SC Order on Binani Cement Acquisition - Assessing the IBC Process

Why in news?

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The Supreme Court (SC) recently allowed UltraTech Cement's purchase of bankrupt Binani Cement to go through.

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What is the case on?

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- The case involves the bidding process of debt-laden Binani Cement Ltd, under Insolvency and Bankruptcy Code (IBC).
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- In the course of bidding, Dalmia Bharat Pvt. Ltd-owned Rajputana Properties had bid Rs 69.30 billion.
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- However, the Binani's Committee of Creditors (CoC) then received a revised bid from UltraTech cement of Rs 79 billion.
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- Binani Cement's CoC decided to consider this improved bid, even after Rajputana Properties' offer was declared the highest.
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- It was also filed with the Kolkata bench of the bankruptcy court for its approval.
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- The CoC's decision would entirely pay off all secured and unsecured financial creditors, as well as operational creditors of Binani.
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- Rajputana Properties had approached the apex court, challenging the CoC's decision.
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- It argued that it was against the spirit of the insolvency law as one could not have revised its bid after being aware of the competitor's bid.
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- The court referred the matter to the NCLAT (National Company Law

Appellate Tribunal).
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What was NCLAT's ruling?

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- A two-member bench of NCLAT had dismissed the appeal by Rajputana Properties.
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- NCLAT held that the objective of the Insolvency and Bankruptcy Code was resolution.
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- Ultimately, the purpose of the resolution is for maximization of the value of assets of the debtor.
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- Also, the resolution process should consider the interests of even those creditors, who are not part of the resolution process, such as operational creditors.
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- NCLAT said that Rajputna's offer for Binani Cement was “discriminatory” against some financial creditors.
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- Notably, UltraTech’s bid was backed by 100% of secured creditors, 100% of unsecured creditors and 100% of operational creditors.
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- Backed by this rationality, the Court upheld the order of the National Company Law Appellate Tribunal (NCLAT).
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- This is a victory for UltraTech and for the committee of creditors of Binani Cement.
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What are the concerns?

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- The ruling is a severe blow to the integrity of the process embedded in the Insolvency and Bankruptcy Code (IBC).
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- The decision seems to be not in keeping with the natural justice of the auction process.

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- Acceptance of offers outside the IBC-sanctioned bidding process undermines the whole basis of the auction mechanism.
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- Moreover, operational creditors are not specifically “discriminated” against in the IBC process.
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- There is, in all economic transactions, a hierarchy of creditors.
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- Financial creditors such as bond-holders are usually at the top of this list, and the IBC recognises this basic fact.
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- In sealed-bid auctions, allowing collection of information, after opening the bid, to make another offer is unfair.
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- If this is allowed, all future auctions will see lower bids as other parties begin to hold back their offers to examine what others would bid.
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- In any case, there is now an incentive for companies to short-circuit or manipulate the bidding process.
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What lies ahead?

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- Certainly, the gap needs to be addressed by the government.
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- The NCLAT judgment needs to be carefully studied by the appropriate ministries (including corporate affairs, finance, law).
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- Suitable amendments have to be proposed to the IBC’s governing legislation.
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- The legal loopholes that have been taken advantage of in this case have to be addressed.
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Source: Business Standard, Livemint

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