

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

IN THE MATTER OF:

TA (AT) (Compt.) No. 22 of 2017 and I.A No. 11/2017
Old Appeal No. 61/2016 I.A.No. 27/2017

Ambuja Cements Limited Appellant

Versus

Competition Commission of India & Ors. Respondents

TA (AT) (Compt.) No. 26 of 2017
Old Appeal No. 65/2016

Ambuja Cements Limited Appellant

Versus

Competition Commission of India & Ors. Respondents

TA (AT) (Compt.) No. 8 of 2017
Old Appeal No. 46/2016

ACC Limited Appellant

Versus

Competition Commission of India & Ors. Respondents

TA (AT) (Compt.) No. 09 of 2017
Old Appeal No. 47/2016

ACC Limited Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 11 of 2017 and I.A No. 10/2017
Old Appeal No. 49/2016 and I.A.No. 171/2017

Jai Prakash Associates Ltd.

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 12 of 2017
Old Appeal No. 50/2016

Jai Prakash Associates Ltd.

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 13 of 2017
Old Appeal No. 51/2016

Cement Manufactures Association (CMA)

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 14 of 2017
Old Appeal No. 52/2016

Century Textiles & Industries Ltd.

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 15 of 2017
Old Appeal No. 53/2016

Century Textiles & Industries Ltd.

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 16 of 2017
Old Appeal No. 54/2016

The Ramco Cements Limited

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 17 of 2017
Old Appeal No. 55/2016

J.K. Cement Limited

...Appellant

Versus

Competition Commission of India & Anr.

...Respondents

TA (AT) (Compt.) No. 18 of 2017
Old Appeal No. 57/2016

The India Cements Limited

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 19 of 2017
Old Appeal No. 58/2016

The India Cements Limited

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 20 of 2017
Old Appeal No. 59/2016

Ultra Tech Cement Limited

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 21 of 2017
Old Appeal No. 60/2016

Ultra Tech Cement Limited

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 23 of 2017
Old Appeal No. 62/2016

NUVOCO Vistas Corporation Limited

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 24 of 2017
Old Appeal No. 63/2016

NUVOCO Vistas Corporation Limited

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 25 of 2017
Old Appeal No. 64/2016

The Ramco Cements Limited

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 27 of 2017
Old Appeal No. 66/2016

Cement Manufacturers' Association (CMA)

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 28 of 2017 and I.A No. 12 & 13 of 2017
Old Appeal No. 68/2016 I.A.No. 38/2017

Binani Cement Limited

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 29 of 2017
Old Appeal No. 69/2016

Binani Cement Limited

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

TA (AT) (Compt.) No. 30 of 2017

Old Appeal No. 72/2016

J.K. Cement Limited

.... Appellant

Versus

Competition Commission of India & Ors.

.... Respondents

Present: For Appellants: -

Shri C.A. Sundaram and Shri Ramji Srinivasan, Senior Advocates assisted by Ms. Nisha Kaur Uberoi, Ms. Soumya Hariharan, Gautam Chawla, Ms. Atreyee Sarkar, Ms. Ankita Gulati, Ms. Harshita Parwar, Ms. Rohini Musa and Shri Apoorv Tripathi, Advocates in TA(AT)(Compt.) Nos. 22 and 26 of 2017

Shri Ramji Srinivasan, Senior Advocate assisted by Shri Harman Singh Sandhu, Shri Tushar Bhardwaj, Ms. Nitika Dwivedi and Shri Sahil Yadav, Advocates in TA(AT)(Compt.) Nos. 08 and 09 of 2017

Shri G.R. Bhatia, Ms. Nidhi Singh Prakash, Ms. Modhulika Bose and Shri Chandramauli Dwivedi, Advocates in TA(AT)(Compt.) Nos. 11 and 12 of 2017

Shri Jeevan Prakash, Advocate in TA (AT) (Compt.) Nos. 13/2017 and 27/2017

Shri Pramod B. Agarwala and Shri Aayush Agarwala, Advocates in TA(AT)(Compt.) Nos. 14 and 15 of 2017

