**TITLE OF THE PAPER**

*Offer a comparative analysis of the valuation methods used to determine the valuation of a distressed business when considering restructuring solutions. Review at least two jurisdictions, at least one of which must be the US or England and Wales. Discuss whether liquidation value, enterprise value, or some other valuation is used and critique each jurisdiction’s approach.*

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**Introduction**

How the valuation of a distressed1 business undergoing restructuring is different from the Valuation under normal circumstances? No doubt the distressed1 assets will have accumulated some element of toxicity thereby causing erosion in its value. But that can happen to any unit/business enterprise not necessarily undergoing restructuring. Like any healthy body accumulating cholesterol over the years a business enterprises also accumulate unwanted assets (NPAs) for various reasons. A healthy body tries to get rid of bad cholesterol to remain active, lean and efficient. On the other hand, an inefficient business unit will have extra flab that slows down its activity level. The unit will resort to extra borrowings to fund same set of unremunerative business thereby adding more toxicity to its assets. Only when it becomes impossible to carry on the business that unit opts for restructuring/surgery to get back to its normal business. Whether the restructuring will be successful or not depends to a large extent on its internal strength to carry on its business, commanding customer’s support/patronage etc., toxicity in its books notwithstanding.

Many startup ventures go for early valuation at the time of consolidation itself to garner better price in the market. Similarly, a comparatively healthy unit may be approached by a larger group/conglomerate for acquisition. In both these cases the business unit is in the sellers’ market and can dictate the price. On the other hand, a stressed asset under Restructuring is in the buyers’ market and its valuation is subject to manipulation by market players. Hence a business unit can be evaluated either on the basis of its future prospects, market share and premium its product commands in the market under normal circumstances or liquidation value driven by distressed1 conditions.

**1 The oxford dictionary meaning of distress is**

1. *Severe Pain, sorrow, anguish etc.,*
2. *The lack of money or comforts*
3. *Law = Distrain*
4. *Breathlessness; exhaustion*

V.tr

1. Subject to distress

2. Cause Anxiety to; make unhappy

In distress, suffering or in danger

The best way to evaluate the business is the present value of its future business prospects, with or without capital infusion. In the worst-case scenario, the valuation is the just the present valuation of its assets less liabilities, without any premium a very simplistic and conservative approach.

Value is actually in respect of a particular context. Value also can change with improvement of technology change of management change of portfolio, acquisition or disposal of assets business or undertakings. Restructuring of organization, business model, ownership or balance sheet, strategy of turnaround, buy out acquisition, or take over etc can actually alter market perception of the business enterprise.

**Distress in the Company: Causes**

If we are endowed with unlimited capital and resources, we may never have to face prospects of a distressed companies heading to insolvency. Unfortunately, since the Capital is scarce and comes with a considerable cost necessitating its deployment with discretion and tact. Besides uncertainty in any business venture is such that even with best practice things may go horribly wrong. Once the rot is set in its starts manifesting in different forms by emanating signals of sickness.

Before the company goes into liquidation there will be many opportunities where in the company can be valued at different stages as depicted in the chart below. One at Synergy Value, then Orderly transaction without having distress situation, then Orderly Transaction with Distress Situation, (however still with context of going concern sale) then Orderly Liquidation on piecemeal basis and Forced Liquidation on piece meal basis, all reflecting different stages of distress, toxicity and warranting different treatment.



Business with no imminent fear of Liquidation

Business facing Liquidation

Synergistic Value

Orderly transaction in no distress situation

Orderly transaction in distress situation (business sale)

Orderly liquidation (Piecemeal Basis)

Forced Liquidation (Piecemeal Basis)

Typically acquisition value by strategic buyer

Typically acquisition value by financial buyer

Based on Resolution Plan

Liquidation Value Estimate

Sales as a going concern rather than individual assets

Sales as individual assets

 where sufficient time available for transactions

Sales as individual assets

where sufficient time not available for transactions

**Chart : Depicting Business at different levels of Distress & Valuation at each level of distress**

The Companies health indicators give many symptoms which might be leading to the company slipping into distress. These symptoms may be internal viz. financial, managerial and technological or external like macro economic factors. Timely corrective actions at appropriate stage, can help the companies to turnaround besides preserving its intrinsic value.

