

CASE STUDIES OF SUCCESSFUL RESOLUTIONS AND LIQUIDATIONS UNDER IBC

SERIES 2



Indian Institute of Insolvency Professionals of ICAI (IIPI)

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**Indian Institute of Insolvency Professionals of ICAI (IIPI)
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FOREWORD

The Insolvency and Bankruptcy Code, 2016 (Code) has established itself, in very short span of time, as credible instrument which has brought about perceptible transformation in the prevailing credit culture. The timely legislative interventions and evolving jurisprudence have imparted further depth and maturity to the law in the context of the evolving market economy. The key objective of the Code is to rescue firms in financial distress and promote entrepreneurship while balancing the interests of all the stakeholders. A plethora of landmark judgments have been delivered in the past few years, clarifying on several issues, and settling the law, especially in case of any inconsistency with other statutes.

The resolution as the preferred outcome and Liquidation being the residual outcome, are at the core of the IBC Ecosystem which warrants a highly interdisciplinary and practical approach. Therefore, knowhow in the form of actual case studies in this context can play a critical role in enhancing capacity of insolvency professionals and stakeholders. It's a matter of great satisfaction that after releasing compilation of CIRP case studies (series-1) two years ago, IIIPI is now publishing more case studies as 'series-2' covering even couple of Liquidation cases as well, on the occasion of IIIPI's 7th foundation day.

I hope this will go a long way in enhancing the capacity of IPs and stakeholders alike. I put on record my sincere appreciation to professional members of IIIPI, viz. CA Vijaykumar V Iyer, CA Amit Jain, CA S.V. Ramkumar, CA Anil Kohli, CA Alok K. Saksena, Mr. Abhilash Lal, CA K.V. Jain, CA M.Suresh Kumar, for contributing these case studies. As all the case studies have been peer reviewed by eminent IPs, I also appreciate valuable inputs by them for improving the outcomes.

I also extend my appreciation to team of IIIPI led by CA. Rahul Madan, Managing Director, for bringing out this publication. I am sure this publication would be of great help to the IPs and other stakeholders.

Dr. Ashok Haldia Chairman,
IIIPI-Board

Date: 6th December, 2023

Place: New Delhi

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CHAPTER

Resolution of Bhushan Steel Limited

Bhushan Steel Limited (BSL) was among the 12 Large Accounts identified by the Reserve Bank of India in June 2017 with instructions to lenders for file CIRP applications. In pursuance of the insolvency application of the State Bank of India, the Principal bench of the National Company Law Tribunal (NCLT) vide an order on July 26, 2017, admitted the Corporate Insolvency Resolution Process (CIRP) of the Company. The NCLT also appointed Mr. Vijaykumar V. Iyer as the Interim Resolution Professional who was subsequently confirmed as the Resolution Professional (RP) by the Committee of Creditors (CoC). The RP and team, with the support of stakeholders, maintained manufacturing and sale operations of the Company. This enabled the team to market the Company, generate interest and obtain two compliant resolution plans before the Company's custody was handed over to Tata Steel Ltd, the successful resolution applicant.

The present case study, sponsored by IIPI, was developed by Mr. Iyer with his colleagues Mr. Sandeep Negi and Mr. Abhishek Sood. In this study, he has provided a first-hand step by step guide to resurrect a corporate life.

Read on to know more...

1. Introduction

Bhushan Steel Limited, (the Corporate Debtor or the Company) renamed as Tata Steel BSL Limited, is a leading producer of primary and secondary steel in India. The case of Corporate Insolvency Resolution Process (CIRP) was admitted against the Company under the Insolvency & Bankruptcy Code, 2016 (IBC or the Code) in the Principal Bench of the National Company Law Tribunal (NCLT) in July 2017.

During the CIRP, the Resolution Professional (RP) and RP Team, as per the provisions of the Code, maintained the operations of the Corporate Debtor as a going concern. Besides, the RP and team also conducted the resolution process which resulted in the resolution plan of Tata Steel Limited being submitted for the consideration of the Adjudicating Authority i.e., NCLT. The NCLT approved the resolution plan, and the Corporate Debtor was expeditiously transferred to the successful resolution applicant, Tata Steel Limited (TSL).

The present case study discusses the operational parameters, the challenges and steps taken for sustained

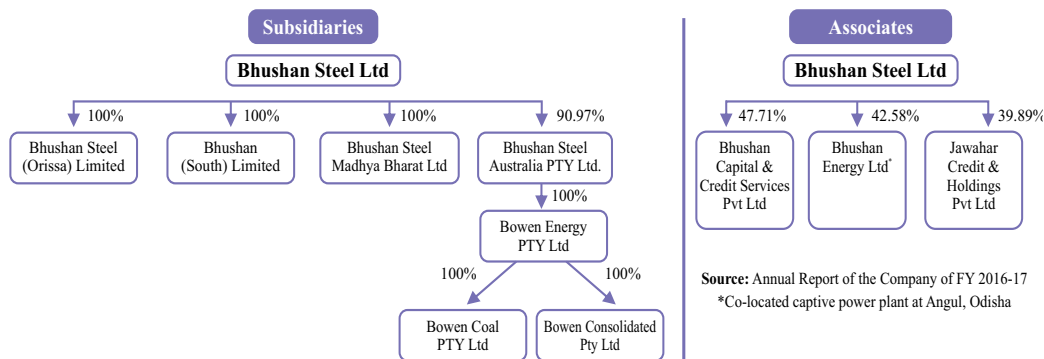
and improved operations, and cash position of the Company during the CIRP, thereby, facilitating a successful resolution as envisaged under the Code.

Having facilities closer to customer locations enable the Company to respond to customer requirements in an expedited manner.

2. Company Profile

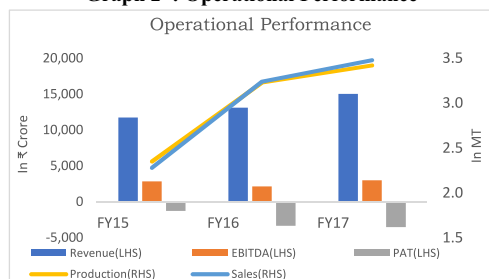
- Bhushan Steel Limited, listed at Bombay Stock Exchange (BSE) and National Stock Exchange of India Limited (NSE), has been a leading primary and secondary steel producer in India.
- The Company was established in 1983, by Mr. Brij Bhushan Singal, Chairman and founding Director. At the time of CIRP commencement, Mr. Neeraj Singal, was the CEO and Managing Director.
- The production capacity of the Company is 5.6 Million Tonnes Per Annum (MTPA) and the product portfolio comprised of Hot Rolled Coils, Cold Rolled Coils, Galvanized & Colour Coated Products, High Tensile Steel Strips, Hardened and Tempered Steel strips, pipes and tubes and billets.
- The Company primarily caters to the automobile and white goods industry and is one of the largest steel suppliers to the Indian automobile industry.
- The Company has manufacturing facilities at three locations in India, namely, Sahibabad in Uttar Pradesh, Angul in Odisha and Khopoli in Maharashtra. Additionally, it has offices, service centers, warehouses, sales depots at various locations across India.
- The Company established its first plant at Sahibabad, Uttar Pradesh, in 1989, for the production of cold rolled and galvanized steel products servicing the automotive and consumer durables customers.
- The second plant was set up at Khopoli, Maharashtra in 2004, to expand its geographical reach and product portfolio.
- The Khopoli plant manufactured precision tubes, API Pipe and high tensile steel strapping, Hardened & tempered (H&T) steel, color coated sheets, besides cold rolled and galvanized sheets.
- As part of backward integration, the third plant, an integrated steel plant with capacity of 5.6 MTPA of liquid steel, was set up in Angul, Odisha to produce hot rolled (HR) coils and billets. This marked the Company's entry into the primary steel sector.
- The Company has a widespread distribution network, comprising 14 warehouses cum marketing offices in India. Of these, three locations are service centers equipped with facilities for cutting tubes to custom sizes required by customers. Having such facilities closer to customer locations enable the Company to respond to customer requirements in an expedited manner.
- The Company also owns ~50 acres of land at Pilkhuwa (near the Sahibabad Plant) along with railway siding which is used as a distribution center for Northern India and for supplying raw material from the integrated steel plant (Angul) to the Sahibabad plant. The Company also has a rented yard at Paradip Port for facilitating imports of coking coal.

Graph-1: Subsidiaries & Associates



Source: Annual Report of the Company of FY 2016-17
 *Co-located captive power plant at Angul, Odisha

- l) The Company had won rights to the 'Kalamang Mine' in Odisha with a premium of 100.05% through auction. The mine had reserves of 92 million tonnes of iron ore.
- m) Furthermore, the Company has several subsidiaries, step-down subsidiaries and associates¹ as depicted Graph -1.

Graph 2 : Operational Performance

3. Pre-CIRP Performance

3.1. Performance in Three Previous Years²

As is evident from the above, the Company was operating at a significant capacity with a large revenue base and positive earnings before interest, taxes, depreciation, and amortization (EBITDA). However, due to high interest cost, the Company was incurring Profit After Tax (PAT) losses and was in financial stress.

3.2. Reasons of Financial Stress

The key reasons³ for high debt and subsequent financial stress in the Company as informed to the RP and team are summarized below:

a. Non-allocation of captive iron ore mine in Odisha

- (i) As per MoU with Govt. of Odisha, the Company was to be allocated a captive iron ore mine which would have ensured a cost-effective feedstock, basis which the Company went ahead with setting up the large integrated steel plant in the State.
- (ii) However, no mine was allocated and therefore the Company had to rely on purchased ore which is expensive, requires relatively higher inventory and higher working capital on account of

payment in advance for inventory purchases.

b. Delays in commissioning of several projects at Angul Plant

- (i) Key components of Oxygen plant were damaged during transportation for installation, and had to be sent to Germany for repairs, which lead to a five-month delay in plant commissioning.
- (ii) Ramping up of Blast furnace operations was delayed as it was observed that the support structures were under-designed and needed to be replaced.
- (iii) In addition, Cold Blast pipelines were offered to be replaced by the supplier based on its experience at another site, which lead to a further six-month delay in commissioning.

c. Accident in blast furnace which lead to closure of Angul plant

- (i) There was an unfortunate incident of fire/explosion in Blast Furnace-2 during the trial run in November 2013. As a result of the same, the Odisha Pollution Control Board directed the closure of Blast Furnace-2.

Though the Company was operating at a significant capacity with a large revenue base and positive earnings before EBITDA, it was incurring PAT losses and was in financial stress.

- (ii) The Blast Furnace-2 was restarted at significant cost, after a period of six months, during which time, the Company suffered losses on account of accumulated interest and loss of income due to delay in commissioning.

d. De-allocation of Coal Block

- (i) The Company was allocated the New Patrapara Coal block by the Union Ministry of Coal in 2006 along with seven joint allottees.
- (ii) In 2012, Ministry of Coal de-allocated the coal block pursuant to recommendations of the Inter-Ministerial Group (IMG) due to no substantial progress in development of the coal block. The IMG noted that time was lost due to litigation between the joint allottees and there was a significant delay in finalization of the mining plan. Subsequently, the Supreme Court cancelled all coal block allocations in 2014.

¹ Annual Report of the Company of FY 2016-17

² The Company's Financial Statements

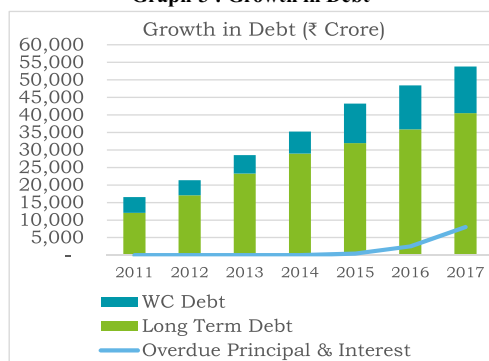
³ Information Memorandum (IM) prepared by SBI Caps for Flexible Debt Structuring, in March 2015.

- (iii) The Company had relied upon the coal block to setup a coal washery, DRI route of steel manufacture and a captive power plant. The deallocation of the coal block impacted the viability of the DRI route as the Company had to purchase expensive coal from the open market, and thus DRI capacity was not utilised optimally.

Due to the above factors, the Company's total debt outstanding increased, including accumulated interest prior to commissioning of the Angul plant. The Company and its lenders made several attempts at revival, including flexible restructuring of ~₹ 30,000 crores under the 5/25 scheme in July 2015. However, despite such efforts, the Company was not able to service its outstanding debt and the account was classified as a Non-Performing Asset (NPA) by several lenders.

The below chart evidences the ballooning debt (long term debt and working capital debt) and the overdue position. Long term debt increased by 235% from ₹12,087 Crore in FY2011 to ₹40,495 Crore in FY2017, while the working capital debt soared by 198% from ₹ 4,474 Crore (FY2011) to ₹13,326 Crore (FY2017) over the same period. In addition, the overdue interest and principal was ₹8,026 Crore in FY2017.

Graph-3 : Growth in Debt



4. Corporate Insolvency Resolution Process (CIRP)

4.2. Appointment of IRP/RP

In June 2017, Reserve Bank of India (RBI) identified 12 large accounts which were in default and instructed the lenders to file the application for initiation of CIRP. The

Company was identified on this list.

On July 13, 2017, application was filed by State Bank of India (Applicant) before the NCLT against Bhushan Steel Limited in terms of Section 7 of the Insolvency and Bankruptcy Code, 2016 read with its Rules and Regulations. The NCLT admitted the application of State Bank of India and appointed Mr. Vijaykumar V. Iyer as the Interim Resolution Professional (IRP) vide its order dated July 26, 2017 (Insolvency Commencement Date, ICD). The IRP was subsequently confirmed as the Resolution Professional (RP) by the Committee of Creditors (CoC) pursuant to the voting at the first CoC meeting held on August 24, 2017. With the active support of financial creditors and other stakeholders, the CIRP was completed within stipulated timelines envisaged under the Code and followed through with a quick implementation of the approved resolution plan.

The summary of the CIRP timeline is presented in **Annexure 1**.

4.2. Initial Assessment

The written order initiating the CIRP was issued by the NCLT on July 26, 2017, and the RP along with RP Team reached the Company's head office in New Delhi on the morning of July 27, 2017, for initial meetings with the management team and to take charge of assets of the Corporate Debtor.

Long term debt increased by 235% from ₹12,087 Crore in FY2011 to ₹40,495 Crore in FY2017, while the working capital debt soared by 198%.

The initial meetings were held at the corporate office between the key members of the management and the RP, RP Team- the legal advisors to the RP and the technical experts appointed by the RP. The objective of the initial meetings was to meet the promoters, directors, Key Managerial Personnel (KMPs) to explain the CIRP protocols, the roles & responsibilities of the RP, and to explain the expectations and cooperation sought from the promoters, directors, KMPs to achieve a successful resolution. The meetings were also utilised to further understand the issues and financial situation of the Company, their concerns and immediate pain points. In such meetings, the department heads from the plant locations also joined virtually.

Additionally, the RP Team and technical experts took charge of the three operating units of the Company

(Angul, Khopoli and Sahibabad). Similar initial meetings were held with the department heads and their teams at the respective plant locations.

Following are some of the key takeaways from these initial discussions:

a. Sustaining Plant operations

The infrastructure at the Company's plants was reasonably state-of-the-art and operating parameters were comparable to other key players in the Indian steel industry. The Company was able to operate its plants at viable utilisation levels with positive EBITDA. However due to high debt accumulated, such EBITDA was not sufficient to service the debt and Company was caught in a debt trap.

b. Condition of plants

The technical experts were convinced with respect to the capabilities of the plant. However, based on their analysis suggested certain capital expenditure to improve operating efficiencies such as improvement in SMS gas holder and pulverized coal injection facility and the completion of Coke Dry Quenching ("CDQ") facility to comply with environmental regulations.

c. Security and safeguarding of assets

The RP and RP Team also evaluated the security services and their positioning especially considering the vast area over which the plant facilities were spread, and the large number of employees and workmen living within the Company's township at Angul. A security agency was deployed to supplement and oversee the existing security arrangements and to safeguard each of the plant locations and assets therein.

d. Remote Plant locations

The integrated steel plant of the Company at Angul is located in a remote location within a sensitive tribal area.

e. Centralised operations under oversight of Promoters

While the manufacturing and dispatch activities were carried out from the plants, the primary marketing, sales and distribution activities were carried out from the corporate office of the Company by a few senior employees in consultation with, and with oversight of, the promoters. These consultations were largely verbal with limited audit trails.

Similarly, the technical head and procurement heads were also based out of the corporate office – and had been

working with the promoters and the Company for a long period of time.

The situation was exacerbated by the initiation of the CIRP, as all dues prior to the ICD were to be included in the claims.

f. Working Capital Position

- (i) Being an operational unit, the Company was generating cash to fund operations. However, due to the financial stress a portion of the cash generated was diverted towards meeting debt obligations.
- (ii) Further, the Company was maintaining minimal inventory levels which was a precarious situation for a continuous plant (Angul) as any inventory shortage could result in an unsafe shutdown of the plant. Such an unsafe shutdown could lead to significant damage to the plant, high restart costs and risk of harm to labour deployed at the plant. Therefore, it was imperative to increase and manage the inventory levels to ensure Angul plant's operations were not disrupted.

g. Sensitive situation at plant locations and strike by labours and transporters

There were unpaid dues of labour contractors, transporters and other vendors with payments being made with delay due to the financial position of the Company. The situation was exacerbated by the initiation of the CIRP, as all dues prior to the ICD were to be included in the claims.

There were labour strikes/factory gate lockdowns on account of delay in payment of wages by sub-contractors, which needed immediate attention due to continuous nature of operations at Angul. There were also instances for example where a transporter held material hostage for their unpaid dues.

4.3. Identified objectives

The key objectives identified by the RP for fulfilling his obligations under the Code were:

- a. To protect and preserve a sizeable asset with a continuous nature of operations at significant risk of damage in case of disruption in operations.
- b. Managing day to day operations despite large outstanding dues including dues to various statutory bodies.
- c. Managing a large set of stakeholders with diverse interests.

4.4. Measures taken to address challenges, maintain operations during CIRP process

The measures taken by the RP and RP Team to meet the challenges and maintain operations to achieve optimal resolution at the earliest and in not more than the 270 days (180 days + 90 days of extension provided by the Adjudicating Authority) as prescribed in the Code include the below:

a. Managing Operations

The RP and RP Team deployed senior technical people for assistance in managing the operations of the Company. The team shadowed the KMPs and was included in all key decisions with respect to operations, while the day-to-day operations were left to the existing management and employees.

