

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**



ITEM No.305 - IA/9(AHM)2025  
in  
CP(IB) 211 of 2020

**Order under Section 60(5) IBC r. w. Rule 11 NCLT**

**IN THE MATTER OF:**

Assistant Commssioner of State Tax  
V/s

.....Applicant

Mr. Sunil Kumar Kabra Liquidator of M/s Archon Engicon  
Limited

.....Respondent

**Order delivered on: 30/04/2025**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sanjeev Kumar Sharma, Hon'ble Member(T)

**ORDER**  
**(Hybrid Mode)**

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-sdr-

**SANJEEV KUMAR SHARMA**  
**MEMBER (TECHNICAL)**

-sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT-1, AHMEDABAD**

**IA/9 (AHM) 2025 in  
CP (IB) No.211/7/NCLT/AHM/2020**

[APPLICATION UNDER SECTION 60 (5) OF THE  
INSOLVENCY AND BANKRUPTCY CODE, 2016 READ  
WITH RULE 11 OF THE NATIONAL COMPANY LAW  
TRIBUNAL RULES, 2016]

In the matter of ***Archon Engicon Ltd.***

**Assistant Commissioner of State Tax**

Office of Assistant Commissioner State Tax,  
Unit-5, 11<sup>th</sup> Floor, B-Block,  
Multi Storey Building (Bahumali Bhavan)  
Apna Bajar, Lal Darwaja,  
District – Ahmedabad, Gujarat -380001  
Email: [ac1unt5-ahd1-gstn@gujarat.gov.in](mailto:ac1unt5-ahd1-gstn@gujarat.gov.in)

**.....Applicant**

**VERSUS**

**Mr. Sunil Kumar Kabra**

Liquidator of Archon Engicon Ltd.  
3<sup>rd</sup> Floor, Reegus Business Centre,  
New Citylight Road,  
Above Mercedes Benz Showroom,  
Bharthana – Vesu,  
Surat – 395007  
Email: [liq.archon@gmail.com](mailto:liq.archon@gmail.com)

**... Respondent/Liq**

**Order Pronounced on 30.04.2025**



**C O R A M:**

**MR. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**  
**MR. SANJEEV KUMAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

For the Applicant : Ms. Manisha Luvkumar, Sr. Adv  
a/w. Mr. Priyam Raval, Adv.

For Respondent/Liq : Mr. Ravi Pahwa, Advocate

**O R D E R**  
**[Per: Bench]**

1. The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, read with Rule 11 of National Company Law Tribunal Rules, 2016, seeking the following reliefs: -

- A. *Your Lordships may be pleased to allow the captioned application;*
- B. *Your Lordships may be pleased to direct Respondent to consider and treat the unpaid dues of the Applicant authority as a secured dues and the Applicant authority as a "Secured Creditor" under Section 53(1)(b)(ii) of the Insolvency and Bankruptcy Code, 2016 for the assessment years 2006-2020;*
- C. *Your Lordships may be pleased to grant any such other and further reliefs as may be deemed just, fit and proper in the interest of justice.*



- D. Pending adjudication and final disposal of this Application, YOUR LORDSHIPS MAY GRACIOUSLY BE PLEASED TO direct the respondent to maintain status quo with respect to the distribution of proceeds, if any realized from the sale of assets of the Corporate Debtor;
- E. Pending adjudication and final disposal of this Application, Your Lordships may be pleased to direct Respondent to undertake for securing the sale proceeds in favour of the applicant distributed by Respondent, if any which the Respondent was not entitled to distribute at the time of distribution, or subsequently became not entitled to distribute by virtue of pronouncement of State Tax Officer (1) vs. Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020) and Sanjay Kumar Agarwal v. State Tax Officer (1) and Anr. (Review Petition (Civil) No. 1620 of 2023 in Civil Appeal No. 1661 of 2020) by the Hon'ble Supreme Court
- F. Your Lordships may be pleased to grant any such other and further reliefs as may be deemed just, fit and proper in the interest of justice.

## **2. FACTS OF THE CASE:**

- i. This Tribunal admitted a petition, that is C.P. (I.B) No. 211/ 7/ NCLT/AHM/2020, filed under Section 7 of IBC on 07.09.2021, thereby ordering to initiate CIRP process of the Corporate Debtor. Accordingly, Mr. Parthiv Parikh was appointed as an "Interim Resolution Professional" (hereinafter referred to as "IRP").
- ii. Pursuant to the order dated 07.09.2021 of this Tribunal, Mr. Parthiv Parikh made a public announcement in Form A on 15.09.2021, thereby



calling upon the creditors of the Corporate Debtor to submit their claims. The last date of submission of claims was stipulated to be 28.09.2021.

- iii.** The applicant authority, vide letter dated 21.09.2021, submitted its statutory claim of GVAT Dues for the assessment years 2006-07 to 2017-18 for an amount of Rs. 149,54,61,779/- (Rupees One Hundred and Forty Nine Crore Fifty Four Lakh Sixty One Thousand Seven Hundred and Seventy Nine) under Form B (under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016) thereby, submitting its statutory claim within time limit stipulated under Form A (public announcement).
- iv.** The applicant authority carried out assessment for GVAT dues of Corporate Debtor under GVAT Act and CST Act and accordingly, assessment orders and demand notices were issued qua the Corporate Debtor for the assessment years 2006-07 to 2017-18 on various dates between 15.04.2011 to 16.01.2021 thereby, raising demand of statutory due to the tune of Rs. 149,54,61,779/- which is attached with Form B as mentioned herein above.
- v.** On 26.10.2021, a claim of Rs. 144,84,87,207/- of applicant authority is shown as "Amount of claim



admitted" under List of Operational Creditors (Government Dues) uploaded on the official website of Insolvency and Bankruptcy Board of India ("IBBI").

- vi.** This Tribunal, vide order dated 24.11.2021, allowed an Interlocutory Application nomenclature as IA. No. 781 (AHM) 2021, which was preferred by the State Bank of India (Financial Creditor) for the replacement of the IRP by appointing a new Resolution Professional (hereinafter referred to as "RP"). Accordingly, Mr. Sunil Kumar Kabra (herein as a Respondent) was appointed as an RP.
- vii.** That on 01.08.2022, the respondent preferred an application IA. No. 670 (AHM) 2022 in C.P. (I.B) No. 211/7/ NCLT/ AHM/2020 before this Hon'ble Tribunal seeking liquidation of the Corporate Debtor since none of the Resolution Plans meet with requisite requirements as per law.
- viii.** This Tribunal, vide order dated 20.02.2023, allowed IA. No. 670 (AHM) 2022 in C.P. (I.B) No. 211/7/NCLT/ AHM/ 2020 thereby, ordering to initiate liquidation proceedings of the Corporate Debtor. Accordingly, the Respondent herein was appointed as a "Liquidator" of the Corporate Debtor.
- ix.** Pursuant to the order dated 20.02.2023 of this Tribunal, the Respondent made a public



announcement 23.02.2023 in Form B of Schedule II, thereby calling upon the creditors of the Corporate Debtor to submit their claims. The last date of submission of claims was stipulated to be 22.03.2023.

