



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

**Casebook Issue
25:**

Insolvency Tale of
Ruchi Soya
Industries Limited

**INSOLVENCY
UNCOVERED**

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About Ruchi Soya Industries Limited (“RSIL”)^{1&2}

Featuring among the top five FMCG players in India, Ruchi Soya Industries Limited commonly known as Ruchi Soya, is a leading manufacturer and India’s largest marketer of healthier edible oils, soya food, premium table spread, vanaspati and bakery fats. It is also the highest exporter of soya meal, lecithin and other food ingredients from India. Established in 1986, Ruchi Soya has emerged as an integrated player, from farm to fork with secured access to oil palm plantations in India and other key regions of the world. Ruchi Soya has access with exclusive oil procurement rights to over two lakh hectares of land in India with a potential of oil palm cultivation.

It has its registered office at Ruchi House, Royal Palms, Survey No. 169, Aarey Milk Colony, Near Mayur Nagar, Goregaon (East), Mumbai, Maharashtra- 400065, India. Its Authorized Capital is Rs. 252.00 crores and Paid up Capital is Rs. 65.00 crores.

Major Financial Creditors/Bankers

State Bank of India amongst the Financial Creditors of the RSIL had the highest voting power. Other financial creditors were Central Bank of India, Punjab National Bank, Standard Chartered, DBS Bank etc.

Ruchi Soya fell into a continuous spiral of borrowing to pay outstanding short-term debt. The company eventually failed to pay debt as it could not recover its receivables. An unprecedented crash in global prices of the castor seed in January last year – of Rs. 3,051.00 per quintal from a high of Rs. 5,100.00 in January 2015 – coupled with falling revenues in the oil business gave a crippling blow to the agri-food FMCG company.

CIRP of Ruchi Soya Industries Limited

Financial Creditors files an application in National Company Law Tribunal (“NCLT”)³

Standard Chartered Bank and DBS Bank file 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 for initiating the insolvency resolution process against Ruchi Soya Industries Limited. RSIL herein the Corporate Debtor (CD) as per the company’s FY- 17 Annual Report showed a total borrowing of Rs. 12, 232.00 crores.

After hearing both the parties, NCLT admitted the petition filed. The Financial Creditor proposed the name of Mr. Shailendra Ajmera of Ernst & Young to act as Interim Resolution Professional (“**IRP**”). It has been held that since winding up petition is not pending before the High Court except an appeal on dismissal order, this petition cannot be kept under suspension by looking at a fight this very CD fighting before the Appellate Authority for confirmation of the original order.

The application regarding classification as Financial or Operational Debt⁴:

An application filed in NCLT by one of the creditors who made a claim before the Resolution Professional (“**RP**”) stating that the CD owed to pay USD 10.00 crores, based on the Bills of Exchanges, ordering the CD to pay this creditor for the goods supplied by another party in between i.e. Avanti Industries Pvt. Ltd. On making of such claim before the RP, it has been rejected by him saying that it is not a Financial Debt as it is an Operational Debt therefore, it could not be considered as Financial Debt as claimed by applicant therein.

Applicant moved to NCLT under section 60(5) of the Code. NCLT after hearing both the parties held that it is an operational debt and the Bench does not find any merit in the application moved by the applicant and the application dismissed without cost. After filing of claim as operational debt by the applicant was once accepted but later rejected by the RP. Petitioner however moved to NCLT again and NCLT vide order dated 24th April 2019 directed RP to consider the claim as of an operational creditor again.

RP files application in NCLT for extension of the CIRP period⁵

The application to NCLT was filed under section 12(2) of the Code to extend the period of CIRP where Committee of Creditors (“COC”) passed the resolution to extend the CIRP on 16th May 2018. NCLT vide its order dated 08th June 2018 allowed the period of CIRP to be extended with effect from 12th June 2018.

Mr. Vijay Kumar Jain moves to NCLT for directions⁶

Mr. Vijay Kumar Jain filed an application in the NCLT under section 60(5) of the Code seeking an order for setting aside the decision taken by the Committee of Creditors on 28th May 2018, disallowing the representatives of the Corporate Debtor including the applicant to participate in the COC meetings; declare that the COC meeting dated 28th May 2018 is non est; direct the RP to ensure active participation of the applicant in the meetings of COC; provide all the documents and information to the applicant for setting aside the CIRP and the meeting of COC which took place without the participation of the applicant after 01st February 2018.

