

PIONEER

The image features a large, light-colored silhouette of a man's head in profile, facing right. Inside the silhouette, a man in a dark suit is walking away from the viewer on a dark, reflective path that leads towards a bright, glowing horizon. The path is composed of horizontal lines, and the man's reflection is visible on the surface. The overall composition is centered and evokes a sense of journey and leadership.

A JOURNEY OF AN **IRP**

DEVENDRA JAIN

PIONEER

A JOURNEY OF AN IRP

DEVENDRA JAIN



NOTE

DATE: / /

प्रिय आत्मन् --- देवेन्द्र भार्गव

अनंत प्रेम

गुणग्रीवर्धि

स्वस्व प्रसन्न रहो!

जिन्दगी सभी को चाहेसा काम करने का मौका जरूर देती है।
 ये हम पर निर्भर करता है कि हम उस मौके की पहचान
 कर सकेंगे या नहीं पाटि विवेक अउट हो जाते हैं। जहाँ
 कुछ लोग बेफियल की बातों में समय गंवते हैं। वहीं कुछ लोग
 व भी होते हैं जो इन सबसे बेखबर बस अपने काम में लगे
 रहते हैं। जैसे- देवेन्द्र भार्गव बिगार कम्पनीओं को, अचमरीकम्पनिजे
 के मालिकों को, अपने अनुभवों से, अपने विचारों से, अपनी बुद्धि
 हनु से एक पुस्तिका प्रकाशन करने जा रहे हैं। इस पुस्तक
 में दिशा देने को दिशा, अवधि को-बीष और अस्वस्थ मन को
 अस्वस्थ की बातें पढ़ने को, सफलता को, जानने और जीने को मिलेगी
 यह पुस्तक निश्चित रूप से, आपके अनुभवों का
 एवं अन्य व्यापसायिक सलाहकारों को एवं अन्य सरकारी
 संस्थाओं को सब्ब सज्जित करेगी। जिसे अगले, समाज
 देश को राष्ट्र की अर्थव्यवस्था में सुधार सम्भवी है।
 लेखक महोदय को श्रेष्ठ एवं आशीर्षक
 अर्पण

अनि १११ | भाग | भरा पाप

अनंत प्रेम मुनिश्री १०८ प्रसन्नसगर जी महाराज
 1-11-2018

Letter from...



>>
Vijay Rupani
Chief Minister of Gujarat



Vijay Rupani

apx/va/2018/0320/vj

Chief Minister, Gujarat State

Dt. 25/07/2018

Snehi Shree Devendrabhai,

Congratulations,

I am really glad to learn about your initiative and intention to publish a book based on your long experience in the field of NPA management.

Complying with the professional ethics and combating the teething troubles, you have successfully come out with positive and effective solution of the cases under the **Insolvency and Bankruptcy Code**, shows your spirit to reach out for the benefits of the society and the nation.

I convey my best complements and wishes for the successful publication of your book, with a noble goal.


(Vijay Rupani)

To,
Shree Devendrabhai Jain, CA,
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Letter from...



>>
Krishna Raj
Minister of State for Agriculture & Farmers Welfare
Government of India



कृष्णा राज
KRISHNA RAJ



कृषि एवं किसान कल्याण राज्य मंत्री
मान्य सरकार
MINISTER OF STATE FOR
AGRICULTURE & FARMERS WELFARE
GOVERNMENT OF INDIA

दिनांक : 13 सितम्बर, 2018

महोदय,

ज्ञानकर अति प्रसन्नता हुई कि आप द्वारा अपने अनुभवों व कौशल आज को साझा करते हुए पुस्तक का प्रकाशन किया जा रहा है। इस हेतु मैं अपनी ओर से शुभकामनाएं देती हूँ।

पुस्तक अपने उद्देश्यों में पूर्ण रूप से सफल हो, ऐसी भीरी कामना है।

शुभकामनाओं सहित,

भवदीया,

(कृष्णा राज)

सी.ए. देवेन्द्र जैन जी,
पन्चपुर
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Letter from...



>>
Santosh Kumar Gangwar
Minister of State Labour & Employment (Independent Charge)
Government of India

संतोष कुमार गंगवार
Santosh Kumar Gangwar



श्री एन संतोषार राज्य मंत्री (स्वतंत्र प्रभार)
भारत सरकार
Minister of State Labour & Employment
(Independent Charge)
Government of India

MESSAGE

I wish to convey my heart felt good wishes for your decision to launch a book on such a subject which is one of the most focused area in today's economic condition prevailing in India.

I am sure that the book on handling cases under Insolvency and Bankruptcy Code, 2016 will definitely prove to be a handy reference book for all rising professionals who will come to know about practical problems and their solutions.

I extend my greetings for the successful bringing out of the Book.

(Santosh Kumar Gangwar)

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01

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I take this opportunity to thank my legal team /legal associates -Rajesh Bohra, Kunal Kanungo, Prateek Gattani, Vivek Jain, Mahesh Agrawal, Meenakshi Arora, Ananya Ghosh, Vishwanathan and other who gave me their valuable inputs and guidance with which i can achieve success in this legal filed.

I also want to extend special thanks to Shri Y K Ghia, Shri T R Bajalia Sir for their continued guidance.

I wish to convey thanks to all the stake holders, members of COC handled by me, suspended board members of all corporate debtors for whom I was appointed as a resolution professional, staff deployed there and all other professional who directly or indirectly gave support in my work.

At this stage I also whole heartedly extend my thanks to all my family members specially my wife and children who provided me moral support. I also place on record special thanks to my parents whom I believe as spiritual source to fight with all odds and evils.

02

FOREWORD

Not much is known about Insolvency professionals and the profession itself – neither to general public nor by professionals themselves. In this book, I have tried to give an honest description of the job profile of the professionals and also some of the challenges or practical difficulties, one faces while practicing his job as IP.

In the year 2016, the central government made an effort to resolve the issue of increasing NPA & sick companies by introducing the Insolvency and bankruptcy code. The new code laid down several rules for resolving the issues of sick companies and provided opportunities to thousands of qualified professionals to resolve the matter.

“

In the subsequent chapters, I have tried to highlight some of the challenging cases handled by me and suggestions on how things could be better for both the resolution professional and the all of the stake holders /lenders /investors.

This code is beneficial in more than one way for the investors/lenders. One of the biggest advantages of this code offers to small investors of company is the time bound manner for the reorganization and the insolvency resolution of the company in order to maximize the value of the assets of the company while keeping a balanced view of the interest of all the stakeholders.

However a lot needs to be done by the authorities. I honestly feel that though the code can be a boon for millions of small investors whose funds are trapped in fraudulent companies under the garb of declaring itself sick. At the same time, having a rich experience of handling around a dozen of assignments under IBC, I have witnessed some ground realities. I am of the opinion that there are lots of changes that need to be carried out at different levels.

In the subsequent chapters, I have tried to highlight some of the challenging cases handled by me and suggestions on how things could be better for both the resolution professional and the all of the stake holders /lenders /investors.

My aim in writing this book is to bring to the notice of the policy makers and other stake holders about the roadblocks that the code still faces in its practical implementation.

DEVENDRA JAIN

INSOLVENCY AND BANKING CODE 2016:

03

A BRIEF INTRODUCTION

The insolvency and bankruptcy code passed by the parliament and came into effect in December 2016 provided for a specialized forum to oversee all kinds of liquidity and insolvency proceeding for individuals, small and medium entrepreneur Companies and also big Corporates.

One of the biggest advantages this code is, it offers for investors/lenders of the Corporate Debtor is the time bound manner for the reorganization and the insolvency resolution of the Corporate Debtor in order to maximize the value of the assets of the Company and keep a balanced view of the interest of all the stakeholders.

In the Corporate Resolution process the application may be filed by any financial creditor, operational creditor or by corporate himself. The main condition for filing an application is that there should have been a default of more than Rs 1 lakh by the corporate towards any financial Institution, Banks etc. (which are termed as financial creditor) or their suppliers, employees, government dues or other operational dues which are classified as operational creditor or others as the case may be.

When the application is filed with the National Company Law Tribunal (NCLT) /Adjudicating Authority in case of Corporate Insolvency Resolution Process (CIRP) in a prescribed format, NCLT is bound to give its assessment within 14 days of filing the application. It can either admit the application for initiating the insolvency process or reject the application on various grounds as per the provision of Code. However, time line for disposing of the applications are now not following by the Benches of NCLT due to various practical difficulties and lack of Infrastructure facilities in comparison to cases being filed.

After the admission of the initiation of Insolvency Process, an Interim Resolution Professional needs to be appointed who will take entire charge of the Company and existing management and Board of Directors will be suspended till the resolution process period.

While usually, the corporate insolvency resolution process (CIRP) needs to be completed in 180 days, there is a provision for one-time extension of 90 days by the National Company Law Tribunal (NCLT) in deserving cases.

The Interim Resolution Professional will perform all acts as management of the Company. For e.g. he can appoint the other professional to run the Company as going concern. Also as an RP, he will take entire charge on all assets, bank accounts, etc. under his control.



The Interim Resolution Professional will invite claims from all creditors and consolidate such claims and will constitute the Committee of Creditors.

During the resolution Process Moratorium will be granted to the Company for prohibiting institution of any suit before a court of law, transferring/encumbering any of the assets of the Debtor etc.

However, the supply of essential goods or services to the corporate shall not be terminated during this period.

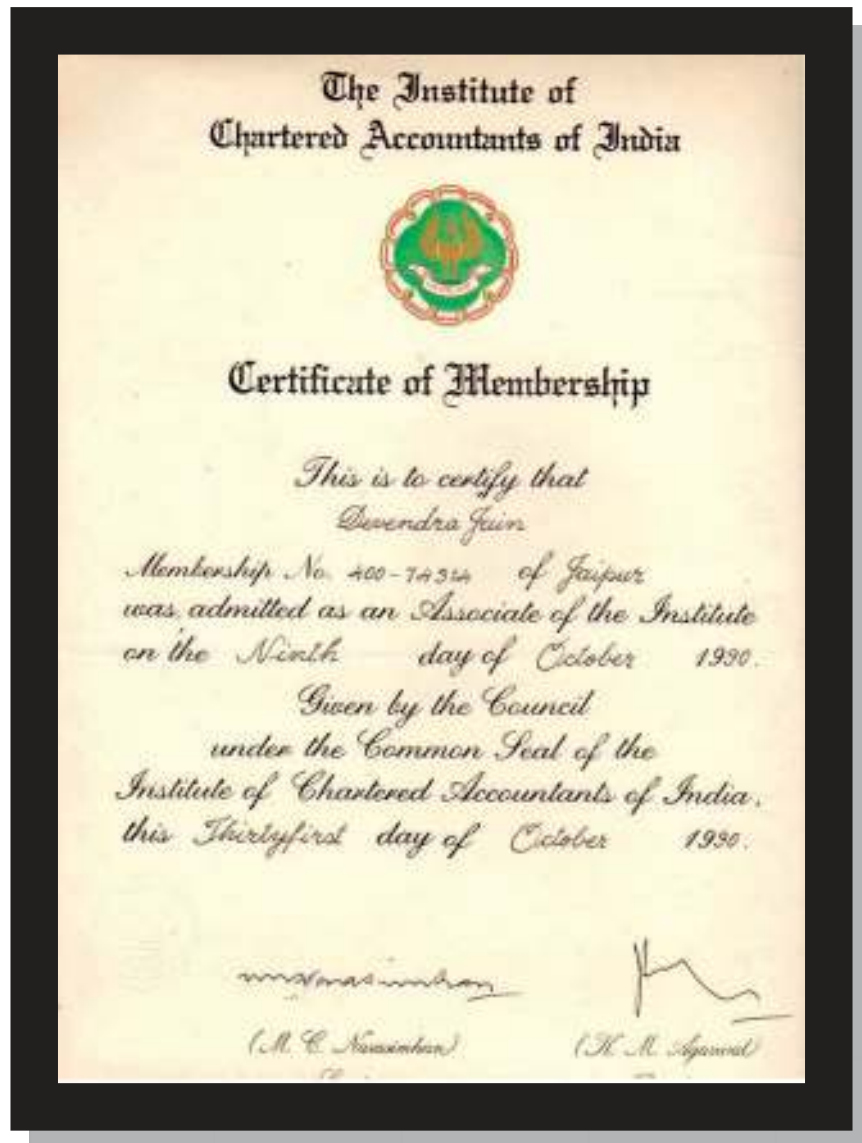
The Interim Resolution Professional will invite claims from all creditors and consolidate such claims and will constitute the Committee of Creditors (CoC).

All Financial Creditors will be member of the Creditors Committee, operational creditor may be invited in the meeting of creditors but they will not get any voting rights in any decision. Creditors Committee will watch

all resolution process and entire decision will be taken and considered by the creditors committee with a vote of minimum 75 per cent (which is now amended as 66%).

A resolution plan will be invited from any creditor, outside agency and (in some eligible cases) even from the promoters to resolve the financial sickness of the Company. The plan would later be discussed in the committee of creditors and approved by them.

The plan would then be submitted to the National Company Law Tribunal for approval and implementation. If all the creditors are not satisfied with the resolution plan, the company then goes for liquidation. Out of the remittance received from liquidation of assets, payment to creditors will be made as per the priority prescribed in the Code. Other than time bound resolution process another advantage of the act is that the creditors are in the loop for the process and it avoids costly and time consuming litigation process.



02

BACKGROUND ON HOW I CAME IN THE PROFESSION

Though a very comprehensive book on my journey to become an independent resolution professional would be coming out soon, I believe that this book would be incomplete without my touching on this aspect.

I am a qualified chartered accountant and was working as a consultant for several sick companies whose cases were stuck with the Board for the industrial and financial reconstruction (BIFR). In the year November 2016, the central government notified the Insolvency and Bankruptcy Code. Also with the Insolvency code coming into existence, the Board of financial and Industrial Reconstruction (BIFR) would cease to be in existence. The cases would now have to be put forth in front of the National Company Law Tribunal (NCLT).

The idea behind getting the code in place was that till that time, there were several forums including the debt recovery tribunal (DRT), High Court, Civil Court, Company Law Board etc where litigation pertaining to the sick companies was adjudicated.



There was a need for consistency and transparency in the fight for recovery of the debt. Till that time, many of the companies could get away by killing time in expensive litigations.

As per the rules laid down in the IBC, 2016, a chartered accountant, a cost accountant or a lawyer with a minimum of 15 years of experience in the field of insolvency and debt restructuring could apply for a temporary license. Since I had the necessary qualification and experience criteria, I decided to apply for the licence.

“
There was a need for consistency and transparency in the fight for recovery of the debt. Till that time, many of the companies could get away by killing time in expensive litigations.

Till the year December 2016, approximately 800 professionals who fulfil the category had applied and were issued the temporary licenses.

A senior lawyer in the field of BIFR, Rajesh Bohra with whom I had got acquainted, gave me the first case of Hyderabad based VNR Infrastructures P Ltd. He recommended my name to the NCLT and it got approved. Thus I got my first case as an Independent resolution professional.

03

MY EXPERIENCE IN THE JOURNEY AS INSOLVENCY PROFESSIONAL

I could gain huge experience by having appointed as Resolution Professional in as many as 11 cases by various NCLTS across the country within short span of less than year after introduction of IBC, 2016. This helped me in facing teething problems and arriving its solutions by own skill implementation, discussion with various authorities and past experience of working in similar filed.

This put me in the front line of Insolvency Professionals. IBBI also extended its recognition on me by inviting me to various seminars and round table conferences for my opinion and FPA/ ICAI also invited me as a faculty member for fresh Insolvency Professionals to share my practical experience on various subjects.

I have mixed bag of experience –with some sad / demotivating, while some great and satisfying moments.

The detailed and case to case experience are produced in separate chapters for each case, I would share some broader outlines of both types of experience and also how to overcome the difficulties.

Being positive in nature, I would start with some positive experience / ctions /suggestions:

- **Follow the rules meticulously.** Being in legal profession you can not ignore the legal formalities /responsibilities you are endorsed with. In every case, on my appointment, I used to complete the required formalities starting from publishing public notice inviting claims, asking for taking over the management and other records /information (of course some of the suspended board members did not provide me entire set of information –however, I maintained record of my follow up in asking them to provide me necessary record /information /data etc)., forming CoC and calling meeting within time frame, reporting developments in various formats etc.
- **Prepared to Take up the challenge.** Be it a big sized case or complicated case. If you have skill, will and patience, there is solution available. For e.g. I had situation where guidelines were not clear as to how to select CoC members where there is no Financial creditor and only the operational creditors in lacs of numbers with small bracket of claim amount. As such by going to rules –I was not able to give proper representation of creditors –who were fearing loss of money. Also approaching authority did not serve the purpose –as they advised me to take decision as per the circumstances. I took logical decision and included such members who could well represent the all lacs of investors.
- **KNOW FOR WHAT YOU ARE THERE: As an IP you must know your limitation and should not act in a manner to influence any party /stake holder.** In one case of big sized company, I found the possibility of revival and hence requested the CoC members to examine the same. Of course, I knew my limitation and did not insisted and ultimately allowed different decision taken by CoC members.
- **Do not surrender or afraid unnecessary.** Have courage to prove yourself when you have done nothing wrong. In above case, I had done all efforts as required from my side in my opinion, yet I was declared as “Incompetent” in the order and was replaced with other IP. I referred to Hon’ble Supreme Court and am happy to share with my readers that my efforts were taken note of and order was issued to delete such

- comments (incompetent) from the the NCLT/AT orders.
- **Every situation is not foreseen by the law makers.** There may be some practical ground level problems which can be resolved with your entrepreneurial skills. In an assignment of two associates, there were lacs of small investors –who were afraid of losing their heard earned money and were making panic. They did not allow me to carry out my work of RP. I heard them patiently and pacified them by explaining the law and provisions. If I would have thought, I could have arranged for some protection /bouncers etc. But I wanted the confidence of investors and follow the legal process.
 - **Doing your best will always yield.** Do not allow the defaulters and leave no chance for their malpractice which leads to addition of pain of the small investors. In the above case, I smelled some misappropriation by the erstwhile management and approached NCLT from where I got the order for attachment of their personal properties, sister concern companies and depositing of passport of the erstwhile directors to the Court. Interestingly it was first such case and thereafter confirmed by Supreme Court too.
 - **Take the running business as an opportunity to develop your entrepreneur skill.** In one the case, I had to run a commercial mall. I managed the entire system in such a systematic way, that today I feel confident that I have ability to run any business activity as an entrepreneur. I studied all- ins and outs of mall management, reviewed security system, changed Mall management Agency. I am satisfied that I have been able to improve the value of the mall.
 - **HAVE PATINECE & SKILL TO CONVINC:** It also happened that, Adjudicating Authority interpreted the law rigidly and did not accept the restructuring plan from the erstwhile management of corporate debtor – as the amendment in the law banning them to present the resolution plan was announced. However, with logical reasoning, time sequence and proper interpretation of the law I succeeded I convincing

the Adjudicating Authority as to acceptance of the resolution plan. This is an example of how aware an IP should be and what should be knowledge ledn he should have and use for betterment of stake holders.

→ **As an IP, keep record of every development /action** etc., perform in the best interest of all, and keep informed each stake holder.

|||||||

THE DEMOTIVATING EXPERIENCE :

→ **FACED UNWANTED CHARGES:** While, I was trying to revive a company –with the good intention and after analysing the capacity of the promoters, I requested the CoC members to give them a fair chance. However, they did not agree. However, without taking note of my efforts, the Adjudicating Authority charged me of not capable. I could not know –how I was judged?.

→ **ACTING AT THE INSTANCE OF AUTHORITY:** Also in the above case, I was forced to pre pone the last meeting of CoC –which prevented the promoters to source the investor due to shortage of time and the company went into liquidation.

→ **The Adjudicating Authority may pass undue comments against you** –which may be absolutely irrelevant and you might not deserve such comments. I had faced such comments orally. However, when I got such comments in writing I did not surrender and got order for deleting such comments form Hon’ble Supreme Court of India. (Please refer positive list)

→ **You might become victim of prejudice of Adjudicating Authority.** (Ultimately they are also Human Beings) and have to face humiliation. In the above case, while my name was confirmed unanimously by all CoC members as liquidator –yet I was replaced by the Adjudicating Authority.

→ **In many cases, you would not get support from the erstwhile management and his team.** The suspended team of directors would not provide necessary information /record / data etc. The employees fear loss of job and sometimes comes under pressure of his boss and did not extend cooperation in work or providing records etc. Under this situation you have no power – except to move to NCLT for getting direction. And the NCLT will issue direction –to extend cooperation. No questions asked –why not extended so far.