Distress could be either economic distress or financial distress. The current pandemic has distorted the business environment and taken out many enterprises out of business, particularly industrial sectors like hospitality, tourism, travel air industry, sporting events and even fine dine restaurants. Further technical advancements too make the not so tech savvy companies go out of business.

This market for distressed assets could support a faster recovery of the economy and unlock the stuck capital by facilitating the exit of distressed assets and support the growth of viable ones.

**Methodology for Valuation:**

Traditional methods are more suited for healthy companies and can’t be used, as is, for valuation of distressed companies. One has to factor in the risk of bankruptcy while estimating the enterprise value of the firm under different valuation approaches. The following are the broadly used Valuation Approaches & Methods and a broad analysis of its application in a distress valuation.

1. Cost Approach
2. Market Approach
3. Income Approach
4. **Cost Approach:**

The Cost approach estimates the cost of recreating or replacing the assets of an enterprise.

**Applicability in Valuation of Distressed Asset**

Since, for an operating business, the whole is greater than the sum of its parts in general, cost approach is not the most preferred method for estimating enterprise value of going concerns however it can be considered for liquidation valuation.

1. **Market Approach:**

Market approach is a relative benchmarking. It uses a comparison between the subject enterprise and a company with a discovered price either through publicly traded shares or a private transaction using operating/ financial metrics for comparison.

**Applicability of Market Approach in Valuation of Distressed Asset**

The applicability of market approach is limited in case of distressed companies as the nature of distress can vary from firm to firm. Revenue and EBITDA multiples are used in distressed firm than healthy firms. P E or P/B multiples are also considered. The Capital Intensive Firm, with huge depreciation and amortization and will invariably have good EBITDA and bad income. High leveraged firms too will have high EBITDA AND NEGATIVE INCOME. So one can consider to compare distressed companies valuation to the valuation of other distressed companies.

In case we consider healthy companies as comparable and then we have to do an adjustment for distress for the firm we are valuing. However, the pitfall is whether we are clubbing the firms which are distressed to different degrees? We can also value the distress firm using comparable firms and consider it as a going concern value.

Moreover, the distressed company’s recent historical revenue and earnings might not be meaningful. Hence, a sustainable or normalized metric has to be ascertained on which the multiple should be applied.

1. **Income Approach:**

Under income approach, Discounted Cash Flow (DCF) method is a commonly used methodology, wherein present value of future expected economic benefits of an enterprise over life of the enterprise is estimated. By using a discount rate based on the risk perception, in a going concern, life of an enterprise is typically assumed till perpetuity and captured using a terminal value.

**Applicability Of Income Approach In Valuation Of Distressed Asset**

The applicability of Income Approach may suffer from the following risks:

1. Uncertainty over future cash flows
2. Uncertainty around life of the enterprise
3. Various other factors in arriving at the value

The following discussion encapsulates how to modify traditional DCF to overcome the above challenges.

1. **Uncertainty over future cash flows**

Distressed companies typically have a very volatile past; hence, projecting future cash flows is quite challenging. There are normally too many moving pieces to capture in a traditional framework.

1. **Life of the Enterprise**

Life of the enterprise can be concluded based on nature of distress, resources required for turnaround and appetite for such assets in market.

* If nature of distress is permanent rather than temporary many a times it is advisable to shut the business down. Hence, a limited period of life is more likely scenario.
* Sometimes, though the nature of distress is temporary and the business is likely to be revived, the cost of maintaining the asset or turnaround cost could be prohibitive.
* Appetite for distressed assets in market also matters. In an industry with surplus capacity, assets capable of revival are also forced to shut down.

While calculating terminal value using a Gordon Growth Model, terminal growth rate should be considered similar to any healthy company. This is because of the fact that though the company despite under stress is still valued as going concern with future cash flows and assigning a lower terminal growth rate is not appropriate. Any trial or tribulation should be considered in the transition period.

