Spectrum dues and Insolvency

Why in news?

Recently the verdict of the National Company Law Appellate Tribunal has created a confusion.

What was the ruling of National Company Law Appellate Tribunal?

- It has said that the final ownership of spectrum lies with the government - Department of Telecom (DOT) and it will be treated as an operational creditor.
- It has also said that the spectrum cannot be treated as a security interest by the lenders.
- The telecom operators have to first clear pending dues to DoT before filing for bankruptcy.
- This order of NCLAT treats DoT ahead of all the financial creditors when it comes to telecom assets.
- This is contradictory as company is unlikely to be insolvent even if it clears DoT's dues.
- This also sends confused signals to banks and can derail the IBC process in the sector.

What will be the effect of this order?

- The banks enter into a tripartite agreement with the telecom operator and the DoT at the time of lending money to operators which takes into account quantum of spectrum held by them.
- Though the operators don't own spectrum, they have rights over it for the period of 20 years during which they can use it themselves or sell it to another entity.
- Even the tribunal itself acknowledged that spectrum is an intangible asset and can be subjected to insolvency proceedings.
- But by making IBC proceedings conditional to payment of dues to DoT ahead of all other creditors, NCLAT's ruling could scramble the entire debt resolution process.
- This is because telecom operators will have to first pay dues to the DoT before filing for debt resolution under IBC.

- This would lead to zero recovery of dues owed by the operators to the banks and DoT will get back the spectrum but not the licence fee dues.

What can be done now?

- In sectors such as mining or telecom, the value of an entity is dependent on the natural resource.
- So it is worth considering whether the government as the owner of the resource should be treated as just another operational creditor.
- The Centre should also reconcile the provisions of the telecom licence that makes DoT the final authority on spectrum ownership and the IBC rules that give banks the top priority.

Source: The Hindu

