



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Civil Writ Petition No. 7258/2019

Ultratech Nathdwara Cement Ltd., Having Its Registered Office At Block D, 4Th Floor, 22 Camac Street, Kolkata - 700016, West Bengal, Through Its Power Of Attorney Holder Shri Rajendra Vijay Son Of Shri Mohan Vijay, Aged About 50 Years, Presently Working As Chief Financial Officer Of The Petitioner Company, Village Binanigram, Tehsil- Pindwara, District- Sirohi- 307031 (Rajasthan).

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Urban Development And Housing Department, Secretariat, Jaipur.

2. District Collector, Sirohi.

3. Executive Officer, Municipality Pindwara, District- Sirohi (Rajasthan).

4. Director And Joint Secretary, Department Of Local Bodies Jaipur, Rajasthan.

5. Sub Divisional Officer, Pindwara, Distt. Sirohi

6. Chairman, Nagar Palika Pindwara, Distt. Sirohi

----Respondents

Connected With

S.B. Civil Writ Petition No. 6851/2019

Ultra Tech Nathdwara Cement Ltd., Registered Office At Block D, 4Th Floor, 22 Camac Street, Kolkata- 700016, West Bengal Through Its Power Of Attorney Holder Rajendra Vijay Son Of Shri Mohan Vijay, Aged 50 Years, Chief Financial Officer Of The Petitioner Company, Village Binanigram, Tehsil Pindwara District Sirohi- 307031.

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Mines And Petroleum, Government Of Rajasthan, Secretariat, Jaipur.

2. The Director, Department Of Mines And Geology, Khanij Bhawan, Shastri Circle, Udaipur.



3. The Mining Engineer, Department Of Mines And Geology  
Sirohi (Rajasthan).

-----Respondents

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For Petitioner(s) : Mr. Vikas Balia  
For Respondent(s) : Mr. Sandeep Shah, AAG assisted by  
Ms. Akshiti Singhvi  
Mr. Rajesh Parihar, Addl.G.C.

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**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI**

**Order**

**08/11/2021**

In wake of second surge in the COVID-19 cases, abundant caution is being maintained, while hearing the matters in Court, for the safety of all concerned.

Learned counsel for the petitioner has pointed out that the petitioner-company is a wholly owned Subsidiary of UltraTech Cement Limited engaged in the manufacturing and marketing of cement and allied products.

Learned counsel for the petitioner has further pointed out that the erstwhile Binani Cement Ltd. was unable to pay its debts to the Bank of Baroda, and therefore, the Bank of Baroda preferred an application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the "Code of 2016") read with relevant regulations as a Financial Creditor before the National Company Law Tribunal, Kolkata Bench. The NCLT has admitted the application under Section 7 of the Code of 2016 and proceeded in accordance with law. The CIRP was conducted as per the provisions of the Code of 2016, wherein the Resolution Professional invited prospective Resolution Applicants and the UltraTech Cement Limited-petitioner also participated. The



resolution plan of the petitioner-company was approved unanimously by the Committee of Creditors and the petitioner-company emerged as the successful resolution applicant. The resolution plan of petitioner-company was approved by the National Company Law Appellate Tribunal (hereinafter shall be referred as "NCLAT") vide order dated 14.11.2018 in Company Appeal (AT) Insolvency 188 of 2018, which was also challenged before the Hon'ble Supreme Court and was upheld vide order dated 19.11.2018 passed in Civil Appeal No.10998 of 2018. The petitioner-company, in consequence of the aforesaid process, took over its management and implemented the resolution plan by making necessary payments to all the creditors including statutory creditors.

Learned counsel for the petitioner also points out that while approving the resolution plan of petitioner-company, the NCLAT accepted the manner and the total amount of payment proposed to be paid to all the creditors. Learned counsel submits that the petitioner-company thus, challenges the fresh demand raised by the impugned demand notice dated 28.03.2019 being contrary to the approved resolution plan as well as the provisions of Code of 2016.

Learned counsel for the petitioner further submits that the matter comes up on his application to decide the matter finally in light of the verdict given by the Hon'ble Apex Court in ***Ghanshyam Mishra and Sons Private Limited through the Authorized Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors. (Civil Appeal No.8129 of 2019).***



Learned counsel for the petitioner also pointed out that while rendering the aforesaid judgment, the Hon'ble Apex Court has also dealt with Civil Appeal arising out of **Special Leave Petition (Civil) No.11232 of 2020**, which is of the petitioner-company i.e. (**UltraTech Nathdwara Cement Limited Vs. State of Uttar Pradesh & Ors.**), the conclusion of the judgment reads as

follows:

**Conclusion**

95: *In the result, we answer the questions framed by us as under:*

(i) *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 other 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;*

(ii) *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 I&B Code has come into effect;*

(iii) *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."*

Learned counsel for the petitioner also submits that even if there were any statutory dues, then also in accordance with the



judgment of the Hon'ble Apex Court, the same 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.

