Supreme Court's decision on Siva Industries may set a good precedent for IBC cases, experts say

The court's June 3 order will give more power to lenders and ensure speedy recovery in cases under the bankruptcy court, according to bankers and legal experts

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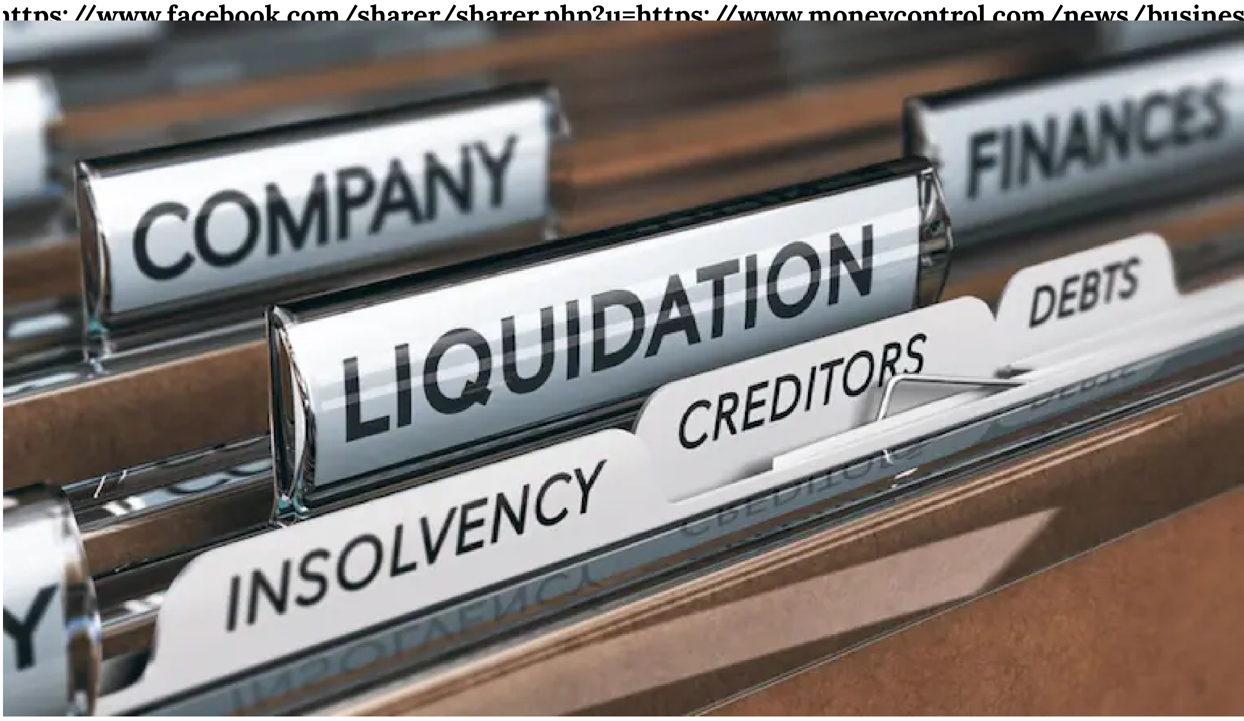

The Supreme Court's decision to allow the IDBI Bank-led consortium of lenders to go ahead with Siva Industries and Holdings Ltd's (SIHL) one-time settlement offer will pave the way for creditors to decide on insolvency cases without the fear of judicial intervention, experts said.

At least six banking and legal experts Moneycontrol spoke with said that the apex court's order will giv[illegible]e power to lenders and ensure speedy [illegible]ution of the cases under the bankrupt[illegible]urt.

In a 21-page written **order (https://main.sci.gov.in/supremecourt/2022/5047/5047_2022_5_1503_36129_Judgement_03-Jun-2022.pdf)** dated June 3 regarding the Siva Industries case, the Supreme Court said that the committee of creditors (CoC) had due deliberation to consider the pros and cons of the settlement plan and took a decision exercising their "commercial wisdom". Therefore, neither the learned National Company Law Appellate Tribunal (NCLAT) nor the National Company Law Tribunal (NCLT) were justified in not giving due weightage to the commercial wisdom of the CoC, the court observed.

"The bankers' consortium is relieved that the settlement amount of Siva Industries is slightly higher than the liquidation value of the firm," said a banker in the stressed assets vertical of a private lender that has exposure to the company. "Settlement is largely preferred than liquidation in most cases where bidders are absent."

Legal experts echoed the banker's view. According to Sonam Chandwani, managing partner at KS Legal and Associates, the premise that financial creditors are fully informed about the viability of the corporate debtor and the feasibility of the proposed resolution plan has been upheld.

"This establishes a precedent for future cases of insolvency and bankruptcy in which the CoC wields significant power and that the court can only intervene when the CoC's judgement is entirely arbitrary and unreasonable," Chandwani said.