1. **Various other factors in arriving at the value of the stressed asset**

## Discount Rate : Capital asset pricing model (CAPM) is commonly used to estimate cost of capital. In traditional DCF model including the reorganization of the enterprise, risk of cashflows is captured in discount rate. This discounting rate is measured largely by Debtors past experience and the experiences of businesses similarly situated.' Fixing of discounting rate is mitigated when the court will have information from public domain with regard to Price/Earnings ratios employed in the sale of comparable enterprises under more or less similar conditions, or capitalization rates employed in fixing the market price of securities of comparable companies. It may be difficult to capture risk of liquidation in cashflows only.

1. **Beta:** Using a historically regressed beta for the distressed company can lead to underestimation of the cost of equity as regression betas lag distress as they are calculating over a long historical period. Hence, using a bottom-up beta approach is suitable. Any economic distress factors will be captured in Beta as comparable companies will be exposed to similar risk factors.
2. **Cost of Debt**: For a distressed firm, the current market rate of borrowings is significantly higher due to current capital structure or bad economic conditions. For our purpose of estimating the cost of debt, the rate of borrowing should be taken into consideration based on the future profitability and capital structure emerging from the restructuring plan. For this purpose, the cost of debt can be estimated based on a synthetic rating, which in turn can be estimated based on the financial characteristics of the firms within each class of ratings (for example, interest coverage ratio, capital structure, etc.)
3. **Tax Rate:** The current effective tax rate for a distressed company might be the minimum alternative. The impact of the carry forward of the Net Operating Losses will also impact the effective tax rate.
4. **Reorganization costs** : Reorganization costs are one-time costs incurred to extend the life of a company facing bankruptcy through special arrangements and restructuring in order to keep the business alive. This cost relates to the objective of getting the debt levels down and closer to their optimal capital structure. This can be achieved through either persuading the creditors to write down their claims, sell assets or issue new securities. The impact of reorganization costs in estimating the valuation of the distressed firm can be considered while estimating the discount rate where instead of using a single discount rate for all the years, different discount rates can be considered based on the varying capital structure for each period of cash flow. Higher discount rate in the first year would reflect higher leverage and then moving towards the optimal capital structure in the outer years thereby reducing the discount rate.

**PART II**

**Understanding Enterprise Value (EV) or the Going Concern Value**

Enterprise Value (“EV”) is a measure of total value of company’s operating assets. It is a going concern value and takes into account best use of assets. It considers the present value of the future cash flows including the cash flows to perpetuity. It is based on the premise that assets are more valuable if kept together as a functioning unit than they would be if sold off piecemeal is said to have a ‘going concern surplus’. We can use the sum of parts method and which will help to arrive the best value of the company under distress. There might be a company which is distressed but has huge intangible value of the company, which can be liquidated and monetized. Most of the restructuring or resolution plans are valued in the context of Enterprise Value.

## Understanding Reorganization Value 2

The reorganization value is the value of the total assets of the emerging entity and represents all of the resources available to meet the post-petition liabilities, and allowed claims and interests called for in the confirmed reorganization plan.

*2ASC 852 defines reorganization value as*

*“The value attributable to the reconstituted entity, as well as the expected net realizable value of those assets that will be disposed of before reconstitution occurs. This value is viewed as the value of the entity before considering liabilities and approximates the amount a willing buyer would pay for the assets of the entity immediately after restructuring.”*

**Understanding Liquidation Value**

Liquidation value is the realizable value of the stressed assets if liquidated on the insolvency commencement date within a short period of time. It is net realizable value of assets of the Corporate Debtor sold as gone concern i.e. beyond the point of redemption.

Liquidation Value has been defined under IVS para 80 as \*IVS-Defined Basis of Value – Liquidation Value 80.1. Liquidation value is the amount that would be realized when an asset or group of assets are sold on a piecemeal basis. Liquidation value should take into account the costs of getting the assets into saleable condition as well as those of the disposal activity. Liquidation value can be determined under two different premises of value: (a) an orderly transaction with a typical marketing period (see section 160 of IVS), or (b) a forced transaction with a shortened marketing period (see section 170 and para 80 & 80.1).

