



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH**

**IA (IB) No. 211/CB/2023  
IN  
TP No. 17/CTB/2021  
CP (IB) No. 1696/MB/2017**

*[An Application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016]*

**In the matter of:**

**JOINT COMMISSIONER OF COMMERCIAL TAXES & GST**  
(Previously it was Deputy Commissioner of Commercial Taxes)  
C.T. & GST Circle,  
Near Rotary Public School,  
Angul, Odisha-759122.

.....Applicant

**Versus**

**NAVNEET KUMAR GUPTA**

Reg. Number: IBBI/IPA-001/IP-P00001/2016-2017/10009  
Email ID: navneet@minervaresolutions.com, LQ.MPCL@in.gt.com  
Address:  
At/PO: Unit No. 2, Block D1,  
Golf Link DDA, Sector 23B, Pocket 8,  
Dwarka, New Delhi,  
National Capital Territory of Delhi, 110077  
Liquidator of Monnet Power Company Limited

.....Respondent

**Order Pronounced on: 02.05.2025**

**Coram: DEEP CHANDRA JOSHI, MEMBER (JUDICIAL)  
BANWARI LAL MEENA, MEMBER (TECHNICAL)**

**Appearance:**

**For Applicant:** Anand Das, Advocate  
Seshadeba Das, Advocate

**For Respondent:** Saswat K. Acharya, Advocate

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**ORDER**

1. This is an Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) read with Rule 11 of the National Company Law Tribunal Rules, 2016 by the Joint Commissioner of Commercial Taxes & GST, (Previously it was Deputy Commissioner of Commercial Taxes) C.T. & GST Circle, Angul Odisha (“**Applicant**”) seeking a direction against the Liquidator of Monnet Power Company Limited (“**Respondent**”) to treat its claim as a ‘Secured Creditor’ and update the list of creditors accordingly and to direct the Respondent to release the claim amount of the Applicant as a Secured Creditor.

2. The brief facts of the case as stated in the Application are as follows:


(i) Monnet Power Company Limited, the Corporate Debtor, was carrying on its business activities within the state of Odisha and registered within the Applicant's jurisdiction under various taxing statutes. Pursuant to the order dated 23.10.2019 passed by the National Company Law Tribunal, Mumbai Bench, the liquidation process of the Corporate Debtor was initiated under the provisions of the Code, and the Respondent was appointed as the Liquidator of the Corporate Debtor.

(ii) The Respondent made a public announcement on 29.11.2019, and accordingly, the Applicant submitted its claim in Form-C with the Respondent for the claim amount of Rs. 80,10,13,103/-. As per the Applicant, such claims include unpaid tax dues arising out of various taxing statutes such as Orissa Value Added Tax Act, 2004, Orissa Entry Tax Act, 1999 & Central Sales Tax (Orissa) Rules, 1957.

(iii) The Respondent, upon receiving the claims filed by the Applicant, admitted the claim amount of Rs. 80,10,13,103/-, placed it under the head of “Operational Creditor (Government Dues)”. Thereafter, the Applicant vide letter dated 30.05.2023

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intimated the Respondent to give the status of the claim so submitted, as the claim of the Applicant was admitted in full by the Respondent. The Respondent vide email dated 01.06.2023 replied to the Applicant wherein the Respondent stated that pursuant to the auction of the Corporate Debtor, Jindal Steel and Power Limited has taken over the assets of the Corporate Debtor by sale and the liquidated amount shall be distributed amongst the stakeholders of the Corporate Debtor in accordance with the waterfall mechanism as provided under Section 53 of the Code.

(iv) The Applicant has submitted that Section 55 of the Orissa Value Added Tax Act, 2004, and Section 11 of the Orissa Entry Tax Act, 1999 have provisions for recovery of tax dues and creation of a charge as required under the Code to be treated as a Secured Creditor. Further, under Rule 22 of the Central Sales Tax (Orissa) Rules, 1957 the provisions of the Orissa Value Added Tax Act, 2004 and the rules made thereunder shall *mutatis mutandis* apply in respect of all procedural and other matters incidental to the carrying out of the purposes of the Act for which no provision is made in the aforesaid Rules. It is further submitted that a charge is said to be created as and when an assessment order is passed under the law.

