

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1451 of 2024

(Arising out of order dated 01.02.2024 passed by the National Company Law Tribunal, Ahmedabad Bench at Ahmedabad in I.A. No. 1467(AHM) of 2023 in CP (IB) No. 184 (AHM) of 2022)

In the matter of:

State Tax Officer -6
Unit -92, Rajkot

Having its address at:
Jilla Seva Sadan -2,
Block No. 1, 4th Floor,
Rajkot- 360001

...Appellant

Vs.

1. Besto Tradelink Limited

Having its registered office address at:
9th Floor, BD Patel House, Naranpura,
Ahmedabad, Gujarat, India, 380014

...Respondent No.1/SRA

2. Rishabh Chand Lodha
(Insolvency Professional)

Having its address at:
E-5, Shraman Basant Vihar,
Gandhi Nagar, Bhilwara,
Rajasthan, 311001

...Respondent No. 2/ RP

3. Saurashtra Specialities Private Limited

Having address at:
Survey No. 196, National Highway,
8-B, Navagram, Anandpur,
Rajkot, Gujarat- 360003

**...Respondent No. 3/ Corporate
Debtor**

Present:

For Appellant: Ms. Ritu Guru, Mr. Bhargav Dangar, Advocate

For Respondents: Ms. Shankari Mishra, Advocate for R-1.

Mr. Abhishek Naik, Ms. Gulafsha Kureshi, Mr. Bhavesh Bothra, Mr. Rishabh Chand Lodha, Advocates for R-2.

J U D G M E N T

(30th June, 2026)

INDEVAR PANDEY, MEMBER (T)

The present appeal has been filed by **State Tax Officer-6, Rajkot/ Appellant**, who is aggrieved by the order dated 01.02.2024 passed by the Ld. National Company Law Tribunal, Ahmedabad Bench (Adjudicating Authority), in I.A. No. 1467(AHM) of 2023, in CP(IB) 184 (AHM) of 2022, in the Corporate Insolvency Resolution Process (CIRP) proceedings of **Saurashtra Specialities Private Limited/Corporate Debtor (CD)**. The Corporate Debtor is the **Respondent No.3** herein. Ld. Adjudicating Authority vide the impugned order allowed the application of the **Resolution Professional (RP)-Respondent No.2** herein, for approval of the Resolution plan of CD submitted by **Respondent No.1-Besto Tradelink Limited (Successful Resolution Applicant)**. The Appellant is aggrieved by treatment of its claim of outstanding GST dues from Corporate Debtor of Rs.83,05,820/-, which were raised by the Appellant upon corporate debtor for previous Assessment Years. The Appellant has been treated as Operational Creditor in the Resolution Plan instead of Secured Operational Creditor.

BRIEF FACTS OF THE CASE

The brief facts relevant to deciding the present appeal are as given below: -

- i) The present Appeal has been preferred by the State Tax Officer, Unit-92, Rajkot, assailing the order dated 01.02.2024 passed by the Adjudicating Authority in IA No. 1467 of 2023 filed by the RP in CP (IB) No. 184 of 2022, whereby the Resolution Plan of Corporate Debtor submitted by SRA & Respondent No.1 (Besto Tradelink Limited) was approved by the Ld. Adjudicating Authority.
- ii) The Corporate Debtor was admitted into Corporate Insolvency Resolution Process ("CIRP") vide order dated 31.10.2022 passed on an application under Section 9 of the **Insolvency and Bankruptcy Code, 2016** (herein after referred as "**Code**") filed by an Operational Creditor, namely Aries Paper Company. Consequent upon commencement of CIRP, Mr. Ashish Shah was appointed as Interim Resolution Professional ("IRP"), who made public announcements and invited claims from stakeholders.
- iii) Appellant initially filed their claim on 12.11.2022, thereafter it revised its claim on 21.11.2022 furnishing the details of the alleged security interest / charge on the property of the Corporate Debtor. The IRP vide email dated 24.11.2022 gave a detailed explanation to the Appellant stating his reason for not considering the claim of the Appellant as the "Secured Creditor". The claim of the Appellant was however admitted for an amount of Rs.82,98,381/- in the category of "Operational Unsecured Creditor".

