



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

Casebook Issue

32:

**Insolvency Tale of
Shekhar Resorts
Limited**

**INSOLVENCY
UNCOVERED**

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About Shekhar Resorts Limited (“SRL”)¹

Shekhar Resorts Limited is an Unlisted Public Company incorporated on 15th October 1997 as a company limited by shares with its headquarters at New Delhi. It has its registered office at J-1817, Chiranjani Park, New Delhi- 110019. Its Authorised Capital is Rs. 17.50 crores and Paid up Capital is Rs. 17.05 crores.

The company operates hotels and motels. It offers dining, wedding and conference rooms, bar, cafe, currency converter, internet access, garden, and board room services.

The company had 5 directors/key management personnel: Chandra Shekhar Sharma, Rajesh Kumar Maratha, Krishn Kumar Sharma, Naresh Kumar Sharma and Asha Sharma.

Major Financial Creditors/Bankers²

As per the list uploaded on the website as on 11th September 2018 as per the link given in bibliography, Oriental Bank of Commerce, JM Financial Asset Reconstruction Company Limited, Religare Finvest Limited amongst the Financial Creditors of the Shekhar Resorts Limited. Operational Creditors of the Corporate Debtor are Central Excise Department and a Chartered Accountant firm.

CIRP of Shekhar Resorts Limited

Oriental Bank of Commerce (“OBC”) files application in National Company Law Tribunal (“NCLT”)³

Oriental Bank of Commerce filed 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 Shekhar Resorts Limited.

SRL herein the Corporate Debtor (CD) owed a sum of Rs. 19.68 crores to Oriental Bank of Commerce. The Financial Creditor proposed the name of Mr. Vikram Kumar to act as Interim Resolution Professional (“IRP”).

The application was filed by OBC over the default by the CD in repayment of Loan while the respondents in their reply objected that:

1. The tribunal did not have the territorial jurisdiction to entertain the application
2. The application had not been filed by a duly Authorized Person.

The NCLT clarified that as per section 60 of the Code “The Adjudicating Authority, in relation to Insolvency Resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of a corporate person is located.” The registered office of the CD was in Delhi. Therefore, the NCLT Bench, New Delhi had the territorial jurisdiction.

As per section 7 of the Code, an application for initiation of ‘Corporate Insolvency Resolution Process’ requires to be filed by ‘Financial Creditor’ itself. The form and manner in which an application under section 7 of the Code is to be filled by ‘Financial Creditor’ is provided in ‘Form-1’ of the adjudicating authority rules and form-1, it may be duly noted that the Code and the adjudicating rules recognize that a ‘financial creditor’ being a juristic person can only act through authorized

representative .Entry 5 & 6 (Part 1) of form no.1 mandates the ‘financial creditor’ to submit name and address of the person authorized to submit application on its behalf. The authorization from 1 also provides for the authorized person’s detail is to be inserted and includes inter alia the position of the authorized person in relation to the ‘Financial creditor’. Thus, only an “authorized person” as distinct from “Power of attorney holder” can make an application under section 7 and required to state his position in relation to “Financial Creditor”.

Considering the above order, it was held that the present application filed by Shri R.P. Shankar, the Assistant General Manager in Oriental bank of commerce was maintainable as it had been filed by an authorized person.

Thus, R1 in its submissions admits that the amount claimed by the applicant is due to be paid by R1 but R1 is unable to repay it presently because of losses in its business. The resolution process under the code has been instituted for the purpose of finding a way of resolving the company’s problems and enable it to pay debts. Thus, the resolution process instead of being a coercive or disproportionate step as claimed by the respondents can in fact, be a process for reviving R1’s business, with the cooperation of R1’s creditors, including the Applicant.

NCLT after hearing both the sides admitted the CIRP on 11th September 2018.

COC appoint IRP as Resolution Professional

COC in its 1st meeting held on 11th October 2018, unanimously approved and resolved by 100% voting share appointment of Mr. Vikram Kumar, IRP as Resolution Professional.

Ex- Management of the CD moves to NCLT for directions⁴

SRL Limited filed application in NCLT under 60(5) of the code, seeking direction of the NCLT to:

Direct the resolution professional to provide the financial details of the corporate debtor specially the financial details with respect to the hotel operations of the corporate.

The applicant represented that the CIRP was initiated against the corporate debtor vide order dated 11.09.2018 that there were 10 CoC meetings that were conducted from 11th October 2018 to 28th March 2019 that the resolution professional had not shared any financial information considering the valuation report of the properties of the corporate debtor with Ex-management. That the valuation ascertained by the resolution professional of the corporate debtor of the properties is approximately Rs.160 crores. That as per the information of the Ex-management, the asset value of the corporate debtor was to extent of approximately Rs. 432 Crores.

The RP filed his reply. NCLT contended that it was evident from the records, the erstwhile management of the CD had not been aiding the process of CIRP as incumbent on them. NCLT also held that this implied that these applications have not been filed bonafide and only to hinder the CIRP of the CD and a view to harass the Resolution Professional. In light of the above contentions, NCLT did not find any merit in the applications filed and dismissed the applications filed vide order dated 26th August 2019.

Mr. Naresh Kumar Sharma appeal to National Company Law Appellate Tribunal against the order of NCLT⁵

Mr. Naresh Kumar Sharma, Ex- Management of the CD appealed to National Company Law Appellate Tribunal (“NCLAT”) against the order of NCLT dated 11th September 2018 admitting the CIRP of Shekhar Resorts Limited. The learned counsel appearing on behalf of the appellant submitted that the CD was not willful defaulter which has been accepted by the respondent- OBC.