Further in Indian context, As per section 35 (1) of the Insolvency and Bankruptcy Code, 2016 (“IBC”), “Liquidation Value is the estimated realizable value of the assets of the corporate debtor if the corporate debtor were to be liquidated on the insolvency commencement date”. Further, section 35 (2) of IBC requires the valuer to determine liquidation value using internationally accepted valuation standards.

The 2 contexts available for a company to consider under Insolvency or Restructuring Process:

1. To liquidate the business, selling off business or physical assets piecemeal, and returning the proceeds to creditors, or
2. To restructure its debts to manageable levels and continue as a going concern.

It is a generally accepted context both India and US Jurisdictions works to ensure that a given asset should not be valued at a distressed or foreclosure sale price if it is sold in a going concern sale. There might a high chances of that property having better value for a different use.

**PART III**

**JURISDICTIONS CHOSEN:**

* India
* United States of America.

**INDIA JURISDICTION**

In India the valuation used to be just a guestimate until the Government of India brought in a regulation via section 247 in Companies Act 2013. Further a separate class of professionals were created called Registered Valuers’ (RV) regulated by government approved agencies, called Registered Valuer Organization (RVO). All the RV’s and RVO’s are in- turn regulated by GOI through Insolvency and Bankruptcy Board of India (IBBI), Hence the valuation is now a well- regulated systematic study of business enterprise based on set guidelines and governed by an independent body. ***However in US Jurisdiction which is another jurisdiction under consideration, Value and Valuation Methodology is an art and not regulated. I felt it is an open ended system where stake holders negotiate value and fight for a value. Every interested party will dispute the value and finally it gets settled in the court.***

In India, The enactment of IBC has created an efficient market for resolution of distressed assets. It has put in place a legal structure well defined processes, responsibilities and timelines. The maturity of the proceedings have helped investors to pick up value assets. The purpose of IBC regulation is to maximize the value of the asset that is in distress and not to maximize the price. The critical element here is a transparent and credible determination of value of assets to facilitate comparison and informed decision making process. Valuations serve as reference for valuation choices, including liquidation, and selection of choice that decides the fate of firm and consequently shareholders. If the valuation is not right viable firm can be liquidated and unviable firm can be rehabilitated, which is disastrous to economy. ***In United States, Stressed asset is a matured market. The market and the concepts have evolved over the decades and one can see purity and maturity in handling insolvency matters. India is an emerging market. All the concerned persons may be shareholders or may be creditors are still dancing based on the loop holes and gaps in the system.***

IBC is a creditor in control procedure and in the resolution process the Creditors are in possession of the company. They have to face the duality as to whether to look at recovery or look at the maximization of the value of assets. Further how to give apportion assets but also to different class of stakeholders including creditors. Though the creditors are in control the impression of an independent observer is that the Secured Financial creditors and also Judiciary have soft corner towards the revival of the Corporate Debtor by giving another opportunity.

IBC provides for the resolution process which is fundamental theme of keeping the value of the company alive, where in stake holders make decisions to rescue the company than going into liquidation. Also recovery is not the main agenda where in the claimants are settled off and company is knocked to death. IBC helps to resolve a company as a going concern rather than liquidation to help to benefit the surplus of the going concern value. Hence no essential supplies are suspended or terminated, all the licenses, permits and grants are continued moratorium on all the legal issues and interest payments and helps to raise the interim finance. It helps to resolve the stress through market mechanism which is transparent and brings out the best value of the stressed asset. It has been officially reported by IBBI, that this process has yielded over 200% of liquidation value and considered as a good sign of success of IBC. Without going into the debate about its relative success it can’t be denied that IBC has proved to be watershed moment in the revival of Indian economy riddled with distress. Even during liquidation, the company is at best attempted to be sold as a going concern. This process helps to maximize the value of the company even during liquidation. ***This is also similar in US context where in standstill come into picture and executory contracts are validated and essential services and supplied are not stopped and many a times made a mandatory and these services stand as priority payments.***