- x.** The applicant authority, vide letter dated 27.06.2023, submitted its statutory claim of GVAT Dues for the assessment years 2006-07 to 2017-18 for an amount of Rs. 174,97,47,153/-(Rupees One Hundred and Seventy-Four Crore Ninety-Seven Lakh Forty-Seven Thousand One Hundred and Fifty-Three) in Form C (under Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016). It is further submitted that the applicant authority, with a clear and express intent, submitted Form C in the capacity of "Secured Creditor" in light of the principle laid down in State Tax Officer (1) vs. Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020) which is evident from the contents of the letter dated 27.06.2023.
- xi.** The applicant authority carried out assessment for GVAT dues of Corporate Debtor under GVAT Act and CST Act and accordingly, assessment orders and demand notices were issued qua the Corporate Debtor for the assessment years 2006-07 to 2017-18 on various dates between 15.04.2011 to 16.01.2021 thereby, raising demand of statutory due to the tune of



Rs. 174,97,47,153/- which is attached with Form C as mentioned herein above. Hence, the aforesaid amount is due from the Corporate Debtor to the applicant authority towards GVAT and CST. The summary of the assessment orders and demand notices for assessment years raised at various dates are produced herein under for the kind reference of this Hon'ble Tribunal: -

SR.NO	ACT	YEAR	A.O. DATE	DEMAND NOTICE DATE	AMOUNT AS PER A.O	INTEREST	TOTAL	ATTACHMENT
1	CST	2006-07	15-04-2011	15-04-2011	39638981	72218637	111857618	A.O AND DEMAND NOTICE
2	VAT	2007-08	31-03-2012	31-03-2012	286580	574071	860651	ASSESSMENT ORDER
3	CST	2007-08	31-03-2012	31-03-2012	41133023	79809967	120942990	ASSESSMENT ORDER
4	VAT	2008-09	31-03-2013	31-03-2013	84566137	153221278	237787415	A.O AND DEMAND NOTICE
5	CST	2008-09	31-03-2013	31-03-2013	48242932	87395785	135638717	A.O AND DEMAND NOTICE
6	VAT	2009-10	29-03-2014	29-03-2014	76686526	125492887	202179413	A.O AND DEMAND NOTICE
7	CST	2009-10	29-03-2014	29-03-2014	31511597	51355505	82867102	A.O AND DEMAND NOTICE
8	VAT	2010-11	31-03-2016	31-03-2016	29879191	38517142	68396333	A.O AND DEMAND NOTICE
9	CST	2010-11	31-03-2016	31-03-2016	29255884	37641083	66896967	A.O AND DEMAND NOTICE
10	VAT	2011-12	31-03-2016	31-03-2016	54526735	72135445	126662180	A.O AND DEMAND NOTICE
11	CST	2011-12	31-03-2016	31-03-2016	27972955	37216789	65189744	A.O AND DEMAND NOTICE
12	VAT	2012-13	31-03-2017	31-03-2017	102409436	123063614	225473050	A.O AND DEMAND NOTICE
13	CST	2012-13	31-03-2017	31-03-2017	2320297	2261094	4581391	A.O AND DEMAND NOTICE
14	VAT	2013-14	28-03-2018	28-03-2018	9180620	8545303	17725923	A.O AND DEMAND NOTICE
15	CST	2013-14	28-03-2018	28-03-2018	63025913	57494454	120520367	A.O AND DEMAND NOTICE
16	VAT	2014-15	30-03-2019	30-03-2019	58768812	43936530	102705342	A.O AND DEMAND NOTICE
17	CST	2014-15	30-03-2019	30-03-2019	15214105	11336801	26550906	A.O AND DEMAND NOTICE
18	CST	2015-16	21-03-2020	21-03-2020	7200976	3824606	11025582	A.O AND DEMAND NOTICE
19	VAT	2016-17	31-12-2020	31-12-2020	468226	200426	668652	A.O AND DEMAND NOTICE
20	VAT	2017-18	16-01-2021	16-01-2021	14751107	6125145	20876252	A.O AND DEMAND NOTICE
21	CST	2017-18	16-01-2021	16-01-2021	241057	99500	340557	A.O AND DEMAND NOTICE
TOTAL					737281090	1012466062	1749747152	

- xii.** In response to submitting a claim under Form C vide letter dated 27.06.2023, the Respondent, vide communication dated 11.07.2023, admitted the claim of Rs.172,39,60,844.85/-under the status of an "Operational Creditor".





- xiii.** That the applicant authority time and again reminded the Respondent regarding considering the applicant department as a "Secured Creditor" in light of the principle laid down in Rainbow Papers' judgment. However, the respondent deliberately failed in responding to the communications made by the applicant which is evident from the set of events mentioned herein below.
- xiv.** The applicant, vide its letter dated 29.12.2023, requested the Respondent to consider the State Tax Department as a "Secured Creditor" in light of Rainbow Papers' judgment as well as rainbow Papers' Review judgment i.e. Sanjay Kumar Agarwal v. State Tax Officer (1) and Anr. (Review Petition (Civil) No. 1620 of 2023 In Civil Appeal No. 1661 of 2020).
- xv.** Since no response was received from the respondent side, the applicant again sent a reminder and a detailed explanation to the Respondent vide communication dated 18.05.2024 so as to consider its department as a "Secured Creditor".
- xvi.** The applicant, vide its letter dated 08.07.2024, once again requested the respondent to consider the State Tax Department as a "Secured Creditor" in light of Rainbow Papers' judgment and Rainbow Papers Review judgment.



- xvii.** The applicant, vide its letter dated 19.11.2024, again reminded the respondent to consider the State Tax Department as a “Secured Creditor” in light of Rainbow Papers' judgment as well as Rainbow Papers' Review judgment.

**FACTS RELATED TO THE GST DUES:**

The Applicant's Application refers to the following facts and claims:

- xviii.** That on 15.02.2024, the applicant authority submitted its statutory claim of GST Dues for the tax period 2017-2020 for an amount of Rs. 2,01,61,104/- (Two Crore One Lakh Sixty-One Thousand One Hundred and Four) under Form C (under the Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016) to the respondent. The applicant authority categorically submitted its claim in the capacity of Secured Creditor, which is evident from the contents of the letter dated 15.02.2024.
- xix.** That the applicant authority carried out assessment for GST dues of Corporate Debtor under GST Act and accordingly, demand orders were issued qua the Corporate Debtor for the tax period 2017-2020 on various dates thereby, raising demand of statutory



due to the tune of Rs. 2,01,61,104/-which is attached with Form C as mentioned herein above. The summary of the demand orders for various tax periods raised at various dates are produced herein under for the kind reference of this Tribunal:

Sr. No.	Year	Date of Assessment Order	Tax Type	Amt. of Tax Rs. (As per A.O.)	Interest Up to Insolvency Dt.	Total Amt.Rs.	Remarks
1.	2017-18	21/12/2023	IGST	0	0	0	Demand Order
			CGS T	4782419	0	4782419	
			SGST	4782419	0	4782419	
2.	2018-19	13/02/2024	IGST	15472	0	15472	Demand Order
			CGS T	1785751	0	1785751	
			SGST	1785751	0	1785751	
3.	2019-20	24/06/2022	IGST	0	0	0	Demand Order
			CGS T	3129148	375498	3504646	
			SGST	3129148	375498	3504646	
	Claim dt-15.02.2024		Total	19410108/-	750996/-	20161104/-	

**xx.** In response to submitting claim under Form C vide letter dated 15.02.2024 the respondent, vide communication dated 04.03.2024, admitted the claim of Rs.2,01,61,104/- under the status of an "Operational Creditor".

