

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1984 of 2024

[Arising out of the Order dated 30.07.2024, passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Ahmedabad, Court-II in IA No. 742(AHM)2022 in Company
Petition CP (IB) No. 473/2018]]

IN THE MATTER OF:

State Tax Officer, Unit-92,
Jilla Seva Sadan -2, Block No.1, 4th Floor,
Rajkot- 360001.

...Appellant

Versus

1. **Shri Keyur J. Shah**
Liquidator of Gangotri Glazed Tiles Private
Limited & Ors.
1007, Sun Avenue-One,
NR. Shreyas Foundation Manekbaug Society,
Ambawadi, Ahmedabad-380015. **...Respondent No.1**

2. **Rajkot Nagarik Sahakari Bank Limited**
Secured Financial Creditor of Gangotri
Glazed Tiles Private Limited **...Respondent No.2**

3. **Gangotri Glazed Tiles Private Limited**
(Company Undergoing Liquidator Process
Survey No.130/P, N.H.8-A, Wankaner,
Dhuva -363622, Gujarat, India **...Respondent No.3**

Present:

For Appellant : Ms. Ritu Guru and Mr. Bhargav Dangal, Advocates.

For Respondents : Ms. Shilpi Chawdhary and Mr. Amarkant Patel and
Ms. Noopur K. Dalal, Advocates for R-1.

Mr. Karan Valecha and Mr. Jaimin R. Dave,
Advocates for R-4.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This is an Appeal under section 61 of the IBC 2016, Challenging the
Order / Judgment dated 30.07.2024 passed by the National Company Law

Tribunal, Ahmedabad Bench in Interlocutory Application No.742 (AHM) 2022 in CP (IB) No.473 of 2018, whereby the learned National Company Law Tribunal, Ahmedabad Bench, has allowed the application of the secured financial creditor of the CD-Gangotri Glazed Private Limited (Respondent No.2) and has directed the appellant to release the charge created by the appellant on the land situated at Morbi District (erstwhile Rajkot District), Sub- District –Morbi, Village- Dhuva, Revenue Survey No.130 paiki, land admeasuring 14678.80 sq. Mtrs, industrial purpose land (NA) along with construction thereon.

Submissions of the Appellant

2. The recovery of tax from the Corporate Debtor (CD) is due under the GVAT and CST Act for the Assessment Years 2010-11, 2011-12, 2012-13, which is prior to the initiation of the CIRP proceedings. Notices were being issued by the appellant for the assessment period of 01.04.2010 to 31.03.2011, 01.04.2011 to 31.03.2012 under Section 9(2) of the Central Sales Tax Act, 1956 read with Section 48 of the GVAT Act, 2003. Also notices were issued for the Assessment period of 01.04.2012 to 31.03.2013 under Section 9(2) of the Central Sales Tax Act, 1956 read with Section 48 of the GVAT Act, 2003.

3. Appellant had addressed a letter on 25.11.2016 to the Talati-cum-Mantri of Dhuva Village and Mamlatdar of Wankaner Taluka, that the tax are dues of the corporate debtor under the GVAT Act and CST Act, which is pending to the tune of Rs.4,33,26,447/- for the assessment year 2010-11 and for the assessment year to the tune of Rs.11,88,32,469/- with interest. On 17.03.2017 and 28.08.2018 the State Tax Officer once again had issued

reminder letter to the Talati-cum-Mantri of Dhuva to put charge /attachment on the property of the corporate debtor. On 22.01.2019, 16.05.2019 and 20.08.2019, the State Tax Officer once again had addressed a letter to the Talati-cum-Mantri, Dhuva for attaching the property of the Corporate Debtor. In the village form No.2 also, the said above entries are reflected for attachment stating that the State Tax Officer had made an attachment on 26.08.2019.

4. Section 9 application came to be allowed on 27.01.2020 and IRP (Interim Resolution Professional) came to be appointed. Mr. Keyur J. Shah was appointed as main IRP. On 13.08.2020, the Resolution Professional of the Corporate debtor addressed a letter to the State Tax Officer requesting for withdrawal of the lien on the Bank Account of the HDFC Bank. On 2.11.2020, the Hon'ble NCLT Ahmedabad bench passed an order for liquidation in respect of the corporate debtor and appointed the RP as the liquidator of the corporate debtor. On 27.11.2020, the appellant addressed a letter to the RP submitting the claim of the State Tax Department along with all requisite documents and the assessment orders. On 28.11.2020, the appellant addressed a mail to the Resolution Professional to consider the State Tax Department as secured creditor and to consider the claim under the CST Act and the Gujarat Value Added Tax Act, 2003 and to register the State Tax Department claim, as they have the first charge over the assets of the defaulting assessee for the outstanding amount of Rs.31,97,71,210/-. On 07.12.2020, the State Tax Officer addressed a mail to the RP of the corporate debtor stating that the Bank's attachment made on the corporate debtors account is much prior to the initiation of the CIRP proceedings. On 7.1.2021,

the Resolution Professional addressed a mail to the State Tax Department stating that the claim of the State Tax Department is being accepted for Rs.31,94,24,427/- and they shall verify the claim based on the records which is being provided by the State Tax Department and accordingly, shall inform whether the revised admitted claim is being accepted or not. On 16.3.2021, the appellant addressed a letter to the liquidator of the corporate debtor with regard to the withdrawal of lien over the bank accounts and withdrawal of the charge on the land stating that the attachment is made much prior to the initiation of the CIRP proceedings. The RP addressed a mail to the appellant, that the provisions of IBC 2016, supersede the provisions of the Central / State Tax Laws and section 238 states that it would have an overriding effect on any other Act. On 26.7.2021, the appellant submitted its Form C submission of claim before the liquidator for the dues pertaining to the CST Act for the assessment year of 2016-17, the said assessment year of 2016-17 was completed on 29.3.2021.

