

Liquidation of S R Foils & Tissue Limited (SRFTL)

After the Resolution Plan for SRFTL was not approved by the CoC, the NCLT vide an order on March 04, 2020, approved liquidation of the Company, and appointed its Liquidator. After taking over, the IP planned to resolve issues one by one with an aim to maximise value of the Corporate Debtor (CD) and ensure maximum possible recovery for the member of Stakeholders Consultation Committee (SCC).

The primary asset of the CD was its plant at Sotanala, Rajasthan, the lease of which was cancelled by Rajasthan State Industrial Development & Investment Corporation Ltd (RIICO) for non-payment of the dues. However, the Liquidator approached the NCLT which stayed the cancellation order. Then came the disputes of the trademarks registered on the name of the CD which were transferred on the name of M/s GMG Engineers & Contractors Pvt. Ltd. without the knowledge of the CD or Liquidator. These trademarks were also successfully restored.

Despite the best efforts, the Liquidator received a single offer amounting ₹13 Crores. Hereafter, the Liquidator followed various processes of bidding and value maximization, simultaneously. So far, ~₹28 Crores have been realised from the assignment u/r 37A, through Sale of Assets and Avoidance Applications.

*The present Case Study, sponsored by IIIPI, has been developed by the Liquidator of SRFTL. In this Case Study, he has provided a firsthand step by step guide to liquidate a company having little legally clean asset. **Read on to know more...***



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1. Introduction

The Corporate Insolvency Resolution Process (CIRP) of S R Foils & Tissue Limited (SRFTL) i.e., the Corporate Debtor (CD) or Company, commenced on August 07, 2017, for which Mr. Anil Kohli was appointed as Interim Resolution Professional (IRP) who was subsequently confirmed as Resolution Professional (RP). After the Resolution Plan of SRFTL was not approved by the CoC, Hon'ble National Company Law Tribunal (NCLT), New Delhi, the Adjudicating Authority (AA) vide an order on March 04, 2020, approved liquidation of the Company and appointed Mr. Anil Kohli as its Liquidator.

The Liquidator in this case handled crucial and sensitive issues viz. cancellation of lease of main asset of the CD by RIICO, issues with respect to Avoidance Transactions applications and prolonged litigations which have been described in this case study.

2. Business Profile of the Corporate Debtor

M/s S R Foils and Tissue Limited was incorporated on July 21, 1997, as M/s. R.S. Hygiene Private Limited registered with Registrar of Companies – the National Capital

Territory (NCT) of Delhi and the State of Haryana. It was converted into a limited Company and a fresh certificate of incorporation was issued on September 26, 2007. The name of the Company was changed to S R Foils and Tissue Ltd and a fresh certificate of incorporation was issued on October 18, 2007.

SRFTL started its operation with Aluminium foil production in FY 1997 and entered in tissue paper production in FY 1999. Initially the Company was in the business of buying aluminium sheet rolls & paper rolls from market, cut them into the desired size and make foils & tissues, packaging and selling them under its own brand names. Aluminium foils were sold under the brand name “Home Foil” while tissues were sold under the brand name of “Mistique”. Later the Company ventured into manufacturing of plastic food wrap under brand name “Clean Wrap”. Thereafter, it expanded its product portfolio by installing downstream product manufacturing lines.

3. Reasons behind Financial Crisis of the CD

In FY 2007, the Company set up paper mill as backward integration for tissue paper and in FY 2010, an Aluminium mill was set up as backward integration for Aluminium foils & products. The Company achieved a turnover peak of ₹603 Crores in FY 2012-13. During the same period i.e., FY 2012-13, the working capital limits of the Company were enhanced to ₹381 Cr keeping in view the challenges being faced by the Company.

The major setback for the Company came in the form of an unhealthy competition from domestic players who in a bid to gain the market share started offering higher discounts to customers, higher margins, attractive incentive schemes etc.

The industry was already facing competition from cheap Chinese imports and then the major setback for the Company came in form of an unhealthy competition from domestic players who in a bid to gain the market share started offering higher discounts to customers, higher margins, attractive incentive schemes and larger credit period scheme for distributors & dealers, fluctuations in raw material prices. The Company also tried to counter that by following the same strategy. Its sales also increased in FY 2012-13 and peaked at ₹603 Cr but came at huge cost of discounts offered to dealers.

Subsequently, the Company got tangled in a working capital debt trap. As per the financial information filed with MCA, the revenues of the Company fell sharply in 2013-14 and the Company cloaked in heavy loss same year. These financial setbacks sharply eroded its net worth and the Company's account became NPA with its lenders during this period.

The lenders, after having tried several measures to recover the amount finally resorted to the remedy available under the Insolvency and Bankruptcy Code, 2016 (IBC).

4. CIRP of SRFTL

The CIRP of SRFTL was initiated on August 07, 2017. The following claims were admitted during CIRP:

Table - 1: Claims admitted against the CD during CIRP

S. No.	Type of Creditors	Claim Amount Admitted (₹)
1.	Financial Creditors	704,46,79,523
2.	Statutory Dues	230,83,11,891
3.	Operational Creditors	2,84,34,240
4.	Employees	32,68,098
Total		938,46,93,752

The Company was closed completely in FY 2016-17 and was no operational during CIRP.