**xxi.** The applicant authority time and again reminded the Respondent in regards to considering applicant department as a "Secured Creditor" in light of the principle laid down in Rainbow Papers' judgment. However, the respondent deliberately failed in responding to the communications made by the applicant, which is evident from the set of events mentioned below.



- xxii.** The applicant, vide its letter dated 18.05.2024, reminded the respondent to consider the State Tax Department as a "Secured Creditor" in light of Rainbow Papers' judgment as well as Rainbow Papers' Review judgment.
- xxiii.** On 08.11.2024, the applicant authority submitted its additional statutory claim of GST Dues for the tax period 2019-2020 for an amount of Rs. 1,82,307/- (One Lakh Eighty Two Thousand Three Hundred and Seven) under Form C (under the Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016) to the respondent. The applicant authority categorically submitted its claim in the capacity of Secured Creditor which is evident from the contents of the letter dated 08.11.2024.
- xxiv.** The applicant authority carried out assessment for GST dues of Corporate Debtor under GST Act and accordingly, demand order was issued qua the Corporate Debtor for the tax period 2019-2020 thereby, raising additional demand of statutory due to the tune of Rs. 1,82,307/- which is attached with Form C as mentioned herein above. The summary of the demand orders for various tax periods raised at various dates under the GST Act regime are produced



herein under for the kind reference of this Hon'ble Tribunal:

Sr. No.	Year	Date of Assessment Order	Tax Type	Amt. of Tax Rs. (As per A.O.)	Interest Up to Insolvency Dt.	Total Amt.Rs.	Remarks
1.	2017-18	21/12/2023	IGST	0	0	0	Demand Order
			CGS T	4782419	0	4782419	
			SGST	4782419	0	4782419	
2.	2018-19	13/02/2024	IGST	15472	0	15472	Demand Order
			CGS T	1785751	0	1785751	
			SGST	1785751	0	1785751	
3.	2019-20	24/06/2022	IGST	0	0	0	Demand Order
			CGS T	3129148	375498	3504646	
			SGST	3129148	375498	3504646	
	Claim dt-15.02.2024		Total	19410108/-	750996/-	20161104/-	
4	2019-20	12/08/2024	IGST	107535	0	107535	Demand Order
			CGS T	37386	0	37386	
			SGST	37386	0	37386	
	Claim dt-08.11.2024		Total	1,82,307	0	1,82,307	

**xxv.** In response to submitting a claim under Form C vide letter dated 08.11.2024, the respondent, vide communication dated 12.11.2024, admitted the claim of Rs. 1,82,307/- under the status of an "Operational Creditor".

**xxvi.** The applicant, vide its letter dated 19.11.2024, again reminded the respondent to consider the State Tax Department as a "Secured Creditor" in light of Rainbow Papers' judgment as well as Rainbow Papers' Review judgment.

**xxvii.** That despite of several reminders communicated to the respondent by the applicant authority, the respondent has deliberately failed to consider the State Tax Department as a "Secured Creditor" under Section 53(1)(b)(ii) of the Code in light of Rainbow



**xxviii.** It is respectfully submitted by the Applicant that the Applicant Department is lawfully entitled to be considered as a "Secured Creditor" under **Section 53(1)(b)(ii) of the Code** on following grounds which are discussed herein below:

- a) Principles And Observations Laid Down in Rainbow Papers' Judgement:-
- b) Significant Observations Laid Down in Sanjay Kumar Agarwal's Judgement:-
- c) Applicant is entitled to be considered as a "Secured Creditor" under Section 53(1)(b)(ii) of the Code for VAT and GST Dues:-
- d) Actions of Respondents are in direct contravention to the well-settled and prevailing law:-

**xxix. Principles And Observations Laid Down in Rainbow Papers' Judgement:-**

That the applicant respectfully submits that the Hon'ble Supreme Court in State Tax Officer (1) vs. Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020), vide its judgment dated 06.09.2022, laid down significant principles and relevant observations which are reproduced herein under for the ready reference of this Hon'ble Tribunal:

<b>Para No.</b>	<b>Relevant Para's read as under</b>	<b>Page No. (of IA)</b>



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) of the IBC and the State becomes a secured creditor under Section 3(30) of the Code"	303
48	"A resolution plan which does not meet the requirements of Sub Section (2) of Section 30 of the IBC, would be invalid and not binding on the Central Government, any State Government, any statutory or other authority, any financial creditor, or other creditor to whom a debt in respect of dues arising under any law for the time being in force is owed. Such a resolution plan would not bind the State when there are outstanding statutory dues of a Corporate Debtor."	310
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."	312
57	"As observed above, the State is a	313



	secured creditor under the GVAT Act. Section 3(30) of the IBC defines a secured creditor to mean a creditor in favour of whom a security interest is created. 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"	
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**xxx. Significant Observations Laid Down in Sanjay Kumar Agarwal's Judgment:-**

That the applicant respectfully submits that the Hon'ble Supreme Court in Sanjay Kumar Agarwal v. State Tax Officer (1) and Anr. (Review Petition (Civil) No. 1620 of 2023 In Civil Appeal No. 1661 of 2020), vide its judgment dated 31.10.2023, made relevant observations which are reproduced herein under for the ready reference of this Hon'ble Tribunal:

<b>Para No.</b>	<b>Relevant Para's read as under</b>	<b>Page No. (of IA)</b>
24	"...the submissions made by the learned Counsels for the Review Petitioners that the court in the impugned decision had failed to consider the waterfall mechanism as contained in Section 53 and failed to consider other provisions of IBC, are factually incorrect. As evident from the bare reading of the impugned judgment, the Court had considered not only the Waterfall mechanism under	330





	Section 53 of IBC but also the other provisions of the IBC for deciding the priority for the purpose of distributing the proceeds from the sale as liquidation assets."	
26	"After considering the Waterfall mechanism as contemplated in Section 53 and other provisions of IBC for the purpose of deciding as to whether Section 53 IBC would override Section 48 of the GVAT Act, it was finally concluded in the impugned order as under: "55. In our considered view, the NCLAT clearly erred in its observation that Section 53 of the IBC overrides Section 48 of the GVAT Act. Section 53 of the IBC begins with a non-obstante clause which reads:-..."	332
27	"In view of the above stated position, we are of the opinion that the well-considered judgment sought to be reviewed does not fall within the scope and ambit of Review. The learned Counsels for the Review Petitioners have failed to make out any mistake or error apparent on the face of record in the impugned judgment, and have failed to bring the case within the parameters laid down by this Court in various decisions for reviewing the impugned judgment. Since we are not inclined to entertain these Review Petitions, we do not propose to deal with the other submissions made by the learned Counsels for the parties	332



	on merits."	
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**xxxi. Applicant is entitled to be considered as a "Secured Creditor" under Section 53(1)(b)(ii) of the Code for VAT and GST Dues:-**

That the status of the applicant is to be considered as that of a "Secured Creditor" under Section 53(1)(b)(ii) of the Code in light of the following grounds: -

- a) It is submitted that the definition of a "Secured Creditor" is wide enough to cover "operational creditor" under its garb. The same can be understood on perusal of Section 3(30) and Section 3(31) of the Code. For ready reference of this Hon'ble Tribunal, the aforesaid sections are reproduced hereunder:

*"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 a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment 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;"*

On perusal of the above definitions and keeping in mind the facts of the instant case, it is very clear that by virtue of section 48 of the GVAT Act, the "first charge" by operation of law squarely falls



within the definition of "security interest" and that the applicant department as a "secured creditor".

