

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 774 of 2024

(Arising against the Impugned order dated 22.02.2024, passed by the Hon'ble National Company Law Tribunal, Ahmedabad in IA No. 195 (AHM)2024, Int. Pet/2(AHM) 2024, IA/522(AHM) 2021 in CP (IB) No. 72 of 2018).

IN THE MATTER OF:

THE COSMOS CO. OP. BANK LTD.

Financial Creditor and Sole Member of the Committee of Creditors
for M/s Sterling Lam Limited,
Cosmos Bank Bhawan,
Income Tax Circle, Ashram Road,
Ahmedabad- 380009

....Appellant

Versus

Mr. KAILASH T. SHAH

Having address at 505,
21st Century Business Centre,
Near World Trade Centre,
Surat, Gujarat-India 382305

...Respondent No. 1

NARESH TRADELINK PRIVATE LIMITED

Successful Resolution Applicant
Having an address at
304, "Aditya" B/h. Sardar Patel Samaj Hall,
Nr. Mithakhali Six Road, Navrangpura,
Ahmedabad-380006.

...Respondent No. 2

GUJARAT STATE TAX DEPARTMENT

Through State Tax Officer,

Cont'd..../

Unit- 29, Prantij, Opp. Bhankhariya Bus Stand,
At & PO – Prantij, District Sabarkantha,
Gujarat – 383205

Email: ac029-ct@gujarat.gov.in

...Respondent No. 3

Present:

For Appellant: **Mr. Ramchandra Madan, Mr. Tushar Nigam, Advocates.**
For Respondents: **Ms. Honey Satpal, Mr. Nipun Singhvi, Ms. Pooja Singh,**
Mr. Akash Agarwalla, Advocates for R-1/RP.
Ms. Ritu Guru, Advocate for State Tax officer, Gujarat.

J U D G M E N T

(13th November, 2025)

INDEVAR PANDEY, MEMBER (T)

The present appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("IBC") by *The Cosmos Co-operative Bank Ltd.*, the sole Financial Creditor and member of the Committee of Creditors ("CoC") of Sterling Lam Limited ("the Corporate Debtor"). The appeal arises out of the impugned order dated 22.02.2024 passed by the National Company Law Tribunal, Ahmedabad Bench ("Adjudicating Authority") in IA No. 195(AHC)/2024 in CP (IB) No. 72 of 2018, whereby the Adjudicating Authority directed Shri Kailash T. Shah, Resolution Professional/ Respondent No. 1 to release an amount of Rs. 1,31,19,769.08 in favour of the Gujarat State Tax Department/ Respondent No.3 treating it as a secured creditor under Section 48 of the Gujarat Value Added Tax Act, 2003 ("GVAT Act").

2. The said direction was passed while deciding I.A. No. 522 of 2021, an earlier application filed by the Resolution Professional seeking removal of the State Tax Department's attachment over the properties of the Corporate Debtor, which had remained pending even after the approval of the Resolution Plan. Aggrieved by this order, the Appellant–Bank has approached this Appellate Tribunal contending that the Adjudicating Authority exceeded its jurisdiction by modifying the distribution under an already approved and implemented Resolution Plan.

Brief facts of the case

3. Brief facts of the case are given below:

- (i) CP (IB) 72/2018 was filed by Ramniklal S. Gosalia & Co. under Section 9 of the Code before the Adjudicating Authority seeking initiation of Corporate Insolvency Resolution Process. The Adjudicating Authority, vide its order dated 10.11.2020, admitted an application and appointed Mr. Rajendra Jain as Interim Resolution Professional (IRP).
- (ii) On 20.11.2020, the IRP issued a public announcement inviting claims from the Creditors of the Corporate Debtor/Sterling Lam Limited.
- (iii) Respondent No. 3/ Gujarat State Tax Department submitted its claim of Rs. 38,58,19,833/- on 01.12.2020, which was verified and admitted only to the extent of Rs. 3,37,65,975/- on 17.12.2020.
- (iv) In the first CoC meeting held on 18.12.2020, Respondent No. 1, Mr. Kailash T. Shah, was appointed as Resolution Professional (RP), and his appointment was subsequently confirmed by the Adjudicating Authority on 10.02.2021.

- (v) During verification of assets, the RP discovered that Respondent No. 3 had created encumbrances on the factory land of the Corporate Debtor at Village Mahiyal, Taluka Talod. On 27.04.2021, the RP addressed an email to Respondent No. 3 seeking removal of such encumbrances. The encumbrance was for a sum of Rs. 47,52,564 for the year 2014-15 including interest of a sum of Rs.2,31,84,958 for the year 2017-18 and sum of Rs. 1,05,81,017 for the year 2018-19.
- (vi) In the 4th CoC meeting held on 28.04.2021, the RP apprised the members about the encumbrance created by the State Tax Department, and the CoC resolved to extend CIRP by 90 days, which was allowed by the Adjudicating Authority on 01.06.2021.
- (vii) Subsequently, on 24.07.2021, the RP/Respondent No. 1 filed an I.A No. 522 of 2021 against the Respondent No. 3 under Section 25(a), 32A, 60(5) and 238 of the Code before the NCLT, Ahmedabad Bench for seeking removal of encumbrances/charges from the factory land of the corporate debtor.
- (viii) In the 7th CoC meeting held on 13.10.2021, the Resolution Plan submitted by M/s Naresh Tradelink Pvt. Ltd./ Respondent No. 2 was approved with 100% voting, offering Rs. 7.85 crore to the Financial Creditors against its admitted claim of Rs. 17,00,42,520.
- (ix) The Adjudicating Authority, on 29.06.2022, allowed the application filed by Respondent No. 1 in IA No. 860 of 2021, and approved the Resolution Plan and held that the Successful Resolution Applicant could not be made liable for past liabilities of the Corporate Debtor.

(x) Despite the approval of Rs 7.85 cr. in favour of the appellant, the Respondent No.1 withheld Rs 1,31,19,769.08 therefrom. In response to the Appellant's request dated 26.08.2022, the RP, vide reply dated 05.09.2022, stated that I.A. No. 522/2021 filed by him against the State Tax Department, seeking removal of charges created by the Revenue Department, was pending before the Hon'ble Tribunal and that the related legal issue was sub judice before the Hon'ble Supreme Court; hence, releasing the said amount would tantamount to contempt of court.

(xi) It was stated, on 13.12.2022, during hearing of IA No. 522 of 2021, the Adjudicating Authority recorded that the RP was considering the State Tax Department as a secured creditor.

(xii) On 30.01.2024, the Appellant filed an application, IA No. 195 of 2024, seeking release of Rs. 1,31,19,769.08, along with an impleadment application in IA No. 522 of 2021.

(xiii) The NCLT, by its order dated 22.02.2024, passed the impugned order whereby both the applications filed by the Appellant were dismissed. Thereafter, the Resolution Professional disbursed the amount to Respondent No. 3.

(xiv) The Appellant, aggrieved by the impugned order, has filed the present Appeal, seeking directions to Respondent No. 3 to deposit an amount of Rs.1,31,19,769.08 in favour of the Appellant and to set aside the impugned order.

