

# Resolution of SHPL's Vizag Hospital Under CIRP Regulation 36B (6A)

Sevenhills Healthcare Private Limited (SHPL), the Corporate Debtor (CD), owns and operates one hospital each in Visakhapatnam (Vizag) and Mumbai. The CIRP of the SHPL was initiated on March 13, 2018, and a Resolution Plan was approved by NCLT on July 26, 2019. However, the Supreme Court set aside the order of NCLT and ruled that any resolution of the Mumbai hospital could only be done after an approval was received from the general body of the Municipal Corporation of Greater Mumbai (MCGM). As the Mumbai hospital was requisitioned by the MCGM as a dedicated Covid-19 facility, a fresh effort of inviting resolution plans could not yield expected results.

Meanwhile, the IBBI, on September 16, 2022, inserted Regulation 36 B (6A) to the CIRP Regulations, paving the way for asset-wise resolution of a CD. Foreseeing an opportunity, the RP in consultation with the CoC decided to invite resolution plans independently for Vizag hospital. Finally, the Vizag hospital received a Resolution Plan of ₹153 crore against its liquidation value of ₹87.9 crore. Thus, the RP successfully completed the first-of-its-kind transaction under Regulation 36B(6A).

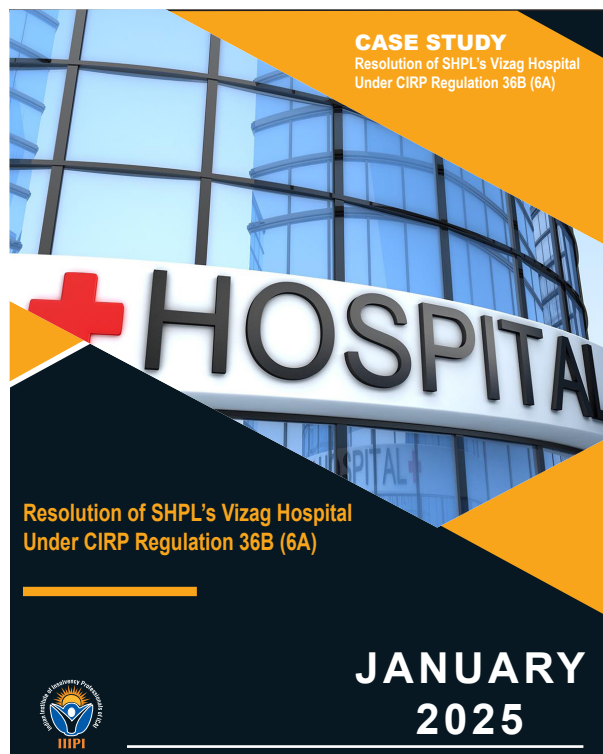
In the present case study, Mr. Abhilash Lal, the RP of the CD, and Mr. Darshil Mashru (Co-Author) have highlighted the challenges faced during the resolution of the Vizag hospital and the solutions the RP and his support team discovered in cooperation with the CoC. **Read on to know more...**



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## 1. Introduction

Sevenhills Healthcare Private Limited (SHPL), the Corporate Debtor (CD) is a private limited company promoted by Dr. Jitendra Das Maganti with significant investment by J.P. Morgan Chase & Co. SHPL owns and operates a 303-bed hospital at Visakhapatnam (Vizag) in Andhra Pradesh, and a 1,500-bed hospital through a public-private partnership (PPP) with the Municipal Corporation of Greater Mumbai (MCGM) in Mumbai. SHPL was admitted to Corporate Insolvency Resolution Process (CIRP) on March 13, 2018, on an application filed by a financial creditor.

The Resolution Professional (RP) and his support team successfully completed the first-of-its-kind transaction under Regulation 36B(6A) of the CIRP Regulations, where resolution of the Visakhapatnam Hospital, as a standalone unit, has been achieved on a going concern basis while ensuring no disruption in operations, with the resolution of SHPL and its Mumbai hospital continuing.

