

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

**Comp. App. (AT) (Ins) No. 34 of 2024 & I.A. No. 105, 106, 990 of 2024**

**(Arising out of the Order dated 31.10.2023 passed by the National Company Law Tribunal, Ahmedabad Bench in IA No. 735/NCLT/AHM/ 2023 in I.A. No. 435/NCLT/AHM/2023 in CP(IB) No. 66/NCLT/AHM/2017)**

**IN THE MATTER OF:**

**Commissioner of State Tax Department**

Having its address at: Office of the Assistant Commissioner of State Tax Unit-15. 2nd Floor, Seva Sadan Building, Lal Darwaja, Ahmedabad, Gujarat  
Mail id: [ac1unt15-ahd2-gstn@gujarat.gov.in](mailto:ac1unt15-ahd2-gstn@gujarat.gov.in)

**...Appellant**

**Versus**

**Ramchandra Dallaram Chaudhary Liquidator of M/s Anil Ltd.**

Having office at: 9B, Vardan Tower, Lakhudi Circle, Naranpura, Ahmedabad, Gujarat-380014. Email – [rdc\\_rca@yahoo.com](mailto:rdc_rca@yahoo.com)

**...Respondent**

**Present**

**For Appellant:** Ms. Aastha Mehta, Adv.

**For Respondent:** Mr. Ramji Srinivasan, Sr. Adv. with Mr. Atul Sharma, Ms. Namrata Saraogi, Mr. Shivanshu Kumar, Ms. Aditi Sharma, Mr. Vikram Choudhary, Advocates

**J U D G E M E N T**

**(20.05.2024)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

1. The present Appeal has been filed by Commissioner of State Tax Department (in short **Appellant**) under Section 61(1) of the Insolvency &

Bankruptcy Code, 2016 (in short '**Code**') in Company Appeal (AT) (Insolvency) No. 34 of 2024 against the Impugned Order dated 31.10.2023 passed by the National Company Law Tribunal, Ahmedabad Bench (in short '**Adjudicating Authority**') in IA No. 735/NCLT/AHM/2023 in IA No. 435/NCLT/AHM/2023 in CP(IB) No. 66/NCLT/AHM/2017, whereby the Adjudicating Authority rejected the application of the Appellant to treat its claim as Secured Creditor during the liquidation under waterfall arrangement as stipulated in Section 53 of the Code.

**2.** Mr. Ramchandra Dallaram Chaudhary is the Liquidation (in short '**Respondent**' herein) of M/s Anil Limited ('**Corporate Debtor**').

**3.** Heard the Counsel for the Parties and perused the records made available including the cited judgements.

**4.** It has been brought out that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (in short '**CIRP**') vide the Adjudicating Authority its Order dated 23.08.2017 and moratorium came into effect same day.

**5.** The Resolution Professional published a public announcement on 28.08.2017 inviting claims from all by stipulating the last date of claim filing as on 06.09.2017. It has been stated that in the public announcement, it was indicated that the estimated date for closure of CIRP would be 19.02.2018.

**6.** It is further submitted that due to no resolution of the Corporate Debtor, the CoC decided to liquidate the Corporate Debtor and the Adjudicating Authority approved the Liquidation vide its order dated 25.10.2018. Subsequent to this, the Respondent again published public announcement on 27.10.2018 and last date of claims submission was 24.11.2018 and further indicated that date of closure of the liquidation process would be 20.05.2018.

**7.** It is a case of the Appellant that the prevailing moratorium under Section 14 of the Code ceased to have effect on 25.10.2018 and Section 33(5) of the Code came into effect. The Appellant submitted that the CIRP came to close on 20.05.2018.

**8.** The Appellant submitted that he passed an order for attachment for immovable properties of the Corporate Debtor vide attachment letter dated 16.10.2018 in terms of the Gujarat Vat Act, 2003 (in short 'VAT Act') for outstanding dues pertaining to Assessment Year (in short 'AY') 2007 to 2017. It was stated that the said attachment order dated 16.10.2018 was challenged by the Respondent before the Appellant in I.A. No. 501 of 2022.

**9.** The Appellant stated that he submitted his claims to the Respondent on 03.11.2018 for the AY 1994-95, 95-96, 96-97 and 97-98 and AY 2014-15 for Rs. 5,45,96,65,301/- and the same was admitted by the Respondent. The Appellant further stated that he filed an additional claims to the Respondent on 24.06.2020 for AY 2015-16 and 2016-17 for Rs. 4,55,75,67,058/-.

**10.** It has been brought out that on 17.07.2020 the Respondent communication admitted all the claims of Rs. 1001,72,32,359/- however, the Respondent vide his letter dated 28.07.2020 stated that the attachment order was bad in law due to moratorium of the Corporate Debtor and further stated that the alleged attached properties belonging to the liquidation estate.

**11.** It is the case of the Appellant as per section 48 of the VAT Act the dues of the Appellant have the first charge over the property of the Corporate Debtor and hence the Appellant ought to have been treated as Secured Creditors.