Submissions of the Appellant

4. The counsel for the Appellant submitted that the present appeal has been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('IBC' or the 'Code') against the order dated 22.02.2024 passed by the Hon'ble National Company Law Tribunal, Ahmedabad Bench ("Adjudicating Authority"), in IA No. 195/AHC/2024 and IA 552/2021 in CP(IB) No. 72 of 2018. The Appellant, being the Financial Creditor of the Corporate Debtor, *Sterling Lam Ltd.*, approached the Adjudicating Authority seeking directions to the Resolution Professional of *Sterling Lam Ltd.* (Respondent No. 1) to release an amount of Rs. 1,31,19,769.08 in favour of the Appellant, being the Financial Creditor and sole member of the Committee of Creditors of the Corporate Debtor, in terms of the approved Resolution Plan, on the ground that Respondent No. 3, the Gujarat State Tax Department, is not entitled to be treated as a secured creditor.

5. Ld. counsel submitted that the Adjudicating Authority erroneously dismissed the Financial Creditor's application despite acknowledging that a Resolution Plan had already been approved on 29.06.2022, under which the claims of all parties, including Respondent No. 3, had been duly finalized. It was contended that the Adjudicating Authority placed misplaced reliance on the judgment of the Hon'ble Supreme Court in '*State Tax Officer v. Rainbow Papers Ltd.*, [(2023) 9 SCC 545]'.

6. The Appellant has contended that the Impugned Order is wholly unreasoned and devoid of any justification. He submitted that the Adjudicating Authority failed to disclose under what authority it directed the

Resolution Professional to pay a sum of Rs. 1.31 crores to Respondent No. 3, despite there being no application or claim to that effect. The said direction, issued nearly two years after the implementation of the approved Resolution Plan, is contrary to the terms of the plan and beyond the scope of the Adjudicating Authority's jurisdiction.

7. The counsel for the Appellant further contended that Respondent No. 3, never challenged its treatment as an unsecured creditor under the Resolution Plan, nor questioned the classification made by the Resolution Professional at any stage. The claim of Respondent No. 3, amounting to Rs. 38 crores, was filed as that of an Operational Creditor and was duly admitted by the Resolution Professional only to the extent of Rs. 3.37 crores on 17.12.2020. At that time, the said debt was classified as an *unsecured operational debt*, which Respondent No. 3 accepted without protest and did not challenge either before the Resolution Professional or the Adjudicating Authority.

8. It was further argued that based on such classification, the Resolution Professional invited Resolution Plans, and Respondent No. 2, the Successful Resolution Applicant, submitted a plan proposing payment of Rs. 7.85 crores (46.10% of admitted claims) to the Appellant, the sole Financial Creditor, while statutory dues, including those of Respondent No. 3, were capped at 0.013% of admitted dues. The plan was unanimously approved by the CoC on 13.09.2021 and subsequently approved by the Adjudicating Authority under Section 31 of the Insolvency and Bankruptcy Code, 2016, vide order dated 29.06.2022.

9. The counsel for the Appellant emphasized that under Section 31(1) of the IBC, an approved Resolution Plan is binding on all stakeholders, including statutory authorities. Therefore, Respondent No. 3, having failed to challenge either the Resolution Plan or the order approving it, cannot now claim the status of a secured creditor by placing reliance on '*State Tax Officer v. Rainbow Papers Ltd.*' The Impugned Order, being contrary to the binding Resolution Plan and the settled position of law, deserves to be set aside.

10. The counsel for the Appellant submitted that the facts of '*State Tax Officer v. Rainbow Papers Ltd.* [(2023) 9 SCC 545]' are distinguishable and not applicable to the present case. In *Rainbow Papers*, the Resolution Professional had waived the entire claim of the Government, and the State Tax Officer of the Gujarat State Tax Department specifically challenged the Resolution Plan before the NCLT, asserting that the dues of the Sales Tax Officer were that of a secured creditor. Following rejection by the NCLT, the matter was appealed to the NCLAT under Section 61 of the IBC, and subsequently to the Hon'ble Supreme Court under Section 62 of the IBC. The Supreme Court ultimately found that the dues of the State Tax Department had been misclassified as unsecured debts, set aside the Resolution Plan, and directed the RP and the Resolution Applicant to consider filing a fresh Resolution Plan.

11. Ld. counsel submitted that, in contrast, in the present case, Respondent No. 3 has neither challenged its classification as an unsecured operational creditor nor disputed the Resolution Plan approved by the Adjudicating Authority. The Appellant emphasized that Respondent No. 3 has not filed any application seeking to set aside the Resolution Plan, despite being

fully aware of its treatment as an unsecured creditor. Consequently, unlike in *Rainbow Papers*, no challenge was made to the Resolution Plan at any stage, and the Impugned Order grants relief that was never sought before the NCLT.

12. The counsel submitted that Respondent No. 3, having failed to challenge the NCLT order approving the Resolution Plan dated 29.06.2022, cannot now seek to take advantage of a subsequent judgment in a different matter, namely *State Tax Officer v. Rainbow Papers Ltd.* It was emphasized that under Section 31(1) of the Insolvency and Bankruptcy Code, 2016, an order approving a Resolution Plan is binding on all creditors, including statutory authorities. Consequently, the Resolution Plan, once approved and unchallenged, attained finality and is binding on Respondent No. 3. Any attempt to unsettle this plan based on a later ruling in a separate case would violate the principle of finality and the statutory mandate under Section 31.

13. The Appellant further contended that the doctrine of finality is a well-established principle in Indian jurisprudence. Once a judgment has become final and binding, it cannot be relitigated even if errors were made, and subsequent rulings in other cases cannot alter its effect. Reliance was placed on the Constitution Bench decision in '*Tilokchand Motichand v. H.B. Munshi (1969 1 SCC 110)*', which held that a litigant cannot reopen concluded proceedings simply because a similar issue was decided differently in another case at a later stage. Additionally, the Appellant cited the Supreme Court decision in '*Neelima Srivastava vs. State of Uttar Pradesh and Ors 2021 SCC OnLine 610*', which upheld that the State or any party cannot avoid implementing a judgment that has attained finality, merely because a

subsequent higher forum ruling may appear inconsistent. Allowing such an approach would constitute an abuse of process and have far-reaching adverse consequences for the administration of justice.

14. The counsel for the Appellant further placed its reliance on the Calcutta High Court decision in '*Indu Bhusan Jana vs. Union of India & Ors. [2008 SCC OnLine Cal 626]*', which affirmed that once an order has attained finality, it cannot be undone at a subsequent stage or collaterally unless obtained by fraud or without jurisdiction. A party that accepts a final order binds itself to the consequences, and cannot later challenge it merely because a subsequent ruling may appear favourable to it. Accordingly, the Appellant argued that Respondent No. 3 cannot unsettle the approved Resolution Plan, and the Impugned Order granting such relief is legally unsustainable.

15. The counsel for the Appellant submitted that the Adjudicating Authority does not have the jurisdiction or authority to alter or modify an approved Resolution Plan. The Resolution Plan in the present case was unanimously approved by 100% of the Committee of Creditors and subsequently confirmed by the NCLT by order dated 29.06.2022. Since neither Respondent No. 3 nor any other party challenged the Resolution Plan or the approval order, the Plan had attained finality. Consequently, there was no occasion for the AA to review or alter the Plan on merits.