Considering the critical role of employees and labour it was ensured that salary dues are paid by 10th to 12th day of the following month.

Such deep involvement led to control over operations, and some key steps by the RP and RP Team to improve operations such as restricting supplies to customers with long overdues, limiting related party transactions, etc.

(i) Sales

The centralised sales team of the Company booked orders for delivery over the short term and there were no significant long-term sale contracts.

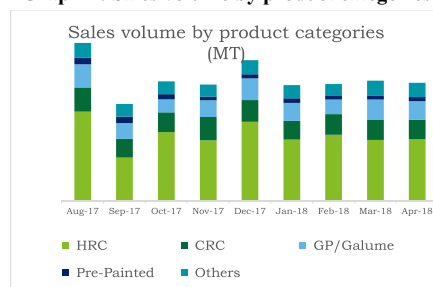
Further, historically it was observed that sales in the months of July / August were low for the steel industry. However, the Company witnessed significantly high sales in August 2017, the month immediately following the commencement of CIRP period.

Sales in September 2017 were subsequently low, in part due to the relatively high offtake in August, and in part due to the concern of various customers in the initial period of CIRP regarding continuity of operations of the Company and assurance of supplies.

The RP Team interacted with various customers and assured them of continued operations.

During the CIRP period, the Company was able to maintain sales with an average monthly offtake of ~324k MT (August 2017 – April 2018).

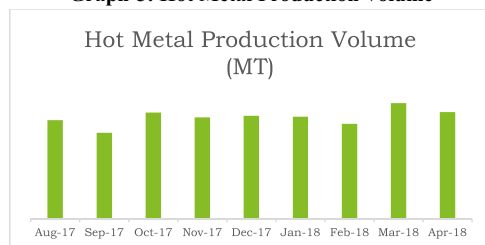
Graph-4: Sales volume by product categories



(ii) Production

The Company was also able to maintain production levels during the CIRP period, with average hot metal production during the period (August 2017 – April 2018) at ~335k MT, despite limited inventory to start with.

Graph-5: Hot Metal Production Volume



b. Managing Working Capital/ Cash

In order to ensure control over the cash generated from operations, the RP Team initiated preparation of weekly budget, and tracked performance against such budget which covered:

- (i) Collections
- (ii) Raw material purchases
- (iii) Labour payments
- (iv) Statutory payments

On subsequent stabilization of operations, the budget was prepared on a monthly basis.

Further, all the payment requests received from the Company were reviewed and scrutinized at multiple levels by the RP Team and only post such scrutiny were payments forwarded to the bank for processing. In addition, periodic reconciliation was carried out between final payments made by the bank and approved payments to ensure that no unauthorized payments were being made.

Such control over cash / payments also helped the RP

Team in prioritising key inventory items and in ensuring that adequate inventory level was maintained at all times.

Due to the above steps, the CIRP period resulted in adequate inventory build-up, and cash surplus for the Company, with net cash generated at the end of CIRP of >₹ 500 Crore. In addition, there was margin build-up for Letter of Credit (LCs) / Bank Guarantee (BGs) to the tune of >₹ 500 Crore.

RP and RP Team remained in close dialogue with such suppliers. As a result, there were no disruptions in operations/sales during the CIRP.

c. Various regulatory authorities

At the commencement of CIRP, intimations were sent to major authorities informing them of commencement of CIRP, and requesting them to file their claims, if any, as per the provisions of the Code.

On receipt of notices from authorities, replies were sent to them intimating about the provisions of the IBC. The RP and RP Team closely monitored the communication with such authorities and held meetings with several critical authorities including labour department officials who had oversight of the Angul Plant.

d. Critical suppliers and key customers

At the commencement of CIRP, intimations were sent to major customers and suppliers informing them of commencement of CIRP, and requesting them to file their claims, if any, as per the provisions of the Code.

Meetings were also held with selected suppliers and customers to assure them of continued operations during the CIRP period and the need for their on-ground support.

Further, to continue operations of the Company as a going concern, existing suppliers were needed to continue supply of critical raw materials. As per the Code, past dues were to be included in claims as on Insolvency Commencement Date (ICD), however, some key suppliers demanded past payments for making continued supplies.

RP and RP Team remained in close dialogue with such suppliers. As a result, there were no disruptions in operations / sales during the CIRP.

The Company was hence enabled to achieve one of its highest ever monthly production and sale of liquid steel during the CIRP period.

e. Employees / Labour

The RP and RP Team held regular meetings with key employees, labour contractors / labour commissioner seeking support during CIRP.

Further, considering the critical role of employees and labour, the payments were streamlined and prioritised, resulting in payment of salary dues by 10th to 12th day of the following month, an improvement over extant practice of deferred payments.

The Company was hence able to ensure that there were no significant disruptions during the CIRP period on account of delayed payments.

f. Books of account and financial statements

Being a listed entity, the Company was required to prepare quarterly financial statements and publish the same to the stock exchanges. As a result, there was a process in place for updating the books of account and finalisation of financial statements. In order to meet the strict timelines under the listing requirements, the RP and team maintained oversight of such procedures. Further, the notes to account relevant to the CIRP process were particularly reviewed by the RP and team.

In order to meet the strict timelines under the listing requirements, the RP and team maintained oversight of such procedures.

With respect to annual financial statements, the CIRP commenced in the month of July 2017, and by then the company had already prepared its annual report for the previous financial year. Further, as the CIRP was completed by the month of May 2018, and the affairs of the Corporate Debtor were transferred to the incoming management, the annual report for FY2018 was finalised and published by the incoming management of the successful resolution applicant.

To attract investors, the RP Team prepared marketing material for the transaction and reached out to several strategic and financial investors, both domestic and international.

5. Resolving claims of creditors

Total claims of ₹ 62,002 crore as on ICD were submitted by various categories of creditors, out of which claims of ₹ 57,505 crore were admitted by the RP and RP Team, post detailed verification.

Table 1 : A summary of claims against the Company

S. No.	Category of Creditor	No. of claims	Amount claimed (₹ Crore)	Amount admitted (₹ Crore)
1	Financial Creditors other than preference shareholders	53	56,080	56,022
2	Financial Creditors – Preference shareholders*	48	2,357	-
3	Operation Creditors other than Workmen and Employees	1,035	3,563	1,483
4	Operational Creditors - Workmen and Employees	40	1.90	0.32
	Total	1,176	62,002	57,505

**The preference shareholders were related parties of the Corporate Debtor.*

During the CIRP, large claims were received from several financial creditors with varied restructuring structures and consortiums. RP and RP Team invested considerable amount of time to go through these facility agreements, inter creditor agreements, security documents and bank statements to plot the sanctioned, disbursed, and outstanding amounts including unpaid interest and penal interest, charges, etc. and the security interest for each of the facilities.

Several financial creditors had submitted manual calculations of interest and such calculations were meticulously rechecked with iterations between the RP Team and financial creditors. Considering the different methodologies followed by the financial creditors in maintaining accounts at their end, especially for NPA accounts, the RP Team had to examine each claim individually without reliance on any set template.

A point of note is that during the plan implementation phase it was required to identify each Financial Creditor which was the beneficiary of pledge of shares given by the promoters. The methodologies followed and the extensive documentation by the RP Team facilitated the successful resolution applicant, TSL, in identifying the pledge beneficiaries and in implementing the resolution plan.

Some of the major challenges in claim verification and approach to mitigate such challenges are as follows:

a) Inadequate support from the management

Receiving adequate information from the management of the Corporate Debtor was a challenge and access to the accounting system (systems, applications, and products, SAP) was delayed. RP and the RP Team engaged vigorously with the management and conducted multiple meetings with the promoter and KMPs to obtain the relevant information.

This is apart from obtaining directions by the Adjudicating Authority to the KMPs and promoters to provide support to the RP on an application filed under section 19 of the Code.

b) Lags in accounting of invoices and improper accounting system

It was observed that the books of account of the Company were not up to date and there was a time lag which could be witnessed in recording of invoices. This limited the reliability of the books of account of the Company for the purposes of claim verification.

It was observed that in several cases, the classification in the books of accounts was erroneous which required detailed reconciliations to be conducted.

The Company also utilised two accounting software – one for capital expenditure, and one for operating expenditure and other items. The two systems were not integrated and were manually aggregated and included in the financial statements.

It was observed that in several cases, the classification in the books of accounts were erroneous which required detailed reconciliations to be conducted.

RP and team conducted meetings with the claimants to understand the nature of their claims and further performed the reconciliation with the books of accounts.

The RP Team also took assistance from the accounting team and the auditors of the Company in performing reconciliation exercise to facilitate verification of the claims.

c) Each claimant had its own story to tell

Claims received were different in nature and no particular methodology could be applied for verification to all or most of the claims. Each claim was required to be studied in detail, the underlying work orders and invoices were

required to be verified and then the claim was admitted basis the supporting documents submitted by the claimant and the detailed reconciliation exercise undertaken by the RP Team.

There were claimants who were unaware of the claim submission process as prescribed in the Code and hence the RP Team explained the key process as per the Code to such claimants and handled them in filing their claims.

Some of the claims, including from Statutory Authorities, were under litigation. On the advice of the legal advisor, such claims were admitted at a notional value of ₹ 1.

d) Claims including Tax Deducted at Source (TDS)

Many of the operational creditors also sought to claim their TDS liabilities since the Corporate Debtor had not furnished the TDS certificates to them, despite depositing the tax against the same. The RP Team after understanding the matter, instructed the management to issue TDS certificates to such vendors which lead to reduction in their claim amounts and further developed confidence in such vendors and suppliers.

e) Claims under litigation

Some of the claims, including from Statutory Authorities, were under litigation at various forums. Advice was sought from the legal advisor on such claims, and basis their inputs, such claims were admitted at notional value of ₹ 1 since the amount payable against such claims was sub-judice and could not be determined as of the ICD. Details of such cases formed part of the data room to be accessed by potential resolution applicants.

f) Claims pending for >5 years

Certain creditors filed claims for outstanding dues of last seven to eight years and it was noted that they provided critical capital goods or services to the Company. The lapse of extended time complicated the reconciliation / verification of such claims.

RP and team had to undertake detailed discussions with such creditors, the projects team and accounting team of the Corporate Debtor to understand and reconcile such claims as part of the verification.

For example: in the case of one of the large operational creditors where capital goods were supplied several years prior to ICD, there were many on-going disputes and several failed attempts at reconciliation in the past. The RP

Team organized multiple meetings with key officers of the Corporate Debtor and management of the claimant and undertook a detailed reconciliation exercise to resolve past disputes, taking cognizance of past settlement agreements (even if not honored) and verified the claim amount which was acceptable to both the parties.

6. Activities related to the resolution plan

The Code provides for a public issuance of invitation for expression of interest. Considering the size of the Company, the RP and team also thought it prudent to aggressively market the asset to all potential investors in order to garner adequate interest in the resolution process.

The RP Team prepared marketing material for the transaction and reached out to several strategic and financial investors, both domestic and international.

As a result of such efforts, and the quality of the underlying asset, the RP received expression of interest from over twenty parties, of which most of the parties thereafter signed the confidentiality undertaking sought and received access to the virtual data room created by the RP. Close to ten parties also completed site visits as part of their diligence exercise – showing keen interest in the process.

a. Evaluation Matrix

Considering the large number of members of the CoC and the size of the asset, the CoC appointed an external advisor to assist them in the resolution process, in preparation of the Request for Resolution Plans (Process Document), and finalization of evaluation criteria for inviting eligible resolution plans from potential resolution applicants. This Process Document was disseminated to potential resolution applicants through the Virtual Data Room (VDR) to provide them a framework for submission of resolution plans, and to clearly outline the evaluation criteria for the resolution plans.

b. Diligence process by potential resolution applicants

As mentioned above, a VDR was maintained to facilitate the diligence process from multiple parties across geographies and considering the strict timeline envisaged under the Code. Further, physical data room access was also provided for legal and secretarial documents which were otherwise unwieldy in terms of scanning and uploading to the VDR.

In order to expedite and facilitate the diligence by multiple potential resolution applicants, the RP, with approval from CoC, commissioned a Legal Diligence Report and a

Technical Diligence Report.

The RP also facilitated meetings of potential resolution applicants with the management of the Corporate Debtor, and a committee of members of the CoC, along with CoC Advisor & legal advisor to the CoC.

c. Receipt of Resolution Plans

In pursuance to the code, RP received resolution plans from three resolution applicants.

The resolution plans, as per the Process Document, were received in sealed envelopes. To ensure integrity of the process, the RP further sealed the envelopes in an outer covering which was initialled by representatives of RP, legal advisor to the RP and the respective resolution applicant.

Such exercise was undertaken to ensure that there was no possibility of the resolution plans being inadvertently disclosed prior to the formal opening.

d. Opening of Resolution Plans

In order to maintain complete transparency and integrity of the resolution process, the resolution plans were opened only in the presence of representatives of all the three resolution applicants, and in a recorded session.

All resolution applicants were informed of date and time for the bid opening and were invited to attend the same.

The sealed cover put in place by the RP was opened post confirmation from the resolution applicants that such covers were not tampered with. Subsequently, the sealed envelopes provided by the resolution applicants were opened.

On opening of the resolution plans, the back of each page of each resolution plan was stamped and initialled by the RP, representatives of each resolution applicant, legal advisor to the RP, legal advisor to the CoC and the CoC advisor for evaluation of resolution plans. The objective of such initialling was to remove any potential allegations that a particular page in the resolution plan has been subsequently modified.

The transparency maintained in the receipt and opening of resolution plans, ensured that there was no allegation of misconduct in opening of the resolution plans.

e. Evaluation of resolution plans

Resolution plans and associated documents were subsequently scanned and shared with the CoC members, legal advisor to CoC, legal advisor to RP, and CoC advisor

for evaluation of resolution plans, through the VDR only, which ensured that the security protocols applied in the VDR were applied to the resolution plan documents as well to maintain confidentiality. The access to VDR was only provided to those members of CoC and its advisors who had signed NDA as per the Code.

In accordance with the Code, the RP, with assistance from the legal advisor to RP, ensured compliance of the resolution plan with the Code and shared the compliant resolution plans with the CoC.

The sealed cover put in place by the RP was opened post confirmation from the resolution applicants that such covers were not tampered with.

Subsequently, the CoC and its advisors evaluated the resolution plans in accordance with the Process Document and the communicated evaluation criteria.

The RP facilitated presentations by each of the resolution applicants to a committee of members of the CoC to highlight the key aspects of the resolution plan, and provide any explanations, wherever relevant.

f. Announcement of H1 resolution applicant

As per the Process Document, the H1 resolution applicant was declared, and same was communicated to the H1 resolution applicant. Other resolution applicants were also informed that they had not been selected as H1.

g. Discussions with H1 resolution applicant

Discussions were held between the H1 resolution applicant and the CoC members to cater to concerns and requirements of CoC members and the outcome of these discussions, was suitably recorded in the form of amendments to the resolution plan and shared with the CoC members for their consideration.

The final, negotiated resolution plan was put to vote and unanimously approved by the CoC.

It may be noted that three members of the CoC (cumulatively less than 0.5% voting share) were not able to vote within the stipulated timelines due to various logistical issues, and subsequently filed affidavits before the NCLT to be considered as consenting members of the CoC with respect to the approved resolution plan.

h. Pre-work

Once the resolution plan was approved, it was immediately filed with the NCLT for its consideration and approval. While there were a few applications filed against

the resolution plan, due to the transparent process followed, there was no allegation of impropriety in the process.

In order to implement the plan expeditiously post approval and avoid any unnecessary delays, several preparatory meetings were held between legal advisors to the CoC, legal advisor to the RP, RP and the successful resolution applicant, TSL, to chalk out the plan for implementation of the approved resolution plan.

Key bottlenecks / dependencies for implementation were identified during such discussions and steps were taken to resolve the same.

A detailed implementation structure was planned out along with timelines which were followed strictly and successfully completed.

Applications for requisite approvals were made to the RBI and Competition Commission of India by TSL prior to receipt of approval from the NCLT to ensure that no time was lost subsequently.

Further, the applications to other relevant authorities such as the Securities and Exchange Board of India (SEBI), and stock exchanges were prepared in advance, so that they could be sent immediately on receipt of approval on the resolution plan.

The proposed transactions documents and process were also discussed in detail and finalized prior to NCLT approval.

In order to ensure payments as envisaged under the resolution plan were made to the respective accounts on time, the RP Team verified and collated the bank account details of each Financial Creditor and also obtained confirmations of the same from such creditors.

Further, the CoC advisor prepared detailed computations of amounts to be paid to each financial creditor as per the resolution plan, and also the shares under pledge to be invoked / allocated to financial creditors as applicable. The resolution plan also envisaged allotment of shares to each of the financial creditors and the necessary internal approvals from creditors and documentation for allotment of shares was prepared and kept ready for expedited execution on approval of the resolution plan.

The resolution plan envisaged a partial payment to each of the financial creditors. Detailed discussions were held with respect to novation of the unpaid debt to TSL, which was captured in the transaction documents. Further, negotiations

were also held between TSL and the CoC to determine the manner for appropriation of payments under the resolution plan to ensure a tax efficient structure for TSL.

All these steps ensured that the resolution plan was implemented in an expedited manner once the approval from NCLT was received.

i. Closing actions

The approval from NCLT was received on May 15, 2018 and thereafter, the agreed upon transaction documents were executed by each Financial Creditor and TSL.

The closing steps included opening of bank accounts as per the transaction documents, conduct of Board Meeting of the Corporate Debtor to allot shares to TSL, infusion of funds by TSL towards allotment of such shares, reconvening of Board Meeting for infusion of funds to repay the financial creditors and actual transfer of funds as per the Code and approved resolution plan.

