



**COMMERCIAL WISDOM OF CREDITORS FOR VALUE MAXIMIZATION:
THE SIGNIFICANCE OF MAHARASHTRA SEAMLESS LIMITED VS.
PADMANABHAN VENKATESH & ORS**

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Introduction

Businesses are the backbone of the economy, and when a business is successful it is due to the knowledge of the its leaders, and when a business fails it leads to insolvency which is then in the hands of the individuals who understand the commercial sector. The role of Insolvency and Bankruptcy Code 2016 in the commercial machinery lies in the latter. Wisdom is referred to the quality of sound experience, knowledge, and good judgement to arrive at a decision; Commercial wisdom is the same presented specifically in the field of economics.

When IBC made the shift from debtor-in-possession to creditor-in-control regime, it gave the creditors of a business their due right of deciding what happens to their investments in the business. The revolutionary legislation, albeit, set a fair system to the effect. Once an application for default is filed against the Corporate Debtor, the Corporate Insolvency Resolution Process (CIRP) guides the formation of a Committee of Creditors (CoC) where the goal is to reach an amicable resolution or opt for liquidation. During the CIRP, the claims by the creditors, the Resolution value, and the Liquidation value are analysed. The resolution is reached by assessing the circumstances and information available which will result in the creditors receiving monetary compensation as close as possible to their admitted claims.

Basic instinct justifies that if the Liquidation value is higher than the Resolution value, the creditors must opt for the former, but an important factor to be put into consideration is the realisable value i.e. the monetary amount the creditors will receive at the end of the resolution or liquidation which is dependent on the time, as the value of the assets tend to fluctuate within the time period it takes to assess them and when they are actually sold. This is where the commercial wisdom of the creditors comes into play, as we will discuss in this article with the case of Maharashtra Seamless Limited. The basic assertion the Liquidation value and the Resolution value should either be equal and if not, opt for the value which is higher is not to be determined by the adjudicating authorities or any other parties other than the financial creditors of the Corporate Debtor.

Background of the Case

The Corporate Debtor (CD) is United Seamless Tubular Private Limited with a total debt of INR 1897 crores. The application for default was filed by one of the Financial



Creditors, Indian Bank. The assets of the CD were assessed by three different registered valuers due to substantial difference in valuation. The final valuation was considered the average of the closest two estimations at INR 432 crores. Out of the four Resolution Plans submitted to the Resolution Professional (RP), the plan by Maharashtra Seamless Limited was approved by the CoC with approximately 87% votes.¹ The point of contention was raised by the suspended Board of Directors of the CD, who alleged that the Resolution Plan was approved in contravention to the IBC, and the maximisation of the value of assets of the CD was lost. The NCLT passed an order to re-assess the Liquidation value of the CD.²

An appeal was raised and the NCLAT directed the NCLT to pass the order under Section 31 of the IBC, which is to allow the Resolution Plan to pass if the approval of the CoC has been obtained at their discretion.³ Also, the re-assessment of the Liquidation value was conducted which placed the value of the CD at INR 597.54 crores- a jump of almost INR 170 crores from the agreed Resolution value. The appellate authority also held that the CoC should suggest the Resolution Applicant (RA), Maharashtra Seamless Limited to make changes to the Resolution Plan if necessary, instead of the adjudicating authority.⁴

Consequently, the agreed Resolution Plan value was set at INR 477 crores, and the NCLAT directed the RA to pay INR 120 crores more to compensate the difference between the Resolution Plan value and the Liquidation value. Owing to which, the RA would be allowed to take possession of the CD, otherwise not.

Supreme Court Judgement

The RA appealed to the Supreme Court based on the order passed by the NCLAT. It was contended that the adjudicating authority, NCLAT in this instance, cannot sit in appeal over the commercial wisdom of the CoC in approving a Resolution Plan. Furthermore, the RA applied for withdrawal of the Resolution Plan following depositing INR 477 crores in accordance with the Plan and was subsequently denied access to the assets of the CD.⁵

The Supreme Court addressed the two issues on January 22, 2020. First issue concerned whether the IBC stipulated that the Resolution Plan value should be equal to the Liquidation value. The Apex Court held that the Adjudicating Authority cannot interfere in the decision based on the commercial wisdom of the CoC, as long as the CoC made sure that the business of the CD was kept going as a going concern, the value of the assets have been maximised, and the interest of all stakeholders have been taken care of. The Resolution Plan value does not have to match the Liquidation value under the IBC

