Decision on IBC Resolution plan

Why in news?

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Ministry of Corporate Affairs (MCA) recently announced that equity shareholders won’t have a say in approving a resolution plan.

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What is the recent clarification of the ministry is about?

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Click here to know more about IBC and resolution plan

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- Given the Insolvency and Bankruptcy Code (IBC) is still in its infancy and Resolution Professionals (RP) are just beginning to work on solutions to revive near-bankrupt companies.
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- There are some degree of confusion on the rules, especially when it comes to the role of equity shareholders.
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- To be sure, the IBC had made this evident; Section 30 of the Code says it is the committee of creditors that must approve the resolution plan, presented to it by the RP, by a vote of not less than 75%.
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What areearlier situations prevailed in the debt recovery?

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- There are gaps in the NCLT (National company law tribunal) a promoter floating another company, or using an existing group firm/subsidiary to bid at the NCLT.
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- So, let’s say a company hasRs 10,000 crore that is clearly unsustainable and,

say, gets sustainable at a level of Rs 4,000 crore.
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- If, as part of the NCLT process, the bank loan is reduced, and a completely different set of promoters buys the firm.
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- But if the existing promoter gets to buy his own company with the banks taking a considerable haircut on their debt.
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- Since the promoters whose companies are at the NCLT have been defaulting for years and have, in many cases, also been accused of siphoning off funds.
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- The principle behind NCLT was that, in at least the most egregious cases, the original promoters would be shown the door.
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- If, however, the original promoters get to regain control of their companies, the optics of this are going to be very poor.
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What is the significance of this move?

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- The MCA says that once a resolution plan is firmed up under the IBC and approved by the creditors, shareholders need not be asked for their consent.
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- In other words, the creditors are supreme, and there is no mention of equity shareholders.
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- The fact that very few cases have been sorted out under the Debt Recovery Tribunal and SARFAESI in all these decades is evidence of the lengths to which promoters will go to ensure they don’t lose out.
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- In all these years, it is the banks and other financial lenders that have taken the biggest losses while most promoters have lost little in terms of their personal wealth.
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- Now this move is welcoming that creditors now have the last word.
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Source: Financial Express

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