There has been an effort, either during Resolution Process or during liquidation to claw back the value by holding into account for preferential undervalued extortionate or fraudulent transactions, with all the related party transactions for 2 years and for Non-Related parties for one year. Further IBC envisages the loss of value due to lack of due diligence, This time zone which begins from the time when a director knew or ought to have known that there was no reasonable prospect of avoiding the commencement of resolution process of the company till the company enters resolution process. IN this time zone the director has to have proper due diligence to make sure no creditor is under loss. IN case loss takes place director has to make good for the losses. Else there is the concept of Claw back gets activated and the directors have to make good for the transactions happened. The US Chapter 11 too has a similar concept of claw back period however period covered here is only 90 days prior to the bankruptcy case.

Despite the avowed objective of IBC aimed at maximization of assets value, the experience so far has been rather mixed with less than satisfactory realization of assets value compared to the total liability or even the fair value contemplated. The judicial wisdom that would have added a supervisory overview on the resolution has been supplanted with commercial wisdom, often resulting in backdoor negotiations and stripping down the actual valuations of the assets. The creditors in possession of the stressed assets have the liberty of excising commercial wisdom to make decisions and keeps the decisions beyond the reach of Judiciary. Below are couple of cases where in the Resolution Plans have been proposed negotiated and concluded in the context of Indian Jurisprudence.

|  |
| --- |
|  **K. Shashidhar Vs. Indian Overseas Bank and Ors** |
| *Approval of Resolution Plan is a business decision taken by the Committee of Creditors with requisite majority based on their commercial wisdom and the same is non-justiciable. While dealing with approval of Resolution Plan, the Hon’ble Apex Court in ‘K. Shashidhar Vs. Indian Overseas Bank and Ors.**observed that the commercial wisdom of the Committee of Creditors has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the I&B Code.*  |

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| --- |
|  **Maharashtra Seamless Limited  Vs. Padmanabhan Venkatesh & Ors** |
| *The Code does not provide that the value given by the Resolution Applicant should match the fair value or the liquidation value. The law in this regard has been settled in Maharashtra Seamless Limited  Vs. Padmanabhan Venkatesh & Ors. While IBC has shown a way for resolution of bad and sometimes unsustainably high debt-ridden assets, the net result has not been too flattering.*  |

***It is my humble observation that US Jurisdiction too is not harsh on price and value and does not hesitate to cramp down dissenting creditors for the benefit of the larger interest.***

Incidentally the resolution/disinvestment of Air India, a 100% Government Enterprise which had been bleeding the country, has been a unqualified success outside the IBC fold. At stake was not just the huge assets and intangibles like goodwill and operating rights but also the prestige of the Government of India backed up by equally huge tax payers money. Hiving off huge debts and non- core assets to a separate entity and selling the new look trimmed outfit to a prospective buyers is something that can be emulated by IBC as well.

As per the Liquidation Regulations under IBC 2016, the Insolvency Professional has to appoint 2 Registered Valuers’ and take a valuation of the stressed asset. In case the two Registered Valuers’ give two varying reports then the Insolvency Professional has to appoint another value and consider the average of two nearest values.

**US JURISDICTION.**

Valuation plays a central role in Chapter 11 bankruptcy negotiations, U.S. bankruptcy law resolves valuation through negotiation. Creditors who disagree can vote against the plan or acquire more claims to influence the vote. Creditors can also lobby for an alternative value, join an official committee, or align themselves with management to develop a plan that best serves their interests. In US it is the Debtors in Possession unless it goes to liquidation where in bankruptcy trustee is appointed. ***Because of DIP in US, Value is retained unlike India where value is lost as it is creditor in Possession.***

The legislative history indicates that "value" may be liquidation value, going concern value, or something in between, based on "the facts of each case and the competing interests in the case."'

Valuation in chapter 11 might have errors such as underestimating value which benefits the claimants who receive shares in the reorganization and managers and CEO’s who receive shares or stock options. For the junior claimants, overestimating value increases their recovery. Hence Valuations actually help out the different competing financial interests and also give bargaining strengths to the participant.

