

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1833 of 2024

[Arising out of order dated 19.07.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Mumbai Bench, Court – IV) in Appeal
No.03/(MB)/2024 in CP (IB) No.1056/MB/2020]

IN THE MATTER OF:

Kolkata Municipal Corporation

...Appellant

Versus

Gajesh Labhchand Jain,

Liquidator of Talwalkars Better Value Fitness Ltd.

...Respondent

Present:

For Appellant : Ms. Anju Thomas, Ms. Pratibha Yadav, Ms. Astha Sharma, Ms. Kritika Sethia and Mr. Piyush Agarwal, Advocates.

For Respondents : Mr. Mohit Rohatgi, Mr. Ashwini Kumar Tak, Ms. Aditi Nemakal and Mr. Karan Trehan, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed by Kolkata Municipal Corporation challenging the order dated 19.07.2024 passed by the adjudicating authority (National Company Law Tribunal (NCLT), Mumbai Bench, Court – IV) in Appeal No. 03/MB/2024, by which order, the adjudicating authority partly allowed the appeal to extent of Prayer (b) in the appeal. Aggrieved by the order, this appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. An asset of corporate debtor situated within the Municipal Corporation Kolkata was assessed for property tax. Part payment was made by the corporate debtor in the year 2018. Amount of Rs.30,28,233/- remain unpaid hence the warrant of distress was issued to the corporate debtor in the year 2018.
- ii. By order dated 11.01.2021, CIRP commenced against the corporate debtor, Talwalkers Better Value Fitness Ltd. Demand notice for outstanding property tax was issued by the appellant on 22.03.2022.
- iii. Adjudicating authority initiated liquidation proceeding vide order dated 28.04.2022. Appellant sealed the property on 24.09.2022. Adjudicating authority on 02.05.2023 directed the appellant to de-seal the property. Appellant was directed to file the claim before the liquidator. Appellant filed a claim in 'Form-C' on 12.05.2023 for Rs.51,72,258/-. There has been exchange of correspondence between the liquidator and the appellant, ultimately the liquidator vide letter dated 21.07.2023 partly rejected the claim and categorised the appellant as unsecured operational creditor.
- iv. Appellant filed Appeal No. 03/2024 under Section 42 of the IBC before the adjudicating authority which by order dated 19.07.2024 has been partly allowed, insofar as Prayer (b) is concerned. The reliefs prayed in the appeal has been noticed in paragraph 2 of the order of the adjudicating authority which is as follows:

“2. The reliefs/prayers sought by the applicant are as follows:

a) set aside the decision of the Liquidator dated 21 July 2023 rejecting partial claims of the Applicant;

b) Issue directions to the Liquidator to admit the entire claim of Rs 34,23,403/- (Rupees Thirty-Four Lakhs Twenty Three Thousand Four Hundred and Three only) of the Applicant filed with the Liquidator, after adjustment from the Suspense Account;

c) Declare that Kolkata Municipal Corporation is a secured creditor in the liquidation of Talwalkars Better Value Fitness Limited in light of its first charge on the Property situated at First Floor, Unit 1, No. 13/1/1A Soorah East Road, Ward No. 33, Kolkata Municipal Corporation, Police Station Beliaghata, Sealdah, District-North 24 Paragans, Kolkata under the Kolkata Municipal Corporation Act, 1980;

d) Direct the Liquidator to cancel the auction of the Property being First Floor, Unit 1, No. 131111A Soorah East Road, Ward No. 33, Kolkata Municipal Corporation, Police Station Beliaghata, Sealdah, District North 24 Paragans, Kolkata, as mentioned in the notice dated 18 July 2023 issued by the Liquidator;

e) In alternative to prayer (d) above, in case the Property is auctioned and/or sold in furtherance of the notice dated 18 July 2023, the Hon'ble Adjudicating Authority may be pleased to set aside the auction of the Property being First Floor, Unit 1, No. 13/1/1A Soorah East Road, Ward No. 33/ Kolkata Municipal Corporation, Police Station Beliaghata, Sealdah, District North 24 Paragans, Kolkata;