The total realisation by creditors under the resolution plan was as below:

Table-2: Realisation by creditors under the resolution plan

S. No.	Category of Creditor	Amount Admitted	Resolution Achieved
1	Financial Ccreditors other than preference shareholders	₹ 56,022 Crore	₹ 35,200 Crore + 12.26% shareholding in BSL
2	Operation Creditors other than Workmen and Employees	₹ 1,483 Crore	₹ 1,200 Crore
3	Operational Creditors - Workmen and Employees	₹ 0.32 Crore	₹ 0.32 Crore
	Total	₹ 57,505.05 Crore	₹ 36,400.32 Crore + 12.26% Shareholding in BSL

7. Post CIRP / acquisition activities^{4,5}

In pursuance to the NCLT order dated May 15, 2018, the

⁴ Business Today, How Tata Steel turned around bankrupt Bhushan Steel, May 18, 2021 (<https://www.businesstoday.in/latest/corporate/story/how-tata-steel-turned-around-bankrupt-bhushan-steel-296337-2021-05-18>)

⁵ Annual report of TSBSL for FY2020-21

custody of the Corporate Debtor, was handed over to TSL on May 18, 2018. The Company was subsequently renamed as Tata Steel BSL Limited (TSBSL) w.e.f. November 27, 2018.

TSL re-designed the organisational structure and created dedicated functional departments within a month of acquisition for safety, environment, Corporate Social Responsibility (CSR), vigilance and ethics, human resources, transformation, shared services, and industrial by-product management, among others.

Post-CIRP, Company has achieved revenue of ₹ 21,536 Crore in FY2021 and a consolidated net profit of ₹ 2,518 Crore.

The gross debt of erstwhile Bhushan Steel Limited was ₹ 63,020 crore as of 2018. The debt stands at ₹ 17,028 crore on March 31, 2021.

- TSBSL focused on leveraging group synergies with Tata Steel group companies to increase use of captive raw material, optimizing product mix to maximize system benefits, horizontal deployment of best practices across the value chain, manufacturing of TSL branded products at the plants and leveraging the channel and distribution network of TSL for increasing the share of branded products. The plant achieved multiple BPDs (best-demonstrated-performance) throughout the year across multiple cost & throughput

parameters which accelerated the journey towards 5.2 MTPA of crude steel production.

- Key initiatives on throughput include - debottlenecking across upstream units like Raw Material Handling System ('RMHS'), Steel Melting Shop ('SMS'), Hot Strip Mill ('HSM') etc. and multiple downstream units, maximizing the utilization of Direct Reduced Iron ('DRI') kilns (7 kilns in operation). Besides these, the initiatives focused on value creation including – customer diversification in multiple segments, ramping up volumes of branded products (including launching of three new brands – ColorNova, GalvaNova, GalvaRos), increasing the sales of value-added products, external sales of DRI and various by-products (1st ever dispatch by rakes).

8. Conclusion

As a result of the above revival efforts, the Company has achieved revenue of ₹ 21,536 Crore in FY2021 and a consolidated net profit of ₹ 2,518 Crore and is currently a viable asset contributing to the income generation in the nation. The stock price of the Company has also increased from ₹ 27.65 per share on May 18, 2018 (date of implementation of resolution plan) to ₹ 52.15 on March 31, 2021, significantly contributing to the wealth generation in the country and underlining the fact that Bhushan Steel Limited is one of the marquee successes of the IBC regime.

2

CHAPTER

Resolution of Jal Power Corporation Limited (JPCL)

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

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

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

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

1. Introduction

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

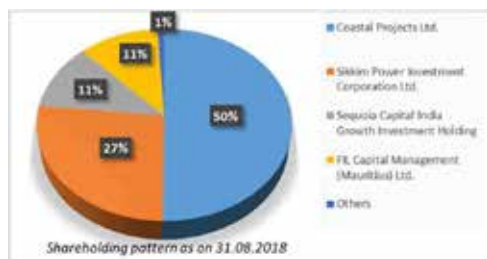
Initial project cost was estimated ~ ₹ 775 Crores which was funded by debt and equity in the ratio of 75:25. The Corporate Insolvency Resolution Process (CIRP) of the company was initiated on April 9, 2019 under the Insolvency and Bankruptcy Code, 2016 (IBC or Code).

2. Company and project profile

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

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

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



Graph 1: Shareholding pattern

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

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

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

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

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

h. Key Technical specifications of project:

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

(ix) Surge shaft with steel liner.

(x) Equipment designed for 10% continuous overload.

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

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

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

k. **Major reasons for cost overrun**

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

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

(vi) Occurrence of landslides in dam area.

(vii) Floss/increased discharge of Rangit River.

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

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

2.1 Understanding the project and company operation

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

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

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

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

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

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

2.1.5 Critical project related compliances and registrations.

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

2.2 Retention of employees/workforce and rationalization of cost

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

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

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

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

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

2.3 Continuation of dewatering activities and security of project asset

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

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

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

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

2.3.4 Security of magazine house (where explosives

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

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

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

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

2.4 Maintenance of Project affected families

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

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

2.5 Security of project equipment

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

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

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

2.6 Identification of construction equipment not owned by company

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

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

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

2.7 Restoration of electricity at project site

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

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

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

2.8 Site management due to Covid pandemic during CIRP

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

2.9 Project Insurance

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

2.10 Inter-Creditor Issues

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

3. Corporate Insolvency Resolution Process (CIRP)

3.1 Appointment of IRP & RP

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

Professional ("IRP") of the Company.

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

3.2 Invitation to submit the Resolution Plan

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

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

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

3.3 Receipt of Binding Resolution Plan

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

process more informative and efficient for the prospective resolution applicants.

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

3.4 Approval of the Resolution Plan by the CoC

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

3.5 Delayed approval by the NCLT

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

- 3.5.3 Considering the interest of all stakeholders, RP took various initiatives to expedite the process of approval of the resolution plan including filing of the Interim application with NCLT for urgent listing of the resolution plan approval application.
- 3.5.4 Resolution plan approval application was listed for hearing on July 31, 2020, and after hearing the clarifications from the legal counsel, the order was reserved by the NCLT.
- 3.5.5 Post the above hearing RP approached the Registrar of NCLT, Hyderabad, sent an email requesting the authorities to pronounce the order with respect to approval of resolution plan which was reserved on July 31, 2020.
- 3.5.6 Since the approval was delayed, a request was received from the successful resolution applicant i.e., NHPC Limited whereby they conveyed their intention to initiate the tendering process for the project prior to the approval of its resolution plan to expedite the preparation of the working of the project.
- 3.5.7 RP discussed with members of the CoC on the request of NHPC and explained the facts and rationale behind the requests. The said request was unanimously approved by CoC.
- 3.5.8 During this interim period, RP was in constant touch with the Successful Resolution Applicant to understand the requirements for an effective handover. This period was utilized by the RP team and Corporate Debtor staff to list out various files, number them, do regular stock checks, etc. so that the time taken for handover is reduced significantly. RP also asked the Successful Resolution Applicant to be ready with its preparation for takeover of the Company i.e., be ready with its nominees of Board of Directors, new CEO etc. All these preparations helped RP to complete the handover formalities in a short period of ~2.5 months after NCLT approval.
- 3.5.9 The NCLT finally passed an order² approving the Resolution Plan on December 24, 2020.

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

4. Handover of the Corporate Debtor to NHPC Limited

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

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

5. Completion of Handover to NHPC Limited

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

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

Conclusion

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

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

3

CHAPTER

Resolution of Orchid Pharma Limited

Orchid Pharma Limited (OPL) was part of the second list of 28 defaulters that Reserve Bank of India (RBI) had flagged for resolution in August 2017. Pursuant to petitions filed by Lakshmi Vilas Bank, an Operational Creditor (OC) under Section 9 of the IBC, the National Company Law Tribunal (NCLT), Chennai Bench, vide order dated August 17, 2017, admitted application for initiation of CIRP for OPL. Mr. CMA CS Rajendran, Insolvency Professional (IP) was appointed as Interim Resolution Professional (IRP) and Mr. Sripatham Venkatasubramanian Ramkumar, IP was later confirmed as Resolution Professional (RP) vide order of NCLT, Chennai Bench dated October 27, 2017, to manage the affairs of the Corporate Debtor (CD). With more than ₹3,600 crore of creditor claims, 24 members in the Committee of Creditors (CoC) and 1,600 employees and workers, timely crisis management and stabilization, stakeholder management, strategic focus, and process improvement initiatives during CIRP not only resulted in a successful resolution but also laid a strong foundation for the turnaround of the CD. A joint effort by the CoC, RP, Resolution Applicant, advisors of all parties and dedicated team of the CD led to the successful resolution of OPL during the first phase of Covid-19 lockdown.

*The present case study, sponsored by IIIPI, was developed by Mr. Ramkumar in which he has provided a first-hand step by step guide to resurrect a corporate life even in adverse situations. **Read on to know more...***

1. Introduction

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

- a) Maintaining the CD as a Going Concern (GC) during the entire 31 months of CIRP
- b) Cost reduction and optimisation achieved across different expense heads resulting in efficient and sustainable operations
- c) Retention of major customers in regulated markets by building trust and meeting their requirements in time
- d) Retention of key employees and rewarding them suitably to ensure that operations are run unhindered

- e) Handling the litigations faced from unsuccessful resolution applicants and non-implementation of resolution plan by a resolution applicant leading to annulment of plan
- f) Lastly, implementation of the resolution plan during 1st wave of Covid-19 induced lockdown

2. Business Profile of the CD

Established in 1992 as an export-oriented unit (EOU), Orchid Pharma Ltd (CD) is a vertically integrated company spanning the entire pharmaceutical value chain from discovery to delivery with established credentials in research, manufacturing, and marketing. The CD ranked among the top 50 pharmaceutical companies in India and had multi-therapeutic presence across segments like anti-infectives, anti-inflammatory, Central Nervous System (CNS), Cardio-Vascular Segment (CVS), nutraceuticals, other oral and sterile products.

The CD ranked among the top 50 pharmaceutical companies in India. It is listed on India's NSE and BSE and Luxemburg Stock Exchange, Luxemburg.

The CD also provides pharmaceutical solutions including Active Pharmaceutical Ingredients (API) and finished dosage forms. It had global presence across 40+ countries through alliances and partnerships with globally reputed majors. The API facility is located at Alathur, Tamil Nadu and formulations facilities at Alathur and Irungattukottai (IKKT), Tamil Nadu. The facilities have from time to time been inspected and approved by global regulatory authorities including United States Food and Drug Administration (USFDA), United Kingdom Medicines and Healthcare products Regulatory Agency (UK MHRA), European Directorate for the Quality of Medicines & HealthCare (EDQM), Pharmaceuticals and Medical Devices Agency, Japan (PMDA), Directorate of Medical Affairs (DMA), Medicines Control Council, South Africa (MCC) and Therapeutic Goods Administration, Australia (TGA). The API facility is one of the largest manufacturers of broad-spectrum antibiotics and had a capacity of 900 MT per annum and FDF units specialised Non-Penicillin, Non-Cephalosporin drugs and had a combined capacity of 1 billion tablets/ capsules per annum. Further, the CD is listed on India's NSE and BSE and Luxemburg Stock Exchange, Luxemburg.

This Case Study is divided into three stages – Pre-CIRP Performance, CIRP and Post-CIRP. Each stage had its

separate set of challenges requiring the RP and team to adapt to the dynamic environment and simultaneously cope up with the then ongoing pandemic during implementation of resolution plan.

3. Pre-CIRP performance

3.1. Performance during three years before CIRP commencement:

- a) The Company was under severe stress from 2012 onwards and was admitted to restructuring under Corporate Debt Restructuring (CDR) scheme in 2014.
- b) The sales of the company reduced gradually by ~168% during the said period, however the pre- EBITDA costs during the said period increased from 82% of sales to 98% of the sales. Given the same, the EBITDA margins reduced drastically from 18% to 2%. Below is the snapshot of the same:

Table 1: EBITDA Percentage

Particulars	2013-15	2015-16	2016-17	2017-18
	18M	12M	12M	12M
Revenue (₹ Crores)	1,736	879	755	649
Operating expenses (₹ Crores)	1,416	705	663	635
EBITDA (₹ Crores)	320	174	92	14
EBITDA %	18%	20%	12%	2%

- (c) Despite the decrease in the operating levels, the company was unable to control the proportionate costs which has resulted in erosion of margins.

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

- a) Due to the liquidity crunch and ongoing debt restructuring exercise (CDR), OPL's plants were running at lower capacity utilization. The lower capacity utilization resulted in delay in supply of orders to customers, thus affecting the 'order book' of the company.
- b) Costs (Direct material cost and fixed overheads) were significantly higher than competitors due to lower capacity

utilization.

- c) The company has lost orders from major customers due to delay in fulfilling the 'order book' which has severely affected the cash flows.

4. Corporate Insolvency Resolution Process (CIRP)

NCLT vide its order¹ dated August 17, 2017, initiated the CIRP of the CD under Section 9 of the IBC. The CoC in the first meeting proposed to appoint Mr. Sripatham Venkatasubramanian Ramkumar as the RP of the CD which was also confirmed by Adjudicating Authority (AA) vide order dated October 27, 2017.

4.1. Initial Assessment

Post receipt of the order from the NCLT, the RP along with his team met with the incumbent management team of the CD, to take charge of its assets and to understand the existing business operations and the organizational structure. The RP also informed the management regarding the provisions of the IBC and laid down the roadmap for maintaining the going concern of the business during CIRP and for future co-ordination and expectations from the incumbent management.

The meeting helped in identifying key Point of Contacts for critical functions and in identifying critical functions, current status of licenses and approvals and steps to be undertaken for maintaining the regulatory licenses.

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

- a. **Large employee base with salary delays for both on-roll and contractual employees:** With over 1600+ employees, the company was a major source of employment and livelihood in the part of country where it operated. The declining profits and cash crunch had resulted in salary delays of two-three months across locations and also created a huge uncertainty among

the employees. Initiation of CIRP also largely depleted the morale of the employees.

- b. **Working capital challenges and cash crunch:** During the year preceding the commencement of insolvency, the company faced severe cash crunch due to reducing business operations which eventually resulted in payment delays across stakeholders including employees, suppliers, statutory agencies, and financial creditors.
- c. **Trust deficit with customers and risk of business loss:** Given that the company had long-term contracts with customers, liquidity issues and subsequent initiation of CIRP created concerns on the ability of the company to satisfy its contractual obligations. The customers also panicked and started inducting alternate supply sources for securing their inputs. This led to a fall in the order book of the company and was also unable to attract new customers.

The declining profits and cash crunch had resulted in salary delays of two-three months across locations and also created a huge uncertainty among the employees.

4.2. Key Concerns/Challenges faced by the RP

- a. **Absence of CFO / COO / Sales / Procurement Heads:** Company did not have full time Chief Financial Officer (CFO), Chief Operating Officer (COO), Sales Head, and Procurement Head. This resulted in respective teams working without proper guidance and direction. The entire operations of CD were done under the guidance of RP and his team for 31 months of CIRP period (Oct 2017 to March 2020) with no promoter involvement.
- b. **Ability to retain required workforce and reduce the employee cost:** The company's operation essentially mandated to have experienced workforce and with the long outstanding employee dues, the RP had to convince and keep the talented workforce

¹ NCLT Chennai, *Laxmi Vilas Bank Ltd. Vs. Orchid Pharma Ltd.*, CP/540/IB/2017, Date of Order, August 17, 2017.

motivated throughout the entire CIRP period. On another hand, the company had huge employee strength which essentially meant huge payroll expenses which is not commensurate to the level of operation at the initiation of CIRP.

- c. **Stoppage of LC issuance by banks:** The lead bank which was supporting with LC facility against 100% margins stopped issuing LC in April 2018. This has resulted in paying vendors in advance for securing supply of Key Starting Materials (mostly imported) thereby extending the working capital cycle by at least 90 days which has put further stress of cash flows and corresponding production.
- d. **Cap on limit of Forex advances:** Due to restrictions in FEMA regulations, the FOREX advances were limited to \$ 200,000 per vendor at any given time resulting in longer lead time for procurement and receipt of Key Starting Materials (KSMs) from China which were essential for uninterrupted production.
- e. **Crisis in electricity supply:** Company was procuring power from a power generating company under captive consumption. However, CIRP was initiated on the power generating company in March 2019 that stopped production due to liquidity issues which meant that the CD had to procure power from Tamilnadu Electricity Board (TNEB) at 50% higher rates which would further erode margins heavily as power is a major cost contributor in the manufacturing process.
- f. **Disproportionate cost structure:** The company did not have adequate systems in place to monitor the expenditure incurred for production and other overheads. This has led to a situation wherein no control was exercised in the manner expenses were incurred.
- g. **Continuous monitoring of Regulatory aspects:** Since the company is operating in a highly regulated environment, the RP and

team has to ensure all necessary compliances required as per Good Manufacturing Practice (GMP) standards on a continuous basis. Further, RP had to facilitate completion of USFDA inspections and EU GMP inspections during his tenure. Since the cost of non-compliances are huge and the RP and his team had to regularly monitor and spend extended hours to ensure timely compliance of GMP standards.

Increments of ~10% to ~30% for the performing employees were given twice during CIRP period with the approval of the CoC.

4.3. Solutions / steps taken by the RP

- a. **Sales and marketing functions:** RP headed the entire sales function wherein he was directly meeting customers to provide them necessary assurances and ensured that additional products with higher margins are sold to them as well thereby increasing capacity utilization and better realisation from limited production.
- b. **Retaining workforce:** Employee payroll was rationalized during CIRP period resulting in ₹ 8.65 Crores savings a year and employee strength came down from ~1,600 at the start of CIRP to ~1300 towards the end of CIRP. RP also ensured elimination of unnecessary costs like doing away with idle contract manpower, etc. Increments of ~10% to ~30% for the performing employees were given twice during CIRP period with the approval of the CoC (Feb 2019 and Dec 2019) to retain the talented workforce from the savings obtained through rationalising workforce.
- c. **Alternate power purchase:** Given that the company was staring at a power crisis, the RP was quick in identifying alternate power sources, i.e., RP started procuring power from IEX energy exchange which also resulted in savings of electricity cost by ₹ 70-80 lakhs per month compared to procurement from state distribution utility.

d. **Optimisation of fixed overheads:**

The RP and team have put in budgeting systems in place and started evaluating the nature and scope of recurring expenses incurred by the CD. Unnecessary costs incurred in manpower, overheads, electricity, insurance and other areas are identified and reduced which has resulted in contributing to the increase in EBITDA from 2% at the start of CIRP to ~15% during the CIRP period.

- e. **Change in product mix:** The company focused on products yielding higher margins and meeting needs of regular customers thereby improving the EBITDA levels from being negative (pre-CIRP) to 12-15% during CIRP period (~31 months of operations). The capacity utilization levels also increased from 35% to 40% with better realization of product mix produced.

- f. **Implementation of MIS systems:** RP introduced monitoring systems to streamline the payments and push for early collections. Further, RP implemented cross-functional MIS systems and deployed business intelligence tools to enable data driven decision making within the organisation.

