

# The Dirty Dozen

Key learnings from the CIRP processes of the twelve entities referred to NCLT by RBI as part of its first list



# A total of 6 entities have seen resolution plans approved by the AA, with 2 entities sent to liquidation and CIRP ongoing for remaining...

Claim amounts are in INR cr.

Corporate Debtor	Resolution Professional	CIRP Status	Employee Strength	Public Listing	Financial Creditors			Operational Creditors			Total		
					Claims	Recovery	%age	Claims	Recovery	%age	Claims	Recovery	%age
Bhushan Steel	Vijaykumar V Iyer	Resolution Order Passed	5,000	✓	56,022	35,571	63.5%	1,483	1,200	80.9%	57,505	36,771	63.9%
Essar Steel*	Satish K. Gupta	Resolution Order Passed	50,000	✓	49,473	Not Finalized	NA	5,074	Not Finalized	NA	54,547	Not Finalized	NA
Alok Industries	Ajay Joshi	Resolution Order Passed	20,169	✓	29,524	5,052	17.1%	1,183	63	5.3%	30,707	5,115	16.7%
Electrosteel Steels	Dhaivat Anjaria	Resolution Order Passed	2,245	✓	13,175	5,320	40.4%	783	-	0.0%	13,958	5,320	38.1%
Monnet Ispat and Energy	Sumit Binani	Resolution Order Passed	2,295	✓	11,015	2,892	26.3%	463	25	5.4%	11,478	2,917	25.4%
Jyoti Structures	Vandana Garg	Resolution Order Passed	1,365	✓	7,365	3,691	50.1%	651	273	42.0%	8,015	3,964	49.5%
Bhushan Power & Steel	Mahendra K. Khandelwal	CIRP Ongoing	7,500	✗	47,148	NA	NA	743	NA	NA	47,891	NA	NA
Jaypee Infratech	Anuj jain	CIRP Ongoing	184	✓	19,375	NA	NA	461	NA	NA	19,836	NA	NA
Era Infra Engineering	Rajiv Chakraborty	CIRP Ongoing	1,549	✓	14,690	NA	NA	613	NA	NA	15,303	NA	NA
Amtek Auto	Dinkar V	CIRP Ongoing	1,360	✓	12,605	NA	NA	207	NA	NA	12,812	NA	NA
Lanco Infratech	Savan Godiawala	Liquidation Order Passed	3,700	✓	45,263	-	-	1,278	-	-	46,541	0	-
ABG Shipyard	Sundaresh Bhat	Liquidation Order Passed	250	✓	18,245	-	-	457	0	-	18,702	0	-

\* Petitions regarding final distribution of recovery between FCs and OCs is being heard at NCLAT

# Some of the major learnings and precedents across procedural matters, resolution plan related litigation and creditor dues...

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## Procedural Matters

- ▶ IBC to override state laws passed prior to IBC coming into effect
- ▶ Withdrawal from insolvency proceedings u/s12A allowable subject to 90% CoC approval
- ▶ CoC holds the right to change, update, supplement, add to, delay or otherwise annul or cease the resolution process at any time,
- ▶ Bid submission from a potential resolution applicant after the final bid submission date can be accepted as long as it helps in maximisation of value for the corporate debtor
- ▶ CoC to take final decision on compliance including 29A, RP to present his diligence report after checking completeness)
- ▶ No bar on creditors for triggering CIRP under IBC even if a winding up petition is pending or admitted before the High Court, unless an official liquidator has been appointed and a winding up order is passed.

## Resolution Matters

- ▶ An aggrieved resolution applicant can approach NCLT only after a plan is considered by the CoC for voting
- ▶ Resolution applicants to seek for necessary approvals and reliefs from respective authorities
- ▶ Potential resolution applicants cannot seek for exclusion of certain period from CIRP under the pretext of amendments made to I&B Code, 2016.
- ▶ Section 29A stipulates that an entity is disqualified from submitting a bid if punishment is so severe so as to include imprisonment for a period of two years. If a potential resolution applicant or a related party thereof is convicted under 'imprisonment or fine' under some other foreign laws, and only monetary fine/imprisonment for less than 2 years is imposed, then there is no disqualification u/s 29A
- ▶ The adjudicating authority should not question the commercial intelligence of the CoC and should approve a resolution plan if its equitable to all creditors involved

