

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 12TH JANUARY, 2024, 10:30 A.M.

IA (IBC)/32/GB/2020
CP (IB)/20/GB/2017

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	Assam Company India Ltd. Vs Pr. Commissioner of Income Tax, Dibrugarh
Under Section	U/s 60(5) of IBC, 2016

For Petitioner (s) :

For Respondent (s) :

ORDER

Order Pronounced through VC *vide* separate sheets.

Sd/-

Satya Ranjan Prasad
Member (Technical)

Sd/-

H.V. Subba Rao
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 12TH JANUARY, 2024, 10:30 A.M.

IA (IBC)/15/GB/2023
CP (IB)/20/GB/2017

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	Assam Company India Ltd. Vs Pr. Commissioner of Income Tax, Dibrugarh, 2. Assistant Commissioner of Income Tax, Circle – 2, Dibrugarh
Under Section	U/s 60(5) of IBC, 2016

For Petitioner (s) :

For Respondent (s) :

ORDER

Order Pronounced through VC *vide* separate sheets.

Sd/-

Satya Ranjan Prasad
Member (Technical)

Sd/-

H.V. Subba Rao
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA (IBC)/32/60(5)/GB/2020
IA (IBC)/15/60(5)/GB/2023
In CP (IB)/20/GB/2017**

IA (IBC)/32/60(5)/GB/2020

In the Matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code 2016, read with Rule 11 of NCLT Rules, 2016;

-And-

In the Matter of:

Assam Company India Limited, Greenwood Tea Estate, Dibrugarh-786001;

... Applicant

Versus

1. **Principal Commissioner of Income Tax**, Dibrugarh, Pushkara House, Natun Goan, N.H
97, University Road, Dibrugarh-786017; **... Respondent No. 1**
2. **Assistant Commissioner of Income Tax**, Dibrugarh, Pushkara House, Natun Goan, N.H
97, University Road, Dibrugarh-786017. **...Respondent No 2**

IA (IBC)/15/60(5)/GB/2023

In the Matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code 2016, read with Rule 11 of NCLT Rules, 2016;

-And-

In the Matter of:

Assam Company India Limited, Greenwood Tea Estate, Dibrugarh-786001.

... Applicant

Versus

1. **Principal Commissioner of Income Tax**, Dibrugarh, Pushkara House, Natun Goan, N.H
97, University Road, Dibrugarh-786017; **... Respondent No. 1**

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

IA (IBC)/32/60(5)/GB/2020

IA (IBC)/15/60(5)/GB/2023

In CP (IB)/20/GB/2017

2. **Assistant Commissioner of Income Tax**, Dibrugarh, Pushkara House, Natun Goan, N.H
97, University Road, Dibrugarh-786017; **...Respondent No 2**

Coram:

Shri H. V. Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

IA (IBC)/32/60(5)/GB/2020; IA (IBC)/15/60(5)/GB/2023;

For Petitioners : Mr. A. Gaggar, Adv.

For Respondents : Mr. V. Sharma, Adv.

Order pronounced on: 12.01.2024

COMMON ORDER

1. **IA (IBC) 32/60(5)/GB/2023** has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 by the Applicant herein i.e. **Assam Company India Limited** seeking the following reliefs:
- a. The demand of the Respondents for Rs. 23,83,408/- for Assessment Year 1986-1987 should be extinguished;*
 - b. The demand of the Respondents for Rs. 21,46,262/- for Assessment Year 2006-2007 should be extinguished;*
 - c. The demand of the Respondents for Rs. 10,23,57,960/- for Assessment Year 2010-2011 should be extinguished;*
 - d. The demand of the Respondents for Rs. 5,38,41,660/- for Assessment Year 2011-2012 should be extinguished;*
 - e. The demand of the Respondents for Rs. 460,29,210/- for Assessment Year 2012-2013 should be extinguished;*

