

## No back-door pact for defaulting promoters

### Why in news?

Recently, Supreme Court barred the promoter from bidding for his company which is undergoing insolvency proceedings.

### What is the history of the case?

- In April 2017, the promoter of Gujarat NRE Coke Company voluntarily admitted the company under insolvency proceedings and submitted a resolution plan.
- But government inserted Section 29A in the IBC retrospectively making the promoter ineligible for bidding the company.
- In 2018, NCLT ordered the liquidation of Gujarat NRE Coke but the promoter moved against the order mentioning the Section 230 of Companies Act of 2013.
- This application was allowed by the NCLT through its order but Jindal Steel and Power (JSPL) filed appeal in NCLAT against this order.
- NCLAT upheld JSPL's petition and denied the promoter from participating in the liquidation process.
- Following this, the promoter filed an appeal in SC.

### What was the Supreme Court ruling?

- The apex court said that Section 230 of the Companies Act will be applicable for the promoters and creditors in normal course of the workings of the company.
- **Section 230 of the Companies Act** allows a defaulting company to enter into a compromise with the creditors for restructuring the debt of the company.
- But this section is not applicable if the company is facing liquidation under Section 29A of IBC.
- **Section 29A of IBC** bars the promoters of insolvent companies from bidding their own companies.
- Hence Section 230 of the Companies Act cannot be used for gaining control of their company if it goes into liquidation.
- So it becomes necessary to read both the sets of provisions in harmony.

## **What are the implications of this verdict?**

- Any other interpretation of Section 29A of the IBC act would have defeated the objective of barring the promoter in the resolution and liquidation processes of the company.
- This verdict by the apex court will speed up the resolution process and maximise the asset value of the company.
- It also settles down the conflicting judgments given by different benches of the National Company Law Tribunal wherein promoters were allowed to re-bid for the company.

**Source: The Indian Express, Business Today**

