



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH COURT – 1, AHMEDABAD

ITEM No.303- IA/1060(AHM)2025
In
CP(IB) 28 of 2017

Under Sec. 60 (5) of IBC, 2016

IN THE MATTER OF:

State Tax Officer - 2

.....Applicant

V/s

Nitin Parikh Liquidator Diamond
Power Transformer Limited

.....Respondents

Order delivered on 09/02/2026

Coram:

Mr. Shammi Khan, Hon'ble Member (J)

Mr. Sanjeev Sharma, Hon'ble Member (T)

ORDER
(Hybrid Mode)

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

SANJEEV SHARMA
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

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

**IA/1060/NCLT/(AHM) 2025
in**

CP (IB) No.28/10/NCLT/AHM/2017

*[An application filed under Interlocutory Application under
Section 60(5) of the Insolvency and Bankruptcy Code, 2016]*

In the matter of: Diamond Power Transformer Ltd

State Tax Officer-2

Unit-40, Vadodara,
3rd Floor, Kuber Bhavan, I-Block,
Kothi Compound, Raopura, Vadodara,
Gujarat-380001
Mobile: 9979012001
Email: sto2-unt40-vad@gujarat.gov.in

.... Applicant/STO

VERSUS

Nitin Parikh

Liquidator of
Diamond Power Transformer Ltd
737, Fortune Tower, Sayajigunj,
Vadodara, Gujarat-380020
Email: nitin_parron2000@yahoo.com

.... Respondent/Liquidator

Order Pronounced on: 09.02.2026

CORAM:

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:

For the Applicant : Mr. Prakash Thakkar, Adv
For the Respondent : Mr. Harmish Shah, Adv. a/w
: Mr. Nitin H. Parikh Liquidator



ORDER
[Per: BENCH]

1. This Interlocutory Application has been filed on 09.09.2025 by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter as, “**the Code**”), against the respondent Nitin Parikh Liquidator of M/s. Diamond Power Transformer Ltd, seeking following prayers:

- a. *Your lordship may be pleased to allow this application*
- b. *Your lordship may be pleased to issue directions to the Liquidator to recognize the claim of the applicant as secured creditors and make payments to the applicants as receivable to the secured creditors in light of the decision of the Hon'ble Supreme Court.*
- c. *Your lordship may be pleased to grant any other and further relief as may be deemed fit and proper in the facts of the present case.*

2. The Applicant has placed the facts through this I.A. in the following manner: -

2.1. It is stated that the applicant State Tax Officer has filed this application to recognize the claim of the applicant as secured creditor and giving effect of ratio laid down in judgment in the case of Rainbow papers which is passed by the Hon'ble Supreme Court in Civil Appeal No. 1661 of 2020.

2.2. The Liquidator had issued a public announcement



inviting claims from the respective creditors vide public notice and the applicant authority submitted their claim vide Form C dated 11.11.2022.

- 2.3. At this juncture it is necessary for the applicant to mention that considering the judgment in the case of Rainbow papers which is passed by the Hon'ble Supreme Court in Civil Appeal No. 1661 of 2020 the applicant would fall within the purview of the "secured creditors" and hence, the applicant has to be treated at par with the other "secured creditors" while disbursing the assets of the corporate debtor
- 2.4. The above stated judgment also specifically mentioned that Liquidator/ resolution professional to revise the amount of claim of Gujarat State Tax Department as soon as might be practically possible.
- 2.5. Thus, considering the factual and legal provisions as well as the Judgment of the Hon'ble Supreme Court in the case of Rainbow Papers it is amply clear that the State Tax Officer be given priority in light of the provisions of Section 48 of the Gujarat Value Added Tax Act, 2003. The very controversy and the legal provisions have been dealt with by the Hon'ble Supreme Court in the case of Rainbow Papers in Civil Appeal No. 1661 of 2020 which squarely covers the issue in question.
- 2.6. It is further stated that it was the duty of the Liquidator to take suo moto note of the law laid down in the



judgement mentioned above and update the status of the Applicant as a secured creditor, especially when question of substantial public money is involved.

2.7. The applicant submits that thus, considering the factual and legal provisions as well as the judgment of the Hon'ble Supreme Court in the case of Rainbow Papers it is amply clear that the claims of the State Tax Officer be revised as soon as practically possible and be given priority in light of the provisions of Section 48 of the Gujarat Value Added Tax Act, 2003. The very controversy and the legal provisions have been dealt with by the Hon'ble Supreme Court in the case of Rainbow Papers in Civil Appeal No. 1661 of 2020 which squarely covers the issue in question. Thus, considering the same the present applicant has preferred this application

3. That on issuance of the notice in the Interlocutory Application, the Respondent/Liquidator has appeared and filed its reply on 04.12.2025 vide inward diary no. D-8154 denying various averments made in the Interlocutory Application. The Respondent/Liquidator has placed the facts through this Reply in the following manner: -

3.1. The respondent herein states that the facts of the case in Rainbow papers and the present matter are different. In Rainbow Papers the claim was filed during the CIRP

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period and CIRP proceedings were continuing and in the present matter the claim has been filed during Liquidation proceedings.