**12.** It has been brought out that the Appellant filed I.A. No. 501 of 2020 before the Adjudicating Authority and the Adjudicating Authority passed the Order dated 22.11.2022 in I.A. No. 501 of 2020 filed by the Respondent challenged the attachment order. The relevant portion of the order dated 22.11.2022 reads as under :-

*"Learned Counsel for respondent Commissioner of State Tax states that they have considered the aspect of applicability of the judgment passed by Hon'ble Supreme Court in Rainbow Papers Limited, and on the assurance from the liquidator to treat it as a secured creditor in view of the said judgment they have lift the attachment within a specific time period. Let the affidavit be filed within five days, and with the time line of lifting the attachments within a week." (SIC.)*

**13.** The Appellant elaborated that based on the Order of the Adjudicating Authority dated 22.11.2022, it was understanding on his part that the claims

would be considered in the category of Secured Creditors. The Appellant submitted that to his shock the Respondent again sent a letter to the Appellant on 22.06.2023 and informed about the rejection of the Appellant's claim for AY 1994 to 98 and for AY 2013 to 2017 and thereby admitting claims of the AY 2007 to 2012. The Respondent also sent a communication vide letter dated 26.06.2023 to the Appellant reiterating that the claims of the Appellant have been rejected.

**14.** The Appellant thereafter filed an I.A. No. 435 of 2023 seeking that he may be declared as Secured Creditors for his entire claims.

**15.** The Appellant gave the background of the case and stated that the Appellant had sent notices under Bombay Land Revenue Code (in short '**BLRC**') and Section 48 of the Gujarat Sales Tax Act 1969 (in short '**Sales Tax Act**') for the purpose of old Assessment years 1994 to 1998 attaching the immovable and movable properties of the Corporate debtor for these old assessment years which were much prior to the moratorium. The Appellant also submitted that notices dated 24.09.2009, 12.02.2010, 12.12.2011 and 03.02.2012 under Section 152 read with Section 200 of the BLRC were sent by him for attachment of movable and immovable property of the Corporate Debtor for the said assessment years, which had not been challenged by the Corporate Debtor.

**16.** It is the case of the Appellant that his claims are covered under the Judgment of *State Tax Officer Vs. Rainbow Papers Limited* [(2023) 9 SCC 545] and the Respondent could not have differentiated his claims for few Financial Years as Secured Creditors vis-à-vis other financial years as Unsecured Creditors.

17. The Appellant admitted that the *Rainbow Paper (Supra)* would not be applicable his claims for the AY 1994 to 1998, however the same does not mean that the Appellant is not a Secured Creditors for these years or such claims have been given up by the Appellant.

18. It is the case of the Appellant that his claims AY 2013-14, 2014-15, 2015-16 and 2016-17 are not hit by the moratorium and are not violated by Section 14 and Section 33(5) of the Code and should have been treated as Secured Financial Creditor under Section 33(1)(e) specially keeping in view the judgment of *Rainbow Paper (Supra)*. It is the argument of the Appellant that the AY are from 1<sup>st</sup> April till 31<sup>st</sup> March of the next year as liability are crystalized as on 1<sup>st</sup> April of the next year as such these liabilities are for a period prior to moratorium. Further the claims of the Appellant of earlier AY being existing liabilities cannot be hit by moratorium and they are protected and treated as Secured as per Section 48 of the VAT Act.

19. The Appellant submitted that the Adjudicating Authority erred in the para 13 of the impugned order which relies on the judgment of *Paschimanchal Vidyut Vitran Nigam Ltd v. Raman Ispat Pvt. Ltd. [(2019) SCC OnLine NCLAT 883]* however the said judgment which sought to clarify the *Rainbow Papers (Supra)* and curtail its applicability is now interpreted in the review petition against *Rainbow Papers (Supra)* in *Sanjay Kumar Agarwal v. State Tax Officer [(2024) 2 SCC 362]*, on the ground that such subsequent decision cannot be a ground for

review and co-ordinate bench ought not to have commented bench/It upon decision of another co-ordinate bench.

**20.** The Appellant attempted to argue that his demands for the amount for AY 2013-14, 2014-15, 2015-16 and 2016-17 were sent after the date of closure of CIRP and thereafter it cannot be said that the merely because the Respondent was not able to adhere the timelines given the public announcement, the Appellant should have not filed his claims or legal demands due to alleged moratorium period.

**21.** The Appellant submitted that it is a failure of the Respondent not to complete the CIRP or liquidation process within the stipulated time and therefore the Appellant cannot be put to any adverse situation invoking continuing moratorium. The Appellant also stated that his attachment are legal and valid as per VAT Act and belong to the prior CIRP period hence should not have been affected by the moratorium.

**22.** The Appellant pleaded that the Code does not provide the recovery mechanism for tax which is covered by the VAT Act and therefore the Appellant took actions according to VAT Act and in terms of Section 34(9) of the VAT Act, audit assessments can be done anytime during a period of four years and as such all his actions was legal according to the VAT Act.

