NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1050 of 2025

(Arising out of order dated 05.05.2025 passed by the National Company Law Tribunal, Ahmedabad Bench, Court-1 in I.A. No. 435(AHM)/ 2025 in CP (IB) No. 123/NCLT/AHM/2022)

In the matter of:

State Tax Officer (4)
Having its address at:
Office of the Assistant Commissioner of
State Tax Unit-11, 2nd Floor,
Bahumali Bhavan-2, Vastrapur,
Ahmedabad, Gujarat – 380052.

...Appellant

Vs.

1. **CA Vinod T. Agrawal**
(Resolution Professional of
Jay Formulations Pvt. Ltd.)
Having address at:
204, Wall Street-1, Near Gujarat College,
Ellisbridge, 1 Ahmedabad, Gujarat - 380006

2. **Jay Formulations Private Limited**
(Corporate Debtor)
Having its address at:
13, 1st Floor, Harikrishna Complex,
B/H. Dipalee Cinema, Ashram Road,
Ahmedabad, Gujarat- 380009

3. **Vishal Shah,**
Aquatic Remedies Limited
(Successful Resolution Applicant)
Having address at:
1208-1211, Cabin A, 12th Floor,
Universal Majestic, P.L. Lokhande Marg,
Chembur (W), Mumbai- 400043

...Respondents

Present:

For Appellant:	**Mr. Hitesh P. Vachhani, Advocate.**
For Respondents:	**Ms. Anjali Sharma, Mr. S.K. Sagar, Ms. Ragini Vinaik and Ms. Thangalunkim, Advocates.**
	Mr. Karan Valecha, Mr. Aayush Rathore, Advocate for R-1/RP.
	Mr. Siddharth Sangal and Ms. Richa Mishra, Advocate for SBI.

WITH

Company Appeal (AT) (Ins.) No. 1064 of 2025

(Arising out of order dated 05.05.2025 passed by the National Company Law Tribunal, Ahmedabad Bench, Court-I in I.A. No. 27(PLAN)/AHM)/2024 in CP (IB) No. 123/NCLT/AHM/2022)

In the matter of:

State Tax Officer (4)
Having its address at:
Office of the Assistant Commissioner of State Tax
Unit-11, 2nd Floor,
Bahumali Bhavan-2, Vastrapur,
Ahmedabad, Gujarat – 380052.

...Appellant

Vs.

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Having address at:
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(Successful Resolution Applicant)
Having address at:
1208-1211, Cabin A, 12th Floor,
Universal Majestic, P.L. Lokhande Marg,
Chembur (W), Mumbai- 400043

...Respondents

Present:

For Appellant:	**Mr. Hitesh P. Vachhani, Advocate.**
For Respondents:	**Mr. Karan Valecha and Mr. Aayush Rathore, Advocate for R-1/RP.**
	Ms. Anjali Sharma, Mr. S.K. Sagar, Ms. Ragini Vinaik and Ms. Thangalunkim, Advocates for R3.
	Mr. Siddharth Sangal and Ms. Richa Mishra, Advocate for SBI.

J U D G M E N T

(25th September, 2026)

INDEVAR PANDEY, MEMBER (T)

The instant Appeal No. **CA (AT) (Ins.) No. 1050 of 2025** has been preferred by the **State Tax Officer (4)/Appellant,** Ahmedabad, Gujrat, against the Impugned Order dated 05.05.2025 passed by the National Company Law Tribunal, Division Bench, Court-1, Ahmedabad (Adjudicating Authority) in **I.A./435 (AHM) 2025 in C.P. (IB) No. 123/NCLT/AHM/2022**, whereby the issue relating to the treatment of the Appellant's claim towards outstanding Central Sales Tax ("CST") dues of **Jay Formulations Private Limited/ Corporate Debtor & Respondent No.2** in the ongoing Corporate Insolvency Resolution Process ("CIRP") was adjudicated. **CA Vinod T. Agrawal, Resolution Professional** of the Corporate Debtor, is **Respondent No.1**, while **Vishal Shah, Aquatic Remedies Limited**, is the **Successful Resolution Applicant & Respondent No. 3**. This Appeal be henceforth referred to as First Appeal.

