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.498 of 2025

The State Tax Officer, State Of Gujarat **...Appellant**

Vs

1. Jaykumar P. Arlani **...Respondent No.1**
The Interim Resolution Professional/
Resolution Professional/Liquidator

2. M/s. Shree Raghuvanshi Fibres Private Limited **...Respondent No.2**

3. Bank of Baroda **...Respondent No.3**

4. Rama Agri Enterprise LLP Gondal **...Respondent No.4**
Auction Purchaser

(Arising out of Order dated 19.02.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Court No.1, Ahmedabad) in Interlocutory Application No. 1077(AHM) 2023 in C.P. (IB) No. 563 of 2019)

For Appellant: Ms. Ritu Guru, Advocate
For Respondent: Mr. Rohan Talwar, Ms. Preksha Diwakar, Advocates for R-3
Mr. Dheeraj Garg, Advocate for R-1

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

This appeal arises out of the Order of the Adjudicating Authority (NCLT, Ahmedabad Bench), dated 19.02.2025 in I.A. No. 1077 of 2023 in C.P. (IB) No. 563/9/04.01.2023, NCLT/AHM/2019 by which it has directed that the corporate debtor be dissolved post liquidation process. And, the appellant contends that it should have been treated as a secured creditor in the distribution process under Sec.53 of the Code.

Facts

2. The material facts are:

a) The appellant is the Sales Tax Authority of the State of Gujarat and the CD, M/s. Shree Raghuvanshi Fibres Pvt. Ltd., fell in arrears of VAT under the Gujarat Value Added Tax Act, 2003 (henceforth GVAT Act) and also CST for four assessment years from 2014-2015 to 2017-2018. According to the appellant a statutory first charge is created in terms of Sec.48 of the GVAT Act. On 05.09.2019, the appellant initiated recovery steps and addressed a communication dated 05.09.2019 to the jurisdictional Mamlatdar seeking attachment and for recording of charge over the immovable properties of the Corporate Debtor. (However, Mamlatdar's records do not disclose any such charge or attachment of the asset of the CD)

b) On 18.02.2020, the Corporate Debtor, came to be admitted to CIRP. On 07.07.2021, the appellant preferred its Claim vide Form B for ₹.36,87,64,745 for the aforesaid four assessment years. Out of this

amount VAT component of the tax arrears constituted ₹.17,94,45,532 plus interest thereon at 18% p.a., and the balance constituted CST arrears plus interest at the same rate.

c) It is required to be stated that in the relevant column in Form B where the details of the security interest which the appellant claims in terms of Sec.48 of the GVAT Act, is required to be stated, the appellant has indicated as 'N.A', meaning thereby that this column is not applicable. However, along with the Claim, the appellant also addressed a communication dated 07.07.2021 to the Interim Resolution Professional to create a first charge on the property of the dealer, namely the corporate debtor, in terms of Sec.48 GVAT Act.

d) The CIRP of the CD however failed, and on 30.08.2022, liquidation of the CD was ordered. Now, on 14.09.2022, the appellant preferred its Claim before the liquidator under Form C for ₹.43,45,22,907 for the same four assessment years from 2014–15 to 2017–18. (it may be stated that this claim was increased to ₹.45,17,26,706/-, owing to certain rectification made in the assessment Orders, and on 03.03.2023 a fresh claim was made. The liquidator however, declined to entertain the revised fresh claim vide his communication dated 07.03.2023, noting that the period for submission of Claims had already expired).

e) It may be noted that as was done on the previous occasion during the CIRP, the appellant had indicated 'NA' in the column in the Claim Form where details of security interest are required to be disclosed. Again, consistent with the methods it had adopted on the earlier occasion, the

appellant had addressed a communication along with his Claim Form to the liquidator to create a first charge in terms of Sec.48 of the GVAT Act.

f) However, the Liquidator vide his communication dated 03.10.2022, had required the appellant (i) to prove its entitlement to claim interest etc., (ii) that he (the liquidator) does not have authority to create any charge as required; and (iii) required the appellant to prove that it is a secured creditor under Sec.3(30) read with Section 3(31) of the IBC, as the appellant has not provided any details of the security interest in the Claim Form. Eventually, the liquidator has admitted ₹.38,76,12,601/- and rejected certain interest component of the claim.

