



INSOLVENCY OF RUCHI SOYA: A BRIEF ANALYSIS

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In the Indian Insolvency scenario the insolvency and bankruptcy is governed by a uniform law of Insolvency and Bankruptcy Code, 2016 (“Code”) which came into force in 2016. In the almost 4 years of its inception, the Code has seen a lot of important judgments and orders being given by the National Company Law Tribunal (“NCLT”) / National Company Law Appellate Tribunal (“NCLAT”) as well as the Apex Court of India. These orders have helped resolved the gaps in the codified law as well as issues left by the legislation to the facts and circumstances in the cases.

Since the coming into force of the provisions of CIRP with effect from December 1, 2016, 3312 CIRPs have commenced by the end of December 2019. Of these, 246 have been closed on appeal or review or settled; 135 have been withdrawn; 780 have ended in liquidation and 190 have ended in approval of resolution plans.¹ One of these resolved cases is that of Ruchi Soya Industries Limited (“Ruchi Soya”). This Article highlights the flow of events and the pertinent questions answered by the Courts in this matter.

Brief Facts of the case:

Ruchi Soya has many manufacturing plants and its leading brands include Nutrela, Mahakosh, Sunrich, Ruchi Star and Ruchi Gold.

Ruchi Soya was a part of the second list of 28 defaulters the Reserve Bank of India flagged for resolution. In December 2017, the NCLT had referred Ruchi Soya for insolvency proceedings on the application of financial creditors Standard Chartered Bank and DBS Bank. Shailendra Ajmera was appointed as resolution professional (RP) to manage the affairs of the company and undertake the insolvency proceedings.

Ruchi Soya had a total debt of about Rs 12,000 crore. Ruchi Soya Industries owed around ₹9,345 crore to financial creditors and another ₹2,750 crore to operational creditors. Among financial creditors, the State Bank of India (SBI) has the maximum exposure of around ₹1,800 crore, followed by Central Bank of India (₹816 crore), Punjab National Bank (₹743 crore) and Standard Chartered Bank India (₹608 crore).

Initially, Resolution Plans were submitted, *inter-alia*, by Adani Wilmar Limited (“Adani Wilmar”) and Patanjali Group to acquire Ruchi Soya. The Resolution Plan submitted by Adani Wilmar was approved by the Committee of Creditors in August 2018. Patanjali Ayurved had approached NCLT challenging the decision of Ruchi Soya's lenders to approve Adani Wilmar's ₹6,000 crore takeover bid. Patanjali group came second with its bid of around ₹5,700 crore, including the infusion of about ₹1,700 crore into the edible oil company.

¹IBBI Newsletter, Oct-Dec 2019, available at <https://ibbi.gov.in/uploads/publication/62a9cc46d6a96690e4c8a3c9ee3ab862.pdf>



However, Patanjali Group challenged, *inter-alia*, eligibility of Adani Wilmar to submit the Resolution Plan under Section 29A of the Code and process for negotiation.

While the application filed by Patanjali Group was being argued before the NCLT Mumbai, Adani Wilmar withdrew its Resolution Plan citing delays in the CIRP. Subsequently, Patanjali Group negotiated its Resolution Plan with the Resolution Professional (“RP”) and Committee of Creditors. Adani Wilmar, which emerged as the highest bidder, after a long drawn battle with Patanjali, had in December 2018 written to the RP regarding significant delays in resolution process that led to deterioration of Ruchi Soya's assets. Later, Adani Wilmar, which sells edible oil under the Fortune brand, withdrew from the race.

Patanjali, the lone player left in contention after the exit of Adani Wilmar, had last increased its bid value by around ₹200 crore to ₹4,350 crore for Ruchi Soya. This excluded capital infusion of ₹1,700 crore into the company. Committee of Creditors (“CoC”) met to discuss the revised bid of Patanjali and decided to conduct the voting process on 30th April 2019.

The CoC had then approved the Resolution Plan submitted by Patanjali Group with approx. 96% vote in favour.

As per the plan proposed by Patanjali, Out of the ₹4,350 crore offered by Patanjali group, ₹4,235 crore would be utilised to pay creditors while ₹115 crore would be used for capital expenditure and working capital requirements of Ruchi Soya. As per the regulatory filing made by Ruchi Soya, ₹4,053.19 crore would be paid to secured financial creditors, ₹40 crore to unsecured financial creditors, ₹90 crore to operational creditors, ₹25 crore to clear statutory dues, ₹14.92 crore to workmen/employees and ₹11.89 crore to provide counter bank guarantee.²

March of law:

As per the table produced below, the flow of events and the march of law have been described according to the orders passed in the Insolvency Process of Ruchi Soya by the NCLT and the NCLAT.