- 3.2. Section 53 of the IBC code has provided for waterfall mechanism for distribution of money to the claimants. The same is reproduced herein:

53. Distribution of assets. (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:

(a) 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 for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages 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;

(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



58 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 (18 of 2013).

3.3. For the present, the relevant clause is **Section 53 (1) (b) (ii)**. The definition of **security interest** is provided in 3(31) of the IBC, 2016 which is reproduced herein:

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 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:

3.4. Thus, reading both the provisions herein above the definition of secured creditor is different during CIRP proceedings and Liquidation proceedings. During Liquidation proceedings a secured creditor is one who has relinquished his interest in the assets of the corporate debtor in favour of the Liquidator. In the present case that is not the case. The above view has been taken in subsequent judgment dated 17th July, 2023 of the Hon'ble Supreme Court in Civil Appeal No. 7976 of 2019 in the case ***Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd.***



3.5. The relevant para(s) of the above judgement in the case ***Paschimanchal Vidyut Vitran Nigam Ltd*** are reproduced herein:

"28. Debts owed to a secured creditor, whenever such secured creditor **"has relinquished security in the manner set out in section 52"** receive a fairly high priority (immediately after insolvency resolution process costs), whereas in other cases, i.e., when the secured creditor does not relinquish security, the priority of claim is lower [Section 53 (1) (e) (ii)] in respect of "any amount unpaid following the enforcement of security interest". Another feature is that amounts due to the government (i.e., payable into the Consolidated Fund of India or Consolidated Fund of a State) are ranked in the same manner as those of secured creditors who do not relinquish their security interest [Section 53 (1) (e) (ii)].

30. The explanation to this appears in the Report of the Insolvency Law Committee (2020):24

7.4. On the basis of the above discussion, the Committee agreed that the priority for recovery to secured creditors under Section 53(1)(b)(ii) **should be applicable only to the extent of the value of the security interest that is relinquished by the secured creditor**. The Committee was of the opinion that this issue stands clarified in terms of the reasoning provided above and does not necessitate



any further amendment to the provisions of the Code."

33. The rationale for placing secured creditors who relinquish their security, higher in priority, is found upon a conjoint reading of Sections 52 and 53.

34. Section 52 gives an option to secured creditors to either relinquish their security interest, in the liquidation process (the procedure for which is prescribed in Regulations 21 and 21A of the Liquidation Regulations²⁶), or proceed to enforce it. In case of the latter option, the secured creditor has to first indicate its option, within the time prescribed (30 days, in Form C or D of Schedule II to the Liquidation Regulations).

49. Rainbow Papers (supra) did not notice the 'waterfall mechanism' under Section 53 the provision had not been adverted to or extracted in the judgment. Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of

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secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in *Rainbow Papers* (*supra*) or was missed altogether. In any event, the judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government.

50. The Gujarat Value Added Tax Act, 2003 no doubt creates a charge in respect of amounts due and payable or arrears. It would be possible to hold [in the absence of a specific enumeration of government dues as in the present case, in Section 53(1)(e)] that the State is to be treated as a 'secured creditor'. However, the separate and distinct treatment of amounts payable to secured creditor on the one hand, and dues payable to the government on the other clearly signifies Parliament's intention to treat the latter differently and in the present case, having lower priority. As noticed earlier, this intention is also evident from a reading of the preamble to the Act itself.

53. In view of the above discussion, it is held that the reliance on *Rainbow Papers* (*supra*) is of no avail to the appellant. In this court's view, that judgment has to be confined to the facts of that case alone,



- 3.6. The Respondent/Liquidator stated that in light of what is stated hereinabove, this Hon'ble Tribunal may pass Order as it deems fit.
4. Thereafter, The Applicant has also filed a rejoinder on 02.01.2026 vide inward No. D 8745, denying most contentions raised by the Respondent/Liquidator in his reply. The contents of the Rejoinder are reproduced as follows: -
- 4.1. It is stated that the question is laid to rest and it is now crystal clear that the Applicant being State Tax Officer, is a secured creditor, in light of decision of the Hon'ble Supreme Court in the matter of *State Tax Officer, Gujarat v. Rainbow Papers Limited, (2023) 9 SCC 545* ("*Rainbow Papers*").
- 4.2. It is stated that the Applicant being the State Tax Officer, Gujarat, is also the same Applicant as before the Hon'ble Supreme Court in the matter of *Rainbow Papers*. Therefore, as far as applicability of section 53 of IBC is concerned, the Applicant herein will have to be treated as a secured creditor in liquidation proceedings under the IBC also.
- 4.3. Therefore, the prayer of the Applicant, that the Applicant be treated as a secured creditor, even in liquidation of corporate debtor, should be granted, as the ratio laid



down in the matter of Rainbow Papers is squarely applicable to the case of the applicant.