(v) The Applicant has relied upon the following judgments: **(a) State Tax Officer vs. Rainbow Papers Ltd, (2023) 9 SCC 545;** **(b) Sanjay Kumar Agarwal vs. State Tax Officer & Anr. (2024) 2 SCC 362** and **(c) Shree Radhekrushna Ginning & Pressing Pvt. Ltd. Through Director Yash Pareshbhai Khachar vs. State of Gujarat, Gujarat High Court in Special Civil Application No. 5413 of 2022**, to submit that in the present case, the Corporate Debtor has failed to discharge its liabilities under the Orissa Value Added Tax Act, 2004 & Orissa Entry Tax Act, 1999. Accordingly, a statutory charge has been created by operation of

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law, and as such, the Applicant is to be treated as a Secured Creditor and its claims are to be distributed as it would have been to a Secured Creditor per Section 53 of the Code.

3. The Respondent has filed its reply wherein it has vehemently opposed the claim of the Applicant on the following grounds:

(i) Pursuant to the public announcement by the Liquidator, the Applicant had filed their claim in Form-C for an amount of Rs. 80,10,13,103/-. This amount included unpaid tax dues arising out of various tax statutes such as the Orissa Value Added Tax Act, 2004, Orissa Entry Tax, 1999, and Central Sales Tax (Orissa) Rules, 1957. The claim of the Applicant was admitted as it was considered as an Operational Debt, and the same was reflected in the List of Operational Creditors as Government Dues published by the Respondent.

(ii) Thereafter, the Respondent sold all the assets of the Corporate Debtor to Jindal Steel and Power Limited at the 9<sup>th</sup> e-auction. The amount realized from the sale was then distributed as per the provisions of Section 53 of the Code.

(iii) The Respondent submitted that the contention of the Applicant that it should be treated at par with Secured Creditor is baseless and illogical. This is because Section 53 of the Code stipulates the priority in which the amount shall be paid.

(iv) The Respondent further submitted that the Applicant's reliance on the Hon'ble Supreme Court judgment in **Rainbow Papers Ltd (supra)**, wherein the Hon'ble Supreme Court stated that the debts owed to a secured creditor, which would include the State under the Gujarat Value Added Tax Act, 2003 are to rank equally with other specified debts including debts on account of workmen's dues for a period of 24 months preceding the liquidation commencement date are not applicable to the

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present factual scenario. This is because, in **Rainbow Papers Ltd (supra)**, the Hon'ble Supreme Court of India considered the dues of the state in the context of the Resolution Plan and not the Liquidation stage.

(v) It is further submitted that the Hon'ble Supreme Court of India in **Principal Commissioner of Income Tax vs. Monnet Ispat and Energy Limited, 2018 SCC OnLine SC 3465**, clearly ruled that income tax dues being in the nature of the crown debts, do not take precedence over the Secured Creditors. Further, the Hon'ble Supreme Court of India in **Paschimanchal Vidyut Vitran Nigam Limited vs. Raman Ispat Private Limited & Ors., 2023 SCC Online SC 842**, has ruled that the careful design of Section 53 of the Code locates the amounts payable to Secured Creditors and workmen at second place after the costs and expenses of the liquidation proceedings. However, the dues payable to the Government are placed much below those of Secured Creditors and even unsecured and operational creditors.

(vi) The Respondent submitted that **Rainbow Papers (Supra)** was in the context of Resolution Plan and not Liquidation, because Section 53 has been specifically enacted for the distribution of amount during the Liquidation stage and hence, the contention of the Applicant to treat their dues at par with Secured Creditor does not sustain as it violates Section 53 of the Code and various judgment passed by the Hon'ble Supreme Court of India.

4. We have heard the learned counsel appearing for the Applicant and the Respondent and have perused the materials available on record. The issue involved in the present case is whether the Applicant can be treated as a 'Secured Creditor' as per the provisions of the Code.

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5. Section 3(30) and Section 3(31) of the Code define the term “Secured Creditor” and “Security Interest”, which are set out herein below:

*“3(30) “secured creditor” means a creditor in favour of whom security interest is created;*

*3(31) “security interest” means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:*

*Provided that security interest shall not include a performance guarantee;”*

6. Though the judgment rendered by the Hon’ble Supreme Court of India in **Rainbow Papers Ltd (supra)** was rendered in the context of approval of resolution plan and not in the context of Liquidation, however, it provides valuable insight for determining whether a particular creditor can be considered as a “Secured Creditor” or not. As held by the Hon’ble Supreme Court of India in **Rainbow Papers Ltd (supra)**, term “Secured Creditor” as defined under the Code is comprehensive and wide enough to cover all types of security interests namely, the right, title, interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction, which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person. It has further held that the definition of Secured Creditor under the Code does not exclude any Government or Government Authority.

