

# Restructuring & Insolvency

Monthly Newsletter

**November 2023**

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# STATUTORY UPDATES

## Discussion paper on amendments to IBBI (Insolvency Resolution Process for Corporate Process) Regulations, 2016

- The Insolvency and Bankruptcy Board of India (IBBI) vide discussion paper dated November 01, 2023 sought comments on the prospective amendments to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Process) Regulations, 2016 (**CIRP Regulations**). The paper deals with the proposed amendments focusing on bridging certain existing gaps in the procedure of the Corporate Insolvency Resolution Process (**CIRP**), and outlines 7 distinct issues in the CIRP and proposes amendments to address the same:
  - Approval of Committee of Creditors (CoC) for insolvency resolution process cost
  - Monthly CoC meetings
  - Discussion of valuation methodology and report with CoC
  - Disclosure of valuation reports
  - Continuation of process activities pending disposal of extension application by the Adjudicating Authority (AA)
  - Clarity in minimum entitlement to dissenting financial creditors
  - Mandatory contents of resolution plan
- The amendments thereunder are as follows:
  - **Approval of CoC for insolvency resolution process cost:** Regulation 31B is proposed to be inserted in CIRP Regulations. This regulation puts an obligation on the insolvency professional to seek permission from the CoC for all expenses, including expenses incurred in running the business of the corporate debtor as a going concern. This is important to ensure that the reins of control are under the most pivotal decision-making body, i.e., the CoC. All financial creditors of the insolvent entity should not only be aware of the operational status of the corporate debtor but should also determine how and in what manner the CIRP takes place. Maintaining the corporate debtor as a going concern during CIRP is crucial to ensure its operational continuity and secure better returns for creditors.
  - **Monthly CoC meetings:** The Insolvency and Bankruptcy Code (IBC) is a time-bound mechanism that stipulates a timeline of 180 days to complete the CIRP. This ensures that the viability of a business does not deteriorate further. However, there is a roadblock that hinders the smooth functioning of IBC by stalling the momentum of the resolution process. There have been cases where a gap of 6 months has been left between 2 successive CoC meetings. Examples such as this show how the gap conflicts with the intended agility of the process. The root cause of this problem is that when there are no items on the agenda, CoC meetings tend to be deferred. This creates an obstacle in achieving consistent and timely resolutions. In order to facilitate swift feedback, establish a forum for addressing emerging issues, and encourage a cooperative atmosphere among stakeholders, an amendment is proposed to incorporate Regulation 18(1) into the CIRP Regulations. This amendment stipulates that there should not be a time gap of more than 30 days between any two CoC meetings.

- **Discussion of valuation methodology and report with CoC:** Until now, according to the CIRP Regulations, the valuation report that contained the methodology of liquidation value and fair market value was only shared with the CoC after the receipt of the Resolution Plan. This had a direct impact on the CoC's decision-making process regarding the eligibility criteria for the prospective resolution applicants as the CoC possessed limited knowledge and understanding regarding to valuation methodology which could subsequently cause disputes. In order to address this issue, a proactive approach is proposed under Regulation 35(1)(a) of CIRP Regulations, which mandates that valuers explain the valuation methodology they adopt to the CoC before computation of the estimates.
- **Disclosure of fair value in the information memorandum:** To ensure transparency and encourage participation at the Request for Resolution Plan (**RFRP**) stage, it was proposed under Regulation 36(2)(1) that resolution applicants should have access to the fair value of the corporate debtor. Previously, this information was only available to the Resolution Professional (**RP**) and CoC, which created an information asymmetry. This transparency ensures that all resolution applicants operate with the same set of information.
- **Continuation of process activities pending disposal of extension application by the AA:** In order to prevent the process from being stranded due to a stalled application for extension of CIRP before the AA, a proposed amendment to Regulation 40 of the CIRP Regulations adds a clarification which enables the RP to continue his functions in the CIRP for the period when the application seeking extension of the corporate insolvency resolution process is filed by the RP until the application for extension is decided by AA.
- **Clarity in minimum entitlement to dissenting financial creditors:** The Regulation 38 of the CIRP Regulations protects the dissenting financial creditors, stating that they will be paid in priority to the assenting financial creditors. Additionally, Section 30(2)(b) of the IBC ensures that the dissenting financial creditors will be paid no less than the realizable amount in case of liquidation, when the resolution plan is approved. However, this poses a problem because Regulation 2(1)(k) calculates the value of a corporate debtor as on the insolvency commencement date, which can lead to a higher return for the dissenting financial creditors. This is because the assets of the corporate debtor may deteriorate during the CIRP process, making the notional value at the start of the process higher than the actual value of the corporate debtor. Moreover, this may incentivize liquidation as it can be more economically lucrative to go against the resolution plan. To address this issue, definition of 'amount due in the event of liquidation' is proposed to be added under the CIRP Regulations by insertion under Regulation 2(1)(ka) whereby it is envisaged that 'amount due in the event of liquidation' is the lower of the amount that would have been paid to the creditors under the resolution plan's distribution order or the liquidation value as defined under these regulations and distributed by the order of priority in Section 53(1) of the IBC. A clarification is also added to Regulation 38(1)(b) which provides that in no circumstance will the financial creditors who voted in favor of the resolution plan be paid higher percent of its dues, than the dissenting financial creditors.
- **Mandatory contents of resolution plan:** To enhance the efficiency of the resolution process and minimize implementation delays, a proposal is made to bifurcate the resolution plan into two distinct parts. Part A of the plan will focus on the inflow i.e., payment under the resolution plan (total value of the resolution plan), payment of insolvency resolution process cost, payment schedule, feasibility, and viability of the resolution plan etc. Meanwhile, Part B will specifically address the allocation of funds among diverse stakeholders. This two-part structure aims to empower the Adjudicating Authority to initially endorse the resolution plan, thereby granting control to the resolution applicant for the inflow to commence and the corporate debtor to resume operations. The subsequent segment will handle the equitable distribution among stakeholders. In the event of any disputes or legal proceedings, contested amounts may be securely held in an escrow account until resolution, with distribution occurring post-litigation upon the conclusive determination of distribution-related matters.

