

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

**IA (IBC) No.582/KB/2021
IA (IBC) No.596/KB/2021
IA (IBC) No.597/KB/2021
IA (IBC) No.598/KB/2021
IA (IBC) No.606/KB/2021
IA (IBC) No.609/KB/2021
IA (IBC) No.610/KB/2021
IA (IBC) No.611/KB/2021
IA (IBC) No.728/KB/2021
IA (IBC) No.729/KB/2021**

**and
IA (IBC) No.1004/KB/2021
in
CP (IB) No.359/KB/2017**

In the matter of

Applications under section 60(5) of the Insolvency and Bankruptcy Code, 2016

CP (IB) No.359/KB/2017

In the matter of:

Bank of Baroda

...

Financial Creditor

Versus

Binani Cements Limited

...

Corporate Debtor

IA (IBC) No.582/KB/2021

Prabhat Pincha, Proprietor of Shubham, having office at JB Road, Balishth Complex, Sujangarh, Rajasthan – 331507

...Applicant

Versus

Ultratech Cement Limited [L26940MH2000PLC128420]

...Respondent

IA (IBC) No.596/KB/2021

Prabhat Pincha, Proprietor of Shubham, having office at JB Road, Balishth Complex, Sujangarh, Rajasthan – 331507

...Applicant

Versus

Ultratech Cement Limited [L26940MH2000PLC128420]

...Respondent

IA (IBC) No.597/KB/2021

Arjun Dev Singhal, Proprietor of Singla Associates, having office at 524/34, Janta Colony, Near Triveni Park, Rohtak, Haryana - 124001

...Applicant

Versus

Ultratech Cement Limited [L26940MH2000PLC128420]

...Respondent

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021
IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021
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IA (IBC) No.729/KB/2021 and IA (IBC) No.1004/KB/2021
in CP (IB) No.359/KB/2017

IA (IBC) No.598/KB/2021

Sehdev Singhal, Proprietor of Singla Enterprises, having office at 524/34, Janta Colony, Near Triveni Park, Rohtak, Haryana - 124001

...Applicant

Versus

Ultratech Cement Limited [L26940MH2000PLC128420]

...Respondent

IA (IBC) No.606/KB/2021

Sehdev Singhal, Proprietor of Singla Enterprises, having office at 524/34, Janta Colony, Near Triveni Park, Rohtak, Haryana - 124001

...Applicant

Versus

Ultratech Cement Limited [L26940MH2000PLC128420]

...Respondent

IA (IBC) No.609/KB/2021

Gotam Chand Jain, Proprietor of Sambhav Market Organiser, having office at 1-635, M.I.A., 2nd Phase, Basni, Road No.8, Jodhpur, Rajasthan - 342005

...Applicant

Versus

Ultratech Cement Limited [L26940MH2000PLC128420]

...Respondent

IA (IBC) No.610/KB/2021

Mrs Radha Jain, Proprietor of Vardhaman Associates, having office at B Wing, Ahura Centre, 2nd Floor, Mahakali Caves Road, Andheri East, Mumbai - 400093

...Applicant

Versus

Ultratech Cement Limited [L26940MH2000PLC128420]

...Respondent

IA (IBC) No.611/KB/2021

Gotam Chand Jain, Proprietor of Sambhav Market Organiser, having office at 1-635, M.I.A., 2nd Phase, Basni, Road No.8, Jodhpur, Rajasthan - 342005

...Applicant

Versus

Ultratech Cement Limited [L26940MH2000PLC128420]

...Respondent

IA (IBC) No.728/KB/2021

Prabhat Pincha, Proprietor of Shubham, having office at JB Road, Balishth Complex, Sujangarh, Rajasthan – 331507

...Applicant

Versus

Ultratech Cement Limited [L26940MH2000PLC128420]

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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021
IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021
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IA (IBC) No.729/KB/2021 and IA (IBC) No.1004/KB/2021
in CP (IB) No.359/KB/2017

IA (IBC) No.729/KB/2021

Prabhat Pincha, Proprietor of Shubham, having office at JB Road, Balishth Complex,
Sujangarh, Rajasthan – 331507

