



LIQUIDATION AS A GOING CONCERN: IVRCL LTD - A CASE STUDY ANALYSIS

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Introduction

The basic objective of Insolvency and Bankruptcy Code, 2016 is maximisation of value of assets, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders. When an organisation makes default in paying to its creditors, the possibilities are either (1) reorganisation where creditors accept reduction of their outstanding amount as full and final settlement through a resolution plan i.e. through Corporate Insolvency Resolution process, or (2) Liquidation of the organisation and distribute the proceeding between creditors, or (3) *liquidation of organisation as going concern and distribute the proceedings between the creditors*. The phase *going concern* means all such assets and the liabilities, which constitute an integral business that must be transferred together, and the consideration must be for the business. The buyer of the assets and liabilities should be able to run business without any disruption. The business must be a running one, and it must be transferred along with its employees.

Liquidation of an organisation as going concern has its own advantages i.e. it helps in realisation of higher value, rescuing a viable business; prevent loss of employment etc which has greater economic value.

After enactment of Insolvency and Bankruptcy Code, 2016, the concept of “Liquidation as a going concern” was first discussed in the matter of peculiar case of **Gujarat NRE Coke Limited** wherein NCLT, Kolkata Bench vide its order¹ dated 11th January, 2018 ordered the company’s liquidation as going concern keeping in mind the life and employment of 1178 employees and workmen in accordance with Regulation 32(b)(i) of IBBI (CIRP Regulations), 2016 which provides for sale of assets in a slump sale.

Since, there was no clear concept of liquidation as going concern, Insolvency and Bankruptcy Board of India (IBBI) amended IBBI (Liquidation Regulations), 2016 on 1st April, 2018 and 22nd October, 2018 to include that *sales of assets during liquidation can be done by way of “sale of Corporate debtor as going concern” or “the business(s) of the corporate debtor as a going concern”*².

Sale of Corporate debtor as going concern would mean that the corporate debtor will not be dissolved, it will form part of liquidation estate. It will be transferred along with the business, assets and liabilities, including all contracts, licenses, concessions, agreements, benefits, privileges, rights or interests to the acquirer. The consideration received from sale will be split into share capital and liabilities, based on a capital structure that the acquirer decides. There will be an issuance of shares by the CD being sold to the extent of the share capital. The existing shares of the CD will not be



transferred and shall be extinguished. The existing shareholders will become claimants from liquidation proceeds under section 53 of the Code.

Sale of the business(s) of the corporate debtor as a going concern would mean The business(s) along with assets and liabilities, including intangibles, will be transferred as a going concern to the acquirer, without transfer of the CD, and therefore, the CD will be dissolved. The existing shares will be extinguished. The remaining assets, other than those sold as part of business will be sold and the proceeds thereof will be used to meet the claims under section 53 of the Code.

Since the inception of the Code, there have been many cases where the Adjudicating Authority ordered for the liquidation as a going concern keeping in mind the current scenario of the Company. Examples of such cases are Gujarat NRE Coke Limited, Edelweiss Asset Reconstruction Company Ltd. vs. Bharati Defence and Infrastructure Ltd, Reid & Taylor, Rukmani Infra Projects Private Limited, IVRCL Limited etc.

Now, we will do overall performance analysis of the Corporate Debtor IVRCL Limited, which is under liquidation as a going concern.

PERFORMANCE ANALYSIS

IVRCL Limited (ordered for Liquidation as going concern)

A. COMPANY PROFILE

IVRCL Limited (the Company) is a public listed Company (NSE & BSE) domiciled in India at Hyderabad, Telangana and is incorporated under applicable provisions of Companies Act on 16th November, 1987. The Company is in the business of development and execution of Engineering, Procurement, Construction and Commissioning (EPCC) and Lump Sum Turn Key (LSTK) facilities in various infrastructure projects such as water supply, Roads and Bridges, Townships and Industrial Structures, Power Transmission etc. for Central/State Governments, other local bodies and private sector. The company has more than 3000 qualified engineers, managers and professional technocrats across India.

