

Restructuring & Insolvency

Monthly Newsletter

May 2023

TABLE OF CONTENTS

RECENT JUDGMENTS

- Re: Go Airlines (India) Ltd
- MK Rajagopalan v. Dr. Periasamy Palani Gounder & Anr
- Vistra ITCL (India) Ltd & Ors v. Mr. Dinkar Venkatasubramanian
- Moser Baer Karamchari Union v. Union of India

RECENT DEALS

- Resolution of KV Developers Pvt Ltd
- Amrit India Ltd (PPIRP)
- Resolution of SARE Gurugram Pvt Ltd
- Resolution of IVRCL Chengapalli Tollways Ltd

COMPANIES ADMITTED TO INSOLVENCY IN APRIL 2023

- Companies admitted to insolvency
- Companies directed to be liquidated



RECENT JUDGMENTS

Re: Go Airlines (India) Ltd

National Company Law Appellate Tribunal Principal Bench, New Delhi | Judgment dated May 10, 2023 |
Company Petition No. (IB)-264(PB)/2023

Background facts

- The Company Petition bearing CP (IB) No. 264(PB)/2023 was filed by Go Airlines (India) Ltd (**Corporate Applicant**) under Section 10 of the Insolvency and Bankruptcy Code, 2016 for the voluntary initiation of CIRP.
- The Corporate Applicant was incorporated in April 29, 2004 and was engaged in running a low-cost Airline under the brand name 'Go Air' since 2005, which was renamed 'GoFirst' in 2021. The Corporate Applicant is the 3rd largest airline operator in India.
- The Corporate Applicant was a profitable operator from 2009-10 to 2018-19. However, from 2022, it began to default on the payments towards its vendors and aircraft lessors and received various notices from its lenders.
- The primary reason for its financial distress was the inherently defective engines supplied by Pratt & Whitney, owing to which almost 34% of its aircrafts were grounded and could not take off.
- On account of the default, the Corporate Applicant was compelled to cancel 4,118 flights with 77,500 passengers in the preceding 30 days. As a result, the DGCA has also issued a Show Cause Notice dated May 02, 2023 to it.
- A perusal of the Admission Order reveals that the Corporate Applicant has availed a total debt of INR 5,251 crore from its financial creditors, including Central Bank of India, Bank of Baroda, IDBI Bank, Axis Bank, Deutsche Bank and UT Finance Corporation. While the Corporate Applicant has not defaulted on its payment obligations to the Financial Creditors, it submitted before the NCLT, Principal Bench that given its current situation, the default would be imminent.
- The Corporate Applicant has averred that it has defaulted on its payment obligations to its operational creditors, i.e., vendors and aircraft lessors. Its dues towards its vendors amount to INR 1,202 crore and those towards its aircraft lessors amount to INR 2,660 crore as on the date of filing.
- The operational creditors of the Corporate Applicant, led by SMBC Aviation Capital Ltd, Narmada Aviation Leasing Ltd and Yamuna Aviation Leasing Ltd opposed the application filed by the Corporate Applicant, contending that it was necessary to hear the creditors prior to admitting the application under Section 10 of the IBC.
- The operational creditors further contended that they wish to file an application under Section 65 of the IBC alleging fraudulent initiation of the CIRP, which ought to be heard prior to the admission of this Application.

Issues at hand?

- Whether there is any mandatory requirement of issuing notice to Creditors before admitting an application under Section 10 of the IBC?
- Whether an application under Section 65 can be entertained even after the commencement of CIRP?
- Whether the Corporate Applicant's application under Section 10 of the IBC ought to be admitted, to initiate the CIRP in respect of the Corporate Applicant?

Decision of the Tribunal

- The NCLT, Principal Bench relied on the decision of the NCLAT in *Unigreen Global Pvt Ltd v. Punjab National Bank & Ors*¹ to hold that a creditor may object to a petition filed under Section 10 of the IBC, however, on limited grounds, such as the non-existence of debt or default in either fact or law.
- The Principal Bench noted that in the present case, the creditors have not opposed the application on the ground of non-existence of debt or default.
- Relying on the application to Adjudicating Authority Rules, 2016, the Principal Bench observed that while the said Rules provide that applications under Section 7 and 9 of the IBC must be served to the Corporate Debtor, there is no requirement for the service of an application under Section 10 of the IBC upon creditors.
- Thus, the NCLT Principal Bench concluded the issue by holding that under Section 10 proceedings, there is no mandatory requirement of issuing notice to the creditors at pre-admission stage. Such notice may be issued to the creditors on the discretion of the NCLT on a case-to-case basis.
- It further held that in cases of clear apprehension of dilution of the assets of the Corporate Applicant and where public interest is involved, issuance of notice cannot be claimed as a matter of right.
- The NCLT, focusing on the meaning of the term 'initiates' as used in Section 65 of the IBC, concluded that Section 65 does not distinguish between pre- and post-admission and as such, an application challenging the initiation of the insolvency resolution process can be adjudicated upon even after the initiation of the CIR Process.
- After ascertaining that there is an existing debt; that the Corporate Applicant has defaulted its repayment obligations; that the application under Section 10 is complete and that the Corporate Applicant is not ineligible under Section 11, the NCLT Principal Bench admitted the application under Section 10.

