

# Liquidation of Moser Baer India Limited (MBIL)

*After MBIL failed to get a resolution plan, the NCLT vide an order on September 20, 2018, approved liquidation of the Company and appointed Mr. Anil Kohli as its Liquidator. Employees' unrest, financial crisis, default dues, and other issues which prevailed during the resolution process were shifted on liquidation.*

*A premium for insurance of assets of CD including plant and machinery valued above ₹100 crores was due on September 30, 2018, i.e., within 10 days from initiation of the liquidation process. Neither there was fund in the account of the CD, nor the financial creditors were willing to provide required money. Finally, being duty bound to protect and preserve the assets of CD, the Liquidator paid the insurance premium out of his own pocket.*

*Further, as the Company was not operational, the Liquidator shifted its registered office to a new premises which resulted in saving of ₹14.38 lakh per month. However, paying employee's dues was still a big challenge because neither the Company had funds, nor the creditors were ready to invest money. The Liquidator, with the assistance of a consultant recovered ₹8.96 crores (approx.) inclusive of interest of ₹ 25 lakh (approx.) as a refund from the Income Tax Department. This amount was used to pay wages and salaries of employees for the CIRP period to some extent thereby giving relief to them in the times of distress.*

*The present case study, sponsored by IIIPI, has been developed by Mr. Anil Kohli in which he has provided a first-hand step by step guide to liquidate a distressed Company even in the most adverse situations.*

**Read on to know more...**



**Anil Kohli**

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## 1. Introduction

The Corporate Insolvency Resolution Process (CIRP) of Moser Baer India Limited (MBIL) i.e., the Corporate Debtor (CD) or Company, commenced on November 14, 2017, for which Mr. Devendra Singh was appointed as Interim Resolution Professional (IRP) who was subsequently confirmed as Resolution Professional (RP).

In the last week of CIRP i.e., during the meeting of Committee of Creditors (CoC) held on August 03, 2018, the State Bank of India (SBI), one of the financial creditors, proposed the name of Mr. Anil Kohli, to be appointed as the RP for conducting the CIRP of CD for the remaining period and subsequently, to carry out liquidation process as Liquidator. Subsequently, the Adjudicating Authority (AA) vide order on August 10, 2018, appointed Mr. Anil Kohli as the RP w.e.f., August 11, 2018. On the same day, the CoC decided to liquidate the CD in the interest of all the stakeholders. The AA vide an order on September 20, 2018, approved<sup>1</sup> the liquidation of the CD and appointed Mr. Anil Kohli as its Liquidator.



<sup>1</sup> NCLT, New Delhi: Case No. (IB)-378 (PB)/ 2017.

The Liquidator in this case handled crucial and sensitive issues viz. workmen and employee's issues qua claim, issues with respect to GST, income tax refund, claims and refund from Provident Fund, Income Tax (IT) disputes, and litigations ranging from NCLT to the Supreme Court, which have been described in this case study.

### 2. Business Profile of Corporate Debtor

Moser Baer India Limited was a leading global tech-manufacturing Company. Established in 1983, the Company had successfully developed cutting edge technologies to become one of the world's largest manufacturers of Optical Storage Media (OSM) devices like CDs, DVDs, and Solid-State Media. The Company had also entered the emerging energy efficiency lighting segment. Over the years the Company diversified its business in the exciting areas of technology and manufacturing and gradually emerged as a market leader in the high growth photovoltaic space. It was the only Company worldwide to receive the prestigious 5-star rating from TOV Rheinland for 3 years in a row<sup>2</sup> (2009 - 2012) maintaining highest standards of quality in manufacturing of PV modules. Moser Baer India had emerged as one of the most credible brands focused on hi-tech manufacturing and, Research & Development (R&D) activities.

### 3. Reasons behind Financial Crisis of the CD

The Company continued to operate at sub optimal levels due to severe working capital constraints, resulting in adverse impact on cash flow from operations. Due to continued liquidity issues, primarily arising from non-release of sanctioned working capital limits from lenders, the Company was unable to comply with repayment terms of its borrowing arrangement with secured lenders in terms of the Corporate Debt Restructuring Package approved in the year ending on March 31, 2013. As a result, and consequent upon the report submitted by Monitoring Institution (MI), the (Corporate Debt Restructuring Empowered Group (CDR-EG) approved exit of the Company from CDR mechanism on October 10, 2016. The lender banks recalled the entire outstanding amounts owed to them by the Company and initiated recovery measures through notices under section 13(2) of the Securitisation and Reconstruction of Financial Assets

and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The Company challenged the loan recall notices and the SARFAESI notices. Besides, during pendency of these disputes the Company continued with its efforts to persuade secured lenders for resolution of the debt.

