



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

**Casebook Issue  
28:**

**Insolvency Tale of  
Adhunik Metaliks  
Limited**

**INSOLVENCY  
UNCOVERED**

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## **About Adhunik Metaliks Limited (“AML”)<sup>1&2</sup>**

Adhunik Metaliks Ltd is one of the leading players in the manufacture of alloy and special steel in Eastern India. They are the manufacturer of auto-grade alloy steel, stainless steel and engineering steel. They are also in the development of captive mines, leading to backward integration and development of mines to create a pipeline of manganese and iron ore.

They are having their plant location at Rourkela in Orissa. The company is the flagship of the Adhunik Group of companies. Adhunik group is an established player in the Iron & Steel and Ferro-Alloys industry with a presence largely in Eastern India. The group has various activities like manufacturing, processing, trading of iron & steel scrap, and secondary as well as primary products and has set up manufacturing facilities in the States of West Bengal, Orissa, Jharkhand and Meghalaya.

Adhunik Metaliks Ltd was incorporated in the year 2001 as Neepaz Metaliks Pvt Ltd with an aim of manufacturing value added steel products having application in automotive industry, engineering sector as well as the household sector. The company was converted into a public company on February 2004. On 22<sup>nd</sup> July 2005 the name of the company was changed from Neepaz Metaliks Ltd to Adhunik Metaliks Ltd.

In April 2007, the company acquired Orissa Manganese & Minerals Pvt Ltd as 100% subsidiary company. In the same time, the company acquired an iron ore mine in Ghatkhuni, Jharkhand and a manganese ore mine in Patmuda, Orissa through Orissa Manganese and Minerals Pvt Ltd.

It has its registered office at Chadri Hariharpur, Kuarmunda, Sundargarh, Orissa-770039, India. Its Authorized Capital is Rs. 145.20 crores and Paid up Capital is Rs. 123.50 crores.

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

Adhunik Metaliks owed as many as 18 financial creditors, led by the State Bank of India (SBI), Rs 5,370 crore. Apart from SBI, lenders to AML were Punjab National Bank, ICICI Bank, IFCI, Punjab & Sind Bank, UCO Bank, Allahabad Bank, Bank of Baroda, Corporation Bank and SREI Infrastructure Finance, among others.

AML had substantial assets and property but due to unforeseen and unavoidable circumstances, AML underwent financial crunch. The company suffered immensely financially and otherwise due to reasons of cancellation of coal blocks by the orders of Supreme Court, non-grant of iron ore mines by Orissa Government despite commitment made by them; Saha Commission stopped iron ore form last 4 years and such prices of raw material shoot up by 100%; dumping of steel form China; highest bank interest cost etc.

## CIRP of Adhunik Metaliks Limited

### Financial Creditor files an application in National Company Law Tribunal (“NCLT”)<sup>3</sup>

State Bank of India (SBI) files 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 Corporate Insolvency Resolution Process (“CIRP”) against Adhunik Metaliks Limited. The petitioner has disbursed total facility of Rs. 747.72 crores to AML and total amount of default along with accrued and penal interest came to Rs. 812.23 crores.

AML herein referred as CD raised objection that the application filed by the financial creditor was in violation of the guidelines of Reserve Bank of India with gross suspension of material facts. CD objected that no specific power of attorney has been granted by the applicant SBI for initiation of After hearing both the parties, NCLT admitted the petition filed. CD also stated that the merger/ amalgamation of Zion Steel Ltd., Adhunik Metallik and Orrisa Manganese Minerals Ltd. was pending with High Court of Orrisa. The Financial Creditor proposed the name of Mr. Sumit Binani to act as Interim Resolution Professional (“IRP”). NCLT after hearing both the parties admitted the CIRP and appointed Mr. Sumit Binani as Interim Resolution Professional. Later, IRP was confirmed as Resolution Professional (“RP”) in first meeting of Committee of Creditors (“COC”) held on 4<sup>th</sup> September 2017 by majority of 81.24% share.

### RP files application in NCLT for extension of the CIRP period<sup>4</sup>

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 with 98.80% majority. NCLT vide its order dated 11<sup>th</sup> January 2018 allowed the period of CIRP to be extended with effect from 31<sup>st</sup> January 2018.

### **RP files application in NCLT for exclusion of 20 days from CIRP Period**<sup>5</sup>

The application to NCLT was filed to exclude 20 days from the period of CIRP. RP explained that during the period of CIRP, he held several meetings and on 06<sup>th</sup> March 2018 he received two resolution plans, one from Liberty House Group and other from Maharashtra Seamless Limited. Both the plans were discussed by COC and the plan submitted by Liberty House Group was decided to be accepted. Meanwhile, RP came across the media reports that Liberty House had been declared as ineligible under section 29A of code. He called for clarification from Liberty House. The Plan submitted by Maharashtra Seamless Limited was rejected by COC because of suggesting less value than Liquidation Value.

NCLT after considering all the facts excludes 20 days from the CIRP Period stating that there were 3000 regular employees and 10000 casual employees working in the Company. If exclusion was not permitted then the situation would emerge as there will be no resolution plan before us and we have no option but to push the CD in Liquidation, thereby causing great prejudice to the workmen and other stakeholders.

