporate Debtor

Starting its journey in 1986 at Indore, Ruchi Soya Industries Ltd (RSIL), the Corporate Debtor (CD) features among the leading FMCG (Fast Moving Consumer Goods) player in India. Known as a pioneer of Soya Foods in India, the RSIL has also been a manufacturer and marketer of a healthy range of consumer products including edible oils, vanaspati, and bakery fat. With access to more than two lac hectares of land for oil palm plantation and exclusive procurement rights thereof, it is one of the largest palm plantation companies in India.

The company (CD) had plants at 23 locations in India (Figure - 1), giving access to markets across the country. Majority of the plants are strategically located with access to national highways, railway rakes, ports, and pipelines. RSIL has more than 90 depots with storage and other logistical facilities, which serve 4,000+ distributors across the country reaching over one million retail outlets. More than 35% of distributors were associated with RSIL for over 10 years.

The company operated its business under various business segments-Crushing, Refining, Soya Products (food), Wind Power Generation and Palm plantations. With more than 3.3 million MTPA (Metric Tonn Per Annum) of edible oil refining capacity and 3.7 million MTPA of oilseed extractions capacity, RSIL was one of the largest FMCG players in the country. The oil refining plants located near ports provided easier access to imported edible oil. Crushing units were located around an area conducive to seed cultivation.

The Company had more than 150 registered brand names - Nutrela (premium segment), Mahakosh, Sunrich, Ruchi Gold, Ruchi Star, Soyumm, Ruchi No. 1, and Bakefat being active ones. Further, RSIL enjoyed a significant 'consumer equity' and market leadership position in many branded product categories. With an experienced team, the average employee tenure was ~10 years. The Company had implemented SAP in 2008, with a majority of the operations automated with a strong control process. As on December 31, 2017 the CD has maximum 57% shareholding in Promoter Group followed by 41% shareholding in Public (Table-1).

Table 1: RSIL shareholding as on December 31, 2017

| Sr. No. | Category | Shareholding (%) |
|---------|-------------------------|------------------|
| 1 | Promoter group | 57% |
| 2 | Public | 41% |
| 3 | Institutional investors | 01% |
| 4 | Others | 01% |

2. Pre-CIRP Performance: Reasons Behind Financial Stress

Since 2015, the symptoms of corporate decline were building up due to macro-economic as well as company-specific factors. While the revenue was on a down-trend (Chart -1), the liabilities were rising at a fast pace. For the sake of simplistic understanding, the reasons behind financial stress could be presented as under:

2.1. Castor Seeds Trading

A large portion of revenue for the company was generated from commodity trading activities. The company actively traded in commodities like crude palm oil, crude soyabean oil, crude sunflower oil, and castor seeds. In 2015, prices of castor seeds rose to ₹ 50,000/MT. Because of the bullish market scenario, the company had booked sizeable long positions in Castor Seed Contracts with the expectation to book huge profits. It held ~40% of the total market open position in February 2016 without hedging any of its exposure. However, on account of bumper new crop arrival of castor seeds and weak global demand, the February 2016 contract for castor seed fell by 20% in January 2016 leaving the company with huge cash loss in the quarter ending March 2016. The unexpected steep fall and sustained low prices of castor, unfavorable global demand factors and market environment intensely impacted the performance of the Company's castor business and significantly contributed to the unfavorable performance of the Company.

Securities and Exchange Board of India (SEBI) observed that there was a very high concentration on Open Interest in February 2016 Castor Seed Contract. This led National Commodity and Derivatives Exchange (NCDEX) to suspend the trading in Castor Seed Contracts

on January 27, 2016. A detailed investigation by SEBI revealed that the company was in violation to the norms of Forward Market Commission (FMC), Government of India by holding such huge positions and was charged with manipulating the commodities market. The company, along with its other group company, was later suspended in May 2016 from dealing in the securities market to led to fall in its shares¹ by ~15%.

2.2. Low Capacity Utilisation

The company had set up its plants across the country which made it one of the largest players in the edible oil industry. RSIL had seven port-based refineries, seven fully integrated plants that could cater to both crushing of seeds and refining the oil extracted therefrom, and five exclusive crushing units. The total capacity of refining plants was 3.3 mn MTPA and crushing plants was 3.7 mn MTPA.

With more than 3.3 Million MTPA of edible oil refining capacity and 3.7 Million MTPA of oilseed extractions capacity, RSIL was one of the largest FMCG players in the country.

The widening disparity between international and domestic prices of Soya bean since 2015 reduced the competitiveness of exports of Soya bean from India. Consequently, several crushing plants of Ruchi Soya became non-viable due to low-capacity utilisation. Even at the peak turnover in 2015, the combined capacity utilisation of refineries was only 67%, which further dropped to 35% in 2017, and that of crushing units was 23% which dropped to a meagre 13%.

The company, being primarily engaged in agro- commodities, was heavily subject to the vagaries of nature. Since the country suffered from severe drought, the crop output/ area under cultivation for soya beans, a major raw material for the company, had significantly reduced which subsequently resulted in a decline in capacity utilisation of the crushing business segment.

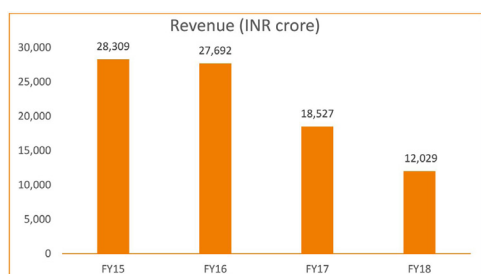
1. The Economic Times (2016): Ruchi Soya Shares Slide 15% on SEBI ban, May 25 <https://economictimes.indiatimes.com/markets/stocks/news/ruchi-soya-shares-slide-15-on-sebi-ban/articleshow/52430032.cms?from=mdr>

2.3. Inadequate Working Capital

The EBITDA (Interest, Taxes, Depreciation, and Amortization) margins in the edible oil industry are already wafer thin on account of price volatility and high input and processing costs. Due to business being high volume driven and working capital intensive, the losses on account of castor trading (discussed above) lead to working capital constraints, and consequently lower capacity utilisation – further deteriorating EBITDA margins. Further due to weak economic outlook, the realisation of debtors was delayed leading to elongated working capital cycle. This led to an acute shortage of working capital required for maintaining such profitable operations.

With mounting financial troubles, the company defaulted on meeting its multiple financial obligations, thereby forcing the lender banks to refer the company to NCLT under the IBC.

Chart-1: RSIL Revenue from FY 15 to FY 18



3. Activities Prior to Commencement of CIRP

3.1. Restructuring Efforts Prior to CIRP Filing

To resolve the financial crisis, a Techno Economic Viability (TEV) study was reportedly carried out as per directions of the lenders. The outcome of the study showed that RSIL's business model had potential based on its strong brand position, goodwill and rich industry experience of the management. However the debt was not sustainable and had to be restructured.

Accordingly, the lenders discussed options to restructure the account under prevailing RBI guidelines. However, the restructuring efforts did not proceed further due to multiple issues such as forensic issues, the requisite majority of lender support etc.

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3.2. IPs Study of the RSIL for Getting Sector Insights

While CIRP application of RSIL was pending before NCLT, Mumbai Bench, the IP and his team conducted a study of financially strained Company and its competitors for getting sector insights. Besides, SWOT (Strengths, Weaknesses, Opportunities, and Threats) was also prepared. After getting the assignment, this study proved vital in managing the business of the CD and also in discussions with the potential investors.

Widening disparity between domestic and international prices of Soya bean since 2015 reduced the competitiveness of exports from India. Consequently, several crushing plants became non-viable due to underutilisation.

Some of the key sector trends that we gauged from the SWOT Analysis are summarized below:

- i. Imports accounted for nearly 65-70% of the total oil consumption in India for 2016-17.
- ii. In 2017, India had become the largest importer of palm and soya oil in the world, as domestic production was not able to keep pace with the demand.
- iii. The demand-supply gap widened due to the limited availability of oilseeds which in turn was caused by the shifting of acreage of oilseeds crops to other crops.
- iv. In 2017, the total demand for edible oil was 23.5 mn MT - palm and soya bean oil constituted ~ 45% and ~ 22% of total demand respectively
- v. Market demand grew at 6% between 2012 to 2017. The fastest-growing categories were soya bean and sunflower oil with CAGR of ~ 11.5%
- vi. In 2017, annual per capita consumption of oil was 16kg in India i.e., 24kg in developed markets.
- vii. Region wise oil consumption in India in 2015: West India accounted for 29% of the total oil consumption., followed by East (26%), North (25%) and South (20%)

4. Key Events During CIRP Period

4.1. Initial Assessment and Setting Ground Rules for an Efficient CIRP

Post receipt of the National Company Law Tribunal (NCLT), Mumbai order² admitting RSIL under CIRP, the IRP Shri Shailendra Ajmera along with his team, held meetings with the incumbent management of RSIL to take charge of its assets. There were series of discussions with key executives of the CD to understand the existing status of business operations and the organization structure. The IRP also informed the management regarding the provisions of the IBC, 2016, and laid down the roadmap for maintaining the business of the CD as a Going Concern (GC) during CIRP, including co-operation of and expectations from the incumbent management. Thereafter, RSIL's point of contact for critical functions such as Treasury and Finance, Human Resource, Plant Operations, Sales and Marketing, etc., were identified and mapped with IRP's representatives with a view to closely monitor and ensure seamless business performance at such a critical juncture.

Sine the cash balance of CD was nil and it no longer enjoyed working capital credit facilities, a system of 13-week rolling cash flow forecast was formulated and cash needs were determined. Short-term cash generation was the top priority.

As the IPs team had consciously developed sector knowledge before admission of the case, the team managed to understand the key intricacies of the business in the first few weeks of CIRP period. Further, potential concerns and risks associated with maintaining the business as a were identified, and measures were undertaken to address the same - some of which have been highlighted here:

(a) Constitution of the Committee of Creditors (CoC)

After the commencement of CIRP, claims were invited from all the financial and operational

creditors. The total claims admitted were ₹ 12,145 crore of which ₹ 9,384 crores pertained to financial creditors and ₹ 2,761 crore pertained to operational creditors. The CoC constituted of 26 financial creditors comprising of SBI being the lead bank with ~20% share followed by Central Bank of India with ~9% share and Punjab National Bank with ~8% share. Pursuant to the first meeting of CoC held on January 12, 2018, the CoC, unanimously confirmed the IRP as RP.

(b) Protection of RSIL's Assets: Teams Deployed at Plants

As soon as CIRP commenced, the IRP team visited plants and established contact with the operations' team on the ground, and laid out an action plan to win the confidence of all the local stakeholders, including but not limited to employees, suppliers, customers, statutory bodies, etc. These efforts not only provided clarity about CIRP to the stakeholders but also served as a significant step towards maintaining the business as a GC.

Further, additional external security teams were deployed at 13 plants, based on an initial assessment, to ensure the safety of the existing asset base. The CD had strategically located port-based refineries and inland crushing units, which could cater to respective geographic demand. Further, oil palm plantations and windmill operations were also critical business segments. To generate the investor interest and maximize the value of the CD, protecting these assets was vital.

(c) Operational Dependence on Related Parties: Requisite Approvals Sought Prior to Transactions

Certain assets such as storage tanks and crude oil pipelines between port and plants were controlled by related parties. Considering the nature of business, continuation of these services (storage, rental, etc.) was critical for maintaining the business as a GC. Therefore, RP with his team reviewed the contracts, visited the relevant sites, held meetings with representatives of supplier entities, and benchmarked the transaction and market prices. Further, requisite approvals of CoC were obtained periodically, so that transactions

2. Business Standard (2017): Videocon, JP Associates, IVRCL on RBI's 2nd list of loan defaulters: Report, August 29 (https://www.business-standard.com/article/companies/rbi-s-second-list-of-loan-defaulterscontain-40-companies-reports-117082900686_1.html)

could be undertaken on an arm's length price. Pursuant to these steps, contracts were extended with a view to maintain the business as a GC.

(d) Cash Crunch and Working Capital Challenges: Implemented Stringent Controls and Unlocked Opportunities

During the period leading up to the commencement of CIRP, the company faced with severe liquidity crunch on account of declining revenue, negative EBITDA margins, and increased finance costs. On CIRP commencement day, the CD had a nil cash balance. Since the company no longer enjoyed working capital credit facilities, it was evident that maintaining it as a GC would be an uphill task.

To mitigate the above risk, a system of 13-week rolling cash flow forecast was formulated and cash requirements were determined. The short-term cash generation was the top priority. Liquidity opportunities were identified to generate cash and bridge the cash gap. A detailed plan was drawn to generate liquidity from the existing balance sheet including recovery of outstanding dues from sticky debtors, tax refunds, windmill receivables from government agencies, inventory optimization, etc. Further, a robust payment approval process was set up to ensure there were no financial leakages in the system. All the bank accounts of the CD were reviewed, and appropriate actions were taken to ensure increase liquidity like closure of non-consortium accounts, levying debit freeze, change of signatories and transfer of funds to central a/c.

Focus on liquidity throughout the CIRP period, helped improve the cash balance from nil on commencement of CIRP to ~₹ 400 crore within 18 months.

(e) Large Creditor Base with Substantial Overdue across Suppliers – Procurement from Intermediaries/ Financers

On account of inadequate working capital availability, the overdue amount to all suppliers and other stakeholders had piled up to huge sums. Out of total claims received

from creditors against the CD, ₹ 2,761 crore was due to Operational Creditors (OCs).