15.12.2017	NCLT, Mumbai Bench ³	A company petition under Section 7 of the Code was filed by Standard Chartered Bank against Ruchi Soya Industries. The order of admission also raised the concern whether the Code will be applicable to agreement for ECB facility which is governed by English Law. The Tribunal decided that since the company is located in India and is governed
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²<https://www.livemint.com/companies/news/patanjali-ayurved-completes-acquisition-of-bankrupt-ruchi-soya-for-rs-4-350-crore-11576684912487.html>

³https://ibbi.gov.in/webadmin/pdf/order/2017/Dec/15th%20Dec%202017%20in%20the%20matter%20of%20Ruchi%20Soya%20Industries%20Ltd.%20CP%201371%20&%20CP%201372-I&BP-NCLT-MAH-2017_2017-12-22%2012:33:39.pdf



		<p>by the laws of India, insolvency proceedings, if any, will be initiated in India too.</p> <p>In another relevant statement made by NCLT, they concluded that since Insolvency and Bankruptcy Code is a complete code in itself, the provisions of Power of Attorney Act, 1882, cannot override its provisions.</p> <p>Despite an appeal in a winding up petition being pending before the High Court, the admission application was admitted and ShailendraAjmera was appointed as the Resolution Professional in the matter.</p>
01.08.2018	NCLT, Mumbai Bench ⁴	<p>The erstwhile director of Ruchi Soya, Mr. Vijay Kumar Jain, had filed an application because he was disallowed to attend the meeting of the CoC as well as he was not receiving the documents being presented to the CoC.</p> <p>The order passed by the NCLT was that the director would be allowed to attend the meeting of the CoC but would not be given any information which is considered confidential by the RP or the CoC.</p>
31.01.2019	Supreme Court ⁵	<p>The Hon'ble NCLT on August 1, 2018 held that the directors have the right to attend the COC meetings as per Section 24 of the Code. However, the directors could not receive information that is considered confidential by the resolution professional or the COC, including the resolution plans. In the first appeal, the decision of the NCLT was upheld by the appellate tribunal on August 9, 2018. The director then moved the Supreme Court, challenging the decision of the appellate tribunal.</p> <p>The Hon'ble Supreme Court held that the scheme of the Code makes it clear that the</p>

⁴https://ibbi.gov.in/webadmin/pdf/order/2018/Aug/STANDARD%20CHARTERED%20BANK%20MA%2018-2018%20CP%201371-2018%20%20NCLT%20ON%2001.08.2018%20FINAL_2018-08-09%2009:46:45.pdf

⁵https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/In%20the%20matter%20of%20Vijay%20Kumar%20Jain%20Vs%20Standard%20Chartered%20Bank%20&%20Ors%20Civil%20Appeal%20No.%208430-2018_2019-01-31%2023:14:57.pdf



		<p>directors, though not members of the COC, have a right to participate in every meeting of the COC. In addition, for effective participation as vitally interested parties in discussion on resolution plans, they have the right to receive copies of the resolution plans presented to the COC. The Hon'ble Supreme Court also clarified that under Regulation 21(3)(iii) of the CIRP Regulations, the notice of the COC meeting, which is required to be given to the directors as well, must contain copies of all the documents relevant for matters to be discussed, including the resolution plans.</p>
24.07.2019	NCLT, Mumbai Bench ⁶	<p>The resolution plan of Patanjali was approved by the Adjudicating Authority after directions for some modifications in the plan. It was further discussed that under Section 43 if the Adjudicating Authority finds that a property is transferred by the Corporate Debtor to a creditor in preference to its other creditors, then, the Adjudicating Authority may order such creditor to transfer back to the Corporate Debtor the property so transferred in preference. However, such reverting of the property to the Corporate Debtor does not automatically entitle the creditor to file a proof of claim with the Resolution Professional for the debt that was discharged. Further, the discretion to allow the creditor to file a revised claim, in such circumstances, is left with the Adjudicating Authority under section 44(1)(g) of the I&B Code.</p> <p>It was observed that neither the Tribunal nor the Hon'ble NCLAT has given any such liberty to file a revised claim to the ICICI. In the absence of any directions from this Tribunal or the Hon'ble Appellate Tribunal, it is submitted that the RP cannot admit the additional claim that arose after Insolvency Commencement Date as also it would be determining a matter which is <i>sub judice</i></p>