## Discussion paper on streamlining the voluntary liquidation process

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- IBBI vide its discussion paper dated October 05, 2023 sought comments on the prospective amendments to the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (**Voluntary Liquidation Process Regulations**).
- It was observed that while the IBC envisages a process of 90 to 270 days for voluntary liquidation, as on August 31, 2023 around 55% of ongoing cases were continuing for over a year on account of the following reasons: delay in making foreign remittances, pending appeals regarding demand/penalty imposed and refund from statutory departments/other litigations.
- In order to limit such delays, the IBBI has proposed that at the time of the declaration of initiation of the voluntary liquidation process, the directors of corporate persons shall be

mandated to make disclosures regarding pending litigations and assessments before statutory authorities, and to ensure that sufficient provisions have been made to meet the obligations arising from these proceedings/assessments.

- The IBBI has further proposed that in the event the liquidator fails to complete the process within the prescribed timeframe of 270 days, he shall call a meeting of contributories of the corporate person and within 15 days, file a status report with the IBBI explaining the reasons for delay and specifying the additional time required to complete the process.
- In case of voluntary liquidation of financial service providers, it was observed that during the period between the submission of the dissolution application and the passing of the dissolution order, several claimants were approaching the IBBI for withdrawal, from the funds deposited with the IBBI, of the amount they were entitled to receive subsequent to the dissolution order. In order to ensure legitimacy of such claims, the IBBI has proposed that in cases of claims for withdrawal received prior to the dissolution order, the liquidator, on the instructions of the IBBI, shall verify the legitimacy of the claim and submit his/her findings and opinions to the IBBI.
- Further, to ensure the streamlining of records, the IBBI has proposed to provide that the Form H, final report as well as the dissolution order be submitted to the IBBI in an electronic platform.

## Discussion paper on strengthening the liquidation process

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- IBBI vide discussion paper dated October 20, 2023 sought comments on the prospective amendments to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation Process Regulations**) and has proposed the following amendments in order to strengthen the existing regulatory framework and respond to the emerging needs.
- Review of auction process under the Liquidation Regulations: In order to enhance the auction process under IBC, IBBI has proposed the following amendments.
  - Participation of prospective bidders in an auction process on the basis of affidavit/declaration on his eligibility under Section 29A of the IBC. In the event a prospective bidder submits wrong affidavit of being Section 29A compliant, then apart from losing the right to participate in the auction, his Earnest Money Deposit (**EMD**) shall stand forfeited.
  - In order to provide a level playing field to all the prospective bidders and to raise transparency, IBBI has proposed listing of all the assets of a corporate debtor along with all the relevant information, as mentioned in the asset memorandum, on a centralized listing platform (as maybe notified by IBBI).
  - Further, IBBI has proposed mandatory consultation with the Stakeholders Consultation Committee (**SCC**) in case the highest bid above the reserve price is rejected by a liquidator.
  - IBBI has also proposed to delete Clause 4A of the Schedule I of Liquidation Process Regulations which allows 25% reduction in the reserve price on account of failure of the first auction for the corporate debtor, to ensure value maximization of the corporate debtor.
- IBBI has proposed mandatory consultation with SCC for:
  - Private sale under liquidation
  - Finalization of valuation reports (in case of fresh valuation)
  - Applying to the AA for early dissolution of the corporate debtor
  - Continuation or initiation of any legal proceeding in respect of the corporate debtor under Regulation 33(5) of the Liquidation Process Regulations.

It has also been proposed that there shall be mandatory sharing of progress report filed under Regulation 15 of the Liquidation Process Regulations with the SCC. Further, a SCC meeting convened by the Liquidator in accordance with the Liquidation Process Regulations shall have a maximum gap of 30 days between 2 consecutive meetings.

- Further, in order to improvise the process of decision making, IBBI has proposed that in the event the running of business of the corporate debtor is economically unviable, the liquidator shall consult the SCC to decide whether to keep the corporate debtor as a going concern or otherwise and shall act as per the advice of the liquidator. Where the liquidator is unable to sell the corporate debtor as a going concern though business of the corporate debtor is running as going concern, he shall inform the reason for such failure to SCC and seek its advice to review the marketing strategy already adopted for previous auctions, to attract potential bidders in future auctions.
- IBBI has also mandated to inform the SCC on any cost overrun by the corporate debtor against the cost mentioned in the preliminary report or if the cost exceeds 10% of the liquidation value of the corporate debtor.
- To facilitate calculation of liquidator's fee in a transparent manner and to remove duplication of work, IBBI has proposed that liquidator's fee specified in the first column in Regulation 4(2)(b) of

the Liquidation Process Regulation will be applicable for the realization made up to the end of 6 months from the end of quarter in which liquidation has commenced. However, no period will be allowed to be excluded on account of inability to sell assets because of any litigation.

- It has been observed that a SCC might possess critical information or perspectives about the corporate debtor, which a liquidator might not be privy to and therefore, their input can help in ensuring the accuracy and completeness of a preliminary report submitted under Regulation 13 of the Liquidation Process Regulations, especially in cases where the books of the corporate debtor are either not available or unreliable. Thus, IBBI has proposed that the liquidator shall seek suggestions/observations of the SCC on the draft preliminary report and finalize it, after considering such suggestions/observations.
- IBBI has also suggested amendments in Form H submitted under Regulation 45(3) of the Liquidation Process Regulations to capture details regarding the realization and distribution made during the process.
- Further, for maximizing the value of assets of the corporate debtor, IBBI has proposed that a liquidator may assign assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in Sections 43 to 51 and Section 66 of the IBC even before the adjudication of such proceedings by the AA.
- Additionally, in order to address the issue of distribution after the submission of final report (before the order of dissolution), IBBI has proposed that on receipt of a request for withdrawal, IBBI shall direct the liquidator to verify the legitimacy of the claim and submit its findings to IBBI to permit withdrawal even before dissolution.

