



**INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA**

**Casebook Issue 8:
Corporate Insolvency
Resolution Process of
Gee Ispat Private
Limited**

**INSOLVENCY
UNCOVERED**

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About Gee Ispat Private Limited

Gee Ispat Private Limited is a Private Limited Company incorporated on 5th December 2003. It is classified as a Non-Govt. unlisted private company classified as “company limited by shares” and is registered at Registrar of Companies, Delhi. Its authorized share capital was Rs. 150,000,000 and its paid up capital is Rs. 136,649,664. It is involved in manufacture of Basic Iron & Steel with a capacity to produce 103,500 tonnes of stainless steel (SS) per annum.

Its registered office is at A/28, Sector-19, Rohini New Delhi, 110085, India. Its 3 directors are Mr. Vijay Garg, Mr. Krishan Basia, and Mr. Ankit Gupta. The company commenced commercial operations in February 2005. It used to sell its products to the domestic and export markets through dealers.

Major Financial Creditors/Bankers

The directors of the Gee Ispat took hefty amount of loan amounting to thousands of crores in the name of the company from various banks. Banks like Oriental Bank of Commerce, HDFC Bank Ltd., Barclays Bank PLC, IFB, IDBI Bank, Axis Bank, PNB etc. The company went into massive losses and failed to clear the pending dues owed to the banks. The account of the Gee Ispat was declared as NPA.

The company business went from bad to worse as the company became incapable of paying its own employees and operational creditors. The registered office was later shut and the last annual general meet of the company was held in 27.08.2016.

CIRP of GEE Ispat Private Limited

NCLT admits the CIRP initiation application moved against Gee Ispat Pvt. Ltd²

M/s Shree Ram Lime Private Limited filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 against M/s Gee Ispat Pvt. Ltd. The Gee Ispat, herein the Corporate Debtor (CD) owed a sum of Rs. 85,59,554/- (Rs. Eighty five lakh, fifty nine thousand, five hundred and fifty four only) to M/s Shree Ram Lime Pvt. Ltd., herein the Operational Creditor (OC). The application was accepted by the Adjudicating Authority (AA) on 24th August, 2017. Moratorium in terms of Section 14 of the Code was imposed and Mr. Shankar Chaudhary was appointed as the Interim Resolution Professional (IRP).

Replacement of the IRP³

On 27th September, 2017, the first meeting of the Committee of Creditors (CoC) was scheduled. In the CoC, it was decided to replace the existing IRP Mr. Shankar Chaudhary and appoint applicant/RP as Resolution Professional (RP), by a vote of more than 66% voting share of the financial creditors. Subsequently, an application was moved for appointment of a Resolution Professional (RP) and Ms. Pooja Bahry was appointed as the Resolution Professional (RP) vide NCLT order dated 24th October, 2017.

No resolution plan received, leading to 100% approval of the CoC for moving the company into Liquidation⁴

In the 7th meeting of the CoC on 30th January, 2018 it was amicably decided that since no resolution plan was received in respect to the Corporate Debtor (CD) and as very little time was left in completion of the CIRP of the CD, an application to liquidate the CD's company under Section 33 of the Code shall be moved in the NCLT.

The tribunal through its order dated 5th October 2018, accepted the application and the existing RP, Ms Pooja Bahry was appointed as the Liquidator to conduct liquidation of the CD.

CoC decides to file a complaint before Insolvency and Bankruptcy Board of India ("the board") against the suspended directors of the CD for falsification in books of accounts and false representation to the creditors⁵

Along with it two other major unanimous decisions were also taken in the 7th meeting of the CoC:

(a) to file a application before NCLT due to falsification in books of accounts by the Corporate Debtor/suspended Board of Directors under Sections 66, 67 (read with Section 235A) of Insolvency Bankruptcy Code, 2016 and under Section 65 against the Operation Creditor.

(b) To file a complaint before IBBI regarding the Offences and Penalties under Section 73 (read with Section 235 A) of Insolvency Bankruptcy Code, 2016 due to false representation to creditors committed by Corporate Debtor (CD)/suspended Board of Directors

NCLT lashed out at the directors of the Corporate Debtor (CD) for conducting and indulging in frivolous and malicious business transactions with the creditors.⁶

On 19th July, 2019, NCLT held that the CIRP of the CD was initiated maliciously and fraudulently and with a purpose other than that to revive the company. The tribunal found the directors guilty of indulging in destruction and falsification of the record books and misrepresentation to the creditors of the CD and directed the suspended directors to pay the entire debt of Rs. 512 crores owed to the financial creditors and to contribute Rs. 191 crores to the assets of the CD so that the creditors of the CD can be paid their dues.

