

Resolution of Jalpower Corporation Limited (JPCL) under IBC

Resolution of Jalpower Corporation Limited (JPCL), was complex as the only project site of the Company was partially constructed and was stalled for over six years. There were no cashflows or cash reserves in company. The holding company, which was also the primary construction contractor, was already going through liquidation process. The company was operating with skeleton staff and was barely complying with statutory requirements.

Pursuant to the insolvency application by one of the lenders with the Hyderabad Bench of the National Company Law Tribunal (NCLT), JPCL was admitted into Corporate Insolvency Resolution Process (CIRP) on April 9, 2019.

RP and his team completed the CIRP of company in less than two years despite the impact of COVID-19 which severally impacted the functioning of NCLT and inadvertently delayed the resolution process.

*This case study, sponsored by IIPI, has been developed by Mr. Amit Jain, the Resolution Professional of JPCL. The case is thought-provoking and showcases the challenges in the path to resolution and emphasizes on role and responsibilities of Resolution Professional and on working with various stakeholders for achieving the objectives of IBC. **Read on to know more...***



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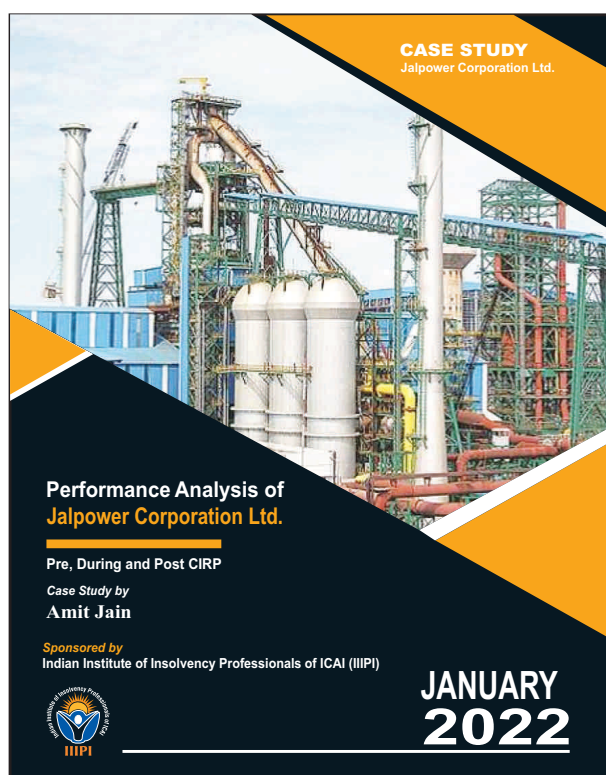
1. Introduction

Jalpower Corporation Limited¹ (JPCL) was awarded Rangit Stage-IV Hydro Electric Project in 2004 by the Government of Sikkim (GoS) as part of national drive for the development of hydro potential of the country. The agreement was to setup run-of-the-river type power plant with pondage and with installed capacity of 120MW (3x40MW) on Rangit river in West & South Sikkim. The implementation agreement was signed in 2005 on BOOT basis (Build, Own, Operate and Transfer) jointly with the GoS for 35 years from the date of commercial operation.

Initial project cost was estimated ~ ₹ 775 Crores which was funded by debt and equity in the ratio of 75:25. The Corporate Insolvency Resolution Process (CIRP) of the company was initiated on April 9, 2019 under the Insolvency and Bankruptcy Code, 2016 (IBC or Code).

2. Company and project profile

a. JPCL, an unlisted Public Limited Company was incorporated in 2004. Company was engaged in setting up of 120 MW (3X40) Rangit Stage-IV run-off-river

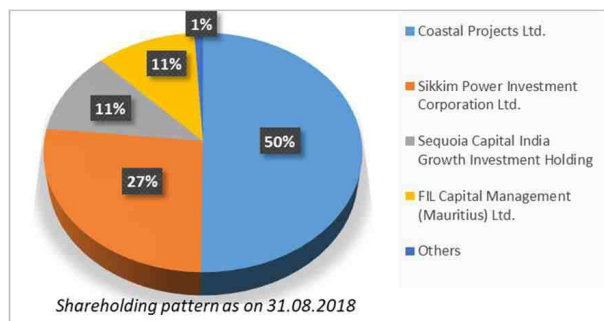


¹ Jalpower Corporation Ltd. (<https://www.jpcl.co.in/>)

CASE STUDY

hydroelectric power plant on Rangit River in Sikkim, India on BOOT basis jointly with GoS. The project is spread over 16km which comes under both and west & south Sikkim.

b. Shareholding pattern as on August 31, 2018, is represented in Graph 1.