## Discussion paper on rationalization the regulatory framework for enhancing the effectiveness of IPEs in insolvency resolution process

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- The IBBI vide discussion paper dated October 20, 2023 sought comments on the prospective amendments to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (**IP Regulations**), Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Process) Regulations, 2016 (**CIRP Regulations**) and Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2016 (**Inspection Regulations**).
- In order to facilitate better implementation of regulatory framework of Insolvency Professional Entities (**IPEs**) and to address the constraints faced by IPEs acting as Insolvency Professionals (**IP**), IBBI has outlined 4 issues:
  - Monitoring of IPE acting as IP
  - Related party definition for an IPE acting as an IP
  - Restriction on number of assignments by an IP
  - Minimum fee structure of an IPE acting as IP and has proposed the following amendments
- To clarify and address the impact of repeated instances of contravention or disciplinary proceeding against a director or a partner of an IPE acting as an IP, IBBI has proposed that in the event of contravention by the IPE acting as IP, disciplinary proceeding shall be initiated against the IP who is/has been its authorized signatory for respective assignment(s). Upon initiation of disciplinary proceeding against such IP, the IPE shall not allow him/her to act as authorized signatory in any new assignment. Such action would not impact the ongoing assignment or status of Authorization for Assignment (**AFA**) of the IPE acting as IP or its other partners or directors, as they are separate legal entity from the authorized signatory. IBBI further clarified that if there are repeated instances of contravention or disciplinary proceeding against one or more partners or directors of the IPE acting as IP, the disciplinary proceeding may also be initiated against the IPE acting as IP on a case-to-case basis. However, such action would not impact the status of AFA of other partners or directors of the IPE.
- Keeping in mind the institutional framework of IPEs, the IBBI has further proposed to exclude the partner or director of the IPE acting as an IP from the definition of related party for the purposes of Clauses 23B and 23C of the Code of Conduct specified in IP Regulations (except for services related to valuation and auditing).
- The IBBI has restricted the maximum number of assignments being undertaken by an IP. However, since an IPE has more than one partner/directors, IBBI has proposed that an IP who is an individual will have an overall limit of 10 assignments at any point of time (maximum 3 of which have admitted claims exceeding INR 1,000 crore each, whereas, for an IPE acting as an IP, there is an overall limit of 5 assignments per partner/director, at any point in time, excluding the assignments taken by them in individual capacity (not exceeding total of 15 assignments).
- The IBBI has further proposed to clarify that the existing fee structure for an IP under Regulation 34B of the CIRP Regulations shall not be applicable to an IPE acting as an IP.



# RECENT JUDGMENTS

## Devi Trading & Holding Pvt. Ltd. v. Mr. Ravi Shankar Devarakonda RP of Meenakshi Energy Ltd

National Company Law Appellate Tribunal, Chennai | Judgment dated October 16, 2023 | Company Appeal (AT) (CH) (INS.) No. 308/2023 | IA Nos. 945 & 946/2023

### Background facts

- Aggrieved by the order dated October 10, 2023 passed by the NCLT, Hyderabad (**Adjudicating Authority**), where it approved the Resolution Plan submitted by Vedanta Limited (**Successful Resolution Applicant or SRA**) in the CIRP of Meenakshi Energy Ltd. (**Corporate Debtor**), the dissenting financial creditor, Devi Trading & Holding Pvt. Ltd. (**Appellant**), preferred an appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (**IBC**).
- Pertinently, Clause 3.5.5 of the Resolution Plan stipulated that the distribution mechanism under the Plan was delegated to the Committee of Creditors (**CoC**) of the Corporate Debtor, and the CoC were authorised to propose a manner of distribution of funds among the various stakeholders.
- The CoC, during its 41st Meeting dated November 11, 2022 deliberated upon the manner of inter-se distribution among the Financial Creditors and approved the Resolution Plan by a majority of 93.43%. Thereafter, the Adjudicating Authority also approved the Resolution Plan, observing that the decision on the distribution mechanism under the Plan falls within the commercial wisdom of the CoC. As such, it did not interfere with the CoC's exercise of its commercial wisdom.
- The learned counsel for the Appellant argued that the CoC is not empowered to 'propose' and then to 'consider' its own proposal for the distribution mechanism under a resolution plan. In terms of Section 30(4) of the Code, the CoC can only consider resolution plans placed before it.
- The Appellant further argued that the Resolution Plan in this case had envisaged 'Nil' payments to the unsecured Financial Creditors and the CoC had not provided sufficient reasoning as to how such 'Nil' apportionment to the unsecured Financial Creditors was feasible and viable for the Corporate Debtor.
- It is pertinent to note that the Appellant, a member of the CoC of the Corporate Debtor, was present during the CoC meeting where the Resolution Plan was approved. However, they had not raised any substantial objections.

### Issue at hand?

- Whether the Adjudicating Authority is justified in approving a resolution plan which confers the authority to propose the distribution mechanism under the Plan upon the CoC, and as such, the CoC's acceptance of its own proposal regarding the distribution of funds, in approving the Resolution Plan?

## Decision of the Tribunal

- Upholding the decision of the Adjudicating Authority, the NCLAT confirmed that the Adjudicating Authority cannot enter into the merits of a 'business decision' of the requisite majority of the CoC, unless it is violative of Section 30(2) of the IBC. The Bench emphasised that a resolution plan approved by the CoC cannot be subject to judicial review in terms of carrying out a quantitative analysis qua each stakeholder.
- The NCLAT observed that the CoC had adhered to all the mandatory requirements while approving the Resolution Plan, and therefore, the Adjudicating Authority could not have questioned the commercial wisdom of the CoC in proposing, considering and approving the distribution methodology as applicable to the Resolution Plan.
- The Bench placed reliance on the judgement of *India Resurgence ARC Pvt Ltd v. Amit Metaliks Ltd & Anr*<sup>1</sup> whereby the Supreme Court has restricted the scope of judicial review available to the Adjudicating Authority as limited to the four corners of Section 30(2) of the IBC and held that the CoC, while exercising its commercial wisdom, can undertake the decision of distribution of funds.
- The NCLAT also defined as to what constitutes a 'business decision' and propounded the following definition:
- A deliberated 'Business Decision' of the CoC includes deliberations on the feasibility and viability, the financial and operational aspects of the Corporate Debtor, and therefore, the question of only 'considering' the proposal put forth by the Resolution Applicant cannot be viewed in a 'rigid manner'.