⁶<https://ibbi.gov.in/uploads/order/9fe19063d2ab4fcb4e37607485e0f5c.pdf>



		before the Hon'ble Appellate Tribunal. The Resolution Professional also relied on Swiss Ribbons case to emphasize that the Resolution Professional is only given administrative powers as oppose to quasi-judicial powers.
14.08.2019	NCLT, Mumbai Bench ⁷	The Mumbai Bench had approved the resolution plan of Patanjali Ayurved Limited, subject to the submission of additional affidavit for acceptance of modifications in the resolution plan and other information as per the directions in the order. In compliance of the said order dated 24.7.2019, the Resolution Applicant has filed an affidavit, providing information relating to the source of funds. The Resolution Applicant was directed to submit the additional affidavit for acceptance of the modification in the Resolution Plan on 27.8.2019, failing which liquidation order was to be passed.
22.08.2019	NCLAT ⁸	The RP had filed an application under Section 43(1) of the Code for seeking reversal of the amounts debited from the account of the CD maintained with the ICICI Bank Limited before the insolvency commencement date and alleged to have been utilised against the payment of dues made by the CD in favour of the ICICI Bank Limited pursuant to 'Letter of Credit (LoC) issued by the ICICI Bank. Hon'ble NCLAT held that all the three transactions, in question, were made in ordinary course of business. This apart, that the transactions made on 8th December, 2017; 11th December, 2017 and 14th December, 2017 are either on the date of commencement of the 'corporate insolvency resolution process' or during the pendency of 'Corporate Insolvency Resolution Process'. Therefore, in terms of sub-section (4) of Section 43 of the Code the transaction, in question, cannot be treated to be made 'one year preceding the insolvency

⁷<https://ibbi.gov.in/uploads/order/c5b6c01ec0407c10a87f6e63e8dca5e8.pdf>

⁸<https://ibbi.gov.in/uploads/order/849aed18e03e5917631d69b9343979f5.pdf>



		commencement date’ and hence is not said to be a preferential transaction.
12.03,2020	NCLAT ⁹	After the approval of the Resolution Plan of Patanjali by the CoC and the NCLT, the appeal against the order or resolution was preferred with a delay of 17 days after the 30 days of appeal was over. NCLAT stated that they could not entertain the appeal having no jurisdiction to condone the delay of more than 15 days after 30 days. Further in view of the decision of the ‘Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta &Ors.’, NCLAT cannot sit in appeal on commercial wisdom of the ‘Committee of Creditors’, to annul the resolution plan. NCLAT also directed that no further litigation would take place in this matter.

Conclusion

Looking at the above flow of events and the stance of the courts in the litigation of the matter, it is very clear that the Adjudication Authorities are highly motivated to comply with the objectives of the Insolvency and Bankruptcy Code which is to bring the company to resolution and avoid liquidation of the company. Highlighting the importance of judgments passed by Supreme Court which have now given a much needed precedence, the matters of *Essar Steel*¹⁰ and *Swiss Ribbons*¹¹ were heavily relied on to drive home the point that the powers of the Resolution Professional are administrative and the supremacy of the wisdom of CoC is prevalent.

The resolution process of Ruchi Soya saw healthy competition between Resolution Applicants resulting in the best possible value for the Corporate Debtor, the importance of the wisdom of CoC, the calculation and power of the Resolution Professional in a matter of late submission of claims and preferential transactions.

⁹<https://ibbi.gov.in/uploads/order/f33c4e5ab60dc6882100db77c7010e15.pdf>

¹⁰<https://ibbi.gov.in/uploads/order/d46a64719856fa6a2805d731a0edaaa7.pdf>

¹¹[https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/25th%20Jan%202019%20in%20the%20matter%20of%20Swiss%20Ribbons%20Pvt.%20Ltd.%20&%20Anr.%20Writ%20Petition%20\(Civil\)%20No.%2037,99,100,115,459,598,775,822,849%20&%201221-2018%20In%20Special%20Leave%20Petition%20\(Civil\)%20No.%2028623%20of%202018_2019-01-25%2013:07:58.pdf](https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/25th%20Jan%202019%20in%20the%20matter%20of%20Swiss%20Ribbons%20Pvt.%20Ltd.%20&%20Anr.%20Writ%20Petition%20(Civil)%20No.%2037,99,100,115,459,598,775,822,849%20&%201221-2018%20In%20Special%20Leave%20Petition%20(Civil)%20No.%2028623%20of%202018_2019-01-25%2013:07:58.pdf)