

The Insolvency and Bankruptcy Code, 2016

NCLT FIRST INSOVENCY RESOLUTION SCHEME UNDER INSOLVENCY AND BANKRUPTCY ACT, 2016

The Insolvency and Bankruptcy Code, 2016 seeks to consolidate the existing framework by creating a single law for bankruptcy and insolvency. Pursuant to notification of the provisions relating to insolvency resolution and liquidation process under the Insolvency and Bankruptcy Code, 2016 (Code), several applications have been made to the National Company Law Tribunal (NCLT) since mid-December by creditors and corporate debtors themselves. Keeping up with the tight timelines under the Code, the judicial response has been swift and the NCLT has begun reviewing and admitting applications in line with the provisions of the Code, the following case has been the first case under which the NCLT, in its order has accepted the Resolution Plan.

Re: Synergies – Dooray Automotive Limited (SDAL)

This matter arose on account of abatement of reference of the company i.e. Synergies – Dooray Automotive Limited (SDAL) before the Board for Industrial and Financial Reconstruction on account of notification of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (SICA Repeal Act). The NCLT, while admitting the application made in accordance with the provisions of the SICA Repeal Act and the Code, has granted moratorium against all proceedings including SARFAESI action which was initiated by some of the creditors of the corporate debtor. While the NCLT has admitted the application of SDAL for Corporate Insolvency and Resolution Process, it has not given any decision on the continuation of the orders passed by BIFR, against which appeals were pending before Appellate Authority for Industrial and Financial Reconstruction prior to the notification of the SICA Repeal Act.

Synergy-Dooray Automotive Limited (SDAL)

which was the first case to have been filed under the Code, was admitted in January, 2017 seeking the initiation of the Corporate Insolvency Resolution Process, under Section 10 which allows the corporate debtor itself to invoke the provisions of the Code. Thereafter, a committee of creditors (CoC) under Section 18 of the Code was constituted.

The applicant has settled the dues in the past pertaining to 5 banks of the Corporate Debtors, which constituted 93% of the borrowings of corporate debtors.

Edelweiss was opposed to the proceedings since the very beginning. After the case having been admitted, Edelweiss approached the NCLT under Section 60 of the Code, alleging various irregularities on part of the resolution professional, as well as the conduct of other financial creditors involved, viz, Synergies Castings Limited (SCL), Millennium Finance Limited (MFL) and Alchemist ARC, all of whom have been assigned debts from various banks. Edelweiss alleged that MFL was wrongly included in the Committee of Creditors based on malicious assignment of debt by SCL to MFL.

The main content of the Resolution plan were as follow:

- a) The resolution plan envisages for insolvency resolution of SDAL, and ensure continuity of business along with use of the assets and equipments of SDAL and the amalgamation of Synergies Dooray Automotive Limited with Synergies Casting Limited;
- b) Payment of insolvency Resolution Process Cost in priority to all other debts of the Corporate Debtor;

- c) Payment to all the Financial Creditors of corporate Debtor in equal installments over a period of three years, without interest;
- d) Payment to operational Creditors, on interest free basis, of an amount, which is more than the amount payable to them in the event of liquidation of the Corporate Debtor, in a staggered manner over a period of three years;
- e) Payment of statutory dues, in a staggered manner, over a period of three years, on interest free basis in the three equal yearly installments, post completion of the financial creditors of the company;
- f) Continued employment to all the erstwhile workmen of the Corporate Debtor;
- g) The resolution plan envisages the relief from the State Government of Andhra Pradesh to exempt the merged entity from the levy of stamp duty on the value of assets transferred on account of merger of SDAL with SCL;
- h) To waive the penal interest, simple interest, compound interest, damages charges on the liability of the company as on the date of approval of the Resolution Plan.

[NCLT Bench Hyderabad has accepted the aforesaid resolution scheme and passed the order accepting the application and declaring moratorium, observing as under:](#)

- The Resolution plan, which was submitted by the Synergies Castings Limited, was approved by the Committee of the creditors, with 90.16% vote, according to section 31(1) of the IBC.
- Further, it is ordered, that the debt of the Operational Creditors should be paid first before making any payment to other financial creditors of the Corporate Debtors keeping in mind the nature of the creditors as well as the quantum of dues involved.
- Further, one of the points in the resolution plan proposed that the debt owed by SDAL to MFL be netted off against the debt owed by MFL to SCL. The Bench did not agree to this and ordered MFL to make the necessary payments to SCL.
- Edelweiss ARC, one of the creditors of the company raised objections to the plan alleging that Millennium Finance Ltd was wrongly included in the committee of creditors and that it was a related party. NCLT dismissed the objection through a separate order, and said the Insolvency Resolution Process, under the provisions of the bankruptcy code, does not have the power to address disputes among creditors.
- The Edelweiss Asset Reconstruction Company Ltd. is directed to extend full cooperation to carry out the terms and conditions of the said resolution plan and also mandating the Synergies Casting Limited and the Synergies dooray Automobile limited to involve EARCL in the affairs of the company, according to the Law.
- The resolution plan that is passed shall be binding on the corporate debtors and its employees, members, creditors, guarantors, and other stakeholders, and all the parties are bound by the terms and conditions mentioned.

The resolution plan which has been accepted by the Board, and the NCLT under Section 31 of the Act, is there either to approve or reject the proposed resolution plan, but in this case modifications has been made by the Board, however, the parties aren't aggrieved with the modification so the question of NCLT's authority to make modifications to a resolution plan is unlikely to be dealt with and it has appreciated the efforts by the Government to implement the Code efficaciously and observed the PAN India efforts by the parties to arrive at a resolution plan in this case. The Bench further said,

“...Therefore, a single financial creditor holding less than 9% of the total share of debt cannot super impose; to scuttle the process of the entire Resolution Plan. If Adjudicating Authority accepts the plea without any supporting evidence, we feel the preamble of the IBC will be jeopardized considering the social object of benefitting more than 1500 families directly/indirectly associated with SDAL.”

Even though there was stiff opposition from Edelweiss Asset Reconstruction Company, it is appreciated that the Resolution Plan has been accepted by the Committee of Creditors and has also been ratified by the NCLT.

This also happens to be the first case across India, where a Resolution Plan has been sanctioned by the NCLT. The sanctioning of the Resolution Plan is great news for the Company, since it will infuse a fresh lease of life into the Corporate Debtor.

- Mr. Ravi Meddiratta (Senior Counsel) And Ms.Yashika Nagpal (Associate)
For any queries please contact: +91-96501-97716, E-mail: ravimeditatta@inmacslaw.com

For private circulation only

The contents of this document is for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the professional views of Inmacs law offices and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Inmacs law offices disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

Registered office (Delhi)

4696 Brij Bhawan, 21A Ansari Road Darya Ganj,
New Delhi-110002. INDIA
Tel : 23288101, 23265320 Fax : +91-11-23265320
E-mail : legal@inmacslaw.com, ravimeditatta@inmacslaw.com

Corporate office (Gurugram)

GLOBAL BUSINESS SQUARE, Building No. 32, Sector 44, Institutional Area
Gurugram, 122002. INDIA
Tel : +91-124-4786200
E-mail : legal@inmacslaw.com, ravimeditatta@inmacslaw.com