It is further submitted that the relevant paragraph in the **Rainbow Papers' judgment** (supra) on the aforesaid aspect is reproduced hereunder for the ready reference of this Hon'ble Tribunal:-

*“29. As argued by the learned Solicitor General, the term "Secured Creditor" as defined under the 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 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.”*

- b) The respondents have lost sight that by virtue of the operation of law, under Section 48 of the GVAT Act, on accruing the amount payable, a "charge" is created over the property of the Corporate Debtor on an amount payable on account of tax, interest



or penalty. For ready reference of this Hon'ble Tribunal, Section 48 is reproduced hereunder:

*"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."*

A bare perusal of the aforementioned section clearly indicates that once the amount becomes payable, the State Government shall have first charge on the property of that dealer, herein corporate debtor. The aforesaid provision contemplates first charge on the corporate debtor's property which is statutory in nature.

- c) Moreover, as per the **Rainbow Papers' judgment** (supra), section 48 of the GVAT Act shall be read harmoniously with section 53 of the IBC thereby, considering applicant as a secured creditor under GVAT Act as well as under Section 53(1)(b)(ii) of the Code.
- d) It is further submitted that by virtue of the operation of law, under Section 82 of the GST Act, on accruing the amount payable, a "charge" is created over the property of the Corporate Debtor



on an amount payable on account of tax, interest or penalty. For ready reference of this Hon'ble Tribunal, Section 82 is reproduced hereunder:

***“82. Tax to be first charge on property.-***

*Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.”*

A bare perusal of the aforementioned section clearly indicates that once the amount becomes payable, the State Government shall have first charge on the property of the Corporate Debtor. The aforesaid provision contemplates first charge on the corporate debtor's property which is statutory in nature.

- e) The department shall be considered as a "Secured Creditor" under Section 53(1)(b)(ii) of the Code since there is no inconsistency between the GST Act and the Code. In light of **Rainbow Papers' judgment** (supra) and **Rainbow Papers' Review judgement** it is very clear on the aspect that **if any statutory demands payable or arising under any law for the time being in force is/are ignored while carrying out distribution in light of**



**Section 53 of the Code then such action shall be considered bad in the eyes of law and shall not be entertained as it is against the provision of the Code.** Therefore, specifically in light of Section 82 of the GST Act the Department still is categorically to be considered as a "Secured Creditor" under Section 53(1)(b)(ii) of the Code. Despite of the fact that Section 82 of the GST Act uses "...save as otherwise provided in the Insolvency and Bankruptcy Code, 2016..." it is very clear that the statutory claims of the State Tax Department falls within the definition of "Security Interest" and "Secured Creditor" under the Code. Therefore, even taking the defence of the aforesaid phrase i.e. "...save as otherwise provided in the Insolvency and Bankruptcy Code, 2016...", the department still shall be considered as a "Secured Creditor" under the Code since the same is no more Res Integra. Hence, there is no question of raising the inconsistency or dispute between the GST Act and the Code because despite of the aforesaid phrase, the unpaid dues of the State Tax Department would otherwise also fall under the category of "Secured Dues" thereby, entrusting it the status of "Secured Creditor" under Section 53(1)(b)(ii).



- f) It is submitted that the Code does not seek to nullify the rights of the parties and thereby render statutory charges created under taxing statutes otiose. It is crystal clear and unambiguous that there is no question of raising inconsistency between GVAT Act and the Code or the GST Act and the Code when the acts i.e. GVAT Act and GST Act can operate harmoniously with the Code. Therefore, in light of the **Rainbow Papers' judgment** (supra), it is evidently clear that Section 48 of the GVAT Act and Section 82 of the GST Act, shall be harmoniously construed with the provisions of the Code so as to mean that any statutory charge created by virtue of a taxing statute, shall be considered as a "Secured" in favour of the department and priority and treatment similar to that of a "Secured Creditor" under Section 53(1)(b)(ii) of the Code shall be rendered to the dues of the department.
- g) It is submitted that Section 238 of the Code nullifies the effect of any provision contained in any other law provided the same is inconsistent with the provisions contained in the Code and not otherwise. It is further submitted that there is no quarrel to the preposition that Section 238 of the Code will have overriding effect in case of anything inconsistent with the provisions of the Code and



that the provisions of Code, in such situation, shall prevail. However, it is respectfully submitted that there is neither inconsistency nor repugnancy in so far as Section 48 of the GVAT Act and Section 82 of the GST Act is concerned with respect to the Code. The statutory "first charge" over the assets of the corporate debtor does not in any manner violate or militate against any provisions of the Code. Moreover, there is nothing in the Code which suggests, even remotely, that a charge created by another statute must lose its character. One cannot give Section 238 of the Code such a wide and sweeping amplitude and scope as holding that it takes away the statutory rights created by other statutes.

- h) Further, Section 238 of the Code cannot be given perversely truncated meaning that it only includes charge created by entering into contract between the parties as in the case of mortgage or hypothecation and ignoring "first charge" which is created by operation of law. It is well settled rule of interpretation of statutes that if one construction leads to a conflict whereas on another construction, two Acts can be harmoniously construed then the latter must be adopted. The legislative intent behind use of non-obstante clause at the inception of any section is to clear





away any impediment to effectuate the measure contained in that section. Thus, such clauses are not to be interpreted or regarded always as repealing clauses. They shall have to be construed in a manner which will remove all obstructions that might arise out of the provisions of any other law while giving way of the operation of such non-obstante clause. Therefore, in light of the above discussion and case, Section 238 of the Code has to be read and construed harmoniously with Section 48 of the GVAT Act as well as Section 82 of the GST Act.

- i) The attention of this Hon'ble Tribunal is again drawn to the **Rainbow Papers' Review judgment** (supra) rendered by the Hon'ble Apex Court wherein the Review petitioners heavily relied on **Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited**, (Civil Appeal No. 7976 of 2019). However, the said case was dismissed by upholding the views extensively enumerated in Rainbow Papers' judgment.
- j) Thus, by virtue of **Rainbow Papers' judgment** (supra) as well as **Rainbow Papers' Review judgment** (supra), the statutory dues of the applicant ought to have be considered as a "Secured Dues" and the applicant department



ought to have been considered and treated as a "Secured Creditor" under Section 53(1)(b)(ii) of the Code by Respondent which he deliberately failed to do.