### HSA Viewpoint

This judgment is beneficial to the interests of the CoC, as it limits the interference of the Adjudicating Authority, and rules out baseless applications which hinder the successful resolution of Corporate Debtors by raising vexatious objections against resolution plans. It upholds the power of the CoC to devise the distribution mechanism under a resolution plan, thus, ensuring an outcome which better aids the revival of the Corporate Debtor.

## Sanjay Kumar Agarwal v. State Tax Officer

Supreme Court of India | Order dated October 31, 2023 | Review Petition (Civil) No. 1620 of 2023 in Civil Appeal No. 1661 of 2020

### Background facts

- A batch of five Review Petitions were preferred to seek review of the Judgment passed by the Supreme Court dated September 06, 2022 titled as State Tax Officer Vs Rainbow Paper (**Rainbow paper case**). The Supreme Court in the aforementioned judgment held that a resolution plan that altogether ignores statutory dues cannot pass the scrutiny Adjudicating Authority and thereby the Corporate Debtor will be required to be liquidated in accordance with the waterfall mechanism under Section 53 of the IBC.
- Under the order dated September 06, 2022, the court made the following observations which were challenged in this review petition- The court held that the state government having first charge over the property is construed as a secured creditor under the Gujarat Value Added Tax Act, 1974 (**GVAT Act**) and thus is bound to be considered as a secured creditor under Section 52(1)(b)(ii) of the IBC as well, for the purpose of distribution of funds under the waterfall mechanism.
- It is pertinent to note that the court also held that the 'security interest' as defined under IBC can also be created by operation of law and therefore again pointing to the fact that such statutory dues can accord the status of secured creditors. In conclusion statutory dues should be treated at the same footing as secured creditors.
- It was argued by the counsel of review petitioners that rainbow papers did not consider the waterfall mechanism. The waterfall mechanism given under Section 53 of the IBC is a well thought out mechanism enacted to delineate a hierarchy for payment of debts in order of priority and thereby providing a cushion to the creditors against domino insolvencies, and for such reasons debt of private individuals such as those of secured creditors were put at a priority than government dues.
- In light of the above argument, it was contended by the counsel that the Supreme Court has erred in not only rejecting the resolution plan but also putting the dues under the GVAT Act at par with the secured creditors under Section 53 of IBC.

### Issues at hand?

- Whether the decision in Rainbow Papers is amenable to the review jurisdiction?
- Whether a Resolution Plan which fails to account for statutory dues is compliant with the provisions of the IBC?
- Whether statutory authorities holding a statutorily created charge over the assets of a Corporate Debtor can be on the same footing as Secured Creditors under Section 53 of the IBC?

<sup>1</sup> (2021) SCC OnLine SC 409

## Decision of the Court

- The court dismissed the review petition and upheld the judgement dated September 06, 2022. The court reiterated the position given under State Tax Officer Vs Rainbow Papers Limited, that a resolution plan which doesn't meet the requirements of Section 30(2) would be invalid.
- Reliance for the same was placed on the judgements given by the Supreme Court in ***Ghanashyam Mishra & Sons Private Limited through the authorized signatory v. Edelweiss Asset Reconstruction Company Limited through the Director & Ors***<sup>2</sup>. Therefore, in light of the above view, a resolution plan ignoring/sidelining statutory dues cannot be sustained and is bound to get rejected as it fails to provide for the requirements mandated under Section 30(2) of IBC.
- Furthermore, the court also upheld the decision of putting statutory dues at the same footing as secured creditors and concluded that the judgement in Rainbow Papers has not only considered the waterfall mechanism but also other provision of IBC for deciding the priority for the purpose of distributing proceeds from the sale of liquidation of assets.
- Therefore, as the review petitioners failed to demonstrate any mistake apparent on the face of the record in the impugned judgement. The court also observed the scope of review petitions and stated that a co-ordinate Bench cannot comment upon the discretion exercised or judgment rendered by another co-ordinate Bench of the same strength.
- If a Bench does not accept as correct the decision on a question of law of another Bench of equal strength, the only proper course to adopt would be to refer the matter to the larger Bench.

HSA

### **Viewpoint**

The Supreme Court has settled the position that no differentiation can be drawn between homebuyers who have sought relief from RERA and received a refund decree and other homebuyers. Any award or decree from another forum merely represents crystallization or an acknowledged debt and should not alter the status of the involved party to be considered while distribution of funds under the Resolution Plan.

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<sup>2</sup> (2021) 9 SCC 657



