18.09.2026
ct no. 10
Sl.06
AGM

WPA 2036 of 2020
with
IA No : CAN 3 of 2025

Ultra Tech Cement Limited & Anr.
-Versus-
Union of India & Ors.

Mr. D. N. Sharma. Sr. Adv.
Mr. Ajay Bhargava.
Mr. Anunoy Basu.
…for the petitioners.

Mr. Prithu Dudhoria.
… for the Union of India.

1. The petitioner No. 1 is a wholly owned subsidiary of Ultratech Cement Limited and is engaged in manufacture of cement. The petitioner was the successful resolution applicant in respect of Binani Cement Ltd. under the Insolvency and Bankruptcy Code 2016 (IBC).

2. The Corporate Insolvency Resolution Process (CIRP) in respect of Binani Cement Limited commenced on 25.7.2017 pursuant to admission of an application under Section 7 of the IBC filed by Bank of Baroda. A public announcement inviting claims was issued by the Resolution Professional on 29.7.2017 under Section 13 and 15 of the IBC.

3. The Resolution plan submitted by Ultratech Cement Ltd. was unanimously approved by the committee of creditors and came to be approved by the National Company Law Appellate Tribunal (NCLAT), on 14.11.2018 in Company Appeal (AT)

No.188 of 2018, which has been affirmed by the Hon'ble Supreme Court vide order dated 26.7.2019. The effective date of takeover of management is 20.11.2018 (hereinafter referred to as Transfer date).

4. The present writ petition has been filed challenging inter alia, the legality of orders dated 24.12.2019 and 31.12.2019 and notices dated 3.1.2020, 20.1.2020 and 23.1.2020 issued by the Income Tax Department and for a direction upon the respondents to refund the amounts already adjusted. Specifically the petitioner challenges the adjustment of:

i. Rs. 1,43,46,686/-

ii. Rs. 67,69,380/- and

iii. Rs. 1,12,73,866/- being refund for A.Y. 2019-2020 adjusted against outstanding demand for A.Y 2011-2012 all relating to the period from A.Y. 2007-2008 to 2015-16 i.e. period prior to the Transfer Date.

5. The core issue involved in the present case are as follows :-

i. Whether Income Tax Authorities are justified in raising demands for pre-CIRP period after approval of the Resolution Plan?

ii. Whether re-assessment / adjustment after 20.11.2018 is justified in law?

iii. Whether such action of the Income Tax Authorities is in violation of the approved

Resolution Plan and Section 31 and Section 238 of the IBC?

6. Learned senior counsel appearing for the petitioner submits as follows;

i. By an interim order dated 08.07.2021 passed by His Lordship the Hon'ble Justice Md. Nizamuddin (as His Lordship then was) the respondents were restrained from giving further effect to the impugned orders / notices till 30.09.2021. Despite such interim protection, the Centralized Processing Centre (CPC) has adjusted the refunds against demands for the pre-transfer period.

ii. Such action is de hors the mandate of the approved Resolution Plan dated 14.11.2018. The plan specifically provides that all assets of the Corporate Debtor shall be free from all encumbrances, claims, whether known or unknown, and all litigations initiated, arisen or pending before the transfer dated shall stand withdrawn and extinguished.

iii. The petitioner places reliance upon a judgment of the Hon'ble Supreme Court in paragraph Nos. 102 to 102.3 in the case of **Ghanashyam Mishra and Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. reported in (2021) 9 SCC 657.** Wherein it has been observed that once a Resolution Plan is approved under

Section 31 (1) of the IBC, all claims stand frozen and are binding on all stakeholders including the Central government, State Government and Local authorities all claims which are not part of the Resolution Plan shall stand extinguished and no person is entitled to initiate or continue any proceeding in respect of such claims.

The relevant portions of the paragraphs are reproduced hereinbelow:

> *"102. In the result, we answer the questions framed by us as under:*
> *102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and others stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.*
> *102.2. The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.*
> *102.3. Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."*

iv. Further reliance has been placed by the petitioner upon the paragraph Nos. 35 to 37 in the case of **JSW Steel Ltd. Vs Pratistha Thakur Haritwal reported in 2025 SCC Online Supreme Court 672**. Wherein it has been held that continuation of proceedings after the judgment in

Ghanashyam Mishra and Sons (P) Ltd. (Supra) is contemptuous in nature. The demand notices were held to be illegal and quashed. The relevant paragrapsh No. 35 to 37 are reproduced herein below;

> *"35. We have, therefore, no hesitation in holding that the continuation of the proceedings by the respondents/authorities even after the judgment of this Court in Ghanshyam Mishra (Supra) was specifically brought to their notice is contemptuous in nature. However, we do not propose to proceed against the respondents/contemnors inasmuch as they are entitled to benefit of doubt.*
> *36. It is the contention of the alleged contemnors that the State of Chhattisgarh was not a party to the Writ Petition or to the proceedings before the learned NCLT. No doubt that even if any stakeholder is not a party to the proceedings before the NCLT and if such stakeholder does not raise his claim before the Interim Resolution Professional/Resolution Professional, the Resolution Plan as approved by the NCLT would still be binding on him. However, this being one of the first cases arising out of the judgment of this Court in the case of Ghanshyam Mishra (Supra), we do not propose to take any stern action against the respondents/contemnors. In any case, the respondents/contemnors have tendered their unconditional apology.*
> *37. In this view of the matter, though we hold that the act of the alleged contemnors is contemptuous in nature, we do not propose to take any action against them. The demand notices issued by the contemnors on the Petitioner Company and all proceedings pursuant thereto are held to be illegal and the same are quashed and set aside. We dispose of the contempt petition accepting unconditional apology of the contemnors."*

v. The petitioner also places reliance upon a judgment of the Division Bench of this Hon'ble Court presided over by the Chief Justice, T. S. Sivagnanam (as His Lordship then was) in the case of **PCIT-3 Kolkata Vs. M/s. Srishtri Hotel Private Ltd. being I.A. No. G.A/3/2024 in ITA/36/2020** has observed in paragraphs Nos. 11 and 12, the relevant portions of the above paragraphs is reproduced herein below:

"11. Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by Respondent 2 after public announcements were issued under Sections 13 and 15 IBC. AS such, on the date on which the resolution plan was approved by the learned NCLT, all claims stood frozen, and no claim, which is not a part of the resolution plan, would survive.
12. In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the resolution plan, does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant."

vi. A reliance has also been placed upon **Vaibhab Goyal and Anr Vs. DCIT reported in 2025 SCC Online Supreme Court 592** read with **Committee of Creditors of ESSAR Steel Ltd. Vs. Satish Kumar Gupta reported in (2019) 16 SCC 1478** wherein it has been categorically observed that once Resolution Plan is approved, no belated claim can be included. A successful resolution applicant cannot be faced with undecided claims like Hydra Heads Popping up. The business must re-commence on a clean slate, and on a paid off order basis. All claims must be submitted to the Resolution Profession.

vii. The Income Tax Department being an operational creditor had submitted the proof of debt in Form 'B' before the Resolution Professional claiming a total amount of Rs. 24,06,35,175/-, which after collation was rejected by the Resolution Professional

viii. Attention is drawn to Section 38 of the IBC 2016 which provides that provisions of the

Court shall have effect notwithstanding anything in consistent therewith contained in any other law.

ix. The Learned Counsel appearing for the Income Tax Authorities files a report in the form of an affidavit which is taken on record.

7. It is strenuously argued that adjustment of refund has been carried out strictly in accordance with law under Section 245 of the Income Tax Act, 1961 since the Income Tax Authorities are empowered under the Act to set off any refund due to an assessee against any sum remaining payable under the Act after giving intimation in writing to the assessee of the proposed action.

8. It is further submitted that the CPC has duly issued intimation under Section 245(1) of the said Act, to the petitioner and thereafter adjusted refund for Assessment Year 2019-20 against outstanding demand for Assessment Year 2011-12. The refund amounting to Rs. 1,12,73,866/- for Assessment Year 2019-20 was determined vide intimation issued under Section 143(1) of the Income Tax Act (hereinafter referred to as the "said Act") dated 24.08.2020.

9. Having heard the parties and upon perusing records made available, this Court finds that the petitioner has been able to make out a prima facie case for interference.

10. This Court has taken judicial notice of all documents including the intimation issued under Section 245 and the judgments cited at the bar.

11. In light of the ratio laid down in Ghanashyam Misra (supra), Essar Steel (supra) and Vaibhav Goes (supra), this Court is of the considered view that the Income Tax Authorities have no right to adjust refund for period which stood frozen. As such, on date on which Resolution Plan was approved by NCLAT dated 14.11.2018, all claims stood frozen and no claims, which does not form part of the Resolution Plan can survive.

12. The Income Tax Authorities can also not initiate any fresh proceedings in respect of demands raised prior to the Transfer Date i.e. upto A.Y. 2019-20.

13. Section 238 of the IBC, 2016 contemplates that the provision of of the Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

14. It is a well settled proposition of law that income tax dues being "crown debts", have no priority over secured creditors and are extinguished upon approval of the Resolution Plan if not included therein.

15. In view of the above discussion, the Writ Petition is disposed of with the following directions:

a. The issuance of impugned notices proposing to initiate fresh proceedings along with consequential orders and proceedings pertaining to period prior to transferred date i.e. upto Assessment Year 2019-20 are held to be arbitrary, illegal, not sustainable in the eye of law and are hereby quashed and set aside.

b. The respondent authority shall entitle the petitioner to carry forward the unabsorbed depreciation and accumulated losses as per the returns of income filed prior to transferred date i.e. upto Assessment Year 2019-20 and to utilise such amounts to set off future tax obligations in accordance with law.

c. The Income Tax Authorities shall without making any adjustment, refund the amount which the petitioner is entitled to along with prevailing banking interest as per law which has not been granted till date or has been recovered wrongfully by way of adjustment for period prior to the Transfer Date.

d. The Income Tax Department shall accept the returns of income filed for the period prior to the Transfer Date. No reassessment or any other proceedings under the said Act shall be initiated against the petitioner for the period prior to the Transfer Date. The respondent authorities are directed to refund the same in accordance with law forthwith, preferably within a period of four weeks from date.

e. The respondent Income Tax Authorities are directed to refund an amount which have already been adjusted from the demands for the period prior to the Transfer Date i.e. upto Assessment Year 2019-20 to the petitioner forthwith within a period of six weeks from date along with interest in accordance with law.

f. This Court however, deems it appropriate to observe that the Income Tax Authorities ought to be more circumspect, prudent and vigilant henceforth. Upon approval of a Resolution Plan under the IBC Code, they are expected to forthwith withdraw all demands pertaining to the pre-transferred period instead of persisting with frivolous and untenable proceedings, thereby unnecessarily burdening the already overcrowded dockets of this Court.

16. With the above observations and directions WPA No. 2036 of 2020 along with all connected applications are hereby disposed of.

17. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Smita Das De, J.)