

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.303-IA/435(AHM)2025
in
C.P.(IB)/123(AHM)2022

Order under Section 60(5)(c) of IBC r.w. Rule 11 NCLT

IN THE MATTER OF:

State Tax Officer

.....Applicant

V/s

Shri Vinod Tarachnad Agrawal IRP for M/s Jay Formulations
Limited & Ors

.....Respondents

Order delivered on: 05/05/2025

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sanjeev Kumar Sharma, Hon'ble Member(T)

ORDER
(Hybrid Mode)


The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

sd/-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-1, AHMEDABAD**

**IA/435 (AHM) 2025 in
CP (IB) No.123/NCLT/AHM/2022**

[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 ***M/s Jay Formulation Limited***

State Tax Officer

Through its Authorized Representative

Jhala Dharmistha

Office Adressat:

State Tax Officer 4,

Unit-11, Bahumali Bhavan 2/2" Floor,

Vastrapur, Ahmedabad 380052.

.....Applicant

VERSUS

CA Vinod T. Agrawal

(Resolution Professional of Jay Formulations Pvt. Ltd).

204, Wall Street-1, Near Gujarat College,

Ellisbridge, Ahmedabad-380006

Gujarat E-mail: ca.vinod@gmail.com

... Respondent No.1

Jay Formulations Pvt. Ltd.

(Corporate Debtor)



Jay Formulations Pvt, Limited
13, 1" Floor, Harikrishna Complex,
B/H. Dipalee Cinema, Ashram Road,
Ahmedabad- 380009.
1301 GIDC Kerala, Bavla- 382220. E-mail-
jay.formulations@yahoo.co.in

... Respondent No.2

Vishal Shah
(Successful Resolution Applicant)
Aquatic Remedies Limited
1208-1211, Cabin A, 12th Floor,
Universal Majestic, P. L. Lokhande Marg,
Chembur (W), Mumbai400 043.
E-mail- vishalhs@yahoo.com

... Respondent No.3

Order Pronounced on 05.05.2025

C O R A M:


MR. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
MR. SANJEEV KUMAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant : Ms. Ritu Guru, Advocate
For the Respondent/RP: Mr. Jaimin Dave, Advocate
For the SRA : Mr. Ravi Pahwa, Advocate

ORDER
[Per: Bench]

1. The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, and Insolvency



and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, read with Rule 11 of National Company Law Tribunal Rules, 2016, seeking the following reliefs: -


- A. Your Lordship may be pleased to allow the Captioned Application.*
- B. The Hon'ble Tribunal may be pleased to consider claim of the Applicant as "Secured Creditor" and direct the Resolution Professional to consider and accept the whole claim of the applicant amounting to INR - 2,00,15,482/- (Two Crore Fifteen Thousand Four Hundred Eighty Two Rupees Only) under the GVAT Act, 2003 and under the CST Act, 1956 as secured creditor under the Resolution Plan.*
- C. The Hon'ble Tribunal may be pleased to consider the present application of the Applicant and direct the Resolution professional to make the payment of the claim as it were to be made as per section 53(1)(b)(ii) of the Code accordingly.*
- D. Pass any further order(s) as the Hon'ble Tribunal may deem fit.*

2. FACTS OF THE CASE:

- i. The present application is filed by the applicant herein i.e. The State Tax Officer of the State Tax Department. The Respondent No. 1 is the Resolution Professional Mr. Vinod Tarachand Agrawal of the Respondent No. 2 Corporate Debtor. Respondent No. 2 is the Corporate Debtor, and Respondent No. 3 is the Successful Resolution Applicant named Aquatic Remedies Limited.




- ii. The present Respondent No. 2 Jay Formulation Limited (JFL) is a public company incorporated on 15.06.1988, a Non-Government Company registered under the Companies Act. Jay Formulation Limited (JFL) is a pharmaceutical Company with its manufacturing plant in Bavla, Gujarat.
- iii. The Corporate Debtor has failed to pay the tax dues for FY 2014-15 under the GVAT Act, 2003, and CST Act amounting to Rs. 1,82,47,705/-. The dues for the year 2017-18 under the GST Act, 2017, amounting to Rs. 81 Lakhs have also not been paid by the Corporate Debtor.
- iv. It would be pertinent to bring to be notice of this Bench that the assessment period of 2014-15 dues that accrued under the GVAT Act, 2003, and the department for the said pending dues had made bank attachment of the Corporate Debtor on 15.02.2021. Against the said order of assessment, the Corporate Debtor had filed an appeal before the Deputy Commissioner, Division 1, Ahmedabad, wherein a stay order was granted against the attachment on 04.06.2021 and the stay was granted up till 04.06.2022.
- v. After the stay period was vacated, the Department once again attached the corporate debtor's bank account. Therefore, the Corporate Debtor once again filed an appeal before Division 1, Deputy Commissioner,




Ahmedabad, wherein a stay was granted against the said recovery on 16.02.2023.