On hearing of the submissions, the point of discussion was to whether suspended director is entitled to get the confidential information as stated in Regulation 35 of CIRP regulations or not. NCLT held giving liberty to the applicant to attend CoC Meetings but not to insist upon the CoC or the RP to provide the information which is considered confidential by the RP or CoC.

RP files Avoidance application in NCLT

RP filed application in NCLT under section 43(1) of the Code for seeking reversal of the amounts that were debited from the current accounts of the CD maintained with ICICI Bank which had been debited by the ICICI Bank before the insolvency commencement date and were utilized against the payment of the dues owed by the CD to the ICICI in relation to the Letter of Credit issued by ICICI.

The Applicant submits that the payment of the impugned amounts lead to preferential treatment towards it by the Corporate Debtor as such payment has the effect of putting Respondents in a beneficial position than it would have been in liquidation of the Corporate Debtor in accordance with Section 53 of the I&B Code. It is further stated by the Resolution Professional that the payments of the impugned amount by the Corporate Debtor were not in the “ordinary course of business” of the Corporate Debtor.

The Respondent has submitted that the said three transactions, like all other LC transactions involving the Corporate Debtor, were carried out by the Respondent, as per the aforesaid ordinary course of conduct. It is hence submitted by the Respondent that the LC transactions are excluded from the provisions of Section 43 since they were in the “ordinary course of business.”

NCLT vide order dated 12th March 2019 held that the respondent ICICI which had debited Rs.27.35 crores on 8th December 2017, and Rs.10.63 crores on December 11, 2017, and Rs.28 crores on 14th Decembers 2017 aggregating to Rs.65.98 crores from the current accounts of the Corporate Debtors directed to reverse the said amount within 30 days from the date of order. Since the resolution plan is already submitted and under examination of the CoC without consideration of this amount, therefore the appropriation of this amount will be decided by the CoC.

ICICI Bank moves to National Company Law Appellate Tribunal (“NCLAT”) against the NCLT order⁸

The appellant ICICI Bank filed appeal in NCLAT against the order dated 12th March 2019. The proceedings were related to transactions dated 8th December 2017, 11th December 2017 and 14th December 2017 which were the transactions undertaken by the Appellant pursuant to the ‘Working Capital Consortium Agreement’ dated 15th May 2013 entered into between the Appellant and the ‘Corporate Debtor’ and the ‘Renewal Credit Arrangement’ dated 20th June 2017 executed between the Appellant and the ‘Corporate Debtor’ providing overall limit of ‘Letter of Credit’ facility for the period ending 15th December 2017.

The main plea taken by the Appellant – ICICI Bank is that the ‘Resolution Professional’ before filing an application under Section 43(1) of the Code formed no opinion independently nor afforded an opportunity to the Appellant to explain about the transactions in question.

NCLAT after hearing both the parties held that the NCLT failed to notice the fact that all the transactions were made on or after the date of commencement of the ‘corporate insolvency resolution process’ and in ordinary course of business and in view of such position the impugned order dated 12th March 2019 cannot be upheld and accordingly set aside the impugned order dated 12th March 2019 and allowed the appeal.

RP files application for approval of Resolution Plan in NCLT⁹

The RP filed application under Section 30(6) of the Code, seeking orders for approval of the resolution plan for the Corporate Debtor submitted by the consortium led by Patanjali Ayurved Limited as approved by the members of Committee of Creditors (CoC).

28 prospective resolution applicants showed their interest out of which two prospective resolution applicants were rejected as one was disqualified under Section 29A of the Code (related party) and the other was a financial investor who did not meet the criteria in the EOI evaluation parameters.

The RP received resolution plans submitted by four Resolution Applicants i.e. from Adani Wilmar Limited (AWL), consortium of Patanjali Ayurved Limited comprising Patanjali Parivahan Pvt. Ltd., Patanjali Gramudhyog Nyas, Divya Yog Mandir Trust (through its business undertaking, Divya Pharmacy)-collectively, Patanjali Consortium, Godrej Agrovvet Limited (Godrej) and Emami Agrotech Limited (Emami). In addition to those above, four other entities namely – 3F, Sakuma, Agrocorp, South India also communicated their interest to participate in the resolution process but had neither deposited the 1st and 2nd Tranche EMD aggregating to Rs.50.00 crores nor submitted a resolution plan.