**23.** The Appellant also assailed the Impugned Order wherein the Adjudicating Authority alleged to have wrongly relied upon the Judgement of Hon'ble Supreme Court of India in the case of *Sundaresh Bhat, Liquidator ABG*

***Shipyard v. Central Board of Indirect Taxes*** [(2023) 1 SCC 472] held as follows, which has wrongly been followed in the present case,

*“45. We are of the clear opinion that the demand notices to seek enforcement of customs dues during the moratorium period would clearly violate the provisions of Sections 14 or 33(5) of the IBC, as the case may be. This is because the demand notices are an initiation of legal proceedings against the corporate debtor. However, the above analysis would not be complete unless this Court examines the extent of powers which the respondent authority can exercise during the moratorium period under the IBC.*

*47. Therefore, this Court in V.M. Deshpande case (S.V. Kandoakar v. V.M. Deshpande, (1972) 1 SCC 438] held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the Customs Act in this context.*

**24.** The Appellant submitted that in the present case there was no enforcement of taxes but the demand notices are issued only as assessment made by the Appellant which are legally payable dues by the Corporate Debtor and no further actions were taken by the Appellant post the demand notices.

**25.** The Appellant emphasized that in terms of Section 47 A of the Sales Tax Act, the Appellant gets power to recover the amount of tax or penalty as arrear of



land revenue under BLRC. The Appellant pleaded that the import of these Sections can be found in Section 46(1)(i) of the VAT Act and therefore, the Appellant has first charge over the properties of the Corporate Debtor and assets of the Corporate Debtor in accordance with the BLRC and not Sales Tax Act.

**26.** The Appellant assailed the conduct of the Respondent as he has admitted the partial claims of the Appellant for the AY 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 in terms of judgment of the Hon'ble Supreme Court of India in the matter of *Rainbow Paper (Supra)* according to which dues of the government are secured dues and has recognized as Secured Creditors by virtue of Section 48 of the VAT Act. The Appellant further submitted that the decision of *Rainbow Paper (Supra)* has been upheld in the revenue case of *Sanjay Kumar Agarwal Vs. State Tax Officer & Ors. [(2024) 2 SCC 362]*. However, the Respondent rejected the other claims of the Appellant on the ground that these years are covered by old laws of Sales Tax Act hence there is no pari-materia provisions like Section 48 of the VAT Act and therefore the Appellant was treated as Unsecured Creditors.

**27.** It is a case of the Appellant that merely because the equivalent provision of Section 48 of the VAT Act was not present in Sales Tax Act does not take away his rights to be treated as Secured Creditors.

**28.** The Appellant pleaded that it is a spirit and the intention of the statute which is important and not the wordings and prints and submitted that the spirit of all the concerned acts and the Codes to treat the claims of the Appellant as

Secured Creditors and had to be treated at par with land revenue claims and as such the Respondent should have treated the Appellant as a Secured Financial Creditor for his tax dues.

**29.** The Appellant further assailed the conduct of the Respondent who rejected the claims of the remaining assessments years on the ground that these would be hit by Section 14 of the Code. It is the case of the Appellant that the estimated date of closure of CIRP was 19.02.2018 and thereafter the Appellant decided to issue demand notices after giving dates and thus the new demand notices were issued by the Appellant are not hit by Section 14 of the Code.

**30.** The Appellant stated that as per the scheme of the Code the CIRP is expected to be completed within 330 days and as such the claims of the Appellant were fully covered.

**31.** Concluding his remarks, the Appellant requested to allow his appeal and set aside the Impugned Order.

**32.** Per-contra, the Respondent denied all the averments of the Appellant, treating these as misleading, mischievous and without any merit.

**33.** The Respondent stated that the Appellant had only challenged the communication issued by the Respondent to the extent of treatment of the claim for the Assessment Years 2013-14 to 2016-17 and the decision taken by the Respondent in relation to the claims for the period of assessment carried out under the provisions of Gujarat Sales Tax Act, 1969 for the AY 1994-95 to 97-98 was

not even under challenge before the Adjudicating Authority and therefore, seeking such reliefs in the guise of the present Appeal is not maintainable.

**34.** In this connection, the Respondent cited Judgment of the Hon'ble Supreme Court of India in the case of *Bachhaj Nahar Vs. Nilima Mandal & Anr. in Civil Appeal Nos. 5798-5799 of 2008*, where it was held that the Applicant case seek reliefs not pleaded.

We note the relevant para which reads as under :-

*“10. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such*

*a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.”*

**35.** The Respondent submitted that he has acted completely as per law and followed various sections of the Code and the relevant regulations. It is a case of Respondent that he also kept in view the relevant judgments including *Rainbow Papers (Supra)* therefore the Appellant could not have any grievance against the rejection of claim which was not covered by the Code or by the *Rainbow Papers (Supra)* .

**36.** The Respondent further submitted that he had issued the detailed letters to the Appellant on 22.06.2023 and 26.06.2023 and clarified position of the various claims of the Appellant which was in conformity that *Rainbow Papers (Supra)* which were appreciated by the Adjudicating Authority in the Impugned Order.

**37.** It is the case of the Respondent that the Appellant was treated as Secured Creditor to the extent that he was illegible and remaining portion of the claims were not treated as Secured Creditors but these were treated as Unsecured Creditors and would be also governed under Section 53 of the Code.