f) In alternative to prayer (d) above, in case the Property is auctioned and sold in furtherance of the notice dated 18 July 2023, the Hon'ble Adjudicating Authority may be pleased to direct the Liquidator to make payments to the Applicant against its dues from the sale proceeds of the auction of the said Property before distributing the

same under Section 53 of Insolvency and Bankruptcy Code, 2016:

g) Injunct the Liquidator from distributing the sale proceeds from the auction of the Property and to keep the same in a separate interest-bearing account until the dues of the Applicant are paid;

h) Stay the auction of the Property during the pendency of this Application;

i) Stay the Liquidation proceedings of the Corporate Debtor during the pendency of this Application;

j) Grant ad-interim reliefs in respect of prayers-above;

k) Condone the delay of three days in filing this application in the interest of justice;”

- v. Adjudicating authority vide impugned order rejected the submission of the appellant that appellant is a secured creditor of the corporate debtor. Adjudicating authority relying on judgment of the Calcutta High Court in **‘Kolkata Municipal Corporation & Anr.’ Vs. ‘Union of India & Ors.’** reported in **[(2021) SCC OnLine CAL 145]**, held that the debt of the appellant is a crown debt. Relying on the said judgment, adjudicating authority held that appellant is not a secured creditor and the debt of the appellant is categorised as Government dues. Liquidator was directed to admit the claim of Rs.34,23,403/-.

3. We have heard learned counsel for the appellant and learned counsel appearing for the respondent.

4. Learned counsel for the appellant challenging the order submits that appellant is secured creditor of the corporate debtor. It is submitted that by virtue of the provisions of Kolkata Municipal Corporation Act, 1980, Section

232 the dues payable to the appellant is a first charge upon the land/building belonging to the person. There being statutory charge created by Section 232, adjudicating authority committed error in not accepting the appellant as secured creditor. Reliance has been placed on the judgment of the Hon'ble Supreme Court in **'State Tax Officer' Vs. 'Rainbow Papers Ltd.'** reported in [(2023) 9 SCC 545]. Learned counsel for the appellant has also submitted that dues of the appellant are not Government dues and adjudicating authority committed an error in holding said dues as crown debt. It is submitted that adjudicating authority failed to draw a distinction between the Government dues and dues payable to the appellant. It is submitted that appellant debt are fully covered by definition of operational debt under Section 5(21) of the IBC. There was no reason for not following the judgment of the Hon'ble Supreme Court in **'Rainbow Papers Ltd.' (Supra)**. Security interest was created in the assets of the corporate debtor by virtue of Section 232 which could not have been ignored. Judgment of Hon'ble Supreme Court in **'Pashchimanchal Vidyut Vitran Nigam Ltd.' Vs. 'Raman Ispat Pvt. Ltd. & Ors.'** reported in [(2023) 10 SCC 60] has not been correctly appreciated by the adjudicating authority on basis of which judgment, appellant's due cannot be held to be Government dues. Judgment of the Calcutta High Court in **'Kolkata Municipal Corporation & Anr.'** (supra) is not applicable. Judgment of **'Kolkata Municipal Corporation & Anr.'** (supra) is not in accord with the judgment of the Hon'ble Supreme Court in **'Rainbow Papers Ltd.' (supra)**.

5. Learned counsel for the respondent refuting the submission of the appellant submits that the adjudicating authority has rightly held that dues of the appellant are Government dues. Learned counsel for the respondent referring to the judgment of Calcutta High Court in **‘Kolkata Municipal Corporation & Anr.’ (supra)** submits that Calcutta High Court has held that appellant’s debt as crown debt. It is submitted that Kolkata Municipal Corporation – appellant is statutory body which has power to levy tax including property taxes which is a sovereign power of a state legislature. Against the judgment of Calcutta High Court in **‘Kolkata Municipal Corporation & Anr.’ (supra)**, SLP has already been dismissed on 14.10.2024. Learned counsel for the respondent has placed reliance on the judgment of the Hon’ble Supreme Court in **‘Pashchimanchal Vidyut Vitran Nigam Ltd.’ (supra)**. The judgment relied by appellant of the Hon’ble Supreme Court in **‘Rainbow Papers Ltd.’ (supra)** is not applicable. **‘Rainbow Papers Ltd.’ (supra)** was considering the provisions of Section 48 of Gujarat Value Added Tax Act, 2023 which contained a non-obstante clause, whereas, Section 232 of the Kolkata Municipal Corporation Act does not contain any non-obstante clause. Only issue to be considered in this appeal is as to whether the appellant is secured creditor or not. Learned counsel for the respondent supported the order of the adjudicating authority.

