

Resolution in Parts – A successful Case Study of Hindustan Photo Films Mfg. Co. Ltd.

CIRP of Hindustan Photo Films Manufacturing Company Limited (HPF), a wholly owned Government of India enterprise, is unique in the sense that it constitutes a composite arrangement of simultaneous partial resolution of the Corporate Debtor (CD) through a Resolution Plan and liquidation of remaining assets, simultaneously. It is the first of its kind in Indian history being declared insolvent under both erstwhile Company Law (liquidation) and thereafter under the IBC.

Incorporated on November 30, 1960, HPF used to manufacture photographic films, cine films, X-ray films, graphic arts films, and photographic paper. As it ran into financial distress, the Company was referred to the Board for Industrial and Financial Restructuring (BIFR), which vide order dated March 31, 2003, directed to wind up the Company. Meanwhile, Canara Bank, in its capacity as Debenture Trustee (Financial Creditor), filed a Company Petition before High Court of Madras which was later transferred to the NCLT, Chennai seeking initiation of the CIRP under Section 7 of the IBC. The NCLT ordered commencement of CIRP on January 07, 2022. IRP received claims of ₹44,001.60 Crores by financial creditors out of which ₹41,872.59 Crores were admitted.

The present case study, sponsored by IIPI, has been developed by Mr. M. Suresh Kumar, Resolution Professional of HPF. In this case study, he has provided a first-hand step by step guide to rescue corporate life.

Read on to know more...



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1. Background of the Corporate Debtor

Hindustan Photo Films Manufacturing Company Limited (hereinafter referred to as HPF or the Company), the Corporate Debtor (CD), is a Company incorporated on November 30, 1960, by the Government of India with an aim to make the country self-reliant in the field of photosensitized products to cater to the needs of media, health care, infrastructure, and defense sector and to ensure the socio-economic development of the industrially backward District of Nilgiris. In its prime years of operation, the company used to manufacture photographic films, cine films, X-ray films, graphic arts films & photographic paper.

The main plant of the Company is located at Udthagamandalam in Tamil Nādu and the Conversion Unit/ Processing Chemical Plant is located at Ambattur, Chennai. Their photographic films are sold under the name “Indu”, which means “silver” in Sanskrit (Silver Halides are used in film).



2. Debt & Security Interest

The CD has raised long terms funds for project expansion through issue of various series of Secured Debentures (Cumulative and Non-Cumulative) which were subscribed to by various banks and financial institutions in 1988. The said debentures are secured with first charge on all the CD owned assets on *Paripassu* (proportionate sharing among the class of lenders) basis. Apart from this term funding, the CD has availed various term loans and working capital loans from SBI and other nationalized banks, which have a charge on current assets and a second *Paripassu* charge on fixed assets of the Company. However, the lenders collectively have agreed to share the realization between the First & Second charge holders in the ratio of 70:30 before commencement of the CIRP.

3. Commencement of CIRP

As the CD became sick, reference was made to the Board for Industrial and Financial Restructuring (BIFR). The BIFR vide order dated March 31, 2003, passed an order to wind up the Company since there was no feasibility and viability for its revival. The same was forwarded to the Hon'ble High Court of Madras (C.P. No. 114 of 2003).

M/s. Canara Bank, in its capacity as Debenture Trustee (Financial Creditor), had originally filed a Company Petition before High Court of Madras and the later stands transferred to the Hon'ble NCLT, Chennai Bench seeking initiation of the Corporate Insolvency Resolution Process (CIRP) U/s.7 of the Insolvency and Bankruptcy Code, 2016 (IBC or the Code). The Adjudicating Authority (AA)

ordered¹ for commencement of CIRP on January 07, 2022. The CIRP of the CD was never dreamt of by its employees, given the umpteen number of pending employees' cases before various courts of law.

The Company became sick and was subsequently referred to BIFR March 31, 2003. Finally, the NCLT Chennai Bench ordered commencement of its CIRP on January 07, 2022.

