



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

## **Casebook Issue 41:**

**Insolvency Tale of  
MBL Infrastructure  
Limited**

A large, torn piece of brown paper is shown against a white background. The paper is torn at the top and bottom edges, and one corner is folded over. The text 'INSOLVENCY UNCOVERED' is printed in large, bold, black capital letters on the white surface that is revealed by the tear in the paper.

**INSOLVENCY  
UNCOVERED**

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### **About MBL Infrastructure Limited<sup>1</sup>**

MBL Infrastructures Ltd. (MBL) was incorporated in 1995 and is listed on BSE & NSE since 2010 and is promoted by Mr. Anjaneer Kumar Lakhotia. The Company engaged in the execution of civil engineering projects in various business segments namely: Highways (EPC, BOT, O&M), Building, Housing & Urban Infrastructure, Railways/Metro and Other Infrastructure.

It provides integrated engineering, procurement and construction (EPC) services for civil construction and infrastructure sector projects. MBL was among the first batch of contractors to be awarded the contracts of prestigious North South East West Corridor by NHAI and was the first to complete the project.

MBL was amongst the early batch of contractors to be awarded contract for maintenance of National Highways by NHAI. MBL has witnessed a continuous growth in bid capacity and pre-qualification capability.

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

RBL Bank Pvt. Ltd., IDBI Bank Ltd., Bank of Baroda, Bank of India, State Bank of India were among the major creditors of MBL Infrastructure Ltd.

## **CIRP of MBL Infrastructure Limited**

### **Initiation of CIRP**

CIRP of MBL Infrastructure (CD) was initiated by RBL Bank Pvt. Ltd., Financial Creditor via application in Form 1 as provided under section 7 of the Code read with Rule 4 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016

### **Appointment of IRP**

The application for initiation of CIRP was accepted by Adjudicating Authority (AA) vide order dated 30.03.2017, Mr. Atanu Mukherjee 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.

### **Replacement of IRP**

Committee of Creditors (CoC) in its first meeting took a unanimous decision to change Mr. Atanu Mukherjee and Proposed appointment of Mr. Sanjeev Ahuja as Resolution Professional. The same was confirmed by IBBI via order dated 18.07.2017.

### **Extension of CIRP Period**

On the recommendations of Committee of Creditors (CoC), the RP filed an application for extension of 90 days for submission of Resolution Plan. The application was excluded the time period of continuation of the stay order and the period taken for disposal of application from the 270 days fixed for conclusion of CIRP vide order dated 11.09.2017.

### **Clarification sought for determining if the Resolution Applicant is compliant with S. 29A**

The CoC denied acceptance of the resolution plan submitted by the Resolution Applicants on the grounds that the Resolution applicant was the corporate guarantor

of the corporate debtor. However, it was noted that the Corporate Guarantee has not been invoked by the Resolution Applicant and the personal guarantor has not committed any default. It was further noted that the intention of the legislation is not to prohibit bona fide persona from submitting Resolution Plan. Therefore, the NCLT, vide order dated 18.12.2017<sup>2</sup>, concluded that the guarantor cannot be deemed to be defaulter, therefore, is eligible to be a resolution applicant and the present case is not covered under the clause (c) and (h) of section 29A. Lastly, it was noted that only legal position of the applicant is clarified but liberty to accept or reject the resolution plan lies with the CoC.

### **Approval of Resolution Plan by Adjudicating Authority<sup>3</sup>**

The NCLT, via order dated 18.04.2018, noted that the resolution plan was submitted only after the expiry of 270 days and the question confronted by the NCLT was if the time period consumed in litigation shall be excluded from the timeline of CIRP or not? Keeping in mind that the very object of the Code is to resolve to further the recovery for creditors, the NCLT relied upon the significant proposition of rule 15 and rule 153 of NCLT, Rules 2016 to extend the time in the interest of justice. It was observed that exceptional circumstances occasioned which were beyond the control of the resolution applicant and if the time period consumed in litigation will not be excluded, grave injustice will be caused to the stakeholders and so it was held that period of litigation shall be excluded from the time-limit prescribed under the Code and therefore, the plan of resolution stand approved.

### **Appeal by Dissenting Financial Creditors<sup>4</sup>**

The dissenting financial creditors challenged the order of NCLT in view of which the grounds for objections to the resolution plan submitted by the Resolution Applicant/ CD. NCLAT imposed a stay on the execution of 'Resolution Plan' and directed RP and its management to not dispose of any movable or immovable property of the 'Corporate Debtor' without prior permission of NCLAT via order dated 9.05.2019.

### **Approval of Resolution Plan by NCLAT<sup>5</sup>**

The Appellants, in the instant case are the dissenting financial creditors who have challenged the order of NCLT, Kolkata Bench, mainly on two grounds. Firstly, that the Resolution Applicant was ineligible to submit any resolution plan under Section 29A(h) and secondly that the resolution plan lacked viability and feasibility.

The NCLAT while rejecting the contention of the Appellant observed that the resolution plan was submitted prior to the introduction of Section 29A of I&B Code, 2016.

Moreover, the contention of ineligibility of resolution applicant had already been raised once before the NCLT when the plan was first proposed, which was not accepted. An appeal against the said order was also dismissed and no permission was accorded to the appellants in raising the same question again.

With respect to the viability and feasibility of the resolution plan, the NCLAT relied upon the decision of the Apex Court in the case of *Swiss Ribbons Pvt. Ltd. & Anr v. Union of India & Ors.* Accordingly, the NCLAT via its order dated 16.08.2019 held that the resolution plan had been approved only after duly considering the techno economic report.

**Timeline**



- 25.08.1995
- Incorporation of MBL Infrastructure



- 30.03.2017
- Initiation of CIRP of MBL Infrastructure;
- Appointment of Mr. Atanu Mukherjee as IRP



- 18.07.2017
- Replacement of RP to Mr. Sanjeev Ahuja



- 22.11.2017
- Submission of Resolution Plan after required modifications



- 11.09.2017
- Extension of CIRP



- 18.04.2018
- Resolution Plan Approved by NCLT



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- c. [https://ibbi.gov.in/webadmin/pdf/order/2018/Apr/18th%20Apr%202018%20in%20the%20matter%20of%20MBL%20Infrastructures%20Ltd.%20CA%20\(IB\)%20Nos.%20238,%20270%20&%20280-KB-2018%20IN%20CP%20\(IB\)%20No.%20170-KB-2017\\_2018-04-23%2012:51:31.pdf](https://ibbi.gov.in/webadmin/pdf/order/2018/Apr/18th%20Apr%202018%20in%20the%20matter%20of%20MBL%20Infrastructures%20Ltd.%20CA%20(IB)%20Nos.%20238,%20270%20&%20280-KB-2018%20IN%20CP%20(IB)%20No.%20170-KB-2017_2018-04-23%2012:51:31.pdf)
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