Graph 1: Shareholding pattern

c. JPCL procured 31.34-hectare forest land, 8.06-hectare private land and 6.40-hectare temporary lease land for the project.

d. JPCL executed Power Purchase Agreement (PPA) with Tata Power Trading Company Limited for sale of 60% power on cost plus basis as per CERC norms and balance 40% on merchant basis.

e. JPCL had bulk power transmission agreement with Power Grid Corporation of India Limited (PGCIL) for 25 years.

f. JPCL had an agreement with a supplier for the supply of Electromechanical equipment.

g. JPCL had agreement with a supplier for supply of Hydromechanical equipment.

h. Key Technical specifications of project:

- (i) Run of the River type with pondage.
- (ii) Installed capacity 120MW (3x40MW).
- (iii) Concrete Gravity dam with height of 44m above crest level.
- (iv) 3 numbers of intakes and 2 Admits.
- (v) Surface powerhouse and 220KV DC line to 220KV pooling station of power grid.
- (vi) Francis turbine.
- (vii) Desilting chamber for continuous operations during monsoon.
- (viii) Maintenance free Gas Insulated Switchyard (GIS).

(ix) Surge shaft with steel liner.

(x) Equipment designed for 10% continuous overload.

(xi) The project cost includes two spares runner beside mandatory spares for 5 years for minimizing the downtime

i. Construction of project started during June 2008, however, after ~40% completion the project stalled during October 2013 due to paucity of funds.

j. **Status of construction:** In May 2013, JPCL submitted a request to lenders for funding the additional cost with original debt equity ratio. The revised estimated cost was ₹ ~10,600 crores and additional cost to construction was estimated to ~₹ 5,000 crores.

k. **Major reasons for cost overrun**

- (i) Increase in cost of detailed survey and consultancy charges for design and engineering of the project.
- (ii) Higher compensation paid to the private landowners.
- (iii) Introduction of diversion tunnel and other changes in design during construction.
- (iv) Poor geology encountered during construction.
- (v) Hold up of works due to severe earthquake nearing about 6.9 on Richter scale in September 2011.

The Company was engaged in setting up of 120 MW Rangit Stage-IV run-off-river hydroelectric power plant on Rangit River jointly with the Government of Sikkim on BOOT basis.

(vi) Occurrence of landslides in dam area.

(vii) Floss/increased discharge of Rangit River.

l. Management of under-construction project and key issues handled during process

As the project was stalled for over 6 years and company had no revenue streams, there was no cash reserve in company to run the CIRP process. With only skeleton staff, Resolution Professional (RP) had an uphill task to carry out resolution process. Once RP took charge of the company, followings steps were taken to keep the company as Going Concern during resolution process:

2.1 Understanding the project and company operation

2.1.1 RP had several rounds of meeting with management of the company for understanding the project nuances and to keep the company as going concern for prospective resolution approach including:

As the project was stalled for over 6 years and company had no revenue streams, there was no cash reserve in company even to run the Corporate Insolvency Resolution Process.

- a. Salient features of the project;
- b. Estimated “cost to complete”;
- c. Relative pros and cons of the project which may invite attention / be attractive to prospective resolution applicants;
- d. Drawings/ technical specifications of project which would be sought by prospective resolution applicants later in the process;
- e. Project viability reports done earlier etc.

2.1.2 Understanding key stakeholders of company and meetings with them for seeking their assistance in resolution process.

2.1.3 Understanding key contracts which were critical to continue for the continuance/ safety of project assets and for the benefit of Project.

2.1.4 Details of employees, their terms of employment, respective roles, compensation etc.

2.1.5 Critical project related compliances and registrations.

All the above helped the RP significantly in populating the data room for the resolution process and being in a position of readiness for resolution.

2.2 Retention of employees/workforce and rationalization of cost

2.2.1 The company was working on skeleton staff i.e., seven employees at head office and four employees at plant location. The employees were having apprehension regarding their salaries and job security post the initiation of CIRP.

2.2.2 Considering the project was stalled for over 6 years, availability of old records and technical expertise of employees associated with project was very critical. RP explained the process of

resolution under IBC regime to the employees and continuity of employment for them and was successful in getting their cooperation in the resolution process.

2.2.3 The company had two key managerial and technical persons who were withdrawing approx. 80% of total salary payout to skeleton staff.