- iv) Subsequently, **Rishabh Chand Lodha/Respondent No.2** was appointed as the **Resolution Professional** of the Corporate Debtor. The Respondent No.2 after receiving repeated representations from the Appellant requesting its classification as a secured creditor, reiterated the erstwhile IRP stand, vide Letter dated 15.04.2023 that there is a clear legal distinction between the CGST Act and GVAT Act. Furthermore, he informed the Appellant that the judgment of the Hon'ble Supreme Court in “**State Tax Officer v. Rainbow Papers Ltd., (Civil Appeal No.1661 of 2020)**” was rendered in the context of Gujarat VAT Act, and not w.r.t the CGST Act. Accordingly, it was reiterated that the claim of the Appellant would not be considered as a secured creditor, and the ratio of *Rainbow Papers (supra)* cannot be mechanically applied to GST claims.
- v) The Adjudicating Authority, vide the impugned order dated 01.02.2024 approved the Resolution Plan and declared it binding on the Corporate Debtor and all stakeholders. Aggrieved by the approval of the Resolution Plan and the rejection of the tax demands claimed by the State Tax Department, the Appellant has preferred the present Appeal before this Appellate Tribunal.

Submissions of the Appellant

2. Learned Counsel for the Appellant submits that the Resolution Professional and the Adjudicating Authority failed to recognize the Appellant as a Secured Creditor despite the existence of a statutory first charge over the assets of the Corporate Debtor. It is contended that Section 82 of the

CGST Act creates a first charge upon the property of a taxable person in respect of outstanding tax dues, which constitutes a "security interest" within the meaning of Sections 3(30) and 3(31) of the Code. Since the definition of "security interest" includes any right, title, interest, claim, charge or encumbrance created by operation of law, the holder of such statutory charge necessarily acquires the status of a Secured Creditor.

3. Learned Counsel further submits that the Resolution Professional committed a serious error in treating the Appellant merely as an Operational Creditor while overlooking the statutory charge existing in favour of the State Tax Department. It is further submitted that a first charge had already been created over the properties and bank accounts of the Corporate Debtor on 25.07.2022 and 14.10.2022, prior to commencement of CIRP and imposition of moratorium under Section 14 of the Code. Consequently, the security interest had crystallized before commencement of insolvency proceedings and could not have been ignored while collating and admitting claims.

4. Learned Counsel contends that undue reliance has been placed upon the expression "save as otherwise provided in the Insolvency and Bankruptcy Code, 2016" occurring in Section 82 of the CGST Act. According to the Appellant, the saving clause does not extinguish or nullify the statutory charge, and neither the Resolution Professional nor the Adjudicating Authority has identified any specific provision of the Code which expressly overrides or invalidates the charge. In the absence of any direct inconsistency between the two enactments, the statutory charge continues to subsist and must be given full effect. The interpretation adopted by the Resolution

Professional renders Section 82 otiose and defeats the legislative intent underlying the provision.

5. Learned Counsel next submits that the approved Resolution Plan is contrary to Sections 30(2) and 31 of the Code. Under Section 30(2)(b), the Resolution Professional is required to ensure that the Resolution Plan provides for treatment of creditors in accordance with the statutory framework. Once the statutory charge under Section 82 is recognized, the Appellant falls within the category of Secured Creditors and is entitled to treatment consistent with the priority contemplated under Section 53 of the Code.

6. Appellant submitted that the Resolution Plan completely ignores the secured nature of the Appellant's claim and fails to provide any meaningful distribution towards the statutory dues payable to the State Tax Department. The Committee of Creditors cannot exercise its commercial wisdom in a manner that defeats mandatory statutory provisions, and commercial wisdom operates only within the framework of the Code.

