

INDIA JURIS

Supreme Court Ruling on Loan Waivers Likely to Benefit Insolvent Companies

A bench comprising of Justice R.K. Agrawal and Justice Abhay Manohar Sapre in The Commissioner vs. Mahindra and Mahindra Ltd. in Civil Appeal Nos. 6949-6950 of 2004 have confirmed the decision of the Bombay High Court in the case of Mahindra & Mahindra Limited, deciding the matter in favour of the company.

The Supreme Court on 24th April, 2018 decided in holding that the waiver of loan is not income in the hands of the borrower could not have come at a more opportune time, given the large number of cases under the Insolvency and Bankruptcy Code, 2016 (IBC) where such waivers are being sought and granted. The Supreme Court in its decision in the case of Mahindra & Mahindra Limited has dismissed the income-tax department's appeal in a batch of 23 cases, and has held that the waiver of a loan cannot be subject to income tax in the hands of the borrower. A bench comprising of Justice R.K. Agrawal and Justice Abhay Manohar Sapre have confirmed the decision of the Bombay High Court in the case of Mahindra & Mahindra Limited, deciding the matter in favour of the company.

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NCLT Advises IBBI on the Need to Review the Insolvency and Bankruptcy Code to Protect Interest of Operational Creditors

The Hon'ble NCLT, Kolkata on 02nd May, 2018 vide application number CA(IB)No.201/KB/2018, CA(IB)No.234/KB/2018 and CA(IB)No.245/KB/2018 suggested to Insolvency and Bankruptcy Board of India that there is a need to review the insolvency code regulations to ensure that they are not "misused or misinterpreted".

It also said that the resolution professional should be competent and independent so that there are no interruptions in the process which lead to delays in disposal of insolvency cases. Besides, it has said the claims of operational creditors are neglected or ignored as the Committee of Creditors has supremacy of the financial creditors (banks and financial institutions) who have control over the entire process.

Nobody is taking care of operational creditors' claim, said the NCLT Kolkata Bench in its order passed last week on the Binani Cement matter. "It is time to recognise their voice also

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in the committee of creditors," it said, suggesting changes to the IBBI.

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