IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.308
IA/447(AHM)2025
in
CP(IB) 289 of 2020

Proceedings under Section Sec 60(5) of IBC ,2016 r.w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

State Tax Officer ....**Applicant**
V/s
Nitin Narang RP of M/s Afcan Impex Private Limited ....**Respondent**

Order delivered on: 30/09/2025

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

O R D E R
(Hybrid Mode)

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

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

IA No.447 of 2025
In
CP (IB) No.289 of 2020

IA No. 447 of 2025

(An application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of NCLT Rules, 2016 for necessary directions)

In the matter of:

STATE TAX OFFICER
Having its Office at
Ghatak- 103, Ground Floor,
Plot No.123, Sector-9,
Opposite S T Stand,
Gnadhidham 370201.
Email-id: ac104-ct@gujarat.gov.in

.... Applicant

Versus

1. **MR. NITIN NARANG**
(Resolution Professional of Afcan Impex Private Ltd.)
Building No.19, Vijaynagar,
Kingsway Camp,
New Delhi-110009,
Mobile No. 9899358800.
Email: cirf.afcan@gmail.com

...RESPONDENT NO.1

2. **AFCAN IMPEX PRIVATE LIMITED.**
Office No.1002/A, Pinnacle Building,
Corporate Road, Vejalpur,
Prahladnagar, Ahmedabad-380004, Gujarat.
Email-id: advocatenitinnarang@gmail.com
info@arzeerags.com me@kishorkapdi.com

...RESPONDENT NO.2

3. MR. NARESH SHAH

(Successful Resolution Applicant)
Flat No.301/C, Thosar House,
Hanuman Cross Road No.1,
Near Shiv Leela Hotel, Vile Parle (East),
Mumbai-400057,
E-mail: nss260165@gmail.com

...RESPONDENT NO.3

Order pronounced on: 30.09.2025

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant	:	Ms. Ritu Guru, Advocate
For the Respondent (RP)	:	Mr. Gaurav Joshi, Advocate

ORDER
(*Per*: Bench)

1. This Application **IA 447 OF 2025** is filed by the State Tax Officer Gandhidham under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016, on 24.03.2025 vide Diary No. E00770, seeking the following prayers: -

a. *That this Hon'ble Tribunal may be pleased to allow the captioned application;*

b. *The Hon'ble Tribunal may be pleased to consider the claim of the Applicant as "Secured Creditor" and direct the Resolution Professional to consider and accept the whole claim of the applicant amounting to INR – 5,80,64,381/- (Five Crore Eighty Lakhs Sixty Four Thousand and Three Eighty One Rupees Only) under the GVAT Act, 2003 and the CST Act, 1956 as a Secured Creditor in the Resolution Plan.*

c. *The Hon'ble Tribunal may be pleased to consider and to direct the Resolution Professional to make the payment of the claim as it were to be made as per section 53(1)(b)(ii) of the Code accordingly.*

d. *That the Hon'ble Tribunal may be pleased to condone the delay in filing the present application.*

e. *Pass any further order(s) as the Hon'ble Tribunal may deem fit.*

2. Before proceeding to adjudicate upon the respective reliefs sought therein, it is considered appropriate to set out the relevant background in brief, to facilitate adjudication of the reliefs sought in both applications. The Applicant in IA 447 of 2025 has submitted that: -

i. The Corporate Debtor, Respondent No.2 herein, was originally incorporated on 30.09.2003 as Arzee Rags (India) Private Limited with CIN U51909GJ2003PTC081238. It was engaged in the business of import and export of shoddy synthetic yarn, woollen yarn, blankets etc. including permissible local sales within Domestic Tariff Area (DTA). The company was renamed Afcan Impex Private Limited with effect from 22.07.2009, and its registered office was later shifted from the State of Maharashtra to the State of Gujarat by order dated 21.07.2014 of the Ministry of Corporate Affairs.

