

# *GST CAFÉ*

*Rajasthan HC quashes demands for past tax dues  
outside the Resolution Plan under IBC  
(Judgment dt. 07.04.2020)*

## BACKGROUND

A common 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**. Often, government creditors, such as the Income Tax Department or the Central and State Goods and Services Tax (“GST”) Departments, continue to pursue such claims extinguished by the approved resolution plans.

The erstwhile Binani Cements Ltd. (now, UltraTech Nathdwara Cement Ltd. or “UNCL”) has undergone corporate insolvency resolution process (“CIRP”) under the IBC, wherein UltraTech Cement Ltd. had successfully submitted its Resolution Plan. UNCL had presently filed **Civil Writ Petition No. 9480/2018** before the Rajasthan High Court at Jodhpur for quashing demand notices and orders issued by the GST authorities for dues pertaining to the period prior to the approval of the Resolution Plan, being previously contested by the Corporate Debtor i.e. Binani Cements Ltd.

## PETITIONER'S SUBMISSIONS

Arguments on behalf of UNCL led by Sr. Counsel Mr. Ajay Vohra, i/b Vaish Associates, are summarized below:

- i. A Resolution Plan approved by the Committee of Creditors (“COC”) and the Adjudicating Authority under the IBC, is binding on all stakeholders in respect of the Corporate Debtor. The Resolution Plan in question provided for payment of INR 72.85 Crores to the Central GST Department of the total claim filed with the Resolution Professional and therefore, **the balance claim would stand extinguished under law.**
- ii. 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.**
- iii. **Section 31 of the IBC has been amended** to specifically provide that the Resolution Plan is binding on all Central, State or local authorities to whom statutory dues are owed. In fact, the Hon’ble Finance Minister before the Rajya Sabha has clarified **the legislative intent behind such amendment as reinforcing the overriding effect of the IBC under section 238 thereof and barring Governmental claims.**

## [CONTD.] PETITIONER'S SUBMISSIONS

- iv. The Resolution Plan is final and binding on all parties whether or not they are heard by the Resolution Professional or the COC. This point has been laid to rest by the Hon'ble Supreme Court in the case of *Committee of Creditors of Essar Steel India Ltd. through Authorised Signatory v. Satish Kumar Gupta & Ors.* reported in 2019 (16) SCALE 319.

## RESPONDENT'S SUBMISSIONS

The Respondent counsel, Mr. Rajvendra Saraswat, opposed the writ petition on the following grounds:

- i. The Department was not heard by the COC before approving of the Resolution Plan proposed by UltraTech Cement Ltd.
- ii. The SLP preferred by the Department against the Resolution Plan was summarily rejected and such rejection would not foreclose the Department's right to raise valid demands for its dues post successful resolution of insolvency proceedings of the Corporate Debtor.

## HC JUDGMENT

The presiding bench, comprising of Hon'ble Mr. Justice Vijay Bishnoi and Hon'ble Mr. Justice Sandeep Mehta, of the Rajasthan High Court (Jodhpur Bench), allowed the writ petition filed by UNCL *vide* its judgment order dated 07.04.2020, observing as under:

- i. The HC noted that the Respondents were neither in a position to dispute the fact that the SLP filed by the Department covered all issues at hand nor the applicability of section 31 of the IBC to the present matter. Heavy emphasis was placed on the Hon'ble Finance Minister's speech elaborating on the legislative intent of the amendment to section 31 of the IBC and the decision of the Apex Court in *Essar Steels (supra)*.
- ii. The HC ultimately held that any demand notices pressed by the Respondents for the period prior to the Resolution Plan being finalized are "*ex-facie illegal, arbitrary and per-se and cannot be sustained.*"

## [CONTD.] HC JUDGMENT

iii. Furthermore, in concluding, the presiding bench reproached the GST Department officers in its pursuance of past dues, stating as under –

*“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.”*

## VA COMMENTS

This decision, in particular the express condemnation of such demands by field formations, arrives perhaps most crucially for other successful resolution applicants, who are often only left with the tedious choice to approach jurisdictional high courts for writ relief in such cases. Explicitly pronouncing the binding nature of the Resolution Plan on statutory authorities, and the GST Department individually, is hoped to discourage litigious Departmental officers.

For any details and clarifications, please feel free to write to:

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