**38.** The Respondent assailed the conduct of the Appellant who attached the assets of the Corporate Debtor during the moratorium and liquidation order thereby violated under Section 14 of the Code and further assailed the conduct of the Appellant who issued demand notice for the AY 2015-16 and 2016-17 during moratorium violating Section 14 of the Code.

**39.** It is the allegation of the Respondent that the Appellant suppressed material facts and events in his own letter dated 23.06.2023 quo his acknowledgement, unequivocal acceptance and undisputed admission of the factum that AY 1994-95 to 1997-98, the Rainbow Paper (Supra) is not applicable since Sales Tax Act had no provisions equivalent to Section 48 of the VAT Act., therefore, there is no charge in properties of the Corporate Debtor.

**40.** The Respondent submitted that the Appellant further concealed the correct facts and chosen not to place on record his own I.A. No. 735 of 2023 in which the Impugned Order was passed, to mislead the judicial forum.

**41.** The Respondent submitted that the Appellant is trying to enlarge the scope of the Appeal by bringing new issues averring that Sales Tax Act to be relied upon to consider the Appellant as Secured Creditors for the AY 1994-95 and 1997-98, despite non applicability of *Rainbow Paper (Supra)*.

**42.** It is the case of the Respondent that the Appellant neither challenged the treatment of old assessment year by the Respondent nor pleaded for consideration before the Adjudicating Authority in I.A. No. 735 of 2023 and no reliefs were sought by the Appellant from the Adjudicating Authority. Hence, at this stage, such pleading need to be rejected.

**43.** The Respondent submitted that through I.A. No. 735 of 2023, the Appellant, in fact, acknowledged and admitted that the treatment of its claim by the Liquidator being correct on the rationale that the old Assessment orders were under Section 67 of the Gujarat Sales Tax Act, 1969 and as the said enactment

doesn't contain pari-materia stipulation akin to Section 48 of the Gujarat Value Added Tax Act, 2003, creating a first charge on the payable amount, therefore the decision of Apex Court rendered in case of Rainbow Paper Judgment would not be applicable to claims the of old Assessment Years.

**44.** The Respondent admitted that in terms of the Judgement of *Rainbow Papers (Supra)* few claims of the Appellant are covered under VAT Act, which are to be treated as secured debts and same treatment has been given by the Respondent.

**45.** It is strong pleading of the Respondent that the cases which are not covered either by Section 48 of the VAT Act and by *Rainbow Papers (Supra)* could not have been considered by him as Secured Creditors.

**46.** The Respondent took pains to explain that all remaining claims of the Appellant have been admitted and treated, albeit, as Unsecured Creditors. The Respondent gave detailed analysis, year by year, as the Respondent claims have been classified and treated by the Appellant .

**47.** The Respondent also refuted the cited judgements of the Appellant during pleadings as these are not applicable in the present appeal.

**48.** Concluding his remarks, the Respondent submitted that the appeal may be dismissed with cost.

## **Finding**

49. The point which emerges from the pleadings is regarding treatment of claims as Secured claims vis-a-vis Unsecured claims.

50. We note that the Adjudicating Authority in its Impugned Order dated 31.10.2023 has captured the details of the claims and treatment given by the Respondent which reads as under :-

6. Details of claims amount examined and verified by Liquidator is given in table below:

**Details of claim amount examined and verified by Liquidator**

Sr. No	Financial Year	Amount of Tax (Rs.)	Interest (Rs.)	Total (Rs.)	Date of Assessment Order as per claim	Remarks	Amount Secured/ Unsecured
1	1994-95	682532	1099643	1782175	13.10.2009	Assessment order under Section 67 of Gujarat Sales Tax Act, 1969	Not under GVAT Act, 2003 Section 48 so unsecured
2	1995-96	55922754	90098452	146021206	13.10.2009	Assessment order under Section 67 of Gujarat Sales Tax Act, 1969	Not under GVAT Act, 2003 Section 48 so unsecured
3	1996-97	1153328	1858154	3011482	13.10.2009	Assessment order under Section 67 of Gujarat Sales Tax Act, 1969	Not under GVAT Act, 2003 Section 48 so unsecured
4	1997-98	443117	713916	1157033	13.10.2009	Assessment order under Section 67 of Gujarat Sales Tax Act, 1969	Not under GVAT Act, 2003 Section 48 so unsecured
5	2007-08	1588158	1866368	3454526	17.03.2012	Notice for demand of amount assessed on 17.03.2012	Secured
6	2008-09	137843958	149619230	287463188	20.09.2012	Notice for demand of amount assessed on 20.09.2012	Secured

7	2009-10	529700	503897	1033597	15.06.2013	20.09.2014 Notice for demand of amount assessed on 25.06.2013	Secured
8	2010-11	67871601	42775844	110647445	31.03.2015		Secured
9	2012-13	21522132	5795055	27317187	31.03.2017		Secured
10	2013-14	983469452	87299754	1070769206	30.03.2018	Notice for demand of amount assessed on 30.03.2018	During Moratorium u/s. 14 since ICD is 23.08.2017 so unsecured
11	2014-15	3697599822	109403433	3807008255	31.07.2018	Notice for demand of amount assessed on 31.07.2018	During Moratorium u/s. 14 since ICD is 23.08.2017 so unsecured
12	2015-16	2779765196	242616981	3022382177	29.11.2019	Notice for demand of amount assessed on 29.11.2019	During Moratorium u/s. 33(5) since LCD is 25.10.2018 so unsecured
13	2016-17	1490377851	44807030	1535184881	23.03.2020	Notice for demand of amount assessed on 23.03.2020	During Moratorium u/s. 33(5) since LCD is 25.10.2018 so unsecured
	Total	9238769601	778462757	10017232358			