MK Rajagopalan v. Dr. Periasamy Palani Gounder & Anr

Supreme Court of India | Judgment dated May 03, 2023 | Civil Appeal Nos. 1682-1683 of 2022

Background facts

- The present appeal was preferred against the order dated February 17, 2022 passed by National Company Law Appellate Tribunal (NCLAT), Chennai Bench.
- Appu Hotels Ltd, the Corporate Debtor, availed project loans from a consortium of bankers led by Indian Bank to build Le Meridian, Coimbatore. Over time, the Corporate Debtor failed to meet its repayment obligations, leading to the initiation of CIRP under Section 7 IBC.
- In the CIRP of the Corporate Debtor, the Resolution Plan submitted by MK Rajagopalan was approved by the Committee of Creditors (CoC) with 87.39% majority voting share. Challenging the same, the suspended promoter director of the Corporate Debtor Dr. Periasamy Palani Gounder alleged procedural irregularities in the conduct of the CIRP.
- The NCLT, Chennai while dismissing the application filed by Dr. Gounder approved the Resolution Plan submitted by MK Rajagopalan, as approved by the CoC.
- The NCLAT reversed the order of the NCLT and remanded the matter to the CoC with directions to the resolution professional, to inter alia resume the CIRP from the stage of publication of Form 'G', and to invite the EOI afresh as per the CIRP Regulations.
- Aggrieved by this order of the NCLAT, the Appellant preferred the present Appeal before the Supreme Court.

Issues at hand?

- Whether the approval of the Resolution Plan had been in contravention of Sections 30(2) and 61(3) of the IBC?

HSA

Viewpoint

In a milestone case in voluntary initiation of CIRP under Section 10, the Principal Bench has settled the position that creditors cannot claim as a matter of right to be served with a copy of every application for initiation of CIRP under Section 10 of the IBC. In holding that an application filed under Section 65 of the IBC can also be heard and adjudicated upon after admitting a petition for initiation of CIRP, the NCLT has paved way for speedy admission of applications which do not get heard due to the pendency of other applications under Section 65 of the IBC in the matter. While this edition of the newsletter was going for publication on May 22, 2023, the NCLAT has upheld the admission order passed by the NCLT and has left it for the NCLT to decide on whether it is a fraudulent initiation under Section 65 and also on the issue whether the airlines can continue to be in possession of leased aircrafts even though the lessors had terminated the lease prior to insolvency.

¹ Company Appeal (AT)(Insolvency) No. 81 of 2017

- Whether the resolution applicant was ineligible to submit a Resolution Plan in terms of Section 29-A(e) of the IBC for being disqualified to act as a director under Section 164(2)(b) of the Companies Act?
- Whether the Resolution Plan in question leads to violation of Section 166(4) of the Companies Act and hence, cannot be approved in terms of Section 30(2)(e) of the Code?
- Whether the Appellate Tribunal erred in applying the principles of non-discrimination in relation to related party of corporate debtor and thereby holding against the Resolution Plan in question for want of provision for related party?
- Whether the Appellate Tribunal erred in holding that settlement offer of the promoter in terms of Section 12-A of the IBC was not placed for consideration of CoC; and whether non-consideration of such a proposal has any bearing on the question of approval of the Resolution Plan in question?

Decision of the Court

- Dismissing the present Appeal, the Supreme Court upheld the NCLAT's order which set aside MK Rajagopalan's Resolution Plan on the grounds of ineligibility to submit a plan as an alter ego of the trust 'Sri Balaji Vidyapeeth,' which had already been declared ineligible.
- Further, the Supreme Court held that the resolution applicant was barred from submitting a Resolution Plan by Section 88 of the Trusts Act, 1882.
- The Supreme Court also made categorical observations regarding the conduct of the CIRP of the Corporate Debtor. The revised Resolution Plan in the present case was filed directly before the NCLT, without being put to a vote before the CoC, which was deemed improper.
- Reiterating the law laid down by the Supreme Court in Court in *Committee of Creditors of Essar Steels v. Satish Kumar Gupta & Ors*² and *K Sashidhar v. Indian Overseas Bank*³, the Supreme Court emphasised that the commercial wisdom of the CoC entails a deliberation by the CoC taking into account the interests of various stakeholders as well as the Corporate Debtor.
- Underlining the need for the proper consideration of the plan by the CoC, held that any modification to a plan, however small the same may be, must necessarily be placed before the CoC, approved by the CoC after due deliberation and only thereafter can the same be placed before the NCLT for its approval.
- The Apex Court further found Resolution Plan to be in violation of Section 166(4) of the Companies Act, 2013, which prohibits a director of a company from involving himself in a situation in which s/he may have a direct interest which may conflict with the interest of another company.
- Moreover, the Supreme Court observed that the ineligibility to submit the Resolution Plan as a director under Section 164(2)(b) of the Companies Act, the settlement offer by the promoter under Section 12-A of the Code, and the non-discrimination of related parties were not adequately considered by the NCLAT.

HSA Viewpoint

The decision of the Supreme Court sets the important precedent for examining the eligibility of resolution applicants in light of the embargoes under Section 88 of the Trusts Act, 1882 as well as Section 166(4) of the Companies Act, 2013. It ensures that the spirit of the IBC is held intact in ensuring the swift but just resolution of the corporate debtor. While following the law laid down in *K Sashidhar* and *Essar Steel* judgments, the Supreme Court clarifies that a Resolution Plan must be placed before the CoC afresh, each time an addendum or modification is carried out to it, no matter how minor the addendum/modification.