The advertisements inviting Expression of Interest (EOI) for the CD were published four times but of no avail. The RP further approached and scouted for prospective investors to submit their EOI. However, despite the best efforts only one compliant Resolution Plan was received which was subsequently placed before the Committee of Creditors (CoC) for its approval. The plan envisaged payment of ₹32 Crores to the financial creditors. The said Resolution Plan was not approved by the CoC. Pursuant to which the CoC resolved to liquidate the Company. Subsequently, an application under Section 33 was filed by the RP before the AA, post-approval of the CoC.

5. Liquidation

The liquidation of SRFTL was initiated vide order dated March 04, 2020, passed by Hon'ble NCLT. The following claims were admitted during Liquidation:

Despite the best efforts only one Resolution Plan was received which envisaged to pay ₹32 Crores to the financial creditors, but it was not approved by the Committee of Creditors (CoC). Pursuant to which the CoC resolved to liquidate the Company.

Table - 2: Claims Admitted During Liquidation

S. No.	Type of Creditors	Claim Amount Admitted (₹)
1	Financial Creditors	10,72,61,30,328
2	Statutory Dues	84,50,17,081
3	Operational Creditors	3,52,72,549
4	Employees	7,47,079
Total		11,60,71,67,037

Subsequently, Stakeholders' Consultation Committee (SCC) was constituted in terms of Regulation 31A of Liquidation Process Regulations. However, the SCC was reconstituted as per the amendment in Regulations in September 2022.

6. Cancellation of Land Allotment by Rajasthan State Industrial Development & Investment Corporation Ltd (RIICO)

RIICO had allotted plot SP-26 (A) measuring 17,132 sq.m and Plot No. SP-26(1) measuring 20,485 sqm. at Industrial Area Sotanala, Tehsil Behror, Distt. Alwar (Rajasthan) to the CD vide execution of two lease deeds dated July 20, 2005, and August 22, 2005, between the RIICO and the CD for a period of 99 years and also granted the permission for mortgage of these lands to financial creditors way back in the year 2011.

RIICO vide Demand Notice dated March 20, 2020, which was physically received by the Liquidator on May 26, 2020, requested the Liquidator to deposit a sum of ₹53,29,789/- being the dues payable to them from the sale proceeds of auction, if any conducted, despite being aware of the fact of initiation of Liquidation Proceedings. To which the Liquidator vide E-mail dated June 10, 2020, apprised them that RIICO comes under the category of Operational Creditor therefore they are required to submit their claim in Form C. They were also apprised that; those properties are mortgaged with banks and the claims of secured creditors have also been filed with the Liquidator in terms of the provisions of the IBC.

RIICO informed the Liquidator vide its latter dated July 06, 2020, that they had cancelled the lease deeds of both the plots vide its cancellation order June 11, 2020, under Rule 24(1) of RIICO Disposal of Land Rules, 1979. Moreover, RIICO also informed that they have also initiated proceeding for taking possession of aforesaid

plots under Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964 through competent E.O. Court. However, order dated June 11, 2020, was neither provided nor served to the Liquidator or upon the CD.

RIICO informed the Liquidator vide its latter dated July 06, 2020, that they had cancelled the lease deeds of both the plots vide a cancellation order June 11, 2020, under Rule 24(1) of RIICO Disposal of Land Rules, 1979.

The liquidator through his team obtained a hard copy of the order on July 28, 2020, from the office of the RIICO. The relevant portion of the order by virtue of which the RIICO had cancelled the allotment, is reproduced hereinunder:

The allottee has failed to deposit dues of the Corporation. Neither allottee or Bank has submitted any reply to our Show Cause Notice.

Hence, allotment of plot no. SP-26, 26(A) and SP-26(A1) at industrial sotanala is hereby cancelled with immediate effect and security money and other charges are also forfeited.

M/s. S.R. Foils and Tissue Ltd is hereby asked to hand over the possession of the plot within 7 days to this office.

In case of failure to hand over possession in time, the plot shall be deemed to have been taken into possession by the Corporation, and action would be taken to vacate the premises under Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 through competent E.O. Court.

RIICO being aware of the Liquidation proceedings initiated against the CD vide order dated March 04, 2020, acted in complete disregard of the direction passed by the AA. It is worthwhile to mention that the RIICO informed the liquidator about the cancellation of allotment of the land(s) vide order dated June 11, 2020, without even giving a copy of the order or serving a show cause notice to the Resolution Professional during the CIRP.

