

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**Customs Appeal No.45 of 2012**

Customs Misc. Application (ORS) No. 10502 of 2021

(Arising out of OIA-01-COMMR-A--JMN-2011 dated 12/01/2012 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV))

**M/S. Ultratech Nathdwara Cement Limited**

**.....Appellant**

P.O. Binanigram,  
Sirohi, Rajasthan

*VERSUS*

**C.C.-JAMNAGAR(PREV)**

**.....Respondent**

Sharda House...Bedi Bandar Road,  
Opp. Panchavati,  
Jamnagar, Gujarat

**APPEARANCE:**

Shri Gaurav Mathur & Shri Abhishek Shah, (Advocates) for the Appellant  
Shri Dharmendra Kanjani, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. A/ 11268 /2022**

**Miscellaneous Order No. M/ 10545 /2022**

DATE OF HEARING: 06.05.2022  
DATE OF DECISION: 20.10.2022

**RAMESH NAIR**

The applicant filed the present miscellaneous application in view of the NCLT order dated 14.11.2018.

02. Shri Gaurav Mathur and Shri Abhishek Shah, Advocates appeared on behalf of the applicant. Shri Gaurav Mathur submits that as per the resolution plan approved by NCLT, no dues exists against the applicant therefore, the demand involved in the impugned order is not recoverable by the department consequently, the appeal becomes infructuous.

03. On the other hand Shri Dharmendra Kanjani, learned Superintendent (AR) appearing on behalf of the revenue raised the preliminary objection. He submits that in the present case, the appellant M/s. Binani Cement Limited became insolvent therefore, the appeal needs to be abated. He further submits that if at all, the present applicant wish to continue the proceedings

before this tribunal, the application should have been made within a period of 60 days from the date of declaration of the assessee as insolvent. Since in this case, the assessee has not filed application they cannot continue the proceeding before this tribunal.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the NCLT has passed an order by approving resolution plan of the company M/s. Binani Cement Limited in favor of M/s. Ultratech Nathdwara Cement Limited, who is the resolution applicant. The relevant terms of the resolution plan are reproduced below:-

#### *6.2.3.6 Contingent Liabilities*

All Liabilities in respect of the Contingent Liabilities of the Operational Creditors in respect of the Corporate Debtor shall stand fully discharged on the Transfer Date without any payment and there shall be no recourse to the Corporate Debtor or the Resolution Applicant in respect of or arising from the Contingent Liabilities. Based on this Resolution Plan, all Litigations relating to the Contingent Liability shall stand withdrawn.

#### *6.5.2. Effect of the approval of the Resolution Plan*

*With effect from the Transfer Date (or such other later date as specified below):*

.....

*6.5.2.8 from the relevant date of discharge and payment of the Resolution Amount in accordance with the Resolution Plan, all claims and dues towards the Financial Creditors, the Operational Creditors and the Contingent Liabilities of the Corporate Debtor shall be fully settled and none of the creditors (including in respect of the Contingent Liabilities) shall have recourse against the Corporate Debtor for any other amount and the Corporate Debtor shall be absolved of its obligations towards all the creditors;*

*6.5.2.9 pursuant to the discharge and payment of the Resolution Amount as per the terms herein, all obligations, promises or commitments made or guarantee given by, or on behalf of the Corporate Debtor whatsoever, (whether oral or written) for the payment of any amount or incurring of any*

*liability or assumption of any liability/obligation or claim against the assets of the Corporate Debtor (whether known or unknown, liquidated or unliquidated, contingent or otherwise) shall stand extinguished, released and discharged, without any further act, instrument or deed by the Corporate Debtor, and no Person shall have any claim whatsoever against the Corporate Debtor or the Resolution Applicant in respect of obligation or liabilities of the Corporate Debtor pertaining to the period prior to the Transfer Date except to the extent provided for payment in this Resolution Plan;*

*6.5.2.11 pursuant to the discharge and payment of the Resolution Amount as per the terms herein, all assets shall be free and clear from any and all claims against the Corporate Debtor, whether known or unknown, liquidated or unliquidated, contingent or otherwise and no Person shall have any claim whatsoever against the Corporate Debtor in respect of obligation or Liabilities of the Corporate Debtor in respect of obligation or Liabilities of the Corporate Debtor pertaining to the period prior to the Transfer Date;*