**xxxii. Actions of Respondents are in direct contravention to the well-settled and prevailing law:-**

It is respectfully submitted that respondents are in gross violation of the principles laid down in the judgments discussed hereinabove.

- a. It is a matter of surprise that despite of well settled law of the land and requesting the applicant at several instances to consider the department as a "Secured Creditor" the respondent, neither bothered to reply nor considered the status of the applicant department as a "Secured Creditor" in light of the judgments referred and discussed herein above. Therefore, respondent shall strictly put into compliance for violating law of the land.
- b. It is submitted that Article 141 of the Constitution of India envisages the law declared by the Hon'ble Supreme Court to be the law of the land. The provision of Article 141 is reproduced herein under for the ready reference of this Hon'ble Tribunal:



*“141. Law declared by Supreme Court to be binding on all courts.—The law declared by the Supreme Court shall be binding on all courts within the territory of India.”*

The respondent, despite being well aware of the prevailing law, categorically failed to consider the applicant department as a “Secured Creditor.”

- c. It is respectfully submitted that the prevailing law of the land is the principle law laid down in **Rainbow Papers' judgement** (supra) which was upheld in **Rainbow Papers' Review judgement** (supra) as discussed herein above.
- d. When law is very clear about considering the deponent's department as a "Secured Creditor" under Section 53(1)(b)(ii) of the Code, there seems no reason not to consider the deponent's department as a "Secured Creditor".
- e. In light of the afore-stated facts and circumstances, it is evident that the applicant is under non-observance to the already well-settled principle of law.

**xxxiii.** Furthermore, it is respectfully submitted that in view of the aforesaid provisions and case laws it is crystal clear that the place of the State Tax Department is at higher priority under Section 53(1)(b)(ii) of the Code



thereby, considering the tax dues of the deponent's department as a "Secured Dues" under the GVAT Act as well as GST Act and deponent's department as a "Secured Creditor" under Section 53(1)(b)(ii) of the Code placing it at par with workmen's dues for the period of 24 months preceding the liquidation commencement date as held and reiterated above.

**xxxiv.** It is an admitted position that the statutory secured dues of the Corporate Debtor towards applicant authority are outstanding to the tune of Rs. 174,97,47,153/- as GVAT Dues and Rs. 2,01,61,104/- Rs. 1,82,307/- 2,03,43,411 as GST Dues. The applicant respectfully submits that since a huge amount of public money is involved, in light of the directions of the Hon'ble Supreme Court, the respondent is under an obligation to consider the applicant department as a "Secured Creditor" under Section 53(1)(b)(ii) of the Code. However, despite the above-discussed principles and well-settled law of the land enumerated by the Hon'ble Supreme Court, the respondent has failed to consider the applicant department as a "Secured Creditor" under Section 53(1)(b)(ii) of the Code.

**xxxv.** That considering the above stated circumstances, the applicant is under the reasonable apprehension that the respondent might not consider the State Tax



Department as a "Secured Creditor" under Section 53(1)(b)(ii) of the Code and the respondent might proceed with distribution of sale proceeds as per Section 53 leaving such significant secured dues unaddressed. This reasonable apprehension of the applicant, coupled with the inaction of the respondent in not considering the applicant authority as a "Secured Creditor" under Section 53(1)(b)(ii) of the Code, has placed the applicant authority at a prejudice. Hence, if the applicant authority is not declared as a "Secured Creditor" under Section 53(1)(b)(ii) of the Code, the applicant authority would be put into serious prejudice and it shall result in meritorious matter being thrown out at the very threshold and cause of justice being defeated.

- xxxvi.** In light of the aforesaid facts and circumstances, it is submitted that Respondent has categorically failed to reply the communications of the applicant and has not considered the status of the applicant as a "Secured Creditor" despite of constant endeavours from the applicant; and respondent have failed to comply with clear law laid down in **Rainbow Papers' judgement** (supra) as well as **Rainbow Papers' Review judgement** (supra).



3. The Respondent Liquidator has filed Affidavit in Reply to the Application on 12.02.2025 vide inward dairy No. D 903 and made the following statements: -

i. At the outset, respondent submitted that the applicant cannot be held to be a Secured Creditor of the Corporate Debtor. Stated that even assuming without admitting that the applicant sales tax department was a secured creditor, the applicant has not exercised the rights u/s. 52 of the IB Code read with Regulation 21A of the Liquidation Regulations to proceed with the assets. Respondent reproduced Sec.52 of IB Code herein below: -

*“Section 52: Secured creditor in liquidation proceedings*

*(1) A secured creditor in the liquidation proceedings may*

*(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or*

*(b) realise its security interest in the manner specified in this section.*

*(2) Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.*

*(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest,*



*the existence of which may be proved either*

*(a) by the records of such security interest maintained by an information utility; or*

*(b) by such other means as may be specified by the Board.*

*(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.*

*(5) If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.*

*(6) The Adjudicating Authority, on the receipt of an application from a secured creditor under sub-section (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.*

*(7) Where the enforcement of the security interest under sub-section (4) yields an amount*

*by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall*

*(a) account to the liquidator for such surplus; and*

*(b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.*

*(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall*



*be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.*

*(9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause*

*(e) of sub-section (1) of section 53.”*

- ii.** Respondent through its affidavit stated that Regulation 21A of IBBI (Liquidation Process) Regulations, 2016 is also relevant and hence reproduced below:-

*“21A. Presumption of security interest-*

*(1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:*

*Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.*

*(2) Where a secured creditor proceeds to realise its security interest, it shall pay - (a) as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date; and (b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred*





*and eighty days from the liquidation commencement date:*

*Provided that where the amount payable under this sub-regulation is not certain by the date the amount is payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator:*

*Provided further that any difference between the amount payable under this sub regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.*

*(3) Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate."*

- iii.** In view of above provision of law, it is clear that at the best, the applicant may be treated as a secured creditor but the amount which shall be disbursed to the said creditor would be distributed as per Sec.53(1)(e) of the IB Code as the applicant has not relinquished its security in the liquidation estate.
- iv.** The Respondent, through its affidavit, stated that the applicant has relied upon the judgment of the Hon'ble Supreme Court in the case of **State Tax Officer v. Rainbow Papers Limited**. The Judgment of the Hon'ble Supreme Court in the case of State Tax Officer v. Rainbow Papers Limited was in the context of the corporate insolvency resolution process and not the liquidation of the Corporate Debtor. Subsequently,



the Hon'ble Supreme Court in the case of **Paschimanchal Vidyut Vitran Nigam Limited v. Raman Ispat Private Limited** has clarified that the judgment of the Hon'ble Supreme Court in the case of Rainbow Papers Limited (supra) was in the context of Corporate Insolvency Resolution Process and not liquidation of the Corporate Debtor. In the facts of present case, as the Corporate Debtor is undergoing liquidation, the judgment of Paschimanchal Vidyut Vitran Nigam Limited (Supra) would be applicable to the facts of present case.