4.4. It is stated that the Applicant is declared as secured creditor by the Hon'ble Supreme Court itself in the matter of Rainbow Papers, thus it is immaterial whether the Applicant specifically stated or not in claim form that he is secured creditor.

4.5. Also, the responsibility of the Liquidator to give effect to law laid down by Hon'ble Supreme Court in Rainbow Papers increases multifold as the dues of the Applicant are public money, held in trust by the Corporate Debtor.

5. The Applicant has filed a **written submissions** on 03.01.2026, vide inward diary No.D-813. However, no written submissions were filed by the Respondent/Liquidator. The major contentions of the Applicant in **written submissions** are as follows: -

5.1. The Applicant submitted that the Liquidator issued a public announcement inviting claims from creditors of the Corporate Debtor. Pursuant thereto, the Applicant authority submitted its claim in **Form-C** within the prescribed time. The claim pertains to statutory tax dues payable by the Corporate Debtor under the applicable State tax law.

5.2. In view of the judgment in **State Tax Officer, Gujarat**




v. Rainbow Papers Limited, (2023) 9 SCC 545, the State tax authorities fall within the definition of secured creditors. The Hon'ble Supreme Court held that statutory first charge created under State tax law constitutes a security interest under the IBC.

- 5.3. Hon'ble Supreme Court in *Rainbow Papers* has recognized that **Section 48** of the **Gujarat Value Added Tax Act, 2003** creates a statutory first charge on the property of the Corporate Debtor. Such statutory charge entitles the State tax authority to be treated as a secured creditor under the IBC.
- 5.4. The Applicant further submits that the issue relating to priority of State tax dues in liquidation has been directly examined and settled by the Hon'ble Supreme Court in *Rainbow Papers*. The Court held that such statutory dues cannot be treated as unsecured merely because they arise from tax legislation.
- 5.5. It is submitted that the Applicant before this Tribunal is the same authority which was the Applicant before the Hon'ble Supreme Court in *Rainbow Papers*. Therefore, the ratio laid down therein is squarely applicable to the present liquidation proceedings under Section 53 of the IBC.
- 5.6. The Applicant submits that once the Hon'ble Supreme Court has declared the State tax authority to be a secured creditor, it is immaterial whether the Applicant



specifically described itself as a secured creditor in the claim form. The legal status flows from statute and judicial declaration.

- 5.7. The Applicant submits that the Liquidator is duty bound to implement the law declared by the Hon'ble Supreme Court. Since the dues of the Applicant are public money held in trust by the Corporate Debtor, the Applicant prays that it be treated as a secured creditor for distribution under Section 53 of the IBC.
6. We have heard Ld. Counsels for the Applicant/ State Tax Officer and the Respondent/Liquidator and carefully considered the rival submissions, pleadings on record, written submissions filed by the Applicant, and the judgments relied upon by both sides. The core issue which arises for consideration is whether the Applicant, State Tax Officer, can be treated as a secured creditor in liquidation proceedings and be entitled to priority under Section 53(1)(b)(ii) of the Insolvency and Bankruptcy Code, 2016.
7. The Hon'ble Supreme Court in the case of **State Tax Officer vs. Rainbow Papers Limited 2022 SCC Online 1162** held that tax under section 48 of the Gujarat Value Added Tax, 2003 due to the State of account of GVAT is



“secured debt” and the State Tax Department is a secured creditor. However, the entitlement of such creditor to priority distribution during liquidation remains subject to compliance with Sections 52 and 53 of the Insolvency and Bankruptcy Code, 2016.

8. 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.
9. 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.

10. 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.”

- 11.** The debts owed by Corporate Debtor to a secured creditor would be covered by the provisions of section 53 (1) (b) (ii)

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only if the secured creditor has relinquished its security interest in the manner set out in section 52.

12. 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.
13. 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 and 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.

14. Based on the above analysis, while a statutory charge under Section 48 of the Gujarat Value Added Tax Act, 2003 may constitute a 'security interest' under Section 3(31) of the Code, the entitlement of the Applicant to priority distribution under Section 53(1)(b)(ii) is conditional upon relinquishment of such security interest in accordance with Section 52 of the Insolvency and Bankruptcy Code, 2016 and the Liquidation Regulations.