Additionally, as the CD was amongst the first few large accounts on which CIRP was initiated, suppliers were still coming to terms with the process and with the possibility of loss of their dues. This increased the risk perception in the eyes of the vendors making it further difficult to obtain critical materials and services necessary to maintain the business as a GC.

As per terms of the process, if the interested parties decided to withdraw, their EMD was to be refunded and access to VDR withdrawn. If they decide to submit the resolution plan an additional EMD of ₹ 50 crore was required.

Owing to the uncertainties looming over recovery of their existing dues, key raw material suppliers and transporters abstained from offering any credit period to the CD for future transactions. Further, certain stakeholders agreed to continue solely in the event of a revision of existing payment terms i.e. a shift to terms requiring advance payments.

As stated earlier over 80% of the input costs pertained to imported raw materials where payment through letter of credit was a norm. Palm-based raw materials were imported through countries such as Indonesia and Malaysia where shipment times ranged from 7 to 14 days. On the other hand, Sunflower and Soyabean based materials were imported from South American countries where shipment times were close to 45-60 days. Given the crunch in working capital, the RP team in consultation with the supply chain heads determined that imports from South American countries which had longer lead times be done through reputed intermediaries who would carry the stock on their book till it arrived in India. RSIL would pick it up once goods arrived in India relieving critical working capital which would have otherwise been stuck.

While this arrangement led to additional finance costs, it resolved the short-term cash requirements and allowed the company to steadily increase its capacity utilization levels from ~35% to ~55% - thereby stabilize

revenue (₹ 12,000 crore per annum) and improve profitability. Despite being in CIRP, the Company was able to generate EBITDA of ₹ 222 crores and PAT (Profit After Tax) of ₹ 77 crores for the year ended 31st March 2019.

4.2. Getting Resolution Plan for the CD

Since RSIL was among the second list of 28 defaulters³ flagged by RBI for resolution, there were limited domestic precedents on the manner in which the resolution process be conducted. RP's team involved members having rich and practical experience of dealing with insolvency laws in the United Kingdom, and a detailed plan was outlined on the manner in which the resolution process be conducted.

Subsequently, on February 05, 2018, the RP published an invitation for expression of interest (EOI) in the newspapers. The published invitation for EOI also had stated timelines and parameters based on which the entities would be eligible to submit their EOI. The RP and his team interacted with ~150 prospective strategic and financial investors via emails, calls, and meetings, and explained the investment opportunity and shared a teaser.

Pursuant to discussions among RP, CoC and legal advisors, the Swiss challenge system was adopted for the first time under the IBC

RP received EOIs from 28 parties. After an interested party had furnished Earnest Money Deposit (EMD) of ₹ 25 lacs and signed a non-disclosure agreement, access to the Virtual Data Room (VDR) was provided for sharing Information Memorandum (IM) and relevant details to help them evaluate the investment opportunity.

RP's team worked with the legal counsel to put a well-defined Process Memorandum in place which was placed before the CoC for inputs and their feedback was incorporated. The Process Memorandum established the guidelines about sharing information with the Potential Resolution Applicants (PRAs), and evaluation of resolution plans, contents of the plan, T&C for submission of resolution plans,

conditions subsequent, EMD/ Performance deposit, etc. Manner of information sharing, the mechanism for redressal of queries, key milestones for the data diligence etc. were clearly laid down in the process memorandum itself to avoid any ambiguities.

Out of 28 EOIs that were received, 26 met the eligibility criteria and were given data room access. 24 of these shortlisted investors paid EMD of ₹ 25 lacs and started the first round of due diligence. RP, along with his team, provided detailed clarification to every query raised by the parties which would facilitate their decision making.

As per terms of the process, in case the interested parties decided to not invest in the CD, the EMD received was refunded and access to VDR withdrawn. However, in case the interested parties decided to move ahead and submit the resolution plan, they were required to furnish an additional EMD of ₹ 50 crore.

While 28 EOIs were received, as the process progressed with due diligence, plant visits, management meetings, etc., the resolution plans were received only from four parties. Further, compliant resolution plans were received from two parties i.e. Adani Wilmar Limited (AWL) and Patanjali Group lead by Patanjali Ayurveda Ltd. (PAL).

To compare the two resolution plans, an evaluation criteria was proposed by the RP, discussed at CoC meetings and reviewed by an independent process advisor appointed by CoC. Thereafter, the CoC finalised the criteria and an evaluation matrix was formulated, which formed part of a comprehensive process memorandum. This matrix would result in scoring of the resolution plan on seven parameters, listed herein below:

- i. Upfront cash recovery
- ii. NPV factoring upfront cash recovery based on certain stated discount rates
- iii. Equity upside
- iv. Fresh equity infusion for improving operations
- v. Reasonableness of financial projections
- vi. Ability to turnaround distressed companies
- vii. Standing of the bidder in the sector

3. NCLT Mumbai (2017): CP 1371 & CP 1372/ I&BP/ NCLT/ MAH/ 2017, December 15

The CoC conducted commercial negotiations with above qualified applicants during which applicants could improve their commercial offer in a two step Swiss Challenge process. The offer could be improved only on identified criteria (upfront cash recovery, NPV, equity upside, and fresh equity infusion) which were aligned to the evaluation matrix. The negotiation process was consented to by the RAs and supervised by an independent bid advisor. Also, discussions w.r.t legal aspects (drafting and compliance) were conducted among the legal advisors of RP, CoC and Resoluiton Applicants (RAs).

Few members of RP team had an extensive experience of handling insolvency resolutions under insolvency laws of the United Kingdom. Accordingly, the team was successful in developing innovative and practical approaches/ solutions to maximize the value of the asset. Pursuant to discussions among RP, CoC and legal advisors, the Swiss challenge system was adopted for the first time under the IBC, with an objective of resolution of RSIL. Under this system, lower bidders were given chance to match the higher bidder and if matched then highest bidder was asked to improve its bid. After all rounds of bidding were completed, AWL stood as the highest bidder with the total bid amount of ~₹ 4,300 crore against total claims of ~₹ 12,000 crore while PAL stood H2 with a total bid amount of ~₹ 4,064 crore. AWL having secured a higher score as per the evaluation matrix (including commercial offer) was declared as the successful Resolution Applicant.

After extensive deliberations and multiple hearings, the NCLT vide its order dated September 06, 2019, approved the resolution plan of PAL with certain modifications which were duly accepted by PAL

On August 23, 2018, the resolution plan of AWL was put to vote before the CoC and was approved with 96.8% CoC consent. However, PAL immediately filed an application before NCLT challenging the decision of the CoC's approval to AWL's Resoluiton Plan. PAL challenged the eligibility of AWL to submit the resolution plan under section 29A of IBC and the process adopted for negotiation.

The resolution plan of AWL as approved by CoC couldn't be implemented due to matter pending before the NCLT. Citing delays in the resolution process and concerns over the deterioration of CD's assets, AWL withdrew its resolution plan in December 2018. Meanwhile, PAL also shown its inclination to match the offer made by AWL.

Pursuant to the above, PAL, being the only resolution applicant, increased its bid offer to ₹ 4,235 crore towards settlement of creditors and an additional equity infusion of ₹ 115 crore for improving the operations of the Company. CoC approved Resolution Plan submitted by PAL on April 30, 2019. NCLT approved the same on September 06, 2019

4.3. Crucial Litigations

Post commencement of CIRP, the CD was faced with multiple litigations which delayed the resolution process. Some of the contentious issues are briefly discussed as follows:

(a) Recovery by lender during CIRP

One of the financial creditors had recovered ~₹ 48 crore from the CD post commencement of CIRP. As this particular recovery happened during the period of moratorium, lender could not have taken any coercive recovery action against the CD. The RP approached NCLT to direct lender bank to reverse transaction since once moratorium has been effective in relation to the CD, neither any assets belonging to the CD can be transferred, alienated or disposed of nor can any action for foreclosure or recovery of security interest created by the CD can be taken. While lender contested stating that these recoveries were in the normal course of business and that it was merely honouring the LC's issued in favour of third party suppliers, the relief was granted to the CD by NCLAT⁴ and subsequently the amounts were reversed to the account of CD.

(b) Suspended Board of Directors to be Given Access to CoC Proceedings: Vijay Kumar Jain v/s Standard Chartered Bank & Others

IBC does not specify whether erstwhile directors be allowed to participate in CoC

4. NCLAT (2018): Company Appeal (AT) 390/2018, July 24

meetings. Accordingly, in this case, they weren't privy to any of the proceedings at CoC meetings.

Mr. VK Jain, erstwhile director of the CD, had filed an application before the Supreme Court of India seeking directions to the RP to provide all relevant documents including the resolution plans to the members of the suspended Board of Directors of the CD, which would facilitate them in participating in the CoC meetings. Based on directions of the Supreme Court⁵, RP shared the resolution plans with the suspended board of directors.

5. Approval of the Resolution Plan

The resolution plan submitted by the consortium led by PAL was approved by the NCLT Mumbai vide order⁶ dated July 24, 2019 subject to filing affidavit by the RA regarding the acceptance of the modifications in the resolution plan and submitting other information as per the directions given in the order. With this order, the CoC members were elated hoping that once Resolution Applicant complies with the directions of the NCLT, they would be home soon (in the quarter ending September 2019) after driving through a long bumpy road.

However, the Resolution Applicant was not in agreement with one specific paragraph in the order which stated that "Any relief sought for in the Resolution Plan, where the contract/agreement/ understanding/proceedings/ actions/notice, etc. is not specifically identified or is for future and contingent liability, is at this moment rejected."

After extensive deliberations and multiple hearings, the NCLT vide its order dated September 06, 2019 approved the resolution plan of PAL with certain modifications which were duly accepted by PAL, the RA. In its order, NCLT also inter-alia clarified that "...

it is to be made clear that while approving the resolution plan, we have dealt with every aspect of the resolution plan in details and all the claims which have been admitted during CIRP are being dealt with by us in terms of the resolution plan. Anyone who has not filed its claim then he will not have any right to agitate the same after the approval of the resolution plan."

6. Formation of Monitoring Committee

Now with absolute clarity in place, the Monitoring Committee (MC) was formed as per the terms of the resolution plan with three representatives from FCs, three representatives of the RA, the RP as Monitoring Agent (MA), and one observer from RA. The MC was entrusted with the responsibility to supervise the implementation of the Resolution Plan and manage the operations of the Company as a GC in the interim.

In accordance with the approved Resolution Plan, the FCs received ₹ 4,093 cr against claims admitted of ₹ 9,385 cr which is about 44% of the total admitted claims.

At that time, there was no major precedence available as to how would monitoring committee function and meet its end objective. However, the MA along with its legal and process advisors prepared a comprehensive document laying out terms of reference and charter for the MC to function. The document was well perceived by the representatives from the RA and CoC and was taken on record in the first monitoring committee meeting.

The document broadly laid out:

- i. Background and Objective of the Monitoring Committee (MC)
- ii. Constitution of MC
- iii. Governance Structure
- iv. Manner of Voting and Decision Making
- v. By Rules of the MC Meeting
- vi. Routine Functioning and Controlling Mechanism
- vii. GC Activities
- viii. Compliances and Record-Keeping

5 Vijay Kumar Jain v/s Standard Chartered Bank & Others., Supreme Court, Civil Appeal No. 8430 of 2018 with Writ Petition (Civil) No. 1266 of 2018, January 31, 2019.

6 NCLAT (2019): MA 1721/2019, MA 1428/2019, MA 1746/2019, & MA 1816/2019, In CP (IB) 1371 & 1372 (MB)/2017, Under Section 30 (6) of the IBC, July 24.

With the rules now clearly laid down, the RA was required to implement the Resolution Plan and settle creditors within 75 days from the effective date.

7. Implementation of the Resolution Plan

During the next 2 months, MC met frequently to review the progress of the steps that were supposed to be taken for implementation of the Resolution Plan and the funding arrangement of the RA. The implementation of the Resolution Plan involved giving effect to the transaction structure proposed in the Resolution Plan which involved steps such as capital reduction, funding at Special Purpose Vehicle (SPV) level, and merger of SPV into the CD.

During the implementation process, creditor-wise distribution was worked out to the exact rupee and an Escrow Account was opened for funding and settlement of creditors. Finalization and execution of escrow agreement was a herculean task with 26 creditors. Some inter-creditor issues made the manner of distribution even more complex and required careful consideration.

The teams of the MA and CoC worked closely with the escrow agent to ensure that the creditor settlement files were made in accordance with the 'system acceptable formats'. In parallel, it was also made sure that all accounting entries for transaction closure are also kept ready to be passed on the transaction day.

However, in the course of preparations an unexpeted roadblock emerged ! The escrow agent informed that they would need lot more documents than that were currently not on the table, in order to settle the foreign creditors. Aware of the stringent FEMA rules and tight banking protocols, the same was accepted as a challenge by the team of the MA. The team assisted by certain employees of the CD burnt midnight oil to get the requisite compliance documents in place. In a record time, the documents were made available to the escrow agent's satisfaction for maximum cases. Only a handful of cases remained which were also provided in due course of time.