Vistra ITCL (India) Ltd & Ors v. Mr. Dinkar Venkatasubramanian

Supreme Court of India | Judgment dated May 04, 2023 | Civil Appeal No. 3606 of 2020

Background facts

- The Appellant, Vistra ITCL (India) Ltd filed the present Appeal against an order passed by the National Company Law Appellate Tribunal (NCLAT) in favor of Mr. Dinkar Venkatasubramanian, the Resolution Professional of Amtek Auto Ltd (Corporate Debtor).
- The Corporate Debtor approached Vistra ITCL for a short-term loan facility of INR 500 crore to be used by its group companies, Brassco Engineers Ltd (Brassco) and WLD Investments Pvt Ltd. Vistra ITCL agreed to provide the loan on the understanding that Amtek Auto Ltd would pledge 16,82,06,100 equity shares of face value of INR 2 each of JMT Auto Ltd held by the company, as first ranking exclusive security for the loan.
- To formalize the agreement, a Security Trustee Agreement was executed between Vistra ITCL and WLD for INR 150 crore with security created over the shares of JMT Auto through a board resolution of Amtek Auto Ltd.
- IDBI Bank issued a No Objection Certificate (NOC) allowing for the proceeds of sale of assets to the maximum of INR 450 crore to be used to first settle the dues under the Security Trustee Agreement issued by Amtek.

² Civil Appeal No. 8766-67 of 2019

³ (2019) 12 SCC 150

- Vistra ITCL also executed two additional Security Trustee Agreements, one between the Appellant, Brassco and WLD for INR 150 crore and the other between the Appellant and Brassco for INR 200 crore.
- As part of the loan agreement, Amtek Auto Ltd pledged 66.77% of its shareholding in JMT Auto Ltd to secure the term loan facility availed by WLD and Brassco from KKR and L&T.
- Vide its order dated July 24, 2017, the NCLT, Chandigarh initiated the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor, whereby the Respondent was appointed as the Interim Resolution Professional (IRP) and later as the Resolution Professional (RP).
- The Appellant filed its claim in Form-C amounting to INR 500 crore, which was rejected by the Respondent Resolution professional. The Appellant challenged the rejection of its claim before the NCLT, Chandigarh Bench as well as the NCLAT, however, the same was upheld on both the levels.
- Aggrieved by the order of the NCLAT rejecting its claim, the Appellant filed the present appeal.

Issues at hand?

- Whether the Corporate Debtor owed a financial debt to the Appellants?
- Whether the claim of the Appellant as a secured financial creditor ought to have been admitted, based on the pledge of shares extended in favor of the Appellant?

Decision of the Court

- Relying on the decisions in Anuj Jain Interim Resolution Professional for *Jaypee Infratech Ltd v. Axis Bank Ltd*⁴ and *Phoenix ARC Pvt Ltd v. Ketulbhai Ramubhai Patel*⁵, the Supreme Court held that the Corporate Debtor could not be held liable to repay the loans as the same were extended to its group companies, with whom the lender had separate, detailed agreements.
- It was further observed that the under the Pledge Agreement, the liability of the Corporate Debtor was limited to its shares pledged in favor of the Appellant.
- Accepting the contention of the Appellant that the shares pledged to it created a security interest in its favor, the Apex Court pronounced that the Appellant was a 'secured creditor' of the Corporate Debtor.
- Emphasizing on the legislative intent of the 2019 Amendment to the IBC, the Supreme Court underlined the need to ensure that in any Resolution Plan, operational creditors, who are not represented in the Committee of Creditors, are provided with their liquidation value entitlement in terms of Section 53 of the IBC.
- Observing thus, the Supreme Court held that the claim of the Appellant be treated as a secured creditor for the purpose of Sections 52 and 53 of the IBC. As such, the Appellant would retain its security interest in the shares of the Corporate Debtor which were pledged to the Appellant.
- Consequently, the Appellant would also be entitled to claim the proceeds from the sale of the pledged shares in the event of the liquidation of the Corporate Debtor.

HSA Viewpoint

An important question of law was settled by the Supreme Court in this case, wherein the Supreme Court accepted the contention of the Appellant that it was in fact, a secured creditor, although not a financial creditor. Further, the Supreme Court held that the liability of the Corporate Debtor was limited to that of its shares pledged in favor of the Appellant as security for the loans granted by the Appellant to the group companies of the Corporate Debtor. Very interestingly, the Supreme Court has rightly doubted the correctness of the Anuj Jain judgment insofar as third-party mortgagees have been held to be only secured creditors as opposed to financial creditors.

Moser Baer Karamchari Union v. Union of India

Supreme Court of India | Judgment dated May 02, 2023 | Writ Petition (C) No. 421 of 2019

Background facts

- Moser Baer Karamchari Union filed a petition seeking the striking down of Section 327(7) of the Companies Act, 2013 which provides that workers' dues would not get preferential payment in case a company undergoes liquidation under the IBC, 2016.

Issues at hand?

- Whether a dispute raised by a Corporate Debtor subsequent to its consumption of the goods amounts to a pre-existing dispute?

Decision of the Court

- The Supreme Court held that sub-Section (7) of Section 327 of the Companies Act, 2013, which exempts the application of Sections 326 and 327 in case of liquidation under the IBC, is neither arbitrary nor violative of Article 21 of the Constitution of India.
- The distribution of assets in cases where a company goes into liquidation under the IBC shall have to be made as per Section 53 of the IBC, subject to Section 36(4) of the IBC. Holding thus, the Supreme Court dismissed the present writ petition.