ii. An application being CP (IB) No. 289/7/AHM/2020 was filed by Bank of Maharashtra under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble NCLT, Ahmedabad Bench. The same was admitted on 17.02.2021 and Mr. Nitin Narang was appointed as the Interim Resolution Professional (IRP), subsequently confirmed as Resolution Professional (RP). Pursuant to admission, the RP issued a public announcement on 23.02.2021.

iii. The Applicant, being the State Tax Department, had inadvertently attached the property of the Corporate Debtor at Kandla SEZ, Gandhidham, by letters dated 12.04.2021 and 29.04.2021. On 19.04.2021, the Applicant duly submitted its claim in Form-B before the RP in respect of statutory tax dues accrued for AY 2006-07 to AY 2009-10 under the Gujarat Value Added Tax Act, 2003 ("GVAT Act") and the Central Sales Tax Act, 1956 ("CST Act"), amounting to Rs. 5,80,64,381/-.

iv. On 04.08.2021, the RP admitted the Applicant's claim provisionally, but only as that of an operational creditor, without seeking further documents or clarifications. The

Applicant, vide its letter dated 10.03.2023 (Annexure A-4), specifically requested the RP to consider it as a secured creditor, relying upon the judgment of the Hon'ble Supreme Court in State Tax Officer v. Rainbow Papers Pvt. Ltd. However, by his reply dated 03.04.2023 (Annexure A-5), the RP declined to do so, stating that the resolution plan had already been approved by the Committee of Creditors ("CoC") and was pending before this Hon'ble Tribunal.

v. Between May 2023 and September 2024, several CoC meetings were convened in which the Applicant's claim was discussed. In the 12th CoC meeting held on 18.09.2024, the RP acknowledged the admitted dues of Rs. 5,80,64,381/- but sought the CoC's view on the applicability of the Rainbow Papers judgment. The Authorised Representative of the Bank of Maharashtra objected, arguing that the attachments were void having been made after moratorium, and therefore the Applicant could only be treated as an unsecured creditor. He further contended that even if Rainbow Papers applied, the Applicant's rights would be confined to liquidation value pari passu with other secured creditors. Consequently, the CoC declined to treat the Applicant as a secured creditor.

vi. Meanwhile, the RP filed I.A. No. 1513 of 2024 before the Hon'ble NCLT, Ahmedabad Bench seeking removal of the department's attachment over the Corporate Debtor's properties. By order dated 06.12.2024 (Annexure A-8), the Hon'ble Tribunal directed removal of the attachment. It was only during these proceedings, particularly on 01.10.2024 when the matter was called, that the Applicant realised it had not been treated as a secured creditor in the resolution plan. Until then, the Applicant was under the bona fide impression that its claim had been considered as secured, especially in light of its earlier correspondence with the RP.

vii. The Applicant submits that the delay in filing the present application was purely unintentional and occurred due to this genuine misunderstanding. The delay deserves to be condoned, as the Applicant has a strong case on merits and grave prejudice would otherwise be caused to the public exchequer.

viii. The Applicant submits that the RP erred in law by treating its claim merely as operational. Section 48 of the GVAT Act, 2003 provides that tax dues shall be a first charge on the property of the dealer. This statutory charge falls squarely within the definition of "security interest" under Section 3(31) of IBC, and therefore, by virtue of Section 3(30), the State Tax Department qualifies as a "secured creditor." Further, Section 9(2) of the CST Act, 1956 makes it clear that CST dues are to be assessed and collected as per the general sales tax law of the State, i.e. GVAT in this case. Thus, the charge under Section 48 extends equally to CST dues. The relevant

ix. The Hon'ble Gujarat High Court in Special Civil Application No. 23256 of 2019 has already affirmed this position, holding the State Tax Department to be a secured creditor in light of Rainbow Papers. The Hon'ble Supreme Court in Rainbow Papers (2023) 9 SCC 545 categorically held that statutory dues of the State fall within the definition of "secured creditor" and that any resolution plan ignoring such dues is liable to be rejected. The Apex Court observed that Section 48 of GVAT is not inconsistent with Section 53 of IBC, and that security interest may arise by operation of law. Review petitions against this judgment were dismissed on 31.10.2023, further cementing this principle.