The various segments where the company operates are:

- **Water:** pipeline installation, Desalination Water Supply
- **Irrigation:** Lift irrigation projects: development of buildings, complexes, metro rail projects etc.
- **Buildings and industrial structures:** -development of buildings, complexes, metro rail projects etc.
- **Power:** Power Transmission Lines and Rural Electrification
- **Transportation:** highways, highways, roads etc.
- **Mining:** development of underground mines etc.



In 2011, IVRCL was ranked as 4th fastest growing company in India by Business world. The Company has 26 direct subsidiaries and 3 associate companies. The Company has four directors (suspended), 1 CFO and 1 CS. One of the main promoters of the Company is E. SUDHIR REDDY who is also the Chairman and Managing Director of the Company. *Permanent employees on roll of the company as on 31st March, 2019 are 913.*

As on 31st March, 2019, the Company had total authorized share capital of Rs. 330,00,00,000/- and paid up share capital of 156,57,95,384/- , distribution of majority shareholding is:

Promoter's Holding	5.37
Institutional Investors-Financial Institutions / Banks / Insurance Companies	50.16
Foreign Portfolio Investors	0.68
Corporate Bodies	8.27
Indian Public	33.55
Non Resident Indian	1.69
Others	0.28

Source: Annual report: 31st March, 2019

B. MAJOR REASONS OF COMPANY'S FALLING INTO INSOLVENCY

The Lenders of the Company exited Corporate Debt Restructuring Scheme (CDR) (*which had certain reliefs in relation to repayment timelines of loans and accumulated unpaid interest*). Therefore, a case of failed CDR, the concessions provided in the CDR Package under the terms of the Master Restructuring Agreement (MRA) were rolled back. Accordingly, concessions provided as per CDR Package stands withdrawn, reversed and revoked as per the relevant clauses of the MRA. Hence, interest and penal interest was recalculated with considering the effect of reversed and revoked concessions provided as per CDR. Moreover, the company was unable to pay the statutory dues for quite long time and interest free unsecured loans were given to its subsidiaries, associates Companies and the terms and conditions are prejudicial to the interest of the company.

Additionally as stated by the auditors of the Company in the annual report , *the Company did not have appropriate internal financial controls over:*

- a) Assessment of recoverability of deferred tax assets
- b) Assessment of expected credit loss/loss allowance of bank guarantees encashed by customers, unbilled revenue, trade receivables and withheld amounts which are subject matters of various disputes /arbitration proceedings/ negotiations with the customers and contractors due to termination / foreclosure of contracts and other disputes.



- c) Assessment of expected cash shortfall and resultant loss allowance that may be required in respect of invocation of corporate guarantees and demand against the Company in respect of such guarantees extended / executed for its subsidiaries and other parties in favour of the lender
- d) Assessment of impairment in value of long term equity investment and assessment of impairment in value of loans and advances to various subsidiary companies and other parties.
- e) Control over reconciliation of subcontractors work bills with the work bills submitted to the clients and physical progress of works completed, which could potentially result into inaccurate estimation of percentage of work completed and consequently delay in the realization of unbilled revenue/ receivables.
- f) Controls over projects costs estimation and review of balance costs to complete in respect of work projects, which could potentially result into inaccurate estimation of foreseeable losses on works contracts.
- g) physical verification of fixed assets and inventories.

Source: Annual report: 31st March, 2019

As a result, State Bank of India filed Section 7 application with National Capital Law Tribunal, Hyderabad Bench which was admitted on 23rd February, 2018.

C. CORPORATE INSOLVENCY RESOLUTION PROCESS

The State Bank of India filed application under section 7 of the Insolvency and Bankruptcy Code, 2016 with NCLT, Hyderabad Bench for the dues amounting of Rs. 604,15,36,434/- under the SBI facilities as on 22nd October, 2017 and NCLT after perusing all the pleadings admitted the application and initiated the CIRP proceedings on **23rd February, 2018**.

Mr. Sutanu Sinha was appointed as the Interim Resolution professional on recommendation of Financial Creditor.

Subsequently, Mr. Sutanu Sinha was confirmed as the Resolution Professional (“RP”) by the committee of creditors (“CoC”). On appointment of the IRP/RP, the powers of the Board of Directors of the Company were suspended.

