

Insolvency rescue plans cannot ignore statutory dues, rules SC

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MUMBAI: The Supreme Court has held that a resolution plan which ignores the statutory demands payable to state governments, or legal authorities, is liable to be rejected. It said that the definition of secured creditor in the Insolvency and Bankruptcy Code (IBC) does not exclude any government or legal authority.

Financial creditors of a company cannot secure their own dues in approving the resolution package of a bankrupt company at the cost of statutory dues owed to a government authority, the Supreme Court said in its order on Tuesday.

A bench led by justices Indira Banerjee and AS Bopanna said, "In our considered view, the Committee of Creditors—which may include financial institutions and other financial creditors—cannot secure its own obligations at the expense of any other obligations, including statutory obligations to any government or governmental authority."

The top court also clarified that a company would have to be liquidated and its assets sold and distributed in accordance with Section 53 of the IBC if it was unable to pay its debts, which should include any statutory obligations to the government or other authorities, and there is no plan that contemplates dissipating those debts in a phased, uniform proportional reduction.

The verdict came on the appeal of a Sales Tax Officer of the Gujarat government against the 2019 judgment passed by the National Company Law Appellate Tribunal (NCLAT) dismissing the plea of the state.

In February 2019, the National Company Law Tribunal (NCLT) had passed an order saying that the government cannot claim first charge over the property of a corporate debtor, as Section 48 of the Gujarat Value Added Tax (GVAT) Act, 2003, which provides for first charge on the property of a dealer in respect of any amount payable by the dealer on account of tax, interest, penalty, among others, under the said GVAT Act, cannot prevail over Section 53 of the IBC.

The matter was then challenged in the NCLAT, which upheld the NCLT order.

Setting aside the NCLAT order, the top court said, "In our considered view, the NCLAT clearly erred in its observation that Section 53 of the IBC over-rides Section 48 of the GVAT Act". Neither Section 48 of the Gujarat Value Added Tax Act nor any other sections of the IBC are inconsistent or in conflict with one another. The State would be considered a secured creditor under the GVAT Act under Section 53(1)(b)(ii)."