



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

Casebook Issue 9:

Journey of IVRCL Limited
from Corporate Insolvency
Resolution Process to
Liquidation as a Going
Concern

**INSOLVENCY
UNCOVERED**

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About IVRCL Limited¹

IVRCL was founded 30 years ago and soon became leading EPC and Infrastructure Public Limited Company listed both on NSE and BSE Stock Exchanges of India. IVRCL Limited's registered office is at M-22 /3RT, Vijayanagar Colony, Hyderabad TG 500057 India. Its authorised capital is Rs. 3,30,00,00,000/- and paid up Capital is Rs. 1,56,57,95,384/-

They currently have more than 3000 qualified engineers, managers and professional technocrats across India. IVRCL built India's 1st and largest desalination plant at Minjur (near Chennai) with 100MLD capacity. IVRCL's core areas of work include Value Chain across sectors such as: Water & Environment, irrigation, Transportation, Buildings & Industrial Structures, Power Distribution & Transmission, Operations and Maintenance and Mining.

Major Financial Creditors/Bankers²

The directors of the IVRCL took hefty amount of loan of amounting to hundreds and thousands of crores in the name of the company in forms of working capital term loan, funded interest term loan, term loan, cash credit facility etc. from various banks including Vijaya Bank, Tamil Nadu Mercantile Bank, IFCI Limited, The Karur Vysya Bank Ltd., Bank of Baroda, ICICI Bank, Standard Chartered Bank, Andhra Bank, Bank of India, Indian Overseas Bank, Indian Bank, GSPC. The business of the company failed soon as it incurred huge losses and the last Annual General Meeting of the company was held on 28/09/2018.

CIRP of IVRCL Limited

NCLT admits the CIRP initiation application moved against IVRCL Limited³.

State Bank of India (SBI) 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 against IVRCL Ltd. The IVRCL Limited herein the Corporate Debtor (CD) owed a sum of Rs. 604,15,36,434/- (Rs. Six hundred and four crores fifteen lakh thirty six thousand four hundred and thirty four only) to SBI, herein the Operational Creditor (OC). The application was accepted by the NCLT Hyderabad bench on 23.02.2018. Moratorium in terms of Section 14 of the Code was imposed and Mr. Sutanu Sinha was appointed as the Interim Resolution Professional (IRP).

Jharkhand Bijli Viltran Nigam Ltd. moves an application in NCLT against the IRP to have acted Illegaly during Moratorium Period⁴:

Jharkhand Bijli Viltran Nigam Ltd. (JBVN) filed an application in NCLT, Hyderabad under Section 60(5) of the code, against the IRP to have acted Illegaly during continuance of moratorium Period. JBVN argued that the CD and JBVN entered into an agreement which went to Arbitration because of arising disputes between the parties, the IRP on 30.03.2018 and 07.04.2018 issued a letter to the Arbitral tribunal directing the tribunal to proceed with the claim and counter claim filed by the CD stating that there is no bar as per the code. The NCLT, On 08.05.2018, ruled out that the IRP indeed went ultra vires his powers and held the letters filed by the IRP in before the arbitral tribunal to be non-est.

NCLT directs the IRP to admit the contingent liability/ un-invoke bank guarantees worth Rs 3,04,15,01,474/- as a legal claim as per the provisions of the code.⁵

Canara Bank, one of the financial creditors filed an application in the NCLT seeking to direct the RP to admit the uninvoked bank guarantees and debt converted into equity as legal claims in the CIRP as per the provisions of the code. Canara Bank asserted that they have continuously, in every meeting of the CoC requested the IRP to admit the uninvoked bank guarantees and debt converted into equity as valid claims but the IRP has constantly accepted the presence of debt but rejected to admit such debt as claims under section 5(8) of the code.

NCLT failed to find any valid and sensible reasoning in the arguments of the IRP and held through an order dated 01.02.2019, that the claim depends on a right to payment and in the case of uninvoked bank guarantees, claims arising from uninvoked bank guarantees indeed provides a right to payment and hence it is a valid claim as per section 5(8) of the code. However, NCLT rejected the contention of the bank of reverting back to the position of Lender from Equity Shareholder, once the CDR/SDR fails. Tribunal reiterated that once the debt is converted into equity it cannot again be made debt if the revival plan under CDR did not fructify.

SBL Construction Private Limited approaches NCLT requesting the Adjudicating Authority to direct the IRP to admit the claims based on an arbitral award⁶.

SBL Construction Limited filed an application under Section 60(5) of the code against the CD represented by the IRP. The issue before the NCLT, Hyderabad bench was whether the claim of a party, herein SBL Construction Private Limited, which is based on an arbitral award, against which an appeal was pending, is admissible or not.

