

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1395 of 2024

IN THE MATTER OF:

Parag Sheth

...Appellant

Versus

Union of India & Ors.

...Respondent

Present:

For Appellant : Ms. Natasha Dhruman Shah, Adv.

For Respondent : Mr. Karan Valecha, Vishal Singhal, Adv. for R2

O R D E R
(Virtual Mode)

Per: Justice Rakesh Kumar Jain (Oral)

02.09.2025: This appeal is filed by the Liquidator of M/s Origin Formulation Pvt. Ltd. (CD), aggrieved against the order dated 09.05. 2024, passed by the NCLT, Ahmedabad (in short 'the Tribunal') by which an application filed by the Appellant bearing I.A No. 541 of 2022 in CP (IB) No. 566/Ahm/2019 under Section 54 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') with a prayer to dissolve the CD, has been rejected.

2. Brief facts of this case are that M/s Prutha Enterprises (FC) filed an application under Section 7 of the Code against the CD which was admitted on 17.09.2019 and the Appellant was appointed as the Interim Resolution Professional (IRP).

3. Shorn of unnecessary details, since the resolution could not take place, therefore, liquidation order was passed by the Tribunal on 28.09.2020.

4. The Appellant after the liquidation, distributed the proceeds in the following manner:-

Particulars	Amount In Rs.
CIRP Cost reimbursement to UBI	Rs. 6,48,781.00
CIRP Cost reimbursement to M/s. Prutha Enterprise	Rs. 9,639.00
Liquidation Cost	Rs. 85,53,282.00
Payment to Employee Provident Fund Organization	Rs. 34,31,290.00
Payment to Employees	Rs. 24,62,510.00
Payment to Union Bank of India- First Distribution	Rs. 11,46,91,051.00
Payment to Union Bank of India- Second Distribution	Rs. 1,00,00,296.00
Payment to Union Bank of India- Final Distribution	Rs. 8,62,019.74
Total	Rs. 14,06,58,868.74

5. The Appellant then filed an application I.A No. 541 of 2022 on 18.06.2022. In this application, the Department of Income Tax raised a claim of Rs. 7,71,39,553/- on 10.08.2022.

6. Counsel for the Appellant has submitted that on 28.06.2023, in the application in question, Ms. Pankti Shah, Adv. appeared for Income Tax Department and submitted that no charge was created against the demand of income tax department, therefore, the decision in the case of State Tax

Officer (1) Vs. Rainbow Papers Ltd., Civil Appeal No. 1661 of 2020 and Civil Appeal No. 2568 of 2020 will not be applicable to the facts of this case and the AA may take appropriate decision. The said order is reproduced as under:-

IA 541 of 2022

Learned Counsel Ms. Pankti Shah appears for Income Tax Department. In response to the query in order dated 20.06.2023, she confirms that no charge was created against the demand of Income Tax Department and therefore, judgement passed by the Hon'ble Supreme Court in the matter of State Tax Officer (1) Vs. Rainbow Papers Ltd. in Civil Appeal No.1661 of 2020 and Civil Appeal No.2568 of 2020 will not apply to the facts of this case and Adjudicating Authority may take appropriate decision.

List for hearing before regular Bench on 16.08.2023

7. However, the Tribunal, while relying upon a decision in the case of Rainbow Paper (Supra) and a decision of this Court in the case of Principal Commissioner of Income Tax Vs. M/s Assam Company India Ltd., CA (AT) (Ins) No. 243 of 2022 decided that the Income Tax department is a secured creditor, therefore, at the time of distribution, the Appellant as the liquidator, should not have considered the Income Tax Department as other creditors instead of secured creditor. The Tribunal, therefore, observed that neither the RoC nor the Income Tax Department have confirmed in writing their no objection to the dissolution proposal submitted by the liquidator because of the pending dues of the Income Tax, therefore, the application was rejected.

