

FATE OF JAYPEE INFRATECH LIMITED UNDER INSOLVENCY AND BANKRUPTCY CODE: A CASE STUDY

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Abstract

Jaypee Infratech is one of the top 12 defaulter companies on the Reserve Bank of India's (RBI) initial list of accounts referred to insolvency under the IBC, 2016 (Code). It failed to meet expectations of about 20,000 homes in its Wish Town and Jaypee Aman projects, as well as defaulting on bank debts. Multiple precedents were set in litigations during the CIRP, and courts clarified various issues and major concerns covered by the IBC. In this case study, an attempt has been made to comprehend the background of this case to analyse the causes of downfall of Jaypee followed by pre and during CIRP performance analysis and issue-by-issue analysis to gain a comprehensive understanding of the case. Doctrinal Research methodology has been used for issue by issue analysis. In order to assess the financial performance, tools like mean, standard deviation and 't' test have been used and analysis has been done using SPSS. This paper also gives recommendations to the Government to make necessary amendments in the code such as altering the definition of secured creditors, making changes in the pre pack insolvency along with implementing pre insolvency and mediation procedures and increasing number of benches and judges so that other creditors do not suffer the same fate as that of Jaypee Infratech.

Keywords: [Jaypee, CIRP, IBC]

INTRODUCTION

Jaypee Infratech Ltd, a Jaypee Group affiliate, is an Indian infrastructure development company best known for building the Yamuna expressway and the F1 track in Greater Noida. It was formed as a Special Purpose Vehicle on April 5, 2007, to build the 165-kilometer Yamuna Expressway in Uttar Pradesh, which connects Noida and Agra. Its business model is based on producing money from expressway traffic and related facilities during the course of the 36-year Concession period, as well as developing adjacent real estate. Furthermore, the company has the right to build 25 million square metres (6175 acres) of property along the Yamuna Expressway in five places for housing, commercial, recreational, & educational settings (<http://jaypeeinfratech.com/>).

FACTS OF THE CASE

The Wish Town City Project by Jaypee Infratech was introduced in Noida and planned building 32,000 homes besides selling some sites in Noida in 2007. These also included the construction of the 165-kilometer Noida Expressway and the F One track Greater Noida. But years after it began, the project has remained shelved, with only a foundation built to ensure prospective homebuyers that something is being built

plus it also defaulted on bank debts from a consortium of banks. Under the guise of the Wishtown City project, the funds allegedly were transferred to the Jaypee Group's other marquee initiatives, such as the Formula One Racing Centre and the Yamuna Motorway. Later, a small number of homeowners who were unhappy with the project's pace complained to the National Consumer Disputes Redress Body (NCDRC), but the commission declined to consider their case, much to the homebuyers' dismay. In June 2017, the Reserve Bank of India (RBI) released a list of the country's top 12 defaulters, which included JIL, which had been labeled in default of nearly Rs. 8,000 crores to its creditors. The Supreme Court decided to hear the matter through a Public Interest Litigation (PIL) following the NCLT's ruling, and it is now reviewing the case. (Khurana & Khurana, 2020).

OBJECTIVES

1. To analyse the causes of downfall of Jaypee
2. To evaluate various judgments in the case and discuss policy implications.
3. To analyse the financial performance of Jaypee Infratech before and after initiation of CIRP.

FINDINGS

OBJECTIVE 1: Causes of downfall of Jaypee Infratech

Following are the main causes analysed for the financial distress of Jaypee Infratech:

1. Cash stuck in inventory and receivables: Significant quantities were found to be locked up in inventory as seen in the figures below. The majority of it deemed to

be considered to be inert or sluggish, according to an analysis of the balance sheet and financials. Associated companies also owed substantial amounts of receivables that appeared to be uncollectible.