7. Learned Counsel further submits that the Hon'ble Supreme Court has held that where a statutory first charge exists in favour of a Government Authority, such authority is entitled to be treated as a Secured Creditor in insolvency proceedings. Reliance is placed upon the judgment in *State Tax Officer v. Rainbow Papers Ltd.*, Civil Appeal No.1661 of 2020. According to the Appellant, the principle laid down therein is directly applicable since Section 82 of the CGST Act creates a statutory first charge in favour of the Government. The Adjudicating Authority approved the Resolution Plan

without properly appreciating the ratio of Rainbow Papers and thereby committed a manifest error of law.

8. Apart from the issue of classification of the claim, Learned Counsel also assails the action of the Resolution Professional in rejecting the updated claim submitted by the Appellant. During the moratorium period, scrutiny proceedings resulted in determination of additional tax liability of the Corporate Debtor, whereupon the Appellant requested the Resolution Professional to take the updated liability into account.

9. Learned Counsel submits that the Resolution Professional wrongly refused to admit the updated claim on the premise that it arose during the moratorium period. Assessment, adjudication, scrutiny or determination of tax liability by a statutory authority does not amount to recovery proceedings and therefore does not violate the moratorium under Section 14 of the Code. Since no coercive recovery action was initiated and the tax authorities merely quantified the liability, there was no legal impediment to considering the updated claim. The rejection of the revised claim has caused substantial prejudice to the Appellant and further vitiated the Resolution Plan.

10. In conclusion, Learned Counsel for the Appellant submits that the Appellant is a Secured Creditor by virtue of the statutory first charge created under Section 82 of the CGST Act; the Resolution Professional wrongly classified the Appellant as an unsecured Operational Creditor; the Resolution Plan violates Sections 30(2) and 31 of the Code by failing to recognize and adequately provide for the Appellant's secured claim; the judgment in Rainbow Papers squarely covers the controversy in favour of the Appellant;

the rejection of the updated claim during CIRP is legally unsustainable; and the Impugned Order approving the Resolution Plan is liable to be set aside. It is accordingly prayed that the Impugned Order be set aside, the Appellant be declared a Secured Creditor under the Code, and appropriate directions be issued for modification of the Resolution Plan and distribution mechanism so as to duly recognize and satisfy the Appellant's statutory dues.

Submission of Respondent No. 1/SRA

11. Ld. Counsel for SRA submits that the Appellant was duly informed by the erstwhile Interim Resolution Professional vide e-mail dated 24.11.2022 that its claim could not be treated as that of a “Secured Creditor”. The reasons for such determination were specifically communicated. Despite being aware of the said determination, the Appellant did not avail the statutory remedy available before the Adjudicating Authority and chose not to challenge the categorization of its claim at the relevant stage.

12. Learned Counsel further submits that instead of pursuing the appropriate legal remedy, the Appellant merely continued addressing communications and representations to the Resolution Professional and other stakeholders seeking recognition of its claim as that of a secured creditor on the basis of the judgment of the Hon’ble Supreme Court in *State Tax Officer vs. Rainbow Papers Ltd., Civil Appeal No.1661 of 2020*. According to Respondent No.1, the Resolution Professional had consistently informed the Appellant that the facts of the present case as well as the applicable statutory provisions were distinguishable and therefore the said decision was inapplicable.

13. It is further contended by the SRA that the Appellant never raised any objection to the Resolution Plan submitted by Respondent No.1 despite being fully aware that its claim had been treated as that of an unsecured operational creditor. The Appellant also failed to object when the Resolution Plan was under consideration before the Adjudicating Authority for approval.

14. Learned Counsel submits that the Resolution Plan has been fully implemented. Payments envisaged under the approved Resolution Plan have already been made to the stakeholders and the resolution process has attained finality. It is argued that the Appellant's failure to challenge its categorization at the appropriate stage has resulted in an irreversible situation and therefore no equitable relief can now be granted.