The Company had outstanding Foreign Currency Convertible Bonds (FCCBs) with principal value of USD 88.4 million equivalent to ₹57,327 lakh which were due for redemption along with premium on 21 June 2012. As on March 31, 2017, accrual for premium on FCCB aggregated to ₹56,468 lakhs. The Company tried negotiating with the bondholders to re-structure the terms of these bonds. However, since this was subject to approval of secured lenders, it did not materialise. Followings are reasons behind financial losses and efforts by the management to minimize those losses:

**The Company mainly supplied Original Equipment Manufacturer (OEMs), which have strong bargaining power resulting in inability to pass on the increase in cost of production to customers.**

- (a) Reasons of Losses or Inadequate Profits Coupled with Market Difficulties:** Followings are the main reasons behind loss incurred by the Company:
- (i) Production and Technical Problems: The Company mainly supplied Original Equipment Manufacturer (OEMs), which have strong bargaining power resulting in inability to pass on the increase in cost of production to customers.
  - (ii) Optical Media Industry in the developed markets started witnessing decline in demand for first generation products like CDs and DVDs.
  - (iii) Progressive growth in alternative-data storage technologies including online and digital storage.
  - (iv) Continuous increase in the prices of raw materials.
  - (v) Aggressive competition from Taiwanese/ Chinese players in Optical Media and global

<sup>2</sup> Information Memorandum (Nature of Industry, p. 69) of Moser Bear India Ltd., as on December 13, 2017.

leaders in Solid State Media products and possible circumvention of the anti-dumping measures implemented by the Government of India.

- (vi) Regulatory developments in debt/capital markets that could adversely affect the Company's interest costs and debt restructuring.
- (vii) Recovery actions by the Company's lenders/creditors.

#### **(b) Steps taken by the Management for Improvement**

- (i) Consolidation of all manufacturing facilities to cut down on overheads and to extract supply chain synergies.
- (ii) Retrenchment policies to match right size employee base to current level of operations.
- (iii) Aggressively entering the markets in Africa and several countries in Latin America for incremental markets and customer acquisition.
- (iv) focus on product innovation, increase in its cost competitiveness and on widening of its distribution network.

The above steps positively impacted the Company's operations in the near to medium term but failed in long term or the year ended March 31, 2017. Moser Baer continued to witness financial constraints and internal challenges that impacted its operating performance. The Company had been constantly working on consolidation measures and restructuring of operations with the objective of re-aligning priorities, resources, and capabilities to succeed in the identified areas of growth.

#### **4. Workmen Unrest & Change of Resolution Professional**

The Company's main plant was located at Greater Noida, wherein 2,200 workmen were employed. During CIRP period wherein erstwhile RP was managing the affairs of the CD, there was workmen/labour unrest due to various issues i.e., declaration of Lock-out of the Company by management since November 11, 2017, as per Section 68(3) of the U.P Industrial Disputes Act, 1947, and non-disbursement of their salaries/wages for the stated period

etc. Besides, workmen's union also filed an application seeking a direction, amongst others, to the erstwhile RP to release the wages of the workers. There were vigorous protests by the workmen which included dharnas, gheraos and suicide attempts which also came in the limelight of media. The workmen had taken over the control of the entire plant of the CD and stationed themselves permanently at the plant. They did not even allow the then RP to visit the plant and take the custody of assets as per the provisions of law. Subsequently, the RP filed an application before the NCLT or Adjudicating Authority (AA), seeking appropriate direction as to whether the lockout of factory premises of the CD was legal or illegal.

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NCLT vide an order<sup>3</sup> dated January 31, 2018, disposed of the application and inter-alia directed the RP to take into account any application of the workmen with regard to disbursement of salary in view of the fact that lock-out was declared unlawful by the Deputy Labour Commissioner through an order dated November 14, 2017. Besides, the NCLT also issued directions to the District Magistrate and the Senior Superintendent of Police (SSP) of the District, Gautam Buddha Nagar including the authorities at the Surajpur Police Station to assist and facilitate the RP in terms of Regulation 30 of Insolvency & Bankruptcy Board of India (IBBI) (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to enable the RP and his team to visit the Plant/Factory of the CD in Greater Noida. Similar directions were issued to the concerned Deputy Commissioner of Police (DCP), Delhi Police to ensure the RP and his team visits registered office of the CD at Okhla Industrial Estate, New Delhi for discharging his duties.