g) The liquidation process proceeded thereafter. The assets of the Corporate Debtor were brought to sale, and on 09.01.2023, M/s. Rama Agri Enterprise LLP emerged as the successful bidder for a consideration of ₹.9.45 crore.

h) While so, on 21.04.2023, the Stakeholders' Consultation Committee meeting was held, in which the liquidator indicated that a legal opinion had been obtained on the treatment of statutory dues. The 3rd respondent Bank of Baroda, had expressed an idea that in the event of any subsequent legal development as regards the appellant's claim to be treated as a secured creditor, the amounts received by it could be returned to the liquidation account for appropriate redistribution to the appellant.

i) Thereafter, the liquidator had proceeded with the distribution of the sale proceeds, and on 24.04.2023, a sum of Rs. 8,80,00,000/- was

distributed to sole financial creditor, the 3rd respondent Bank, in accordance with the waterfall under Section 53 of the Code.

j) The appellant participated in subsequent meetings of the Stakeholders' Consultation Committee, including the meeting held on 25.08.2023, wherein the distribution already effected was recorded.

k) The liquidator thereafter, moved an application in I.A.1077 of 2023 under Section 54 of the Code seeking dissolution of the Corporate Debtor. It appears that since the appellant had not provided any specific materials to prove that it is a secured creditor as was required by the liquidator in his email dated 03.10.2022, the latter has treated the claim of the appellant as operational statutory dues.

l) At the stage when the application for dissolution came to be considered by the Adjudicating Authority, the appellant entered appearance and raised objections contending that its dues ought to be treated as secured debt and that the distribution already made required reconsideration.

3. By an Order dated 19.02.2025, the Adjudicating Authority declined to accept the plea of the appellant to treat it as a secured creditor on the ground that the statutory charge as claimed by the appellant is not registered and that the security interest is not disclosed in the Claim Form. This finding has led to the appellant preferring the present appeal.

Arguments

4. The learned counsel for the appellant contended:

a) that the Adjudicating Authority has erred in treating the dues of the State Tax Department as falling under Sec.53(1)(e) of the Insolvency and Bankruptcy Code, 2016, overlooking the statutory character of the claim as one backed by a first charge created by the operation of law vide Sec. 48 of the Gujarat Value Added Tax Act, 2003. The definition of 'secured creditor' under Section 3(30) of the Code read with Section 3(31), is of wide amplitude and includes within its fold a charge created by operation of law.

b) The statutory charge so created is neither contingent upon nor dependent on any further act of registration or mutation. In ***Shree Radhekrushna Ginning & Pressing Pvt. Ltd. Vs State of Gujarat*** [SCA No. 5413 of 2022] has held that the charge contemplated under Sec.48 of the GVAT Act arises immediately upon assessment and does not await any further act of enforcement. Hence there is hardly a need to register a charge under Sec.77 of the Companies Act.

c) The fact that in Form C the appellant has denoted NA in the column relating to security interest cannot be construed as a waiver of statutory right. Indeed, the Form prescribed does not contemplate a security interest created by operation of law. At any rate the Form of the Claim cannot override the substantive nature of the right.

d) This apart, by virtue of Sec. 9(2) of the Central Sales Tax Act, 1956, the provisions of the State enactment extend to CST dues as well, and therefore the statutory charge covers the entirety of the appellant's claim. Reliance was placed on the Division bench judgement of the Delhi High Court in ***IFCI Ltd. Vs Commercial Tax Officer***, [2011

SCC OnLine Del 2563], where the Court has held that the CST dues partake the same character as State VAT dues by virtue of Section 9(2) of the CST Act.

e) In ***State Tax Officer Vs Rainbow Papers Pvt. Ltd***., [(2023)9 SCC 545] which later confirmed in review [See (2024)2 SCC 362], the Hon'ble Supreme Court has held that the statutory dues under the GVAT Act is required to be treated as a secured debt and the State as a secured creditor.

f) Inasmuch as the appellant is required to be treated as a secured creditor, since it has not chosen to enforce its security right, the same has to be treated as relinquishment of security interest under sec.52(1)(a) read with Proviso to Regulation 21A(1) of the IBBI (Liquidation Process) Regulations, 2016, and hence it is entitled to be treated at par with other secured creditors under Section 53(1)(b)(ii) of the Code.