The Financial Creditor had initially recommended the appointment of an Insolvency Professional (IP), whose Authorization for Assignment (AFA) was unfortunately not renewed at the time of CIRP admission. Hence, on the directions of the AA, the applicant submitted a modified request for the appointment of an Interim Resolution Professional (IRP). Subsequently, Dr. C. Prabakaran was appointed as the IRP to take forward the CIRP.

4. Public Announcement & Claim Processing

The IRP made a public announcement and took control and custody of the CD assets located at Ooty and Chennai. The Board of Directors (mostly bureaucrats, Government & lenders nominees) had a special meeting and handed over the possession of the CD to the IRP to facilitate a smooth CIRP.

The IRP verified the claims received and constituted the CoC. A summary of claims admitted is given below for information:

¹ CIRP Admission Order, dated January 07, 2022, TCP No.1 of 2021 (CP/114/2003- on the file of Hon'ble High Court of Madras), (<https://ibbi.gov.in/uploads/order/5bcedc9fe9685e36d0caa31799a1ba3f.pdf>)

S.No.	Name of the Financial Creditor	Amount Admitted (In Crores)		
		Principal (A)	Interest (B)	Total (C)
	Secured FC			
1.	Life Insurance Corporation of India	19.98	657.58	677.56
2.	The Administrator of the Specified Undertaking of the Trust of India (SUUTI)	45.93	5,550.46	5,596.38
3.	UTI Trustee Company Private Limited	7.61	889.84	897.45
4.	Canbank Financial Services Limited	0.15	0.48	0.63
5.	Indian Bank	5.11	578.22	583.33
6.	Canara Bank (Asset Recovery Management)	10.49	1,659.16	1,669.65
7.	Canara Bank, Ootacamund Branch	6.23	47.02	53.25
8.	State Bank of India (SAMB, Cbe)	277.79	29,344.98	29,622.77
9.	The New India Assurance Company Ltd	1.00	3.50	4.50
10.	Peerless General Finance and Investment Co. Ltd	30.25	105.95	136.20
11.	Punjab National Bank	0.70	2.45	3.15

S.No.	Name of the Financial Creditor	Amount Admitted (In Crores)		
	Secured FC	Principal (A)	Interest (B)	Total (C)
12.	United India Insurance Company Limited	0.85	2.98	3.83
13.	Canbank Mutual Fund	0.80	2.80	3.60
14.	SBI Fund Management Limited Unsecured FC	5.00	17.51	22.51
15.	Ministry of Heavy Industries, Govt of India	557.57	1,888.60	2,446.17
16.	KIOCL Limited	18.00	133.59	151.59
	Total	987.47	40,885.12	41,872.59
OTHER CREDITORS				
	Name of the Operational Creditor	Category	Claimed (In Crs)	Admitted (In Crs)
	M. Ramakrishnan (Late) K. Unni Krishnan	Employees	0.0105 0.1650	Nil
	Subramania Koushik. G. Canara Bank (Debenture Trustee) J. B. Murali (Advocate) Chennai Auto Ancillary Industrial Infrastructure Up gradation Company	Others	31.7660 1.8300 0.0419 0.2202	 0.1830 0.0419 0.2043
	Total		34.0336	0.4292

5. Change of Resolution Professional

Although the IRP was originally recommended by the Canara Bank Debenture Trustees, in the 1st CoC meeting, the lenders had not decided on the agenda for appointment of IRP as RP. The major lenders solicited proposals from various insolvency professionals to replace the IRP. The IRP replacement was approved in the 2nd CoC meeting held on March 07, 2022, through E-voting (approved with 99.29% voting) and was subsequently approved by AA on April 12, 2022.

The CoC suggested taking a fresh valuation during the Liquidation process with local valuers from Tamil Nādu, so that the local market factors are taken into consideration.

As the RP appointment was delayed, the IRP went ahead with the appointment of registered valuers for all the three classes of assets. As the IRP had his IPE support office based in Mumbai, the valuers have been appointed from North India, which was discussed as a matter of concern in the CoC during the resolution plan discussion. The CoC suggested taking a fresh valuation during the Liquidation process with local valuers from Tamil Nādu, so that the local market factors are taken into consideration.

