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

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