Chapter 11 has a concept of DIP financing which will help to sell the unit as a going concern, were by the Debtor is in a position to hold on to a good Enterprise Valuation or going concern Valuation, else it would have become Liquidation valuation.

The application of the "best interests" test, and the special test for creditors who have opted to the proposed distribution to compared to dissenting claim holders and interest holders will necessitate better valuation and more distribution to the dissenters. In the case of a dissenting secured creditor, a valuation of the creditor's interest in the collateral, can be further crammed down "if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under.

During the reorganization proceeding, different stakeholders may independently develop distinct estimates of the reorganization value to facilitate negotiations or litigations. The confirmed reorganization plan, however, reflects the terms agreed upon by the consenting stakeholders and specifies either to a single range of reorganization values or a single point estimate.

The reorganization value is the value of the total assets of the emerging entity and represents all of the resources available to meet the post petition liabilities, and allowed claims and interests called for in the confirmed reorganization plan.

A valuation of the debtor and of the proposed distribution to each class is a pre requisite before the reorganization court could determine whether the proposed distribution under a plan was "fair and equitable.”

The method of valuation adopted by the courts for determining, the business debtor's "reorganization value ' is "going concern" value based on a capitalization of prospective earnings, which avoids a forced sale. The best value during reorganization comes when the debtor is preserved as going concern rather than a piecemeal distribution.

The methods used by bankruptcy practitioners and investors and the interested parties are predominantly discounted Cash flow method and comparable company multiples method.

Actually in United State Valuation experts help to get the reorganization plan approved by the bankruptcy court by preparation the valuation. ***However*** ***In India, Registered Valuers’ are appointed by the Resolution Professional, to arrive at a valuation of the enterprise which in turn he will evaluate against the resolution plan received and update the Committee of Creditors who are believed to be credited with Commercial wisdom to evaluate resolution process in toto.***

US Jurisdiction has been chosen to get global perspective of Valuation and its relevance in the context of emerging Indian conditions. The United States has been a pioneer in the field of innovation and developing innovative techniques in developing the thought process of valuation, management and insolvency process for others to emulate. ***India is an emerging market.***

Under the US law a defined reorganization value is the same as enterprise value. Here the applicant acquires the ownership and control of assets of the stressed company as a going concern. Hence Restructured Asset can be concluded as the value which an applicant brings to for the resolution of a stressed assets. In a re- organizational value there are higher chances of the share- holders continuing to hold shares even after the restructuring. In a reorganizational value, the investor not only considers the enterprise value but also considers settlement of claims, infusion of funds, expansion of business and upgrading of technology. ***In India there are many qualifications and conditions for the same shareholders to continue being in the company after approval of the Resolution Process.***

Restructuring, in respect of an enterprise, means one or both of a financial restructuring, fundamentally adjusting the liabilities of the enterprise (also referred to as a debt restructuring or balance-sheet restructuring); and an operational restructuring, a significant adjustment to the assets or operations of the enterprise (also referred to as a turnaround).

Further in Chapter 11, the court or the administrative authority may have to carry out a valuation exercise putting a value on the debtor’s business where the restructuring plan is challenged on the basis that either the “best interests of creditors” test or more general cram-down conditions have not been met. In this scenario, the court may be assisted by properly appointed experts. Each of the relevant creditor classes will be armed by their own experts with a plausible value to put on the business and making use of standard valuation methodology in the form of comparable transactions, discounted cash flow and leveraged buyout pricing models. The approach adopted may feel very subjective so that the result is somewhat unpredictable, and the judge hearing the valuation dispute may “feel fixed”. It is the case, however, that unless the judge at the valuation hearing takes a particularly optimistic view of the company’s prospects, those lower down the priority hierarchy may be left with nothing or a belittle something.

The 2014 report of ABI on Chapter 11 has made a remark on the valuation of the business enterprise, having a deep impact on the junior stake holders. The report pointed out that “valuation may occur during a trough in the debtor’s business cycle or the economy as a whole and relying on a valuation at such a time may result in a reallocation of the reorganized firm’s future value in favour of senior stakeholders and away from junior stakeholders in a manner that is subjectively unfair and inconsistent with the Bankruptcy Code’s principle of providing a breathing spell from business adversity.