g) Finally, the sole financial creditor's (the Bank of Baroda, the 3rd respondent herein) has undertaken vide its undertaking, dated 21.04.2023, that in the eventuality of appellant's claim being treated as a secured debt the bank will bring back the amount to be payable to the appellant as a secured creditor into the liquidation account for redistribution in accordance with law, and hence the Adjudicating Authority ought not to have proceeded to dissolve the CD without first addressing the issue of proper classification of the appellant and its entitlement during distribution under Sec.53 of the Code.

5. Per contra, the learned counsel appearing for the 1st respondent Liquidator argued:

a) The appellant's plea for a classification as secured creditor is hit by delay and acquiescence. The appellant was aware of its classification, participated in the Stakeholders' Consultation Committee meetings, and yet failed to challenge the same within the statutory period prescribed under Sec.42. The distribution of Rs. 8,80,00,000/- to the 3rd respondent bank was made on 24.04.2023, and the present objection has been raised only at the stage of dissolution, and it is impermissible.

b) Appellant's own conduct throughout the CIRP and liquidation proceedings is determinative of the issue. In the specific column in Claim Form where the appellant is required to provide the details of the security interest, it has indicated 'N.A'. Not stopping there, the appellant has even requested the liquidator to create a first charge over the assets of the Corporate Debtor to which the liquidator has replied that he has no authority to create a charge. This sequence of events would go to indicate that at the time when the appellant had preferred its claim, it has conceded that no charge has been created. Besides, the liquidator also required the appellant to furnish proof of its alleged claim as a secured creditor. This communication was never assailed by the appellant under Sec. 42 of the IBC, and therefore, the classification of the appellant as an operational creditor attained finality.

c) Under Sec.52 of the Code read with Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016, a creditor claiming to be

secured creditor must establish the existence of a security interest through legally recognised modes, namely, (i) records in an information utility, (ii) registration with the Registrar of Companies, or (iii) registration with CERSAI. The appellant has not satisfied any of them. Indeed, under Sec. 77(3) of the Companies Act, 2013, when no charge created by a company shall be taken into account unless it is duly registered. In other words, even if a statutory charge is presumed to exist in abstract, the same cannot be recognised in liquidation unless it is capable of being proved in the manner contemplated under Regulation 21. Reliance was placed on the dictum of the Adjudicating Authority in ***Uttar Gujarat Vij Company Ltd. v. Pradeepkumar Kabra*** (IA 883/2024) and ***Government of Tamil Nadu Vs Chandra Mouli Ramasubramaniam*** (IA (IBC) 864(CHE)/2023), to contend that statutory authorities cannot be treated as secured creditors in the absence of legally cognizable proof of security. In ***Brihanmumbai Electric Supply & Transport Undertaking Vs Ashok Kumar Golecha***, [2025 SCC OnLine NCLAT 808], which has since been affirmed by the Hon'ble Supreme Court in Civil Appeal No. 9927 of 2025 (decided on 08.08.2025), it was held that registration or equivalent proof is indispensable for recognition of secured status. In ***Home Kraft Avenues Vs Jayesh Sanghrajka***, [2025 SCC OnLine NCLAT 309], this tribunal had held that while registration of charge may not be insisted upon during CIRP, the same becomes mandatory in liquidation, where rights under Section 52 are exercised.

d) In ***Paschimanchal Vidyut Vitran Nigam Ltd. Vs Raman Ispat Pvt. Ltd.***, [(2023) 10 SCC 60], to submit that the statute itself locates government dues in a distinct and lower rung under Section 53(1)(e). So far as the ratio in ***State Tax Officer Vs Rainbow Papers Pvt. Ltd.***, [(2022) SCC OnLine SC 1162], goes, it was rendered in CIRP setting and will not be applicable to the distribution scheme during liquidation under Sec.53.