- g. **Maintenance of compliance calendar and facilitate completion of regulatory inspections:** RP successfully completed 3 USFDA and 2 EU GMP inspections during his tenure. The inspecting authorities recommended continuation of the respective licenses / approvals. Extension of the regulatory approvals helped the company not only to continue as a going concern but also in attracting Potential Resolution Applicants (PRAs). RP also maintained compliance and license calendars to ensure that the renewals were applied for within the prescribed time limits and all necessary approvals are kept up to date.

- h. **Identifying alternate vendors:** Given the FEMA cap on advances, RP identified/

approved new vendors and material requirement was spread across multiple vendors within the limit prescribed. This has resulted in securing the necessary supply of KSM without any delays which otherwise would have hampered production.

- i. **Alternates to Letter of Credit (LC):** Negotiation with customers explaining the constraints faced by the company resulted in receipt of part advances for orders placed and elongation in credit period offered keeping the working capital cycle in control.

4.4. The Resolution Process

4.4.1. Failure in Implementation

The RP published an advertisement for inviting Expression of Interest (EoI) for the CD on February 09, 2018. An application for liquidation was filed on 270th Day i.e., May 14, 2018, by the RP, when no plan was received till 270 days and CoC voted in favour of it. Applicant-1 approached the NCLT for their plan to be considered and NCLT vide letter dated May 28, 2018, directed the RP to consider the same. Subsequently, the plan of Applicant-1 was put for voting and passed with requisite majority. NCLT also approved plan of Applicant-1 vide its order dated September 17, 2018.

After detailed arguments on the potential for revival of the CD by the RP, NCLT granted an additional 105 days' time for fresh round of bidding.

However, Applicant-1 failed to implement the resolution plan citing various frivolous reasons despite directions and orders from NCLT.

Given the failure to implement the plan, the CoC proceeded to request NCLT to annul the Applicant's plan and filed an application with the NCLT on November 29, 2018, and the same was confirmed by the NCLT vide order dated February 28, 2019, and IBBI initiated civil and criminal proceedings against the Applicant-1 in concerned courts at Chennai. After detailed arguments on the potential for revival of the CD by the RP, NCLT granted an additional 105 days' time for fresh round of bidding to rerun the process once again.

4.4.2. Issues faced by the RP post annulment of the plan

In the second round of investor process, plan of Applicant-2 was voted in favour by the CoC and the same was approved by NCLT vide its order dated 27 June 2019. One of the resolution applicants appealed against the order of NCLT on July 26, 2019, citing that a lender Punjab National Bank (International) Limited (PNBIL) had after voting in favour of resolution plan had dissented later over email and the minimum voting of 66% is not achieved in favour of the resolution plan by the CoC (reference is drawn to the Stock Exchange intimation made by the CD by the contesting resolution applicant). Upon NCLAT setting aside² the approved Resolution Plan, several external stakeholders interpreted that the company was staring at liquidation and RP had to meet with key customers/vendors to address their concerns on 'going concern' status of the company:

- a) Major Customers sought for legal status of the CD in the aftermath of media articles surfacing on NCLAT order.
- b) Major concern for customers being whether the company would be able to supply their orders without any disruption.
- c) RP and sales team worked on addressing these concerns raised by customers;
- d) RP and sales team were also working on getting additional orders from existing customers;
- e) Vendors supplying KSM were restricting supplies for the CD fearing cancellation of contract entered with them;
- f) Vendors preferred other customers even though CD was making 100% advance payment for KSMs fearing their contracts would be terminated in case the CD heads to liquidation;
- g) RP and Procurement team visited key vendors to ensure allocation of KSMs and to assure that CD will honour the contracts entered on time;

Upon NCLAT setting aside the approved Resolution Plan, several external stakeholders interpreted that the company was staring at liquidation.

- h) RP and Procurement team worked on adding alternate vendors for key KSMs to safeguard the CD from any supply chain disruption.

4.4.3. Legal disputes before the courts

Issue 1: Litigations surrounding resolution plan approval

Basis the NCLT order, the RP published an advertisement inviting EoI for the CD on April 10, 2019. Subsequently, the CoC voted for the resolution plan of Applicant-2 and the NCLT vide its order dated June 27, 2019, approved the plan of Applicant-2.

However, shortly thereafter, a stay was granted by the NCLAT on the approved resolution plan on July 27, 2019 based on the appeal filed by one of the resolution applicants citing that a lender PNBIL had after voting in favour of resolution plan had dissented later over email and the minimum voting of 66% is not achieved in favour of the resolution plan by the CoC (reference is drawn to the Stock Exchange intimation made by the CD by the contesting resolution applicant).

Subsequently, on November 13, 2019, the NCLAT set aside the order of NCLT on the ground that the value of the resolution plan of Applicant-2 was less than the liquidation value.

On December 06, 2019, the Supreme Court stayed the order of NCLAT based on the appeal filed by one of the members of the CoC argued that the member who ascended to the plan first in the e-voting platform but later descended has not objected to the implementation of resolution plan (as this is the primary reason raised by NCLAT for setting aside the order of NCLT). Finally, the NCLAT, on February 28, 2020, set aside the order of NCLT paving way for implementation of Applicant 2's plan.

Issue 2: Appropriation made by a lender post CIRP initiation reversed

One of the financial creditors had recovered ~₹ 184 crore from the CD post-commencement of CIRP. As this particular recovery happened during the period of

²NCLAT New Delhi, *M/s. Accord Life Spec Private Limited Vs. M/s. Orchid Pharma Limited, and Ors*, Company Appeal (AT) (Insolvency) No. 761 of 19, Date of Order: November 13, 2019.

moratorium, lender should have restrained from taking any coercive recovery action against the CD. The RP approached NCLT to direct lender bank to reverse transaction since once moratorium has been effective in relation to the CD, no assets belonging to the CD can be transferred, alienated or disposed of nor can any action for foreclosure or recovery of security interest created by the CD can be taken. While lender contested stating that these recoveries were in the normal course of business and that it was merely honouring the LC's issued in favour of third-party suppliers, the relief was granted to the CD by NCLT which was later contested by the lender in NCLAT³ and Supreme Court³ which was dismissed and subsequently an amount of ₹ 184 crores was reversed to the account of the CD.

4.4.4. Hustles caused by Covid-19

January 2020 to March 2020 saw unfolding of the Covid-19 pandemic and imposition of severe lockdowns curbing the economic activities and physical movements which were then critical in execution of legal documents and in implementation of resolution plan. In particular, the RP was faced with the following issues:

a) Issues faced in sourcing of KSMs

- i. Company was sourcing 80% of the Key Starting materials (KSMs) for its Active Pharmaceutical Ingredient (API) business from China. Due to Chinese New Year shutdown in mid-Jan 2020 and subsequent Covid-19 pandemic, there was no clarity on the time by which Chinese vendors would resume supplies.
- ii. Company had stock of KSMs for the months of February 2020 and March 2020 for few products only. Company would have faced a complete stock out situation in April 2020 and would not have been able to produce few products from March 2020 onwards which would have resulted in EBITDA losses.

- iii. Procurement of KSMs were also impacted by the limit of \$200,000 on advances made to foreign vendors as per FEMA regulations (in the absence of any LC support from banking system).
- iv. Since the entire pharma industry was facing a stock out situation due to the epidemic in China and there would have been high demand for KSMs once Chinese vendors had resumed production, RP proposed to the CoC for relaxation of limit of \$200,000 per vendor to \$500,000 (which can be approved by the AD banker as delegated by RBI) for the critical vendors to ensure continuity in production.

Once the proposal was approved by the CoC, the RP approached the AD banker for relaxing the limit on advances for above vendors from \$ 200,000 to \$ 500,000.

- v. Once the proposal was approved by the CoC, the RP approached the AD banker for relaxing the limit on advances for above vendors from \$ 200,000 to \$ 500,000 and ensured supplies are secured during this period and the operations continued without any issues.
- vi. Ensuring continuous operation at the beginning of covid induced lockdown was critical as the appeals against the resolution plan was turned down by Supreme court during this period and the resolution applicant was in the process of implementing the plan. Any stoppage of operations would have made the resolution applicant to delay or back out from implementation of resolution plan.

³ NCLAT New Delhi, *State Bank of India Vs. Punjab National Bank & Ors.*, Company Appeal (AT) (Insolvency) No. 329 of 2018, Date of Order: April 11, 2019.

b) Issues faced during implementation of resolution plan due to covid lockdown

- i. Obtaining Stamp Paper required for execution of documents from stamp vendor when the lockdown was imposed.

Solution adopted by RP - RP team member physically visited the office of OPL during lockdown to get the stamp papers arranged.

- ii. Submitting signed Escrow Bank Account opening forms to banks when the lockdown was imposed

Solution adopted by RP - RP team member ensured that the signed forms are arranged from RP who was stuck at another city at that time and physically went to the escrow bank for submission of account opening forms during lockdown

RP identified a platform for digitally signing the documents and convinced all the lenders and resolution applicants to onboard and execute the required documents using the digital platform.

- (iii) Obtaining the audit report from the MC appointed CA, on the working capital changes between March 31, 2019 and Plan approval date (February 28, 2020) as required under resolution plan for implementation and arriving at surplus cash payable to Financial Creditors.

Solution adopted by RP – All details were provided to auditors remotely and clarifications were sorted out by RP and team to get the report on time before implementation.

- (iv) Execution of documents including documents for implementation of the plan.

Solution adopted by RP – RP identified a platform for digitally signing the documents and convinced all the lenders and the resolution

applicants to onboard and execute the required documents using the digital platform.

4.4.5. Successful implementation of the plan

Around 25+ plus stakeholders signed the Escrow and NDC documents digitally using digital platform on March 28, 2020, in a record time of six hours. On March 31, 2020, the successful Resolution Applicant-2 infused funds into the company.

Noticing the performance of the company as part of Monitoring Committee (MC), (Positive EBITDA and surplus cashflows) even during the period Jan 2020 to March 2020 wherein entire pharma industry was facing issues with procurement of KSM and supply of end products, the Resolution Applicant-2 decided to pay the entire consideration to various stakeholders as upfront payment while implementing resolution plan by fast-tracking deferred payment proposed as well and hence, the plan was implemented on March 31, 2020.

5. Key Achievements by the RP

- a) The CD was run as a Going Concern for the entire CIRP period of ~31 months in spite of various challenges faced in the form of litigations, loss of customers, liquidity issues and covid outbreak.
- b) The RP maintained consistent revenue of ~₹ 100-120 crores and operating EBITDA of ~10%-12% throughout CIRP on a quarter-on-quarter basis by supplying high margin products and products with minimal credit period.

Table 2: Operating EBITDA

Particulars	FY18	FY19	FY20
Period	CIRP	CIRP	(Feb 20)
Revenue from operations (₹ Crores)	649	555	485
Operating EBITDA (₹ Crores)	86	56	45
EBITDA %	13.3%	10.2%	9.3%

This has also created confidence in the Resolution applicants to take over the CD during

the first wave of Covid-19 without any second thoughts by implementing the resolution plan.

- c) Surplus Cash of ₹ 440 Crores were generated in CIRP period from the operations of CD during CIRP period subject to change in WC capital of ₹46.23 Crores (which was paid out to secured FCs i.e., CD had a cash balance of ₹440 Crores and Net working capital of ₹56.35 crore on the date on which Supreme court held the NCLT order as correct in comparison to a cash balance of ₹ 2.94 Crores at the time of CIRP initiation and Net working capital of ₹ 180.82 crore.
- d) Retention of major customers and addition of new customers in the regulated and less regulated markets during CIRP period by maintaining good and transparent relationships with customers.
- e) ₹ 1,100 Crores (~31% of claims admitted) has been recovered by different class of creditors in the course of the resolution process.

6. Key takeaways and Best Practices Adopted

(a) Prior to NCLT filing for IRP to RP change

Based on the information available, we understood key financial and business performance indicators and financial difficulties/ reasons for stress in the recent past. Discussion with applicant's FCs helped to understand additional details on reason for failure of CDR scheme prior to admission of CIRP. Thereafter, we made a preliminary assessment of risks associated with business and manage the affairs on a going concern basis. Further, an assessment of key stakeholders and bringing them on board before admission/ filing for IRP to RP change facilitated running the CD as a GC during IBC and avoid loss of value.

(b) Immediate Actions after NCLT order appointing RP

Once the application for change in IRP to RP was approved, the RP is required to juggle many balls simultaneously. In the case of OPL, as soon as RP change happened, RP and the team identified KMPs (Key Managerial Personnel) and finalized the organization structure delineating the roles and responsibilities of each KMP. This approach ensured that there are no internal disruptions due to CIRP process. While the RP deployed resources at different plant locations, immediate control of CD's head office at Chennai was taken. The head office was

The company had cash and bank balance in excess of ₹ 440 crores at the time Supreme court held that the resolution plan approved is valid.

the control point from operations and strategy perspective. Further, a set of stringent controls were established for cash flow and working capital management. To build stakeholder confidence from Day 1, townhalls were conducted – assuring them that it was 'business as usual' during CIRP period with the only exception that RP would be in charge under the guidance of the CoC and the IBC.

(c) Defining the Organizational Structure

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

(d) Robust cash flow management

Considering the huge volume of business and payments being processed to more vendors on a daily basis, a dedicated team of the RP reviewed and approved payments. A system of cash rationing was established to make critical payments and maintain CD as a going concern. An action plan for cash-generating initiatives was also developed. Realization of debtors, tax and GST refunds and realisation of export credit scrips, facilitated in improving the cash balance. Further, a periodic assessment of cash requirements of the business ensured improved the cash flow position. As against a cash balance of ₹ 2.97 Crores on the date NCLT approved initiation of CIRP, the company had cash and bank balance in excess of ₹ 440 crores at the time Supreme court held that the resolution plan approved is valid, which was later passed on to the secured financial creditors as additional consideration during implementation of resolution plan net of working capital adjustment of ₹ 46.29 Crores for the CIRP period.

(e) Comprehensive Investor IM Created a Good First Impression

We prepared a robust investor IM covering - (a) Investment highlights (b) Industry overview (c) Company overview (d) Profiles of all KMP's (e) Business and operational details (f) Manufacturing facilities overview (g) Supply chain and distribution network (h) regulatory

approvals in place. Team spent significant time reviewing internal data, discussions with KMP's and industry experts so that the IM reflects the true strengths and the value in the business. IM went through multiple rounds of iterations, and we took feedback from KMP and senior management which helped refine the investor presentation which were ultimately shared with over 50 investors in both rounds of investor process.

(f) Establishing relationship with key suppliers and customers

The RP and his team spent considerable time in visiting key customers and vendors in different locations around the world and establishing good relationship with them. This has ensured that Customers continued to have trust on the CD with order book was built over such relationship and vendors ensuring adequate supplies are made for meeting customer order book when KSMS imports from China was facing environmental and supply chain hurdles.

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

RP's team worked with the legal counsel to put a well-defined process memorandum in place which was placed before the CoC for inputs and their feedback was incorporated. The process memorandum clearly established the guidelines pertaining to sharing information with the PRAs, examination and evaluation of resolution plan, contents of the plan, terms, and conditions

(T&C) for submission of resolution, conditions subsequent, EMD/performance deposit, etc., manner of information sharing, mechanism for redressal of queries, key milestones for the data diligence etc., were clearly laid out in the process memorandum itself to avoid any ambiguities. The guidelines on all aspects were laid out in the process memorandum.

(h) Preparing for Resolution Plan Implementation is the Key

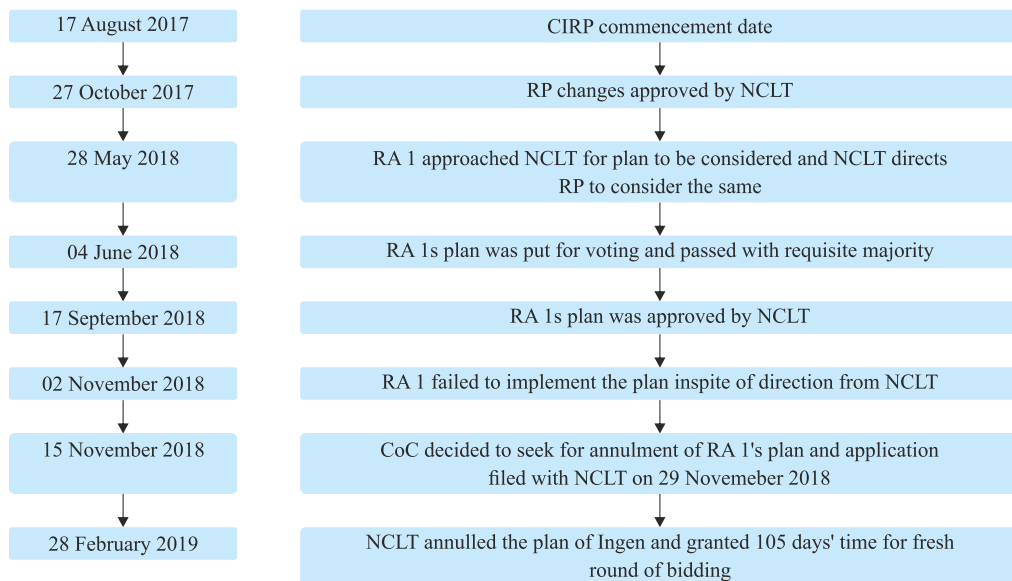
Even before resolution plan was approved by AA, we undertook preparation activities for setting up the MC. Since there were few precedents of on ground operations during implementation phase, a document formalizing protocols such as mode and manner of operations, extent of control, information sharing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

(i) Continuous Engagement with RA – Post NCLT approval

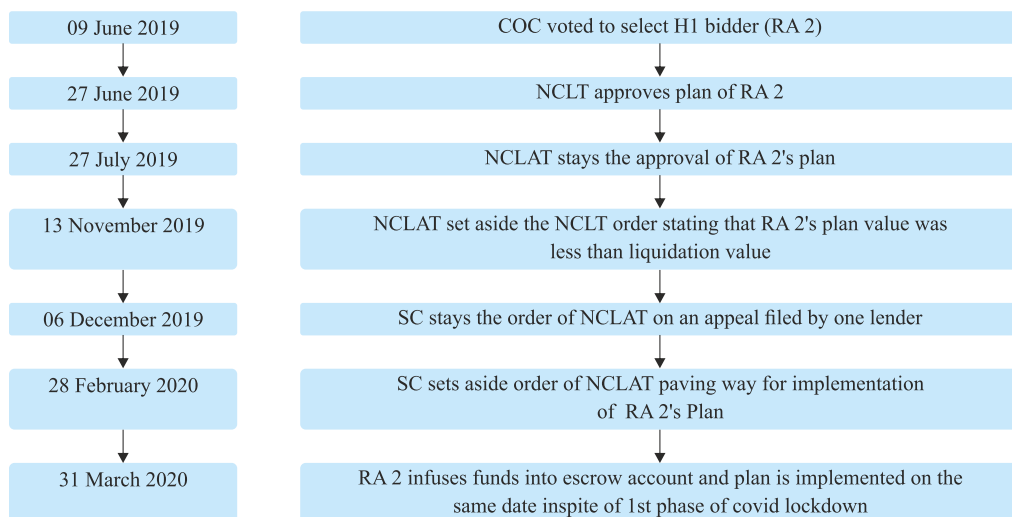
There were regular discussions with the RA in MC with respect to status of funding arrangements to ensure a successful implementation of approved resolution plan. A clear plan of action to be undertaken was established with regard to disbursement mechanism, documentation, bookend secretarial compliances,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

7. Key timelines

First Round of Investor Process



Second Round of Investor Process



4

CHAPTER

Liquidation of Moser Bear 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 IIPI, 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...