→ **Threats of Life:** The worst experience I had was that having frustrated due to fear of loss of funds in the case of two companies (with large operational investors), one of the group of investors abducted me. Of course, as they were not professional criminals – they did not harm me and I was released from their control within 24 hours.

→ **Fight by your own:** Under such situation of life risk, please be prepared that you have to move alone. No one is there to support or take any action. Taking the above point of abducting further, I approached NCLT with application for police protection, which was still to be considered and pending.

→ **Other Stake Holders:** Besides non-cooperation from erstwhile management and its team, sometimes, other government departments (like Income tax, SEBI, EOW) would also not extend required quantum of cooperation. In one of the assignments, the EOW froze the bank accounts which were preventing me to carry on the CIRP and meet the expenses. In spite of requesting they did not listen to me. Of course, ultimately I moved to Hon’ble Supreme Court and got the order for releasing the accounts.

→ **There is no concession for IP** in running the business on behalf of the corporate debtor. He has to pay all tax in time, file all returns and information in time. While the fact is that he is doing his duty as professional and not as business person. Also some times, delay or non filing is due to non availability of required information /record from erstwhile management /his team. As such there is need to insert some

special provision in this regard. For e.g. such responsibilities can be continued on erstwhile management.

- **One more interesting point is that sometimes, due to collusion of the erstwhile management with some outsiders /government** and arranges for creating unnecessary issues /such issues which are years older. In one of the cases handled by me, the suspended director



For some political gain, some media spread news of political connection of one company for which I was handling CIRP. Though, this did not affect me or my working, one has to remain prepared for such things and any consequences that may occur from such news.

implemented this tactics and tried to keep me busy in resolving such matters. Here I suggest the need for such provision which restricts raising of such years old matter –which may kill time and delay the CIRP.

- **At times, you will find that, Adjudicating Authority would not identify the difference between genuine intention and intention of time killing.** This some times results in allowing extension of unrequired time period for CIRP. I have experienced this on the last hour –when I went to NCLT on hearing of endorsing decision of liquidation taken by COC, the decision to extend time came out –due to last hour appeal of the suspended director of the corporate debtor to allow them to submit resolution plan. He would not be asked about such last hour decision and why it was not submitted so far.

- **Handel to Labour/Staff:** I also came across a situation where the company /erstwhile management gave fullest support –but labours went on strike. As an IP, we have to maintain the going business status. As such, (as stated earlier) we need to have all qualities of an entrepreneur. I intervened in the matter, called the union representatives and explain /discuss with them entire situation and how company and labour both can be benefited. They got convinced and called off the strike.
- **Political Situations:** Sometimes, you become victim of unknown things or unexpected matters. For some political gain, some media spread news of political connection of one company for which I was handling CIRP. Though, this did not affect me or my working, one has to remain prepared for such things and any consequences that may occur from such news.
- **Whatever positive you try, there are various unknown and sudden issues that will come before you and you have to face it.** Our legal system allows everyone to create doubt or raise objection on any issue. While entire resolution plan was accepted by CoC and was recommended to Adjudicating Authority for approval, one of the financial creditors raised objections as to calculation of voting share.
- **As an IP you might not treated as Human being** Whatever you do as IP, it is your duty. If other party /stake holders create hurdle, you have to resort to legal system. But as an IP you cannot make a small single mistake. **Regulating Authorities are strict to IPs only, they are not concerned with other stake holders.**
- **Time and again you will feel that the provision for time bound action (which is the key factor of IBC, 2016) is applicable to IP only.** Other stake holders are allowed to create delay by raising objections at last hour or by avoiding their duty. As an IP you have to go on requesting the Adjudicating Authority. Even no action /questions –even if they ignore the directions of the NCLT.

MATTERS HANDLED UNDER IBC, 2016 AND EXPERIENCE OF EACH CASE

The above summary of experience is based on handling various assignments. As stated above, within a short span of implementation of the legislation –in the form of IBC, I was selected in as many as a dozen of cases to handle the matter as Insolvency Professional.



For some political gain, some media spread news of political connection of one company for which I was handling CIRP. Though, this did not affect me or my working, one has to remain prepared for such things and any consequences that may occur from such news.

It also happened that in the initial period –some practical situation came to notice to me as an IP and which had no express resolution in the code. I discussed with various Authorities and at various forms. However, nobody wanted to take responsibility of taking decision. This is the crux of entire book –in absence of clear rules; you are left to choose one of the various alternatives available to you. No one will question you –unless your choice goes wrong OR someone questions it.

Let me now jump to describing each assignment, the major factors / situations, how I handled and resolved.

04: Assingment #1

M/s VNR INFRASTRUCTURES LIMITED

This case will always remain special because it was the first case taken up by me after registering as an Independent resolution professional. It was admitted during February, 2017. It gave me an opportunity to enter into new field of presenting resolution matters before the Courts. Till then I was just carrying resolution activities for lenders / borrowers as a consultant and providing various alternatives.

CORPORATE DEBTOR AT A GLANCE:


VNR Group was focused on infrastructure development projects in the growing sectors of Railways, Irrigation, Aviation, Logistics and Power with specialization in Railway infrastructure for the past 26 years. The group had executed and commissioned signalling systems for more than 150 railway stations, executed more than 120 Panel Interlocking Projects, 30 block sections of Intermediary Block Signalling IBS, 10 block sections of Automatic Signalling, 10 block sections of Audio Frequency Track Circuits projects, 25 stations of Electro Mechanical Signalling and Cable and OFC works.

SC Orders Deletion Of Adverse Remarks Made By NCLAT Against Resolution Professional | Live Law

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SC Orders Deletion Of Adverse Remarks Made By NCLAT Against Resolution Professional

BY: ANAMSHA JAIN
MAY 1, 2018 8:34 PM



22 SHARES

A bench of Justice AK Goel and Justice Rohinton Fali Nariman ordered that the adverse remarks be deleted while dismissing the appeal of the RP, Desandra Palanchand Jain, challenging the order of NCLAT.

In the instant case, Jain had been appointed the Interim Resolution Professional for the VRN by NCLT in February, 2017.

After constitution of the Committee of Creditors, in the first meeting, the Committee unanimously confirmed Jain's appointment as the Resolution Professional. The appointment was confirmed by NCLT.

After several meetings of the Committee of Creditors, the resolution plan could not be validated as the committee at first sought some modifications in it.

With the statutory period of 180 days nearing end, NCLT directed that the final meeting of the Committee of Creditors be held before 31.07.2017.

On July 25, 2017, the Committee of Creditors rejected the Resolution Plan as well as the request of VNR Infrastructure for extension of the time limit for completion of the insolvency resolution process.

V N R Infrastructure was the first case for the Hyderabad bench and the 8th case to be filed in the country under the IBC, 2016. It was a big sized company which was into construction of Infrastructure for the railways. They already had some infrastructure contracts for railways in the North East and the South worth Rs 1000 crores.

TAKING CHARGE AS IRP:

I took the charge from the company management immediately after its admission to NCLT for CIRP and also issued a public announcement asking for all claims of debt within the period of 14 days. The public notice was given in this regard in prominent news publications in the format specified.

HIGHLIGHTS OF THIS CASE WERE AS UNDER:

- **CBI Enquiry & Going Concern:** During the Corporate insolvency resolution process, there was a central bureau of investigation enquiry as well. Secondly, as an the independent resolution professional, I also ensured that the railway EPC contracts which was going on at 99 places and valued at around Rs 700 crores were managed without any interruption.
- **COC Conduct:** A total of six meetings by the committee of creditors (COC) which comprised of 8 financial creditors like and including SBI, PNB, BOB, IOB, SBH, IFCI having exposure of debt for more than Rs.1000/- crore and corporate debtors were conducted. There was 100 per cent consensus on appointing me as the resolution professional.
- **Resolution Plan:** As per the then prevailing guidelines, the promoters of the company had an option to give a resolution plan before the company went into liquidation. (presently as per Section 29 A non MSME corporate Debtors are barred from presenting the Resolution Plan).

The COC did not accept the resolution plan given by the promoters of the company. As they also refused to give an extend time period to revive the company, I as an independent resolution professional recommended to NCLT that the company be liquidated.

Hyderabad's VNR Infra first firm to be liquidated under IBC

DNA LOCAL WORLD INDIA ENTERTAINMENT SPORTS WORLD BUSINESS TECH LIFESTYLE INDIA

Hyderabad's VNR Infra first firm to be liquidated under IBC

Hyderabad's VNR Infra first firm to be liquidated under IBC



WCT, Hyderabad

SHARE

WRITTEN BY

Hyderabad-based VNR Infrastructures Ltd, owned by Valasai Narasim Reddy, a member of legislative council of Andhra Pradesh, has become the first company to be liquidated by the Hyderabad bench of National Company Law Tribunal (NCLT) on August 4, 2017.

The company which owes its IBC score to a cluster of banks led by State Bank of India, will be liquidated under the Insolvency and Bankruptcy Code (IBC) for defaulting on its repayments to lenders. Other lenders who have exposure to the company include Punjab National Bank, Indian Overseas Bank, Bank of Baroda and Bank of India.

The company which is into engineering procurement construction (EPC) of railway projects had asked lenders for a 15-year repayment period with a two-year moratorium, but the lenders refused the plan. The company has now been asked to pay an upfront fee of Rs 200 crore for considering the resolution.

Dharendra Jain, a chartered accountant who had been appointed as the interim resolution professional (IRP), said there are no cash flows for the company to make this payment. According to Jain, the resolution plan was:

Jain told DNA money, "Banks felt that the plan was not supported by an upfront payment. Also, the corporate debtors were requesting a 30-year time period to repay the debt, which they felt was unreasonable."

"This is an EPC company working on railway contracts, so there are no fixed assets to sell. With fresh contracts, the company could have turned around. But with no support from lenders, the company had to be closed. I had also suggested the banks to reconsider the resolution plan by the debtor after some modification because the company still has potential to revive and also sell out some assets to repay some of the loans," said Jain.

IBC 104, the second (the second) creditor, which has cumulative exposure of over 25% of VNR's debt, had simultaneously proceeded against the promoters under the Section 208E.

Hyderabad's VNR Infra first firm to be liquidated under IBC

SHOCKS IN STORE FOR ME

→ Prepone the Scheduled Meeting as forced by Adjudicating Authority:

I felt the first shock of this profession when the adjudicating authority started dictating terms for this case & way of proceedings. The authority forced me to call the meeting of the last committee of creditors at a much earlier date than scheduled by me with the consent of all the COC members. As the COC decided to give more time to promoters for revision in the Resolution Plan after discussion with the prospective Investor within time limit of CIRP I had decided the date for meeting –which had to be pre pone.

The preponing had a negative impact on all the stakeholders. Firstly the promoters were trying to get an investor on board who would be able to pump in some funds. They were also in talks with several investors at that time. However since the meeting was preponed, the talks could not be completed and none of the investors could be taken on board.

“
This I felt was the misuse of power and Authority –as the simple fact is that one cannot compare all the case from its final result angle. There are various facts and factors related to each case.”

The company had created a good will in the market and they had several orders on hand as well. An external investor could have revived the business had he be given enough time to prepare his plan. Also, since the investment proposal was such that it did not have any hair cut or a negative

spread between the buying and selling price of the security, the lenders would have benefitted the most.

Let me categorically mention that, If such meeting would not have been pre pone, even then there was no violation of any provisions of IBC. & that way I had done nothing wrong. On the contrary, If the meeting was held on the previously scheduled day (as fixed by me), there existed greater chance of suitable resolution plan COC could have taken the decision for extension of CIRP for further 90 days for considering the Resolution Plan or even if plan could not have been accepted by CoC, they could pass the Resolution for Liquidation within the time limit of 180 days. So such decision by the Adjudicating Authority was not in the spirit of the Insolvency & Bankruptcy Code, where object is to explore more chance of revival of the Corporate debtor.

→ **Authority Restricted RP for appointment as Liquidator thereby not following the provisions of the IBC:**

The second shocker was that the adjudicating authority also announced some other person as liquidator without any relation to the ground reality. The authority made an oral remark that when a patient has died due to medication by a doctor –why should I appoint the same doctor to take care of post mortem of the so died patient?

It was also quoted that in another case in the same bench, the XYZ IP (RP) can bring the resolution proposal, why can you not., in prescribed 180 days' time This was again an oral comment. He also went to the extent of saying that the resolution professional has not assisted the adjudicating authority to the satisfaction during various hearings held. He held that in the prima facie view that the new/ competent liquidator should be appointed.

This I felt was the misuse of power and Authority –as the simple fact is that one cannot compare all the case from its final result angle. There are various facts and factors related to each case. Otherwise, what is the need of entire process and why the option of liquidation is inserted in the provision?

It is worth to mention that 100 percent of the committee of creditors confirmed my name as liquidator by sworn affidavit. **(This is also recorded in the NCLT order dated 24th August, 2017.)**

If competence of the independent professional is to be judged by such an authority, then what is the meaning of examination conducted by the IBBI Board which was appointed for the sole purpose of monitoring the insolvency and banking code process or what is the purpose of even forming the committee of creditors?

I also wish to point out that there was not a single complaint from any of the creditors, promoters or any of the other stakeholders ever about any matter during the corporate insolvency resolution process.

Yet, I was to face humiliation–without any evident reason.

I do not hesitate to say that comparison of my work with another corporate professional was totally unethical and unreasonable –as there is always a different situation depending upon the merits and demerits of each case. One cannot expect all cases to result into resolution. This only proved that this remarks are based on bias against me or favourable mind-set for other resolution professional.



the sincere effort and honest work did pay off. I did not want to go ahead in the career with the remarks put forth on me and hence went up to Supreme Court.

I felt extremely sad that even the appellate authority did not listen to my plea and facts about my working ignoring the all record and the facts presented by me and dismissed my appeal.

Now my big question on the basis of following happening –that my above appeal was dismissed – but the order was kept reserve for around time of four months. While adjudicating authority does have the power– but I fail to understand the possible reasons for upholding order or which factor was given the utmost importance in the entire code.

DON'T GIVE UP TILL LAST TO PROVE MYSELF:

I was determined that I would not sit till I get these remarks removed – simply because – I had put in 100 per cent dedicated efforts, performed my duties with utmost reasonableness.

However, the sincere effort and honest work did pay off. I did not want to go ahead in the career with the remarks put forth on me and hence went up to Supreme Court. The orders were passed to delete the adverse remarks against me mentioned in the order of NCLT /NCLAT.

I feel sad to share the above incident which proves that the independent professional has to fight alone. Anyone can pass any comment against him in the open House and no one notices the volume of work handled by him.

While one may feel that in the very first matter, I have said everything –with so much experience, then wait. This was just a beginning. There was lot to happen yet.

With this background, let me turn to another matter –which I am sure –you will find equally difficult to handle.

05: Assingment # 2

M/S ROYAL TWINKLE STAR CLUB LTD AND M/S CITRUS CHECK INNS LTD

This was one of the high profile & extremely sensitive cases handled by me. Both the above mentioned companies were associates and were engaged in selling and marketing of 'Holiday Plans' to investors. The case was admitted on 2nd May, 2017 and I was appointed as the interim resolution professional and subsequently as the resolution professional.

WHILE I STARTED TAKING THE CHARGE, THE FOLLOWING FACTS CAME TO MY KNOWLEDGE:

Firstly, there were no financial creditors for either of the companies. Only the operational creditors were there. They were mostly the small investors to whom the plan was sold and on maturity of the plan –refund was not given by the company.

The most important point was that such operational creditors were in lacs in numbers –around 18 lacs. And all of them had claim amount in the range of Rs.10 thousands- Rs. 10 lakhs only. There were many below the claim of Rs.1 lakh.

The total amount claimed by all the investors was approximately to the tune of Rs.7,000.00 crores in both the Companies.

SC Orders Attachment Of All Properties, Assets Of CCIL, RTSCL In Rs.7,500-Cr Scam Involving 18 Lakh Investors [Read Order]

BY: RITESH KASHYAP
MAY 11, 2018 8:04 PM



47
SHARES

Change Font Size

The Supreme Court on Thursday attached all the properties and assets of two Mumbai-based firms, Royal Twinkle Star Club Ltd (RTSCL) and Citrus Check Inns Ltd (CCIL), in order to representative, one investor representative and one representative of CCIL and RTSCL and their associates/sister concerns.

This four-member committee will then appoint registered valuers to value the properties that have been unearthed during the insolvency process of CCIL and RTSCL, which will include assets of their sister concerns as well. The total number of such associates/sister concerns is 88.

Senior advocate Shyam Dixan and Kapil Joshi were the counsels appearing on behalf of the investors in the matter along with Amir Karikhanis and Rahul Galkwad of Gravitas Legal.

• Press Note by Live Law on SC order-RTSC

CHALLENGES FACED AS A RESOLUTION PROFESSIONAL WHILE HANDLING THE CASE AND STEPS TAKEN TO COME OUT WITH SOLUTIONS:

Due to the fear of losing money, most of the small investors were in a panic mode and had gone aggressive towards the company officials. They were

mistaking us (me and my team) to be a part of the company after we took over. Pacifying them was a huge challenge.

MAKING COC:

Initially class of creditors was not described anywhere in the provisions of IBC, therefore they were treated as Operational creditor in absence of any loan or finance agreement. Now after the amendment in the Code, they will be treated as financial creditors (Class of creditors) and the selection of representative of such class of creditors to representing in COC has been described under the amended regulations of CIRP.

As such, I had to follow the then prevailing guidelines in the original provision of the Insolvency and the Bankruptcy code which provided that that if there are no financial creditors in the company then 18 of the top operational creditors could be included in committee of creditors (COC) along with one representative of Employees and one representative of workman.

There was a lack of clarity in the legal provisions. In this particular case, selection of top 18 was also not that easy – as all were small investors and if counted by value of claim, we could not identify only top 18 – as there would be number of investors/creditors having same amount of claim.

HOW TO APPLY MIND TO CONSTITUTE THE COC:

This was a question of using prudence to the situation in accordance with the spirit of the provisions contained in Insolvency and the Bankruptcy Code. Therefore, from the lakhs of investor – if according to law – I could include only top 18, it would be definitely considered as injustice to others. Inappropriate representation for all investors would only cause the proper interpretation of the provision. I met with the officials of the regulating authority IBBI for taking their advice but their reply was that “you should take your own judgement with application of best practice being resolution professional, if you get success this will be benchmark for others.” Also met with the SEBI officials and requested them for representation in the COC, but they denied that stating we shall not join COC, but you take care of investors interest.



प्रधान मंत्री कार्यालय
Prime Minister's Office

नई दिल्ली- 110011
New Delhi- 110011
Dated: 15/12/2017

No:PMOPG/D/2017/0584090

To
CHIEF SECRETARY,
GOVERNMENT OF MAHARASHTRA,
MUMBAI

Sub:Petition of SHRI DEVENDRA JAIN
A/43
PRIME PLAZA
OPP D L A SCHOOL BODAKDEV
AHMADABAD
GUJARAT-380054

Sir,

I am desired to forward herewith a letter/gist of oral representation dated 16/11/2017 received in this office from SHRI DEVENDRA JAIN for action as appropriate. Reply may be sent to the Petitioner and a copy of the same may be uploaded on the portal.

Yours faithfully,

[ALOK SURMAN]
SECTION OFFICER

Copy for information to :
SHRI DEVENDRA JAIN
A/43
PRIME PLAZA
OPP D L A SCHOOL BODAKDEV
AHMADABAD
GUJARAT-380054

Note:- Status of the grievance can be tracked through internet at
<https://pportal.gov.in/MainCity.aspx?for=entering registration no. PMOPG/D/2017/0584090>

* Letter from Prime Minister's office

क्र.क्र.२९४२/अपोज/पुनर्वि/सक-३/सज/पी-४२४९/२०१७,
अस पोलीस आयुक्त,
पुन प्रादेशिक विभाग, बांधे कार्यालय,
बैंगलूर, मुंबई
दिनांक: 25/12/2017.


प्रति,
श्री देवेंद्र जैन,
अ/४३, प्राईम प्लाजा,
डी.एल.अ. स्कूलभा बाकी मार्ग,
बोदाकडेव, अहमदाबाद,
पिन- ३८००५४

विषय :- श्रीमती. प्रमला कातीमा त्रिपाठीने केला बांधे दिनांक १८/०९/२०१७ रोजीच्या
अर्जाबाबत...

महोदय,

उपरोक्त विषयात अनुसूचन अपसक दिनांक १६/११/२०१७ रोजीच्या तक्रार अर्ज व पर्याप्तप्राप्त
प्राप्त झाली आहे.