6. Supporting the arguments of the liquidator, the 3rd respondent (M/s Bank of Baroda) argued:

a) the Bank's security interest stands on a fundamentally different footing, having been created through a deed of mortgage, and has been duly recognized throughout the CIRP and also during the liquidation process. In contrast, the appellant has failed to demonstrate the existence of any perfected or enforceable charge.

b) So far as the undertaking of the bank dated 21.04.2023, goes, the same was made only in view of the then prevailing uncertainty and would operate only upon a change in law. Since no such change of law has occurred post ***Paschimanchal Case,*** the undertaking cannot be invoked to reopen the concluded distribution.

(Some of the authorities which the bank has relied on were grouped with those relied on by the liquidator to avoid repetition of the same idea)

Discussion & Decision

7. The CD was liquidated and indeed, vide the impugned Order has been ordered to be dissolved. The grievance of the appellant is that whereas it

should have been treated as a secured creditor in terms of Sec.48 of the GVAT Act for the purposes of the waterfall mechanism intended for the distribution under Sec.53 IBC, it was treated only as an operational creditor.

8. So far as the appellant's claim to be treated as a secured creditor is concerned, notwithstanding the fact that it has not disclosed it in the Claim Form, it still has been claiming it, pursuing it, and doing it to the knowledge of the liquidator and the sole financial creditor through communications contemporaneously addressed to the liquidator. It might be that the liquidator might not have any authority to create a charge, but the fact remains that the appellant was not willing to surrender its right to be treated as a secured creditor. Turning to the decision of the liquidator to treat the appellant's claim as operational statutory debt, it is very evident that this decision was taken not because the liquidator had the materials to hold that the appellant was not eligible to be treated as a secured creditor within the meaning of Sec.3(30) read with 3(31) IBC, but because he was uncertain about it. In the 6th meeting of the SCC held on 21.04.2023, he has shred the legal opinion on the status of the appellant. It is minuted, " The liquidator brought to the notice of the stakeholders that there is some confusion regarding the distribution process to be followed, in Liquidation, due to the recent judgement in the "*Rainbow Papers Case*" *by the Hon. Supreme Court. More importantly the treatment of the claim of State Tax Office needs to be looked at carefully. The Liquidator added that he has classified the claim of the State Tax Office as*

a "***Secured Operational Creditor – government Dues*"**. But in the 7th meeting of the SCC held on 25.08.2023, the Liquidator changes position in view of the ***Paschimanchal Vidyut Vitran Nigam case*** that ***Rainbow papers*** principle will not apply to liquidation. It is in these circumstances the failure of the appellant to provide the details of security interest in the Claim Form and its mentioning of NA in the column provided therefore appears to have come in handy. To strengthen his line of approach, the liquidator would allege that the appellant has not proved the security interest as contemplated under Regulation 21 of the IBBI (Liquidation Process) Regulation, 2016. If the Liquidator is certain that appellant need not be treated as a secured operational creditor, then his demand for proof of the security interest does not fit in with his decision. Does it not indicate that if proof of security interest was made available, then the Liquidator would not have an issue to treat the appellant as a secured operational creditor? He is apparently caught in certain confusion.

9. The oscillating stands of the liquidator in the light of ***Rainbow Papers*** and the ***Paschimanchal case*** now stands clarified by a coordinate bench of this tribunal in ***Cosmos Cooperative Bank Ltd., Vs Kailash T. Shah & others*** [Comp Appeal 774 of 2024, dated 13.11.2025) where it held that the ***Paschimanchal case*** does not involve any issue of statutory first charge but only pure governmental dues.

10. Should the appellant be required to prove the statutory first charge contemplated in terms of Regulation 21 since distinguished from CIRP, proof of security interest is required to be proved under Regulation 21.

11. The argument of the liquidator is logically attractive, but it is not without its inbuilt fallacies. Creation of a security interest is one thing and its proof is another thing. And a charge can be created by contract or by operation of law. Whereas a contractual charge is a product of consensus ad idem of the contracting parties, a charge by operation of law does not require any mutuality of intent. Secondly, during a CIRP where the statutory intent is to sell the corporate debtor as a going concern, security interest created on its asset is not given prominence for a differential treatment except for distribution of the proceeds of the successful insolvency resolution process, whereas in liquidation vide Sec.52(1)(b) provision is made to grant an option to a secured creditor to realise his security interest instead of pooling it. The need for proof of security interest as required in Regulation 21 of the Liquidation Process Regulation therefore, requires to be contextually understood. More about it in later paragraphs.