- vi. That the Financial Creditor, State Bank of India, had filed an application under section 7 of the Insolvency and Bankruptcy Code, 2016, for initiating CIRP against the Corporate Debtor. That on 26.09.2023, Mr. Vinod Tarachand Agrawal was appointed as the IRP. The RP published a public announcement on 28.09.2023 and invited claims from various creditors whose dues are pending against the Corporate Debtor.
- vii. The Applicant submits it that the Department once again had made bank attachment on 05.10.2023 of the Corporate Debtor for the same recovery dues for 2014-15. It is submitted that the Applicant had filed its claim vide Form B under the GVAT Act on 07.10.2023.
- viii. It is submitted against the said order dated 05.10.2023, Corporate Debtor filed an appeal before the Joint Commissioner, Ahmedabad, wherein a stay was granted on 27.12.2023, and the stay was continued to be in operation till 31.01.2024.
- ix. On 18.10.2023, the Resolution Professional (RP) admitted the Provisional claim of the Applicant department for Rs.1,81,78,117/- and has rejected the claim of Rs. 69,586/-.
- x. On 12.02.2024, once again, the Department has attached the bank account of the Corporate Debtor. The said matter is still pending for adjudication before




the authority. The present Applicant submitted its claim under the GST Act vide Form-B on 14.02.2024 before the RP for FY 2017-18, 2018-19, 2019-20 for Rs. 9,75,79,119/-. The present Applicant had filed its additional claim before the RP on 09.08.2024 under section 74 GST-DRC-07 for the financial year 2017-18, 2018-19, 2019-20 for Rs. 8,94,58,844.00/-.

- xi. That the Applicant had created a charge by way of operation of law on the corporate debtor as the Corporate Debtor has a liability to clear the debts of GVAT of the State Tax Department. The resolution Professional has wrongly considered the Applicant as an operational creditor in the said Resolution plan.
- xii. The list of stakeholders which the RP has produced also mentions that the Applicant is being considered as Operational Creditor. That the valuation report which the RP has produced before this Hon'ble Tribunal in the IA Plan from page no. 378 to 401 has not been properly verified and scrutinised by the RP. There are many discrepancies in the valuation report which the RP has submitted before this Hon'ble Tribunal.
- xiii. That in the said plan, the RP has taken into consideration the Applicant's claim to be paid out as admitted to only 5%, which is mentioned in a tabular chart form no. 15 at page 440 of the IA for plan. That the directors of the Corporate Debtors have deliberately not paid the dues of tax of the Applicant and the




present Financial Creditor has also not placed proper records of the loan amount which has been sanctioned by the Financial Creditor to the Corporate Debtor and that the purpose for not disclosing the said facts before this Hon'ble Tribunal is in itself creating doubts on the liability of the debts drawn upon the Corporate Debtors.

- xiv. That this Hon'ble Tribunal called upon the department on 02.08.2024 to file its reply in the IA/27(Plan)/2024. That it is, after this relevant point of time the Department has come to know that the claim of the Department has not been accepted as a Secured Creditor. It is only after verifying the records from the ROC the Applicant has come to know that the Directors of the Corporate Debtors are also the Director in different pharma company and that the corporate debtor with the wilful intention for not paying the Tax amount of the Applicant has rotated rather shifted the amount of transaction in a circular chain system among its other company.
- xv. Thus, the present application is filed before this adjudicating Authority to direct the Resolution Professional to consider the claim of the Applicant as Secured Creditor and make the payment according to the provisions stipulated under the Code.
- xvi. That due to lack of awareness of the knowledge of the IBC laws and court proceedings of NCLT, at the



relevant point of time, the concerned officer was not able to raise any objections before the RP or file any application before this Hon'ble Tribunal.

