



Casebook Issue 54:

Insolvency Tale of Inka

Foods Private Limited

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



**INSOLVENCY
UNCOVERED**

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About Inka Foods Private Limited¹

Inka Foods Private Limited is a non-government company, incorporated on 21 November, 1995. It's a private unlisted company and is classified as company limited by shares.

Company authorized capital stands at Rs 400.0 lakhs and has 100.0% paid-up capital which is Rs 400.0 lakhs.

Inka Foods Private Limited is majorly in Agriculture and Allied Activities business, The Board of directors consist of Mr. Ankit Kumar, Mr. Sahil Garg and Mr. Ankur Garg .

The Company's registered with Himachal Pradesh Registrar Office and its registered address is Ropar Roadnalagarh, District Solan, Himachal Pradesh-177320.

Major Creditor/Banker

JM Financial Asset Reconstruction Company Ltd. and Himachal Pradesh Financial Corporation were the major claimants in this case

CIRP OF INKA FOODS PRIVATE LIMITED

JM Financial Asset Reconstruction Company Ltd files an application for initiating CIRP under section 7 of the Insolvency and Bankruptcy Code, 2016

In this case, Inka Foods Pvt. Ltd. (Debtor) availed the cash credit and working capital loan facilities from Indian Overseas Bank. The said facility was secured by way of personal guarantee of promoters, along with other securities.

The Debtor was declared NPA in the books of the Bank, as per the RBI guidelines 18.02.2008 and the Bank issued notice under section 13(2) of the SARFAESI Act 2002. The Bank vide assignment agreement dated 07.03.2011 assigned the said debt along with the security in favor of JM Financial Asset Reconstruction Company Ltd.

The NCLT Chandigarh (AA) finds that in this case JM Financial Asset Reconstruction Company Ltd (Creditor) filed a Company Petition under Section 7 of the Insolvency & Bankruptcy Code, 2016 ("IBC") as an Financial Creditor, to whom the debt was legally assigned via valid agreement by Bank. The Creditor is a financial creditor under section 5(7) of the Code.

It was also noted that the Creditor filed an application under section 19 of the Recovery of Debts and Bankruptcy Act 1993 before the DRT Chandigarh and the DRT issued a recovery certificate in favor of Creditor for Rs. 5,56,45,487/- along with future interest. Therefore, the occurrence of default also proved.

Order of moratorium and appointment of IRP²

Vide order dated 05.04.2019 the AA declared moratorium against the Debtor under section 14 of the Code.

The AA appointed Shri Ashok Kumar Gupta as the IRP of the Debtor.

Constitution of CoC and appointment of RP³

In compliance of AA order, the IRP made the public announcement calling for the claims against the Debtor and constituted the CoC comprising of one Creditor i.e., JM Financial Asset Reconstruction Company Ltd.

In the first meeting of CoC with 100% voting share the IRP was appointed as RP of the Debtor. However, the RP updated the claims against the Debtor and re-constituted the CoC with two members namely, JM Financial Asset Reconstruction Company Ltd. (66.8% voting share) and Himachal Pradesh Financial Corporation (33.2% voting share).

Public Announcement and the Resolution Plan⁴

The RP issued Form G and advertised the same in English and Hindi newspapers on 07.06.2019. The last date of submission of EoI resolution plan was 28.06.2019 and 18.08.2019 respectively.

The RP received only one EoI from M/s Adhrit Hospitality Pvt. Ltd. Fresh Form-G was issued on 08.07.2019 and three EoIs were received.

In the 5th CoC meeting dated 06.09.2019 the RP apprised the CoC that M/s Adhrit who earlier was keen to submit the plan refused to submit the same

and other two applicants had shown interest in the land of the Debtor in H.P., but there exists restriction with regard to the use of the land in H.P. The CoC was also apprised of the fact that the main promoter and the ex-Director of the Debtor offered One Time Settlement.

In the 6th CoC meeting dated 27.09.2019 the RP apprised the Committee that no OTS or plan received from the ex-Director nor the applicants shown any interest pursuant to the publication of Form-G. Therefore, it would be prudent to liquidate the Debtor.

Liquidation of Corporate Debtor

In the 6th CoC meeting dated 27.09.2019 with 66.80% votes the resolution to liquidate the Debtor was passed.

Application under section 33(2) of the Code⁵

The RP filed an application under section 33(2) of the Code seeking liquidation of the Debtor. The AA observed that the CoC had not considered all the aspects required for the liquidation of the Debtor and therefore, the same application was not maintainable.

The RP withdraws the application with the liberty to file application after taking necessary steps.

Regulation 39B to 39 D of CIRP Regulations 2016⁶

In the 7th CoC meeting dated 19.11.2019 the resolutions relating to Regulations 39B to 39 D of CIRP Regulation 2016 were passed.

Order of Liquidation by AA and appointment of Liquidator⁷

The AA observed that the application filed under section 33(2) of the Code does not satisfy the condition laid down in the same. Since, the application for the liquidation made before the expiry of the CIRP, and no resolution plan received under section 30(6) of the Code. Therefore, the order of liquidation dated 10.01.2020 of the Debtor was passed under section 33(1) of the Code.

Vide the said order the AA appointed the RP as the liquidator as per section 34 (1) of the code. The Liquidator was directed to publish the public announcement in accordance with Regulation 12 of the Liquidation Process Regulations 2016 and in Form B of Schedule II of these Regulations.

Timeline



- 21.11.1995
- Inka Foods Pvt. Ltd. was incorporated



- 05.04.2019
- Initiation of CIRP



- 05.04.2019
- NCLT Chandigarh declared moratorium against Inka Foods Pvt. Ltd.
- IRP was appointed



- 07.06.2019
- Form-G was published
- 08.07.2019
- Form-G was re-published



- 27.09.2019
- Liquidation approved by CoC



- 10.01.2020
- AA approved the liquidation under section 33(1) of the Code

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