

## LEGAL UPDATES

### **NCLT: NCLT QUASHES INSOLVENCY PROCEEDINGS FOR NON-PAYMENT OF DUES, PROVIDED CREDITOR'S ABSOLUTE RIGHT IN MORTGAGED-PROPERTY**

NCLT rules that where a financial creditor/debenture trustee ("petitioner") has categorical rights over the secured asset, then no claim lies under sec.7 of IBC for non-payment of outstanding dues under Debenture Trust Deed ("DTD") on account of petitioner's agreement for the sale of a mortgaged asset for the realisation of dues. The tribunal firstly noted that the petitioner and corporate debtor signed DTD to inter-alia raise debt for buying FSI and other corporate objectives. NCLT further noted that both parties also signed supplementary DTD to alter the t&c of interest rate of debentures and the debtor failed to honour the terms of DTD, hence certain amount was payable to the petitioner. Furthermore, clause 13.1.1 of DTD, delineates the creation of an English mortgage by the debtor. Thus, all interest including ownership and possession stood transferred to the petitioner. The Tribunal while highlighting clause 17 of DTD, observed that upon default security under DTD becomes enforceable and also considers a scenario where the promotor purchase mortgage asset from the debtor at a rate at which the Issuer decreased the Debenture, permitting the petitioner to receive an amount from the Debenture and the Principal amount. Thus, the tribunal finally held that in an event wherein the petitioner, without the tribunal's intervention, can enforce security against the mortgage then the tribunal found no default and dismissed the petition after finding that the petitioner accepted the remedy as provided for under the DTD. Hence, the petition stood dismissed.