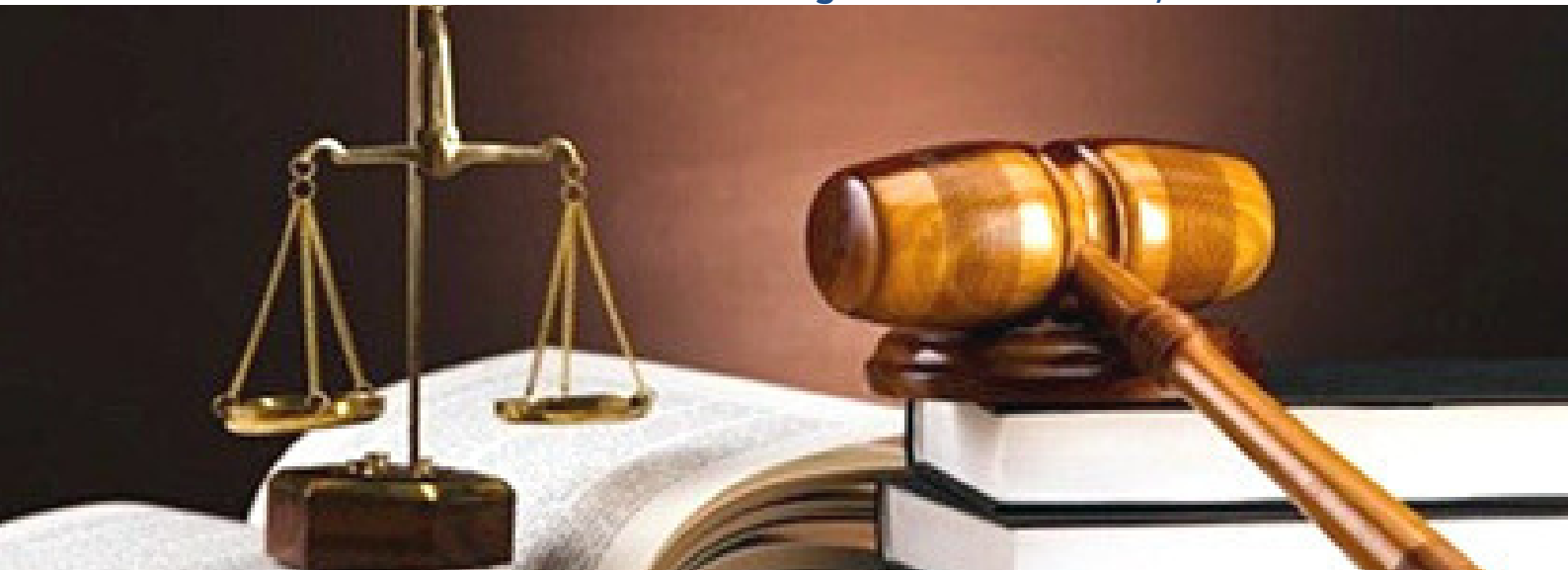


IBC DOSSIER

A Bulletin on Landmark Judgements under IBC, 2016



ELECTROSTEEL STEELS LIMITED VS. THE STATE OF JHARKHAND AND ORS. W.P.(T). NO. 6324-6327 OF 2019

Brief Facts

State Bank of India (“SBI”) initiated insolvency proceedings against Electrosteel Steels Limited (“Electrosteel”) u/s 7 of IBC,2016 wherein post completion of corporate insolvency resolution process, Vedanta Limited became the successful resolution applicant. Post approval of the resolution plan, Electrosteel challenged the Order No.727 dated 21st November 2019 issued under Section 46 of the Jharkhand Value Added Tax Act, 2005 issued by the Deputy Commissioner of Commercial Taxes (Respondent No. 3) to the State Bank of India (Respondent No. 5) thereby asking SBI to pay an amount of Rs. 37.41 Crores into the Government Treasury, on account of outstanding tax penalty on Electrosteel for the FY 2011-12 and FY 2012-13.

Electrosteel also challenged a letter issued by the State Tax Officer to SBI, to meanwhile deposit an amount of Rs.75.57 Lakhs by way of demand draft in favour of the Deputy Commissioner, Commercial Taxes.

As SBI provided the information that only the amount of Rs.75.57 Lakhs was available in the bank account of Electrosteel at that point of time. The aforesaid order and letter have been challenged by Electrosteel before the High Court of Jharkhand under Article 226 of the Constitution of India on the grounds that the aforesaid amount cannot be claimed by the State Government post approval of the resolution plan.



**INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA (IPA ICAI)**

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Decision

Hon'ble High Court of Jharkhand held that even though the management of Electrosteel has duly been taken over by Vedanta Limited post approval of resolution plan, still the petitioner in particular application is not Vedanata limited rather the company being taken over itself. Moreover, Electrosteel has already realized the amount from its customers which is pending for payment to the tax authorities for FY 2011-12 and FY 2012-13.

Hon'ble High Court of Jharkhand also held that even though a resolution plan is duly approved for Electrosteel, however neither it was brought to the knowledge of the Commercial Tax authorities of the State of Jharkhand that the corporate insolvency resolution process under IBC,2016 has been initiated against Electrosteel nor Public Announcement was made in the State of Jharkhand regarding commencement of its corporate insolvency resolution process under IBC,2016 Also Section 31(1) of IBC,2016 was amended vide IBC (Amendment) Act, 2019, to make the approved resolution plan binding on the Government Authorities in relation to the statutory dues.

It is pursuant to this amendment that the rights of the Government Authorities for statutory dues were affected and such right was made subject to the approved resolution plan. The said amendment was made effective from 16th August 2019, which is prospective in nature. Resolution Plan of Electrosteel was approved by NCLT in April 2018 which is much prior to the aforesaid amendment.

Section 31 of IBC,2016 clearly lays down that the approved resolution plan shall be binding only on those stakeholders who were involved in the resolution plan. Accordingly, the State Government of Jharkhand was never involved in the insolvency process of Electrosteel and hence the approved resolution plan cannot be said to be binding on it. Accordingly, on account of no merit in the application, the application are dismissed.

Link to the Order

https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=%2FE3WiyNUWFIaR1oBGE62WtEWqX6ARwIu8jQdkW%2BVRuBWRUgkkAk8iylZqOK22dv&caseno=WPC/6324/2019&cCode=1&appFlag=