In the US, valuation disputes are a significant part of the Chapter 11 landscape. ***In India Valuations are yet to reach a maturity of disputes and accepted on many occasions at face value.***

Few cases where inside the US Jurisprudence where in the restructuring has been proposed negotiated and concluded.

|  |
| --- |
|  **Allegheny International** |
| 1. *Debtors Filed C 11 Petition. In 3 Months Judge terminated their exclusivity.* *2. Company’s Board rejected all cash acquisition offer of Vulture Investor.* *3. Debtor submitted a plan a month later for an EV of $ 518 Million where most of Debt were converted to 91% of the equity.* *4. Then Vulture Investor submitted a plan EV 621 Million by purchasing all debt of company(to block Debtors Plan)**5. Judge took exception of Vulture investors tactic and disqualified its votes and confirmed debtors plan. Vulture Investor got all the stocks in the re organized company. EV 963 Million* |
|  |
|  **E-II Holding** |
| 1.*Company filed C 11 proceeding. Valued at EV of 824 Million. The companys Debt equal between Senior and Junior publicly traded bonds. These were majorly held by Vulture Investor (VI). Mr. C held major in Junior Bonds.* *2. Mr. C alleged in court that (VI)and CEO of company had deliberately undervalued the company to enhance the recovery of VI and give more stake to VI in restructured company and less to Junior Bond Holders.* *3. Further it was alleged CEO was given generous package.**4. Mr C proposed his plan with EV of $ 1345 Million.**5. Judge Cramped down Mr. C to confirm Debtors Plan.*  |
|  |
|  **National Convention Stores**  |
| *1.The Debtor Filed for Ch 11 Proceeding. Company EV was over $ 300 Million. All claims retained. Preference and Equity Stake Holders retain their Stake. Creditors Reject as the company is over burdened by Debt.**2. Debtor gave second plan for EV $ 210 million with substantial reduction in debt and wiping out Preference and Equity Stake Holders. Severe Restriction on trading of stocks. UCC rejected that the restriction will reduce the value by 25-30%. And provided no recovery to common stake holders and further they felt the EV was above $ 300 Million.**3. Debtor gave third plan for EV of $ 210 Million with fewer trading restrictions and less generous stock option grants for Senior Management. This plan was accepted.* |

**Conclusion:**

In the examples given above both in the Indian context and the US Jurisdiction, we have seen how a stressed assets can be revived by employing different methodology of the valuations and restructuring. Compared to the US, the IBC, Code 2016 in India is a recent phenomenon and is still evolving. It is more of a Creditor in Control and restructuring is all revolving around the creditors and heavily skewed in favour of secured financial creditors. Long term impact of success or otherwise of IBC is yet to be experienced, though a more accommodative approach towards Operational Creditors would be a welcome development. In contrast, the system has fully matured in the US with Debtors in Possession . Reorganization results in the restructuring of the debt with portion of its converted into equity as we have seen in the case of Full Beauty Brands Holdings Corp. The other debtors not willing to consenting such restructuring have the option of retaining their share. The moot point is why an example can’t be replicated in India? The answer has to be found in the relatively shallow secondary bond market in India and Corporate preferring to Banks or private lenders in privacy than directly raising loan from the public. It is imperative to encourage development of secondary bond market in India to fund the growing needs of burgeoning economy.

**ABBREVATIONS**

**ABI** – American Bankruptcy Institute

**ASC** – Accounting Standards Codification

**DCF** – Discounted Cash Flow.

**GOI** – Government of India

**IBBI** - Insolvency and Bankruptcy Board of India

**IVS** – International Valuation Standards

**IBC** – Insolvency Bankruptcy Code, 2016

**NPA** – Non Performing Assets

**NPV** – Net Present Value

**RV** - Registered Valuer

**RVO** - Registered Valuer Organization

**US** – United States of America

**USA** – United States of America

**UK** – United Kingdom

**BOLD &**

***ITALICS***: Critical Analysis of the another Jurisdiction Chosen.

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