15. Respondent No.1 further submits that the Resolution Professionals correctly appreciated the legal position while examining the nature of the Appellant's claim. It is argued that Section 82 of the Central Goods and Services Tax Act, 2017 cannot be equated with Section 48 of the Gujarat Value Added Tax Act, which was under consideration in *Rainbow Papers*. Particular emphasis has been laid upon the language employed in Section 82 of the CGST Act, namely, "save as otherwise provided in the Insolvency and Bankruptcy Code, 2016". According to the Respondent, the aforesaid provision itself manifests the legislative intent that, where insolvency proceedings are being conducted under the Insolvency and Bankruptcy Code, 2016, the provisions of the Code shall prevail notwithstanding any charge purportedly created under the CGST Act.

16. It is submitted by the SRA that in view of the express statutory exclusion contained in Section 82 of the CGST Act, the Appellant cannot claim the status of a secured creditor merely on account of tax dues. Therefore, the Appellant's reliance upon Section 82 of the CGST Act is stated to be misplaced and legally untenable.

17. Ld. Counsel for SRA placed reliance upon the judgment of this Appellate Tribunal in *Department of State Tax through the Deputy Commissioner of State Tax v. Pranav Constructions Systems Pvt. Ltd. & Anr.*, Company Appeal (AT) (Ins.) No.1945 of 2024, decided on 14.11.2024, and *Department of State Tax through the Deputy Commissioner of State Tax v. Zicom SaaS Pvt. Ltd. & Anr.*, Company Appeal (AT) (Ins.) No.246 of 2022, decided on 07.02.2023. In both the aforesaid decisions, similar claims of Government Departments seeking treatment as secured creditors on the basis of statutory charge provisions were rejected by this Tribunal.

18. Ld. counsel reiterated that the Adjudicating Authority has committed no error while approving the Resolution Plan. The Resolution Plan was examined in detail and found to be compliant with all requirements of the Insolvency and Bankruptcy Code, 2016, including Section 30(2) thereof. The Resolution Plan has been fully implemented and the Monitoring Committee has already been dissolved, consequently, no interference with the Impugned Order is warranted. He therefore prayed for dismissal of the appeal with costs.

Submissions of Respondent No. 2/RP

19. Ld. Counsel for RP submitted that the Appellant has sought to challenge the approved Resolution Plan by relying exclusively upon the judgment of the Hon'ble Supreme Court in *Rainbow Papers*. According to the Respondent, such reliance is entirely misplaced in view of the statutory framework governing GST dues and the subsequent judicial pronouncements clarifying the limited applicability of the said judgment.

20. Learned Counsel further submits that the ratio of *Rainbow Papers* cannot be mechanically applied to the present case. It is pointed out that the Hon'ble Supreme Court in *Rainbow Papers* was considering Section 48 of the Gujarat Value Added Tax Act, 2003, which creates a first charge over the property of the dealer without any qualification or subordination to the Insolvency and Bankruptcy Code, 2016. In contrast, Section 82 of the Central Goods and Services Tax Act, 2017 expressly provides that any first charge created thereunder shall operate "save as otherwise provided in the Insolvency and Bankruptcy Code, 2016". The aforesaid saving clause is of decisive significance. The legislature, while enacting the CGST Act subsequent to the enactment of the Insolvency and Bankruptcy Code, consciously subordinated the statutory charge under Section 82 to the overriding framework of the Code. Consequently, once insolvency proceedings commence under the IBC, the treatment of claims and distribution of proceeds are governed exclusively by the provisions of the Code.

21. RP submitted that the express legislative recognition accorded to the IBC in Section 82 of the CGST Act clearly demonstrates that the statutory charge contemplated under the GST regime cannot override the insolvency framework or alter the priority mechanism prescribed under the Code. Accordingly, the Appellant's claim could not be treated as that of a secured creditor merely by virtue of Section 82 of the CGST Act.

22. Learned Counsel further submits that the claim of the Appellant was accordingly admitted as an operational debt and classified as an unsecured operational claim. Such classification was first communicated by the erstwhile Interim Resolution Professional and was subsequently reaffirmed by Respondent No. 2 through letter dated 15.04.2023 after considering repeated representations made by the Appellant.