6. We have considered the submissions of the counsel for the parties and perused the records.

7. Only question which need to be answered in the present case is as to whether the appellant is secured creditor of the corporate debtor by virtue of Section 232 of the Kolkata Municipal Corporation Act, 1980. There is no dispute between the parties that appellant has levied property tax on the corporate debtor. Part payment of property tax was made and there was outstanding due and much prior to initiation of CIRP, proceedings were initiated by the appellant for recovery of the dues. Section 232 of the Kolkata Municipal Corporation Act, 1980 provides as follows:

“232. The property tax on lands and buildings to be first charge on premises.–

The [property tax) on lands and buildings due from any person shall, subject to the prior payment of land revenue (if any) due to the Government thereupon, be a first charge upon the land or the building belonging to such person and upon the movable property (if any) found within or upon such land or building.”

8. Appellant’s case is that appellant is claiming secured creditor by virtue of statutory provisions of Section 232 as above. Reliance has been placed on the judgment of the Hon’ble Supreme Court in **‘Rainbow Papers Ltd.’ (supra)**, in which judgment, Hon’ble Supreme Court relying on Section 48 of Gujarat Value Added Tax Act, 2003 has held that State Tax Officer shall be statutory charge holder. Section 48 of the Gujarat Value Added Tax, 2003 which has been relied has been noticed by Hon’ble Supreme Court in paragraph 2 of the Judgment in **‘Rainbow Papers Ltd.’ (supra)**:

“2. The short question raised by the appellant in this appeal is, whether the provisions of IBC and, in particular, Section 53 thereof, overrides Section 48 of

the GVAT Act which is set out hereinbelow 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.”

9. In **‘Rainbow Papers Ltd.’ (supra)** the claim of the State Tax Officer was being a secured creditor of the corporate debtor was not accepted by the NCLT & NCLAT against which order, appeal was filed in the Hon’ble Supreme Court. Hon’ble Supreme Court in **‘Rainbow Papers Ltd.’ (supra)** relying on Section 48 has held that the claim of State Tax Officer was a secured debt and State Tax Officer was secured creditor. In paragraph 56 & 57, following was laid down:

“56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of IBC. Under Section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.

57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) IBC defines “secured creditor” to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of “secured creditor” in IBC does not exclude any Government or Governmental Authority.”

10. Learned counsel for the appellant has also placed reliance on the judgment of the Hon’ble Supreme Court in **‘K.C. Ninan’ Vs. ‘Kerala State Electricity Board & Ors.’** reported in **[(2023) 14 SCC 431]**, where the issue

was considered by the Hon'ble Supreme Court is as to whether the Paschimanchal Vidyut Vitrat Nigam is a secured creditor of the corporate debtor by virtue of provisions of electricity supply code. One of the issues framed by the Hon'ble Supreme Court in the above case was as to whether arrears of electricity become a charge or encumbrances over the premises. Hon'ble Supreme Court in the said case held that even a subordinate rule or regulation can provide for statutory charge to be fastened on the premises. It is useful to notice paragraphs 112, 113, 116 & 117 of the judgment:

“112. *A subordinate rule or regulation, as in the case of the Electricity Supply Code framed by a Regulatory Commission, can provide for a statutory charge to be fastened on the premises within which consumption of electricity was effected. In terms of Section 50 of the 2003 Act, a State Commission is empowered to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity and other cognate matters. In terms of Section 181 of the 2003 Act, the State Commission is empowered to make regulations and rules consistent with the Act which carry out the provisions of the Act. As held in the preceding paragraphs, the rule-making power contained under Section 181 read with Section 50 is wide enough to enable the Regulatory Commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge. The State Commission is conferred with wide powers under the statutory framework to provide for different mechanisms in the Electricity Supply Code for recovery of electricity arrears of the previous owner. The recovery of electricity arrears may take effect either by requiring a subsequent owner of premises to clear payment of outstanding dues as a condition precedent for an electricity connection, or by deeming that any amount due to the licensee shall be a first charge on the assets, or by any other reasonable condition.*