...Applicant

Versus

Ultratech Cement Limited [L26940MH2000PLC128420]

...Respondent

IA (IBC) No.1004/KB/2021

Mukesh Doshi, Proprietor of S.K. Khetan Associates, having office at 100,
Bholapura, Udaipur, Rajasthan - 313001

...Applicant

Versus

Ultratech Cement Limited [L26940MH2000PLC128420]

...Respondent

Date of hearing: 13 June 2022

Order pronounced on: 28 June 2022

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (via hybrid mode):

For the Applicants in all the IAs

: Mr. Sidhartha Sharma, Advocate
Mr. Arjun Asthana, Advocate

For Binani Cement Limited
(through Ultratech Nathdwara
Cement Limited)

: Mr. Ratnanko Banerji, Sr. Advocate
Mr. Ajay Bhargava, Advocate
Ms. Vanita Bhargava, Advocate
Ms. Wamika Trehan, Advocate
Ms. Radhika Khanna, Advocate
Mr. Suryaksh Manot, Advocate

COMMON ORDER

(disposing of all the interlocutory applications)

Rajasekhar V.K., Member (Judicial):

1. Prologue

1.1. This court convened via hybrid mode.

1.2. Binani Cement Limited (***‘Corporate Debtor’***) was engaged in the business of manufacturing and marketing of cement and had appointed Binani Business

Developers (**'BBD'**) for networking, collection from dealers, sales and marketing within specific geographical locations.

- 1.3. As per the agreements between the Corporate Debtor and the BBDs, the BBDs shall be responsible for supervising the activities of the dealers/distributors appointed by them and shall also be responsible for making all payments due and payable to the Corporate Debtor. While executing an agreement with the BBD, the Corporate Debtor used to collect security amount from the BBD, depending upon the region/districts.
- 1.4. The Corporate Debtor had also authorised retailers/dealers at different locations to sell the cement. The Corporate Debtor collected security deposit from the authorised retailers as per the norms decided from time to time.
- 1.5. However, an application under section 7 of the Insolvency and Bankruptcy, Code, 2016 was filed by one of the Financial Creditors of the Corporate Debtor before this Adjudicating Authority. Thereafter, *vide* order dated 26 July 2017 Corporate Insolvency Resolution Plan (**'CIRP'**) was initiated against the Corporate Debtor. Mr. Vijay Kumar V. Iyer was appointed as the Interim Resolution Professional and later as the Resolution Professional (**'RP'**). Subsequently, the Interim Resolution Professional made the public announcement on 27 July 2017 for inviting claims.
- 1.6. On 13 October 2017, the RP made a public announcement and invited prospective Resolution Applicants to submit their respective Resolution Plans. Subsequently, the RP received responses from sixty-five prospective Resolution Applicants but only six Resolution Plans were received as on 15 January 2018.
- 1.7. Thereafter, the Committee of Creditors (**'CoC'**) after due deliberation and interaction with the prospective Resolution Applicants on 27 February 2018 desired to continue with the Resolution Plan submitted by Rajputana

Properties Private Limited (**'RPPL'**). The Resolution Plan submitted by RPPL was put for voting and was approved with 99.43% of votes of the CoC. On 19 March, 2018, the Resolution Plan submitted by RPPL came up before this Adjudicating Authority for approval.

- 1.8. However, the Resolution Plan submitted by RPPL was rejected by this Adjudicating Authority *vide* its order dated 04May 2018 on the grounds of gross misconduct by the RP while performing his duties. Aggrieved by the order of the Adjudicating Authority, several appeals were filed before the Hon'ble NCLAT.
- 1.9. The Hon'ble Supreme Court *vide* its order dated 02 July 2018 had directed transfer of all proceedings before this Adjudicating Authority to the Hon'ble NCLAT.
- 1.10. In the meantime, the CoC after reviewing concluded that the Resolution Plan submitted by UCL was the best in order to achieve the purpose of the Code and the same was unanimously approved by the CoC. Thereafter, the Hon'ble NCLAT approved the Resolution Plan submitted by Ultratech Cement Limited (**'UCL' or 'Successful Resolution Applicant' or 'SRA'**) *vide* its order dated 14 November 2018.
- 1.11. An appeal was again filed before the Hon'ble Supreme Court against the order dated 14 November 2018 of the Hon'ble NCLAT. However, the appeal was dismissed on 19 November 2018 and the order of the Hon'ble NCLAT attained finality. UCL took over the management of the Corporate Debtor with effect from 20 November 2019.
- 1.12. It is observed that all the Applications calls for the attention of this Adjudicating Authority on a common issue, hence, all the Interlocutory Applications shall be dealt in this common order.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021
IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021
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IA (IBC) No.729/KB/2021 and IA (IBC) No.1004/KB/2021
in CP (IB) No.359/KB/2017