The Tribunal, on 01.04.2019 noted that in view of moratorium in respect of the CD, the said appeal is stalled. It observed that the claim is based on a valid and legally issued award under the Arbitration and Conciliation Act, 1996 and hence RP is not right in rejecting legally tenable claim of the applicant.

After rejecting the received Resolution Plans, RP files an application before the Adjudicating Authority to initiate the Liquidation of the CD⁷

The RP issued a public announcement inviting first Expression of Interest (EoI) to submit a resolution plan for the CD from the potential Resolution Applicant on 09.05.2018. After going through every Resolution Plan submitted, CoC held none of the plans to be viable enough to revive the CD and rejected the submitted Resolution plans on commercial and technical aspects pursuant to which, RP filed an application under Section 33 of the code to initiate the Liquidation process.

First Global Finance Pvt. Limited files an intervention application before the Adjudicating Authority to dismiss the application filed by the RP to initiate the Liquidation proceedings⁸

First Global Finance Pvt. Ltd. (Resolution Applicant) aggrieved by the decision of the CoC of rejecting the Resolution Plan submitted by the Resolution Applicant, filed an Intervention application before the Adjudicating Authority, praying to dismiss the application filed by the RP to initiate the Liquidation proceedings and set aside the resolution passed in the CoC meetings to the extent of dismissing the Resolution plan of the Resolution Applicant.

NCLT through an order dated 26.07.2019, dismissed the Intervention Application filed by the Resolution Applicant and held that once the CoC has exercised its commercial wisdom in rejecting the resolution plan submitted by the Resolution Applicant and has taken such decision after much consideration and deliberation, it is not open for the Adjudicating Authority to intervene and impose its wisdom or supplement the wisdom of the CoC. If the CoC has come to a conclusion that the Resolution Plan submitted by the Resolution Applicant is commercially not viable and does not fulfill the eligibility criteria, Adjudicating Authority is bound to pass an order of initiation of Liquidation.

Thus the NCLT through the same order dated 26.07.2019, accepted the application filed by the RP to initiate the Liquidation proceedings as per Section 33 of the code.

NCLAT stays the Liquidation Process of debt-strapped IVRCL Limited⁹

The Resolution Applicant approached NCLAT by filing an appeal against the impugned order dated 26.07.2019 of the NCLT, Hyderabad directing the RP to initiate the Liquidation process of the CD. The Resolution Applicant contended that the resolution plan submitted by it was not considered in its proper perspective. It also contended that the Resolution Applicant deposited total earnest money of ₹5 crore and fulfilled the minimum capacity of more than ₹500 crore, but the resolution plan submitted by it was rejected both by the CD and the adjudicating authority without any ground, and the order of liquidation was passed.

The NCLAT, On 06.09.2019 held that the order of liquidation will be subject to the decision of this appeal. The liquidator will not sell or transfer or alienate moveable or immovable property of the Corporate Debtor nor create any third party encumbrance on the same, without prior approval of this Appellate Tribunal. The liquidator was directed to ensure that IVRCL remains a going concern and that any developments would be based in accordance with the law and proceeded with the terms of the NCLAT.

Concluding Notes

Because of not having a prospective Resolution Applicant, the company had been put into Liquidation. Interestingly, on November 18, 2019, NCLT pronounced order for IVRCL Limited as going concern for 1 year and 3 months till the completion of Liquidation Process. The company processes are running as a going concern. Also, the company had its 32nd Annual General Meeting on November 29, 2019. The Liquidator has invited EOI for the process of sale of company as a going concern. After completion of bidding process and receiving the EMD, Mr. Sutanu Sinha moved an application for approval of sale of Company as a going concern, which is pending before the NCLAT for approval. **After approval, IVRCL Limited will be the first IBC case to be sold as going concern in Liquidation.**

CIRP Timeline

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- 23.02.2018
 - The CIRP application was accepted by the NCLT Hyderabad bench.

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- 08.05.2018
 - NCLT ruled out that the IRP indeed went ultra vires his powers and held the letters filed by the IRP in before the arbitral tribunal to be non-est.

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- 01.02.2019
 - NCLT held that the claims arising from uninvoked bank guarantees indeed provides a right to payment and hence it is a valid claim as per section 5(8) of the code.

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- 01.04.2019
 - NCLT directed the IRP it directed the RP to admit the claim of the SBL Construction Pvt. Limited.

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- 26.07.2019
 - NCLT dismissed the Intervention Application filed by the Resolution Applicant.

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- 26.07.2019
 - NCLT accepted the application filed by the RP to initiate the Liquidation proceedings as per Section 33 of the code.

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- 06.09.2019
 - NCLAT stayed the Liquidation proceedings and held that the order of liquidation will be subject to the decision of the appeal.

Bibliography

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⁹ <https://nclat.nic.in/Useradmin/upload/11167520865d7243c7d91fb.pdf>