Section 74 of IBC

Why in news?

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Section 74 of the Insolvency and Bankruptcy Code (IBC) was recently invoked against a company for its failure to comply with the approved resolution plan.

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What are the elements of IBC?

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- Under IBC, either the creditor (banks) or the loaner (defaulter) can initiate insolvency proceedings on a defaulted company.
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- It is done by submitting a plea to the adjudicating authority (AA) at the National Companies Law Tribunal (NCLT).
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- Insolvency proceedings can be initiated on admission of the application by the NCLT.
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- After the admission, the lenders have to form a committee of creditors (CoC) and appoint an insolvency professional (IP).
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- The IP act as a resolution professional (RP) and run the borrower's business in the interim period.
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- Meanwhile, any resolution applicant may submit a resolution plan to the RP that is placed before the committee of creditors.
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- A resolution plan can be said to be a bid for the corporate debtor, through which he/she proposes to repay the bad debt or part of the bad debt of the corporate debtor.
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- The responsibility of approving a resolution plan rests with the CoC, which

will approve it with not less than 75% voting in favour of it.
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- Where a plan approved by the CoC is subsequently approved by the AA, the final plan will be binding on the corporate debtors, involved in the resolution plan.
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What does section 74 contain?

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- Section 74 lays down the provisions to penalise officials of corporate debtors, creditors and bidders if and when they violate a resolution plan as approved by the adjudicating authority.
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- Officials of the corporate debtor who violate the norms can be imprisoned for a maximum term of five years and a penalty of up to Rs 300,000.
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- Officials of creditors who violate the norms can be jailed for a maximum of five years and a penalty of up to Rs 1 crore.
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- Officials of bidders, who violate the norms can similarly be imprisoned for a maximum tenure of five years and a penalty of up to Rs 1 crore.
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- This provision is required to protect the Code from being taken lightly, and ensure that a resolution happens as planned.
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Why is it in news at this point?

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- The Liberty House, an international metals and industrial group, had made a successful resolution plan for a defaulted company, Amtek Auto, earlier this year.
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- The terms of the resolution plan were also approved by the adjudicating authority (NCLT).
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- However, Liberty House failed to pay the banks according to the terms of the resolution plan.
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- Liberty House alleges that there were serious issues in the information and valuation reports shared with it prior to the bidding process.
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- Hence, the lenders to Amtek Auto have moved the Chandigarh bench of the NCLT to invoke Section 74 against the Liberty House Group.
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- Once the Section is invoked by the Committee of Creditors, it is up to the NCLT to decide on the course of action with respect to the corporate debtor.
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- The NCLT can then either decide to allow the resolution professional of the corporate debtor to invite fresh bids, or penalise the erring bidder with jail and fine as per Section 74.
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- In case there are no fresh bidders, the NCLT can also allow liquidation of such corporate debtors.
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What are the concerns?

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- The section could bring seriousness into the entire corporate insolvency resolution process.
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- However, this could also further deter bidders from a market that anyway lacks good resolution plans.
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- Also, penalising only the bidder is unfair as delays often happen due to litigations involving other bidders or even the debtor.
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- Thus the decision of the NCLT will likely set a precedent for future cases, since this is the first time that Section 74 is being invoked by lenders.
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Source: Business Standard

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