
(2025) 01 NCLAT CK 1670

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Appeal (AT) (Insolvency) No. 844 of 2024

Assistant Commissioner CGST & Central Excise, Kadi Division APPELLANT

Vs

Pradeep Kabra, RP of Cengres Tiles Ltd. RESPONDENT

Date of Decision : 23-01-2025

Acts Referred:

Insolvency and Bankruptcy Code 2016 — Section 33, 53
Companies Act 2013 — Section 529A
Gujarat Value Added Tax Act, 2003 — Section 48
Central Excise Act, 1944 — Section 11E

Citation : (2025) 01 NCLAT CK 1670

Hon'ble Judges : Ashok Bhushan, Chairperson; Barun Mitra, Member (T); Arun Baroka, Member (T)

Bench : Full Bench

Advocate : Anushree Narain, Anks Kumar, Ravi Raghunath, Aditya Sharan

Final Decision : Dismissed

Judgement

23.01.2025: Heard Learned Counsel for the Appellant and Counsel appearing for the Respondent.

2. This Appeal has been filed against the order dated 13.09.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench Court-1 by which order the Resolution Plan of the Corporate Debtor-M/s. Cengres Tiles Limited has been approved by the Adjudicating Authority. Appellant i.e. Assistant Commissioner, CGST and Central Excise, Kadi Division has come up in this Appeal challenging the said order.

3. The submission which has been advanced by the Counsel for the Appellant is that under the Resolution Plan as has been approved by the Adjudicating Authority, the Appellant has been provided only an amount of Rs.1,00,000/- as against the admitted claim of the Appellant to the extent of Rs.11,76,90,942/-. It is submitted that the secured operational creditors have

been paid the higher amount in the Resolution Plan. It is submitted that the amount which has been earmarked to the Appellant is not in accordance with IBC and violates Section 30(2). Counsel for the Appellant has placed reliance on the judgment of the Hon'ble Supreme Court in "State Tax Officer vs. Rainbow Papers Limited- (2023) 9 SCC 545" as well as the judgment of the Hon'ble Supreme Court in "Sanjay Kumar Agarwal vs. State Tax Officer-AIR 2023 SC 5636". It is submitted that the Appellant ought to have been treated as secured operational creditor and ought to have been given the same treatment as was given to other secured creditors.

4. Shri Ravi Raghunath, Learned Counsel appearing for the Respondent submits that the claim of the Appellant was treated as operational debt and has been treated in the plan as operational debt and has been paid in accordance with the said treatment. It is submitted that the statutory provisions regulating the dues of the Central Excise does not recognize the claim of such dues as secured dues. It is submitted that the judgment of the Hon'ble Supreme Court in Rainbow Papers Limited (supra) have no application in the facts of the present case and this Tribunal has already dealt with the claim of the Central Excise and held that the said claim cannot be treated as secured claim.

5. We have considered the submissions of the parties and perused the record.

6. The judgment which has been placed by the Appellant is the judgment of the Hon'ble Supreme Court in Rainbow Papers Limited (supra) where the Hon'ble Supreme Court has occasion to consider Section 48 of the Gujarat Value Added Tax Act, 2003 and interpreting the said provision, it was held that the dues of the State Tax Officer were secured debt. Section 48 of the Gujarat Value Added Tax Act, 2003 provides as follows:-

"48. Tax to be first charge on property.-

Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such dealer, or as the case may be, such person."

7. Section 11E of the Central Excise Act, 1944 which provision provides as follows:-

"11E. Liability under Act to be first charge.-

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made thereunder shall, save as otherwise provided in Section 529A of the Companies Act, 1956 (1 of 1956), the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) [the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002) and the Insolvency and Bankruptcy Code, 2016], be the first charge on the property of the assessee

or the person, as the case may be.]”

8. Section 82 of the Central Goods and Services Tax Act, 2017 lays down following:-

“82. Tax to be first charge on property.-

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.”

9. The provisions of Section 11E of the Central Excise Act, 1944 and Section 82 of the Central Goods and Services Tax Act, 2017 clearly carves on exception with regard to provisions of Insolvency and Bankruptcy Code, 2016. In Central Excise Act, 1944, provision of Section 529A of the Companies Act, 1956 was referred.

10. The above provisions came for consideration before this Tribunal in “The Assistant Commissioner of Central Tax, CGST Division vs. Mr. Sreenivasa Rao Ravinuthala- CA(AT)(CH)(Ins.) No. 346 of 2021” where in paragraph 8, following was laid down:-

“8. From the usage of the words 'save as provided in in Section 11E is in the nature of an exception intended to exclude the class of cases, mentioned in Companies Act, 1956, 'The Recovery of Debts due to Banks and Financial Institutions Act, 1996'. 'SARFAESI Act, 2002' and 'I&B Code, 2016'. The 'Secured Interest' as defined under the Code excludes charges created by Operation of law. Section 11E of the Central Excise Act, 1944 is distinct from the provisions of 'Gujrat VAT Act, 2003' and therefore the decision in the matter of 'Sate Tax Officer v. Rainbow', (Supra) cannot be made applicable to the facts of this case.”

11. Counsel for the Respondent also pointed out that Civil Appeal No.7882 of 2023 has been filed against the judgment of the Chennai Bench where the Hon’ble Supreme Court passed following order on 11.12.2023:-

“Issue notice returnable in March 2024.

Notice will be served by all modes, including dasti. We clarify that the dues payable to the appellant will be treated as Government Dues. The issue in the present appeal relates to quantifying the said dues.”

12. Another judgment of this Tribunal relied by Counsel for the Respondent is “Department of State Tax, Through the Dy. Commissioner of State Tax vs. Zicom Saas Pvt. Ltd. & Anr- CA (AT) (Ins.) No.246 of 2022” also fully supports the submissions of the Respondent.

13. We, thus, do not find any error treating the claim of the Appellant as operational debt and operational creditor is entitled for payment as per Section 30(2)(b) and present is not a case where it is contended that the amount which

is offered to the Appellant is less than the liquidation value to which the Appellant would have been entitled in event of liquidation under Section 53(1) according to waterfall mechanism. We, thus, do not find any error in the order of the Adjudicating Authority approving the Resolution Plan.

14. The Appeal is dismissed.