

## INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Mukund Mall

### **SC Vidharbha Industries Power Limited (12.07.2022) 4633 of 2021**

Word used Section 7(5)(a) of the IBC is “may” which must be interpreted to say that it is not mandatory for the NCLT to admit an application in each and every case, where there is existence of a debt. It enables NCLT to reject an application, even if there is existence of debt, for any reason that the NCLT may deem fit, for meeting the end of justice and to achieve overall objective of the IBC.

The Appellate Authority ( NCLAT) erred in holding that the Adjudicating Authority ( NCLT) was only required to see whether there had been a debt and the CD had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The NCLT was required to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company. operated under statutory control, the impact of MERC’s appeal, pending in this Court, order of APTEL referred to above and the overall financial health and viability of the CD under its existing management.

It is certainly not the object of the IBC to penalize solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. Section 7(5)(a) of the IBC, therefore, confers discretionary power on the (NCLT) to admit an application of a FC under Section 7 of the IBC for initiation of CIRP

**The NCLT order and NCLAT order are set aside. The NCLT shall reconsider the application of the Appellant for stay of further proceedings on merit in accordance with law.**