

Steel producer operating in Italy struggles to protect its activities

Giorgio Cherubini and Giancarlo Cherubini report on one of the most debated issues concerning companies in financial difficulties – the case of steel producers Ilva and its environmental impact



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Ilva is the largest steel plant in Europe with a factory in Taranto and a century-old history, which began in the early twentieth century on the initiative of a group of industrialists from Northern Italy.

The plant is one of the flagships of the Italian economic boom, giving jobs and creating wealth and employment.

In the eighties the steel market entered into a profound crisis and in 1995 the plant was bought by the steel group Riva and passed into private hands.

Shortly after the purchase by Riva group, the first problems related to environmental pollution caused by the steel plant with its activity began to appear and in

2012 the situation degenerated in an almost irreversible way when the public prosecutor of Taranto informed the Minister of the Environment and the local authorities about the alarming results of the epidemiological report prepared by the Judge for preliminary investigations, which confirmed the very high level of pollution in the area surrounding the Ilva plant, confirming the correlation between this situation and the emissions from the steel plant.

The top managers of the company were investigated for crimes of negligent and intentional disaster, poisoning of food substances, intentional omission of precautions against accidents at work, aggravated

damage to public goods and atmospheric pollution.

On 26 July 2012, the entire area of the plants was seized by order of the investigating judge, without faculty of use, and house arrest was ordered for eight people accused of environmental disaster.

In the summer of 2019, the judge who presided over preliminary hearings of Milan acquitted Fabio Riva, previously vice president of the company, from bankruptcy charges. For the magistrate, the Riva family, in the management of the Ilva of Taranto between 1995 and the seizure in 2012, invested over a billion Euros in environmental matters and over three billion Euros for the modernisation and construction of new plants.

The Italian State tried in many ways to allow the continuation of the company's production, which was fundamental for the Italian industry, Ilva playing a fundamental role for the national economy.

For this reason, some ad hoc laws were issued to allow ILVA to circumvent the permitted levels of pollution, allowing the company itself to postpone the terms within which to comply with the environmental standards.

With the Ministerial Decree of 21 January 2015, before difficult financial conditions, an Extraordinary Administration Proceedings was opened and the Board of Commissioners of ILVA S.p.A. was appointed with the aim to restore the company, both environmentally and economically, and then sell it to potential interested buyers.

Extraordinary administration

'Extraordinary administration' means insolvency proceedings aimed at restoring the balance sheet of large commercial enterprises through the continuation, reactivation or conversion of entrepreneurial activities.

To be admitted to this kind of proceedings, the company shall comply with certain competing requirements, such as:

- having the insolvency status;
- employment should be equal to a number of employees going to 200 for at least one year, and debt values should not be lower than 2/3 both of the total assets of the balance sheet and of the revenues from sales and services in the last financial year. In case of a group of companies these requirements can be assessed overall; and
- concrete recovery possibilities, consisting of the real chance of consolidating the company alternately within one year through a programme for the sale of assets and/or business complexes, or within two years through a programme of economic and financial restructuring of the company.

Extraordinary administration can at any time be converted into bankruptcy proceedings if it appears that it can no longer follow the authorised programme or when, at the end of the proceedings, this has not been usefully implemented.

After the investigation launched in 2012 and after initiating the procedure of external administration of the company, the State launched an international tender, won by the French-Indian industrial giant Arcelor Mittal.

Environmental issue

Ilva is one of the most serious health and environmental disasters in Italian and European history.

The estimates of the experts appointed by the Taranto

prosecutor's office count that many people died due to emissions, in particular from cardiovascular and respiratory complications.

In 2010, according to court reports and Ilva's declarations, more than four thousand tons of dust and eleven thousand tons of nitrogen dioxide and sulphur dioxide were released into the surrounding environment.

According to the data of the National Inventory of Emissions and their Sources, in recent years, 93% of all dioxin produced in Italy has been released into the atmosphere in Taranto, in addition to 67% of lead.

According to estimates by the National Asbestos Observatory, among the workers employed in the ex Ilva steel plant in Taranto, 500% more cases of cancer than the average of the general population of the town, not employed in the plant, are recorded. This is the latest estimate, published in 2018, confirming the alarming data released today by the Statistical Observatory of Labour Consultants, according to which the worst national statistics for the absolute number of carcinogenic diseases deriving from work activity is precisely in Taranto, with 70% of the cancers reported in relation to the metalworking sector.

The liaison with Arcelor Mittal

In January 2016, the tender notice was published with an invitation to apply in acquiring Ilva. The deadline was set at 30 days and the extraordinary commissioners chose the French-Indian group Arcelor-Mittal.

Arcelor Mittal asked as a *conditio sine qua non* for signing an agreement with the Italian State, to take advantage of a so-called "*Criminal Shield*", to protect itself from any criminal liability due to the behaviour of previous managements.

This provision was structured specifically to guarantee legal protection for both company managers, commissioners and

future buyers, from any liability arising from the implementation of the factory environmental plan. Avoiding that, by implementing the environmental plan, regulated by a *Decree of the President of the Council of Ministers* of 2017, the commissioners or future buyers of the steel centre could not be involved in judicial vicissitudes deriving from past behaviour.

It was clear to the Italian government that no entrepreneur would be interested in running a company with a similar history of environmental pollution without having a minimum of safeguards.

In 2018 Arcelor-Mittal took the reins of the former Ilva with the aim of revitalise the iron and steel centre of Taranto, a very difficult goal to achieve, given the difficulties suffered during the years and the environmental disasters caused.

However, the new government composed of the Democratic Party (*Partito Democratico*) and the 5-Star Movement (*Movimento 5 Stelle*) did not share the position of the previous governments on the "*Criminal Shield*" and on 23 October 2019 voted for its elimination.

In relation to this step back from the Italian government, Arcelor Mittal, accusing the Italian government of not having respected the agreement made, filed an application with the court to be recognised as legitimate to the termination of the contract.

Subsequently, the extraordinary commissioners and Arcelor Mittal reached a basic agreement to negotiate the revision of the original contract for the plants and for the financial relaunch operation of the iron and steel centre based in Taranto. It is an agreement to renegotiate the terms of the commitment of the French-Indian multinational in the plant, in an attempt to a judicial dispute.

Negotiations are still ongoing despite strong opposition and scepticism from the trade unions. ■



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