



11:11 AM   15 FEB <b>MARKET STATS</b> <span style="float:right">LIVE</span>	SENSEX 35,627 <span style="color:red">▼</span> -248.49	NIFTY 50 10,656 <span style="color:red">▼</span> -89.10	GOLD (MCX) (Rs/10g.) 33,224.00 <span style="color:green">▲</span> 145.00	USD/INR 71.35 <span style="color:green">▲</span> 0.21	<a href="#">CREATE PORTFOLIO</a>	<a href="#">Download ET MARKETS APP</a>	<a href="#">CHOOSE LANGUAGE ENG</a>
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# NCLT Sterling order may cheer lenders

BY [SUGATA GHOSH](#), ET BUREAU | FEB 15, 2019, 07.02 AM IST

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MUMBAI: There's a ray of hope for lenders who are unable to sell properties of errant borrowers with the [Enforcement Directorate](#) (ED) having attached the assets by invoking the harsh anti-money laundering law.

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In a case involving Sterling SEZ and Infrastructure Ltd, whose promoters have left India, the National Company Law Tribunal has ruled that the attachment order obtained by ED is invalid and the resolution professional can step in to take charge of the properties and deal with them under the Insolvency and Bankruptcy Code (IBC).

Sterling SEZ is part of the Vadodara-based [Sterling Biotech](#) (SBL) group, and according to court papers, total credit facilities of Rs 8,100 crore availed by the group were declared "fraud account" by banks.

Srei Infra Finance, one of the creditors to Sterling SEZ, had sought NCLT's intervention for lifting the attachment by ED which felt that IBC 2016 being a civil law cannot be given precedence over Prevention of Money Laundering Act (PMLA), 2002, and therefore, NCLT lacks jurisdiction.

However, the tribunal directed the ED to release the attachment on the ground that IBC is a later legislation and the time-consuming proceedings under PMLA could cause an erosion in the value of the attached assets.

<p><b>Big Boost</b> ED had attached Sterling's assets under PMLA <b>Srei Infra</b>, one of the creditors to Sterling SEZ, had sought NCLT help for lifting attachment by ED</p>	<p><b>What NCLT said</b> ED's attachment order invalid <b>Resolution professional</b> can take charge of assets, deal with them under IBC <b>Delays in probes</b> by govt agencies can erode asset value</p>	<p><b>Expert Take</b> <b>Order may be challenged</b> in higher courts <b>In high-profile cases</b> many lenders, don't challenge ED attachment <b>Move may provide</b> legal recourse to lenders in such cases</p>	
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"It's a significant order and is likely to be challenged in higher courts. The ruling provides the ground to other lenders to move court to lift the attachment by ED or other government agencies," said MR Umarji, former RBI executive director and a member of the Bankruptcy Law Reforms Committee.

Sapan Gupta, partner with Shardul Amarchand Mangaldas, said, "The ruling upholds the right of secured lenders as there are specific securities offered for obtaining loans. Once ED completes its process, the securities should be released to secured lenders."

The ED's contention was that as per the decision of the special court under PMLA if an asset is proceed of crime, it erodes the very title of the corporate debtor and the resolution applicant.

The agency had told the court that the "promoters of SBL group left the country under suspicious circumstances and evaded the process of law to face criminal prosecution".

According to a PTI report on Thursday, two of the main promoters of SBL, Nitin Jayantilal Sandesara and Chetankumar Jayantilal Sandesara, along with Dipti Chetan Sandesara moved a Delhi court seeking cancellation of non-bailable warrants issued against them.

However, the Mumbai bench of the NCLT observed the purpose and object of IBC is resolution for the corporate debtor by maximising the value that can be received by creditors and stakeholders. "The PMLA's object is also to recover the property from wrongdoers and compensate the affected parties by confiscation and sale of assets of the wrongdoer apart from imposing punishment. Here the beneficiaries are the creditors of the corporate debtor," said the court.

In high-profile and politically sensitive cases lenders, particularly state-owned banks, often refrain from challenging asset attachment by government agencies. “Some of the lenders to [Nirav Modi](#) and [Vijay Mallya](#) whose movable and immovable assets have been attached by agencies can explore legal option,” said a banker.

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