



**INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA**

Casebook Issue

40:

**Insolvency Tale of
Prowess International
Private Limited**



**INSOLVENCY
UNCOVERED**

Index

1. About Prowess International Pvt. Ltd.	2
2. Major Financial Creditors/Bankers.....	2
3. CIRP of MBL Infrastructure Limited	3-4
▪ <i>Initiation of CIRP</i>	
▪ <i>Appointment of IRP</i>	
▪ <i>Withdrawal Application filed by the Applicant</i>	
▪ <i>Appeal against the NCLT order for withdrawal of application</i>	
▪ <i>Approval of Resolution Plan by Adjudicating Authority</i>	
4. Timeline.....	5
5. Bibliography.....	6

About Prowess International Pvt. Ltd.¹

Prowess an ISO 9001 company with registered office in Jamshedpur and branch office in Kolkata was founded in 2003. Prowess has transformed itself into a company of international reputation since then.

It is one of the world leaders in the Design, Engineering & Supply of complete plants, systems & processes as well as specialized mechanical equipment for the Iron & Steel sectors. Prowess offers cutting edge technologies for steel making, ladle treatment, fume extraction system & caster. Further, it provides customized solution as per the requirement of our clients.

Its employees consists of qualified & experienced engineers, designers & managers. We do complete design, engineering & manufacturing of equipment as per the requirement of the customers & maximize their benefits.

Their workshop is facilitated with skilled & competent workforce, quality assurance system, wide range of manufacturing machines and round the clock working facilities.

Prowess excels in providing Customised Solution to its Customers, assessing their requirement. We are well equipped to execute EPC Projects of Steel Melt Shop (EAF-LRF-VD-CASTER Route) upto One (1) Million Tonne Annual Capacity.

Major Financial Creditors/Bankers

As per the orders of the court, only two major creditors filed the claim during CIRP, i.e. Parker Hannifin India Pvt. Ltd. and Punjab National Bank.

CIRP of Prowess International Pvt. Ltd.

Initiation of CIRP

CIRP of Prowess International Pvt. Ltd (CD) was initiated by Parker Hannifin India Pvt. Ltd., Operational Creditor under section 8 and section 9 of the IBC on account of default for not making payments of Rs. 45,73,250/-.

Appointment of IRP²

The application for initiation of CIRP was accepted by Adjudicating Authority (AA) vide order dated 20.04.2017, Mr. Arun Kumar Gupta was appointed as Interim Resolution Professional by the AA. The AA further directed the CIRP to proceed as per the timeline and imposed moratorium on the CD.

Withdrawal Application filed by the Applicant³

Considering that the application of withdrawal was filed before insertion of section 12A, the AA vide order 25.05.2017 rejected the application of withdrawal on the grounds that after the admission of the application, the petition acquires the character of Representative suit and through publication of Notice in newspapers, applications have been invited from all the creditors of the company to file their claim before IRP. After admission of the Petition under IBC, the petition cannot be dismissed on the basis of compromise between the CD and the operational creditor, because other creditors of the company also have the right to file their claim.

Appeal against the NCLT order for withdrawal of application ⁴


The NCLAT vide order dated 18.08.2017 was also of the view that the as per Rule 8 of the I & B Code (Application to Adjudicating Authority) Rules 2016, the Adjudicating Authority may permit withdrawal of the application on the request of the applicant before its admission. Tribunal has no power to allow any applicant or any other person to withdraw the application after admission.


It was further held that Insolvency Resolution Process is not a recovery proceeding to recover the dues of the creditors. IBC is an Act relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including the Government dues. Such being the object of the IBC, if the interest of all the stakeholders are balanced and satisfied then to promote entrepreneurship and to ensure that the company continue to function as on going concern, it is desirable to close such proceeding without delay and going into technical rigour of one or other provisions, which are all otherwise futile for all purpose.


Approval of Resolution Plan by Adjudicating Authority ⁵


Considering that the present resolution was being conducted before the insertion of section 29A and the fact that no other resolution plan was received by the RP except from the promoters of CD which was approved by the CoC, the NCLT via order dated 17.10.2017 accepted the proposal of restructuring and re-payment plan submitted by the Promoters. It was further noted that the claims of operational creditors had been settled with the CD and the financial creditor has certified that accounts of the CD are classified in their books of accounts as a standard asset, thereby implying that no debt is outstanding as on date. Therefore, given the present circumstances, the NCLT was of the view that the resolution plan deserved to be accepted.


Timeline


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- 07.03.2005
 - Incorporation of Prowess International Pvt. Ltd.

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- 20.04.2017
 - Initiation of CIRP of Prowess International Pvt. Ltd.;
 - Appointment of Mr. Arun Kumar Gupta as IRP

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- 06.05.2017
 - First meeting of CoC
 - Re-appointment of Mr. Arun Kumar Gupta as RP

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- 25.05.2017
 - Withdrawal Application filed by the Applicant

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- 18.08.2017
 - Appeal against the NCLT order for withdrawal of application disposed off by NCLAT

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- 17.10.2017
 - Resolution Plan Approved by NCLT

Bibliography

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5. [https://ibbi.gov.in/webadmin/pdf/order/2017/Oct/17th%20Oct%202017%20in%20the%20matter%20of%20Prowess%20International%20Pvt.%20Ltd.%20CP%20No.%20150-IB-KB-2017%20\(Approval%20of%20Resolution%20Plan\)_2017-10-25%2011:37:51.pdf](https://ibbi.gov.in/webadmin/pdf/order/2017/Oct/17th%20Oct%202017%20in%20the%20matter%20of%20Prowess%20International%20Pvt.%20Ltd.%20CP%20No.%20150-IB-KB-2017%20(Approval%20of%20Resolution%20Plan)_2017-10-25%2011:37:51.pdf)