## Creditor Matters

- ▶ Payment to different creditors cannot be differential for similarly placed creditors; resolution plan to be fair and equitable to all creditors.
- ▶ Uniform haircut across all classes of creditors no discrimination to be made between FCs and OCs
- ▶ Balance in an account of the corporate debtor, as on the CIRP commencement date, cannot be adjudged against debts of financial creditors
- ▶ Home buyers entitled to initiate a CIRP against a corporate debtor under section 7 of the IBC and will also form part of the committee of creditors
- ▶ Creditors free to invoke corporate guarantees provided by the corporate debtor for its subsidiaries; claims arising from such invocation to be treated in line with other similar claims
- ▶ Repayment amongst creditors within the same class to be done in a pari passu manner basis their dues without regards to seniority of charges held

# Bhushan Steel Limited

## CIRP Overview

Resolution Professional	Vijaykumar V Iyer
Status	Resolution order passed
Date of Admission	26 <sup>th</sup> July, 2017
# of resolution applicants	03 (TSL, JSW and employees of BSL)
Total Claims	Financial: INR 56,000 cr. Operational: INR 1,422 cr.
Successful Resolution Applicant	Bamnival Steel Limited (subsidiary of Tata Steel)
Recovery to FCs	INR 35,200 cr. (c. 63%)

## Company Overview

A listed steel asset catering to automotive and consumer durable industries. The company manufactures primary steel products, such as hot rolled coils and billets, which are supplied to automotive manufacturers and used as inputs in secondary steel manufacturing facilities.

The company owed its financial creditors about INR 56,000 cr. The plea by lenders was admitted on 26th July 2017 with the acquisition completed on 21st May 2018.

## Overview of CIRP process

- ▶ Entire process completed in a period of 293 days; one of few cases to be completed within proposed timeline
- ▶ Recovery for FCs to the tune of INR 32,500 cr. was provided, along with a 12% lender equity stake allowing them to benefit from potential value appraisal post acquisition; set a precedent in terms of value recovery through CIRP
- ▶ Less delays from frivolous litigation ensured low value erosion of the corporate debtor and adequate recovery in a time bound manner for all stakeholders
- ▶ Operations of the corporate debtor was maintained at pre-CIRP levels with a focus to continue the company as a going concern with minimal disruptions; cooperation from incumbent employees was key to ensure a smooth transition
- ▶ All key stakeholders worked in the spirit of the value maximisation. Resolution process was met with keen interest in acquiring the company. The CoC and the NCLT took key decisions in a swift manner within the defined time frame

## Key Legal Judgements

- ▶ NCLT rejected litigation against successful RA acquisition in record time
- ▶ NCLAT rejected pleas from operational creditors for priority of payment on grounds that the resolution plan was fair and equitable to all creditors.
- ▶ RA completed the acquisition (including transfer of shares) within 36 hours of the order by NCLT
- ▶ Flagbearer of adherence to IBC timelines by all stakeholders as part of the resolution process (completed in 293 days)

# Essar Steel Limited

## CIRP Overview

Resolution Professional	Satish Kumar Gupta
CIRP Status	Ongoing
Date of Admission	2 <sup>nd</sup> August 2017
# of resolution applicants	03 (Arcelor Mittal, NuMetal (promoter backed) & JSW)
Total Claims	Financial: INR 49,473 Cr Operational: INR 5074 Cr
Successful Resolution Applicant	Arcelor Mittal India Pvt Ltd*
Recovery to FCs	Proposed recovery of c.86%

## Company Overview

Integrated steel producer with an annual capacity of 10 million tonne per annum in India with a presence in intensive steel consuming markets of Asia and North America

Manufacturing facility comprises ore beneficiation, pellet making, iron making, steel making, and downstream facilities including cold rolling mill, galvanising, pre-coated facility, steel processing facility, extra wide plate mill and a pipe mill

## Overview of CIRP process

- ▶ SBI, one of the financial creditors, filed for IBC in June 2017, the Company was admitted for CIRP in August 2017. NCLT approved the Resolution applicant in March'19, however, final negotiations are still ongoing
- ▶ The Company had received interest from three parties. The final approved Resolution Plan submitted by Arcelor Mittal has provided for an overall recovery of c.81% for all creditors and c.86% for financial creditors
- ▶ Historically, the company was running at negative PAT with low capacity utilization. During the CIRP process, the RP managed to run the company as a going concern with improved performance and utilisation
- ▶ Constantly evolving legal framework e.g. introduction of section 29A (promoter non participation) and introduction of Section 12A led to a lot of on-going litigations which has adversely impacted the resolution timeline