As the objectives of CIRP were not being achieved, the CoC decided to replace the RP with Mr. Anil Kohli who had expertise and experience in handling and liquidating the properties/assets of complex and complicated matters under the SARFAESI Act. He had also ensured successful possession of the Kingfisher Villa, Koutons and Shakti Bhog (flour) among others. Finally, Mr. Kohli was appointed as RP by NCLT on August 10, 2018.

<sup>3</sup> NCLT, New Delhi: Case No. (IB)-378(PB)/2017.

## 5. Lack of Funds to run the Liquidation Process

The liquidation process of the CD commenced vide NCLT order dated September 20, 2018, for which Mr. Kohli was appointed as Liquidator of CD.

Since the CD was not a going concern, there was insufficient funds to manage the liquidation process. Meanwhile, the insurance of the main plant of the CD valued over ₹100 crore was due for renewal by September 30, 2018, to which a premium of ~₹20 lakh was required. Despite repeated requests made by the Liquidator to the secured financial creditors to fund premium for insurance renewal to safeguard the asset of the CD, the secured financial creditors did not provide required finances.

The problem aggravated further as there is no provision of CoC in the liquidation process. Moreover, there was no provision of Stakeholder's Consultation Committee<sup>4</sup> (SCC) during liquidation of MBIL, as it was introduced by IBBI through a regulation on July 25, 2019. The liquidation of MBIL was carried out under old laws. As the Liquidator was duty bound to protect and preserve the assets of the CD hence the insurance premium cost was funded by the Insolvency Professional Entity (IPE) of which the Liquidator is a partner.

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This issue of meeting out the initial liquidation expenses which are incurred before the sale of the assets was discussed at various forums. Pursuant to which, IBBI took cognizance of the same and made suitable amendments and inserted Regulation 39B in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 through a notification on July 25, 2019, and Regulation 2A in IBBI (Liquidation Process) Regulations, 2016 through a notification on July 25, 2019.

## 6. Income Tax Refund

Upon taking charge as Liquidator, a rigorous and dedicated effort was made by the Liquidator and his team for exploring all possible legal avenues to generate funds within shortest possible time to meet out the immediate

liquidation expenses prior to the sale of assets. Liquidator faced huge fund crisis to run the process and therefore with the assistance of consultant successfully recovered ₹ 8.47 crores along with interest of ₹ 27 lakhs as a refund from the Income Tax Authorities on October 10, 2018. Out of which the wages and salaries of workmen were paid for the CIRP period to some extent giving relief to them in the times of distress. It was also helpful in meeting out liquidation cost. Besides, refund of another 4 crore was received during the later stage of Liquidation process on June 24, 2020.

## 7. Litigations & Important Orders in the Liquidation Process

**7.1. Litigation 1:** An application under Section 60(5) (c) of the IBC was filed by the Liquidator to seek indulgence of the NCLT to decide on a question of law on employees' cost, which included the salaries of workers/ employees who continued the rolls during CIRP but were not assigned work due to factory/ plant shutdown caused by labour strike. They were not paid due to litigations and paucity of working capital. The court was asked to adjudicate on whether the Liquidator had jurisdiction to accept their salary claims beyond 270 days i.e., the maximum time permitted under the IBC for CIRP? The NCLT vide order dated September 17, 2018, stated as under:

*“The workers/employees are necessary constituent for running the business of the corporate debtor on day-to-day basis during the moratorium period. Therefore, the RP would be well within his rights to decide the claim made by the employees/workers. In fact, such an intention is implicit in the order on August 10, 2018, passed in CA-295(PB)/2018. Any other view would result in serious prejudice to the rights of the worker/employees or any other claimants. In view of the above, we dispose of this application. The RP is directed to consider the claim of the employees/workers in accordance with law and the expiry of 270 days on August 11, 2018, would not limit his jurisdiction to decide any claim as long as it has arisen respect of 270 days”*

The workmen's union vide FORM-E dated October 16, 2018, submitted a claim for ₹291,04,99,716 for a total of 1,528 workers. Pursuant to which the Liquidator admitted the following claims and rejected others:

<sup>4</sup> Regulation 31A. Inserted d by Notification No. IBBI/2019-20/GN/REG047 dated July 25, 2019 (w.e.f. 25-07-2019).