2. The Appellant had submitted its statutory tax claims before the Resolution Professional and thereafter filed I.A./435 (AHM) 2025 seeking recognition of its claim as a secured claim under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**Code**'). Aggrieved by the treatment of its CST dues in the Impugned Order, the Appellant has preferred the present Appeal under Section 61 of the Code and made the following prayers:

RELIEFS SOUGHT

> ***A.*** *YOUR LORDSHIPS MAY BE PLEASED to allow the present Appeal;*
>
> ***B.*** *YOUR LORDSHIPS MAY BE PLEASED to quash and set aside the impugned order dated 05.05.2025 passed by the Hon'ble National Company Law Tribunal, Division Bench, Court-I, Ahmedabad in I.A./27(PLAN)/AHM/2024 in C.P. (IB) No. 123/NCLT/AHM/2022;*
>
> ***C.*** *YOUR LORDSHIPS MAY BE PLEASED to declare the status of the unpaid CST dues of the Appellant as a secured dues and the Appellant as a "Secured Creditor" under Section 53(1)(b)(ii) of the Insolvency and Bankruptcy Code, 2016;*
>
> ***D.*** *YOUR LORDSHIPS MAY BE PLEASED to direct the Respondents to undertake for securing the payment in favour of the Appellant while distribution of payment, if any, which the Respondents were not entitled*

to at the time of distribution by virtue of pronouncement of State Tax Officer vs. Rainbow Papers Limited (2023) 9 SCC 545 and upheld by the Hon'ble Supreme Court in case of Sanjay Kumar Agarwal v. State Tax Officer (1) and Anr. (2024) 2 SCC 362;

E. IN THE ALTERNATE YOUR LORDSHIPS MAY BE PLEASED *to reject and set aside the impugned order and direct for the liquidation of the Corporate Debtor since the impugned order is not as per the provisions of law for the time being in force, more particularly, in light of the law of the land as passed by the Hon'ble Supreme Court in case of Rainbow Papers' judgment which subsequently came to be upheld in Rainbow Papers' Review judgment; and*

F. *YOUR LORDSHIPS MAY BE PLEASED to grant any such other and further reliefs as may be deemed just, fit and proper in the interest of justice.*

CA (AT) (Ins) No. 1064 of 2025

3. The second connected Appeal CA (AT) (Ins) No. 1064 of 2025 has been preferred by the **State Tax Officer (4),** Office of the Assistant Commissioner of State Tax, Unit-11, Ahmedabad ("Appellant") against the **Impugned Order dated 05.05.2025** passed by the National Company Law Tribunal, Division Bench, Court-I, Ahmedabad (Adjudicating Authority) in **I.A./27(PLAN)/AHM/2024 in C.P.(IB) No. 123/NCLT/AHM/2022**, whereby the Resolution Plan submitted in respect of **Jay Formulations Private Limited** ("Corporate Debtor/Respondent No. 2") by **Vishal Shah, Aquatic Remedies Limited** ("Successful Resolution Applicant/Respondent No. 3") was approved. **CA Vinod T. Agrawal**, Resolution Professional of the Corporate Debtor, is Respondent No. 1. The Appellant had participated in the CIRP by

submitting its claims towards outstanding statutory dues and had filed its reply in the Resolution Plan proceedings.

4. This appeal arises from the approval of the Resolution Plan by the Impugned Order, particularly in relation to the treatment of the Appellant's claim towards outstanding CST dues, wherein the claim of the Appellant was treated as Operational Debt and treated accordingly in the approved Resolution Plan. The Appellant has made following prayers in the instant appeal:

RELIEFS SOUGHT

A. To allow the present Appeal;

B. To quash and set aside the Impugned Order dated 05.05.2025 passed by the Hon'ble NCLT, Division Bench, Court-I, Ahmedabad in I.A./27(PLAN)/AHM/2024 in C.P. (IB) No. 123/NCLT/AHM/2022;

C. To declare the status of the Appellant qua the unpaid CST dues as a secured creditor under Section 53(1)(b)(ii) of the Insolvency and Bankruptcy Code, 2016;

D. To direct the Respondents to make payment in favour of the Appellant while distributing the amount, if any, which the Respondents were not entitled to get at the time of distribution, in view of the judgments in State Tax Officer v. Rainbow Papers Limited, (2023) 9 SCC 545 and Sanjay Kumar Agarwal v. State Tax Officer (1) and Anr., (2024) 2 SCC 362;

E. In the alternative, to quash and set aside the Impugned Order and direct liquidation of the Corporate Debtor, stating that the Impugned Order is not in accordance with the provisions of law;

F. To grant such other and further reliefs as may be deemed just, fit and proper in the interest of justice.

5. Both these Appeals arise out of the same CIRP proceedings of the Corporate Debtor and involve similar issues relating to the categorisation of the Appellant's claim and its subsequent treatment under the Resolution Plan. Company Appeal (AT) (Ins.) No. 1050 of 2025 is being considered as the main Appeal for the purpose of adjudication. The decision in the second Company Appeal (AT) (Ins.) No. 1064 of 2025 would depend upon the decision in the First Appeal.

