



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

Number 230

(June 30, 2025)



**State Tax Officer vs. Vinod Tarachand Agrawal (IRP for M/s Jay Formulations Limited & Ors), M/s Jay Formulations Private Limited and Shri Vishal Shah (SRA) M/s Aquatic Remedies Limited
IA/435 (AHM) 2025 in CP (IB) No. 123/NCLT/AHM/2022
Date of NCLT Order: 05th May 2025**

Facts of the Case: -

The present application was filed under Section 60(5) of the IBC, 2016 read with the relevant provisions of the IBBI Regulations, 2016 and Rule 11 of the NCLT Rules, 2016. The application was filed by the State Tax Officer of the State Tax Department (hereinafter referred as "the Applicant") against the Resolution Professional, Corporate debtor & SRA (hereinafter referred as Respondent No. 1, 2 & 3 respectively) seeking recognition of its claim as that of a 'Secured Creditor'.

The applicant's was aggrieved by the failure of the CD to discharge its statutory tax liabilities for multiple financial years. Specifically, the CD defaulted in payment of tax dues under the GVAT Act and the CST Act for the Financial Year 2014-15, amounting to ₹1,82,47,705/-, and further defaulted under the GST Act, 2017 for the financial years 2017-18 to 2020, with dues aggregating to approximately ₹81 lakhs. Cumulatively, the Applicant sought recognition of dues amounting to ₹2,00,15,482/- comprising ₹1.82 crore under GVAT, ₹1.65 crore under CST, and ₹9.75 crore under GST.

To recover these dues, the department had issued several attachments to the bank accounts of the CD, followed by continued appeals to the office of the Deputy Commissioner, Division 1, Ahmedabad. In many such instances, the authorities granted interim stays, preventing effective recovery. Despite the department's repeated assertion that these tax dues constitute a statutory charge, and therefore should be treated as secured debt, the RP only partially admitted the claim and classified the Applicant as an 'Operational Creditor'. The list of stakeholders prepared and submitted by the RP accordingly reflected the Applicant's status as an operational creditor, not a secured creditor.

Aggrieved by this treatment, the Applicant made a special civil application before the Hon'ble High Court of Gujarat. In its pleadings, the Appellant emphasized that statutory tax dues, by virtue of provisions under the GVAT Act and relevant case law, create a charge on the assets of the CD, thereby qualifying the Department as a 'Secured Creditor'. The Applicant placed heavy reliance on the landmark judgment of the Hon'ble Supreme Court in the matter of *State Tax Officer v. Rainbow Papers Ltd.*



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NCLT's Observations:

The AA acknowledged that the GVAT dues constituted a statutory charge under Section 48 of the Gujarat Value Added Tax (GVAT) Act, a position upheld by the Hon'ble Supreme Court in *State Tax Officer v. Rainbow Papers Ltd.*. However, the AA made a clear distinction in the treatment of CST and GST dues.

The AA further emphasised that unlike GVAT, CST and GST dues do not create any statutory charge and, therefore, do not qualify as secured debt. Instead such dues fall under Section 53(1)(e)(i) of the Insolvency and Bankruptcy Code (IBC), which categorizes them as government dues ranking lower in priority during distribution of assets.

In reaching this conclusion for CST dues, the AA relied on the precedent set in *Paschimanchal Vidyut Vitran Nigam Ltd.*, affirming that these are merely government dues without secured status. With respect to GST, the AA specifically referred to Section 82 of the Central Goods and Services Tax (CGST) Act, clarifying that although it speaks of a first charge, it is expressly made subject to the provisions of the IBC. Consequently, the AA held that in case of any conflict, the IBC would prevail over the GST Act, reinforcing the supremacy of the Code in insolvency proceedings.

Order/Judgement:

A. Allowed:

GVAT dues of ₹15,90,276 are to be treated as secured debt under Section 53(1)(b)(ii) of IBC.

B. Rejected:

CST dues of ₹1,65,87,840 and GST dues (₹8,30,90,029 and ₹81,20,284) are not considered secured creditors claim and treated under Section 53(1)(e)(i) as government dues.

The AA rejected the claim that the RP erred in rejecting CST and GST dues as secured.

Case Review: The case was partly allowed and IA No. 435 of 2025 in CP(IB) 123 (AHM) 2022 is disposed of accordingly.