All set, it was now showtime! An evening worth remembering - Wednesday December 18, 2019, when the Resolution Plan amount was deposited in an escrow account and from thereon went straight to the creditors for settlement of their dues. A long process with innumerable battles fought valiantly was finally nearing a successful closure. In accordance with the approved Resolution Plan, the FCs received ₹ 4,093 cr against claims admitted of ₹ 9,385 cr which is about 44% of the total admitted claims.

Pursuant to successful implementation of the approved Resolution Plan, the RA requested the RP and his team to extend advisory and support services to the Company given the on-ground experience for more than two years. During this period, the Company continued to run as a GC and has explored several cost and revenue synergies. The matters related to avoidance and preferential transactions are pending before the NCLT.

8. Key Take-Aways and Best Practices Adopted

(a) Prior to NCLT filing and Pending Admission

Based on the information available, we understood key financial and business performance indicators and financial difficulties/ reasons for stress in the recent past. The loan documents made available by applicant FCs helped to understand additional details. Thereafter, we made a preliminary assessment of risks associated with business and manage the affairs on a GC basis. Further, an assessment of key stakeholders and bringing them on board before admission/ filing for IBC facilitated running the CD as a GC during IBC and avoid loss of value.

(b) Immediate Actions after CIRP Announcement

Once the CD is admitted in CIRP, the IRP is required to juggle many balls simultaneously. In the case of RSIL, as soon as CIRP commenced, RP and the team identified KMPs (Key Managerial Personnel) and finalized

the organization structure delineating the roles and responsibilities of each KMP. This approach ensured that there are no internal disruptions at the initiation of CIRP. While the RP deployed resources at different plant locations, immediate control of CD's head office at Indore was taken. The head office was the control point from operations and strategy perspective. Further, a set of stringent controls were established for cash flow and working capital management. To build stakeholder confidence from Day 1, townhalls were conducted – assuring them that it was 'business as usual' during CIRP period with the only exception that RP would be in charge under the guidance of the COC and the IBC.

As against no cash balance on the date CD entered into CIRP, it had cash and bank balance in ~ ₹ 400 crores, which continued to be retained by the Company post-implementation of the Resolution Plan.

(c) Defining the Organizational Structure

The absence of erstwhile promoters, management, and experienced personnel results in a massive loss of organizational knowledge and experience. Accordingly, efforts were taken to retain senior management and harness their valuable knowledge base. Also, such personnel were entrusted with additional responsibility for the sake of company's revival.

(d) Robust Cash Management

Considering the huge volume of business and payments being processed to more than 100 vendors daily, a dedicated team of RP reviewed and approved the payments. A system of cash rationing was established to make critical payments and maintain CD as a GC. An action plan for cash-generating initiatives was developed. Realization of debtors / non-core assets and tax refunds, facilitated in improving the cash balance. Further, a periodic assessment of cash requirements of the business ensured improved the cash flow position. As against no cash balance on the date NCLT approved initiation of CIRP, the company had cash and bank balance in excess of ₹ 400 crores, which continued to be retained by the Company post the implementation of resolution plan.

(e) Comprehensive Investor IM Created a Good 1st Impression

We prepared a robust investor IM covering -(a) Investment highlights (b) Industry overview (c) Company overview (d) Profiles of all KMP's (e) Business and operational details (f) Manufacturing facilities overview (g) Supply chain and distribution network. Team spent significant time reviewing internal data, discussions with KMP's and industry experts so that the IM reflects the true strengths and the value in the business. IM went through multiple rounds of iterations and we took feedback from KMP and senior management which helped refine the investor presentation which were ultimately shared with over 28 investors.

(f) Conducted Internal Due Diligence on the Data before Making it Available to Potential Investors

The RP team started putting data together for VDR from the EOI stage itself to ensure timely readiness. For every data to be put in VDR, a maker checker responsibility was established in the Company so as to ensure that data provided to investors is relevant and accurate. When the data room was made available to investors after obtaining confidential undertaking, SPOCs (Single Point of Contacts) were established in the team for resolving any technical and operational issues in using the data room.

(g) Defining Resolution Process Steps, Timelines and Protocols for Investor

RP's team worked with the legal counsel to put a well-defined process memorandum in place which was placed before the CoC for inputs and their feedback was incorporated. The process memorandum clearly established the guidelines pertaining to sharing information with the PRAs, examination and evaluation of resolution plan, contents of the plan, T&C for submission of resolution plans, conditions subsequent, EMD/Performance deposit, etc. Manner of information sharing, mechanism for redressal of queries, key milestones for the data diligence etc. were clearly laid out in the process memorandum itself to avoid any

ambiguities. The guidelines on all aspects were laid out in the process memorandum.

(h) Swiss Challenge: Adopted for First Time under IBC

Negotiations were conducted with qualified applicants under which qualified applicants were allowed to improve their commercial offer in a two step Swiss Challenge Process. The offer could be improved only on identified criteria's (upfront cash recovery, NPV, equity upside and fresh equity infusion) which was aligned to the evaluation matrix. The negotiation process was consented to by the RA's and supervised by an independent bid advisor. The applicant with the highest score as per the evaluation matrix (including commercial offer) was declared as the successful resolution applicant.

(i) Preparing for Resolution Plan Implementation is the Key

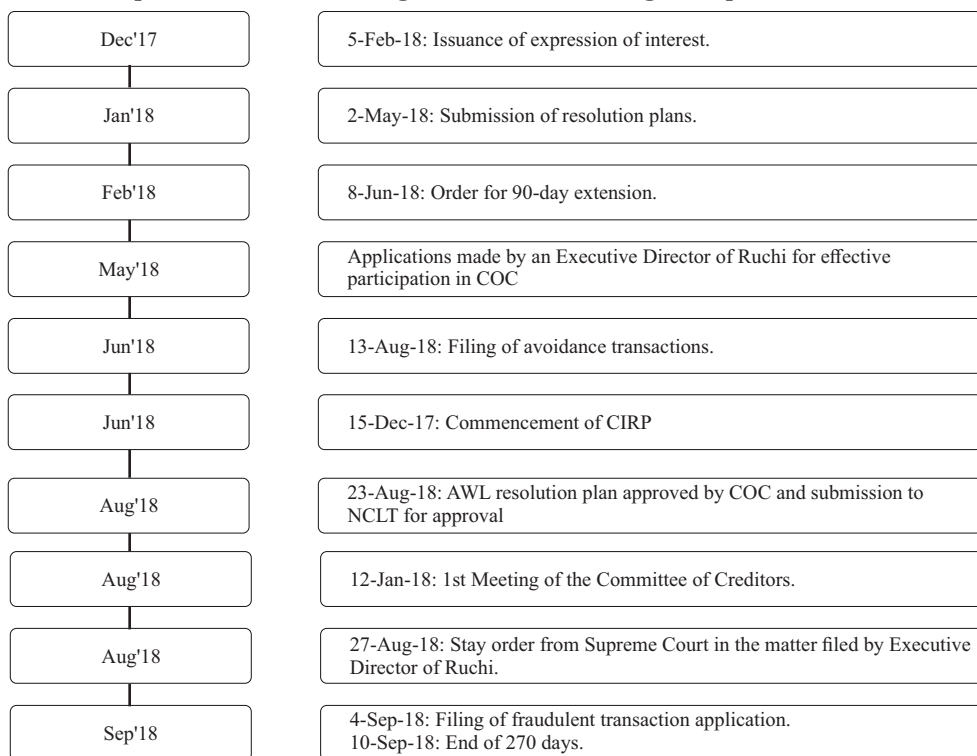
Even before resolution plan was approved by

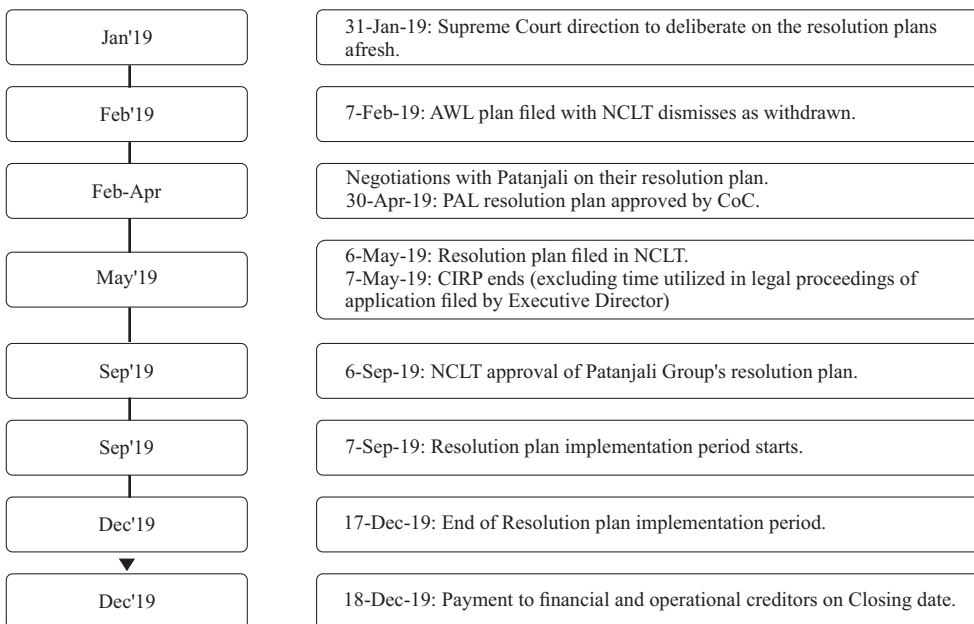
Adjudicating Authority (AA), we undertook preparation activities for setting up the MC. Since there were few precedents of on- ground operations during implementation phase, a document formalizing protocols such as mode and manner of operations, extent of control, information sharing was agreed amongst RA and FCs. Finally, a list of activities with timelines and responsibilities to be done by each stakeholder was agreed upon by all representatives keeping in mind the closing date.

(j) Post-NCLT Approval - Continuous Engagement with RA

There were regular discussions with the RA in MC with respect to status of funding arrangements to ensure a successful implementation of approved resolution plan. A clear plan of action to be undertaken was established - disbursement mechanism and documentation, book closure, secretarial compliance, etc.

Graph 4: CIRP timeline - Significant events during CIRP process of RSIL





CHAPTER-6

CIRP Uttam Galva Metallics Limited & Uttam Value Steels Limited

The facilities of UGML and UVSL were closely intertwined with the railway siding used for transport of raw material and finished goods which was the property of UGML whilst the staff township and the water tanks which were integral to the unit was the property of UVSL. There were various other linkages of utilities between UGML and UVSL. Considering these synergies and close interlinkages, the value of one unit was totally dependent on the other and hence both the companies required to be resolved in co-ordination to achieve maximization of value. The present Case Study, sponsored by IIPI, has been developed by Mr. Rajiv Chakraborty, Resolution Professional of UGML & UVSL).

A lenders consortium, led by State Bank of India, had initiated insolvency proceedings against the two entities in 2017 and 2018. Lenders to Uttam Metallics had submitted claims worth Rs 4,263 crore, of which Rs 4,176 crore was admitted by the resolution professional. A total claim of Rs 3,014 crore was admitted against Uttam Value Steels. Finally, the NCLT approved the Resolution Plan in May 2020 which involves an upfront settlement amount and deferred and contingent payments to financial creditors worth Rs 1,567 crore and Rs 1,078 crore, respectively.

*Besides, running the Corporate Debtors (CDs) as Going Concern (GC), the challenges also include Payment of GST dues for Moratorium Period, Related Party Linkages, handling bidding process and conditional Resolution Plans, recovering cost of CIRP, and implementing the Resolution Plan. **Read on to know more...***

1. Background

Uttam Galva Metallics Limited ("UGML") was a part of Uttam Group. UGML is engaged in the business of manufacturing hot metal/pig iron and has an iron making capacity of 0.60 MTPA at Wardha, Maharashtra. It was a major supplier of hot metal to Uttam Value Steels Ltd ("UVSL") a listed company of the same group. Both the plants are located adjacent to each other at Wardha along with a captive power plant Indraprastha Power Private Limited ("IPPL"). Both UGML and UVSL derive substantial business synergies from the combined operations of the iron making (hot metal) facility of UGML with the steel plant of UVSL and together with IPPL constituted the integrated steel manufacturing complex.

2. Reasons for Financial Stress

The saga of financial stress started with the Uttam group acquiring Uttam Value Steels Limited, the erstwhile Lloyds Steel Industries Limited ("LSIL"), in March 2012. The acquisition of the UVSL made strategic sense as the unit

was located adjacent to the other plant owned by the Uttam group. There were significant synergies between the two units. To leverage these synergies Uttam group embarked upon an ambitious expansion plan of its primary steel plant in UGML.

Further as the plants were already operating in a working capital deficient scenario, most of the sale was done with a 7 to 10 days credit cycle and the same had also been monetized.

The acquisition of UVSL and the investments made in the expansion project in UGML stretched the financial and operational resources of the Uttam group. During the same time starting 2014-15 the steel market in the India went through a sustained slowdown and a brutal price correction. This market weakness put further pressure on the financial position of the group. Pursuant to the Company's account being categorized as SMA-2, in May 2016, a Joint Lenders Forum was formed by the lenders as the SDR

(Strategic Debt Restructuring), Guidelines¹ of the Reserve Bank of India in June 2016. However, no proposals were received from any prospective investor, the lenders decided not to convert debt into equity. Consequently, SDR for the companies failed and in January 2017 the accounts were classified as non-performing asset. In December 2017, the JLF agreed to initiate the insolvency resolution proceedings against the companies.