Facts of the Case

6. Brief facts of the case relevant for deciding these appeals are as follows:

i. The Corporate Debtor (Jay Formulations Private Limited), was engaged in the manufacture, supply and export of allopathic medicines and pharmaceuticals, with its registered office at Ashram Road, Ahmedabad and manufacturing plant at Bavla, Gujarat.

ii. The Corporate Debtor had outstanding statutory dues for Financial Year 2014-15 under the Gujarat Value Added Tax Act, 2003 ("GVAT Act") and the Central Sales Tax Act, 1956 ("CST Act"), aggregating to Rs.1,82,47,705/-, pursuant to which assessment orders were passed by the State Tax Department.

iii. On account of the unpaid tax dues, the Appellant initiated recovery proceedings and, on 15.02.2021, attached the bank account of the Corporate Debtor. The Corporate Debtor, thereafter preferred an appeal before the Deputy Commissioner of State Tax, Division-1, Ahmedabad, pursuant to which a stay against recovery was granted on **04.06.2021**, initially up to 04.06.2022.

iv. Meanwhile, State Bank of India, which had extended various credit facilities to the Corporate Debtor since 2001, classified its account as an NPA on 29.06.2021 and thereafter sought recovery of its outstanding financial dues. The Bank subsequently initiated CIRP proceedings against the Corporate Debtor under Section 7 of the Code by filing **C.P. (IB) No. 123/AHM/2022** before the Adjudicating Authority. During the pendency of the insolvency proceedings, a further stay against recovery was granted on 16.02.2023, up to 30.06.2023, in proceedings preferred by the Corporate Debtor before the State Tax authorities.

v. The Section 7 application filed by State Bank of India was admitted and Corporate Debtor was admitted in **CIRP on 26.09.2023**, and CA Vinod T. Agrawal was appointed as the Interim Resolution Professional. Pursuant to commencement of CIRP, Respondent No.1 issued a public announcement in Form A on 28.09.2023, inviting claims from creditors, with 10.10.2023 prescribed as the last date for submission of claims.

vi. During the CIRP, the Appellant again attached the bank account of the Corporate Debtor on 05.10.2023 and, on 07.10.2023, submitted its claim for Rs.1,82,47,705/- towards VAT/CST dues in Form B before Respondent No. 1. The claim was admitted by the Resolution Professional to the extent of Rs.1,81,78,117/-.

vii. The Appellant also submitted separate claims towards GST dues, including a claim of Rs.8,30,90,029/- on 09.10.2023 and a further claim of Rs.81,20,284/- on 14.02.2024. The claim records subsequently reflected the Government claims submitted during the CIRP and the amounts admitted by the Resolution Professional.

viii. A further bank attachment was made by the Appellant on 12.02.2024 in respect of the unpaid tax dues, while the related tax proceedings remained pending before the State Tax authorities.

ix. During the CIRP, Respondent No.1 filed I.A. (Plan) No. 27 of 2024 on 25.06.2024 seeking approval of the Resolution Plan submitted by Respondent No.3, the Successful Resolution Applicant (SRA). The Appellant filed its reply on 08.12.2024 in the said proceedings.

x. Thereafter, on 15.03.2025, the Appellant filed I.A./435 (AHM) 2025 in C.P. (IB) No. 123/NCLT/AHM/2022, seeking recognition of its claim of Rs.2,00,15,482/- under the GVAT Act and CST Act as a secured claim and appropriate consideration of the same under the Resolution Plan.

xi. The Adjudicating Authority passed the Impugned Order dated 05.05.2025 in I.A./435 (AHM) 2025, whereby the Appellant's claim in respect of CST dues amounting to Rs. 1,65,87,840/- was not treated as a secured claim under Section 53(1)(b)(ii) of the Code.

xii. Aggrieved by the aforesaid order, particularly the treatment of its CST dues in the CIRP and Resolution Plan, the Appellant has preferred this Appeal.