The Liquidator of the CD filed an application being I.A. No. 3115 of 2020 under section 33(5), 35(1)(b), (d), (n), 36(2) & 36(3) & 235A of the IBC read with Regulation 9(1)(c) of the IBBI (Liquidation Process) before Hon'ble NCLT on August 01, 2020 seeking stay of cancellation of order dated June 11, 2020 passed by the RIICO and

Table - 3: Members of the SCC and their claims

(I) Financial Creditors

S. No.	Name of Creditors	Names of SCC Members	Admitted Claims (₹)	Voting Share
1	State Bank of India	State Bank of India	4,726,898,429.00	40.724
2	ICICI Bank	ICICI Bank	1,986,385,039.00	17.113
3	Phoenix ARC	Phoenix ARC	1,584,935,518.00	13.655
4	Union Bank of India	Union Bank of India	1,704,515,495.00	14.685
5	Punjab National Bank	Punjab National Bank Including Claim of (Erstwhile Oriental Bank of Commerce)	351,351,702.00	3.027
6	Genesis Finance Co Ltd	Genesis Finance Co Ltd	23,063,370.00	0.199
7	India Factoring & Finance Solution Pvt. Ltd	India Factoring & Finance Solution Pvt. Ltd	283,471,922.00	2.442
8	Barclays Bank Plc	Barclays Bank Plc	49,544,917.00	0.427
9	Canbank Factors Ltd	Canbank Factors Ltd	15,963,936.00	0.138
	Sub Total (A)		10,726,130,328.00	92.410

(II) Operational Creditors (Government Dues)

S. No.	Name of Creditors	Names of SCC Members	Admitted Claims (₹)	Voting Share
1	Commercial Tax Department	Joint Commissioner, Commercial Tax Dept Rajasthan	844,813,294.00	7.278
2	EPFO,	-	203,787.00	0.002
	Sub Total -(B)		845,017,081.00	7.280

(III) Operational Creditors (Employees Dues)

S. No.	Name of Creditors	Names of SCC Members	Admitted Claims (₹)	Voting Share
1	Mr. Bimal Jain	Mr. Bimal Jain	747,079.00	0.006
	Sub Total- (c)		747,079.00	0.006

(IV) Operational Creditors (Other Than Govt, Employees/Workmen Dues)

S. No.	Name of Creditors	Names of SCC Members	Admitted Claims (₹)	Voting Share
1	Dhawan Box Sheets Containers Pvt. Ltd.	-	6,369,340.00	0.055
2	Jindal Aluminium Ltd.	-	3,891,444.00	0.034
3	Scientific Security Management Services Private Limited	-	266,444.00	0.002
4	M/S JN Ravanuss India Pvt. Ltd.	-	671,516.00	0.006
5	M/S FIBRO Source India Pvt. Ltd	M/S FIBRO Source India Pvt. Ltd	12,072,810.00	0.104
6	BLR Logistiks (I) Ltd.	-	75,006.00	0.001
7	Well worth Packers P. Ltd.	-	1,184,344.00	0.010
8	VR Hydrochem Pvt. Ltd.	-	10,741,645.00	0.093
	Sub Total -(D)		35,272,549.00	0.31

TOTAL A+B+C+D			11,607,167,037	100
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consequential order for stay of the proceedings instituted by the them under Rajasthan Public Premises (Eviction of Unauthorized occupants) Acts, 1964 before Competent E.O.(Eviction Officer) Court against the CD. The copy of the application was also sent to RIICO vide e-mail dated August 01, 2020.

Meanwhile, the term/tenure of the president, Hon'ble NCLT, Principal Bench, New Delhi came to an end and considering the urgency of the matter, the Liquidator also filed a Writ Petition (C) No. 5193 of 2020 under Section 226 of the Constitution of India before the Hon'ble High Court on August 08, 2020, for issuance of writ of mandamus/prohibition or a writ of any other nature.

That the Writ Petition (C) No. 5193 of 2020 was listed before the Hon'ble High Court of Delhi on August 13, 2020, wherein the Hon'ble High Court whilst noting the fact that the term of the Acting President of the Hon'ble NCLT has been extended by a period of one month with effect from August 05, 2020 and accordingly requested the Hon'ble NCLT to consider the request for early hearing of the application filed by the Liquidator.

On the date of hearing on August 17, 2020, none appeared on behalf of RIICO. The Hon'ble AA passed an order and directed RIICO not to take possession of the properties of the CD, until further orders.

In view of the aforesaid order passed by the Hon'ble High Court, an application was filed before Hon'ble NCLT on August 01, 2020, seeking stay of cancellation order dated June 11, 2020, passed by the RIICO was scheduled for listing/hearing on August 17, 2020. On the date of hearing held on August 17, 2020, none appeared on behalf of RIICO, and the Hon'ble AA passed an order and directed RIICO not to take possession of the properties of the CD based on the cancellation order June 11, 2020, until further orders.

6.1. Insertion of Regulation 37A in 2020

In the 2nd Meeting for Consultation with stakeholders, i.e., Financial Creditors of the CD, held on February 05, 2021, the matter was discussed *w.r.t.* possible ways forward, to resolve the issue for maximization of value to stakeholders. Further, it was also discussed that since underlying assets being not readily realizable and initiation of sale process under Regulation 32 and 33 of

Liquidation Regulations¹ also subject to outcome of the application filed before Hon'ble NCLT therefore, it was decided to explore the opportunity for disposing off this asset by way of publication of sale notice under Regulation 37A of Liquidation Regulations pertaining to 'Assignment of not readily realizable assets' to solicit offers from the interested investors.