- xvii. That the resolution plan contravenes the provision of section 30 (2) (b) of the Code. The learned Resolution professional has erred by not conjointly considering section 48 of the Gujarat Value Added Tax Act, 2003 read with section 3(4), 3(30) and 3(31) of the IB Code 2016 which clearly brings the applicant authority within the purview of "Secured Creditors", having first charge over the property of the corporate debtor.
- xviii. That the learned Resolution Professional ought to have considered that section 238 of the IB Code 2016, cannot be interpreted to make any other laws redundant, the resolution professional has erred by giving overriding effect to the IB Code 2016 by considering section 238 of IB Code 2016 ignoring the provisions of section 30(2) (e) of the IB Code 2016 itself which clearly provides.
- xix. That the resolution plan does not contravene any of the provisions of law for the time being in force. This Tribunal may thus kindly appreciate that section 30(2)(e) of the IB Code 2016 itself makes it amply clear that it is the duty of the resolution professional to verify that the resolution plan submitted does not contravene any other provisions of law. Thus, a harmonious interpretation was required, considering




conjointly both Gujarat Value Added Tax Act 2003 read with the provisions of the IB Code 2016.

- xx. That the RP has erred in verifying the claim of the applicant and has therefore admitted provisional claim as operational creditor. The RP never asked the applicant for additional documents to prove and verify its claim, but has provisionally accepted the claim without even asking for clarification from the applicant. The applicant was not provided any chance to prove its claim for the above-mentioned amount. That the RP has denied considering the claim of the applicant in the capacity of "Secured Creditor". The non-consideration of claim in the capacity of Secured Creditor by the RP is completely de hors to the provision of Section 48 of the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as 'GVAT' Act) which recognises the doctrine of first charge on the property of a corporate debtor or from any other persons from whom any other amount of tax, interest or penalty is recoverable. While considering section 48 of the GVAT Act, 2003, read with Section 3(31) of the Insolvency and Bankruptcy Code, 2016, which pertains to "security interest," brings the tax dues of the appellant under the purview of "Secured Creditor".
- xxi. The respondent no.1 has failed to consider that, the applicant would fall under the definition of secured creditor under Section 3(30) of the IB Code.




- xxii. The applicant submits that while duly considering the above-mentioned two provisions, the Hon'ble Tribunal may also consider the provisions of Section 3(30) of the Code. The said definition pertains to "Secured Creditor", to mean a creditor in favour of whom security interest is created. That when the charge is created by way of operation of law it is deemed to be believed that security interest has been relinquished by the state.
- xxiii. That it is pertinent to mention that the RP knowing very well that he is holding all the books of accounts of the corporate debtor which would reflect the dues of the applicant, the RP has remained silent on the said issue before the COC members and has not even appraised it to the SRA before placing the resolution plan for approval. The RP has failed to perform his duties as contemplated in the Code under section 25. The RP has not brought the said facts before the Hon'ble Adjudicating Authority in the present IA (PLAN) for approval which is pending sub-judice.
- xxiv. It is submitted that the delay in filing the present Interlocutory application has occurred as the concerned officer of the department was not much aware of the procedure of the Tribunal, as well as having less knowledge about the IBC. Further, the RP has never called upon the department, asking any further details of documents to be furnished before




them. It is only when the Plan application is filed before this Tribunal and this Tribunal has called upon the department, that it has come to the notice of the applicant herein that the claim of the department is not been considered in the resolution plan.

- xxv. Therefore, the delay which has occurred in filing this present application which is inevitable and unavoidable delay. The applicant humbly prays to this Hon'ble Tribunal that the delay has been caused purely unintentionally, that the delay deserves to be condoned in the interest of justice, and that the applicant herein, has a good case on merits. Therefore, the delay may be condoned by this Tribunal.
- xxvi. The legal issue in question for being considered as "Secured Creditors" under the Code by virtue of operation of Law, the authority herein has preferred Special Civil Application no. 23256 of 2019 before the Hon'ble High Court of Gujarat, challenging the order dated 18.11.2019 passed by the National Company Law Tribunal Mumbai Bench, in Misc. Civil Application no. 2357 of 2019 in Company Petition (IB) no. 1514 (MB) of 2017, whereby, the National Company Law Tribunal, Mumbai Bench was pleased to direct lifting of attachment made by the tax department (Sales Tax Officer) in exercise of the power under the provisions of the Gujarat value Added Tax Act, 2003 which was



made by the authority for recovery of the tax dues so accrued.