x. The Applicant therefore submits that the RP's refusal to recognise its status as secured creditor, and the CoC's failure to provide for its statutory dues in the resolution plan, are arbitrary, contrary to law, and de hors binding precedent under Article 141 of the Constitution. Section 30(2)(e) of IBC expressly mandates that no resolution plan can contravene provisions of law. By ignoring GVAT and CST provisions, the RP has failed in his duties under Sections 25 and 30 of IBC.

xi. The Applicant further submits that the dues in question are prior to the initiation of CIRP, are reflected in the books of the Corporate Debtor, and have been assessed by way of quasi-judicial orders. The RP, being in possession of such records, ought to have properly verified and admitted the Applicant's claim as secured.

3. After issuance of notice in the I.A., a reply has been filed by the Resolution Professional on 07.07.2025 vide Inward Diary No.D-3228, wherein the Resolution Professional have made the following averments:

i. The background of the case is straightforward. On 17 February 2021, this Hon'ble Tribunal admitted a petition filed by Bank of Maharashtra under Section 7 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor, M/s Afcan Impex Private Limited. Along with the admission, a moratorium under Section 14 was imposed, and the Respondent, Mr. Nitin Narang, was appointed as the Interim Resolution Professional (IRP). The Tribunal's order was detailed — it directed that no suits or recovery actions could be continued against the Corporate Debtor, no assets could be attached or alienated, and even attachments under SARFAESI or tax laws were prohibited. The order also required the IRP to take charge, preserve the Corporate Debtor as a going concern, make a public announcement, invite claims, and run the CIRP in accordance with law.

ii. Acting strictly in line with the order, the Respondent issued a public announcement on 23 February 2021 in Financial Express (English and Gujarati editions), inviting claims from creditors with a deadline of 8 March 2021. This announcement was also uploaded on the IBBI website. Several creditors filed their claims, which were verified, and based on these, the Committee of Creditors (CoC) was formally constituted.

iii. Once the CoC was in place, the Respondent issued Form-G to invite resolution plans. Multiple prospective applicants submitted their plans, which were carefully reviewed in meetings of the CoC. Finally, in the 7th CoC meeting, after full deliberation, the CoC unanimously approved the resolution plan of Mr. Naresh Sevantilal Shah with 100% voting share. Following this, the Respondent, now acting as the Resolution Professional (RP), filed I.A. No. 766 of 2021 before this Tribunal, seeking approval of the resolution plan under Section 31. That application is still pending. Importantly, the Applicant in the present case was invited to attend every single CoC meeting, including those where the resolution plan and its entitlements were discussed. However, the Applicant chose not to attend those meetings and thereby forfeited the opportunity to raise any grievance before the CoC itself.

iv. In the meantime, on 6 September 2022, the Hon'ble Supreme Court delivered its judgment in State Tax Officer (1) v. Rainbow Papers Ltd. In that ruling, the Court held that tax dues under the Gujarat VAT Act would qualify as "secured debt" under the IBC and that the State Tax Department would, therefore, be treated as a secured creditor. However, the judgment did not address the question of how such secured creditors would rank in priority when compared with other secured creditors. More importantly, the Rainbow Papers ruling came a full year after the CoC had already approved the resolution plan in October 2021.

v. When the plan approval application was being considered, this Tribunal, by order dated 10 September 2024, directed the RP and the CoC to clarify whether the Rainbow Papers ruling had any bearing on this case. Acting promptly, the RP convened the 12th CoC meeting on 18 September 2024. Once again, the Applicant was invited to attend but did not turn up. In that meeting, the CoC, assisted by its legal counsel, carefully examined the issue. Counsel pointed out that the Sales Tax Department had attached the Corporate Debtor's property after the moratorium had been declared. Since any such attachment post-moratorium is void under Section 14 of the Code, the RP had already filed an application before this Tribunal on 16 September 2024 seeking to set aside that attachment.

