

TRENDING# M Karunanidhi NRC Assam Ind vs Eng Narendra Modi

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# NCLT offers Shirdi Ind to promoters, gives hope to others



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In a landmark judgement which may help other promoters who are fighting to defend their companies, Mumbai-based laminates maker Shirdi Industries has become the first case where a National Company Law Tribunal (NCLT) passed an order that allowed the company to be handed over to the same promoters for implementing the resolution plan.

The court handed over the company to the existing management on December 12, and the resolution plan of the company got implemented from December 13 by the management.

This will be the first case where the Mumbai NCLT court has ruled in contravention of the NPA Ordinance of November 23, where the government debarred existing promoters from bidding for their own company if the loan is a non-performing asset (NPA) for more than 12 months. The court said it made an exception because the resolution plan was approved by 99% of the lenders long before the NPA Ordinance was announced.

Devendra Jain, the interim resolution professional (IRP) to Shirdi Industries, appointed by the creditors, said, "The resolution was approved by the Committee of Creditors (CoC) in the meeting held on October 25, with 99.43%

"The court also took into account that the company brought in Rs 32.14 crore from April 2015 to September 2017 to revive the company and the operating and the financial performance of the corporate debtor improved substantially during the years 2015 to 2018 in line with the technical study projections," Jain said.

The five-year resolution plan of the company is being implemented by the existing promoters from December 20, with a timebound plan to complete by March 2022. The total claim under the insolvency proceeding is Rs 651.87 crore.

In a similar instance, the Kolkata Bench of NCLT ruled that the existing promoter is eligible to bid for his company. While in the case of MBL Infra, the court allowed the existing management to bid for their own company, in the case of Shirdi Industries, the company is already handed over to the existing promoters to implement a resolution plan.

In the MBL Infra case, the court ruled, "Merely because there is a default by a borrower in repayment of the borrowed amount to a creditor does not render the borrower or its guarantor, dishonest. Every act of default cannot be equated with malfeasance."

Sameer Kakar, partner, News Insolvency Professional LLP, said, "It is for the legislature to make laws and for the courts to interpret the same."

JM Financial Asset Reconstruction Company is the lead lender with 64.5% of secured loans of Shirdi and Edelweiss ARC holds about 19.5% of the debt. Standard Chartered Bank and State Bank of India (SBI) hold about 16% of the debt.

The company, in turn, will convert 20% of its total paid-up capital of the corporate debtor in December 2017 and 51% of the total paid-up capital of the company. About 82% is already pledged and the balance by the end of December 2017.

Shirdi Industries was put under the insolvency resolution process by the court on May 18, 2017 and Devendra Jain was appointed as the IRP. He started his work and convened the first meeting of the committee of creditors on June 15, where the IRP was confirmed and the decision was taken to conduct the technical study of the corporate debtor and the promoter of the corporate debtor was permitted to submit the resolution plan.

The court observed that both a forensic audit and a technical study were conducted by the CoC and the report of both the investigations were satisfactory with sufficient checks and balances to escrow the earnings of the company.

#### **BIG RELIEF**

- The resolution plan is being implemented by the existing promoters from December 20
- The timebound plan is to complete it by March 2022