



INSOLVENCY PROFESSIONAL AGENCY  
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

## Casebook Issue

24:

Corporate Insolvency  
Resolution Process of  
Sri Srivathsa Paper  
Mills Private Limited



**INSOLVENCY  
UNCOVERED**

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### **About Sri Srivathsa Paper Mills Private Limited (“SSPMPL”)<sup>1& 2</sup>**

SSPML was incorporated on 21<sup>st</sup> August 2006. Sri Srivathsa Paper Mills Private Limited is majorly in manufacturing (Paper & Paper product, Publishing, printing, and reproduction of recorded media) business since last 14 years and currently, the company’s operations are active.

It has its registered office at Sri Rowni Illam, No.1, Venkitdusamy Naidu Street Venkittapuram, Coimbatore, Tamil Nadu- 641013. Its Authorized Capital is Rs. 21.70 crores and Paid up Capital is Rs 21.66 crores.

The company has three Directors Mr. Amit Bhashker since 1<sup>st</sup> October 2019, Mr. Arumugam Umamaheswari and Mr. Dhandapani Gnanavadivel since 28<sup>th</sup> October 2019.

### **Major Financial Creditors/Bankers**

The Sole Financial creditor of Sri Srivathsa Paper Mills Private Limited was Asset Reconstruction Company (India) Limited (ARCIL) as an assignee after assignment of debt by Indian Overseas Bank.

## **CIRP of Sri Srivathsa Paper Mills Private Limited**

### **Asset Reconstruction Company (India) Limited files application in National Company Law Tribunal (“NCLT”)**<sup>3</sup>

The Petitioner Asset Reconstruction Company (India) Ltd. (“ARCIL”) is a Financial Creditor. An application under section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 had been filed for initiating the insolvency resolution process against Sri Srivathsa Paper Mills Private Limited. Indian Overseas Bank (“IOB”) assigned their debt to ARCIL. Thus, ARCIL filed application, being the ‘Assignee’ as Financial Creditor. SSMPL herein the Corporate Debtor (CD) owed a sum of Rs. 142.00 crores to ARCIL as on 6<sup>th</sup> April 2018.

The Petitioner proposed the name of Mr. Arumugam Arumugam to act as Interim Resolution Professional (“IRP”). NCLT after hearing both the parties admitted the Corporate Insolvency Resolution Process (“CIRP”) of SSMPL on 13<sup>th</sup> November 2018. IRP was appointed as Resolution Professional on 15<sup>th</sup> December 2018 by Committee of Creditors (“COC”).

### **OTS Proposal by one of the Shareholders of the CD**<sup>4</sup>

Applicant, one of the shareholders of CD filed an application in the NCLT with the prayer to accept the applicant’s proposal on 2<sup>nd</sup> July 2018 for OTS proposing to pay Rs. 21.35 crores within a period of 24 months. The same has been rejected on 4<sup>th</sup> July 2018.

Again, the OTS proposal was submitted on 15<sup>th</sup> January 2019 for an amount of Rs. 20.30 crores which was proposed to be paid within a period of 90 days but the same was also rejected but this time by the sole Financial Creditor.

NCLT rejecting the petition held that RP is in process of inviting the EOI and he has also received six (6) proposals which are to be crystallized for being presented before the CoC for consideration. The Sole Financial Creditor had rejected the proposal for OTS twice and now the applicant did not have any vested right to stop the CIRP and to compel the CoC to accept the OTS.

**RP moves an application to NCLT for extension of CIRP<sup>5</sup>**

The CoC in its meeting approved the extension of CIRP which was to end on 26<sup>th</sup> April 2019. NCLT vide its order dated 21<sup>st</sup> May 2019 held that 180 days of CIRP already expired on 11<sup>th</sup> May 2019 and extended the period of CIRP w.e.f 11<sup>th</sup> May 2019.

**Prospective Resolution Applicant files application in NCLT against the RP and Financial Creditor<sup>6</sup>**

Resolution Plan was submitted by one of the Prospective Resolution Applicant on 27<sup>th</sup> March 2019 but the same was rejected on 1<sup>st</sup> April 2019 on the ground that the applicant falls within the purview of section 29A of the Code, and they are ineligible to file the Resolution Plan. After seeking a detailed explanation from the applicant but the resolution plan submitted by applicant got rejected by CoC on 22<sup>nd</sup> April 2019 and they proceeded to approve the plan submitted by another Resolution Applicant.

