

## **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**

