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[Mayur Shetty](#) and [Reeba Zachariah](#) | TNN | Updated: Nov 24, 2017, 04:49 IST

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WHO ARE WILFUL DEFAULTERS

The central bank has 4 criteria for identifying wilful defaulters:

	1 Borrower defaults despite having capacity to repay	2 Borrower misuses loan funds	3 Loan funds have been diverted
4 Borrower has dealt with assets without knowledge of lender			

➤ RBI has identified 12 cos for insolvency proceedings

➤ While these account for a quarter of banks' bad loans, they have not been declared as wilful defaulters

Reeba Zachariah & Mayur Shetty | TNN

Mumbai: Some of the promoters of companies facing insolvency proceedings may legally test the new ordinance on [bankruptcy code](#), which has barred them from regaining control of these entities when the assets go under the hammer. Lawyers said founders like Ruia of [Essar Steel](#) could approach the courts as the ordinance forces them to surrender their companies to rivals.

The new ordinance disqualifies a number of people — including promoters and management executives — of companies whose loan accounts have been classified as [non-performing assets \(NPAs\)](#) for a year and more from bidding for their own assets in bankruptcy proceedings. Essar Steel, which has a current debt of Rs 42,000 crore, is among the dozen loan-defaulting companies facing insolvency proceedings. Ruia declined to respond to emailed queries.

Shardul Shroff, executive chairman and national practice head (insolvency & bankruptcy) of [Shardul Amarchand Mangaldas](#), said, “The ordinance will save the government ‘blushes’ in a situation where promoters of existing corporate debtors seeks massive haircuts in the guise of a resolution applicant.”

Insolvency lawyer Alok Dhir said, “While the intent to weed out those who gamed the system is understandable, its broad sweep is troubling. This will lead to litigation by those who aren’t maligned and reduce the bidding fray, thereby depressing the price discovery.” Dhir added that amendments posted another peculiar problem: “How do you ensure that foreign investors do not attract similar broad-brush disqualifications?”

However, Pratip Chaudhuri, former [SBI](#) chairman, said that it was proper that promoters were barred from the bidding process. “They have already tried their hand at it and they could not succeed. There have been other companies in the same industry who have been successful in the business. This sends a message to promoters that you cannot be in default perpetually.”

Shardul Shroff pointed out that promoters of delinquent companies can submit a resolution plan, provided they pay all overdue amounts with interest and charges relating to NPAs.

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Sujain Talwar, partner at Economic Laws Practice, highlighted that nothing in the code stops anyone from warehousing the ailing asset and then selling it onwards, including to a debarred promoter.

Khaitan & Co’s disputes resolution partner, Diwakar Maheshwari, said that the amendment having retrospective impact in barring resolution plans already submitted could become a subject matter of judicial interpretation. He also wondered if the amendments to sections 25 (2) (h) and 30(4) could dilute the autonomy of the committee of creditors in functioning the tasks mentioned in the said provisions.

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Ruia of Essar Steel, the most high-profile case in the RBI’s initial list of 12 defaulting companies referred to the NCLT, may argue that the company’s financial woes stemmed from external factors — abrupt snapping of gas supplies by the UPA government in 2011, and cheaper Chinese imports in an industry with huge over-capacities. Lawyers said Ruia may also point out that they had paid almost Rs 10,000 crore in servicing loan interests between 2012 to 2015 when lenders declared it as an NPA.

Several bankers who didn’t want to be quoted said most of the 50-odd cases (including the subsequent [RBI](#) lists) landing before the NCLT involve NPAs that are clearly more than a year old. As the clean-up act gathers momentum, the broad sweep of amendments uprooting entrenched promoters, who are corrupt or wilful defaulters, may carry wider ramifications for an economy riding heavily on family-run enterprises. There were worries if such transitions would be orderly, or if it would disturb both businesses and jobs. [PwC India](#) partner Sanjeev Krishnan said the reaction from the business community wasn’t surprising, given the far reaching character of the ordinances, which precludes many potential acquirers. “One can argue that the government could have done this earlier, but they still managed to get the timing right before some of these bankruptcy cases went awry,” he added.

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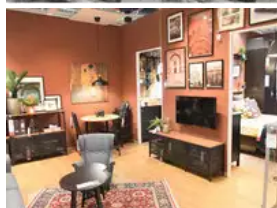
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FIR against PVR's directors, promoters for cheating, forgery

PTI | Nov 23, 2017, 11.37 PM IST

TimesPoints



Gurgaon, Nov 23 () The [Gurgaon Police](#) has registered an FIR against [PVR Cinemas](#), and its promoters and directors on charges of cheating and forgery on the directions of the Gurgaon civil court.

Its promoters Ajay Bijli, [Sanjeev Kumar](#) Bijli, Niharika Bijli and eight other persons have been booked under relevant sections of the IPC for selling stocks at inflated value of Rs 820 crore illegally and causing loss to Gurgaon-based real estate companies.

The FIR was registered at the Sushant Lok phase-1 police station yesterday.

The case came to light when Elan Group filed a complaint in the court, which on November 17 directed the local police to register an FIR against Chairman and Managing Director of [PVR Limited Ajay Bijli](#), and directors Niharika Bijli, Sanjeev Kumar Bijli and others.

PVR Limited had claimed they were going to have 1,000 screens by 2018, according to the FIR.

"It entered into MOUs with builders of commercial space and Ajay Bijli made sensational statements to the press that PVR was in the process of achieving its target of 1,000 cinema screens by 2018, thereby inflating the share prices of PVR based on false statements," it read.

"Once PVR sold its 14 per cent stakes by overpricing to Warbur Pincus, a US based fund, it fraudulently and malafidely tried to terminate the MOU," the FIR claimed. The complainant found that PVR never had any intention of taking on lease the multiplex proposed to be developed in terms of the aforesaid MOUs.

Elan Group found that "the accused had hatched a well-planned conspiracy with the malafide intent to allure investors to increase the share value and worth of PVR in global market.

"Once the shares of PVR were sold, they dumped the contracts/MoUs and fraudulently tried to terminate deals," it alleged.

However, PVR in a statement termed the allegations "incorrect and baseless" and said they were made with the sole intention to tarnish its image.

"In 2016, PVR was approached by Elan, offering multiplex space in certain projects proposed to be constructed by Elan in Gurugram. The parties entered into MoU based on several representations made by Elan.

"PVR subsequently discovered that Elan had misrepresented facts and was therefore constrained to terminate the MOUs and a civil dispute is currently pending between the parties inter alia in this regard," it said.

"PVR is seeking legal advice with regard to the order passed by the judicial magistrate, Gurgaon and shall take appropriate recourse under applicable laws. Since the aforesaid proceedings are currently sub-judice, PVR is not in a position to provide any further comments at this stage," the statement read. Corr KRH GVS SK GVS

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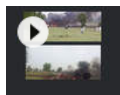
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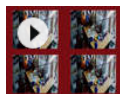
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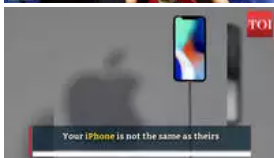
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