



INSOLVENCY AND BANKRUPTCY MOOT COMPETITION

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INSOLVENCY AND BANKRUPTCY MOOT COMPETITION 2017

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Moot Proposition¹

New Age Technology Limited (New Age) is the fourth largest manufacturer of solar panels in the world and the largest in India. New Age has three plants, one located in the State of Gujarat and the other two in Karnataka. The shares of New Age are listed at the Bombay Stock Exchange and the National Stock Exchange. New Age has raised an amount of Rs. 10 crore in the year 2015 from issuing Masala Bonds with maturity date of July 2018. The largest maturity amount is owed to PEG Developers Ltd, a London based Infrastructure Company. The FCCBs issued by New Age are listed on the New York Stock Exchange. The Registered Office of New Age is in Delhi. The corporate office of New Age is located in Mumbai. There is one sales office in Rajasthan and another in

¹For the purposes of this Moot Problem, it is assumed that India has adopted the UNCITRAL Model Law on Cross-Border Insolvency 1997

Hyderabad. Hyderabad office is on lease from Mr. R.S. Reddy. The Rajasthan office is self-owned property located in a commercial building in Jaipur. The office space is shared with a travel agency. The company has a guesthouse in Hyderabad, which was taken on lease for three years in 2014 at the monthly rent of Rs. 12 lakh. The lease can be extended by another three years at the option of the lessor. Between the plants and its various other establishments New Age employs over 3000 employees. New Age also owns a property "New Age House" in Jaipur, which has been given on lease to People's Bank, Jaipur Branch under a registered lease deed dated 06.01.2011. Lease rental of Rs. 15,06,900/- per month is payable to New Age. The company owns six luxury cars, including a Mercedes Benz, BMW and Audi, for use by its Managing Director, CEO and CFO and other senior executives. The company owns an apartment in Juhu, Mumbai, which is occupied by the managing director of the company, who is also the main promoter. New Age also owns a parcel of land in Raipur in Chhattisgarh.

In 2015, the promoters of New Age diversified into the hotel and real estate business. They set up a company, Radha Hospitality Private Limited (RHPL) that bought an operational 5-star hotel in Jaipur. An international hotel operating company, Seven Points, manages the Jaipur hotel. New Age entered into a JV Company with RHPL to develop a hotel on Raipur land (owned by New age) to be operated by Seven Points. The JV development agreement requires that RHPL will construct the hotel and commercial tower on the land by contributing 50% cost while New Age will pay for the balance (in kind and cash). The Contribution in kind was by way of transfer of the Raipur piece of land owned by New Age to the JV and the cash contribution was approximately Rs. 65 crore. As New Age received a large advance from its US clients against orders, the company paid nearly 90% of its obligations towards the construction amount of Rs. 65 crore over a short period of time. The balance was to be paid at the time of completion of the project. According to the JV agreement, New Age will receive revenue from commercial tower and RHPL from the hotel, after meeting operational expense and management fee. The hotel is scheduled to commence in March 2018 and New Age expects good returns.

New Age obtained financial assistance from a consortium of banks in the year 2008 at the time of setting up of the Gujarat plant. The company later borrowed further from these banks in the year 2011 for setting up the Karnataka plants. A total term loan and working capital assistance of Rs. 2195 crore was borrowed – term loan from three banks – Indo Bank, RST Bank and People’s Bank, and the working capital assistance of Rs. 195 crore was obtained from Bank of North India. The company owns the lands on which the plants are built. While the term loan lenders have first charge on the land and building of New Age and second charge on plant and machinery, the working capital lender has first charge on plant and machinery and second charge on land and building. The principal amount and outstanding dues of the lenders of New Age are as detailed below:-

Particulars	Principal Amount (In Rs. crore)	Outstanding as on 31.12.2016 (In Rs. crore)
INDO BANK	1000	1650
RST BANK	500	650
PEOPLES BANK	500	790
BANK OF NORTH INDIA	195	279

In the year 2016, whilst diversifying into the hospitality and real estate business, the promoters also acquired Ten Hospitality Services Pvt. Ltd (THSPL), a Singapore based company, which owns a 5 Star hotel, The Davisson Continental, in Singapore. In January 2017, THSPL raised capital through a private equity fund, LAVCA Capital Advisors (LAVCA) for its re-development and expansion needs to the tune of USD 50 million. The investment came partly in cash and partly as a loan, against which THSPL created security interest in favour of LAVCA’s sister company AFB Investment Pte., based in Mauritius and created *First charge* by way of equitable mortgage on immovable properties of the Davisson Continental consisting of land and building of the hotel. THSPL is required to repay the entire funding within a period of 3 years i.e. by 30.07.2019.