8. Counsel for the Appellant has submitted that the Tribunal committed an error in rejecting the application only on the ground that the Income Tax Department is a secured creditor while relying upon the decision of the Hon'ble Supreme Court in the case of Rainbow Papers (Supra) and Principal Commissioner of Income Tax (Supra). She has submitted that, in so far as,

Rainbow Papers (Supra) is concerned that is an altogether different facts because it was pertaining to Section 48 of the GVAT Act. She has further submitted that in the case of Principal Commissioner of Income Tax (Supra), decided by this Court is also not applicable because in that case an order of attachment was passed which in a sense creation of a charge on the property of the CD whereas in the present case no such attachment order has been passed, therefore, the judgment in the case of Principal Commissioner of Income Tax is not applicable. She has further submitted that even a statement was suffered by the Counsel for the Income Tax Department on 28.06.2023 when she categorically stated before the Tribunal that the Income Tax Department does not have any charge created on the demand of the Income Tax, therefore, the decision in the case of Rainbow Papers (Supra) is not applicable. The Income Tax Department did not challenge the order dated 28.06.2023 before the Higher Court if the said statement was not correct.

9. Be that as it may, during the pendency of this appeal, we thought it fit to issue notice to the department and in this regard, passed the following order:-

“28.02.2025 This appeal is directed against the order dated 09.05.2024 by which an application filed by the Appellant (Liquidator) in I.A. No. 541 of 2022 in C.P (IB) No. 566 of 2019 under Section 54 of the Insolvency and Bankruptcy Code, 2016 with a prayer to dissolve the CD i.e., M/s. Origin Formulation Private Limited, has been dismissed.

The Tribunal, while dismissing the application was of the view that neither the RoC nor the Income Tax Department had confirmed in writing their no objection to the dissolution proposal though they had sent a notice under Section 270 of the Income Tax Act, 1961 on 06.01.2021 and claimed a sum of Rs. 7,71,39,553/-.

Counsel for the Appellant has argued that the Counsel appearing on behalf of the Income Tax Department had suffered a statement on 16.08.2023 that neither the decision of the Hon'ble supreme Court in the case of Rainbow Paper vs. ST Department of Gujarat shall apply to this case nor the Department had filed any claim before the liquidator.

Since the Impugned Order has been passed in favour of the Income Tax Department, therefore, we are of the considered opinion that Income Tax Department is required to be impleaded as the party to contest the present appeal because there is no one else to contest the present appeal.

In view thereof, issue notice to Income Tax Department. The complete address along with the E-mail ID of the Department is as under :-

"The Assistant Commissioner, Central Circle-2(2) Ahmedabad, Aaykar Bhawan, Ashram Road, Navrangpura, Ahmedabad, Gujarat – 380009. Email : ahmedabad.dcit.cen2.2@incometax.gov.in"

The Appellant is directed to deposit process fees along with requisites for the issuance of notice within three days from today to the Registry.

List on 14.04.2025."

10. As per office report, notice was served upon the Income Tax Department but no one has put in appearance on its behalf either in the pre lunch session when the case came up for hearing and then it was passed over to be taken up in the post lunch session and at that time also no representation was made on its behalf.

11. The reason appears to be obvious because the statement had already been made by Counsel appearing on behalf of Income Tax Department on 28.06.2023, noticed in the previous part of this order, that the department has no charge against the demand of income tax, therefore, the decision in the case of Rainbow papers (Supra) is not applicable.

12. Thus, in view of the aforesaid facts and circumstances, we are of the considered opinion that the Tribunal has committed a patent error in rejecting

the application only by presuming that Income Tax Department is a secured creditor while relying upon the decision in the case of Principal Commissioner of Income Tax (Supra) which has already been distinguished.

13. No other point has been raised.

14. Counsel for Respondent No. 2 has also supported the case of the Appellant.

15. In view of the aforesaid facts and circumstances, the present appeal succeeds and the impugned order dated 09.05.2024 is set aside. The matter is remanded back to the Tribunal for passing the order of dissolution in accordance with law. The parties shall appear before the Tribunal on 16.09.2025.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Sc/RR