6. Assets of the Corporate Debtor

The asset holding structure of the CD was a bit complicated and the ownership of major assets was subject matter of a legal dispute. A summary of immovable properties held by the CD are as under:

Land & Building	Plant & Machinery	Securities / Financial Assets
<ul style="list-style-type: none"> Lease Land 201.17 acres [Ooty] with factory building 	Unit I & III [Ooty] Unit IV [Ooty]	Stock & Book Debts
<ul style="list-style-type: none"> Lease Land 90 acres [Ooty] with factory building Free Land 12.19 acres [Ooty] Free Land 4.49 acres [Ambattur] with factory building 	Unit II [Ambattur]	

The 291 acres of Forest land was assigned to the CD by Department of Forests, Government of Tamilnadu through various Government Orders (GO's) passed between 1960 to 1990, of which the 201 acres was a free of cost transfer and 90 acres was lease transfer. Both land assignments are subject to various conditions, of which one key condition

is “The land reverts back to the Government, if it is not used for the intended purpose by the company”.

In the eyes of the public, the company was sitting with a huge land bank. Whereas the District Collector of Nilgris passed an order on February 19, 2020, remanding back the entire forest land to the Government, citing the reason that the same is not being utilized by the CD for the intended purpose. The said remanding order is the subject matter of a writ petition pending before the High Court of Madras and is yet to be decided².

Further the Forest department served a notice in 2021, demanding payment of rent & interest to the tune of 550 Crores for the usage of 90 acres of lease land.

7. Employees & their Claims

The CD has already discharged all its employees over the years through various Voluntary Retirement Schemes (VRS). At the commencement of CIRP, there was only one employee on roll and the safe custody of assets was ensured through outsourced contractors. The Government has nominated Shri. MRV Raja, General Manager in HMT Ltd, as the Chairman-cum-Managing Director, of the CD as an additional charge.

The last wage settlement of the employees took place in 1987 and there were no wage revisions thereafter. The unions negotiated a recoverable monthly advance (RMA) with the management and were paid. Over the years, many employees have superannuated / voluntarily retired and 1000+ cases were filed against the CD for Gratuity, RMA recovery, permanent employee status, leave benefits etc. The company had nearly 19 employee union / associations, who were defending all these cases before various judicial forums.

As many of the employees had migrated out of Ooty to other places in Tamil Nādu, the commencement of CIRP was not known to them in time and most of their claims were received belatedly.

As many of the employees had migrated out of Ooty to other places in Tamil Nādu (mostly Coimbatore & Chennai), the commencement of CIRP was not known to them in time and most of their claims were received belatedly (after 90 days).

² All these disputes started with the Government acquiring 25 acres of unused lease land for construction of medical college / hospital, wherein the CD has challenged the same. As per the land lease GO, all disputes are subject to Arbitration, wherein the one-member arbitral bench will comprise of the District Collector of Nilgris, only.

8. Exceptional Employee Settlement during CIRP

During CIRP, there is no case of payment of creditors/ employees' old dues, which are outstanding as on the date of commencement of CIRP. However, the CIRP of this CD witnessed a unique settlement to its ex-employees during the CIRP period. Despite CIRP moratorium, ex-employees won a writ petition against the Government of India and CD for compensation, which was upheld by the Hon'ble Supreme Court during moratorium. A sum of ₹43 Crores was directly paid to ex-employees by Ministry of Heavy Industries, Government of India, through the Labour Commissioner during the CIRP.

The failure of the first round of EOI (no resolution plan) was an utter dismay to the CoC, as they were sitting with this non-performing asset for more than two decades.

Brief Facts: In 2013-14, DHI approved VRS settlement for all the employees (subject to deduction of all the advances). Employees were settled after deducting their notional increment paid as advance from their settlement amount. The employees' union filed a writ (WA 1370 to 1372 of 2017) against this deduction of advances from the settlement amount directly against Government of India. In 2018, an employees' association won the writ appeal in the High Court Madras (initially single bench and later division bench). In response, the Government of India filed an SLP before the Supreme Court against this order of the High Court of Madras. The Supreme Court dismissed the said SLP on May 05, 2022, and ordered immediate payment.