vi. The Authorised Representative of the Bank of Maharashtra, which is the main financial creditor, also explained that because the attachment was post-moratorium and therefore illegal, the Sales Tax Department could not be treated as a secured creditor in this CIRP and would have to be considered an unsecured creditor. The CoC went further to say that even if the Rainbow Papers judgment were applied, the Sales Tax Department's rights would still be limited only to the liquidation value of its security interest, if any, and that such value would have to be shared on a pari passu basis with the other secured creditors. These points were recorded in the minutes of the 12th CoC meeting.

vii. The Respondent emphasizes that despite the Applicant's repeated absence from CoC meetings, the CoC has nevertheless looked after its interests. The CoC made sure to deliberate on the effect of Rainbow Papers and came to a balanced position that protects all creditors. Therefore, the Applicant cannot claim that it has been left out or prejudiced.

viii. Given this sequence of events — the admission of the petition in February 2021, the imposition of moratorium, the conduct of CIRP and constitution of the CoC, the unanimous approval of a resolution plan in October 2021, the later judgment of the Supreme Court in September 2022, this Tribunal's direction in September 2024, and the CoC's considered clarification in its 12th meeting — the Respondent submits that the present application is without merit. The grievance raised is already addressed by the CoC, and the cause of action has become infructuous. Accordingly, the Respondent respectfully prays that this application be dismissed in its entirety.

4. Further, an additional affidavit has been filed by the Resolution Professional on 05.08.2025, vide Inward Diary No.D-5247, wherein the Resolution Professional have made the following averments:

i. In compliance of order of this Hon'ble Tribunal specifically directed the Resolution Professional (RP) to clarify the status of the Applicant's dues under the Gujarat Value Added Tax Act (GVAT) and the Central Sales Tax Act (CST). In compliance with these directions, the RP sought a bifurcation of the total claim amounting to ₹5,80,64,381/-. The Applicant accordingly provided the breakup, which showed that ₹4,95,83,045/- pertained to GVAT dues, while ₹84,81,336/- pertained to CST dues.

ii. Pursuant to this, the RP convened the 13th meeting of the CoC on 31.07.2025 to deliberate upon the treatment of the Applicant's claim. In the meeting, the CoC's counsel apprised the members that in light of the Supreme Court's judgment in State Tax Officer v. Rainbow Papers Ltd., only the portion of the claim relating to GVAT dues could be treated as secured, whereas dues under the CST Act would fall under the category of unsecured claims under the IBC. The CoC noted the bifurcation provided and discussed the matter in detail, also considering orders passed by NCLT in similar cases.

iii. After deliberation, the CoC reached the following decision:

- GVAT dues of ₹4,95,83,045/- would be treated as secured.
- CST dues of ₹84,81,336/- would be treated as unsecured.

iv. Further, the CoC confirmed that in respect of the entitlement of the Sales Tax Department under the resolution plan, compliance would be ensured with the ratio laid down in the Rainbow Papers judgment. It was also reiterated that the CoC had already taken a consistent view in the 12th CoC meeting that the secured claim would be dealt with strictly in terms of Rainbow Papers, limited to the liquidation value of the secured asset.

v. Accordingly, the RP submits that the treatment of the Applicant's claim has been clearly determined: the GVAT component is to be treated as secured debt, the CST component as unsecured debt, and both shall be dealt with as per the binding principles of Rainbow Papers. This affidavit has been filed to comply with the Tribunal's direction dated 08.07.2025 and is prayed to be taken on record.