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7. The next aspect that is to be looked into is whether the demand raised by the Applicant under the Orissa Value Added Tax Act, 2004, Orissa Entry Tax Act, 1999 & Central Sales Tax (Orissa) Rules, 1957 contains any provisions that provide for the creation of a charge on the property of a person in respect of any amount payable by that person on account of tax, interest, penalty, etc. The relevant provisions under the abovementioned statutes, which, as per the Applicant, provide for the creation of a charge, are reproduced below:

**“Section 55 of the Orissa Value Added Tax Act, 2004:**

**55. Tax to be first charge on property.** -Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, including interest or penalty or both, if any, payable by a dealer or any other person under this Act shall be a first charge on the property of the dealer or such person, as the case may be.

**Section 11 of the Orissa Entry Tax Act, 1999:**

**11. Payment and recovery of any tax.-** (1) The tax under this Act shall be paid in such manner, in such instalments, if any, and within such time, as may be prescribed.

(2) If default is made in making payment in accordance with subsection (1)—

(i) the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the property of the Dealer or any other person or persons liable to pay tax under this Act; and

(ii) the Dealer or any other person or persons liable to pay the tax under this Act shall pay a penalty equal to two and half per cent of such amount for each month subsequent to the first three months as aforesaid.

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*Explanation—For the purposes of clause (ii) the penalty payable for a part of a month shall be proportionately determined.*

*(3) Notwithstanding anything contained in sub-section (2), the Commissioner may subject to such conditions as may be prescribed remit the whole or any part of the penalty payable in respect of any period by any Dealer or person or class of persons.*

*(4) Any tax assessed, or any other amount due under this Act from a Dealer or any other person or person may without prejudice to any other mode of collection be recovered as an arrear of public demand or in accordance with the provisions contained in the schedule to the Sales Tax Act:*

*Provided that where a Dealer or any other person who has appealed or applied for revision of any order made under this Act and has complied with an order made by the appellate or the revising authority in regard to the payment of tax or other amount, no proceedings for recovery under this sub-section shall be made or continued until the disposal of such appeal or application for revision.*


**Rule 22 of the Central Sales Tax (Orissa) Rules, 1957:**

**22. Application of the [Orissa Value Added Tax, 2004], and the rules made thereunder to certain matters.** - *The provisions of the [Orissa Value Added Tax Act, 2004] and the rules made thereunder shall mutatis mutandis apply in respect of all procedural and other matters incidental to the carrying out of the purposes of the Act for which no provision is made in these rules or in the Central Sales Tax (Registration and Turnover) Rules, 1957.”*

8. It is pertinent to note that Section 55 of the Orissa Value Added Tax Act, 2004, is *pari materia* with Section 48 of the Gujarat Value Added Tax Act, 2003, which was the subject matter of discussion in the

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**Rainbow Papers Ltd (supra).** In that case, the Hon'ble Supreme Court held that a charge created under a statute would create a security interest in favour of the statutory authority, making such statutory authority a charge holder and thereby a Secured Creditor. It further held that Section 48 of the Gujarat Value Added Tax Act, 2003, is not inconsistent with Section 53 or any other provisions of the Code. The Hon'ble Supreme Court held that the debt arising out of or in connection with the Gujarat Value Added Tax Act, 2003 Act will be secured debt and will fall under section 53(1)(b)(ii) of the Code, which provides for priority of dues to secured creditors.


9. The Applicant has relied upon the judgment of the Hon'ble Supreme Court of India in **Sanjay Kumar Agarwal vs. State Tax Officer & Anr. (2024) 2 SCC 362**, wherein review petitions against **Rainbow Papers Ltd (supra)** were dismissed by the Hon'ble Supreme Court of India on 31 October 2023. Therefore, the dismissal of the review petitions in relation to the **Rainbow Papers Ltd (supra)** will mean that the decision of the **Rainbow Papers Ltd (supra)** will continue to be binding in such cases where the statutory provision creating first charge in favour of the relevant government or statutory authority is *pari materia* with the provision of Section 48 of the Gujarat Value Added Tax Act, 2003.