### **Edelweiss Asset Reconstruction Company Ltd. files application for directions**<sup>6</sup>

Edelweiss Asset Reconstruction Company Ltd. (“**Edelweiss**”) filed application in NCLT under section 60(5) of the Code praying to direct the RP to place their earlier plan for consideration before COC and to grant an additional period for consideration and approval of its Plan before COC.

Edelweiss stated that at one of time in the CIRP, it has submitted Resolution Plan. However, RP, later on, postponed the process of bidding on the ground that only one Resolution Plan had been received and with a view to have a maximization of the assets of the CD, he made a fresh Public Announcement calling upon more resolution applicants.

RP stated that after calling for afresh bids, the applicant did not submit any plan. The applicant was called by RP to submit revised Resolution Plan. RP vide email dated sought clarification on some points by the applicant. The Applicant communicated to the RP that since the Resolution Plan submitted by them did not find favour from COC, an earnest money deposit be returned. He also stated that earlier resolution plan submitted was already considered by the COC and COC did not vote in favour of the plan for some good grounds.

As on that day, there was no resolution plan submitted to RP by the applicant. NCLT after hearing both the parties, dismissed the petition filed by Edelweiss.

### **RP files application for approval of Resolution Plan in NCLT**

In the first round of invitation for resolution plans, one(1) resolution plan was received from Edelweiss. The said resolution plan was taken into consideration of COC in the 8<sup>th</sup> meeting held on 18<sup>th</sup> February 2018 but after discussion and deliberations the COC not being satisfied with plan, directed the RP to call for fresh Resolution Plan.

The RP thereby initiated a fresh process for invitation of Resolution Plan. In response to fresh process initiated, two(2) resolution plans were received. One by Liberty House Group Pte. Ltd.(H1) and another from Maharashtra Seamless Limited(2). After several discussions and deliberations, COC was satisfied with H1 and while the plan was under final consideration, media reports told that liberty house had been disqualified under section 29A of the Code.

Clarification was sought from Liberty House and the disqualification was cleared of by the Resolution Applicant. COC in its 16<sup>th</sup> COC meeting held on 5<sup>th</sup> July 2018 considered the resolution plan submitted by H1 and approved the same by 99.94% majority. Upon approval of resolution plan by COC, RP filed application in NCLT for approval of resolution plan by H1.

When the matter came up before NCLT, two applicants came forward objecting the approval of resolution plan. One of the objectors was MSTC Ltd., a Public Sector Undertaking was a raw material supplier of the CD and the applicant contended a total of Rs. 113.64 crores as insolvency resolution process costs. It is submitted on the side of the applicant that amount claimed by applicant was as resolution process costs and the RP excluded the claim from the purview of resolution costs as per the circular of Insolvency and Bankruptcy Board of India (“IBBI”) dated 12<sup>th</sup> June 2018.

The second objector was a recognized Trade Union of the CD representing 578 workers. They objected that despite furnishing to the RP detail ledger of wages along with calculation of amount due to respective workers. The applicant prayed for the disbursement of the amount of wages before approval of Resolution Plan.

RP objected that both the said applications filed and filed affidavit replying in opposition denying the allegations and further submitted that the claim of workmen for sanctioning increment during the CIRP period is not maintainable and disbursement of admitted wages is to be paid by the resolution applicant within 30 days of approval of resolution plan. After hearing all the objections, NCLT approved the resolution plan submitted by Liberty House.

### **Liberty House failed to implement the Resolution Plan<sup>8</sup>**

COC led by State Bank of India moved to NCLT alleging noncompliance of the terms in the approved resolution plan which had been approved by NCLT vide order dated 17<sup>th</sup> July 2018. The resolution applicant failed to pay the upfront amount to the tune of Rs. 410 crores which was to be paid within 57 days from the approval of resolution plan by NCLT.

MSTC pressed for passing an interim order. Liberty House, resolution applicant sought directions to implement the resolution plan by the Long Stop Debt as defined in the resolution plan and to issue ad interim directions to the COC not to proceed with the Liquidation Process which might be initiated at the instance of COC.

NCLT vide its order dated 12<sup>th</sup> December 2018 directed the resolution applicant to file affidavit and reply and refused to grant interim relief to the Liberty House.

After NCLT order, Liberty House moved to National Company Law Appellate Tribunal (“NCLAT”) for directions. NCLAT after hearing passed an interim order that no Liquidation Order to be passed by NCLT till any further decision of NCLAT on the same.

NCLAT vide its order dated 15<sup>th</sup> March 2019 passed the final order rejecting both the appeals by Liberty House and MSTC Limited. After hearing both the parties, NCLAT gave one opportunity to resolution applicant another 30 days to make upfront payment in terms of the resolution plan. On failure, it would be open to NCLT to pass appropriate order in accordance of the law. NCLAT dismissed the appeal of MSTC Limited.

MSTC Limited aggrieved by the decision of NCLAT filed an appeal in Supreme Court for relief. Supreme Court vide its judgement dated 29<sup>th</sup> April 2019 rejected the appeal to MSTC limited mentioning that the Apex Court did not find any reason to interfere with order of NCLAT. Accordingly, appeal is dismissed.