⁴ 2019 SCC OnLine SC 1775

⁵ (2021) 2 SCC 799

- Under Section 271 of the Companies Act, 2013, even a running and financially sound company can be wound up for the reasons provided in Clauses (a) to (e).
- The reasons and grounds for winding up under Section 271 of the Companies Act, 2013 are vastly different from the reasons and grounds for the revival and rehabilitation scheme as envisaged under the Code. Therefore, the Companies Act, 2013 and the IBC deal with different situations and cannot be equated when examining discrimination or violation of the Constitution of India.
- The Apex Court categorically opined that the losses suffered by the workmen, who form a separate class of creditors, should not be considered unjust or arbitrary unless they are found to be onerous and burdensome on the workmen.
- The Court further held that the examination of whether there is a violation of Article 14 or Article 21 of the Constitution of India does not require a word-by-word comparison of the waterfall mechanism under the Companies Act, 2013 and the rights of workmen under the IBC, as the grounds and situations under the two enactments are different and should be evaluated in the context of their respective objectives and purposes.

HSA

Viewpoint

The Supreme Court has granted sufficient protection to the interests of employees and workmen under the mechanism provided under the IBC as well as the Companies Act, 2013. It has further held that in case of conflict between the provisions of the Companies Act, 2013 and the IBC, the latter will prevail.



RECENT DEALS

Resolution of KV Developers Pvt Ltd

- The NCLT, New Delhi Bench, Court – III, vide an order dated April 17, 2023 approved the Resolution Plan submitted by Brijkishor Trading Pvt Ltd and Mr. Sumit Kumar Khanna, the Successful Resolution Applicant, in the CIRP of KV Developers Pvt Ltd, the Corporate Debtor.
- The Corporate Debtor is engaged in the business of Real Estate activities with own or leased property including sale of land and cemetery lots, operating of apartment hotels and residential and mobile home sites.
- Vide order dated October 10, 2020, the NCLT, New Delhi Bench, Court – III admitted the Company Petition filed by LIC Housing Finance Ltd under Section 7 of the Code and ordered for initiation of the CIRP of the Corporate Debtor thereby appointing Mr. Pankaj Narang as the Interim Resolution Professional, who was later confirmed as the Resolution Professional of the Corporate Debtor.
- Pursuant thereto, the Interim Resolution Professional constituted the Committee of Creditors in accordance with Section 21(2) of the Code, which comprised of the 428 homebuyers/allottees as creditors in class having 40.50% voting share and LIC Housing Finance Ltd having 59.50% voting share.
- After issuance of Form G, in terms of Section 25(2)(h) of the IBC read with Regulation 36A (1) of the CIRP Regulations, 2016, on January 10, 2021, six Prospective Resolution Applicants came forward for the submission of the Resolution Plan. However, in pursuance to the Request for Resolution Plan issued, only three Prospective Resolution Applicants submitted Resolution Plans. After due discussion and deliberation, the Resolution Plan received from the Successful Resolution Applicant was approved with 100 % voting share by the CoC in its 7th meeting held on July 13, 2021.
- Following the decision of the NCLAT in ***Puneet Kaur v. K.V. Developers***⁶ inter alia directing the Resolution Applicant to submit an addendum to the Resolution Plan considering the claims of homebuyers filed belatedly, an addendum dated July 03, 2022 was submitted, which was unanimously approved by the CoC in its 9th Meeting dated July 08, 2022.
- The Successful Resolution Applicant, a consortium of Brijkishor Trading Pvt Ltd And Mr. Sumit Kumar Khanna, shall implement the Resolution Plan through the nominated SPV, i.e., REAR Co Pvt Ltd. Brijkishor Trading Pvt Ltd is engaged providing advisory services for investments in real estate and financial assets. Mr. Sumit Kumar Khanna has over 20 years of experience in Corporate Finance and Restructuring with focus on managing and turning around distressed assets in Real Estate sector.