113. *In exercise of such power, Regulation 10.5 of the Maharashtra Electricity Supply Code, 2005 provides that any charge for electricity or any other sum which remains unpaid by an erstwhile owner constitutes a charge on the property and can be recovered from the transferee subject to the permitted period specified therein. This provision spelt out in the present judgment is a mere illustration of a subordinate rule wherein unpaid electricity dues constitute a charge on property and can be recovered from a subsequent transferee.*

...

116. *The provisions of the statute and statutory conditions of supply need to be examined to determine whether the conditions of supply provide for the creation of a charge in terms of Section 100 of the Transfer of Property Act, 1882. Once it is established that a statutory charge is created and required notice was given, the charge attaches to the property and the licensee is entitled to recover the unpaid electricity dues by proceeding against the premises. Consequent to the charge created, Article 62 of the Limitation Act, 1963 would come into play. Article 62 of the Limitation Act relates to enforcing the payment of money procured by mortgaged or otherwise charged upon the immovable property. The electricity utilities would get a period of twelve years to recover the dues charged on the immovable property from the date when the money payable became due.*

117. *In light of the above discussion, we are of the opinion that the electricity utilities can create a charge by framing subordinate legislation or statutory conditions of supply enabling recovery of electricity arrears from a subsequent transferee. Such a condition is rooted in the importance of protecting electricity which is a public good. Public utilities invest huge amounts of capital and infrastructure in providing electricity supply. The failure or inability to recover outstanding electricity dues of the premises would negatively impact the functioning of such public utilities and licensees. In the larger public interest, conditions are incorporated in subordinate legislation whereby the Electric Utilities can recoup electricity arrears. Recoupment of electricity arrears is necessary to provide funding and investment in laying down new*

infrastructure and maintaining the existing infrastructure. In the absence of such a provision, the Electric Utilities would be left without any recourse and would be compelled to grant a fresh electricity connection, even when huge arrears of electricity are outstanding. Besides impacting on the financial health of the Utilities, this would impact the wider body of consumers.”

11. The conclusion has been recorded in paragraph 342.7 which is as follows:

“342.7. The rule-making power contained under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the Regulatory Commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge;”

12. The above judgment thus clearly supports the submission of the appellant that charge can be created by statutory provisions.

13. Judgment of the Hon’ble Supreme Court in the matter of **‘Greater Noida Industrial Development Authority’ Vs. ‘Prabhjit Singh Soni & Anr.’** in **[Civil Appeal No. 7590-7591 of 2023]** relying on Section 13A of the U.P. Industrial Area Developmental Act, 1976 has held that Greater Noida shall be secured creditor by virtue of Section 13A of U.P. Industrial Development Act, 1976. The judgment of the Hon’ble Supreme Court in **‘Greater Noida Industrial Development Authority’ (supra)** also supports the submission of the appellant that appellant is a secured creditor.

14. The submission which has been much pressed by the appellant is that respondent is performing sovereign power in collecting property tax hence the dues of appellant are only Government dues.

15. In the above context we may refer to the judgment of **‘Pashchimanchal Vidyut Vitran Nigam Ltd.’ (supra)**, where Hon’ble Supreme Court had occasion to consider the nature of dues of Paschimanchal Vidyut Vitran Nigam Ltd. as to whether the said dues are Government dues or whether it is secured operational debt. Hon’ble Supreme Court in the above case has noticed the judgment of Hon’ble Supreme Court in **‘K.C. Ninan’ (supra)** reiterated the proposition that charge could be created not only by plenary legislation but could be created by regulations. In paragraph 46, following has been held:

“46. A recent ruling of this Court in K.C. Ninan v. Kerala SEB [K.C. Ninan v. Kerala SEB, (2023) 14 SCC 431 : 2023 SCC OnLine SC 663] examined the circumstances in which such a “charge” could be constituted in law, and held as follows : (SCC para 107)

“107. Consequently, in general law, a transferee of the premises cannot be made liable for the outstanding dues of the previous owner since electricity arrears do not automatically become a charge over the premises. Such an action is permissible only where the statutory conditions of supply authorise the recovery of outstanding electricity dues from a subsequent purchaser claiming fresh connection of electricity, or if there is an express provision of law providing for creation of a statutory charge upon the transferee.”