सद्य तक्रार अर्जाचे अवधानेन वेळे जल्ला, अर्जाच्या आग्रह घेतले जाणारीत मध्ये सद्य घटना व
प्रकरण कोणत्या विभागात (पल्लू नसू करावा) घडते आहे याबाबतची बांधे होत नाही. आपलीसकत ही
सुचक व सुविचाराने माहिती दिव्यात तसेच कोणत्या पोलीस ठाणे/अड्ड्यात आहे, प्रवासात माहिती नसू
केवळ संबंधीत तक्रारीचे निवारण करण्यास सुलभ होईल.


(सु. मा. सतर्कर)
पोलीस पोलीस निरीक्षक
असि. महर्षि सतर्करा, (अविपन्न)
अस पोलीस आयुक्त,
पुन प्रादेशिक विभाग, बैंगलूर, मुंबई
बांधे फरीक

* letter dtd 14.12.2017

CA Devendra Jain
IP Registration No. BIP-074-018/11-0002/15/2017-10, 0000

17/01/2018
DKI/IRP/CCL/

Date: 16th November, 2017

To,
Mr. Lakshmi Gadbani,
Addl. C.P. (E.I.)
Chembur, Mumbai

Dear Sir,

Re: REQUEST FOR URGENT ATTENTION /ACTION IN THE MATTER OF UNNECESSARY HARRASMENT LEADING TO INTERRUPTION IN CARRYING LEGAL DUTY IMPOSED UPON ME.

Ref: Case No. 896/I & BP/NCLT/MB/MAH/2017: M/S. CITRUS CHECK-INNS LTD & Case No. 895/I & BP/NCLT/MB/MAH/2017:M/S. ROYAL TWINKLE STAR CLUB PVT LTD

Above two associate companies were engaged in selling Holiday plans and gathered funds from lacks of retail investors by selling plans. However, the companies failed to repay back the amount on maturity and having felt loss of funds, few of the investors filed petition against both the companies in NCLT.

The matter was admitted by NCLT and I have been appointed as insolvency Resolution Professional by the NCLT, Mumbai Bench in the above two matters vide order dated 2nd May, 2017.

Since then I have been taking the matter forward as per the legal process contained in IBC, 2016 and as per the order of NCLT. My job role was to form committee of creditors arrange meeting with the company and the creditors of the company wherein the company to present its repayment plan and have to report the NCLT whether plan is accepted by the creditors or not. NCLT then may issue orders for further process of liquidation of the company.

• letter dtd 14.12.2017

The usual time period for above process is 180 days, during which various meetings are held and I have to submit report to NCLT from time to time and have to act as per the guidance issued by them. In the matters of these companies, 180 days are already over and I have submitted my reports to NCLT as discussed in the meeting of Committee.

I have been appointed Insolvency Resolution Professional in 8 cases so far and am carrying on the process without any issue.

However, in the present cases there are certain nuisance elements working in such a matter that is creating hurdle in the process of my duties in honest and transparent way.

I wish to bring to your urgent notice the following:

- That on 8th September, 2017 I was kidnapped from the outside of office of the company.
- With the active actions by Mumbai Police, I was relieved.
- The matter was reported to various Authorities and was also published by some news papers.
- I have also made an application for providing police protection to NCLT
- Before and after the above incidence, I continued to receive various threats of my life and my family.
- Various threats and phone calls on mobile received on my mobile to the extent that I am not able to do any other work due to such disturbance.
- Now I am in receipt of some communications (copies enclosed for your perusal) from Mr. Bhupendra Kantilal Jain and one organization namely "Prahar Apang Kranti Andolan" threatening about launching various types of demonstration, fasting etc.

Sir, I wish to submit as under:

- I fail to understand the reason for targeting me by such unscrupulous social elements and at whose instance.

• letter dtd 14.12.2017

- In the above circumstances, how me or any other person can function and discharge his duties as described in the law?
- I am simply working as a RP in both two companies and my job is well defined in the IBC Code and I can't do any illegal and unethical work and can't favour to any stakeholder and bind by NCLT order and other applicable laws. I am independent authority.
- Under the circumstances, it is clear that I cannot and I have no right to give the funds to the investors OR even I am no authority to direct any one to do so.
- Therefore if such type of threat of American Anshon, gherav etc and various other threats to me, why such things against me, if any action to be taken take against the promoter/directors of the Company. This needs to be inquired.

Also by this time, I have been observing the events and the game played by mischievous elements and my points are as under:

1. Why Police supporting such things /persons.
2. Local political leaders are supporting such activities for their political interest.
3. However, please clarify me how Insolvency Professional will do his duties.
4. When it is clear that IRP has not authority for deciding on giving back money, why IP can be party and victim in such type of events.
5. Illegal and unethical pressure to get payment priority seems to be created at the instance of someone to divert the matter.
6. I met, discussed and made clear all legal position and how to payment will start to all who wanted to meet me.
7. Already kidnapped by another group of investors –as narrated above has happened.
8. If such things will continue how we care about our security as well as family security.


In the CIRP each steps was taken in the interest of large public, everything discussed and appraised to NCLT also, now case is under final stage when assets of corporate debtor and their sister concerns/related parties will be sold out and payments will be start as per prescribed guideline and proportionally, without partiality.

• letter dtd 14.12.2017

inally request you to pay your urgent personal attention to this serious matter concerning to the life and safety /security of myself and my family members,

Also if this types of incidents will effect the moral of many other Insolvency Resolution Professionals ultimately leading to mess in the effectiveness of legal system.

I am sure, you would take the required action on urgent basis.



Mr. Devendra Padamchand Jain
RESOLUTION PROFESSIONAL

• letter dtd 14.12.2017

Then I made up to my mind that this is my baby and I shall take a call. Accordingly I myself and made a plan how to approach to maximum of creditors/investors and find out the solution to constitute the Committee of creditors with maximum representation of creditors.

- I released the video on YouTube and explain entire process of the IBC in local language and asking their help to give me full support for complete the process.
- I started to meet different group of creditors/ investors, I heard all the investors patiently. Everyday there was large number of such investors who would eagerly wait to meet me with a hope that they would get back their hard-earned money invested in the company. I had to explain to most of them the process involved and the provisions under which the money would finally be given. I also had to tell them the time taken which finally pacified them.
- I also asked them to select representatives amongst themselves for representation in COC –so that I could carry on the process smoothly.
- With this process I was able to select required no. of people who representing the members and constitute the Committee of Creditors. The report for constitution of COC filed with NCLT and NCLT has approved the process of selecting the representative of COC.
- Further, I appointed an advisory committee consisting of specialist and experienced persons to the committee of creditors. The members of advisory committee gave their valuable inputs on various issues which helped a lot during the meeting of committee of creditors.

HANDLE TO PUBLIC AT LARGE AND INVITING THE CLAIM:

The public at large was not aware of entire legal process and submitting claims abruptly –not in prescribed formats –which made claim verification work extremely difficult. However, in order to avoid delay, I continued to

accept the claims –in whatever form and also considered the same as the claim for maturity amount.

NON-COOPERATING STAFF AND PROMOTERS:

While this chaos of the investors was a big issue to handle, on the other side the management of the corporate debtor or even the employees were not extending any support required under the law. They handed over after considerable gap and in incomplete manner.

SOLUTION WITH EMPLOYEES:

I took the employees into confidence and explained that I was not there to create any problem for them but would ensure that they also get their dues /salary in time.

ARRANGING OF THE FUND FOR SMOOTH CIRP:

Even the fund to manage the affairs was also not provided by the promoters. There was attachment order from the Income tax department for attachment of personal properties of promoters /guarantors as well as the properties of company and its associates.

The bank account of the company was also frozen by the Economic Affairs Wing (EoW) at Mumbai. That worsened the situation as we were unable to meet the day- to day expenses. However, we pressurise to promoters and told them strictly to provide the funds to complete the statutory/IBC process in smooth way.

DANGER TO MY LIFE :

The worst problems was yet to come –with an unfortunate incidence. On one of the late evenings on September, 2017 –I was standing out of the office of the corporate debtor, issuing instructions to some of the employees when a group of ruffians pulled me forcibly in their car. Before I could comprehend the situation, I was whisked away.

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

C.P No.896/(MAH)/2017
M.A. No. 675/2017

CORAM: Present: **SHRI M.K. SHRIRAWAT**
MEMBER (J)
SHRI BHASKARA PANTULA MOHAN
MEMBER (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 22.12.2017

NAME OF THE PARTIES: Seyali S Ram
Via
Citrus Check Inns Ltd.

SECTION OF THE COMPANIES ACT: I & BP Code 2016.


S. No.	NAME	DESIGNATION	SIGNATURE
1	Fatehsingh	Advocate- Rep- RP Deventra Padamchand Jain.	
2	Preme Kadam	Advocate for Corporate Debtor.	
3	Rahul Gokhand i/b Key Legal Associates LLP	Interveners	



* NCLT order 22-12-17-CCIL-1

- 2 -
ORDER
MA 675 & 676 IN CP 895 & 896/T&BC/NCLT/MB/MAH/2017

- Mentioned the Miscellaneous Application by referring an earlier Order passed on 03.10.2017 pertaining to Intervention Petitions connected with the main Petition which is filed under section 9 of the Insolvency & Bankruptcy Code.
- On behalf of the Insolvency Resolution Professional, Mr. Deventra Padamchand Jain, a Prayer has been made that there is an apprehension that the Directors of the Debtor Company may leave the country and also dispose of the properties. It has also been mentioned that Miscellaneous Application bearing MA Nos. 543/2017 in CP No.895/T&BC/2017 AND 542/2017 in CP No.896/T&BC/2017 are already listed for hearing on 08.01.2018 be postponed. It is informed that the said Miscellaneous Application has been moved under section 33(1) of the Code for the Liquidation of the defaulter Company.
- On hearing the submissions and after perusal of the case records we are of the considered opinion that the interest of the Creditors as well as the interest of the other stake holders is required to be protected in the situation as narrated before us. As a consequence, we hereby direct the Directors not to alienate or create any third party right in respect of the declared Assets of the Company and the Assets of the Directors.
- The Insolvency Resolution Professional can also ear mark and identify the undeclared property, if any, found to be purchased out of the siphoned money of the Company and thereupon on identification those properties shall also not be dealt with in any manner by the Directors of their Representatives till further Orders of this Bench.



* NCLT order 22-12-17-CCIL-2

M.A. 895/2017 IN O.P. 895 & 896/2017 NCLT MUMBAI BENCH

-3-

5. Strong apprehension is conveyed that Mr. Omprakash Basantlal Goenka, Mr. Prakash G. Utekar, Mr. V. Natarajan and Mr. Narayan S. Kohnisto may attempt to leave the country so as to avoid the Insolvency Proceedings. Considering the progress of the Insolvency Proceedings and the Reports submitted by the Insolvency Professional, this Bench is of the view that to protect the interest of all the stakeholders and also to facilitate the proceedings these persons should not be allowed to leave the country without prior permission of this Bench of NCLT, Mumbai. As a precaution these persons can tender their respective Passports to the Registry, alternatively can seek prior permission to leave the country in case of any emergency.

6. The Miscellaneous Applications are disposed of accordingly.


7. The entire proceedings along with the Petitions are already listed for hearing on 08.01.2018.

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)
Date : 22.12.2017.

Sd/-

M.K. SHRAWAT
Member (Judicial)



Certified True Copy
Copy Issued "Free of cost"
On 05.01.18

[Signature]
Assistant Registrar
National Company Law Tribunal Mumbai Bench

* NCLT order 22-12-17-CCIL - 3

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P No. 895/(MAH)/2017
M.A. No. 676/2017

CORAM: Present: **SHRI M.K. SHRAWAT**
MEMBER (J)
SHRI BHASKARA PANTULA MOHAN
MEMBER (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 22.12.2017

NAME OF THE PARTIES: **Dr. A. A. Aher**
Via
Royal Twinkle Star Club Ltd.

SECTION OF THE COMPANIES ACT: 1 & BP Code 2016.

S. No.	NAME	DESIGNATION	SIGNATURE
1	FASHM BIRWA	Advocate- REG- RP DEMANDA PADAMCHAND JADKAR	<i>[Signature]</i>
2	Prema Kadam	Advocate for corporate Debtor	<i>[Signature]</i>
3	Amit Kadam	Interlocutors	<i>[Signature]</i>

Beikwad & Kanyalgal Associates LLP



(Contd - 2)

* NCLT order 22-12-17-RTSC - 1

- 1 -

ORDER
MA 675 & 676 IN CP 895 & 896/IBC/NCLT/MB/MAH/2017

1. Mentioned the Miscellaneous Application by referring an earlier Order passed on 03.10.2017 pertaining to Intervention Petitions connected with the main Petition which is filed under section 9 of the Insolvency & Bankruptcy Code.
2. On behalf of the Insolvency Resolution Professional, Mr. Devendra Padamchand Jain, a Prayer has been made that there is an apprehension that the Directors of the Debtor Company may leave the country and also dispose of the properties. It has also been mentioned that Miscellaneous Application bearing MA Nos. 543/2017 in CP No.895/IBC/2017 AND 542/2017 in CP No.896/IBC/2017 are already listed for hearing on 08.01.2018 be prepared. It is informed that the said Miscellaneous Application has been moved under section 33(1) of the Code for the Liquidation of the defaulter Company.
3. On hearing the submissions and after perusal of the case records we are of the considered opinion that the interest of the Creditors as well as the interest of the other stake holders is required to be protected in the situation as narrated before us. As a consequence, we hereby direct the Directors not to alienate or create any third party right in respect of the declared Assets of the Company and the Assets of the Directors.
4. The Insolvency Resolution Professional can also ear mark and identify the undeclared property, if any, found to be purchased out of the siphoned money of the Company and thereupon on identification these properties shall also not be dealt with in any manner by the Directors or their Representatives till further Orders of this Bench.



 (Contd... 3)

* NCLT order 22-12-17-RTSC - 2

- 3 -

5. Strong apprehension is conveyed that Mr. Omprakash Basantlal Goenka, Mr. Prakash G. Utakar, Mr. V. Natarajan and Mr. Narayen S. Kotrisa may attempt to leave the country so as to avoid the Insolvency Proceedings. Considering the progress of the Insolvency Proceedings and the Reports submitted by the Insolvency Professional, this Bench is of the view that to protect the interest of all the stakeholders and also to facilitate the proceedings these persons should not be allowed to leave the country without prior permission of this Bench of NCLT, Mumbai. As a precaution these persons can tender their respective Passports to the Registry, alternatively can seek prior permission to leave the country in case of any emergency.
6. The Miscellaneous Applications are disposed of accordingly.
7. The entire proceedings along with the Petitions are already listed for hearing on 08.01.2018.

Sd/-
BHASKARA PANTULA MOHAN
 Member (Judicial)
 Date : 22.12.2017.

Sd/-
M.K. SHRAWAT
 Member (Judicial)



 Certified True Copy
 Copy issued Date of issue
 On 05.01.18
 National Company Law Tribunal Mumbai Bench

Scanned by CamScanner

* NCLT order 22-12-17-RTSC - 3

It was only later that I realised that they were not professional criminals and did not intend to harm me. Some of them had invested in the company and wanted their money back. I tried my best to explain my situation to them.

They took me to a farm House in remote area and whole night I was kept there. Even I could not talk to my family as my Cell also was also in their custody. I requested them to allow me at least to call to my family so they would not worry about me. After repeating request, they allowed me to call my wife in mid night. You can understand how much this situation was scary for me. I faced the situation with courage and I tried my best to convince them that I was the person appointed by the Court for helping them and to find out the resolutions for their debts due from the Company. They understood somehow but still they wanted to talk with the promoters through me for their financial needs as promoters were not meeting with them and avoiding their own responsibilities by telling them that now “Mr. Jain has taken the charge, he will give your money back.”

It was with grace of God the kidnappers were not the professionals and did not cause any harm or injury to me. Moreover, due to sincere efforts of Mumbai police with the help of tracking of my phone calls I was relieved from the kidnappers within 24 hours of the incidence.

NO SUPPORT AND SYMPATHY OF REGULATING AUTHORITY AND ADJUDICATING AUTHORITY:

While an independent resolution professional is duty bound to many –but there is no one to support him in the cause. Our constraint was also seen from the fact that while considering the large chaos of public and other circumstances; I had already applied for police protection through the National Company law tribunal(NCLT)

However, before the application was heard, the above incidence took place.

The point to ponder is that in spite of such incidence and my pending applications – I have not been allotted any police protection till date.

This incident reported in various news prints as well discussed in various seminars and group of professionals. I also report this incident to the IBBI and various government departments but amazingly, I never got reply from our own regulating authority.

I still receive threats on my mobile phone on a regular basis. It does impact me to the extent that I am unable to concentrate on my work. Such stormy incidents did not stop. I have received a threat from a person claiming to be from an organization named “PraharaApangKrantiAndolan”. In the letter, he has warned of various agitations aimed towards me. It has come to our knowledge that this particular person is closely associated with a local political leader who wants to gain mileage through such deeds.

PMO INTERVENTION

I want to mention here that after my letters to various government authorities about such incidents and threats, I only got the reply from PMO office, where they instructed to local authorities of Maharashtra to look into the matter and provide the assistance. This type of support from our Prime Minister Shree Narendra Bhai Modi, gave me more strength and courage to fight with all such evils and hassles. But I feel also very bad, why our own regulating authority is far behind to give protection to their own registered members, they are only for to making strict rules against the IPs.

FURTHER STEPS TAKEN BY ME IN CIRP

- I appointed a forensic auditor to verify various financial transactions.
- I appointed an investigator to verify the transactions related to property and report diversion of funds.
- As a routine matter, I appointed two valuers to have valuation reports on the assets. Very interesting situation was there, in both the company's total debt towards public was around Rs.7000 Crores and value of assets of both the Companies was only around Rs. 30.00 Crores.
- When I found out that there are certain investments/funds diverted to sister/associates' concerns, I immediately asked such concerns to pay back the investments.

08/08/18 Firms resort to kidnapping, theft to game NCLT proceedings

DNA HOME FINANCE INDIA ENTERTAINMENT SPORTS WORLD BUSINESS TECH LIFESTYLE TRAVEL

Rs. 55,000/- under section 80D HEALTH INSURANCE

NEWS

Firms resort to kidnapping, theft to game NCLT proceedings



Fifty-year-old Deventra Jain, a qualified resolution professional with nearly two decades of experience in stressed assets management, was appointed to resolve the investors' woes in two Punal schemes - the Royal Twinkle Star Club and Citrus Check.

While working on the case Jain was suddenly kidnapped on September 11 evening by a group of agents of these two schemes. About 13 lakh investors had invested in around Rs 6,000 crore in the holiday plaza and Jain was devising ways to get back the money. He was waiting for his car at the Sun Mill compound in Mumbai's Lower Parel when three women came and asked him about these schemes. While he was talking to them a group of agents pulled him into their car and drove off before his own car could come. He cried for help but even the security guards of the buildings looked the other way. If it was not for the timely action from the Mumbai police, Jain may not have escaped from their clutches.

Jain told DNA Money, "Since I was trying to get back the investors' money, a group of agents kidnapped me and took me to Nashik where I was held captive in a guest house. At midnight after 7 hours in captivity, I was able to call up home. Now that I am free, I will try and get back the people's money."

• Firms resort to kidnapping, theft to game NCLT proceedings

- As soon as I felt that the promoters might leave the country, I also arranged for seizing their pass ports. Also, I took actions and made them declare properties lying in their sister/ associate concerns worth Rs.3500 cr. before the NCLT.
- Even after abducting, I did not give up. I continued and carried forward the matter till the end and did whatever possible in the interest of public.
- Even some element tried to stop the process. The matter went up to Supreme Court. Yet I presented the matter in its true and factual manner.

INTERVENTION APPLICATION:

In the meantime, an intervention application was filed by some group of investors for recalling the notice for CIRP before NCLT /NCLAT. Both the Authority rejected the appeal; however, Hon'ble Supreme Court of India accepted the appeal and issued direction to file a report in the matter and actions taken by IRP.

- While hearing the above matter, in the month of April, 2018, Honourable Supreme Court & announcing the order noted that the resolution professional has already done a job in finding about the diversion of funds by way of investment in group companies. Also he has got passport of the promoters surrendered. As such, in the said matter even asked me to arrange a joint meeting with the applicant of the petition and SEBI. It was also ordered that the report of such meeting to be submitted to Hon'ble Supreme Court in next hearing.
- Accordingly a joint meeting was conveyed and ultimately only those points emerged and those decisions were taken that I was advocating for long on the basis of my skill and experience. The decision taken included the appointment of a forensic auditor and forming a sale cum monitoring committee that would take care of entire sale process for the assets of the company etc.
- The report of the joint meeting was submitted before the Supreme Court. On perusal, the Supreme Court issued an order.