The applicant moved to NCLT against RP and CoC. NCLT after hearing both sides held that applicants were close relatives of the majority shareholders of the CD and holding the position of suspended directors in the CD. Moreover, the applicants had not filed any response to the invitation of the EOI, even they did not bother to deposit EMD and filed the resolution plan straightaway on the last day just in order to stall the CIRP and approval of resolution plan submitted by another resolution applicants. In those circumstances, the rejection of the resolution plan by the CoC is justified. Thus, the application is rejected.



### **Approval of resolution plan by the NCLT<sup>7</sup>**

The resolution plan submitted by the 2<sup>nd</sup> Resolution Applicant was approved in the 6<sup>th</sup> CoC Meeting on 26<sup>th</sup> April 2019 by voting held on 1<sup>st</sup> May 2019 with 100% voting power but many objections were raised regarding the Resolution Plan by Operational creditor: Arjun Chemicals Private Limited; State Tax officer; State of Tamil Nadu; TANGEDCO; ESI Corporation; Income tax Officer, Coimbatore etc. NCLT rejected the objections raised.

As per the resolution plan submitted by the resolution applicant M/s Hi- Tech Bio Products (“RA”), the estimated cost for implementation of resolution plan is Rs. 21.66 crores. Also, RA prayed for approval for reduction of share capital which the NCLT approved without requiring compliance with the provisions of section 66(1) and (2) of Companies Act, 2013. After hearing on 15.04.2019, NCLT approved the Resolution Plan.

### **Resolution Applicant moves to National Company Law Appellate tribunal (“NCLAT”) against NCLT order<sup>8</sup>**

NCLT order dated 11<sup>th</sup> June 2019 mentioned that the resolution applicant falls within the purview of section 29A of Code. However, it has been challenged in NCLAT by the applicants. After hearing the arguments from both the sides, the appeal was dismissed by NCLAT on 24<sup>th</sup> June 2019.

Applicants aggrieved by order of NCLAT filed SLP before the Supreme Court of India. The Apex Court passed an order on 9<sup>th</sup> August 2019 and dismissed the appeal as withdrawn with liberty to avail appropriate remedy.

Applicants again moved to NCLT for appropriate order. NCLT vide its order dated 3<sup>rd</sup> October 2019 dismissed the petition mentioning that it has been barred by res-judicata under section 11 of the CPC.

### **RP moves to NCLT for directions<sup>9</sup>**


The Monitoring Committee of Sri Srivathsa Paper Mills Private Limited seeking relief under section 60(5) of the Code. RP mentioned that claims of all the stakeholders had been settled as per the approved resolution plan. When the applicant submitted the approved resolution plan to the Registrar of Companies (“ROC”) by filing form INC 28, RP had sought for deemed resignation letters from the suspended directors of the CD. Only one director agreed to submit while others refused due to which Resolution Applicant was unable to take effective control of the Management of the Corporate Debtor.

NCLT after hearing directed ROC to delete the names of suspended directors and take on record the names of new directors appointed and allow to allot shares to the new directors appointed and top accept all the forms filed by the newly appointed directors of behalf of the CD.


### **Concluding Notes**


On October 2019, the Resolution Applicant settled all the claims of stakeholders. Though, suspended Board of Directors tried to stop the process of CIRP sagaciously but at the end the new management took over and the company is now working smoothly. However, some miscellaneous applications are pending before NCLT for adjudication.


## CIRP Timeline

- 
- 13.11.18
  - NCLT admitted the application for commencement of CIRP.

- 
- 19.03.19
  - NCLT rejected the application for OTS proposal.

- 
- 21.05.19
  - NCLT extended the period of CIRP

- 
- 11.06.19
  - NCLT rejected the application filed by resolution applicant against RP and COC.

- 
- 19.07.19
  - NCLT approved the Resolution Plan.

- 
- 03.10.19
  - NCLAT rejected the appeal against order of NCLT.

- 
- 21.10.19
  - RP moved to NCLT for directions.



## **Bibliography**

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<sup>4</sup>[https://nclt.gov.in/sites/default/files/final-orders-pdf/MA-202\\_0.pdf](https://nclt.gov.in/sites/default/files/final-orders-pdf/MA-202_0.pdf)

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<sup>6</sup> <https://nclt.gov.in/sites/default/files/final-orders-pdf/MA-393.pdf>

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