Considering the ongoing CIRP, the SC ordered for direct disbursement to employees through office of Labour Commissioner, which was successfully completed by organizing claim submission camp at three locations viz., Ooty, Coimbatore & Chennai for the convenience of old employees who have settled across various parts of Tamil Nādu. The RP deputed a two-member team consisting of ex-employees of the CD, who were appointed by the RP on contract basis for better assistance in the CIRP, to assist office of Labour Commissioner for employee verification and validations.

9. First Round of EOI Process

The ratification for the appointment of RP by AA took about one month time. Considering the CIRP timelines,

the IRP and CoC went ahead with the preparation of Information Memorandum (IM) and proceeded with the issue of Form G (Invitation of EOI for the submission of the Resolution Plan) on March 23, 2022.

After the RP took over the CD, the 3rd CoC meeting was held on May 06, 2022, which dealt with the matters of Evaluation Matrix & RFRP and approved the same. In the First round of EOI, about Five PRA's (Prospective Resolution Applicants) evinced initial interest and qualified for submission of resolution plans. After a brief due diligence, due to ongoing land dispute with Government of Tamil Nādu, none of them turned up submission of Resolution Plan submission. The failure of the first round of EOI (no resolution plan) was an utter dismay to the CoC, as they were sitting with this non-performing asset for more than two decades.

10. Decision to Consider Resolution Plans for Part of CD Assets

The CoC met for the 4th time and discussed the next course of action. Considering the fact that the core asset of the CD (290 acres of leased land) being under lease and was revoked by the State Government (which is a subject matter of dispute pending before HC), resolving the Insolvency of the CD through a resolution plan became a challenge in this CIRP process. In such a scenario, RP proposed for resolution in piecemeal basis. Although there was no express provision in law for partial resolution plan by then³, considering the stand taken by various NCLT's in real estate projects (wherein the Resolution plan for specific project instead of whole CD is accepted by AA) the RP's suggestion was accepted by the CoC and the 2nd EOI process was agreed.

The second round of resolution process kick started with re-issue of 'Form G' on June 27, 2022, this time in two newspapers - *The Economic Times* (All India Edition) and *Dinamani* (Vernacular all Tamil Nadu Edition) inviting prospective resolution applicants to revive the CD.

Particulars	Due Dates
Date of invitation of Expression of Interest	June 27, 2022
Last date for receipt of Expression of Interest	July 13, 2022
Date of issue of provisional list of Prospective Resolution Applicants	July 20, 2022

³ Later Regulation 36B(6A) was inserted w.e.f 16.09.2022 facilitating piecemeal resolution, which facilitated the AA approval.

Particulars	Due Dates
Last date for submission of objections to provisional list	July 25, 2022
Date of issue of final list of Prospective Resolution Applicants	August 2, 2022
Date of issue of Information Memorandum, Evaluation matrix and Request for Resolution Plans to Prospective Resolution Applicants	July 25, 2022
Last date for submission of Resolution Plans	August 24, 2022

Engagement of Process Consultants: Further, considering the suggestion of CoC members, appointment of Process Consultants for soliciting Prospective Resolution Applicants (PRA's) & Resolution Plans (handholding their referral PRA from EOI to successful plan submission & approval) have been agreed upon on success fee model. The brief terms agreed are:

Realisation of assets through an Approved Resolution Plan (Rs.) (A)	Process Consultant Fees (B= A* Rate below)
Upto ₹100 Crores	0.50%
Above ₹100 Crs and upto ₹250 Crores	1.00%
Above ₹250 Crs and upto ₹500 Crores	1.25%
Above ₹500 Crores	1.50% (Subject to a maximum of ₹10 Crores*)

***Note:** Based on the total plan realization value, the applicable highest slab will be applied for the full value, subject to the maximum cap of Rs. 10 Crs.

