



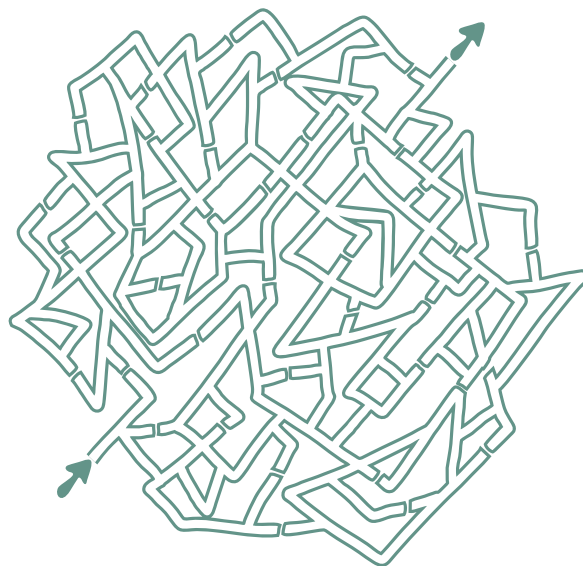
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UNPACKING VIDEOCON'S INSOLVENCY SAGA

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UNPACKING VIDEOCON'S INSOLVENCY SAGA

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A SPIRAL OF DEBT

All loans come with a certain degree of risk of default by the borrower, but not all defaults make huge headlines. Today, let's discuss the story of Videocon Industries Limited ("**Videocon**") – a classic example of a *jack-of-all-trades*, master of none. Rewind to 1956, when Videocon forayed into the business world as a paper tube seller.

Soon enough, the hunger to enter new markets nudged Videocon in the manufacturing of consumer electronics such as television and washing machine and in no time, its name became synonymous with household electronics. Nevertheless, Videocon's hunger to diversify into

new and challenging markets did not die. Riding on the back of extensive loans from the Indian banks, Videocon established its business empire spanning from Oil and Gas to Telecom and even DTH in early 2000s.

Do you know?

The Reserve Bank of India can issue specific directions to the Banks for the purpose of initiating insolvency against the lenders. This is provided under Section 35A of the Banking Regulation Act, 1949

Unsurprisingly, the over-diversification by the company brought along a plethora of existential risks. No amount of capital could save Videocon's new ventures from failing spectacularly. The aggressive borrowing for its new businesses gave feeble returns and sucked resources from its profitable ventures as well. Sooner, rather than later, the 30-year-old business conglomerate, ran into a spiral of crushing debt within a span of 10 years.

At the end, Videocon was left with a massive hole in its pockets and a Rs. 90,000 crores dues looming over its head during its peak. We can argue all day long that Videocon's failure is entirely of its own making, but the important thing to consider is the outrageous amounts of money that the company owed to its financial creditors such as banks and operational creditors such as Micro, Small and Medium Enterprises. To tackle this issue, the lenders of Videocon came together to form a joint lenders forum wherein its debt was proposed to be restructured. However, soon enough, the Central Bank intervened and directed the lenders to initiate insolvency against Videocon instead. Following this, State Bank of India ("**SBI**"), Videocon Group's largest lender dragged the group to insolvency for the resolution of the piling debt

ATTEMPTING TO SORT OUT THE MESS

Simply put, under the IBC, when a Corporate Debtor ("**CD**") is unable to pay back its dues to its financial and operational creditors, the Corporate Insolvency Resolution Process ("**CIRP**") comes into play. Once initiated, an insolvency resolution professional is takes charge of the powers of the management of the CD till the time that the resolution is finalised. All the financial creditors of the CD come together to form the Committee of Creditors ("**CoC**"). The primary role of the CoC is to assess and approve the resolution plans of the potential bidders for the assts and business of the Corporate Debtor.

If and when a resolution plan is approved by the CoC, the approval of the same from the National Company Law Tribunal ("**NCLT**") is required. In the absence of a viable proposal, the CD is disposed of at its liquidation value. It usually refers to the amount you can get by selling the machines, factories, and other assets of a company on a piecemeal basis and. In certain cases, this value can be pretty close to the scrap value of these assets. Now that you have an understanding of the whole process, let's move onto the case in hand.