16. It was further emphasized that even if a Resolution Plan had been challenged, the statutory framework under Sections 31(1) and 31(2) of the IBC empowers the Adjudicating Authority only to approve or reject the Plan. There is no provision under the IBC that allows the AA to modify or alter the terms

of an approved Resolution Plan. Once approved, the Plan reflects the commercial wisdom of the Committee of Creditors, which forms the foundation of the resolution process, and such commercial decisions cannot be interfered with by the AA. The Appellant contended that the Impugned Order, by directing that Respondent No. 3 be treated as a secured creditor, effectively altered the key terms of the Resolution Plan that had attained finality, thereby violating settled principles of law. This unauthorized modification undermines the statutory scheme of the IBC and the finality of the resolution process. Accordingly, the Impugned Order deserves to be set aside solely on this ground. The Appellant argued that implementing the Impugned Order would necessitate undoing a four-year-old Resolution Plan that has already been executed, requiring the Resolution Applicant to submit a fresh plan to the Committee of Creditors, a step that is legally and commercially untenable in the present context, particularly since the Plan had already achieved finality.

17. The counsel submitted that the reliance of the Ld. Adjudicating Authority on the Supreme Court's judgment in *Rainbow Papers* is entirely misplaced. The Appellant emphasized that subsequent rulings, including '*Paschimanchal Vidyut Vitran Nigam Ltd. [(2023) 10 SCC 60]*', clarified that *Rainbow Papers* failed to consider the statutory waterfall under Section 53 of the IBC and should be confined strictly to its own facts. Additionally, *Rainbow Papers* is per incuriam as it ignored the binding principles laid down in '*Ghanshyam Mishra & Sons Pvt. Ltd. [(2021) 9 SCC 657]*' and '*Vaibhav Goel v. Deputy Commissioner of Income Tax 2025 SCC OnLine 592*', which confirm that statutory dues not included in an approved Resolution Plan stand extinguished under Section 31 of the IBC. The Appellant further highlighted

that the legislature itself, through the IBC Amendment Bill, 2025, has clarified that a security interest arises only from an agreement between parties and does not include interests created merely by operation of law, thereby effectively overruling *Rainbow Papers*. Consequently, even if *Rainbow Papers* were hypothetically applicable, it is no longer relevant or binding and cannot support the Impugned Order.

18. Summing up his argument Ld. Counsel submitted that the Impugned Order dated 22.02.2024 is liable to be set aside as it wrongly directs payment to Respondent No. 3, classified as an unsecured creditor under the approved Resolution Plan. The Appellant, having accepted a 53% haircut, is entitled to the funds under the plan. The order undermines the finality of the plan, and reliance on *Rainbow Papers* is misplaced and legally per incuriam. The NCLT has no power to modify a final Resolution Plan, and therefore, the Impugned Order should be quashed to uphold the integrity of the resolution process.

Submission of Respondent No. 1/RP

19. Respondent No. 1, the Resolution Professional (RP) of Sterling Lam Limited/ Corporate Debtor, submitted that the present Appeal is misconceived, factually incorrect, and devoid of any legal merit. It is submitted that the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by the Hon'ble Adjudicating Authority (NCLT) vide order dated 10.11.2020, pursuant to which the Gujarat State Tax Department/ Respondent No. 3 duly filed its claim within the prescribed time period, which was duly verified and admitted by the Interim Resolution Professional (IRP) to

the extent of Rs. 3,37,65,975/-. During the course of verification, Respondent No. 1 discovered that Respondent No. 3 had created certain encumbrances on the factory premises of the Corporate Debtor, and accordingly, filed an application bearing I.A. No. 522/2021 before the Hon'ble Adjudicating Authority seeking directions for removal of such encumbrances. Meanwhile, the Resolution Plan submitted by M/s Naresh Trade Link Pvt. Ltd./ Respondent No. 2 was duly approved by the Committee of Creditors (CoC) in its meeting held on 13.09.2021 and subsequently sanctioned by the Hon'ble Adjudicating Authority vide order dated 29.06.2022. Respondent No. 1 therefore contends that all actions undertaken by the RP were in strict compliance with the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) and under the supervision of the Hon'ble Adjudicating Authority, and as such, the allegations and contentions raised by the Appellant are baseless and unsustainable in law.

20. It is submitted that prior to the approval of the Resolution Plan, the Hon'ble Supreme Court, in *State Tax Officer v. Rainbow Papers (supra)*, had reserved its judgment on 23.03.2022 on the issue concerning the status of the State Tax Department as a “secured creditor.” In view thereof, and to avoid any prejudice or contempt, the Respondent No. 1, in exercise of due diligence, kept aside an amount of Rs.1,27,02,769.08 from the Resolution Plan proceeds pending adjudication of the issue. Upon the pronouncement of the judgment by the Hon'ble Supreme Court on 06.09.2022, holding that the State Tax Department is to be treated as a secured creditor under the IBC read with Section 48 of the Gujarat VAT Act, 2003, the Adjudicating Authority, while deciding I.A. No. 522/2021, rightly directed the disbursement of

Rs.1,31,19,769.08 in favour of Respondent No. 3. The said direction was strictly in conformity with the law declared by the Apex Court and was duly complied with by Respondent No. 1, who had no independent discretion in the matter.

21. Respondent No. 1 further submits that the contention of the Appellant that the judgment in *Rainbow Papers* (supra) cannot be made applicable as the Resolution Plan had already been approved prior to the pronouncement of the said judgment, is legally untenable. The Hon'ble Supreme Court in *Rainbow Papers* (supra) did not lay down a new law, but merely clarified the existing legal position, interpreting Sections 3(30), 3(31), and 53 of the Insolvency and Bankruptcy Code, 2016 in conjunction with Section 48 of the Gujarat VAT Act, 2003. Consequently, the said judgment has retrospective applicability and binds all subordinate fora. The Adjudicating Authority, being cognizant of the said development, acted well within its jurisdiction in directing the distribution of funds to Respondent No. 3 as a secured creditor.

22. Respondent No. 1 submitted that in view of the foregoing, the impugned Order dated 22.02.2024 has been passed by the Hon'ble Adjudicating Authority after due consideration of the facts, law, and the binding pronouncement of the Hon'ble Supreme Court. The said order is consistent with the provisions of Sections 30(2) and 53 of the IBC, read with Section 48 of the Gujarat VAT Act, 2003, and does not suffer from any illegality or infirmity. The disbursement made by the Respondent No. 1 was in faithful compliance with the judicial directives of the Adjudicating Authority and the settled law declared by the Hon'ble Supreme Court. Accordingly, the present

Appeal, being devoid of substance, be dismissed with costs, and such other or further reliefs be granted as this Hon'ble Appellate Tribunal may deem fit in the interest of justice.

Submissions of the Respondent No. 3/Gujarat Tax Department

23. The counsel for the Respondent No. 3/Gujrat State Tax Department submitted that the dues for the corporate debtor are much prior to the commencement of CIRP i.e., 10.11.2020. The counsel for the respondent contended that an attachment made on the properties of the corporate debtor was made much prior to the commencement of CIRP. It was also the duty of RP to examine the books of accounts of corporate debtor, which was within the custody of the RP, therefore the RP cannot deny that he was not aware that the corporate debtor's dues were pending and a charge was already created. The Respondent No.3 was therefore a secured creditor of the CD.