The applicant reviewed the four Resolution Plans submitted by the Resolution Applicants and found that only the plans submitted by AWL and Patanjali Consortium provided for the corporate insolvency resolution of the Corporate Debtor as a whole and on a going concern basis.

During the 13th CoC meeting held on 21st August 2018, the resolution plan submitted by AWL was put for e-voting which was commenced on 22nd August 2018 and ended on 23rd August 2018. **The said resolution plan was approved by a vote share of 96.85%.** RP filed application in NCLT for approval of Resolution Plan.

While the application was pending for consideration before this Bench, Hon'ble Supreme Court by its order dated 31st January 2019 in *V.K. Jain Vs. Standard Chartered Bank & Ors.* passed the order. Under the order of Hon'ble Supreme Court, the approval of the CoC of the resolution plan of AWL was interdicted. In compliance of the above-mentioned Hon'ble Supreme Court order, this Bench by its order dated 7.2.2019 directed as follows:

“Resolution Professional is directed to comply with the directions of the Hon’ble Supreme Court and submit the report within the stipulated time as provided by the Hon’ble Supreme Court.”

After the conclusion of the 23rd CoC meeting, it was decided and agreed by the members to put the resolution plan of Patanjali Consortium submitted on 2nd May 2018. In the e-voting concluded on 30th April 2019, the CoC approved the resolution plan submitted by Consortium of Patanjali with a vote share of 96.95%. NCLT on application filed by the RP approved the Resolution Plan submitted by Patanjali Ayurved. Patanjali Ayurved through its resolution plan offered Rs. 4,350.00 crores to lenders of Ruchi Soya Industries Limited.

RA, Patanjali Ayurved moves to NCLT for modification of order of NCLT¹⁰

In the petition filed, RA had sought substitution of Para 38 of the Resolution Plan as under:

“38. Any relief sought for in the Resolution Plan, where the contract/agreement/ understanding/proceedings/actions/notice etc is not specifically identified or is for future and contingent liability, is at this moment rejected.”

The Resolution Applicant sought to substitute the above Paragraph 38 of the said order as under:

“All claims that were either not filed or not admitted during CIRP in terms of the provisions of the Insolvency and Bankruptcy Code, 2016 shall stand extinguished. Further, claims admitted/verified by the Resolution Professional shall stand settled and extinguished as per the Resolution Plan.”

NCLT vide its order dated 4th September 2019 clarified that no party had any right to dictate the terms of order. There was no need to substitute Para 38 with the proposed para as mentioned in the application. Anyone who had not filed its claim then he would not have any right to agitate the same after the approval of the

resolution plan. Resolution Applicants accepted the terms of the modified resolution plan as had been approved by this Bench by submitting an affidavit in compliance of the order dated 24th July 2019 and with the order dated 14th August 2019.


Concluding Notes


Resolution Plan approved by NCLT of Patanjali Ayurved leads to a 60% haircut for the lenders. RA completed its acquisition of Ruchi Soya Industries Limited in December 2019. After getting relisted on 27th January 2020, Ruchi soya shares have rallied 3200 percent, valuing the company at about Rs. 16, 250.00 crores as per the data dated 12th May 2020.


This is the perfect example of restructuring where it leads the company to reach the much higher market capitalization. With this, the Company entered top 200 most valuable firms.


Petition towards the claim of Sales Tax Department is still pending in the NCLT for orders. However, due to filing of appeal beyond the timeline by Sales tax Department in NCLAT has been rejected.


CIRP Timeline


- 
- 15.12.2017
 - NCLT admitted the application for commencement of CIRP.


- 
- 18.05.2018
 - NCLT rejected the application filed against rejection of claim.


- 
- 08.05.2018
 - CIRP Period extended by NCLT.

- 
- 01.08.2018
 - Mr. Vijay Kumar Jain moved to NCLT.

- 
- 12.03.2019
 - RP files avoidance application in NCLT.

- 
- 22.08.2019
 - NCLAT set aside the order of NCLT dated 12.03.2019

- 
- 24.07.2019
 - NCLT approved Resolution plan submitted by Patanjali Ayurved.

- 
- 04.09.2019
 - Patanjali Ayurved moved to NCLT for modification of order approving resolution plan.

Bibliography

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