

IBC DOSSIER

A Bulletin on Landmark Judgements under IBC, 2016



ULTRA TECH CEMENT LIMITED V/S. UNION OF INDIA D.B. CIVIL WRIT PETITION NO. 9480/2019

Brief Facts

Corporate insolvency resolution process was admitted against Binani Cement Limited u/s 7 of IBC,2016 before the NCLT Kolkata Bench. Resolution plan submitted by Ultra Tech Cement Limited was approved unanimously by the Committee of Creditors and the name of the corporate debtor was changed to Ultra Tech Nathdwara Cement Ltd. The resolution plan duly provided for the payment to all the creditors along with Goods and Service Tax Department to the extent of Rs. 72.85 Crores towards liabilities of excise duty and service tax.

The Goods and Service Tax Department raised numerous demands from the corporate debtor for the period from April 2012 to June 2017 and interest upto 25.7.2017. Having made the full and final payment as proposed by the resolution professional, the petitioner addressed a letter dated 26.11.2018 to the respondents informing them of the payment of dues as admitted by the CIRP and reminded them that all remaining claims and proceedings stood extinguished in terms of the resolution plan. Having failed to get any positive response from the respondents, the petitioner company has approached this Court through this writ petition under Article 226 of the Constitution of India seeking the relief referred to supra.



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

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Decision

Hon'ble Rajasthan High Court pointed out that pursuant to the Section 31 of IBC,2016 the resolution plan approved by the COC is binding on the Central Government, State Government or any other local authority to whom, a debt in respect of payment of dues arising under any law for the time being in force are owed. Once the offer of the resolution applicant is accepted and the resolution plan is approved by the appropriate authority, the same is binding on all concerned to whom the industry concerned may be having statutory dues. While deciding the matter, Rajasthan High Court referred the judgement in the matter of Essar Steel India Ltd.

Through Authorised Signatory Vs. Satish Kumar Gupta & Ors. and stated that it is the financial creditors who are given the right to vote in the COC whereas, the operational creditors viz. Commercial Taxes Department of the Central Government or the State Government as the case may be, have no right to vote in respect of the approval of the resolution plan. In the case at hand, the Commercial Taxes Department of Govt. of Rajasthan as well as the Commissioner of Goods and Service Tax assailed the resolution plan by filing appeals before Hon'ble the Supreme Court with a specific plea that their dues have not been accounted for by the Committee of Creditors in the resolution plan.

The objection so raised stands repelled with the rejection of the appeals by Hon'ble Supreme Court. It may be emphasized here that the amount of Rs.72.85 Crores assessed by the resolution professional in favour of the respondent GST Department has already been deposited by the successful resolution applicant. The High Court quashed the demand notices and held that the respondents would be acting in a totally illegal and arbitrary manner while pressing for demands raised vide the notices which are impugned in this writ petition and any other demands which they may contemplate for the period prior to the resolution plan being finalized. The demand notices are ex-facie illegal, arbitrary and per-se and cannot be sustained.

Link to the Order

<https://ibbi.gov.in/uploads/order/eee9e6247d407246d19b1b55c5cd38c8.pdf>

