

LEGAL UPDATES

NCLT: SALES TAX PAID BY OPERATIONAL CREDITOR, NOT 'OPERATIONAL DEBT'; DISMISSED INSOLVENCY APPLICATION

While adjudicating a Section 9 application filed by the Operational Creditor, the National Company Law Tribunal Delhi denied a request for the Corporate Debtor to pay back a Sales Tax Demand as an "Operational Debt".

The Hon'ble NCLT observed that the entire claim of the Operational Creditor is based on the Final Notice of Assessment passed by the Sales Tax Department and that the Final Notice of Assessment had been raised against the Operational Creditor and not the Corporate Debtor.

The Hon'ble NCLT cited the Final Notice of Assessment issued by the Sales Tax Department as the foundation for the Operational Creditor's whole claim and noted that the Operational Creditor, not the Corporate Debtor, is the target of the Final Notice of Assessment.

Therefore, highlighting the definitions of Operational Debt u/s 5(21) and Operational Creditor u/s 5(20) of the IBC, NCLT opined, *"although the definition of the Operational Debt includes the dues arising under any law in force...the dues payable to the Government can be claimed by the Government only in the capacity of the Operational Creditor."*

NCLT further elucidated that *"The payment of Tax Demand...discharged by the Applicant herein to the State Government will not result in an automatic assignment or transfer of such payment/debt to the Corporate Debtor, and therefore, Operational Creditor cannot claim the same as reimbursement from the Corporate Debtor as the Operational Debt."*

The NCLT also held that the debt is not an Operational Debt and that the Applicant is not the Operational Creditor because the amount claimed by the Applicant is neither related to the provision of goods and services nor is it a claim based on employment nor does it represent the amounts owed to the government.