3. Co-ordinating Corporate Insolvency Resolution Process (CIRP)

The facilities of UGML and UVSL were closely intertwined with the railway siding used for transport of raw material and finished goods which was the property of UGML whilst the staff township and the water tanks which were integral to the unit was the property of UVSL. There were various other linkages of utilities between UGML and UVSL. Considering these synergies and close interlinkages, the value of one unit was totally dependent on the other and hence both the companies required to be resolved in co-ordination to achieve maximization of value.

As a first step towards achieving this objective, the consortium of lenders of both UGML and UVSL agreed to appoint a common interim resolution professional for both UGML and UVSL. The Interim Resolution Professional was then confirmed as the Resolution Professional for both the companies. A petition was filed before the NCLT, Chandigarh Bench in December 2017 by State Bank against UGML in Chandigarh. At the same time State Bank filed a similar application against UVSL before the NCLT Mumbai Bench. In the case of UVSL, an application was submitted by the promoters before the NCLT, Principal Bench, with a prayer for transfer of the UVSL petition from NCLT, Mumbai to NCLT, Chandigarh. However, the NCLT, Principal Bench, ordered transfer of the Company Petition of UGML listed before the NCLT, Chandigarh Bench to the NCLT, Mumbai bench. In terms of aforesaid order, the NCLT, Chandigarh Bench

transferred the Company Petition pertaining to UGML to the NCLT, Mumbai Bench which passed orders dated 26th June 2018 and 11th July 2018 admitting UVSL and UGML respectively into CIRP.

In the effort to run a co-ordinated process after the 1st CoC meeting in both the companies. Each of the subsequent 13 CoC meetings held for both the companies conducted over the next 10 months happened on the same days. The Expression of Interests for both the companies were called on the same date i.e., September 24, 2018, the resolution plans were submitted by the bidders on the same date i.e., January 21st, 2019, and then again on March 18th, 2019, for both the companies. As was expected all the bidders made conditional bids in both for both companies making their being declared as a successful bidder in one company as a condition for their bid in the other company. This impediment was brought to the notice of the Adjudicating Authority which allowed the CoC to approve the interlinkage and vote on the conditional plans.

This effort put in at the start of the process helped maintain both the companies as going concerns and led to an incremental working capital in the range of INR 400 crores during the CIRP period.

After this the respective resolution plan were approved by the CoC meetings held on April 21st, 2019, for both the companies. The resolution plan submitted by the same bidder was approved resolution plans was approved by the CoC of the respective companies. The application for approval of resolution plans of both UGML and UVSL was submitted to NCLT together on the May 08, 2019, and finally the resolution plans of both the companies were approved by the NCLT together on 6th May 2020 thus successfully culminating probably one of the first coordinated CIRP under IBC.

4. Commencement of CIRP

The timing of the admission order of UVSL and UGML could not have come at a worst time. It was just plain unlucky that both the admission orders dated 26th June 2018 and 11th July 2018 were passed during a period when both the plants were in the midst of a planned maintenance shutdown.

1. RBI Notification, RBI/2015-16/330 DBR.BP.BC. No.82/21.04.132/2015 -16 Available at <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10293&Mode=0>

This unfortunate timing made the task daunting as the market perception of the companies plummeted as the market felt that the admission order was like curtain for both the companies and the shutdown of the plants were orchestrated with the admission order on purpose. Moreover, this inconvenient timing of the orders also made the working capital situation adverse. The plants had hardly any raw material or finished goods in its inventory. Further as the plants were already operating in a working capital deficient scenario, most of the sale was done with a 7 to 10 days credit cycle and the same had also been monetised.

5. Reception from Employees and Workmen

One of the remarkable points of the CIRP of both the companies was the unequivocal co-operation and respect that the RP and his team received from the entire management and staff. This relationship survived through the entire period of the CIRP.

6. Challenges faced during CIRP

6.1. Challenge to run the Corporate Debtor (CD) as Going Concern (GC): The first challenge which was faced by me as a resolution professional was to restart the plant post the maintenance shutdown.

How was it resolved: The first few weeks were intense and me and my team along with the management team of both the companies were engaged in explaining the meaning of the CIRP to the vendors suppliers and customers of UGML and UVSL. With the support of the existing management, we were able to convince the vendors and the customers about the concept of moratorium

and the protection that the CIRP provided to all their credit exposure taken during the CIRP period. With a lot of efforts, the suppliers and vendors were convinced to deliver raw materials on credit to both the plant on credit and the plant restarted production in late July 2018. The efforts of all the stakeholders resulted in a situation where vendors and suppliers took credit exposures to the tune of INR 250 crores in UGML and UVSL post the insolvency commencement date. This effort of communication with the customers increased their confidence to maintain their order books with the companies.

This effort put in at the start of the process helped maintain both the companies as going concerns and led to an incremental contribution in the range of INR 400 crores during the CIRP period.

6.2. Payment of GST dues for Moratorium Period

Whilst with the combined efforts of the RP, his team and the existing management, most of the vendors and suppliers co-operated and extended additional credit for both the companies and help it restart, there were certain critical vendors and suppliers who blackmailed and used arm-twisting techniques to recover their dues for the period prior to the insolvency commencement date. Interestingly the biggest beneficiary of these prior period payments was the GST department, whose officers despite the moratorium on both UGML and UVSL threatened to take coercive actions including threats to seal the plants and raid the customers of the companies in their zeal to collect the GST dues of the company pertaining prior to the insolvency commencement date.

Consolidated Summary Uttam Galva Metallics Limited and Uttam Value Steels Limited

Part I : Claims Overview

INR in crores

| | Particulars | Admitted |
|---|--|-----------------|
| 1 | Financial Creditors (FC) | 6,113.58 |
| 2 | Operational Creditor (OC) | - |
| 3 | Non Related Parties | 1,050.29 |
| 4 | Related Party | 1,023.06 |
| 5 | Employees & Workmen | - |
| 6 | Any other | - |
| | Total Claims admitted (1+2+3+4+5) | 8,186.93 |

Part II: Upfront Commitment**INR in crores**

| | Particulars | Admitted |
|-----|---|-----------------|
| I | Debt infused by Resolution Applicant | 515.00 |
| II | Debt infused by ARC | 110.00 |
| III | Equity infusion by Resolution Applicant | 110.00 |
| IV | Debt infusion by Resolution Applicant | - |
| | Total Upfront Funds Commitment (I+II+III+IV) | 725.00 |

Part III: Deferred Commitment**INR in crores**

| | | |
|----|--|-----------------|
| V | Deferred Payment to FC | 1,200.00 |
| VI | Equity share capital offered to FC | 5.00 |
| | Total deferred committed value to FC (V+VI) | 1,205.00 |

Part IV: Contingent Value Offered**INR in crores**

| | | |
|------|--|-----------------|
| VII | Recovery from trade receivables | 198.00 |
| VIII | recovery from Mega incentive receivables upto March 31, 2021 | 262.00 |
| IX | Recovery from Advance given | 256.00 |
| | Contigent value to FC (VII+VIII+IX) | 716.00 |
| | Total value of offer | 2,646.00 |

Resolution Applicant means a consortium of Carval and Nithia

- i. CVI CVF IV Master Fund II LP, CVI AA Master Fund II LP, CVI AV Master Fund II LP, CVIC Master Fund LP, Carval GCF Master Fund II LP, CarVal GCF Lux Securities S. à r. l., CVI AA Lux Securities S. à r. l., CVI AV Lux Securities S. à r. l., CVI CVF IV Lux Securities S. à r. l. and CVIC Lux Securities Trading S. à r. l. ("Carval"); and
- ii. Nithia Capital Resources Advisors LLP and Mr. Jai Saraf ("Nithia")

How was it Resolved: Interestingly the biggest beneficiary of this pre-CIRP period payment was the GST department, whose officers despite the moratorium on both UGML and UVSL warned to take coercive actions including sealing of the plants and raid the customers of the CD in their zeal to collect the tax dues. If the GST officials had taken any action of sealing, we would have the option to approach the NCLT for stay order. This is because being an Operational Creditor (OC), the tax dues of GST department are also covered under Section 14 of the IBC. The various provisions of the Section 14 provide legal protection to the assets of the CD from previous liabilities, if any. However, at that time in all matters some amount of prior period payments were being made with the approval

of the CoC to keep the corporate debtor as a Going Concern (GC). In this matter, the CoC was of the view that conflict approach with the GST officials would have an adverse effect in running the CD as GC. Any litigation with GST would have taken two to three months to be adjudicated and in the meantime GST officials would have sealed the plant. This would have a significant impact on the value of the assets. Hence the NCLT route was not chosen.

After detailed deliberations in the CoC meetings, the CoC took a decision to approve payment of these pre-CIRP period tax dues to ensure both UGML and UVSL are run as GCs and the GST department got benefitted to the extent of more than INR 100 crores which was not in concurrence to the spirit of the IBC.

6.3. Related Party Linkages and Transactions Affecting Operations

As explained above the integrated steel facility was housed across three entities: (a) UGML- The primary steel plant (c) UVSL- The Secondary Steel plant and (c) IPPL- the captive power plant.

This led to a situation where there was a plethora of large value related party transactions viz.

- (a) Almost 100% of the production of UGML was sold to UVSL
- (b) IPPL was the captive supplier of power to UVSL.
- (c) UGML sold coke oven gas to IPPL as fuel by IPPL for power production.
- (d) IPPL sold steam to UVSL.
- (e) UGML paid lease rent to UVSL for using the railway siding and staff quarters and other facilities.

In addition to these related party transactions, the senior level staff was in the rolls of another group company Taam Galva Steels Limited ("UGSL") and their costs was allocated across all the four entities.

As is evident from the above, each of these transactions were critical for the functioning of the plant but under the IBC, all these understandings and pricing had to be explained to the CoC and ratified by the CoC and then tracked and reported regularly to maintain transparency and independence. The related parties in this instance were captive to each other and arm's length pricing was also being done on a cost-plus basis. Furthermore, the option of market pricing was not available as these materials like hot metal at 1400 degrees Centigrade, steam, gas could not have been transported to the plant from a third party. On the power front, comparative pricing studies were conducted using experts to arrive at a reasonable billing price.

How was it resolved: This activity of understanding, validating, and confirming the geniuses of these transactions took a significant amount of time and bandwidth of the RP and the CoC during the entire process

but was resolved post receiving CoC approvals for these transactions.

6.4. Bidding Process

The bidding process of both the companies started on September 24, 2018, eight potential resolution applicants had subscribed to the EOI.

After extensions on the request of the prospective resolution applicants on January 21, 2019, two resolution plans each were received for both UGML and UVSL.

Subsequently the CoC declared that the bids received from the resolution applicants were unsatisfactory and proposed a re-bid. Because the period remaining in the CIRP of both the companies was not enough to re-initiate the bidding from the EOI stage.

Both the resolution plans were conditional plans, stating that the respective applicant will purchase the companies only if they are selected as the successful bidder for the other company.

How was it resolved: CoC and the RP along with their respective legal advisors interpreted Regulation 36B (7) of the CIRP Regulations and in the interest of value maximization of the companies decided to directly issue an advertisement on February 8th, 2019, without going through the EOI process.

7. Resolution Plan for the CD

Finally on March 18, 2019, two resolution plans were received from two applicants for both the companies. One of the resolution applicants was a repeat bidder who had participated in the first round of bidding and the other resolution applicant was one who entered the race in the second round.

Both the resolution plans were conditional plans, stating that the respective applicant will purchase the companies only if they are selected as the successful bidder for the other company.

As the IBC did not give the Resolution Professional powers to declare such conditional bids as compliant, an application was filed by the Resolution Professional, seeking directions from this tribunal to approve the said

conditional resolution plans. Vide an Order dated April 1, 2019, this tribunal directed the CoC to analyse the said conditional resolution plans and approve the same if appropriate. It is interesting to note this was the first miscellaneous application which was filed in the entire CIRP of both the companies barring the procedural ones for constitution of the CoC, extension of time period of the CIRP.

On March 29, 2019, the RP on behalf of the CoC intimated the resolution applicant who had entered the bidding in the second round that they had been selected as the sole shortlisted resolution applicant based on the evaluation of the resolution plan. The other bidder after receiving the communication that it had been declared unsuccessful revised its bid and resubmitted the amended plan to the Resolution Plan. On April 21, 2019, the CoC decided not to consider the amended plan submitted by the other bidder and voted on the resolution plan of the applicant who was declared successful on 29th March 2018.

8. Post-Bidding Litigations

The CIRP of UGML and UVSL was unprecedented in the sense that probably these were the only processes amongst the first list of 12 and 28 cases where there was no litigation from the time of admission till the date of the filing of the resolution plan with the NCLT. This run of good fortune was broken by the flurry of litigants who landed up at the door of the adjudicating authority. Each UGML and UVSL had two litigants each one the unsuccessful bidder and the other the respective largest operational creditor.

The unsuccessful resolution applicant tried hard to find a way around the judgement of the Supreme Court of India in the matter of *K. Shashidhar Vs. Indian Overseas Bank & Others*² which fortified the commercial wisdom of the CoC and the only approach the litigants had was to take shelter behind the allegations of “gross irregularity in the conduct of the process”. The operational creditor on the other hand after losing their fangs basis the judgement of the Supreme court in the judgment of the Supreme Court of

2. Civil Appeal No. 8766-67/2019 and other petitions.

India in the matter of Committee of Creditors of *Essar Steel India Limited Vs. Satish Kumar Gupta & Ors*³ matter teamed up with the unsuccessful resolution applicant trying to raise fundamental questions on the conduct of the CIRP by the RP.