The Ex- Directors of CD filed an appeal against the order dated July 19, 2019 before the National Company Law Appellate Tribunal (“NCLAT”)^{7& 8}

As per the order passed by NCLAT on 13th September, 2019, “Operation of the Impugned Order dated 19th July, 2019 passed by Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-II) in CA-64/C-II/2018 in CP(IB)-250/ND/2017 shall remain stayed till further orders.” The matter was listed for final judgement on 4th February 2020. Tribunal varies the impugned order dated 19th July, 2019 passed by the Adjudicating Authority (AA) and refer the matter to the Central Government for investigation through any inspector. If the matter needs to be examined by ‘Serious Fraud Investigation Office’, the Central Government may do so, if the case of fraud is made out and proceed further in accordance with law.

NCLT clarified that Capital gain tax payable to Tax authorities is to be treated as Operational Debt and thus Capital gain tax payable during the period of liquidation would be covered under Section 53 of the IBC⁹


The liquidator filed an application under Section 60(5) of the Code seeking clarification from the NCLT on the status of assets which are part of the Liquidation estates post liquidation. The issue as to whether the liquidator is required to deposit capital gains on sale of secured assets and include it in the liquidation cost and distribute the balance amongst the claimants. On 22nd October, 2019, The Adjudicating Authority held that capital tax liability arising out of sale shall be distributed in accordance with the waterfall mechanism under Section 53. The applicability of the Section 178 or 194 IA of the IT Act will not have an overriding effect on waterfall mechanism under the provisions of Section 53 of the Code, which is a complete Code in itself, and the capital gain tax shall not be taken into consideration as the Liquidation Cost. The dues towards Government, be it tax on income on or sale of properties, would qualify as operational debt and has to be dealt with accordingly. The capital gain is first to be provided for, and then be included as liquidation cost, it would create an anomalous situation in the Secured Creditor getting a lesser remittance than what they could have realized had they not released the security into the common corpus. It is for this purpose that the provision of

Section 178 of the Code has been amended giving priority to the waterfall mechanism over government dues.


Concluding Notes


After many twists and turns under CIRP, Gee Ispat Private Limited, CD is under Liquidation. As per the order of NCLAT dated 3rd February, 2020, the Corporate Debtor (CD) is under investigation by the Ministry of Corporate Affairs (MCA) under Section 213 of Companies Act, 2013. The case may be referred to the Serious Fraud Investigation Office (SFIO) by the Central Government, if the case of fraud is made out and processed further in accordance with law.

CIRP Timeline


- 
- 5th December, 2013
 - Date of incorporation of Gee Ispat Pvt. Ltd.*


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- 27th August, 2016
 - Date of last AGM meeting

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- 24th August, 2017
 - The application for initiating CIRP was accepted by the Adjudicating Authority


- 
- 27th September, 2017
 - First meeting of the CoC conducted*


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- 24th October, 2017
 - Appointment of Ms. Pooja Bahry as the new RP*

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- 30th January, 2018
 - Seventh CoC meeting conducted*

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- 5th February, 2018
 - Eighth CoC meeting conducted*

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- 5th October, 2018
 - Appointment of Ms. Pooja Bahry as the liquidator.*

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- 19.07.2019
 - NCLT found suspended directors of the CD to be guilty of falsification of accounts and false representation to the creditors.*

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- 22.10.2019
 - NCLT held that Capital gain tax payable to Tax authorities is to be treated as Operational Debt and thus Capital gain tax payable during the period of liquidation would be covered under Section 53 of the IBC.*

Bibliography

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²[http://ibbi.gov.in/webadmin/pdf/order/2017/Aug/24th%20Aug%202017%20in%20the%20matter%20of%20Gee%20Ispat%20Pvt.%20Ltd.%20CP%20No.%20\(IB\)-250-\(ND\)-2017_2017-08-29%2016:55:12.pdf](http://ibbi.gov.in/webadmin/pdf/order/2017/Aug/24th%20Aug%202017%20in%20the%20matter%20of%20Gee%20Ispat%20Pvt.%20Ltd.%20CP%20No.%20(IB)-250-(ND)-2017_2017-08-29%2016:55:12.pdf)

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⁴[https://ibbi.gov.in/webadmin/pdf/order/2018/Oct/5th%20Oct%202018%20in%20the%20matter%20of%20Gee%20Ispat%20Pvt.%20Limited%20C.A.%2063-C-II-2018%20In%20Company%20Petition%20No.%20\(IB\)%20-250\(ND\)-2017_2018-10-15%2014:20:17.pdf](https://ibbi.gov.in/webadmin/pdf/order/2018/Oct/5th%20Oct%202018%20in%20the%20matter%20of%20Gee%20Ispat%20Pvt.%20Limited%20C.A.%2063-C-II-2018%20In%20Company%20Petition%20No.%20(IB)%20-250(ND)-2017_2018-10-15%2014:20:17.pdf)

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