## RECENT DEALS

### Resolution of Birla Tyres Ltd

- The NCLT, Kolkata bench vide order dated October 19, 2023 approved the resolution plan submitted by the Dalmia Bharat Refractories Limited, the Successful Resolution Applicant (**SRA**), in the Corporate Insolvency Resolution process (**CIRP**) of Birla Tyres Limited (**Corporate Debtor**).
- Vide Order dated May 5, 2021, the NCLT, Kolkata Bench directed the initiation of the CIRP of the Corporate Debtor and appointed Mr. Seikh Abdul as the Interim Resolution Professional (IRP) and his appointment as the Resolution Professional (**RP**) was subsequently confirmed. However, on October 31, 2022, Sri Pratim Bayal was appointed as the RP by replacing Mr Seikh Abdul Salam.
- In terms of Section 25(2)(h) of the IBC read with Regulation 36A (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**), invitation in Form G for Expression of Interest (**EoI**) was published 4 times spanning from the period of August 1, 2022 to September 16, 2022 by the erstwhile RP and the timeline for submitting an EoI was extended up to September 30, 2022. Pursuant to the issuance of the last Form G on September 16, 2022, the RP received EoIs from 21 Prospective Resolution Applicants (PRA) and published a provisional list of PRAs on October 10, 2022.
- Subsequently, the final list of 19 PRAs was published on October 15, 2022, out of which only 2 – Dalmia Bharat Refractories Limited and Melrose Creations Pvt Ltd. in Consortium with Stephen Financial Services Pvt Ltd – submitted Resolution Plans. However, Melrose Creations Pvt Ltd failed to submit a Bank Guarantee and therefore, their plan was not tabled before the CoC for their consideration.
- As such, the Resolution Plan provided by Dalmia Bharat Refractories Ltd. was placed before and approved by the Coc in their 16th CoC meeting with 82.48% voting share. Consequently, the SRA and their strategic partner, Stephen Financial Services Pvt. Ltd. provided a security sum of INR 50 crore by way of a Bank Guarantee valid for 12 weeks.
- The value of the Resolution Plan submitted by the SRA and approved by the NCLT is INR 347.03 crore. Under the Resolution Plan, an amount of INR 1097.35 crore has been provided to the Secured Financial Creditors, whereas the unsecured financial creditors have been allocated an amount of INR 32.11 crore. Further, all the operational creditors, including employees and workmen, have been provided a total amount of INR 517.10 crores.
- It is pertinent to note that many reliefs provided by the SRA were out of the purview of the IBC and required the permissions from the respective departments of the Government for such reliefs, waivers, and concessions, therefore owing to the same, the resolution applicant was granted a time of one year as prescribed under Section 31(4) of the IBC to comply with the statutory obligations/seeking sanctions from governmental authorities.

- Placing reliance on the position laid down by the Supreme Court on *Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd*<sup>3</sup>, *Lalit Kumar Jain v. Union of India & Ors*<sup>4</sup>, observed that there's a waiver with regards to extinguishment of claims that arose pre-CIRP and therefore all claims which do not form part of the resolution plan stand extinguished.
- In the view of the above, the NCLT, Kolkata bench, held that the Resolution Plan as approved by the CoC was in accordance with Sections 30 and 31 of the IBC and also compliant with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Holding thus, the NCLT, Kolkata Bench approved the Resolution Plan.

## Resolution of Mittal Corp Ltd

- The NCLT, Mumbai Bench, vide an Order dated October 18, 2023 approved the Resolution Plan submitted by Shyam Sel and Power Limited (Subsidiary of Shyam Metalics & Energy Ltd.), the Successful Resolution Applicant (**SRA**) in the Corporate Insolvency Resolution process (**CIRP**) of Mittal Corp Ltd., the Corporate Debtor (**CD**), which is a manufacturer of stainless-steel bullets, blooms, rolled flats and wire roads.
- The Section 7 application filed by the Financial Creditor, Punjab National Bank, against the Corporate Debtor bearing CP (IB) No. 434/MB/C-II/2018 was admitted on November 10, 2021 and Mr. Ashok Kumar Gulla was appointed as the Interim Resolution Professional (**IRP**). Pursuant to the said Admission Order, the Committee of Creditors (**CoC**) was constituted on December 01, 2021 by the IRP. The CoC so formed thereafter appointed Mr. Shailendra Ajmera as the Resolution Professional (**RP**) on February 16, 2022.
- The Form for the Expression of Interest (**EoI**) from Prospective Resolution Applicants (**PRAs**), i.e., Form G, was published by the RP in newspapers as well as on the website of Insolvency and Bankruptcy Board of India (IBBI) on March 17, 2022 pursuant to which a total of 29 EoIs were received.
- In their 6th meeting held on April 05, 2022, the CoC approved the issuance of fresh Request For Resolution Plan (**RFRP**) and the revised Evaluation Matrix. Pursuant thereto, the revised information memorandum, RFRP and evaluation matrix was issued on April 11, 2022 and the final list of Prospective Resolution Applicants (**PRAs**) was issued on April 12, 2022.
- Thereafter, in the 8th meeting of the CoC held on May 06, 2022, the members of the CoC further approved the extension of the last date for submission of the Resolution Plan from May 11, 2022 to May 31, 2022. On the last date, the RP received total six (06) resolution plans However, while these Resolution Plans were put to vote none received the requisite vote of 66% in accordance with Section 28(3) of the IBC. The members of the CoC through an e-vote on January 27, 2023 voted for the reissuance of the RFRP, in response to which, two Resolution Plans were received— one from the SRA, and the other from Saarloha Advanced Material Private Limited. Qua the above Resolution Plans, a challenge process was conducted on February 22, 2023 in which the SRA emerged as the highest bidder. Pursuant to the same, the Resolution Plan submitted by SRA was approved by the CoC by 100% votes in the 31st meeting of the CoC held on February 23, 2023. The Resolution Plan of the SRA is valued at INR 351 crore, including the CIRP Cost, against the total admitted claims of INR 1767.49 crore.
- The resolution plan proposes to pay the Secured Financial Creditors an amount of INR 348.77 crore against their admitted claims of INR 1587.51 crore. The workmen and employees are allocated and amount of INR 73 lakh as against their admitted claims of INR 74 lakh. INR 1 Crore has been allotted to the Statutory/Government Dues as against their admitted claims of INR 73.27 crore, whereas Operational Creditors are to be paid INR 50 lakh as opposed to their admitted claim of INR 105.97 crore. The Plan further provides that any unpaid dues towards provident fund, gratuity fund and pension fund of the Workmen and Employees accrued after the Insolvency Commencement Date, shall be paid by the SRA in full after adjusting amounts already paid (if any).
- It is important to note that as an integral part of the resolution process under the Resolution Plan, the CD will merge with the SRA (**Merger**) with effect from the Scheme Appointed Date (being February 17, 2023) and the same has been approved by the Board of Directors of the SRA. As a result, the CD as an entity will stand dissolved without winding up, with all its assets, liabilities, rights and obligations vested in the SRA.
- In view of the abovementioned observations, the NCLT, Mumbai Bench held that the Resolution Plan is in accordance with the provisions of the Code and allied Regulation and approved the Resolution Plan.