2. Consolidated submissions of the Ld. Counsel appearing for all the Applicants in all the IAs¹

- 2.1. These are applications under section 60(5) of the Code, filed by the Applicants, against UCL. The Applicants kept on providing their services during the CIRP period, to help the Corporate Debtor run as a going-concern. Some of the Applicants had also entered into BBD Agreement with the Corporate Debtor.
- 2.2. The Corporate Debtor was admitted into CIRP on 26 July 2017 and the public announcement for inviting claims was made on 27 July 2017. In pursuance such public announcement the Applicants also submitted their claims with the RP. From time to time they also about the same. However, on enquiry the Applicants were informed that their claims are under the verification process and shall be considered by the RP in due course. Nevertheless, the verification of the claims of the Applicant was pending even when during the final hearing of the approval of the Resolution Plan.
- 2.3. The Resolution Plan of UCL, as approved by the Hon'ble NCLAT *vide* order dated 14 November 2018 provides for payment of 100% dues of the Operational Creditors, except related parties. But no payments have been received by the Applicant despite several requests and meetings.
- 2.4. The reliefs sought by the Applicant in their respective Applications are, *inter alia*, as follows:

<i>Details of the Interlocutory Application</i>	<i>Prayers</i>
<u>IA (IBC) No.582/KB/2021</u> <i>Prabhat Pincha, Proprietor of</i>	For direction on UCL to make a payment of ₹4,39,978/- (Rupees four lakh thirty-nine thousand nine

¹ IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021, IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021, IA (IBC) No.610/KB/2021, IA (IBC) No.611/KB/2021, IA (IBC) No.728/KB/2021, IA (IBC) No.729/KB/2021 and IA (IBC) No.1004/KB/2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021
IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021
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IA (IBC) No.729/KB/2021 and IA (IBC) No.1004/KB/2021
in CP (IB) No.359/KB/2017

<i>Details of the Interlocutory Application</i>	<i>Prayers</i>
<i>Shubham Steels v Ultratech Cement Limited</i>	hundred seventy eight only).
<u>IA (IBC) No.596/KB/2021</u> <i>Prabhat Pincha, Proprietor of 'Shubham' v Ultratech Cement Limited</i>	For direction on UCL to make a payment of ₹11,39,531/- (Rupees eleven lakh thirty-nine thousand five hundred thirty-one only).
<u>IA (IBC) No.597/KB/2021</u> <i>Arjun Dev Singal, Proprietor of Singla Associates v Ultratech Cement Limited</i>	For direction on UCL to make a payment of ₹23,93,132.91 (Rupees twenty-three lakh ninety-three thousand one hundred and thirty-two and paise ninety-one only).
<u>IA (IBC) No.598/KB/2021</u> <i>Sehdev Singal, proprietor of Singla Enterprises v Ultratech Cement Limited</i>	For direction on UCL to make a payment of ₹97,542.80 (Rupees ninety-seven thousand five hundred forty-two and paise eighty only).
<u>IA (IBC) No.606/KB/2021</u> <i>Sehdev Singal, Proprietor of Singla Transport Co. v Ultratech Cement Limited</i>	For direction on UCL to make a payment of ₹29,08,791/- (Rupees twenty-nine lakh eight thousand seven hundred ninety-one only).
<u>IA (IBC) No.609/KB/2021</u> <i>Gotam Chand Jain, Proprietor of 'Sambhav Market Organisor' v Ultratech Cement Limited</i>	For direction on UCL to make a payment of ₹1,62,60,329.88 (Rupees one crore sixty-two lakh sixty thousand three hundred twenty-nine and paise eighty-eight only).
<u>IA (IBC) No.610/KB/2021</u> <i>Radha Jain, Proprietor of Vardhman Associates v Ultratech Cement Limited</i>	For direction on UCL to make a payment of ₹21,88,413.05 (Rupees twenty-one lakh eighty-eight thousand four hundred and thirteen and paise five only).
<u>IA (IBC) No.611/KB/2021</u>	For direction on UCL to make a