This give bird's eye view of Financial Year, total claims, which classified as Secured and Unsecured Debts and reason for such classification by the Respondent

51. After perused of all records and pleading of the parties, we can bifurcate the Appellant's claims into three period

(i) **Tax dues arising out of AY 2007 to 2013:**

There is no dispute between the Appellant and the Respondent as the Respondent has treated all these claims as Secured Creditors as covered under relevant statute.

(ii) **Tax dues arising out of AY 1994 - 1995 and 1997 - 98:**



There is dispute regarding status of such outstanding claims. The Appellant claims these as Secured whereas the Respondent has treated as Unsecured, since they are not protected by status of relevant period.

**(iii) Tax dues arising out of AY 2013-14 to 2016-17:**

These are also disputed. The Appellant submitted that as per law, he was entitled to carry on assessment since estimated CIRP period was over, his claims should have been treated as Financial Creditor. On the other hand, the Respondent stated that they are squarely covered during moratorium period, hence illegal.

**52.** The Gujarat Sales Tax Act, 1969 does not contain any part-material stipulation akin to Section 48 of the Gujarat Value Added Tax Act, 2003, therefore, the claim of the Appellant for the AY 1994-95 to 1997-98 were considered by the Respondent as an unsecured dues and accordingly the Appellant herein was declared as Unsecured Creditor by the Respondent vide communication dated 22.06.2023 in relation to the said claim. The Appellant also vide letter dated 23.06.2023 confirmed its status as Unsecured Creditor for the aforesaid period.

**53.** The Respondent has considered the claim of the Appellant for the period from AY 2007-08 to 2012-13 as a 'Secured Creditor'. As regards, the AY 2007-08 the assessment order was passed on 17.03.2012, in relation to the AY 2008-09 the assessment order was passed on 20.09.2012, in relation to the AY 2009-10 the

assessment order was passed on 15.06.2013, in relation to the AY 2010-11 the assessment order was passed on 31.03.2015 and in relation to the AY 2012-13, the assessment order was passed on 31.03.2017.

**54.** As all the assessment orders were passed before the initiation of CIRP of the Corporate Debtor particularly before declaration of moratorium under the provisions of the Code, the said claim for the aforesaid Assessment Year from AY 2007-08, 2008-09, 2009-10, 2010-11 and 2012-13, were considered as a Secured Creditor in view of the judgment passed by the Hon'ble Supreme Court of India in the matter of *Rainbow Paper (Supra)*.

**55.** The claims of the aforesaid duration is undisputed by the Appellant. It is noted that the Appellant filed its claims for the AY 2013-14 wherein the Assessment Order was passed on 30.03.2018 by the Appellant, AY 2014-15 wherein the Assessment Order was passed on 31.07.2018 by the Appellant, AY 2015-16 wherein the Assessment Order was passed on 29.11.2019 by the Appellant and AY 2016-17 wherein the Assessment Order was passed on 23.03.2020 by the Appellant.

**56.** The CIRP of the Corporate Debtor came to be initiated vide order dated 23.08.2017 and accordingly moratorium was declared same day.

**57.** It has been brought to the notice of this Appellate Tribunal that pursuant to the initiation of liquidation process of the Corporate Debtor, the effect of moratorium is continued as per Section 33(5) of the Code which is also confirmed

by the Hon'ble Supreme Court of India in the matter of *Sundaresi Bhatt Vs. Central Board of Indirect Taxes and Custom* [(2023) 1 SCC 472].



**58.** Thus, it is undisputed that the Assessment Order dated 29.11.2019 for the AY 2015-16 and the Assessment Order dated 23.03.2020 for the AY 2016-17 came to be passed by the Appellant during liquidation process of the Corporate Debtor.

**59.** It is observed that during the course of proceeding of IA No. 435 of 2023, the Adjudicating Authority vide its order dated 15.06.2023 directed the Respondent to intimate the Appellant regarding their treatment as Secured Creditor in view of *Rainbow Paper (Supra)*. The Respondent in compliance of the directions the Respondent vide its letter dated 22.06.2023 informed the Appellant that in the light of judgement of Hon'ble Supreme Court in *Rainbow Papers (Supra)*, the State Tax Department has been considered as a "Secured Creditor" with the admitted claim amount of Rs 42,99,15,943/- -as secured portion under Section 53 of the Code and as per the relevant provisions of the Liquidation Regulations, 2016 and the balance admitted claim amount of Rs.958,73,16,448/- as unsecured portion under the category of Operational Creditor under Section 53 of the Code

**60.** The Respondent submitted that pursuant to the letter dated 22.06.2023, the Appellant vide its letter dated 23.06.2023 claims in respect of AY 1994-95 to 1997-98 would not fall within the preview of "Secured Creditor" in the light of judgement of Hon'ble Supreme Court of India in *Rainbow Papers (Supra)* and

further did not dispute the fact that assessment order with respect to claim of AY 2015-16 and 2016-17 were passed in Moratorium Period and further, the Appellant requested the Respondent to consider the claim with respect to period of AY 2013-14 and 2014-15 as "Secured claim".

