



# IBC AU-COURANT

*Latest updates On Insolvency & Bankruptcy*

**8<sup>th</sup> August 2022**

**"Dreams don't work unless you do"**

## ➤ **CIRP against solvent, MSME company providing employment not justified : NCLT Delhi**

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Anant Bijay Singh (Judicial Member) and Ms. Shreesha Merla (Technical Member), while adjudicating an appeal filed in M/s Agarwal Veneers v Fundtonic Service Pvt. Ltd., has upheld the dismissal of a Section 9 petition on the grounds of the Corporate Debtor being a solvent company, operating as a 'going concern' and is also a MSME enterprise providing employment and generating revenue. It was held that in such cases, especially when due amount is small, the question of 'Reorganising' or 'Resolution of the Company' does not arise.

M/s Agarwal Veneers ("Appellant") had filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") before the NCLT Ahmedabad Bench ("Adjudicating Authority"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against Fundtonic Service Pvt. Ltd. ("Respondent"). The Adjudicating Authority vide an order dated 29.09.2020 had rejected the petition while observing as follows:

That the Demand Notice issued under Section 8 of the IBC was issued by an advocate to whom no authority was given to issue such notice and there was nothing on record to show that the advocate was associated to the Appellant.

That the Respondent is a going concern and at present giving employment to 20 employees. Hence, it would defeat the very purpose of the IBC, if a going concern generating revenue, the employees and stakeholders are subject to the rigors of the CIRP.

That the Appellant had filed the petition as a tool of recovery mechanism which is not the objective of the IBC.

That the Respondent falls within the category of Micro, Small and Medium Enterprise (MSME) and CIRP proceedings against a going concern jeopardizing livelihood of several families is against the objectives of IBC.

That the Appellant had not produced on record documents like copy of the purchase order, delivery challan and a copy of bank statement showing that no payment is received from the corporate debtor towards the invoices raised to substantiate its claim.

The Bench observed that a Demand Notice under Section 8 could be issued by an advocate. However, the Adjudicating Authority is empowered to reject an incomplete petition under Section 9 if a copy of the invoices, the bank statements and the financial accounts are not furnished alongwith it. The Preamble of IBC describes its spirit and objective to be 'Reorganisation' and 'Insolvency Resolution', specifically omitting the word 'Recovery'. If IBC is purely used for the purpose of Debt Recovery, particularly when the amounts due are small, and the Company is a solvent entity and is a going concern, the question of 'Reorganising' or 'Resolution of the Company' does not arise.

**Source: Live Law**

**Read Full news at:** <https://www.livelaw.in/news-updates/nclat-delhi-insolvency-and-bankruptcy-code-corporate-debtor-msme-company-205952?infinitescroll=1>

## ➤ **NCLT orders insolvency against Som Resorts**

The Delhi bench of the National Company Law Tribunal (NCLT) has ordered initiation of the corporate insolvency resolution process against Som Resorts Pvt Ltd after the company defaulted on payment of ₹15 crore. The tribunal has appointed Sumit Shukla as the interim resolution professional (IRP) for handling the day-to-day affairs of the company.

“In the present case it is observed that Som Resorts has used Cosmic Structures to enter into builder-buyer agreement and collect the money from home buyers with an ulterior motive to conceal the real transaction,” observed the bench led by Justice Dharminder Singh.

In December 2012, Som resorts launched a commercial cum residential project, Casa Italia, in Ghaziabad, Uttar Pradesh. Home buyers, who are classified as financial creditors according to the Insolvency and Bankruptcy code, had booked space in the project during 2012-15 on the assurance that they would have possession of the units within 36 months from the project commencement date. The company, however, defaulted in handing over possession of the units and also failed to refund the deposit to the home buyers.

**Source: Live mint**

**Read Full news at:** <https://www.google.com/amp/s/www.livemint.com/market/stock-market-news/nclt-orders-insolvency-against-som-resorts/amp-11659893556191.html>

## ➤ **NARCL interested in taking over loan accounts of debt-ridden Srei : Official**

The National Asset Reconstruction Co Ltd (NARCL) has evinced interest in the loan accounts of Srei group companies, which are undergoing corporate insolvency resolution process, a top official of a state-owned bank said. The development comes at the time when the resolution is at an advanced stage, and financial bids are expected to be submitted latest by August 10 for taking over debt-ridden.

"We have received preliminary interest from NARCL on taking over the Srei account. We will discuss this at the joint lenders' meeting on August 8," UCO Bank MD & CEO Soma Shankara Prasad said.

The total liabilities of Srei stood at around Rs 32,000 crore from all sources, including banks, debentures and external commercial borrowing, officials said.

The company has made cash recovery and upgradation of NPA accounts worth nearly Rs 5,000 crore since an RBI-appointed administrator started looking into the affairs of the crisis-ridden firms, they said.

"There will be no impact on the ongoing IBC-led resolution process even if existing lenders/banks assign or sell out loans to any other institution, including asset reconstruction companies (ARCs)," Srei board administrator Rajneesh Sharma, who is also the resolution professional, told PTI.

Srei officials said the total resolution amount is likely to be around Rs 10,000 crore.

There were originally 14 suitors who had submitted expressions of interest to acquire Srei group companies under the Insolvency and Bankruptcy Code (IBC) in March. But, now only overseas bidders -New York-based Arena Investors LP Ltd, Varde Investment's affiliate VFSI Holdings and Shon Randhawa and his partners - are expected to participate in the financial bidding.

The Reserve Bank of India had in early October last year superseded the boards of SIFL and its wholly-owned subsidiary SEFL.

**Source: The Economic Times**

**Read Full news at:**

<https://economictimes.indiatimes.com/industry/banking/finance/banking/narcl-interested-in-taking-over-loan-accounts-of-debt-ridden-srei-official/articleshow/93413902.cms>