5. An Assessing Officer under the Gujarat Value Added Tax Act, 2003 is a Quasi-judicial authority, and that an order passed by the assessing officer is a Quasi-judicial order. The orders passed by the authority are not been challenged by the corporate debtor therefore they have attained finality.

6. Section 48 of the Transfer of Property Act, 1882 deals with the priority of rights in case of multiple charges or encumbrances created over the same property. A state tax charge arises when a taxpayer (individual or entity) fails to pay taxes owed to the government. The charge created by the state tax authorities is a statutory lien that operates to secure the payment of taxes.

This lien can arise even without any formal agreement between the taxpayer and the tax authorities. Statutory charges, such as those created by tax authorities, shall have special priority, overriding the general principle of “first in time” under Section 48. This is because certain laws grant statutory charges a higher “priority” over other types of charges, including “voluntary charges” (such as a loan charge) even if the registered charge (e.g., under the Companies Act) was created earlier. By virtue of charge, by operation of law, held by the appellant on the corporate debtor, it would qualify as a secured creditor of the corporate debtor and thereby would rank higher in the order of payment specified in section 53 of the Code. Further as the ratio of stake holding of the appellant in the corporate debtor is much higher than the present respondent no.4. Consequently, the amount that the appellant should receive in case of the liquidation of the corporate debtor should have been at par with what the other secured creditors of the corporate debtor had received. The creation of a statutory charge over the assets of the tax defaulter does not in any manner violate or militate against any provision of the code. There is nothing in the code which suggests, even remotely, that a charge created by another statute must lose its character on commencement of liquidation process under the code.

7. The Hon’ble Supreme Court in the Review Petition in the case of **Rainbow Papers Ltd** has noted the observations of the Hon’ble Coordinate Bench in **Paschimanchal Vidyut Vitran Nigam Limited v. Raman Ispat Private Limited**. 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 the State Tax Department is considered as a secured
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creditor. The Hon'ble Supreme Court has held that section 238 of the IBC, 2016 will not have an over-riding effect on the GVAT Act, 2003 and the Hon'ble Supreme Court's judgment would be binding on all the Courts by virtue of Article 141 of the Constitution of India.

8. The respondent no.1 has grossly erred in not considering the appellant as a secured creditor of the corporate debtor as per the provisions of Section 48 of the GVAT Act, 2003 which has to be read along with Section 3(30) of the IB Code, 2016 and to be read with section 9(2) of CST Act.

9. In the case of **IFCI Ltd. versus Commercial Tax Officer**, the Division Bench of the Hon'ble High Court of Delhi in **WP(C) 337 of 2011** has come to the conclusion that a charge created under section 9(1) and 9(3) read with section 9(2) of CST Act will have priority to collect tax which is to be read with section 50 of the RST Act and therefore the dues under CST Act are to be considered as Secured dues. The issue before the Hon'ble High Court of Delhi was that whether the dues under the CST Act provided under the State Sales Tax Act would equally apply to the Central Sales Tax Act to be collected under the CST Act or not, and that the dues have to be considered under the category of Secured Creditor or not. The question involved in the case was whether a charge by operation of law has been created under the CST Act and the Hon'ble High Court came to the conclusion that a charge stands created if meaning is to be given to the word "collection" and "enforcement" found in various provisions, more specifically Section 9(1) and 9(3) of CST Act read with the relevant provisions of Section 9(2) of the CST Act, coupled with the right of appropriation conferred in the States though the tax may be collected by

the Central Government. Thus, the priority given under section 50 of the RST Act to the recovery of local sales tax will apply with equal force to the recovery of Central sales tax qua State trade or commerce.

10. Further, Regulation 21 of the (Liquidation Process) is to be read with Section 52 and Section 53 of the Code. Regulation 21(A) of the IBBI (Liquidation Process) Regulation 2016 read as follows:

“Presumption of security interest 21A.

(1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II: Provided that, where a secured creditor does not intimate its decision within 30 days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

(2) Where a secured creditor proceeds to realise its security interest, it shall pay – (a) as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest, to the liquidator within 90 days from the liquidation commencement date; and (b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within 180 days from the liquidation commencement date: Provided that where the amount payable under this sub-regulation is not certain by the date the amount is payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator: Provided further that any difference between the amount payable under this sub-regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.

(3) Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate. [Explanation.- It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019.]”.

11. As per the proviso of Regulation 21(A) the legislature has specifically stated that if the security interest is not being relinquished by a secured
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creditor under the Code within the 30 days' time period of the liquidation commencement date, then the assets covered under the security interest shall be presumed to be part of the liquidation estate. The Appellant herein have a charge by way of operation of law on the properties of the Corporate Debtor which would have precedence over the charge created by way of attachment on the property of the corporate debtor.