Figure 1: Value of Inventory from 2012-21

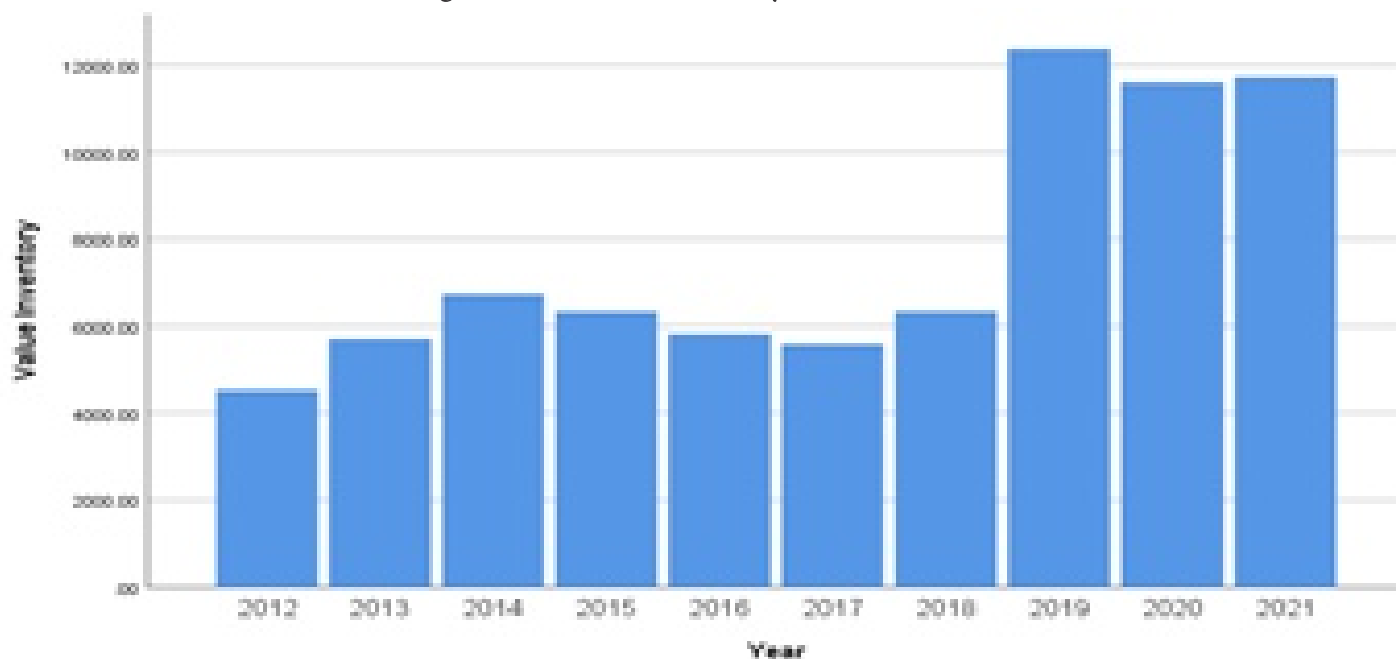
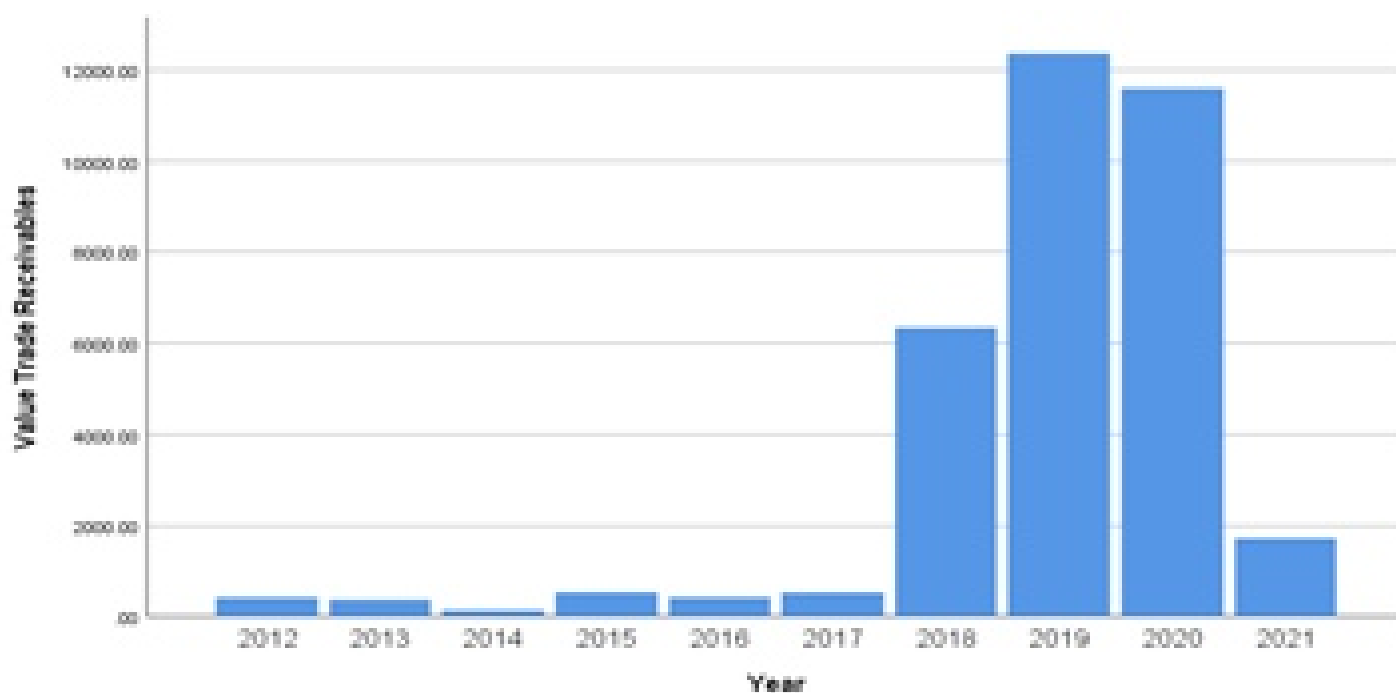