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, approved¹ the liquidation of the CD and appointed Mr. Anil Kohli as its Liquidator.

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 row² (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

² Information Memorandum (Nature of Industry, p. 69) of Moser Baer 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.

There were vigorous protests by the workmen which included dharnas, gheraos and suicide attempts which also came in the limelight of media.

NCLT vide an order³ 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.

³ 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 Committee⁴ (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.

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.

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:

⁴ 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.

. 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 appeal⁵ 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

⁵ 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 Court⁶, 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,

⁶ 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” (NRRA), Regulation 37a

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

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 NRRA 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, Udhog 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 NRRA 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 NRRA 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 NRRA 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 NRRA 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 NRRA in IBC, 2016. The said application was allowed by NCLT vide its order dated December 10, 2021 and the valuation is in progress.

5

CHAPTER

Resolution of Aditya Estates Private Ltd. (AEPL)

Though small in terms of size and value, resolution of Aditya Estates Private Ltd. (AEPL) provides some interesting aspects of the insolvency process under the IBC. This is such a case in which a foreign bank provided debt to a foreign company operating outside India, which happened to be a related party of AEPL, the Corporate Debtor (CD). The said loan was backed by a corporate undertaking given by the AEPL. The Adjudicating Authority considered this undertaking as corporate guarantee and declared AEPL a Corporate Debtor and the foreign bank a Financial Creditor under the IBC.

NCLT on February 26, 2019, admitted the CIRP application of the ICICI-UK for and ordered initiation of insolvency process for AEPL. The court also appointed Mr. Alok Saxena as Interim Resolution Professional who was subsequently confirmed as its Resolution Professional by the Committee of Creditors. The CD had only a leasehold property in New Delhi, which was its registered office. The liquidation value of the property was estimated to be around ₹306.80 crores which was reduced to ₹153.40 crores after adjusting the liabilities of getting it converted from leasehold to freehold. Ultimately, the Committee of Creditors approved the Resolution Plan of Adani Properties Pvt. Ltd. with 93.01% votes. Thus, the CD was resolved through a Resolution Plan amounting ₹265 crore which is about 138 % higher than the liquidation value.

The present case study, sponsored by IIPI, has been developed by Mr. Alok Saxena in which he has provided a first-hand step by step guide for resolution of a small sized distressed company having a single property situated in one of the poshest localities of India.

Read on to know more...

1. Introduction:

The resolution of Aditya Estates Private Ltd. (AEPL) involves complicated legal battles wherein the Corporate Debtor (CD) argued that the property under question stood released as the debt against it which was granted to Duncan Macneill Power India Ltd. (DMPIL) a related party of AEPL was repaid to ICICI Bank- India. This argument was accepted by the Debt Recovery Tribunal (DRT) which passed an order of release of the property to which ICICI Bank-India the creditor filed an appeal in the appellate tribunal. Besides, AEPL also contended that ICICI Bank UK PLC (ICICI-UK) was not a Financial Creditor (FC) under the definition of Insolvency and Bankruptcy Code, 2016 (IBC). The judgement of NCLAT on these issues provides more clarity on various provisions of the IBC.

2. Profile of Corporate Debtor

AEPL, the CD in this case with registered office at House No.3, Bhagwan Das Road, New Delhi-110001 (hereafter, property at B. D. Road) was incorporated by Mr. Aditya Kumar Jajodia in 1984. The company was primarily engaged in real estate sector with owned or leased

properties.

AEPL was a group company of Jajodia Group of Companies, which was primarily engaged in tea growing and manufacturing business. Besides AEPL, the major subsidiaries of the group included Duncan Macneill Power India Ltd. (DMPIL), Assam Oil Company Ltd – UK (AOCL), and Assam Company India Ltd. (ACIL), which was a listed entity and a major tea company of India. The Jajodia Group of Companies fell into financial crisis as its foray into oil sector incurred losses. Besides, downturn in the tea business further increases the financial crisis.

AEPL had provided corporate guarantee to secure repayment of a term loan amounting ₹24.95 crores disbursed by the ICICI Bank-India to DMPIL. It mortgaged the property at B. D. Road to ICICI Bank-India through a Power of Attorney against the loan availed by DMPIL. In a suit filed before the Debt Recovery Tribunal (DRT), DMPIL claimed to have paid entire outstanding of ₹24.95 crores along with interest and sought release of the mortgaged property from ICICI Bank-India. The DRT ordered for release of the property, but ICICI Bank-India challenged the order in Debt Recovery Appellate Tribunal (DRAT), which set aside the order of the DRT on the ground that the entire outstanding payment was not made. ICICI -UK moved Delhi HC against the Release of the Property mortgaged to ICICI Bank -India on the ground that AEPL has provided a corporate undertaking for the liabilities due to AOCL and obtained a stay on such release.

Subsequently, ICICI-UK filed a petition before NCLT, New Delhi under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) for enforcing the Corporate Undertaking given by AEPL through ICICI Bank-India against the loan of USD 63 million availed by AOCL. As per this loan agreement the AEPL had undertook to repay the loan in case of default. This undertaking of AEPL was treated as a corporate guarantee to ICICI-UK on the basis of which it was recognized as a financial creditor under the IBC thereby having rights to file application against the CD for commencement of the CIRP.

3. Commencement of CIRP of AEPL

ICICI-UK had given a term loan of USD 63 million to AOCL in 2007. Besides, ICICI Bank-India had provided a loan of ~₹23 Crore to DMPIL, wherein the AEPL had given an undertaking to repay the said loan from sale of its

property at B. D. Road. Accordingly, ICICI-UK filed a Corporate Insolvency Resolution Process (CIRP) petition under Section 7 of the IBC in 2018 for initiating resolution process of AEPL. The NCLT Principal Bench, New Delhi admitted the petition and initiated CIRP vide its order¹ in C.P. No. 974 (PB)/ 2018 on February 26, 2019, by holding that ICICI-UK is a Financial Creditor (FC) of the CD. In arriving to these findings, the Bench considered the documents between four parties, namely, ICICI Bank-India, DMPL, ICICI-UK and the CD. The court also appointed Mr. Alok Kailash Saxena as Interim Resolution Professional (IRP) who was later confirmed as Resolution Professional (RP) by the Committee of Creditors (CoC) dated March 26, 2019.

4. Complicated Documentation involved in the Loan Transaction and undertaking by the CD

The admission order took into account the complicated documentation as mentioned below:

- (a) Facility Agreement between AOCL and ICICI-UK through which the AOCL had secured a loan of USD 63 million.
- (b) Facility Agreement dated December 21, 2007, wherein ICICI Bank-India granted a loan ₹ 24.95 Crores to DMPIL and took a guarantee of the CD along with mortgage of the property at BD Road.

ICICI Bank-India, AEPL and DMPIL entered into a Debt Asset Swap Agreement (DASA), but ICICI-UK was not part of DASA agreement.

- (c) ICICI Bank-India, AEPL and DMPIL entered into a Debt Asset Swap Agreement (DASA), but ICICI-UK was not part of DASA agreement. Along with the DASA agreement two more agreements were executed as follows:
 - i. The CD executed an irrevocable Power of Attorney in favour of ICICI Bank-India, appointing ICICI Bank-India as its Attorney, to sell, transfer, assign and/or otherwise dispose of the property, including through any encumbrance on the property inter alia for satisfaction of the dues owed to ICICI Bank-India as well as the FC namely ICICI-UK.

¹ NCLT, Principal Bench - New Delhi: C.P. No. 974 (PB)/ 2018 dated February 26, 2019

ii. Multi party undertaking executed at New Delhi inter alia between the FC and AOCL wherein AOCL agreed that upon occurrence of event of default, any amount which is in excess of the amount received for the payment of statutory dues and satisfaction of outstanding amount under the transaction document would be used to extinguish the outstanding amount under the facility agreement dated December 21, 2007, signed between the FC and the AOCL.

(d) Article of association of the CD were amended in 2015 after the DASA and multi-party undertaking by incorporating new article 34 where 'lenders' were defined to include loans granted by ICICI Bank-India to DMPIL and loan granted by ICICI-UK to AOCL, and the 'property' was defined as the property at BR. Further, the articles placed restrictions on the CD from directly or indirectly dealing with the property without the written consent of the 'lender'.

(e) The questions before the NCLT were whether ICICI-UK is a party of the agreement between the ICICI Bank-India and the CD? Whether ICICI-UK is directly a party or beneficiary of clauses in DASA? Whether any Right has been created in favour of ICICI Bank to recover its dues from the property of the CD mortgaged to ICICI Bank-India? If that is the case, then ICICI-UK would be covered by the expression of FC as defined in Section 5 (7) & (8) of the IBC. After analysing complex documents created between the parties namely, ICICI Bank-India, DMPIL, CD and ICICI-UK the bench proceeded to decide the issues and the various contentions raised thereon.

(f) The primary contention of the CD was that ICICI-UK was not a signatory to the DASA, which was essentially between ICICI Bank-India, DMPIL and the CD. In this agreement, the CD had mortgaged its property in favour of ICICI Bank-India against a debt of ₹24.95 Crores which it had availed from a sanctioned loan amounting ₹335 Crores. Therefore, ICICI-UK has no right created on the assets of CD by virtue of this agreement. The next contention was that in terms of the undertaking ICICI-UK had access to the sale proceeds of the property only in the event of default between ICICI Bank-India and DMPIL and since the loan was



repaid by DMPIL as per the order of the Debt Recovery Tribunal (DRT), there was no default and consequently ICICI-UK had no right over its property and its dues are not financial debt. It was further contended that even if the DASA and undertaking are deemed to be creating a charge or

CD argued that the loan was repaid by DMPIL as per the order of the Debt Recovery Tribunal (DRT), there was no default and consequently ICICI-UK had no right over its property and its dues are not financial debt.

interest on the mortgaged property at BR, ICICI-UK cannot be termed as a guaranteed holder.

(g) After considering all the contentions, the Bench held that ICICI-UK is not a part of the loan advanced by ICICI Bank-India to DMPIL or part of the DASA agreement. However, it is a party to the escrow agreement. Further, the amendment carried out in the Article of Association of the CD and the undertaking given to ICICI-UK created a right to sell the property and pay the liabilities. It held that ICICI-UK would be a financial creditor qua the CD. As far as the DASA agreement, it was seen that although ICICI-UK is not a part of DASA, it figures as a beneficiary in various paras of DASA. The Hon'ble NCLT also considered the objection that the debt was time barred but it held otherwise after considering the terms of repayment of principal and interest.

5. Challenges to CIRP Admission Order

The suspended director of the CD filed an appeal before the National Company Law Appellate Tribunal (NCLAT) challenging the CIRP initiation order on various grounds, which were raised before the NCLT. The grounds of appeal and decision of NCLAT order² in CA(AT) 270/ 2019 dated 5th September 2019 are tabulated below:

² NCLAT, New Delhi: Company Appeal (AT) 270/ 2019 dated September 05, 2019

Table-1: NCLAT decisions on various grounds of appeal contended by the suspended Director

Grounds of Appeal	Decision of NCLAT
ICICI-UK is not a signatory to the DASA (which is essentially between ICICI Bank- India and Duncan Macneill for its loan of ₹24.95 crores) and can claim no right under the agreement.	ICICI Bank UK PLC although not a signatory is mentioned as a party. It is immaterial as the CD has undertaken obligations to repay the loan of ICICI Bank UK PLC of USD 63 million.
The payment to ICICI-UK under DASA would arise only in the event of default of loan granted by ICICI Bank-India to DMPIL. Since the entire liability of DMPIL was discharged by the CD, no repayment can be made to ICICI-UK.	NCLAT observed that even as on CIRP Admission date the entire liability of ICICI Bank-India was not discharged as outstanding interest was not fully repaid. .
No separate guarantee was given by CD to ICICI Bank-UK for its loan to AOCL and the reliance on the undertaking is not relevant once the DASA becomes ineffective due to repayment.	NCLAT observed that the liability of ICICI Bank-India was still not fully discharged and that the undertaking created an effective right to ICICI Bank-India and ICICI-UK.
The reliance on Articles of Association cannot create any right under IBC to be treated as a Financial Creditor.	The amendments in the Article of Association whereby it lists ICICI-UK as a 'lender' for its dues from AOCL fortifies the view that it has acknowledged the liability of financial debt to ICICI-UK.

The tribunal vide an order dated September 05, 2019, dismissed the said application to which the suspended director filed a civil appeal in the Supreme Court on September 30, 2019 but failed to get any relief.

6. Public Announcement, Claims and CoC

Public Announcement for initiation of CIRP was made on March 01, 2019. Creditors had filed their claims which were submitted to NCLT and CoC was constituted as tabulated below:

Table -2: Constitution of the CoC

Name	Voting Share
ICICI Bank UK PLC	89.52%
ICICI Bank Limited	3.38%
Sprit Infrapower & Multiventures Pvt. Ltd.	6.99%
Shailja Commercial Trade Frenzy Limited	0.11%

AEPL, the CD had only one property at B. D. Road. It had no other assets and no income. The said property was under perpetual lease from the Land & Development Office (L&DO), Government of NCT of Delhi. Therefore, the resolution of the CD was centred around the said

property and its value. This property was spread on 3.44-acre plot in posh Luytens' Delhi with a colonial bungalow constructed during British period which passed through the ownership of several kings and business stalwarts. It finally came under the ownership of the suspended director's family through the controlling interest in the CD.

7. Valuation and Challenges

Valuers were appointed by the RP within the stipulated timeline who arrived at an average liquidation value of ₹306.80 crores. Both valuers have stated that buyer/ auction purchaser is liable to pay L&DO transfer fees (unearned increase) and conversion from leasehold to freehold. Once such payment to L&DO is considered from buyer/ auction purchaser the valuation shall reduce by 50%. Accordingly, Average Liquidation Value stood at ₹153.40 crores. Therefore, the valuation had two values i.e., average liquidation value of ₹306.80 crores and net value of ₹153.40 crores after payment of liabilities to convert it from lease hold to free hold.

8. EOI and Final List of PRA

Form G was issued within the prescribed timelines and following list of Property Resolution Applicants (PRAs) was issued.

Table-3: List of Property Resolution Applicants (PRAs)

S. No.	Name of Prospective Resolution Applicant
1	Adani Properties Private Limited.
2	Mr. Anil Rai Gupta.
3	Dalmia Cement (Bharat) Limited.
4	Mr. Malvinder Singh.
5	Mr. Narayana Murthy.
6	Panch Tatva Promoters Private Limited.
7	Mr. Paras Pramod Agarwal.
8	Veena Investments Private Limited.
9	Welspun Logistics Limited.

A consultant was appointed to evoke the interest in resolution applicants. Considering that the property was located at a prime locality which required interest from very High Net Worth Individuals (HNWI), the consultant approached several HNWI locally and globally.

9. Resolution Plans

Adani Properties Private Limited (APPL) and Veena Investments Private Limited (VIPL) submitted their resolution plans within the prescribed timelines. The other resolution applicants had reservations on the complex documentation and on the issue of leasehold land which was under perpetual lease. They expressed the view that land should ideally be converted to freehold by the CD with the support of interim finance and thereafter resolution process should be commenced. The RP explained to the resolution applicants that IBC was a time bound process and the issue of conversion from perpetual lease to freehold was a time-consuming process which cannot be done within the timelines of CIRP. He also

informed that there was no restriction on change of shareholding of the CD and it may only entail paying

On request of CoC, to make the plan unconditional as per the requirements of IBC, APPL revised their offer from ₹400 Crores to ₹265 Crores, net reduction of ₹135 Crores.

certain transfer fees which should be factored in.

There were several challenges in preparing the Information Memorandum (IM) and the Data Room as the suspended management was not particularly co-operative. The Data Room required a huge documentation of the property since its first origin of the perpetual lease dated way back to 1920 C.E. There were series of transfers and mutations and the same needed lots of efforts in collating, analysing the linked documents and putting in the organised manner to ensure resolution applicants had all the information and least number of queries arose.

We had intense negotiations on the plan submitted by APPL and VIPL, which consumed a lot of time. The negotiations centred around the issue of conversion of property from perpetual leasehold to freehold and the various cost associated with the same. These issues being critical were elaborately discussed between the resolution applicants. The approach of APPL was to initially offer ₹400 crores with a condition that L&DO Charges for conversion of the perpetual leasehold to freehold, transfer fees, along with other charges would be paid from the said 400 crores. On request of CoC, to make the plan unconditional as per the requirements of IBC, APPL revised their offer from ₹400 Crores to ₹265 Crores, net reduction of ₹135 Crores. This reduction was to be attributed to conversion cost, taxes, transfer fees etc., so as to perfect the titles. This reduction was independently verified by the CoC through an external agency.

Table 4: Comparison of the two resolution plans

Highlights of APPL's Resolution Plan	Highlights of VIPL's Resolution Plan
<ol style="list-style-type: none"> Initially offered ₹400 crores with a condition that L&DO Charges along with other charges would be paid from the said ₹400 crores. On request, of CoC, to make the plan unconditional and remove the uncertainty of payment to L&DO and other agencies, APPL revised their offer from ₹400 Crores to ₹265 crores, net reduction of ₹135 crores. All Amount was to be paid upfront. 	<ol style="list-style-type: none"> Offered ₹225 crores with a condition that L&DO Charges along with other charges would be paid from the said ₹225 crores. The plan proposed that the L&DO Charges ought to be waived and not levied on the Resolution Applicant and in case the said charges are not waived, the plan would stand withdrawn.