- xxvii. By way of the said Special civil Application filed before Hon'ble High Court of Gujarat the authorities have placed reliance on the provisions of 3(4), 3(30) and 3(31) of the Code read with section 48 of the Gujarat Value Added Tax Act 2003 to substantiate that the tax department falls within the purview of "Secured Creditor". The Hon'ble High Court of Gujarat in Special Civil Application No. 23256 of 2019 has been pleased to consider the issue on merits and stayed the implementation and operation of the order passed by the Hon'ble National Company Law Tribunal Mumbai Bench dated 18.11.2019. The Hon'ble High Court of Gujarat on 23.09.2024 allowed the said petition of the state tax department and considered the department's claim as a secured creditor in view of the judgment of the Hon'ble Supreme Court in Rainbow Papers Ltd.
- xxviii. The Applicant submitted that the respondent No. 1 has grossly erred in not considering the applicant as a secured creditor of the corporate debtor as per the provisions of Section 9 (2) of CST Act, 1956 to be read with Section 48 of the GVAT Act, 2003 and to be read along with Section 3 (30) of the IB Code, 2016.
- xxix. The respondent No. 1 has failed to consider that any amount payable by the debtor on account of any tax, interest, or penalty which the corporate debtor is liable




to the applicant shall be a first charge on the property of the appellant.

- xxx. A conjoint reading of Section 9 (2) of CST Act, 1956 and Section 48 of the GVAT Act, 2003, would clearly indicate that Section 48 of the GVAT Act also applies to the tax levied under the CST Act. Therefore, as per above mentioned provisions, the applicant had already created first charge over the property. The respondent No. 1 has failed to consider that the applicant has submitted its claim Form duly filled with supporting documents before the respondent No.1 in the stipulated time period and they have failed to consider the applicant as a secured creditor as per the provisions of the Code.
- xxxii. The Respondent No.1 has not considered the applicant as a secured creditor is erroneous and contrary to the clear definition of the secured creditor under the provisions of IB Code. Because the respondent No. 1 has failed to take into consideration that as per section 53 (1)(b)(ii) of the IB code, the debts owed to a secured creditor, which would include the state under section 9(2) of the CST Act read with section 48 of the GVAT Act, would rank equally with other specified debts on account of Workman's due for a period of 24 months preceding the liquidation commencement date.
- xxxiii. The Hon'ble Supreme Court has clearly held that section 48 of the GVAT Act is not contrary or



inconsistent with section 53 of IB Code. Further, the RP has not taken into consideration the Rainbow papers (supra), the judgment of the Apex Court, while considering the claim of the appellant. Further, it is submitted that the Hon'ble Supreme Court in Review Petition (supra) has noted the observations of the Hon'ble coordinate bench in Paschim Anchal (supra). Even after referring to the same, the Hon'ble Supreme Court has rejected the Review Petition thereby upholding the judgment of Rainbow papers (supra) that state is a "Secured Creditor". That the Hon'ble Supreme Court's judgment would be binding on all the Courts by virtue of Article 141 of the Indian constitution. That in the Rainbow papers (supra) judgment, the Hon'ble Supreme Court did not bifurcate the claim amount under GVAT Act and CST act and treated the appellant therein i.e. the State Tax Officer as secured creditor for the entire claim amount. That from the above proviso as well as the Hon'ble apex court judgment, it could be seen that the CST act mandates the RP to set aside the amount as notified before disposing the assets of a company.

xxxiii. It is crystal clear from the above-mentioned judgement of the Hon'ble Supreme Court that the applicant should be treated as a "secured creditor" and the RP has erred in understanding the same. The applicant respectfully submits that its outstanding dues are




protected by the provision of Section 48 of the GVAT Act, 2003. That the RP has acted arbitrarily and negligently in admitting claim of the applicant as provisional.

xxxiv. That it is humbly submitted that the Applicant has a huge sum of claim, and unless and until this Hon'ble Tribunal allows the application, there would be a huge monetary loss of public money. That grave prejudice will be caused to the rights of the Applicant if the present application is not allowed, as it will close a meritorious matter and will cause great loss to the public exchequer. The amount of tax involved is the Revenue of the State Tax Department, which is utilised for the state development, which has to be truly considered by this Tribunal.


3. The Respondent / Resolution Professional has filed an Affidavit in Reply to the Application on 01.04.2025 vide inward diary No. D 2156 and made the following statements: -

i. Applicant, through the present reply affidavit, stated no part of the said application shall be deemed to have been admitted by the deponent unless it has been specifically admitted by the deponent hereinafter. It is submitted that the Applicant has already filed its objections before this Hon'ble Tribunal in I.A. No. 27 (Plan) of 2024. It is submitted




that the present application is on the same subject matter and amounts to an abuse of the process of law on account of the multiplicity of proceedings. Hence, the present application is liable to be rejected on this ground alone.