The RP and his support team identified allocable assets and liabilities to both Visakhapatnam and Mumbai hospitals, implementing a classic M&A strategy of separate-and-sell, maximizing value for all stakeholders and enabling the Successful Resolution Applicant (SRA) and stakeholders of Visakhapatnam Hospital to write a growth story independent of the Mumbai Hospital.

The support team also worked towards improving the operations of the hospitals throughout the CIRP, reinforcing the going concern status of the company. This enabled the support team to market the Visakhapatnam Hospital, generate interest in the same and obtain IBC compliant resolution plans before handing over the Visakhapatnam hospital to Mr. M. K. Rajagopalan and MGM Healthcare Private Limited, the Successful Resolution Applicant (SRA), a strategic player, who operates multiple hospitals in South India.

The present case study discusses the steps taken towards resolution of Visakhapatnam Hospital, a first-of-its-kind resolution under Regulation 36B(6A) setting precedent where a plan was received on a going concern basis for a unit while the CIRP continued for the remaining entity.

## 2. Company Profile

SHPL, a private limited company promoted by Dr. Jitendra Das Maganti and Mrs. Maganti Renukarani, with a significant investment by J.P. Morgan Chase & Co., is a healthcare company based in Visakhapatnam. SHPL owns and operates a 303-bed hospital along with a nursing college in Visakhapatnam and commenced operations in 1988. It also operates a 1,500-bed hospital through public-private partnership (PPP) model with the MCGM in Mumbai.

**“Visakhapatnam Hospital is a major super-specialty hospital in the region. At any given time about 76% of the IPD patients in the hospital have been from Odisha and Chhattisgarh.”**

Visakhapatnam Hospital is a major super-specialty hospital in the region, catering to patients from as far as southern Odisha and southern Chhattisgarh, with patients

from both these states contributing close to 76% of the inpatient (IPD) population at any given time.

The Mumbai hospital stands on a 19-acre plot in Andheri East, leased from the MCGM, with a potential for further expansion as well as for constructing a medical college. As part of the PPP agreement with the MCGM, 20% of the beds are reserved for MCGM stated categories, to provide affordable super-specialty healthcare to the underprivileged sections of the society.

The Visakhapatnam Hospital is on Waltair Main Road, 2.5 km away from Visakhapatnam railway station, 1.5 km from the APSRTC Bus Depot and 12 km from the Visakhapatnam Airport, in addition to being in close proximity to major industrial institutions in the area. The Mumbai hospital is located just 3.0 km from the Chhatrapati Shivaji Maharaj International Airport (Terminal 2). Both hospitals are accredited by the National Accreditation Board for Laboratories (NABL) and National Accreditation Board for Hospitals and Healthcare providers (NABH), while the Mumbai hospital was previously accredited by the Joint Commission International (JCI).

## 3. Background of the CIRP till 2023

The National Company Law Tribunal (NCLT) / Adjudicating Authority (AA) admitted a CIRP application against SHPL (CD) on March 13, 2018, and ordered commencement of insolvency proceedings. The CIRP application was filed by Axis Bank Ltd, a financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC or the Code). A resolution plan for the CD was approved by NCLT on July 26, 2019. However, the order approving the plan was overturned by the Hon'ble Supreme Court on November 15, 2019. The Supreme court ruled that any resolution of the Mumbai hospital of SHPL could only be done after an approval was received from the general body of the MCGM under the BMC Act. Subsequent to the Supreme Court's order and directions from the NCLT, the RP issued a fresh Invitation for Expression of Interest (EOI) on December 25, 2019, and a Request for Resolution Plans (RFRF) on February 13, 2020. However, due to the onset of the Covid-19 pandemic, since March 2020, the Mumbai Hospital of the Corporate Debtor was requisitioned by

the MCGM as a dedicated Covid-19 facility under the Disaster Management Act, 2005. In view of this, the CIRP of the CD was extended from time-to-time as the CIRP could not proceed to its conclusion till the Mumbai Hospital remained requisitioned under the Disaster Management Act, 2005.