Figure 2: Value of trade receivables from 2012-21

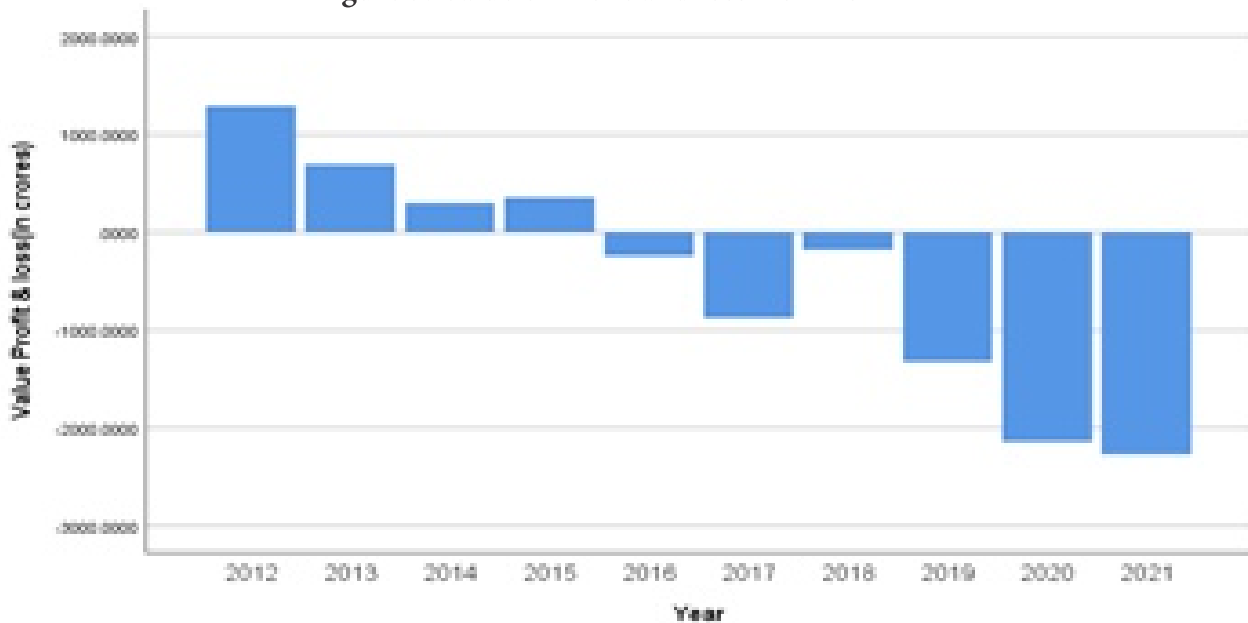


Source: Annual Reports

2. Unsuccessful Projects: Jaypee had a bunch of incomplete and unsuccessful projects in its closet. The integrated housing project Wishtown did not show any signs of residences close to delivery for the majority of buyers even after 90 days because of the working capital issues and the cash crunch the company had been experiencing for at least 12 to 24

months prior to the CIRP's launch. There were mounting losses from its other projects like the abandoned Formula One Circuit and the National Green Tribunal's ban. Jaypee saw a dip in profits since 2012 and in 2016 the company was in a knee-deep loss which have grown deeper ever since as shown in the figure below.

Figure 3: Value of Profit and loss from 2012-21

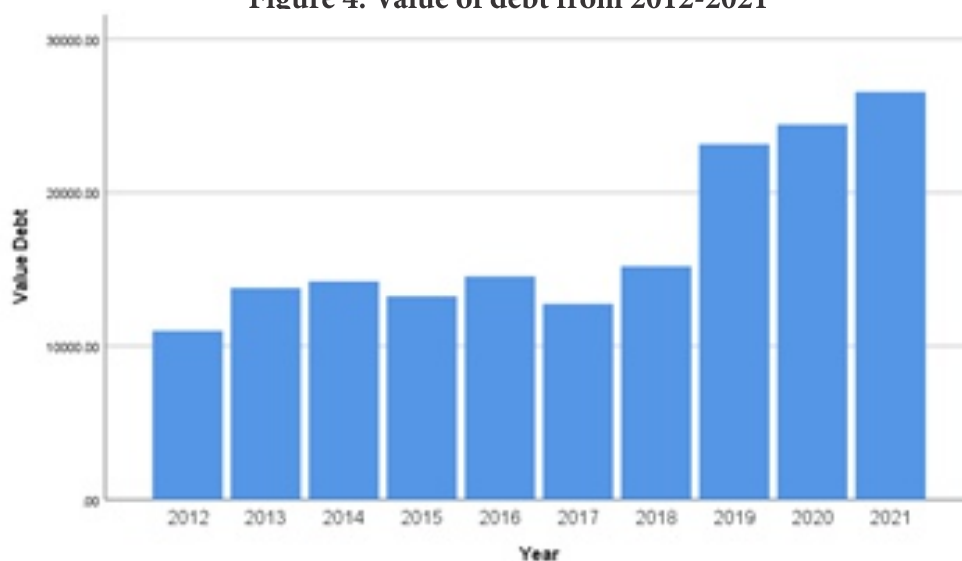


Source: Annual Reports

3. High leverage: The group's massive debt load, which is among the largest among Indian enterprises, was the primary problem. The recent strong growth in the real estate, infrastructure, cement, and power sectors

is to be blamed for the huge debt. Between 1999-2000 and 2014-15 the group saw growth of 26.92% and 32.08% but it ignored the fact that debt also had grown 40 times and 20 times, respectively.

Figure 4: Value of debt from 2012-2021



Source: Annual Reports

4. High debt to EBITDA ratio: Debt-to-EBITDA gauges a business's capacity to settle its debt. An organisation may take longer to pay off its debt if its debt-to-EBITDA ratio is high. Jaypee Infratech's highest Debt-to-EBITDA Ratio over the previous 13 years was 66.66. The lowest value was 42.70. As compared to industry median of 2.64 Jaypee's median of 5.72 is ranked worse than 98.06% of 1239 companies in the construction industry (www.gurufocus.com)

OBJECTIVE 2:

Research Methodology

Doctrinal Research Methodology is used for completing this objective. Doctrinal research is delving further into the legal concepts and principles from a variety of sources, such as cases, precedents, statutes, and others; to examine them and come to reliable findings.

