

# Unable to Pay up? Top Bidder to Face Penalty Under New Rule

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**Mumbai:** A new amendment to corporate insolvency regulation prescribing stringent punishment for successful resolution applicants who fail to make prompt payments is likely to protect the new bankruptcy law from frivolous bidders, lawyers said. The amendment comes after recent cases of backtracking by winning bidders in taking over debt-laden companies. The latest of such examples is the case of Chennai-based Orchid Pharmaceuticals, which owed lenders \$1,000 crore. Last week, a two-judge bench of the National Company Law Tribunal (NCLT) ordered the restart of the resolution process after US-based Ingen Capital Group failed to deposit money to take over the debt-laden company. Earlier, UK-based investor Liberty House had backed out after being declared the highest bidder in the case of Artek Auto and Adhunik Metaliks. Section 74 of the insolvency code prescribes stringent punishment to resolution applicant if it fails to implement a plan, said Shilju Veeetil, senior partner at Indialaw. In addition, recent amendments to the regulation make it mandatory for a successful applicant to provide performance security, which can be forfeited in the eventuality of a default. The amend-



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**RECENT CASES:**  
**Chennai-based Orchid Pharmaceuticals**, which owed lenders 25,000 crore, had the highest bidder, Ingen Capital Group, backing out after it failed to deposit money.  
**Liberty House had backed out** after being declared the highest bidder in the case of Artek Auto and Adhunik Metaliks.

ment also requires every resolution applicant to declare if the applicant or its related party failed to implement a plan in the past. With these safeguards, the code is now well equipped to handle defaults in the implementa-

tion of the resolution plan. Indialaw was representing the committee of creditors (CoC) led by SEI in the Orchid Pharma case. In February 2018, a two-judge bench of the NCLT in Chennai, led by Justice Prakash Kumar had granted respite to Ingen Capital for 105 days to invite fresh expressions of interest and find new bidders for the company. Ingen had offered to pay ₹1,000 crore under a resolution plan approved on September 17 within 30 days of the order. As part of the payment, Ingen had to first deposit one-third of the amount for company failed to make the payment but instead filed a fresh petition to replace the RP.

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SHILJU VEETIL, senior partner, Indialaw

In its order, the court said the RP has received small enquiries from DVI Laboratories, Grand Collar, Biochemicals and Fidelity Trading Corp and oral enquiries from ART Capital India, Everest Group and Capital Partners. The court said the RP Group expressing interest. Ingen's share for the company of at a total of ₹1,000 crore was at a 65% stake to the total debt of over ₹3,000 crore. The company owes a consortium of more than 24 lenders. It remains to be seen whether any new bidder offers a higher amount. The company has around 1,500 employees on its roll. It was among the list of 28 companies that the RBI had sent to banks in August 2017 seeking a speedy resolution. These total had loans aggregated to about ₹2 lakh crore.

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