**61.** It seems that the Reply of the Appellant to the Respondent vide letter dated 23.06.2023 is very significant and directly connected to present appeal. Hence, it would be desirable to look into same and the letter reads as under :-

 Goods and Services Tax	OFFICE OF THE <b>ANNEXURE R1 COLLY</b> ASSISTANT COMMISSIONER OF STATE TAX UNIT-15, 2 <sup>ND</sup> FLOOR, SEVA SADAN BUILDING, LAL DARWAJA AHMEDABAD-380001 (P)-079-25503091 E-mail : aclunt15-ahd2-gstn@gujarat.gov.in	 NATION TAX MARKET Goods and Services Tax
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Ref. No.:- STO-2/NCLT/ANIL LIMITED/2022-23/Outward no.499 Date:- 23/06/2023

To,  
CA Ramchandra Dallaram Choudhary  
(Insolvency Professional) Liquidator,  
9/B, Vardan Complex, Near Vimal House,  
Lakhudi Circle, Navrangpura,  
Ahmedabad-380014.

Sub: Details qua calculation provided pursuant to the interim order dated 15.06.2023 passed in IA No. 435 of 2023 In IA No. 501 of 2020 In CP(IB) No. 66 of 2017 by Hon'ble NCLT in the matter of Anil Ltd.

Sir,

1. The State Tax Department is in receipt of the details along with the reasoning of the categorization qua the total claim amount (Tax Dues), provided by your good office to the department on 22.06.23, pursuant to the interim order dated 15.06.2023 passed in IA No. 435 of 2023 in IA No. 501 of 2020 in CP(IB) No. 66 of 2017 by Hon'ble NCLT Ahmedabad Bench in the matter of Anil Ltd.
2. Considering the said calculation, the claim of the department for AY 1994-95 to 97-98, undisputedly falls under the

Gujarat Sales Tax Act, 1969 and not under the Gujarat Value Added Tax Act, 2003. Hence, for the said period State Tax Department would not fall within the purview of "Secured Creditor" as per the decision of the Hon'ble Apex Court in the case of Rainbow Paper being Civil Appeal No. 1661 of 2020.

3. As per the said calculation provided to the department as on 22.06.23 your good office has acknowledged the fact that for AY 2007-08 to 2012-13 the claim of the department is to be treated as "secured claims" in light of the decision of the Hon'ble Supreme Court in the case of Rainbow Papers. The State Tax Department has accordingly been considered as "Secured Creditors".
4. It is hereby necessary to clarify that for Sr. No. 10 and 11, the State Tax Department is also required to be considered as Secured creditors, the claim of Rs.107,07,69,206/- for AY 2013-14 accrued vide Assessment Order dated 30.03.2018 which is post the period of Moratorium.
5. It is necessary to further clarify that the claim of the State Tax Department amounting to Rs.3,80,70,08,255/- for AY 2014-15 accrued vide Assessment Order dated 31.07.2018 which is post the period of Moratoriums.

. The Notice for demand of amount assessed for AY 2013-14 and 2014-15 would not fall within the moratorium period as mentioned by the Liquidator in the details provided on 22.06.23 as the public announcement dated 28.08.2017 issued by the IRP, mentions the estimated dated of closure of CIRP to be 19.02.2018 being 180 days from the date of commencement of Insolvency process in terms of the provisions of Section 12 of IBC 2016.

7. Notably, no extension as prescribed under the statute has been sought. Without prejudice and furthermore, even as per the Advertisement published by the Liquidator, dated 27.10.18, the date of closure of Insolvency proceedings is stated to be 20.5.18, in which case admittedly dues for the AY 2014-15 need must be considered as secured dues. The Liquidator of Anil Limited, is therefore, hereby requested to consider the claim of the State tax department for the AY 13-14 and 2014-15 to be "Secured Claims" and accordingly treat the state tax department as "Secured Creditors"
8. The department does not dispute the fact that for AY 2015-16 and 2016-17, the assessment can be said to have been carried out during the moratorium period which commenced

Hence the Appellant clearly acknowledged in Para 2 that AY 1994-95 to 1997 to 98 do not full as Secured Creditor.