NCLT vide order dated **26th July, 2019** ordered for the liquidation of the corporate debtor on account of non receipt of any viable resolution plan even after issuing expression of interest many times.

NCLAT vide its order dated **9th September, 2019** held that the order of liquidation will be subject to the decision of the appeal made by prospective resolution applicant on ground that the plan was rejected by Corporate debtor and NCLT without any ground. The liquidator was directed to ensure that IVRCL remains a going concern and that any developments would be based in accordance with the law.

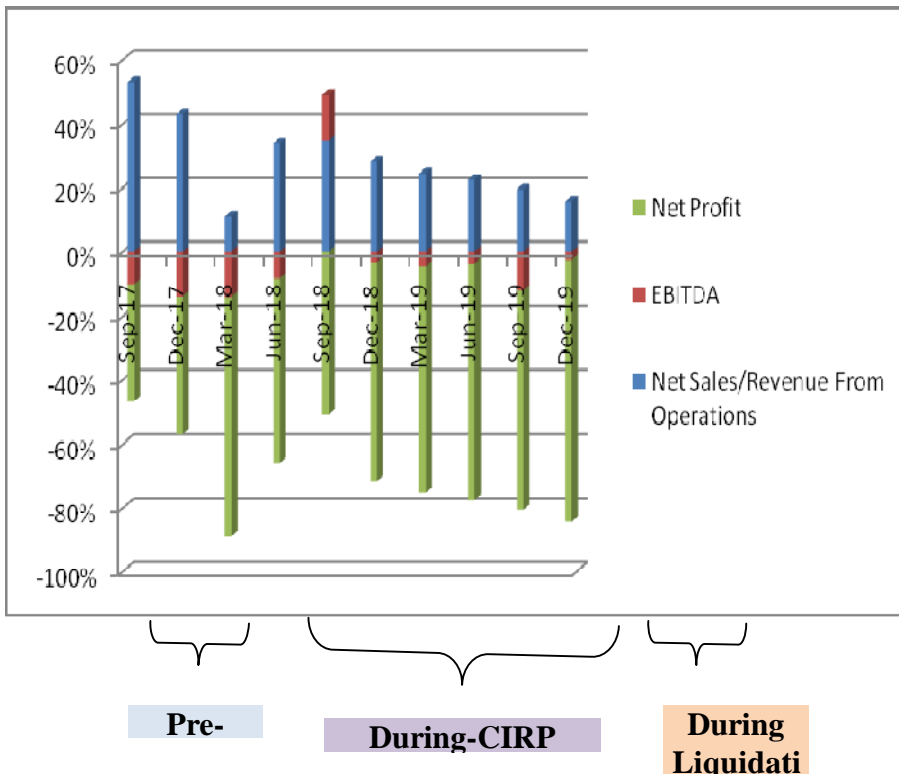


Initiation of CIRP	23 rd February, 2018
NCLT order for liquidation as going concern	26 th July, 2019
NCLAT order that liquidation order will be subject to the decision of appeal till then company remains a going concern.	9 th September, 2019
Decision of NCLAT	<i>Pending</i>

D. PERFORMANCE OF THE COMPANY- PRE CIRP, DURING CIRP, POST LIQUIDATION

Particulars	Pre CIRP		During CIRP						Post CIRP	
	Sep-17	Dec-17	Mar-18	Jun-18	Sep-18	Dec-18	Mar-19	Jun-19	Sep-19	Dec-19
Net Sales/Revenue From Operations	404.22	319.34	171.76	203.09	234.03	170.99	121.13	116.61	111.80	81.75
Other Income	7.34	3.51	71.17	2.66	113.31	3.19	5.90	1.62	3.52	2.41
Total Income	411.55	322.85	242.93	205.74	347.34	174.18	127.03	118.22	115.32	84.16
Expenditure	692.81	639.57	920.98	549.75	590.13	513.32	469.67	470.17	502.89	496.08
Total exp. (excluding finance and dep. Charges)	486.65	425.12	460.54	253.64	253.06	192.52	148.18	136.06	184.16	96.94
Expense (%)	120%	133%	268%	125%	108%	113%	122%	117%	165%	119%
Operating profit	-82.43	-105.78	-288.78	-50.55	-19.04	-21.52	-27.06	-19.45	-72.36	-15.20
EBITDA	-75.10	-102.27	-217.61	-47.89	94.27	-18.34	-21.15	-17.83	-68.84	-12.79
EBITDA margins	-0.18	-0.32	-0.90	-0.23	0.27	-0.11	-0.17	-0.15	-0.60	-0.15
Exceptional Item			-475.40		-97.90	-70.59	-4.74	-27.66	-6.50	-15.73
PBT	-281.26	-316.72	-1153.45	-344.01	-340.69	-409.74	-347.38	-379.60	-394.07	-427.65
Tax	1.02	1.02	1.02	0.37	0.37	0.37	0.37	0.37	0.37	0.37
Net Profit	-282.28	-317.74	-1154.47	-344.38	-341.06	-410.11	-347.75	-379.98	-394.44	-428.02
EPS	-3.58	-4.03	-14.72	-4.40	-5.64	-5.24	-4.46	-4.85	-5.04	-5.47