#### 4. Rationale for asset-wise Resolution

As the Mumbai Hospital remained requisitioned by the MCGM as a designated Covid-19 facility, post the conclusion of the Covid-19 vaccination drive, RP sought cooperation from MCGM to conclude the CIRP. However, since MCGM has continued to requisition the Mumbai Hospital and not confirmed a closure date, the CIRP has been in a deadlock. In the meantime, the IBBI, via notification no. IBBI/2022-23/GN/REG093, dated September 16, 2022, inserted Regulation 36B(6A) to the CIRP Regulations, paving the way for asset-wise resolution of a Corporate Debtor. Foreseeing an opportunity of resolution, the RP, and the support team and Committee of Creditors (CoC) deliberated and decided to explore an asset-wise resolution. Basis the deliberations, RP and the support team identified allocable assets and liabilities associated with both the hospitals, and cost and claims associated to each hospital.

**“ On September 16, 2022, the IBBI inserted Regulation 36B(6A) to the CIRP Regulations, paving the way for asset-wise resolution of Corporate Debtor. ”**

#### 5. Key Considerations and Issuance of RFRP (Request For Resolution Plan)

Basis identification by RP and the support team, it was agreed with the CoC that the Visakhapatnam Hospital and Mumbai Hospital could be considered as two separate identifiable assets, and we could proceed for resolution for both assets separately (hereinafter identified as “categories”). There were multiple areas that the support team had to answer satisfactorily to ensure we remained fully compliant with all laws and regulations such as:

i. compliances with the Code and the Regulations formed thereunder;

- ii. treatment of claims and liabilities in asset-wise resolution plans;
- iii. distribution amongst class of creditors of each asset;
- iv. Inter-se distribution within a class of creditor of each asset;
- v. resolving the complex security structure;
- vi. tagging of the legal entity with an asset;
- vii. treatment of tax losses;
- viii. impact on operations;
- ix. lack of judicial precedents and contradicting interpretations of the law;
- x. preparation of Evaluation Matrix;
- xi. comparing plans received for the CD as a whole with asset-wise resolution plans
- xii. operational issues like usage of brand, shifting of registered office, transfer of multiple regulatory registrations like GST, TDS, PF etc., transfer of hospital empanelment with various customers and government schemes;

Further, since a resolution plan must deal with liabilities, interest of all stakeholders, provide for implementation schedule etc., the categorisation of assets becomes more complex. Considering the requirements of Section 30 of the IBC, read with Regulations 37 and 38 of the CIRP Regulations, and the continuing requisition of Mumbai Hospital by MCGM, it was decided that assets and liabilities associated thereto of both hospitals would need to be dealt with for any resolution plan to comply with the Code and CIRP Regulations. Additionally, considering the Mumbai hospital to be the main and larger asset, though under requisition by the MCGM, it was decided that CD shall be tagged along with Mumbai Hospital.

The CoC decided that considering the difference in complexity of both assets, separate Evaluation Matrices were required for both hospitals. This allowed the CoC to evaluate both the assets independently and allowed evolution of evaluation matrix according to complexity of the asset and attached liabilities thereto. The CoC, in the interest of maximisation of value, also decided that, if a Prospective Resolution Applicant (PRA) is desirous of acquiring the CD as a whole, they shall submit two

separate, resolution plans for each hospital and the CoC, at its sole discretion, may offer maximum weightage to the Resolution Plan(s) which provide for resolution of CD as a whole.

Accordingly, to resolve both the assets together, the RP issued a fresh Invitation of EoI dated January 05, 2023, and subsequently, RFRP dated May 03, 2023, as per Regulation 36B(6A) of the CIRP Regulations inviting separate resolution plans under two categories – (i) Category I being the Vishakhapatnam Hospital, and (ii) Category II being the Mumbai Hospital and the CD.