**(a) Claims Admitted by Liquidator:**

- (i) Wages/Salaries of CIRP period including Provident Fund (PF) dues during CIRP period including employee contribution as CIRP cost.
- (ii) PF dues prior to the CIRP period (including employer contribution) for the salaries paid for August 2017 as CIRP cost since salaries/wages were paid during CIRP.
- (iii) Salaries/wages including employers' contribution on PF for pre CIRP period i.e., from September 01, 2017, to November 14, 2017.
- (iv) Gratuity as applicable
- (v) Earned leave claim for the period and working prior to the CIRP period.

**(b) Claims Rejected by Liquidator:**

- (i) Compensation was not admitted for the entire period claimed by the workmen because there has been no termination or retrenchment by the Liquidator. As the employer was ordered to be liquidated and therefore, the employment has only ended in accordance with the provisions of the law. It was admitted for the period as per the proviso to Section 25 FF read with Section 25 FFF of the Industrial Disputes Act, 1947.
- (ii) Increment was a promise by erstwhile management but the same was never implemented by the CD.
- (iii) Company was in loss hence no bonus claim was accepted and also there was no eligibility under the provisions of Payment of Bonus Act, 1965.

**7.2. Litigation-2**

- (a) **Submissions of the Appellant:** Pursuant to the above, the workmen union assailed the decisions of the Liquidator in toto and appealed the NCLT to pass "appropriate directions to the Liquidator to exclude the amount due to

workmen towards Provident Fund and Gratuity from the waterfall mechanism as provided under Section 53 of the Code 2016 and to pay to the Workmen, all the Provident Fund Dues, Gratuity Fund dues, from the Liquidation Estate in priority to all other claims payable by the Corporate Debtor in Liquidation". Besides, the following specific reliefs were also sought from the NCLAT or AA:

- (i) Pass directions to the Liquidator to pay to the Workmen 'Severance Compensation' towards Workmen dues in accordance with Section 25FFF of the Industrial Disputes Act, 1947.
- (ii) Pass appropriate direction to the Liquidator to pay the arrears towards 'Workmen Dues' dues from September 01, 2017, to September 20, 2018, being less than 24 months preceding the order of Liquidation, in priority to all other debts including debts due to secured creditors, within a period of 30 days of sale of assets.

- (b) Response/ Stand of the Liquidator:** In response to the appeal, the Liquidator submitted the followings:

- (i) PF dues pre-CIRP period: The Liquidator has deposited the PF dues on salaries paid for August 2017 with PF department. In addition, the Liquidator has accepted the claim for PF dues from September 01, 2017, to November 14, 2017, as workmen's dues u/s 53(1) to be paid in pari passu proportion with secured creditors. However, the Liquidator was unable to accede to the request of the workman to pay the balance of PF dues for the pre-CIRP period in priority over other creditors in absence of any specific provision in the IBC.
- (ii) PF dues during CIRP period till date of discharge: The said dues have already been approved as CIRP cost and the same shall be paid in priority in terms of the waterfall as provided under Section 53 of the IBC.

(iii) **Gratuity:** The Liquidator has admitted the said dues and the Liquidator shall disburse the amount as lying in the trust in priority to the workmen and the balance due payment, if any shall be paid to the workmen in terms of Section 53(1)(b)(i) of the IBC. Besides, the Liquidator has accepted the claim for gratuity as workmen's dues u/s 53(1) to be paid in pari passu proportion with secured creditors. That the Liquidator is unable to accede to the request of the workmen to pay the balance of gratuity dues in priority over other creditors in absence of any specific provision in the IBC.

(iv) **Compensation:** The direction sought with regards to payment of severance compensation and arrears towards due from September 01, 2017, to September 20, 2018, to be paid in priority to all other dues was neither included in Section 326 of the Companies Act, 2013 nor any provision for the same has been provided under the Code and therefore, the Liquidator had not admitted the said claim.

The compensation was not admitted for the entire period claimed by the workmen as there has been no termination or retrenchment by the Liquidator and the employer has been ordered to be liquidated and therefore, the employment has only ended in accordance with the provisions of law. It was admitted for the period as per the proviso to Section 25 FF read with Section 25 FFF of The Industrial Disputes Act, 1947.

**(c) Order of the AA/ NCLT:** NCLT vide order dated March 19, 2019 allowed the application of the Workmen Union and directed that “provident fund dues, pension funds dues and gratuity fund dues are not treated as a part of the liquidation estate and would not, therefore be recovered by Section 53 of the IBC which provides for waterfall mechanism. The Liquidator has taken a perverse view by

unnecessarily referring to explanation-II of Section 53 and Section 326 of the Companies Act, 2013. It is made clear that if there is any deficiency to the Provident Fund, Pension Fund, and Gratuity Fund, then the Liquidator shall ensure that the fund is made available in the aforesaid accounts, even if their employer has not diverted the requisite amount”.

