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C&M Alert: RAJASTHAN HIGH COURT REAFFIRMS 'CLEAN SLATE' PRINCIPLE UNDER IBC

The Rajasthan High Court, at Jodhpur in a recent judgment of *Ultra Tech Nathdwara Cement Ltd. vs. Union of India and Ors.*, Civil Writ Petition No. 9480/2019 dated 07 April 2020, quashed the demand notices raised by the GST departments on the Petitioner, demanding payment of dues for the period prior to approval of the resolution plan of the Petitioner.

Factual Background

In the resolution process of Binani Cement Limited (“**BCL**”), the resolution professional (“**RP**”) collated and verified claims from various creditors, including claims of various GST departments (Respondents) against BCL.

The Petitioner submitted a resolution plan for BCL, which provided for payment of certain amounts the Respondents. The resolution plan was approved by the Committee of Creditors (“**CoC**”), and thereafter, also by the National Company Law Appellate Tribunal (“**NCLAT**”).

An appeal against the NCLAT order was *inter alia* made by the Commercial Taxes Department of Govt. of Rajasthan and Central Goods and Service Tax and Central Excise Commissionerate, Jodhpur. The Supreme Court dismissed all appeals, giving finality to the resolution plan of the Petitioner.

The Petitioner proceeded to take over management and operation of BCL and payments, in accordance with the resolution plan, were made to all the creditors, including the Respondents.

Thereafter, the Respondents issued various demand notices, claiming payment of pending dues of BCL for the period April 2012 to June 2017, along with interest, from the Petitioner. The Petitioner filed a writ petition before the Rajasthan High Court, seeking quashing of the demand notices and a restraint order against the Respondents from raising any further demands or from taking any coercive steps against the Petitioner for the dues incurred prior to the period when the Petitioner took over BCL.

The Petitioner argued that the Respondents have no jurisdiction to raise demands from the Petitioner after the resolution plan has been duly approved and payments have been made to all creditors in terms of the resolution plan. The Petitioner relied on the Essar judgment of the Supreme Court and the amendment to Section 31 (1) of the Code passed in August 2019 (which added a provision that the resolution plan will be binding on all creditors, “*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*”).

Attention of the Court was also drawn to discussions that took place in the Parliament in the Upper House while passing the said amendment. During the discussions, the Finance Minister had explained



the intent behind the amendment in Section 31(1) in following terms: “... *There is also this question about indemnity for successful resolution applicant. The amendment now is clearly making it binding on the Government. It is one of the ways in which we are providing that. The Government will not raise any further claim. The Government will not make any further claim after resolution plan is approved. So, that is going to be a major, major sense of assurance for the people who are using the resolution plan.*”

On the other hand, the Respondents argued that since the GST Departments had not been heard by the COC while considering the resolution plan of the Petitioner, the Respondents are not bound by such resolution plan.

The Order

Relying heavily on the Essar judgment, the amendment to Section 31 and the Parliamentary discussions, the Rajasthan High Court allowed the appeal with following observations:

- Once the offer of the resolution applicant is accepted and the resolution plan is approved by the courts, the same becomes binding on all concerned to whom the industry concern may be having statutory dues. No right of audience has been given to such creditors in the resolution process.
- Financial creditors have to be given a precedence in the ratio of payments when the resolution plan is being finalized. The purpose of the statute is very clear that it intends to revive the dying industry by providing an opportunity to a resolution applicant to take over the same and begin the operation on a **clean slate**. For that purpose, the evaluation of all dues and liabilities as they exist on the date of finalization of the resolution plan have been left in the exclusive domain of the RP with the approval of the COC.
- The High Court noted that the tax departments (including the Respondent) had filed appeals before the Supreme Court which were dismissed. It also noted that if BCL had gone into liquidation, the Respondents would have failed to recover any of their dues, whereas in the present case, the Respondents have been paid an amount of approx. INR 72 crores in the plan.
- The Respondents would be acting in a totally illegal and arbitrary manner while pressing for impugned demands and any other demands which they may contemplate for the period prior to the resolution plan being finalized.

Observing that the demand notices are ex-face illegal, arbitrary and per-se unsustainable, the demand notices issued/raised by the Respondents were quashed. The High Court also expressed displeasure at the approach of the GST Departments and observed that the said authorities ought to have adopted a pragmatic approach by withdrawing the demands rather than indulging in such frivolous litigations, unnecessarily adding to the burden of the courts.

Our Thoughts:

While there is no dispute with the proposition that the resolution plan is binding on all creditors in respect of their prior period claims, it has been seen that even after approval of the resolution plan by the NCLT, various statutory authorities (who are operational creditors) continue to agitate these claims. The order of the Rajasthan High Court, quashing demand notices, and the observations made

by the Court against the conduct of the departments in pursuing these demands would hopefully deter the authorities and provide greater comfort to the resolution applicants.

The full text of the judgment is available [here](#).

For any clarification, please contact:



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