



INDIA INSIGHTS

December 2019

**Essar Steel India Limited –
Resolution Experience**





Company Background

Essar Steel India Limited (ESIL) is India's 4th largest steel producer in terms of installed capacity with an annual production capability of 10 mn tons supported by a 20 mn tons pellet facility. The manufacturing operations comprise iron ore beneficiation, pellet making, iron making, steel making, and downstream facilities, including a cold rolling mill, a galvanizing and pre-coated facility, a steel-processing facility, an extra-wide plate mill and three pipe mills with coating facilities. Facilities are located at Hazira (Gujarat), Pune (Maharashtra), Paradip & Dabuna (Odisha), Vizag (Andhra Pradesh), Bailadila (Chhattisgarh) and have access to captive power and port facilities through various Essar group companies.

Summary of resolution

ESIL was the most high profile IBC case with total borrowings of INR 493 bn. The resolution process took more than 800 days, against the timeline of 270 days, due to various issues and litigation. Key event timelines under IBC are given under Annexure 1.

The final judgement on the case filed with the Hon'ble Supreme Court of India was received on 15th November 2019. By virtue of the order, the resolution plan submitted by consortium of Arcelor Mittal and Nippon Steel for an amount of INR 420 bn was approved. The distribution of proceeds as suggested by the Committee of Creditors (CoC), which factored in primacy of secured financial creditors' rights over unsecured creditors and operational creditors was also approved.¹

Post confirmation of resolution plan by the Hon'ble Supreme Court of India, the final exit was achieved on 16th December 2019. The resolution plan was finally implemented and distribution of proceeds to all stakeholders has been completed.

Annexure 1: Key event timelines under IBC

Timelines	Particulars
Aug 02, 2017	Order for admission of ESIL in NCLT under provisions of IBC.
February 12, 2018	First Round Resolution Plan submitted by Numetal & Arcelor Mittal and Nippon Steel consortium (Arcelor)
March 23, 2018	Resolution Professional (RP) declared the first round applicant ineligible under section 29A of the IBC
April 02, 2018	Fresh resolution plans were submitted by AM India, Numetal and Vedanta Ltd.
October 04, 2018	SC Judgement affirming decision of RP & CoC to declare Numetal and Arcelor ineligible, however both granted final opportunity to cure default under 29A. SC also directs the CoC to consider plans submitted on April 02, 2018 for such applicants who are eligible under 29A (post cure)
October 19, 2018	Arcelor declared eligible on account of curing default under 29A. Numetal fails to clear default. Presentation of Resolution Plan by eligible Resolution Applicants Arcelor and Vedanta
October 19-21, 2018	Arcelor declared highest bidder and negotiations held with Arcelor

¹ Refer Annexure 2 for key takeaways from Essar Steel Supreme Court order dated November 15, 2019.



October 22, 2018	Submission of final resolution plan which envisages payment of INR 420 bn to secured financial creditors
October 24, 2018	Resolution plan approval by COC. Also distribution is approved by CoC which distributes resolution plan proceeds basis quality of security and those creditors with security on project assets to receive ~92% of admitted claims
March 08, 2019	Order of NCLT approving plan subject to certain suggestions and modifications. Distribution based on different security packages is rejected by NCLT. Further NCLT recommends higher share to Operational Creditors
March 27, 2019	CoC agrees to keep aside INR 10 bn out of upfront amount of INR 420 bn in favour of OCs and reiterates its earlier decision vis-à-vis distribution among financial creditors based on different security packages
July 04, 2019	NCLAT, vide its judgement dated 4th July 2019, approved the Resolution Plan. However, it ordered equal distribution of resolution plan proceeds amongst all Financial Creditors (“FC”) and Operational Creditors (“OC”) (thereby reducing the recovery of secured FC to 60.7%). Further, it also admitted additional claims of OCs worth ~INR 135 bn
July 29, 2019	In a swift response to the NCLAT order, the Government of India amended IBC, clarifying and restoring the primacy of secured creditor rights against all other creditors and maintaining the hierarchy of lenders
November 15, 2019	Post the final round of hearings, the Supreme Court, on 15th November 2019, came out with its order reiterating the CoC’s decision and concurred with the Amendment Bill to the IBC with regard to distribution of resolution plan proceeds and reinstated the primacy of secured FC rights over OCs
December 16, 2019	Post approval of resolution plan by the Hon’ble Supreme Court of India, the final exit was achieved on 16 th December 2019. The resolution plan was finally implemented and distribution of proceeds to all stakeholders was completed.



Annexure 2: Key takeaways from Essar Steel Supreme Court order dated November 15, 2019

In a landmark judgment for the insolvency resolution process in India, the Supreme Court gave its ruling in the Essar Steel case on November 15, 2019, upholding the primacy of secured financial creditors and resolving a constitutional challenge to the Insolvency and Bankruptcy Code (IBC) process.

Essar Steel which had ~INR 490 bn+ of debt was one of the earliest IBC cases (amongst the top 12 cases recommended by the RBI) that was admitted to the NCLT in **August 2017**. There were a few bidders in contention for this asset and in **October 2018**, the Committee of Creditors (CoC) constituted under the IBC process, accepted the INR 420bn bid of Arcelor Mittal. The CoC decided allocation of proceeds implied a ~90% recovery for the secured financial creditors and very little recovery for the operational and unsecured creditors.

The operational and unsecured creditors approached the appellate authority NCLAT on the same and the NCLAT judgment in **June 2019**, said that all creditors should be treated at par and with this, the recovery to the secured financial creditors was to be ~60% vs the ~90% earlier.

This case was then taken to the Supreme Court of India, which in **November 2019** overturned the NCLAT judgment and upheld the primacy of the secured financial creditors and the CoC decision.

Following are the key takeaways from the judgement –

- **CoC has the ultimate discretion of deciding the merits and demerits of the resolution plan.** CoC's decision cannot be challenged and **value maximisation would remain the ultimate objective of the IBC**
- The sanctity of the **validity of the security held by the secured creditors has been validated**
- While there would be a clear differentiation between secured and unsecured creditors, **there would also be differentiation between the various types of securities held by secured creditors**
- **Operational creditors are only entitled to the liquidation value** or the amounts approved by the CoC

Following are expected to be the key implications of the judgement –

- It would **enable the secured creditors to lend at lower rates** (risk-adjusted) in absence of which the lending rates in the country would have risen
- It proves that **bankruptcy law in India is for real** and will work which will lead to reduction in timeline for other pending cases
- It will lead to a **large capital infusion in Indian banking system** as there would be write-backs of the provisions which banks had made
- The entire IBC process can be expected to become a lot smoother now as litigations would expectedly decline

With the resolution of this most-followed case, the success of IBC as an efficient insolvency resolution mechanism has been reinforced. The best case under the IBC was resolved in ~9 months and the toughest one in ~30 months (compared to 2-3 years taken by Chapter 11 in USA). The overall time required for settlement under IBC process can be expected to further come down to 1-1.5 years as the law matures.

This milestone judgment will thus set precedence for future resolutions through the IBC and will provide confidence to the secured creditors to bring deals to the IBC process for resolution. This is expected to increase the deal flow and provide attractive investment opportunities for investors who were in a wait and watch mode till this judgement.



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