**NCLAT held that the Liquidator was duty bound to pay all dues outside Section 53 of the IBC on priority. “The law is clear about the Provident Fund, Gratuity Fund and Pension being outside the liquidation estate,” said the court.”**

The court did not rely on the contention of the Liquidator the meaning of “workmen dues” should be explained as per Section 326 of the Companies Act, 2013 and called it “perverse” view. It held that the Liquidator was duty bound to pay all dues outside the Section 53 of the IBC on priority basis. “The law is clear about the Provident Fund, Gratuity Fund and Pension Fund being outside the liquidation estate. However, the distinct feature of the instant order was that Liquidator was directed to pay total dues of PF and Gratuity in priority and Liquidator to make good the shortfall in funds if any,” said the AA.

**(d) Appeal in NCLAT:** Aggrieved with the NCLT order, the SBI filed an appeal<sup>5</sup> before NCLAT. The NCLAT vide an order on August 19, 2019, dismissed the appeal and upheld the NCLT order. The observations of the Appellate Tribunal are as follows:

- (i) The Explanation (iii) below Section 53, for the purpose of meaning of 'workmen's dues', the Appellant cannot derive the meaning as assigned to it in Section 326 of the Companies Act, 2013, including the Explanation below it 18. In view of the aforesaid specific provisions.
- (ii) There is a difference between the distribution of assets and preference/priority of workmen's dues as mentioned

<sup>5</sup> NCLAT, New Delhi: Appeal Number- 396/2019.

under Section 53(1) (b) of the IBC and Section 326(1) (a) of the Companies Act, 2013. It has also been noticed that Section 53(1) (b) (i) which relates to distribution of assets, workmen's dues is confined to a period of twenty-four months preceding the liquidation commencement date.

(iii) While applying Section 53 of the IBC, Section 326 of the Companies Act, 2013 is relevant for the limited purpose of understanding “workmen's dues”, which can be more than Provident Fund, Pension Fund and The Gratuity Fund kept aside and protected under Section 36(4) (iii). On the other hand, the workmen's dues as mentioned in Section 326(1) (a) is not confined to a period like twenty-four months preceding the liquidation commencement date and, therefore, the Appellant for the purpose of determining the workmen's dues as mentioned in Section 53(1) (b), cannot derive any advantage of Explanation (iv) of Section 326 of the Companies Act, 2013. This apart, as the provisions of the IBC have overriding effect in case of consistency in any other law for the time being enforced, we hold that Section 53(1) (b) read with Section 36(4) will have overriding effect on Section 326(1) (a), including the Explanation (iv) mentioned below Section 326 of the Companies Act, 2013.

**(e) Appeal in the Supreme Court:** SBI challenged the order of NCLAT in the Supreme Court<sup>6</sup>, which is presently pending adjudication. In this appeal, the following legal questions have been raised:

(i) Whether there is any conflict between the provisions of Section 53(1)(b) read with Section 36(4) of IBC, 2016 on one hand, and section 326(1)(a) and explanation (iv) to section 326 of the Companies Act, 2013?

(ii) Whether provisions of Section 53(1)(b) read with section 36(4) of the IBC, 2016 would override the provisions of section 326(1)(a) and explanation (iv) to section 326 of the Companies Act, 2013?

**NCLAT held that the Liquidator was duty bound to pay all dues outside Section 53 of the IBC on priority. “The law is clear about the Provident Fund, Gratuity Fund and Pension being outside the liquidation estate,” said the court.”**

### 7.3. Miscellaneous Litigations

- (a) The Liquidator intimated the workmen that in compliance of order of NCLT dated March 19, 2019, the following payments were admitted as preferential payments:
- (i) Total CIRP amount including wages during CIRP period from November 14, 2017, to September 20, 2018, PF contribution during CIRP and Unclaimed FBP, Gratuity and Pre-CIRP PF contribution i.e., PF of Sept'17, Oct'17 and upto 13th November 13, 2017, were cleared.
  - (ii) Besides, PF contribution of the CD for August 2017 was already deposited.
  - (iii) Further, claims admitted as per waterfall under Section 53 of IBC will be other than CIRP – (Wages of Sept'17, Oct'17 and upto November 13, 2017, Leave Encashment) and Compensation: i.e., 3 months as per proviso to Section 25 FFF ID Act, were also deposited.