ANALYSIS

This paper analyses three ground-breaking judgments in the Jaypee case which changed the face of IBC:

Date	Judgment	Analysis of Judgment
9 august, 2018	The Court held that the CIRP should be resurrected, and the Council of Creditors should be reconstituted in accordance with the updated statutes to include house buyers. The IRP may issue new expressions of interest for the submission of resolution proposals, and the Court barred JIL/JAL from participating in the CIRP. Using the power of Article 142 of the Constitution, the Supreme Court extended the time limit for completing the resolution procedure.	1. It is up for debate as to whether the homebuyers are secured or unsecured creditors. 2. In this judgment Due to concerns that it would provide one class of creditors a preferential payment, the Supreme Court refused to mandate payment of funds placed by the promoter to homebuyers which in authors opinion is unfair as they are the major creditors in this case and have been waiting for decades.
6th February, 2020	1. On February 6, 2018, the IRP filed a request with the court asking that the security interest created by corporate debtor JIL in favor of JAL's lenders be removed and that the 858 acres of immovable property be deemed to belong to corporate debtor instead of being mortgaged by JAL's directors and promoters because those transactions were preferential, undervalued, illegal, and fraudulent. 2. The court viewed third party security not qualifying as 'financial debt' of the corporate debtor.	1. The Supreme Court left key legal questions unsolved by declining to rule on whether the JIL Mortgage may be avoided in accordance with Sections 44 or 66 of the IBC. 2. The Supreme Court should really have treated the lenders of JAL as financial creditors in the Jaypee decision. The applicant would have been designated as both a principle and a financial debtor. (Khurana & Khurana, 2020).
24 March, 2021	The resolution plan submitted by NBCC India Limited (NBCC) for Jaypee Infratech Limited (JIL) was dismissed by a bench of three judges of the Supreme Court of India in Jaypee Kensington Boulevard Apartments v. NBCC India Ltd. & Ors., claiming that NBCC's bid is contingent, and remanded the case back to JIL's Committee of Creditors (CoC) to accomplish its corporate insolvency resolution process (CIRP) Judgement within 45 days, by allowing resolution applicants who have previously participated in JIL's CIRP to submit modified resolution plans.	The Supreme Court's decision basically reaffirms that the CoC's business wisdom reigns supreme, and that where a resolution plan fails to meet legislative requirements, The CoC is the sole party to the case that the adjudication authority can designate and alterations to the plan are not permitted.

OBJECTIVE 2: PERFORMANCE ANALYSIS

The study is being carried out with the goal of measuring the financial performance of Jaypee Infratech before and after CIRP commenced using various financial ratios. This will help us in determining the fate of Jaypee Infratech under IBC.

Hypothesis

The following are the variable-by-variable assumptions for the paired t-test. Hence, the period before CIRP started is characterized as 1 and after CIRP started is characterized as 2.

Table 1: Variable wise hypothesis

VARIABLE	NULL HYPOTHESIS	ALTERNATE HYPOTHESIS
EPS	$EPS_1 = EPS_2$	$EPS_1 \neq EPS_2$
Net Profit Ratio	$NP_1 = NP_2$	$NP_1 \neq NP_2$
Return On Capital Employed	$ROCE_1 = ROCE_2$	$ROCE_1 \neq ROCE_2$
Return On Asset	$ROA_1 = ROA_2$	$ROA_1 \neq ROA_2$
Asset Turnover	$AT_1 = AT_2$	$AT_1 \neq AT_2$
Quick Ratio	$QR_1 = QR_2$	$QR_1 \neq QR_2$
Inventory Turnover	$ITR_1 = ITR_2$	$ITR_1 \neq ITR_2$
Earning Yield	$EY_1 = EY_2$	$EY_1 \neq EY_2$

Source: Author's Creation

RESEARCH METHODOLOGY

Period of Study: This study uses five years before CIRP started i.e., 2012-16 and five years after the CIRP started i.e., 2017-21 to test the hypothesis

Source and Collection of Data: The data to measure financial performance of companies is collected from annual reports of Jaypee Infratech from the year 2012-21.