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

*IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021
IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021
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IA (IBC) No.729/KB/2021 and IA (IBC) No.1004/KB/2021
in CP (IB) No.359/KB/2017*

<i>Details of the Interlocutory Application</i>	<i>Prayers</i>
<i>Gotam Chand Jain, Proprietor of Sambhav Market Organisovr Ultratech Cement Limited</i>	payment of ₹1,69,35,550.69 (Rupees one crore sixty-nine lakh thirty-five thousand five hundred and fifty and sixty-nine paise only)
<u>IA (IBC) No.728/KB/2021</u> <i>Prabhat Pincha, Proprietor of Shubham Steels v Ultratech Cement Limited</i>	For direction on UCL to make a payment of ₹35,842.23 (Rupees thirty-five thousand eight hundred forty-two and paise twenty-three only)
<u>IA (IBC) No.729/KB/2021</u> <i>Prabhat Pincha, Proprietor of Shubham Steels v Ultratech Cement Limited</i>	For direction on UCL to make a payment of ₹15,96,371/- (Rupees fifteen lakh ninety-six thousand three hundred seventy-one only)
<u>IA (IBC) No.1004/KB/2021</u> <i>Mukesh Doshi, Partner of S.K. Khetan Associates v Ultratech Cement Limited</i>	For direction on UCL to make a payment of ₹15,00,000/- (Rupees fifteen lakhonly)

3. Consolidated rebuttal by the Ld. Senior Counsel appearing on behalf of the Respondent in all the IAs

- 3.1. The Applicants have interpreted the approved the Resolution Plan in a mistaken way. Upon bare perusal of the approved Resolution Plan of UCL operational trade creditors were to be paid 100% of their verified claims and not 100% of their amount as claimed. The respondents have already made payment to three Operational Creditors as per the approved Resolution Plan. The alleged claims of the remaining Operational Creditors were not admitted by the RP.
- 3.2. The Applicants are **not** entitled to any amount as per the Approved Resolution Plan. The Applicants have also failed to provide appropriate claim forms. The RP upon receiving the claim used to verify claim and maintained a list of

creditors, which contained the names of the creditors along with the amount claimed from them. The list also reflected the details of claims admitted or rejected. As per the final list of the RP only three claims have been admitted.

- 3.3. As per section 31(1) of the Code, the Resolution Plan shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan. Hence, the Applicants are bound by the terms of the approved Resolution Plan.
- 3.4. Further, point 6.2.3 of the Resolution Plan as approved by the Hon'ble NCLAT by its order dated 14 November 2018² categorical states that the liabilities of the Operational Trade Creditors in respect of the claims verified/admitted shall stand fully discharged by payment. Within thirty days of the date of transfer. Further, point 6.2.7 of the Resolution Plan also states that the Resolution Applicant shall not be liable to any other creditor or any other liability of the Corporate Debtor including Contingent Liabilities for a period prior to the Transfer Date.
- 3.5. The Resolution Plan also stated that the no person shall have any claim against the Corporate Debtor or the Resolution Applicant in respect of the liabilities of the Corporate Debtor to the period prior to the Transfer Date, except to the extent provided for payment in the Resolution Plan.
- 3.6. Reliance has been also placed on the Judgment passed by the Hon'ble Supreme Court in *Ultratech Nathdwara Cement Limited v State of Uttar Pradesh & Ors*,² where the Hon'ble Supreme Court has held that section 31 of the Code is clarificatory and declaratory in nature, and therefore will have retrospective effect. Further, when a Resolution Plan is approved by the Adjudicating Authority then the claims which are not part of the Resolution

² (2021) 9 SCC 657 decided on 13 April 2021

Plan shall stand extinguished and the proceeding related thereto shall stand terminated.