However, the Workmen's Union once again challenged the above decision of Liquidator and filed C.A. No. 767(PB) of 2019, wherein the Workmen Union sought the following prayers:

- (i) Pass appropriate directions to the Liquidator to re-visit the calculation sheet as per the statutory position (Payments of Gratuity Act, 1972 and Industrial Disputes Act, 1947)), while calculating Gratuity and severance compensation under Section 25FFF of the Industrial Dispute Act, 1947,

<sup>6</sup> Supreme Court: Appeal No. CA-258/2020

- (ii) Pass appropriate direction to the Liquidator to disburse the workmen dues with respect to 24 months as per Section 53(1)(b) of the Code, 2016 forthwith,
- (iii) Pass appropriate directions to the Liquidator to re-arrange the list of workmen as per the stand of Liquidator taken on 25.01.2019.

This petition was dismissed as withdrawn with liberty to approach the appropriate Court of Law.

- (b) The workmen union also filed a Contempt Application against the Liquidator being C.A. No. 768 (PB)/2019 for non-compliance of order dated March 19, 2019.
- (c) In addition, the workmen union filed C.A. No. 1398 of 2019 before AA/ NCLT to keep intact the dues of workmen in terms of its order dated March 19, 2019. In this matter, the Court through an order on August 21, 2019, directed the Liquidator to take steps to implement the directions issued in Order March 19, 2019, read with Order dated August 19, 2019, passed by the NCLAT. Pursuant thereto, vide order dated September 25, 2019, the NCLT directed the Liquidator to file an affidavit, which was duly filed and accordingly vide order dated October 22, 2019, the NCLT recorded that this satisfies the requirement of law and the application bearing No. C.A. 768 (PB)/2019 does not survive for adjudicating and the same is disposed of.
- (d) Subsequently, the Workmen's Union again filed an application seeking recall of order dated August 24, 2020, which was dismissed vide order dated December 04, 2020, by the NCLT.
- (e) The workmen have also filed a Writ Petition (Civil) No. 421 of 2019 before the Supreme Court thereby challenging the constitutional validity of Section 327(7) of the Companies Act, 2013 which is pending adjudication.
- (f) Income Tax Department filed appeals before the Supreme Court against the Liquidator for payment of its outstanding dues. The Supreme Court vide its order dated July 21, 2020,

disposed of the appeals filed by the Income Tax Department, thereby stating that the Company in Liquidation is not in a position to pay its outstanding amount dues including taxes.

### 8. Sale of Assets

The Liquidator while discharging his duties sold almost all the assets of the CD including the plants at Noida & Greater Noida by July 2019 and realised ~₹325 Crores. However, immediately after the sale, the workmen started threatening the Liquidator as well as the buyers that they will not let the buyers take the possession of the plants of the CD until their claims are settled. The workmen gheraoed the factory premises and held various demonstrations outside the factory premises. They did not allow and even threatened the successful bidders/buyers from entering the premises of the CD who went to take possession of the assets purchased by them. There was very heavy resistance by the workmen for handing over the possession of the assets to the successful bidders/buyers.

**The Liquidator while discharging his duties sold almost all the assets of the CD including the plants at Noida & Greater Noida by July 2019 and realised ~₹325 Crores**

Consequently, the successful bidders/ buyers started pressing the Liquidator to cancel the sale and refund the consideration paid towards the said assets by them. The workmen also filed an application before the AA seeking inter-alia restraint on the Liquidator to distribute entire sale proceeds till the issue of workman dues is not decided by the NCLAT or the Supreme Court.

The Liquidator, as per the directions given by NCLT vide its order dated March 19, 2019, and with the sole objective of resolving the matter i.e., the hindrances being created by the workmen at the plants of the CD, held meetings with the Office bearers of Moser Baer Workers Union including its President and General Secretary. Finally, the Liquidator succeeded to convince them for peaceful handover of the assets of the CD to the buyers.

### 9. Distribution of Liquidation Proceeds

Liquidator while discharging his duties in the Liquidation Process under the IBC sold all the assets of the CD forming part of Liquidation Estate and received funds from the proceeds. The Liquidation proceeds were distributed amongst the stakeholders including employees and



workers (towards wages/salaries during CIRP period, PF, and Gratuity) and Secured Creditors to satisfy a part of their claims.

The Liquidator had distributed ~₹ 95 crores to the employees/workmen towards their dues for wages/salaries during the CIRP period, PF and Gratuity on priority over all other dues as per the directions of the NCLT vide its order dated March 19, 2019, which was further confirmed by the NCLAT order dated August 19, 2019, since there was no stay by Supreme Court. Accordingly, the gratuity to all the workmen/employees of the CD was paid on priority including the deceased employees, whose gratuity payments were made to their legal heirs, after ensuring all the legal compliances.