Whether the entire claim of the appellant is required to be treated as secured debt:

12. The Claim of the appellant has two distinct components: the VAT component and the CST component. The appellant claims statutory first charge for the entirety of its claim. So far as the VAT dues are concerned, there can be no doubt that the appellant is a secured creditor, but the issue concerning it is not on the legal effect of Sec.48 of the GVAT Act, but on how it is required to be proved during the liquidation process.

An associated aspect that may be mentioned here is that while the ***Rainbow Papers case*** declared the law on the effect of the operation of Sec.48 of the GVAT Act,

13. The issue therefore would be twofold: (a) whether the CST dues qualify for being treated as secured debt? (b) how to prove the security interest created by operation of law under Sec.48 of the GVAT Act?

14. So far as CST dues are concerned, there is no specific provision in the CST Act which creates statutory first charge as in Sec.48 of the GVAT Act. But the appellant makes a novel argument that Sec.9(2) of the CST Act enables the telescoping of Sec.48 of the GVAT Act into the CST Act to create a first charge even as regards the CST dues. The tenability of the same will now be considered. Here, the appellant relies on the ratio of the judgement of the Division Bench of the Delhi High Court in ***IFCI Ltd. Vs Commercial Tax Officer***, [2011 SCC OnLine Del 2563] where the Court, while interpreting Sec.9(2) of the CST Act in the context of Rajasthan Sales Tax Act, has held that the central sale tax assumes the character of Crown debt, and hence it is entitled to priority over other debts in realisation. And this decision was made without any reference to any statutory first charge akin to the one enabled by Sec.48 of the GVAT Act.

15. Turning to the law governing the priority in realisation of governmental dues conceptualized on the common law principle of crown debt, in one of the earliest post constitutional judgement in ***Builders Supply Corporation Vs Union of India*** [AIR 1965 SC 1061], the Hon'ble Supreme

Court has recognized the existence of this principle in India. This is also recognized by a Constitutional Bench of the Supreme Court in ***Superintendent and Legal Remembrancer, State of West Bengal Vs Corporation of Calcutta*** [AIR 1967 SC 997]. Where however, the ***Legal Remembrancer case*** differed from the ***Builders supply case*** is that while the latter case has held that the priority of crown debt is a common law rule and is a law in force in India within the meaning of Article 372 of the Constitution, the former case has held that crown debt's preferential treatment is not a common law rule but only a construction of the common law, and hence it does not qualify to be termed as 'law in force' within Article 372. A three Judge bench of the Supreme Court in ***Collector Vs Central Bank*** [AIR 1967 SC 1831] had held that despite apparent divergence of views in ***Builders Supply case*** and the ***Legal Remembrancer case,*** a closer analysis of the second mentioned judgement does not indicate a divergence of view from the former. These finer aspects however, need not bother us in the context of the present case. What is significant in the context is that the governmental dues in this country are accorded priority during realization as crown debt. The next issue that arose was about the point where such priority should be accorded. Should it be given priority over secured debts? In ***Dena Bank Vs Bhikhabhai Prabhudas Parekh & Co and others*** [(2000)5 SCC 694], after considering ***Builders Supply Corporation case*** the Supreme Court has held:

> *"10.... the crown's preferential right to recovery of debts over other creditor is confined to ordinary or unsecured creditor. The*

> *common law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for recovery of its debts over a mortgagee or pledgee of goods or a secured creditor. It is only in cases where the Crown's right and that of the Subject meet at one and the same time that the Crown is in general preferred. Where the right of the subject is complete and perfect before that of the King commences, the rule does not apply, for there is no point of time at which the two right are at conflict, nor can there be a question which of the two ought to prevail in a case where one, that of the subject, has prevailed already. In Giles Vs Grover, (1832) 131 ER 563, it has been held that the Crown has no precedence over a pledgee of goods. In Bank of Bihar Vs State of Bihar, (1972) 3 SCC 196, the principle has been recognised by this Court holding that the rights of the pawnee who has parted with money in favour of the pawnor on the security of the goods cannot be extinguished even by lawful seizure of goods by making money available to other creditors of the pawnor without the claim of the pawnee being first fully satisfied. Rashbehary Ghose states in 'law of Mortgage (Tagore Law Lecture, 7th Edition p.386) – "It seems a government debt in India is not entitled to precedence over a prior secured debt."*