Pursuant to the advice regarding the above matter in the meeting of the Stakeholders Consultation Committee (SCC) held on February 05, 2021, the Liquidator had also sought legal opinion from counsel for assignment under Regulation 37A.

The legal counsel opined that the Liquidator could assign the rights for Litigation for the factory premises on plot area of approx. 57, 935 sqm at S.P.-26, S.P.-26(A), & S.P.-26(1), Industrial Area, Sotanala, Distt. Alwar, Rajasthan in terms of Regulation 37A of the Liquidation Process Regulations, 2016. However, the Liquidator in terms of the Discussion Paper of IBBI decided to follow the following principles:

- (a) Acting in the best interest of Liquidation Estate.
- (b) Seeking maximum consideration for the assignment.
- (c) Consulting the SCC.
- (d) Assignment through an auction or if an auction is not possible, on an arm's length basis.
- (e) Assignment shall be subject to Section 29A of the Code.
- (f) Liquidator to be reasonable, fair and should act in good faith.

6.2. First Attempt for Assignment in 2021

The Liquidator thereupon published a Notice dated February 11, 2021, under Regulation 37 A of Liquidation Regulations, 2016 for seeking interest from possible perspective assignees for all rights and interests of Litigation regarding plot area approx. 57,935 sqm at S.P.-26, S.P.-26(A), & S.P.-26(1), Industrial Area, Sotanala, Distt. Alwar, Rajasthan including building(s) constructed thereupon and including entire plant & machinery, including rights of Litigation for allotment cancelled by RIICO for its outstanding dues of ₹53,29,789/- and all

¹ IBBI (Liquidation Process) Regulations, 2016.

consequent rights for owning the subject assets, in three newspapers.

Subsequently, Liquidator received 'four offers' from prospective buyers. The prospective investors were asked to deposit EMD @10% of their proposed offer amount. However, the same was not received from any of the investors.

This was discussed in the 3rd Meeting of the SCC held on March 19, 2021, that keeping in view the objective of maximization of value of assets of CD for stakeholders, if any other prospective buyer/bidder approaches, they may be entertained by the Liquidator for submission of EOI under Regulation 37 A of Liquidation Regulations. It was further discussed that either the underlying assets of the CD may be assigned/transferred by way of assignment of rights to any prospective investor under Regulation 37A of Liquidation Regulation or Fresh Sale process of this asset may be initiated under Regulation 32 or 33 of Liquidation Regulations upon outcome of the application filed before Hon'ble NCLT since stated issue of underlying assets is major reason for pendency of completion of Liquidation Process of the CD.

Pursuant to the approval accorded in the 4th Meeting of the SCC, the Liquidator published a notice inviting for 'Assignment / Transfer of NRRA of CD in Liquidation'. Subsequently, a prospective bidder offered ₹ 14 Crores.

The liquidator received an offer of ₹13 Crores along with the EMD of 10 percent of offer amount from one bidder which was placed before the SCC. After many deliberations and negotiations, the bidder gave a final offer of ₹13.5 Crores. To ensure utmost transparency in the process and to ensure maximisation of value to the stakeholders, the Liquidator suggested to the members of the SCC that a publication may be done thereby inviting better offers from public with ₹13.5 Crores as the base price and in case of no offers received pursuant to publication then Liquidator may be authorized for assignment/transfer, under regulation 37A of IBBI (Liquidation Process) Regulations, 2016 to the current bidder. Pursuant to the approval as accorded by SCC Members in the 4th Meeting of the SCC held on July 06, 2021, the Liquidator published a notice inviting for Assignment / Transfer of 'Not Readily Realizable Assets

(NRRA) of CD in Liquidation. Subsequently a prospective bidder offered an amount of ₹ 14 Crores.

6.3. Objection of RIICO before Hon'ble NCLT for Assignment under Regulation 37A

The application filed before Hon'ble NCLT by Liquidator thereby seeking stay of cancellation of order dated June 11, 2020, passed by the RIICO and consequential order for stay of the proceedings instituted by them under Rajasthan Public Premises (Eviction of Unauthorized Occupants) Acts-1964, before Competent E.O. (Eviction Officer) Court against the CD, came up for hearing on July 13, 2021, wherein the counsel for RIICO appeared and submitted that the Liquidator is attempting to sell the assets forming part of the present application. To which, counsel appearing on behalf of the Liquidator opposed the submissions made by the counsel for RIICO and apprised the AA that the Liquidator is not selling the assets of CD but is only taking steps for assignment/transferring the rights to litigation in terms of Regulation 37A of the Liquidation Regulations, 2016. Post hearing, the Hon'ble AA recorded statement, that the Liquidator is not selling the assets of the CD forming part of the present application till the application is disposed of.

That pursuant to the above development the Liquidator vide E-mails intimated the Members of the SCC and the prospective buyers that as a fair practice, the process of assignment of rights of 'NRRA of CD' has been put on hold till decision by Hon'ble NCLT.