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

IA (IBC)/32/60(5)/GB/2020
IA (IBC)/15/60(5)/GB/2023
In CP (IB)/20/GB/2017

- f. The demand of the Respondents for Rs. 6,69,84,657/- for Assessment Year 2013-2014 should be extinguished;*
- g. The demand of the Respondents for Rs. 6,69,84,657/- for Assessment Year 2014-2015 should be extinguished;*
- h. Any other demand prior to 20th September, 2018 should be extinguished;*
2. **IA (IBC) 15/60(5)/GB/2023** has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 by the Applicant herein i.e. Assam Company India Limited seeking the following reliefs:
- a. The Respondents be directed not to attach any bank accounts of the applicant and not to take any coercive steps and/or actions which is detrimental to the operations of the applicant;*
- b. Ad-interim order in terms of prayers above till disposal;*
3. Since, the issues for consideration involved in both the above IAs are common, both the IAs are hereby disposed of through this common order.
4. The main crux of the issues involved in the above IAs are as follows:
- 4.1 An application was filed being CP (IB) No. 20/GB/2017 by the Financial Creditor in which this Bench admitted the said application *vide* order dated 26.10.2017 and initiated Corporate Insolvency Resolution Process (**CIRP**) and also appointed an Interim Resolution Professional for collating the claims of the Applicant.
- 4.2 During the CIRP Process, the Respondent did not file its claim with the IRP. Thereafter, the IRP was replaced by the Resolution Professional who floated the Expression of Interest for inviting the potential Resolution Applicants to submit their Resolution Plans. During the CIRP, a Resolution Plan placed by BRS Ventures Investments Limited was duly accepted by the majority votes in the 13th Meeting of Committee of Creditors held on 10.08.2018 and the same was approved by this Bench by an order dated 20.09.2018.

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

IA (IBC)/32/60(5)/GB/2020
IA (IBC)/15/60(5)/GB/2023
In CP (IB)/20/GB/2017

- 4.3 In the approved Resolution Plan it was clearly stated that barring aside the claims admitted and forming part of the Resolution Plan any other claim and/or demand prior to the effective date shall stand extinguished.
- 4.4 On 11.03.2019, the Applicant sent a letter to the Respondent No. 1 bringing to their knowledge the commencement of CIRP against the Applicant and approval of the Resolution Plan of BRS Ventures Investment Limited, wherein the successful resolution Applicant has already infused the amount of Rs. 1,064 Crore and has paid off /settle the claims of the stakeholders as per the approved Resolution plan out of which Rs. 18.93 Crore has been paid to the Operational Creditors. The said letter requested to extinguish all the disputed and undisputed claims against the Applicant relating to the period prior to the effective date i.e. 20.09.2018 in terms of the approved Resolution Plan. However, the Respondent No. 1 allegedly failed to give any reply to the letter sent by the applicant.
- 4.5 The Respondent has not filed any claims before this Tribunal for settlement of any of its dues other than the claims for Rs. 16,20,25,953 which was filed for the assessment years 2013-14 and 2014-15 before the Resolution Professional and Rs. 1,97,92,084 was admitted by the Resolution Professional and Rs. 1,20,23,691.03 was paid to the Respondents.
- 4.6 Despite having received an amount of Rs. 1, 20, 23,691.03 pursuant to the Resolution Plan approved by this Tribunal by an order dated 20th September, 2018, the respondents issued demand notices upon the applicant for payment of several dues, all pertaining to the period prior to the approval of the resolution plan and also took necessary steps of attaching the bank accounts of the applicant.
- 4.7 Being aggrieved by the steps taken by the respondents the applicant filed three applications being I.A. No. 10 of 2020; I.A. No. 31 of 2020 and I.A. No. 32 of

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA (IBC)/32/60(5)/GB/2020
IA (IBC)/15/60(5)/GB/2023
In CP (IB)/20/GB/2017**

2020 praying for extinguishment of all demands prior to the approval of the resolution plan as well as praying for injunction restraining the respondents from attaching the bank account of the applicant. This Tribunal after hearing the three applications being I.A No. 10 of 2020; I.A No. 31 of 2020 and I.A No. 32 of 2020 passed orders dated 20th January, 2021 and 10th February, 2021 respectively and extinguished all demands raised by the respondents pertaining to the period prior to the approval of the resolution plan.