*“2. Considering the said calculation, the claim of the department for AY 1994-95 to 97-98, undisputedly falls under the Gujarat Sales Tax Act, 1969 and not under the Gujarat Value Added Tax Act, 2003. Hence, for the said period State Tax Department would not fall within the purview of "Secured Creditor" as per the decision of the Hon'ble Apex Court in the case of Rainbow Paper being Civil Appeal No. 1661 of 2020.”*

*(Emphasis Supplied)*

Similarly the Appellant accepted that the issue AY 2014-15, 2015-16 and 2016-17 is post moratorium period :-

*“5. It is necessary to further clarify that the claim of the State Tax Department amounting to Rs.3,80,70,08,255/- for AY 2014-15 accrued vide Assessment Order dated 31.07.2018 which is post the period of Moratoriums.*

*8. The department does not dispute the fact that for AY 2015-16 and 2016-17, the assessment can be said to have been carried out during the moratorium period which commenced from the date when the Hon'ble Tribunal passed the Liquidation order on 25.10.2018 which came to be passed in I.A. 291 of 2018.*

*Thus, considering the abovementioned details the department, hereby requests the Liquidator to consider the state tax department for the period of AY 2013-14 and 2014-15 as "secured creditor". On the same being duly considered.*

*the state tax department shall lift the attachment in due compliance the interim order passed by the Hon'ble National Company Law Tribunal on 15.06.2023 in IA 435 of 2023 in IA 501 of 2020..”*

*(Emphasis Supplied)*

**62.** It seems from above that the Appellant knew his legal rights very well. Only point of the Appellant is contained in Para 6, which reads as under :-

*“6. The Notice for demand of amount assessed for AY 2013-14 and 2014-15 would not fall within the moratorium period as mentioned by the Liquidator in the details provided on 22.06.23 as the public announcement dated 28.08.2017 issued by the IRP, mentions the estimated dated of closure of CIRP to be 19.02.2018 being 180 days from the date of commencement of Insolvency process in terms of the provisions of Section 12 of IBC 2016.”*

*(Emphasis Supplied)*

This argument of the Appellant does not seem to be convincing and we are not inclined to accept the pleadings of the Appellant on this account.

**63.** We observe that the Respondent vide its letter dated 22.06.2023 had considered the claims for Assessment Year (2007-08 to 2010-11 & 2012-13) and admitted the same as 'Secured' in view of the Judgment passed by the Apex Court in *Rainbow Paper (Supra)*.



**64.** We understand that the assessment orders for the AY 2013-14 & 2014-15 was passed by the Appellant on 30.03.2018 & 31.07.2018, respectively after the imposition of Moratorium under Section 14 of the Code i.e., 23.08.2017, which tantamount to violation of Section 14 of the Code as Section 14(b) of the Code prohibits transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein' from the declaration of Moratorium. For this reason, the assessment order dated 30.03.2018 & 31.07.2018 is found to be in contravention of Section 14(b) of the Code. The submission of the Appellant that the CIRP period ends on the 19.02.2018 as per estimated date of closure of CIRP provided in Form A 'Public Announcement of the Corporate Debtor cannot be accepted.

**65.** It is also observed that the assessment orders for the AY 2015-16 & 2016-17 came to be passed by the Appellant on 29.11.2019 & 23.03.2020, respectively after passing of order of liquidation of Corporate Debtor i.e., 25.10.2018 which was not permitted as per Section 33(5) of the Code which provides that Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor. Therefore, after liquidation order has been passed by the Adjudicating Authority the moratorium under Section 33(5) of the Code comes into effect which is further confirmed by the Apex Court in the matter of *Sundaresi Bhatt (Supra)*. The relevant portion of this judgement reads as under :-

*“44. At the cost of repetition, we may note that the demand notices issued by the respondent are plainly in the teeth of Section 14 of the IBC as they were issued after the initiation of the CIRP proceedings. Moratorium under Section 14 of the IBC was imposed when insolvency proceedings were initiated on 1-8-2017 [ICICI Bank Ltd. v. ABG Shipyard Ltd., 2017 SCC OnLine NCLT 554] . The first notice sent by the respondent authority was on 29-3-2019. Further, when insolvency resolution failed and the liquidation process began, NCLT passed an order on 25-4-2019 [Sunil Kumar Jain v. Sundaresh Bhatt, 2019 SCC OnLine NCLT 9931] imposing a moratorium under Section 33(5) of the IBC. It is only after this order that the respondent issued a notice under Section 72 of the Customs Act against the corporate debtor. The various demand notices have therefore clearly been issued by the respondent after the initiation of the insolvency proceedings, with some notices issued even after the liquidation moratorium was imposed.*

*45. We are of the clear opinion that the demand notices to seek enforcement of customs dues during the moratorium period would clearly violate the provisions of Sections 14 or 33(5) of the IBC, as the case may be. This is because the demand notices are an initiation of legal proceedings against the corporate debtor. However, the above analysis would not be complete unless this Court examines the extent of powers which the respondent authority can exercise during the moratorium period under the IBC.”*

*(Emphasis Supplied)*

Hence, Assessment orders passed on 29.11.2019 & 23.03.2020 by the Appellant after passing of liquidation order under VAT Act violates the moratorium under provision of 33(5) of the Code.

**66.** We understand and appreciate that the Appellant during the moratorium period could determine the tax, interest, fine or any penalty which is due, however, the Appellant could not enforce his claims for recovery or levy of interest on the tax due during the period of Moratorium. It has been brought out that the Claims of Assessment Orders passed during the moratorium under Section 14 & 33(5) of the Code, have been rightly considered and admitted as 'Unsecured' Operational Debt. It is significant to take into consideration that the Appellant vide its own letter dated 23.06.2023 acknowledged the fact that for A.Y. 2014-15, 2015-16 & 2016-17, the assessments were carried on during moratorium.

