

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

Company Appeal (AT) (Insolvency) No.825 of 2023

IN THE MATTER OF:

**Department of State Tax
Through the Deputy Commissioner of State Tax** **...Appellant**

Versus

Apollo Soyuz Electrical Pvt. Ltd. **...Respondent**

Present:

For Appellant: Ms. Shwetal Shepal, Advocate.

For Respondent: Mr. Malak Bhatt, Advocate.

ORDER

11.07.2023: Heard learned counsel for the parties. This Appeal has been filed against order dated 13.04.2023, by which order the Adjudicating Authority has approved the Resolution Plan.

2. The Appellant is an Operational Creditor who submits that in the plan the amount which was allocated to the Appellant was less than 1% i.e. 0.59%. Learned counsel for the Appellant submits that the Appellant ought to have treated as a Secured Creditor.

3. Learned counsel for the Respondent refuting the submission of learned counsel for the contends that Appellant has filed claim as an Operational Creditor. Learned counsel relying on judgment of this Tribunal in ***“Company Appeal (AT) (Insolvency) No. 246 of 2022, Department of State Tax, Through the Dy. Commissioner of State Tax vs. Zicom Saas Pvt. Ltd. &***

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Anr.” submits that issues raised in the present appeal are fully covered by the said judgment.

4. We have considered the submissions of learned counsel for the parties and perused the record.

5. There is no dispute that the Appellant has filed claim as Operational Creditor and this Tribunal in the case of **“Department of State Tax, Through the Dy. Commissioner of State Tax vs. Zicom Saas Pvt. Ltd. & Anr.”** has considered similar issues on an appeal filed by Department of State Tax and has upheld approval of the Resolution Plan. It was held by this Tribunal in said case that Appellant cannot be treated as Secured Creditor. In Para 7 to 10 following has been held:

“7. There are no dispute between the parties regarding the facts which took place in the CIRP and the claim which was admitted in the CIRP. In “Rainbow Paper Limited” (supra), Section 48 of the GVAT Act was relied, which has been quoted in paragraph 2 of the Judgement which is to the following effect:

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

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

Government shall be a first charge on the property of such dealer, or as the case may be, such person”

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

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

9. *When we compare the provisions of Section 48 of the provision of Gujarat Values Added Tax which was relied in “Rainbow Papers Limited” and the Provisions of Section 37 which is sought to be relied on in the present Appeal, distinction between the provisions is clear. Section 37 specifically uses the expression “subject to any provision regarding creation of first charge in any central act”. The provision itself contemplated thus that Section 37 was subject to any provision in Central Act. The IBC Section 53 itself provides waterfall mechanism which may be treated to be law which has been contemplated under Section 37 of the MVAT Act, 2002.*

10. *We thus are of the view that the Judgement of the Hon’ble Supreme Court in “Rainbow Paper Limited” relied by Learned Counsel for the Appellant is distinguishable. The Appellant having been treated as Operational Creditor allocation of amount in the*

Resolution Plan cannot be said to be in violation of Section 30 (2)(b). We thus are of the view that no ground has been made to interfere with the Impugned Order.

The Appeal is dismissed.”

6. We are of the view that issues raised in the present Appeal are fully covered by the judgment of this Tribunal in “**Department of State Tax, Through the Dy. Commissioner of State Tax vs. Zicom Saas Pvt. Ltd. & Anr.**”. Following the aforesaid judgment, Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Archana/nn