5. Further, a Rejoinder has been filed by the Applicant on 16.05.2025, vide Inward Diary No.D-3258 and made the following averments:

i. The Applicant, State Tax Officer, has carefully examined the reply affidavit filed by the Resolution Professional (RP) and is submitting this rejoinder in compliance with the order of this Hon'ble Adjudicating Authority dated 07.05.2025 (marked as Annexure A-1). The Applicant emphasizes at the outset that the RP has once again failed to correct his position regarding the treatment of the Applicant as a secured creditor. According to the RP, during the 12th Committee of Creditors (CoC) meeting, the claim of the State Tax Department was discussed, and the RP allegedly informed the CoC that even if the claim were to be treated as secured, the rights of the Department would be limited to the liquidation value of the security interest, if any, and would have to be distributed on a pari passu basis with other secured creditors. The Applicant strongly contests this interpretation, arguing that it is inconsistent with legal precedent and the statutory provisions under the Insolvency and Bankruptcy Code (IBC) and the Gujarat Value Added Tax (GVAT) Act.

ii. The Applicant further brings to the Tribunal's attention that a similar issue has already been considered by this Hon'ble Tribunal in IA No. 9 of 2025 in CP (IB) No. 211 of

2020, titled Assistant Commissioner of State Tax vs. Mr. Sunil Kumar Kabra, Liquidator of M/s Archon Engicon Limited. In that matter, the Tribunal specifically addressed the treatment of statutory dues under GVAT and CST as secured claims. The Tribunal, in its order dated 30.04.2025, recognized that unpaid GVAT dues should be treated as secured under Section 53(1)(b)(ii) of the IBC. In reaching this conclusion, the Tribunal relied on several judgments of the Hon'ble Supreme Court, including:

a. State Tax Officer vs. Rainbow Papers Ltd., (2022) SCC OnLine SC 1162 (06.09.2022), which clarified that statutory dues to the State should be treated as secured;

b. Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Pvt. Ltd. & Others, (2023) SCC OnLine SC 842 (17.07.2023); and

c. Sanjay Kumar Agrawal vs. State Tax Officer (1) & Another, Review Petition (Civil) No. 1620 of 2023 in Civil Appeal No. 1661 of 2020 (31.10.2023), which reaffirmed the treatment of statutory dues as secured.

iii. The Applicant has annexed a copy of the Tribunal's order in Archon Engicon as Annexure A-2 to demonstrate that this legal position is binding and applicable in the present matter.

iv. The Applicant also highlights a procedural concern: during CoC meetings, the Applicant is not granted voting rights because the RP has not recognized them as a secured creditor. Consequently, any objections or concerns raised by the Applicant do not form part of the official CoC deliberations. Additionally, due to unavoidable circumstances, the Applicant's officer could not attend the 12th CoC meeting held on 18.09.2024 and was therefore unable to respond orally to the contentions raised by other CoC members. The RP, instead of clarifying whether the Department's claim is recognized as secured, merely reiterated that if the Rainbow Papers judgment were applicable, the Department's rights would be limited to liquidation value and distributed pari passu with other secured creditors.

v. The Applicant strongly objects to this limited interpretation, arguing that it is legally and factually incorrect. By filing this rejoinder, the Applicant requests that the Hon'ble Tribunal take into account the legal position as established by the Supreme Court in Rainbow Papers, the observations in Paschimanchal Vidyut Vitran Nigam and Sanjay Kumar Agrawal, and the prior decision of this Tribunal in Archon Engicon. The Applicant seeks a clear direction to the RP to recognize its claim as that of a secured creditor and to ensure payment of its dues in accordance with Section 53(1)(b)(ii) of the IBC, rather than limiting its rights to the liquidation value of security interest.

vi. In essence, the rejoinder emphasizes that the RP's repeated attempts to sideline the statutory claim of the

State Tax Department as secured are inconsistent with established law, procedural fairness, and the specific directives issued by the Hon'ble Tribunal in earlier cases. The Applicant prays that the Tribunal take cognizance of both the legal position and the factual record and direct the RP to treat the claim as secured in full and make payment accordingly.