Shri Mohan Parasaran, Senior Advocate assisted by Shri T. Srinivasa Murthy, Ms. Shruti Iyer and Ms. Aditi Dani, Advocates in TA (AT) (Compt.) Nos. 16 and 25 of 2017

Shri C.S. Vaidyanathan, Senior Advocate assisted by Shri Aditya Verma, Advocate in TA(AT)(Compt.) Nos. 18 and 19 of 2017

Shri Sameer Parekh, Ms. Sonali Basu Parekh, Shri Lalit Chauhan, Shri Aditya Sharma, Ms. S. Lakshmi, Shri Akash Jindal and Ms. Tanya Chaudhary, Advocates in TA (AT) (Compt.) Nos. 20 and 21 of 2017

Ms. Nisha Kaur Uberoi, Shri Dinoo Muthappa, Ms. Nandita Sahai and Ms. Shravani Shekhar, Advocates in TA(AT)(Compt.) Nos. 23 and 24 of 2017

Ms. Sagarika Rawat, Advocate in TA(AT)(Compt.) Nos. 28 and 29 of 2017

For Respondents:

Shri Salman Khurshid, Senior Advocate assisted by Shri Vaibhav Gaggar, Ms. Neha Misra, Shri Rishabh Juneja, Smriti Jain, Shri Zafar Khurshid, Ms. Gitanjali Kapur, Ms. Sakshi Kotiyal and Azar Rehman, Advocates for CCI

Shri Samar Bansal and Ms. Shreya Singh, Advocates for CCI in T.A. (AT)(Compt.) Nos. 09/2017, 12/2017, 15/2017, 19/2017, 21/2017, 22/2017, 24/2017, 25/2017, 27/2017, 29/2017 and 30/2017

Shri Vasanth Rajasekaran, Shri Saurabh Babulkar, Advocates for Builders Association of India

ORDER

03.08.2017 In these appeals including the appeals preferred by *Binani Cement Limited [TA (AT) (Compt.) Nos. 28 and 29 of 2017 (Old Appeal Nos. 68/2016 and 69 of 2016)]* the Appellate Tribunal on the request of the learned counsel for the appellants, passed the following interim order on 24th May, 2017:

“Learned counsel for the Appellant Dr. Manish Singhvi requests time of six months for depositing 10% of the penalty amount as directed by this Tribunal on 28.11.2016.

We have perused the Interim Application Nos. 38/2017 and 42/2017 and reply filed by the Commission. The Act stipulates a period of six months, within which in the normal course appeals before this Tribunal should be decided. Therefore, what learned counsel has asked for is, in effect waiver

of the order of this Tribunal dated 28.11.2016. We cannot agree to such a proposition. We are further conscious of the fact that through this process of interim applications, the appellant has already taken a time of almost six months and yet not complied with the Tribunal's order of 28.11.2016. Learned counsel for the Commission Shri Gaggar objects to any further time being granted to the appellants.

As a matter of last opportunity, we allow a period up till 12th July, 2017, when the bunch of similar cases are fixed for final arguments, to the appellant to deposit 10% of the penalty in accordance with the order dated 28.11.2016, failing which the appeal shall be considered as dismissed without referring back to the Tribunal. If the Appellant deposits 10% of the penalty as directed, the case be listed for arguments with other similar cases.”

In spite of the aforesaid order, the appellant – Binani Cement Ltd., in both the appeals, have not deposited the amount. Ms. Sagarika Rawat, Advocate appearing on behalf of Binani Cement Ltd. referred to an order passed by the learned Adjudicating Authority (National Company law Tribunal, Kolkata Bench, Kolkata) on 25th July, 2017 in C.P. (IB) No. 359/KB/2017 where an Interim Resolution Professional (IRP) has been appointed and Insolvency Resolution has been started against appellant – Binani Cement Limited.

Now, in view of the aforesaid development as the amount can be recovered only through the Resolution Process, if the appeals fail, we allow the respondent – Competition Commission of India to lodge its claim before the IRP, who in his turn will consider the claim along with other creditors.

Heard Mr. C.A. Sundaram, learned Senior Counsel appearing on behalf of some of the appellants. Hearing remained inconclusive.

Post the matter for further hearing on 4th August, 2017 at 2.00 P.M.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member(Technical)