- 4.8 The instant interlocutory application i.e. IA (IBC) No. 32/GB/2020 was heard and disposed of by this Bench *vide* order dated 10.02.2021. Relevant portion of the order is reproduced below:

“Para 16: Since the Respondents have not filed any claims for the period from 1986-87 except 2013-14 and 2014-15 before the Resolution Professional/ before the approval of the resolution plan, the left over claims of the respondents from 1986-87 till the approval of the resolution Plan, if it is filed now or in the future, is not to be entertained by the Resolution Applicant/ Corporate Debtor.

- (1) Company can operate the Bank Account without any obstructions form the Income Tax Department.*
- (2) The Resolution Applicant/ the Petitioner is hereby directed to strictly implement the resolution Plan as approved in time without any violation.*
- (3) The Petitioner is further directed to file an affidavit compliance report within 15 days of this order before the Registry stating the details of amount month wise that the Company has been paying all the statutory dues especially, EPF, Income Tax, GST etc. from the date of the Resolution Plan is approved till the order of this date.*
- (4) The Monitoring and Supervising Committee appointed during the approval of the Resolution Plan is directed to submit the Status Report of the implementation of the Resolution Plan approved, before this registry within 21 days from today.*

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA (IBC)/32/60(5)/GB/2020
IA (IBC)/15/60(5)/GB/2023
In CP (IB)/20/GB/2017**

Para 17: Accordingly, the IA No. 32 of 2020 is disposed of with the above observations and directions.

- 4.9 Aggrieved by the order dated 10.02.2021 passed in IA (IBC) No. 32/GB/2020, an appeal was preferred by the Respondents in the above mentioned IA, before the Hon'ble National Company Law Appellate Tribunal and the same was numbered as Company Appeal (AT) (Insolvency) No. 241 of 2022. The Hon'ble Appellate Tribunal *vide* order dated 07.02.2023 set aside the impugned order dated 10.02.2021 and remitted back the same for fresh hearing. Relevant portion of the order is reproduced below:

“Para 19: Taking all the facts aforementioned, we are of the considered view that these facts have not been considered by the Adjudicating Authority while passing the impugned order. Admittedly, the judgment passed by the Hon'ble Supreme Court in the case of “State Tax Officer (1) Vs. Rainbow Papers Limited, Civil Appeal No. 1661 of 2020 dated 06th September, 2020”, the dues of the Appellants are ‘Government dues’ and they are Secured Creditors. Thus, the impugned order dated 10.02.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Guwahati Bench, Guwahati) in IA No. 32 of 2020 in C.P (IB) No. 20/GB/2017 is hereby set aside and the matter is remitted back to the Adjudicating Authority (National Company Law Tribunal, Guwahati Bench, Guwahati) with a request to hear the parties (Appellants and Respondents herein) considering the aforesaid facts and also judgment passed by the Hon'ble Supreme Court in the case of ‘Rainbow Papers Limited case (supra)’ and pass fresh orders as expeditiously as possible”.

- 4.10 Thereafter, an Interim Application i.e. IA (IBC) No.15/GB/2023 was filed by SRA to further seek directions and assurances from this Tribunal that no coercive step should be taken by the respondents of attaching any of the bank accounts of the applicant or take any such steps which may be detrimental to

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

IA (IBC)/32/60(5)/GB/2020
IA (IBC)/15/60(5)/GB/2023
In CP (IB)/20/GB/2017

the operations of the applicant till the disposal of IA No. 32 of 2020 in CP (IB) No. 20/GB/2017.

- 4.11 The above mentioned IA i.e. IA (IBC) No. 15/GB/2023 was first listed and heard on 10.02.2023 and this Bench directed the Income Tax Department not to take any coercive action or attach the bank accounts of the Applicant till the next date of hearing. The Respondents were given opportunity to file their replies and the Applicant was also given an opportunity to file rejoinder if any.
5. The Respondent in accordance with orders of this Tribunal dated 10.02.2023, filed written statement/objection to the petition stating that:
- 5.1 In response to para (b) the answering deponent submits that the demands of the Respondents are statutory demands which have been long pending and unrealised. Such non-realisation of demands is a great loss to the state exchequer and the growth of the nation. Therefore, the Respondents may be allowed to proceed for recovery of taxes due in the case of appellant under the relevant provisions of the Income Tax Act, 1961.
- 5.2 In response to para (3d) the answering deponent submits that the claims of Respondents are statutory claims and the respondents had placed before the RP the demand of income tax for the A.Y. 2013-14 for Rs. 6,69,84,657/- and A.Y. 2014-15 for Rs. 9,50,41,296/- totalling to Rs. 16,20,25,953/- , which were outstanding before the date of admitting the said application. The claim was filed in the form of FORM B dated 14.11.2017 as proof of claim by Operational Creditor as required under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) regulations, 2016. Thus, it is evident that the demands of the respondents at least for AY 2013-14 and 2014-15 was filed on time and much before the effective date of resolution plan i.e. 20.09.2018.