This Court held that the creation of a charge need not necessarily be based on an express provision of the 2003 Act or plenary legislation, but could be created by properly framed regulations authorised under the parent statute. In these circumstances, the argument of Pvvnl that by virtue of Clause 4.3(f)(iv) of the Supply Code, read with the stipulations in the agreement

between the parties, a charge was created on the assets of the corporate debtor, is merited. A careful reading of the impugned order [Raman Ispat (P) Ltd. v. Paschimanchal Vidyut Vitran Nigam Ltd., 2018 SCC OnLine NCLT 25732] of the NCLT also reveals that this position was accepted. This is evident from the order of Nclat which clarified that Pvvnl also came under the definition of “secured operational creditor” as per law. This finding was not disturbed, but rather affirmed by the impugned order [Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd., 2019 SCC OnLine NCLAT 883] . In these circumstances, the conclusion that Pvvnl is a secured creditor cannot be disputed.”

16. In the above case liquidator has also contended that dues owed to Paschimanchal Vidyut Vitrat Nigam Ltd. were Government dues. In the above context the Government dues came for consideration. It was held that dues payable for statutory corporation do not fall within the amount due to the Central or State Government. It is useful to notice the paragraphs 47 to 50 of the judgement, where following was held:

“47. The counsel for the liquidator had submitted that dues owed to Pvvnl were technically owed to the “Government”, and thus occupied a lower position in the order of priority of clearance. The expression “government dues” is not defined in IBC — it finds place only in the Preamble. However, what constitutes such dues is spelt out in the “waterfall mechanism” under Section 53(1)(e), which inter alia states that, “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 the State” ranks lower in priority to the class of creditors described in Clauses (a) to (d) of Section 53(1). Thus, there exists a separate enumeration or specification of the Central Government and State Government dues, as a class apart from other creditors, including creditors who may have secured interest (in respect of which amounts may be

payable to them). The repeated reference of lowering of priority of debts to the government, on account of statutory tax, or other dues payable to the Central Government or the State Government, or amounts payable into the Consolidated Fund on account of either government, in the various reports which preceded the enactment of IBC, as well as its Preamble, means that these dues are distinct and have to be treated as separate from those owed to secured creditors.

48. The Central Government and State Government are defined by the General Clauses Act, 1897. The former is defined by Section 3(8), and latter by Sectionn 3(60). The distinction between the Governments has been recognised and maintained by previous decisions of this Court. for instance, in *Shrikant v. Vasantryao* [*Shrikant v. Vasantryao*, (2006) 2 SCC 682] this Court underlined that while an entity or corporation may be “State” under Article 12 of the Constitution of India, nevertheless, its distinct entity, for other purposes, is always maintained, and fact-dependent : (SCC p. 694, para 19)

“19. ... Both may answer the definition of “State” under Article 12 for the limited purpose of Part III of the Constitution. Further, the very inclusive definition of “State” under Article 12 by referring to the Government of India, the Government of each of the States and the local and other authorities, makes it clear that a “State Government” and a local or other authorities, are different and that they fall under a common definition only for the purpose of Part III of the Constitution. This Court has consistently refused to apply the enlarged definition of “State” given in Part III (and Part IV) of the Constitution, for interpreting the words “State” or “State Government” occurring in other parts of the Constitution. While the term “State” may include a State Government as also statutory or other authorities for the purposes of Part III (or Part IV) of the Constitution, the term “State Government” in its ordinary sense does not encompass in its fold either a local or statutory authority.”