3.7. The Respondent has also relied on the decisions of the Hon'ble Rajasthan High Court in *Ultratech Nathdwara Cement Limited v Union of India*,³ *Ultratech Nathdwara Cement Limited v State of Rajasthan, Dept. of Mines & Ors.*,⁴ and of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta and Ors*⁵ (Para 86 and 88). The respondent also relied on the decision of the Hon'ble NCLAT in *Binani Industries Limited v Bank of Baroda & another*,⁶ whereby the revised Resolution Plan of the Corporate Debtor was approved. This decision was assailed before the Hon'ble Supreme Court in *Commissioner of Central Excise, Goods and Service Tax, Jodhpur v Binani Industries Limited & Ors.*,⁷ which dismissed the appeal, finding no reason for interference.

3.8. The instant Applications has been filed with a view to harass the respondents into paying sums which are neither due nor payable by the Successful Resolution Applicant.

4. Issue

4.1. The issue that arises for consideration in the present batch of applications is this: Can a creditor initiate proceedings for recovery of any of the dues which are not part of the resolution plan, from the Corporate Debtor after approval of resolution plan by the adjudicating authority?

5. Analysis and findings

5.1. We have heard the Ld. Counsel appearing for the Applicant and the Ld. Senior Counsel appearing for the Respondent. It is noticed that in all the IAs, there is

³ 2020 SCC OnLine Raj 1097 decided on 07 April 2020

⁴ 2021 SCC OnLine Raj 2536 decided on 08 November 2021

⁵ (2020) 8 SCC 531 decided on 15 November 2019

⁶ 2020 SCC Online NCLAT 521 decided on 14 November 2018

⁷ 2020 SCC OnLine SC 1185 decided on 24 January 2020

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

*IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021
IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021
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only one Respondent, i.e., *Ultratech Cement Limited*, who is also the Successful Resolution Application but all the replies on record has been filed on behalf of the Respondent No.2.

5.2. Upon perusal of the record it is relevant to mention the points, as follows:

<i>Details of the Interlocutory Application</i>	<i>Amount Claimed</i>	<i>Amount accepted by the RP</i>	<i>Amount paid by the SRA as per the approved Resolution Plan</i>
IA (IBC) No.582/KB/2021 <i>Prabhat Pincha, Proprietor of Shubham Steels v Ultratech Cement Limited</i>	₹35,55,364 (Annexure A @Pg.37 Reply Vol-1, Relevant entry No.2640 @Page 87 Reply Vol-1)	₹21,34,802 (Annexure B, Final List @Pg. 96 Reply Vol-1, Relevant entry No.3204 @Page 148 Reply Vol-1)	₹21,34,802 as approved by the RP was paid in full through Cheque dated 07 December 2018
IA (IBC) No.596/KB/2021 <i>Prabhat Pincha Proprietor of 'Shubham' v Ultratech Cement Limited</i>	The name 'Shubham' was missing from the Operational Creditors list (Annexure A - @Pg 35 of Reply, Relevant @Pg 85 of Reply)	-----	-----
IA (IBC) No.597/KB/2021 <i>Arjun Dev Singal Proprietor of Singla Associates v Ultratech Cement Limited</i>	₹51,50,190.38 (Annexure A @ Pg 35, Vol I of the Reply, Relevant entry No.202 @ Pg 36 of the Reply)	-----	-----
IA (IBC) No.598/KB/2021 <i>Sehdev Singal, proprietor of Singla Enterprises v Ultratech Cement Limited</i>	₹33,16,806.00 (@ Ann. D, Vol I @Pg 36 of Application). However, no such claim appears in the OC list (starts @ Annexure C - @Pg 46, Vol I of Reply, Relevant @Pg 97 Vol I of Reply)	-----	-----
IA (IBC) No.606/KB/2021 <i>Sehdev Singal,</i>	₹33,16,806.00 (@ Ann. D, Vol I @Pg	-----	-----