**67.** It has been brought to notice that the Appellant passed attachment orders on the property of the Corporate Debtor i.e., 16.10.2018 in alleged and contravention of Section 14 of the Code & Regulation therein, even after order dated 15.06.2023 passed by Adjudicating Authority whereby, the Appellant was directed to lift the attachment within ten days of receipt of such intimation from the Respondent, however, till date, the Appellant continues illegally and unlawfully attachment on the subject property of the Corporate Debtor.

This obviously is not in consonance with the law .

**68.** We also find logic in the pleadings of the Respondent that allowing such attachment over property during the subsistence of the moratorium, would undermine resolution of the Corporate Debtor and well prejudice the interests all stakeholders. This is found to be against the spirit of the Code.

**69.** We consciously note that the Appellant fairly conceded that his case to be partly covered by the *Rainbow Paper (Supra)* and the same fact has not been disputed by the Respondent. We also observe that the Respondent pleaded that he has treated the claims as Secured Creditors which are protected under of the VAT Act keeping in view of the *Rainbow Paper (Supra)* .

**70.** We understand from the information given by the parties that total 13 claims were submitted by the Appellant for the period 1994-95 onwards with total tax dues amounting to Rs. 1001,72,32,359/- and the Respondent considered the tax demands of Rs. 42,99,15,943/- relating to AY 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 as Secured Creditors and the remaining claims of the Appellant were accepted but not as Secured Creditors and have treated as Unsecured Creditors which amount to Rs. 958,73,16,448/-. We find this to be in accordance with the Code and judgment of the Courts.

**71.** As regards, the arguments of the Appellant that the CIRP/liquidation process should have been completed within 330 days and therefore dues to reasoning that the Appellant and conclude the resolution of the Corporate Debtor the Appellant cannot be put to disadvantage. We are of the view that time period

of 330 days prescribed in the Code is indicative and directory in nature and not mandatory. In fact, large number of cases, due is several reasons, are not able to be resolved within such stipulated period and if the contentions of the Appellant is accepted then the Resolution Process of the Corporate Debtor, in most of the cases, may not take off at all. Thus, the pleadings of the Appellant on this grand, stand rejected.

**72.** We observe that there was a gap in the claims made by the Appellant pertaining to AY 2011-12 which has not been claimed by the Appellant. A pointed query was raised by us to the Appellant to explain the same particularly whether there is no claim or the claim has been settled. However, we did not get any answer to this from the Appellant.

**73.** Another pointed query was raised by this Tribunal to the Appellant as to why such arrears were allowed to continue which pertaining to all almost 20 years old way back from 1994-95. We also pointed out that in accordance with the earlier BLRC and now Gujarat Land Revenue Record, or VAT Act, why the Appellant allowed to accumulate such huge claims of more than 1000 Crores. We also asked, as to what action the Appellant had taken to recover his dues from the Corporate Debtor.

However, despite our repeated queries we did not get any concrete and convincing reply.

**74.** Since, ratio of *Rainbow Paper (Supra)* has been used by both , we will go through it and note the relevant paras. These reads as under :-

*“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.”*

*29. As argued by the learned Solicitor General, the term “secured creditor” as defined under IBC is comprehensive and wide enough to cover all types of security interests, namely, the right, title, interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction, which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person.*

*30. The learned Solicitor General rightly argued that in view of the statutory charge in terms of Section 48 of the GVAT Act, the claim of the Tax Department of the State, squarely falls within the definition of “security interest” under Section 3(31) IBC and the State becomes a secured creditor under Section 3(30) of the Code.*

*55. In our considered view, NCLAT clearly erred in its observation that Section 53 IBC overrides Section 48 of the GVAT Act. Section 53 IBC begins with a non obstante clause which reads:*

*“53. Distribution of assets.—(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....”*

*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.*

*58. We are constrained to hold that the appellate authority (NCLAT) and the adjudicating authority erred in law in rejecting the application/appeal of the appellant. As observed above, delay in filing a claim cannot be the sole ground for rejecting the claim.”*

*(Emphasis Supplied)*

**75.** From above, we note that the *Rainbow Paper (Supra)* held that tax dues covered under section 48 of the VAT Act which clearly stipulate the Appellant's right over the assets of the Corporate Debtor as first charge. We also note this similar provisions, however, was not available in Gujarat Sales Tax Act and therefore, the tax claims were not treated as Secured Creditors. To the credit of the Appellant, he fairly concluded that this period was not covered in the ratio of *Rainbow Paper (Supra)*.

Hence the Respondent classified remaining admissible outstanding dues as Unsecured debts. The Adjudicating Authority, therefore, also passed the Impugned Order accordingly based on Resolution Plan put up for approval by CoC through the Respondent.

We do not find any infirmity in the Impugned Order on this account.

**76.** In view of above detailed discussions, we do not find any merit in the appeal. The appeal stands dismissed. No Costs. Interlocutory Application(s), if any, are Closed.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Mr. Naresh Salecha]**  
**Member (Technical)**

**[Mr. Indavar Pandey]**  
**Member (Technical)**

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