New Age has many suppliers of raw material. Two main suppliers are based out of China and Taiwan. New Age has many clients but 85% of its production is captive with two major clients - Dan Morris Energy Inc. (Morris), a Delaware company, and Texas Power International (TPI), a company incorporated in Houston. Both the US based companies are operating major solar power plants around the world, including in India. New Age has large orders from these two clients that will keep the plants busy for at least four years (operating on full capacity).

New Age has been servicing its debts regularly and has excellent relations with the bankers. Its payments to suppliers are also regular.

On 15 September 2016, Morris filed for a Chapter 11 proceeding under the U.S. Bankruptcy Code due to the stress caused by shutting down of its two plants in Muhaba in North Africa due to social unrest in the country following a military coup. At the same time, the holding company of TPI faced a major legal action from the US government for bribing government officials in one of the South East Asian countries in return for permission to set up a power plant in that country. Tremors were felt in TPI as many of its contracts in that country were also put under scrutiny.

On 18 September, Morris asked New Age to put some of its orders on hold. Morris conveyed its inability to pay the next tranche of purchase money due on 15 October 2016. But it did not cancel the orders as it was hoping for some relief under Chapter 11 proceedings. Around the same time, TPI wrote to New Age and expressed inability to take delivery of solar panels already ready for delivery, for which payment had been made, as it was blacklisted in the country where they were to be delivered. They were facing prosecution both in US and the said South East Asian country.

The next instalment of interest payable by New Age to term loan lenders fell due on 31st October 2016, which New Age paid. The working capital lender was to be paid its next instalment of interest on 31st December 2016. Around 4th November New Age paid the balance amount of 10% to RHPL for completing construction works. The company did

not have any cash to service the instalment of Rs. 35 lakh due on 31st December 2016. On 4th December 2016 the Board of Directors of New Age passed a resolution to sell the Mumbai house to its managing director for Rs. 5 crore to raise funds to pay the next installment. An advance of Rs. 55 lakh was received. The market value of the Mumbai house is speculated to be much higher.

On 16th December, New Age received a copy of an order from their lawyer in Bangalore stating that the High Court of Karnataka had rejected their appeal against an order of attachment passed by Customs Department, pursuant to an order passed by them for concealment of real value of plant imported from France in 2011 to avoid payment of duty of Rs. 45 lakh, depriving the government of revenue. That amount together with the penalty now worked out to Rs. 95 lakh. The High Court had allowed Customs Department to attach the amount of Rs. 55 lakh lying in New Age bank account in Mumbai. As a result, New Age bank account in Mumbai had only Rs. 14 lakh left. There were Rs. 32 lakh in another account which could have been used to pay the salaries and other bills or the bank. New Age decided to default to the banks.

On default, Bank of North India at once informed the other banks. On 4th March 2017, RST Bank filed an application before the NCLT under the Insolvency and Bankruptcy Code, 2016 (IBC) and proposed Mr. S. Mahesh, its empanelled lawyer, as interim resolution professional.

(Please identify the key issues at this stage)

The Application was listed for admission hearing before the NCLT on 17th March 2017, wherein the Corporate Debtor raised objections to the maintainability of the Application before NCLT on various grounds. The Bench whilst recording the objections raised in detail by a speaking order, listed the application for admission hearing on 5th April 2017.

On 5th April 2017, NCLT admitted the application whilst declaring Moratorium and referred the appointment of the IRP to the Insolvency and Bankruptcy Board of India (IBBI) for recommendation. IBBI recommended and confirmed Mr. Amit Thakur as

Interim Resolution Professional to carry out the functions as mentioned under the IBC, 2016.

