



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

**Casebook Issue 44:
Insolvency Tale of
Bharati Defence and
Infrastructure Limited**

**INSOLVENCY
UNCOVERED**

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About Bharati Defence and Infrastructure Limited ¹

Bharati Defence and Infrastructure Limited (formerly known as Bharati Shipyard Limited) was incorporated on June 22, 1976. It began as a partnership firm in 1968 which was converted into a Limited company in 1976 and later to a public limited company in 1996. It has state of the art shipbuilding and fabrication facilities in Dabhol, Ratnagiri, Goa, Mangalore, Chennai and Kolkata. Company's IPO in 2004 was oversubscribed 78 times.

BDIL's product portfolio evolved from small-sized vessels and tugs to sophisticated offshore vessels like Platform Support Vessels (PSVs), Anchor Handling Support Vessels (AHTSVs), Offshore Support Vessels (OSVs), jack-up rigs; mid-sized LNG propelled vessels and smaller defence vessels. It is also engaged in the business of design and construction of various types of sea going, coastal, harbour, inland crafts and vessels. Product range includes cargo barges, dredgers, power packed ocean going tractor tugs, cargo ships, etc. BDIL also constructs specialised, sophisticated vessels for Exploration and Production (E&P) companies, coastal and the marine market sectors.

Major Financial Creditors/Bankers

Edelweiss Asset Reconstruction Company and IDBI Bank are among the major creditors of Bharati Defence and Infrastructure Limited.

CIRP of Bharati Defence and Infrastructure Limited

Initiation of CIRP ²

CIRP of Bharati Defence and Infrastructure Limited (CD) was initiated by Edelweiss Asset Reconstruction Company, 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 06.06.2017, Mr. Dhinlal Shah 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.

Extension of CIRP

The Interim Resolution Professional was later resolved by the Committee of Creditors to be appointed as Resolution Professional (“RP”). The CIRP period was extended vide an order of this Tribunal dated 15.11.2017 by 90 days from 06.12.2017.

Various applications filed before AA against the approved resolution plan

- The IA no. 21/2018 is filed by one of the subsidiary company of the Corporate Debtor along with the suspended directors of the Corporate Debtor challenging the process of approving the resolution plan by the CoC and raised objections against the resolution plan approved by the CoC. The relief sought in this application is to direct RP to disclose the details of all resolution plans received, to disclose reasons for which the expression of interest received from other applicants was rejected and the concluded CIRP be set aside.
- The MA no. 489/2018 is filed by ARCS Ship Build Services (P) Ltd., which is one of the unsuccessful resolution applicants. This application challenged the defects in

the process of calling for resolution plans, lack of provisions of information provided for the preparation of resolution plan. The relief sought in the application is, among other things, to make the ARCS Ship Build Services (P) Ltd. a party to the proceedings and to provide a copy of the final resolution plan.

- The MA no 461/2018 is filed by MEC Consultants, operational creditors of the corporate debtor. The relief sought in this application is, among other things, to direct the RP to pay the operational debt due as well as the lease rent of ₹9,82,000/- per month in respect to the plant and machinery and enabling works, materials that are owned by MEC Consultants but are lying at Corporate Debtor's yard in Dhabol till the time it is released.
- The MA no. 482/2018 is filed by Poly-Tech Engineers, Operational Creditor of the Corporate Debtor whose part claims are disputed and not admitted. The relief sought in this application is, among other things, to make payment of the operational debt due and to update the debt amount due for the Poly-Tech Engineers.
- The INVP no. 830/2018 is filed by Steadfast Shipping Private Limited, whose claims are not admitted by the RP. The relief sought in this application is, among other things, to direct the RP to furnish the bare boat charter agreement on which Steadfast Shipping Private Limited is basing its claim as a financial creditor and to make the payment due to it.
- The MA no. 473/2018 is filed by Titagarh Wagon Limited whose claims are not admitted by the RP. The relief sought in this application is to direct the RP to include Titagarh Wagon Limited in the list of creditors and not to deal with the lease hold land of Kolkata Port Trust.
- The MA no. 837/2018 is filed by Besi Marine Systems GmbH seeking inclusion of its name in the list of operational creditors by admitting its claim.
- MA 584/2018 has been filed by the suspended board of directors of the Corporate Debtor namely (1) Mr Vijay Kumar and (2) Mr P.C. Kapoor u/s 60(5) of IBC, 2016 r/w Rule 11 of the NCLT Rules, 2016, inter-alia, praying that RP and CoC consider all resolution plans afresh bearing in mind the principle of maximization of

