NCLAT Order on Spectrum Trading

Why in news?

- The National Company Law Appellate Tribunal (NCLAT) recently spelt its findings on various aspects on spectrum trading and ownership.
- It also ruled on spectrum trading and liability of buyers and sellers.

What are NCLAT's key rulings?

- As per a September 2020 order of the Supreme Court, the NCLAT had to decide mainly on three aspects:

1. whether spectrum could be subjected to proceedings under the insolvency code
2. how would the payment be made by the telecom companies (telco) if there was spectrum trading
3. how would the liability of seller and buyer of the spectrum be decided

- 1) Spectrum is an intangible asset of the telecom company.
- It could thus be subjected to insolvency or even liquidation proceedings.
- However, the NCLAT said that the same could be done only if the buyer or the seller of the spectrum had cleared all the dues of the Department of Telecommunications (DoT).
- This, experts said, is likely to create problems for the insolvency process of the three telcos that are undergoing insolvency.
    - These are Reliance Communication, Videocon, and Aircel.
- It's because the DoT is now likely to ask the bidders for these companies to first clear its dues in entirety before proceeding with the resolution plan.
- 2) Telcos can try to trigger insolvency against themselves under Section 10 of the Insolvency and Bankruptcy Code.
    - Such an insolvency process, if triggered, would lead to a moratorium on licence fee and deferred spectrum payments as per IBC rules.
    - Thereby, it allows the licensee to escape the said dues.
- NCLAT has thus said that this would not be allowed if done with a "malicious intent" of avoiding payment of pending dues.
- Allowing it would mean that the DoT, being an operational creditor, gaining very less value for the asset.
    - This is because operational creditors are placed below financial

creditors under the IBC.

- 3) The NCLAT has also held that the telecom companies only have the right to use the spectrum and not own it.
- This again effectively blocks lenders to the companies from creating any charge or claim on the said spectrum.
- This means that despite the DoT being an operational creditor in scheme of things, it will get priority in payments from any prospective bidders.
    - As, the statutory dues owed to it will have to be cleared either by the corporate debtor or the bidders.
- 4) NCLAT said that since spectrum is a scarce natural resource, it must be used optimally by all licencees.
- It has, therefore held that spectrum should not be available for use for any of the telcos or licensees if the dues are not cleared.

Source: The Indian Express

Quick Fact

NCLAT

- The NCLAT was constituted under Section 410 of The Companies Act, 2013.
- It was tasked to hear appeals against the orders of the NCLT (National Company Law Tribunal).
- It is also the appellate tribunal for orders passed by -
    - the NCLT under Section 61 of the Insolvency and Bankruptcy Code (IBC), 2016,
    - the Insolvency and Bankruptcy Board of India (IBBI) under Sections 202 and 211 of the IBC

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