¹United Seamless Tubulaar Private Limited IA No. 472-2018 in CP (IB) No. 49-7-HDB-2017

² Ibid

³Maharashtra Seamless Ltd. Vs. K.K. Lakshminarayana & Ors. CA(AT)(Ins) No. 637 of 2018

⁴ Ibid

⁵Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Ors. Civil Appeal No. 4242 of 2019



or any of the IBBI Regulations,⁶ even if it seems that the difference between the values is inequitable.⁷ Only when the circumstances point to the otherwise of the stated⁸, the Adjudicating Authority should ask the CoC to make amendments to the Resolution Plan which the NCLAT and the Supreme Court did not find. It was stipulated that the role of the Adjudicating Authorities is limited to judicial review, reiterating the late 2019 judgement in the case of Essar Steel India Limited.⁹

On the issue of RA seeking withdrawal from the Resolution Plan via Section 12-A of the IBC 2016, the Supreme Court held that the provision is not applicable to the RA but to applicants who invoke Section 7, 9 and 10 of the Code.¹⁰ The NCLAT order was set aside and the Supreme Court allowed the RA to take possession of the assets of the CD within four weeks of the judgement with the assistance of administrative and law enforcement authorities.¹¹

Decision-Making Process for Value Maximisation

The Judgement in the case of Maharashtra Seamless Limited has a twofold significance. First, in re-establishing the precedent¹² on the role of the Adjudicating Authority. And secondly, on the reliance on the decision-making process of the Creditors of the CD. The Code is designed to promote resolution-seeking among the stakeholders. Of course, the stakeholders would seek a resolution which would allow them a fair return of their admitted claims, but value maximization is not simply about numbers projected by the Registered Valuers during the CIRP. Let us consider the case at hand, the value of the assets of the CD fluctuated immensely during the CIRP as shown in Table 1 below.

Value assessing Entity	Value of the assets (approx.)
Registered Valuer 1 (K. Vijay Bhasker Reddy)	INR 681 crores
Registered Valuer 2 (P.Madhu)	INR 513 crores
Valuer 3 (Duff and Phelps)	INR 352 crores
Final Valuation (via Resolution Professional)	INR 597 crores

Table 1

The mistake a layman would make is to equate the value of the assets of the CD to its Liquidation value. Sure, the Liquidation value of the CD is INR 597 crores at that

⁶ Section 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

⁷ Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh &Ors. Civil Appeal No. 4242 of 2019

⁸ Section 31(1) and Section 30 (2), (4) of the Insolvency and Bankruptcy Code 2016

⁹ Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta &Ors. Civil Appeal No. 8766-67 of 2019 and Ors.

¹⁰ Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh &Ors. Civil Appeal No. 4242 of 2019

¹¹ Ibid

¹² Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta &Ors. Civil Appeal No. 8766-67 of 2019

particular period of time. But if the value assessment during CIRP via three different valuers result in such drastic monetary differences, then when the CD actually goes into liquidation, say after a year or two of the assessment, the certainty of the final valuation is compromised. The market value of the assets may have dropped or increased significantly than the value at which the CoC decided the CD to undergo liquidation. The realisable value might only be INR 352 crores, as suggested by the Third Valuer, instead of INR 597 crores.

Another aspect in consideration of the Creditors is that Resolution value is generally considered the amount of money an RA offers for a resolution of the CD.¹³ Thus, the Resolution value of INR 477 crores offered by the RA- Maharashtra Seamless Limited is the amount the Claimants will definitely receive at the end of the CIRP, unlike the Liquidation value of the time.

Well-informed decisions are important in economic matters and it is put forward that the more information the Creditors receive, the better decisions they take during an insolvency process. A fantastic explanation of this is laid down by Dr. M.S. Sahoo in his article "The Art of Value Maximisation," which will be used to analyse the decisions of the Creditors within the CoC of the case at hand- Maharashtra Seamless Limited.¹⁴ In Table 2, the Creditors are only aware of the Liquidation and Resolution value, and thus would tend to reject a Resolution Plan put forward by the RA.

Description	Creditor 1	Creditor 2	Creditor 3
Liquidation value	597	597	597
Resolution value	477	477	477
Decision on Resolution Plan	Reject	Reject	Reject

Table 2

In Table 3, the Creditors now compare their claims with the Liquidation and Resolution value and thus make their decisions as follows.