24. The Respondent No. 3 submitted that the Resolution Professional ("RP") had preferred I.A. No. 522 of 2021 before the Adjudicating Authority seeking removal of attachment placed by the Respondent. In reply thereto, the Respondent filed a detailed affidavit asserting that the charge over the properties of the Corporate Debtor had been created both by way of attachment and by operation of law. It was contended that the assessment orders passed by the Respondent under the GVAT Act and CST Act were never challenged by the Corporate Debtor and, therefore, had attained finality. Consequently, such orders have the force of law and confer upon the Respondent the status of a secured creditor under the relevant statutory provisions.

25. The Respondent placed reliance upon Sections 3(4), 3(30), and 3(31) of the Insolvency and Bankruptcy Code, 2016 (“the Code”) read with Section 48 of the Gujarat Value Added Tax Act, 2003 (“GVAT Act”) to substantiate that the State Tax Department falls within the definition of a “Secured Creditor.” It was further stated that the State Tax Department had challenged an order of the Hon’ble NCLT, Mumbai Bench before the Hon’ble Gujarat High Court by way of Special Civil Application No. 23256 of 2019. The Hon’ble Gujarat High Court stayed the order of the NCLT, Mumbai Bench which had allowed removal of charge by Gujarat Tax Deptt. from the property of CD.

26. The Respondent emphasized that the orders passed by it are quasi-judicial in nature, as the authority exercises quasi-judicial powers under the tax laws. Further, reliance was placed upon the judgment of the Division Bench of the Hon’ble Gujarat High Court in ‘*Shree Radhekrushna Ginning and Pressing Pvt. Ltd. v. State of Gujarat*’, wherein it was held that upon passing of an assessment order determining the liability under the GVAT Act, a statutory charge is created over the immovable assets of the dealer in favour of the State by operation of law under Section 48 of the GVAT Act. It was also submitted that the assessment orders in the present case were passed prior to the commencement of CIRP on 10.11.2020.

27. The Respondent contended that at the time of approval of the Resolution Plan, the RP and the Appellant failed to disclose that I.A. No. 522 of 2021 was pending adjudication before the Adjudicating Authority. The Resolution Plan, as approved, provided a meagre sum of Rs.52,069/- towards the dues of the

Respondent, which is contrary to the mandate of Section 53(1)(b)(ii) of the Code.

28. Ld. Counsel for Respondent drew attention to the orders of the Adjudicating Authority dated 13.12.2022 and 22.09.2023 in I.A. No. 522 of 2021, wherein it was recorded that the State Tax Department, in view of the Supreme Court's judgment in *Rainbow Papers*, requested that it be treated as a secured creditor. The RP had sought time to consider this request and had kept the amount separately. The matter was accordingly adjourned, and later, the Tribunal decided to await the outcome of the Supreme Court's review proceedings in *Rainbow Papers Ltd.* Hence, it was submitted that the issue of the Respondent's claim and its classification was sub judice and the same was under active consideration of Adjudicating Authority.

29. The counsel for the Respondent argued that the pendency of I.A. No. 522 of 2021 before the Adjudicating Authority preserves its right to assert its claim as a secured creditor. Merely because no separate interlocutory application was filed, the Respondent's legal right to such classification cannot be extinguished, while the matter remains pending. The counsel for the respondent further contended that the law declared by the Hon'ble Supreme Court in *Rainbow Papers* operates retrospectively, from the date the Code came into force. Therefore, the approval of the Resolution Plan prior to the said declaration is irrelevant, and the amounts payable to the Government must be re-determined in accordance with the said judgment. It was submitted that the Adjudicating Authority, Ahmedabad Bench, has correctly

directed that payment be made to the State Tax Department treating it as a secured creditor.

30. The counsel for the respondent relied upon the judgment of the Hon'ble Delhi High Court in '*IFCI Ltd. v. Commercial Tax Officer [W.P. (C) 337/2011]*', wherein it was held that dues under the CST Act, read with the relevant provisions of the State Sales Tax Act, create a statutory charge having priority over other debts, thereby rendering such dues as "secured." It was further emphasized that the Hon'ble Supreme Court in '*State Tax Officer v. Rainbow Papers Pvt. Ltd. (Civil Appeal No. 1661 of 2020)*' has recognized the status of the State Tax Department as a secured creditor, without distinguishing between the GVAT Act and the CST Act. The said position has been reaffirmed in *Review Petition (2024) 2 SCC 362*. The Respondent submitted that Section 238 of the Code does not override Section 48 of the GVAT Act, which contains a non obstante clause declaring tax dues to be the first charge on the property of the dealer. Therefore, the statutory charge created under the GVAT Act takes precedence over other claims, as recognized in *Rainbow Papers*.

31. In view of the foregoing submissions, the Respondent No. 3 prayed that the Hon'ble Appellate Tribunal consider the facts and legal position arising from the judgments of the Hon'ble Supreme Court and various High Courts, uphold the status of the State Tax Department as a secured creditor, and dismiss the appeal filed by the Appellant as devoid of merit.

Analysis and Findings:

32. We have gone through the documents on record and heard the Ld. Counsels for the parties at great length. Written submissions have also been made by appellant (Financial Creditor) and Respondent No.3.

33. The appellant has contended that Respondent No.3 has never challenged its treatment as an unsecured creditor or the resolution plan. The Respondent No.1/ RP has classified the claim of Respondent No.3 as unsecured operational creditor and accepted their claim to the extent of Rs.3.37 crores. It is his submission that till date Respondent No.3 has not challenged its classification as an unsecured financial creditor before any court.

34. It is appellant's submission that resolution plan submitted by Respondent No.2/ Successful Resolution Applicant (SRA) was approved by 100% of the Committee of Creditors (CoC) on 13.09.2021. The RP filed I.A. No. 860 of 2021 seeking approval of resolution plan from the Adjudicating Authority. The same was approved by Adjudicating Authority on 29.06.2022.

35. Appellant further submits that the approved resolution plan provided for payment of Rs. 7.85 crores to the appellant as sole Financial Creditor. The amount for payment of statutory dues of the Corporate Debtor were kept at 0.013% of the admitted dues. It is his submission that Respondent No.3 did not challenge the approval of resolution plan till date, the resolution plan has attained finality and the amount payable to different parties have been frozen in terms of the plan. Further, that the Respondent No.3 has never challenged the Judgment of the NCLT approving the plan and the Respondent cannot

take advantage of a judgment passed in the subsequent matters viz. Judgment of Hon'ble Supreme Court in *Rainbow Papers Ltd (supra)*. In the Rainbow papers matter Hon'ble SC held in a different case, where the misclassification was challenged by the State Tax Deptt on the grounds that they ought to be treated as a secured creditor; cannot alter the finality of order dated 29.06.2022 as the same had attained finality.

36. The appellant submits that Adjudicating Authority does not have the authority to alter or modify an approved resolution plan passed by 100% of CoC and duly approved by the Adjudicating Authority. He further submits that the ruling in Rainbow Papers is *per incuriam* as its fails to take into account the Judgment of Hon'ble SC in '*Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.* [(2021) 9 SCC 657]'. In Ghanshyam Mishra matter Hon'ble SC held that on approval of the plan all dues including government dues which are not incorporated in the resolution plan stand extinguished under Section 31 of the Code.