value envisaged under the Code. Another prayer is for seeking directions to RP to disclose all information, documents, bids received.

Rejection of Resolution Plan by AA ³

The RP filed an application seeking approval of the resolution plan submitted by an RA, who is an FC with 82.796 voting share in the CoC. The plan provided that the RA will sell the CD in two years. It noted that the plan does not give due consideration to the interest of all stakeholders, seeks several exemptions, and contains a lot of uncertainties and speculations. It provides for generation of income from ongoing operations and no upfront money is brought in by the RA. The AA also noted that the RA has proposed to hold majority equity in the CD, run its operations, enhance its value and over a period to find a suitable investor/buyer for the same. Relying on the judgment in the matter of Binani Industries Limited, the AA observed resolution plan is for insolvency resolution of the Corporate Debtor as a going concern and not for the addition of value and intended to sale the Corporate Debtor" It observed that RA is essentially extending the CIRP period to find an investor, which is not the intention of the legislature. It further observed: "If the ultimate object in the resolution plan is to sell the company, then it can be achieved by sale as a going concern during the liquidation process.

Appointment of Liquidator

Given the conflict of interest of the RP, the AA thereby appointed Mr. Vijay Kumar V Iyer as the new liquidator.

Appeal by RP against the order of liquidation by AA ⁴

The grievance of the appellant is limited to the observations made by Adjudicating Authority against him. However, from the impugned order we find that the resolution plan submitted by 'Edelweiss Asset Reconstruction Company Ltd.' was duly approved by the Committee of Creditors by voting share of 94.3%. In spite of the same, the Adjudicating Authority has gone into the question of the viability and feasibility of the resolution plan including maximization the assets.

In view of the above appeal, NCLAT directed the liquidator or the Adjudicating Authority will not take any steps to sell or transfer or alienate movable or immovable assets of the Corporate Debtor, nor create any third party encumbrance on it without prior approval of this Appellate Tribunal.

Appeal against the order of liquidation by Shareholders ⁵

The Appellant, Shareholder challenged the order on the ground that liquidation order has been passed with “material irregularity” due to fraud committed by the ‘Resolution Professional’. It was held by the NCLAT that the ‘Resolution Plan’ should be planned for ‘Insolvency Resolution’ of the ‘Corporate Debtor’ as a going concern and not for addition of value with intent to sell the ‘Corporate Debtor’. The purpose to take up the company with intent to sell the ‘Corporate Debtor’ is against the basic object of the ‘I&B Code’. Further, it directed that the liquidator to ensure that the company remains in as going concern.

Extension of liquidation period ⁶

Liquidator filed an application before AA seeking an extension of the period for submission of the compromise or arrangement of the scheme for the Corporate Debtor by a period of 90 days. It was submitted that under Liquidation and as per the directions of NCLAT, applicant is seeking time for submission of Scheme of Compromise or arrangement with the creditors or members of the Corporate Debtor as provided for under Section 230 of the Companies Act, 2013 by further period of 90 days beyond the original 90 days allowed for such process in accordance with the directions of NCLAT. Acknowledging that the NCLAT has authorised AA to extend the process by 90 days if there is a chance of approval of arrangement of scheme, the AA agreed to extend the period.

Timeline



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