

## LEGAL UPDATES

### **NCLT: OWNERSHIP OF ASSETS TO BE DETERMINED BY THE COURT, AND IT FORMS PART OF A CORPORATE DEBTOR'S LIQUIDATION ESTATE**

According to National Company Law Tribunal (NCLT) regulations, the assets whose ownership is subject to resolution by the Court or Authority would be included in the Corporate Debtor's Liquidation Estate.

The Hon'ble NCLT ruled that the assets which are subject to the determination of ownership by the Court or Authority would form part of the Liquidation Estate of the Corporate Debtor, remarked that *"...the valuation of the assets of the Corporate Debtor is different from the issue that whether the Corporate Debtor has marketable title over the property. Simply because the Corporate Debtor has no marketable title over the property, does not make the value of the property 'zero'."*

The applicant contended that the liquidator had used an inappropriate method to determine the value of the corporate debtor's assets and had also withheld some assets from the "Liquidation Estate," which prevented the assets of the corporate debtor from being maximum.

Emphasising on the advocates viewpoint and the value which the IBBI valuers determined in legal areas that one of the properties of the Corporate Debtor is subject to litigation and lacks a marketable title. Hence, it cannot be liquidated and has arrived at the value of 'zero'. The Hon'ble NCLT noted that *"Based upon the same...the Liquidator has not included that property...and has arrived at a Realizable value of Rs. 217.52 Crore."*

The Tribunal moreover stated that *"... based on the Legal opinion obtained and on the pretext that the said property is under litigation and thereby ascribing the value as 'zero' for the*

*said...property which forms part of the Liquidation Estate would indirectly make Section 36(3)(e) of IBC...as otiose."*

The Hon'ble Tribunal further asserted that the fact that the Liquidator ordered a new valuation after submitting the current application demonstrates that the Liquidator did not act to follow Regulation 35(2) of the Liquidation Process Regulations and, as a result, believes that the liquidation value was determined by only one set of valuers and that the Liquidator did not obtain a valuation from the second set of valuers to obtain a mean value.

The Hon'ble NCLT Chennai thus concluded that "*...a fresh valuation is required to be made...*"