Source: www.bseindia.com



The trend of the company in terms of EBITDA margins, revenue from operations, net profit etc. during CIRP and post CIRP (i.e. liquidation) is declining as compared to pre-CIRP period. It is generally seen that when the company is having negative EBITDA margins before CIRP, it tends to have negative margins during CIRP and afterwards till the company does not get restructuring plan, however the liquidator is doing all its efforts to keep the company as going concern.

The main operating segment of the company is construction and project activities. The liquidator of the company has enhanced its focus on risk management. Project execution overview has been significantly strengthened by adding more experienced and senior persons to the PMC (Project Monitoring Cell). Reviews are conducted regularly to understand the cost profile of the original bid and the effect of time on costs.

During CIRP and liquidation, the company booked some exceptional items which led to more decline in the net profit trend of the company. The exceptional items in the month of March, 2018 represented recast of interest/penal interest charged and benefits withdrawn by the lenders upto March 31, 2017 that were extended pursuant to CDR/SDR scheme from the cut-off date (i.e. November 30, 2013) and from September, 2018 onwards pursuant to invocation of performance bank guarantees during CIRP.



However, the management is in the process of initiating arbitration/other legal action for such invocations.

There are numerous reasons which are hindering the growth of the company:

- failed CDR which led to withdrawal of all the benefits since cut-off date:
- litigations
- Slow progress in projects which led to no billing for longer period of time which ultimately build huge unbilled revenue
- Failed financial guarantees, loans and advances given to subsidiaries which are loss making
- Collapse of under construction structure, which has somewhere hampered the reputation in market
- Invocation of performance bank guarantees
- Notices from various authorities on account of non-payment of taxes and statutory dues

Road ahead

The liquidator of the company on 3rd March, 2020³ made a disclosure on the website of NSE & BSE that as a part of liquidation process and as per the advertisements published, on 27th February, 2020 the company has received a bid under E-auction process for sale of company as going concern from M/s GABS MEGACORP Limited at a price of Rs. 1654.77 Cr. The sale would be subject to the decision of NCLAT (since appeal against liquidation order is pending). Keeping in mind, the current situation of the company, if NCLAT dismisses the appeal against liquidation order, the company would become the first company under IBC which will be liquidated as a going concern.

¹[https://ibbi.gov.in/webadmin/pdf/order/2018/Jan/11th%20Jan%202018%20in%20the%20matter%20of%20Gujarat%20NRE%20Coke%20Limited%20C.P.%20\(I.B\)%20No.%20182-KB-2017%20\(Liquidation%20Order\)_2018-01-17%2012:32:08.pdf](https://ibbi.gov.in/webadmin/pdf/order/2018/Jan/11th%20Jan%202018%20in%20the%20matter%20of%20Gujarat%20NRE%20Coke%20Limited%20C.P.%20(I.B)%20No.%20182-KB-2017%20(Liquidation%20Order)_2018-01-17%2012:32:08.pdf)

² <https://ibbi.gov.in/Discussion%20paper%20LIQUIDATION.pdf>

³ <https://www.bseindia.com/xml-data/corpfiling/AttachHis/66bccde1-9a77-4d42-9aa5-6e6c6be9706f.pdf>