After rounds of hearings stretched over hours and days, the Mumbai Bench of NCLT came up with an unprecedented “split” verdict in the matter on 31st December 2019 and the saga moved to the principal bench in New Delhi where after rehearing the matter at length the Principal Bench rejected the claims of the unsuccessful bidder and the operational creditors and held that the conduct of the CIRP was compliant as per Insolvency and Bankruptcy Code, 2016 (IBC) and related regulations. The order was pronounced by the Principal Bench in front of an empty court on the last day before the nationwide lockdown in March 2020.

The advisors of the RP coordinated with the agency appointed by the successful resolution applicant to verify all assets and inventory of the CD and link them back to the assets as per the financial statements drawn up by the RP as on the CIRP commencement date.

After this affirmation, the resolution plans were heard online during the lockdown in the month of April 2020 and the resolution plans were the first to be approved by the NCLT Chennai Camp Bench in early May 2020 through the online hearing mode. As per the Plan the successful bidder was required to pay an upfront settlement amount and deferred and contingent payments to financial creditors worth Rs 1,567 crore and Rs 1,078 crore, respectively⁴.

9. Hiatus surrounding the High unpaid CIRP Cost

The CIRP of UGML and UVSL was plagued by the issue of high unpaid CIRP costs. This

3. Civil Appeal No.10673 of 2018 and other petitions.
4. Bloomberg-Quint (2020): NCLT Approves Resolution Plans For Uttam Galva Metalics, Uttam Value Steels, May 07, Available at <https://www.bloombergquint.com/business/ibc-news-nclt-approves-resolution-plans-for-uttam-galva-metalics-uttam-value-steels>

was on account of two reasons. As explained earlier both the plants were in a maintenance shutdown at the time of the admission into CIRP and lacked any sizeable receivables or inventory. In the absence of any interim finance support the plants were restarted by using the credit period extended by the raw material suppliers as working capital, this always kept the unpaid CIRP cost high during the entire process.

Because of the location of the plant which was away from the traditional coal and iron ore belt the cost of production of the plant was traditionally high and the EBITDA (Profit) of the plant was only on account of an indirect tax subsidy of 7.5% offered by the Maharashtra government. There was a timing gap of 18 months between the accrual and realization of this said government subsidy. This combination of peculiar circumstances kept the unpaid CIRP costs of the process high although during the CIRP period more than INR 400 crores of incremental assets were built up in the companies. This situation was a cause for concern for the members of the CoC.



This issue was explained in detail to the members of the CoC and in the spirit of transparency the RP requested the CoC members to appoint an independent auditor to review the CIRP costs and validate the twin

premise. The RP also agreed to get the unpaid CIRP cost as on the date of approval order certified separately by the statutory auditors of both the companies.

10. Takeover Tantrums

During the implementation period the successful resolution applicant raised questions on the realisability of more than INR 100 crores of customer receivables which was built up during the CIRP period and requested for detailed review of the assets and inventory of the companies in a bid to try and find a way to angle for a discount of the bid price.

Even after the approval of the resolution plan the RP was engaged with the Monitoring Agency of the companies and the customers to ensure realization of the customer receivables during the implementation period. The Monitoring Agency comprised of two representatives of the CoC, two representatives of the Resolution Applicant and an independent expert. The advisors of the RP coordinated with the agency appointed by the successful resolution applicant to verify all assets and inventory of the companies and link it back to the assets as per the financial statements drawn up by the RP as on the insolvency commencement date.

Finally in end December 2020, three years to the day from the day when the insolvency professional had signed the consent form to become the IRP of both the companies, the resolution plan was implemented, and the successful resolution applicant took over the control of the companies after making the payments to the stakeholders bringing down the curtains to an interesting journey leading to the successful resolution of both UGML and UVSL.



CHAPTER-7

CIRP of Jubilant Energy Kharsang Pvt Limited (JEKPL)

There were no employees, no directors and no promoters/shareholder representatives from Dec'l 7 to Sept'20 therefore status of Corporate Debtor was marked as "Active Non-Compliant" at website of the Ministry of Corporate Affairs (MCA), Government of India. One of the major hurdles faced during the CJRP of the Corporate Debtor was this classification of the Corporate Debtor as an Active Non-Compliant company and structuring the manner in which the new management of the Corporate Debtor shall take over the management of the Corporate Debtor.

Furthermore, where all directors of the company have resigned of their office under Section 167 of Companies Act, the promoters or Central Govt shall appoint the required number of directors. Accordingly, Mr. Bhuvan Madan the RP requested promoter company, JE Energy B.V (holding company which holds 100% share of Corporate Debtor) to appoint directors in JEKPL as per statutory requirement however since the JE Energy B.V itself is into liquidation under Netherland Laws, the Bankruptcy trustee of promoter company expressed its inability to appoint any director/s on the board of Corporate Debtor. Besides, almost every stakeholder filed petitions in various courts of law from NCLT to NCLAT to the Supreme Court. Some of which were dismissed on the grounds that the petitioner had 'no locus' in the case.

*Finally, the Resolution Plan of H-1 was voted by the COC after H-2 failed to outbid the H-1. But the implementation of the Resolution Plan had its own set of challenges. The present Case Study, sponsored by IIPI, has been developed by Mr. Bhuvan Madan, Resolution Professional of JEKPL. **Read on to know more...***

1. Introduction

The resolution of JEKPL involves several aspects of insolvency such as guarantors obligation for payment of debts, legal loopholes, multiple litigations, plan implementation hurdles, locus standi of unsuccessful resolution applicant and role of MA to facilitate implementation of plan. However, for the sake of presentation, the entire case study has been divided into three main stages i.e. CIRP-Phase 1, CIRP-Phase 2, and Implementation of the Resolution Plan. Each stage brought its own set of challenges.

The main reason for financial stress was declining production and oil prices of produce from Kharasang oil field and problem further aggravated due to governmental policies and regulations pertaining to licenses. This led to severe financial crunch and has delay in debt servicing. Consequently, account of Corporate Debtor (CD) was classified as NPA. After attempts of revival could not materialise,

the CD filed an application with NCLT for initiation of Corporate Insolvency Resolution Process (CIRP) against itself under section 10 of the Insolvency and Bankruptcy Code (IBC or Code), 2016.

The NCLT vide order dated 17 March 2017 ordered commencement of CIRP and appointed an Insolvency Professional (IP) as Interim Resolution Professional (IRP) for the Corporate Debtor. However, the IRP was replaced with another RP (RP-1) by the Committee of Creditors (COC). Subsequently, Bhuvan Madan, IP was appointed as the Resolution Professional (RP-2) by the Committee of Creditors (CoC) of the Corporate Debtor and the same was confirmed by the NCLT vide order dated 8 March 2019. It was due to pre-existing legal disputes the RP-2 could not take over the process after a gap of about 15 months from the RP-1 demitting the office. Wading through several litigations filed by various stakeholders, the RP-2 not only completed the CIRP of the CD but also

successfully discharged the responsibilities as MA for implementation of the Resolution Plan.

2. Company Profile

2.1. About the Kharsang Project

Kharsang field covering an area of 9.94 sq. km is located in a reserve forest in Changlang district in the state of Arunachal Pradesh (North East India), about 50 km east of Digboi Refinery. The Kharsang field was discovered in 1976 by Oil India Ltd. (OIL). A total of 36 wells were drilled by OIL in the Kharsang field by 1995. It has oil producing wells (high wax and low wax) with API ranging from 16 to 36 deg. Kharsang field aggregates to 70 wells comprising of 36 wells of legacy Oil India and 34 wells of PSC consortium.

The Government of India (GoI) desired that petroleum resources be exploited with utmost expedition in the overall interest of India in accordance with good international petroleum industry practice and invited bids from interested person having requisite credentials to undertake exploration and development of the petroleum resources. In the exercise of its powers, the GoI granted mining lease for such oil contract area and entered a contract with certain Parties with respect to the petroleum operations in the contract area and pursuant to the production sharing contract (Production Sharing Contract or PSC).

The Production Sharing Contract was executed on 16 June 1995 among following parties

| | |
|---|-----|
| Oil India Limited | 40% |
| Geopetrol International Inc | 25% |
| Enpro India Limited (now JEKPL Corporate Debtor) | 25% |
| GeoEnpro Petroleum Limited | 10% |

The PSC has a term of 25 years which can be extended for another 10 years.

In addition to the PSC, a Joint Operating Agreement (JOA) was also executed between the aforesaid parties.

2.2. JEKPL: The Corporate Debtor

The name of Enpro India Ltd was changed to Jubilant Enpro Ltd. Subsequently Jubilant Enpro assigned its entire 25% PI to its affiliate company Enpro Commercials Pvt Limited whose name changed to Jubilant Energy (Kharsang) Pvt. Limited and thereafter to JEKPL (Corporate Debtor).

In addition, Corporate Debtor has participating interest in Manipur Blocks (Manipur I and Manipur II) which have been relinquished under force-majeure conditions. The PSCs were executed on June 30, 2010 and July 19, 2010 with GoI which were tendered under the New Exploration Licensing Policy, Eighth Round and the Petroleum Exploration License was issued by the State Government of Manipur on Nov 15, 2010. After completion of initial G&G activities, preparation for the next round of obligations, i.e., drilling of exploration wells was commenced. However, it was found that the roads were in a deplorable condition and major repair work on portions of the access roads and bridges was underway. Even after four and a half years, there was no sign from the government as to when the roads would become functional. Hence, DGH agreed to grant force majeure on March 10, 2015 w.e.f. August 2, 2013 under the terms of the PSCs for both the blocks.

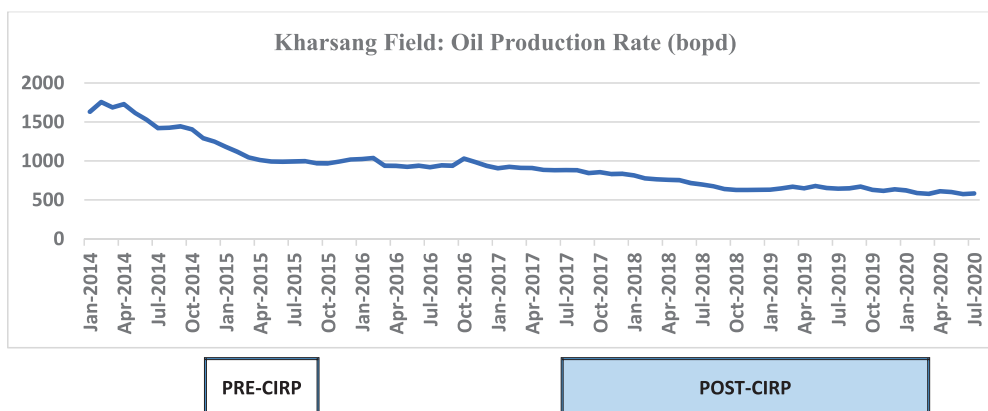
3. Pre-CIRP Performance

3.1. Production Capacity: Pre-CIRP Vs. Post-CIRP

Oil and gas reservoirs lose the pressure as oil and gas is produced from them. This results in decline in production over a period of time unless pressure management technology is implemented, or enhanced oil or gas recovery technology is implemented. In Kharsang, neither pressure management nor enhanced oil recovery technology is implemented to arrest the decline.

Further, it is understood that drilling of new wells has not been taken up due to lack of various regulatory approvals. This has resulted into decline in production level over period which has been tabulated as hereunder:

Chart I: Oil Production Rate in Kharsang Field

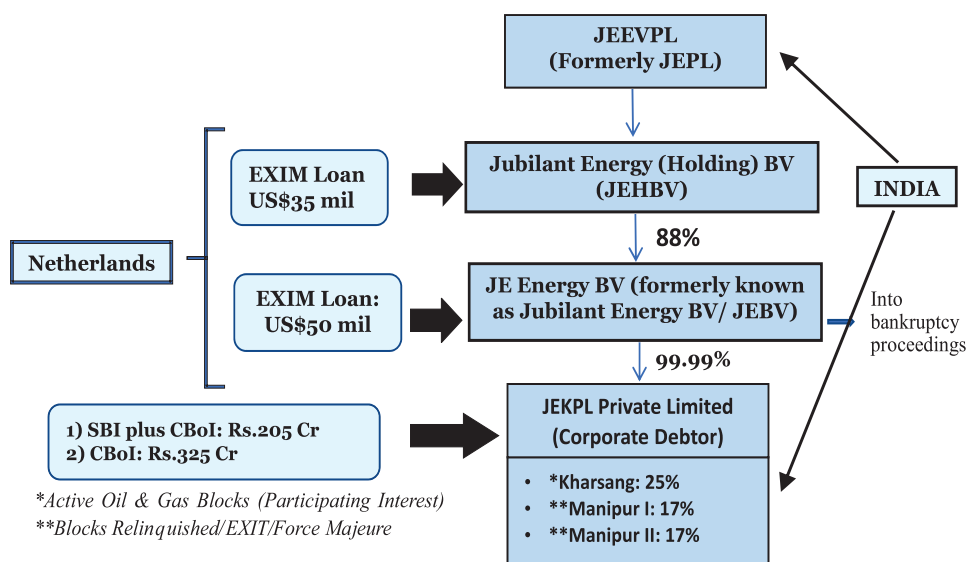


3.2. Financial facilities availed by JEKPL

a. Financing facilities of Corporate Debtor and corresponding security in Rupees

| Name of Bank | Claims admitted (Rs. In Crores) | Secured by |
|-----------------------|---------------------------------|--|
| State Bank of India | 104 | First charge on movable and immovable assets of Corporate Debtor Present and future receivables from Kharsang or any other field Mortgage of Corporate Debtor's PI in kharsang field Pledge of 51 % shares of Corporate Debtor. |
| Central Bank of India | 501 | |

Graph 1: Group Structure of the Corporate Debtor



b. Counter Corporate Guarantee provided by Corporate Debtor for Dollar Loan facilities availed in step-up holding companies:

EXIM bank sanctioned a Foreign Currency Term Loan of USD 50 Million during FY 2011-12 to Jubilant Energy N.V.(JENV) and USD 45 Million to Jubilant Energy (Holding) B.V.(JEHBV) formerly known as Jubilant Energy N.V, the Netherlands).