## Key Legal Judgements

- ▶ IBC to override state laws passed prior to IBC coming into effect
- ▶ An aggrieved resolution applicant can approach NCLT only after a plan is considered by the CoC for voting
- ▶ CoC to take final decision on compliance including 29A, RP to present his diligence report after checking completeness)
- ▶ Withdrawal from insolvency proceedings u/s12A allowable subject to 90% CoC approval

\* Identified as successful bidder by CoC

# Alok Industries Limited

## CIRP Overview

Resolution Professional	Ajay Joshi
Status	Resolution order passed
Date of Admission	18 <sup>th</sup> July, 2017
# of resolution applicants	01 (consortium of RIL and JMF ARC)
Total Claims admitted	Financial: INR 29,614 cr. Operational: INR 592 cr.
Successful Resolution Applicant	Reliance Industries Ltd & JM Financial ARC
Recovery to FCs	INR 5,052 cr. (c. 17%)

## Company Overview

A listed textile company established in 1986, Alok Industries grew to be a textile behemoth with presence in apparels, fabrics, accessories, home textiles etc. The company counts Kohl, Carrefour, Marks & Spencer among its customers.

The company owed its financial creditors about INR 26,600 cr. The plea by lenders was admitted on 18<sup>th</sup> July 2017 with the acquisition completed on 08<sup>th</sup> March, 2019.

## Overview of CIRP process

- ▶ Entire process completed in a period of 602 days
- ▶ Recovery for FCs to the tune of INR 5,000 cr. was provided, giving recovery of only 17%; recovery for OCs was only for those with dues less than INR 3 Lacs and total payment to them was INR 4.83 crores.
- ▶ Consortium of Reliance Industries and JM Financial ARC were the only resolution applicant for the company. The plan been rejected by the CoC with 70% of lenders voting favourably (approval by 75% of CoC by voting rights was required u/s 30(4) for approval of resolution plan)
- ▶ Section 30(4) got amended in June 2018 which changed approval requirement of resolution plan to 66%
- ▶ Subsequently, the RP requested the NCLT for withdrawal of liquidation application and for re-voting on the earlier plan. Plan got approved by the CoC on June 18, 2018 with approval from 72% of lenders by voting rights

## Key Legal Judgements

- ▶ Conditional approval of resolution plan passed by NCLT with directions to seek reliefs requested from respective authorities. Implementation of resolution plan to include obtaining necessary regulatory approvals including clearance from Competition Commission of India (CCI)

The resolution order has been challenged at NCLAT by a state-run utilities supplier over preferential treatment towards operational creditors. The supplier had successfully appealed to the NCLT for it to be recognised as an operational creditor. The approved resolution plan proposes payment to OCs with dues below INR 3 lakhs only

# Electrosteel Steels Limited

## CIRP Overview

Resolution Professional	Dhaivat Anjaria
CIRP Status	Resolution order passed
Date of Admission	21st July 2017
# of resolution applicants	03 (TSL, Vedanta and Renaissance Steel)
Total Claims	Financial - INR 13,175 Cr Operational - INR 783 Cr
Successful Resolution Applicant	Vedanta Limited
Recovery to FCs	INR 5,320 (c.40%)

## Company Overview

Electrosteel Steels Ltd has set up 2.51 Million Ton Per Annum (MTPA) Greenfield Integrated Steel Plant near Siyaljori village, in the Bokaro district of Jharkhand. The Company has established excellence at every stage of production by bringing international expertise and solutions from reputed manufacturers.

The Company's product range includes Pig Iron, Billets, TMT Bars, Wire Rods and Ductile Iron Pipes.