12. Respondent No. 1 and Respondent No. 3 have relied upon the Section 77(3) of the Companies Act, 2013- wherein a question of creation of charge comes into play under the liquidation process for being taken into account by the liquidator which provisions are read as follows:

“Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered under Sub Section (1) and a certification of registration of sub charge is given by the registrar under Sub Section (2)”.

As per the above proviso, a charge is to be created by a company under the statute before the Respondent No. 1 to claim its dues as a secured creditor. The appellant being a statutory authority does not fall under the definition of a "company". Therefore, Section 77(3) of the Companies Act, 2013 will not apply in the present case. The question of registration of a charge before the ROC does not exist here as the appellant being a statutory authority has registered its charge by way of operation of law and therefore, also will have precedence over the registration of charge before the ROC.

13. Further, the Division Bench of the Hon'ble High Court of Gujarat in the case on **Shree Radhekrushna Ginning and Pressing Pvt. Ltd. vs SOG** order dated 29.03.2022 passed in **Special Civil Application No. 5413 of 2022** has

held that the day the Assessment orders are passed determining the liability under the GVAT Act, a charge over the immovable assets of the Corporate Debtor is created in favour of the State by way of operation of law as envisaged under section 48 of the GVAT Act.

14. The amount claimed by the Appellant herein under the CST is prior to CIRP and therefore, has to be considered as Secured Creditor as per the proviso of section 9(2) of the CST Act. Further, the Hon'ble **NCLT Mumbai Bench** has held on 15.05.2024 in the case of **Amit Gupta, Liquidator of Provogue India Ltd. versus Assistant Commissioner of Sales Tax and Excise in IA No. 2659 of 2023 in CP (IB) No. 1667/MB/2018** that the dues of the Sales Tax Department under the CST Act is to be read along with section 26 of HPVAT Act and therefore, the Hon'ble NCLT Bench held the dues under Central Sales Tax Act, 1956 as Secured Creditor. The following observations are made by the Hon'ble Mumbai NCLT Bench:

"10. Mr. Shridharan, Sr. Adv. representing for the Applicant has taken us through the legislative history and constitutional framework of VAT/Sales Tax and Central Sales Tax which is explained below: (i) The Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1, and the legislature of any State has exclusive power to make laws for any such State with respect to any of the matters enumerated in List II and both Parliament and the legislature of a State have power to make laws with respect to any of the matters enumerated in List III. ii) Entry 54 of List II empowers the State legislature to enact a legislation relating to taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List 1. iii) Entry 92A of List 1 empowers the Parliament to enact a legislation relating to taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce. iv) With reference to tax on sale or purchase taking place in the course of inter-state trade or commerce, even though the legislation is by the Centre, the tax so collected is fully assigned to the State within which that tax is leviable. v) Ld. Senior Counsel submitted that the taxes under entry 92A List I are not only fully assigned to states but the actual administration and collection of taxes is also with the States. He referred to the Report of

the Taxation Enquiry Commission which explains the relationship between the Union and State for tax on inter-state trade as follows! "Place of the Union and the States in the sales tax system. 2..... That law and administration in the interstate sphere should formally, and when need arises effectively, be with the Union; in actual practice, the administration should, in their individual jurisdictions, be delegate to the States. The revenue, inter-State or intra-State, should wholly devolve on the appropriate States..." vi) Further, Article 269 of the Constitution provides that the taxes enumerated in the article shall be levied and collected by the Union but assigned to the States: "269. Taxes levied and collected by the Union but assigned to the States. Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2). Explanation-For the purposes of this clause, - (a) The expression "taxes on the sale or purchase of goods shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce; (b) The expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce (2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the State within which that tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law. (3) Parliament may by law formulate principles for determining when a sale or purchase of, or consignment of, goods takes place in the course of inter-State trade or commerce." 11. Ld. Senior Counsel further referred to Section 9 of CST Act and submitted that in light of the same, all provisions under the General Sales Tax law including provisions dealing with recovery of tax will be applicable for levy and collection of taxes under the CST Act. Accordingly. Section 26 of the HPVAT Act creating first charge will also apply for demand raised under the CST Act. 15. We shall first refer to section 17 (3), (4) & (6) of the Central Sales Tax Act, 1956 which provides the following: "(3) The liquidator shall not part with any of the assets of the company or the properties in his hands until he has been notified by the appropriate authority under sub-section (2) and on being so notified, shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands: Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a court or for the purpose of the payment of the tax payable by the company under this Act or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of

liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the appropriate authority reasonable. (4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by, or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of sub-section (3), he shall be personally liable for the payment of the tax which the company would be liable to pay: Provided that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this subsection shall be to the extent of such amount. (6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force" It is seen from the above quoted section that the CST Act mandates the Liquidator to set aside the amount as notified before disposing the assets of a Company. 16. It is pertinent to note that various Central Acts have been amended by the I&B Code starting from section 245 to section 255 of the I&B Code. These sections amend the Central Acts like Central Excise Act, 1944, the Income Tax Act, 1961, the Customs Act, 1962, the Finance Act, 1994, the SARFAESI Act, 2002, Recovery of Debts due to Banks and Financial Institutions, 1993, etc. However, the CST Act has not been amended. Similarly, the General Sales Tax Act and the Value Added Tax (VAT) Acts of the States have not been amended."