JEPL being the ultimate Indian holding company of the prime borrowers has offered the corporate guarantee for both above loans. In addition, Corporate Debtor being an Indian subsidiary of prime borrowers has offered counter corporate guarantee for the performance of above guarantee by JEPL to EXIM bank.

In March'16 above Loan facilities extended by EXIM Bank were classified as NPA

3.3. Reason for Financial stress

The performance of kharsang field has declined considerably with both production and prices declined significantly which has been further aggravated due to governmental policies and license issues. The decline in production and lower crude prices have led to severe financial crunch and has led to delay in debt servicing. Consequently, account of Corporate debtor has been classified as NPA.

Corporate Debtor claimed that they made attempts to restructure its petroleum production in consultation with financial lenders, but it yielded not many results. Pursuant to continuation of such financial stress, Corporate Debtor filed an application under Section 10 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') for initiation of Corporate Insolvency Resolution Process (CIRP) against itself. The NCLT approved¹ the commencement of CIRP vide order dated 17 March 2017 and appointed an Insolvency Professional (IP) as Interim Resolution Professional (IRP) for the Corporate Debtor. However, the IRP was replaced with another RP (RP-1) by the Committee of Creditors (COC). Subsequently, the RP-1 was

also replaced by Mr. Bhuvan Madan (RP-2), who is the author of this case study.

3.4. Issues related to Management/Labour/Employees

Under Joint Operating Agreement (JOA) one of PI holder GeoEnpro Petroleum Limited was designated as Operator and entrusted with job of exploration, develop and operate the Contract Area in order to discover, develop and produce commercial accumulation of petroleum in accordance with policies, work programmes, budgets approved in accordance with Contract, and direction issued by Operating Committee and Management Committee.

4. Corporate Insolvency Resolution Process (CIRP)

Pursuant to approval of Resolution Plan by NCLT vide order dated 15 Dec 2017, erstwhile all directors of the Corporate Debtor resigned w.e.f 15th Dec 2017 by filing DIR-11 (However, entire process was severely marred by litigations at all forums and hence final resolution approved by NCLT in Feb 20 and plan got fully implemented in Sept 20 (explained in following paras).As all directors vacated office since 15 Dec'17, none of compliances with regard to e-filing of any form could be completed.

RP requested promoter company, JE Energy B., to appoint directors in the board of CD as per statutory requirement. However, since the JE Energy B.V itself undergoing liquidation under Netherland Laws the Bankruptcy trustee expressed inability to appoint any director.

There were no employees, no directors and no promoters/ shareholder representatives from Dec'17 to Sept'20 therefore status of Corporate Debtor was marked as "Active Non-Compliant" at website of the Ministry of Corporate Affairs (MCA), Government of India. One of the major hurdles faced during the CIRP of the Corporate Debtor was this classification of the Corporate Debtor as an Active Non-Compliant company and structuring the manner in which the new management of the Corporate Debtor shall take over the management of the Corporate Debtor.

1. NCLT,Allahabad, CP No. 24/ALD/2017, March 17, 2017.

Where all directors of the company have resigned of their office under sec 167 of companies Act, the promoters or Central Govt shall appoint the required number of directors. Accordingly, RP requested promoter company, JE Energy B.V (holding company which holds 100% share of Corporate Debtor) to appoint directors in JEKPL as per statutory requirement however since the JE Energy.

B.V itself is into liquidation under Netherlands laws therefore, the Bankruptcy trustee of promoter company expressed its inability to appoint any directors on the board of Corporate Debtor.

4.1. CIRP: Phase-1

The statutorily prescribed period of one-hundred and eighty (180) days from the insolvency commencement date was expiring on 17 September 2017, accordingly, upon an application filed by the erstwhile Resolution Professional (RP in CIRP-1 or RP-1) under Section 12 of the Code, the said period of the CIRP was extended by the Adjudicating Authority (AA) by another 90 days vide its order dated 3 August 2017. Accordingly, the CIRP of the Corporate Debtor was due to expire on 12 December 2017. Pursuant to the advertisement, the creditors - 'Financial Creditors' including EXIM Bank and 'Operational Creditors' filed their respective claims.

Pursuant to invitation for EOI for submission of resolution plans, 13 EOIs were received by the RP-1 out of which 5 EOI were found to be qualified, however final resolution plan were submitted by two potential Resolution Applicant's namely Atyant Capital India Fund -1 ("Atyant") and Hindustan oil Exploration Company Limited (HOEC).

The Resolution Plan of Atyant (Highest bidder) was recommended by RP-1 and COC voted in its favour except Exim bank. The same was approved by AA vide its order dated 15 Dec 2017. It is worthwhile to note that RP-1 had not recognized Exim Bank debt as "Financial Debt" and ignored to include the Exim Bank in the COC with voting share proportionate to its amount of claim.

4.2. Brief Background of Atyant Capital: The Resolution Applicant

Atyant Capital India Fund- I ('Atyant Capital/ Fund'), the Resolution Applicant, was incorporated in the Republic of Mauritius as a public company limited by shares in accordance with the Mauritius Companies Act, 2001 Republic of Mauritius. It has been granted a category - I global business licence by the Financial Services Commission and authorised as a collective investment scheme under the Securities Act, 2005. Atyant Capital Family of Funds have assets under management in excess of USD 500 million. Limited partners (LPs) to the Funds include university endowment funds, institutional investors, pension funds, and large family offices, all from North Americas. Further, the Fund has committed but unutilised capital of USD 500 million for investment. Typical to a Private Equity investor, the Fund's investment objectives are to achieve consistent absolute rate of return which exceed the emerging market indexes and long-term capital appreciation by investing in shares and securities - both private or listed equities in defined sectors like oil and gas, technology and health sciences.

4.3. Meanwhile, two appeals were filed before Hon'ble NCLT, details of which are as hereunder:

a. EXIM Bank challenged the NCLT order dated 15 Dec '17 as Claim of Exim bank as a Financial Creditor rejected by erstwhile Resolution Professional (RP-1)

The EXIM Bank declared the amount of loan advanced to Principal Borrower as NPA. Therefore, the EXIM Bank recalled the loan facilities advanced to JENV and JEHBV. Consequently, Exim Bank initiated recovery actions against the Prime Borrowers i.e JENV and JEHBV and invoked its 'Corporate Guarantee' as well as the 'Counter Corporate Guarantee' against the JEPL and Corporate Debtor.

According to EXIM Bank Principal Borrower having defaulted and the liability of Corporate Guarantee as 'Counter Corporate Guarantee' being joint and co extensive with Principal Borrower, the EXIM Bank comes within the

meaning of 'Financial Creditor' of Corporate Debtor (Corporate Debtor), in terms of Section 5(7) r/w Section 5(8)(h) of I&B Code. However, Exim Bank's claim to treat it as a 'Financial Creditor' has not been accepted by the RP- I, which led to Exim Bank filing an application before AA challenging the said rejection of claim and the same finally resulted in an Order dated 27 November 2017 passed by this AA whereby the decision of the RP-I rejecting the claim of Exim Bank as a financial creditor of the Corporate Debtor was upheld.

The aforesaid order was challenged by Exim Bank before the NCLAT and consequently, NCLAT pronounced order² on dated 8th Dec 2017 directing RP-1 to consider the claim of appellant and request the COC to notice the same and also bring to the notice of AA.

However, the said order dated 15 Dec 2017 passed by NCLT is subject to outcome of EXIM Bank's application before the NCLAT challenging the order of NCLT dated 27th Nov 2017 to consider them as financial creditor to the CIRP of Corporate Debtor.

Therefore, EXIM bank filed an appeal to NCLAT of setting aside 15th Dec'17 order of NCLT and also its order dated 27th Nov 17 and the decision dated 4th Aug'17 of the RP rejecting the claim of EXIM.

b. Challenging of NCLT order dated 15th Dec 2017 by HOEC ("Unsuccessful Resolution Applicant")

HOEC alleged that bidding process was not conducted by RP-1 and COC in accordance with defined process laid out in process documents. HOEC alleged despite that bids submitted by each resolution applicant being treated as final offer, suddenly the goal post was changed by RP-1 and COC from written binding bidding to verbal auctioning mode towards upward revision in price consideration with both potential resolution applicants. Atyant ("Successful Resolution Applicant") participated in verbal auctioning and submitted revised resolution plan on 6th Dec 2017. HOEC claimed that they being listed company couldn't participate

2. NCLT, Allahabad, CA.No.159/2017, November 27, 2017.

in verbal auctioning however, submitted revised resolution plan on 6th Dec 2017. Post evaluation of resolution plans by RP-1 and COC, resolution plan of Atyant was approved by COC and rejected the resolution plan of HOEC on the ground - HOEC submitted conditional plan and HOEC opted out of bidding process on dated 4th Dec'17.

HOEC alleged that purported conditions under which HOEC's plan was rejected is illegal and motivated. Aggrieved by the order of NCLT dated 15 Dec 2017, HOEC filed an application before the NCLAT on 20th January 2018 to consider the resolution plan submitted by HOEC on dated 6th December 2017 which was higher than that of Atyant.

c. NCLAT passed stay order on 1st Feb 2018 and a final Order on 14th August 18

Pursuant to above two appeals NCLAT passed stay order on dated 1st Feb 2018 directing the AA NCLT Allahabad Bench not to give effect to the Resolution Plan which was passed during vide order dated 15 Dec 2017. Finally, the above issue was settled by judgment dated 14 August 2018 whereby the NCLAT recognised the status of Exim Bank as a "Financial Creditor". NCLAT also recognised that resolution plan has been approved by the COC which was not competent in the absence of Exim Bank and taking into consideration that the claim of one of the resolution applicants Viz HOEC was wrongly not been considered and hence order dated 15 Dec 2017 was set aside and directed to reconstitute the COC after including Exim Bank and further directed to reconsider of the resolution plans already submitted with respect to the Corporate Debtor. It was made clear by the NCLAT that COC cannot go in for "rebidding" on account of the resolution plans having already been opened.

d. NCLAT order dated 14th August 2018 was challenged by Atyant

Meanwhile, the decision of the NCLAT dated 14 August 2018 was challenged before the Supreme Court by Atyant as it is prejudicially affecting the rights and interest of the Appellant as a successful resolution applicant by setting aside approved Resolution Plan of Appellant which was approved by the NCLT vide its order dated 15 Dec 17.

The basic premises of appeal filed by Atyant was that although EXIM bank was participating in CIRP throughout and attended all COC meetings and never objected to the resolution plan submitted by Atyant. In addition, NCLT observed that Atyant's Plan is bonafide and beneficial to the interest of Corporate Debtor.

Therefore, Atyant prayed that NCLAT's dated 14 Aug'18 order for setting aside NCLT order dated 15 Dec 17 would alter the status of Atyant as successful Resolution Applicant, merely because EXIM Bank being declared as "Financial Creditor" although the rights of EXIM Bank are fully protected under the resolution plan of Appellant and EXIM Bank was always part of all COC meetings.

Supreme Court vide order dated 7 September 2018 (i.e. the next day after the direction to Exim Bank to call for a meeting of the Committee of Creditors), while issuing notice directed for maintenance of status quo as on the said date. Also, in the matter of HOEC's appeal, NCLAT passed an order on dated 28th Jan 2019 to follow the direction given in the NCLAT order dated 14th August 2018.

The aforesaid civil appeal was thereafter taken up and dismissed³ by the Supreme Court vide its order dated 23 January 2019.

4.4. CIRP Phase- 2: Re initiation of CIRP after gap of 15 months

Subsequently, Bhuvan Madan was appointed as the Resolution Professional (RP-2) by the Committee of Creditors of the Corporate Debtor and the same was confirmed by the NCLT vide order dated 8 March 2019.

Thereafter, RP-2, his authorised representatives and his legal advisor Shradhul Amarchand Mangaldas (SAM) reconstituted the COC, along with EXIM Bank and held a meeting on 29th March 2019 to discuss the future course of action and to evaluate/consider/reconsider the resolution plans already submitted by existing resolution applicants only in line with NCLAT order dated 14 August 2018. While the statutorily prescribed period for conducting the of the CIRP has already expired, the members of the Committee of Creditors inter alia authorized the RP-2 to file the following applications:

3. NCLAT, CA(AT) (Tnsolvency) No. 304/2017, December 08, 2017.

- a. Application before the NCLT seeking exclusion of time period consumed in litigation in calculating the total time period available for conducting the CIRP of the Corporate Debtor; and
- b. Application before the NCLAT seeking clarification of the Order dated 14 August 2018 with respect to whether the existing resolution applicants could be asked to submit revised resolution plans to maximize the value of assets or if the CoC was bound to consider the original plans such resolution applicants had submitted.

