

State laws repugnant to IBC are void: SC

Provisions of State enactments which hinder the country's new bankruptcy law, the Insolvency and Bankruptcy Code (IBC), meant to protect the interests of shareholders, creditors and workmen against entrenched managements unable to dig their way out of their debts, will be declared void, the Supreme Court held.

In a judgment heralding the IBC as an effective legal framework aimed at improving 'Ease of Doing Business', a Bench of Justices Rohinton Nariman and Sanjay Kishan Kaul held that the erstwhile management of a company cannot represent it in court once insolvency resolution process has been admitted in the National Company Law Tribunal and the management transferred to an insolvency professional.

"Entrenched managements are no longer allowed to continue in management if they cannot pay their debts," the court held in its 88-page judgment.

The judgment dismissed an appeal by Innoventive Industries, represented by senior advocate A.M. Singhvi and advocate Shikhil Suri, against insolvency proceedings under the IBC by lender ICICI Bank.

The company invoked the Maharashtra Relief Undertakings (Special Provisions Act) of 1958 against the insolvency resolution process under Section 7 of the IBC.

'Parliament statute'

Mr. Singhvi said the 1958 Act allowed temporary suspension of any debt recovery against the company and allowed the State to run the company as a measure to mitigate the hardship caused to workers who may be thrown out of employment by its closure.

In January, the National Company Law Tribunal had already dismissed the plea, saying the Code, a parliamentary statute, would prevail against the Maharashtra Act. The appellate tribunal, National Company Law Appellate Tribunal, had held that Innoventive Industries' management cannot derive any advantage from the Maharashtra Act to stall proceedings under the Code.

Appearing for the bank, senior advocate Harish Salve argued that the "old notion of a sick management which cannot pay its financial debts continuing nevertheless in the management seat has been debunked by the Code".

He added that the erstwhile management of the company cannot represent its interests once the management was handed over to the insolvency professional.

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