<sup>3</sup> (2021) 9 SCC 321

<sup>4</sup> (2021) 9 SCC 321

## Resolution of Educomp Solutions Ltd

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- The NCLT, Delhi Bench, vide an Order dated 09.10.2023 approved the Resolution Plan submitted by Ebix Singapore Pvt. Limited the Successful Resolution Applicant (**SRA**) in the Corporate Insolvency Resolution process (**CIRP**) of Educomp Solutions Limited the Corporate Debtor (**Corporate Debtor**), which is an education technology company that offers smart class products and ICT solutions to schools.
- The Corporate Debtor filed an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) bearing Company Petition No. (IB)-101/(PB)/2017 on May 05, 2017. Prior to filing of the application, the Corporate Debtor had prepared a Corporate Debt Restructuring mechanism which was approved vide LOA dated February 17, 2014. On the basis of the CDR package, a revival plan was prepared to mitigate the challenges which the Corporate Debtor was facing due to the economic slowdown.
- Pursuant to filing of the application under Section 10 of the IBC, an Interim Resolution Professional (**IRP**) was appointed on the Insolvency Comment Date i.e., May 30, 2017. Subsequently the Committee of Creditors (**CoC**) was constituted on June 28, 2017 following which Mr. Mahender Kumar Khandelwal was appointed as the Resolution Professional (**RP**) dated July 27, 2017 which was confirmed by the NCLT vide order dated September 12, 2017.
- Form G, as per Section 25(2)(h) of the IBC read with Regulation 36A(1) of the CIRP Regulations, 2016, was issued on October 18, 2017, to invite potential bidders. The NCLT, through an order dated November 13, 2017, extended the CIRP from November 26, 2017, to February 24, 2018. Accordingly, the Request for Resolution Plans was amended from time to time. The deadline for submitting resolution plans was also extended multiple times, the final deadline being January 27, 2018. Pursuant thereto, Plans were received, and the Resolution Plan submitted by Ebix Singapore Ltd., the SRA was approved by the CoC 75% February 22, 2018, with 75% of the CoC voting in favor thereof.
- After obtaining approval from the CoC for the resolution plan, the SRA sought to either withdraw or amend its Resolution Plan. This decision was influenced by various factors, including the ongoing investigations affecting the resolution process, financial challenges, significant changes in the corporate debtor's circumstances due to COVID-19, and delays in the approval of the resolution plan.
- The Supreme Court in the ***Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions***<sup>5</sup> conclusively held that a resolution plan, once approved by the CoC of the Corporate Debtor, cannot be withdrawn, or retracted from consideration. This determination rested on two key factors: first, recognizing that a resolution plan is not merely a contractual agreement, but an entity formed under IBC, and secondly, acknowledging the absence of legislative provisions addressing the withdrawal of an approved resolution plan. Consequently, Ebix was precluded from withdrawing its resolution plan.
- The total amount proposed to be paid under the Resolution Plan was INR 325 crore. The total admitted claims of Financial Creditors amounted to INR 3,003 crore, out of which, a sum of INR 314 crore was proposed to be paid to them as the final settlement amount, including contingent liabilities. The admitted claims of employees of INR 2.4 crore were to be settled from the residual amount.
- Operational Creditors were proposed to be paid a sum equivalent to their liquidation value entitlement. Under circumstances in which their liquidation value entitlement turned out to be Nil, they were proposed to be paid at pro rata basis of 5% of admitted amount (admitted amount being INR 1.6 crore). Further, the statutory dues amounting to INR 1.75 crore were proposed to be paid in full.
- Subsequent to the approval of the Plan, the SRA proposed to constitute a new Board of Directors, comprising of (i) Mr. Robin Raina, the Chairman of the Board, President and CEO at Ebix, Inc, (ii) Mr. Pavan Bhalla, an independent director at Ebix, Inc, (iii) Neil D. Eckert, one of the Directors on the Board of Ebix, Inc, (iv) Gagan Sethi, the CTO of Ebix, Inc, and (v) Vikas Verma, an expert in Financial Planning and Strategy.
- It is pertinent to note that as the RFRP in the present case was issued on December 05, 2017 and the sub-Regulation (4A) of Regulation 36B of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016 was incorporated only on January 24, 2019, no bank guarantee was yet deposited by the SRA in adherence of the aforementioned regulation. Therefore, in furtherance of the said Regulation, the SRA was directed vide order dated August 07, 2023 to furnish a Performance Bank Guarantee amounting to INR 32.5 crores qua implementation of the plan within 3 weeks.

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<sup>5</sup> Civil Appeal No. 3224 of 2020

- The Resolution Professional was directed to forward all the records relating to the conduct of the CIRP and the Resolution Plan to IBBI to be recorded on its data base (Section 31(3)(b) of IBC). The SRA was directed to act in terms of Section 31(4) of IBC and was entitled to all immunities available to it in terms of the provision of Section 30(2)(a) of IBC.
- In terms of these observations, the NCLT approved the Resolution Plan, being compliant of the provisions of Section 30(2) of IBC, 2016 and in consonance with the provisions of Section 30(2) of IBC 2016.