In the 5th meeting of the SCC held on March 28, 2022 it was deliberated upon that since significant time has already elapsed in the matter and no outcome has been received till date, hence an application may be filed before Hon'ble NCLT wherein permission for assignment/transfer of all rights of litigation and interest of underlying asset, being NRRA of CD under Regulations 37 A of Liquidation Process Regulations, 2016, be sought. It was further discussed that the intent of filing this application before Hon'ble NCLT is to safeguard the interests of the stakeholders and to clarify before Hon'ble NCLT that undertaking given by Liquidator in pursuance to hearing held on July 13, 2021 was for not selling the assts of CD whereas transfer /assignment of rights of litigations and interest for underlying asset is still permissible as per the IBC and that transfer /assignment of rights of litigation of assets of CD is not synonymous to the sale of assets.

All the SCC members present in the meeting unanimously accorded their consent to go ahead with filing of application before Hon'ble NCLT during pendency of this application and seek permission for assignment/transfer of rights of litigation and interest of underlying asset of CD under Regulations 37 A of Liquidation Process Regulations, 2016 which shall be in the best interest of the stakeholders and post obtaining approval from Hon'ble NCLT. In this regard, the Liquidator may immediately initiate the process by giving publication for invitation for submission of EOIs in leading newspapers. Accordingly, an application to this effect was filed before Hon'ble NCLT. The matter was decided and allowed in the hearing held on July 08, 2022, with the condition that the Liquidator will seek approval from the AA before actual auction as well as actual assignment/sale. Subsequently, it was decided in the SCC that notice inviting offers to be published again in the newspapers for inviting EOIs/Offer from public at large for assignment of NRRA of CD as the old process was scrapped due to the litigation.

The SCC suggested that an online bidding may be conducted amongst the bidders by keeping the reserve price of ₹14.51 Crores which shall ensure both transparency and maximization of value to the stakeholders and minimise litigations.

Post publishing of Notice thereby inviting offers from bidders, the liquidator received offers from three bidders, Rs. 14.51 Crores being the highest offer. The liquidator then sought the views of the SCC members to decide upon the way forward. It was discussed that either Swiss Challenge Mechanism be adopted in the process, or an open inter-se bidding be done with reserve price being the highest offer received from the current bidders for value maximization.

It was suggested that an online bidding may be conducted amongst the present bidders by keeping the reserve price of ₹14.51 Crores which shall ensure both transparency and maximization of value to the stakeholders along with minimal possibility of litigations. An application to this effect was filed by the liquidator for obtaining approval of the Hon'ble AA on September 27, 2022, for inter se bidding amongst bidders which was allowed on October 07, 2022.

6.4. Inter-Se Bidding held on October 18, 2022

The Liquidator successfully conducted inter se bidding by using e-auction platform of one of the most reputed e-auction agency in the most fair and transparent manner with the sole objective of maximisation of value of the stakeholders.

In the inter-se bidding the highest bid received was for ₹21,21,00,000/- which was ₹ 6,70,00,000/- more than the reserve price. Subsequently, the Liquidator had filed an application in I.A. No. 5373 of 2022 under Section 60(5) of the IBC read with Regulation 37A of the Liquidations Regulations, 2016 seeking approval for assignment of 'NRRA' to the successful bidder in the inter se bidding conducted on October 18, 2022. The Hon'ble NCLT vide its order dated March 02, 2023, allowed the said application.

Accordingly, the assignment of NRRA (disputed asset) was finally concluded in the most fair and transparent manner ensuring value maximisation to stakeholders and the price realised, though a disputed asset, was nearly equivalent to the reserve price in first failed auction conducted before communication for cancellation of lease was received.

7. Trademarks

The RP in discharge of his duties to preserve assets of the CD traced the trademarks registered in name of CD and got lien marked in the records of Registrar of Trademarks. Notice for sale of trademarks of the CD vide e-auction was published in the 2nd Notice for sale of assets in June 2020. The trademarks were successfully sold in the said e-auction. However, the successful bidder after depositing 25 % of the sale consideration amount failed to deposit the balance amount and the sale was cancelled after forfeiting the amount deposited by the bidder.

Thereupon the trademarks of the CD were successfully sold in the 4th e-auction process. However, post-sale of trademarks as mentioned in the sale notice, it came to the knowledge of Liquidator that there are also some other trademarks registered in the name of the CD post-initiation of CIRP. The same are presented in tabular form in Table 4.