## 6. Resolution Process, Resolution Plan and its challenges

In response, the RP and the support team received multiple expressions of interest (EoI) from prospective resolution applicants (PRAs) for both, the Mumbai and Visakhapatnam Hospitals. Meanwhile, given the situation with MCGM, RP took appropriate legal steps to ensure no coercive steps such as cancellation of the PPP contract / lease were taken.

In view of the prevailing circumstances, the CoC decided to call for Resolution Plans for Category I and provide extension for submission for Category II. On 31 August 2023, RP and the support team received three resolution plans for the Visakhapatnam Hospital. Being a first-of-its-kind transaction, PRAs also faced multiple challenges in addressing various questions and challenges.

**“ The CoC decided to call for resolution plans for Category I (Visakhapatnam Hospital) and provide extension for submission for Category II (Mumbai Hospital). ”**

Since the categories defined in the RFRP consisted of all the assets and liabilities associated thereto, assets, outstanding operating cost, claims of creditors, liabilities in the books of accounts were bifurcated between both the categories. Accordingly, resolution plans pertaining to Visakhapatnam Hospital addressed claims and liabilities relating to Visakhapatnam and hence, the amount under these resolution plans was allocated towards liabilities and creditors of Visakhapatnam Hospital only.

However, loans extended by the financial creditors to the Corporate Debtor were as a single legal entity. Therefore, were not allocable to any defined category. Coupled with a complex security structure, determination of intra-creditor realisable value upon resolution posed a significant risk of intra-creditor litigation. In the interest of resolution, CoC members extensively deliberated on the distribution and concluded that all assenting creditors would be paid in proportion to their claim, irrespective of security held, and dissenting creditors will be paid as per the Code. This cooperation amongst members of the CoC was the foundation of this unique resolution going forward.

RP and the support team had also identified various non-core assets tagged as part of the Visakhapatnam Hospital. Besides, the RP and the support team successfully negotiated with the PRAs to release the non-core assets of more than ₹45 crore in favour of the CoC without impacting the Plan value. Post tagging of non-core assets to the CoC, the fair value and liquidation value of the Vizag asset was ₹121.5 crore and ₹87.9 crore respectively.

A major question before PRAs, RP team and CoC was distribution of Resolution Plan proceeds amounting ₹153 crores. Though outstanding costs had been allocated to each unit, process related cost like RP and support team fees could not be allocated to any single unit. Also, the total outstanding CIRP cost, mainly interim finance and interest thereon, was more than the expected Vizag resolution plan amount. After multiple rounds of deliberation, it was decided, with the consent of CoC members, that CIRP cost shall be paid at actuals and out of amount allocated to financial creditors. CIRP cost (OC claims) pertaining to Vizag operations was paid as the resolution was an asset sale and asset was being demerged into a separate entity. Hence, the same was paid to prevent any disruption in operations of the asset. PRAs covered their exposure by capping the total resolution plan amount, in case of any unforeseen additional liability towards acquisition of the Visakhapatnam Hospital.

## 7. Resolution Plan: Operational and Tax Challenges

The CIRP for the CD had extended to over 5 years due

to litigation and Covid-19 related issues. Further, given the age of the buildings, dated equipment, spread out facilities, legacy operational issues and challenges under Covid 19, the Visakhapatnam Hospital, it would not have been a very attractive stand-alone acquisition for Resolution Applicants (RAs). However, the RP and the 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. This showcased the potential of the hospital and attracted the interest of RAs.

Some key areas where RP team worked towards improving operations of Visakhapatnam Hospital were:

#### I. Revamp of Organisational Structure

- (a) To ensure proper oversight over the hospital, the management structure of hospital was reviewed and revamped in a comprehensive manner.
- (b) A new CEO with relevant experience in healthcare sector was appointed to ensure proper controls were in place to prevent any significant operational leakage in the Vizag hospital.