6. Further, a Written Submission has been filed by the Applicant on 22.09.2025, vide Inward Diary No.D-6429 and the same was taken on record.

7. We have heard the counsel for the Applicant, Ld. Counsel for the Respondent/ Resolution Professional, perused and duly considered the material placed before us.

8. The Applicant/State Tax Department contends that the Corporate Debtor has defaulted on tax dues for FY 2006-07 to 2009-10 under the GVAT Act, 2003, and CST Act, 1956, totalling Rs. 5,80,64,381/-. The amount of GVAT (Gujarat Value Added Tax) dues: Rs. 4,95,83,045/- and CST (Central Sales Tax) dues: Rs. 84,81,336/-. The Applicant submitted its claim via Form B on 19.04.2021. The RP provisionally admitted Rs. 5,80,64,381/- of the claim.

9. The RP, in its affidavit in reply, stated that they have accepted and admitted the dues pertinent to the GVAT Act as Secured Creditors.

10. M/s Afcan Impex Private Limited, the Corporate Debtor, is undergoing CIRP proceedings. The amount to be distributed under the plan as per Section 53 of the IBC, therefore the said Section 53 is extracted as below:

> ***"Section 53: Distribution of assets.***
> **53.** *(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—*
> *(a)[J2] the insolvency resolution process costs and the liquidation costs paid in full;*
> *(b) the following debts which shall rank equally between and among the following :—*
> *(i) workmen's dues[J2] for the period of twenty-four months preceding the liquidation commencement date; and*
> *(ii) debts owed to a secured creditor[J4] in the event such secured creditor has relinquished security in the manner set out in section 52;*
> *(c) wages[J2] and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*
> *(d) financial debts owed to unsecured creditors;*
> *(e) the following dues shall rank equally between and among the following:—*

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;[J6]
(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
(f) any remaining debts and dues;
(g) preference shareholders, if any; and
(h) equity shareholders or partners, as the case may be.
(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.
(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.
Explanation.- For the purpose of this section—
(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and
(ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013."

11. The Corporate Debtor has GVAT and CST amounts due to the State Government.

12. The Hon'ble Supreme Court in the case of ***State Tax Officer vs. Rainbow Papers Limited 2022 SCC Online 1162*** held that the amount due to the State of account of GVAT are "secured debt" and therefore such debt will be paid in the distribution mechanism as per the provisions of section 53 (1) (b) (ii) of the IBC, 2016. This Adjudicating Authority, by following the ratio Decidendi of the Hon'ble Supreme Court in the case of Rainbow Papers (which was reaffirmed in the review petition in the case of Sanjay Agarwal), holds that the GVAT dues are secured debt and the Sales Tax Department is the "secured creditor".

13. Based on the above facts and analysis, this Tribunal directs the Respondent to consider the unpaid GVAT dues to State as "debts owed to a secured creditor" and the Authority as "Secured Creditor" and adhere to the provisions of section 53 of the IBC, 2016, while deciding the applicability of section 53(1)(b)(ii) of IB, Code. The Resolution Professional will also consider the provisions of section 52 of the IBC, 2016, and Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016.

14. The following analysis concerns questions about the classification of unpaid CST dues.

15. Section 9(2) of the Central Sales Tax Act, 1956 reads as below:

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

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

> ***"Section 238: Provisions of this Code to override other laws.***
>
> **238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

17. **Section 9(2) of the CST Act**, which allows state authorities to enforce CST dues as if they were state tax dues, does not create a statutory charge equivalent to Section 48 of the GVAT Act. To the extent that it implies a priority for CST dues over other creditors, it is inconsistent with the waterfall mechanism under Section 53 of the IBC, which prioritizes secured creditors and other specified categories over government dues.