Submission of Appellant

7. Ld. Counsel submits that the present Appeal concerns the CST dues of Rs. 1,65,87,840/- of the Corporate Debtor for FY 2014-15. The grievance of the Appellant is that, despite the claim having been submitted during the CIRP, the Appellant was not treated as a "Secured Creditor" in respect of the CST dues under Section 53(1)(b)(ii) of the Code.

8. He submits that the issue is covered by the judgment of the Hon'ble Supreme Court in ***State Tax Officer v. Rainbow Papers Limited, (2023) 9 SCC 545***. It is submitted that the Hon'ble Supreme Court recognised that a statutory charge created by operation of law can constitute a "security interest" under Section 3(31) of the Code and consequently the concerned State Tax Department can fall within the definition of "Secured Creditor" under Section 3(30) of the Code.

9. Ld. Counsel submits that, in Rainbow Papers, the Hon'ble Supreme Court considered the statutory first charge created under Section 48 of the GVAT Act and held that such charge was not inconsistent with Section 53 of the Code. The Appellant submits that the same principle is applicable to the present CST dues because the CST Act itself makes the State sales-tax machinery applicable for assessment, collection and enforcement of CST dues.

10. He further submits that the judgment in Rainbow Papers was subsequently considered by the Hon'ble Supreme Court in *Sanjay Kumar Agarwal v. State Tax Officer (1) and Anr., (2024) 2 SCC 362,* wherein the review

petitions were dismissed. It is submitted that the review proceedings also considered the issue concerning the statutory charge and the waterfall mechanism under Section 53 of the Code. The Appellant therefore submits that the principle laid down in Rainbow Papers recognising the State as a secured creditor was not interfered with and was relied upon by the Appellant before the Adjudicating Authority.

11. Ld. Counsel submits that the principal issue is required to be determined by reading Section 9(2) of the CST Act, 1956 with Section 48 of the GVAT Act, 2003. It is his submission that Section 9(2) of the CST Act provides that the authorities empowered under the general sales-tax law of the appropriate State shall assess, reassess, collect and enforce payment of CST, interest and penalty as if such amounts were payable under the general sales-tax law of that State. The provision further permits the State authorities to exercise the powers available under the State sales-tax law for such purposes.

12. He submits that in Gujarat, the applicable general sales-tax legislation is the GVAT Act, 2003, and Section 48 thereof provides that any amount payable by a dealer towards tax, interest or penalty shall be a first charge on the property of such dealer. Therefore, when Section 9(2) of the CST Act and Section 48 of the GVAT Act are read together, the statutory machinery and charge under the GVAT Act are applicable for enforcement of CST dues.

13. Appellant submits that the learned Adjudicating Authority erred in holding that Section 9(2) of the CST Act does not create a statutory charge equivalent to that under Section 48 of the GVAT Act. The Appellant's case is

that Section 9(2) provides the statutory mechanism for enforcement of CST dues through the State law, while Section 48 creates the first charge. The two provisions therefore operate conjointly and are not required to be read in isolation.

14. He submits that the said statutory first charge constitutes a “security interest” under Section 3(31) of the Code, thereby making the Appellant a “Secured Creditor” under Section 3(30). There is no exclusion in the definition of “Secured Creditor” merely because the creditor happens to be a Government authority or State Tax Department.

15. It is therefore submitted that the CST dues of Rs. 1,65,87,840/-, being protected by the statutory charge arising under Section 9(2) of the CST Act read with Section 48 of the GVAT Act, ought to have been treated as dues of a Secured Creditor under Section 53(1)(b)(ii) of the Code, in accordance with the principles laid down in Rainbow Papers and its review judgment.

Submissions of Respondent no.1/ Resolution Professional

16. Ld. Counsel for Respondent No.1/Resolution Professional submits that the present Appeals arise out of the treatment accorded to the claim of the Appellant/State Tax Officer in the CIRP of Jay Formulations Private Limited. The controversy in the present Appeals is confined to the question whether the dues claimed under the Central Sales Tax Act, 1956 (“CST Act”) are required to be treated as secured dues, notwithstanding that the Resolution Professional has treated the GVAT component of the claim as secured and the CST component as unsecured operational debt. The Respondent submits that

the classification was made on the basis of the statutory documents and supporting material furnished by the Appellant itself and that the treatment of the respective components is consistent with the governing statutory provisions and the decisions relied upon by the Respondent.