15. The Respondent No. 1 and Respondent No. 3 have relied upon the judgment of Hon'ble Supreme Court in **Paschimanchal Vidhyut Vitran Nigam Ltd.** and have relied that in the said judgment the Rainbow Papers (Supra) case was discussed and that the Hon'ble Supreme Court had held that Rainbow Papers (Supra) is not applicable in the case of liquidation as the Rainbow Papers judgment was related to the dues arising wherein a resolution plan was under challenge but have failed to consider the judgement passed by the Hon'ble Supreme Court in the Review Petition. Hon'ble Supreme Court in State Tax Officer versus Rainbow Papers Pvt. Ltd. has considered the Appellant as a Secured Creditor and no bifurcation of GVAT Act and CST Act is being observed by the Hon'ble Supreme Court in the said judgment: The Rainbow (Supra) has been upheld by the **Hon'ble Court in Review Petition (2024) 2 SCC 362**. Hon'ble Supreme Court is the superior court of law which

gives directions and which is to be implemented by the State or any authority. Therefore, the judgment delivered in the Review Petition holds greater significance.

16. Therefore, this Hon'ble Appellate Tribunal shall consider all the above facts and law points and thereafter may allow the appeal of the Appellant.

Submissions of R1-Liquidator

17. The short legal question before this Hon'ble Tribunal is whether a subsequent statutory lien claimed by the State Tax Department in 2019 can override a prior registered security interest created in favor of a financial creditor in 2012, where the secured creditor has exercised its statutory rights under Section 52 of the Insolvency and Bankruptcy Code, 2016. The Respondent contends that such lien cannot defeat a prior perfected security interest nor obstruct enforcement under Section 52 IBC.

18. The dispute must be examined within the framework of the IBC and settled Supreme Court jurisprudence and also the relevant provisions of the IBC particularly Section 35 - Duties of Liquidator, Section 36 - Liquidation Estate, Section 52 - Secured creditor's right to realize security interest, Section 53 - Distribution waterfall and Section 238 - Overriding effect of IBC.

19. On 26.09.2012, the Corporate Debtor had created a charge in favour of Rajkot Nagarik Sahakari Bank Ltd. The charge was duly registered with ROC, and legally perfected. The State Tax Department asserts a lien created through communication to the Talati dated 20.08.2019. Therefore, chronological priority clearly rests with the bank.

20. CIRP commenced on 27.01.2020 and later Liquidation commenced on 02.11.2020. The secured creditor filed claim in Form D and expressly stated that it will not relinquish security interest. This is a statutory election under Section 52(1)(b) IBC. The Liquidator accordingly permitted enforcement of the security interest.

21. The alleged lien was discovered only when the secured creditor attempted enforcement. Importantly the State Tax Department did not disclose this charge in its claim form and also the charge was not registered with Registrar of Companies (ROC)

22. The Liquidator admitted the following claims pursuant to the public announcement:

Creditor	Nature	Amount (₹)
Rajkot Nagarik Sahakari Bank Ltd.	Secured Financial Creditor	9,22,05,285.44
State Tax Officer	Operational Creditor (later reclassified as Secured Operational Creditor after Rainbow Papers' Judgement)	31,94,24,427.00
Central GST Department	Operational Creditor	2,68,01,741.00
SVM Cera Pvt. Ltd.	Operational Creditor	28,40,573.00

Total admitted claims: ₹43.12 Crores approx.

23. The Appellant has attempted to criticize the conduct of the Liquidator. This criticism is misplaced and legally irrelevant. The Liquidator acted strictly within the framework of Section 35 and the Liquidation Regulations. The Liquidator:

- invited claims
- verified claims

- prepared list of stakeholders
- permitted enforcement of security under Section 52
- approached authorities to remove lien
- implemented Supreme Court judgment in Rainbow Papers

Thus, the Liquidator has acted in a bonafide manner and diligently.

24. The Respondent No. 1 acted in the best interest of the company and nothing beyond. But is aggrieved by certain findings of the Hon'ble NCLT, which were unfounded and uncalled for as in paras 8, 9(c), 9(d) and 9(j) of the Impugned Judgment as noted herein:

- The Liquidator failed to consider the State Tax Department as a secured creditor.
- The Liquidator handed over possession of secured assets to the financial creditor without proper verification.
- The Liquidator did not perform proper due diligence regarding encumbrances.
- The Liquidator took contradictory positions after the Rainbow Papers judgment.
- The Liquidator exceeded his authority in relation to sale of secured assets.

25. On the allegation that Liquidator ignored State Tax claim as secured creditor, it is claimed as incorrect. The State Tax Department submitted its claim during liquidation. The claim was duly admitted by the Liquidator. At the time of admission, the claim was treated as Operational Creditor, which was the consistent legal position prevailing prior to the judgment in State Tax Officer vs Rainbow Papers Ltd (2022). After the Rainbow Papers judgment, the ***Company Appeal (AT) (Insolvency) No. 1984 of 2024***

Liquidator reclassified the State Tax Department as Secured Operational Creditor and informed the department through email dated 31.12.2022. Thus, the Liquidator has fully complied with the Supreme Court judgment.

26. Further on the allegation that the Liquidator improperly handed over possession to the financial creditor, the Liquidator claims that acted strictly in accordance with Section 52 IBC. The secured financial creditor filed Form D clearly stating that it would not relinquish its security interest. Under Section 52(1)(b), the secured creditor is entitled to realize its security interest outside the liquidation estate. The Liquidator verified the security interest as required under Section 52(3). As indicated, the State Tax did not declare their lien in their claim and the secured creditor came to know about the lien only when they approached Talati to realise its security interest. Accordingly, possession of the secured asset was handed over to enable realization. Therefore, the Liquidator performed a statutory duty, not an unauthorized act.