Videocon Group's insolvency case was murky from the word go. Pursuant to the process of its insolvency resolution, before the NCLT, Videocon received a resolution plan by Vedanta group-promoted Twinstar Technologies Limited ("**Twinstar**"). The resolution plan had two surprising ingredients: One, the repayment amount offered in the plan was only marginally higher than the liquidation value. Second, the repayment offered in the plan resulted in more than a 95% haircut (or total shave?) on the sums owed to the financial creditor.

INFOGRAPHIC

Year 2017-18

Videocon held discussions with the Joint lenders forum of the lenders for restructuring of their debt.

January 2018

SBI moved NCLT to initiate insolvency against Videocon.

November 2020

Videocon's Committee of Creditors approve Twinstar's Resolution Plan

July 2021

Bank of Maharashtra & IFCI move NCLAT against NCLT approval

July 2021

Twinstar moves SC against NCLAT stay

January 2022

NCLAT set aside NCLT's approval of Twinstar's takeover; Twinstar bid rejected, fresh bids invited

February 2022

Close of applications for fresh expressions of interest in Videocon

August 2020

11 resolution applicants submitted resolution plans

June 2021

NCLT approved Twinstar's takeover offer

July 2021

NCLAT ordered the stay on the implementation of the resolution plan

August 2021

SC refuses to vacate NCLAT stay on Twinstar takeover

January 2022

Twinstar to approach SC over NCLAT's order

Surprisingly, such a resolution plan was accepted by the CoC with a 95.09% voting share. Twinstar was to pay a paltry sum of Rs 2,962 crore as against an outstanding debt of nearly Rs. 65,000. Considering these numbers, even the NCLT observed that the liquidation value of the entity might have been disclosed to Twinstar resulting into the lack of credence in the process.

In a twist of events, the financial creditors who had earlier approved the resolution plan, flip-flopped. Arguing a duty-bound urge to reconsider their decision in light of the unprecedented 95% haircut, the financial creditors moved National Company Law Appellate Tribunal (“**NCLAT**”) against the approval of the resolution plan by NCLT.

The NCLAT while upholding the supremacy of decisions of the CoC in commercial matters, held that if the CoC has power to approve a plan, it has also the power to reconsider and review its own decisions on a resolution plan. It used the analogy of the ‘Board of Directors’ of a company, which has the power to approve a proposal, and also has the power to review and even annul previous approvals at a later date, in course of exercising its powers of implementation.

FOOD FOR THOUGHT

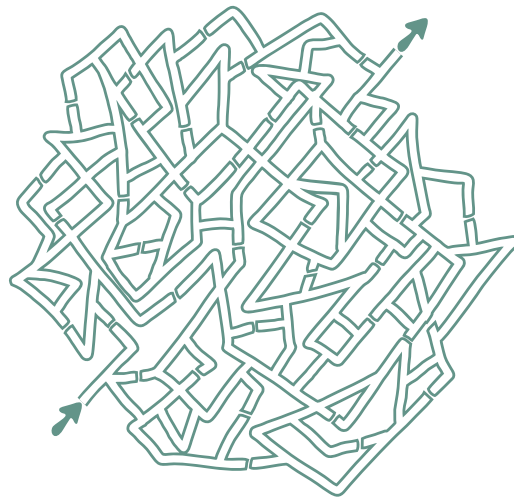
The CoC, in the present instance, reconsidered and reversed their own decision, and while this falls in line with the reasoning laid down by the NCLAT, it leaves us with some unanswered question as well. For one, does the decision of the CoC not have a bearing on the other parties such as the resolution applicant that submitted a resolution plan? Does it not question the credible and predictable character of the insolvency resolution process? Should the privilege of withdrawal of an approved resolution plan exclusively rest with the creditors of the company?

We leave our readers to ponder upon the answers to these questions and let us know of their thoughts.

Do you Know?

In India, the Insolvency resolution process, and the borrower company under insolvency is managed by the financial creditors of the borrower company. For the purpose of this, a ‘Committee of Creditors’ is formed.

The scheme of this arrangement is provided under the Insolvency and Bankruptcy Code 2016.



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