## Overview of CIRP process

- ▶ Entire process completed in a period of 270 days; one of few cases to be completed within proposed timeline
- ▶ The Resolution Professional submitted 4 Resolution Plans before the CoC for their consideration. All the members of the CoC approved the Resolution Plan submitted by Vedanta Limited
- ▶ The Resolution Plan envisaged restructuring exercise - conversion of debt into equity, capital reduction and consolidation and delisting of Electrosteels
- ▶ Operations of the corporate debtor was maintained at pre-CIRP levels with a focus to continue the company as a going concern with minimal disruptions; cooperation from incumbent employees was key to ensure a smooth transition
- ▶ All key stakeholders worked in the spirit of the value maximisation. Resolution process was met with keen interest in acquiring the company. The CoC and the NCLT took key decisions in a swift manner within the defined time frame

## Key Judgment

- ▶ Distinction drawn between 'imprisonment or fine' and 'imprisonment and fine' in terms of severity of indictment
- ▶ Section 29A stipulates that an entity is disqualified from submitting a bid if punishment is so severe so as to include imprisonment. If convicted under 'imprisonment or fine' under some other foreign laws, and only fine imposed, then there is no disqualification u/s 29A

# Monnet Ispat and Energy Limited

## CIRP Overview

Resolution Professional	Sumit Binani
CIRP Status	Resolution order passed
Date of Admission	18th July 2017
# of resolution applicants	01 (Consortium of JSW and AION Investments)
Total Claims	Financial - INR 11,015 Cr Operational - INR 450 Cr
Successful Resolution Applicant	Consortium of JSW and AION Investments Pvt Ltd
Recovery to FCs	INR 2,892Cr (c.26%)

## Company Overview

Established in 1994 Monnet Ispat & Energy Limited is into manufacturing and marketing of Sponge Iron, Steel and Ferro Alloys.

The Company is in the elite group of primary steel producers with a world class integrated steel plant at Raigarh that has a production capacity of 1.5 MTPA to produce HR plates, rebars and structure profiles to cater to the rapidly growing infrastructure & construction industry

## Overview of CIRP process

- ▶ AION Investments Pvt Ltd and JSW hold holds 70% and 30% stake respectively in the Consortium
- ▶ The Resolution Plan submitted by the Consortium of JSW and AION Investments Pvt. Ltd, the only bidder, was approved by the CoC with 98.97% majority
- ▶ Approval was also sought from the Competition Commission of India
- ▶ One of the unsecured financial creditor, after dissenting to the Resolution Plan, requested the NCLT to include itself in the list of an assenter
- ▶ The Resolution Plan envisaged restructuring exercise - conversion of part debt into equity, capital reduction and merger. Further, the outstanding statutory dues were paid off in full
- ▶ All key stakeholders worked in the spirit of the value maximisation. Resolution process was met with keen interest in acquiring the company.

## Key Judgment

- ▶ Once the CoC approves the resolution Plan, NCLT cannot interfere in the settlement value assigned to the operational creditor
- ▶ The NCLT directed the RP to include claims with respect to guarantees that are invoked post the commencement of insolvency proceedings



# Jyoti Structures Limited

## CIRP Overview

Liquidator	Vandana Garg
CIRP Status	Resolved
Date of Admission	4 <sup>th</sup> July 2017
# of resolution applicants	01 (group of HNIs led by Sharad Sanghi)
Total Claims	Financial - INR 7,364 cr. Operational - INR 650 cr.
Successful Resolution Applicant	Group of HNI headed by Mr. Sharad Sanghi
Recovery to FCs	INR 3691 cr (~50%)

## Company Overview

Jyoti Structures Limited is in the business of execution of projects relating to power transmission and distribution

The Company is engaged in the manufacturing of transmission line towers, sub-station structures, antenna towers/masts and railway electrification structures

## Overview of CIRP process

- ▶ Jyoti Structured Ltd was admitted for CIRP on 4<sup>th</sup> July 2017 after filing of petition by one of the financial creditors.
- ▶ The Company received only a single bid from a group of HNIs lead by Sharad Sanghi
- ▶ The Resolution Plan received 81% approval, after the voting was re-conducted, on the grounds that the members of the CoC who abstained from voting initially, requested for re-vote and certain other members who voted against the resolution plan in Round 1 , reconsidered their vote
- ▶ The NCLT had rejected the resolution plan and had ordered liquidation. NCLAT reversed the NCLT order and directed the NCLT to hear the resolution plan and asked the resolution applicant to revise the resolution plan
- ▶ The NCLT has approved the resolution plan on 25<sup>th</sup> April 2019