Thereafter, on 10 April 2019, the RP-2 Invited to both the resolution applicants seeking confirmation on their interest to participate in the resolution process of the Corporate Debtor. In response, both resolution applicants reconfirmed their interest.

While NCLT granted requisite exclusion, the application filed before the NCLAT was disposed vide Order dated 14 May 2019 whereby the AA stated that there was no need for clarification and granted liberty to the CoC to negotiate with the resolution applicants in accordance with the Code to maximise the value of assets of the Corporate Debtor.

On 24 May 2019, the 18th COC meeting took place wherein the members of the COC decided the future course of action and unanimously agreed to issue a process document (Process Document) containing the detailed terms and conditions of the process to be conducted by the COC for negotiation with both the resolution applicants. Accordingly, on 1 June 2019 the RP-2, on behalf of the COC, circulated the Process Document and the due date for submission of revised resolution plan was decided as 10 June 2019. In terms of the Process Document, an out bidding process had been envisaged where each resolution applicant had one chance to outbid the highest evaluated plan.

In pursuance of the above invitation, both the resolution applicants submitted their revised resolution plans and post evaluation, Atyant was declared as the H1 bidder and HOEC was declared as the H2 bidder.

Thereafter the H2 bidder was given the opportunity to outbid the H1 bidder, in accordance with the process for outbidding stipulated under the Process Document. However, the H2 bidder i.e. HOEC declined to outbid the H1 bidder and consequently, H1 bidder i.e. Atyant was declared the highest evaluated Resolution Applicant (RA).

The members of CoC participated in the scheduled e voting and the same resulted in approval of Final Resolution Plan submitted by Atyant by 100% voting in favour of approval of plan. NCLT found Resolution Plan of Atyant in conformity of section 30(2) of code and an approval in respect of the same was pronounced on 7th January 2020. However, RP-2 observed some error that had crept in the order and filed an application for modification order. Subsequently, NCLT passed order dated 4th Feb 20 and corrected/modified⁴ the order dated 17th Jan 20.

Upon NCLT's approval of the resolution plan, Atyant appointed the RP-2 as Monitoring Agency (MA) in terms of the approved resolution plan for effective monitoring and supervising the implementation of resolution plan approved by the NCLT.

5. Implementation of Resolution Plan

5.1. Hurdles in Implementing Resolution Plan

It appeared that all things ended happily and now RA is to implement the plan. However, many aspects unfolded one by one including Covid-19 Pandemic that kept delaying implementation of the Resolution Plan. Hurdles in implementation of the resolution plan by Successful Resolution Applicant, Atyant Capital India Fund- I ("RA") are as follows:

- a. The NCLT order dated 4th Feb'20 approving the resolution plan was challenged by Geopetrol International Inc ("GPI") (a wholly owned step down subsidiary of HOEC) on account of an alleged Pre-emption Right.
- b. Geopetrol International Inc. (GPI) challenged the NCLT order dated 4th Feb'20 while claiming pre-emption rights

4. NCLT, Allahabad, CA No. 223/ 2017 in CP No. 24/ ALD/2017, December 15, 2017.

on the Participating Interest ("PI") held by JEKPL Pvt. Ltd. in the Kharsang Field. GPI sought a recall of the corporate insolvency resolution process until a notice of pre-emption is issued in terms of Clause 12.3 of the Joint Operating Agreement for enabling parties to the JOA to exercise their pre-emptive rights. It was argued by GPI that the principal assets of the 'Corporate Debtor' was its 25% Participating Interest in Kharsang oil field and any direct or indirect sale of the said participating interest to be strictly governed by the provisions of the Production Sharing Contract and the Joint Operating Agreement. Accordingly, GPI claimed a first charge over the participating interest of the 'Corporate Debtor' and pre-emptive right under Article 12.3 of the Agreement. However, the NCLAT was pleased to dismiss the appeals vide its order dated 13th March 2020 on account of the resolution plan having been approved and it being presently binding on all stakeholders under Section 31 of the Code.

- c. On account of the aforesaid appeal, Atyant changed its implementation strategy to wait and gauge the situation. This was also exacerbated by the outbreak of the pandemic. Atyant feared appeals to the NCLAT order and was apprehensive that GPI may raise an issue with respect to exercise of its alleged pre-emption rights. Therefore, keeping this in mind, Atyant issued a letter dated 14 March 2020 to the lenders as well as the MA seeking extension of 90 days extension for implementation of the resolution plan for the following reasons:
 - i. Possibility of filing of appeal by GPI before Supreme Court;
 - ii. Pandemic outbreak of COVID-19 which has been declared as force majeure event.
 - iii. the pandemic has caused a steep fall in oil and gas prices worldwide which is also the primary business of the Company thereby potentially affecting the cash flows of the Company.

- d. The letter was responded to the MA inter alia stating that in view of the unequivocal terms of the Approved Resolution Plan, the Atyant is stopped from taking any contrary position and delaying or seeking any extension for the implementation of the Approved Resolution Plan. Further, the MA also objected to the RA's contention of occurrence of event of force majeure and emphasized that the COVID outbreak had absolutely no bearing whatsoever in respect of the requirement to implement an Approved Resolution Plan by payment of the consideration provided therein and secondly, the Approved Resolution Plan does not have any provision which provides the liberty or right to renege or delay in the implementation of the Approved Resolution Plan even upon the occurrence of a force majeure event.
 - e. Finally, the MA along with the financial creditors of the Company called upon the Atyant to immediately implement the terms of the approved Resolution Plan without any further delay by making the payment of the total consideration to the financial creditors.
 - f. By this time, the Atyant had already filed an application before the NCLT Allahabad Bench seeking directions for extension of 90 days' time period for implementation of the resolution plan stating the lockdown imposed by the government of India as one of the reasons for the same.
 - g. Atyant deliberated with the MA and lenders on finally on 22 April 2020 it was agreed that Atyant would be permitted an extension of 90 days to implement the approved resolution plan subject to the following terms and conditions:
 - i. INR 10 crores should be infused by Atyant in JEKPL by way of issuance of demand draft immediately, to display their commitment towards implementation of plan;
 - ii. Application/Affidavit to be filed with Adjudicating Authority to seek necessary direction for extension of time as requested by the RA, along with the withdrawal of application filed by RA;
 - iii. The balance resolution amount to be paid to the financial creditors within 90 days from lifting of lockdown issued by Central Government.
- Finally, Atyant agreed to implement the resolution plan in line with the extension granted and fulfil the conditions. Furthermore, Atyant clarified that the reason for seeking 90 days is to gauge the situation vis-a-vis GPI and any challenges that it may raise with respect to the resolution plan and exercise of its pre-emption rights. Atyant further clarified that in case the anticipated litigation filed by HOEC/GPI before the Supreme Court of India⁵ is disposed-off sooner thereby attaining finality on the issue of pre-emption right, they shall make the payment even before the completion of 90 days.

5.2. Fresh operational issues raised by Atyant

Subsequently, Atyant raised another two operational issues on account of which they expressed their apprehension towards their implementation of the Resolution Plan now stating that the same had material bearing on the business and financial affairs of JEKPL: -

- a. Demand notice dated 04.06.2020 issued by MoPNG, Government of India seeking payment of USD 24.8 million.
- b. Letter dated 08.06.2020 issued by MoPNG, giving three months period for continuing petroleum operations (instead of 10 years extension, consistent with the Government's Extension Policy 2016, to the PSC tenure).

5.3. Invocation of Performance Bank Guarantee by lenders

This is last thing which any Resolution Professional would like to avoid but there was no option but to scrap the entire resolution process.

Lenders expressed their discomfort over the observations made by the Atyant and

5. NCLAT, CA(AT) (Insolvency) No. 304/2017, February 01, 2018.

apprehension that the Atyant may not be willing to file the application in accordance with the decision taken in meeting dated 22 April 2020. Unhappy with the issue raised by the Atyant and attempt by Atyant to delay the implementation, the lenders invoked the performance bank guarantee submitted by Atyant.

5.4. Authorisation to MA

By this time Lenders had made up their mind Atyant was just buying time and delaying the plan implementation. There was a deadlock between the resolution applicant and the lenders, and it almost seemed as if liquidation would be the only option left in respect of the Corporate Debtor. In fact, the possibility of liquidation was also contemplated by the lenders. Pursuant to such deadlock, the MA was authorised to negotiate with the resolution applicants.

Accordingly, the MA and his legal counsel were able to act as a bridge between the lenders and the resolution applicant by nurturing trust and faith between the parties and mediating the deadlock to explore all possibilities of implementation of plan and develop an implementation model, which can be mutually acceptable. This mature and professional endeavour was in line to the objectives underlying the IBC, namely that of revival of the corporate debtor and avoid liquidation. This is also indicative of the importance of sensible and practical negotiations in salvaging situations that may be detrimental to all parties involved in a transaction. It was crucial to create an ambience of faith and confidence among all the stakeholders and mediate for effective closure.

5.5. Finally, after a lot of deliberation and back and forth between the Atyant and the lenders, the following decisions were taken in the meeting held on 30 July 2020:

- a. The RA shall provide the demand draft for INR 5.77 crores to the MA by August 5, 2020 and
- b. simultaneously, lenders shall withdraw notice of invocation of PBG and the unconditional discharge of the PBG which was earlier submitted.
- c. RA shall mandatorily and unconditionally implement the approved Resolution Plan on or before 30 September 2020.
- d. Reversal of entire implementation of Plan in the event GPI/HOEC challenges the resolution plan in view of pre-emptive rights in respect of PI of JEKPL and the Supreme Court decides in favour of GPI/HOEC. In this event, money paid by RA shall be returned back by lenders within 30 days.
- e. Filing of joint application to Adjudicating Authority on the decision taken by the erstwhile COC/lenders with regard to extension of timelines and seek direction from them.

A joint application was filed by the MA(post authorisation from lenders) and Atyant seeking directions on the extended timeline for implementation of the Resolution Plan and fresh agreed position, specifically confirming for implementation of Resolution Plan unconditionally by 30th Sept'20. Such application filed with a confirmation that receipt of consolidated demand drafts of INR 15.77 crores by the MA.

Vide order dated 9th Sept 2020, NCLT6 while declining to accede to the prayer for reversal of money to the Successful Resolution Applicant in the event of dismissal of order from Supreme Court (being speculative), directed the implementation of the approved Resolution Plan on revised commercial agreement between lenders and Atyant by 30 September 2020.

Table 1: Sequence of events since approval of resolution plan by NCLT

| Date | Event |
|-------------------------|--|
| 04.02.2020 | NCLT approved resolution plan of Atyant Capital India Fund-I (RA) to be implemented within 30 days. |
| 06.02.2020 | Geopetrol International Inc. ("GPI") issued notice claiming pre-emption rights on participating interest held by JEKPL Pvt. Ltd. in the Kharsang Field |
| 03.03.2020 | MA responded to GPI's notice objecting to their right. |
| 13.03.2020 | GPI approached the Hon'ble ("NCLAT") challenging the NCLT order dated 4 February 2020 approving the resolution plan. The Hon'ble NCLAT was pleased to dismiss the appeal. |
| 14.03.2020 | Atyant issued letter to monitoring agency seeking 90 days extension on account of outbreak of COVID-19 and possibility of GPI filing an appeal before SC. |
| 16.03.2020 | A meeting was held with the Atyant to deliberate on the issues raised by the Atyant in his letter dated 14.03.2020 |
| 17.03.2020 | Atyant issued another letter requesting for extension of 90 days, seeking to file a joint application before the Hon'ble NCLT for the same. |
| 18.3.2020 | Ayant filed application before NCLT seeking extension of 90 days for implementation of resolution plan. |
| 19.03.2020 | The MA responded to both the letters of the Atyant dated 14.3 and 17.3 inter alia stating that in view of the unequivocal terms of the Approved Resolution Plan, the RA is estopped from taking any contrary position and delaying or seeking any tension for the implementation of the Approved Resolution Plan |
| 19.3.2020 | Atyant responded to MA's letter stating their willingness to implement the plan within 90 days. |
| 17.4.2020 | Discussion with Atyant on implementation of plan and requesting them for renewal of PBG which was expired |
| 22.4.2020 | Meeting between Atyant, lenders and MA regarding implementation of plan where - by extension of timeline for implementation was approved by lenders. |
| 20.6.2020 | Atyant issued another letter to the MA and the lenders requesting for a meeting to deliberate on certain operational matters |
| 1.7.2020 | MA sent email to Atyant informing that the request for meeting to discuss operational matters rejected by lenders who rather insist on compliance of decisions taken in 22 April meeting and submission of INR 10 crore DD. |
| 4.7.2020 | In response to this, Atyant again requested lenders to hold a meeting. |
| 9.7.2020 | PBG submitted by Atyant invoked by SBI |
| 13.7.2020 16.7.2020 | The lenders had a meeting with MA to deliberate on the way forward on account of non-implementation of the plan by RA |
| 17.7.2020 | Atyant finally handed over the fresh DD for INR 10 crore to the MA which was to expire on 15 Aug 2020. |
| 22.7.2020, 27.7.2020 | Another meeting happened with RA to discuss the next steps towards implementation of plan. |
| 30.7.2020 | Final meeting with RA whereby it was agreed to implement resolution plan latest by 30 September 2020. |
| 13.8.2020 | The notice for invocation of PBG withdrawn by SBI upon submission of DD aggregating to INR 15.77 crores in total. |
| 25.8.2020 | Joint application on behalf of RA and lenders filed seeking extension of period for implementing the resolution plan. |
| 9.9.2020 | The NCLT allowed the application for extension of timeline for implementation of resolution plan up to 30 Sep 2020. |

5.6. Final Implementation of Resolution Plan

Following the extended timeline for implementation of the resolution plan, Atyant implemented the resolution plan in its entirety. The money payable to the financial creditors was infused in the Corporate Debtor and accordingly, the following resolutions were passed in the board meeting conducted by the "Reconstituted Board" for the purpose of effective change of management pursuant to approved resolution plan:

1. To take a note of NCLT order dated Feb 4, 2020 approving the resolution plan and to take on record the appointment of reconstituted board in terms of NCLT order (along with the general disclosure as received under sec 164(2) and sec 184 (1) of Companies Act.
2. To take a note of cessation of the erstwhile directors of the company.
3. Authorising the reconstituted board to file E- Form INC-28 for submission of NCLT order approving the plan.
4. On the same day, the infusion of funds required to make payment to the financial creditors was infused in the Company and thereafter, these sums were distributed to all financial creditors.