Thereafter, the CoC took a prudent decision of de-linking the L&DO Charges and other charges from the financial proposal of the plan.

In case of VIPL, the offer of ₹225 crores was along with the condition that L&DO Charges along with other charges would be paid from the said ₹225 Crores. The plan proposed that the L&DO Charges ought to be waived and not levied on the RA and in case the said charges are not waived, the plan would stand withdrawn. After detailed discussion, the CoC concluded that VIPL's plan was conditional, non-compliant and uncertain.

10. CoC's Decision on the Resolution Plan

The CoC decided that Resolution Plan of VIPL, was non-compliant, conditional, and uncertain and was not considered any further and was not to be put up for voting.

In case of APPL, the CoC took an independent assessment from reputed advisors on the reduction of ₹135 crores. The independent assessment estimated the conversion cost

around ₹140 crores and therefore the reduction from ₹400 crores (including L&DO Charges) to ₹265 crores (Excluding L&DO Charges) was found to be reasonable. The same was put up for voting. Furthermore, the Resolution Plan of APPL was found compliant based on section 29A Affidavit and further verification of affidavit conducted by specialised agency. The plan met all the conditions of Section 30 and the regulations and found to be financially viable as well.

11. Comparison of Approved Plan with Liquidation Value

Finally, the property at B. R. Road fetched ₹265 crore through resolution plan which was ₹111.6 above its liquidation value. Thus, the value of approved plan was about 138 % higher than the liquidation value. The recovery was around 44% of the admitted claims of financial creditors amounting ₹593.55 crore). There was no Operational Creditor (OC) in this case. The voting patten for approval of the Resolution Plan is as follows:

Table-5: Voting Pattern for Approval of Plan

S.No.	Name of FC	Voting Share %	Voted
1	ICICI Bank UK PLC	89.52%	For
2	ICICI Bank Limited	3.38%	For
3	Sprit Infrapower & Multiventures Private Limited	6.99%	Against
4	Shailja Commercial Trade Frenzy Limited	0.11%	For

Since 93.01% votes were casted in favour of the plan and only 6.99% were against the plan, it was approved with more than requisite majority i.e., 66% votes in favour of the plan.

12. Objections of Dissenting Creditor

Dissenting Creditor, Sprit Infrapower & Multiventures, raised objections before the Adjudicating Authority (AA)/ NCLT on the ground that the Resolution Plan of APPL was initially of ₹400 crores and later revised to ₹265 crores which was below the liquidation value of ₹306.80 crores. Therefore, it can not be approved. The AA, after detailed discussion on the issue of valuation, taking into account the report of the valuer, and the independent assessment held that the net liquidation value excluding L&DO Charges was ₹153.40 crores (as per the valuers, who had reduced the liquidation value of ₹306.80 cores by 50% for unearned charges towards L&DO and other charges). Therefore, the resolution plan offering ₹265 crores excluding L&DO Charges and other charges was higher

than the liquidation value. Thus, the objections of the dissenting creditor were overruled by the AA.

13. Approval of the Resolution Plan

The AA relied upon the decision of the Supreme Court in the case of *Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Ors*³ in and held that the commercial wisdom of COC shall prevail and cannot be interfered upon, and the Resolution Plan can also be lower than the liquidation value. The AA therefor rejected the contentions of the dissenting creditor and approved the Resolution Plan of APPL. No appeal was filed against the order of approval of the Resolution Plan.

³ Supreme Court: Civil Appeal No. 4242 of 2019.

Thus, the CIRP process was concluded within the 270 days. Subsequently, Interim Management Committee (IMC) was formed, comprising of five members with the RP as its Chairperson for effective implementation of the Plan. Accordingly, all payments were done, and CD was handed over to Resolution Applicant to bring a successful resolution towards closure.

14. Learnings for Insolvency professional

The Fair value and Liquidation value of the CD can be done showing different values based on different situations. There need not be a single value as it is understood. In the instant case there were two valuation (i) firstly, on an as is where is basis wherein the valuer considered the perpetual lease and the payment against L&DO Charges [estimated and uncertain] (ii) secondly, the valuation considered the conversion of lease hold into

free hold. This brings various options at the table of the CoC in evaluating the resolution plans.

The Fair value and Liquidation value of the CD can be done showing different values based on different situations.

The second learning would be evaluating the complex documents which establish the rights of the creditors and classify it as a Secured Financial Creditor. In the instant case on the face of the documents it appeared that ICICI-UK was not a FC. It was not a secured creditor as well. The issue of ICICI-UK was decided by the AA and the appellate authorities, but it required further evaluation by the RP to treat it as a Secured Financial Creditor. This decision of RP was also separately challenged by the erstwhile promoters, but the AA found no infirmity in the same.

6

CHAPTER

Resolution of Jhabua Power Ltd. (JPL)

Jhabua Power Limited (JPL), a company originally promoted by Avantha Group, is a power generation company based at Seoni district in the State of Madhya Pradesh. In pursuance of insolvency application filed by an operational creditor, the Kolkata Bench of the National Company Law Tribunal (NCLT) admitted JPL into Corporate Insolvency Resolution Process (CIRP) vide an order on March 27, 2019.

The Committee of Creditors (CoC) in its first meeting appointed Mr. Abhilash Lal as the Resolution Professional (RP) of JPL. He and his support team successfully completed the CIRP of the company. The team, with the support of stakeholders, continued and improved operations of the power plant, reinforcing the going concern status of the Corporate Debtor (CD). This enabled the team to market the company, generate interest and obtain compliant resolution plans before handing it over to NTPC Ltd., the successful resolution applicant (SRA).

The present case study, sponsored by IIPI, was developed by Mr. Abhilash Lal with his colleagues. In this study, the research team has provided a first-hand step by step guide to resurrect a corporate life.

Read on to know more...

1. Introduction

Jhabua Power Limited (JPL), a company originally promoted by Avantha Power & Infrastructure Limited (APIL), is a power generation company based in the Seoni district in the State of Madhya Pradesh. The site is located near village Barela - Gorakhpur, Tehsil Ghansore of Seoni District (near Jabalpur). JPL currently has 600MW thermal capacity which is fully operational with potential for a second unit of 600MW at the same site.

During the CIRP, the Resolution Professional (RP) along with his support team not only managed to maintain the company as a Going Concern as per the provisions of the Code, but also successfully transformed business operations leading to superior performance and achieving lifetime high operational and financial milestones.

The RP submitted the resolution plan of the successful resolution applicants (SRA) for consideration of the Adjudicating Authority (AA) i.e., NCLT, Kolkata Bench. The plan had been unanimously approved by all the members of the CoC. Upon approval of the resolution plan application by the AA, the CIRP of the CD was concluded

and the CD was successfully transferred to the SRA. During the transition period, a Monitoring Committee comprising representatives from the lenders and the SRA and headed by the RP, monitored the operations and the transition process as per the approved resolution plan.

This case study discusses the challenges and steps taken for sustained and improved operations thereby facilitating a successful resolution as envisaged under the IBC.

2. Company Profile

- (a) JPL is an Independent Power Producer (IPP) having 600 MW Coal-fired power plant with turnover of ~ 11 billion. It entered into CIRP before even crossing 50% utilization of power generation capacity.
- (b) The plant was commissioned in 2016 with a delay of three years with several critical CAPEX work like Railway siding, Wagon Tippler, Plant Roads, Drains, etc. still incomplete and inadequate essential and mandatory spare parts in its store.

As in the FY2018-19, about 335 Cr of term loan was dues from Banks and NBFCs. Besides, 90 Cr of Compulsory Convertible Debentures (CCD) were issued in 2013-14.

- (c) At the time of admission into CIRP, JPL had 85% of its power capacity tied up through Long- & Medium-Term Power Purchase Agreements (PPAs) with governments of Madhya Pradesh (MP), Kerala & West Bengal (WB).
- (d) The debt profile and security structure of the CD are provided in Annexure 2.
- (e) JPL was accredited with Quality Management Systems (ISO 9001:2015), Environmental Management Systems (ISO 14001:2015), Occupational Health and Safety Management Systems (ISO 45001:2018) and Energy Management System (ISO 50001:2018).
- (f) The nearest railway siding station is Binaiki, located in the Jabalpur Gondia section of Indian Railways and the nearest airport is at Jabalpur.
- (g) About 335 Cr of term loan from Banks and NBFCs as of FY19 and 90 Cr of Compulsory Convertible Debentures (CCD) were issued in 2013-14.

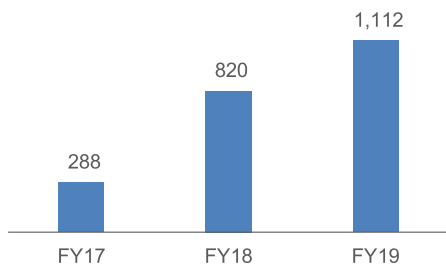
3. Pre-CIRP Performance

- (a) JPL regularly faced the issue of coal availability and hence couldn't ensure full Declared Capacity to the PPA. beneficiaries, thus getting a hit on fixed cost tariff invoicing.
- (b) The company faced several arbitrations claims even before entering CIRP, the major one with the key BTG (Boiler Turbine Generator) vendor – BHEL. This led to serious issues with plant maintenance, running and safety.
- (c) JPL struggled in inventory management for mandatory spares due to insufficient cash balance, with inadequate spares for extremely critical machinery e.g., turbine blades which affected plant availability.
- (d) Due to improper budgeting and liquidity crunch, JPL was unable to meet requirements for non O&M and employee engagement expenses.
- (e) With several important capital items left unfinished (roads, rail siding, wagon tippler, drains etc), JPL faced regular issues in normal operations that pushed up the cost of repairs and operations. Coals supply too was erratic and slow due to constraints at the plant end

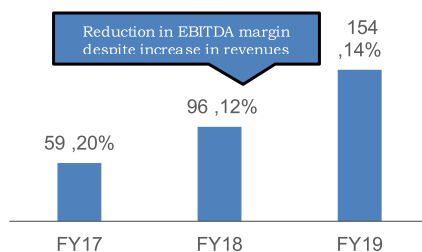
4. Key Reasons for Financial Stress

- (f) Significant delays in start of Commercial Operation of the plant.
- (g) Cost overrun led to a substantial increase in the debt. The debt could not be serviced through the cash inflows and the lenders started charging penal interest which further added to the debt service cost.
- (h) High financing cost of long-term debt (at ~14%) was unsustainable for JPL given its cash flows.
- (i) Low plant availability due to absence of critical spares and incomplete works.
- (j) Working capital constraints to purchase coal & meet operational expenses – addressed through prudent cash management, detailed budgeting and monitoring.

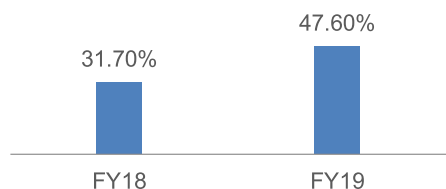
Pre ICD Revenue (₹Cr)



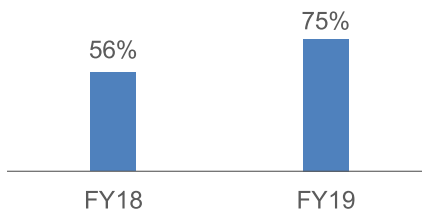
Pre ICD EBITDA (₹Cr,%)



Pre ICD Plant Load Factor (PLF) - in %



Pre ICD Plant Availability - in %



5. Corporate Insolvency Resolution Process (CIRP)

5.1. Appointment of IRP/RP

Pursuant to a Section 9 application filed by M/s FL Smidth Private Limited (Applicant), NCLT Kolkata Bench admitted Jhabua Power Ltd. (JPL) to CIRP in terms of the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC). The CoC of JPL in its first meeting appointed Mr. Abhilash Lal as the Resolution Professional (RP) to replace the erstwhile Interim Resolution Professional (IRP). The entire CIRP was completed with the active support of financial creditors and other stakeholders. The summary of the CIRP timeline is provided in Annexure 1.

5.2. Initial Assessment

- Low Plant Availability due to which company was not able to bill full fixed cost as per the terms of power purchase agreements.
- Interruptions in business operations on account of coal stock-out situations.
- Performance test of Boiler, Turbine and Generator unit was not carried out.
- No support from OEM for obtaining spares &

services support for plant maintenance / overhauling due to ongoing arbitration.

- Private railway siding at JPL was under construction due to which coal was being transported inside the plant by trucks.
- Lack of space in ash dyke for disposal of ash.
- Critical major equipment/facilities like permanent ash silo, condensate polishing unit, standby CW pump, wagon tipplers etc., were not ready/commissioned affecting sustained operation of plant at higher load.
- High landed cost of coal due to procurement from market traders due to low allocation of linkage coal.
- Permanent roads and drains were not constructed during plant construction phase causing significant problems in bringing coal & evacuating ash through trucks/dumpers/bulkers thereby affecting scheduled generation of power, especially during monsoon season.
- Huge outstanding receivables from PPA beneficiaries affect the working capital position of the company. To improve the cash position,

alternative revenues sources by supply of power on market/exchanges was explored on near term and short-term basis along with watertight controls on non-critical spends and regular follow-ups with PPA beneficiaries resulted in faster realization of part of the outstanding receivables.

5.3. Role of RP Team

(a) Resolution Process

- (i) Managed operations whilst preparing the company for a competitive bidding process within IBC framework.
- (ii) Managed the resolution process as per requirements of Section 25 of the IBC 2016 viz, Expression of Interest and RFRP document.
- (iii) Set up and maintained a VDR to store data effectively for prospective resolution applicants.
- (iv) Developed the information memorandum as per requirements of Section 29 of the IBC and supplemented the same with a more detailed i-banking document.
- (v) Managed claims database, payment control mechanism and preparation of related MIS for lenders.
- (vi) Ensured that all requirements under the IBC and Regulations were carried out within the stipulated time frame without any conflicts.

(b) Business Operations

- (i) Monitored business activities, plant operations and performance
- (ii) Reviewed the Mega Insurance Risk Policy of Plant for Business Interruption (BI) during MLOP/FLOP and made critical interventions to include BI coverage during Insolvency. Mega Insurance Risk Policy covers any plant against Physical damage to Plant Asset & Equipment and also revenue loss during stoppage of plant due to fire or shutdown of machinery due to any fault.
- (iii) Reviewed existing contracts and finalized strategy for long running contracts

Equipment/facilities like Railway Siding, Wagon Tipplers, Condensate polishing unit, Ash water recovery, Coal Bunker dust suppression system, Plant roads & drains, etc. were not ready/commissioned affecting sustained operation of the plant at higher load.

- (iv) Completed and ensured operational readiness of critical unfinished project capex works during CIRP (funded by internal company cash flows) by effective capex budgeting, representation to CoC for their approval and tracking project progress and performance.
- (v) Made recommendations for optimal inventory management on mandatory spares.

(c) Commercial, Legal & MIS

- (i) Preparation of progress reports for NCLT.
- (ii) Tracking of all statutory compliances of company as going concern
- (iii) Monitoring hearings and legal consultations pertaining to the various ongoing / outstanding petitions / arbitration matters and providing regular updates to COC with advice as to future actions.
- (iv) Maintained trackers of Bank Guarantees issued by JPL to various agencies and also BGs received from vendors under various ongoing WO/PO.
- (v) Detailed monthly MIS to CoC including plant performance parameters, entity-wise landed coal cost & stock, cash flow, monthly billing & payment status under various PPAs, debtors aging, etc.

(d) Cash Flow Management

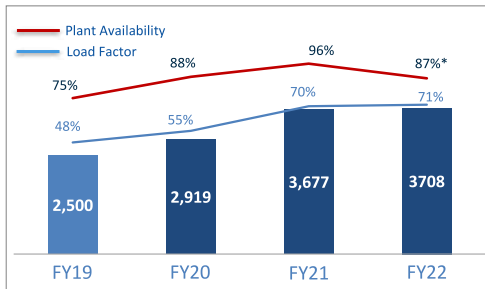
- (i) Review of monthly cash budget for all operational expenses and ensuring that the budget was adhered to.
- (ii) Actuals tracking to monitor transactions, review collections and manage receivables.
- (iii) Maintained water-tight controls during Work Order / Purchase Order approvals to ensure transparency and follow Nip-in-the-bud procedure at PO/WO stage itself (segregating Opex & Capex).

- (iv) Budget and track non-O&M expenses (CSR, employee engagement, Admin etc.)
- (v) Verify that the funds utilized for business operations and report anomalies.

6. Key Results

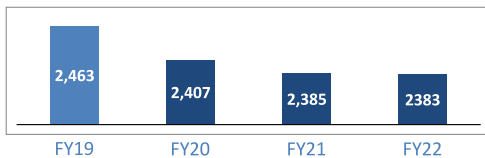
6.1. Improvement in Key Operational Parameters

Higher Power Generation, Improved Plant Availability and Load Factor



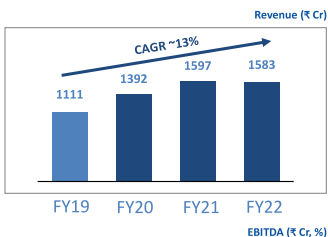
*Plant Availability reduced for FY22 due to planned annual overhaul at plant

Improved Station Heat Rate (KCal/KWH)

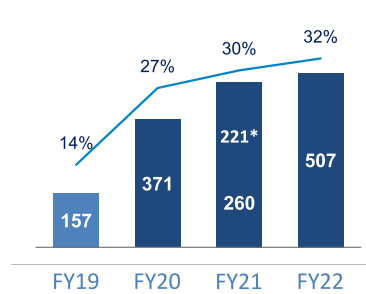


Station Heat Rate: Amount of heat energy required by a thermal power plant to produce 1 unit of electricity. Lesser its value more efficient the power plant

6.2. Improvement in Key Financial Parameters



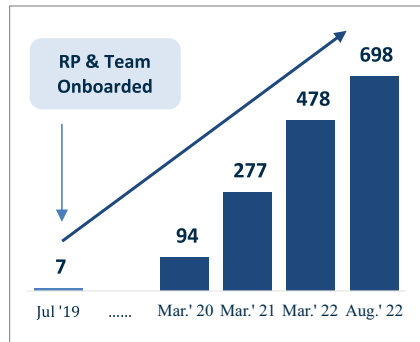
- ~13% YoY CAGR growth (FY19-22) in revenue by optimizing power sale at PPAs and IEX.
- Improvement in fixed tariff recovery from 80% to 96% by ensuring near 100% declared capacity consistently thereby earning full fixed charges under the PPAs.