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

IA (IBC)/32/60(5)/GB/2020
IA (IBC)/15/60(5)/GB/2023
In CP (IB)/20/GB/2017

- 5.3 In response to para (3e) the answering deponent submits that with regards to the demands for AY 2013-14 and 2014-15, the assessee was asked to pay the outstanding demand vide letter No. 304 dated 12.03.2019 of the Respondent No. 2. Subsequently, the assessee wrote to the Principal Commissioner of Income Tax, Dibrugarh to extinguish all outstanding disputed/undisputed demands relating to a period prior to the date of order of the NCLT, as per the resolution plan approved by NCLT. A review petition was filed with the NCLT, Guwahati and subsequently the NCLT, Guwahati *vide* its order dated 22.10.2019, has delivered that since the IRP has intimated the Department that the demand after finalization of appeal by CIT(A) would be payable by the new promoter and such written intimation of the IRP is to be read with the approved resolution plan and the demand of the Department is duly considered and the Department has the right to lay its claim before the new promoter of Assam Company India Limited. The same has also been validated by the order of this Tribunal dated 22.10.2019 wherein it has clearly observed that the written intimation of the RP is to be read with the approved Resolution plan and the demand of the Income Tax Department has been duly considered and the Department has the right to lay its claim before the new promoter of Assam Company India Limited.
- 5.4 In response to para (3f) the answering deponent submits that the unpaid demands of the Department are all demands arrived through rigorous observance of Statutory Process and these pertain to financial period prior to the effective date of approved resolution plan. Mere fact that a particular demand is not communicated before the CIRP does not take away the right of an operational creditor for the valid due. Also pending judicial/appellate proceedings for earlier assessment years prior to effective date may also give rise to new demands. Therefore, the view taken by Hon'ble NCLT providing

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA (IBC)/32/60(5)/GB/2020
IA (IBC)/15/60(5)/GB/2023
In CP (IB)/20/GB/2017**

for blanket extinguishment of demands other than demands for AY 2013-14 and 2014-15 needs consideration as was rightly done by the order of Hon'ble NCLAT, New Delhi dated 07.02.2023 in Company Appeal (AT) (Ins) 241/2022, Company Appeal (AT) (Ins) 242/2022 and Company Appeal (AT) (Ins) 243/2022 by setting aside the order of this Tribunal dated 10.02.2021 in IA No. 32 of 2020 and pass appropriate order to restore right of the appellant for all valid demands. Above all, the assessee has not even paid the full amount of the demands relating to AY 2013-14 and 2014-15.

- 5.5 In response to para (3l) the answering deponent submits that the Income Tax demands for AY 2013-14 and 2014-15 stood outstanding in the case of the petitioner. And the recovery of long outstanding demand in its case was carried out observing the relevant statutory provisions of the Income Tax Act, 1961.
- 5.6 In response to para (3n) the answering deponent submits that on receiving the direction of Hon'ble NCLAT, New Delhi, the letters were issued to banks for withdrawal of attachment notice and no amount was realised from the petitioner.
6. The Applicant upon receiving the reply from the respondent, filed its rejoinder dated 29.03.2023 and submits that:
- 6.1 With reference to para No. 1 to 3 of the reply, the applicant denies that the demands of the respondents are statutory demands which have been long pending or unrealized or such no realization of demands has cause great loss to the state exchequer or the growth of the nation or the respondents be allowed to proceed for recovery of taxes due in the case of the appellant under the provisions of the Income Tax Act, 1961 as alleged at all. The respondents cannot be allowed to proceed for recovery of taxed due in the case of the appellant under the relevant provisions of the Income Tax Act, 1961.

