



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

**Casebook Issue
30:**

**Insolvency Tale of
Deccan Chronicle
Holdings Limited**

**INSOLVENCY
UNCOVERED**

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About Deccan Chronicle Holdings Limited (“DCHL”)¹

Deccan Chronicle Holdings Limited (DCHL) publishes the largest circulated English newspaper in South India -- Deccan Chronicle, bringing every day the most comprehensive bouquet of news and analysis. Its remarkable skill of journalism over 75 years has won the Deccan Chronicle a mature and dedicated readership from all over the world and it is growing.

The Deccan Chronicle has a circulation of over 1.45 million copies each day across Andhra Pradesh, Telangana, Tamil Nadu, Karnataka and Kerala. There are eight editions in Andhra Pradesh and Telangana - Hyderabad, Vijayawada, Rajahmundry, Vishakapatnam, Anantapur, Karimnagar, Nellore and Coimbatore. The paper also has a robust presence in Chennai, Bengaluru, and Kochi.

DCHL also publishes The Asian Age, an English daily with editions in Mumbai, Delhi, Kolkata, and London. The group's financial daily is the Financial Chronicle which gets published from Delhi, Mumbai, Hyderabad, Bangalore and Chennai. It also has a very popular Telugu paper named Andhra Bhoomi.

It has its registered office at No.36 Sarojini Devi Road Secunderabad Telangana-500003 India. Its Authorized Capital is Rs. 70.00 crores and Paid up Capital is Rs. 55.00 crores.

Major Financial Creditors/Bankers²

The Financial Creditors of the CD were UV Asset Reconstruction Company Limited, ICICI Bank Ltd., Canara Bank, Axis Bank Ltd., IDBI Bank, Andhra Bank, PIL Industries Limited, Pegasus Asset Reconstruction Private Limited, Kotak Mahindra Bank, IDFC Bank Limited, Corporation Bank, Tata Capital Financial Services Ltd., Indian Overseas Bank, Central Bank of India, HDFC Bank, State Bank of India etc.

CIRP of Deccan Chronicle Holdings Limited

Financial Creditor files an application in National Company Law Tribunal (“NCLT”)³

Canara Bank 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 Deccan Chronicle Holdings Limited. RSIL herein the Corporate Debtor (CD) owed an amount of Rs. 723 crores.

After hearing both the parties, NCLT admitted the petition filed. National Company Law Tribunal (“NCLT”) and directed to post the case on 19th July 2017 (19/07/2017) for consideration of appointment of Interim Resolution Professional (“IRP”).

Appointment of IRP⁴:

NCLT on hearing dated 19th July 2017 by invoking the powers under sections 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 25 of the Code, appointed Mr. Koteswara Rao Karuchola as IRP. Considering the nature of the industry, the importance attached to the media industry, the IRP was also advised to be very cautious in all his actions and he should also ensure that the existing business should be continued as a going concern and should not suffer in any manner.

Canara Bank files an appeal in National Company Law Tribunal (“NCLAT”)⁵

Canara Bank, the appellant challenged the NCLT order dated 19th July 2017 whereby the learned counsel for appellant submitted that the NCLT could not exclude any court from the purview of moratorium for the purpose of the recovery of amount or

execution of any judgement or decree, including any proceeding, if any, pending before the High Courts and Supreme Court against a CD.

NCLAT held that the power of Supreme Court under Article 32 of the Constitution of India and High Court under Article 226 of Constitution of India which power could not be curtailed by any provision of an Act or a Court.

In view of the aforesaid provision of law, NCLT made it clear that moratorium would not affect any suit or case pending before the Supreme Court under article 32 of the Constitution of India or where an order had been passed under article 136 of the Constitution of India. Moratorium would also not affect the power of the High Court under article 226 of Constitution of India.

IRP files application in NCLT for extension of the CIRP period⁶

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 on 4th January 2018. NCLT vide its order dated 25th January 2018 allowed the period of CIRP to be extended.

Appointment of Resolution Professional (“RP”)⁷

The COC in its meeting dated 25th January 2018 resolved to replace the IRP with new RP. Three Insolvency Professionals (“IP”) were proposed to be appointed namely, Mr. TSN Raja, Dr. Lakshmi Narsimha and Mr. Sanjai Kumar Gupta. In the e- voting held, out of 27 members in CoC, 26 members had participated and as per the scrutinizer’s report, for Mr. TSN Raja 63.14% votes were in favour whereas 65.22% and 18.20% votes were cast in favour respectively for Dr. Lakshmi Narsimha and Mr. Sanjai Kumar Gupta.