27. On the allegation that the Liquidator failed to detect the State Tax lien Liquidator claims that allegation is unfounded. The alleged lien was not disclosed in the claim form filed by the State Tax Department. The alleged lien was not registered with the Registrar of Companies. The existence of such lien was discovered only when the secured creditor approached the Talati while attempting enforcement of security interest. Therefore, the Liquidator had no prior knowledge of the alleged lien.

28. On the observation that the Liquidator acted inconsistently after Rainbow Papers is also claimed to be incorrect. Prior to the Rainbow Papers

judgment, the settled position was that government dues were treated as operational debt. After the judgment dated 06.09.2022, the Liquidator promptly reclassified the claim. The Appellant was informed accordingly. Thus the Liquidator acted bonafide and in accordance with evolving jurisprudence.

29. On the observation that the Liquidator sold assets without authority is also claimed to be factually incorrect. The Liquidator did not sell the secured assets. The secured creditor is enforcing its security interest independently under Section 52 IBC. The Liquidator's role was limited to verifying the security interest and facilitating enforcement.

30. The Liquidator took several steps to resolve the issue as it Liquidator wrote to the State Tax Department requesting removal of lien, approached the Appellate Authority of the State Tax Department as directed by NCLT, filed application before NCLT seeking removal of lien, after dismissal of that application, directed the secured creditor to approach the Tribunal as required under Section 52(5), informed stakeholders and SCC members about developments. Thus, the Liquidator has acted diligently and transparently.

31. The fundamental principle of secured transactions is that a prior perfected security interest prevails over a subsequent charge. This principle has been recognized repeatedly by courts. The bank's charge is prior in time, registered under Companies Act and is legally perfected. On the other hand, the State Tax lien was subsequent in time, not registered with ROC and not disclosed in claim. Therefore, the Bank's charge should prevail as upheld by the Hon'ble NCLT, Ahmedabad Bench.

32. Further, Section 52 IBC gives secured creditors two options: a) Relinquish security interest and join liquidation estate, or realize security interest outside liquidation. The secured creditor exercised the second option. Once this option is exercised; the secured creditor enforces security independently and the Liquidator cannot interfere. Allowing the State Tax lien to remain would render Section 52 meaningless.

33. Furthermore, Section 238 IBC overrides all other laws inconsistent with it. The Supreme Court has repeatedly affirmed this. In landmark judgment of **Principal Commissioner of Income Tax v Monnet Ispat (2018) 18 SCC 786** the Hon'ble Supreme Court held that IBC will override tax statutes. Thus, tax recovery mechanisms cannot override insolvency proceedings.

34. The Appellant relies heavily on State Tax Officer vs Rainbow Papers Ltd (2022). However, Rainbow Papers does not apply to the present facts. What Rainbow Papers actually held that State tax dues may qualify as secured debts where a statute creates a first charge. However, the judgment did not hold that tax dues automatically override prior registered security interests. In the present case prior registered charge exists while in Rainbow Papers (supra), no competing prior secured creditor existed. Thus Rainbow Papers cannot invalidate prior secured interests. Subsequent judgments have clarified the limited scope of Rainbow Papers. In **Paschimanchal Vidyut Vitran Nigam Ltd v Raman Ispat Pvt Ltd (2023)**, the Hon'ble Supreme Court emphasized that IBC priority scheme cannot be disrupted by statutory dues.

35. The Appellant participated in the insolvency process and filed claim. However, it did not disclose the alleged lien in the claim form and also the lien

was not registered under Company law. The alleged lien surfaced only when enforcement began. Moreover, the lien by way of letter to Talati in 2019 was much later than the security interest created by the lender in 2012. Thus the Appellant cannot now assert priority inconsistent with its own conduct.

36. The IBC is designed to ensure time-bound insolvency resolution, orderly liquidation and certainty of secured transactions. Allowing tax authorities to block secured asset enforcement would destroy this framework.

37. The NCLT correctly directed removal of the lien because the lien obstructed enforcement of a prior registered security interest and the lien was inconsistent with Section 52 IBC and most importantly the lien was contrary to Section 238 IBC. The order therefore requires no interference.

38. In light of the allegations made against Respondent No. 1 and the observations recorded in the impugned order dated 30.07.2024 passed by the Respondent No. 1 – Liquidator prays that:

1. Dismiss the Appeal.
2. Record that Respondent No. 1, the Liquidator has acted bonafide and strictly in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the applicable Regulations while discharging his statutory duties in the liquidation process of the Corporate Debtor.
3. Clarify that the Liquidator has neither acted beyond his authority nor committed any procedural irregularity in facilitating the exercise of rights of the secured creditor under Section 52 of the Insolvency and Bankruptcy Code, 2016.

4. Expunge the adverse observations made against the Liquidator in paragraphs 8 and 9(c), 9(d) and 9(j) of the order dated 30.07.2024 passed by the Hon'ble NCLT Ahmedabad, inasmuch as the said observations are not borne out from the record and may prejudice the professional standing of the Liquidator.
5. Declare that no adverse inference or liability shall attach to the Liquidator on account of the observations made in the impugned order, the Liquidator having acted bonafide and in discharge of statutory obligations under the Insolvency and Bankruptcy Code, 2016.
6. Uphold the order dated 30.07.2024 passed by NCLT Ahmedabad, and
7. Pass such other and further orders as this Hon'ble Appellate Tribunal may deem fit in the interest of justice.