11. Acceptance of Belated EOIs

The initial turnout of EOI was poor. Although many investment banking firms showed interest in acting as process consultants, very few came with a PRA. The process consultants took longer time to study the IM and solicit their clientele for possible acquisitions.

In the interest of resolving the CD through a resolution plan, the CoC met on multiple occasions and approved belated EOIs.

RP received belated EOI's. In the interest of resolving the CD through a resolution plan, the CoC met on multiple occasions and approved belated EOIs. Considering time, such approvals were done through Circular Resolutions

also. The successful resolution applicant's initial belated EOI was also approved through a circular resolution in Aug 2022. The interest and support of CoC, comprising of SBI, UTI & nationalized banks are commendable in resolving the case through a resolution plan.

12. Resolution Plan & Negotiations

With the incorporation of various belated EOI's, the final list of PRAs got modified multiple times and the resolution plan submission dates got extended up to September 30, 2022. Finally, the CoC received two resolution plans for consideration, of which one was not compliant with the requirements of RFRP, as the RA has not furnished the EMD/BG of ₹20 Crs as set out in the RFRP. In the first meeting of plan consideration, COC directed the RP to negotiate with the RA for plan value revisions. The negotiation meeting with the RA was held physically in the presence of key representatives of lenders.

The initial plan of RA, submitted by Shri. M.K. Rajagopalan, Chennai, was to acquire the entire assets of the CD for ₹102.60 Crs and use it for other business activities including industrial park, Medical & hospitality industry. On the other hand, the Liquidation value of the CD as a whole was ₹636.84 Crs, which includes the value of leased land. During the course of negotiation, as the RA was not offering any value for the leased land (as the lease itself was subject matter of legal dispute before HC), the RA agreed to modify the Plan for partial assets, which was owned by the CD. Further pricing negotiations were carried out. The RA finally submitted a Resolution plan for two assets owned by the CD as under:

Resolution Plan for acquisition of following assets through a scheme of arrangement (demerger) as under:

Description of Asset	Proposed Scheme	Plan Value	Fair / Liquidation Value
Factory Land & Building [Land 4.49 acres] along with P&M at Ambattur Industrial Estate, Chennai.	To be demerged from CD and merged with Transferee Company 1 of RA	₹102.60 Crs	₹ 89.11 Crs [FV] ₹73.16 Crs [LV]
Free Land 12.19 acres at Ooty.	To be demerged from CD and merged with Transferee Company 2 of RA		₹ 23.45 Crs [FV] ₹ 18.72 Crs [LV]

S. No.	Nature of Creditors	Amount [in Crs]
1	Secured Financial Creditor	100.80
2	Unsecured Financial Creditor	--
3	Operational Creditor [WM/Emp]	--
4	Operational Creditor [Others]	--
5	Equity Holders	--
	CIRP Cost	1.80
	Total Payable to the CD	102.60
	Fresh infusion for CAPEX works	2.70
	TOTAL	105.30

13. CIRP Time extensions

When the first round of EOI failed, to take forward the 2nd round, the CoC passed a resolution seeking 90 days extension after considering 53 days COVID exclusions. Further the Resolution Plan negotiations and bank approvals necessitated additional time, which was graciously granted by the AA at the request of CoC (special extension of 60 days i.e., up to 330 days).

14. Plan Approval by CoC & AA

After various discussion and internal approvals, the plan was finally approved by the CoC members for partial resolution of the CD assets and the remaining assets will undergo liquidation. The summary of voting results as under:

Approved	77.94 %
Dissent	13.36 %
Abstain / Not voted	8.70 %

With the consent of 8 secured lenders constituting 77.94%, the Plan was approved, and the letter of intent was given to Successful Resolution Applicant (SRA) for submission of Performance Bank Guarantee.