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021
IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021
IA (IBC) No.610/KB/2021, IA (IBC) No.611/KB/2021, IA (IBC) No.728/KB/2021
IA (IBC) No.729/KB/2021 and IA (IBC) No.1004/KB/2021
in CP (IB) No.359/KB/2017

<i>Details of the Interlocutory Application</i>	<i>Amount Claimed</i>	<i>Amount accepted by the RP</i>	<i>Amount paid by the SRA as per the approved Resolution Plan</i>
<i>Proprietor of Singla Transport Co. v Ultratech Cement Limited</i>	36 of Application		
IA (IBC) No.609/KB/2021 <i>Gotam Chand Jain, Proprietor of 'Sambhav Market Organisov' v Ultratech Cement Limited</i>	₹47,23,942.49 (part of Annexure-D, @Page no.133, Application, Vol-1)	₹29,04,391.00 (Annexure B, Vol I, Starts @ 99, Relevant Entry @S.No.2655 @Pg 144, Reply Vol-I)	A sum of ₹22,85,313.91 was paid to the Applicant vide cheque no. 002163 dated 10 December 2018 drawn on HDFC Bank, and a further sum of ₹11,47,248.00 vide Cheque No.00122 dated 13 March 2019. Stands fully paid.
IA (IBC) No.610/KB/2021 <i>Radha Jain, Proprietor of Vardhman Associates v Ultratech Cement Limited</i>	₹65,16,176.30. (Annexure D @ Pg 65, Vol I of the Application)	-----	-----
IA (IBC) No.611/KB/2021 <i>Gotam Chand Jain, Proprietor of Sambhav Market Organisov Ultratech Cement Limited</i>	₹1,86,84,633.98 for 25 dealers (Annexure D, Vol I @Pg 56-145 of Application)	Out of the 25 Dealers/Distributors listed by the Applicant in Chart B, Annexure-D to the Application, only 2 claims have been partially admitted by the IRP/RP namely: a. Choudhary Traders: Amount claimed: ₹10,62,627,	Approved amount has duly been paid to Choudhary Traders. (Proof of payment @Annexure B, Page 47, Vol I of the Reply) Of the Approved amount, amount due as on date of payment i.e., 18.12.2018 has

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

*IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021
IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021
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IA (IBC) No.729/KB/2021 and IA (IBC) No.1004/KB/2021
in CP (IB) No.359/KB/2017*

<i>Details of the Interlocutory Application</i>	<i>Amount Claimed</i>	<i>Amount accepted by the RP</i>	<i>Amount paid by the SRA as per the approved Resolution Plan</i>
		Annexure C, Relevant Entry at S. No.516 @ Pg 130, Vol I of the Reply. Amount approved: ₹1,44,599, Annexure D, Relevant Entry at S. No.605 @ Pg 200, Vol II of the Reply. b.Prem Sukh& Sons (Power of Attorney in favour of the Applicant has not been placed on record): Amount claimed: ₹99,457 Annexure C, Relevant Entry at S. No.1913 @ Pg 157, Vol II of the Reply. Amount approved: ₹72,836, Annexure D, Relevant Entry at S. No.2296 @ Pg 221, Vol II of the Reply	been paid to Prem Sukh sons (owing to ongoing business during CIRP) (Proof of payment @Annexure B, 74, Vol I of the Reply)
IA (IBC) No.728/KB/2021 <i>Prabhat Pincha Proprietor of Shubham Steels v Ultratech Cement Limited</i>	i. Claim Form dated 05 August 2017 for ₹6,063.00 for Jagdish Prasad Prajapatvide email dated 08.08.2017 filed through the Applicant (Annexure D, Vol I	i. Claim filed by Godara Building Material has been approved in full i.e., ₹24,362. (Annexure B, Relevant	Approved amount has been duly paid vide Cheque dated 05 December 2018 bearing Cheque No.000676 drawn on HDFC

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

*IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021
IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021
IA (IBC) No.610/KB/2021, IA (IBC) No.611/KB/2021, IA (IBC) No.728/KB/2021
IA (IBC) No.729/KB/2021 and IA (IBC) No.1004/KB/2021
in CP (IB) No.359/KB/2017*