**“ A new CEO, with relevant experience in healthcare sector, was appointed for Vizag hospital to ensure proper controls were in place to prevent any significant operational leakage in the hospital. ”**

- (c) Key positions of Chief Medical Superintendent and Hospital Administrator were restaffed after substantial review of credentials and extensive interviews.
- (d) Key departments like Human Resources and Marketing were revamped to prevent wastage and promote achievement of targets in an efficient manner

#### II. Marketing and Empanelment

- (a) The marketing department of hospital was re-structured into two separate departments: Marketing and Corporate Development - to ensure

better focus and specialization.

- (b) Candidates with extensive experience in hospital marketing were interviewed and selected to aid the revival efforts of hospital.
- (c) Innovative marketing methods like social media marketing and digital screens were used to promote the hospital in a cost-effective way while ensuring extensive reach.
- (d) Various events such as medical camps were held from time to time to ensure that the name and recognition of hospital remained intact despite facing challenges stemming from CIRP.
- (e) Empanelment with key public and private players in the surrounding areas to ensure a steady flow of patients.

#### III. Doctor Structure

- (a) The hospital faced an extensive outflow of key doctors, post-Covid 19 pandemic due to reduction in speciality patients (reducing variable compensation) and inability of the hospital to pay increased salaries offered by competitors in the market.
- (b) To offset this outflow, new doctors with suitable knowledge and experience were hired and they performed successfully under the new supervision over the CIRP period.
- (c) The salary structure of doctors was revamped to ensure a proper balance between fixed and variable pay ensuring equitable distribution of revenue between hospital and doctors.

#### IV. Capex

- (a) To ensure the infrastructure of hospital was in line with new advances and competitors, significant improvements were made in the hospital.
- (b) Modular Operation Theatres (OTs) were constructed to ensure adequate infrastructure in relation to operation of patients.
- (c) Cardio-Thoracic department of the hospital

## Case Study

### THE RESOLUTION PROFESSIONAL

was started for which RP team utilized various innovative methods like refurbishment and leasing to procure equipment at lower cost as compared to outright purchase.

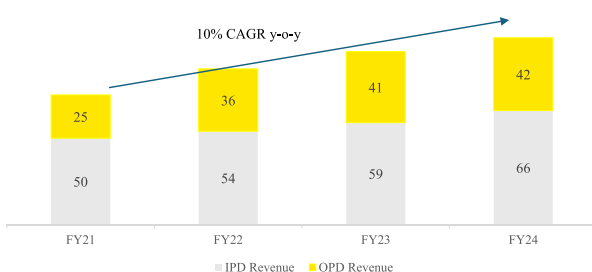
- (d) Liver transplant facility was provided to Visakhapatnam populace through the inauguration of the Liver Clinic, a one-of-its-kind initiative, in collaboration with a leading Hyderabad based institute.
- (e) All changes / modernizations were done in regular consultation with the staff since finance was limited to internal accruals alone. The requirements were prioritized in terms of patient needs, safety / regulatory requirements and payback period.

## V. Cost Reduction Initiatives

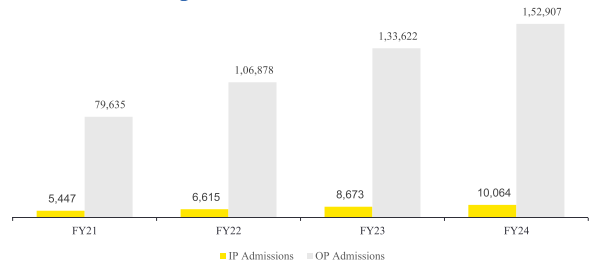
- (a) For every purchase order, multiple quotations were sourced to optimize the procurement cost.
- (b) Doctors' salary structure was revamped to prevent excessive outflow of doctor cost as compared to competitors.
- (c) Extensive negotiations were conducted to ensure cooperation of vendors despite significant pre-CIRP dues.
- (d) The excess manpower of hospital in areas like housekeeping was trimmed down significantly to reduce employee cost while retaining service standards.

