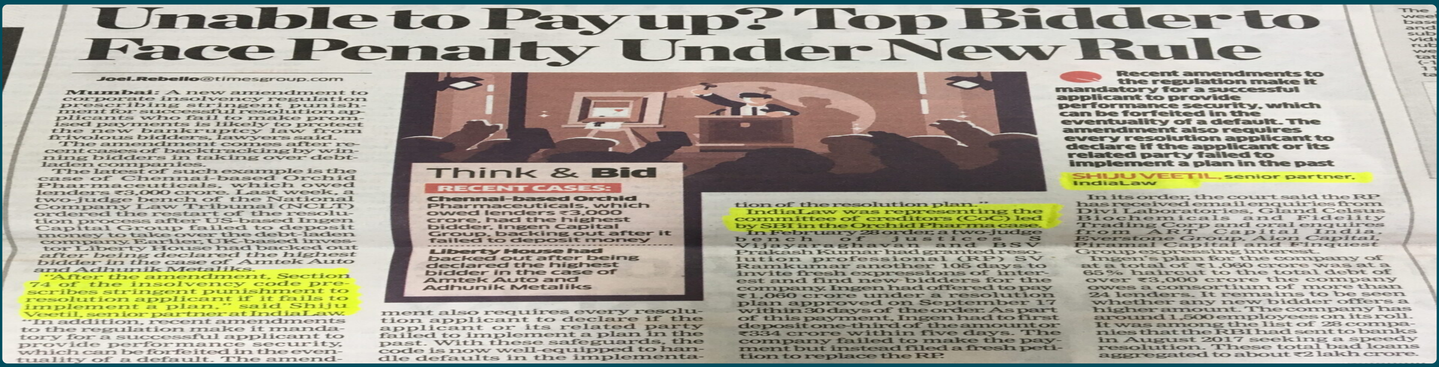

Unable to Pay up? Top Bidder to Face Penalty Under New Rule

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Mumbai: A new amendment to corporate insolvency regulation prescribing stringent punishment for successful resolution applicants who fail to make promised 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 example is the case of Chennai-based Orchid Pharmaceuticals, which owed lenders ₹3,000 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 Amtek Auto and Adhunik Metaliks.

"After the amendment, Section 74 of the insolvency code prescribes stringent punishment to resolution applicant if it fails to implement a plan," said Shiju Veetil, 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 amendment 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 implementation of the resolution plan."

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Chennai-based Orchid Pharmaceuticals, which owed lenders ₹3,000 crore, had the highest bidder, Ingen Capital Group, backing out after it failed to deposit money

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SHIJU VEETIL, senior partner, IndiaLaw

IndiaLaw was representing the committee of creditors (CoC) led by SBI in the Orchid Pharma case.

In February 28 order, a two-judge bench of justices S Vijayaraghavan and BSV Prakash Kumar had granted resolution professional (RP) SV Ramkumar another 105 days to invite fresh expressions of interest and find new bidders for the company. Ingen had offered to pay ₹1,060 crore under a resolution plan approved on September 17 within 30 days of the order. As part of this payment, Ingen had to first deposit one-third of the amount or ₹334 crore within five days. The company failed to make the payment but instead filed a fresh petition to replace the RP.

In its order, the court said the RP has received email enquiries from Divi Laboratories, Gland Celsus Biochemicals and Fidelity Trading Corp and oral enquires from ART Capital India, Everstone Group, Aion Capital, Piramal Capital and Finquest Group expressing interest.

Ingen's plan for the company of at a total of ₹1,060 crore was at a 65% haircut 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 bad loans aggregated to about ₹2 lakh crore.

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