As per section 22(2) as applicable at that time, COC in its first meeting either appoint IRP as RP or replace the IRP with new RP by a majority vote of not less than 75%. As per the votes cast, no IP receive the requisite number of votes. Therefore, it necessitated the tribunal to consider an appropriate/suitable and experienced person to conduct CIRP in respect of DCHL which is one of the leading newspapers in the states of Andhra Pradesh and Telangana.

Considering the importance of the sector in which CD was functioning, the employment provided to thousands of people, directly or indirectly contributing to development of the state and also performing the role of information dissemination to millions of people, the bench decided to appoint another RP.

The Bench had the occasion to oversee the performance of one of the IPs, Ms. Mamta Binani who conducted first ever CIRP in the case of Synergies Dooray Automotive Limited and the bench also commended her performance in accepting first ever insolvency resolution plan in the country. Therefore, the Bench was of unanimous opinion to appoint her as RP for DCHL. Thus, NCLT appointed Ms. Mamta Binani as RP.

Mr. Vinayak Ravi Reddy files application in NCLT for directions⁸

Mr. Vinayak Ravi Reddy filed application in NCLT under section 60(5) of the Code for directions. IHFL claimed that the applicant was a personal guarantor to the loan availed by the CD. Applicant filed the application praying NCLT to withdraw the sale notice dated 26th February 2018 and to restrain India Bulls Housing Finance Limited (“IHFL”) from proceeding with auction of property belonging to the applicant during the moratorium period.

The applicant gave personal guarantee against the loan advanced by IHFL of Rs. 100 crores. The loan was availed by CD and IHFL initiated action under SARFAESI Act and issued notice of auction under SARFAESI Act on 21st November 2013 in respect

of two properties. Then applicant and other guarantors including the CD before the High Court of Andhra Pradesh.

The Writ petition was allowed, and High Court set aside auction initiated under SARFAESI act. It had been contented that during moratorium no proceedings can be initiated against personal guarantors as per the judgement laid down in the matter of “Mr. V Ramakrishnan vs. Veasons Energy Systems Pvt. Ltd. and State Bank of India”. The applicant in his capacity as co- borrower executed the loan agreements.

The Writ petition filed also stated that he is co- borrower along with others. The Supreme Court of India also observed in the civil appeal that applicant was a co-borrower. NCLT held that moratorium was not applicable to the properties beyond the ownership of the CD. It was stated that borrower could not be construed as Guarantor. The applicant was borrower. Therefore, the SARFEASI proceedings initiated and the application deserved to be dismissed. The Applicant was a co-borrower and not entitled to take protection of the order of the moratorium caused in the case. Thus, the application was dismissed.

IHFL files application in NCLT for directions⁹

IHFL filed application in NCLT seeking directions to the Resolution Professional and to COC to treat IHFL as Secured Creditor for all purposes in the CIRP. It was stated that at the time of consolidation of claims by RP, the petitioner was recognized as secured creditor. On the other hand, in the meeting of COC held on 29th May 2018, the petitioner was treated as unsecured creditor solely on the ground of non- registration of charge in respect of security claim over the assets of the CD.

It was also stated that petitioner brought to the notice of IRP that it was not mandatory that a charge to be registered for the purpose of consideration of

resolution plans. Petitioner also contended that it had been recognized as secured creditor for the purpose of SARFAESI Act.

NCLT after hearing directed to treat applicant as secured creditor for all the purposes of CIRP.

IDBI Bank files application challenging the approval of Resolution Plan by COC¹⁰

IDBI Bank and India Overseas Bank who were members of the COC filed application under Section 60(5) of the Code, seeking orders for declaring that the RP was not eligible to place the Resolution Plan before the COC for voting and the COC was not eligible to vote on such plan in the absence of ascertaining compliance with the mandatory provisions of the Code. Applicant also prayed to declare the Resolution Plan dated 11th December 2018 as discriminatory and contrary to the Code and applicable law.

The RP received three resolution plans from Bennett Coleman & Company Ltd. (“**R1**”), Arm Infra & Utilities Pvt. Ltd. (“**R2**”) and from the SREI Multiple Asset Investment Trust (“**R3**”). In the 12th COC meeting held on 14th June 2018, R3 was declared as highest bidder. The applicant objected to the Resolution plan inter alia on the grounds that the settlement offered to the applicant against its claims were unacceptable being less than its pro- rata entitlement and that the applicant should be treated at par with other financial creditors.

