NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

11.05.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
ARUN BAROKA, MEMBER (TECHNICAL)
INDEVAR PANDEY, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.108 of 2025

Assistant Commissioner of State Tax, Vapi ...Appellant

Vs

1. **M/s ARCK Resolution Professionals LLP ...Respondent No.1**
   Through Its Designated Partner
   Mr. Anil Kohli, Resolution Professional for
   Vinergy International Pvt. Ltd.

2. **UV Stressed Assets Management Private Limited ...Respondent No.2**

(Arising out of Order dated 09.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-IV) in I.A. (IBC)(Plan) No. 57 of 2024 in C.P. (IB) No. 386/MB/2021)

For Appellant: Mr. Priyam Raval, Advocate

For Respondent: Ms. Sanjukta Roy, Advocate for R-2
Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalia, Mr. Rajat Gupta, Ms. Ridhima Mehrotra, Advocates for R-1

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

1. The present appeal arises out of the order dated 09.12.2024 passed by the Hon'ble National Company Law Tribunal, Mumbai Bench-IV in I.A.

(IBC) (Plan) No. 57 of 2024 in Company Petition (IB) No. 386/MB/2021, whereby the Resolution Plan of Vinergy International Pvt. Ltd. ("Corporate Debtor") came to be approved under the provisions of the Insolvency and Bankruptcy Code, 2016. The appeal has been filed by the Appellant authority challenging the Impugned Order on the ground that it has been erroneously treated as an "Operational Creditor" instead of a Secured Creditor under Section 53(1)(b)(ii) of the Code, despite the statutory charge and lien created under the provisions of the GVAT Act and the law laid down by the Hon'ble Supreme Court in ***State Tax Officer Vs Rainbow Papers Ltd***. [(2023) 9 SCC 545] and its subsequent review judgment [(2024) 2 SCC 362].

FACTS

2. The minimum facts which are relevant for the current purposes may now be stated:

a) On 09.02.2023, the Corporate Debtor, Vinergy International Pvt. Ltd., was admitted into Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code, 2016.

b) Prior to commencement of CIRP, the appellant authority had issued a notice dated 03.06.2021 under Section 44 of the Gujarat Value Added Tax Act, 2003 (henceforth would be termed as GVAT Act), thereby creating a lien over the bank account of the Corporate Debtor in respect of outstanding tax dues.

c) Pursuant to the admission of CIRP, the Interim Resolution Professional made a public announcement on 11.02.2023 inviting claims, with the last date being 24.02.2023. The Appellant filed its claim in Form B on 22.02.2023 for an amount of Rs. 15,65,92,673/- towards VAT and CST dues for multiple assessment years, which claim was admitted in full by the IRP on 03.05.2023.

d) Be that as it may, on 05.01.2024, the appellant addressed a communication to the Resolution Professional to treat it as a secured creditor in terms of Sec.53(1)(b)(ii) of the Code in light of the law laid down by the Hon'ble Supreme Court in ***Rainbow Papers Ltd case*** [(2023) 9 SCC 545] and its subsequent review judgment.

e) Meanwhile, the Resolution Professional filed I.A. No. 4517 of 2023 before the Adjudicating Authority against HDFC Bank Limited and the present appellant herein, seeking *inter alia* the removal of the lien marked on the bank account of the Corporate Debtor and permitting its operation under Section 17(1)(d) of the Code. The appellant has filed its reply wherein it pleaded that it ought to be treated as a secured creditor.

f) While the aforesaid issues were pending consideration, the Adjudicating Authority, vide impugned order dated 09.12.2024 in I.A. (IBC) (Plan) No. 57 of 2024, approved the Resolution Plan submitted by Respondent No. 2 (Successful Resolution Applicant), wherein the appellant was treated as an Operational Creditor and not as a secured creditor.

3. The pointed contention of the appellant is that the entire claim of the appellant should have been treated as a secured debt, and accordingly, it should enjoy priority in payment ahead of operational creditors as contemplated in Sec.53 of the Code. The proposition declared in Rainbow papers case is later followed in in ***Sanjay Kumar Agarwal Vs. State Tax Officer*** [(2024) 2 SCC 362], and therefore the impugned order is in direct contravention of the dictum in those cases. Indeed, an Adjudicating Authority, ought to have decided this issue before the plan is approved. Instead, it has endorsed the decision of the RP and the CoC, and hence the decision of the Adjudicating Authority to approve the resolution plan is erroneous. Reliance was also placed on the ratio of the judgements of this tribunal in ***State Tax Officer Vs. Premraj Ramratan Laddha*** [Comp. App. (AT) (Ins) No. 720 of 2021] and ***Amar Nath Vs. Excise & Taxation Commissioner*** [Comp. App. (AT) (Ins) No. 221 of 2023], where it was held that failure to treat statutory dues as secured debts in contravention of the dictum in ***Rainbow Papers case*** amounts to material irregularity and vitiates the resolution plan.