⁶ Company Appeal (AT) (Insolvency) No. 390 of 2022 dated November 11, 2021

- On approval of the Resolution Plan by the CoC, the Resolution Professional had issued LOI on July 22, 2021, which was accepted by the Successful Resolution Applicant vide its letter dated July 23, 2021. Further, as per the terms of RFRP, the Successful Resolution Applicant furnished a performance bank guarantee of INR 1.2 crore.
- A perusal of the order of approval of Resolution Plan shows that the Resolution Plan provides for the delivery of complete flats to the allottees/homebuyers and an amount of INR 35.34 crore to LIC Housing Finance Ltd, the sole other financial creditor.
- The Successful Resolution Applicant proposes to arrange up to INR 20 crore for the Project within 90 days of the Implementation Date. In addition to this, the Successful Resolution Applicant has received proposed finances of INR 60 crore from HDFC Bank and INR 135 crore from the Government of India's SWAMIH Investment Fund.
- There are total 7 towers in the Project, out of which 5 are at an advanced stage of construction. The Successful Resolution Applicant proposes to complete the construction of the towers in 3 Phases (to be calculated from the Implementation Date): Phase 1A – 15 to 18 months; Phase 1B – 18 to 21 months; and Phase 2 – 42 months.
- The Resolution Plan proposes two Plans for the delivery of flats to the homebuyers/allotees – construction linked payment plan and deferred payment plan. Both the plans require an upfront payment of 10% of Balance Sale Consideration and 10% of the Sale Price Equalizer within 30 days from the Effective Date.
- The Construction linked payment plan provides for 3 further tranches of payment, 30% each: (a) 90 days from the commencement of construction of the tower; (b) 360 days from the commencement of construction of the tower; and (c) on offer of possession of the unit. The Deferred payment plan provides for a one-time payment of 90% directly on offer of possession, with additional payments of 'Finance Cost' of INR 200/sq feet for residential units and INR 500/sq feet for commercial units.
- An avoidance application under Sections 43 and 45 of the IBC bearing C.A./1917/ND/2021 is pending before the NCLT, New Delhi Bench, Court – III. In respect of the same, Clause 12(iv) of the Resolution Plan provides that any recovery made from the avoidance transactions shall be shared equally between the Financial Creditors – allottees and the Resolution Applicant.
- Further, in compliance with the Delhi High Court's judgment in *Tata Steel BSL Ltd v. Venus Recruiter Pvt Ltd* [2023/DHC/257], the Resolution Plan provides that the Successful Resolution Applicant retains the right to report and take required legal actions on transactions which have taken place within the relevant period but haven't been reported to the Adjudicating Authority.
- Relying on the position laid down by the Supreme Court in *Committee of Creditors of Essar Steels v. Satish Kumar Gupta & Ors*⁷ and *K Sashidhar v. Indian Overseas Bank*⁸, the NCLT New Delhi Bench, Court–III observed that the power of judicial review conferred on the Adjudicating Authority under Sections 30(2) and 31 of the IBC is limited and the Adjudicating Authority cannot venture into the commercial aspects of the decision of the CoC.
- In view of the abovementioned observations, the NCLT held that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and Regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and pronounced the Resolution Plan as approved.

Amrit India Ltd (PPIRP)

- The NCLT, New Delhi, Principal Bench, vide an order dated May 03, 2023 approved the Resolution Plan submitted by Aquarius Fincap and Credits Pvt Ltd, the Successful Resolution Applicant, in the Pre-Packaged Insolvency Resolution Process (PPIRP) of Amrit India Ltd, the Corporate Debtor.
- The Corporate Debtor is engaged in the trading and consultancy business. However, has been out of business for the last 2-3 years.
- Vide order dated November 28, 2022, the NCLT, New Delhi, Principal Bench admitted the Company Petition filed by Amrit India Ltd under Section 54C of the Insolvency and Bankruptcy Code, 2016 and ordered for initiation of the Pre-Packaged Insolvency Resolution Process of the Corporate Debtor, thereby appointing Mr. Mukesh Kumar Jain as the Resolution Professional.
- Pursuant thereto, the Resolution Professional constituted the Committee of Creditors, comprising of only one financial creditor – i.e., Mr. Awadh Saran Singh having 100% voting share.
- In the 1st CoC meeting held on December 12, 2022, the CoC deliberated upon the Base Resolution Plan submitted by the Corporate Debtor, however, as the same proposed a 90%

⁷ Civil Appeal No. 8766-67 of 2019

⁸ (2019) 12 SCC 150

haircut in the debt owed to the financial creditor and a 100% impairment to the contingent creditors, CoC requested the Corporate Debtor to improve the Base Resolution Plan and also to invite Resolution Plans from the public, as per Section 54K read with Regulations 42 to 47 of the PIRP Regulations, 2021.

- In the 3rd CoC meeting held on December 16, 2022, the CoC approved the contents of the invitation for Prospective Resolution Applicants and of the evaluation matrix and December 31, 2022 was determined as the last date for submission of Resolution Plans. Before the said date, the Resolution professional received only one Resolution Plan, from Aquarius Fincap and Credits Pvt Ltd.
- After due discussions and deliberations, in the 5th CoC meeting held on February 21, 2023, the Resolution Plan submitted by Aquarius Fincap and Credits Pvt Ltd was approved by the CoC by a majority of 100%.
- A perusal of the order of approval of Resolution Plan shows that the Resolution Plan provides for a total payment of INR 7.20 lakh to the stakeholders, including the sole secured financial creditor as well as other creditors. The Plan proposes for the amount of INR 5 lakh to be paid to financial creditors in two tranches – 50% on the approval of the Resolution Plan by the CoC (to be considered as the Performance Bank Guarantee) and the rest of the 50% upon the approval of the Resolution Plan by the NCLT, Principal Bench.
- The Successful Resolution Applicant has the net worth of INR 544.61 crore on March 31, 2022. Further, the new promoters have undertaken to infuse funds from its internal accruals. As such, the financial resources of the Successful Resolution Applicant are sufficient to provide for the funds required for further business.
- The Resolution Plan provides that subsequent to the implementation of the Plan, the equity shareholders of the Corporate Debtors from the public to the extent of 6,52,220 shares will be assigned shares of the transferee company in the ratio of one share for every 200. Preference shares of the Corporate Debtor shall be extinguished.
- Based on the abovementioned observations, the NCLT, Principal bench approved the Resolution Plan and concluded the PIRP of Amrit India Ltd.