- v. Respondent through its affidavit stated that the Hon'ble Supreme Court in the case of Paschimanchal Vidyut Vitran Nigam Limited (supra) has specifically held that the judgment of the Hon'ble Supreme Court in the case of Rainbow Papers Limited (supra) did not consider the waterfall mechanism as enumerated in Section 53 of the IB Code. The priority of claims indicated in the hierarchy of preferences under the waterfall mechanism is therefore,

- firstly- insolvency resolution process costs;
- secondly- workmen dues for a period of 24 months preceding the liquidation commencement date; and debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in Section 52.



- thirdly-wages and any unpaid dues to employees other than workmen for a period of 12 months preceding the liquidation commencement date;
- fourthly-financial debts owed to unsecured creditors;
- fifthly-any amount due to central government and state governments and debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- sixthly-any remaining debts and dues;
- seventhly-preference shareholders;
- eighthly-equity shareholders or partners;

Thus, it is clear that the debts owed to a secured creditor who has relinquished security in the manner as set out in Section 52 receives a fairly high priority than the amount to be paid to Government dues.

- vi.** Respondent through its affidavit stated that therefore the prayer of the applicant that the applicant department be treated as a secured creditor as per Sec.53(1)(b)(ii) of the IB Code is untenable and may not be granted by this Hon'ble Adjudicating Authority.

#### **Claim pertaining to GST Department**

- vii.** Respondent through its affidavit stated that the claim of the applicant pertaining to GST Department to be treated as secured creditor may not be accepted by



this Hon'ble Adjudicating Authority. That Section 82 of the GST Act is relevant and hence is reproduced below:-

*“Section 82: Tax to be first charge on property*

*Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.”*

A perusal of the above quoted provision would reveal that this provision specifically excludes the provisions of IB Code and therefore, the GST department cannot be treated as a secured creditor.

4. The Applicant has filed its Affidavit in Rejoinder to the Application on 06.03.2025 vide inward dairy No. D 1552 and made the following statements:

Applicability of State Tax Officer (1) vs. Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020) qua GVAT Dues:

- i. With respect to Paragraph No. 3, Applicant submitted that the averments made therein are misconceived and hence, denied. By virtue of pronouncement by the Hon'ble Supreme Court in case of State Tax Officer (1) vs. Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020) annexed as Annexure: W to the captioned Application, it is settled law that the State Tax



Department should be considered as a "Secured Creditor" under Section 53(1)(b)(ii) of the IB Code, 2016. Respondent has taken no notice of Section 48 of the GVAT Act, 2003 that it is by virtue of operation of law a "charge" is created over the property of the Corporate Debtor on an amount payable on account of tax, interest or penalty. A bare perusal of the aforementioned section categorically indicates that on accruing the amount payable, the State Government shall have first charge on the property of that dealer, herein Corporate Debtor. Therefore, the principle of first charge enumerated under the said provision is statutory in nature. Furthermore, the Hon'ble Supreme Court, in case of State Tax Officer (1) vs. Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020), has distinctly ruled that section 48 of the GVAT Act, 2003 shall be read harmoniously with section 53 of the IB Code, 2016 thereby, considering Applicant as a "Secured Creditor under Section 53(1)(b)(ii) of the IB Code, 2016.

- ii.** For ready reference of this Hon'ble Tribunal, relevant paragraphs of State Tax Officer (1) vs. Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020) are reproduced herein under:

*"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) of the IBC and the State becomes a secured creditor under Section 3(30) of the Code."*

*"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"*

- iii.** Therefore in view of the afore-discussed judgment, the averment by the Respondent with respect to non-relinquishment of security in liquidation estate holds no relevance in the present facts and circumstances. Applicability of Sanjay Kumar Agarwal v. State Tax Officer (1) and Anr. (Review Petition (Civil) No. 1620 of 2023 In Civil Appeal No. 1661 of 2020 which was pronounced vide judgment dated 31.10.2023:
- iv.** With respect to Paragraph No. 4 to 6, Applicant submitted that the averments made therein are



misconceived and hence, denied. It is reiterated position that the Hon'ble Apex Court, in Sanjay Kumar Agarwal v. State Tax Officer (1) and Anr. (Review Petition (Civil) No. 1620 of 2023 In Civil Appeal No. 1661 of 2020) vide judgment dated 31.10.2023- annexed as Annexure: X to the captioned Application, upheld the law laid down in State Tax Officer (1) vs. Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020) while dismissing the Review Petition wherein the Review petitioners heavily relied on Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited, (Civil Appeal No. 7976 of 2019).

- v. For ready reference of this Hon'ble Tribunal, relevant paragraphs of Sanjay Kumar Agarwal v. State Tax Officer (1) and Anr. (Review Petition (Civil) No. 1620 of 2023 In Civil Appeal No. 1661 of 2020) are reproduced herein under:

*“24. Apart from the well-settled legal position that a co-ordinate Bench cannot comment upon the judgment rendered by another co-ordinate Bench of equal strength and that subsequent decision or a judgment of a co-ordinate Bench or larger Bench by itself cannot be regarded as a ground for review, the submissions made by the learned Counsels for the Review Petitioners that the court in the impugned decision had failed to consider the*



*waterfall mechanism as contained in Section 53 and failed to consider other provisions of IBC, are factually incorrect. As evident from the bare reading of the impugned judgment, the Court had considered not only the Waterfall mechanism under Section 53 of IBC but also the other provisions of the IBC for deciding the priority for the purpose of distributing the proceeds from the sale as liquidation assets."*

*"26. After considering the Waterfall mechanism as contemplated in Section 53 and other provisions of IBC for the purpose of deciding as to whether Section 53 IBC would override Section 48 of the GVAT Act, it was finally concluded in the impugned order as under: -*

*"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 Governmental Authority." or

"27. In view of the above stated position, we are of the opinion that the well-considered judgment sought to be reviewed does not fall within the scope and ambit of Review. The learned Counsels for the Review Petitioners have failed to make out any mistake or error apparent on the face of record in the impugned judgment, and have failed to bring the case within the parameters laid down by this Court in various decision for reviewing the impugned judgment. Since we are not inclined to



*entertain these Review Petitions, we do not propose to deal with the other submissions made by the learned Counsels for the parties on merits."*

- vi.** It is respectfully submitted that even the Hon'ble High Court of Gujarat, in case of State of Gujarat v. Sanjay Kumar Agarwal and Anr. (R/Special Civil Application No. 23256 OF 2019) vide order dated 23.09.2024, observed State Tax Officer (1) vs. Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020) and Sanjay Kumar Agarwal v. State Tax Officer (1) and Anr. (Review Petition (Civil) No. 1620 of 2023 In Civil Appeal No. 1661 of 2020) and ruled to consider the State Tax Department as a "Secured Creditor" under Section 53(1)(b)(ii) of the IB Code, 2016.
- vii.** Hence, by virtue of State Tax Officer (1) vs. Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020) and Sanjay Kumar Agarwal v. State Tax Officer (1) and Anr. (Review Petition (Civil) No. 1620 of 2023 In Civil Appeal No. 1661 of 2020), the statutory dues of the Applicant ought to have be considered as a "Secured Dues" and the Applicant department ought to have been considered and treated as a "Secured Creditor" under Section 53(1)(b)(ii) of the IB Code, 2016.
- viii.** Therefore in view of the afore-discussed judgment, averments and reliance on Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited,



(Civil Appeal No. 7976 of 2019) by the Respondent holds no good in the eyes of law.