17. He submits that the SRA prepared the Resolution Plan on the basis of the information contained in the Information Memorandum shared by the RP. The Information Memorandum clearly reflected the admitted amount of Rs.1,82,47,705 towards the outstanding dues of the State Tax Officer. The SRA accordingly formulated and submitted the Resolution Plan on the basis of the information available in the CIRP and in accordance with the applicable provisions of law.

18. He further submits that the Appellant's claim consisted of both GVAT and CST dues, and there is a material statutory distinction between the two. The GVAT dues are covered by Section 48 of the GVAT Act, which creates a statutory first charge. Consequently, the GVAT component was required to receive treatment consistent with the decision of the Hon'ble Supreme Court in *State Tax Officer v. Rainbow Papers Ltd.*

19. Ld. Counsel submits that the CST dues stand on a different footing from GVAT dues because the CST Act does not contain a provision equivalent to Section 48 of the GVAT Act creating a first charge over the property of the dealer. The Section 9(2) of the CST Act merely provides the machinery by which CST is to be assessed, reassessed, collected and enforced. Under the said provision, the authorities empowered under the general sales tax law of the appropriate State may assess, reassess, collect and enforce payment of

CST, as if the tax were payable under the general sales tax law of that State. The provision also permits exercise of the powers available under the State sales tax law for purposes of assessment and recovery.

20. It is submitted that Section 9(2), however, does not itself create a charge upon the assets of the Corporate Debtor. Unlike Section 48 of the GVAT Act, there is no express statutory language in Section 9(2) creating a first charge over the property of the dealer in respect of CST dues. The expression “as if” in Section 9(2) facilitates the adoption of the machinery and procedure for assessment and recovery; it does not import a substantive statutory charge which is absent from the CST Act.

21. It is his submission that the creation of a security interest is essential for a claim to be treated as a secured claim under the Code. Such security interest may arise through a contractual arrangement, such as mortgage or hypothecation, or through a specific statutory provision creating such interest. In the present case, there is no contractual security interest pleaded or shown in respect of the CST dues and, more importantly, there is no statutory provision in the CST Act creating a charge over the assets of the Corporate Debtor.

22. Ld. Counsel relies upon the principle laid down in the Judgement of Hon’ble Supreme Court in ***Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd.***, that statutory dues cannot acquire the character of secured dues, unless the statute under which the dues arise, contains an express provision creating a charge over the assets of the Corporate Debtor. In the present case, the CST Act contains no such charge-creating provision.

Consequently, the treatment of the CST dues in the Resolution Plan as government dues but unsecured operational debt is justified.

23. He further places reliance upon the judgment of this Appellate Tribunal in ***CA (AT) (Ins.) No. 495 of 2025, GST & Central Excise Angul Division, Rourkela GST Commissionerate v. Shri Dinesh Sood & Ors.,***. In that matter, the GST and Central Excise Department had challenged the approval of a Resolution Plan contending that its excise duty claims had wrongly been treated as unsecured operational debt, rather than secured debt and had relied upon Rainbow Papers. This Appellate Tribunal rejected the contention, noting, inter alia, that no statutory charge was created under the Central Excise Act; and that Rainbow Papers was concerned with Section 48 of the GVAT Act, which expressly creates a first charge; and that the statute in question in that case did not contain a corresponding charge-creating provision.

24. Ld. Counsel submits that the Appellant itself has confined the controversy in the present Appeal to the treatment of CST dues as secured or unsecured. In paragraph 9 of the Appeal, the Appellant has specifically stated that the grievance concerns rejection of the CST dues as secured dues. The Appellant has not challenged the classification and treatment of the GVAT dues, which have been recognised as secured and dealt with accordingly under the Resolution Plan. Thus, the scope of the present Appeals is confined to the CST component.

25. He submits that the Resolution Professional classified the Appellant's claim into secured and unsecured components strictly on the basis of the documents submitted by the State Tax Officer along with Form B and its supporting annexures. The Assessment Order and the Form B claim dated 07.10.2023 clearly distinguished between the GVAT dues, amounting to approximately Rs.15.12 lakh, and the CST dues, amounting to approximately Rs.1.67 crore.

26. However, it is submitted that the ratio of *Rainbow Papers* cannot be mechanically extended to CST dues. The judgment in Rainbow Papers proceeded upon the existence of Section 48 of the GVAT Act, which expressly creates a first charge. There is no equivalent provision in the CST Act creating a charge over the assets of the Corporate Debtor. Therefore, the statutory foundation which existed in respect of GVAT dues is absent in respect of CST dues.