Despite granting more than a month's time for deciding on the voting, 7 out of 16 members (mainly unsecured lenders including MHI, Government of India, and some secured lenders) had not voted on the Plan. On the other hand, one of the key secured lenders SUUTI dissented for the plan. With the consent of 8 secured lenders constituting 77.94%, the Plan was approved, and the letter of intent was given to Successful Resolution Applicant (SRA) for submission of Performance Bank Guarantee. After receipt of the BG, RP

filed two applications before Hon'ble NCLT, Chennai bench seeking:

- Approval of the Resolution Plan⁴ along with scheme of arrangement (Two SBU's of CD merges with two different companies of the SRA) as proposed by the RA.
- Liquidation order for Liquidating⁵ the remaining assets of the CD.

After various rounds of detailed hearing in both virtual and physical mode, the bench directed the SRA to make some provisions in the Resolution Plan for Unsecured Financial Creditors & Operational Creditors, as their interests need to be protected to the extent possible. Considering the directive of the AA, the SRA filed an affidavit before AA for additional payment of ₹15 Lakhs over and above the approved value of the Resolution Plan out of which ₹11 lakhs were allocated for Unsecured Financial Creditors and remaining ₹5 lakhs were allocated for Operational Creditors.

After considering the additional affidavit, the AA passed two orders on March 31, 2023 – Firstly, approving Resolution Plan for the part of assets of the CD, and Secondly, Liquidation of remaining assets, simultaneously.

After considering the additional affidavit, Hon'ble NCLT Chennai bench passed two orders on March 31, 2023 – *Firstly*, approving Resolution Plan for portion of assets of the CD, and *Secondly*, Liquidation of remaining assets of the CD, simultaneously. This has been the first of its kind order under the IBC, after introduction of Regulation 36B(6A) in CIRP Regulations for dealing with the Resolution Plan in parts.

15. Key Challenges to the RP

- GoI, the shareholders themselves, joined the COC with voting rights for their outstanding loans. Although the government is a promoter, the erstwhile IRP treated them as unrelated party and included them in the COC.
- A major portion of assets are taken by the State Government, by the order of District Collector of Nilgiris, and is a subject matter of a legal dispute before High Court.

⁴ Resolution Plan approval order dated March 31, 2023, IA(IBC)/99(CHE)/2023 IN TCP/1/2021 (<https://ibbi.gov.in/uploads/order/0fc3ab13bdd814ba20eef585af871d9.pdf>).

⁵ Liquidation Order dated March 31, 2023, IA(IBC)/204(CHE)/2023 IN TCP/1/2021 (<https://ibbi.gov.in/uploads/order/33b906bb3feab26c42e339f72b949db4.pdf>).

- 1000+ employee cases pending before various judicial forums up to Supreme Court
- Not an operating entity and the CD's products and technology are obsolete in the market.
- Exceptional settlement of ₹43 Crores to 633 employees during the CIRP period, despite moratorium
- Reduction of Fixed Cost (Security and administration of 300 acres of land with 45 lakh Sq.ft of factory buildings & employee qtrs, spread across 3 small hillocks in Ooty).
- Scope for new industries in the premises limited on account of environmental concerns in the region (forest land).

16. Plan Implementation & Liquidation

The Resolution Plan approval was communicated to all the relevant parties and the same stands fully implemented as of May 2023. Dissenting FC's and OC's have been paid on priority as per the IBC followed by distribution to the Secured Financial Creditors. The RP was also appointed as the Liquidator and the Liquidation process is ongoing.

17. Conclusion / Continuing Challenge to the Liquidator

After a detailed run of CIRP process with two rounds of EOI, the Resolution Plan was implemented successfully. In terms of realization, the amount realized by FC is miniscule in comparison to the total admitted claim of over ₹41,872.59 Crores. However, an NPA more than three decades old of the financial creditors, who had written off the asset fully in their books has fetched them some realization in FY 2023-24, which otherwise would have remained an issue perennially.

The continuing challenges for the Liquidator are:

- Resolution of the pending dispute with Government of Tamil Nādu for remaining leased assets, so that the FC can get some material realizations.
- Revaluation of all the remaining assets with local valuers (obsolete technology equipment's likely to result in only scrap value realizations)
- Dealing with the grievances of 1000+ employees/ 200 plus court orders for employee settlements. Nil payment to employees as there is no outstanding due to them & there are no claims.