Table – 4: Trademarks registered with the Corporate Debtor

S. No.	Trademark Applied For	Class	Application No.	Date of Application	Date of Registration	Valid Till
1	Mistique Joy	16	2088717	24.01.2011	06.12.2017	24.01.2021
2	Mistique Magic	16	2088716	24.01.2011	12.06.2018	24.01.2021
3	Mistique Softee	16	2088718	24.01.2011	12.06.2018	24.01.2021
4	Mistique Sparkle	16	2088719	24.01.2011	12.06.2018	24.01.2021
5	SR	99	1924333	18.02.2010	17.12.2015	Filed Renewal Application with Trademark Registry

Table – 5: Disputed Trademarks of the Corporate Debtor

S. No.	Name	Application Ref. No	Class	Certificate issued on
1	HOMEFOIL	3593364	16	23.01.1018
2	HOMEFOIL	3593365	6	06.09.2020
3	MISTIQUE	3593366	16	06.09.2020
4	SR CHAPATI WRAP	3593367	6	Objected
5	SR CLEAN WRAP	3593368	16	23.01.2018
6	CHAPATI N WRAP (LABEL)	3951394	6	01.06.2019

On further investigation it was found that the below mentioned marks (other than those listed above) which were in the name of CD, were also registered in the name of GMG Engineers & Contractor Pvt Ltd. by the Trademark Dept vide its certificate issued post commencement of CIRP based on an undated Letter of Consent/No Objection given by the CD prior to CIRP without bringing the same in knowledge of RP/Liquidator despite lien being marked on the same.

The application for registration was filed on July 17, 2017, i.e., just prior to the Insolvency Commencement Date (ICD) i.e., August 07, 2017, and the certificates were issued post commencement of CIRP by the trademark registry despite lien of the Liquidator on the same. The facts thereto were concealed by M/s. GMG Engineers & Contractors Pvt Ltd and erstwhile directors of the CD during the entire CIRP despite proceedings before Hon'ble NCLT to bar them from usage of trademarks and order for payment of Royalty to RP for usage of trademarks.

7.1. Steps taken to Resolve the issue of wrongful registered trademarks

The Liquidator post coordinating with representative of

GMG Engineers & Contractors Pvt. Ltd., got the requisite documents /application signed and appointed a consultant through which the application was filed with Trademark Dept. for cancellation of 6 additional trademarks of CD which were also registered in the name of GMG.

Pursuant to the application filed on behalf of the Liquidator, the Trademark Department cancelled registration of five trademarks on the name of GMG Engineers & Contractors Pvt Ltd. Thus, these trademarks again became assets of the CD.

Accordingly, five (5) out of six (6) trademarks got cancelled and one (1) trademark, namely, “SR Chapati Wrap” was not cancelled since the status of the same was already 'objected'. Thereupon, the Liquidator vide E-mail dated March 09, 2021, wrote to the office of Trademark Registry, restraining for proceeding further on registration of this trademark, keeping in view our lien on the trademarks registered in the name of M/s S R Foils & Tissue Limited pursuant to AA order dated March 04, 2020.

Further, two (2) additional trademarks i.e., viz SR (device) under class 6 and 16 strikingly similar to the ones

registered in name of the CD were also found registered (application no 3594267) /accepted & advertised (application no 3594268) that too post E-auction of trademarks. Accordingly, M/s GMG Engineers & Contractors Pvt. Ltd. were advised by Liquidator to also get these trademarks cancelled /withdrawn at the earliest by way of filing cancellation application before the Trademark Registry as done for trademarks registered in their name earlier. Pursuant to which, the cancellation application was obtained from M/s GMG Engineers & Contractors Pvt. Ltd. and was filed with the trademark registry. Finally, upon resolution of the above trademark issues, the successful bidder made the balance payment of sale consideration against the trademarks sold to him through fourth e-auction.

8. Sale of Assets of CD during Moratorium

The RP, on examination of records at the website of Ministry of Corporate Affairs (MCA), had reported a charge on some assets of the CD in favour of Religare. Even after rigorous follow up Religare did not file its claim, examination of records of sub registrar was conducted wherein it was noticed that a transfer of immovable properties was made at a consideration of ₹3.60 Crores, which was in contravention to the Section 14 of the IBC i.e., moratorium period. Further, on enquiry from Religare it was found that they had settled their claim of ~₹10 Crores for ₹3.60 Crores and released the properties charged to them. The RP then carried out valuation of the properties which came out to be ~₹7.00 Crores. Accordingly, RP filed an application under Section 74(1) & 60(5), 43,45 being C.A. No. 173(PB)/2018 seeking appropriate reliefs. Subsequently, the AA directed the buyer to deposit a sum of ₹3.40 crores being differential of value arrived and the purchase price. The buyer contested that it had also deposited ₹120 lacs earlier besides the reserve price. Hon'ble NCLT thereafter vide order dated October 15, 2018, directed the RP to file an affidavit concerning the amount of ₹120 lakhs. The Affidavit was accordingly filed by RP. Thereafter, the Hon'ble NCLT vide order dated November 27, 2018, disposed of the application with direction to the RP to seek an opinion of the expert, which shall be binding upon the respondent.

Pursuant to the above, the RP sought an expert opinion of a Chartered Accountant and based on the opinion obtained

It was found that Religare had settled its claim of ~₹10 Crores for ₹3.60 Crores and released the properties charged to them. The RP then carried out valuation of the properties which came out to be ~₹7.00 Crores.

& the statement made by the Counsel for M/s S.R. Foils & Hygiene Private Ltd before the AA, the RP vide email dated December 07, 2018, requested M/s S.R. Foils & Hygiene Private Ltd to make the payment of ₹340.17 lacs being the differential amount. The said differential amount was required to be paid in the following manner:

S.No.	Amount	Due Date
1.	₹100 lacs	07.01.2019
2.	₹120 lacs	07.02.2019
3.	₹120.17 lacs	07.03.2019

However, M/s S.R. Foils & Hygiene Private Ltd failed to make payment as per directions.