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

IA (IBC)/32/60(5)/GB/2020
IA (IBC)/15/60(5)/GB/2023
In CP (IB)/20/GB/2017

- 6.2 With reference to para 9 of the reply, the applicant submits that the respondents have failed to file any claims before this Tribunal for settlement of any of its dues other than the claim for Rs. 16, 20, 25,953/- which was filed for the assessment years 2013-14 and 2014-15 before the Resolution Professional and Rs. 1, 97, 92,084/- was admitted by the Resolution Professional and Rs. 1, 20, 23,691.03 was paid to the respondents. The CD underwent CIRP wherein the successful resolution applicant being BRS Ventures Investment Limited infused an amount of Rs. 1,064 Crore and has paid off/settled the claim of the stakeholders as per the approved Resolution Plan which includes Rs. 120,23,691.03 released to the Appellants/Income Tax Authorities. It is pertinent to mention herein that against the claim of Rs. 16, 20, 25,953/- of the Income Tax Authorities against ACIL, the RP had admitted the claim to the extent of Rs. 1, 97, 92,084/- and upon approval of the Resolution Plan of BRS Ventures, an amount of Rs. 120, 23,691.03 released to the Appellants/Income Tax Authorities on 18th December, 2018 and 7th January, 2019 respectively. Therefore the claim filed by the respondents for the assessment year 2013-14 and 2014-15 in Form B submitted before the effective date of the resolution plan i.e. 20th September, 2018 does not make the respondents eligible to raise demand to an extent to 100% of its claim.
- 6.3 With reference to para 10 of the reply, the applicant submits that the respondents had filed an application being IA No. 67 of 2019 before this Tribunal praying for recalling of the order dated 20th September, 2018 for approval of the Resolution Plan of BRS Ventures Investment Limited. As and when the matter came up for hearing on 22nd October, 2019 this Tribunal was pleased to pass an order refusing to interfere in the order dated 20th September, 2018 and disposed of the IA No. 67 of 2019 being devoid of merit and further made observation that the letter dated 31st July, 2018 sent by the Resolution

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

IA (IBC)/32/60(5)/GB/2020

IA (IBC)/15/60(5)/GB/2023

In CP (IB)/20/GB/2017

Professional is to be read along with the Resolution Plan and IT Department would have in any case any statutory liability finally arising after appeal process has to right to lay its claim before the new promoter of the Respondent. Therefore, there has been a mis-interpretation of the letter dated 31st July, 2018 by the respondents.

- 6.4 With reference to para 11 of the reply, the applicant denies that this Hon'ble Tribunal has provided blanket extinguishment of demands other than the demands for assessment year 2013-14 and 2014-15 as alleged or at all. The Respondents were paid to the extent of their entitlement to their demand raised with the resolution professional of the CD.
- 6.5 With reference to para 12 to 27 of the reply, the applicant denies that any income tax demand for the assessment year 2013-14 and 2014-15 are outstanding from the applicant. It is also denied that non-realization of the demand from the applicant are a loss to the state exchequer and its revenue which feeds people who are hungry or in poverty as alleged or at all.
7. Heard the Learned Counsel appearing for both the parties. Material available on record perused. In view of the forgoing, this Tribunal is of firm view that the claims as aforesaid, of the respondents herein are not maintainable. Our observations in this regard are as under:
- A. In the judgment of *Essar Steel India Limited V/s Satish Kumar Gupta* the Hon'ble Apex Court has held that the CD will be taken up on a 'fresh/clean slate' and therefore any liability prior to the approval of the resolution plan whether claimed or not claimed shall be waived/extinguished. The entire resolution plan has been implemented upon payment of Rs. 1,064.00 Crore by the SRA and therefore at this juncture the question of any further payment does not arise.

