

Raj HC strikes down demand notices, upholds binding nature of Resolution Plan

An issue plaguing successful resolution applicants under the Insolvency and Bankruptcy Code, 2016 (“IBC”) is with respect to government claims pertaining to the period prior to approval of the Resolution Plan. Government claims, such as those raised by the Income Tax Department, Central and State GST Department, extinguished by resolution plans continue to be pursued by such departments by way of issuance of demand notices under respective statutes.

UltraTech Nathdwara Cement Ltd. (formerly Binani Cements Ltd.) (“UNCL”) had filed a Writ Petition on the issue in the Rajasthan High Court, Jodhpur, for quashing the demand notices/orders issued by the Tax Departments with respect to dues pertaining to the period prior to the approval of the Resolution Plan. The demand notices etc. were primarily with respect to disputes for the period prior to the corporate insolvency resolution contested by the Corporate Debtor i.e. Binani Cements Ltd.

It was the case of UNCL that the Resolution Plan and its provisions are binding on all the stakeholders of the Corporate Debtor. The Resolution Plan provided for payment of INR 72.85 crores to the Central GST Department as against the total claim filed with the Resolution Professional of Binani Cement Ltd. and extinguishment of the balance claims. Arguments on behalf of UNCL were led by Sr. Counsel Mr. Ajay Vohra on the following grounds:

- a. The SLP filed by the Department challenging the order of the National Company Law Appellate Tribunal approving the Resolution Plan of UltraTech Cement Ltd. was dismissed by the Hon’ble Supreme Court;
- b. A Resolution Plan approved by the Committee of Creditors (“COC”) and the Adjudicating Authority/NCLT under the IBC, is binding on all stakeholders of the Corporate Debtor;
- c. Section 31 of the IBC, as amended, also provides for the Resolution Plan to be binding on all stakeholders including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed;
- d. The Hon’ble Finance Minister also clarified the legislative intent behind the amendment to Section 31 of the IBC;
- e. The resolution plan is final and binding on all parties whether or not they had been heard by the resolution professional or the COC, has been laid to rest by Hon’ble The Supreme Court in the case of *Committee of Creditors of Essar Steel India Ltd. Through Authorised Signatory Vs. Satish Kumar Gupta & Ors.* reported in 2019(16) SCALE 319.

Mr. Ajay Vohra, Sr. Counsel was assisted by Mr. Arnab Roy. Mr. Bomi Daruwala, Ms. Sandhya Iyer and Ms. Pratiksha Agrawal of Vaish Associates Advocates also worked on the matter.

The counsel for the Respondents opposed the Writ Petition on the following grounds:

- a. The Department was not heard by the COC before finalising the Resolution Plan;
- b. A summary rejection of the SLP preferred by the department against the resolution plan would not foreclose the right of the department to raise its valid demands from the successful resolution applicant.

The Bench comprising of Hon’ble Mr. Justice Vijay Bishnoi and Hon’ble Mr. Justice Sandeep Mehta of the Jodhpur Bench of the Rajasthan High Court, while rejecting the contentions of the Respondents observed that the Respondents were not in a position to dispute the fact that the SLP covered all the issues and that Section 31 of the IBC is applicable to the situation at hand.

The Hon’ble HC, while relying heavily on the stance of the Hon’ble Finance Minister in the Rajya Sabha, and on the judgment of the Hon’ble Supreme Court in *Essar Steels* (supra), allowed the Writ Petition 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.”

The demand notices and orders were accordingly struck down. Also, the Hon’ble HC made the following observation:

“Before parting, we would like to express our serious reservation on the approach of the concerned Officers of the GST in persisting with the demands raised from the petitioner in gross ignorance of the pertinent statement made by Hon’ble the Finance Minister before the Parliament (referred to supra) and the amendment brought around in the IBC. We are of the firm view that the authorities should have adopted a pragmatic approach and immediately withdrawn the demands rather than indulging in a totally frivolous litigation, thereby unnecessarily adding to the overflowing dockets of cases in the courts.”

Vaish Associates Advocates previously represented UltraTech Cement Ltd. in preparing the Resolution Plan for acquiring Binani Cements Ltd., one of the first major successful resolutions under the IBC.

For any further information/clarification, please feel free to write to:

Mr. Bomi F. Daruwala: bomi@vaishlaw.com

DISCLAIMER

While every care has been taken in the preparation of this case summary to ensure its accuracy at the time of publication, Vaish Associates Advocates assumes no responsibility for any errors which despite all precautions, may be found therein. The material contained in this document does not constitute/substitute professional advice that may be required before acting on any matter.