The Siva Group-IDBI Bank deal

SIHL, the holding company of the Siva Group, owed around Rs 5,000 crore to a lenders' consortium led by IDBI Bank. It was dragged to the NCLT in July 2019 and with no successful suitors, the company was heading

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to liquidation. The group was promoted by Chinnakannan Sivasankaran, a well-known businessman whose investments spanned real estate, hospitality, shipping, minerals and agro exports. At one time, he also controlled companies such as Aircel and Barista, and had a stake in Tamilnad Mercantile Bank.

In April 2021, Sivasankaran managed to convince more than 90 percent of SIHL's lenders to withdraw the company from the corporate insolvency resolution process and go in for a one-time settlement of Rs 328.21 crore to lenders under a settlement plan involving a haircut of about 93.5 percent for lenders.

However, the NCLT rejected the settlement offer in August 2021, causing promoter Vallal RCK, Sivasankaran's father and a shareholder of the company, to move the NCLAT. In January this year the NCLAT also upheld the NCLT order for liquidation. Vallal had then moved the Supreme Court.

More power to lenders

According to experts, the apex court's decision gives lenders more flexibility to arrive at a settlement even after the corporate insolvency process is initiated and is at an advanced stage.

"Earlier, once the admission order was passed in respect of a corporate debtor, the promoters were ousted from the control and management of the company and had no active role in the resolution process," said Udit Mendiratta, partner at Argus Partners (Solicitors & Advocates).

"Given this decision, the CoC can now, in parallel with the CIRP (corporate insolvency resolution process), also try and negotiate a settlement with the promoters."

This could also create a positive shift in resuscitating the debt-ridden company through a settlement process as opposed to resolution and give more options to lenders, experts said.

The court's order does not entirely violate Section 29A of the Insolvency and Bankruptcy Code (IBC), which states that an insolvent, a wilful defaulter or a person who was a promoter or was in the management of the corporate debtor, among other conditions, would not be allowed to bid for the insolvent company concerned. This is because ineligibility under Section 29A applies only in case of submission of a resolution plan and not settlement proposals.

"This decision does not in any manner enable promoters or connected persons to regain control of a company by submitting a resolution plan which can be approved by a 66 percent majority of the CoC," said Mendiratta. "Instead, a settlement plan must necessarily pass a higher threshold of approval by 90 percent of the CoC."

Sifting 'bad apples'

However, a major challenge emanating from this decision will be to sift genuine promoters from wilful defaulters. If wilful defaulters are given this option, it would embolden them to engage in wheeling and dealing with banks and creditors. They could also use the same method to retain control of their bankrupt companies and end up paying a fraction of what they initially owed banks.

"This would bring us to the pre-IBC days when under the garb of one-time settlement, the companies would keep taking the creditors and other stakeholders for a ride," said Srinivas Kotni, managing partner at Lexport, a law firm.

Sivasankaran himself, for instance, is not new to controversy and his trysts with the judiciary and regulatory authorities are many.

The Central Bureau of Investigation (CBI) had registered a case against two of his companies and a clutch of banks for allegedly defaulting on loans of over Rs 600 crore, according to a Business Standard **report (https://www.business-standard.com/article/companies/c-sivasankaran-a-maverick-prone-to-courting-controversy-and-the-cbi-118042700853_1.html)** dated April 28,2018. Sivasankaran had **denied (https://www.business-standard.com/article/companies/c-sivasankaran-denies-link-with-alleged-rs-6-billion-idbi-fraud-118121901273_1.html)** such allegations then.

His name also cropped up in a series of investigations relating to Dayanidhi Maran, the former telecom minister, in an alleged telephone connections case, as well as in charge sheets and allegations of irregularities in granting Foreign Investment Promotion Board approval to the takeover of Indian telecom firm Aircel (which he founded) by Maxis of Malaysia.

Not just that, ousted Tata group chairman Cyrus Mistry had also dragged his name into various deals, which included the Tatas offering him a 10 percent share in Tata Teleservices Ltd at a discounted rate. There are many more such cases. Some even related to evergreening of loans.

Sivasankaran did not respond to Moneycontrol, when contacted for a contribution to this story.

"There are going to be bad apples everywhere, even in such cases. But let that not be the sole deciding factor for the judiciary to intervene; let banks play their role and let the commercial wisdom come into play to sift these 'bad apples'," said another executive with a state-run bank, requesting anonymity.

To be fair, there have been a few prominent cases in the past where banks have refused to entertain the offers of defaulted promoters for one-time or similar settlements. A recent example is Kapil Wadhawan's bid for Dewan Housing Finance Corporation (DHFL) by offering to pay off dues to his creditors over seven to eight years. Though not an NCLT case, a similar thing happened in the Kingfisher-Vijay Mallya case as well.

"Be it genuine or wilful defaulters, the decision has given more surety to the IBC process and bankers," said Sanjay Agarwal, executive director at CARE Ratings. "The IBC process is to ensure that commercially prudent decisions are taken by lenders, and banks will capitalise on that."

KS Legal and Associates' Chandwani said that the IBC's lack of distinct public and private banking norms of conduct is concerning, especially when public funds are involved.

"If lenders accept bids to avoid the expensive and time-consuming IBC process, it will encourage defaulters and contradict the purpose of IBC," she added.

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