27. Summing up his arguments Ld. Counsel submits that the precise issue as to whether the dues of the State Tax Department under the Central Sales Tax Act constitute secured debt has already been considered and answered by this Tribunal in ***Company Appeal (AT) (Ins.) No. 1804 of 2025***, particularly in paragraphs 9, 11 and 22 of the judgment annexed with the present submissions. The Respondent accordingly submits that the said judgment directly supports the classification of CST dues as unsecured and the treatment adopted by the Resolution Professional and reflected in the Resolution Plan.

ANALYSIS AND FINDINGS

28. We have gone through the documents available on record and heard the parties at length.

29. The issue for the determination in this case is whether the Central Sales Tax ("CST") dues amounting to Rs.1,65,87,840/-, of the Appellant could be treated as "Secured" by virtue of Section 9(2) of the Central Sales Tax Act, 1956 ("CST Act") read with Section 48 of the Gujarat Value Added Tax Act, 2003 ("GVAT Act").

30. There is no dispute that the Corporate Debtor had outstanding tax dues for the financial year 2014-15 and that the Appellant submitted its claim during the CIRP. The total claim submitted by the Appellant in Form-B was Rs.1,82,47,705/-, comprising dues under the GVAT Act and the CST Act. However, the present Appeal is confined to the treatment of the CST dues component amounting to Rs.1,65,87,840/- as unsecured. The Appeal itself challenges the Impugned Order specifically on the ground that the Appellant was not treated as a "Secured Creditor" qua the CST dues.

31. The Appellant submits that Section 9(2) of the CST Act requires the authorities empowered under the general sales tax law of the appropriate State to assess, reassess, collect and enforce payment of CST as if the same were tax payable under the general sales tax law of that State. According to the Appellant, since the relevant State legislation in the present case is the GVAT Act, the provisions of Section 48 of the GVAT Act would also apply to CST dues. Section 48 of the GVAT Act creates a first charge on the property

of the dealer. It is therefore submitted that a security interest stood created by operation of law and the Appellant was consequently entitled to be treated as a secured creditor under the Code. The Appellant relies principally upon *State Tax Officer v. Rainbow Papers Ltd.*, (2023) 9 SCC 545 and *Sanjay Kumar Agarwal v. State Tax Officer (1) and Anr.*, (2024) 2 SCC 362.

32. The Respondents, on the other hand, submit that there is a fundamental distinction between Section 48 of the GVAT Act and Section 9(2) of the CST Act. Section 48 expressly provides that the amount payable by a dealer towards tax, interest or penalty shall be a first charge on the property of the dealer. Section 9(2) of the CST Act does not contain any corresponding provision creating a charge over the property of the dealer. According to the Respondents, Section 9(2) merely adopts the machinery of the State sales tax law for assessment, collection and enforcement of CST dues and does not import the substantive first charge created under Section 48 of the GVAT Act.

33. Section 9(2) of the CST Act provides that the authorities empowered to assess, reassess, collect and enforce payment of tax under the general sales tax law of the appropriate State shall perform those functions in respect of CST as if the CST were tax payable under the general sales tax law of that State. The provision further permits such authorities to exercise the powers available under the general sales tax law and makes applicable various provisions relating to returns, assessment, recovery, appeals, reviews, revisions, penalties, interest and other matters. However, the section does not create a "charge" on the assets of the dealer. Section 9(2) of the Central Sales Tax Act, 1956 is reproduced below:

"Section 9

(1) xxxx

(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any [interest or penalty,] [Substituted by Act 10 of 2000, Section 119, for " penalty" (w.e.f. 12.5.2000).] payable by a dealer under this Act as if the tax or [interest or penalty,] [Substituted by Act 10 of 2000, Section 119, for " penalty" (w.e.f. 12.5.2000).] payable by such a dealer under this Act is a tax or [interest or penalty,] [Substituted by Act 10 of 2000, Section 119, for " penalty" (w.e.f. 12.5.2000).] payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, [refunds, rebates, penalties,] [Substituted by Act 61 of 1972, Section 6, for " refunds, penalties" (w.e.f. 1.4.1973).] [charging or payment of interest,] [Inserted by Act 103 of 1976, Section 6 (retrospectively).] compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly."