2.2.4 They were the only technical people who were associated with the project since the beginning and had legacy knowledge about project. RP had to balance between ensuring their continuity as well to rationalize salary to reasonable levels and reduce the burden on CIRP. RP was able to negotiate a reduction of salary payout by ~ 50%. Besides, no payout was made to these two senior personnel until resolution/ handover was achieved.

2.3 Continuation of dewatering activities and security of project asset

2.3.1 Due to monsoon and geology of the project site (tunnel and desilting chambers) there was constant need to avoid waterlogging. The activity was very critical for safety of the project. Considering the criticality of activity, it was prudent to continue with dewatering activity. Due to limited funds, RP was conservative in funds handling and managed such CIRP costs through a combination of interim finance from lenders and deferring other payments to the extent feasible.

RP was able to negotiate a reduction of salary payout by ~50%. Besides, no pay out was made to these two senior personnel until resolution/ handover was achieved.

2.3.2 The construction site was spread over ~16 km hence, keeping adequate security was a priority.

2.3.3 At first, RP understood the existing terms with security agencies including number of security personnel, their shifts, commercials etc. RP negotiated better terms with the security agencies including increasing number of shifts, taking their assistance in regular stock reports etc.

2.3.4 Security of magazine house (where explosives

were stored) was also critical - any lapse of security would have been extremely detrimental to the project.

2.3.5 RP kept adequate armed security personnel to avoid any mishapening at the magazine house and continuous clearing of surrounding area was also taken care of.

2.3.6 Again, due to limited fund availability, RP had to defer some payments.

As the wellbeing of 29 project affected families was the integral condition of implementation agreement, RP ensured that regular payout was made to families to avoid any dispute.

2.4 Maintenance of Project affected families

2.4.1 As per implementation agreement, the company was required to provide employment to 29 project affected families i.e., the families who have been relocated and had given their land to company for construction of project.

2.4.2 As the wellbeing of 29 project affected families was the integral condition of implementation agreement, RP ensured that regular payout was made to families to avoid any dispute which otherwise would have negatively affected the implementation agreement and the resolution process.

2.5 Security of project equipment

2.5.1 As the project were stalled for over 6-year, high value of uninstalled equipment was lying at project site at different locations.

2.5.2 The equipment providers had been maintaining a covered store at project site. Since there was no visibility on recommencement of construction, the supplier had removed its store manager from site.

2.5.3 As identification and verification of equipment material was critical to determine the assets of company, RP approached the supplier's team and successfully managed to get their assistance in verification and tagging of their equipment through multiple site visits which eventually was useful at the time of handing over the project to the successful resolution applicant.

2.6 Identification of construction equipment not owned by company

2.6.1 The Holding company was the EPC contractor for JPCL. Once construction was stalled, the holding company had left their construction equipment at the project site.

2.6.2 Since the holding company was undergoing liquidation proceedings under IBC, it was critical to identify their assets to avoid any overlap/ overvaluation of company assets.

2.6.3 RP reached out to the liquidator of the holding company and managed to get the primary list of their equipment at JPCL project site. The list of equipments was verified by internal team of JPCL and segregated.

2.7 Restoration of electricity at project site

2.7.1 In the month of August 2020, due to heavy rain fall and landslides, power supply was disrupted at project site. When RP approached the electricity department for restoration of power supply - the department refused to entertain our request due to non-payment of long outstanding dues.

2.7.2 It was peak monsoon time and restoration of electricity was critical to continue the dewatering activity (any disruption in dewatering activity would have put the project structure at risk). Also, due to non-supply of electricity there was risk of theft.

2.7.3 RP contacted the power department officials through on ground team and explained the CIRP process and applicability of moratorium against penal action. The electricity department was still reluctant to restore electricity due to overdue payments. Also, some defects were noticed by the department in the power meter which needed to be addressed. With regular follow up and meetings, RP was able to restore electricity at project site after paying some partial amount of current dues pertaining to post-CIRP commencement period and reaching an agreement for installation of temporary meter and regularizing of payment of electricity bills going forward.

2.8 Site management due to Covid pandemic during CIRP

- 2.8.1 Due to unprecedented COVID pandemic situation, the management of site activity without any disruption became a priority to ensure compliance to dynamic government guidelines.
- 2.8.2 RP created a mechanism of weekly reporting from security agencies and dewatering agencies to know the wellbeing of their employees who are assigned at project site. The reporting was duly verified by company employees and RP team during the CIRP period.

