



INSOLVENCY PROFESSIONAL AGENCY  
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



# IBC AU-COURANT

*Latest updates On Insolvency & Bankruptcy*

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

**"Always be positive"**

## ➤ **Srei bidders refuse to pay earnest deposit**

Bidders for the bankrupt Srei group companies refused to make the earnest money deposit (EMD) of ₹150 crore on Wednesday - which was the last day for submitting a resolution plan - due to a dispute with the administrator over unusual conditions attached to the deposit, said two people aware of the development.

Administrator Rajnish Sharma received two plans on Wednesday - one from Arena Investors in partnership with a Varde Partners affiliate and another joint offer from Shon Randhawa and Rajesh Viren Shah - but he pushed back the deadline to submit the final bids to August 19.

Since both bidders did not furnish the EMD, he was left with no choice but to extend the deadline, the people said.

As per the terms of the request for proposal, a plan is considered void if the bidder does not make the EMD of ₹150 crore and provide a ₹550-crore performance guarantee. The heart of the dispute is one of the terms of the RFP, which says the EMD money would be forfeited if the Reserve Bank of India did not endorse the successful resolution applicant as "fit and proper". Srei Infrastructure Finance NSE 1.18 % and Srei Equipment Finance are lender regulated by RBI.

Both bidders objected to the condition of forfeiting the EMD on the grounds that it was not within their control if the regulator decided to reject their names. According to bankers, the condition was imposed since the entire exercise would be wasted if the regulator did not endorse the bidder. "Such a condition would thus put the onus on the successful bidder to convince the regulator," said a bank official.

**Source: The Economic Times**

**Read Full news at:** <https://economictimes.indiatimes.com/industry/banking/finance/srei-bidders-refuse-to-pay-earnest-deposit/articleshow/93508483.cms>

## ➤ **NCLAT Delhi Directs Tax Authorities To Withdraw Notices For Freezing Accounts Of Corporate Debtor**

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson), Justice M. Satyanarayana Murthy (Judicial Member) and Mr. Barun Mitra (Technical Member), while adjudicating an appeal filed in Mr. Hemant Mehta v Asst. Commissioner of State Tax, has held that notices issued by the Tax Authorities to freeze the accounts the Corporate Debtor during liquidation process are bad in law and has directed withdrawal of such notices and de-freezing of the accounts. The Bench held that the Adjudicating Authority is vested with residuary powers under Section 60(5) of the Insolvency and Bankruptcy Act, 2016 ("IBC") to intervene in circumstances where insolvency resolution process is getting derailed.

Pan India Utilities Distribution Co. Ltd. ("Corporate Debtor") was admitted to Corporate Insolvency Resolution Process ("CIRP") by the Adjudicating Authority on 20.09.2019 and Mr. Hemant Mehta ("Appellant") was appointed as the Interim Resolution Professional, later confirmed as Resolution Professional, later confirmed as Resolution Professional. As no resolution plans were received, the order for Liquidation was passed on 11.08.2020 by the Adjudicating authority.

The Assistant Commissioner of State Tax, Mumbai ("Respondent No. 1") and the Commercial Tax Officer, Gwalior Circle-1, Madhya Pradesh ("Respondent No.2") had issued notices to IDBI Bank and Axis Bank respectively, directing them to freeze the current account of the Corporate Debtor towards clearance of outstanding dues/liabilities of CST/VAT. IDBI and Axis Bank had accordingly placed debit freeze on the accounts of the Corporate Debtor.

The Appellant sent several communications to the government/bank authorities urging them to defreeze the relevant current accounts, but to no avail and therefore an interim application bearing I.A. No 192 of 2021 was filed before the Adjudicating Authority, seeking (i) directions to be issued to Respondents No. 1 & 2 to set aside their notices issued to the bank authorities freezing the bank accounts of the Corporate Debtor; and (ii) directions IDBI and Axis Bank to de-freeze the bank accounts of the Corporate Debtor.

The Adjudicating Authority vide an order dated 31.01.2022 directed the Liquidator (Appellant) to take up with the relevant government authorities and their grievances redressal mechanism to de-freeze the bank accounts of the Corporate Debtor towards consolidating the assets of the Corporate Debtor which is under liquidation. The Appellant filed an appeal against the order dated 31.01.2022 before the NCLAT.