34. Section 48 of the GVAT Act, on the other hand, expressly creates a first charge over the property of the dealer in respect of amounts payable to the Government. It is this express statutory first charge, which formed the foundation of the decision of the Hon'ble Supreme Court in *Rainbow Papers*.

The Hon'ble Supreme Court considered the statutory charge under Section 48 of the GVAT Act and, under the law as it then stood, held that such security interest could be created by operation of law and that the State could consequently fall within the definition of a secured creditor.

35. The question in the present Appeal, however, is not whether Section 48 of the GVAT Act creates a first charge. It undoubtedly does. The question is whether that substantive first charge can be said to arise in respect of CST dues merely because Section 9(2) of the CST Act adopts the State's sales tax machinery for collection and enforcement of CST.

36. This precise question has subsequently been considered by this Tribunal in "***State Tax Officer v. Nitin Narang, RP of Afcan Impex Pvt. Ltd. & Ors.*, Company Appeal (AT) (Insolvency) Nos. 1804 & 1805 of 2025**", decided on 07.01.2026. In that case also, the State Tax Officer's GVAT dues had been accepted as secured, whereas the dispute concerned the CST dues. The Appellant therein had also relied upon Section 9(2) of the CST Act and contended that the entire mechanism of recovery under the State VAT law, including the first charge, consequently became applicable to CST dues.

37. We take note of the relevant paras 9, 11 and 22 of the Nitin Narang (Supra):

> *"**9.** There can be no quarrel to the proposition laid down by the Hon'ble Supreme Court in the above case. In the present cased also, the claim of the Appellant under GVAT Act has been accepted as secured creditor and with regard to which there is no dispute between the parties. The only issue which needs to be considered in the present case with regard to the dues of the Appellant under*

the CST Act as secured creditor. The Appellant has pleaded reliance on the judgment of the Hon'ble Supreme Court and on Section 9 sub-section (2) of the CST Act. Section 9 subsection (2) of the CST Act provides as follows: "9(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess re-assess, collect and enforce payment of tax, including any [interest or penalty,] payable by a dealer under this Act as if the tax or [interest or penalty] payable by such a dealer under this Act is a tax or [interest or penalty] payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly: Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, be rules made in this behalf make necessary provision for all or any of the matter specified in this sub-section.

11. *Section 48 of the GVAT Act specifically provides that any amount payable by a dealer, the Government shall have the first charge on the property of such dealer. Section 9 sub-section (2) clearly applies to machinery provision for recovery and enforcement of payment of tax, but it does not create any first charge on the assets of the CD. We, thus, are in agreement with the submission of the learned Counsel for the Respondent that Section 9 sub-section*

(2) is a machinery provision and not a provision creating separate statutory charge unlike Section 48 of GVAT Act. The provision of Section 9 sub-section (2) expressly limited to procedural matters - assessment, returns, recovery steps, appeals, penalties etc. and does not import any substantive rights of the State, much less a statutory first charge as created under Section 48 of the GVAT Act.

22. *Section 9 sub-section (2) of the CST Act, which is sheet anchor submission of the Appellant has been noticed above. We have observed that provisions of Section 9 sub-section (2) cannot be read to mean that by virtue of said provision any charge can be created on the assets of the CD by operation of law. Although Section 9 sub-section (2) refers to various provisions, which had been made applicable specially to recovery by CST Act as was applicable in the general sales tax laws, but the provision of creating first charge on the assets of the CD is absent in Section 9 sub-section (2), nor it can be impliedly imported with respect to dues under CST Act. We, thus, are of the view that Adjudicating Authority did not commit any error in not accepting the claim of the Appellant insofar as central dues of CST Act are concerned. We, thus, are not persuaded to accept the submission of the Appellant that dues under CST Act has to be treated as secured debt."*

38. We can see from the above that in *Nitin Narang (Supra)*, this Appellate Tribunal took note of the Judgement of Hon'ble SC in Rainbow Papers (Supra) and after considering the provisions of Section 48 of the GVAT Act and Section 9(2) of CST Act, held that Section 9(2) of the CST Act is a machinery provision and does not create a separate statutory charge in respect of CST dues. It further held that the provision cannot be read as impliedly importing the substantive first charge under Section 48 of the GVAT Act. The claim under the CST Act was therefore not held to be secured debt.