49. The judgment of this Court in *Dum Dum Municipality v. Indian Tourism Development*

Corpn. [Dum Dum Municipality v. Indian Tourism Development Corpn., (1995) 5 SCC 251] noticed that, “In the case of major public utilities, statutory corporations were created under different enactments”, and went on to enumerate some examples such as Road Transport Corporations, Electricity Boards under the Electricity Supply Act, 1948 and so on. The Court observed that : (SCC p. 263, para 21)

“21. ... With a view to enable these statutory corporations and companies to carry on the activity which was hitherto carried on by the Governments, the relevant properties, assets and liabilities were transferred to such new corporations. They were supposed to operate on business lines, pay taxes and justify their creation and constitution. These corporations, whether created under the statute or registered under the Companies Act are distinct juristic entities owning their own properties, having their own fund, capable of borrowing and lending monies and entering into contracts like any other corporation. In many cases, the entire share capital of these corporations is owned by the Government whether Central or State. In some cases, the major shareholding is of the Government with some private shareholding as well. In case of some statutory corporations, the enactment creating them did not provide for any share capital, though it was made a body corporate with all the necessary and incidental powers that go with such concept. The International Airports Authority is one such corporation created under the Act with no share capital but which has its own properties, its own fund, accounts, employees and capable of lending and borrowing and entering into contracts.”

50. *The specific mention of other class of creditors whose dues are statutory, such as dues payable to workmen or employees, “the provident fund, the pension fund, the gratuity fund” under Section 36(4), which excludes these enumerated amounts from the liquidation, especially clarifies that not all dues owed under statute are treated as “government” dues. In other words, dues payable to statutory corporations which do not fall within the description “amounts due*

to the Central or State Government” such as for instance amounts payable to corporations created by statutes which have distinct juristic entity but whose dues do not constitute government dues payable or those payable into the respective Consolidated Funds stand on a different footing. Such corporations may be operational creditors or financial creditors or secured creditors depending on the nature of the transactions entered into by them with the corporate debtor. On the other hand, dues payable or requiring to be credited to the Treasury, such as tax, tariffs, etc. which broadly fall within the ambit of Article 265 of the Constitution are “government dues” and therefore covered by Section 53(1)(f) IBC.”

17. Learned counsel for the respondent has relied on the judgment of the **‘Kolkata Municipal Corporation & Anr.’ (supra)**, relying on which judgment, adjudicating authority also held that debt of appellant is a crown debt. In the case of **‘Kolkata Municipal Corporation & Anr.’ (supra)**, a Writ Petition was filed challenging the order of NCLAT directing the Kolkata Municipal Corporation to handover the physical possession of the office premises to the RP. In the above case, Kolkata Municipal Corporation in exercise of its authority under 1980 Act has destrained the property in recovery of Municipal Tax. The corporate debtor came under CIRP hence the RP approached the NCLT for issuing direction to handover the physical possession of the property, which order was challenged by the Writ Petition before the Calcutta High Court. High Court after hearing the parties framed two questions which arose for consideration. It is useful to notice paragraphs 30 to 32 which are as follows:

“30. *The two questions which arise in the matter are:*

31. *Whether the writ jurisdiction of this court under article 226 of the Constitution of India can be invoked*

in the matter, despite the availability of an alternative remedy ; and

32. *Whether the property-in-question, having been seized by the KMC in recovery of its statutory claims against the debtor, can be the subject matter of a corporate resolution process under the Insolvency and Bankruptcy Code, 2016.”*

18. The second question which came for consideration was whether the property which is seized by the Kolkata Municipal Corporation can be subject matter of the CIRP process under IBC Code. The said question was considered and answered in paragraphs 47 to 50:

“47. *In the present case, the Corporation followed such procedure and took possession of the disputed property for non-payment of tax. Thus, there was no further scope for any "determination" of ownership of the property by the KMC. As such, there arose no question of the task of the interim resolution professional, in taking control and custody of the asset, being subject to the determination of ownership by any authority, as contemplated under section 18(f)(vi) of the IBC. Rather, the claim of the KMC, in the absence of any successful challenge thereto, attained finality, fastening a liability upon the corporate debtor. As per the interpretation in Embassy Property Developments P. Ltd. v. State of Karnataka 2019 SCC OnLine SC 1542 ; (2020) 9 Comp Cas-OL 609 (SC), such a finalized claim would come within the purview of "operational debt" under section 5(21) of the IBC. Hence, the resolution professional has jurisdiction to take custody and control of the same.*