4. Per contra, both the learned counsel for the Respondents (the Resolution Professional and Successful Resolution Applicant) submitted:

a) The plan was approved based on the Information Memorandum prepared during the CIRP, and that appellant, at all times, was treated only as an Operational Creditor and the plan was submitted

on the basis of this classification, and therefore cannot be faulted for the same.

b) The Appellant is estopped from challenging the impugned order at this stage, as it had failed to raise any objection to the Resolution Plan before the Adjudicating Authority. Despite being aware of the proceedings, the Appellant neither opposed the approval of the Resolution Plan nor sought any modification therein. It is submitted that in contrast to ***Rainbow Papers case*** where objections were raised at the appropriate stage, the Appellant herein chose not to contest the plan, and hence cannot now assail the same in appeal.

c) The appellant itself, in its claim filed in Form B dated 16.02.2023, had not asserted any security interest and had specifically mentioned N.A. against column 5 which relates providing the details of the security. Having failed to assert its alleged secured status at the relevant stage, the Appellant cannot now be permitted to change its stand and claim priority under Sec. 53(1)(b)(ii) of the Code.

d) The reliance placed by the Appellant on *Rainbow Papers* (supra) is misplaced, inasmuch as the later judgment of the Hon'ble Supreme Court in ***Paschimanchal Vidyut Vitran Nigam Ltd. Vs. Raman Ispat Private Limited*** [(2023) 10 SCC 60] has clarified that government dues fall within the ambit of Section 53(1)(e) of the Code and are required to be treated distinctly from secured creditors. The waterfall mechanism under Sec.53 places government dues lower in priority, reflecting the legislative intent to subordinate such dues vis-à-vis secured creditors.

e) Alternatively, even if it is assumed that the Appellant is entitled to the benefit of Sec. 48 of the GVAT Act, the creation of statutory charge which the said provision enables would extend only to VAT component of the dues and not to the dues under the Central Sales Tax Act, 1956. Reliance was placed on the judgment of this tribunal in ***Commissioner of State Tax Department Vs. Ramchandra Dallaram Chaudhary*** [2024 SCC OnLine NCLAT 642], wherein it was held that in the absence of a statutory charge, such dues cannot be treated as secured.

f) It is submitted that the Resolution Plan has been approved by the Committee of Creditors in exercise of its commercial wisdom, and the scope of judicial review under Section 61 of the Code is limited. In the absence of any material irregularity or contravention of Section 30(2), the Appellate Tribunal ought not to interfere with the approved Resolution Plan.

g) At any rate, even if it is assumed that the appellant's contention carries any merit, it would still involve only an issue on the distribution of the proceeds of the plan under Sec.53 of the Code, and does not warrant a rejection of the plan.

Discussion and Decision

5. Superficially the issue involved pose least complication: whether the appellant's claim should be treated as a secured debt and if the Sale Tax Department should be treated as a secured creditor. After all the ***Rainbow Papers*** gives the solution as an arithmetic formula. But there

are few more issues, which include the how the appellant had chosen to prefer its claim, and its impact on its contention.

6. A cursory glance at the claim of Rs.15,65,92,673/- made by the appellant informs that it is a composite claim of VAT + CST + interest thereon. Therefore, Sec.48 of the Gujarat VAT Act creates a statutory charge only for VAT claim, and hence the same benefit cannot be extended to CST component of the claim. In other words, out of the total claim of ₹ 15,65,92,673/- the VAT component is ₹ 3, 41,74,431/-

7. However, in column 5 of the Claim made in Form B, where a claimant is required to disclose the details of any security held and its value etc., the appellant has indicated 'NA', signifying this column does not apply to it. The respondents contend that the appellant having consciously taken a position that it does not claim any security interest in terms of Sec.48 of the Gujarat VAT Act, it is estopped from claiming the status as a secured creditor.