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

IA (IBC)/32/60(5)/GB/2020

IA (IBC)/15/60(5)/GB/2023

In CP (IB)/20/GB/2017

- B. Section 31 of the IBC, 2016 clearly states that upon approval of the resolution plan it becomes binding on all the stakeholders including Central Government, State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is owed cannot be burdened with the liability when the resolution plan is already approved. In the instant case the para Nos. 12.1.1 and 12.1.2 of the resolution plan duly approved by this Tribunal states to the effect that the Successful Resolution Applicant and the applicant shall have no liability towards any Operational Creditors and other creditors with respect to any claims relating in any manner to the period prior to the Effective Date. It further states that all claims of all Governmental Authorities relating to the period prior to the Effective Date, shall stand fully and finally discharged and/or waived or extinguished.
- C. The Resolution Plan once approved and implemented cannot be amended. In the present case the Respondents had filed its claim for Rs. 16,20,25,953/- which was accepted to the extent of Rs. 1,97,92,084/-. The claim of the respondent formed the part of the information memorandum, pursuant to which the SRA has already paid an amount of Rs. 1,20,23,691.03. Therefore, the claim raised by the respondents for Rs. 16,20,25,953/- cannot be accepted at this belated stage as it would lead to a modification of the resolution plan which otherwise is not allowed under IBC, 2016. Once the requirements of the IBC have been fulfilled, all concerned are duty bound to abide by the discipline of the statutory provisions of IBC, 2016.
- D. Under IBC, 2016 the RP is *inter alia* required to collate the claims filed by the creditor and prepare the information memorandum accordingly. In the present case, the Respondent *vide* its email dated 31st July, 2018 mentioned such instructions which has so bearing under the IBC, 2016 as the RP has no powers

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

IA (IBC)/32/60(5)/GB/2020

IA (IBC)/15/60(5)/GB/2023

In CP (IB)/20/GB/2017

to give such instructions or otherwise allow such claim which is not forming part of Information Memorandum to be received from the successful resolution applicant. Therefore, in our views such communication made *vide* email dated 31st July, 2018 is not binding upon the successful resolution applicant.

- E. The Hon'ble Apex Court reinforced the prominence of Section 53 within the context of insolvency and the strength of Section 238's non-obstante clause within the IBC, 2016. The Hon'ble Apex Court also reiterated the significance of prioritizing the secured creditors claims over government dues under the 'Waterfall Mechanism' otherwise there will be cascading effects on the rights and interests of secured creditors, operational Creditors, and both Central and State Governments. Moreover, the Income Tax Act cannot override the provisions of Section 238 of Insolvency and Bankruptcy Code, 2016.
- F. The Hon'ble Apex Court in *Paschimanchal Vidyut Vitran Nigam Limited Vs. Raman Ispat Private Limited and Others* is of the view that the careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in *Rainbow Papers* (supra) or was missed altogether. In any event, the judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government. The Gujarat Value Added Tax Act, 2003 no doubt creates a charge in respect of amounts due and payable or arrears. It would be possible to hold that the State is to be treated as a 'secured creditor'. However, the separate and distinct treatment of amounts payable to secured creditor on the one hand, and dues payable to the government on the other clearly signifies

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

IA (IBC)/32/60(5)/GB/2020

IA (IBC)/15/60(5)/GB/2023

In CP (IB)/20/GB/2017

Parliament's intention to treat the latter differently- and in the present case, having lower priority. As noticed earlier, this intention is also evident from a reading of the preamble to the Act itself.

- G. In our views, the Judgment of *State Tax Officer v/s Rainbow Papers Limited* is not applicable in the present case. The resolution plan has a provision for an amount of Rs. 1, 20, 23,691/- payable to the Income Tax Authorities which has already been paid towards full and final settlement of their claims. Furthermore, the Resolution Plan has been passed in 2018 and completely implemented upon payment of Rs. 1064 Crore to all creditors and therefore at this belated stage there cannot be any modification to the resolution plan duly approved and implemented or any further amount can be claimed from the successful resolution applicant.
8. Accordingly, the above IAs that is IA (IBC)/32/60(5)/GB/2020 and IA (IBC)/15/60(5) /GB/2023 are allowed and disposed of.
9. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
10. Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
11. File be consigned to records.

Sd/-

Satya Ranjan Prasad
Member (Technical)

Sd/-

H.V.Subba Rao
Member (Judicial)

Signed this on 12th day of January, 2024.