## Key Legal Judgements

- ▶ Open to CoC to change its opinion in favour of resolution plan, however CoC, who once vote in favour of the resolution plan cannot change their views later
- ▶ Supremacy of CoC and their commercial wisdom cannot be questioned
- ▶ Security charge created on the assets should be disregarded and creditors should rank paripasu in terms of repayment

# Bhushan Power and Steel

## CIRP Overview

Resolution Professional	Mahendra Kumar Khandelwal
CIRP Status	Ongoing
Date of Admission	26 <sup>th</sup> July 2017
# of resolution applicants	03 (Liberty House Group, JSW and TSL)
Total Claims	Financial: INR 47,148 Cr Operational: INR 743 Cr
Successful Resolution Applicant	JSW Steel*
Recovery to FCs	Proposed recovery of c.41%

## Company Overview

The company was incorporated in the year 1999. It is a leading manufacturer of flat and long products and have state-of-the-art plants located in Chandigarh, Derabassi, Kolkata and Orissa.

These facilities manufacture value added products covering the entire steel value chain. BPSL has a wide marketing network in both India and abroad for selling its value added product range.

## Overview of CIRP process

- ▶ PNB, mandated by the consortium of lenders to BPSL, filed for CIRP under IBC in June 2017, NCLAT had directed the NCLT principal bench to decide on the successful resolution applicant's bid by March'19, however, final judgement is still awaited
- ▶ The Company had received interest from three parties. The final approved Resolution Plan submitted by JSW Steel has provided for a recovery of c.41% for financial creditors
- ▶ There has been significant delay in the resolution process due to litigation by different stakeholders including unsuccessful bidders, operational creditors and promoters of the company
- ▶ The NCLAT had reprimanded the RP for his failure to follow court orders asking for representatives of operational creditor to attend CoC meetings
- ▶ The Punjab and Haryana High Court has passed ex-parte orders on 18<sup>th</sup> April 2019 asking the NCLT to hear pleas submitted by the promoters of BPSL against the lenders for not sharing resolution plan details

## Key Legal Judgements

- ▶ NCLT, Delhi, had allowed for submission of bid by a potential resolution applicant after the final bid submission date, stating that value maximisation should be given higher priority over following due process
- ▶ NCLAT had observed that the adjudicating authority should ensure that all creditors are treated similarly and there is no discrimination between FCs and Ocs
- ▶ NCLAT upheld the CoC's right to change, update, supplement, add to, delay or otherwise annul or cease the resolution process at any time, thus allowing the successful bidder to alter their basic plan structure even after final submission date

\* Identified as successful bidder by CoC

# Era Infra Engineering

## CIRP Overview

Resolution Professional	Mr. Rajiv Chakraborty
CIRP Status	Ongoing
Date of Admission	8 <sup>th</sup> May 2018
# of resolution applicants	To be finalised
Total Claims	Financial - INR 14,690 Cr Operational - INR 613 Cr
Resolution Applicant	Yet to be decided
Recovery to FCs	Pending

## Company Overview

The company was incorporated in 1990 to pursue opportunities in the infrastructure sector. Era Infra's major business divisions include the engineering, procurement and construction (EPC) business along with equipment management,

EPC firms primarily derive value through technical credentials, order book and key skilled personnel. The firms hold little value by themselves and CIRP for EPC firms have largely ended in liquidation.

## Overview of CIRP process

- ▶ Era Infra was originally admitted for CIRP u/s 7 by the NCLT on 10<sup>th</sup> August 2017. However, the company already had several winding up petitions filed in Delhi High Court. Subsequently, the NCLT proceedings for initiation of insolvency was initiated by Union Bank of India in February 2018 and the same was admitted in May
- ▶ The NCLT decided to waive a period of 215 days from consideration as CIRP due to the various delays caused to the process from the various winding up petitions being heard in the high court
- ▶ Lenders have proposed a 'Stalking Horse' bid structure wherein the debt at the consortium level would be broken into sustainable and unsustainable categories. The sustainable debt would further be broken down lender-wise based on the current security structure while unsustainable debt is to be converted to instruments backed by arbitration claims of the respective SPVs.
- ▶ Lenders had received a bid from Suraksha ARC but the same was rejected by as no upfront payment was promised