48. *As discussed earlier, the parameters of powers of the National Company Law Tribunal, as an Adjudicating Authority under section 60 of the IBC, is defined and circumscribed by the scope of section 18(f)(vi) of the IBC. Such exercise of power would fall within the ambit of the expression "arising out of or in relation to the insolvency resolution", as envisaged in section 60(5)(c) of the IBC.*

49. *The proposition laid down in Principal CIT v. Monnet Ispat and Energy Ltd. (Special Leave to Appeal*

(C) No(s). 6483 of 2018) (2018) 211 Comp Cas 99 (SC) ; (2018) 12 ITR-OL 281 (SC), that Income-tax dues, being in the nature of crown debts do not take precedence even over secured creditors, holds true in the present case as well. The claim of the KMC, being in the nature of crown debts, cannot gain precedence over other secured creditors, as contemplated in the IBC.

50. *Thus, in the light of Embassy Property Developments P. Ltd. v. State of Karnataka 2019 SCC OnLine SC 1542 ; (2020) 9 Comp Cas-OL 609 (SC), the finalized claim of the KMC can very well be the subject matter of a corporate resolution process under the IBC.”*

19. The judgment of the High Court clearly indicate that High Court took a view that the asset on which there was restraint order by Municipal Corporation was asset of the corporate debtor and under Section 18(f)(vi), adjudicating authority could have directed the RP to take possession. In paragraph 49 observation has been made by Calcutta High Court “the claim of KMC being in the nature of crown debt cannot gain precedence over other secured creditor, as contemplated in the IBC”. Only two questions which have been framed in the above Writ Petition has been answered, the question what is the nature of claim of the Kolkata Municipal Corporation under the IBC was not under consideration before the High Court and the question of which category of waterfall under Section 53 debt of Kolkata Municipal Corporation falls was not subject matter of consideration or issue in the Writ Petition. The observations as noted above by the High Court, where in reference to that debt cannot gain precedence over other secured creditors. The question as to whether Kolkata Municipal Corporation was secured creditor was not gone into hence the said judgment cannot relied by the respondent to support his

submission that debt of claim of Kolkata Municipal Corporation is not a secured debt and the appellant is not secured creditor.

20. In any view of the matter, we have noticed above that Hon'ble Supreme Court in '**Pashchimanchal Vidyut Vitran Nigam**' (*supra*), as noted above has noticed the difference between the Government dues and dues payable to the statutory corporations. The Hon'ble Supreme Court has clearly noticed the distinction between the Government dues and dues payable to the operational creditor. We may in this reference also notice the definition of operational creditor as contained in Section 5(21). The definition itself contemplates debts of local authority.

21. We feel ourselves bound by the judgment of the Hon'ble Supreme Court in '**Pashchimanchal Vidyut Vitran Nigam**' (*supra*), and '**State Tax Officer**' (*supra*) as well as the judgment of the Hon'ble Supreme Court in '**Greater Noida Industrial Development Authority**' (*supra*). In view of the law laid down by the Hon'ble Supreme Court in above cases, appellant has a statutory charge by virtue of Section 2(32) of the Kolkata Municipal Corporation Act and the appellant is a secured creditor. Adjudicating authority committed error in rejecting the claim of the appellant as secured creditors.

22. In result of the foregoing discussions, the appeal is allowed, impugned order passed by the adjudicating authority dated 19.07.2024 is modified. The Prayer of the appellant as made in Appeal No.3/(MB)/2024 to declare it as secured creditor is allowed. The order of the adjudicating authority dated

19.07.2024 is modified to the above extent. Appellant's claim as admitted by liquidator shall be dealt with as secured creditor by the liquidator in accordance with law.

Appeal is allowed accordingly. Parties shall bar their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

26th September, 2025

himanshu