Applicability of State Tax Officer (1) vs. Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020) qua GST Dues:

- ix.** With respect to Paragraph No. 7 to 8, I say and submit that the averments made therein are misconceived and hence, denied. In view of State Tax Officer (1) vs. Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020) it is settled law that if any statutory demands payable or arising under any law for the time being in force is/are ignored while carrying out distribution in light of Section 53 of the Code then such action shall be considered bad in the eyes of law and shall not be entertained as it is against the provision of the Code.
- x.** For ready reference of this Hon'ble Tribunal, relevant paragraph of State Tax Officer (1) vs. Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020) is reproduced herein under:

*“48. A resolution plan which does not meet the requirements of Sub Section (2) of Section 30 of the IBC, would be invalid and not binding on the Central Government, any State Government, any statutory or other authority, any financial creditor, or other creditor to whom a debt in respect of dues arising under any law for the time being in force is owed. Such a resolution plan would not bind the State when there are outstanding statutory dues of a Corporate Debtor.”*



**xi.** Therefore, specifically in light of Section 82 of the GST Act the deponent still is categorically to be considered as a "Secured Creditor" under Section 53(1)(b)(ii) of the IB Code, 2016. It is respectfully submitted that despite of the fact that Section 82 of the GST Act uses "...save as otherwise provided in the Insolvency and Bankruptcy Code, 2016..." it is very clear that the statutory claims of the deponent falls within the definition of "Security Interest" and "Secured Creditor" under the IB Code, 2016. Therefore, even taking the defence of the aforesaid phrase i.e. "...save as otherwise provided in the Insolvency and Bankruptcy Code, 2016...", deponent still shall be considered as a "Secured Creditor" under the IB Code, 2016 since the same is no more Res Integra. Hence, the averment of the Respondent with respect to exclusion of the applicability of IB Code, 2016 holds no relevance since there seems no reason of raising inconsistency or dispute between the GST Act and the IB Code, 2016.

**5.** We have heard the counsel for the Applicant and Respondent/ Liquidator and have perused the material placed before us.

**6.** This Tribunal vide order dated 07.09.2021 admitted Company Petition 211 of 2020 under Section 7 of the IBC, initiating the CIRP of the Corporate Debtor and appointing



Mr. Parthiv Parikh as the IRP. Subsequently, a public announcement was made on 15.09.2021, calling for claims.

7. The applicant authority submitted its claim for GVAT dues amounting to Rs. 149,54,61,779/- for the assessment years 2006-07 to 2017-18 within the stipulated time, arising from assessments carried out between April 2011 and January 2021. This claim was initially admitted at Rs.144,84,87,207/- under the category of Operational Creditors (Government Dues) on 26.10.2021. Later, on 24.11.2021, Mr. Sunil Kumar Kabra was appointed as the new RP. Due to the failure of resolution plans, the Tribunal ordered the liquidation of the Corporate Debtor on 20.02.2023, with Mr. Sunil Kumar Kabra appointed as the Liquidator. Following a public announcement for liquidation claims, the applicant authority submitted a claim for GVAT dues, now Rs. 174,97,47,153/-, and GST dues, Rs. 2,01,61,104/- (for 2017-2020) and Rs. 1,82,307/- (for 2019-2020), in Form C, explicitly claiming the status of a Secured Creditor based on the "first charge" principle under the GVAT and GST Acts and the Supreme Court's ruling in the Rainbow Papers case.
8. The Liquidator admitted the above claims as those of an Operational Creditor.



9. The applicant has argued that the statutory charge under these tax laws constitutes a “security interest” under the IBC, as affirmed by the Supreme Court, entitling them to be treated as a Secured Creditor under Section 53(1)(b)(ii) of the IBC.
10. Based on the prayer made by the Applicant, this Adjudicating Authority is required to give its decision on the following four questions:

**Question 1:** Whether unpaid GVAT can be characterised as “secured dues” and the Applicant State Tax Department as “Secured Creditor”;

**Question 2:** Whether unpaid GST dues are to be characterised as “secured dues” and the Applicant State Tax Department as “Secured Creditor”;

**Question 3:** Whether the debt due to unpaid GVAT will have priority as per Section 53 (1) (b) (ii) while distributing the proceeds from the sale of the liquidated assets;

**Question 4:** Whether the debt due to unpaid GST will have priority as per Section 53 (1) (b) (ii) while distributing the proceeds from the sale of the liquidated assets;



11. M/s Archon Engicon, the Corporate Debtor, is undergoing liquidation proceedings. Chapter III (sections 33 to 54) of the IBC, 2016 deals with the Liquidation Process. Section 53 of the IBC, 2016 provides a mechanism for distributing the proceeds from the sale of the liquidation assets. Section 53 is extracted as below:

**Section 53: Distribution of assets.**

\*53. (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 and within such period and in such manner as may be specified, namely :—

- (a)<sup>J2</sup> the insolvency resolution process costs and the liquidation costs paid in full;
- (b) the following debts which shall rank equally between and among the following :—
  - (i) workmen's dues<sup>J2</sup> for the period of twenty-four months preceding the liquidation commencement date; and
  - (ii) debts owed to a secured creditor<sup>J4</sup> in the event such secured creditor has relinquished security in the manner set out in section 52;
- (c) wages<sup>J2</sup> and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- (d) financial debts owed to unsecured creditors;



(e) the following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;<sup>J6</sup>

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

*Explanation.*- For the purpose of this section—

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same





class of recipients, if the proceeds are insufficient to meet the debts in full; and

(ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.

**12.** This Adjudicating Authority considers that the section starts with the non-obstante language, (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 or priority..), and this provides that the provisions overrides any law enacted by the Parliament or any State Legislature as far as distribution of proceeds from the sale of the liquidation assets is concerned. Further, the provisions use the word “shall” to indicate that the distribution mechanism is sacrosanct and cannot be deviated from.

**13.** The CD has GVAT amounts due to the State Government. In the distribution mechanism, any amount due to the State Government is covered by the provisions of section 53 (1) (e) (i) of the IBC, 2016.

**14.** The Hon’ble Supreme Court in the case of State Tax Officer vs. Rainbow Papers Limited 2022 SCC Online 1162 held that the amount due to the State of account of GVAT



are “secured debt” and therefore such debt will be paid in the distribution mechanism as per the provisions of section 53 (1) (b) (ii) of the IBC, 2016. This Adjudicating Authority, by following the ratio Decidendi of the Hon’ble Supreme Court in the case of Rainbow Papers (which was reaffirmed in the review petition in the case of Sanjay Agarwal), holds that the GVAT dues are secured debt and the Sales Tax Department is the “secured creditor”.

