

LEGAL UPDATES

PROMOTERS ARE NOT REQUIRED TO COMPETE WITH OTHER SOLUTIONS AS PER NCLAT; APPLICANTS TO RESTORE CONTROL OF MSME-CORPORATE DEBTOR

The Hon'ble NCLAT accepted appeals against the NCLT decision denying the appellant's insolvency application because the appellant was ineligible under IBC Section 29(A)(e) and the appellant is attempting to access the corporate debtor's assets through a backdoor by posing as an MSME.

The Appellant had contested the NCLT's decision to reject the Corporate Debtor's Resolution Plan because the Corporate Debtor is an MSME and the Appellant is qualified to participate in the Resolution Plan, and pleaded that *"...if the Corporate Debtor is an MSME, the Promoters don't need to compete with other 'Resolution Applicants' to regain the control of the Corporate Debtor"*.

The Hon'ble Tribunal noted that *"...the DIN of the Appellant is activated according to the directions of the High Court of Madras and accordingly he is qualified and the observations of the Adjudicating Authority is...quashed."*

Additionally, it referred to the modifications made to IBC Section 240-A, the Appellate Tribunal observed that *"By the above amendment, the Legislation intends to encourage the Promoters of MSME accordingly the amendment was brought to the provisions of I B Code, by allowing the Promoters of MSME to file Resolution Plan, which is viable, feasible and fulfils other criteria as laid down by the Code."*

Finally, it pointed out that the Appellant had informed the Adjudicating Authority that the Corporate Debtor is an MSME as defined by the Central Government.

It further instructed the RP to consider the Appellant's Resolution Plan since the Appellant was the Corporate Debtor's former director and promoter.