Tools used for Analysis: The present study has analysed the financial performance of before and after CIRP was initiated in Jaypee Infratech. To perform the financial analysis, various ratios and variables such as earnings per share, net profit margin, return on assets, return on equity, earning yield, quick ratio, asset turnover and inventory turnover are used. In order to assess the financial performance, tools like mean, standard deviation and 't' test have been used and analysis has been done using SPSS.

ANALYSIS

Table 2: Descriptive analysis

Particulars	Description	Duration	Mean	Standard deviation	t-value	Sig(p value)	Analysis
EPS	Shows how much money a firm produces for each	PRE POST	3.4320 -12.1400	4.03068 4.18424	13.104	.000	Test is statistically significant
NET PROFIT RATIO	Ratio of after-tax profits to net sales	PRE POST	3.5320 -12.1400	4.03419 4.18424	13.968	.000	Test is statistically significant
RETURN ON CAPITAL EMPLOYED	Assesses how effectively a corporation uses its capital to generate profits	PRE POST	3.6860 -3.8100	4.40549 4.09483	3.021	.039	Test is statistically significant
RETURN ON ASSET	Gauges how well a corporation can manage its assets to generate profits	PRE POST	2.6240 -7.7860	3.32432 2.44935	8.535	.001	Test is statistically significant
ASEET TURNOVER		16.6140 3.9140	1.36544 2.83092	9.191		.001	Test is statistically significant
QUICK RATIO	Ability of a corporation to satisfy its short-term obligations using its most	PRE POST	.4520 .1400	.02387 .08689	6.417	.003	Test is statistically significant
INVENTORY TURNOVER	Determines how many times a corporation can replace its sold	PRE POST	5500 .0900	.09083 .07176	11.290	.000	Test is statistically significant
EARNING YIELD	Indication of the payback period of your stock	PRE POST	.0700 -8.1320	.15922 9.73329	1.888	.132	Test is statistically significant

Source: Author's Calculation

DISCUSSIONS

The above analysis shows that since the CIRP began in 2017, the financial ratios have been rapidly declining, indicating that the company's financial health is in jeopardy and that the insolvency process should be

completed as soon as possible; otherwise, given the company's mounting operational costs and limited cash flows, the liquidation process is likely to take many more years, and the value realised at the end may fall further from current projections.

RECOMMENDATIONS

1. The definition of secured creditors should be altered and homebuyers should be included in it. This will complete the insufficient amendment of declaring home buyers as financial creditors and give them a sense of security.
2. Pre-insolvency procedures should be implemented, and resolution of a twilight zone corporation should begin considerably sooner rather than waiting for it to fail. It is also possible to investigate the introduction of depositors' insurance, which would at least provide depositors some peace of mind while investing in real estate.
3. Without an arbitration provision, mediation is already regarded as one of the best Alternative Dispute Resolution processes for these types of situations. This will not only save a great deal of money, but also a great deal of time.
4. Procedures like The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021, would prevent abuse of pre pack model which were implemented in the UK. They only consider substantial disposal when the consent of the creditors has been obtained or when a report for the same has been sent by an independent evaluator.
5. About 80 times, the tribunal has rescheduled the hearing of Jaypee Infratech. This clearly shows the urgent need to increase the number of benches and judges to reduce the judicial delays in the procedure.

CONCLUSIONS

The insolvency case of Jaypee Infratech is one of longest-running cases in India. It's also the first time the government has added homebuyers to the definition of a financial creditor and has also revised the Insolvency and Bankruptcy Code (IBC) to set a minimal bar for homeowners to bring a real estate business to the NCLT under the IBC. The case has revealed a glaring problem

with the IBC, which does not recognise homebuyers as secured creditors and has put a question on NCLT's performance since the case took place in three different forums instead of one. The homebuyers are totally displeased by the Supreme Court recent orders as they are back to square one a year after they were given hope that NBCC would finish the project. Many of them have been waiting for a decade with the added stress of EMI and rent, and this decision has only added to their suffering.

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