



# 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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**Principal Commissioner of Income Tax & Ors. Vs. Assam Company India Ltd (ACIL)**  
**Company Appeal (AT) (Insolvency) No. 243 of 2022**  
**Date of NCLAT's Judgements: February 07, 2023**

### Facts of the Case: -

An appeal is filed by the Principal Commissioner of Income-tax & Ors. (hereinafter referred as “Appellant”) after being aggrieved by the order dated 20.01.2021 passed by the AA.

CIRP Application was filed against M/s Assam Company India Limited (hereinafter referred as “Respondent”) by its financial creditor M/s Seri Infrastructure Pvt. Ltd. The AA admitted the application on 26.10.2017 and appointed an RP. On 14.11.2017, the Appellants placed a demand of income tax before RP for the assessment year 2013-14 and 2014-15 totaling to Rs. 16,20,25,953/-. The RP informed the Appellant that the claim can't be admitted since an appeal regarding both the assessment year was pending before Commissioner of Income Tax (A) and the new promoter of the Respondent will pay the demand after the decision of CIT(A) under the statutory liability.

Subsequently, RP informed Appellant that AA may consider payment of Rs. 1,97,92,084/ (being 15% of the outstanding due) and the balance amount being considered as “contingent liability” will be payable by the Respondent upon final outcome of the appeal. As per AA's Order dated 20.09.2018, the Appellant received the payment of Rs.1,20,23,691/- as a tranche payment against dues. Meanwhile appeal of both Assessment year 2013-14,2014-15 was dismissed by CIT(A) vide order dated 16.01.19 and the demand for Rs 13,41,75,287/- stood outstanding.

The Appellant on 20.09.2018 filed an application for review of the AA's order seeking clarification and for necessary directions to the RP for submission of the revised resolution plan incorporating the entire amount alleged to be due to the Appellants. The AA vide its order dated 22.10.2019 stated that the earlier intimation of the RP is to be read with the Resolution Plan and the appellants have a right to lay its claim before the new promoter of the Respondent Company.

The Appellants demanded the total outstanding dues with interest from the respondent but since there was no compliance of the demand notice, bank attachment in (i)Allahabad Bank Dibrugarh Branch, and (ii) Allahabad Bank, Industrial Finance Bank, Kolkata were carried for remittance of outstanding amount. It was found that the accounts were marked debit freeze. Meanwhile the Respondent approached the ITAT and obtained the stay on demand for three months. Simultaneously, the Respondent filed an application before AA under Section 60(5)(c) of the IBC stating that the claims of the Appellants cannot be entertained after 15 months of the approval of the Resolution Plan and therefore the Appellants vide order dated 20.01.2021 were directed to withdraw the attachment.



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## NCLAT Observations:

The Appellate Tribunal referring to the judgement of Supreme Court in “*State Tax Officer (I) Vs. Rainbow Papers Limited*”, held that the dues of the Appellants are ‘Government dues’ and they are Secured Creditors. Impugned order of the AA failed to consider that these dues are of the Revenue Department and if not paid, the Appellants would be in great difficulty and grave injustice would be caused to the Revenue Department and a huge loss to the public exchequer. AA has erred in stating that the Appellants claims cannot be entertained after 15 months of the approval of the Resolution Plan as the Appellant have made the recovery of the outstanding demand on 14.11.2017 which is prior in time to the resolution plan being approved on 20.09.2018.

**Order/Judgement:** The impugned order dated 20.01.2021 passed by the AA is hereby set aside and the matter is remitted back to the AA with a request to hear the parties.

**Case Review:** Appeal is disposed off. No order as to costs.