15. Upon perusal of record in the present case in hand, it is noted that on 11.11.2022 the Applicant/STA submitted the claim in **Form-C** as per **Regulation 17** of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. **In Column No. 8A** (whether security interest relinquished) stated and declared **No**. The said **Column No.8A** of the **Form-C dated** 11.11.2022 submitted by the Respondent/Liquidator is reproduced hereunder: -

8A.	WHETHER SECURITY INTEREST RELINQUISHED	No
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16. It is not in dispute that the Corporate Debtor is under liquidation and the claim of the Applicant was filed during liquidation proceedings by submitting Form-C dated 11.11.2022. It is also an admitted position that in **Column No. 8A** of the said **Form-C**, the Applicant has categorically declared that the security interest has **not been relinquished**.
17. Section 53 of the Code provides a complete and exhaustive waterfall mechanism for distribution of proceeds during liquidation. Under Section 53(1)(b)(ii), debts owed to secured creditors rank at a higher priority **only when such secured creditor has relinquished its security interest** in the manner prescribed under Section 52 of the Code.
18. From a conjoint reading of Sections 52 and 53 of the Insolvency and Bankruptcy Code, 2016, it is evident that even where a creditor qualifies as a "Secured Creditor", the entitlement to distribution under Section 53(1)(b)(ii) is conditional upon such secured creditor having **relinquished its security interest** in the manner prescribed under Section 52 of the Code.




19. In the present case, though the Applicant relies upon the judgment of the Hon'ble Supreme Court in ***State Tax Officer v. Rainbow Papers Limited***. However, it is an admitted position that the Applicant, while filing its claim in **Form-C dated 11.11.2022**, has **specifically declared in Column No. 8A that the security interest has not been relinquished.**
20. The Hon'ble Supreme Court in ***Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd.*** has categorically clarified that the ratio of *Rainbow Papers* is confined to its own facts and does not override the waterfall mechanism under Section 53 of the Code, particularly in liquidation proceedings.
21. The Hon'ble Supreme Court further clarified that during liquidation, **secured creditors who do not relinquish their security interest stand on the same footing as Government dues under Section 53(1)(e)**, and cannot claim priority under Section 53(1)(b)(ii). The Insolvency and Bankruptcy Code, 2016 consciously subordinates all statutory charges to the liquidation waterfall under Section



53, notwithstanding their characterization under other enactments.

- 22.** The statutory charge created under Section 48 of the Gujarat Value Added Tax Act, 2003 may constitute a “security interest” under the Code. However, such recognition alone does not automatically entitle the Applicant to higher priority in liquidation unless the mandatory requirement of relinquishment under Section 52 is fulfilled.
- 23.** The **Hon’ble NCLAT** in ***Tapadia Polyesters Pvt. Ltd. v. Sales Tax Officer*** has also reiterated that where the State Tax Department does not relinquish its security interest, it cannot be treated as a secured creditor for the purposes of priority distribution under Section 53(1)(b)(ii).
- 24.** To summarise, in the present case, the Applicant is a secured creditor as per the decision of the Hon’ble Supreme Court in the case of Rainbow Papers. Applicant filed its claim in Form C as per Regulation 17 of the IBBI (Liquidation Process) Regulations, 2016 and regarding the relinquishment of charge, the Applicant has expressly



stated “No” in **Column 8A** of **Form-C**. **Therefore, it** has neither relinquished any security interest under Section 52 nor exercised the option as contemplated under the Liquidation Regulations. This factual situation and the provisions of law clearly disentitles the Applicant from claiming priority under Section 53(1)(b)(ii).

- 25.** The contention of the Applicant that it should be treated as a secured creditor merely on the basis of statutory charge under Section 48 of the Gujarat Value Added Tax Act, 2003 cannot be accepted in view of the clear legislative scheme under Section 53 of the Code.
- 26.** The Insolvency and Bankruptcy Code is a special statute with an overriding effect under Section 238. The priority of claims during liquidation is governed strictly by Section 53 and no deviation is permissible based on general statutory charges created under other enactments. Accordingly, any statutory charge created under the Gujarat Value Added Tax Act, 2003 stands overridden to the extent of inconsistency by virtue of Section 238 of the Insolvency and Bankruptcy Code, 2016.



27. In view of the above discussion, this Tribunal is of the considered opinion that the reliance placed by the Applicant on the judgment in *Rainbow Papers* is misplaced for the purpose of priority of distribution under section 53(1)(b) of IBC, 2016 . Since, the Applicant has not relinquished its security interest, it is not entitled to seek priority distribution under Section 53(1)(b)(ii) of the Code.

28. The claim of the Applicant shall be treated in accordance with **Section 53(1)(e)(i)** of the Insolvency and Bankruptcy Code, 2016, and the Liquidator shall distribute the proceeds strictly in compliance with the statutory waterfall mechanism.

29. Accordingly, the Interlocutory Application being **IA/1060/NCLT/(AHM) 2025** is **dismissed**. No order as to costs.

-sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Vinit/Soumya/LRA

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)