- ii. Respondent through its affidavit stated that the claim of the State Tax Department in so far as it pertains to GVAT is admitted as Secured Creditor and claim under GST is admitted as Unsecured Creditor in accordance with the judgement of Hon'ble Supreme Court in case of State Tax Officer V/s Rainbow Papers Limited, (2022) 9 SCC 401.
- iii. It is submitted that as per the Claim Form dated 07.10.2023, the deponent has admitted the claim of the department under the GVAT Act to the tune of Rs. 15,90,276/ as secured creditor and the claim of the department under the CST Act to the tune of Rs. 1,65,87,840/- as unsecured creditor.
- iv. Furthermore, claim under GST Act to the tune of Rs. 8,30,90,029/- as per claim form dated 9.10.2023 and 81,20,284/- as per claim form dated 16.02.2024 is admitted as an unsecured creditor. Under the circumstances, the entire grievance of the Applicant herein is misconceived and baseless.
- v. Furthermore, Claim Form dated 09.08.2024 for GST Dues produced along with Annexure A-8 of the Application was submitted before the deponent after




filing of an application for approval of the resolution plan being 1.A. No. 27 (Plan) of 2025 before this Hon'ble Tribunal on 25.06.2024. Hence, the amount claimed under the said Claim Form dated 09.08.2024 does not form part of the IM and/or Resolution Plan. However, the claimant already submitted the claim for GST dues as mentioned in para 6 above, which were admitted by the Respondent.

- vi. Thus, the State Tax Department is treated as a secured creditor in accordance with the judgment of the Hon'ble Supreme Court in the case of State Tax Officer VS. Rainbow Papers Limited, (2022) 9 SCC 401. Without prejudice to the above, it is submitted that the Sales Tax Department has submitted its claim as an operational creditor in Form B and the claim pertaining to GVAT is admitted as an operational creditor. Hence, the entire grievance raised by the State Tax Department with respect to non-consideration of their claim as secured creditor is totally misconceived.
- vii. It is further submitted that the Applicant is not required to be treated as a secured creditor on the basis of Section 9(2) of the CST Act, 1956, read with Section 48 of the GVAT Act, 2003. It is submitted that as per ratio laid down under State Tax Officer vs Rainbow Papers Limited, (2022) 9 SCC 401, the State Tax Department is required to be treated as secured



creditors for dues under the GVAT Act. It is submitted that claim forming part under CST Act, 1956, will not be treated as a secured creditor in terms of the judgment of the Hon'ble Supreme Court in the case of Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P.) Ltd., reported in [2023] 152 taxmann.com 421 (SC).

- viii. It is also denied that there are discrepancies in the valuation report produced in I.A. No. 27 (Plan) of 2024. It is further submitted that the valuation report annexed along with the application for approval of the plan is not challenged before any forum to date. otherwise, Applicant does not have any say in so far as valuation report is concerned.
- ix. It is further submitted that the Resolution Professional has no role to play in the loan obtained by the Corporate Debtor prior to the commencement of the Corporate Insolvency Resolution Professional. Furthermore, advancing loans is the prerogative of the banks and they are entitled to advance multiple credit facilities on the same set of secured assets. The Resolution Professional has admitted the claims of the Creditors, including banks, after due verification. Be that as it may, it is submitted that the Resolution Professional has examined the books of accounts and financial statement of the Corporate Debtor and made an appropriate application for reversal of fraudulent



and/or preferential transactions. It is submitted that these facts have nothing to do with the approval of resolution plan more particularly when the resolution plan is submitted by the third party who is not connected to suspended management.

- x. It is submitted that Section 164 of the Companies Act, 2013 deals with disqualification of directors. That as per the said provisions, a person is not disqualified from being a director in other company merely because one of the companies where he/ she was director is under insolvency. In any case, the Resolution Professional has no role to play in the directorship of suspended management in other companies more particularly at the stage of approval of the resolution plan. It is submitted that in the application for approval of resolution plan, directorship of suspended management of the Corporate Debtor in other companies is not germane at all.
- xi. Therefore, the present application is required to be rejected being totally misconceived and baseless.
4. The Applicant department has filed a Rejoinder to the Affidavit in Reply filed by the Resolution Professional on 21.04.2025 vide inward diary No. D 2569 and made the following statements: -