Analyses and Findings

39. We have heard the counsels of both sides and also perused the material placed on record.

40. The issue before us is can a subsequent statutory lien claimed by the State Tax Department in 2019 override a prior registered security interest created in favor of a financial creditor, which was done in 2012 and where the secured creditor has exercised its statutory rights under Section 52 of the Code.

41. The main grounds of the appellant are noted herein as follows:

41.1. The appellant has not been considered 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.

41.2. Any amount payable by the debtor on account of any tax, interest or the penalty which the corporate debtor is liable to the appellant shall be a first charge of the property of the appellant.

41.3. Dues under CST Act would be assessed and collected as per the General Sales Tax Act of the relevant State. Therefore, we have to refer to the applicable sales tax act which will also apply to the dues under the CST Act which in the present case is Gujarat Value Added Tax Act, 2003.

41.4. A conjoint reading of Section 9(2) of the 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 the above-mentioned provisions, the appellant had already created a first charge over the property and the bank account of the corporate debtor before the initiation of the CIRP proceedings and moratorium against the corporate debtor.

41.5. Due to the charge created by the appellant, as discussed earlier, it qualifies the appellant as a secured creditor under Section 3(30) of the IB Code.

41.6. Section 3(30) of the IB Code defines a “secured creditor” as a creditor in favour of whom a security interest is created. This definition directly applies here, as the first charge over the corporate debtor’s property and bank account—established under Sections 9(2) of the CST Act, 1956, and 48 of the GVAT Act, 2003—creates such a security

interest prior to CIRP initiation. Thus, the appellant meets the criteria of a secured creditor.

41.7. There is no proviso in the IB Code that overrides Section 9(2) of the CST Act, 1956, nor is there anything stated in the IB Code that is contrary to the provisions of Section 9(2) of the CST Act.

41.8. This ensures the first charge created under Section 9(2) CST Act, read with Section 48 GVAT Act, remains effective and unimpacted by the IB Code. Thus, the appellant retains its secured creditor status.

41.9. The Liquidator (Respondent No. 1) failed to recognize that the appellant holds a charge over the corporate debtor's property under the Gujarat Value Added Tax Act, 2003. This charge arises by operation of Section 48 GVAT Act, 2003, read with Section 9(2) CST Act, 1956. The term "charge" as defined under the Insolvency and Bankruptcy Code, 2016 fully encompasses the appellant's claim, confirming its status as a secured creditor.

41.10. Respondent No. 1 (the Liquidator) failed to consider Section 53(1)(b)(ii) of the IB Code. Under this provision, debts owed to a secured creditor rank equally with workmen's dues for the 24 months preceding the liquidation commencement date. The appellant, as a secured creditor by virtue of Section 9(2) CST Act read with Section 48 GVAT Act, is entitled to this pari passu priority alongside workmen's dues.

41.11. The Hon'ble Supreme Court has held that Section 48 of the GVAT Act, 2003 is neither contrary nor inconsistent with Section 53 of the IB Code. The Liquidator failed to consider *Rainbow Papers (supra)*, a judgment of the Apex Court, when evaluating the appellant's claim. In *State Tax Officer v. Rainbow Papers Ltd. (2022)*, the Supreme Court affirmed the State's secured creditor status under GVAT Act provisions, ensuring parity in liquidation waterfalls without IBC override.

41.12. In *Rainbow Papers (supra)*, the Hon'ble Supreme Court did not distinguish between claim amounts under the GVAT Act, 2003 and CST Act, 1956, treating the State Tax Officer (appellant therein) as a secured creditor for the full claim. The ruling unified the claims, affirming secured status without bifurcation. Per the above judgment and statutory provisions, the CST Act requires the Liquidator to set aside the notified amount prior to disposing of the company's assets.

41.13. In view of the Hon'ble Apex Court's decision in *Rainbow Papers Private Limited (supra)*, Respondent No. 1's plea does not survive. The argument that Section 238 of the IB Code has an overriding effect does not apply here. *Rainbow Papers* clarifies that statutory charges under GVAT Act (like Section 48) are not overridden by IBC provisions, preserving the appellant's secured creditor rights.

41.14. Statutory authorities may take steps to determine tax dues, including interest and penalties. The appellant humbly submits that the Hon'ble Adjudicating Authority erred in allowing the secured

financial creditor's application. The Authority wrongly directed the appellant to release the charge over the corporate debtor's properties.

42. From the facts and circumstances of the case, we find that on 26/9/2012, the corporate debtor had created a charge in favor of the financial creditor, namely Rajkot Nagarik Sehkari Bank Limited. The charge was duly registered with the Registrar of Companies and was legally perfected. On the other hand, we find that the State Tax Department asserts a lien created through a communication to the Talati dated 20th August 2019. We find that the Bank charge was created in the year 2012, and the so-called lien created by the State tax department was in the year 2019. Therefore, the chronological priority clearly rests with the Bank.