8. The issue now arises is that, even though the appellant to claim the status as a secured creditor vis-à-vis its VAT component of the Claim, can it still feel aggrieved after it has notified to the RP that it does not have any security interest over the asset of the CD? In other words, has the appellant waived his right over the security interest which the statute has created? In ***Motilal Padmapat Sugar Mills Co., Ltd., Vs State of UP & others*** [(1979) 2 SCC 409], the Hon'ble Supreme Court has held that, '*Waiver means abandonment of a right and it may be*

either express or implied from conduct, but its basic it requirement is that it must be "an intentional act with knowledge". Where a statute creates a charge, then it is not left to the choice of the statutory authorities to waive it, unless the statute itself grants them the authority to waive. Therefore, it cannot be said that when the appellant had made its claim in Form B and notifying to the resolution professional that it does not have a security interest over the asset of the CD, it may not amount to waiver, even though every statutory authority presumed to have knowledge about the law that it administers. After all what is not approved in law cannot be validated thorough the conduct of the authorities.

9. Having stated thus, from the RP-CoC standpoint, is it necessary that they apply the correct law, even though their attention was not specifically brought to a statutory provision which enables the creation of statutory notice. In the same ***Motilal Padamapat Sugar Mills Case***, the Supreme Court refers to following passages, and they read as below:

> *"6……..Over a hundred and thirty years ago, Maule, J., pointed out in* ***Martindale Vs Falkner*** *[(1846) 2 CB 706: 135 ER 1124],*
>
> > *"There is no presumption in this country that every person knows the law; it would be contrary to common sense and reason if it were so."*
>
> *Scrutton, L.J., also once said:*
>
> > *"It is impossible to know all the statutory law, and not very possible to know all the common law."*

> *But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in* ***Evans Vs Bartlam*** *[(1937) AC 473, 479 : (1937) 2 All ER 646]*
>
> > *"..the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application."*

The maxim *ignorantia juris non excusat* (ignorance of the law excuses no none), applies to all penal laws or statutes that create a liability, does not apply to civil law. In the context of the IBC, is the RP and the CoC bound to know the Gujarat VAT Act? They are statutorily created for the purpose of only maximising the asset value of the CD and to sell it as a going concern to the SRA in a manner which the Code has designed and structured and not to administer the Gujarat VAT Act.

10. Therefore, even though the conduct of the appellant in indicating in Form B in the column where it is required to provide the details of the security interest as 'N.A', may not amount to waiver of what the statute has consciously created, yet the appellant is duty bound to inform the RP about the statutory charge which Sec.48 of the Gujarat VAT Act has created. After all, as stated earlier, there is no presumption the RP knows the provisions of the said Act.

11. However, the RP himself has provided a twist with his I.A. No. 4517 of 2023 which he had taken out *inter alia* against the appellant for removing the lien created over the asset of the CD. This application is resisted by the appellant with its reply where it has raised the issue of creation of statutory charge under Sec.48 of the Gujarat VAT Act.

(Neither the copy of I.A.4517 of 2023 nor the reply of the appellant to that application are available on record, but it is an admitted fact as could be gathered from the appeal memorandum and the reply of RP in this appeal). This would imply that the RP did have an occasion to know about the lien created at the instance of the appellant, which necessarily reduces the answer given by the appellant in column 5 of Form B redundant. In ***Greater NOIDA Vs Prabhjit Singh Soni & another*** [(2024)6 SCC 767], the Hon'ble Supreme Court has held that it is immaterial if the claim is made in a wrong Form since the RP is under a statutory duty to collate claims from any records including that maintained by the CD. The ratio of this case in essence signifies the duty of the RP to gather information which is capable of being verified. Now, in the context of the present case, if the RP knew that a lien is created on the bank account of the CD at the instance of the appellant, is it not then obligatory for him to ascertain the basis of the said lien. Even if he had missed it then, when the appellant in his reply to I.A.4517 of 2023 has claimed right based on Sec.48 of the Gujarat VAT Act, is it not then required of the RP to ascertain if the appellant was entitled to be treated as a secured creditor. The contention of the RP in the present appeal based on the position taken by the appellant in Form B may be valid only if the only source of information to the RP is the very form and no other. To repeat, when the RP had every opportunity to ascertain if the appellant has a right under Sec.48 of the Gujarat VAT Act, and here the game substantially ends.

12. Turning to the relief, there is merit in the contention of the respondents, since appellant is entitled to be treated as a secured operational creditor only for the VAT component of Rs.3,41,74,431/- out of its claim, and hence there is no need to reject the resolution plan as approved by the Adjudicating Authority. It is an issue involving the distribution required to be made under Sec.53 of the Act. This exercise the CoC can now undertake.

13. To conclude, this appeal is partly allowed, and the appellant required to be treated as a secured operational creditor vis-à-vis the VAT dues under the GVAT Act. As to the rest, we confirm the decision of the Adjudicating Authority. No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

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