**15.** Section 53 (1) (b) (ii) reads as, “Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52.

**16.** Sec.52 of IB Code is reproduced herein below: -

*“Section 52: Secured creditor in liquidation proceedings*

*(1) A secured creditor in the liquidation proceedings may*

*(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or*

*(b) realise its security interest in the manner specified in this section.*

*(2) Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.*

*(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either (a) by the records of such security interest maintained by an information utility; or 1 (b) by such other means as may be specified by the Board.*

*(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.*



*(5) If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.*

*(6) The Adjudicating Authority, on the receipt of an application from a secured creditor under subsection (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.*

*(7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall (a) account to the liquidator for such surplus; and (b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.*

*(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.*

*(9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of section 53.*

Regulations 21 and 21A of IBBI (Liquidation Process) Regulations, 2016 is also relevant and hence reproduced below: -

#### 21. Proving security interest

The existence of security interest may be proved by a security creditor on the basis of –

- (a) The records available in an information utility, if any;



- (b) Certificate of registration of charge issued by the Registrar of Companies; or
- (c) Proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India.

*“21A. Presumption of security interest-*

*(1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:*

*Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.*

*(2) Where a secured creditor proceeds to realise its security interest, it shall pay - (a) as much towards the amount payable under clause (a) and sub clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date; and (b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date:*

*Provided that where the amount payable under this sub-regulation is not certain by the date the amount is payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator: Provided further that any difference between the amount payable under this sub regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.*

*(3) Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.”*



17. The debts owed by Corporate Debtor to a secured creditor would be covered by the provisions of section 53 (1) (b) (ii) only if the secured creditor has relinquished its security interest in the manner set out in section 52.
18. Section 52 requires that a secured creditor in the liquidation proceeding relinquish its security interest to the liquidation estate to receive proceeds from the sale of assets in the manner specified in section 53.
19. The Hon'ble National Company Law Appellate Tribunal in ***Tapadia Polyesters Pvt. Ltd. Vs. Sales Tax Officer Professional Tax Officer & Anr., (2023) ibclaw.in 556*** **NCLAT** dealt with the issue whether the GVAT can be treated as a 'secured creditor' for the purposes of IBC. In the case before the Hon'ble NCLAT, the Sales Tax Department had attached the properties of the Corporate Debtor prior to the initiation of the CIRP and continued the attachment was not removed till liquidation. The Hon'ble NCLAT considered the decision of the Hon'ble Supreme Court in the cases of Embassy Property Development Private Limited Vs State of Karnataka & Ors [2019] 17 SCR 559 and Rainbow Papers Limited, provision of sections 53, 52 and Regulation 21A and held that as the Sales Tax Department had not relinquished their right under section 52, hence the department cannot be considered as the Secured Creditor.



- 20.** Based on the above facts and analysis, this Tribunal directs the Respondent to consider the unpaid GVAT dues to State as “debts owed to a secured creditor” and the Authority as “Secured Creditor” and adhere to the provisions of sections 52 and 53 of the IBC, 2016 and Regulations 21 and 21A of the IBBI (Liquidation Process) Regulations, 2016, while deciding the applicability of section 53(1)(b)(ii) of IB, Code.
- 21. Questions Nos. 1 and 3** framed above are answered accordingly.
- 22.** The following analysis concerns questions about unpaid GST dues.
- 23.** Section 82 of the Gujarat Goods and Services Tax Act, 2017 reads as below:
- “Section 82: Tax to be first charge on property  
Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.”*
- 24.** Therefore, section 82 of the GST Act, 2017 provides an exclusion due to the applicability of the provisions regarding the Insolvency and Bankruptcy Code, 2016. Therefore, the provisions of section 82 of the GST Act,



2017, will not override the inconsistent provisions, if any, in the IBC Code 2016.

- 25.** The distribution rules (waterfall mechanism) stipulated in section 53 of the IBC, 2016 also override any contrary provisions contained in any law enacted by the Parliament or any State Legislature for the time being in force.
- 26.** The National Company Law Appellate Tribunal in ***Department of State Tax Vs. Ashish Chhawchharia Resolution Professional for Jet Airways (India) Ltd. & Anr.***, (Judgment dated October 21, 2022) dealt with the issue whether the Department of State Tax can be treated as a ‘secured creditor’ for the purposes of IBC pursuant to provisions of **Section 82 of Maharashtra GST Act, 2017** which provides as follows:
- “Tax to be first charge on property. – Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.” The Hon’ble NCLAT, by placing reliance on the decision of the Hon’ble Supreme Court in the case of Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes and Customs, 2022 SCC Online SC 1101, held that



provisions of Section 82 of the Maharashtra GST Act, 2017, contains an exception with regard to IBC and therefore, on the strength of dues under Maharashtra GST Act, 2017, no charge can be claimed on the assets of the corporate debtor.

27. We consider that the provisions of section 82 of the Gujarat GST Act, 2017, are the same as those of Section 82 of the Maharashtra GST Act, 2017, and therefore in view of the specific exclusion of IBC under Section 82 and by following the decision of the Hon'ble NCLAT, it is held that the unpaid GST dues to the State are not the debt owed to a secured creditor and the order of distribution provided in section 53 of the IBC, 2016 will apply.
28. This Tribunal has carefully considered the decisions of the Hon'ble Supreme Court in the cases of **State Tax Officer Vs. Rainbow Papers Limited 2022 SCC Online 1162** (decision of 06.09.2022), **Paschimanchal Vidyut Vitran Nigam Limited vs. Raman Ispat Private Limited and others 2023 SCC Online SC 842** (dated 17.07.2023), and the decision in the case of **Sanjay Kumar Agarwal v. State Tax Officer (1) & Anr.**, [Review Petition (Civil) No. 1620 of 2023 in Civil Appeal No. 1661 of 2020, **Rainbow Papers Review Decision**] (Decision dated 31.10.2023) and it is stated that the issue relating to the GST is not dealt in these judgments.





**29.** In view of the above, this Tribunal is of the opinion that the unpaid GST dues to the State are not dues owed to a secured creditor and provisions of section 53 (1) (b) (ii) do not apply to unpaid GST dues.

**30. Question Nos. 2 and 4** are answered accordingly.

**31.** In view of the above, we decide the claims of the Applicant in **IA No.09 of 2025** accordingly and as summarised below: -

**A. Unpaid GVAT dues** by the Corporate Debtor to be considered as debts owed to the secured creditor and applicability of section 53(1)(b)(ii) of the IBC, 2016 is subject to the provisions of section 52 of the IBC, 2016 and Regulations 21 and 21A of the IBBI (Liquidation Process), Regulations 2016; and

**B. Unpaid GST due** by the Corporate Debtor to the State is not the debt owed to the secured creditor, and the claims are not covered in the category covered by section 53 (1) (b) (ii) of the IBC, 2016.

**C.** Other interim reliefs sought are consequential and separate adjudication is not required.

**32.** Accordingly, the **IA No. 09 of 2025** in CP(IB) 211(AHM)2020 is disposed of.



- 33.** Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

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**SANJEEV KUMAR SHARMA**  
**MEMBER (TECHNICAL)**

SP/LRA

-sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**