CA Devendra Jain
IP Registration no. IBBP/PA-001/IP-P00255/2017-18/10484

Camp office:-
203-B Parvati Industrial Premises,
Sun Mill Compound,
Lower Parel (West),
Mumbai 400 013
citrus.ip@gmail.com, rtwinkle.ip@gmail.com

THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI

CASE NO: 896/18 BP/NCLT/MB/MAH/2017

Submitted before Bench on 25-09-2017

IN THE MATTER OF

Mrs. Sayali S. Rane Petitioner / Operational Creditor

Versus

M/s Citrus Check Inns Ltd Respondent/Corporate Debtor
[Through Mr. Devendra Padmchand Jain, Resolution Professional]

Dear Sir,

We are concerned for the Respondent/ Corporate Debtor in the above captioned matter. Please find enclosed herewith the Affidavit in the above captioned matter.

Thanking you

Yours sincerely,


Devendra Padmchand Jain
Resolution Professional
(Regn. No. IBBP/PA-001/IP-001/IP-00225/2017-18/10484)



Place- Mumbai
Date: 22nd September 2017

A/43, Prime Plaza, Opp. DLA School, Bodakdev, Ahmedabad - 380 054 Email: devendrajain@hotmail.com

* Police Complaint regarding Kidnapping

BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
6TH FLOOR, FOUNTAIN TELECOM BUILDING NO.1,
NEAR CENTRAL TELEGRAPH, M.G. ROAD
MUMBAI, 400 001, MAHARASHTRA

COMPANY PETITION NO. 896/18BP/NCLT/MB/MAH/2017


AND IN THE MATTER OF:

Mrs. Sayali S. Rane
13/1/B, Shree Niwas Chawl,
Shastri Nagar, Kanjurmarg (E)
Mumbai - 400 042

Petitioner / Operational Creditor

Versus

Citrus Check Inns Ltd.
16-18, Shilpin Centre, 1st Floor,
40 G.D. Ambedkar Marg,
Wadala, Mumbai - 400 031



..... Respondent / Corporate Debtor

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deaf

* Police Complaint regarding Kidnapping

①

BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
6TH FLOOR, FOUNTAIN TELECOM BUILDING NO.1,
NEAR CENTRAL TELEGRAPH, M.G. ROAD
MUMBAI 400 001, MAHARASHTRA

COMPANY PETITION NO. 896II&BPINCLT/MBIMAH/2017

AND IN THE MATTER OF:


Mrs. Sayali S. Rane
13/1/B, Shree Nilvas Chawl,
Shastri Nagar, Kanjurmarg (E)
Mumbai – 400 042

Petitioner / Operational Creditor

Versus

Citrus Check Inns Ltd.
16-19, Shipin Centre, 1st Floor,
40 G.D. Ambedkar Marg,
Wadala, Mumbai – 400 031

.....Respondent / Corporate Debtor

 AFFIDAVIT

I, Devendra Padamchand Jain S/o Shri Padamchand Jain, aged about 49 years, am the Resolution Professional of the Corporate Debtor, M/s Citrus Check Inns Ltd. having my office at 16-19, Shipin Centre, 1st Floor, 40 G.D. Ambedkar Marg, Wadala, Mumbai, do hereby solemnly state and affirm as under :




• Police Complaint regarding Kidnapping

②

1. I say that I am the Resolution Professional of the Corporate Debtor and am well aware of the facts and circumstances of the case and I am duly authorized to swear this Affidavit.
2. This Hon'ble Authority has heard the matter on 02.05.2017 and whereby, this Hon'ble Authority has passed the Order for admission of the petition and appointed me as Interim Resolution Professional and granted the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (to be referred hereinafter as to "the Code")
3. The first meeting of Committee of Creditors (COC) was conducted on 14.09.2017 in accordance with the provisions of Section 22(1) of the Code, whereby I was appointed as Resolution Professional (RP).
4. During the course of functioning as RP and observing my duties, on 15.09.2017, I was in the office of the Corporate Debtor situated at Parnavi Premises, Sun Mill Compound, Lower Parel, Mumbai.
5. That when I came down at 5:15 pm, at the exit road site, I was waiting for my vehicle, three ladies had come for discussion for repayment of their dues and all of a sudden while I was busy in discussions with them, 5 persons came around me and forcefully put me in a car.
6. That I cried but no one came forward for help and I was taken away. In fact they kidnaped me for pressuring me for their outstanding dues.

That the incident was reported immediately by the concerned officials of the Corporate Debtor and ultimately, I was rescued by





• Police Complaint regarding Kidnapping

⑤

police and I was taken back from Mubad (Village) wherein, these persons kept me for whole night.

8. That the fact is that the Corporate Debtor is indebted to lakhs of depositors and any time these kinds of incidents may happen with the person in-charge.
9. That I had moved Application bearing no. 337/2017 for police protection before His Hon'ble Authority and the whole purpose of the same was to avoid such incidence so that I can be secured and work fearlessly towards the duties of the RP.
10. That the copy of the FIR and other documents are enclosed herewith ready reference of His Hon'ble Authority.
11. That I most humbly pray this Hon'ble Authority to kindly allow Application no. 337/2017, in terms of Regulation 30 of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and also to direct all the personnel to extend cooperation to RP as prayed in the application
12. That they took me at Mubad (village) in some Farm House and kept me for whole night. They want their investment back which made in to the Corporate Debtor forcefully. However no physical damage to me, but mentally I am very much scared. With grace of God, Police traced me in next 24 hrs.







• Police Complaint regarding Kidnapping

④





VERIFICATION

Verified at Mumbai on this 21st September, 2017 that the contents of the above affidavit are true and correct to my knowledge derived from records of the company and no part of it is false and nothing material has been concealed therefrom.

 DEPONENT

BEFORE

S. MILOKHANDE,
NOTARY
MUMBAI - MAHARASHTRA
21 SEP 2017

NOTED & REGISTERED
Bk. No. 1070 G4
Dated 21 SEP 2017

• Police Complaint regarding Kidnapping


It was a proud moment for me as my efforts were appreciated. The challenges faced by me at that time are actually a bench mark now for me to do better in life. Whatever logical actions I was suggesting to ensure and protect interest of lakhs of small investors were approved as Hon'ble Supreme Court directed following actions:

- ➔ To form Sale cum monitoring committee (SCM) to ensure transparent liquidation /sale of assets process.
- ➔ To carry out valuation of the properties.
- ➔ To attach all the properties of not only both the companies but also of their associates /sister concerns.
- ➔ Directors to declare their assets and worldwide properties before Hon'ble Supreme Court.

→ The above directions were similar to what I was insisting since the beginning of the corporate insolvency resolution process of both the companies. As out of my experience as consultant for NPA Resolution matters, I knew that to have satisfaction about transparency and also to manage such a large portfolio of assets only such actions would give proper justice to all the stake holders.



भारत सरकार
 कर्पोरेट अफेयर्स मंत्रालय
 100, "EVEREST", MARINE DRIVE, मुंबई - 400002
 टेलीफोन / TELE : 2281 2627, 2281 2645, 2281 3760
 फैक्स / FAX : 2281 1977


 GOVERNMENT OF INDIA
 MINISTRY OF CORPORATE AFFAIRS
 OFFICE OF THE REGISTRAR OF COMPANIES
 100, "EVEREST", MARINE DRIVE,
 MUMBAI - 400 002
 Website : www.mca.gov.in
 e-Mail ID : roc.mumbai@mca.gov.in

No. ROC (M)/IPC/HK/2805
 21 MAR 2018

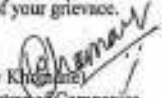
To,
 Shri Devendra Jain
 A/43, Prime Plaza,
 Opp.D.I.A. School,
 Bodakdev, Ahmedabad-380054

शीघ्र डाक सेवा
 SPEED POST

Sub:- Request for urgent attention/ action in the matter of unnecessary
 Harassment leading to interruption in carrying legal duty imposed upon me.


Re:- Case No.896/I & BP/NCLT/MB/MAH/2017: M/s. Citrus check-Inns Ltd.

Sir,
 With reference to the above subject cited, I am to state that your complaint has received in this office regarding unnecessary harassment leading to interruption in carrying legal duty same does not fall under the preview of the Companies Act, 2013. You are requested to approach to Police authority/Hon'ble National Company Law Tribunal for redressal of your grievance.


 (Uday Khichare)
 Asstt. Registrar of Companies,
 Maharashtra, Mumbai

* Letter dtd 21.03.18

e-mail: rd.west@mca.gov.in
 Tel No. 022- 22811493
 Fax No. 022-22812389

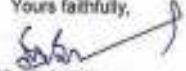

 भारत सरकार
 GOVERNMENT OF INDIA
 कर्पोरेट अफेयर्स मंत्रालय
 MINISTRY OF CORPORATE AFFAIRS
 ऑफिस ऑफ द रीजनल डायरेक्टर, वेस्टर्न रीजन
 OFFICE OF THE REGIONAL DIRECTOR, WESTERN REGION
 ऑफिस, एवरेस्ट बिल्डिंग, 5TH FLOOR,
 100, नेताजी सुभाष मार्ग, 100, NETAJI SUBHASH MARG,
 मुंबई - 400 002, Mumbai 400 002.

No. RD/STA/Compl/386/2017/8586
 Date: 29 JAN 2018

To
 The Registrar of Companies,
 Mumbai

Sub: Letter dated 16/11/2017 received from Shri Devendra Jain in the matter of M/s. Citrus Check-Inns Ltd & M/s. Royal Twinkle Star Club Pvt Ltd

Sir,
 With reference to the subject cited above, I am directed to enclose herewith a copy of letter dated 16/11/2017 received from Shri Devendra Jain in the matter of M/s Citrus Check-Inns Ltd & M/s. Royal Twinkle Star Club Pvt Ltd and to request you to examine the matter & take appropriate action and dispose of this complaint at the earliest under intimation to the complainant as well as to this Directorate.

Yours faithfully,

 (S. M. SAINDANE)
 JOINT DIRECTOR
 FOR REGIONAL DIRECTOR (WR)

Enc: As above.

Copy to:
 ✓ Shri. Devendra Jain
 A/43, Prime Plaza,
 Opp. D.I.A School,
 Bodakdev, Ahmeddabad - 380 054
 (For information we request to follow up the matter with Registrar of Companies Mumbai, 100, Everest, Marine Drive, Mumbai - 400002. in future.)

* Letter dtd 29.01.18

1

ITEM NO.2 COURT NO.11 SECTION XVII

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Appeal No(s). 20971/2017

ANANT KAJARE Appellant(s)

VERSUS

EKNATH AHER & AMR. Respondent(s)

[IA No.133609/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.25509/2018-impleading party]

WITH

SLP(C) No. 3374/2018 [IX]
[IA No.134607/2017-CONDONATION OF DELAY IN FILING and IA No.134608/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.134606/2017-PERMISSION TO FILE SLP and IA No.134609/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.25502/2018-impleading party]

C.A. No. 28901/2017 [XVII]
[IA No.134696/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.25616/2018-impleading party]

SLP(C) No. 3384/2018 [IX]
[IA No.135034/2017-CONDONATION OF DELAY IN FILING and IA No.135035/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.135033/2017-PERMISSION TO FILE SLP and IA No.135038/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.25498/2018-impleading party]

SLP(C) No. 3386/2018 [IX]
[FOR ADMISSION and I.R. and IA No.138590/2017-CONDONATION OF DELAY IN FILING and IA No.138593/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.138588/2017-PERMISSION TO FILE SLP and IA No.138596/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.6075/2018-impleading party]

SLP(C) No. 3385/2018 [IX]
[IA No.6084/2018-impleading party]

Order : 18-05-2018 These matters were called on for hearing today.

RECORDED
IN
COURT
JURAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

2

For Appellant(s) Mr. Shyam Divan, Sr. Adv.
Mr. Kapil Joshi, Adv.
Mr. Rahul Galkwad, Adv.
Mr. Vinayak Bhandari, Adv.
Mr. Faizi Saif, Adv.
Ms. Kriti Malik, Adv.
Mr. Ajay Kumar, Adv.
Mr. Pashupati Nath Razdan, Adv.
Ms. Manju Jetley, AOR

For Respondent(s) Mr. Tushar Mehta, ASG
Mr. Bhargava V. Desai, Adv.
Mr. Akshat Malpani, Adv.

Mr. Mukul Rohatgi, Sr. Adv.
Ms. Manjeeta Rohatgi, AOR

Mr. G. Prakash, AOR
Mr. Disha M.L., Adv.
Mrs. Priyanka Prakash, Adv.
Mrs. Seema Prakash, Adv.
Mr. Vijay Shankar V.L., Adv.

Mr. K.V. Vishwanathan, Sr. Adv.
Mr. Nabesh Agarwal, Adv.
Mr. Rishi Agrawala, Adv.
Mr. Vivek Jain, Adv.
Mr. Rishabh Parikh, Adv.
Mr. Nipun Singhvi, Adv.
Mr. E. C. Agrawala, AOR
Mr. Vikrant Pachnanda, Adv.

Ms. Manisha Ambwani, AOR
Ms. Charu Ambwani, Adv.

Ms. Purnima Bhat, AOR

Mr. Jayanth Muthraj, Adv.
Mr. Nishe Rajen Shonker, AOR
Ms. Anu K. Joy, Adv.
Mr. Alim Anvar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

By our order dated 20.04.2018, we had suggested that a joint meeting take place with the petitioner's representative, the Resolution Professional and representatives of the SEBI.

3

We have since been informed that such a joint meeting has, in fact, taken place on 07.05.2018 with the following Members present:

1. Devendra Jain, Resolution Professional (RP) of Citrus Check Inn Ltd. (CCIL) and Royal Twinkle Star Club Limited (RTSCL).
2. Mr. Amit Karkhanis, Advocate for Petitioner Society - Citrus Welfare Society (CWS)
3. Mr. Rahul Gaikwad, Advocate for Petitioner Society - Citrus Welfare Society.
4. Mr. Basu Nandan Kanungo, Advisor to Petitioner Society - Citrus Welfare Society.
5. Mr. Mahesh Pawaskar - President of Citrus Welfare Society
6. Mr. Nipun Singhvi, Advocate for RP.
7. Mr. Prateek Gattani, Advisor to RP.
8. Ms. Maninder Cheema, SEBI Representative.
9. Mr. Ankit Shamsali, SEBI Representative."

Ultimately, everybody jointly consented to the Supreme Court giving certain directions with regard to the formation of a Sale-cum-Monitoring Committee, and the steps to be taken by such Committee.

After hearing all learned Counsel appearing on behalf of the various parties before us, we direct that a Sale-cum-Monitoring Committee be set up comprising of the Resolution Professional, one SEBI Representative, one Investor Representative and one Representative of CCIL and RTSCL and their associates/sister concerns.

This four-Member Committee will then appoint Registered Valuers to value the properties that have been unearthed during the insolvency process of CCIL, RTSCL, which will include assets of

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their associates/sister concerns.

We also appoint M/s Deloitte as the special auditor to carry out the Forensic Audit not only of CCIL and RTSCL, but of their associates/sister concerns, which at present number 88. If anymore sister or associate concerns are unearthed after the date of this order, they shall conduct a Forensic Audit for the same.

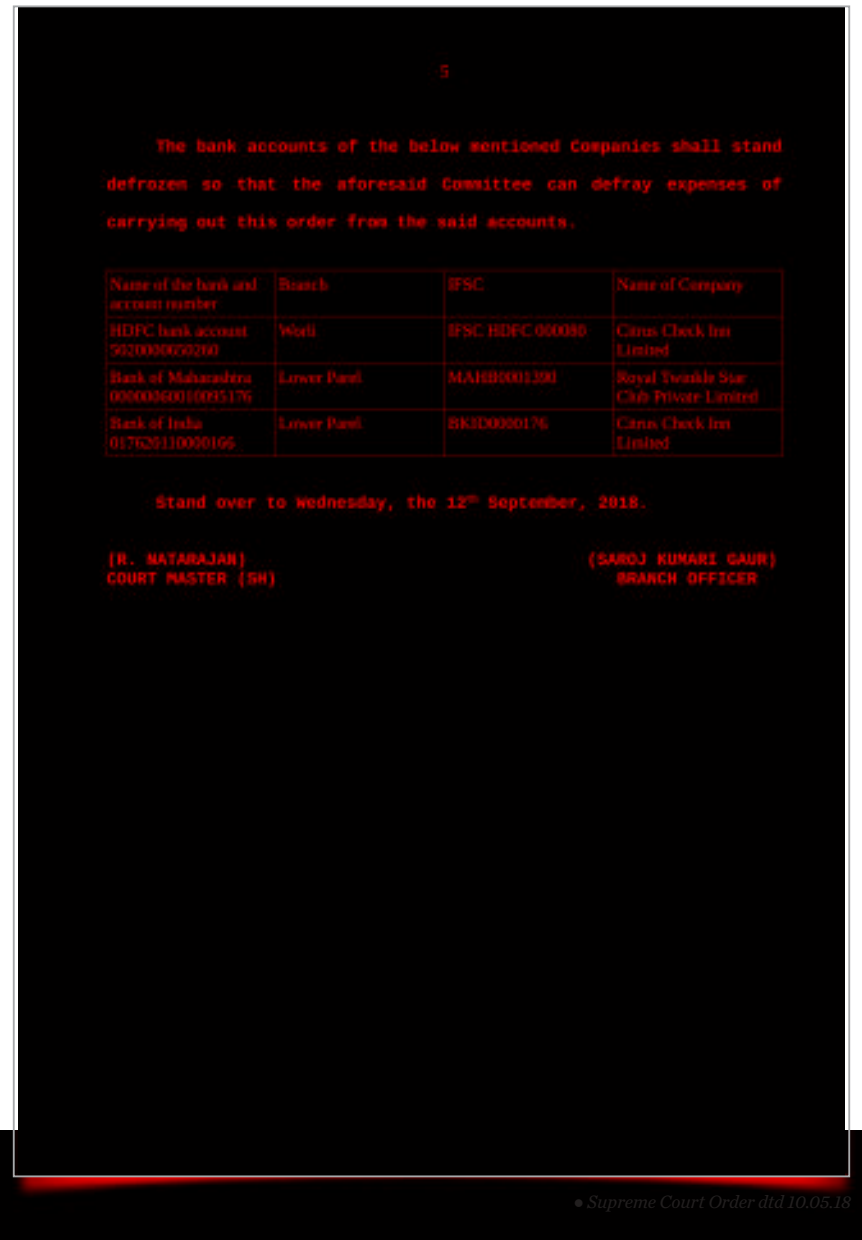
We have been informed that the statement made in our order dated 26.04.2018 that attachment orders have already been obtained is not correct: apparently, only injunction orders have been obtained qua the assets in question.

We, therefore, hereby attach all the properties of CCIL, RTSCL as well as assets and other properties of their associates/sister concerns. Pursuant to this attachment, we direct that after valuation has been done a sale of each of these properties will take place under the aegis of the NCLT.

Mr. Divan has moved I.A. No. 57067/2018, which is allowed to the aforesaid extent.

Insofar as IA No. 57071/2018 is concerned, we permit the petitioner to add the promoters and Directors of other persons mentioned in prayer (a) thereof, and further direct that all these persons disclose on affidavit their personal assets world-wide in affidavits filed before this Court within a period of eight weeks from today.

We request the Committee to do their job in right earnest, and submit a Report to this Court within a period of four months from today.



→ Yet – it is very common practice for some of the stakeholders not to accept the judgment of the legal authority and create obstacle in one way or the other. This happened in our case as well. As directed in the order –when I started forming the sale cum monitoring committee and requested the representative of investors who were present in the joint meeting –to suggest a name of member of the investors who might have reasonable share and eligibility to properly represent the investors. The objective was that he could be included in the committee as a representative of investors. While I was intending to convey that if a suitable representation is included, it will justify the act to create transparency, boost confidence of all the stake holders and avoid litigation. The representative of the investors who was present in the joint meeting went to create one more legal complication. He informed me that they are going to file an application that the resolution professional was acting in contrary to order of the Hon’ble Supreme Court and that the resolution professional was trying to exclude him from the committee.

→ As such it is already more than 180 day’s period – and the matter still remains undecided – simply because of unnecessary litigation – may be from any stake holders – with the mala fide intention of wasting time or otherwise. Hence the very purpose of enacting the insolvency and the banking code –with a specified time line for every activity under the code is defeated.

