



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

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State Tax Officer (1) Vs. Rainbow Papers Limited
Civil Appeal No. 1661 of 2020 with Civil Appeal No. 2568 of 2020
Date of Supreme Court's Judgement: September 06, 2022.

Financial Creditors cannot secure their own dues at the cost of statutory dues while approving a Resolution Plan.

Facts of the Case: -

This Appeal was filed against an order of National Company Law Appellate Tribunal (NCLAT) dated February 27, 2019, in which the NCLAT upheld the view of the Adjudicating Authority (AA) that the Government cannot claim first charge over the property of the Corporate Debtor (CD) under Section 48 of the Gujarat Value Added Tax (GVAT Act) 2003.

The Corporate Insolvency Resolution Process (CIRP) of the Respondent (Rainbow Papers Ltd., the CD) was initiated on September 12, 2017, by the NCLT, Ahmedabad (AA) on a Section 9 petition filed by an Operational Creditor. Subsequently, the Appellant had filed a claim of approx. ₹47.36 Crores before the Resolution Professional (RP) claiming dues payable by the CD to the State Government, towards its dues under the (GVAT Act). However, the RP informed the Appellant that his entire claim "had been waived off". Aggrieved with this decision, the Appellant challenged the Resolution Plan by making an application before the NCLT contending that Government dues could not be waived off. The appellant prayed for payment of total dues towards VAT/CST on the ground that the Sales Tax Officer was a secured creditor. The AA rejected the application made by the appellant as not maintainable. The appellant agitated this issue before NCLAT through an Appeal. The NCLAT held that the Government cannot claim first charge over the property of the Corporate Debtor, as Section 48 of the GVAT which provides for first charge on the property of a dealer in respect of any amount payable by the dealer on account of tax, interest, penalty etc. under the said GVAT Act, cannot prevail over Section 53 of the IBC.

The appellant filed the appeals in Supreme Court under Section 62 of the IBC and raised the question that whether the provisions of the IBC, in particular Section 53, overrides Section 48 of the GVAT Act.



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Supreme Court's Observations:-

The Apex Court, referring to the definition of the term "Secured Creditor" as defined under the IBC, observed that it is comprehensive and wide enough to cover all types of security interests namely, the right, title, interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction, which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person. The claim of the Tax Department of the State Government 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 IBC. The court also remarked "If the Resolution Plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan. In other words, if a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 of the IBC. In our considered view, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues."

Further, the Court said that 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.

Order: - The appeals are allowed. The impugned orders are set aside. The Resolution Plan approved by the CoC is also set aside. The RP may consider a fresh Resolution Plan in the light of the observations made above.

Case Review: - Appeals allowed.