### *Contentions Of The Appellant*

The Appellant contended that Regulation 44(1) of IBBI (Liquidation Process) Regulations, 2016 mandates that the Liquidator shall liquidate the Corporate Debtor within a period of one year, hence it was necessary to take over the bank accounts of the Corporate Debtor as part of the liquidation estate within the prescribed time-frame or else the objective of value maximization would fail. It was submitted that

the Adjudicating Authority has refused to exercise the powers vested on it by the IBC to direct the banks/government authorities to de-freeze the accounts of Corporate Debtor and has instead directed the Appellant to again approach the government authorities. It was submitted that the directions made by the Adjudicating Authority to remand the Appellant yet again before the government authorities would only add to delay in completion of the CIRP and mount liquidation costs.

Whether the Liquidator having already made sufficient efforts and still having failed to persuade the government authorities and the banks to de-freeze the relevant bank accounts of the Corporate Debtor, does it become incumbent upon the Adjudicating Authority in terms of the IBC to intervene and issue appropriate directions to the relevant government authorities/banks to lift the debit freeze on the accounts of Corporate Debtor, if it is so requested by the Liquidator?

#### *Decision Of The NCLAT*

The Bench observed that Section 35 of the IBC clearly empowers the liquidator to exercise authority to seek the de-freezing of the current bank accounts of the Corporate Debtor and transfer the funds lying therein to the Liquidator's account so as to form part of the liquidation estate. The Liquidator had made genuine and sustained efforts to bring the bank accounts of the Corporate Debtor into the liquidation estate and thus cannot be faulted for any inaction or non-compliance on his part. The Bench placed reliance on Section 60(5) and Section 238 of the IBC and observed that the Adjudicating Authority is vested with residuary jurisdiction and it therefore casts a responsibility on the Adjudicating Authority to intervene in certain circumstances.

The present is also a fit case where the Adjudicating Authority could have exercised its residuary discretion under Section 60(5) so as to ensure that the objectives of IBC are not frustrated including providing relief to the Liquidator in stalemate circumstances as the present. It has also been held by the Hon'ble Supreme Court in the Gujarat Urja Vikas Nigam Ltd. Vs. Amit Gupta & Ors. (Civil Appeal No. 9241 of 2019) that the residuary jurisdiction and can be exercised as long as the matter is not de hors the insolvency proceedings."

Section 238 of IBC clearly overrides anything inconsistent contained in any other enactment. The IBC is thus a complete code and prevails over all other laws which are inconsistent with or in conflict with the IBC.

It was held that the directions issued by Respondent No.1 and 2 to freeze the accounts of the Corporate Debtor during liquidation process was bad in law and it was within the remit of the Adjudicating Authority to issue appropriate directions to the Respondents No. 1 and 2 to set the matter right and provide statutory relief to the Appellant rather than remanding the matter back to government authorities.

"Given that the persistent efforts on the part of the Appellant to defreeze the accounts of the Corporate Debtor did not bear any result; given that there is sufficient proof of reluctance on the part of Respondents 1 to 4 to defreeze the bank accounts of the Corporate Debtor; given that Section 238 of IBC overrides anything inconsistent contained in any other enactment and also given that Section 60(5) of

the IBC vests residuary jurisdiction on the Adjudicating Authority to intervene and, above all, keeping in mind that the cardinal objective of the IBC Code is to obviate uncalled for derailment of the insolvency resolution process, we find sufficient merit in the submission made by the Learned Counsel for the Appellant that the Adjudicating Authority ought to have appreciated the constraints faced by the Appellant/Liquidator and provided relief by exercising its residuary jurisdiction rather than remanding the Appellant once again back in the hands of the government authorities."

It was held that the Adjudicating Authority erred in not exercising the residuary jurisdiction vested in it under Section 60(5) of the IBC and had failed to provide necessary relief to the Appellant. The Bench set aside the order dated 31.01.2022 and directed the Respondents No. 1 and 2 to immediately withdraw the notices issued by them de-freezing the Bank Accounts of the Corporate Debtor maintained in IDBI Bank and Axis Bank Ltd. and IDBI and Axis Bank were directed to defreeze the Bank Accounts held in the name of the Corporate Debtor.

**Source: Live Law**

**Read Full news at:** <https://www.livelaw.in/news-updates/national-company-law-appellate-tribunal-nclat-section-605-of-the-insolvency-and-bankruptcy-act-corporate-insolvency-resolution-process-cirp-tax-authorities-freezing-accounts-206351>



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