→ However, the matter was again listed after vacation and finally name of the representative was finalized. And now SMC is working in full swing. Valuers already appointed. Forensic Auditor started its audit.

→ Still there are certain litigations filed by various concerns whose interest in the attached properties are affected. Hon’ble Supreme Court is now hearing all such applications and as such it is hoped that matter will be resolved in smooth way.

Above facts leave following question to me which I leave to my readers

and all those who believe that law should be respected: Till date – using the legal excuse or sometimes under the guise of legal /technical issue, we as citizen of the country are facing delayed justice. When aim for special code is to complete the process within specified time limit, should there not be any penalty for any such act on the part of any stake holders –who just intend to defeat such prime purpose of the Code.



Sometimes, it happens that the person having guts, skill & courage faces more challenges isn't it?. You will feel the same thing when you will yet go through the details of my next assignments. Particularly it will explain that how legal system is tried to be exploited by nuisance elements.

SALIENT POINTS TO PONDER:

- I wanted to ensure adequate representation amongst lakhs of investors and hence wanted to include more than 18 members in the committee of creditors. When I met the relevant authority and presented all the facts, I was told to use my own judgment and discretion in the case.
- I realised that as an independent resolution professional one also needs to be well prepared to face challenging situations like–abductions and threats to life - while working towards the benefit of society. While there is neither an inbuilt provision for security nor the application for security heard on priority.

- At the same time it is also to be kept in mind that there is no lucrative remuneration for acting as Resolution Professional that one would like to take a risk of life without adequate security measures.
- This had not only caused threat the to life of professional person but also to his family members.
- While an independent resolution professional does not have the absolute authority to decide on any issue or towards any stakeholder and has to act within the provisions of the law, they are subjected to harassment from several corners. Even the promoters who intended to cheat will be provided opportunity to judicial court.

Of course, I strongly believe that while working as an insolvency professional is definitely tough, it is also the fact that `sincere and dedicated efforts –with proper recording of all events, honest and transparent environment to all stake holders will yield successful result.

06: ASSIGNMENT # 3

M/s SANDHYA PRAKASH LIMITED

This is a case about a company located at Bhopal (MP). The Company was mainly running a commercial mall and a printing press unit. The case was admitted at Ahmedabad NCLT in September, 2017 under Section 7 of IBC, 2016 wherein I was admitted as Interim resolution Professional and subsequently as Resolution Professional.

THE HIGHLIGHTS OF THE CASE:

→ It had a running business concern. Hence the responsibilities of Insolvency Professional increased multi-fold. I have to go ahead with the corporate insolvency resolution process and run the business in such a way that not a single stake holder is adversely affected. The compliance to various authorities like –Income Tax, Service Tax, PPF, SEBI and others also need to be taken care of. In case of slipups, there is a possibility that any one of them would resort to legal recourse and the insolvency professional may be found guilty.

In such situations, one always fails to notice how much responsibilities he carries in the absence of adequate information due to Non-cooperation from the corporate debtor, lack of background information on any matter due to negative approach of employees.

Collecting all the information /record /studying the same and compliance on behalf of corporate together with compliance as an insolvency professional that too within a time bound manner is what expected from insolvency professional and in turn he is expected not to make any single mistake, all stake holder or authority should get adequate attention etc.

- I was also required to take care of entire mall, number of tenants to whom space was let out, security and management of infrastructure etc.
- Here also the Management /promoters were not happy and not cooperating. Also the staff employed by them was trying to avoid instructions or delaying matters or hiding the record etc.
- On my taking over of the mall and printing press, various issues started taking place, which one can easily understand why it cropped up suddenly.

CHALLENGES COMES DURING CIRP

- Local Authorities (Nagar Nigam) started issuing notices on one or other pretext (Like tax matter, unauthorized construction matter, about the outdoor publicity etc.)-in spite of clearly intimating them that what I am doing is under the legal frame work and you could not take any action till corporate insolvency resolution process is going on.
- In spite of the Nagar Nigam went to the stage of sealing the mall -which is one of the the basic activities and revenue generation source for such a company which is not able to pay dues to financial institutions and others. While the law (made by the Government) is trying to support activities running (so that dues can be recovered) -the other hand of the Government (Nagar Nigam) was trying to hinder such movement - that too even when the IBC prohibits them from doing so. Is timing for such action not sufficient to prove malafide intention or collusion?
- The commercial mall -Being a place with large amount of public movement- security lapses, lift issue, escalator issues, fire NoC and

sewerage treatment plan was not there at the time of taking charge. But we had done all such compliance. If any untoward incident happens due to non compliance of norms for mall operation, entire responsibility may come on RP.

- There was an incident of threatening the security guard performing his duty at printing press unit with the intention to spread fear amongst the employees and break the business cycle.
- Inquiry from EPFO in certain matter and insistence by them to recover certain amount.
- Some of the lease holders tried to raise different issues relating to property matters and in absence of proper documentation provided to me by the suspended directors of the corporate debtor.
- And the surprising factor was that majority of the dispute were relating to period much earlier -even as much as 6 years back - then I took the charge. I was left wondering that why they all remain silent throughout so many years and all of a sudden how they woke up. I leave this on the ability of judgment of my readers who know very well that how people try to misuse the "opportunity to be heard" that our legal system provides to all to ensure proper justice to all. However, people misuse this for prolonging the legal matters -so that the other party gets harassed.

UNDUE ADVANTAGE OF LEGAL SYSTEM AND FORCEFULLY EXTENSION OF CIRP PERIOD:

- One more example of how some people tried to take undue advantage of legal provisions is that after the expiry of 180 days period as decided by committee of creditors, I had recommended to NCLT for suitable orders. At this juncture, the promoter felt that he could present resolution plan /source an investor. Few other investors also expressed their interest in the company after the final decision of COC/reference made to NCLT.

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**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

IA 188 of 2018 in C.P. (LB) No. 113/7/NCLT/AHM/2017

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 05.06.2018

Name of the Company: Devendra Padamchand Jain (RP)
V/s.
Sandhya Prakash Ltd. & ors

Section of the Companies Act: Section 33 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Vishal S. Dave Nigun Singhvi	Advocate	Applicant Promoter	
2.	Sharvil P. Magudar	Adv.	CoD	

ORDER

Advocate Mr. Vishal Dave with Advocate Mr. Nigun Singhvi are present for the Applicant, Advocate Mr. Sharvil Magudar is present for the promoter in IA 188/2018.

The argument at length from the Learned Counsel for the Respective parties are heard.

The applicant being a resolution professional of the corporate debtor company has moved the present application seeking for extension CIRP period for another 90 days beyond 180 days so as to complete the CIRP. In respect of the Corporate Debtor Company learned Counsel for the Applicant, during the course of hearing has invited our attention to the earlier direction issued by this court dated 09.05.2018 observing such that the RP and CoC may relook and consider the claims' grievance of the other applicants/objectors. Pursuant to such direction issued by this court, The CoC has reconsidered the issue refer to it and passed necessary resolution in this regard. The relevant extract of resolution passed is also mentioned at para E to G of the present application. for the sake of convenience, the same is being reproduced here in below;

E. Accordingly, in view of above points, Resolution Professional requested to CoC members go for voting via 12(2) of Insolvency and Bankruptcy Code 2016 & Regulations 40 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016-to get a fair view on the following;

• Sandhya CIRP extension order

a) Revised/improved plan from the Resolution Applicants as discussed today.

b) Resolution plan from the suspended promoter/director of the CoD may be considered, in case the proposed amendment comes in effect.

c) To invite fresh EDI after deciding the evaluation Matrix for prospective Resolution Applicant, if the above recommendation for extension of time is approved by Hon'ble NCLT.

F. Accordingly, the CoC has passed the resolution for extension of time and filing of necessary application before Hon'ble NCLT, with consent of 100% of present members having the voting share of 99.73% in favour of the extension of time for CIRP for further 90 days. Absentee member representative of M/s PVR Cosmos having voting share of 0.27% shall send his consent through electronic mail as intimated by him over phone.

G. RP asked suspended promoter/director of the CoD to provide all pending documents/records/ information etc. so that all major information/details can be provided to prospective RA for submitting Resolution Plan with proper evaluation.

By considering the above stated facts of the case and such being a matter of record that the CIRP period of 180 days is already over on 13.03.2018 while prior this an application for liquidation of the Corporate Debtor Company was filed.

In spite of the above a subsequent request is made seeking for extension of the CIRP for another 90 days for consideration of the resolution plan and for exploring possibility of potential resolution applicant by inviting fresh expression of interest. Hence, such request appears to be bonafide and reasonable.

In view of the above, the application filed under section 33 of the IB Code has now become infructuous.

Consequently, such IA 82/2018 is dismissed as being infructuous and accordingly, stands disposed of.

Therefore, the present IA No. 188/2018 deserve to be allowed because the reason shown for seeking extension and deliberations made in the meetings of the CoC appears to be convincing and reasonable in order to save the paramount interest of the Corporate Debtor Company hence, the present IA is allowed in the result, the period of the CIRP is further extended for another 90 days beyond 180 days.

Further request for exemption of the period, consumed during pendency of the present application for the purpose of counting of CIRP would be considered later on by this court at appropriate stage.

The IAs stands disposed of accordingly.

**HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL**

Dated this 05 day of June, 2018.

• Sandhya CIRP extension order

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**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

IA 2 of 2018 in C.P. (LB) No. 113/7/NCLT/AHM/2017

Coram: Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.01.2018**

Name of the Company: Devendra Padamchand Jain (RP)
V/s.
Sandhya Prakash Ltd. & ors

Section of the Companies Act: Section 14 r/w 20 of the Insolvency and
Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	GALAXY MEDIA ARTIST	Artist	Respondent	[Signature]
2.	NIPUN SINGHVI VISHAL J DAVE	Adv	Applicant	[Signature]

ORDER

Learned Advocate Mr. Vishal Dave with Learned Advocate Mr. Nipun Singhvi present for Applicant. None present for Respondent in IA 2 of 2018.

Proof of service of notice of date hearing and proof of service of copy of application on Respondents no. 2 to 7 filed.

None appeared for Respondent no. 2 to 7.

Heard arguments of learned Counsel for RP.

This application is filed by RP seeking direction to respondents no. 2 to 5 to pay the rent and for direction to the police to give the protection to take charge of the assets and for direction to Respondent no. 6 and 7 styling them as unauthorised occupants under section 14 r/w section 20 of IB Code.

It appears this application is filed without the approval of the COC. Section 14 of the IB Code only imposes moratorium from the recovery of any property by an

• Sandhya CIRP extension order

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owner or lessor, where such property is occupied by or in the possession of corporate debtor. Therefore, RP cannot invoke section 14 (1)(d) of the IB Code.

In case RP finds any difficulty in discharging its function as laid down in section 25 of the IB Code, he can approach the District Administration under regulation 30 of Insolvency and Bankruptcy (Insolvency Resolution) Regulations, 2016.

Hence, the application is dismissed in respect of relief against the tenants. However, the RP is entitled to recover the rent from the tenants. He can also approach the District Administration in discharge of its duties, if necessary.

Application is disposed of accordingly.

[Signature]
MANORAMA KUMARI
MEMBER JUDICIAL
Dated this the 23rd day of January, 2018.

[Signature]
BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

• Sandhya CIRP extension order

- I have experienced that while the Adjudicating Authority tries to protect the status of ongoing concern and consider the resolution plan even received after final decision of COC, the only motive behind such intended plan is to waste time. While they gain nothing except time, they enjoy the harassment felt by the others in terms of preparing for hearing, documentation, expenses and wastage of time of such other party.
- Since the suspended director made a request to NCLT to allow them to present the resolution plan – on the expectation of the possible amendment that was under consideration by the Central Government of India – allowing suspended promoters to present resolution plan -with certain conditions -which was yet not published till the time of publication of this book.. The NCLT directed me to explore any possible Resolution Applicant / plan.
- Amongst all these developments, the promoter remained negative and continued to be non-cooperative and adopted the tactic of creating complex situation using his liaison and power of being owner of printing press (Media). He did not provide required data /information

/documents in spite of my repeated request and also made his employeestake all his orders.

- I communicated the same to the resolution applicant—who had earlier approached us after final decision of COC to not allow any further extension of time limit. Two of them submitted their indicative /draft Resolution plans and therefore I had to call the committee of creditors again.
- In the Creditors committee meeting, the resolution applicant were also called and asked to present their plan in brief. The committee felt that the plan presented by resolution applicants lacked certain vital points and need to rework on the plan after adding all the detailed information about the affairs of the company. As such, the committee also to decide to go for extension of time limit by further 90 days.
- If the national company law tribunal approves this decision of the creditors committee which was likely – the defaulter would get time – the lenders would still remain in doubt about the loan money and additional expenses would have gone up. Also invaluable time would also be wasted. A fresh invitation for expression of interest would have to be published. Meetings of Committee of creditors to be called etc.
- While the code carries time line to be followed on one hand. On the other hand, in this matter the Resolution plan submitted just a day before the hearing date of liquidation was allowed to be taken on record and it was directed to hear the plan and revert back. In fact, it was not a plan at all and it was just document that wished to offer considerably reduced amount than the evaluation matrix decided by CoC.
- Even then the person submitting plan was called by COC – and it was transpired that he is not seriously interested. Yet, CoC gave him a chance and asked to present improved plan and visit the site to assess the real value.

- Yet he never turned up. On the other hand, period was extended without any outcome. However, the actual date and calculation of CIRP closure date was not made clear leaving ambiguity with all CoC members and RP.
- Since date of CIRP was extended, As such, during such extended period again the person was requested to submit improved plan –if he is genuinely interested. But he never replied

On the other hand, clarification for CIRP closure was received –which showed a date of closure which was nearing soon. Again on a day before last date of submission of plan, suddenly the same old person submitted his plan –within same old proposal.

POINTS TO PONDER

- What is role of a Resolution professional –when his recommendations which are not his personal –but taken on the basis of decisions of committee of creditors and after long exercise, was forcefully reversed by the ultimate authority under the name of giving opportunity and fair chance to all. Does it not contravene to the basic idea of completing legal work within specified time limit? Does it not adversely affect the lenders and defeat the purpose of quickening the recovery process in the country? And that too for the sake of defaulters? To give chance to those who had made all the stake holders in hanging position, made them incur additional expense and lose further time and money behind legal process.
- –what is the importance of Committee of Creditors members - who are lenders and want to recover their blocked fund back from the defaulting borrower

Also as known to everyone dealing with people associated with media is very difficult and when required they will use of all kind of resources to put a person in complicated situations.

ACTIONS TAKEN BY ME:

- Visited the mall run by the company and took charge of the entire operations and management of the mall under my custody.
- Intimation of Corporate Insolvency Resolution Process was issued to following agencies.
 - To all Brand Holders (Show Room holders) at the Mall.
 - The Assistant Commissioner of Income Tax 5(1), Bhopal.
 - Madhya KshetravVidyutVitran Co Ltd
 - Police Authority, Bhopal
 - Sub Registrar, Bhopal



The commercial mall -Being a place with large amount of public movement- security lapses, lift issue, escalator issues, fire NoC and sewerage treatment plan was not there at the time of taking charge.

- Appointed one Chartered Accountant as CEO of the company –so that he can take entire management and financials in his control and also look after daily routine activities under my direct instructions.
- Changed the security agency existing at the time of my appointment. This was because they were also under the control of promoters and not adhering to my instructions or not performing their duties as they were bound to.
- Appointed management agency to take care of management of the mall, infrastructure Housekeeping etc. Such actions made the lease

- holders happy and they felt assured that they are not going to be affected by Corporate Insolvency Resolution Process.
- Also visited press and changed security there and took urgent actions to repair the lacuna prevailing there particularly in the security system and immediately replaced the security agency.
- I felt that in view of the loss being incurred at this division of the Corporate Debtor, it is advisable that loss of this unit should not affect the other units. As such I instructed that all the expenses of the printing unit shall be met out only from the Cash being generated by that unit only
- Took control of dispatch record /sales record /revenue record etc.
- Issued notices to some of the lease holders to either pay rent or vacate the space utilized by them. Also got such order from NCLT.
- Appointed two valuers to arrive at fair market value and liquidation value of the assets /company.
- Appointed another C.A. to report on related party transactions / fraudulent transactions etc.
- Application (u/s 19 of IBC, 2016) against the corporate debtors due to non- cooperation and not providing required information /documents /records etc. for the resolution process.
- Application (u/s 14) for seeking directions against unauthorized lease holders – not vacating the space or not paying due rents. This proves that as Resolution professional, we have no power to say such illegal occupant to vacate the space – but we are answerable for not taking any actions against them.
- Took employees in to confidence, explained the consequences of process, removed their fear of legal process. Also convened a meeting

with the major / head of the employees and identified duties of each one and also allocated some special task /monitoring activities with instruction to report on the same regularly. A memorandum to this effect was also prepared.

- Since this was a case of running unit, I was very keen to see that it reaches to the stage of acceptable resolution. However, there being no interested investor /no acceptable resolution plan – the creditors ultimately wished not to extend time limit beyond 180 days.
- As such I had to recommend for liquidation. However, there was an investor communication even after liquidation proposal was recommended by me. I circulated the same to all committee of creditors with the intention that if they all agree and if there is any resolution –it would help to many.
- In spite of non- receipt of entire information from the suspended promoters of the company. Yet I thought it proper to start sourcing investor in order to maintain status of “ongoing concern” instead of liquidation. As such, Invitation of Expression of Interest seeking investment in terms of Section 25 (2) (h) of the Code was issued. The Expression of interest was published in two newspapers.
- Following 3 applications have been filed for seeking the directions of the National corporate law tribunal to ask the suspended directors to assist and cooperate with the resolution professional.
 - Application (u/s 19 of IBC, 2016) against the suspended directors.
 - Application (u/s 14 of IBC, 2016) –in relation to properties on lease /rent and non- availability of its record.
 - Application (u/s 14 of IBC, 2016) for possession taken by Syndicate bank on part of the properties of AURA Mall –which was rented to some lease holders.

AS A RESULT:

- I was able to improve overall value /reputation and image of the mall in the eyes of customers /visitors and other stake holders.
- This improvement had a direct positive bearing in the revenue of each lease holders and also of the mall.
- Also I could with clear and transparent working methodology able to prove that in spite of the clear cut directional order issued by the Adjudicating Authority towards application filed by the resolution professional. Their non co operational behaviour. Such non-cooperation was clear and was reflected in the fact that even till date they have not provided the entire set of record demanded by the resolution professional from the beginning of the resolution process.
- Further as a resolution professional I had to make lot of communications, mails, and request etc. to provide pending items as necessary information /documents etc. to complete the resolution process as per laid down procedure. Also no record of daily activities was provided to resolution professional regularly. Accounting records or daily receipt /payments were updated from time to time. For which resolution professional had to shoot number of letters / emails etc. to the promoters.

INTEGRITY OF SUSPENDED BOARD:

I also reported that following activities and actions on the part of the suspended promoters of the company were sufficient to raise doubt on their intention to comply with legal process.

- Submitting Expression of interest without submitting any subsequent documents or evidence showing their genuine interest for providing Resolution Plan. Even he ignored the dead line given by committee of creditors for submission of Resolution Plan without any concrete and logical reason.

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

IA 1 of 2018 in C.P. (LB) No. 113/7/NCLT/AHM/2017

Coram: Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.01.2018

Name of the Company: Devendra Padamchand Jain (RP)
V/s
Sandhya Prakash Ltd. & ors

Section of the Companies Act: Section 19 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	(A.P.) HITEN PARIKH	FCA	Respondent	
2.	VISHAL J DAVE	ADVOCATE	APPLICANT	
3.	NIPUN SINGHVI	ADVOCATE		

ORDER

Learned Advocate Mr. Vishal Dave with Learned Advocate Mr. Nipun Singhvi present for Applicant. Learned FCA Mr. Hiten Parikh present for Respondent No. 2 in IA 1/2018. None present for other Respondents.

The promoter filed information that is required by the RP in the application.

Learned Counsel appearing for RP represented that some more information is required to be given by the representative of Corporate Debtor.

Hence, the representative of Corporate Debtor is directed to co-operate with the RP by furnishing required documents that are in the custody of Corporate Debtor.

IA 1/2018 is disposed of accordingly.

MANORAMA KUMARI
MEMBER JUDICIAL
Dated this the 31st day of January, 2018.

