

LEGAL UPDATES

NCLT: NONPERFORMING OF STATE FUNCTIONS DO NOT MAKE GOVERNMENT COMPANY IMMUNE FROM IBC PROCEEDINGS

The Hon'ble NCLT, while admitting that the Operational Creditor's petition to initiate CIRP against the Corporate Debtor (a government-owned firm) held that *"Since the Corporate Debtor, has not been performing any Governmental Functions or the Functions of State, the Corporate Debtor cannot be immune from the IBC proceedings merely based on being a Government Company."*

Hon'ble NCLT Jodhpur acknowledged that Sec. 5 of the Arbitration Act prevents the Adjudicating Authority from hearing this application and rejecting the Corporate Debtor's argument that the instant application is not maintainable in light of the arbitration clause in the parties' agreements. However, it was concluded that this objection does not merit consideration because Sec. 238 of the IBC has precedence over the Arbitration Act;

The Hon'ble Tribunal observed further that the Corporate Debtor made no reference in its response to any deficiencies in the Operational Creditor's works, nor did it present any communication from any date before issuing the demand notice, which may suggest that the parties had a prior disagreement.

According to the letter the corporate debtor sent to the operational creditor, NCLT considered that the corporate debtor had demonstrated its desire to pay off its debt. *"Therefore, the contention of the Corporate Debtor regarding no attachment of measurement sheets along with the invoices cannot be a ground for non-payment of dues to the Applicant/Operational Creditor."*

Finally, noted that the Corporate Debtor has failed to provide any convincing justifications as to why the CIRP should not be commenced against it, Hon'ble NCLT concluded that *"...the*

Operational Creditor has been able to establish the default on the part of the Corporate Debtor in payment of the operational debt.”