*Company made provision of ~INR 221 Cr in FY21 for doubtful debts

- ~3X growth in EBITDA was noticed at the back of higher revenues and controlled expenses.
- Reduction in landed cost of coal (constitutes 70-75% of total expenses) to ensure higher margins leading to EBITDA improvement.

Cash Balance (₹ Cr)



- Moratorium on interest payments during CIRP period.
- Established strict controls in cash budget.
- Controls at PO approval stage.
- Monitored payments against budgets with daily payment management process.
- Ensured timely payment of all statutory dues & ongoing O&M. expenses during CIRP

7. Key Impact Areas by RP and Team



(a) Systems Establishment

- (a) Set up a process where requests from JPL for every PO/WO (value above 1 lakh each) came to RP team for review and clearance.
- (b) Set up robust PO/WO review and MIS with O&M (regular plant and admin) and CAPEX expenses to control spend – *Nip In The Bud* at PO/WO stage itself.
- (c) Established process for PO approval which ensured tightening of spends - getting quotations from at least 3 vendors, detailed and signed Note for Approval (NFA) and Comparable Statement Quotes (CSQ) which contains all important T&C of contract (Landed Cost, Payment terms, Delivery time, warranty, BG etc.), restricting contracts to shorter time frame (3-6 months), unconditional exit clauses, and stores confirmation on current stock level for consumables.

(b) Inventory Management

- (a) JPL used to struggle in inventory management for mandatory spares due to insufficient cash balance, with insufficient spares for extremely critical processes which affected plant availability.
- (b) Identified critical and key inventory requirements and stocking levels, negotiated and purchased critical spares from alternate vendors, set up reorder levels and procedure.
- (c) Post RP team coming on board, the plant had zero delay due to unavailability of spares and consumables without exceeding budget managed with the existing cash balance.

(c) Expense Monitoring

- (a) Tracked and controlled non-essential purchases to reduce overall expenses and to keep it within CERC tariff guidelines for thermal power plants.

- (b) Introduced budgeting across functions with clear ownership (Statutory, O&M, Coal & Freight, CAPEX).

- (c) Monitored and controlled spends across facilities management, security agencies, payroll and IT hardware and services.

(d) Cash management & Cashflow forecasting

- (a) Team established cash budget and monthly review with cross functional teams to exercise tight control on payments and inflows.
- (b) Monitored payments against budgets with daily payment management process and actuals tracking.
- (c) Ensured timely payment of all statutory dues & ongoing O&M expenses during CIRP period.
- (d) Provided consistent monthly updates of cashflow and forecast to CoC.

(e) Coal Planning

- (a) Prior to CIRP, JPL regularly faced the issue of coal availability and hence couldn't ensure full declared capacity to the PPA beneficiaries, thus getting a hit on fixed cost tariff invoicing. There was not a single instance of stock-out after the RP team onboarded due to effective cash management and efficient coal planning to account for logistical and operational delays.
- (b) RP team improvised coal planning and tracking system – maintained a coal stock of three to four weeks at site, coordination with coal planning and F&A team, created a visibility for six months, reduced sourcing of poor-quality high-cost MCL coal, managed shifting of coal supply to mine with better quality coal (higher GCV, lower dust), participated in e-auction on landed coal cost basis and nullified the dependence on buying coal from traders, thereby reducing the overall landed cost.
- (c) Third party quality testing for e-auction coal at mines end (as loaded coal).
- (d) RP team assisted fuel management team to set

RP team assisted fuel management team to set up Short Term Open Access (STOA) contracts to set up sales channel via IEX portal, resulting in consistent increase in cash flow.

up Short Term Open Access (STOA) contracts to set up sales channel via IEX portal, resulting in consistent increase in cash flow.

(f) Cost Saving

- (a) Coordinated with JPL coal team to ensure maximum loading through direct rail mode and reduction in dependence on road mode – instituted penalties to coal handling agent (CHA) if quality and quantity less than guaranteed.
- (b) Reviewed various contracts for liaison with CIL, coal reconciliation, improving inflow of FSA coal above trigger (above 80% of allotted annual contracted quantity).
- (c) Created contract structure for CHA to incentivise them for loading higher quantity of allotted coal (above 80% of allotted quantity) through rail mode.
- (d) Rationalization of FSA from poor-quality costly coal (MCL) to better-quality cheaper coal (NCL).
- (e) Monitored average landed cost of coal (INR/GCV) regularly to drive higher margins and EBITDA improvement.

(g) Financial & Operational Planning

- (a) Facilitated research and feasibility study for Flue Gas Desulfurization (FGD) & Ash Management.
- (b) Identification and utilization of ash dumping site to ensure compliance with MOE guidelines.
- (c) Developed Annual Business Plan and benchmarks during CIRP process to ensure continuous improvement in performance.
- (d) Carried out two financial audit cycles and oversaw preparation of annual accounts in line with accounting conventions. Subsequently ensured necessary board approvals and conducted AGMs.

(h) CAPEX

- (a) Detailed 6-month, 1-Year and Long-Term capex plans developed for better visibility and prioritizing capex activities – ensured all capex was approved by CoC.
- (b) Finished critical project works - railway siding and electrification, wagon tippler, CPU, Coal Bunker dust extraction system, ventilation system, fire-fighting lines, high mast lighting, railway track fencing, internal and external roads, drains, retaining walls among others - that were unfinished from project phase. All funding met through internal accruals without any additional financing and phasing out capex to match cash flows.
- (c) Commissioning of railway siding and wagon tippler helped in reducing overall landed coal cost, reduced transit losses due to multiple handling of coal and increased supply efficiency.
- (d) Completion of external plant roads helped in better ash evacuation and compliance with regulatory norms.

(i) Employee Engagement

- (a) Carried out replacement hiring and employee reduction to maintain and maximize efficiency in operations
- (b) Carried out two cycles of annual appraisals and duly awarded promotions and increments during CIRP process.
- (c) Conducted regular site/office visits to ensure high morale and maintain connection with on-ground team.
- (d) During the outbreak of Covid-19, ensured availability of medical and accommodation support for all plant personnel.
- (e) Ensured the setting up of canteen and rest rooms for railway siding staff in accordance to Factories and Labor Act.
- (f) During CIRP period, multiple awards and recognitions awarded to JPL employees for outstanding performance.

(j) Corporate Social Responsibility (CSR)

- (a) Established contracts for CSR funding via Institute for Development of Youth, Women and Child & BAIF Development Research Foundation while company was under CIRP.
- (b) As a part of CSR program, provided funding toward the following initiatives
- (c) Provided revolving funds to self-help groups (in convergence with govt. scheme) for their income generation activities.
- (d) Organized school level competitions for students & provided electronic panels for smart classes.
- (e) Provided health infrastructure support to Govt. Institutions like Nutritional Re-Habilitation Centers etc.

what are critical aspects to be focused while handling CIRP of Power Companies

- (a) Developing understanding of the company's PPA and other short term power supply obligations
- (b) Assessment of PAF to avail full fixed cost per the terms of the PPA.
- (c) Assessment of alternate sources of coal and to undertake coal rationalization, if possible
- (d) Planning of major and minor overhauls for compliance with critical licenses
- (e) Close monitoring of the ash disposal activities followed by the Company in line with environmental norms
- (f) Tracking of landed coal cost and contracted GCV to ensure timely receipt of compensation for grade slippages, if any
- (g) Analysis of stock levels of mandatory spare parts as recommended by the OEMs.

8. Learnings from CIRP of power companies and

Annexure 1: CIRP / Timeline of Key Operational Milestones

Event	Date
JPL was admitted to CIRP under IBC by an Operational Creditor u/s 9	March 27, 2019
Abhilash Lal appointed as RP by NCLT	July 25, 2019
Alvarez and Marsal team onboarded as RP Team	July 29, 2019
Submission of resolution plan by NTPC & Adani	December 30, 2019
Negotiation process ~16 months; Multiple revisions in plans; 29A verification, PPA & Liquidation Valuation issues	Jan 2020 – May 2021
Submission of resolution plan to NCLT (with 100% CoC approval)	June 30, 2021
Approval of resolution plan by NCLT and setting up of Monitoring Committee	July 06, 2022
Completion of Transfer to SRA	September 5, 2022

Annexure 2: Claims – Financial Creditors

Claims Filed			Claims Payout			
#	Creditor Name	Amount Claimed	Upfront Amount	NCD	Equity	Recovery %
1	AVANTHA POWER & INFRASTRUCTURE LIMITED*	1,482,295,897	-	-	-	NA
2	AXIS BANK LIMITED	4,735,830,922	805,048,717	533,811,599	289,147,950	34%
3	BANK OF INDIA	3,365,289,725	625,358,574	414,662,683	224,608,953	38%
4	LIFE INSURANCE CORPORATION	2,305,201,480	428,366,539	284,041,229	153,855,666	38%
5	POWER FINANCE CORPORATION	10,345,000,000	1,922,370,726	1,274,685,332	690,454,555	38%
6	PUNJAB NATIONAL BANK	6,187,893,008	1,149,857,443	762,447,325	412,992,301	38%
7	RURAL ELECTRIFICATION CORPORATION	4,178,008,558	776,382,924	514,803,889	278,852,106	38%
8	STATE BANK OF INDIA	7,320,319,511	1,360,306,228	901,991,678	488,578,826	38%
9	UCO BANK	3,411,861,259	614,501,042	407,463,271	220,709,272	36%
10	UNION BANK OF INDIA	7,353,604,683	1,366,491,481	906,092,995	490,800,372	38%
Total		49,203,009,147	9,048,683,674	6,000,000,000	3,250,000,000	

* Avantha Power – related party – unsecured creditor. All other creditors had pari passu charge on fixed and current assets.

Annexure 3: Claims – Other Creditors

Claims Filed			Claims Payout	Recovery %
Category	# of claims	Amount of Claim Admitted	Amount Paid	
Workmen	1	1,316,326	1,316,326	100%
Operational Creditors	57	1,071,043,234	200,000,000	19%

7

CHAPTER

Resolution of Ireo Fiveriver Private Limited (IFPL)

The CIRP of IFPL is a complex case of Group Insolvency as it involved 10 more group companies in addition to the CD. On application of an Operational Creditor (OC), the NCLT, New Delhi ordered CIRP of the CD on December 13, 2018.

The primary challenge in this case was that there was no real asset in name of the CD, and it was merely holding JDA's (Joint Development Agreements) with certain companies which were the actual land holding companies. Besides, the real estate project was apparently in conflict with some laws such as FEMA, and Land Ceiling Act etc. The RP not only addressed these issues but also was able to capture balance of the 25% land documents (title deeds etc.) from the landowning companies and promoters of the CD and gave them in the safe custody of the financial creditors. He finally managed a feasible Resolution Plan for the CD.

The present case study, sponsored by IIIPI, has been developed by Mr. Jain. In this study, he has provided a first-hand step by step guide to rescue a corporate life.

Read on to know more...

1. Commencement of CIRP

Worxspace Consulting Pvt. Ltd., an Operational Creditor of M/s Ireo Fiveriver Private Limited (IFPL), the Corporate Debtor (CD), filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) at National Company Law Tribunal (NCLT), New Delhi for initiating its Corporate Insolvency Resolution Process (CIRP). The Adjudicating Authority (AA) through an order on December 13, 2018, admitted the petition and appointed Interim Resolution Professional (IRP) for the CD.

The CD had planned to develop a sole real estate project (Project) at Sector 3, 4 & 4A of Kalka-Pinjore Urban Complex, District Panchkula in Haryana. The project comprised of Plotted Development, Group Housing Towers, Villas, Independent Floors, Commercial Development, and Institutional area. As per the land records provided to the RP, the Project was planned on 198.801 acres of land for which license was obtained from Department of Town and Country Planning (DTCP) in the

name of Magnolia Propbuild Pvt. Ltd. and other land-owning companies. The CD had signed Joint Development Agreements (JDAs) with those land-owning companies. However, some land was disputed and possession of 177.27 acres of land was available. The proposed area breakup of the Project is given in the Table 1.

Table 1: The proposed area breakup of the Project

S.No.	Items	Area
1.	Plotted Development	56.00 Acres
2.	Group Housing 1	14.81 Acres
3.	Group Housing	224.94 Acres
4.	Commercial	03.18 Acres
5.	Institutional	11.55 Acres
6.	Roads, utility, parks others	~66.79 Acres
	TOTAL	177.27 Acres

2. Appointment of Resolution Professional

The IRP appointed by the Adjudicating Authority (AA) was not appointed as RP. Eventually after 270 days the Committee of Creditors (CoC) by way of a resolution replaced the IRP and Mr K. V. Jain was appointed as the RP of CD with 100% votes of the CoC. The RP applied for further extension of time for CIRP, which was allowed by NCLT vide an order dated November 25, 2019, for 90 days i.e., from November 09, 2019, to January 08, 2020.

The project comprised of Plotted Development, Group Housing Towers, Villas, Independent Floors, Commercial Development, and Institutional area. However, the land of the Project was not in the name the CD.

After taking over the charge, RP found that there was no real asset in name of the CD, and it was merely holding JDA's (Joint Development Agreements) with certain companies which were the actual land holding companies. As per the account books of the CD, it was brought to the knowledge of the RP that the Ireo Group is having an overseas fund from where it received funds in the accounts of CD. In fact, the funds were sent by Mauritius based Company named Camixo Ltd., which IREO Group used to call Group Fund Co., and from that Camixo Ltd. fund was received by Ireo Five River P. Ltd.

3. Claims Admitted by the RP

HDFC Ltd., a Non-Banking Financial Creditor (NBFC), and Axis Bank were major financial creditors. The CD had sold various plots and flats in 'Plotted Development' and high-rise towers, which it had intended to develop and sold (partially) thereby creating 'Class Creditors' in the form of homebuyers. A list of creditors with claims received and admitted as on Insolvency Commencement Date (ICD) i.e., December 13, 2018, as received by the RP in response to the public announcement as per Information Memorandum (IM) is provided in Table – 3.

Table-3: Claims Received and Admitted by the RP

Nature of creditor	Amount Claimed (₹ Crore)	Amount Admitted (₹ Crore)
Financial Creditors		
HDFC Limited – Secured	192.04	192.04
Axis Bank Limited – Bank Guarantee	65.13	62.50
Allottees (who filed claims)	178.24	149.20
Allottees (who did not file their claims and their claims are admitted on NCLT Directions)	0.00	92.97
IREO Grace Realtech Pvt. Ltd.	136.12	0.00
Commander Realty Pvt. Ltd.	7.53	0.00
IREO Pvt. Ltd.	4.21	0.00
Puma Relators Pvt. Ltd.	--	6.23
Sub Total- A	583.27	502.94
Operational Creditor (Other than Workmen and Employee and Statutory Dues)	56.08	0.33
Operational Creditor (Workmen & Employee)	0.00	0.00
Operational Creditor (Statutory Dues)	0.00	0.00
Sub Total- B	56.0	80.33
Total A+B	639.35	503.27

4. Challenges faced during CIRP

Though Land Celling Act is applicable in the State of Haryana, the CD would not have purchased the large chunk of agriculture land in its name. Besides, another problem which RP could foresee was buying agriculture

land in the name of CD through Foreign Direct Investment (FDI) and holding it till the Change of Land Usage, which might have violated the provisions of Foreign Exchange Management Act, 1999 (FEMA).

On further checking of account books, it was revealed that the CD transferred funds to certain companies as ICD's (Inter Corporate Deposit) which in turn bought agriculture land from farmers and applied to DTCP for grant of licence to develop it as a colony for which JDAs were being executed between land-owning licence holder companies and the CD. These JDAs authorised the CD to develop the colony and also gave it the right to sell the same.

RP realised JDAs were the only assets in the hands of the CD. However, almost 75% of the land bank under the said project was mortgaged to the two FCs of the CD. After several rounds of discussions between the RP and his team, it was decided to pitch the resolution of the CD either by merger or complete shift of ownership of land-owning companies along with the CD in the Terms of Reference (TOR) for Expression of Interest (EOI) of Resolution Plan.

Another problem which RP could foresee was buying agriculture land in the name of CD through FDI and holding it till the Change of Land Usage, which might have violated the provisions of FEMA.

Another challenge came before the RP was to satisfy the valuers as to the valuation of the project where there was no real asset in the name of the CD. They were appraised about the situation and explained the possible way through which the asset would eventually flow on the resolution, so they conducted the valuation of JDA's as 'Intangible Asset' of the CD. Another major challenge before the RP was huge number of unsatisfied homebuyers (Class Creditors) who had lost faith in the CIRP process due to inactivity for almost 270 days. So, to restore their faith, the RP took immediate steps and created a dedicated response team in his office to resolve queries of homebuyers and stakeholders on real time basis. Another step taken by RP to restore their faith in IBC's efficacy was to allow representatives of the Homebuyers' Association in the CoC meetings along with their Authorised Representative (ARs) but homebuyers were advised not to speak in the CoC meetings although they were allowed to raise their concerns in the meeting through AR. This eventually created faith of the homebuyers in the process.

Now the other challenges before the RP were various provisions of DTCP and Real Estate Regulatory Authority

To restore confidence of homebuyers, the RP took immediate steps and created a dedicated response team in his office to resolve the queries of homebuyers and other stakeholders on real time basis.

(RERA). DTCP had huge receivable in the form of various dues pending against the land-owning companies due to non-fulfilment of the licence conditions and it was very difficult for the RP to convince the DTCP, which is a government body, to file claim under CIRP of the CD since licences were granted in the name of ten more land owning companies which were not directly part of the CIRP. After many efforts, the RP was able to convince the government officials to file their claims on the basis of JDAs and the land bank which was part of CIRP.

Besides the above, following steps were taken to streamline the CIRP process:

- (a) The Class Creditors of the CD obtained stay from Hon'ble High Court against 10 Group companies from alienating its assets. It was difficult task to satisfy/ convince Prospective Resolution Applicants (PRAs) and even to Hon'ble High Court to allow the resolution of the CD in view of this order.