37. The Appellant contends that *Rainbow Papers* cannot be applied here because in a later judgment, '*Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd.*, (2023) 10 SCC 60', the Supreme Court observed that *Rainbow Papers* did not discuss the waterfall mechanism under Section 53 of the IBC and should be confined to its own facts. The Appellant also relied on '*SREI Multiple Asset Investment Trust v. Deccan Chronicle Marketeers*, [(2023) 7 SCC 295]', and '*M.K. Rajagopalan v. Dr. Periasamy Palani Gounder*, [(2024) 1 SCC 42]', to argue that an approved Resolution Plan cannot be reopened or modified under any circumstances.

38. The Respondent No.3 on the other hand submits that the dues of the Corporate Debtor are of a much prior period to the start of CIRP on 10.11.2020. Attachment by Gujarat Sales Tax Department was made on the properties of the Corporate Debtor prior to the commencement of the CIRP. Such attachment was on the record of the books of the CD which was available to the RP during this period. It is further submitted that RP moved an application I.A. No. 522 of 2021 on 24.07.2021 seeking removal of attachment on the property of the CD. The Respondent No.3 submitted a detailed reply to the aforesaid I.A before the Adjudicating Authority and made a submission that the charge on property is being created by way of attachment as well as by operation of law. The assessment orders passed by the Respondent No.3 were never challenged by the Corporate Debtor and have attained finality. It is their submission in the reply to I.A. 522/2021 that the Gujarat State Tax Department has to be considered as a secured creditor as per Section 48 of GVAT Act, 2003. The Respondent No.3 submits that RP did not take any action on their prayer and without seeking an adjudication on I.A. No. 522 of 2021 submitted a resolution plan for the approval of Adjudicating Authority.

39. The Respondent No.3 submits that in a similar matter the State Tax Department had challenged an order dated 18.11.2019 passed by the National Company Law Tribunal, Mumbai Bench in Misc. Application No. 2357 of 2019 in Company Petition No. 1514/I&BC/NCLT/MB/MAH.2017. By the operative part of the order so passed, the Tribunal has directed concerned authorities to lift the attachment of the properties in question so that they can be put to sale by the liquidator and thereupon the sale proceedings be

distributed under Section 53 of the I&B Code in order of priority prescribed therein. The principal contention raised in the writ petition was that State by virtue of Section 48 of the Gujarat Value Added Tax Act read with Section 3(4), 3(30) and 3(31) of the IBC is a secured creditor as per Section 3(1)(b)(ii). The Hon'ble Gujarat High Court vide order dated 26.12.2019 was pleased to issue the notice to the respondents and stayed the operation, implementation and execution of the impugned order.

40. The Respondent No.3 also cites another Judgment of Division bench of Hon'ble Gujarat High Court in '*Shree Radhekrushna Ginning and Pressing Pvt. Ltd. vs. State of Gujarat* [SCA No. 5413 of 2022]' on 29.03.2022, wherein an assessment order passed by the Competent Authority under GVAT Act, 2003 was challenged. The prayer in this case related to release of charge created on the property (land and factory building) of the writ applicant be released as the appeal against the assessment order was admitted by the first Appellate Authority. The Hon'ble HC held that Section 48 of GVAT Act 2003 creates charge on the property of the assessee by operation of law. The Hon'ble Gujarat High Court in paragraph 17 to 20 observed as follows:

"17. The above-mentioned Section clearly indicates the following types of charges :

- 1) *Charges created by act of parties; and*
- 2) *Charges arising by operation of law.*

18. The words "by operation of law" are more extensive than the words "by law" and a charge created by operation of law includes a charge directly created by the provisions of an Act (like Section 48 of the GVAT Act) as well as other charges created indirectly as a legal consequence of certain conditions.

The expression "operation of law" only means working of the law.

19. A charge, as we have already seen, is a right to receive a certain sum of money. If a dealer registered under the GVAT Act incurs any liability towards payment of tax, then the State has a right to receive a certain sum of money as crystallized in the form of liability. This recovery of the money from the property can be by attaching the assets of the defaulting dealer, and thereafter, putting those to auction. This type of recovery would be governed by the provisions of Section 46 of the GVAT Act.

20. In the case on hand, it could be said that the day the assessment order came to be passed determining the liability of the writ applicant under the provisions of the GVAT Act, a charge over the immovable assets of the writ applicant could be said to have been created in favour of the State by operation of law, as envisaged under Section 48 of the GVAT Act.”

41. The Respondent No.3 also relies upon the Supreme Court judgment in *Rainbow Papers* (supra), where it was held that Section 48 of the GVAT Act creates a *security interest* by operation of law, and therefore, the State Tax Department is a *secured creditor*, within the meaning of Sections 3(30) and 3(31) of the IBC. This position, it was pointed out, has also been reaffirmed by the Supreme Court in the review petition '*State Tax Officer v. Rainbow Papers Ltd. (Review)*, [(2024) 2 SCC 362]’.

42. The Respondent No.3 also points out that the Resolution Professional had himself stated before the NCLT on 13.12.2022 that the amount corresponding to the State's claim had been kept aside pending decision of

the application. Therefore, directing the release of that reserved amount cannot be seen as reopening the plan.

43. The key issue to be decided in this matter is whether retention and subsequent distribution of Rs. 1.31 crores from the amount earmarked for the financial creditor in the Resolution Plan to the State Tax Department after the approval of resolution plan is in accordance with the provisions of the Code and judicial precedents.

44. The appellant has stated that the Respondent No.3 never submitted a prayer before the RP for treating their admitted claim amount as secured operational debt. The Respondent No.3 also did not challenge the Resolution Plan which provided Rs. 7.85 crores to the financial creditor and therefore, they could not be treated as secured operational creditor. There was a specific amount of Rs.50,211/- earmarked in the Resolution Plan for operational creditors and any payment to Respondent No. 3 had to be made out of that only. This contention was rebutted by the Respondent No. 3. It is their submission that RP was well aware of their claim as secured creditor as in the Information Memorandum, he had stated that there is a charge on the properties of the CD by the State Tax Department. It is in this context that RP had filed I.A. No. 522/2021 dated 24.07.2021 seeking an order from Adjudicating Authority for removal of encumbrance by the RP on the property of CD. The Respondent No.3 also submitted that in their reply to the I.A. 522/2021 they had prayed for treatment of their claim as secured operational debt in accordance with Section 48 of GVAT Act and Judgments of Hon'ble Gujarat High Court in this regard.

45. In this regard we take note of Form-B (proof of claim by Operational Creditors except workmen and employees) filed by Gujarat State Tax Deptt. on 01.12.2020 with IRP. In Item No.11 of the said forms which refers to a list of documents attached to this proof of claim, the department had attached at Sl. No.12 Property attachment against the pending recovery. The said portion of Form B is extracted below:

10.	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	VAT DEPARTMENT BANK ACCOUNT
11.	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITORS	<p>1. DEMAND NOTICE OF THE YEAR: 2014/15 DATED :29/03/2019. (CST) 2. DEMAND NOTICE OF THE YEAR: 2017/18 DATED :10/12/2018. (GST ACT 2017) 3. DEMAND NOTICE OF THE YEAR: 01/04/2018 TO 30/09/2018 DATED :10/12/2018. (GST ACT 2017)</p> <p><u>AS PER RETURNS TAX ACCEPTED BY DEALER, ALL RETURNS ARE FILED BY DEALER ONLINE & IT IS SYSTEM GENERATED. ALL STATUTORY NOTICES ISSUED TO DEALER /IRP BUT DID NOT REPORTED BEFORE THE CONCERN TAX OFFICIALS AND ALSO NOT PRODUCED/ PROVIDE ALL BOOKS OF ACCOUNTS AND ITS SUPPORTING DOCUMENTS WHICH REQUIRED UNDER THE RELATED ACT TO ASSESS AND INCOMPLETE SUBMISSION IN 2015-16 AND NO ANY SUBMISSION MADE ONWARDS YEAR, IN 2015-16 REASSESSMENT & IN 2016-17 & 01/04/2017 TO 30/06/2017 AUDIT ASSESSMENT PENDING DUE TO NO-CO OPERATION FROM DEALER ETC.</u></p> <p>1. FORM-205, YEAR:2015/16 (VAT) 2. FORM-3B, YEAR:2015/16 (CST) 3. FORM-205, YEAR:2016/17(VAT) 4. FORM-3B, YEAR:2016/17 (CST) 5. FORM-201, APRIL-17 (VAT) 6. FORM-3B, APRIL-17 (CST) 7. FORM-201, MAY-17 (VAT) 8. FORM-3B, MAY-17 (CST) 9. FORM-201, JUNE-17 (VAT) 10. FORM-3B, JUNE-17 (CST)</p> <p><u>GST ACT 2017</u></p> <p>11. 2017-18 ONLINE RETURNS FILE SUMMARY OF GSTR-1 (OUTPUT TAX LIABILITY ACCEPTED IN GSTR-1 RETURNS) 12. PROPERTY ATTACHMENT AGAINST THE PENDING RECOVERY UNDER RIC ACT SEC.135(D) DT:09/07/2019 (MAMLATDAR, TALOD DIST-SK) AS PER DEPARTMENT INSTRUCTION LETTER NO.3486 01/04/7/2019. 13. BANK ATTACHMENT IN BANK OF BARODA, TALOD BRANCH (SK) BUT ALREADY PREVIOUSLY ATTACHED BY INCOME TAX DEPTT. AS PER BANK LETTER 14. OTHER CORRESPONDENCES/LETTERS</p>

46. We can see that it is clearly mentioned in Item No.12 that the said attachment was done on 09.07.2019 by Mamlatdar Talod as per Department Instruction Letter No. 1486 dated 04.07.2019. It is clear from the aforesaid claim form that the charge has been created on the property of the CD well before the initiation of CIRP and this was in the knowledge of IRP.

47. The reply of Respondent No.3 to I.A. No. 522/2021 was filed on 31.12.2021. The relevant paras 8 to 11 of the aforesaid reply are extracted below:

"8. I further say and submit that the conjoint reading of the provisions of the I & B Code particularly sections 3(4), 3(30) and 3(31) which are reproduced as under.

3(4):-

"charge" means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage:

3(30):-

"secured creditor" means a creditor in favour of whom security interest is created

3(31):-

"security interest" means right, title or interest or 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;

Provided that security interest shall not include a performance guarantee.

9. I say that a conjoint reading of these sections undisputedly indicate that the State has a charge over the property as secured creditor in whose favour, there was a security interest and therefore, I submit that the State in accordance with section 48 of the Gujarat Value Added Tax Act read with sections 3(4), 3(30) and 3(31) of the I & B Code would be a secured creditor as per sections 53(1)(b)(ii) and not one under section 53 (1)(e) of the I & B Code.

10. I further say that on identical facts, a writ petition under Article 226 of the Constitution of India being Special Civil Application No. 23256 of 2019 is preferred before the Hon'ble High Court of Gujarat which is pending for hearing, wherein the State of Gujarat has challenged the order of the Hon'ble National Company Law Tribunal, Mumbai Branch passed in Misc. Application No.2557 of 2019 in Company Petition No.1514/ 18BC/NCLT/MB/MAH.2017, wherein the Hon'ble Tribunal has directed the concerned authorities to lift the attachment of the property in question so that, it can be put to sell by the liquidator and thereupon, the proceeds can be distributed under section 53 of the I & B Code. The principal contention which is raised in the writ petition is that State by virtue of section 48 of the Gujarat Value Added Tax Act read with sections 3(4), 3(30) and 3(31) of the 1 & B Code is a secured creditor as per section 3(1)(b)(ii). The Hon'ble Gujarat High Court vide order dated 26.12.2019 was pleased to issue the notice to the respondents and stayed the operation, implementation and execution of the impugned order. A copy of the order dated 26.12.2019 passed by the Hon'ble Gujarat High Court in Special Civil Application No.23256 of 2019 is annexed herewith and marked as Annexure-R-1 with this affidavit in reply.

11. Therefore, I request the Hon'ble Court to not to pass any order of lifting of attachment over the property and pray further to the Hon'ble Court to direct the IRP to treat the State as secured creditor of corporate debtor and Tax amount due may be

disbursed in favour of the State of Gujarat in the interest of justice.”

/emphasis supplied/

48. It can be seen from the above that the Respondent No.3 had stated in the above reply filed before the Adjudicating Authority that the claim of the State Tax Department would be the first charge on the property of the CD by operation of law in terms of Section 48 of Gujarat VAT Act read with sections 3(4), 3(30) and 3(31) of the Code and the Department would be a secured creditor as per sections 53(1)(b)(ii) and not one under section 53 (1)(e) of the Code. Department had further cited the decision of Hon'ble Gujarat High Court in Special Civil Application No.23256 of 2019 dated 26.12.2019 vide which the Hon'ble HC stayed the operation of order passed by NCLT, Mumbai Bench which had ordered the removal of attachment of property by the Gujarat Tax Deptt. in similar matter. The Respondent No.3 further prayed that they be treated as secured operational creditor and their claim should be decided accordingly.

49. We note that no action was taken on the prayer made in this I.A. No. 522/2021. In the meantime, the CoC which comprised of appellant Cosmos Co-operative bank as the sole member of CoC approved the resolution plan on 13.10.2021. The RP filed I.A. No. 860 of 2021 for approval of the resolution plan before the Adjudicating Authority, which was approved by the AA on 29.06.2022.

50. Hon'ble Supreme Court delivered its Judgment in CA No. 1661 of 2020, Rainbow papers (supra) on 06.09.2022 holding that Section 48 of Gujarat VAT

Act, 2003 is not in conflict with provisions of IBC Code and thereby directing the treatment of such crystalized claims of the Tax Department as secured debt.

51. Subsequent to the aforesaid Judgment of Rainbow (supra), I.A. No. 522/2021 was taken up by the Adjudicating Authority on 13.12.2022 and the following order was passed:

“ORDER”

IA/ 522(AHM)2021

*Ld. Counsel appearing for the State Tax Department submitted that in view of the Hon'ble Supreme Court's judgment in **State Tax Officer vs Rainbow Paper Ltd.** in Civil Appeal No.1661/2020 they have written a letter to the RP to treat the State Tax Department as a Secured Creditor. Ld. Counsel for the RP submitted that he will take a call on this and he has kept that amount separately. We recorded this fact. Since the Ld. Counsel for the RP seeks some time, the matter stands adjourned.*

List all the matters on 14.02.2023.”

52. It is seen from the above order that RP had not taken a decision about the status of claim of Respondent No.3 till then, but he had kept an amount separately for disbursement to Respondent No.3 which was to be disbursed after a decision about status of the claim. This was duly noted by the Adjudicating Authority.