## Key Legal Judgements

- ▶ Special bench of NCLT held that there is no bar on the NCLT to trigger insolvency resolution process on an application filed under sections 7, 9 and 10 of the Code even if a winding up petition is pending or admitted before the High Court, unless an official liquidator has been appointed and a winding up order is passed. This was held in view of the fact that the NCLT and the High Court being equivalent in law, the former can impose a moratorium u/s 14 of the code on cases pending before the latter
- ▶ NCLT dismissed petition against Era Infrastructure, a subsidiary of Era Infra Engineering, by one of its financial creditors, for pushing the former into insolvency under grounds of "duplication", as its parent company was already undergoing insolvency wherein the claims of the FC were being dealt with. They also held that contractual commitments are financial debt

# Jaypee Infratech Limited

## CIRP Overview

Resolution Professional	Anuj Jain
CIRP Status	Ongoing
Date of Admission	9 <sup>th</sup> August 2017
# of resolution applicants	To be finalised
Total Claims	Financial - INR 9,782 Cr Operational - INR 461 Cr Home buyers- INR 9,593Cr
Successful Resolution Applicant	To be identified
Recovery to FCs	Not Applicable

Jaypee Infratech Limited, was incorporated on April 5, 2007 as a Special Purpose Vehicle (SPV) to develop, operate and maintain the Yamuna Expressway in the state of Uttar Pradesh, connecting Noida and Agra

The company also has the right to develop 25 million square of land along the Yamuna Expressway at five locations for residential, commercial, amusement, industrial and institutional purposes

## Overview of CIRP process

- ▶ Jaypee Infratech was admitted for CIRP on 9th August, 2017 after filing of petition by one of the financial creditors. However the process was restarted again on 9th August, 2018 after inclusion of homebuyers as Financial Creditors
- ▶ Jaypee Infratech had received interest from multiple parties in both the rounds of Resolution plan process. The CoC is under negotiation with top two bidders in the second round of plan process
- ▶ The insolvency process was carried out in spirit of the law. However the process has been restarted based on Supreme Court's order. The process has resulted in clarity of treatment of home buyers. However, there has been practical challenges with respect to participation of home buyers in CoC and voting on key agenda items.
- ▶ All major stakeholders worked in spirit of the process. The CoC took key decisions within the defined time frame. The vendors and employees worked in along with Resolution Professional towards a possible resolution for the Company and the EOI generated multiple interest for the company.

## Key Legal Judgements

- ▶ Home buyers will now be entitled to initiate a CIRP against a corporate debtor under section 7 of the IBC and will also form part of the committee of creditors
- ▶ Public announcement inviting claims should offer choice of three insolvency professional to act as the authorised representative (AR)
- ▶ The Authorised Representatives will attend the meetings of the CoC, and vote on behalf of each financial creditor to the extent of his voting share
- ▶ Intervention of Supreme Court to protect the interests of the home buyers

# Amtek Auto Limited

## CIRP Overview

Resolution Professional	Dinkar V Venkatasubramaniam
CIRP Status	Ongoing
Date of Admission	24 <sup>th</sup> July 2017
# of resolution applicants	To be finalised
Total Claims	Financial: INR 12,604Cr Operational: INR 187 Cr
Successful Resolution Applicant	To be identified
Recovery to FCs	Not Applicable

## Company Overview

Amtek Auto, established in 1985, emerged as a key player in the Indian auto component space with over 15 plants across India catering to major OEMs both in India and globally.

Following default in plan implementation by the successful resolution applicant the Resolution Professional and the CoC filed an application with the NCLT against the successful resolution application

## Overview of CIRP process

- ▶ Amtek Auto was admitted for CIRP on 24th July 2017 and the shortlisted resolution plan was approved by Hon'ble NCLT on 25th July 2018. The CIRP is re initiated vide NCLT order dated 13th February 2019
- ▶ Possible recovery of almost 37% for the financial creditors and operational creditors, well above the economic value of the current business. The shortlisted resolution applicant defaulted on the implementation of the Resolution Plan after it was duly approved by Hon'ble NCLT. The Adjudicating Authority has ordered to consider the H2 resolution applicant for process further
- ▶ The Resolution Professional has taken many crucial initiatives like capex for maintenance and repair, monetization of scrap, weekly reviews for efficient operational and financial reporting which have helped in achieving positive operational EBITDA on the company level and generating cash to sustain itself despite acute cash crunch hindering the working capital, loss of customer schedule and financial distress

