

## INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Viral Doshi

### **Summary of Ultra Tech Nathdwara Cement Ltd., – Petitioner Vs. CGST Department –Respondent**

A Writ Petition in the Rajasthan High Court against the demand by the CGST Department, for the period before it take over of Binani Cement which was admitted underinsolvency. UltraTech Nathdwara Cement Ltd. Resolution Applicant/ Petitioner, bid for the CD. COC approved the resolution plan. Plan dealt with the dues of all the creditors equitably and was superior in terms of recovery to the banks and other creditors as compared to the losses which all the creditors would have suffered in case the company had gone into liquidation. The AA duly approved to be made by the Petitioner Company to all the creditors. The liquidation value available to the operational creditors including GST department would be zero. In this situation. The Resolution plan was affirmed/approved also by the NCLAT and by the Hon'ble Supreme Court on being challenged before those authorities on one or more of the ground. The approved Resolution Plan proposes payment towards all the stakeholders including the statutory creditors. The RA contended that the amount as assessed by the Resolution Professional involving GST department is already deposited.

Resolution Plan attained finality after approval by the COC and AA. The same cannot be questioned in a court of law and that the amended Section 31 of the code says that the approved resolution plan will be binding on all the stakeholders including central/state government or any local authority where any dues is owed against any application of law.

The Hon'ble High Court expresses 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 amended Section 31 of the code.

The Court noted that the GST department had unsuccessfully challenged the resolution plan before the Supreme Court. Therefore, the court held that “We are of the firm view that the authorities should have adopted a pragmatic approach and immediately withdrawn the demands rather than indulging in totally frivolous litigation, thereby unnecessarily adding to the overflowing dockets of cases in the courts

The court emphasized that IBC was a special law and that the purpose is to revive dying industry by providing an opportunity for a resolution applicant to take over the same and begin the operation on a clean slate.

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