This view was accepted in ***Union of India Vs SICOM*** [(2009) 2 SCC 121]. See also: ***Punjab National Bank Vs Union of India*** [(2022)7 SCC 260] and the dictum laid down by the Full Bench of the Madras High Court in ***UTI Bank Vs Deputy Commissioner*** [(2007) 1 Mad LJ 1(FB)]. To sum up, the effect of treating governmental dues as Crown debt for a preferential treatment is available only against unsecured debts, and it does not extend to the extent of superseding prior secured debts.

16. It could now be derived that while Sec.48 of the GVAT Act has created a charge over the assets of the assessee, the CD herein, to enable the appellant to be treated as a secured creditor as concerning its claim of GVAT dues, but so far as its claim of CST dues is concerned, the appellant cannot be treated as a secured creditor.

17. So far as fixing the position where the appellant may claim priority over other unsecured debt goes, the common law rule of crown debt is interfered by Sec.53 of the IBC which has provided where the governmental dues must be fitted in, and here the dictum in ***Paschimanchal case*** shows the way. Where a specific statutory provision operates, any rule of common law or its construction should take a back seat. To conclude, the argument of the appellant on the inter play of Sec.9(2) of the CST Act based on the dictum of the Division bench of the Delhi High Court in ***IFCI case*** does not take it anywhere, and this argument is terribly misconceived.

18. To sum up, appellant is entitled to be treated as a secured creditor only for the VAT dues recoverable from the CD and not the CST dues.

Proof of statutory Charge under Sec.48 GVAT Act

19. The next aspect relates to proof of the security interest created owing to the operation of Sec.48 of the GVAT Act in the context of Regulation of 21 of the IBBI (Liquidation Process) Regulation. According to the liquidator, while the appellant claimed security interest in terms of Sec.48 of the GVAT Act, it has not produced any proof that it indeed was created. In

particular, the appellant had communicated to the mamlatdar to create security interest, but it was not done. Secondly, the appellant required the liquidator himself to create security interest, but it was declined by the latter for want of authority to do it. In fitness of things, the appellant should have registered the charge under Sec.77(3) of the Companies Act to prove the security interest created for the purposes of Regulation 21 of the Liquidation Process Regulations.

20. Regulation 21 reads:

> *"**21. Proving security interest**: The existence of a security interest may be proved by a secured creditor upon the non-payment of a claim, if any.*
>
> *a) The information available in an information utility, if any;*
> *b) Certificate of registration of charge issued by the Registrar of Companies; or*
> *c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India."*

Regulation 21 above being what it is, nowhere it could be seen that a security interest could be proved only in the manner provided and no other. It could be seen from the choice of expression the IBBI has opted: '*may be proved*'. And, it does not state how a statutory charge should be proved either. Now was it necessary for the appellant to register a charge under Sec.77 (3) of the Companies Act? Here, we find the argument of the liquidator is misconceived for Sec.77 by its very structure casts a duty to register every charge which a company creates on its assets. It applies to contractual charge and not statutory charge created by operation of law.

Indeed, in ***Shree Radhekrushna Ginning and Pressing Pvt., Ltd. Vs State of Gujarat*** [Special Civil Application 5413 of 2022, dated 29.03.2022], Hon'ble J.B.Pardiwala J (as His Lordship then was) has held:

> *"15. A charge … under Section 48 of the GVAT Act creates no interest in or over a specific immovable property, but is only a security for the payment of money (See: Dattatreya Shanker More Vs Anand Chintaman & Others, (1974)2 SCC 799.*
>
> *18. The words "by operation of law" are more extensive than the words 'by law' and a charge created by operation of law includes a charge directly created by the provisions of an Act (like Sec.48 of the GVAT Act) as well as other charges created indirectly as a legal consequence of certain conditions. The expression operation of law only means working of the law.*
>
> *19. A charge, as we have already seen, is a right to receive a certain sum of money. If a dealer registered under the GVAT Act incurs any inability towards payment of tax, then the state has a right to receive a certain sum of money as crystallized in the form of liability. This recovery of the money from the property can be by attaching the assets of the defaulting dealer, thereafter, putting those to auction. This type of recovery would be governed by the provisions of Section 46 of the GVAT Act.*
>
> *20. In the case on hand,* ***it could be said that the day the assessment order came to be passed determining the liability of the writ applicant under the provisions of the GVAT Act, a charge over the immovable assets of the writ applicant could be said to have been created in favour of the State by operation of law, as envisaged under Section 48 of the GVAT Act….*** *"*
>
> *(emphasis supplied)*