The appellant submitted that the respondent had shown a total default of debt of Rs. 19.68 crores including interest out of which the appellant had paid Rs. 15.88 crores approximately till March 2018.

It was submitted that the appellant undertook to make the payment of the rest of the amount within next six months from the date of the order as may be passed by the appellate tribunal.

The appellant also raised the question of maintainability of petition under section 7 of the Code. NCLAT after hearing both the sides dismissed the appeal vide the order dated 18th September 2019 mentioning that NCLAT was not inclined to interfere with the impugned order of NCLT dated 11th September 2018.

RP files application for approval of Resolution Plan in NCLT⁶

RP received resolution plans from two prospective resolution applicants i.e. M/s NCJ Infrastructure Private Limited and Krishna Constructions. One of the prospective resolution applicants, Mr. Amit Goyal filed application before NCLT seeking directions to accept and take on record the documents/information in furtherance of the EOI to ascertain the eligibility of the applicant and to put the resolution plan before the COC for its due consideration which was disposed of vide order 6th May 2019.

In the 14th COC meeting held on 2nd May 2019, the revised resolution plan of NCJ Infrastructure Private Limited was discussed which was conditional and not fully compliant with the Code and the regulations, an opportunity was given to resolution applicant to submit fully compliant resolution plan for consideration.

The COC approved the resolution plan submitted by NCJ Infrastructure Private Limited in which the total amount offered was revised and recorded their reasons for approval as required under regulation 39(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

NCLT after hearing both the parties approved the resolution plan submitted by NCJ Infrastructure Private Limited on 24th July, 2020.

Ex- Management moves to NCLAT against the order of NCLT⁷

The Suspended Board of Directors of Ex- Management moved to NCLAT against the order of NCLT approving the resolution plan submitted by NCJ Infrastructure Private Limited.

NCLAT mentioned that the Resolution Plan submitted had been approved by the COC with 100% voting share, Performance Bank Guarantee as required under the regulations had been deposited by the Resolution Applicant and all the statutory and regulatory compliances had been made. The main issue raised in the appeal was regarding the valuation of assets of the CD.

Appellants mentioned that the actual value of the properties was Rs. 490 crores whereas the Resolution Applicant offered Rs. 143 crores. The appellant also submitted that the actual outlay was only of Rs. 105 crores and rest of the resolution plan was window dressed. The Fair value had been ascertained at Rs. 157 crores whereas the Liquidation value had been ascertained at Rs. 125 crores. The value of the Resolution Plan is Rs. 50 crores less than the Fair Value of Rs. 157 crores.

The NCLAT after hearing both the aspects held it noticed no irregularity, much less a material irregularity at the hands of Resolution Professional in CIRP or infraction of any of the grounds enumerated under section 61(3)(i) to (iv) had been raised in this appeal to dislodge and disturb the commercial wisdom of the COC in approving the Resolution Plan nor the appellant been able to establish any lapse on the part of NCLT in examining and determining that the approved resolution plan did in any manner not confirm to conditions under section 30(2) of the Code and that the same was in conflict with any extent law.

As regards to valuation it is apt to notice that the fair value being ascertained at Rs. 157.12 crore and the Liquidation value ascertained at Rs. Rs.125.92 Crore, respectively, Respondent No. 2 offered Rs.143.50 Crore which in the opinion of Committee of Creditors was the best plan providing for satisfaction of claims of all the stakeholders and being viable and feasible, all aspects of the matter having been taken into consideration by the Committee of Creditors based on their commercial wisdom, which is not justiciable either before the Adjudicating Authority or before this Appellate Tribunal. The Code does not provide that the value given by the Resolution Applicant should match the fair value or the liquidation value.

NCLAT found that the appeal was not maintainable, and the Appellants had no case on merit. Thus, NCLAT dismissed the appeal on 14th September 2020.

Concluding Notes

After knocking the door of NCLT and NCLAT, the resolution plan approved by NCLT of NCJ Infrastructure Private Limited is in process of implementation. At the end, the company by not going into Liquidation marked safe by a successful resolution plan.

CIRP Timeline

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- 11.09.18
 - NCLT admitted the application for commencement of CIRP.

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- 11.10.18
 - COC appointed IRP as RP

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- 26.08.19
 - NCLT dismissed the applications filed by Ex- Management

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- 18.09.19
 - NCLAT dismissed the appeal filed by suspended board of directors

- 
- 24.07.20
 - NCLT approved the Resolution Plan.

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- 14.09.20
 - NCLAT dismissed the appeal of suspended directors.

Bibliography

¹ <http://www.mca.gov.in/mcafoportal/companyLLPMasterData.do>

² <http://www.orienttaj.com/cirp-view.php?id=14>

³ https://ibbi.gov.in/webadmin/pdf/order/2018/Sep/11th%20Sept%202018%20in%20the%20matter%20of%20Shekhar%20Resorts%20Ltd.%20CP-IB-22-ND-2018_2018-09-19%2014:35:13.pdf

⁴ <https://ibbi.gov.in/uploads/order/59565afdeb8f2e4dfd2927c3d828a6a1.pdf>

⁵ <https://nclat.nic.in/Useradmin/upload/4342061585d8219c0c7a6b.pdf>

⁶ <https://ibbi.gov.in/uploads/order/75519864ab37791151a404a7b6a1c8c7.pdf>

⁷ <https://nclat.nic.in/Useradmin/upload/2063929925f5f5363c442c.pdf>