- i. The present Applicant submits that the Respondent herein has, for the very first time, admitted in its reply that they have considered the dues of the department under the GVAT Act as a Secured Creditor. It is further submitted that the Respondent has stated in para 5 of the reply that the dues under the GVAT Act is to the tune of Rs. 15,90,276/- and these dues are considered as Secured Creditor of the Applicant. But the dues under the CST Act which is to the tune of Rs. 1,65,87,840/- is considered as an unsecured Creditor. The respondent has misconceived the provisions of the CST Act, 1956, the same has to be read with GVAT Act, 2003. The applicant herein submits that as per the Judgement of the Hon'ble Supreme Court in Rainbow Papers Limited, the Hon'ble Apex Court ; the same has to be read with the of the department separately in the said judgement. The Hon'ble Apex Court has held that the dues of the Department are to be considered as Secured Creditor under section 48 of the GVAT Act but in the para 48 of the Hon'ble Supreme Court's judgement it is very specifically and categorically stated that any dues of the Central Government or the state Government of any statutory dues would not bind the state for their outstanding dues. Paragraph 48 is read as follows-

“48. If a resolution plan which does not meet the requirements of Sub Section (2) of Section 30 of the IBC, would be invalid and not binding on the




Central Government, any State Government, any statutory or other authority, any financial creditor, or other creditor to whom a debt in respect of dues arising under any law for the time being in force is owed. Such a resolution plan would not bind the State when there are outstanding statutory dues of a Corporate Debtor.”

- ii. The present Applicant submits here a tabular chart showing the bifurcation of the Corporate Debtor's dues under the GVAT Act and the CST Act. This chart makes the dues of the Corporate Debtor very clear.
- iii. The Respondent herein has wrongly considered the dues under the CST as unsecured Creditors and has relied upon the judgment of Paschimanchal Vidyut Vitran Nigam Limited Versus Raman Ispat Private Limited (2023) 152 taxman.com 421 (SC). The Hon'ble Apex Court in the Review Petition has already dealt with the issue raised in Paschimanchal Vidyut Vitran Nigam Limited, and thereafter the Hon'ble Apex Court has upheld the order of Rainbow Supra. Therefore, the stand of the Respondent that the dues under the CST cannot be treated as a Secured Creditor does not suffice. Respondents say that the present Application and the Resolution Plan dehors in as much that the Resolution Professional has no role to play in the directorship of the suspended management in other companies. More particularly, at the stage of approval of the Resolution Plan, merely by stating this, the Resolution Professional cannot escape the facts that




are placed on record by the Applicant in the reply to the Resolution Plan Application, which this Hon'ble Court has taken into consideration. Further, the Applicant submitted that this Tribunal may kindly take into consideration the reply which has been filed by the present Applicant in the Resolution Plan Application wherein the irregularity and discrepancies done by the Corporate Debtor are been highlighted. The Respondent herein has submitted that the fraudulent transactions and preferential transactions are been challenged by way of an appropriate application and that the same will not have any effect with the approval of Resolution Plan more particularly when the Resolution Plan is submitted by the 3rd party who is not connected to the suspended management.

- iv. It is submitted that, the fact remains that if the 3rd party submits the Resolution Plan at the relevant point of time before submission of the Resolution Plan the Resolution Professional has to scrutinise the books of accounts and has to verify each and every record whether any dues are pending, if they have been challenged or no; all these facts are to be brought before the COC meeting as well as before this Adjudicating Authority. If the Corporate Debtor has done any fraudulent transactions, then that is also to be brought before the COC meetings and before



passing any plan or moving an application for approval of the Resolution Plan these aspects were to be brought by the Resolution Professional before this Tribunal.

- v. The Resolution Professional has failed to do its duty, as is very clear from the records placed before this Adjudicating Authority.
5. We have heard the counsel for the Applicant and Respondent/ Resolution Professional and have perused and duly considered the material placed before us.
6. It is the case of the Applicant/State Tax Department that the Corporate Debtor has failed to pay the tax dues for the period of FY 2014-15 under the GVAT Act, 2003, and CST Act, 1956, amounting to Rs. 1,82,47,705/-. That for the said dues, the present Applicant has made a bank attachment of the Corporate Debtor. Against the assessment order of the Corporate Debtor Appeal is being preferred by the corporate debtor before the Deputy Commissioner, Division 1, Ahmedabad wherein stay is being granted up till period 31.01.2024. Presently, as on date there is no stay on the bank attachment. That the Applicant had filed its claim vide Form-B on 07.10.2023. The RP on 18.10.2023 had admitted a provisional claim of the Applicant for Rs. 1 81,78,117/- and has rejected the claim of Rs. 69,586/-. That in the said resolution plan Application, the RP has taken into consideration the



Applicant's claim to be paid out as admitted to only 5%, which is mentioned in the tabular chart Form No. 15 at Page 440 of the IA for the plan.