53. Thereafter the matter was taken up on 22.09.2023 and the following order was passed by the Adjudicating Authority:

“Order”

IA 522 of 2021

Ld. Counsel Mr. Nipun Singhvi appears for the applicant.

Ld. Counsel Mr. Radhesh Vyas appears for the respondent/ State Tax Department.

Reply stated to have been filed. Ld. Counsel for the applicant submitted that this case may be adjourned to await the outcome of the review matter i.e. Rainbow Papers Limited which is now reserved for order by the Hon'ble Supreme Court on 18.09.2023.

Re-list on 03.11.2023.”

54. The I.A No. 522 of 2021 along with Int. Pet/2(AHM)2024 in CP (IB) 72 (AHM/2018 and IA/ 195 (AHM)2024 in CP (IB) 72 (AHM)2018 was finally decided by the Adjudicating Authority vide the impugned order dated 22.02.2024. The Int. Petition No. 2 and IA/ 195 (AHM)2024 in CP (IB) 72 (AHM) 2018 were filed by the Cosmos Co-operative Bank Ltd., the sole Financial Creditor and appellant herein seeking the following reliefs:

*“15. **Int. Pet/2(AHM)2024** was filed on 30.01.2024 by the sole Financial Creditor (Cosmos Co. Op. Bank Ltd.) to the Corporate Debtor seeking the following reliefs:-*

(A) This Hon'ble Tribunal be pleased to allow the present application in the interest of justice,

(B) This Hon'ble Tribunal be pleased to direct the Applicant-RP to join Third Party Intervener-The Cosmos Co. Op. Bank Ltd., as Party respondent no. 2 in the present IA 522/2021. Subsequently, be pleased to permit the Third Party Intervener bank to defend the IA 522/2021 by filing necessary reply.

(C) To order the cost of this Application.

(D) To grant such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

*22. **IA/195(AHM)2024** is an application filed by the sole Financial Creditor with the following prayers:-*

(A) This Hon'ble Tribunal be pleased to allow the present interlocutory application in the interest of justice,

(B) This Hon'ble Tribunal be pleased to direct the respondent no. 1 to release the amount of Rs. 1,31,19,769.08 in favour of the applicant herein being Financial Creditor and Sole CoC member.

(C) To order the cost of this Application.

(D) To grant such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

55. The Adjudicating Authority heard all the parties in the matter and decided the following, vide paras 25 to 28 of the impugned order:

"25. The Resolution Applicant has brought in the entire amount. It is stated by the counsels appearing for the RP that possession of the Corporate Debtor has been given to the Resolution Applicant M/s. Naresh Tradelink Pvt. Ltd., long back post the approval of the Resolution Plan vide order dated 29.06.2022. The only controversy in the matter relates to the distribution of a sum of Rs. 1,31,19,769.08.

26. Civil Appeal No. 1661 of 2020 was decided by Hon'ble Supreme Court on 06.09.2022 whereas it is seen that the Resolution Plan with respect to the Corporate Debtor (herein) was approved on 29.06.2022. The order dated 13.12.2022 records that the RP has kept that amount separately and till today the same has not been distributed. On the other hand, the State Tax Department is claiming to be a Secured Creditor. At this stage, we refer to the judgment of the Hon'ble Supreme Court in Civil Appeal No. 1661 of 2020, more particularly, in para 54 to 58 which are reproduced below:-

"54. In our considered view, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues.

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

"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 the 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) of the 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 the 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...".*

The said judgment was upheld in Review Petition (Civil) No. 1620 of 2023 on 31.10.2023 by the Hon'ble Supreme Court.

27. *Since, the amount of Rs.1,31,19,769.08 has not been distributed, we hold that the same may be distributed to the various claimants treating the State Tax Department as the Secured Creditors in terms of provisions as contained in Section 53 of IBC, 2016 within seven days and compliance may be reported by way of additional affidavit by the RP.*

28. *The other two IAs, namely, Int. Pet/2(AHM)2024 and IA/195(AHM)2024 deal with the same issues. As we have already decided in the main issue in IA/522(AHM)2021, these two applications are hereby dismissed."*

56. We have seen that Section 48 of the GVAT Act clearly provides that any amount payable by a dealer on account of tax, interest, or penalty "shall be a first charge on the property" of such dealer, notwithstanding anything contained in any other law. This provision automatically creates a *charge by operation of law*, meaning that it does not depend on any agreement between parties, but arises the moment tax liability crystallizes through assessment.

57. We have already noted that even before the CIRP began, the State Tax Department had already attached the Corporate Debtor's property. This attachment created a valid security interest in favour of the State. The Hon'ble Gujarat High Court in '*Shree Radhekrushna Ginning and Pressing Pvt. Ltd. v. State of Gujarat* [C/SCA/5413/2022]

 decided on 29.03.2022 held that once such an assessment is made and attachment is affected, a charge over the immovable property comes into existence by operation of Section 48. In this case as the assessment orders become absolute much prior to initiation of CIRP and the attachment was already enforced, therefore, by the time the CIRP began, the State already had a secured right over the property of the CD.

58. Hon'ble Supreme Court in *Rainbow Papers* (2023) 9 SCC 545 settled the position of law that dues covered by Section 48 of the GVAT Act amount to a "security interest" under Section 3(31) of the IBC, and hence the State Tax Department qualifies as a *secured creditor*. The Court also clarified that excluding such dues from consideration in a Resolution Plan makes the plan non-compliant with Section 30(2) of the Code.

59. We also observe that Section 238 of the IBC gives the Code an overriding effect over other laws *only when there is inconsistency*. However, where a statutory first charge under another law is recognized as a "security interest" within the meaning of the IBC itself, there is no inconsistency. Both laws operate in harmony. Section 48 of the GVAT Act and Section 53 of the IBC can co-exist, and the Adjudicating Authority's interpretation ensures this harmony.

60. It is well-settled that a declaration of law by the Supreme Court applies retrospectively, unless the Court expressly restricts it to the future. In this case Hon'ble Supreme Court interpreted the Section 48 of GVAT Act, 2003 in the light of provisions of IBC Code and found no conflict therein. In such a situation the treatment of Gujarat Tax Deptt. as secured creditor would be effective from the date of coming into effect of IBC.

61. Further, we have noted that the Judgment in Rainbow papers (supra) was reserved by Hon'ble Supreme Court on 23.03.2022 i.e. much before the approval of resolution plan by the Adjudicating Authority on 29.06.2022. Keeping in mind the pending decision in the Rainbow matter the RP had not distributed a portion of funds earmarked for Financial Creditor in case the Gujarat Tax Deptt. was to be treated as secured creditor. This amount was lying with the RP pending for distribution. Hence, when the NCLT passed the impugned order in February 2024, it was bound to apply the principle laid down in *Rainbow Papers*, even if the Resolution Plan had been approved earlier.

62. Regarding the contention of the appellant that the Respondent No.3 never challenged his classification as Operational creditor before the Adjudicating Authority, nor did they file an appeal against the approval of Resolution Plan. We are of the view that there was no necessity for the Gujarat State Tax Department to challenge the Resolution Plan at the time of its approval. The question of its classification as a secured creditor was already pending consideration before the Adjudicating Authority in IA No. 522 of 2021, which had not been decided when the plan was approved on

29.06.2022. Since the issue was *sub judice*, any appeal against the Resolution Plan would have been premature and unwarranted. The Department rightly awaited adjudication of its pending claim, and therefore its failure to challenge the plan cannot be treated as acquiescence or waiver of its rights.