In pursuance to above, the RP filed an application being C.A. No. 935(PB)/2019 before Hon'ble NCLT seeking appropriate reliefs.

That the above-captioned C.A. No. 935(PB)/2019 was considered by the Hon'ble Adjudicating Authority on August 07, 2019, wherein the Respondents insisted that interest should be payable from February 07, 2019, to September 07, 2019, i.e., till the date of payment. The AA in its order on August 07, 2019, directed 'that a sum of ₹2,13,44,000/- be paid to the applicant with interest at the rate of 10.50% from February 07, 2019, till the date of payment i.e., September 07, 2019. The AA also made it clear that if payment was not made by the due date the consequences shall follow and no further time for payment shall be granted².

However, the respondent failed to deposit the amount and on account of non-payment of said amount by Director of Purchaser Co. and CD in accordance with Hon'ble NCLT order dated August 07, 2019, another application was filed by the RP under Section 60(5) of the IBC, read with Rule 11 of the NCLT Rules, 2016 and read with Section 425 of the Companies Act, 2013 on November 13, 2019 for seeking directions against the Directors of Purchaser / Director of CD in view of contempt of the order dated

² C.A. No. 935(PB)/2019, Date of Judgement: August 07, 2019.

August 07, 2019 passed by the AA to either the outstanding amount of ₹2,13,44,000/-, along with interest from September 07, 2019, till passing of order by the AA and that appropriate action be initiated against M/S S.R. Foils & Hygiene Pvt Ltd for wilful disobedience of the undertakings given before the CoC and before the AA.

8.1. Avoidance Transactions

It came to the knowledge of the Liquidator that the buyer of flats has defaulted in payment of loan facility availed from Indiabulls Commercial Credit Limited and Fullerton India Credit Company Limited, wherein the properties, being an asset of the CD and being subject matter of Avoidance Application bearing C.A. No. 2517 of 2019 which were pending adjudication before AA, have been offered as security to aforementioned financial institutions.

Both the financial institutions i.e. Indiabulls Commercial Credit Ltd., and Fullerton India Credit Company Ltd., issued 'Demand Notice' under Section – 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) to directors of the CD. Thereafter, 'Possession Notices' in terms of Section 13(4) of the SARFAESI Act to take possession of the underlying properties of the CD forming subject matter of Avoidance Application were also issued. Subsequently, action was initiated taken by these financial institutions for sale of assets.

To safeguard the interests of the stakeholders of the CD, the Liquidator immediately filed Applications under Section – 60 (5) of the IBC against India bulls Commercial Credit Limited and Fullerton India Credit Company limited to maintain status quo. Subsequently, the AA granted stay on sale of the properties and directed the respondents to maintain status quo till disposal of the matter. Thereafter, the contemnor in the Contempt Application filed by the Liquidator gave a proposal to purge the contempt. Hon'ble NCLT directed the liquidator to place the proposal before the SCC for its consideration.

The SCC after much deliberation gave approval to the proposal subject to some terms. Accordingly, the decision of the SCC was placed before Hon'ble NCLT. However, there was no consensus between the parties and both Indiabulls and Fullerton submitted before Hon'ble NCLT that they are ready to deposit the sale proceeds in the Liquidation Estate of the CD once the stay is vacated and

An amount of ~₹28 Crores has been realised from Assignment u/r 37A, through Sale of Assets and Avoidance Applications.

they are permitted to sell the assets subject to the undertaking to be given by them.

Subsequently, Hon'ble NCLT directed Indiabulls & Fullerton to file an affidavit by way of an undertaking before the next date and the same can be considered after filing of the undertaking. Pursuant to which an undertaking was filed by both the financial institutions and Hon'ble NCLT vide its order dated January 04, 2023, vacated the stay and allowed both the parties to sell the assets. Finally, the matter was brought to its logical conclusion and the properties were sold by the respective financial creditors and the amount of Rs. 2,13,00,000/- along with applicable interest was duly deposited by them in the liquidation estate of the CD in proportion to their share. An amount of ~₹28 Crores has been realised from assignment u/r 37A, Sale of Assets and Avoidance Applications in the matter.

9. Pending Matters

(a) Royalty

M/s GMG Engineers & Contractors Pvt. Ltd was allowed to enjoy the right of usage of the Trademarks of the CD during CIRP in pursuance to Memorandum of Understanding executed between the CD and M/s GMG Engineers & Contractors Pvt. Ltd. on August 12, 2014, by the CoC. However, since the CoC had rejected the Resolution Plan submitted by M/s Lucky Generators Pvt. Ltd (its sister concern), and no further settlement proposal has been given by M/s GMG Engineers. Therefore, it was decided by the CoC that for further usage of trademarks of the CD, the royalty at the rate of 2% per annum of value of the intellectual property rights of CD has to be paid, else the usage of trademarks of the CD will not be allowed.