10. The next aspect which is to be considered is whether the provisions of the Orissa Value Added Tax Act, 2004, Orissa Entry Tax Act, 1999 & Central Sales Tax (Orissa) Rules, 1957 provide for an exception concerning the applicability of the Code, like an exception provided under Section 142A of the Customs Act, 1962 and Section 82 of the Maharashtra GST Act, 2017.

11. This aspect has to be looked into as the Learned National Company Law Appellate Tribunal, New Delhi, in **Department of State Tax v. Ashish Chhawchharia Resolution Professional For Jet Airways (India) Ltd. & Anr., Company Appeal (AT) (Insolvency) No.**

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**792 of 2021** placing reliance on **Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes and Customs, 2022 SCC Online SC 1101**, has held that provisions of Section 82 of the Maharashtra GST Act, 2017, contains an exception with regard to the Code and therefore, on the strength of dues under Maharashtra GST Act, 2017, no charge can be claimed on the assets of the Corporate Debtor. However, no such specific exclusion has been engrafted under the Orissa Value Added Tax Act, 2004, Orissa Entry Tax Act, 1999 & Central Sales Tax (Orissa) Rules, 1957 for the applicability of the provisions of the Code.


12. In the present case, as per the Form-C submitted by the Applicant, it is observed that the total claim of the Applicant, i.e., **Rs. 80,10,13,103/- (Rupees Eighty Crore Ten Lakhs Thirteen Thousand One Hundred Three Only)** against the Corporate Debtor arises out of 51 Assessment Orders under the Orissa Entry Act, 1999, and Orissa Value Added Tax Act, 2004 from the year 2010 to 2017. It is also noted that Section 11 of the Orissa Entry Act, 1999, provides for the creation of a charge in favour of the State Tax Department on the property of the defaulter for any outstanding amounts payable under the Orissa Entry Tax Act, 1999.

13. Therefore, in view of the statutory charge in terms of Section 55 of the Orissa Value Added Tax Act, 2004, Section 11 of the Orissa Entry Tax Act, 1999, and Rule 22 of the Central Sales Tax (Orissa) Rules, 1957 and applying the ratio laid down by the Hon'ble Supreme Court of India **Rainbow Papers Ltd (supra)**, the claim of the Applicant, squarely falls within the definition of "Security Interest" under Section 3(31) of the Code and the Applicant is to be treated as a "Secured Creditor" under Section 3(30) of the Code.

14. The Respondent, relying upon the **Paschimanchal Vidyut Vitran Nigam Limited (supra)**, has contended that the ratio laid down in **Rainbow Papers Ltd (supra)** would not be applicable in the present

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case, as the Hon'ble Supreme Court of India considered **Rainbow Papers Ltd (supra)** from the aspect of approval of the resolution plan whereas in the present case, the Corporate Debtor is at the stage of liquidation. We are unable to accede to this submission of the Respondent, as we are of the opinion that if a particular creditor falls under the definition of a "Secured Creditor", then such position shall remain the same irrespective of the fact that whether the Corporate Debtor is undergoing the CIRP or liquidation.

15. The Respondent has relied upon the ratio **Principal Commissioner of Income Tax vs. Monnet Ispat and Energy Limited, 2018 SCC OnLine SC 3465**, wherein it was held by the Hon'ble Supreme Court of India that income tax dues being in the nature of the crown debts, do not take precedence over the Secured Creditors. However, the ratio of this judgment is not applicable to the factual matrix of the present case because this judgment was rendered in the context of the Income Tax Act, 1961, which does not have a provision for the creation of a first charge.

16. In view of the above, we are inclined to allow the present Application and pass the following directions:

(i) The Liquidator is directed to treat, **Joint Commissioner of Commercial Taxes & GST**, Near Rotary Public School, Angul, Odisha-759122 as a 'Secured Creditor' of the Corporate Debtor.

(ii) Accordingly, the Liquidator shall update the list of creditors by incorporating **Joint Commissioner of Commercial Taxes & GST**, Near Rotary Public School, Angul, Odisha-759122 as a 'Secured Creditor' of the Corporate Debtor.

17. With the aforesaid directions, **IA (IB) No. 211/CB/2023** is **ALLOWED** and **DISPOSED OF**.

  
**BANWARI LAL MEENA**  
**MEMBER (TECHNICAL)**

  
**DEEP CHANDRA JOSHI**  
**MEMBER (JUDICIAL)**