7. The RP, in its affidavit in reply, stated that they have accepted and admitted the dues pertinent to the GVAT Act as Secured Creditors. The claim under the CST Act is admitted as Unsecured Creditors, to the tune of Rs. 1,65,87,840/-.
8. M/s Jay Formulation Limited, the Corporate Debtor, is undergoing CIRP proceedings. The amount to be distributed under the plan as per Section 53 of the IBC, therefore the said Section 53 is extracted as below:

“Section 53: Distribution of assets.


53. (1) *Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—*

(a)^{J2} the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following :—

(i) workmen's dues^{J2} for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor^{J4} in the event such secured creditor has relinquished security in the manner set out in section 52;



(c) wages^{J2} and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;^{J6}

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and


(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation.- For the purpose of this section—

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and



(ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.”

9. The CD has **GVAT** amounts due to the State Government. In the distribution mechanism, any amount due to the State Government is covered by the provisions of section 53 (1) (e) (i) of the IBC, 2016.
10. The Hon’ble Supreme Court in the case of **State Tax Officer vs. Rainbow Papers Limited 2022 SCC Online 1162** held that the amount due to the State of account of GVAT are “secured debt” and therefore such debt will be paid in the distribution mechanism as per the provisions of section 53 (1) (b) (ii) of the IBC, 2016. This Adjudicating Authority, by following the ratio Decidendi of the Hon’ble Supreme Court in the case of Rainbow Papers (which was reaffirmed in the review petition in the case of Sanjay Agarwal), holds that the GVAT dues are secured debt and the Sales Tax Department is the “secured creditor”.
11. Based on the above facts and analysis, this Tribunal directs the Respondent to consider the unpaid GVAT dues to State as “debts owed to a secured creditor” and the Authority as “Secured Creditor” and adhere to the provisions of section 53 of the IBC, 2016, while deciding the applicability of section 53(1)(b)(ii) of IB, Code. The Resolution Professional will also consider the provisions of



section 52 of the IBC, 2016, and Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016.

12. The following analysis concerns questions about the classification of unpaid **CST dues**.
13. Section 9(2) of the Central Sales Tax Act, 1956 reads as below:

*“Section 9: **Levy and collection of tax and penalties-***

9(2)Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess re-assess, collect and enforce payment of tax, including any 5 [interest or penalty,] payable by a dealer under this Act as if the tax or 6 [interest or penalty] payable by such a dealer under this Act is a tax or 7 [interest or penalty] payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, 8 [refunds, rebates, penalties,] 9 [charging or payment of interest,] compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly: Provided that if in any State or part thereof there is no general sales tax law in force, the



Central Government may, be rules made in this behalf make necessary provision for all or any of the matter specified in this sub-section..”

14. Section 238 of the Insolvency and Bankruptcy Code, 2016 reads as follows:

“Section 238: Provisions of this Code to override other laws.

**238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*

15. **Section 9(2) of the CST Act**, which allows state authorities to enforce CST dues as if they were state tax dues, does not create a statutory charge equivalent to Section 48 of the GVAT Act. To the extent that it implies a priority for CST dues over other creditors, it is inconsistent with the waterfall mechanism under Section 53 of the IBC, which prioritizes secured creditors and other specified categories over government dues.
16. Therefore, as per Section 238 of IBC, 2016, IBC provisions will prevail over the provisions of such acts that are inconsistent with the Code's provisions. Therefore, the provisions of IBC Code 2016 override any inconsistent provisions, if any, in section 9(2) of the CST Act, 1956. It is also stated that the provisions of section 9 of the CST are not similar to section 48 of the GVAT, which were



before the Hon'ble Supreme Court in the case of Rainbow Papers Limited. Therefore, the decision of the Hon'ble Supreme Court in the case of Rainbow Papers does not apply. The claim of the State Tax Department that the Hon'ble Supreme Court did not distinguish the VAT and CST claims, and therefore the decision will apply to CST dues as well, is rejected for the reason that the issue of CST was not before the Hon'ble Supreme Court in the case of Rainbow Papers. The Hon'ble Supreme Court had considered the government dues in the case of Paschim Anchal Vidyut Vitran Nigam Limited and it was held that the Government (Central and State) dues fall in section 53 (1) (e) (i) while applying the waterfall mechanism for distributing the proceeds from the sale of the liquidation assets.