Resolution of SARE Gurugram Pvt Ltd

- The NCLT, New Delhi, Principal Bench, vide an order dated April 24, 2023 approved the Resolution Plan submitted by the consortium of KGK Realty (India) Pvt Ltd and Dhoot Infrastructure Projects Ltd, the Successful Resolution Applicant, in the CIRP of Sare Gurugram Pvt Ltd, the Corporate Debtor.
- Vide order dated March 09, 2021, the NCLT, Principal Bench admitted the Company Petition filed by Asset Care and Reconstruction Enterprises Ltd (**ACRE**) under Section 7 of the Code and ordered for initiation of the CIRP of the Corporate Debtor thereby appointing Mr. Ajit Gyanchand Jain as the Interim Resolution Professional. Subsequently, he was confirmed as the Resolution Professional during the 1st CoC meeting held on April 19, 2021.
- The Corporate Debtor is engaged in the business of construction and development of residential and commercial real estate projects. Presently, the Corporate Debtor is developing two Projects: Crescent Parc Project on 48.818 acres in villages Wazirpur and Mewka, Sector 92, Gurgaon, Haryana; and Sports Parc Project on 17.212 acres in Village Dhorka, Sector 92, Gurgaon, Haryana. The flats in Phases 1 & 2 of the Crescent Parc project have been handed over to the allottees and the Resolution Plan covers the remaining phases 3-7 of the Project.
- After the collation of claims by the IRP, the CoC comprised of homebuyers of the Project, Alchemist Asset Reconstruction Company Ltd, Bank of India and ACRE. Apart from this, there were claims received from Sare Facility (Gurgaon) Services Pvt Ltd, a related party of the Corporate Debtor; operational creditors and Employees.
- After issuance of Form G, in terms of Section 25(2)(h) of the IBC read with Regulation 36A (1) of the CIRP Regulations, 2016, six Prospective Resolution Applicants – Alpha Corp Development Pvt Ltd; Consortium of KGK Realty (India) Pvt Ltd and Dhoot Infrastructure Project Ltd; Mr. Nikhil Jain; Signature Global (India) Ltd; Mr. Sumeet Nanda; and Mr. Sunil Kumar Jain – submitted Resolution Plans. All six Resolution Plans were found to be compliant with the Code and put to vote. After due discussion and deliberation, the Resolution Plan received from the Successful Resolution Applicant – Consortium of KGK Realty (India) Pvt Ltd and Dhoot Infrastructure Project Ltd – was approved with 100% voting share by the CoC in its 7th meeting.
- On approval of the Resolution Plan by the CoC, in accordance with the terms of RFRP, the Successful Resolution Applicant furnished a performance security of INR 2.5 crore through bank guarantee. Further, the Successful Resolution Applicant has also provided two Performance

Bank Guarantees of INR 15.03 crore and INR 5.28 crore dated January 18, 2022, in favor of the CoC.

- In the Consortium, KGK Realty (India) Ltd is the Lead Member having 74% voting share, while Dhoot Infrastructure Projects Ltd has 26% voting share. Both the companies are engaged in development of residential, commercial, hospitality and industrial projects in Gurgaon, Jaipur, Navi Mumbai and Indore.
- A perusal of the order of approval of Resolution Plan shows that the Plan provides a detailed Implementation Schedule. The Plan provides for the settlement of workmen/employee dues within 90 days from Effective Date and the payment of Financial Creditors in two tranches: Tranche 1 – INR 95 crore within 90 days from Effective Date and Tranche 2 – in 4 tranches within 4 years from Effective Date.
- The Successful Resolution Applicant endeavors to complete the construction of the remaining phases (3 to 7) of The Crescent Parc Project within 36 months from Construction Commencement Date. Phases 3 and 7 which are at an advanced stage of construction will be completed first, followed by Phases 4, 5 and 6.
- The Successful Resolution Applicant proposes to allocate a sum of INR 25 crore for expediting the construction and an additional amount of INR 2 crore for beautification and upgradation of the common areas. The total estimated cost of construction is INR 250 crore, which shall be sought from various banks & financial institutions.
- The Sports Parc Project is proposed to be developed in 3 Phases, comprising total 942 saleable units and 166 EWS units, over a period of 42 months starting from the completion of 1 year from the Effective Date. The cost of construction for the Sports Parc Project is estimated to start at INR 3540 per sq feet.
- The Resolution Plan provides for a total payment of INR 990.22 crore, comprising of the payment of INR 225 crore to Financial Creditors, INR 10 lakh to operational creditors, and units with the aggregate value of INR 765.07 crore to the homebuyers/allottees.
- In view of the abovementioned observations, the NCLT Principal Bench held that the Resolution Plan meets the requirements of Sections 30(2) of the IBC and Regulations 37, 38, 38(1A) and 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and pronounced the Resolution Plan as approved.