18. Therefore, as per Section 238 of IBC, 2016, IBC provisions will prevail over the provisions of such acts that are inconsistent with the Code's provisions. Therefore, the provisions of IBC Code 2016 override any inconsistent provisions, if any, in section 9(2) of the CST Act, 1956. It is also stated that the provisions of section 9 of the CST are not similar to section 48 of the GVAT, which were before the Hon'ble Supreme Court in the case of Rainbow Papers Limited. Therefore, the decision of the Hon'ble Supreme Court in the case of Rainbow Papers does not apply to CST dues. The claim of the State Tax Department that the Hon'ble Supreme Court did not distinguish the VAT and CST claims, and therefore the decision will apply to CST dues as well, is rejected for the reason that the issue of CST was not before the Hon'ble Supreme Court in the case of Rainbow Papers. The Hon'ble Supreme Court had considered the government dues in the case of Paschim Anchal Vidyut Vitran Nigam Limited and it was held that the Government (Central and State) dues fall in section 53 (1) (e) (i) while applying the waterfall mechanism for distributing the proceeds from the sale of the liquidation assets.

19. The distribution rules (waterfall mechanism) stipulated in section 53 of the IBC, 2016, also override any contrary provisions contained in any law enacted by the Parliament or any State Legislature for the time being in force.

20. This Tribunal has carefully considered the decisions of the Hon'ble Supreme Court in the cases of ***State Tax Officer Vs. Rainbow Papers Limited 2022 SCC Online 1162*** (decision of 06.09.2022), ***Paschimanchal Vidyut Vitran Nigam Limited vs. Raman Ispat Private Limited and others 2023 SCC Online SC 842*** (dated 17.07.2023), and the decision in the case of ***Sanjay Kumar Agarwal v. State Tax Officer (1) & Anr.***, [Review Petition (Civil) No. 1620 of 2023 in Civil Appeal No. 1661 of 2020, ***Rainbow Papers Review Decision***] (Decision dated 31.10.2023) and it is stated that the issue relating to the CST is not explicitly dealt in these judgments and therefore the same is required to be considered as a government dues and dealt with based on the decision of the Hon'ble Supreme Court in the case of Paschimanchal Vidyut Vitran Nigam Limited.

21. In view of the above, this Tribunal is of the opinion that the unpaid CST dues to the State are not dues owed to a secured creditor and provisions of section 53 (1) (b) (ii) do not apply to unpaid CST dues.

22. The delay in filing the application is condoned, as the Applicant has demonstrated bona fide misunderstanding per IBC precedents.

23. In view of the above, the Tribunal adjudicates the reliefs sought in IA No. 447 of 2025 as follows: -

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

B. **Unpaid CST dues** by the Corporate Debtor to the State are not the debt owed to the secured creditor, and the claims are not covered in the category covered by section 53(1)(b)(ii) of the IBC, 2016. These dues do not qualify as secured creditor claims, as no statutory charge akin to Section 48 of the GVAT Act exists under the CST Act, 1956.

C. Therefore, the Applicant's claim of Rs.5,80,64,381/- is partly accepted. The **GVAT dues** of Rs.4,95,83,045/- are admitted as secured creditor claims, while the **CST dues** of Rs. 84,81,336 are admitted as government dues under Section 53(1)(e)(i) of the IBC, 2016, and not as secured creditor claims.

D. The relief seeking payment of the entire claim as per Section 53(1)(b)(ii) is partly allowed with respect to GVAT dues, as noted above. The CST dues are classified as **operational debts** under Section 5(21) of the IBC, 2016, and shall be treated as per the waterfall mechanism under Section 53(1)(e)(i) or 53(1)(d), depending on the period to which they pertain, respectively.

E. No further orders are required beyond the above, as the remaining issues raised by the Applicant do not directly impact the classification of GVAT and CST dues.

24. Accordingly, the **IA No. 447 of 2025** in CP(IB) 289(AHM)2020 is disposed of.

25. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

SP/LRA