### **NCLT passed Liquidation Order under section 230<sup>9</sup>**

SBI filed application in NCLT where SBI prayed NCLT not to pass Liquidation order but to pass order of revival of the CIRP by excluding period wasted by the successful resolution applicant by not implementing the resolution plan. SBI also requested to allow them to consider the resolution plan which was submitted by earlier H2 bidder Maharashtra Seamless Limited and to forfeit the sum of Rs. 50 crore which the

Liberty House had deposited by treating the same amount as a performance's security.

Liberty House filed application requesting NCLT to give directions to the COC to cooperate them in implementing the resolution plan in proper prospective. Workmen filed application stating that they had not been paid wages for month. One more application was filed by monitoring committee to give direction to the Registrar of Companies, Odisha not to take any coercive action against the CD, for not holding Annual General Body Meeting in time.

NCLT vide its order dated 9<sup>th</sup> July 2019 after hearing all the parties ordered Liquidation of Adhunik Metaliks Limited and appointed Mr. Sumit Binani Resolution Professional as Liquidator of the CD. NCLT also directed the Liquidator to Liquidate/ sale the CD as it was a going concern as per the Regulation 32(f) of IBBI (Liquidation Process) Regulations, 2016.

#### **Liquidation order challenged before NCLAT<sup>10</sup>**

Liquidation order passed by NCLT on 9<sup>th</sup> July 2019 had been challenged and appeal had been filed to set aside the order passed. NCLAT in its hearing dated 17<sup>th</sup> July 2019 passed an interim order of stay of operation of the order of NCLT dated 9<sup>th</sup> July 2019.

In the next hearing on 28<sup>th</sup> August 2019, the NCLAT set aside the interim order passed on 9<sup>th</sup> July 2019 and directed Liquidator to ensure that the company remained going concern but not to sell or transfer or alienate movable or immovable property of the CD not create any third party encumbrance.

After order of NCLAT, RP proceeded with liquidation process. RP filed an application in NCLT for directions and sought clarity about the treatment of claims received on and from the period between 18<sup>th</sup> July 2018 till 7<sup>th</sup> July 2019. NCLT held that the claims received between 18<sup>th</sup> July 2018 till 7<sup>th</sup> July 2019 could neither be treated as a part of insolvency resolution process costs nor they fall within the ambit of Liquidation Cost and hence, could not be accorded priority over other dues in terms of provisions of law. In respect of the claims received for the aforesaid period, the Liquidator might rely on the statutory treatment of claims as laid down in section 53 of the Code.

NCLAT in its subsequent hearing on 22<sup>nd</sup> January 2020, Liberty House submitted affidavit and heard Mr. Virender Ganda, the learned senior counsel for the appellant where Liberty House prayed for giving one opportunity to implement the resolution plan and directed the Liberty House to deposit Rs. 360 crores (Rs. 410 crores minus Rs. 50 crores already deposited) as full and final settlement towards financial creditors and Lenders by 14<sup>th</sup> February 2020 in the account of State Bank of India, the lead bank. Also, Liberty House would deposit additional Rs. 10 crores.

In subsequent hearing dated 17<sup>th</sup> February 2020, learned counsel of Liberty House submitted that the amount in terms of order dated 22<sup>nd</sup> January 2020 had been paid. In view of this, NCLAT stayed the Liquidation order and the Liquidator would act as RP. NCLAT posted the next date of hearing on 3<sup>rd</sup> March 2020 for final decision including rest of the issues.

In the Last hearing on 3<sup>rd</sup> March 2020, NCLAT held that the resolution plan be implemented in letter and spirit. The claim of all creditors got settled. Control and records had been handed over to successful resolution applicant and the Monitoring Committee got discharged.

### **Concluding Notes**

With peak and valleys in its ride of finding a suitable buyer, Adhunik Metaliks Limited sailed its boat into resolution sea despite of sailing its boat almost into the sea of liquidation. Adhunik Metaliks Limited was the third largest company to be resolved under the Insolvency and Bankruptcy Code (IBC) after Bhushan Steel and Electrosteel Steels. Resolution Plan approved by NCLT of Adhunik Metaliks Limited led to a 92% haircut for the lenders. The Company is in process of delisting of equity shares form all stock exchanges.

## CIRP Timeline

- 
- 03.08.2017
  - NCLT admitted the application for commencement of CIRP.

- 
- 11.01.2018
  - CIRP Period extended by NCLT.

- 
- 15.06.2018
  - 20 days excluded from the CIRP Period by NCLT.

- 
- 05.07.2018
  - Edelweiss Asset Reconstruction Limited moved to NCLT for directions.

- 
- 17.07.2018
  - NCLT approves the resolution plan submitted by Liberty House.

- 
- 12.12.2018
  - Liberty House failed to implement the resolution plan.

- 
- 09.07.2019
  - NCLT ordered liquidation of Adhunik Metaliks Limited.

- 
- 03.03.2020
  - Resolution Plan implemented and the monitoring committee got discharged.

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