Description	Creditor 1	Creditor 2	Creditor 3
Debt Claims	250	550	650
Liquidation value	597	597	597
Resolution value	477	477	477
Decision	Accept	Reject	Reject

Table 3

It is when the Creditors compare their claims, Liquidation and Resolution value with the realisable value (in Table 4) that the Creditors tend to accept a Resolution value of INR 477 crores to the Liquidation value of INR 597 crores. Thus, it is important to give due

¹³The Art of Value Maximisation in CIRP. IBBI Quarterly Newsletter Jan-Mar 2020

¹⁴ The analysis is different from the what the presented in the Article. The instances of Corporate Debtors is replaced with Creditors to study the decision-making process of Creditors in the CoC in the present case.



credit to the Creditors and their ingenuity and commercial wisdom when they make decisions during a CIRP.¹⁵ A deal which satisfies all the stakeholders requires more information than just the comparison of the Liquidation and Resolution value of the assets of the CD.

Description	Creditor 1	Creditor 2	Creditor 3
Debt Claims	250	550	650
Liquidation value	597	597	597
Resolution value	477	477	477
Realisable Value on Liquidation	450	450	450
Decision	Accept	Accept	Accept

Table 4

We also notice that the cases where the CIRPs resulted in resolutions, the realisable value received by the Creditors was 183% of the value they would have received at liquidation.¹⁶ This is highly valuable information because it suggests that the commercial wisdom of Creditors allowed them to sift through information as analysed in Table 4 above. This is testament of the fact that no third party can assess the situation at hand better than the Financial Creditors of the CD during an insolvency process, as long as they are compliant with the rules of the IBC.

Time Period	Total Admitted Claims by FC (INR crores)	Liquidation value (INR crores)	Realisable by FCs (INR crores)	% of their Admitted Claims	% of Liquidation value
Jan-Mar '18	4405	1427	3070	69.70	215.11
Apr-Jun '18	76239.12	18084.36	42885.44	56.25	237.14
Jul-Sept '18	42269.56	9541.80	11079.32	26.21	116.11
Oct-Dec '18	8447.71	2953.97	6958.46	82.37	235.56
Jan-Mar '19	39675.20	6155.97	9568.5	24.11	155.43
Apr-Jun '19	32385.84	6836.19	7151.33	22.08	104.60
Jul-Sept '19	79442.25	14870.43	27159.17	34.18	182.63
Oct-Dec '19	25762.51	2853.32	3513.61	13.63	123.14
Jan-Mar '20	39101.77	19567.67	25063.79	64.10	128.09
Total	384436.67	96349.52	176673.70	45.96	183.37

Table 5¹⁷

¹⁵ Also noted in the case of Bhaskara Agro Agencies Vs. Super Agri Seeds Pvt. Ltd. CA (AT) No. 380-2018 & Shri Ram Residency Pvt. Ltd. Vs. Kuldeep Verma, RP, Jalan Intercontinental Pvt. Ltd. & Ors. CA (AT) No. 202-2018

¹⁶ The Quarterly Newsletter of Insolvency and Bankruptcy Board of India. Jan-March 2020, Vol.14.

¹⁷ The data from October 2016 to December 2017 has not been listed in the table but the amounts have been added in the grand total.



Conclusion

The Judgement of the Supreme Court in the case of Maharashtra Seamless Limited is similar to the judgements that have been reached by other Adjudicating Authorities in different cases¹⁸, including the apex court itself,¹⁹ i.e. the feasibility of the Resolution Plan is best left to the ingenuity of the Creditors. The analysis of the decision-making process of the Creditors of the CD helps us understand how information and long-term thinking and vision are significant for Creditors when considering the feasibility of a Resolution Plan.

There is a counter argument to this commercial wisdom of the CoC which might allow malpractice to seep into the resolution-making process. Although this is a valid argument, the point is to understand that the decision-making process of the CoC is multi-faceted and what might seem like malpractice might actually just be the utilisation of commercial wisdom of the Creditors. And the Adjudicating Authority in its judicial capacity still carries a lot of punch in assessing if the CoC complied with the provisions of the IBC and relevant IBBI Regulations.

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¹⁸ NCLAT in the cases of BhaskaraAgro Agencies Vs. Super Agri Seeds Pvt. Ltd. CA (AT) No. 380-2018 &Shri Ram Residency Pvt. Ltd. Vs. Kuldeep Verma, RP, Jalan Intercontinental Pvt. Ltd. &Ors. CA (AT) No. 202-2018

¹⁹ In the case of Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta &Ors. Civil Appeal No. 8766-67 of 2019