Apart from priority payments, proceeds received during liquidation process were distributed amongst the workmen/employees (i.e., workmen's wages other than CIRP period, workmen leave encashment and workmen compensation) and Secured Financial Creditors on pari passu basis, as per the provisions of section 53(1)(b) of IBC, 2016.

#### 10. Optimization of Staff and Resources

The Liquidator in order to discharge his duties, as envisaged under the IBC and the Regulations thereof, appointed some employees and consultants to the CD on part-time basis for various tasks including recovery from debtors. The Liquidator engaged the services of about 20 personnel who were ex-employees of the CD, senior and middle level management, having critical information of the CD and were capable of assisting in Liquidation Process.

The number of working days for the said employees and consultants was reduced periodically on completion of the specified tasks. Besides, Liquidator also restructured the team to reduce the fixed cost from ~₹15 lakh to ~₹50,000/ per month. Furthermore, in view of the ongoing investigation of Central Bureau of Investigation (CBI), Enforcement Directorate (ED) and other authorities, requisite resources were deployed as and when required for retrieving information/documents to minimize cost.

Moreover, in order to save on costs being incurred on the monthly rentals and incidental expenses for maintaining office the liquidator closed the CD office since not much routine work was being carried due to liquidation process and shifted majority of records to the third agency.

However, important documents were retained in the personal office of liquidator and the liquidation process is being carried on from that office. Besides, only two employees were retained for providing support in the area of accounts and HR matters, by working from home, at a reduced remuneration i.e., at of 25% of their existing salary, for all the support services are being provided IPE.

#### 11. Proceedings of Various Investigating Agencies

The Liquidator and his team were subject to proceedings of various investigating agencies including but not limited to:

- (a) Directorate of Income Tax (Investigation), under Section 132 of the Act, conducted search & seizure of MBIL Group Companies on several locations in a pre-dawn sweep on August 18, 2019 (Sunday) which continued till the night of August 19, 2019 (Monday). Some documents and hard drives were confiscated by authorities which was later handed over to the team of the Liquidator. The Liquidator and his team extended all possible support to the officials during the search & seizure, and whenever warranted.

**Liquidator received summons from the ED on November 29, 2019, for personal appearance, along with certain documents/information in the alleged ₹354-crore bank loan fraud, which was duly complied with.**

- (b) **Summons by Enforcement Directorate (ED):** Liquidator received summons from the ED on November 29, 2019, for personal appearance on December 02, 2019, along with certain documents/information in the alleged ₹354-crore bank loan fraud pertaining to MBIL. The Liquidator duly complied with the same and provided all the information/documents as sought by the ED. However, during the course of the personal appearance on November 29, 2019, the Liquidator was handed over with another summon for appearance before the special court on December 23, 2019, which was also complied. On the same day, an application was filed before the court requesting relief for the Liquidator from such appearances. However, the application was not allowed, and the court refused to grant permanent exemption from appearance to the

Liquidator. Accordingly, the Liquidator had to seek exemption from personal appearance on every date of hearing.

(c) **Raids by Central Bureau of Investigation (CBI):** The Liquidator received a notice from Economic Offences Wing (EOW), New Delhi in respect of Case FIR No. 25/2020 dated February 04, 2020 (registered on a complaint filed by workers of MBIL against the erstwhile Directors of the Company in respect of irregular payment of gratuity) to provide certain information pertaining to the matter. Liquidator through his legal counsel on March 20, 2020, provided certain information as desired by the authorities. The Liquidator was asked to provide some additional information which was also submitted through legal counsel.

Thereupon, raids were carried out by the department and the Liquidator received various communications from CBI, New Delhi w.r.t. Case No. RC-06/19 pertaining to the CD and RC 2232020A0002 pertaining to Moser Baer Solar Limited (subsidiary of the CD) thereby asking to provide certain information in respect of various transactions. Liquidator provided the required documents and information wherever they were available. As required by CBI officials, attendance of one of the authorized representatives of the Liquidator was also provided to them from time to time for providing explanation on certain transactions. The

authorized representative of the Liquidator attended the proceedings of CBI on 14 occasions during one quarter. In furtherance, visit of CBI officials to the warehouse of the record keeping Company in Gurgaon engaged by the Liquidator to store physical files/records of CD was facilitated to enable them to retrieve some physical records.

**12. Leased Properties of the CD**

MBIL had developed the area, constructed buildings, infrastructure utilities and common areas which were sub-leased to two of its group companies namely MBSL & HPVL, the details of which are in Table-1.