Further, the applicant objected that the resolution plan did not provide the basis of inter- se allocation between Category A lenders and Category B lenders. It was averred that the resolution plan submitted by the R3 was rejected by the COC as it failed to get the requisite votes. R3 submitted improved resolution plan which was approved by the majority of COC members with 81.39 % voting. It had been averred that in the resolution plan the Financial Creditors had been classified as FC Category A and Category B based on security held by the creditors. 37 financial creditors which fell under category A and 8 financial creditors under category B.

NCLT held that it was clear that the Financial Creditor holding security interest or holding security interest. The grouping of Financial Creditors did not amount to any discrimination. Though, Canara Bank was allotted higher amount than the applicant, it could not be said that there was no discrimination in the allocation of share from the resolution fund. Thus, the application was dismissed.

RP files application in NCLT for approval of Resolution Plan¹⁰

The RP received three resolution plans from Bennett Coleman & Company Ltd. (“R1”), Arm Infra & Utilities Pvt. Ltd. (“R2”) and from the SREI Multiple Asset Investment Trust (“R3”). COC in its 20th COC meeting on 10th December 2018 approved the resolution plan submitted by R3. After deliberations and discussions, NCLT approved the resolution plan vide order dated 3rd June 2019.

Concluding Notes

After the approval of Resolution Plan by NCLT, SREI Infrastructure is in process of taking over the company. However, various appeals have been also pending before NCLAT for decision. The lenders agreed to take a staggering 95.2% haircut to revive the debt-ridden media entity.

CIRP Timeline

- 05.07.2017
- NCLT admitted the application for commencement of CIRP.

- 11.07.2017
- NCLT appointed the IRP.

- 14.09.2017
- Canara Bank filed appeal in NCLAT

- 25.01.2018
- CIRP Period extended by NCLT.

- 25.01.2018
- NCLT appointed Ms. Mamta Binani as RP.

- 15.05.2018
- Mr. Vinayak Reddy files application in NCLT for directions.

- 05.07.2018
- IHFL filed application in NCLT for directions.

- 09.05.2019
- IDBI Bank file application in NCLT for directions.

- 03.06.2019
- NCLT approved the resolution plan.

Bibliography

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²<https://www.deccanchronicle.com/business/in-other-news/230418/deccan-chronicle-holdings-limited-list-of-creditors.html>

³<https://ibbi.gov.in/webadmin/pdf/order/2017/Nov/5th%20Jul%202017%20in%20the%20matter%20of%20Deccan%20Chronicle%20Holdings%20Limited%20CP%20No.%20IB-41-7-HDB-2017-2017-11-29%2016:41:02.pdf>

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⁵[https://ibbi.gov.in/webadmin/pdf/order/2017/Sep/14th%20Sept%202017%20in%20the%20matter%20of%20Canara%20Bank%20Vs.%20Deccan%20Chronicle%20Holdings%20Ltd.%20CA%20\(AT\)%20\(Insolvency\)%20No.%20147-2017-2017-09-22%2009:59:40.pdf](https://ibbi.gov.in/webadmin/pdf/order/2017/Sep/14th%20Sept%202017%20in%20the%20matter%20of%20Canara%20Bank%20Vs.%20Deccan%20Chronicle%20Holdings%20Ltd.%20CA%20(AT)%20(Insolvency)%20No.%20147-2017-2017-09-22%2009:59:40.pdf)

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⁸<https://nclt.gov.in/sites/default/files/Interim-order-pdf/IANO.682018%20ND.pdf>

⁹<https://nclt.gov.in/sites/default/files/Interim-order-pdf/Canara%20Bank-0.pdf>

¹⁰[https://ibbi.gov.in/webadmin/pdf/order/2019/May/9th%20May%202019%20in%20the%20matter%20of%20Deccan%20Chronicle%20Holdings%20Ltd.%20IA%20No.%2023,24,66,120,121,122-2019%20&%20155,320,367%20&%20417-2018%20In%20CP%20\(IB\)%20No.%2041-7-HDB-2017-2019-05-10%2017:25:18.pdf](https://ibbi.gov.in/webadmin/pdf/order/2019/May/9th%20May%202019%20in%20the%20matter%20of%20Deccan%20Chronicle%20Holdings%20Ltd.%20IA%20No.%2023,24,66,120,121,122-2019%20&%20155,320,367%20&%20417-2018%20In%20CP%20(IB)%20No.%2041-7-HDB-2017-2019-05-10%2017:25:18.pdf)

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