Resolution of IVRCL Chengapalli Tollways Ltd

- The NCLT, Hyderabad Bench-II, vide an order dated March 01, 2023 approved the Resolution Plan submitted by SPCP Luxembourg Strategies S.A.R.L., the Successful Resolution Applicant, in the CIRP of IVRCL Chengapalli Tollways Ltd, the Corporate Debtor.
- Vide order dated April 20, 2022, the NCLT, Hyderabad Bench admitted the Company Petition filed by Assets Care & Reconstruction Enterprise Ltd under Section 7 of the Insolvency and Bankruptcy Code, 2016 and ordered for initiation of the CIRP of the Corporate Debtor thereby appointing Mr. Sutanu Sinha as the Interim Resolution Professional. Subsequently, he was confirmed as the Resolution Professional during the 1st CoC meeting held on May 25, 2022.
- Pursuant thereto, the Interim Resolution Professional constituted the Committee of Creditors in accordance with Section 21(2) of the Code. The CoC comprised of only one financial creditor – i.e., ACRE having 100% voting share.
- After issuance of Form G on July 09, 2022, three Prospective Resolution Applicants submitted their Resolution Plans, namely SPCP Luxembourg Strategies SARL, Highways Infrastructure Trust, and Cube Highways and Infrastructure V. Pvt Ltd. All three Resolution Plans were found to be compliant with the Code and put to vote. After due discussion and deliberation, the Resolution Plan received from the Successful Resolution Applicant – SPCP Luxembourg Strategies SARL – was approved with 100% voting share by the CoC in its 13h meeting dated March 08, 2023.
- The Successful Resolution Applicant is a company registered under the laws of Luxembourg. Its investment adviser is Silver Point Capital which focuses on global investments with turnaround opportunities. Silver Point Capital has prior experience of investing in India and uses the Successful Resolution Applicant as a vehicle for its debt investments in India.
- A perusal of the order of approval of Resolution Plan shows that the Resolution Plan provides for a total payment of INR 1464.98 crore to the stakeholders, which is 100% of the total admitted claims. The sole secured financial creditor, ACRE, has an admitted claim of INR 1058.49 crore. The operational creditors have admitted claims worth INR 6.45 crore.
- The payment to the sole secured financial creditor, ACRE is proposed to be made by a combination of ways including issuance of Compulsory Convertible Debentures amounting up to INR 5 crore; equity in the Corporate Debtor; the proceeds of new equity shares; and excess cash.

the Resolution Plan also proposes to pay the operational creditors 100% of their admitted debt on Payment Date, i.e., 60 days from the Effective Date.

- The Plan provides for the full payment of the dues owed to NHAI including Unpaid Due Premium and NHAI Other Dues on Payment Date, i.e., 60 days from the Effective Date.
- The Successful Resolution Applicant has proposed to subscribe to 100% of the paid-up share capital of the Corporate Debtor under the Foreign Direct Investment route by a combination of subscription of New Equity Share and/or New Compulsorily Convertible Debentures aggregating to INR 15 crore.
- As on November 30, 2021, the Resolution Applicant has assets under management amounting to INR 12,488 crore. Along with support from Silver Point Capital, the Resolution Applicant has sufficient funds readily available to be deployed for the implementation of the Resolution Plan.
- Relying on the position laid down by the Supreme Court in K. Sashidhar v. Indian Overseas Bank⁹, Committee of Creditors of Essar Steels v. Satish Kumar Gupta & Ors¹⁰ and Vallal RCK v. Siva Industries and Holding Ltd & Ors, the NCLT Hyderabad Bench-II observed that the power of judicial review conferred on the Adjudicating Authority under Sections 30(2) and 31 of the IBC is limited. Holding that the Resolution Plan meets the requirements of Sections 30(2) of the IBC and Regulations 37, 38, 38(1A) and 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and pronounced the Resolution Plan as approved.

⁹ (2019) 12 SCC 150

¹⁰ (2020) 8 SCC 531



COMPANIES ADMITTED TO INSOLVENCY IN APRIL 2023

Companies admitted to insolvency

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Future Lifestyle Fashions Ltd	Mumbai	Apparel brand
2	Sree Sankara Community for Ayurveda Consciousness Ltd	Kochi	Community, personal and social services
3	Yatin steels India Pvt Ltd	Mumbai	Manufacturing of basic iron & steel
4	Infinia Solutions & Services Pvt Ltd	Mumbai	Business services
5	Celogen Pharma Pvt Ltd	Mumbai	Manufacturing of metals and chemicals
6	PJM Minerals and Industries Pvt Ltd	Mumbai	Mining and quarrying
7	Popular Steel Works and Agricultural Implements Pvt Ltd	Mumbai	Development of agricultural equipment
8	Ashpearl Shipping Services Pvt Ltd	Mumbai	Sea and coastal water transport
9	Datta Krupa Roller Flour Mill Pvt Ltd	Mumbai	Processing wheat products
10	Process Construction and Technical Services Pvt Ltd	Mumbai	Civil engineering works
11	Calvin Associates Pvt Ltd	Mumbai	Trading in real estate and personal property
12	Perfect Engine Components Pvt Ltd	Mumbai	Manufacturing of general-purpose machinery
13	Apollo Polyvinyl Pvt Ltd	Chennai	Trading of vinyl products
14	D J Appliances Pvt Ltd	Mumbai	Trading of household and electronic goods
15	Ansal Crown Infrabuild Pvt Ltd	New Delhi	Construction business
16	No Exit Clothing Pvt Ltd	Chandigarh	Trading of apparels
17	MP Enterprises & Associates Ltd	Mumbai	Building, cleaning and maintenance services.
18	Hanson Agro Ltd	Chandigarh	Forestry and logging
19	Valtrom Technologies Pvt Ltd	New Delhi	Manufacturing of electrical equipment
20	Whiz Enterprise Pvt Ltd	Mumbai	Infrastructure development, project management, asset management and business support services
21	Hanson Petro Pvt Ltd	Chandigarh	Manufacturing and trading of plastic bags and sheets
22	Symphonia & Graphicus Pvt Ltd	Jaipur	Printing, market research and public relations
23	Shree Rajasthan Syntex Ltd	Jaipur	Manufacturing of synthetic spun yarns, cotton yarns and polypropylene yarns
24	Thyme & Reason Hospitality LLP	Mumbai	Hospitality services
25	Eko Air Filtration India Pvt Ltd	Mumbai	Manufacturing of appliances
26	Flash Forge Pvt Ltd	Mumbai	Manufacturing and supply of forging, forging parts, chemical plants & machinery
27	Amar Prakaash Developers Pvt Ltd	Chennai	Real estate
28	Santoshi Barrier Film India Pvt Ltd	Mumbai	Manufacturing of co-extruded plastic film
29	Sharon Solutions Ltd	Chennai	Manufacturing of SIM cards and smart cards
30	DK Infrastructure Pvt Ltd	Mumbai	Commercial, residential and industrial construction
31	Jogvick Manufacturing & Trading Pvt Ltd	Kolkata	Manufacturing of India Made Foreign Liquor
32	Madan's Wine Stores Pvt Ltd	Kolkata	Distribution of distilled spirits
33	Sebros Steels Pvt Ltd	Mumbai	Manufacturing of heavy fabrication structures