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

* Sandhya Section 19

- Ignoring the order of National Company Law Tribunal directing them to provide cooperation in running resolution process.
- No clarification about the non-current assets disposed of during FY 2016-17.
- Audited Financial Statement for the year 2016 -17 submitted by suspended directors of the CD is signed and dated 24.08.2017 by auditors and promoters. As per the MCA records and information available till date annual general meeting (AGM) has not been held and reason as to why the accounts and audit report submitted after almost six months.

While finally the order for extension of time limit by 90 days for CIRP is announced by NCLT on 5th June (& received on 29th June) and accordingly the further process is being carried out, I have learnt following lessons:

1. Do our duty in the best way, transparent way and within the frame work and powers given to us. Of course, you may feel harassed and gain nothing for that, ultimately what credit you receive is the best reward.
2. Those who are guilty will try to create obstacles in your task, but when we do work with utmost sincerity and honesty, there is nothing to worry.
3. Take decisions in the interest of the company for whom you are in charge – to maintain its status, value etc.

Have you started feeling that it is enough experience? No –there is still new experiences to come across. Just read the next matter and you will find something entirely new.

07: ASSIGNMENT # 4

M/S SHIRDI INDUSTRIES LTD

This was a case admitted by Mumbai NCLT in the month of May, 2017. Earlier it was registered with the Board for Industrial and financial restructuring (BIFR) and then was referred to the NCLT by the corporate debtor themselves itself under section 10 of Insolvency and Banking code, 2016.

In this case, it was an operating concern and the promoters were absolutely cooperative. They had an in depth understanding of the implications of the legal process and also knew how they should conduct themselves.

This was due to the fact that they wanted to resolve the issue and commence the business again. Since the units were also running, they had strong desire to revive the business and get things back to normalcy by solving the crises.

LABOUR STRIKE :

However, things were not very simple. There were almost around 400 employees employed in the company. The employees had gone on a strike and I had to arrange a meeting to understand what the issues were.

As I have been repeatedly saying that all responsibilities lay on the resolution professional –it was necessary to resolve the issues by the earliest. Since the employees did not want to cooperate – I had no alternative but to file an affidavit before the Adjudicating Authority. However, they also could not provide me any solution saying that it was not their subject. Ultimately said application was withdrawn as NCLT did not want to issue the notice to labour department and related department for stopping the strike and unreasonable demand.

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI
MA 352/2017 in TCP No. 809/1&BP/NCLT/MUM/2017

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

MA 352/2017 in TCP No. 809/1&BP/NCLT/MUM/2017

Under section 31 of IBC, 2016

Mr. Devendra Padamchand Jain
Resolution Professional Applicant

In the matter of

Shirdi Industries Ltd.
..... Corporate Debtor

Order delivered on: 12.12.2017

Coram:
Hon'ble Mr. B.S.V. Prakash Kumar, Member (J)
Hon'ble Mr. V. Nallaraswamy, Member (T)

For the Applicant: Mr. Rakesh Agarwal, Resolution Applicant, Mr. Jay Choksi, Advocate for RP

For the Secured Creditors : Mr. Rishan Agarwal, Ith MDP Partners, Advocate for State Bank of India, Mr. Nitin Bhakker, Sr. Counsel, Jb V. Deshpande & Co, JM Financial Asset Reconstruction Co. Ltd., Ms. Meenakshi Mhapatra, Jb V. Deshpande & Co for Edelweiss Asset Reconstruction Co. Ltd.

By: V. Nallaraswamy, Member (Technical)

ORDER

This is an Application filed by the Resolution Professional under Section 31 of the Insolvency and Bankruptcy Code, 2016, seeking approval of the Resolution Plan as approved by the Committee of Creditors in its meeting held on 25.10.2017 with 99.43% voting in favour of the Resolution Plan submitted by the Resolution Applicant.

2. The Corporate Debtor, Shirdi Industries Ltd. was put under Insolvency Resolution Process by an order of this Adjudicating Authority dated 18.5.2017. Mr. Devendra Padamchand Jain was appointed as Interim Resolution Professional (IRP), the said IRP issued Public Announcement inviting the Creditors to submit

* Shirdi Order of Resolution Plan

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI
MA 352/2017 in TCP No. 809/1&BP/NCLT/MUM/2017

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

MA 352/2017 in TCP No. 809/1&BP/NCLT/MUM/2017

Under section 31 of IBC, 2016

Mr. Devendra Padamchand Jain
Resolution Professional Applicant

In the matter of

Shirdi Industries Ltd.
..... Corporate Debtor

Order delivered on: 12.12.2017

the proof of their claim on 23.5.2017. The IRP conducted the first meeting of Committee of Creditors on 15.6.2017 wherein the IRP was confirmed as Resolution Professional, a decision was taken to conduct TEV study of the Corporate Debtor and the promoter of the Corporate Debtor was permitted to submit the Resolution Plan. On 16.6.2017, the RP appointed ITCOT Consultancy and Services Ltd for conducting TEV study and it was reported by ITCOT that the Corporate Debtor is technically and commercially viable. An advertisement was issued inviting expression of interest seeking investment in terms of Section 25(b) of the IBC Code, 2016, for which there was no response.

3. The Applicant Resolution Professional further submits that the promoters have submitted their Resolution Plan on 21.6.2017, the same was discussed in the 3rd CDC meeting held on 8.9.2017 and the Resolution Applicant was advised to submit revised Resolution Plan in line with restructuring agreement already made with 82% of Financial Creditors with adjustments based on provisions under IB proceedings and the change in timeline for payment.

4. Accordingly, Mr. Rakesh Kumar Agarwal on behalf of the promoters of the Corporate Debtor submitted the Resolution Plan on 11.10.2017, the said Resolution Plan was approved by the Committee of Creditors with 99.43% voting in favour of the resolution plan, with some modifications, in its meeting held on 25.10.2017. The Resolution Applicant confirmed the acceptance of modification suggested by the Committee of Creditors and submitted the signed copy of the final Resolution Plan which was approved by the Committee of Creditors.

5. This Bench has noticed that the M/s. Sharp and Tannan were appointed as the auditors for conducting forensic audit and for monitoring the monthly cash flow including the inflow and utilization of the corporate debtor on a real time basis from September 2015 onwards, by the M/s. JM Financial Asset Reconstruction Company Ltd., which is the lead bank having 64.5 % shares in the secured loans. Further, it seems that M/s. Moeet MacDonald Pvt. Ltd were entrusted with the task of conducting TEV study of the project of the corporate debtor. The report of both the agencies were found to be satisfactory and the creditors are satisfied that there are sufficient checks and balances to control outflow and inflow of the corporate debtor.

* Shirdi Order of Resolution Plan

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI
MA 552/2017 of TCP No.0301&RP/2017

6. Under the resolution plan, the resolution applicant has offered to make the payment to secured financial creditors and unsecured financial creditors as shown in the chart below:

Payment under resolution plan approved by CoC			
Particulars	Existing Financial Creditors (100% of secured financial creditors voted in favour of the plan) (Rupees in Lacs)	Secured Creditors (100% of secured financial creditors voted in favour of the plan) (Rupees in Lacs)	Existing Unsecured Financial Creditors - voted in favour of the plan (Rupees in Lacs)
Outstanding amount as on 31.03/2014 with interest		41100.00	1000.00
Claim amount under insolvency proceedings		63187.3	1815.6
Total amount receivables upon liquidation of assets of corporate debtor		10305.0	Nil
Total amount receivables upon liquidation of assets of guarantors of financial credit.		997.6	Nil
Payment		17385.53 (Commencing from Dec 2017 and ending in March 2022)	250 (Commencing from June 2018 and ending in March 2022)
Amounts received		17.00	-
Right to Recompense		5500 (Commencing from June 2022 and ending in March 2024)	Nil
Fresh shares		20% of total paid up capital of corporate debtor in Dec 2017	Nil
Pledging of shares		51 % of total paid up capital of Corporate Debtor (82% already pledged and balance by Dec 2017)	Nil

The resolution plan has approved by the CoC in the meeting held on 25.10.2017 with 99.43 % of voting in favour of the plan, it was provided that before the approval of the resolution plan by the Adjudicating Authority the secured debt of Standard Chartered Bank and State Bank of India shall be assigned and paid fully. The affidavit filed by the senior Vice President of the secured creditor M/s.

Shirdi Order of Resolution Plan

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI
MA 552/2017 of TCP No.0301&RP/2017

JM Financial Asset Reconstruction Company Ltd reveals that the resolution applicant has complied with the condition. It was further reported that the promoters have deployed funds to the extent of Rs. 32.14 Crores since April 2015 to September 2017 in the corporate debtor company. It was also reported that the financial and operating performance of the corporate debtor improved substantially during the years 2015 to 2018 in line with the TVS Study projections. All these factors weighed in favour of the resolution applicants who happens to be the promoters of the corporate debtor.

8. The M/s JM Financial Asset Reconstruction Company Ltd further states that there is a provision to nominate a director on behalf of secured creditors on the Board of corporate debtor provided the plan is approved by the adjudicating authority.

9. On perusal of the resolution plan, this Bench being satisfied with the valuation given by the registered valuer, estimation of turn-over during the resolution period, repayment schedule to the financial creditors both secured and unsecured and the affidavit of the major financial creditor M/s JM Financial Asset Reconstruction Company Ltd., approves the resolution plan as voted by 99.43 % of the Committee of Creditors.

10. Accordingly, this MA No. 552/2017 is hereby allowed by varying the moratorium already granted at the time of admission of Company Petition No. 839/2017. It is made clear that the corporate debtor is liable to pay the direct taxes, indirect taxes, municipal taxes, etc. as applicable without any exemption as sought in the resolution plan.

In view of the approval of the Resolution Plan as sought by the Insolvency Resolution Professional, this Bench hereby discharges the Insolvency Resolution Professional from duties of the Insolvency Resolution Process by submitting all the documents maintained by him before the Insolvency and Bankruptcy Board of India provided under the Insolvency and Bankruptcy Code, 2016 and the regulations thereunder.

Certified True Copy
Filed by M/s. JM Financial Asset Reconstruction Company Ltd.
On: 25/10/2017

Sd/- V. NALLASENAPATHY
Member (Technical)

Sd/- B. S. V. PRAKASH KUMAR
Member (Judicial)

Shirdi Order of Resolution Plan



• NCLT offers Shirdi Ind to promoters, gives hope to others

Again – I would place before the readers – why it is always that – what others fail to resolve is left with the independent resolution professional to rectify.

HOW TO SOLVE THE ISSUE:

Once again my rich experience of handling complex situation helped me. I called the labour representative and thoroughly explained them the legal situation and its effects on the economic condition of labour vis a vis the benefits that they will get from smooth legal process. After a lengthy

persuasion and deliberations on the discussion with ground reality, they were ultimately convinced and agreed to cooperate.

At that time applicability of section 29A was not there so suspended directors/ promoters were also eligible for submission of Resolution Plan. Since the suspended directors were keen to run the operation, the resolution plan was submitted by the promoters themselves and was approved by the committee of creditors having voting rights equivalent to 99.5%. There was no other resolution plan submitted by any other applicant.

TWISTING SITUATION FOR RESOLUTION APPLICANT:

When the committee of creditors agreed to this plan on 2nd November, 2017, everything was approved without any legal hitch. The next hearing was scheduled on 9th November, 2017 at the tribunal. On 7th of November, 2017 there was an amendment in respect of insertion of Section 29(A) restricting the promoters themselves to present resolution plan. As such, on the hearing date, the Adjudicating was not in favour of approving such plan.

“
Ultimately said application was withdrawn as NCLT did not want to issue the notice to labour department and related department for stopping the strike and unreasonable demand.”

Of course, with our in depth knowledge and study – we can sometimes win the losing match. Accordingly, from the exact wording of the new amendment, I presented that the amendment was in the benefit of the creditors. In our case, the committee of creditors had already acted and decided before the date of such amendment. As such the Adjudicating Authority was convinced and accepted the plan after long 9 hearings.

However, things were not yet smooth. This time certain media groups and some politicians began spreading news of the nexus between the corporate debtor and a senior political leader. The news was splashed by certain media groups without been verified.

Such news creates discredit to the resolution process at a time when the resolution professional is trying to get an amicable resolution which is in the interest of all stake holders and also in the national interest of economy.

However, the matter is sorted out now.

08: ASSIGNMENT # 5

M/s M/S ASIS PLYWOOD LIMITED

This is also a very good concern and the promoters of the company were trying their best to resolve the issue and revive the business. The corporate insolvency resolution process began on November, 2017.

This is the most successful case for me due to following reasons:

- The case was resolved with resolution plan accepted by all the financial creditors.
- The resolution applicant was sourced by me as I had circulated the expression of interest to such interested parties –who might be ready to invest in such units.
- While the resolution plan was agreed upon by the majority of the financial creditors, it was recommended to the adjudicating authority.

However, in this case too, the resolution process had to be stopped, but due to a totally different reason. One of the financial creditors – raised an objection about the calculation of voting share and accordingly questioned on the acceptance of the resolution plan. The plan was accepted on January 2018 and remained pending with the above objection till the end of May, 2018 with NCLT.

I wish to put forth a question to the readers whether my anguish is justified or not when you know the fact that the objection that was made by one financial creditor having a nominal /meagre share in committee of creditors.

I am sure my readers know that when the majority of the committee of creditors collectively having a share of 75% or more agree to resolution –the resolution is considered passed by the committee as per the provision of the Insolvency and Banking Code, 2016. Will it not be proper to insert such clause which prevent such application which are not apparently maintainable and creating suspicion about its time in the entire time line of Insolvency and Banking Code 2016.?



Now I am going to describe four cases –which were in a sense having common happenings. Almost in all cases, any of the parties /stake holders had any interest and also some of the parties continued to ignore the directions of Adjudicating Authority.

Also this is what I am not able to understand and want to share with all –why all the questions arises at such a point of time –when the process is likely to end with satisfaction to all? It may be case of Shirdi Industries or Asis Plywood Limited?.

Also we as resolution professional are required to follow a time bound process, then what are the above matters –when at the last moment objections is raised and extra time is taken?

In this matter too, I experienced force from Authority. The resolution plan which was already studied, scrutinized, analyzed by the CoC members

and have finally approved it after a prolonged discussion, the Authority wanted some changes therein. Yes, this is not area to interfere by the Authority, yet as we all know, we have no alternate but to accept their views as an order. Finally again a meeting of CoC was called, the amended plan was presented – and as it was bound to happen –as a matter of formality it had to be accepted. The question of time bound action is only for RP.

The more surprising fact is that even after lapse of more than three months, order for such revised /approved plan is not yet issued? Where is the so called “timeline”?

What if a minor delay occurred on the part of IP. There was a matter in which IP have faced charges including charge of remaining IRP for couple of days more than the prescribed days in IBC.

Now I am going to describe four cases –which were in a sense having common happenings. Almost in all cases, any of the parties /stake holders had any interest and also some of the parties continued to ignore the directions of Adjudicating Authority.

09: ASSIGNMENT # 6

M/S AVANCE LOGISTICS AND TRADING (INDIA) PRIVATE LIMITED

INITIAL PERIOD LEGALITY:

- This case was filed by the non-banking financial company, BELL FINVEST INDIA LTD in the month of September, 2017.

- However, in the order issued by law tribunal, there was an error in the name of the company. As such an application had to be filed.

- Order for corrected name received in November, 2017.

- However, before I as a resolution professional could take any action the corporate debtor filed an application with the tribunal disputing the interest charged by the non-banking financial company was higher than the guidelines of RBI. In an order announced by the NCLT, there was a condition for filing report on interest /claim amount of applicant.

- **PROCESS STARTS:** After my submission of report to NCLT, Both the matters were cleared /unaccepted and finally the corporate insolvency resolution process began on January, 2018.

- On receipt of final order, I published notice of corporate insolvency resolution process commencement and also sent notice to every known creditor. Since the matter was already delayed, I planned to take fast action in this matter.

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

IA 42 of 2018 and IA 48 of 2018 in C.P.(IB)-1245(MB)/2017

CORAM : Present : **SHRI M.K. SHRAWAT
MEMBER (J)**

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **19.06.2018**.

NAME OF THE PARTIES : **Bell Finvest (India) Limited
V/s.
Avance Logistics & Trading India Pvt. Ltd.**

SECTION OF THE COMPANIES ACT: **Section 7 of I&B Code, 2016.**

ORDER

1) I.A. 48 of 2018 :-

This Application is moved only for the purpose of giving direction to reimburse the expenses incurred by the Resolution Professional and to pay his Fees. The Applicant Mr. Devendra Jain (Resolution Professional) has stated that on appointment vide an Order dated 11.09.2017 through which the Petition of the Financial Creditor M/s. Bell Finvest in respect of the Financial Debt of ₹53,43,350/- was admitted U/s.7 of The Code against the Avance Logistics and Trading India Pvt. Ltd. (Corporate Debtor), the necessary steps were taken for commencement of Insolvency Proceedings. Public announcements have been made and Meetings of the Committee of Creditors were commenced. He has informed that in one of the Meetings held on 06.01.2018 it was decided that Professional Fees of ₹50,000/- shall be paid per month. In this Application it is stated that the Committee of Creditors has not yet made the payment. The Second submission is that the expenditure incurred out of pocket of about ₹1,25,000/- be also reimbursed by the Committee of Creditors.

Page 1 of 2

* Avance section 70 order

I.A. 48 & 42 in CP (IB) 1245 Devendra Jain Vs. Bell Finvest India Ltd

1. On hearing the submissions and considering the facts of the case it is pronounced in the Court that the Committee of Creditors shall approve ₹30,000/- per month to be paid to the Resolution Professional without further delay.

2. It is further directed that the Resolution Professional shall place the claim of expenditure incurred and after verifying the same the Committee of Creditors shall make the payment to the Resolution Professional.

2) I.A. 42 of 2018 :-

1. The Resolution Professional has filed this Application by making the Ex-Premoter Directors viz. Mrs. Puja Rajwani and Ravindra Gopal Karle & Ors. as Respondents with a Prayer that due to non-compliance from the side of the Corporate Debtor and its Management, the provisions of Section 16 be invoked to impose heavy fine for non-cooperation and defiance of the Order of the NCLT.

2. Although the disobedience is an admitted position in this case, and for that a fine can be imposed which shall not be less than ₹1 lakh, but before imposing the fine, a 'Show Cause Notice' is hereby issued to explain the reason. It is also directed to the Corporate Debtor and the Management to immediately contact the Resolution Professional to supply the requisite information so that the Proceedings under the Insolvency Code be completed within the specified period as prescribed under The Code. This Order is to be communicated to the Respondent Debtors and no separate Notice is required to be issued. The Respondent Debtor shall be present on the next date of hearing, now listed for **25.07.2018**.

Date : 19.06.2018

SD/-
(M.K. SHRAWAT)
Member (Judicial)

Page 2 of 2

* Avance section 70 order

However, no one took notice of our intention or work done in the interest of larger section of the society. However, if the delay is on the part of stake holder/s, we need to apply to Court and I have experienced that a simple order, we have to approach the stake holders and have to request them to cooperate in the case.

- **EFFORT TO CREATE HURDELS:** In the present case too, the corporate debtor did not cooperate and started playing all the delaying tactics by not giving in giving the required information.
- However, I am not a person to get demotivated by any circumstances –come what may. I have the habit of calmly going on performing my duties in all sincerity –no compromise with duties.
- As such, withso many efforts, I could dig out only certain basic information and accordingly moved on. I formed a committee of creditors and started organising meetings –first being in the first week of February, 2018 –with 100 per cent presence of all members.

Also I got appointed as a resolution professional unanimously by all the members of the committee of creditors.

- However, the promoters of the CD did not stop their deeds and continued to create obstacles in the case. He asked me to take up one of the issue of higher interest with one of the financial creditors. Since it was not my duty, I replied that in that matter only he has to approach the concerned financial creditor directly.
- I also discussed the behaviour of the suspended director and his non- cooperation in the second creditors committee meeting held on March, 2018.
- He also insisted to reduce the claim amount saying that wrong and huge interest rate was levied by one of the financial creditors.

ABUSE OF LEGAL PROVISION

Again this is a perfect example of misuse of the legal provision by allowing presenting the case to each party. However, while the provision in itself is perfectly logical and reasonable – the time line of creating the arguments and asking to allow presenting the case is not examined.

Here also, he could have raised such objection well before even the insolvency process started. I would say –at the time of sanction of loan itself. As a resolution professional how could I decide about the reasonableness of interest rate? So the question arises – Is the resolution professional only appointed to bear the blunt of the case?

“
As a resolution professional how could I decide about the reasonableness of interest rate? So the question arises – Is the resolution professional only appointed to bear the blunt of the case?”