Following the efforts undertaken by RP to improve operations of the hospital, significant improvements were seen in key performance metrics of the hospital:

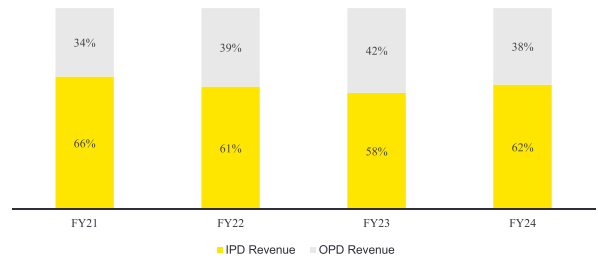
**Graph 1: IPD and OPD Revenue Trend (INR in Crore)**



**Graph 2: Number of Patients**



**Graph 3: Revenue Contribution %**



Significant improvements were also made in the infrastructure of the hospital to ensure the same is in line with competing hospitals of Vizag:

- The hospital canteen has been renovated at a cost of ₹23 lacs with ₹10 lacs borne by the canteen operator.
- OPD rooms have undergone renovation in phased manner with renovation cost at ₹0.7 lacs per OPD.
- Upgradation of 8 rooms to 'Deluxe' AC rooms with better facilities to attract higher income patients at minimal cost.
- Purchase of 128 slice CT scan machine financed partly by sale of old machine.
- Renovation of the modular OTs within the allocated budget of ₹~150 lacs.

Since resolution plans were received for a particular category of the CD, transfer of the asset in a clean and effective manner was critical to successful implementation. Helping PRAs understand the resolution process was a challenge given the unique nature of the transaction. A key concern for the PRAs was lack of precedents, an MCA white paper discussing potential amendments in the Code, and contradicting interpretations of the amendment.

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### THE RESOLUTION PROFESSIONAL

Resolution plans received envisioned a simple transfer of assets and liabilities creating possible tax outflow. The agreed structure also had to be vetted to ensure compliance with applicable laws and regulations. Employee contracts would have to be terminated as they moved to a new entity triggering payment of gratuity. Further, issues such as transfer of contracts, licenses and empanelment upon the sale of the hospital could severely impact smooth operations.

After extensive deliberations with PRAs, it was decided that Visakhapatnam Hospital would be demerged from SHPL into the PRA on a going concern basis, along with all assets and liabilities associated thereto. This structure allowed all assets, employees, contracts, licenses, empanelment and liabilities associated to be transferred to the PRA on a going concern basis without any GST implications. Also, no outflow towards income tax was expected, being an Income Tax compliant demerger and losses in proportion to the assets being transferred would also be transferred to PRA. Such a demerger was also found to be efficient for stamp duty implications.

Ensuring seamless continuity of operations at the hospital was another key reason for adopting the demerger route.

## 8. Final Resolution Plan: Operational and Implementation Challenges

On January 23, 2024, the CoC unanimously approved the resolution plan filed by M. K. Rajagopalan and MGM Healthcare Private Limited for the Visakhapatnam Hospital. The same was filed before the NCLT on January 25, 2024, and received approval vide order dated June 10, 2024. Pursuant to the order, the RP and team ensured compliance with the defined steps and completed implementation by July 12, 2024.