(Please identify the key issues at this stage)

Upon appointment, Mr. Amit Thakur (IRP) visited the Gujarat plant to take possession of New Age's assets. He was not allowed to enter the unit of New Age as the local political leaders along with the union workers led an agitation against Mr Amit Thakur to prevent him from taking possession. Mr. Amit Thakur took appropriate steps and took possession of the unit and appointed XYL Security services for preserving the unit of New Age.

(Please identify the key issues at this stage)

On 06th March 2017, the electricity supplier GSES issued a demand notice for Rs. 85 lakhs towards the dues of electricity for the past 9 months, to be paid within 10 days, failing which electricity will be disconnected with immediate effect.

On 08th March 2017, one of the suppliers of New Age, JSEW LTD who regularly supplies EVA Film for manufacturing of the solar panels refused to supply EVA Film till the time New Age clear its past dues and agreed to pay future dues as and when payable against future supplies.

On 09th April 2017, in order to run the company as a going concern, the IRP wrote to People's Bank to deposit the lease rental in terms of the lease from April 2015 to February 2017, amounting to Rs. 79,41,026/- with the company, to which People's Bank refused and informed the IRP that the Bank has been adjusting the said lease rental towards its dues.

(Please identify the key issues at this stage)

Pursuant to the public announcement, the IRP received claims from all the other lenders - Indo Bank, RST Bank and People's Bank. IRP also received claims from various

operational creditors and statutory authorities including the Customs & Excise Department. Accordingly, the IRP segregated the claims of the financial institutions, operational creditors, statutory authorities and the public depositors (Singapore).

During the scrutiny, the IRP observed that Marvel Organics Ltd, one of the financial creditors of New Age, had filed its claim but failed to file any documents in support to substantiate its claim. Marvel Organics Ltd had filed a claim of Rs. 136 crore. Marvel Organics Ltd provided transformers to the tune of Rs. 20 Crore to New Age, which it claimed, remained unpaid by New Age. Marvel did not file documents to support how its 20 crore had escalated to 136 crore. IRP added the claim of Marvel to the list and invited it to the committee of creditors.

(Please identify the key issues at this stage)

On 08th April 2017, the IRP appointed M/s. KGB Valuers and M/s AKP Valuers, being registered valuers, to determine the liquidation value of New Age. However, during the valuation, it was found that M/s AKP valuers were a related party to New Age.

In the year 2012, New Age had invited public deposits for its working capital needs. However, due to financial crunch, New Age could not service the interest to the public depositors and various public depositors filed their claim before the IRP. The IRP however rejected the claims of the public depositors on the ground that they do not fall within the purview of operational creditors. The aggrieved public depositors approached NCLT.

(Please identify the key issues at this stage)

In the meantime, RST Bank challenged the claim filed by People's Bank and Marvel on the ground that the claim filed by People's Bank is inflated.

In order to take possession of the flat of New Age in Mumbai, the IRP wrote to the Director for taking possession, who neither replied nor handed over the possession of

the flat. The IRP accordingly filed an application before the NCLT, seeking appropriate orders for taking possession of the Mumbai flat.

(Please identify the key issues at this stage)

One of the largest supplier of raw material to New Age, Xi Mao, a Chinese company, upon coming to know that New Age is under CIR process refused to supply raw material till the time past dues of Rs 10 crores are cleared by New Age and future payments are regularized.

Thereafter, the IRP verified the claims received and prepared a list containing the names of creditors along with the amount claimed by them including the rate of interest allowed in each case.

LENDER	CLAIM FILED (IN CRORE) Rs.
INDO BANK	1650
RST BANK	650
PEOPLES BANK	790
BANK OF NORTH INDIA	279
MARVEL ORGANICS LTD	136
JSEW LTD	20
GSES	1.20
PUBLIC DEPOSITORS	45
CUSTOMS & EXCISE	2
EPF DUES	12
XI MAO	15

On 22th April, 2017, the IRP constituted the Committee of Creditors (CoC). As RHPL was not part of the CoC, RHPL was not included in the CoC and objected to its exclusion from representation, participation and voting rights in the CoC.