*6.5.2.13 pursuant to this Resolution Plan, all Litigations instituted against the Corporate Debtor, initiated or arising and pending before the Transfer Date shall stand withdrawn, without any further act, instrument or deed. Any appeals or challenges in respect of such Litigations shall also stand withdrawn, without any further act, instrument or deed. It is clarified that all Litigations instituted by the Corporate Debtor, initiated or arising and pending before the Transfer Date shall continue. The Corporate Debtor shall file the suitable applications with the Relevant Authorities along with a copy of the order of the Adjudicating Authority and if required, the Resolution Plan to place on record such withdrawal of the relevant Litigations. It is clarified that the Contingent Liabilities including Liabilities in respect of the said Litigations will be NIL and there shall be no recourse against the Corporate Debtor or the Resolution Applicant in respect of the same;*

From the above terms of the resolution plan approved by the NCLT, it prima facie appears that the appellant is not liable to pay any dues. However, this tribunal is not competent to decide regarding the recovery of any dues. It is the department who has to decide whether any dues is recoverable or otherwise, in the light of the resolution plan approved by the NCLT. As regard the submission made by learned AR that the applicant has not filed an application for continuance of the proceeding in terms of Rule 22 of the

CESTAT Procedure Rules, 1982, after careful reading of the said rule, we are of the view that Rule 22 is applicable only in case when the assessee is adjudicated as insolvent or in the case of a company when it is wound up. In the present case, the applicant being a company has not been wound up whereas, the same was revived under Insolvency Resolution process as per NCLT order. Moreover, in the present case, there is only change of name of the company from M/s. Binani Cement Limited to M/s. Ultratech Nathdwara Cement Limited in terms of certificate of incorporation pursuant to change of name issued by RoC therefore, the company has not been wound up and it is on going company, hence, rule 22 is not applicable. As regard the decision of this tribunal in the case of M/S. MURLI INDUSTRIES LTD. v/S. CCE, NAGPUR relied upon by learned AR. On going through the said judgment, we find that the fact is not clearly revealed that whether in that case the applicant company was wound up or declared as insolvent therefore, the facts of the said decision is different from the facts of the present case. Hence, the decision in M/S. MURLI INDUSTRIES LTD. v/S. CCE, NAGPUR is distinguished. In any case as per Rule 22 of CESTAT Procedure Rules, 1982, status of insolvent is applicable to natural person and not in case of company. In case of company Rule 22 is applicable when company gets wound up.

4.1 We also find that from the record and submissions of the learned AR, it is not on record that whether the respondent has approached the NCLT and lodged its claim against adjudged dues in the impugned order and status thereof. For this reason also, this tribunal cannot conclude about the recovery of the adjudged dues.

4.2 From the above facts, we find that as per the resolution plan approved by the NCLT and in the light of Hon'ble Supreme Court judgment in the case of Ghanashyam Mishra & Sons Pvt. Ltd.-2021 SCC Online SC 313, it prima facie appears that the adjudged dues cannot be recovered by the department however, this issue has to be decided by the department and not by this tribunal. For this reason, that firstly, there is no provision made in the Customs and Central Excise Act to give effect of NCLT proceedings. This tribunal being creature under the Customs Act, even though the Insolvency and Bankruptcy Code have over riding effect over all the other acts in absence of any explicit provision under the Customs/Central Excise Act, this tribunal cannot decide finally whether the adjudged amount can be

recovered by the department or otherwise. This issue has to be resolved by the respondent.

05. In this position, we are of the view that at present the appeal became infructuous accordingly, we dismiss the appeal as infructuous. Both the sides have liberty that in case of any amicable resolution is not arrived at between the appellant and respondent to approach this tribunal to revive the present appeal and be decided on merit if required. The appeal is disposed as infructuous. MA also stand disposed of.

06. Having decided the appeal as above, we note that IBC proceedings are being initiated against many companies who are either appellant or respondent in the appeals pending before this tribunal. We observed that the revenue-department has no proper guideline as to what stand is to be taken in a case where the IBC proceedings is in progress before NCLT/NCLAT or at higher forum. The assessee against whom the IBC proceedings are initiated invariably approach this tribunal through miscellaneous application for disposing of the appeals in the light of the NCLT's orders. However, in the absence of any guideline by the CBIC, the departmental representative are unaware as to what stand is to be taken in such cases. Therefore, we are of the view that the Central Board of Indirect Taxes & Customs may consider issuing guideline/procedure for dealing with the case before this tribunal wherein, against the assessee's company IBC proceeding has been initiated. Copy of this order be sent to the Chairman-CBIC by speed post.

(Pronounced in the open court on 20.10.2022 )

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**

Mehul