21. A statutory charge under Sec.48 of the GVAT is thus created the moment assessment Order is made. Secondly, nowhere a provision is made either in the GVAT Act or in the Rules made thereunder any procedure for effecting the charge. In other words, the statutory first charge in terms of Sec.48 of the GVAT requires no further action to be made to make the charge operational beyond the passing of the assessment order. This precisely is what flows from the dictum in ***Shree Radhakrushna Ginning case.*** The liquidator apparently has not approached the issue in the right way and has tried to apply proof required in the context of contractual charge to proving the statutory first charge. The proof required for establishing the statutory first charge of the kind created by Sec.48 of the GVAT Act is the statute itself and no more.

22. The next argument in the context of proof of statutory charge is that the appellant has indicated NA in the column in the Claim Form where it is required to furnish the details of the security interest. Now, if the statutory first charge is the legal consequence of an assessment Order, can the liquidator plea ignorance of Sec.48 of the GVAT Act and its effect? In other words, how far the *maxim ignorantia juris non excusat* (ignorance of law will excuse none) will apply for the liquidator to plea ignorance of any statutory charge created by operation of law? In ***Assistant Commissioner of State Tax, Vapi Vs ARCK Resolution Professionals LLP*** [Comp. Appeal 108 of 2025] which we have disposed it of today vide a separate judgement, we have dealt with this aspect in detail. Suffice to state that this maxim has no application to civil law, and therefore, it will be

mandatory for any governmental agency who claims statutory charge to bring it to the notice of liquidator, or a resolution professional for it to appreciate. It is hence, detailing the nature of security in interest in the claim Form becomes imperative. All that it is required to be stated is that statutory charge created under specific provision of the statute which creates it.

23. In the present case, unquestionably the appellant has mentioned N.A in the column where it is required to state the details of the security interest. What however, saves the appellant from the impending peril of losing its security interest owing to the non-disclosure in the Claim Form is that it has addressed a communication contemporaneously with its Claim Form, to the liquidator, to create a statutory charge in terms of Sec.48 of the GVAT Act. All that the liquidator requires is verifiable information about creation of charge, and it does not matter even if it is not disclosed in the Claim Form. What is more important is if the liquidator was put on notice about the claim of statutory charge and the provision which creates it. Once done, it is for the liquidator to verify the same.

24. So far as the argument that no charge could be said to have been created inasmuch as the appellant has addressed a communication to the liquidator to create one goes, law operates on its own strength and not on the basis of how an official who administers it understands its operation. This will also apply in equal force to the request by the sales tax officials to the mamlatdar to register the charge. A mamlatdar is a revenue official merely and when the GVAT Act does not enjoin any responsibility on him

vis-à-vis creation of charge under Sec.48, how does it matter if he has not recorded the statutory charge so created in the revenue records? After all a statutory charge created on a property is not the same as an attachment of a property.

On Acquiescence and Waiver

25. To this may also be added rule of estoppel. In our view, none operates to affect the entitlement of the appellant to be treated as a secured creditor vis-à-vis its VAT claim. The reasons are:

a) At no time the appellant has waived its right to be treated as a secured creditor, but is seen actively pursuing it. It may have made a huge demand to include its entire claim, but the fact remains that it has been persisting with its demand.

b) Secondly, in the 6th meeting of the SCC, the liquidator has treated the appellant as a secured operational creditor, but in the 7th and the last meeting of the SCC he doubted his own earlier view, and has gone ahead to file his I.A.1077 of 2023 for dissolution of the CD. Therefore, the only time and perhaps the first opportunity the appellant gets to challenge the way it is decided to be treated has come only after the 7th meeting. It is in these circumstances, the sole financial creditor, the 3rd respondent herein, has given its undertaking on 21.04.2023. It reads: "*we understand that as per Regulation 43 of by the IBBI Liquidation Process Regulations, 2016, a stakeholder shall forthwith return any monies received by him in distribution which he was not entitled to at that time of distribution or subsequently become not entitled*

to". To repeat, this undertaking was given when I.A.1077 of 2023 which the liquidator has filed for dissolution of the corporate debtor was pending consideration of the Adjudicating Authority.