23. RP further placed reliance upon the judgment of the Hon'ble Supreme Court in ***“Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited [Civil Appeal No. 7976 of 2019]”***, wherein it was observed that the decision in *Rainbow Papers* must be confined to the facts of that case. The aforesaid observation itself demonstrates that the Appellant cannot seek automatic application of the ratio of *Rainbow Papers* to every statutory charge provision contained in different taxing enactments.

24. RP further relies upon the judgment of this Appellate Tribunal in ***“Department of State Tax v. Zicom SaaS Pvt. Ltd. & Anr., Company Appeal (AT) (Ins.) No. 246 of 2022”***, wherein this Tribunal distinguished *Rainbow Papers* and held that where the relevant taxing statute itself acknowledges the operation of a Central enactment creating priority, the

provisions of the Insolvency and Bankruptcy Code would prevail. It is submitted that this Tribunal specifically held that treatment of such statutory dues as operational debt did not violate Section 30(2)(b) of the Code. Reliance is also placed upon the subsequent decision of this Appellate Tribunal in “**Department of State Tax v. Pranav Constructions Systems Pvt. Ltd. & Anr., Company Appeal (AT) (Ins.) No. 1945 of 2024**”, wherein a similar claim by GST authorities seeking recognition as secured creditors was rejected. On the basis of the aforesaid statutory provisions and judicial precedents, the decision of the Resolution Professional to classify the Appellant as an unsecured operational creditor was legally correct and cannot be faulted.

25. Ld. Counsel submits that the conduct of the Appellant disentitles it from any discretionary relief. The Appellant had filed its claim during the Corporate Insolvency Resolution Process and had also furnished details of the alleged statutory charge. The erstwhile Interim Resolution Professional, by email dated 24.11.2022, expressly communicated the reasons for not treating the Appellant as a secured creditor and admitted the claim under the category of unsecured operational debt. RP submits that, despite having complete knowledge of the decision taken by the Resolution Professional, the Appellant never challenged the same before the Adjudicating Authority. Instead, the Appellant merely continued to address representations and correspondence seeking reconsideration of its claim.

26. Learned Counsel further submits that even after being informed about approval of the Resolution Plan, the Appellant did not seek any immediate

relief before the Adjudicating Authority. Instead, it directly preferred the present Appeal. Appellant thereby sought to bypass the statutory framework contemplated under the Code and the settled principle that grievances concerning actions of the Resolution Professional ought to be raised before the Adjudicating Authority in the first instance. The Appellant remained a silent spectator throughout the CIRP despite full knowledge of the treatment accorded to its claim. Such prolonged inaction, according to the Respondent, amounts to waiver, acquiescence and acceptance of the position adopted during the resolution process.

27. The RP submits that the Adjudicating Authority, after examining the Resolution Plan in detail, found the same to be feasible, viable and compliant with all requirements of the Insolvency and Bankruptcy Code, 2016 and the regulations framed thereunder, including Section 30(2) of the Code.

28. It is further submitted by the RP that the Resolution Plan has since been fully implemented. Payments contemplated under the approved plan have already been made and the Monitoring Committee constituted for implementation of the Resolution Plan has also been dissolved pursuant to orders of the Adjudicating Authority. Consequently, the resolution process has attained finality and any interference at this stage would seriously prejudice the sanctity and certainty of the insolvency framework.

29. Ld. Counsel further submits that the appeal is stated to be founded upon an erroneous interpretation of Section 82 of the CGST Act, contrary to binding precedents and further barred by the Appellant's own conduct,

acquiescence and delay. Accordingly, it is prayed that the Appeal be dismissed with costs.

Analysis and Findings

30. We have gone through the records of the case and heard the Ld. Counsel for the parties.

31. The only issue which arises for consideration in the present Appeal is whether Section 82 of the CGST Act confers the status of a Secured Creditor upon the Appellant which is a State Government Department.

32. The entire challenge of the Appellant rests upon the judgment of the Hon'ble Supreme Court in *Rainbow Papers (supra)*. The submission of the Appellant is that by virtue of Section 82 of the CGST Act, a statutory first charge stood created over the assets of the Corporate Debtor and consequently the Appellant ought to have been treated as a secured creditor in the CIRP. It is further contended that failure to accord such status renders the approved Resolution Plan violative of Section 30(2)(b) of the Insolvency and Bankruptcy Code, 2016.