63. The appellant had argued that the Adjudicating Authority had only two options under Section 31 (1) of the Code to either approve or reject a resolution plan and once a plan is approved, the AA cannot revisit it or pass directions which would alter the financial distribution. The AA by directing payment of Rs. 1.31 crores to the State Tax Department, effectively modified the plan and reduced the appellants approved entitlement. Such an act of AA amounts to review of the resolution plan, which is not permitted by the code. The Appellant had also argued that once a plan is approved, the RP ceases to have authority and becomes *functus officio*. Therefore, any later statement of action by the RP to allocate or reserved money for the State Department was beyond his powers.

64. Section 31(1) of the IBC provides that once the Adjudicating Authority is satisfied that a Resolution Plan meets the requirements of Section 30(2), it shall approve the plan, which then becomes binding on the Corporate Debtor and all stakeholders. This provision does not, however, prevent the Adjudicating Authority from giving necessary directions to ensure proper implementation or to resolve issues that were pending or reserved at the time of plan approval.

65. The distinction lies between *altering* a plan and *clarifying* or ensuring its proper implementation. While the former is impermissible, the latter is well

within the jurisdiction of the Adjudicating Authority to ensure compliance with the Code and binding judicial precedents.

66. We note that the NCLT's order did not change the structure or commercial terms of the Resolution Plan. The order records that the Resolution Professional had, on 13.12.2022, stated that the amount relating to the State Tax Department's claim had been kept aside pending adjudication. The NCLT merely directed that this reserved amount be released to the Department in view of the Supreme Court's judgment in *Rainbow Papers*.

67. This shows that the Adjudicating Authority was not altering the plan's commercial content or the CoC's commercial wisdom. It was only ensuring that a pending issue i.e. whether the State's claim was secured or not, was settled in accordance with the binding law of the Supreme Court. Therefore, this act does not fall within the scope of "modification" but rather "implémentation" of plan in accordance with laid down law. It should also be noted here that the approved Resolution plan had been implemented in totality, wherein the Successful Resolution Applicant M/s Naresh Tradelink Pvt. Ltd./ Respondent No. 2, has deposited the total proceeds pertaining to the approved Resolution Plan and the Resolution Professional has given the possession of the assets of the corporate Debtor to the Successful Resolution Applicant. The insolvency of the CD has thus been successfully resolved.

68. We must also note that once the Supreme Court declares the law, it applies retrospectively to all pending matters unless expressly stated

otherwise. In *Rainbow Papers*, the Apex Court held that Section 48 of the GVAT Act creates a security interest by operation of law and that the State is a secured creditor.

69. When this law was declared, the NCLT was obliged to apply it to the pending IA 522 of 2021. Its decision to direct payment to the State Department was therefore not an exercise of review but an application of the prevailing legal position.

70. If we were to hold that the NCLT was powerless to give effect to a Supreme Court judgment in a matter already before it, it would amount to compelling the Tribunal to enforce an order contrary to the highest law of the land, something no court can do. Therefore, the NCLT rightly exercised its jurisdiction to align its order with binding precedent.

71. The Appellant's contention that the Resolution Professional became *functus officio* after plan approval is also misplaced. The Resolution Professional's responsibilities may cease after plan approval, but where certain matters are pending or reserved, such as distribution of a disputed amount, the implementation of the plan, the RP, as part of Monitoring Committee continues to act under directions of the CoC and the Adjudicating Authority till completion of the process. Here, the RP had only reserved the amount and awaited judicial direction. Therefore, his conduct was consistent with his duties under Section 30(6) of the IBC, relevant regulations of IBBI and the AA's supervisory powers.

72. We also have a look at the judgments relied upon by the Appellant in the context of the present factual matrix of this case:

(i) *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.* [(2021) 9 SCC 657]:

In this case, the Hon'ble Supreme Court held that once a Resolution Plan is approved under Section 31(1) of the IBC, all claims not forming part of the plan stand extinguished, including Government dues. The central reasoning there was that after plan approval, no creditor could assert a right inconsistent with the terms of the plan. However, in that case, the Government had not created or asserted any prior charge over the assets of the corporate debtor, and its claim had not been the subject of pending adjudication before the Adjudicating Authority. In the present case, the situation is materially different — the dues of the Gujarat State Tax Department were secured by a *statutory first charge* under Section 48 of the GVAT Act and were already under consideration in **IA No. 522 of 2021** when the Resolution Plan was approved. The Adjudicating Authority did not reopen a concluded issue, but decided a matter that was still pending. Therefore, the ratio of *Ghanashyam Mishra* does not apply to the present facts.

(ii) *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd. & Ors.* [(2023) 10 SCC 60]:

In this case, Hon'ble Supreme Court dealt with the treatment of electricity dues under

Section 53 of the IBC and observed that *Rainbow Papers* did not discuss the waterfall mechanism. The Court further clarified that dues payable to the Government occupy a lower priority under the Code. However, in *Paschimanchal Vidyut*, there was no statutory provision creating a *first charge* or *security interest* over the corporate debtor's property. The dues in that case were merely operational in nature. In contrast, the present matter involves a *statutory charge* explicitly created by Section 48 of the GVAT Act before the commencement of CIRP. The Supreme Court in *Rainbow Papers* held that such charge constitutes a "security interest" within the meaning of Section 3(31) of the IBC, thereby elevating the State to the status of a secured creditor. Thus, *Paschimanchal Vidyut* is factually distinguishable and does not dilute the applicability of *Rainbow Papers* to this case.

(iii) *Tilokchand Motichand v. H.B. Munshi* [(1969) 1 SCC 110]:

The decision in this case dealt with the doctrine of finality and the limitation on reopening a case that had already attained final adjudication. Hon'ble Supreme Court held that a litigant cannot revive a matter that has concluded merely because a subsequent judgment has taken a different view of the law. However, the principle laid down in *Tilokchand Motichand* applies only to cases that had attained absolute finality. In the

present matter, the issue concerning the secured status of the State Tax Department had not been finally adjudicated; it was part of a pending application before the NCLT. The Adjudicating Authority merely decided that pending issue in accordance with the Supreme Court's later declaration of law. Hence, the doctrine of finality in *Tilokchand Motichand* does not operate against the Respondent in this context.

(iv) *Neelima Srivastava v. State of Uttar Pradesh & Ors.*

[(2021) SCC OnLine SC 610]: In this case, Hon'ble Supreme Court considered whether a State authority could disregard a judgment that had attained finality merely because a later decision had taken a different legal view. The Court cautioned against reopening concluded matters and emphasized the sanctity of final orders. In contrast, the matter before us was never concluded. Therefore, *Neelima Srivastava* does not apply to the present case.

(v) *Indu Bhusan Jana v. Union of India & Ors. [(2008) SCC*

OnLine Cal 626]: The Calcutta High Court in this case also held that once an order attains finality, it cannot be collaterally challenged unless obtained by fraud or without jurisdiction. That case concerned a final order not open to collateral challenge. Here, the issue of the State's charge under Section 48 GVAT Act was undecided and pending; thus, *Indu Bhusan Jana* is inapplicable.

73. In view of the above findings, we do not find any infirmity in the impugned order. The appeal is dismissed. Pending IAs, if any, are closed. No order as to costs.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Indevar Pandey]
Member (Technical)

SA