

## HIGH COURT

April 7, 2020

### **Ultra Tech Nathdwara Cement Ltd. (formerly known as Binani Cements Ltd.) v. Union of India, D. B. Civil WP No. 9480/2019 (Rajasthan High Court).**

Binani Cement, the CD, could not pay the debts it owed to the Bank of Baroda. CIRP was initiated u/S. 7 of the Code by the FC and a RP was appointed. The RP invited applicants to stake a bid for Binani Cements. The CoC evaluated various bids and concluded that the petitioner company's resolution plan was the most effective as it ensured that the creditors gain more than they would have, had the company gone into liquidation. The resolution plan was approved by the CoC and the AA and executed as well. Post its execution, the Tax Department claimed that the company had to pay GST for the period prior to the initiation of the CIRP. The counsel for the applicant contended that the Commercial Taxes Department was not heard before the finalization of the resolution plan and the Department is therefore not bound by it. The petitioner company premised their arguments on the intent of the Parliament when amending S. 31 of the Code. The amended version of S. 31 of the Code states that the resolution plan shall be binding on governments and their employees as well. The petitioner also relied on the Finance Minister's statement in Parliament, where it was made clear that the binding effect of the resolution plan on creditors would give companies a major sense of security. The HC of Rajasthan thereby allowed the WP and dismissed the claims of the Tax Department relying on the *Essar Steel* judgment [*Committee of Creditors of Essar Steel India Ltd. through Authorised Signatory v. Satish Kumar Gupta & Ors.*, Civil Appeal No. 8766-67 of 2019 and Ors.], and the statement of the Finance Minister. Furthermore, it held that OCs do not have the right to be heard post the approval of the resolution plan and they need not recover the same percentage that FCs do.

April 13, 2020

### **Shakuntla Educational and Welfare Society v. Punjab and Sind Bank, WP (C) 2959/2020 (Delhi High Court).**

The petitioner was an educational institution with various institutes in Uttar Pradesh and had taken loans from the respondents to establish them. In this petition, the petitioner had sought a direction from the Delhi HC to direct the respondent not to declare its pending loan payments as NPAs and a direction for a grant of a moratorium in accordance with the RBI circular. The petitioner had made 4 of the 6 term payments. The petitioner contended that an order of the U.P. government had prevented them from collecting fees from the students and therefore, they were

unable to make the remaining term payments by 31.03.2020. Additionally, the RBI circular allowed a moratorium of 90 days on all loans payable on or after 01.03.2020. *Per contra*, the respondent argued that the moratorium would only apply to loans that were due on or after 01.03.2020 and this loan was due on 31.12.2019. The respondent argued that the circular does not override Regulatory Policy, which does not provide for postponing the classification of debts as NPAs. The respondent however, conceded to the fact that they could not have declared the payments as NPAs had it been paid before 31.03.2020. The Court stated that the RBI, through the circular, intended to ensure that the status of borrowers' accounts in the country was maintained. The court granted the relief sought by the petitioner. It stated that the petitioner would have to pay the debts within one week of the order preventing them from collecting fees being withdrawn.