43. In this case, the CIRP had commenced on 27th January 2020 and the liquidation commenced on 2nd November 2020. The secured creditor filed its claim in Form D and expressly stated that it will not relinquish the security interest as per the statutory election done by it under Section 52(1)(b) of the Code. The liquidator verified the security interest as required under section 52(3) and possession of the secured asset was handed over to enable the realization by the secured creditor. However, the State Tax Department had not declared their lien in their claim, and the secured creditor-FC-Bank came to know about the lien only when they approached Talati to realize its security interest. Accordingly, the liquidator permitted the enforcement of the security interest. Thus, we cannot find any fault in such action by the liquidator to perform its statutory duty.

44. We also note that the State Tax Department submitted its claim during the liquidation process, which was duly admitted by the liquidator. At the time of the admission, the claim was treated as an operational creditor, which was the legal position prevailing prior to the judgment of **Rainbow Papers judgment**, and after the judgement, the liquidator reclassified the State Tax Department as a secured operational creditor and informed the department through email dated 31st December 2022.

45. We note that the lien was discovered only when the secured creditor attempted enforcement. Further, perusal of the Claim Form of the Sales Tax Department indicates that it did not disclose this charge in its claim form, and moreover, the charge was not registered with the registrar of companies also.

46. The appellant claims that, even though, as per Regulation 21(A) of the Liquidation Process Regulations, if the security interest is not being relinquished by a secured creditor under the Code within the 30-day time period of the liquidation commencement date, then the assets covered under the security interest shall be presumed to be part of the liquidation estate. However, since the appellant has a charge by operation of law on the properties of the corporate debtor, therefore it would have precedence over the charge created by way of attachment on the property of the corporate debtor. Furthermore, the appellant argues that Section 48 of the Transfer of Property Act, 1882 provides the priority of rights in case of multiple charges or encumbrances created over the same property. It argues that a state tax charge arises when a taxpayer (individual or entity) fails to pay taxes owed to

the government. The charge created by the state tax authorities is a statutory lien that operates to secure the payment of taxes. This lien can arise even without any formal agreement between the taxpayer and the tax authorities. Statutory charges, such as those created by tax authorities, shall have special priority, overriding the general principle of “first in time” under Section 48. This is because certain laws grant statutory charges a higher “priority” over other types of charges, including “voluntary charges” (such as a loan charge) even if the registered charge (e.g., under the Companies Act) was created earlier. By virtue of charge, by operation of law, held by the appellant on the corporate debtor, it would qualify as a secured creditor of the corporate debtor and thereby would rank higher in the order of payment specified in section 53 of the Code. Further as the ratio of stake holding of the appellant in the corporate debtor is much higher than the present respondent no.4. Consequently, the amount that the appellant should receive in case of the liquidation of the corporate debtor should have been at par with what the other secured creditors of the corporate debtor had received. The creation of a statutory charge over the assets of the tax defaulter does not in any manner violate or militate against any provision of the code.

47. For better appreciation we extract section 48 of the Transfer Of Property Act, 1882 as follows:

Priority of rights created by transfer.—Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

48. The plain reading of Section 48 indicates that the appellant doesn't have any special rights or priority over the Bank. We may agree with the Appellant that by operation of law, the Appellant can qualify as a secured creditor of the corporate debtor, but it would not put them on a higher rank in the order of payment under Section 53 of the Code. Thus, we do not find the argument of the appellant to be tenable under the Transfer of Property Act.

49. The charge of the financial creditor was created earlier in time and was registered as per the Companies Act. The financial creditor in its claim had elected to realize the charge as per Section 52(1)(b) of the Code. We note that the secured financial creditor had filed Form D stating that it would not relinquish its security interest. We note that under Section 52(1)(b) of the Code, the secured creditor is entitled to realize its security interest outside the liquidation estate. The Liquidator verified the security interest as required under Section 52(3) and the possession of the secured asset was handed over to enable realization. Therefore, we cannot find any fault in the conduct of the liquidator who was performing a statutory duty. Furthermore, in the claim form of the appellant- the State Tax Department did not file such declaration regarding its charge. The secured creditor came to know about the lien only when they approached Talati to realise its security interest. In such a situation, the argument that tax authorities shall have special priority, overriding the general principle of first-in-time under Section 48 of the transfer of Property Act, is untenable.

50. We find that, as per section 52 of the Code, a secured creditor has two options either to relinquish the security interest and join the liquidation estate

or to realize the security interest outside of liquidation. The secured creditor in this case, the financial creditor, exercised the second option. Once this option was exercised, the secured creditor enforces security independently, and the liquidator cannot interfere. Therefore, allowing the State tax department to at this stage remain would render section 52 of the Code meaningless.

51. The appellant claims that the R 1- Liquidator, has erred in considering the appellant as a secured creditor of the corporate debtor as per the provisions of section 48 of the GVAT Act 2003, which has to be read along with section 3 (30) of the Insolvency and Bankruptcy Code 2016 and to be read with section 9 (2) of the CST Act. The liquidator brings to our notice that the claim of the appellant was duly admitted by the liquidator. At the time of admission, the claim was treated as an operational creditor, which was the legal position prevailing prior to the judgement in **Sales Tax State Tax Officer vs Rainbow Papers Limited (2020-22)**. It also brings to our notice that after the Rainbow Papers judgement, the liquidator re-classified the State Tax Department as a secured operational creditor and informed the department through email dated 31-12-2022. The liquidator has also brought to our notice that the purported lien was not disclosed in the claim form filed by the State Tax Department. Furthermore, it was also not registered with the Registrar of Companies. The existence of this lien was discovered only when the secured creditor approached the Talati while attempting enforcement of its security interest. We further note that the secured creditor, a financial creditor, had already disclosed its interest in not relinquishing its charge and realizing on its own as per the mechanism under the Insolvency Code. We also

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note that the charge of the bank was created in the year 2012, and the purported state tax lien was created in the year 2019. Therefore, chronologically, the priority clearly rests with the Bank.