34	Johal & Company (Wine Sales) Pvt Ltd	Kolkata	Manufacturing of liquor
35	Shradha Agencies Pvt Ltd	Kolkata	Wholesale trading of goods
36	Azam Rubber Products Pvt Ltd	Allahabad	Manufacturing of footwears
37	Bangalore Blues Entertainment India Pvt Ltd	Bengaluru	Hospitality services
38	Value Designbuild Pvt Ltd	Bengaluru	Property development and design-build services
39	Imperial Consultants and Securities Ltd	Chennai	Financial advice; portfolio accounting engines
40	Nano Minpro Pvt Ltd	Mumbai	Trading of apparels
41	Simm Samm Hotels Pvt Ltd	Mumbai	Managing hotels, camping sites and short-stay accommodation
42	Vindhyavasini Steel Products Pvt Ltd	Mumbai	Casting of metals
43	Insteel Engineers Pvt Ltd	Mumbai	Structural steel design and detailing
44	Radharani Exports Pvt Ltd	Jaipur	Retail stores
45	Deify Infrastructures Ltd	Mumbai	Civil engineering
46	MPS Car Care & Services Pvt Ltd	Mumbai	Sale, maintenance and repair of motorcycles & related parts
47	Megafin Securities Ltd	Hyderabad	Production, processing and preservation oils and fats
48	Sushitex Industries Pvt Ltd	Mumbai	Manufacturing of textiles
49	Sudalagunta Sugars Ltd	Amaravati	Manufacturing of food items
50	Krishna Premium Care Services LLP	Hyderabad	Business services
51	Windals Auto Pvt Ltd	Mumbai	Metal fabrication industry

Companies directed to be liquidated

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Ten Ocean Marine Ltd	Mumbai	Manufacturing of machinery and equipment
2	Maestria Paints India Pvt Ltd	Hyderabad	Production of paints and raw materials
3	Princi Proteins Pvt Ltd	Ahmedabad	Trading of castor oil
4	Samson and Sons builders and Developers Pvt Ltd	Kochi	Civil engineering
5	Sagar Autotech Pvt Ltd	Indore	Maintenance and repair services
6	Mahajan Steel Furnace Pvt Ltd	Chandigarh	Manufacturing of metals & chemicals
7	Warana Dairy and Agro Industries Ltd	Mumbai	Dairy business
8	Kharewali Steel Pvt Ltd	Mumbai	Manufacturing of steel products
9	Suryajyothi Spinning Mills Ltd	Hyderabad	Manufacturing of cotton and blended yarn
10	Bihar State Construction Corporation Ltd	Kolkata	Civil engineering and construction
11	Vikram Structures Pvt Ltd	Bengaluru	Construction of buildings
12	Ezeego One Travel & Tours Ltd	Mumbai	Online travel and hotel bookings
13	E Ruttonsha Pvt Ltd	Mumbai	Manufacturing of computing machinery
14	Aaj Ka Anand Papers Ltd	Mumbai	Publishing house
15	Hema Automotive Pvt Ltd	New Delhi	Manufacturing of fabricated metal products
16	Stan Autos Pvt Ltd	New Delhi	Car repair and maintenance services
17	Samtex Desinz Pvt Ltd	New Delhi	Dressing and dyeing of fur
18	JR Foods Ltd	Chennai	Extraction of edible oil solvents
19	Bhrihu Infra Pvt Ltd	Hyderabad	Real estate activities with self-owned or leased property
20	Uniply Industries Ltd	Chennai	Manufacturing of wood, cork, straw and plaiting materials
15	Raghuleela Infraventures Pvt Ltd	Mumbai	Building completion

CONTRIBUTIONS BY:

Abhirup Dasgupta | Partner

Pratik Ghose | Partner

Avishek Roy Chowdhury | Principal Associate

Ishaan Duggal | Principal Associate

Mukta Halbe | Associate

HSA AT A GLANCE

FULL-SERVICE CAPABILITIES



BANKING & FINANCE



COMPETITION & ANTITRUST



CORPORATE & COMMERCIAL



DEFENCE & AEROSPACE



DISPUTE RESOLUTION



ENVIRONMENT, HEALTH & SAFETY



INVESTIGATIONS



LABOR & EMPLOYMENT



PROJECTS, ENERGY & INFRASTRUCTURE



PROJECT FINANCE



REAL ESTATE



REGULATORY & POLICY



RESTRUCTURING & INSOLVENCY



TAXATION



TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

GLOBAL RECOGNITION



STAY CONNECTED



www.hsalegal.com



mail@hsalegal.com



HSA Advocates

PAN INDIA PRESENCE

New Delhi

Email: newdelhi@hsalegal.com

Mumbai

Email: mumbai@hsalegal.com

Bengaluru

Email: bengaluru@hsalegal.com

Kolkata

Email: kolkata@hsalegal.com