

LEGAL UPDATES

NCLAT: REJECTED THE ORDER OF NCLT WHICH DISMISSED THE INSOLVENCY INITIATION BASIS OF "INCORRECT PREMISE"

The New Delhi NCLAT bench allowed an appeal against the NCLT order which rejected a Sec.9 application filed by the Operational Creditor ('Applicant') which sought to initiate the insolvency process. The Appellate Tribunal rejected the NCLT order on the ground of "incorrect premise". The Appellant submitted that though the NCLT correctly determined in para 1 that the application is of Sec. 9 of IBC ('the Act'), however, the observation of the tribunal was that the Applicant has claimed to be the financial creditor and hence, ruled that though the decree-holder comes under the ambit of the Act but is not covered under the scope of 'financial creditor' and hence, the insolvency process cannot be initiated. The Respondents contended that the application under Sec. 9 of the Act has been filed as a medium for recovery and the order obtained was an ex parte order and further contended that the Code is not the appropriate forum for recovery of dues. The Appellate Tribunal observed that, the Applicant has been referred to as an operational creditor at the very beginning of the application filed and the entire premise of the impugned order is that the application is not maintainable by the applicant as a financial creditor hence, the bench ruled that, "When the Appellant has not filed the Application as Financial Creditor, there was no question to go on the said issue." Finally, the bench held that, "...the Adjudicating Authority having not gone into any other issue, it is not necessary for us to consider any other issue in this present Appeal." The Appellate authority has referred back the Sec. 9 application to NCLT which might be considered as a fresh application as per law.