## Resolution of Topworth Steel and Power Pvt Ltd

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- The NCLT, Mumbai Bench vide Order dated October 11, 2023 approved the Resolution Plan submitted by Amalgam Steel and Power Limited, the Successful Resolution Applicant (**SRA**), in the CIRP of Topworth Steel and Power Private Ltd., the Corporate Debtor.
- Vide Order dated January 29, 2020 the NCLT, Mumbai Bench directed the initiation of the CIRP of the Corporate Debtor and appointed Mr. Dushyant Dave as the Interim Resolution Professional (**IRP**). However, Committee of Creditors (**CoC**) in its 3rd meeting held on May 15, 2020 replaced the IRP and appointed Mr Sanjay Gupta as the Resolution Professional (**RP**) of the Corporate Debtor.
- Pursuant thereto, Form G was published in newspapers on August 14, 2020 inviting Expression of interest (**EOIs**) from interested Prospective Resolution Applicant (**PRAs**), pursuant to which 8 Resolution Plans were received.
- Upon the deliberation of CoC, being unsatisfied by the received resolution plans, a fresh form G was again published on April 16, 2021 and June 07, 2021 was fixed as the last date, which was again extended to July 09, 2021. On the last date of submission of resolution plans, the Applicant was in receipt of 12 (Twelve) resolution plans from interested PRA's out of which only 8 resolution plans were legally compliant.
- The members of the CoC in their 26th meeting held on October 22, 2021 approved the resolution plan submitted by Amalgam Steel and Power Limited, the SRA, with requisite majority of 89.61% with only one dissenting creditor i.e. Indian bank.
- Pursuant to the approval of the Resolution Plan by the CoC, the SRA has accepted the Letter of Intent in accordance with the Request for Resolution Plan and has also issued a Performance Bank Guarantee dated December 27, 2021 for a sum of INR 30 crore.
- The total value of the Resolution Plan is a little above INR 260 crore. The plan proposes a payment of INR 236 crore to the secured financial creditors against their total admitted claims of INR 2,672 crore. Unsecured financial creditors were granted INR 97 lakh against their combined claims of INR 257 crore. Operational creditors, including employees and workmen, were allotted slightly over INR 3.16 crore, against their claims totaling INR 20 crore.
- In view of the discussions the NCLT, Mumbai Bench held that the Resolution Plan meets the requirements of Section 30(2) of the IBC and Regulations 37, 38, 38 (1A) and 39 (4) of the CIRP Regulations. Further observing that the Resolution Plan is not in contravention of any of the provisions of IBC and is in accordance with law, the NCLT approved the Plan.



# COMPANIES ADMITTED TO INSOLVENCY IN SEP/OCT 2023

## Companies admitted to insolvency

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Goli Vada Pav Pvt Ltd	Mumbai	Indian ethnic fast food restaurant chain
2	Bhilai Jaypee Cement Ltd	Cuttack	Cement production company
3	MMS Infrastructure Ltd	Mumbai	Constriction and real estate
4	The Indure Pvt Ltd	New Delhi	Civil engineering services for power and infrastructure sectors
5	Katerra India Pvt Ltd	Bengaluru	Real estate
6	Gaurang Properties Pvt Ltd	Mumbai	Redevelopment of residential and commercial buildings
7	Prana Studios Pvt Ltd	Mumbai	Motion picture, radio, television and other entertainment
8	Bagalkot Cement and Industries Ltd	Mumbai	Manufacturing of cement, metals & chemicals
9	Kavan Cotton Pvt Ltd	Ahmedabad	Cotton ginning & oil industries
10	Manpasand Beverages Ltd	Ahmedabad	Manufacture and distribution of fruit-Based beverages
11	Catskill Infra Projects Pvt Ltd	Mumbai	Cross-country pipeline projects in the oil & gas industry
12	Budha Global Ltd	New Delhi	Mining and quarrying
13	Kesma Impex Pvt Ltd	Mumbai	Manufacturing of purses & other related products
14	World Connect Impex Pvt Ltd	New Delhi	Trading industry
15	Jabalpur Msw Pvt Ltd	New Delhi	Sewage and refuse disposal, sanitation and similar activities
16	RSV Earth Enterprises Pvt Ltd	Allahabad	Provides real estate and renting business
17	Ddk Infratech Pvt Ltd	Mumbai	Construction business
18	Nysa Communications Pvt Ltd	New Delhi	Consultancy in ICT
19	Ravi Infrabuild Projects Pvt Ltd	Jaipur	Construction of civil engineering infra projects
20	Western Energetics Pvt Ltd	Jaipur	Manufacturing of furniture
21	Contemporary Exports LLP	New Delhi	Manufacture of wearing apparel, dressing and dyeing of fur
22	HN Reacon Pvt Ltd	New Delhi	Real estate activities
23	India Denim Ltd	Ahmedabad	Spinning, weaving and finishing of textiles
24	Maa Durga Commotrade Pvt Ltd	Cuttack	Wholesale of agricultural products
25	Saffron Therapeutics Pvt Ltd	Ahmedabad	Marketing and trading of pharmaceutical products
26	CBC Fashions (Asia) Pvt Ltd	Chennai	Ready-made apparel
27	Vidhant Realty Pvt Ltd	Mumbai	Real estate activities
28	Grandstar Reality Pvt Ltd	New Delhi	Real estate activities
29	Jay Formulation Ltd	Ahmedabad	Ayurvedic products
30	Radius & Deserve Builders Llp	Mumbai	Real estate activities
31	Emerald Performance Chemical Pvt Ltd	Mumbai	Chemical products
32	KRSNA Home Products Ltd	New Delhi	Manufacturing, retailing and trading of home items
33	Ahmedabad Ring Road Infrastructure Ltd	Ahmedabad	Develops, operates, and maintains roads and highways
34	Manglam Fiscal Services Pvt Ltd	Kolkata	Financial intermediary
35	Spica Metfab Solutions India Pvt Ltd	Chennai	Architectural, engineering and other technical activities
36	Baliraja Sakhar Karkhana Ltd	Mumbai	Manufacturer of white sugar powder, white crystal sugar
37	Tirupati Fabricators Pvt Ltd	Mumbai	Casting of metals, supply & trading of specialized filters
38	Valecha Kachchh Toll Roads Ltd	Mumbai	Construction of infrastructure & engineering projects
39	Yours Ethnic Foods Pvt Ltd	Ahmedabad	Food products
40	Tuscan Consultants and Developers Pvt Ltd	Chennai	Construction of commercial and residential properties
41	Apex Steel Pvt Ltd	Kolkata	Manufacturer and trader of steel products
42	Consumer Marketing (India) Pvt Ltd	Mumbai	Wholesale distribution of groceries and related products
43	Newtech Buildhome Pvt Ltd	Jaipur	Builds and sells residential buildings

