

Videocon tells a Story*

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The multiple encounters with government agencies and the courts of Videocon Industries—the now bankrupt durables-to-energy corporate group—on charges of violations of one kind or another get curiously by the day. Having put behind media attention on allegations such as corruption and fraud in its credit dealings with ICICI Bank and its high-profile chief executive Chanda Kochhar and the illegal diversion of funds meant for overseas oil investments (for which its offices were raided as recently as July 17), the group has once again been in the news. This is because of the twists and turns the bankruptcy proceedings that followed its default on a pile of debt have been through. These proceedings, in the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT), have also questioning the vigour and integrity of the Insolvency and Bankruptcy Code (IBC), which has been touted as a game-changing mechanism to resolve the problem of accumulated bad debt in the books of India's banks.

To understand the implications of the Videocon saga, a brief foray into history is in order. At different points of time in 2018, creditors filed applications to initiate resolution proceedings against different Videocon group companies, given their failure to meet their debt service commitments. Approached by the promoter, Venugopal Dhoot, and a principal creditor, the State Bank of India, in August 2019 the Mumbai bench of the NCLT, in what was a first instance, ordered the consolidation of 13 of these separate proceedings into one case covering the group to be heard by a single adjudicating authority. The consolidation was presented as a new initiative “to be utilized as a mechanism to maximise the value of a financially stressed group of companies.”

Once initiated, the insolvency proceedings took much longer than mandated by the IBC. Finally, in mid-June 2019, the National Company Law Tribunal (NCLT) approved a resolution plan for recovery of proceeds to part cover the non-performing debt of Videocon Industries. The plan was based on an offer made by Twin Star Technologies, a company belonging to mining conglomerate Vedanta, and accepted by a committee representing the creditors exposed to Videocon. This was the first group-based resolution award since the IBC process was put in place.

That award has, however, not brought the Videocon saga to its end. While granting approval, the NCLT had noted that the scheme involved Vedanta paying almost nothing, with its successful offer amounting to 4.15 per cent of the outstanding admitted claims of more than Rs. 64,000 crore and the creditors settling for a “hair cut” of 95.85 per cent. Moreover, the NCLT felt it necessary to request the Insolvency and Bankruptcy Board of India (IBBI) to examine whether confidentiality requirements had been met in the resolution process, especially since the successful bid was so close to the liquidation value at which assets could, probably, have been sold as scrap. Twin Star's successful bid offered creditors Rs. 2962.03 crore, whereas the valuers had estimated the liquidation value at Rs. 2568.13 crore. By flagging the small difference between the two, the NCLT was implicitly casting doubt on the integrity of the resolution process, which requires that the liquidation value should be kept confidential till all offers were made.

The resolution plan appears suspect also because of the control that Vedanta would obtain over the Ravva oilfield in the Krishna-Godavari basin with the takeover of Videocon. Videocon holds a 25 per cent stake in the oil field, which is higher than the stake of 22.5 per cent that Vedanta holds through Cairn. If Vedanta gets control over Videocon Industries for 'almost nothing' as the NCLT opined, its stake in the Ravva fields would rise to 47.5 per cent. In 2018, the Ministry of Petroleum and Natural Gas had sent Videocon a controversial claim (rejected by an international arbitration tribunal) demanding the dollar equivalent of Rs. 2,245 crore, which in its view was the unpaid profit petroleum due to the government as part of a 'Production Sharing Contract' between the government and ONGC, Videocon Industries, Vedanta and Ravva Oil (Singapore). ONGC held a 40 per cent stake in the oil field. The resolution professional (RP) overseeing IBC proceeding relating to Videocon took the matter to the NCLT, which ruled that once insolvency proceedings are initiated as per the IBC, a moratorium comes into force and no dues can be recovered from the corporate debtor outside of the resolution plan. Whatever the merits of the government's claim, there can be little doubt that Videocon's oil assets that Vedanta would acquire are quite attractive to the latter, strengthening the suspicion that the final settlement was far too low. Remarkably, the government's demand in terms of profit share alone was almost equal to the estimated liquidation value of the assets of Videocon Industries.

The fact that, despite such evidence and its own apprehensions, the NCLT found it necessary to approve the resolution plan suggests that the IBC resolution process is neither "efficient" and "time bound" as claimed, nor capable of extracting a fair value out of the assets available to compensate creditors. The fact that the resolution plan appeared suspect was what possibly triggered other actions that has once again stalled the process. On July 19 the National Company Law Appellate Tribunal (NCLAT) stayed the NCLT's approval of the resolution plan, which was challenged by the Bank of Maharashtra and IFCI. The principal grounds of the challenge were that while the corporate debtors in the group had cash balances of Rs. 200 crore the successful resolution applicant was bringing in only Rs. 262 crore in cash, the rest being in non-convertible debentures payable in six years, and that the first payment of upfront cash of Rs. 200 crore would be made only after a significant time interval.

Meanwhile, in keeping with his brazen and quirky behaviour, Dhoot, the defaulting promoter of the Videocon group, has also requested the NCLAT to quash the NCLT approval of the resolution plan, and require the NCLT to consider a Rs. 31,789 crore offer he had made to the creditors to take back the assets. He has also reportedly held that the resolution professional was in error for not having flagged the foreign oil and gas assets of Videocon in the information provided to potential bidders. Given opposition to defaulting corporates recovery their own assets by settling debt at a discount, Dhoot's bid is unlikely to go through.

But the mess that this much-delayed, first of a kind effort at consolidated group-wise resolution of bad debt has given rise to questions that erode the legitimacy of the IBC process. In particular, it raises questions about the decisions taken by the Resolution Professional and the dominant voices in the Committee of Creditors, and about the integrity of the valuation process. Why was the liquidation value of assets that included oil and gas assets set so low? Why was the Vedanta bid so close to the liquidation value, as the NCLT queried? Why was the committee of creditors willing

to accept such a low bid? Why is Dhoot willing to pay such a large sum to win back assets he let slip from his hands?

Among the many things the IBC was designed to ensure, ostensibly to speed up resolution and improve recovery rates, was to substantially empower the Committee of Creditors and the Resolution Professional. Within the frame of the process that the code laid out, the decisions of these players were binding. If the NCLT could not establish that the prescribed process had been deviated from, it also could not turn down these decisions, in the absence of opposition from an adequate number of creditors. Of the two powerful sets of players, the members of the committee of creditors at least have a stake in the game, benefiting from higher recovery. That is not true of resolution professionals who are paid to manage the company and its assets till the process is complete, during which time they exercise immense power. As Arush Khanna of Numen Law Offices notes (Indian Express July 31, 2021), section 25 of the code, that defines the “Duties of resolution professional”, does not even require the RP to maintain confidentiality of sensitive information that is likely to affect the valuation of the corporate debtor. Given their powers and access to information, some resolution professionals may engage in acts that subvert the integrity of the process. Recognising this possibility, the Insolvency and Bankruptcy Board of India has decided to monitor and institute strict disciplinary proceedings for insolvency professionals, with penalties for violations of the code of conduct, including that of terminating their licence to practice.

But even if this late course correction proves to be a deterrent to deviant behaviour, it is likely to hurt the resolution process by increasing litigation and worsening the problems of long-delayed resolution and low recovery rates. The best solution is to keep down the volume of non-performing assets. That should be possible if banks do not, as they did in the case of Videocon, have large joint exposures to a single corporate group, which is plied with credit even as the evidence suggests that it has not been acting in good faith and been responsible in meeting commitments. That raises the most important question: why did Videocon’s creditors act the way they did?

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