5.7. HOEC challenged NCLT order dated 9th September 2020 in NCLAT

HOEC filed application, before NCLT Allahabad Bench against NCLT order dated 9th Sept 2020, under Section 33(3) and 74(3) of the Code sought initiation of the liquidation process on account of purported failure on part of Atyant to implement the resolution plan within the stipulated timeline.

Strangely, while appeal is pending in NCLT Allahabad Bench, Later, HOEC filed another appeal to NCLAT against the order of the NCLT dated 9th September 2020 allowing delayed implementation of the resolution plan on the ground that the erstwhile Committee of Creditors, in connivance with the Successful Resolution Applicant, accepted a re negotiated fresh Resolution Plan and the application of the Committee of Creditors under Section

60 (5) of the Code was not maintainable and shouldn't have been entertained by the Adjudicating Authority.

MA and Atyant, both pleaded that Applicant herein is in no manner impacted by the implementation of the Resolution Plan by the Successful Resolution Applicant. The Applicant, during the CIR Process of the Corporate Debtor, was given a fair opportunity of participation and it is ultimately the commercial decision of the members of the COC which is paramount. The members of the erstwhile COC had, in exercise of their commercial wisdom, approved the Resolution Plan of Atyant and the same thereafter received a stamp of approval from NCLT as well in terms of Section 31 of the Code. The NCLAT vide its order⁶ dated 17th Nov'20 held that HOEC had no locus to maintain that the change in terms of the approved Resolution Plan in regard to the extension of time for induction of upfront amount as also the implementation of the Resolution Plan jeopardized its legal rights qua consideration of its Resolution Plan which had been rejected. It was also held that an unsuccessful resolution applicant has no vested rights and upon finding no merit in the present appeal; it was dismissed.

Evidently, the NCLAT has rightly recognised the established position of law that once a particular resolution applicant is declared unsuccessful and is out of the resolution process, it has no right to then challenge any decisions taken by any stakeholder and/or implementation of the resolution plan by the successful resolution applicant. Keeping in light of aforesaid NCLAT order, later NCLT Allahabad bench also dismissed application.

5.8. HOEC challenged NCLAT Order in the Supreme Court

HOEC aggrieved with the order NCLAT filed appeal in Supreme Court under section 61 of Code. Counsel for HOEC submitted that they are aggrieved by the extension granted to the successful resolution application for plan implementation. He submitted there was a 30-day time period stipulated for

6. NCLAT, CA(AT) (Insolvency)No.304/2017, August 14, 2018

plan implementation, however a period of 8 months have been granted by the committee of creditors for plan implementation, despite the fact that the committee of creditors had become functus officio. He also submitted that the entire resolution plan, as approved by the NCLT has been changed and the Corporate Debtor is now handed over to some third party.

The Supreme Court after hearing the submissions passed an order⁷ dismissing the captioned appeal at the outset.

5.9. Recovery of Financial Creditors/ Operational Creditors

There were no operational creditors and resolution plan has been fully implemented in accordance with approved resolution plan. Recovery for financial creditors is around 10% of admitted claim which was fully paid by Atyant and distributed among the financial creditors in proportionate to admitted claim.

5.10. Avoidance Proceedings

Sections 43, 45, 49, 50 and 66 of the Code mandate the RP and the Liquidator to file applications with the Adjudicating Authority (AA) seeking appropriate reliefs and directions permissible under the Code where the RP and Liquidator comes across any transactions that can be classified in the said provisions. Erstwhile RP didn't observe any such transactions which may be classified in the said provisions and hence didn't file any application with the Adjudicating Authority.

6. Learning/Jurisprudence

- a. At first place excluding decision by RP-1 to exclude EXIM Bank as financial creditor with voting share was not correct. In accordance with executed guarantee deed by JEPL and counter guarantee deed executed by JEKPL for the financial facilities extended by EXIM Bank to JENV, Netherland, both entities are liable jointly and severally as "Principal Debtor". Corporate Counter Guarantee in respect of due performance and discharge of obligations and liabilities of JEPL to EXIM Bank, essentially comes within ambit of Supplementary/Additional guarantee.

7. Supreme Court, CA No. 9090-9091/2018, January 23, 2019

There is admitted payment default by the Principal Borrower i.e JENV, Netherland. EXIM Bank has declared account of JENV as NPA in May '2016. Such Counter guarantee given by JEKPL has been acknowledged by JELPL in the financial accounts. Therefore, for all purpose Counter Corporate Guarantee given by JEKPL amounts to Guarantee and entitled to be covered under Financial Debt.

- b. Secondly, 'Unsuccessful Resolution Applicant' whose Resolution Plan was rejected by the Committee of Creditors has no locus to question the implementation of the approved Resolution Plan of the Successful Resolution Applicant. Once the Unsuccessful Resolution Applicant is out of the fray, it has neither locus to call in question any action of any of the stakeholders qua implementation of the approved Resolution Plan nor can it claim any prejudice on the pretext that any of the actions post approval of the Resolution Plan of Successful Resolution Applicant in regard to its implementation has affected its prospects of being a Successful Resolution Applicant. If the terms of the approved Resolution Plan of Successful Resolution Applicant have been varied or time extended to facilitate its implementation and the creditors have not claimed any prejudice on that count and the Committee of Creditors comprising of the creditors as stakeholders has not objected to same rather been privy to it on account of hardship due to prevailing circumstances, the Unsuccessful Resolution Applicant cannot be permitted to cry foul.

Both above matters have been duly given acknowledged and approved by NCLAT.

7. Success mantra, engagement/negotiation etc

"When learning is purposeful, creativity blossoms. When creativity blossoms, thinking emanates. When thinking emanates, knowledge is fully lit. When knowledge is lit, economy flourishes." ~Dr. A.P.J. Abdul Kalam, *Indomitable Spirit*. The learnings from the successful resolution of JEKPL could be summarised as follows:

- a. **Insolvency Professional should be thorough professional and have meticulous approach.** In my view, ability of quick grasping of the ongoing business, operational and regulatory issues along with handling CIRP process, litigations arising of CIRP must go hand in hand. There is no fit for all formula for dealing with a business in this situation; a careful commercial judgement must be made in each case. The IP has no time to develop any understanding about the CDs business but is expected to make meaningful decisions to keep the business operational. The RP should demonstrate deep understanding of industry operations, banking credit knowledge, commercial expertise and legal clarity from commercial perspective to enable an IP to take over the company's reins, reverse its decline and bring the company back on track and continue trading to increase returns to creditors; or, in cases where the company is extremely weak and cannot survive, close it down.

In aforesaid case history, resolution of JEKPL has truly lived up to expectation and to large extent matched up to the challenge of reinvigorating the insolvency regime in India.

- b. **Pro-activeness of RP:** While CIRP regulations provide timelines for RP but generally it is often observed that there is considerable delay in RP's response thereby leading to initiation of multiple suits. Therefore, RPs need to ensure timely decisions and actions, effective communication with all stakeholders.

While CIRP regulations provide timelines for RP but it is often observed that there is considerable delay in RP's response thereby leading to multiple suits. Therefore, RPs need to ensure timely decisions and actions, effective communication with all stakeholders.

- c. **Ability to handle conflicts among creditors:** Creditors need to show more maturity in changing their mindset and viewing IBC as an avenue for resolution rather than merely for recovery. The very object of the Code is to revive a company under the CIRP and not to liquidate it.

- d. Even after approval from resolution plan, Resolution Applicant might face many hurdles and challenges while doing implementation (in JEKPL apart from pandemic, multiple issues cropped up as explained above). RP (who presume the role of Monitoring Agency "MA" till implementation of plan) should have ability to resolve all implementation issues. RP/MA should attempt to resolve the conflict by identifying a solution that is partially satisfactory to Resolution Applicant and Lenders but completely satisfactory to neither. RP/MA should cooperate with the RA to understand their concerns in an effort to find a mutually satisfying solution. This requires considerable freedom from lenders to RP/MA and trust and reliance placed upon him and fortunately all lenders of JEKPL supported fully.

- e. **Timeliness still a major issue under IBC regime:** To do justice to this landmark legislation, it is critical that it does not go the way of cases in Indian courts, mired in delays. Because a reform like IBC, no matter how revolutionary it is, is only as good as its implementation allows it to be. Equally important is increasing the number of NCLT benches initially to ensure there are no capacity limitations towards resolutions.

- f. **Continued support from judiciary in settling the law:** Given that the insolvency jurisprudence in India is constantly evolving, it is imperative that Courts continue to be pro-active in settling debated legal positions and its associated interpretational issues. For instance, the uncertainty looming over the assets of the Corporate Debtor on account of unwarranted litigation initiated by Geopetrol and possibility of an appeal getting filed in the Supreme Court against the order dated 13 March 2020 passed by the NCLAT. In addition,

8. Conclusion

Rescuing a viable firm is far more important than failing to liquidate an unviable company in the current COVID-19 pandemic crisis.

The only issue that needs to be addressed is the change in mindset that accepts the reality and allows the market forces to play out and accepts the market outcome. All the stakeholders - creditors, RPs, Resolution Applicants, AA need to act fully in conformity with spirit of the Code. This may result huge haircut but, certainly, bonus as compared to liquidation value.

All the stakeholders - creditors, RPs, Resolution Applicants, AA need to act fully in conformity with spirit of the Code. This may result huge haircut but, certainly, bonus as compared to liquidation value.

Having stated the above, the IBC has certainly matched up to the challenge of reinvigorating the insolvency regime in India. Not only has

it been able to tackle the menace of non-performing assets, but it also has been effective in contributing to the economy in various indirect ways such as improving credit discipline in the market owing to the fear instilled in the minds of promoters of losing their control in the companies, creating foreign investment opportunities in light of increased confidence on account of the structured and time bound approach and saving jobs by preventing companies from going into liquidation.

दुर्लभान्यपि कार्याणि सिद्ध्यन्ति प्रयत्नेन हि ।

शिलापि तनुतां याति प्रपातेनार्णसो मुहुः ।।

The Impossible things can be accomplished with efforts. Like a hard rock gets thinner with repeated fall of water



ACRONYMS

| | |
|-----------------|--|
| AA | Adjudicating Authority (NCLT) |
| CD | Corporate Debtor |
| CIRP | Corporate Insolvency Resolution Process |
| CoC | Committee of Creditors |
| EBITDA | Earnings before Interest, Taxes, Depreciation, and Amortization |
| EOI | Expression of Interest |
| FC | Financial Creditor |
| GC | Going Concern |
| IBBI | Insolvency and Bankruptcy Board of India |
| IBC/Code | Insolvency and Bankruptcy Code, 2016 |
| IM | Information Memorandum |
| IP | Insolvency Professional |
| IPE | Insolvency Professional Entity |
| IRP | Interim Resolution Professional |
| IU | Information Utility |
| LLP | Limited Liability Partnership |
| NCLT | National Company Law Tribunal |
| OC | Operational Creditor |
| PUEF | Preferential, Undervalued, Extortionate and Fraudulent |
| RA | Resolution Applicant |
| RP | Resolution Professional |



Feedback

The book “Case Studies of Successful Resolutions under IBC” is part of an initiative of the Indian Institute of Insolvency Professionals of ICAI (IIPI) aimed at dissemination of information and knowledge on evolving ecosystem of insolvency and bankruptcy profession and developing a global world view among practicing and aspiring insolvency professionals in India.

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Indian Institute of Insolvency Professionals of ICAI (IIPI)

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Regd. Office: Post Box No: 7100, ICAI Bhawan, Indraprastha Marg, New Delhi - 110002
Admin. Office: ICAI Bhawan, 8th Floor, Hostel Block, A-29, Sector-62, Noida - 201309
☎ +91 120 2975680/81/82/83, ✉ ipa@icai.in, 🌐 www.iiipicai.in