

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 246 of 2022

IN THE MATTER OF:

**Department of State Tax, Through the Dy.
Commissioner of State Tax**

...Appellant

Versus

Zicom Saas Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant: Ms. Shwetal Shepal, Mr. Aaditya Pande, Mr. Rahul Chitnis. Advocates

For Respondent: Mr. Mayur Khandeparkar, Mr. Vishesh Kalra, Mr. Kunal Kannya, Advocates for R-1
Mr. Aman Varma, Advocate for R-2

ORDER

07.02.2023: Heard Learned Counsel for the Appellant as well as Learned Counsel for the Respondents.

2. This Appeal has been filed by the Department of State Tax challenging the Order dated 16th December, 2021 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-III) by which Order, the Adjudicating Authority has approved the Resolution Plan submitted by the Resolution Professional.

3. The Appellant's case in the Appeal is that Appellant has filed a claim before the Resolution Professional in 'Corporate Insolvency Resolution Process' (CIRP

in short) for an amount of Rs. 43,72,97,479/- out of which claim Resolution Professional accepted the claim of Rs. 36,68,12,729/- and in the Resolution Plan, they have been allotted only 1% of the admitted claim.

4. Learned Counsel for the Appellant submits that the Appellant's claim was required to be treated as secured charge in view of the Judgement of the Hon'ble Supreme Court in the matter of **"State Tax Officer Vs. Rainbow Papers Limited"** [2022 SCC OnLine SC 1161]. It is submitted that the Adjudicating Authority committed error in not accepting the entire claim of the Appellant which was admitted. Learned Counsel for the Appellant has relied on the provisions of Section 37 of the Maharashtra Value Added Tax Act, 2002.

5. Learned Counsel for the Respondent refuting the submissions of Learned Counsel for the Appellant contends that with regard to the judgement of the Hon'ble Supreme Court in **"State Tax Officer Vs. Rainbow Papers Limited"** (supra), Review Petition (CIVIL) Diary No. 32268 of 2022 has been filed on which Hon'ble Supreme Court has issued notice on 02.02.2023. It is further submitted that in any view of the order, the Judgement in "Rainbow Papers Limited" (supra) is distinguishable from the facts of the present case.

6. We have heard the Learned Counsel for the parties and have perused the record.

7. There are no dispute between the parties regarding the facts which took place in the CIRP and the claim which was admitted in the CIRP. In "Rainbow

Paper Limited” (supra), Section 48 of the GVAT Act was relied, which has been quoted in paragraph 2 of the Judgement which is to the following effect:

“The short question raised by the appellant in this appeal is, whether the provisions of the IBC and, in particular, Section 53 thereof, overrides Section 48 of the GVAT Act which is set out herein below for convenience:-

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

8. The Provision of Section 37 of Maharashtra Value Added Tax, 2002 is to the following effect:

“37. Notwithstanding anything contained in any contract to the contrary, but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, sum forfeited, fine or any other sum, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer, or as the case may be, person.”

9. When we compare the provisions of Section 48 of the provision of Gujarat Values Added Tax which was relied in “Rainbow Papers Limited” and the Provisions of Section 37 which is sought to be relied on in the present Appeal, distinction between the provisions is clear. Section 37 specifically uses the expression “subject to any provision regarding creation of first charge in any

central act”. The provision itself contemplated thus that Section 37 was subject to any provision in Central Act. The IBC Section 53 itself provides waterfall mechanism which may be treated to be law which has been contemplated under Section 37 of the MVAT Act, 2002.

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.

The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Basant/nn