



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

## IBC Case Law Capsule

Volume 06 | Number 35

(August 28, 2023)



**The Assistant Commissioner of Central Tax Vs. Mr. Sreenivasa Rao Ravinuthala & Ors.**  
**COMPANY APPEAL (AT) (CH) (INS.) NO. 346/2021**  
**Date of NCLAT Judgement: August 18, 2023**

### Facts of the Case: -

The present appeal is filed by the Assistant Commissioner of Central Tax (hereinafter referred as 'Appellant') after being aggrieved by the order dated 13.08.21 passed by the Adjudicating Authority.

The CD, M/s Samyu Glass Pvt. Ltd. entered into CIRP and the RP (hereinafter referred as 'Respondent' no. 1) was appointed by the AA. The resolution plan submitted by the M/s Renganayaki Agencies (hereinafter referred as 'Respondent no. 2') was approved by the CoC with 100% majority votes and same was also approved by the AA through its order dated 13.08.21.

The Appellant challenged the order and contended that the CD had defaulted in payment of the Central Excise Duty amounting to ₹22,60,32,948/- (including interest and penalty) but the Resolution Plan earmarked only 0.13% of the claim amount towards Government dues. Whereas, the Financial Creditor and other Operational Creditors were given a higher percentage of their Claim amounts. The Appellant further stated that due to the attachment placed on the CD's assets, the Appellant should be categorized as a 'Secured Creditor'. The Appellant placed its reliance on the judgment pronounced in *State Tax Officer v Rainbow Papers Limited*, (2022) SCC, wherein it was held that State is a Secured Creditor under GVAT Act 2003.

The Respondent no. 1 submitted that the Appellant's challenge comes after the approval of the Resolution Plan, which was subsequently implemented on 08.02.2022. The SRA has already spent ₹68,98,00,000/- following the approval of the Plan. The Respondent argues that the Appellant did not raise any objections when the claim amount was initially communicated.

The AA noted that the Resolution Plan was in accordance with Section 30(2) of Code and Regulations 37, 38, 38(1A), and 39(4) of the CIRP Regulations, 2016, and approved the same by its order dated 13.08.21, resulting which the Appellant filed this appeal before Appellate Tribunal.



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### NCLAT Observations:-

The Appellate Tribunal contented that the demand orders were issued to the CD were under Central Excise Act 1944 and its provision are distinct from the provisions of GVAT Act 2003. The Appellate Tribunal held that the usage of the words '*save as provided in*' in Section 11E of Central Excise Act, 1944 is in the nature of an exception intended to exclude the class of cases, mentioned in Companies Act, 1956, The Recovery of Debts due to Banks and the Financial Institutions Act, 1993, SARFAESI Act, 2002 and IBC. Further, 'Secured Interest' as defined under IBC, excludes charges created by Operation of law.

The Appellate Tribunal referring to the Master Circular No.1053/02/2017-CX, issued by the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, held that dues under 'Central Excise Act, 1944' would have first charge only after the dues under the Provisions of IBC are recovered. Therefore, the decision in the matter of '*State Tax Officer Vs. Rainbow Papers Ltd.*' cannot be made applicable to the facts of this case and the Appellant cannot be treated as a Secured Creditor.

The Appellate Tribunal placing their reliance on the judgment pronounced by the Apex court in '*Kalparaj Dharamshi & Anr. v. Kotal investment Advisors Ltd. & Anr*' held that the Commercial Wisdom of the CoC is non-justiciable unless it is not in accordance with Section 30(2) of the Code.

**Order/Judgement:** The Appellate Tribunal found no irregularities in the Resolution Plan under Section 30(2) of the Code. The Plan was fully executed and the SRA paid Rs. 35,25,00,000/- to all the Creditors. Further as over 2 years have passed since approval the Appellate Tribunal didn't find any tangible and substantial reasons to set the clock back at this point of time.

**Case Review:** Appeal is dismissed. No Costs.