NO EFFECT ON MY POSITIVE PERFORMANCE

Yet having decided to comply with my duties I went on performing the same and kept all the stake holders and the authorities informed about the developments.

Anyway, I prepared the expression of Interest -even when IM was not completely ready –due to non- availability of the entire required information /documents from the corporate debtor. The reason to publish the expression of interest was to ensure that any investor who might be interested and looking for an investment option in such industry may get at least some primary information about the corporate debtor. If any such investor approaches me, I can assure him of all required details –directly or

from the intervention of the Court. This is what I always intend to and this proves what I have been saying about my sincerity and devotion towards working for larger interest at the cost of my personal respect.

RP IS EXPECTED TO CLARIFY FOR FALUT OF OTHERS?

→ However, all my efforts went in vain, when I received an incomplete communication from IBBI stating that without date of IM the form G in reference to the expression of interest could not be posted on the website of the Board. I say it is incomplete because no clarification was given to me –what could I have done in absence of cooperation and information from the suspended directors? If I did publish the expression of interest without mentioning the IM –it would have been termed as my fault and if the IM was not prepared due to non-submission of information /documents despite Courts order –who would have been held responsible? Who was wasting time? Such queries had no replies.

APPROACH OF FC

While the entire process is aimed to recover the money lent by creditors & particularly the financial creditors are given prime importance. However, in the instance case, how strange was the behaviour of financial creditors –as if they are not interested in recovery process /nor they want to follow law or order of the legal authority.

Following points will make my point clear.

→ I also appointed two valuers for getting the fair value and liquidation value of the assets of the Company. However, the payment of fees for those valuers could have become an issue as the suspended promoters did not provide for any funds. I also raised the issue before the committee of creditors, but no one could come out with any solution.

Would it be wrong to assume that silence on the part of financial creditors is an indication of their lack of interest in completing the process –which is aimed to get their money back?

→ There was also a disagreement amongst the committee members

regarding the appointment of the valuers as they were arguing as to who would bear the cost of valuation as same could not be recovered from the corporate debtor as there is no business activity nor any assets with the corporate debtor.

I would like to draw attention of the readers to the fact that there is no action for such lack of funds from promoter or the creditors committee. If the resolution professional had failed to get the valuation done, you could imagine the action that he could have faced. Till the corporate insolvency resolution process was going on, despite repeated requests, the promoters were not providing any details or documentation that could have helped us out.



The reason to publish the expression of interest was to ensure that any investor who might be interested and looking for an investment option in such industry may get at least some primary information about the corporate debtor.

One also is left thinking of the objective of creating special legislation and enacting provisions for a time bound process completion. Whether time bound resolution is applicable to resolution professionals only? For a small mistake or delay the professional has to bear insult but nothing except simple request to person defeating the goal of entire law and holding up entire system?

IS RP A BEGGAR? HAS TO APPROACH AUTHORITY & FILE APPLICAITON FOR PAYMENT OF HIS FEES /INFORMATION FOR CARRYING PROCESS

→ RP TO CONTINUE WORK EVEN IF FEES NOT RECIEVED! I must also share at this moment that for the period between September, 2017

and June, 2018, at the time the resolution process was going on, I did not get my professional fees. There is no provision in the insolvency and the bankruptcy code regarding the payment of fees to the professionals except priority under section 53 at the time of liquidation. (If there is no assets to liquidate, who will bear the CIRP nowhere mentioned, only directions from NCLT required) We have to keep on requesting the adjudicating authority or the committee of creditors regarding the same. I feel the whole situation is quite demeaning to the professional.

- I have again referred the matter to national company law tribunal seeking guidance under respective sections, if the corporate debtor refuses to co-operate or refuses to furnish the vital documentation required under the case and also for the non-payment of funds required for the expenses of the corporate insolvency resolution process.
- **NOT FEES – RP RECEIVE ALLEGATION!!** Even after my application under section 19 seeking directions from the national company law tribunal for non-cooperation from the suspended director, the suspended director sent me shocking communication which mentions that ‘by demanding fees in committee of creditors and by not taking appropriate action in reducing claim of the financial creditor for higher interest –there is misconduct on the part of the resolution professional’.
- Was I wrong in assuming that “It was the promoter who had first availed the loan by signing the loan agreement for the interest rate mentioned in the same? At that time, he did not complain to any regulating authority (RBI) about the higher interest rate– Doesn’t he have a mistrustful intention when he asked the resolution professional to reduce the interest rate after so long and just when the resolution process was about to end? I also felt frustrated when there was no decision from the adjudicating authority in time.
- Finally the matter was heard by NCLT and directions passed for fees on 6th July. Of course, I did not get the fee as per order given by Hon’ble NCLT till the publication of this book.

FINAL STAGE /FINAL ACTION –WITHOUT ANY DECISION BY THOSE WHO ARE BENEFICIARIES OF PROCESS

- Finally I had to file an application for further direction under section 60(5)(c) read with section 33 and 12A in absence of any interest from either party only because the time line of 180 days was over. However, I also know that one application for recalling the initiation of CIRP on the ground of interest rate dispute is pending at NCLAT. Once again the RP is questionable from every angle. If after 180 days, RP does not file application for liquidation –then WHY? On the other hand, when RP knows that an application is pending before NCLAT then he should have waited for its disposal. WHY he filed liquidation application?
 - I am sure the readers and my colleagues would be pondering as to how all other parties could behave in such an irresponsible manner even ignoring the directions of court. While a resolution professional was not allowed to make a small mistake –while handling the entire company as well as CIRP?
 - While I do consider leaving the case, I leave this chapter at this point with a request to the readers to ponder over the matters.
-

10: ASSIGNMENT # 7

RICHA CREATION INDIA P LTD**CASE BRIEF AND HURDLES FACED:**

- *This case is on the similar lines to that of M/s Avance Logistics and Trading (India) Private Limited and similar to Avance, this case too was put up by the non-banking financial company- - BELL FINVEST INDIA LTD in the month of September, 2017.*
- As soon as I received the order, I immediately issued a Public Notice (Form A) and also sent a separate intimation to individual financial creditors with a request to submit their claim.
- However, not a single creditor came forward and did not receive any claim (except Applicant creditor) even after the completion of the mandatory claim submission period of 14 days as per the public notice.
- **EXCEPT RP -ALL CAN DELAY PROCESS:** There is no provision for any penal action for the delay caused by any other stake holder in the corporate insolvency resolution process. If the delay would be on account of the insolvency professional, then he would be considered liable.
- **RP TO GO ON ROAD AND SEARCH FOR SUSPENDED PROMOTERS!!** Further the location of the suspended promoters was also unknown. For that too, the insolvency resolution professional had to make efforts. Promoters on their own could not come forward and contact the insolvency professional.

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

C.P No. 1178/(MAH)/2017
M.A. No. 550/2017

CORAM: Present: **SHRI M.K. SHRIRAWAT**
MEMBER (1)
SHRI BHASKARA PANTULA MOHAN
MEMBER (2)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 07.11.2017

NAME OF THE PARTIES: Bell Fivest India Limited
Vs
Richa Creation Pvt. Ltd.

SECTION OF THE COMPANIES ACT: I & BP Code 2016.

S. No.	NAME	DESIGNATION	SIGNATURE
1.	Mr. Devendra Jain	IRP	
2.	Mr. Padamchand Jain	IRP	

ORDER

MA 550/2017 IN CP 1178 IBC/NCLT/MB/MAH/2017

1. In this case, an Order was passed on 16th August 2017 and Mr. Devendra Padamchand Jain was appointed as IRP. On receiving the Order, he has proceeded with the matter. However, seeking extension for 30 days for holding meeting of the Committee of Creditors. Through this Miscellaneous Application (MA No. 550/2017) filed on 11th October, 2017.

2. The IRP has intimated that on receiving the said Order on 08.09.2017, Public Notice was issued on 11.09.2017. According to his report, no claim was received from the Creditors and even the Promoters of the Company have also not been

(Contd...2.)

-2-

MA 550/2017 IN CP 1178 IBC/NCLT/MB/MAH/2017


located. Due to the said reason, the Committee of Creditors could not be formed and Meeting could not be held. A prayer has been made to extend 30 days' time for constitution of Committee of Creditors and also for holding of meeting of Committee of Creditors.

3. We have examined the relevant provisions of the Insolvency & Bankruptcy Code and in short discussed below:-

a. As per section 19(2) where any personnel of the Corporate Debtor or Promoter is required to assist the IRP who, however, does not assist or extend cooperation to the IRP then the IRP may make an Application to the Adjudicating Authority for necessary directions. It is worth to mention that under section 19(1) the Promoter or any personnel of the Corporate Debtor or any other person associated with the Management of the Corporate Debtor shall extend all assistance and cooperation to IRP as required by him in managing the affairs of the Corporate Debtor. As a consequence of these sections and on due consideration of the Report of the IRP since cooperation was wanting hence we hereby have no option but to exercise our discretion as granted under the Statute for requisite direction so that the purpose of initiation of CIRP be not forfeited.

b. We are also aware that as per section 16 of the Code the appointment and the tenure of IRP is prescribed therein hence under Sub-section

(Contd...3)



→


(5) of Section 16 the term of the IRP is prescribed as 30 days from the date of his appointment.

c. Although the time of 30 days is prescribed under section 16(5) but under section 60(5) it is provided that notwithstanding anything to the contrary contained in any other law for the time being in force, the NCLT shall have jurisdiction to entertain or dispose of any question of priorities or any question of law or facts arising out of or in relation to the Insolvency Resolution or Liquidation proceedings of the Corporate Debtor or Corporate person under this Code. Because of this jurisdiction granted under section 60 we deem it proper to entertain the Miscellaneous Application now under consideration.

d. The Resolution Professional has to prepare a list of Creditors on the basis of the claims received by him under section 102 of the Code. There is no ambiguity in section 104 that the Resolution Professional shall prepare a list of Creditors on the basis of claims received by the Resolution Professional under section 102 of the Code. Thereupon the Resolution Professional shall prepare the list within 30 days from the date of the Notice.

4. In a situation when any of the Directors of the Corporate Debtor was not available and the Creditors have also not lodged their respective claims within

(Contd...4.)



←

the time prescribed, as reported by Learned IRP, we are of the conscientious opinion that an extension of 30 days is justifiable so as to implement the order dated 16th August, 2017 passed under section 7 of the Code by this NCLT Bench. Side-by-side by invoking section 19(1) of the Code it is hereby directed that the personnel of the Corporate Debtor or Promoter or any other person associated with the Management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as may be required by him in managing the affairs of the Corporate Debtor.


5. The Miscellaneous Application stood allowed.

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)
Date : 07.11.2017

Sd/-

H.K. SHRAWAT
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On: 07.11.17

[Signature]
Assistant Registrar
National Company Law Tribunal Mumbai Bench

- **RP HAS TO AGAIN AND AGAIN MOVE TO AUTHORITY AND KEEP ON COMPLAINING.....**Further, the pity part of the process is that as an insolvency professional is that he has to approach the Court to seek guidance and pray for further course of action as financial creditors were not coming forward to submit claim.
- Accordingly the court extended time period of insolvency resolution process by 30 days. This showed that all other stake holders in the entire process did not have to worry for any lapses or inappropriateness on their part. There would be extension of time for them.



Accordingly the court extended time period of insolvency resolution process by 30 days. This showed that all other stake holders in the entire process did not have to worry for any lapses or inappropriateness on their part. There would be extension of time for them.

- With this extension of time, ultimately the corporate insolvency resolution process began on December, 2017 and to ensure that there was no fault on my part –I had to again issue notice for such extension and again sent invitation to all concerned.
This time, the financial creditors did submit their claims and the usual action were taken-
- All the claims were verified.
- A committee of creditors were formed.
- Issuance of notice for first meeting of committee of creditors and onwards

- Conducting the meetings. -4meetings were held by the end of June, 2018.

PATH AHEAD: NOT SO SMOOTH

I was confirmed as a resolution professional with 100 per cent voting in my favour by the committee of creditors However, again the process could not run smoothly due to non-cooperation of the part of the promoters. However, as an insolvency professional, this was my responsibility and at such a stage there are only two solutions are available.

- Continue follow up, request, praying to promoters and wait till the entire information /documents etc. are submitted by them.
- Go again to the Court and seek the guidance. I have learnt that in the order to seek guidance, it will be only said that insolvency professional should ask promoter to cooperate. While the fact is that since promoters were not cooperating and were not providing details to run corporate insolvency resolution process, therefore I had approached the court. But this was the only power that an Insolvency professional has.

I continued to report with every authority about such situation and hindrance created by the promoters but the insolvency professional has no one to help but has to complete the resolution process anyhow.

I wish to share with the readers that such issues defeat the very purpose of enacting a separate and special legislation for resolution and recovery of dues.

THE FOLLOWING WAS THE WORK OF ACTION FROM MY SIDE IN THIS CASE

- EOI PUBLICATION: Published Expression of Interest based on whatever information and documents, I received from the promoters. However, as mentioned in the matter of Avance - I received a communication that without date of IM –the form G (in reference to

EOI) could not be placed on website. This shows the status and power of Insolvency professional – who is responsible for everything –but has no power to improve the situation.

→ **APPOINTMENT OF VALUERS:** I also appointed two valuers for getting fair value and liquidation value of the Company and its assets. However, there was no fund to pay the fees of the values. Financials creditors had though agreed in the first committee meetings to provide necessary fund for cost of resolution process, but failed to arrange any fund.

This was a clear indication that only the resolution professional needs to be concerned about carrying on the resolution process and no other stake holder. In order to obtain information about the corporate debtor and check for any fund diversion activity, I obtained the ledger details of the debtor's account from one of the financial creditor. I found a few suspicious transactions which came into light and were yet to be checked and verified. Such transactions might indicate diversion of funds by the Corporate Debtor.

All the above actions were taken by me without receiving even a single rupee towards my professional fees. Readers may not able to digest or believe such things – but this is the ground reality and I have evidence to prove this. This means that as an insolvency professional you are carrying lot of responsibilities on your shoulder – but reward is not guaranteed and we get the feeling that our fees is our personal problem -not connected with the corporate insolvency resolution process.

FINALLY THE STATUS REMAINS AS UNDER:

→ **RP HAD TO WORK – NOT TO EXPECT PAYMENT:** Till the end of August, 2018 there were no payments received from any of the creditors towards my pending fees. Though discussed in all the creditors meetings, certain funds were required to carry on the resolution process but despite giving so many reminders, none of the creditors provided the fees as well as expenses during the resolution process. Under such circumstances, the resolution professional had to file an interlocutory

application against all the creditors under regulation 34 of the Insolvency and Bankruptcy (Resolution Process for Corporate Persons) Regulations, 2016. This application was filed on 6th April, 2018.

→ However, after regular follow-up and considering the importance of work, COC agreed to contribute the fund in their voting share for entire CIRP cost. They also want forensic audit for last 3-4 years transactions of CD, finally an Auditor appointed for the Forensic Audit. Still promoters are free and enjoying, no office place, no records, no assets in the books of account. Very surprising how the promoters managed to take the huge loans.

→ Till date the promoters have not yet complied nor have they provided any information about the company. The latest financial statements were also not available yet. Hence, I filed an Interlocutory Application against the promoter under section 70 of the Insolvency and Bankruptcy Code 2016 on 12th April, 2018. Still case is not yet listed for hearings.

→ **STAGE IN PROCESS:** As of now the CIRP is in its last stage, few suspicious transactions mentioned before in the report are yet to be verified for any fund diversion indication by the Corporate Debtor and till date no Resolution Applicant has expressed his /her interest in the said matter. There are no business activity as well as no assets in the books of corporate debtor.

→ Finally I had to file an application for liquidation after confirmation by COC in absence of any interest from either party only because the time line of 180 days is over.

11: ASSIGNMENT # 8

V-TECH ELASTOMERS PRIVATE LIMITED

CASE BRIEF & HURDLES FACED:

Again like the last two case, this was also received from NBFC - BELL FINVEST INDIA LTD in the month of September, 2017 and the problems in this case were almost similar to those two cases.

Since the issues faced and actions taken are already narrated above, I would just put the summary of actions taken, issues faced by me and points to think over.

- **LACK OF INTEREST EVEN BY FINANCIAL CREDITORS –THE BENEFICIARY OF ENTIRE PROCESS??** Like in the matter of Richa Creation –here too there were no claims from any creditors – after public notice and individual intimation –for which I had to file application seeking directions from the Court.
- In this case too extension of time by 30 days was ordered –which was received in December, 2017 and the resolution process actually began from that day –with a delay of around 2 months. Since it was no fault of Insolvency professional - no questions asked to justify delay in process.

- Again issued corrigendum for public notice for such extension again invited creditor to submit claim and then process moved on.
- **RP CAN'T DELAY:** But process kept moving from my side only i.e. I did take all necessary action of claim verification, forming Committee of creditors, organised creditors meetings, appointing two valuers and submitted reports to all concerned authorities.
- Also here the Committee of creditors expressed full faith on me and confirmed my name unanimously me as the resolution professional.

LACK OF RESPONSE OR USE OF SYSTEM LACUNA –BY PROMOTERS?

But all these points could not help me run the process as smooth as it should have again due to non- cooperation on the part of the promoters. But no questions were asked to such defaulting party who were delaying the process and defeating the purpose of law to complete process in a time bound period. It is only I as an insolvency professional approached the Courts and requested them for a suitable order –as if it was my personal problem.



It is only I as an insolvency professional approached the Courts and requested them for a suitable order –as if it was my personal problem.

Even after a period of 4 months, IM could not be prepared and yet with a view to find any interested investor party, I prepared and publish invitation to Expression of interest –which was again rejected due to blank date of IM. This was actually the result of the default on the part of the promoter.

FINALLY STATUS OF THIS MATTER STANDS AS UNDER:

- **OTHER THAN RP –ALL CAN IGNORE EVEN THE LAW!!!**
Though informed in the previous (First) meeting to the suspended Directors about the directions issued by the law tribunal to cooperate with insolvency professional and they did not provide sufficient documents to finalize the expression of interest till the 2ndCreditors Committee meeting. I had also informed the creditors that I have asked the promoters on numerous occasions to provide us the vital information and the documents. The promoters on their part agreebut do not furnish us the information.

- **NO FUND WITH COMPANY IS RP'S PROBLEM. – HE HAS TO APPOINT AND PAY OTHER AGENCIES.....** I also discussed with the creditors the funds required for the remuneration and expenses to be incurred in continuation of the resolution process. As such, the appointment of valuers , fees of the resolution professional, other routine and miscellaneous expenses etc. it was decided in the previous meeting that all the members of committee of creditors would contribute for such fund in the designated account and Resolution professional would meet out the expenses there from. The members have agreed for respective contribution accordingly.

The information is yet not submitted by the suspended Directors, as such I requested the Committee of creditors who were the financial creditors to provide Net worth statements that they might have obtained from promoters at relevant time in their process of sanction of fund. So that on the basis of such net worth statement, I can decide upon further investigation /report etc. Also,I requested other Bank to provide statement for last 2 years before the commencement of the resolution process.

- **PROMOTERS CAN CONTINUE NON COOPERATION? WHO CARES?** Though the valuers were appointed, they were not able to commence the work of valuation in absence of basic information –which the suspended directors were not providing. Whatever information asked by the valuers – was also advised to the suspended

directors. However, they have continued their non-cooperative approach and as such the valuation work yet remained incomplete.

Even after clear request for arrangement of funds in the designated account to meet cost of resolution process, no payments were received from any of the creditors. Further in spite of constant and regular follow up to the suspended directors for providing necessary documents etc.as such, it was practically not possible for me to carry on the resolution process. Under such circumstances, I had to file an Interlocutory Application against all the Committee of creditors under Regulation 34 and under section 19 of the Insolvency and Bankruptcy Code 2016. This application was filed on the 9th of April, 2018.

→ SVC Bank shared ICICI Bank account details of the corporate debtor which was not disclosed by the suspended directors earlier. As such I immediately issued intimation letter ICICI Bank to close account and transfer of fund to designated account. I also asked ICICI Bank to provide statement of the account from month of December 2017. After receiving the statement I examined the copies of bank statement and transactions therein. It was found that even after commencement of the resolution process, the suspended directors continued operation in this account with considerable amount –which otherwise could have helped to meet the cost of the resolution process.

Does this not cause serious concerns in the mind of the resolution professional as to the intention of the suspended directors as to utilization of funds as well as compliance of the regulations of the legal system?

RP: EASY TARGET OR TARGET FOR EVER?