<i>Details of the Interlocutory Application</i>	<i>Amount Claimed</i>	<i>Amount accepted by the RP</i>	<i>Amount paid by the SRA as per the approved Resolution Plan</i>
	@Pg 51 of Application) and Claim Form dated 05 August 2017 for ₹24,362 for Godara Building Material vide email dated 09.08.2017 filed through the Applicant (Annexure D, Vol I @Pg 55 of Application) <u>Godara Building Material</u> ii. Claim of Godara Building Material, amounting to ₹24,362 was submitted by the Godara Building Material to the IRP/RP. (Annexure A, Page 53, @ S. No.740, Vol I of the Reply)	Entry @ S. No.873, Page 121, Vol I of the Reply)	Bank. (Annexure E, Page 161, Vol II of the Reply)
IA (IBC) No.729/KB/2021 <i>Prabhat Pincha, Proprietor of Shubham Steels v Ultratech Cement Limited</i>	Out of the 45 alleged claims, the Applicant has only placed on record claim forms for 15 of the said alleged Dealers/Distributors.	As per the final list of creditors provided by the RP, only 3 out of 45 claims listed at Annexure G of the Application were admitted/partially admitted by the IRP/RP as follows: a. Om Prakash Sharma: Amount claimed:	Approved amount was duly paid by the Respondent No.2 Om Prakash Sharma was issued Cheque No.838 for ₹1,480, dated 05 December 2018 drawn on HDFC Bank:

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

*IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021
IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021
IA (IBC) No.610/KB/2021, IA (IBC) No.611/KB/2021, IA (IBC) No.728/KB/2021
IA (IBC) No.729/KB/2021 and IA (IBC) No.1004/KB/2021
in CP (IB) No.359/KB/2017*

<i>Details of the Interlocutory Application</i>	<i>Amount Claimed</i>	<i>Amount accepted by the RP</i>	<i>Amount paid by the SRA as per the approved Resolution Plan</i>
		₹10,383, Annexure C, Relevant Entry at S. No.1750 @ Pg 79, Vol I of the Reply. Amount approved: ₹1,480, Annexure D, Relevant Entry at S. No.2083 @ Pg 143, Vol I of the Reply. b. Bhanwar Singh Amount claimed: ₹77,831, Annexure C, Relevant Entry at S. No.380 @ Pg 53, Vol I of the Reply Amount approved in full: i.e., ₹77,381/- Annexure D, Relevant Entry at S. No. 451 @ Pg 123, Vol I of the Reply c. Jagdish Prasad Amount claimed: ₹13,143/- Annexure C, Relevant	Bhanwar Singh was issued Cheque No.1647 for ₹77,831, dated 14 December 2018 drawn on HDFC Bank. Jagdish Prasad was issued Cheque No.716 for ₹13,143 dated 27 December 2018 drawn on HDFC Bank

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

*IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021
IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021
IA (IBC) No.610/KB/2021, IA (IBC) No.611/KB/2021, IA (IBC) No.728/KB/2021
IA (IBC) No.729/KB/2021 and IA (IBC) No.1004/KB/2021
in CP (IB) No.359/KB/2017*

<i>Details of the Interlocutory Application</i>	<i>Amount Claimed</i>	<i>Amount accepted by the RP</i>	<i>Amount paid by the SRA as per the approved Resolution Plan</i>
		Entry at S. No.928 @ Pg 63, Vol I of the Reply Amount approved in full: Annexure D, Relevant Entry at S. No, 1110 @ Pg 131, Vol I of the Reply	
IA (IBC) No.1004/KB/2021 <i>Mukesh Doshi, Partner of S.K. Khetan Associates v Ultratech Cement Limited</i>	₹20,51,306. (Annexure D @Pg 57, Vol I of the Application)	-----	-----