52. The Appellant has heavily relied on the judgment of the Honorable Supreme Court in **State Tax Officer vs Rainbow Papers Ltd. (2022)**. However, we find that this judgment does not apply in the present facts of the case. The Rainbow Papers judgment (supra) held that the tax dues may be qualified as secured debts where a statute creates a first charge. However, the judgment did not hold that tax dues automatically override the prior registered security interest. In the present case, the prior registered charge existed, while in Rainbow Papers (supra) no competing prior secured creditor existed. Furthermore, in the present case, the issue is more of priority between the charges, but there was no such issue of priority in the case of the Rainbow judgment (supra). The Rainbow judgment related to claims classification as secured or unsecured. We also find that in the Rainbow judgment there was no issue of Section 52 enforcement. In the present case, we find that Section 52 rights have been invoked by the secured creditor- R2-Bank. Therefore, the Rainbow paper cannot invalidate the prior secured interest and therefore the Rainbow judgment is of no avail to the appellant.

53. We also note that subsequent judgment of the Honorable Supreme Court in the matter of **Paschimanchal Vidyut Vitran Nigam Limited versus Raman Ispat Private Limited (2023)**, it was emphasized that the IBC Insolvency and Bankruptcy Code, priority scheme under the Code cannot be disrupted by the statutory dues.

54. The appellant has relied very heavily on the judgment of the Honourable High Court of Gujarat in the matter of **Shri Radhekrushna Ginning and Pressing Pvt Ltd. (supra)**, which held that the day the assessment orders are passed determining the liabilities under the GVAT Act, a charge over the immovable assets of corporate debtors is created in favor of the state by operation of law as per Section 48 of the GVAT Act. We note that this judgment is of no assistance to the appellant for the above-noted facts. On the contrary, it supports the case of the liquidator that the security interest which has been created by the operation of law is at a later point of time. Therefore, the priority has to be for the Bank whose security was created earlier and was also registered with the Registrar of Companies, and which has also elected to realize its security interest as per the Code.

55. The appellant has also relied upon the judgement in the case of **IFCI Ltd. versus Commercial Tax Officer**, wherein the **Division Bench of the Hon'ble High Court of Delhi** in **WP(C) 337 of 2011** has come to the conclusion that a charge created under section 9(1) and 9(3) read with section 9(2) of CST Act will have priority to collect tax which is to be read with section 50 of the RST Act and therefore the dues under CST Act are to be considered as Secured dues. The issue before the Hon'ble High Court of Delhi was that whether the dues under the CST Act provided under the State Sales Tax Act would equally apply to the Central Sales Tax Act to be collected under the CST Act or not, and that the dues have to be considered under the category of Secured Creditor or not. The question involved in the case was whether a charge by operation of law has been created under the CST Act and the Hon'ble High Court came to the conclusion that a charge stands created.

Thus, the priority given under section 50 of the RST Act to the recovery of local sales tax will apply with equal force to the recovery of Central sales tax qua State trade or commerce. The judgment cited herein is distinguishable from the facts of the present case. There is no quarrel in treating the Appellant as secured operational creditor basis the judgment of Honorable Supreme Court in Rainbow Papers (Supra) irrespective of the judgement cited by the appellant. But the question remains with respect to priority. The priority will come into play on the basis of the date of creation of the charge, as we had noted separately herein. The charge created by the secured financial creditor-R2 was created sometime in the year 2012. The charge which is created with operation of the law in favour of the Appellant has been created sometime in the year 2019. Therefore, the circumstances are totally different, and therefore the appellant cannot be given a priority over the charge which has been created at an earlier point of time. Therefore, this judgment is of no assistance to the appellant with the different facts in the present case.

56. In the above background, the Adjudicating Authority was right in directing the State Tax Officer, the appellant, to release the charge created by them on the security interest, and also allowed the Secured Financial Creditor to realize its claim by taking necessary steps. Therefore, we do not find justification to interfere in the impugned order.

Orders

57. Accordingly, we dismiss the appeal. We also find that the liquidator has acted in a bona fide manner and strictly in accordance with the provisions of the Code and the applicable regulations while discharging his statutory duties in the liquidation process of the CD. We further clarify that the liquidator has

neither acted beyond his authority nor committed any procedural irregularity in facilitating the exercise of the rights of the secured creditor under Section 52 of the Code. Accordingly, we expunge the adverse observations made against the liquidator in paragraphs 8 and 9(c) 9(j) of the order dated 30th July 2024 passed by NCLT Ahmedabad. Further, we declare that no adverse inference or liability shall attach to the liquidator on account of the observations made in the impugned order. All related IAs are also disposed of. No orders to costs.

**[Justice N Seshasayee]
Member (Judicial)**

**[Arun Baroka]
Member (Technical)**

**[Indevar Pandey]
Member (Technical)**

**New Delhi.
May 11, 2026.**

pawan/rashmi