2.9 Project Insurance

- 2.9.1 As the project was uninsured at the commencement of CIRP, it was imperative to get the project insured at the earliest.
- 2.9.2 RP approached different insurance companies and understood details on types of insurance, category of risk and amount of sum insured for getting the project insured.
- 2.9.3 Through a tight negotiation process, the insurance cost was reduced substantially.

2.10 Inter-Creditor Issues

- 2.10.1 There were two lenders in the consortium lending. One of the lenders had granted an additional loan facility and created charge with RoC.
- 2.10.2 The other lender challenged the said facility and amongst other claims/ disputes, alleging that the charge created was without NoC from the other lender as invalid.
- 2.10.3 The matter was discussed at length in the Committee of Creditors (CoC) meetings and after legal opinions and multiple meetings with senior bank officials, consensus was arrived at and suitably documented in CoC meeting.

3. Corporate Insolvency Resolution Process (CIRP)

3.1 Appointment of IRP & RP

- 3.1.1 The NCLT vide its order dated April 09, 2019, admitted the petition filed on behalf of Power Finance Corporation (PFC) for initiating the CIRP for JPCL under the provisions of the IBC. By the same order, NCLT also appointed Mr. Sanjay Kumar Dewani as the Interim Resolution

Professional (“IRP”) of the Company.

- 3.1.2 The CoC in its first meeting appointed Mr. Amit Jain as the Resolution Professional (“RP”) of the Company which was subsequently approved by NCLT through an order dated June 21, 2019.

3.2 Invitation to submit the Resolution Plan

- 3.2.1 RP published the invitation for Expression of Interest (EOI) on June 18, 2019 calling for submissions of EOIs from interested resolution applicants.
- 3.2.2 No EOI was received till the last date of submission of EOI i.e., July 04, 2019, accordingly RP extended the last date of submission of EOI to July 31, 2019.

Considering the interest of stakeholders, RP took various initiatives to expedite the process of approval of the Resolution Plan including filing of the Interim application with NCLT for urgent listing.

- 3.2.3 As part of market making for the asset, RP approached several strategic and financial players and sought their participation in the Resolution process. A total of thirty-five (eighteen strategic and seventeen financial) players were approached and were requested to participate in the EOI process. The brief profile of prospective applicants was shared with lenders along with the discussion progress for wider participation in the process. The objective was to have wider market participation for more competition and value maximization for stakeholders.

- 3.2.4 In response to the said invitation, seven EOIs were received

3.3 Receipt of Binding Resolution Plan

- 3.3.1 Multiple discussions were held with such potential resolution applicants. The preparatory work done after taking charge as RP helped, since business queries raised by prospective resolution applicants were largely addressed through information in the Information Memorandum and data room. Several rounds of questions and answers were done in CoC meetings where senior management personnel from the Company were also asked to attend – this helped in addressing questions on historical events, technical specifications etc. which made the

process more informative and efficient for the prospective resolution applicants.

- 3.3.2 Last date for submission of resolution was extended multiple times at the request of the prospective resolution applicants and the final last date for submission of the resolution plan was December 04, 2019. Till such date, RP received the binding resolution plans from two Applicants.

3.4 Approval of the Resolution Plan by the CoC

- 3.4.1 Multiple CoC meetings were convened where RP presented the key facts of the Resolution Plan submitted by both the Resolution Applicants.
- 3.4.2 Members of the CoC deliberated upon the various facts of the resolution plan. Discussions were held with both the Resolution Applicants and CoC requested for revision in the Resolution Plan.
- 3.4.3 Revised Resolution plans were submitted by both the applicants by the statutory deadline.
- 3.4.4 RP presented the key facts along with the financial proposal of both the Resolution Plans and addressed questions from the members of the CoC. Both the Resolution Plans were compliant as per regulation 38 of CIRP regulations. However, CoC in 16th CoC meeting decided that the other resolution plan was not viable & feasible on commercial grounds.
- 3.4.5 After multiple discussions and deliberations Resolution Plan of NHPC Limited was confirmed to be compliant with all requirements of the RFRP, Code and that it was feasible and viable in the opinion of the members of the CoC and accordingly was approved by the members of the CoC by 100% votes in favor of the Resolution Plan.
- 3.4.6 Pursuant to the section 30(6) and section 31 of the IBC, RP filed an application with NCLT dated January 25, 2020, for approval of the CoC approved Resolution Plan submitted by NHPC.