An application under Section 66 against the management of the 10 group companies was filed to ensure their cooperation.
- (b) RP impressed upon the group managements to co-operate in the resolution process of the CD, and to confirm before CoC of the CD that they all are willing to sign the new JDA's once a Successful Resolution Applicant (SRA) is finalised by CoC with due process.
- (c) RP obtained all the title deeds of the land bank which were not mortgaged with the FCs from 10 group companies.

5. Precedents in India for Group insolvency

The case of *State Bank of India Vs. Videocon Industries Ltd.* (VIL) is the landmark judgement for Group Insolvency jurisprudence in India. In this case, the NCLT Mumbai passed an order for consolidation of CIRP against 13 (out of 15) companies of Videocon, relying on principles laid down by US and UK courts. This order was passed in:

- (a) MA 1306/2018 in CP No. 02/2018, CP No. 01/2018, CP No. 543/2018, CP No. 507/2018, CP No.

509/2018, CP No. 511/2018, CP No. 508/2018, CP No. 512/2018, CP No. 510/2018, CP No. 528/2018, CP No. 563/2018, CP No. 560/2018, CP No. 562/2018, CP No. 559/2018, CP No. 564/2018

- (b) MA 1416/2018 in CP No. 02/2018 &
- (c) MA 393/2019 & MA 115/2019 in CP No. 543/2018 &
- (d) MA 1574/2019 in CP No. 01/2018 &
- (e) MA 774/2019 in CP No. 543/2018 &
- (f) MA 778/2019 in CP No. 559/2018 &
- (g) MA 1583/2018 IN CP No. 559/2018 dt 8th August 2019

Further, following paras of NCLT's judgement in MA No. 2385/2019 dated February 12, 2020, are worth mentioning in reference to Group Insolvency:

(a) **Para 103:** Now we try to answer the question that whether "consolidation" in this case meets the criteria of consolidation as propounded in the Judgment of this Bench of 8-8-2019 by which "consolidation" of 13 Videocon Group Companies were done for the purpose of CIRP. Each of these parameters and whether the same is fulfilled or not is detailed below: -

- (i) **Common control:** There is no dispute about the control of Respondent No.1/VIL on all decisions of Respondent Nos.2 to 5. It is also not denied that Respondent Nos. 2 to 5 were/are the Special Purpose Vehicles created by the Respondent No. 1/VIL. It is also not seriously disputed that the Respondent Nos.2 to 5 were acting like an agent and/or extended arm of the Respondent No. 1/VIL.
- (ii) **Common directors:** The family members of V.N. Dhoot are Directors in Respondent Nos.2 to 5 Companies, as was there for the 12 consolidated Companies;
- (iii) **Common assets:** As stated in the preceding paragraphs we have already held that Lenders of LOC/SBLC Agreement as well as Rupee Facility Agreement (RTL Agreement) have always treated the Videocon Group, as a Single Economic Entity, which included the 13 Obligor Co-obligor companies as well as Respondent Nos. 2 to 5. Further, as stated

hereinbefore the Lenders have treated the assets of the Videocon Group may it be in CHA assets, Telecom assets and/or foreign oil and gas assets as common assets for granting of the facility amount.

- (iv) **Common liabilities:** The clauses of the SBLC Facility Agreements and the VTL and RTL Facility Agreements have demonstrated that the security available for satisfaction of the debts are common securities belonging to various entities in the Videocon group, as was there for the 12 consolidated Companies;
- (v) **Inter-dependence:** As already discussed and held hereinbefore the Lenders have treated the foreign oil and gas assets and businesses dependent with the CHA business by way of putting various restrictions and cross defaults in respective funding Agreements to CHA and foreign oil and gas business. That apart the executed documents, the acquisition documents do indicate the Respondent Nos.2 to 5 were never independent and financially sound to acquire and maintain the properties but, it is admitted that all the time Respondent Nos. 2 to 5 were dependent on Respondent No. 1/VIL. Similarly, the funding arrangements also envisaged that for the CHA business funding foreign oil and gas assets shall have second charge and *vice-versa*.
- (vi) **Interlacing of finance:** In view of the aforesaid discussion and reference to the specific clauses in Rupee Facility Agreements on one hand, (for the default of which the 15 Videocon Group Companies are referred to the ongoing CIRP), clearly establishes the substantial right, security and interest qua the foreign oil and gas assets, properties, including interest therein is secured in favour of the Rupee Lenders under the various terms of the RTL Agreement. Whereas on the other hand, the LOC/SBLC Lenders i.e. lenders of Respondent Nos.2 to 5 for the foreign oil and gas business, have also secured the rights and interest in Respondent No. 1/VIL and has put various restrictions in its favour in relation to the non-disposal of the pledge shares of Respondent Nos.2 to 5 by

Respondent No. 1/VIL as well as have also taken the other securities including the security of the Videocon Brand which belongs to one of the Companies i.e. C.E. India Limited which is already part of the ongoing CIRP. Beside this the reference to various clauses of the RTL Agreements as well as LOC/SBLC Agreements do clearly show that there was interlacing finance arrangements.

- (vii) **Pooling of resources:** It has not been denied and admitted that Respondent Nos. 2 to 5 were financed from the resources of Respondent No. 1/VIL with the security to the Lenders for this finance and on the other hand for CHA business the resources of foreign oil and gas assets was given as a second charge. As such, for the sanction of the facility limits either for CHA business or foreign oil and gas business security of each other's assets was offered. Not only this, but the surplus flow arrangement from each other's business also agreed to be shared by the Lenders. Further, it is apparent that there was common Board of Directors, Promoters, pooling of human resources, liaising and funding. Undisputedly, the directors are commonly using their contacts and relationship to run all the subsidiaries for which common office staff, accountants, and other human resources are mobilized to manage the affairs collectively. Further, common arrangement of capital/funds is an accepted position in Videocon group, as was there for the 12 consolidated Companies.
- (viii) **Coexistence for survival:** The Respondent Nos. 2 to 5 were/are completely dependent on Respondent No. 1/VIL and it is admitted that these companies did not have any separate financial capability to serve the cash calls. Admittedly, the funding was done on the basis of the responsibility and guarantee taken by the parent company.
- (ix) **Intricate link of subsidiaries:** The Respondent Nos. 2 to 5 were incorporated subsequent to acquisition of the assets, the shareholding pattern, the control on these Respondents was/is common and admittedly never was independent but, there is intricate link amongst

them. Further, the loan documents and security arrangement mentioned therein clearly establish the intricate link between them and Respondent No. 1/VIL.

- (x) **Intertwined accounts:** The accounts of Respondent Nos. 2 to 5 were completely under control of the Respondent No. 1/VIL and each other Lenders have taken the charge on the proceedings of each other's account, which itself shows the accounts were intertwined.
 - (xi) **Inter-looping of debts:** As stated hereinbefore, we have already held that the accounts were intertwined, and creditors of CHA business and oil and gas business have already created inter-looping of the debts in favour of each other's debt.
 - (xii) **Singleness of economics of units:** As discussed above in the preceding paragraphs thereby referring to various specific clauses clearly shows that the Lenders have treated the Respondent Nos. 1 to 5 as one single economic unit, irrespective of the different businesses and assets, properties. The same is fortified from the various securities and restrictions mentioned in the loan documents. The foreign oil and gas assets acquisition documents also support the said fact.
 - (xiii) **Common Financial Creditors:** As per two financing agreements viz., SBLC Facility Agreement and the RTL & VTL Facility Agreements, the lenders are members of a 'consortium of banks' which is common for all. Because the impugned Insolvency Petitions were filed by SBI for itself and also on behalf of the said Joint Lenders Forum, already listed above, the names of all the banks forming consortium thus substantiate the fact that the financial creditors are common for Respondent No. 1 and Respondent No. 2, as was there for the 12 consolidated Companies.
- (b) **Para 104:** It can be clearly seen from the above that all the 13 parameters which were enunciated in the Order dated August 8, 2019, in the consolidation of 13 Videocon Group Companies are fully met and satisfied in this case also.

(c) **Para 105:** We are of the view that in case the said assets are not considered to be assets of single economic entity and/or of the Respondent No. 1/VIL, then, by no stretch of imagination, the effective resolution of ongoing CIRP of any of the 13 Companies as well as the CIRP VOVL would meet to the objective envisaged under the IBC and they shall be forced towards the liquidation despite having sufficient means and assets to resolve the debt of all corporate persons.

(d) **Para 106:** In other words, there shall be compromise rather the rights and interest of important stakeholders like Operational Creditors, employees etc. shall be jeopardized to the greater extent as looking at the cross creation of the security interest in relation to the assets of each of the VIL Group Companies would not be able to independently meet with the claims lodged by all the creditors.

Relying on VIL judgement, the NCLT, Mumbai in *Axis Bank Ltd. Vs. Lavasa Corpn. Ltd.* MA No. 3664 of 2019, dated February 26, 2020, also allowed for Group Insolvency. Although precedents are there but India needs Group Insolvency laws in place along with multi countries insolvency treaties and guidelines.

6. Value Maximization

In the meantime, RP was able to get balance of the 25% land documents (title deeds etc) from the landowning companies and promoters of the CD and gave them in the safe custody of the financial creditors.

All 'title deeds' were lying in the custody of HDFC Ltd. only, however, they were mortgaged to Axis bank & HDFC Ltd., so remaining 'title deeds' collected by RP were handed over to HDFC Ltd. for safe custody.

7. Resolution of the CD

Now other challenge with RP was to satisfy/ convince the Prospective Resolution Applicants (PRAs) about the existence of the intangible asset by way of various JDA's in the hands of the CD and the land bank being physically held in other ten companies but mortgaged to the FCs of the CD.

After initial hiccups, seven PRAs responded to EOI. The RP and his team had a series of meetings with them and explained the strategy being adopted by the RP to address the situation. Finally, RP received two resolution plans.

After vetting, the resolution plans of two PRAs – were presented before the CoC for voting. Finally, the CoC approved a Resolution Plan which was subsequently approved by the AA on August 06, 2021. The Successful Resolution Applicant (SRA) has offered ₹220 crores to two FCs and possession of plots according to different options exercised by home buyers or refund of money.

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The Resolution Plan is being successfully implemented and in its final stage of implementation. The Bank and NBFC have been paid while homebuyers have been offered their share as per the Resolution Plan.

8. Takeaways from the CIRP of IFPL

(a) Case for Joint Resolution

- (i) The assets of the 10 group companies were exclusively purchased for the business of the CD under CIRP.
- (ii) The management and deployment of staff was common, the Key Managerial Personnel (KMP) of the group companies appointed were the employees of one group only.
- (iii) The affairs of the 11 companies were so entangled that joint resolution benefitted all creditors. Separating assets might have been prohibitive and hurt all creditors.
- (iv) The expenses of the 10 subsidiaries after default was being met by parent as the assets owned by the subsidiaries were exclusively used by CD.
- (v) The assets of the 10 group companies were exclusively charged with bankers of the CD for CD's exposure only.
- (vi) 10 group companies were not having any other liability other than loan from CD.

(b) Options For Joint Resolution?

- (i) Substantive consolidation,
- (ii) Amalgamation of subsidiaries during CIRP before Resolution of the CD,

- (iii) Amalgamation/consolidation of assets of subsidiaries through Resolution Plan submitted for revival of CD by Resolution Applicants.
- (iv) All 10 group companies were willing to sign the exclusive JDA with incoming Resolution Applicant (RA) of the CD.

(c) Challenges Ahead

- (i) No framework exists for substantive consolidation mechanism. The same has to be opted for by creditors by making an application for consolidation before Hon'ble NCLT or it can be applied directly by NCLT as was done in some previous cases like Videocon.
- (ii) The CD is already undergoing CIRP for the past 9 months and the 10 Group companies have not defaulted so can't be admitted into CIRP. For a substantive consolidation to be effective, the first step is that the 10 Group companies should be admitted under CIRP.
- (iii) In the instant case, a separate consolidation application needs to be filed by the 10 Group companies and to be agreed by the CoC of the CD which is undergoing CIRP.
- (iv) CIRP is a time bound process. A substantive consolidation would require resetting of the clock for consolidated resolution plan of all the 11 companies which may result in delay in the revival of the CD. However, this delay should get compensated by the benefits in terms of value maximization through consolidation.
- (v) Amalgamation of subsidiaries during CIRP before Resolution of CD shall require approval of the NCLT. Prior to the same, it shall also require approval of the different class of creditors and shareholders of the 10 group companies, which may take some time and may not coincide with the CIRP timelines and deadlines of CD. Provisions of the Companies Act, 2013 shall be applicable.
- (vi) Amalgamation/Consolidation of Assets of subsidiaries through Resolution Plan submitted for revival of CD by the Resolution Applicant shall also require approval of the different class of creditors and shareholders of the 10 group

companies before submission of the relevant resolution plan.

- (vii) Balancing of all the different class of creditors shall be required.
- (viii) Adequate legal framework for amalgamation of companies under IBC is also required for a seamless process so that benefits equally apply to all the group entities i.e., parents and its subsidiaries/SPV's.

9. What would have fast tracked the above Process - Suggestive Steps

The experiences of RP and his team in conducting CIRP of IFPL may be crucial for Resolution Professionals (RPs) dealing/ will deal with similar cases. Followings are some important suggestions for smooth Resolution in the matters of Group Insolvency.

- (i) If not a Group Insolvency Framework, at this stage, a suitable provision in the IBC should be made for initiating consolidation application by the lenders or by the RP of one of the group companies in case of joint assets.

The RP should be given the responsibility in these types of situations, after he verifies the interrelated dependencies of the so-called group companies, he should place it before the CoC.

- (ii) The RP should be given the responsibility in these types of situations, after he verifies the interrelated dependencies of the so-called group companies, he should place it before CoC. Subsequently, the RP, with due approval of CoC, should submit it with the AA within a specified time frame, and Hon'ble AA to pass the appropriate order in this regard on priority basis to initiate/ commence the CIRP of the group companies or entities provided they fall within any definition of section 5(24) or 5 (24A) or as per Chapter X of Income Tax Act, 1961.
- (iii) The jurisdiction of AA should be that of the Main CD from where the first CIRP has started. It means that even if the other group companies are from other jurisdictional Registrar of Companies (ROCs) their proceedings should be before the same Bench which is handling the Main CD insolvency.
- (iv) There can be single RP for the group companies, to reduce the inter CoC conflicts and to promote uni-directional Resolution approach.

- (v) In case where the operations of the group companies are diverse and complicated and scattered then a central RP should be appointed to whom the different RPs should report and coordinate for a uni-directional effort for Resolution.
- (vi) There can be Main CoC with one or more (or they can be in accordance with the Debt share to the Group) elected members nominated from Sub CoC's.
- (vii) All CoC's should function in accordance with the policy framework to be decided by the main CoC in its 2nd meeting.

Hon'ble Apex Court's judgement in the case of *Victory Iron Works Ltd. Vs. Jitendra Lohia Civil Appeal Nos. 1743,1782 of 2021* dated March 14, 2023, may be referred where there is group insolvency and assets are held in between various corporates. The key takeaways of this judgement are as under:

- (a) Development rights in property created in favour of the Corporate Debtor constitute "property" within the meaning of the expression under Section 3(27) of IBC and "asset" within the meaning of section 25(2)(a) of IBC.
- (b) The Explanation under Section 18 begins with a caveat namely "for the purposes of this Section". Therefore, the exclusion of assets owned by a third-party, but in the possession of the Corporate Debtor held under contractual arrangements, from the definition of the expression "assets", is limited to Section 18. In other words, the Explanation under Section 18 does not extend to Section 25. Therefore, the Explanation under Section 18 will not provide an escape route for the appellants. In any case, the bundle of rights and interests created in favour of the Corporate Debtor may even be tantamount to

creation of an implied agency under Chapter-X of the Indian Contract Act, 1872 and such agency may not even be amenable to termination in view of Section 202 of the said Act since the creation of the same in favour of the Corporate Debtor was coupled with flow of consideration.

- (c) Two applications were filed before NCLT. One was by the Resolution Professional and the other was by Victory. A careful look at the application filed by Victory in C.A. (IB) No.146 of 2020 would show that there was no whisper about Victory occupying any land in excess of what they were permitted to occupy under the Leave and License Agreement. Under the Leave and License Agreement, Victory was allowed to occupy only 10000 sq. ft. of land, upon payment of a monthly license fee of ₹5,000/- . If at all, a vague averment was made in paragraph VII (c) of their application to the effect that inasmuch as the Corporate Debtor was unable to commence any development activity in the subject land, the owner and the developer, with their full consent, had decided to allow the applicant to run its business in the usual course from the subject land, because the subject land could not have been left vacant for any substantial period of time. The fact that there were security guards posted in the property is borne out by records. This is why NCLT as well as NCLAT have done a delicate act of balancing, by protecting the interests of Victory to the extent of the land permitted to be occupied. In fact, Victory does not even have the status of a lessee but is only a licensee. A license does not create any interest in the immovable property. Therefore, NCLT as well as NCLAT were right in holding that the possession of the Corporate Debtor, of the property needs to be protected. This is why a direction under Regulation 30 had been issued to the local district administration.

8

CHAPTER

Resolution in Parts 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...

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)	Employees	0.0105	Nil
	K. Unni Krishnan		0.1650	
	Subramania Koushik. G.	Others	31.7660	
	Canara Bank (Debenture Trustee)		1.8300	0.1830
	J. B. Murali (Advocate)		0.0419	0.0419
	Chennai Auto Ancillary Industrial Infrastructure Up gradation Company		0.2202	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 revise 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:

- a) 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.
- b) 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 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

- a) 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.
- b) 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.

- c) 1000+ employee cases pending before various judicial forums up to Supreme Court
- d) Not an operating entity and the CD's products and technology are obsolete in the market.
- e) Exceptional settlement of ₹43 Crores to 633 employees during the CIRP period, despite moratorium
- f) 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).
- g) 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:

- a. Resolution of the pending dispute with Government of Tamil Nādu for remaining leased assets, so that the FC can get some material realizations.
- b. Revaluation of all the remaining assets with local valuers (obsolete technology equipment's likely to result in only scrap value realizations)
- c. 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.

⁴ Resolution Plan approval order dated March 31, 2023, IA(IBC)/99(CHE)/2023 IN TCP/1/2021

(<https://ibbi.gov.in/uploads/order/0fc3ab13bdd814ba202eef585af871d9.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>).

9

CHAPTER

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 IIPI, 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...***

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 SR 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 completion 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 hereunder:

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

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 *IRRI (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	23.01.2018
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



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