33. Section 48 of the Gujarat Value Added Tax Act, 2003, which fell for consideration before the Hon'ble Supreme Court in *Rainbow Papers*, reads as follows:

"48. 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..."

34. State Tax Department of Gujarat under the GVAT Act, 2003, charges Value Added Tax (VAT) from the dealers registered with it for sale of goods by them. As prescribed in the Section 48 of the GVAT Act, 2003 the dues of VAT on account of tax, interest or penalty was to be the first charge upon the property of such dealer. It was held in *Rainbow Papers (supra)* that in case of distribution of assets of a Corporate Debtor in accordance with Section 53 of the Code, which is done on the basis of categorisation of claims as prescribed in Section 53, the State Tax Authority, Gujarat would be treated as secured creditor on the basis of Section 48 of GVAT Act, 2003. This decision led to consideration of claims of Gujarat Tax Department under Section 53(1)(b)(ii) of the Code in CIRP and Liquidation Proceedings. Prior to the *Rainbow (supra)* the dues of Gujarat Tax Department were lower in priority at Section 53(1)(e)(i) of Code, under which the dues of all Central & State Government Departments were considered. Thus, the judgment in *Rainbow (supra)* allowed treatment of Gujarat Tax Department as secured creditor in priority over the dues of Central and other State Governments under the waterfall mechanism provided in Section 53(1) of the Code.

35. The claim of the Appellant in the present case is on account of GST dues under CGST Act, 2017 from the Corporate Debtor. The foundation of the Appellant's argument is that Section 82 of the CGST Act is *pari materia* with Section 48 of the Gujarat Value Added Tax Act, 2003 which was considered by the Hon'ble Supreme Court in *Rainbow Papers*.

36. We now take a look at Section 82 of the CGST Act, 2017 which is extracted below:

"82. 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... shall be the first charge on the property..."

37. A plain reading of the aforesaid provisions demonstrates a material and substantive distinction between the two enactments. While Section 48 of the GVAT Act creates a first charge simpliciter, Section 82 of the CGST Act expressly incorporates the phrase **"save as otherwise provided in the Insolvency and Bankruptcy Code, 2016"**. The aforesaid expression cannot be ignored while interpreting the scope and effect of Section 82. It is a settled principle of statutory interpretation that every word employed by the legislature must be assigned meaning and effect, which the legislature intended. Courts cannot adopt an interpretation which renders any part of the statute redundant or otiose.

38. The Parliament, while enacting the CGST Act in the year 2017, was fully conscious of the existence and operation of the Insolvency and Bankruptcy Code, 2016. It consciously incorporated a saving clause making the statutory charge under Section 82 subject to the provisions of the Code. The legislative intent is therefore explicit and unambiguous. The first charge contemplated under Section 82 is not absolute. It operates subject to the provisions of the Insolvency and Bankruptcy Code. Consequently, once

insolvency proceedings commence under the Code, the treatment of claims, determination of priorities and distribution of proceeds are governed by the statutory scheme of the Code.

39. The Hon'ble Supreme Court in *Rainbow Papers* was concerned only with Section 48 of the Gujarat Value Added Tax Act, 2003, Section 82 of the CGST Act 2017 containing an express saving clause in favour of the Insolvency and Bankruptcy Code was not before the court. The statutory framework involved in *Rainbow Papers* was therefore materially different from the statutory framework governing the present Appeal.

40. We further notice that subsequent judicial pronouncements have clarified the limited applicability of the judgment in *Rainbow Papers*. In *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited*, Civil Appeal No.7976 of 2019, the Hon'ble Supreme Court observed that:

"The judgment in Rainbow Papers has to be confined to the facts of that case."