3.5 Delayed approval by the NCLT

- 3.5.1 The application filed for the approval of the Resolution plan was listed for hearing on multiple dates.
- 3.5.2 Approval of the Resolution plan was delayed due to the outbreak of the Covid-19 pandemic.

- 3.5.3 Considering the interest of all stakeholders, RP took various initiatives to expedite the process of approval of the resolution plan including filing of the Interim application with NCLT for urgent listing of the resolution plan approval application.

- 3.5.4 Resolution plan approval application was listed for hearing on July 31, 2020, and after hearing the clarifications from the legal counsel, the order was reserved by the NCLT.

- 3.5.5 Post the above hearing RP approached the Registrar of NCLT, Hyderabad, sent an email requesting the authorities to pronounce the order with respect to approval of resolution plan which was reserved on July 31, 2020.

- 3.5.6 Since the approval was delayed, a request was received from the successful resolution applicant i.e., NHPC Limited whereby they conveyed their intention to initiate the tendering process for the project prior to the approval of its resolution plan to expedite the preparation of the working of the project.

- 3.5.7 RP discussed with members of the CoC on the request of NHPC and explained the facts and rationale behind the requests. The said request was unanimously approved by CoC.

- 3.5.8 During this interim period, RP was in constant touch with the Successful Resolution Applicant to understand the requirements for an effective handover. This period was utilized by the RP team and Corporate Debtor staff to list out various files, number them, do regular stock checks, etc. so that the time taken for handover is reduced significantly. RP also asked the Successful Resolution Applicant to be ready with its preparation for takeover of the Company i.e., be ready with its nominees of Board of Directors, new CEO etc. All these preparations helped RP to complete the handover formalities in a short period of ~2.5 months after NCLT approval.

- 3.5.9 The NCLT finally passed an order² approving the Resolution Plan on December 24, 2020.

² The Hindu Business Line (2021). NHPC gets NCLT's nod to take over Jalpower Corporation (<https://www.thehindubusinessline.com/companies/nhpc-gets-nclts-nod-to-take-over-jalpower-corporation/article33522196.ece>)

4. Handover of the Corporate Debtor to NHPC Limited

- 4.1 Pursuant to the approval of the Resolution Plan by the NCLT, a Monitoring Agency (“MA”) was formed with RP as one of the members.
- 4.2 Closer to the handover date, a major stumbling block was the presence of assets of the holding company (in liquidation) lying at the project site. NHPC requested for the removal of the said assets as a precondition for taking handover.
 - 4.2.1 RP and team regularly followed up with the Liquidator of the holding company for removal of equipment and requested multiple times to act on ground through local support, however, apart from meeting vendors, no action could be taken by the Liquidator of the holding company for removal of equipment.

After due deliberation and multiple discussions with NHPC and lenders, it was agreed that in case the holding company is unable to incur/ finance the cost for removal of its equipment from the site, the lenders will reimburse NHPC for shortfall of expenses for relocation of such equipment from corporate debtor's site. Basis a confirmation by lenders, NHPC agreed to take over the site.

5. Completion of Handover to NHPC Limited

On March 31, 2021, within two years from the Insolvency Commencement Date and in ~ 2.5 months from the

approval of resolution plan by the NCLT, the handover was completed and NHPC Limited transferred the total consideration as per resolution plan to company designated account and on same date RP transferred the amount to all stakeholders including lenders, operational creditors, employees and CIRP dues as per distribution provided in resolution plan. The company is now thriving as a subsidiary³ of NHPC.

Conclusion

The resolution process of JPCL was challenging and complex – to be able to find a resolution of a half complete hydro power asset (with significant cost to complete obligation) in ~ six months of takeover as RP and then to complete handover within 2.5 months of NCLT approval (in spite of Covid challenges) was immensely satisfying. In the end, an asset which was facing imminent closure was salvaged through the IBC process and this indeed will help the country/ economy (with a fully complete and running hydro power plant in ~ two to three years), has saved jobs and will generate more jobs in coming years; besides lenders and other operational creditors found a settlement which otherwise have had to be completely written off. The resolution process of Jalpower Corporation Limited hence upheld the primary motive of IBC i.e., “to accelerate resolution in case of insolvency or bankruptcy of businesses, save bankrupt businesses, and speed up recovery of loans.”



³ PSU Connect (2021). NHPC's subsidiary JPCL awards Lot-I Civil Work contract of Rangit IV HEP (<https://www.psuconnect.in/news/NHPCs-subsidiary-JPCL-awards-Lot-I-Civil-Work-contract-of-Rangit-IV-HEP/29161/>).