



# IBC AU-COURANT

*Latest updates On Insolvency & Bankruptcy*

**31<sup>st</sup> October 2022**

**"Wise people are those who learn from their mistakes and make better choices going forward"**

## ➤ **Can't Interfere With COC'S Decision Not To Pay Suspended Directors For Their Services During CIRP: NCLT Ahmedabad**

The National Company Law Tribunal ("NCLT"), Ahmedabad Bench, comprising of Dr. Deepti Mukesh (Judicial Member) and Shri Ajai Das Mehrotra (Technical Member), while adjudicating a petition filed in Indian Overseas Bank v AMW Autocomponent Ltd., has held that promoters and persons associated with the management of the Corporate Debtor are statutorily obligated to extend all assistance to the Resolution Professional.

The Bench declined to interfere with the CoC's decision to not pay remuneration to the Suspended Directors, for the services rendered by them on the request of Resolution Professional during insolvency process.

Indian Overseas Bank had filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against AMW Autocomponent Ltd. ("Corporate Debtor").

The Corporate Debtor was admitted into CIRP on 01.09.2020. Mr. Avil Menezes was appointed as Interim Resolution Professional and later confirmed as Resolution Professional.

Mr. Babubhai Shrimali, Mr. Rakesh Jagetiya and Mr. Dinesh Bahadur Singh (collectively "Applicants") are suspended directors of the Corporate Debtor. After initiation of CIRP, on request of Resolution Professional, the Applicants had rendered service as Directors, Legal & Administrative Head, CFO and Head of Operations in the Corporate Debtor.

They were assured by the Resolution Professional that salaries during the period of CIRP would be paid. The Committee of Creditors ("CoC") in its meetings discussed on the salaries of the Applicants but did not come to any conclusion. Therefore, the Applicants had resigned from their respective posts on by notice on 28.10.2020.

The payment to all other employees pending CIRP was made and only the salaries of Applicants was refused by the CoC. The Applicants filed an application before the Adjudicating Authority seeking direction to the Resolution Professional to release the lawful dues towards salary during the CIRP period.

It was argued that the Applicants being the directors are the related party of the Corporate Debtor and any payment to them would fall under related party transactions as per Section 28(f) of IBC.

Therefore, the Resolution Professional is bound under Section 28 of IBC to take approval of CoC. The Applicants extended support in management of the Corporate Debtor during the CIRP as required under the IBC. However, the CoC did not approve the said related party transaction on the ground of it being exorbitant as the Corporate Debtor was under severe financial distress.

The Bench observed that as the term 'related party transaction' is not defined under IBC. Therefore, Section 188 of the Companies Act, 2013 was referred, which states that Related Party Transactions includes any contract or arrangement with a related party with respect to availing of any services. Thus, availing of services from the Applicants would amount to related party transactions.

It was further observed that IBC empowers the CoC to take commercial decision as to whether related party transactions should be undertaken or not during the CIRP. Accordingly, the Resolution Professional in various CoC meetings had placed a resolution for payment of salary to the Applicants but the CoC in its commercial decision has rejected the resolution.

Reliance was placed on the Supreme Court judgment in Vallal RCK Vs. M/s Siva Industries and Holdings Ltd. & Ors (Civil Appeal No. 1811- 1812 of 2022), wherein it has been held that "the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC".

The Bench opined that the decision of COC should not be interfered with and the question of reversing the decision cannot be considered. Moreover, the Applicants being the promoters and persons associated with the management of the Corporate Debtor are statutorily obligated to extend all assistance to the Resolution Professional in managing the affairs of the Corporate Debtor. The application was rejected.

**Source: Live Law**

**Read Full news at:** <https://www.livelaw.in/news-updates/nclt-ahmedabad-suspended-directors-corporate-debtor-section-7-of-the-insolvency-and-bankruptcy-code-cocs-decision-cirp-212729>

## ➤ **Creditors expect higher bid values for insolvent Srei firms**

After Capri Global Holdings and ArcelorMittal affiliate AM Mining India submitted expressions of interests (EoIs) for two Srei entities, creditors to the insolvent companies are expecting higher financial bid values and upfront cash offers from prospective resolution applicants amid a more competitive environment in the latest round of the corporate insolvency resolution process (CIRP).

The consolidated committee of creditors (CoC) for Srei Infrastructure Finance (SIFL) and Srei Equipment Finance (SEFL) has earlier decided to extend the last date for submission of resolution plans to November 15.

In the first round of the CIRP, the final list of the prospective resolution applicants for SIFL and SEFL consisted of 13 entities. Now, the list has 15 names after Capri Global and AM Mining submitted their EoIs.

In the first round, the NBFCs had received two resolution plans as Varde Partners and Arena Investors had jointly submitted one. The consortium had put forward around Rs 14,000-crore bid with around Rs 6,500 crore of upfront cash. The second bid submitted by Shon Randhawa and her partner was of around Rs 10,000 crore.

The creditors, however, did not agree on the upfront cash offered by the two bidders, and with a view to maximise the value of the assets of the corporate debtors for all stakeholders, a request for resolution plans was issued by the administrator, Rajneesh Sharma.

“Competitive environment has been properly created now with the two latest additions in the final list of the prospective resolution applicants. Creditors are expecting much more than what had been offered by Varde Partners and Shon Randhaw. The creditors are expecting bids with higher upfront cash,” sources close to the matter told FE.

The EoI from Capri Global Holdings was received by the administrator on October 14 in response to the fresh publications with regards to submission of EoIs by prospective resolution applicants (regardless of whether they appear in the final list).

The EoI submitted by Capri Global Holdings, having met the eligibility criteria as per invitation for EoI dated February 25, 2022, was placed before the CoC in its meeting held on October 17. The CoC approved a resolution to include the name of Capri Global Holdings in the final list of prospective resolution applicants.

An EoI from AM Mining India was received on September 27 after the expiry of the last date of submission of EoI. AM Mining India, while citing its reason for delay, also requested for condonation of delay in submission of EoI. “The EoI submitted by AM Mining, having met the eligibility criteria as per invitation for EoI dated 25th February 2022, was placed before the committee of creditors in its meeting held on October 1, 2022, and after considering all aspects including the value maximization for all stakeholders including but not limited to banks, financial institutions and retail debenture holders, the CoC approved a resolution to include the name of AM Mining India Private Limited in the final list of prospective resolution applicants,” according to a stock exchange filing by SEFL, a subsidiary of SIFL.

Insolvency proceedings against SIFL and its subsidiary SEFL commenced in October 2021 after insolvency petitions filed by the Reserve Bank of India were approved by the Kolkata bench of the National Company Law Tribunal.

**Source: Financial Express**

**Read Full news at:** <https://www.financialexpress.com/industry/creditors-expect-higher-bid-values-for-insolvent-srei-firms/2755487/>



**Insolvency Professional Agency of Institute of Cost Accountants of India**  
**(A Section 8 Company registered under Companies Act, 2013)**  
**CMA Bhawan, 3, Institutional Area, Lodhi Road**  
**New Delhi - 110003**