(Please identify the key issues at this stage)

On 29th April 2017, the first meeting of the CoC was scheduled, wherein the IRP, Mr. Thakur, proposed to the CoC that IRP be continued as RP. However, after much deliberation, the CoC resolved to appoint Mr. Dhivesh Sharma as the Resolution Professional. During the meeting, People's Bank raised concern about sale of Mumbai Flat to the managing director of New Age in the month of December 2016 and the sale proceeds being siphoned off.

CoC informed the NCLT of appointment of Mr. Dhivesh Sharma as the Resolution Professional and the NCLT vide its order dated 07th April 2017 recommended the name of Mr. Dhivesh Sharma as the Resolution Professional to the Board for confirmation. On 17th April 2017, the Board confirmed Mr. Dhivesh Sharma as the Resolution Professional of New Age (under CIRP).

(Please identify the key issues at this stage)

In the meantime, the RP received a notice from the lessor with regards to the guest house of New Age and its lease coming to an end. In terms of the lease, renewal for next three years can be done subject to 30% increase of rent of the said guesthouse. However, the Resolution Professional chose not to renew the lease and terminate the lease w.e.f. 31st March 2017 i.e. prior to the termination date. New Age filed an application before the NCLT.

(Please identify the key issues at this stage)

Pursuant to the first CoC meeting, the RP received a letter from Mr. Chew John informing that AFB Investments Pte had initiated insolvency proceedings against THSPL in Singapore, in which he had been appointed as office holder. THSPL had defaulted in making payment of debt to AFB. Mr. Chew John requested the RP to put on hold any further action in the New Age insolvency proceedings, claiming that since subsidiary company is in insolvency proceedings and it was based in Singapore, Singapore would be considered as the centre of main interest. The RP replied to Mr. Chew John stating that since he was the office holder in New Age proceedings, the holding company of

THSPL, the centre of main interest would lie in India. Mr. Chew John moved an application before the NCLT for recognition of Singapore proceedings.

(Please identify the key issues at this stage)

Mr. Dhivesh Sharma, the RP thereafter collected information and prepared the Information Memorandum (IM) and invited expression of interest for Resolution Plan. Pursuant thereto, The Blue Plaza, a Thailand based hotel requested the RP for a copy of the IM. In addition, JKL Pvt. Ltd, the fourth largest manufacturer of solar panels in India also requested the RP for a copy of the IM. The promoters of New Age also requested the RP for a copy of the IM.

The RP refused to provide IM to JKL Pvt. Ltd on the ground that JKL was not a serious party and provided a copy of IM to both the promoters of New Age and The Blue Plaza. JKL filed an application before the NCLT to seek a copy of IM.

(Please identify the key issues at this stage)

Thereafter, the promoters of both New Age and The Blue Plaza submitted separate resolution plans, details of which are given below:

PLAN SUBMITTED BY NEW AGE:

- (i) Sale of "New Age House" property in Jaipur;
- (ii) Proposal to the lenders for reduction/hair-cut by 45% in the amount payable to the lenders with 10 years repayment schedule.
- (iii) Payment to Operational Creditors within three years.
- (iv) Payment of 60% CIRP cost.
- (v) Sale of part of shares of New Age in Seven Points Hotel at Raipur;

PLAN SUBMITTED BY THE BLUE PLAZA:

The Blue Plaza will purchase the Jaipur, Raipur and Singapore hotel for an amount of USD 125 million.

On 20th July 2017, the RP received claim from PEG Developers Ltd to the tune of Rs. 15 crore.

RP examined the resolution plans and pointed out defects. New Age had failed to identify the source of funds to pay dissenting creditors. Blue Plaza had proposed a plan of repayment over 5 years.

(Please identify the key issues at this stage)

During the CoC meeting held on 01st August 2017, certain objections were raised with regards to the resolution plan of New Age. .

In the CoC meeting held on 28th September 2017, the plan was approved with modifications that repayment will be made in 5 years as against 10 years and accordingly the RP filed the plan with the NCLT.