Appellant's status and dictum in *Paschimanchal Vidyut* case

26. That the appellant is a secured operational creditor is regards the VAT component of its claim is the legal consequence that flows from Sec.48 of the GVAT Act. This is the law declared by the Gujarat High Court in ***Shree Radhekrushna Ginning case*** [Special Civil Application 5413 of 2022, dated 29.03.2022]. And, the ***Rainbow Papers case*** ratio recognizes this aspect in the context of an insolvency resolution process. The ***Paschimanchal Vidyut Vitran case*** however, says that the ***Rainbow Papers*** dictum does not apply to liquidation process, but as clarified by a coordinate bench in ***Cosmos Cooperative Bank Ltd. case*** [Comp Appeal 774 of 2024, dated 13.11.2025) by one of us (Mr. Indevar Pandey) that ***Paschimanchal*** does not involve an issue of statutory first charge, but ***Cosmos*** is a case involving CIRP and not liquidation. But the present case involves an issue seeking to position the status of the appellant with a statutory first charge in the context of liquidation.

27. If the ***Paschimanchal*** is analysed in its deeper layers, its ratio that the ***Rainbow Papers dictum*** will not apply to liquidation is founded on the right reserved by the Code in favour of a secured creditor to realise its security interest under Sec.52(1)(b) which is not available to a creditor in the context of a CIRP. However, the distribution mechanism provided for

CIRP and liquidation remains the same as delineated in Sec.53 of the Code. How then to harmonise?

28. The cue lies in Regulation 21A of the IBBI (Liquidation Process) Regulation. Let the facts that lies beneath the issue be understood and collated in a certain sequence:

a) That the appellant is a statutory first charge holder under Sec.48 of the GVAT Act the moment it passes an assessment order, for it is the legal consequence which waits for no human intervention for its operation. See: ***Shree Radhekrushna Ginning*** *case**.*** The ***Rainbow Papers*** in essence reinforces this idea.

b) This implies that when liquidation of the corporate debtor commenced, the appellant is already a secured operational creditor as regards its VAT component of its claim.

c) Now the appellant has a right under Sec.52(1)(b) to retain its right to realise its security interest. It did not do. Even as it asserted statutory first charge, at no time it had indicated its intention to realise the security interest under Sec.52(1)(b). Instead, it has set its eyes on the share that it might obtain in the distribution process and not on halting the liquidation process.

d) Here Proviso to Regulation 21A (1) comes into action. It says if a secured creditor does not exercise its option under Sec.52(1)(b) within a stipulated time, then the such secured creditor is deemed to have relinquished its security interest.

e) In the present case, the appellant is aware that it is a secured operational creditor, insisted that it be treated thus, yet it did not

exercise the option available to it under Sec.52(1)(b), then by virtue of Proviso to Regulation 21A(1) it is deemed to have relinquished its right to realise the security interest. This will bring it within the class of secured creditor under Sec.53(1)(b)(ii) of the Code.

See: ***Kolkata Municipal Corporation Vs Gajesh Labhchand Jain*** (Liquidator) [(2025)ibclaw.in.813 NCLAT]

29. To sum up, the appellant is entitled and hence required to be treated as a secured operational creditor vis-à-vis its VAT dues and as operational creditor-government dues for its CST dues. The liquidator is, therefore, required to ascertain the amount payable to the appellant if it were to be treated as a secured operational creditor for its VAT dues, recall such sum from the third respondent as may be necessary to satisfy the appellant from the third respondent bank.

30. The appeal is accordingly partly allowed and to the extent intimated in paragraph 29 above. As to the rest, we confirm the Order of the Adjudicating Authority. No cost.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

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