

LEGAL UPDATES

MADRAS HC HELD THAT A COMPANY THAT IS MAJORITY OWNED BY THE GOVERNMENT, IS NOT EXEMPT FROM IBC PROCEEDINGS

A Division Bench comprising of Chief Justice Sanjib Banerjee and Justice P.D. at the Hon'ble Madras High Court rejected the Petitioner's (an electricity distributing company) argument, that a company that any government substantially owns may not be complained against or have insolvency proceedings brought against it before the NCLT.

The Principal Respondent had moved NCLT against the petitioner claiming to be its creditor and citing Petitioner's perceived inability to pay debts

It was however ruled that NCLT has the authority to decide any dispute raised by a debtor in any insolvency proceedings. It categorically remarked that *"...there does not appear to be any exemption provided under the Companies Act...or the Insolvency and Bankruptcy Code...in such regard."*

Attempting to invoke section 86(1)(f) of the Electricity Act, the Petitioner argued that since it is a generator and distributor of electricity under the control of the State Government, it would be subject to the Electricity Act, and since the issue relates to the generation of the electricity, the Electricity Act will take precedence over the Companies Act and IBC as a special statute; In this situation, it is important to note that the Electricity Act will prevail over the Companies Act and IBC.

The Hon'ble High Court however observed that the assessment of one Act being regarded as a special Act qua another arises when there is a possibility of a conflict or when there is an unavoidable conflict, and in the instant case there is no such situation/ possibility of conflict. Thereafter, it referred to Section 86(1)(f) which pertains to disputes between the licensees and distributing companies, and held that *"Though the petitioner is a distributing company, the second respondent is certainly not a licensee, and its legal status will be that of a trade or operational creditor."*

The Court also warned the Petitioner not to contest the NCLT's power to receive the Petition. It enables the withdrawal of the Instant Petition requesting permission to raise any controversies about the Operational Creditor's ('Respondent') claim before the NCLT.