Accordingly, RP was advised to issue notice to M/s GMG Engineers & Contractors Pvt. Ltd. (renamed as 'SR Foils & Hygiene Pvt. Ltd.') stating either to surrender the usage of the trademarks of the CD or to pay royalty at the rate of 12% per annum of the value of the intellectual property rights of the CD for using the trademarks. However, SR Foils & Hygiene Pvt. Ltd. failed to take either of the actions i.e., they did not pay the royalty as mentioned in the

notice to the CD and also had not given any confirmation for stopping usage of the trademarks.

SR Foils & Hygiene Pvt. Ltd. failed to comply with the order of Hon'ble NCLT and accordingly a contempt application was filed which is pending adjudication.

After deliberations on the same, the CoC directed the RP to file an application before Hon'ble NCLT to direct SR Foils & Hygiene Pvt. Ltd. either to pay royalty at the rate of 12% per annum of the value of trademarks as assigned by the valuers i.e., ₹40.56 lakhs per annum, for continuous usage till the disposal of trademarks under liquidation or otherwise, or to stop the usage of registered trademarks of the CD.

Subsequently, after hearing the Hon'ble NCLT directed the SR Foils & Hygiene Pvt. Ltd. to stop the use of trade name 'home foils' on the completion of three months starting from July 15, 2019, and payment of royalty from the date of use till October 15, 2019. However, SR Foils & Hygiene Pvt. Ltd. failed to comply with the order of Hon'ble NCLT and accordingly a contempt application was filed which is pending adjudication.

10. Non-Co-operation from Customs Department

There were certain bank guarantees issued by the CD in favour of the Customs Department. The said bank guarantees were issued by State Bank of India (SBI) against fixed deposits kept as margin money. The Liquidator requested SBI to release the said Fixed Deposit since the same shall form part of the Liquidation Estate of the CD. However, SBI expressed its inability to do the same since the original bank guarantees were not handed over by the Customs Department. Accordingly, the Liquidator filed an application before Hon'ble NCLT and SBI gave an undertaking to release the fixed deposits held with them as 100 percent margin money on receipt of the original bank guarantees. However, there was no response from the Customs Department.

The liquidator was constrained to file a fresh application before the AA for directions to SBI to release the FDRs in the absence of receipt of original bank guarantee from the Customs Department. Meanwhile, the SBI vide its email dated April 20, 2023, informed the Liquidator that the bank guarantees to the Customs Department may have perpetual automatic renewal clause. Therefore, to reverse the bank guarantee liability in the CBS system and



extinguish Bank's liability for Bank Guarantee, original bank guarantees will be required from the Customs Department. They further requested the Liquidator to take-up the matter with the Custom Department for return of original bank guarantees.

The Liquidator issued a letter along with email to the Customs department on April 20, 2023, requesting them to confirm whether any valid bank guarantee is held by them as on date. It was further requested that they arrange to return all the original bank guarantees issued on behalf of the CD, since the bank guarantees have already expired. They were further requested to treat the matter as urgent and it was stated that in the event the original bank guarantees are not returned within 15 days of receipt of the letter, the Liquidator shall be constrained to approach Hon'ble AA for appropriate directions.

The AA vide its order dated May 10, 2023, directed the Liquidator to get the proof of whether the bank guarantee is subsisting or if it has been invoked. The Liquidator was further directed to take instructions to state whether the bank guarantee was still with the Custom Department, by writing to both the Customs Department and the SBI, that were directed to give the necessary details to the Liquidator without fail. In view of the directions of Hon'ble AA vide order dated May 10, 2023, the Liquidator issued letter and email to the Customs department on May 30, 2023, requesting them to provide the details of the said bank guarantees.

However, no revert has been received from the Customs Department. The liquidator has been following up with the Customs Department rigorously and shall seek appropriate directions from Hon'ble NCLT. Meanwhile, State Bank of India has come forward to remit the amount of fixed deposits over and above the liability reflecting in the bank guarantees. Therefore, the matter is expected to be resolved soon.

11. Learnings

- Value maximisation by fairness and transparency in the process by inter-se bidding.
- Efficient handling of complex situations like sale of assets during moratorium.
- Importance and ways of tracking assets of the CD including intangible assets like trademarks and value maximisation thereof.

Table-6: Realization from the Liquidation of the Corporate Debtor

Particulars	Total Realization (₹)	CIRP cost/Liquidation cost including Liquidator fee and Estimated Liquidation cost etc. (₹)	Amount distributed to stakeholders as per Section 53 (₹)
Assignment	21,21,00,000	1,25,32,103	19,95,67,897
Avoidance Transactions	2,85,47,423	9,35,900	2,76,11,523
Brands, Royalty	3,06,00,000	33,05,940	2,72,94,060
Sale of Assets (Including Interest)	73,22,439	6,47,495	66,74,944
Forfeiture of EMD	85,25,000	30,30,615	54,88,985
Other Realization (i.e., FD Interest, Recovery from old bank accounts etc.)	73,39,988	5,08,425	68,31,563
Total	29,44,34,850	2,09,60,478	27,34,68,974