- 5.3. As envisaged under section 31 of the Code, the Adjudicating Authority approves a Resolution Plan if it is satisfied that the same has been approved by the Committee of Creditors by the requisite 66% votes, after taking into consideration the feasibility and viability of the Resolution Plan[*section 30(4) of the Code*]. However, in this instant case, the Resolution Plan of Ultratech Cement Limited was unanimously approved by the CoC and was approved by the Hon'ble NCLAT on 14 November 2018. The Hon'ble Supreme Court *vide* Order dated 19 November 2018 also upheld the Order of the Hon'ble NCLAT.
- 5.4. It is also pertinent to mention that the issue arising here have been dealt by the Hon'ble Supreme Court in a plethora of cases. Every now and then, the Apex Court has made it explicit that the commercial wisdom of the Committee of Creditors has to be given paramount status without any judicial intervention.⁸ Further, when a Resolution Plan is being approved by the CoC there is an intrinsic assumption that the Financial Creditors are fully informed about the

⁸ *Kalpraj Dharamshi v Kotak Investment Advisors Limited* (2021) 10 SCC 401 decided by the Hon'ble Supreme Court on 10 March 2021

viability and feasibility of the proposed Resolution Plan.⁹ There is no provision in the Code, which envisages challenge to the commercial or business decision of the Financial Creditors taken collectively or their individual opinions, as the case may be.¹⁰

- 5.5. Further, in *Ghanashyam Mishra & Sons Private Limited v Edelweiss Asset Reconstruction Company Limited*,¹¹ the Hon'ble Supreme Court has held that ***any debt*** in respect of the payment of ***dues arising under any law***, including the ones owed to the Central Government, any state Government or any local authority, which does not form a part of the approved Resolution Plan shall ***stand extinguished***.
- 5.6. Nevertheless, in this instant case, we have observed that the payments to the Operational Creditors have been made by Ultratech Cement Limited in terms of the approved Resolution Plan. Further, these applications have been filed three years after the date of approval and implementation of the resolution plan.
- 5.7. The Applicants should have taken proper recourse under the Code at the relevant point of time, against the admission or rejection of their claims by the RP. It is a bit too late in the day at this point of time to ask the Corporate Debtor under new management to make payment of operational debts which stand extinguished by the approval of the resolution plan way back in 2018. It is precisely such claims popping up long after the approval of the resolution plan, that the Hon'ble Supreme Court cautioned against, when it said in the *Essar Steel (supra)* judgment that the successful resolution applicant should not be required to face these hydra heads popping up.

⁹ *Ibid*

¹⁰ *K. Sashidharv Indian Overseas Bank & Others*, (2021) 12 SCC 150 decided by the Hon'ble Supreme Court on 05 February 2019

¹¹ (2021) 4 SCC (Civ) 638 decided on 13 April 2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021
IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021
IA (IBC) No.610/KB/2021, IA (IBC) No.611/KB/2021, IA (IBC) No.728/KB/2021
IA (IBC) No.729/KB/2021 and IA (IBC) No.1004/KB/2021
in CP (IB) No.359/KB/2017

6. Orders

- 6.1. In view of the above facts and circumstances and the precedents laid down by the Hon'ble Supreme Court, each of the IAs, *i.e.*, IA (IBC) No.582/KB/2021, IA (IBC) No.596/KB/2021, IA (IBC) No.597/KB/2021, IA (IBC) No.598/KB/2021, IA (IBC) No.606/KB/2021, IA (IBC) No.609/KB/2021, IA (IBC) No.610/KB/2021, IA (IBC) No.611/KB/2021, IA (IBC) No.728/KB/2021, IA (IBC) No.729/KB/2021 and IA (IBC) No.1004/KB/2021, shall stand dismissed as not maintainable after the approval of the resolution plan.
- 6.2. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**BALRAJ
JOSHI** Digitally signed by
BALRAJ JOSHI
Date: 2022.06.28
20:43:14 +05'30'

Balraj Joshi
Member (Technical)

Safura A., LRA

**Rajasekhar V
K** Digitally signed by Rajasekhar V.K.
DN: cn=Rajasekhar V.K., o=KOLKATA BENCH-I, ou=National Company Law Tribunal, email=Rajasekhar.V.K@nclt.co.in, c=IN
Date: 2022.06.28 18:57:36 +05'30'

Rajasekhar V.K.
Member (Judicial)