Dear Reader, I may clarify that there are enough provision to punish such defaulting party for causing delay in the corporate insolvency resolution process. However, it has been the tendency of the courts not to invoke such provision. This gives a wrong signal amongst the defaulting parties. But Insolvency Professional would not be let down for a single minor mistake.

While the Insolvency Professional presides over the creditors committee meetings without any power and is expected to see that the process is completed as per provisions and as per time allowed –notwithstanding the fact that in the entire process he is just playing the role of coordinating person.

Order Passed by the Hon'ble NCLT for Fee and Co-operation: Finally with great efforts and long hearings got the order with directions to COC members for contributing the fee and strict directions to Suspended Board for providing all details immediately and co-operate with RP. After these directions behaviour of CD has been changed and he immediately approach to RP for requesting him to give sufficient time for submitting the required information.



Dear Reader, I may clarify that there are enough provision to punish such defaulting party for causing delay in the corporate insolvency resolution process. However, it has been the tendency of the courts not to invoke harsh on such provision.

Settlement between the Applicant and CD: Meantime new section of 12 A inserted in the amended IBC code. In this case suspended board wants to settle the demand with their creditors and they approach to individual creditors including the Applicant. In last COC all members were agree on the Settlement with certain conditions and passed the resolutions.

However, till publication of this book procedure of settlement under the provisions of IBC still pending. I already filed an Application before the Hon'ble NCLT for further directions in this regard as time line is over.

12: ASSIGNMENT # 9

LUTHRA WATER SYSTEMS PVT. LTD

CASE BRIEF AND HURDLES FACED

- *This was also a case received from the non-banking financial company - BELL FINVEST INDIA LTD. The corporate insolvency resolution process for this matter began in the month of December, 2017. Normal process initiated by me in terms of taking over charge, publishing Form A, inviting claims, verification of claims, forming Committee of creditors and ultimately the first Committee of creditors meet was organised on January, 2018.*

- **EXCEPT FOR RP -LAW CAN'T FORCE ANYONE ELSE!!** In this matter, though promoter of the corporate debtor was not extremely non cooperative like above three, yet he was avoiding the matters or delaying the submission of various information and documents etc. Also, on many occasions, he tried to create pressure on me by asking for payment to various parties etc. -without giving complete details of the employees, financials and business transactions and creating provision for fund. However, I -like in other cases -went ahead with one ultimate goal of performing my duties in the best interest of various stake holders and in accordance with the provision of law. Of course, the working was difficult as there was no staff or management at the corporate debtor's office available -and for any record or information, we always could not go on examining searching record.

- **PLANT VISIT:** The Plant of the Company (Bottling Plant of mineral water) was situated in very remote area and scared place. No one can easily go there without proper arrangement of security. We also visited there with full team force but the experience was very scared. Plant was closed and surprisingly the main source (natural water) was not in the possession of the CD, the source of water belongs to others even Land where the Plant is situated was also belongs to family members. Valuers also visited the plant with us only.
- I sent letters to various statutory authorities intimating my appointment as an insolvency resolution professional in this matter and requesting them to submit their claims from the corporate debtor, if any.



one of the financial creditors asked for the inclusion of the expression of interest as one of the agenda points, while there was no sufficient information available for preparing one

- **APPOINTMENT OF VALUERS:** I appointed two valuers also for arriving at liquidation and fair value of the assets. Also in the minutes of first Committee of creditors, I recorded having made request to promoter about pending list of information and documents etc.
- I also issued a notice in the month of February, 2018 for calling second committee of creditors meeting. The promoter tried to raise objection about the notice. Also one of the financial creditors asked for the inclusion of the expression of interest as one of the agenda points, while there was no sufficient information available for preparing one. And on other side the Insolvency and the Bankruptcy Board of India had

clearly informed that they will not accept Form G (Part of and summary of Expression of Interest).

NON COOPERATIVE ATTITUDE OF THE SUSPENDED DIRECTOR/S OR BEYOND THAT?

- **ALL CAN TELL ANYTHING TO RP – HE IS AVAILABLE FOR TAHT.....** The insolvency professional had to suffer from both side and has always to bear risk of unknowingly getting injustice to a particular stake holder for the non-compliance of others. The latest financial statements were not available. No arrangements were made by the suspended Director for funds to meet daily expenses. This made it extremely difficult to run the show and entire responsibility remained on my shoulder. It did not matter who did not cooperate. On the contrary the suspended director told me to recover the fees or dues as Insolvency professional from Committee of creditors – and if they are not paying take action against them.!!!
- He also raised question of high rate of interest charged by one of the financial creditor. While I can check the rate as per terms of loan agreement – I am no authority to instruct any bank or financial institution to reduce rate of interest until and unless that is restricted by any law/ order of any authority. Even so many times I advised them to follow-up with the respective creditor and can approach to the regulating authority (RBI) but they never approach to RBI or any authority and continuously blaming to RP and forcing him to change the interest rate. How can a RP change the claim amount, if it submitted with proper evidences? Very funny things happened.
- **IT'S EASY TO BLAME RP:** Not only that, he also went on blaming me with the words “.....voting share decided upon you blatantly in defiance of law.....”. Like in the matter of Avance (mentioned in this book) I want to describe how poor an Insolvency Professional is..!!!! He has to take the blame from all –be it true or false at all times even

baseless, bear the insult from all. I strongly recommend that keeping in the motive behind Insolvency and Bankruptcy Code, 2016 – no such act which are having ultimate goal of delaying the legal process be strictly disallowed or even made punishable”.

- This is because the suspended director also conveyed me that
- “Your ground of not allowing payments for my day to day business in its limited current collections is also construed as an effort to endeavour to close a running business. The role of the Resolution Professional is to find a solution for benefit to all and not force closure of business” from where we will allow the expenses only from the collections or income or by infusing fund by COC if agreed. Whether RP will fund the CD from its own Pocket?



Your ground of not allowing payments for my day to day business in its limited current collections is also construed as an effort to endeavour to close a running business. The role of the Resolution Professional is to find a solution for benefit to all and not force closure of business

- Is he (CD) the Adjudicating Authority? Who has given him the right to speak about my performance? Should he dare without being sure that he is speaking truth and truth only –why he is not approaching the legal authority –and instead playing dirty tricks of creating mental pressure?

- While he did not provided any information or record of the operations but always tried to create a picture that whatever expenses his staff asks me to incur -I am bound to simply sign it without having adequate information about the grounds and reasonableness of such expenses.
- **NOTHING SHOULD GO OUT OF RP’S EYE:** Let me also share that one of the financial creditors informed that they had charged interest and recovered the amount deposited by the corporate debtor after the commencement of resolution process. Though this is clearly against the provision of the Code, as insolvency professional, I had to request them to credit back such amount to designated bank – as they cannot take away any amount once the resolution process begins. This is yet another evidence that only the insolvency professional cannot make any mistake or he has to be ready for insult or adverse remarks directed towards him. If such mistake is created by financial creditor, the insolvency professional has to follow them and go on requesting or reminding them to rectify the same.
- The promoter did not stop raising objection and also protested on the minutes of second Committee of creditors that was circulated by me to all members. He also objected the decision on my professional fees – showing clearly that he wanted to create hurdles in my payment. This was simply an indirect threaten tactics under the guise of law so that no insolvency professional would like to move the case and promoter would save himself from legal action. He also tried to take me into clutches by raising issue of incorrect interest rate charged by one of the financial creditor and quoted sections of laws in wrong references -which again showed his intention to keep harassing me in one way or other. The point was that he was not saying a single word about pending item list that was being given to him which was also recorded in the minutes. As such, his clear intention was to avoid his responsibility as defined in the law but to keep the insolvency professional in precarious situation.

ACTIONS TAKEN BY ME

- **TRANSPARENT AND OPEN DISCUSSION:** However, since it was open house discussion and I used to conduct Committee of creditors meeting in very transparent manner, I could prove myself with documentary evidence and witness of other members. But the point that I would request the reader to note was -being an Insolvency Professional, one needs to be ready to take all blames, insults and adverse comments etc. This was because practically we have no power and we are not allowed to do any wrong –but have to request other wrong doers to stop wrong doing!!.
- **EOI PUBLICATION –TO COMPLETE DUTY:** However, as usual, I went on and published the expression of interest – again without adequate information – but with a good intention that if anyone interested comes forward to invest in the present resolution plan -It will be beneficial to all the stake holders. I also called third Committee of creditors during March, 2018 and also sent separate communication that due to non-availability of adequate information.
- **BAG FOR FEES!!!** I was left with no option but to take actions as per various sections of the Code. The third creditors committee meeting was held. I had to convey the same points in the house and also recorded the same in the minutes. Also I conveyed the house about my pending fees and beyond that the expenses that were incurred by me out of my pocket need to be paid on urgent basis. This is the one greatest evidence that I work only for the interest of all stake holders and had no intention to make any party to suffer.
- **PROMOTERS –PLEASE HAVE YOUR KINDNESS ON ME..I WILL BE OBLIGED!:**
At the same time I also continued to send reminders to promoter with the list of pending items for resolution process. After I concluded that the promoter was in no mood to respond to my request, I ultimately filed an application u/s 34 of the Insolvency and Bankruptcy Code, 2016 seeking directions for my fees & expenses from the Court to

issue suitable directions so that I can get the resolution process done smoothly and timely manner. I also filed another application u/s 19 (2) for getting directions issued by NCLT to suspended board of the company.

- **PROMOTERS –PUT THEMSELVES ABOVE AUTHORITY:** Here I will share another example what freedom the promoters are having in raising questions on voting share pattern though it was already submitted to every authority and no authority raised any questions. I was called as person with bias interests, allegation that I pressurized him and that I was not making regular business payment etc. While as an Insolvency professional, I was not allowed to go on uttering such irresponsible statements.

WHILE THE FACTS ARE AS UNDER:

- Since there was no business income in the company and therefore in the absence of the requisite funds it was difficult for me to comply with Corporate Resolution Process (CIRP) mandatory procedure, like obtaining valuation reports, publication of expression of interest, etc.. Which may result into contravention of the resolution process and hence the said issue was serious and needed urgent attention.
- Non-cooperation by the suspended board and the creditor's committee members. It was very difficult for me to continue the resolution process and incur the expenses from my own pocket. I also apprised the creditors that till date all the activity and meetings had been conducted by me from own pockets. I also informed them that till date huge amount was due to me. Non-cooperation from creditors and lack of funds were causing unnecessary delays in the resolution process and this may result in contravention of the process which is punishable offence under the Code. This would render me unable to discharge duties under the Code. Under the given conditions I decided to move to law tribunal for directions in this regards.

→ **EVEN BEHAVIOUR OF FINANCIAL CREDITORS SO?** Even after clear request for arrangement of funds in the designated account to meet cost of resolution process, there were no payments received from any of the creditors. Under such circumstances, I had to file an Interlocutory Application against all the Committee of creditors under Regulation 34 of the IBC code 2016.



After I concluded that the promoter was in no mood to respond to my request, I ultimately filed an application u/s 34 of the , 2016 seeking directions for my fees & expenses from the Court to issue suitable directions so that I can get the resolution process done smoothly and timely manner.

→ **ACTIVITIES REMAIN PENDING FOR WANT OF FUND:** In absence of provision for sufficient funds for meeting cost of resolution process, the valuation work could not be completed. Also some of the information sought by the valuers could not be provided due to non-receipt of such information from the suspended directors.

→ Though entire set of information and documents were not yet provided, Information Memorandum (IM) was prepared on 31st March, 2018 based on the Information and documents available so far. Of course I could not cover some of the vital information and comment on the status of the same, yet in order to invoke interest of prospective resolution applicant, it was thought proper to issue IM.

However, being an resolution professional, I was targeted by the suspended directors and instead of complying their own duty, they went on doing activities like:

→ **EVIDNETLY CLEAR WICKED INTENTION:** Creating undue pressure and shooting communications for making payments like salary to staff raising concern about the need for fund to staff and conveying need for regular payment for staff. However, the intention behind their logic would be clear from the fact that:

→ They did not provide any funding in the bank account in regular interval for the resolution process. However, they were arranging funds only when the salary time came, and immediately thereafter started sending reminders to me presenting utmost urgency for making payment and as if delayed payment would make me responsible for affecting activities and ongoing concern status of the company.

→ However, on the other side when I requested them to provide information or fund, they conveniently forget their part of duty and do not provide the details and basis of the payment of expenses like salary. (For e.g List and category of staff, their record for presence etc.) is not provided to me. While they are well aware that the resolution professional was a responsible person and it is not possible for him just to authorize each payment as may be asked by the corporate debtor –just in the pretext of running business.

It is thus clear that suspended directors were just trying to create false chaos and delay the matter and trying to present such a situation that fault is on the part of resolution professional only.

FINAL STATUS

→ Finally, I had to file an application for further direction in absence of any interest from either party only because the time line of 180

days is over. However, I also know that one application for interest rate dispute is pending at NCLAT. Once again the RP is questionable from every angle. If after 180 days, RP does not file application for liquidation –then WHY? On the other hand, when RP knows that an application is pending before NCLAT then he should have waited for its disposal. WHY he filed liquidation/ resolution application?

Reader would have by now understood the practical realities and the grimy techniques of taking disadvantages of opportunity given by the law by creating by dubious reasons.

CONCLUSION

From the above description of various assignments that I handled as an Insolvency Professional, I am sure I have achieved my motive of writing this book and have conveyed it loud and clear that:

- There are various difficulties in the way and process that an Insolvency Professional undertakes.
- There are need for certain amendments in the law, in the process and in the structure to ensure that process becomes smoother and the difficulties are overcome. The ultimate motive of time bound process could be maintained. I have tried to mention such points which were used by certain elements to get undue advantage and become successful in delaying process. Also I have illustrated certain examples of delaying tactics deployed by some parties which stall the process and delay takes places.
- At various places, I have also narrated that how people do ignore the order or directions issued by Legal Authority. I fail to understand that why such a scenario has come into existence – that people dare to disrespect the legal order? I think if this loophole is blocked many odds can be avoided.

→ It might have been clear by now that I have also been emphasizing the need for in depth knowledge, skill and capacity to handle any adverse situation – as must for any Insolvency Professional. The process is such that adverse situations are bound to happen or exist. My motive is not to demotivate anyone from entering in this field. I want that having understood what kind of complex situation can come to you – one can be prepared to face them with such qualities.

Having mentioned above, let me summarize and conclude what I mean to spread.

MAJOR CHALLENGES

- At times, there would be situation that law /provisions might not be clear /or such that it may lead to different interpretation. We have to act prudently. I had mentioned in one of the assignments about lakhs of operational creditors and provision of 18 members in committee of creditors – this was not satisfying me and I was of the view that such a situation might not be foreseen by the law makers. Hence I felt that out of lakhs of numbers – it is needed that more than the numbers given in the code – may be included in the committee of creditors to give proper representation of investors. However, I could not get affirmation from any authority on this.
- No one is there in your support – company, its promoters, creditors, IBBI, NCLT or any other. All will expect you to perform your duties in the best manner. All the parties can make mistake –but an insolvency professional cannot. Even in the situation where legal clarification is not available –it is the resolution professional to decide action – if it goes well – it is ok. In case, it is failed – insolvency professional will have to face question from all corners.
- Yes of course, the ill intended parties can create disorder in any manner and that too under the guise of law –misusing the opportunity to represent their side and diverting the matter to such way which will ultimately waste time.
- At times, the defaulting parties have clearly entered into collusion with some parties and misrepresented facts – simply to delay the legal process and create legal complexions. For e.g. in one of the assignments – various Government /semi government bodies suddenly started issuing

/demanding payment or create other disturbances. This was only after the beginning of the resolution process and issues raised by them were related to significantly older times. One can easily understand how all of a sudden all authorities woke up?

- This implies that as an Insolvency professional you have to fight alone. Do not expect support from any of the co-parties.
- There will be threats on your life –even life of your family. Here too it is nobody’s worry. It is your personal matter and you have to manage it. As I mentioned in one of the assignments – that I had suffered this and even after such life threat – no protection /protection order was issued. Simply because I am insolvency professional, do I have to suffer to such an extent?
- At the same time it is also to be kept in mind that there is no lucrative remuneration for acting as Resolution Professional that one would like to take a risk of life without adequate security measures
- While we have not authority to decide on any issue pertaining to any stake holder or people and have to act within the provisions of the law only, we have to face protest and insult from all corners. Even the promoters who intend to cheat the public at large will have no case but will be provided opportunity to justice.
- When dealing with assignment for company which is a running concern the responsibilities of Insolvency Professional increase multi-fold. One has to run the resolution process and operate the business in such a way that not a single stake holder is adversely affected. Neither the compliance to various authorities like –Income Tax, Service Tax, PPF, SEBI and lot more. Otherwise any one of them would resort to legal Authority and the insolvency professional would be proved guilty. No one would see how much responsibilities he carries and that too in absence of adequate information due to non-cooperation from the corporate debtor and lack of background information on any matter due to negative approach of employees.

MY SUGGESTIONS:

- To ensure timely process completion in all conditions unless there is exceptional circumstances. Extending time limit due to one of the parties claiming certain contention under the guise of law -particularly at last moment might be taken seriously - and if such contention taken at the last moment is proved to be false – there should be provision for punishment to such elements –as they are negatively impacting the very existence for maintaining time line in the Code.
- The matter of providing protection should be immediately considering when threat is felt and application is made for protection. Or such other arrangement like no need to separate application –but in built order of security with the appointment of Resolution Professional etc.
- While working for an insolvency professional is definitely tough, it is also the fact that `sincere and dedicated efforts –with proper recording of all events, honest and transparent environment to all stake holders will yield successful result.
- Non submission of information, records and relevant data is becoming an increasingly common habit in the suspended directors’ fraternity. This might be viewed seriously by the monitoring and controlling authorities very seriously and proper provision to such act be enacted. At present there is simple direction order is issued to them to cooperate. I suggest that there should not be any need for approaching Adjudicating Authority by insolvency professional for such reasons. Because such process again results into delaying entire process which is in favour of such ill elements and in turn their purpose is served.

- Role of an insolvency professional be made more effective and authoritative. As from my experience it is learnt that when recommendation of insolvency professional which are not his personal –but taken on the basis of decisions of creditors committee and after long exercise is just reversed almost forcefully by the ultimate authority under the name of giving opportunity and fair chance to all. Does it not contrary to the basic idea of completing legal work within specified time limit? Does it not adversely affect the lenders and defeat the purpose of quickening the recovery process in the country? And that too for the sake of defaulters? To give chance to those who had made all the stake holders in hanging position, made them incur additional expense and lose further time and money behind legal process.
- The question also arises that what is the importance of creditors committee members , who are lenders and want to recover their blocked fund back from the defaulting borrower
- Do our duty in the best way, transparent way and within the frame work and powers given to us. Of course, you may feel harassed and gain nothing for that, ultimately what credit you receive is the best reward.
- Those who are guilty will try to create obstacles in your task, but when we do work with utmost sincerity and honesty, there is nothing to worry.
- Take decisions in the interest of the company for whom you are in charge – to maintain its status, value etc.

MEDIA COVERAGE



● Abduction to blackmail Professionals hired to resolve bad loans face risks - Business Standard News



● Abduction to blackmail Professionals hired to resolve bad loans face risks Business Standard News



● DNA MONEY EXCLUSIVE - Has promoter of Rs 4,900 cr Citrus ponzi scheme fled India



● How Devendra Jain made a fortune from reviving sick firms - The Economic Times



● NCLT admits JM Fin's petition against Sandhya Prakash - The Financial Express



● Rajasthan Patrika news dtl 4-8-18



● SEBI banned company's investors to soon get their money back



● Rs 20,000 crore bank loans on platter for ARCs



● Replacement of Resolution Professional in Liquidation case



गालिब तेरी कश्ती के तलबदार बहुत हैं,
इस पार कुछ और उस पार बहुत हैं ।
जिस शहर में तूने खोली है शीशे की दुकान,
उस शहर मे पत्थर के खरीददार बहुत हैं ।



The Insolvency and Bankruptcy Code, 2016 (IBC) was passed in the Lok Sabha in the month of May 2016. It took almost six months to pass the law after it was introduced in the month of December 2015. IBC that was passed in May 2016 replaced three existing laws on insolvency and bankruptcy. The aim of introducing this law was to seek a consolidation of the existing frame work to create a single law for insolvency and bankruptcy. There were several rules laid in the code one of which is the appointment of an independent insolvency professional who would through his independent means undertake the resolution process of the insolvent or sick companies. There are around 1800 independent resolution professionals today who are offering such services today.

Devendra Jain was one of the first ones to get into this profession. This book aims to highlight some of the issues that still plague the profession and also some simple solutions to solve them.