41. The claim of the Appellant to be treated as Secured Operational Creditor here is based on interpretation of Section 82 of the CGST Act, 2017 which clearly states that the charge on the property shall be considered as first charge but in case of treatment under IBC, 2016 the same would be considered as per provisions of the Code. This means that the dues of the Central or State Government would be treated in accordance with Section 53(1)(e)(i) in case of proceedings under the Code.

42. We are therefore of the considered opinion that Section 82 itself furnishes the answer to the controversy raised by the Appellant. The statutory charge contemplated therein cannot override the insolvency framework nor can it alter the priority mechanism prescribed under the Code. We are therefore of the considered view that the reliance placed by the Appellant upon *Rainbow Papers* is misplaced and is not applicable to the facts of the present case.

43. This Appellate Tribunal in “**Department of State Tax v. Zicom Saas Pvt. Ltd. & Anr., Company Appeal (AT) (Ins.) No.246 of 2022**”, while considering a similar contention founded upon *Rainbow Papers*, held in Paragraph 10 as follows:

“10. We thus are of the view that the Judgement of the Hon’ble Supreme Court in “Rainbow Paper Limited” relied by Learned Counsel for the Appellant is distinguishable. The Appellant having been treated as Operational Creditor allocation of amount in the Resolution Plan cannot be said to be in violation of Section 30 (2)(b). We thus are of the view that no ground has been made to interfere with the Impugned Order.”

44. In the case of Department of State Tax vs. Zicom (supra) the claim was filed by Maharashtra State Tax Department where a reliance was placed upon judgment in Rainbow (supra). The Appellants had relied upon Section 37 of Maharashtra Value Added Tax Act, 2002, however, Section 37 specifically uses the expression “*subject to any provision regarding creation of first charge in any Central Act.*” The provision itself contemplated that Section 37 was subject to any provision in Central Act. Accordingly, this Tribunal refused to

consider Maharashtra Tax Department as Secured Creditor and its treatment as “operational creditor” was held to be valid.

45. The ratio laid down in the aforesaid judgment squarely applies to the facts of the present case as Section 82 of the CGST Act, 2017 clearly states that "save as otherwise provided in the Insolvency and Bankruptcy Code, 2016" means IBC will prevail over CGST Act and the claim of Appellant has to be treated as under operational Debt as State Government dues.

46. We also take notice of the subsequent judgment of this Appellate Tribunal in “**Department of State Tax v. Pranav Constructions Systems Pvt. Ltd. & Anr., Company Appeal (AT) (Ins.) No.1945 of 2024**”, wherein a similar claim seeking recognition of GST dues as secured debt was rejected.

47. We have seen from the records that both IRP and RP had at different times informed the Appellant that they were to be treated as unsecured operational creditor and that the Rainbow Papers (supra) was not applicable to the facts of the case which related to GST Claims and not the VAT Claims which are covered by judgment in Rainbow Papers (supra).

48. The Appellant also did not raise any objection when the Resolution Plan was placed before the Committee of Creditors. It did not file any objection before the Adjudicating Authority, when approval of the Resolution Plan was sought. Even after approval of the Resolution Plan, the Appellant did not seek any immediate remedy before the Adjudicating Authority and instead chose to file the present Appeal. The conduct of the Appellant clearly demonstrates that it remained a silent spectator throughout the resolution process despite being fully aware of the treatment accorded to its claim.

49. Another issue raised by the Appellant is that during the moratorium period, scrutiny proceedings resulted in additional tax liability of the corporate debtor for which the Appellant requested the RP to update the liability and update the claim of the department. However, the RP rejected such updated claim.

50. We are of the view that in view of the moratorium operating during the CIRP proceedings no scrutiny orders could have been passed by the Appellant imposing further liability upon the Corporate Debtor. We find no infirmity in the decision of the RP rejecting such additional claims.

51. We further note that the resolution plan has been fully implemented. Payments to all creditors as per resolution plan have been made. The Monitoring Committee constituted for implementation of resolution plan has already been dissolved.

52. In view of the findings above, we do not find any infirmity in the impugned order. The Appeal is dismissed. Pending IAs, if any, are closed. No order as to costs.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

Place: New Delhi

Harleen