## Key Legal Judgements

- ▶ Requirement for EMDs along with EOI submission
- ▶ Support from financial creditors in the Form of Interim Finance
- ▶ Balance in an account of the corporate debtor, as on the CIRP commencement date, cannot be adjudged against debts of financial creditors
- ▶ The shortlisted Resolution Applicant failed to honour the commitments. Consequently, the NCLT ordered to initiate CIRP from scratch

# Lanco Infratech Limited

## CIRP Overview

Resolution Professional	Savan Godiawala
CIRP Status	Liquidation order passed
Date of Admission	26 <sup>th</sup> July 2017
# of resolution applicants	01 (Thriveni Earthmovers)
Total Claims	Financial - INR 45,263 cr. Operational - INR1,278 cr.
Successful Resolution Applicant	None
Recovery to FCs	Not Applicable

## Company Overview

The company has been involved in the domains of Engineering, Procurement and Construction (EPC), Power, Solar, Natural Resources and Infrastructure over the last two-and-a-half decades

Lanco was one of the leading private sector power developers in India with 3,460 megawatt (MW) under operation and 4,636 MW under construction

## Overview of CIRP process

- ▶ Lanco Infratech was admitted for CIRP on 26<sup>th</sup> July, 2017 after filing of petition by one of the financial creditors.
- ▶ Liquidation order against the company was passed on 27<sup>th</sup> August, 2018 with the RP appointed as the official liquidator
- ▶ Given that EPC companies have most of their assets in the form of intangibles, it makes sale of such companies unattractive as compared to asset heavy companies in steel or power sector
- ▶ Additionally, lack of funds and termination of contracts post initiation of CIRP makes it extremely difficult for any EPC company to continue its operations; there is erosion both in terms of skill exodus and order book diminution.
- ▶ Liquidation order was passed once the lone resolution plan submitted by Thriven Earthmovers failed to get requisite CoC approval despite additional time provided by NCLT.
- ▶ Post liquidation orders, most of its power subsidiaries have also been dragged into IBC, as lenders look to minimize losses

## Key Legal Judgements

- ▶ NCLT rejected the plea of a potential resolution applicant seeking to exclude a certain period from CIRP and to allow for fresh bidding. NCLT held that the company could not seek exemption under the pretext of amendments made to section 29A.

# ABG Shipyard Limited

## CIRP Overview

Liquidator	Sundaresh Bhat
CIRP Status	Liquidation order passed
Date of Admission	1 <sup>st</sup> August 2017
# of resolution applicants	01 (Liberty house Group)
Total Claims	Financial - INR 18,245 cr. Operational - INR 457 cr.
Successful Resolution Applicant	None
Recovery to FCs	Decision to be taken

## Company Overview

ABG Shipyard Ltd is a part of the ABG Group of companies with diversified business interests. Established in 1985, it is headquartered in Mumbai. It has shipbuilding operations in Surat and Dahej in Gujarat.

Following its acquisition of Western India Shipyard Limited in October 2010, it operated a ship repair unit in Goa which was the largest ship maintenance facility in India. This was subsequently also pushed into insolvency

## Overview of CIRP process

- ▶ ABG Shipyard was admitted for CIRP on 1<sup>st</sup> August 2017 after filing of petition by one of the financial creditors.
- ▶ The Company received three EOI's , however only one submitted the resolution plan
- ▶ The CoC rejected the resolution plan on the grounds that the repayment terms did not satisfy the requirements of the creditors, and also on the grounds that the resolution applicant had not honoured its commitment towards other companies where it bid
- ▶ Owing to non receipt of resolution plans by any other bidder, the CoC voted in favour of liquidation
- ▶ Further the NCLT observed that the Company has been involved in undervalued and extortionate transaction
- ▶ The NCLT has passed a liquidation order dated 25<sup>th</sup> April 2019

## Key Legal Judgements

- ▶ Supremacy of CoC and their commercial wisdom cannot be questioned. Once CoC approves the liquidation, the NCLT or NCLAT cannot interfere in the decision unless the decision is perverse of contrary to the provisions of the law
- ▶ Dues received from Coast Guard, Controller of Defence towards work done by workers and services rendered by the employees shall not form part of the assets of the Company while calculating liquidation assets nor it should be dealt under waterfall mechanism u/s 53 of the IBC, and should be distributed to the concerned workers and employees in an appropriate manner