44	Cyber Infosystems and Technologies Pvt Ltd	Ahmedabad	Manufacturer of television and radio transmitters
45	Gilco Exports Ltd	Chandigarh	Metal-based fabricator
46	Supertech Orb Project Pvt Ltd	Allahabad	Real estate
47	Mars Remedies Pvt Ltd	Ahmedabad	Formulations of medicines
48	Food and Biotech Engineers India Pvt Ltd	New Delhi	Dairy and food processing equipment
49	Intarvo Technologies Pvt Ltd	New Delhi	BPO services
50	Blue Marlin Buildcon Ltd	New Delhi	Real estate
51	Apodis Hotels & Resorts Ltd	Mumbai	Hospitality
52	VP Bullion Pvt Ltd	Allahabad	Wholesale trading
53	Raghupati Construction Pvt Ltd	Allahabad	Construction
54	Nirbhay Rasayan Pvt Ltd	Mumbai	Manufacturers & supplier of organic pigments
55	Photogravurs (India) Pvt Ltd	Mumbai	Photo roller engraving plant machinery
56	Darode Jog Realities Pvt Ltd	Mumbai	Real estate and renting
57	Snehtango Food Products Pvt Ltd	Kolkata	Food products
58	Calix Life Sciences Pvt Ltd	Mumbai	Healthcare and nutraceuticals manufacturing
59	Eashkrupa Shipping & Logistics India Pvt Ltd	Mumbai	Transport
60	U P Bone Mills Pvt Ltd	New Delhi	M. S. Ingots and billets
61	Vilsons Roofing Product Pvt Ltd	Mumbai	Manufacturing of asbestos sheets
62	Opel Securities Pvt Ltd	Ahmedabad	Finance
63	Pai Khot Infra Pvt Ltd	Mumbai	Construction
64	GS Constro & Infra Pvt Ltd	Mumbai	Redevelopment projects
65	Shree Sainath Land & Development (India)	Mumbai	Construction business
66	Ssa Traders Pvt Ltd	New Delhi	Indian handicrafts
67	Heaven Ahead Voyage Pvt Ltd	New Delhi	Consultancy services
68	Printland Digital (India) Pvt Ltd	New Delhi	Digital printing business
69	Iceberg Aqua Pvt Ltd	New Delhi	Beverages
70	Tirupati Balaji Enterprises Pvt Ltd	Jaipur	Construction
71	Lexus Granito (India) Ltd	Ahmedabad	Tile manufacturing

## Companies directed to be liquidated

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Krishna Premium Care Services LLP	Hyderabad	Provides medical support services
2	Rashmi Yarns Ltd	Ahmedabad	Spinning, weaving, and finishing of textiles
3	Force 1 Guarding Services Pvt Ltd	Chennai	Security services
4	Nucleus Satellite Communications (Madras)	Chennai	Manufactures dish antennas
5	Grouse Promoters Pvt Ltd	Chennai	Construction
6	Selva Developers Pvt Ltd	Chennai	Real estate
7	Doshion Water Umbrella (Cuddalore)	Ahmedabad	Collection, purification and distribution of water
8	Overnite Express Ltd	New Delhi	Post and courier activities
9	Naresh Retail Mart LLP	Kolkata	Retail trading and repair of personal & household goods
10	Jashank Impex Pvt Ltd	Ahmedabad	Retail trade of new goods in specialized stores
11	EBC Bearings India Ltd	Hyderabad	Manufactures general purpose machinery
12	Dawar International Electronics Pvt Ltd	Chandigarh	Retailer and supplier of electronic items
13	Mota Layja Gas Power Company Ltd	Ahmedabad	Production, collection, and distribution of electricity
14	PG Silk Mills Pvt Ltd	Ahmedabad	Manufacturing, supplying and exporting textile fabrics
15	Doshion Pvt Ltd	Ahmedabad	Manufacturing of water treatment solutions
16	Chhatrapati Agro Food Manufacturing Co	Mumbai	Food products
17	Pan India Infra Projects Pvt Ltd	Mumbai	EPC agency
18	Planet M Retail Ltd	Mumbai	Retail music store
19	Hi Point Investment Finance Pvt Ltd	New Delhi	Activities auxiliary to financial intermediation.
20	Deogiri Infrastructure Pvt Ltd	Mumbai	Civil engineering construction
21	Trimurti Corns Agro Foods Pvt Ltd	Mumbai	Food processing
22	Dilip Chhabria Design Pvt Ltd	Mumbai	Car interior and modifying services
23	SR Marine foods Ltd	Chennai	Food processing
24	Adelson Pharma Pvt Ltd	Jaipur	Manufactures medicines
25	Brahmaputra Tubulars Pvt Ltd	Guwahati	Iron & steel products
26	Brahmaputra Galvochem Pvt Ltd	Mumbai	Iron & steel products
27	Nanai Dairy Pvt Ltd	Mumbai	Dairy products
28	Bhavya Infrastructure India Pvt Ltd	Mumbai	Real estate
29	Vikram Iron and Steel Company Pvt Ltd	Mumbai	Iron & steel products
30	Chuo Senko Advertising India Pvt Ltd	Mumbai	Advertising
31	TV Products India Pvt Ltd	Mumbai	e-commerce
32	Arpita Filaments Pvt Ltd	Ahmedabad	Spinning, weaving, and finishing of textiles
33	Staunch Natural Resources Pvt Ltd	Mumbai	Non-agriculture intermediate products
34	BEML Midwest Ltd	Mumbai	Heavy equipment manufacturing
35	Nature India Communique Ltd	New Delhi	Consultancy
36	Siddhi Vinayak Polymer Pvt Ltd	Jaipur	Rubber products

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