**Table – 1: Developed Areas Leased by the CD**

Particulars	Plot no 66 (sqm)	Plot no 66B (sqm)	Total Area (sqm)
Area (Square Meters)	2,70,201	1,11,217	3,81,418
Subleased			
MBSL 1	-	21,000	
MBSL 2 (MOU)	-	26,350	
Helios	-	19,736	
Sub total	-	67,086	
Balance		44,131	

The balance land as shown in the Table-1 is represented by the space available for walkway, entry, exit, parking, common areas, green areas, and utilities etc., and is not usable for anyone as the available Floor Space Index (FSI) had already been used hence cannot be sold in isolation. The property of MBIL is shown in Map-1.

**Map-1: Property of MBIL in Greater Noida**



A termination notice cancelling the said lease was served on Helios Photo Voltaic Limited (Helios) vide. letter dated August 23, 2019, and on MBSL vide notice dated March 30, 2019, in terms of provisions of lease deed, for they had defaulted in making rent payments as per the lease deed. The Liquidator filed an application before NCLT for directions to lessees for peaceful handover of the assets leased to them, which is pending adjudication.

### 13. Assignment of “Not Readily Realizable Assets” (NRRRA), Regulation 37a

IBBI vide their notification dated November 13, 2020, inserted a new Regulation 37A w.r.t. assignment of NRRRA.

The Liquidator realized that this regulation can be used in the best interest of all the stakeholders and timely completion of proceedings. He accordingly explained the newly inserted regulation to the stakeholders. After lengthy discussions and deliberations, it was decided that an attempt should be made under Regulation 37A, for sale of not readily realizable assets of CD by assigning the rights for litigations to a successful prospective buyer that is eligible under the provisions of the IBC to submit a resolution plan for resolution of the CD. Following is the list of NRRRA of the CD:

**After lengthy discussions and deliberations, it was decided that an attempt should be made under Regulation 37A, for sale of not readily realizable assets of CD.**

- (a) Plot No. 66 B, Udhyog Vihar, Greater Noida, Uttar Pradesh measuring 1,11,217 sq. mt. (SEZ Area) along with buildings and utilities leased to Moser Baer Solar Ltd. and Helios Photo Voltaic Ltd. (All rights and interest including litigation rights).
- (b) Investments in shares & other Securities (Equity, Preference, Debenture, Bonds, etc.) of following subsidiary companies:
  - (i) Moser Baer Entertainment Limited,
  - (ii) Moser Baer Distribution Limited (Old name Moser Baer SEZ Developer Limited),
  - (iii) Moser Baer Investment Limited,
- (c) Investments in shares and other securities (Equity, preference, debenture, bonds, etc.) in other companies,
- (d) Assignment of Loans (along with rights therein) given to several companies,
- (e) Assignment of all current Assets including receivables, Debtor, deposits, advances, attached bank accounts etc.,
- (f) Intellectual properties in nature of trademarks, patents, designs, or any other intellectual property of similar nature owned by the Company.

Accordingly, an application was filed by the Liquidator of MBIL seeking permission of NCLT for assignment/sale of NRRRA of the CD in terms of Regulation 37 A of the Liquidation Process Regulations, 2016. The request was allowed by NCLT vide its order dated March 31, 2021, read with order dated April 28, 2021.

Subsequently, the Liquidator published a Notice dated May 11, 2021, in leading financial dailies for invitation of Expression of Interests (EOIs) for assignment of NRRRA of the CD under Regulation 37A of Liquidation Process Regulations, 2016 on “As Is Where Is, As Is What Is, Whatever There Is And Without Recourse Basis”.

Three proposals were received pursuant to the publication of EOI. Thereupon, the representatives of the investors who had submitted their offer and Earnest Money Deposit (EMD) were invited to attend the meeting with stakeholders for discussion and negotiation on their offers with the lenders. The highest offer which was received during the meeting for Assignment of Rights and Interest (including litigation rights) in the NRRRA of the CD was ₹11.5 Crores.

However, since NIL value was assigned by the valuers for these assets during CIRP and there was no benchmark for determining the value of the said assets, the Liquidator with the sole objective of maximization of value to the stakeholders, filed an application before NCLT for permission to carry out the valuation of the NRRRA of the CD i.e. Plot No. 66 B, Greater Noida along with buildings and utilities thereof since there is no provision for valuation of NRRRA in IBC, 2016. The said application was allowed by NCLT vide its order dated December 10, 2021 and the valuation is in progress.