Though the PRA had addressed payment of CIRP cost and distribution to FCs, the question on payment of outstanding CIRP cost continued before RP team and CoC since the CIRP Cost (interim funding + interest for the whole CD) was higher than the total plan amount (i.e. sale value of Vizag asset). Hence, RP team faced a bigger question of distribution of the Plan proceeds as multiple interpretations led to multiple options:



**Before**



**After**

*Upgradation of 8 rooms to 'Deluxe' AC rooms with better facilities to attract higher income patients at minimal cost.*



**Before**



**After**

*Purchase of 128 slice CT scan machine financed partly by sale of old machine.*



**Before**



**After**

*Renovation of the modular OTs within the allocated budget of ~₹150 lacs.*

1. Pay creditors of Vizag asset only
2. Keep all sale proceeds with the CD and distribute upon resolution of the CD as a whole
3. Pay all creditors on proportionally reduced basis

RP team and CoC deliberated extensively and decided that since the Visakhapatnam Hospital only was being resolved, all outstanding cost relating to Visakhapatnam Hospital should be paid to avoid any disruption in operations. Similarly, since majority of outstanding process cost i.e. interim finance could not be allocated to any particular asset, clarity would be required in treatment of such cost. This had been mitigated by CoC ensuring that, if any order directing payment of remaining CIRP cost is passed, then all CoC members will return the Plan amount received. As required by the RFRP, the resolution plans also specifically addressed the dues of employees, OCs and other stakeholders relating to Visakhapatnam Hospital which needed to be paid in accordance with the Resolution Plan after approval.

**“ On June 10, 2024, the NCLT approved the Resolution Plan for Visakhapatnam Hospital. Besides, the court also decided other related applications in favour of the RP and the CoC. ”**

On June 10, 2024, the NCLT, along with order approving the resolution plan for the Visakhapatnam Hospital, pronounced its order in other applications, including applications against the resolution of the Visakhapatnam Hospital, in favour of the RP and CoC. Considering the favourable order from NCLT and expecting resolution of Mumbai Hospital, after considering multiple options and deliberating on payment between CIRP cost and FCs, CoC decided that the outstanding CIRP cost will be paid out of proceeds from resolution of Mumbai Hospital and remaining plan amount shall be distributed to FCs. While deciding on the distribution, the CoC, being cognizant of uncertainty of interpretation, also decided that if any order directing payment of CIRP cost is passed, then all CoC members will return the Plan amount received.

An unexpected operational difficulty surfaced during payments to operational creditors and employees. Since the commencement of the CIRP in March 2018, several employees and a few OCs had moved on and their bank details, as provided under the claims, had changed. Foreseeing this requirement of updated bank account details, the RP reached out to OCs and employees to update their records and ensure payment is made within the approved timeline.

The location of the registered office and registrations with statutory authorities provided another challenge. The registered office of the CD was the Visakhapatnam Hospital. Since the Resolution Plan envisioned a demerger of Visakhapatnam Hospital to another entity, the registered office needed to be shifted without disturbing the applicable territorial jurisdiction of statutory authorities, such as income tax, GST, EPFO, ESIC and also the NCLT. Hence, the CoC approved the shifting of the registered office of SHPL within the city limits to a new commercial building. Due to limited filing options on MCA portal, MCA records are in process of updating which will be followed by income tax, GST among others. Also, since all employees are being transferred to an existing entity, the employees' provident fund, ESIC, and other statutory accounts with the CD are also being transferred to the new entity. Post the transfer of all employees to new registration, all existing registrations obtained by SHPL for use by the Visakhapatnam Hospital shall be closed.

## 9. Conclusion of transaction and transition

Upon the infusion of funds by M. K. Rajagopalan, through his company MGM Healthcare Private Limited, the transaction stood implemented. MGM Healthcare Private Limited and the RP signed a transfer deed for the Visakhapatnam Hospital and all assets associated therewith, for the transfer of the asset in favour of MGM Healthcare Private Limited, and MGM Healthcare Private Limited recently rebranded the SevenHills Hospital, Visakhapatnam as “MGM Healthcare SevenHills Hospital”. With this, the resolution of the Visakhapatnam Hospital stood completed, while the resolution of the Mumbai Hospital and SHPL continuing, pending closure of litigation mounted by the MCGM and the promoters.