39. The aforesaid decision is squarely applicable to the facts of the present case. The statutory provisions relied upon by the Appellant in the present case are the same. The Appellant's claim to secured status for CST dues rests upon the same statutory route, namely Section 9(2) of the CST Act read with Section 48 of the GVAT Act. The reasoning adopted in Nitin Narang therefore directly answers the principal statutory question arising in the present Appeal.

40. This position has been further clarified by a subsequent amendment to the Insolvency and Bankruptcy Code, 2016. Parliament enacted the Insolvency and Bankruptcy Code (Amendment) Act, 2026, which came into effect w.e.f. 26.05.2026. The Amendment Act inserted an Explanation to Section 3(31) of the Code. The official text provides that, for removal of doubts, a security interest shall exist only where the right, title, interest or claim to property arises pursuant to an agreement or arrangement by the act of two or more parties, and that a security interest created merely by operation of any law for the time being in force is excluded. The said provision has been extracted below:

> *"**(31)** 'security interest' means right, title or 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 or any other security interest:*
>
> ***Explanation—For the removal of doubts, it is hereby clarified that the security interest shall exist only if it creates a right, title or interest or a claim to a property pursuant to an***

agreement or arrangement, by the act of two or more parties, and shall not include a security interest created merely by operation of any law for the time being in force;"

(Emphasis supplied)

41. The amendment is directly relevant because the Appellant does not rely upon any mortgage, hypothecation, pledge, contractual charge or other agreement or arrangement entered into with the Corporate Debtor. The alleged security interest in the present case is claimed to arise entirely by operation of statutory provisions, namely Section 9(2) of the CST Act. The Explanation has been introduced **"for the removal of doubts"**. A provision which is clarificatory in nature does not ordinarily create a new law from the date of its enactment; its purpose is to explain and make clear the meaning of the existing statutory provision from the date of the enactment of the statutory provision. Such a provision therefore operates retrospectively and applies to pending proceedings, unless the statute expressly provides otherwise. The mere fact that the clarification was enacted in 2026 does not mean that we could ignore it while deciding a pending appeal arising from an earlier order.

42. The 2026 amendment therefore operates as an additional statutory consideration. Even assuming, for the sake of argument, that the operation of Section 9(2) read with Section 48 could result in a charge arising by operation of law, such an interest would still have to satisfy the definition of "security interest" under the Code. Under the amended Section 3(31), an interest created merely by operation of law is expressly excluded. This distinction is important. The Appellant's tax claim itself is not in dispute

merely because its secured status is rejected. The State Tax Officer continues to have its admitted statutory claim against the Corporate Debtor

43. The present case, however, does not require the entire decision to rest upon the retrospective application of the 2026 amendment. Even independently of the amendment, the Appellant's claim encounters the difficulty that Section 9(2) of the CST Act does not itself create a first charge upon the property of the dealer. The issue has been already considered and settled by this Appellate Tribunal in *Nitin Narang (Supra)*, which had considered the Rainbow Papers Judgement of Hon'ble SC and held that the first-charge provision contained in Section 48 of the GVAT Act cannot be impliedly imported into CST dues merely through Section 9(2) of the CST Act.

44. We also note that the Impugned Order was passed on 05.05.2025, at a time when the 2026 amendment to Section 3(31) was not in force. The Adjudicating Authority was therefore examining the matter under the law then applicable. The Appellant had relied upon *Rainbow Papers* and contended that the statutory charge arising through Section 9(2) read with Section 48 was sufficient to confer secured status. The Adjudicating Authority, however, distinguished the statutory first charge under Section 48 of the GVAT Act from the machinery provision contained in Section 9(2) of the CST Act and declined to treat the CST dues as secured.

45. In view of the discussion in above paras, we are of the view that the Appellant has an admitted and enforceable claim of Rs.1,65,87,840/- towards CST dues, but such claim cannot be treated as a "Secured Debt" under the Code. Once the claim under CST is not treated as "Secured Debt" the question

of its treatment under Section 53(1)(b)(ii) of the code in the Resolution Plan does not arise.

46. Based on the above, we find no error in the impugned order passed by the Ld. Adjudicating Authority holding that the CST dues of Rs.1,65,87,840/- could not be treated as "Secured Debt". Consequently, the claim of the Appellant to be considered as Secured Creditor under Section 53(1)(b)(ii) of the code in the Resolution Plan does not arise. Accordingly, both the Appeals are dismissed. Pending IA's, if any, are closed. No order as to costs.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

Place: New Delhi

Harleen/
Pragya (LRA)