Learned Additional Advocate General alongwith learned Additional Government Counsel appearing on behalf of the respondents have fairly admitted that the controversy broadly stands decided, but strongly have raised a distinguishing issue arising out of judgment rendered by the Hon'ble Apex Court in **Federation of Indian Mineral Industries and others Vs. Union of India and another** reported in **(2017) 16 Supreme Court Cases 186**, in which, the Hon'ble Apex Court has declared that the lease holders are given time to make their full contribution to the District Mineral Funds failing which they will be liable to make the contribution with interest at 15% per annum from the due date. Relevant portion of the judgment reads as follows:

*“52 Having considered the issues raised by the petitioners and by the learned Additional Solicitor General in different perspectives, we hold:*

*52.1 Merely because the DMFs have been established or are deemed to have been established from a date prior to the issuance of the relevant notifications does not make their operation retrospective.*

*52.2 In any event, the establishment of the DMFs (assuming the establishment is retrospective) from 12th January, 2015 does not prejudicially affect any holder of a mining lease or a prospecting licence-cum-mining lease.*

*52.3 In view of the failure of the Central Government to prescribe the rate on 12th January, 2015 at which contributions are required to be made to the DMF, the contributions to the DMF cannot be insisted upon with effect from 12th January, 2015. Fixing the maximum rate*



*of contribution to the DMF is insufficient compliance with the law laid down by the Constitution Bench in Vatika.*

*52.4 Contributions to the DMF are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of minerals other than coal, lignite and sand for stowing with effect from 17th September, 2015 when the rates were prescribed by the Central Government.*

*52.5 Contributions to the DMF are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of coal, lignite and sand for stowing with effect from 20th October, 2015 when the rates were prescribed by the Central Government or with effect from the date on which the DMF was established by the State Government by a notification, whichever is later.*

*52.6 The notification dated 31 st August, 2016 issued by the Central Government is invalid and is struck down being ultra vires the rule making power of the Central Government under the [MMDR Act](#).*

*53. We fervently hope the State Governments recognize their responsibilities and utilize the contributions to the District Mineral Funds quickly and for the object for which they have been established, particularly since the amounts involved are huge.*

*54. We grant time till 31st December, 2017 to those holders of a mining lease or a prospecting licence-cum-mining lease who have not made the full contribution to the District Mineral Funds to pay the contribution, failing which they will be liable to make the contribution with interest at 15% per annum from the due date. We also make it clear that in the event any holder of a mining lease or a prospecting licence-cum-mining lease has mistakenly made contributions to the District Mineral Fund from a date prior to the date that we have determined, such a holder of a mining lease or a prospecting licence-cum-mining lease shall not be entitled to any refund but may adjust the contribution against future contributions, without the benefit of any interest.”*

Learned counsel for the respondents also submitted that though they have not challenged the NCLAT order or the resolution in question, but since the part of the claim was under adjudication before a competent court, therefore, the portion of



those claims need to be paid by the petitioner-company despite they having already satisfied the resolution in question.

This Court, after hearing learned counsel for the parties as well as perusing the record of the case alongwith the precedent laws cited at the Bar, is of the firm opinion that once the application under Section 7 of the Code of 2016 was admitted by the NCLAT at the instance of the Bank, and thereafter, the IRP was confirmed by the resolution professional in their meeting dated 28.05.2018 which was further affirmed by the NCLAT vide its order dated 14.11.2018, then only option left to the State was to contest the same.

This Court is also drawing its finding from the order passed by the Hon'ble Apex Court on 19.11.2018 in Civil Appeal No.10998 of 2018, whereby the order of NCLAT approving the resolution plan was challenged and upheld.

Thus, once the Hon'ble Apex Court has categorically laid down the law 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 all the parties including the Corporate Debtor, employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders shall be bound down by such plan. The Hon'ble Apex Court has gone to the extent of laying down the law that all dues including the statutory dues, Central Government, state government or any other local authority, if not a part of the resolution plan, shall also stand extinguished.

In view of the aforesaid observations, the present writ petitions are allowed and the impugned demand order dated



25.04.2019 and subsequent communications dated 31.03.2017, 11.04.2017, 10.04.2019, 15.05.2019 and 20.05.2019 (CWP No.7258/2019) as well as the demand order dated 28.03.2019 (CWP No.6851/2019) are hereby quashed and set aside. The present order has been passed in view of the limited submission made by both the parties and those submissions which have not been pressed, are not required to answered by the Court.

It is needless to say that if the State/respondents have any legal remedy, they shall be free to avail the same.

All pending applications stand disposed of accordingly.

**(DR.PUSHPENDRA SINGH BHATI),J.**

18-19 Zeeshan