17. The distribution rules (waterfall mechanism) stipulated in section 53 of the IBC, 2016, also override any contrary provisions contained in any law enacted by the Parliament or any State Legislature for the time being in force.
18. This Tribunal has carefully considered the decisions of the Hon'ble Supreme Court in the cases of ***State Tax Officer Vs. Rainbow Papers Limited 2022 SCC Online 1162*** (decision of 06.09.2022), ***Paschimanchal Vidyut Vitran Nigam Limited vs. Raman Ispat Private Limited and others 2023 SCC Online SC 842*** (dated 17.07.2023), and the decision in the case of ***Sanjay Kumar Agarwal***



v. State Tax Officer (1) & Anr., [Review Petition (Civil) No. 1620 of 2023 in Civil Appeal No. 1661 of 2020, **Rainbow Papers Review Decision**] (Decision dated 31.10.2023) and it is stated that the issue relating to the CST is not explicitly dealt in these judgments and therefore the same is required to be considered as a government dues and dealt with based on the decision of the Hon'ble Supreme Court in the case of Paschimanchal Vidyut Vitran Nigam Limited.

19. In view of the above, this Tribunal is of the opinion that the unpaid CST dues to the State are not dues owed to a secured creditor and provisions of section 53 (1) (b) (ii) do not apply to unpaid CST dues.
20. Regarding the claims about unpaid GST, we have carefully analysed the prayer of the Applicant and submissions made by it. The payer does not refer to GST due; the submission refers to GST dues for FY 2017-2018 to 2019-2020. Though not claimed in prayer, we consider it appropriate to deal with this issue and avoid any further proceedings in the matter. It is seen that the applicant's contention with respect to the claims pertaining to the GST Department is that it should also be treated as a secured creditor for unpaid GST dues. However, in relation to the GST claims it is clearly mentioned in the IBC that the claims in relation to Government dues to be treated as operational creditors. It is also mentioned



under section 82 of the GST Act that IBC will take overriding effect over the provisions of the GST Act. The said section is reproduced below:-


"Section 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 (31 of 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."

A perusal of the above-quoted provision would reveal that it specifically excludes the provisions of the IB Code, and therefore, the GST department cannot be treated as a secured creditor. Therefore, GST will require treatment under section 53, similar to that of CST discussed above.

21. In view of the above, the Tribunal adjudicates the reliefs sought in IA No. 435 of 2025 as follows: -

A. The application is partly allowed to the extent that **Unpaid GVAT dues** by the Corporate Debtor are to be treated as debts owed to a secured creditor under Section 53(1)(b)(ii) of the IBC, 2016, read with Section 52 of the IBC, 2016, and Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016.

B. **Unpaid CST dues** as well as **Unpaid GST dues** by the Corporate Debtor to the State are not the debt



owed to the secured creditor, and the claims are not covered in the category covered by section 53(1)(b)(ii) of the IBC, 2016. These dues do not qualify as secured creditor claims, as no statutory charge akin to Section 48 of the GVAT Act exists under the GST Act, 2017.

- C.** Therefore, the Applicant's claim of Rs.2,00,15,482/- is partly accepted. The **GVAT dues** of Rs.15,90,276/- are admitted as secured creditor claims, while the **CST dues** of Rs.1,65,87,840/- as well as the **GST dues** of Rs. 8,30,90,029/- and Rs. 81,20,284/- are admitted as government dues under Section 53(1)(e)(i) of the IBC, 2016, and not as secured creditor claims.
- D.** The relief seeking payment of the entire claim as per Section 53(1)(b)(ii) is partly allowed with respect to **GVAT dues**, as noted above. The **CST dues** and **GST dues** are classified as operational debts under Section 5(21) of the IBC, 2016, and shall be treated as per the waterfall mechanism under Section 53(1)(e)(i), depending on the period to which they pertain, respectively.
- E.** No further orders are required beyond the above, as the remaining issues raised by the Applicant do not



directly impact the classification of GVAT, GST, and CST dues.

- 22.** Accordingly, the **IA No. 435 of 2025** in CP(IB) 123(AHM)2022 is disposed of.
- 23.** Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

Sd/-

**SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)**

SP/LRA

Sd/-

**SHAMMI KHAN
MEMBER (JUDICIAL)**