

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1068 of 2025**

**[Arising out of the Order dated 30.05.2025, passed by the  
'Adjudicating Authority' (National Company Law Tribunal, New  
Delhi, Court-IV in IA No. 2341/ND/2024 in Company Petition  
CP (IB) No. 1581/ND/2019)]**

**IN THE MATTER OF:**

**Federal Bank Limited**

Branch Office at: 1/7 first floor, Zonal office  
East Patel Nagar, New Delhi

**...Appellant**

**Versus**

**Mr. Pradeep Upadhyay**

Respondent - Liquidator Ofdugal Associates Pvt. Ltd  
B-2/42, Sector-18, Rohini, Delhi-110089

**...Respondent**

**Present:**

**For Appellant** : Mr. Brijesh Kumar Tamber, Mr. Prateek Kushwaha,  
Advocates

**For Respondent** : Mr. Pradeep Upadhyay, Respondent - Liquidator Mr.  
Pranjal Kishore, Mr. Nagarjun Sahu, Advocates for R-2  
Pavitra Sujoy, RP in person Narendra Kumar, Mr.  
Sanjeev Panda, Mr. Sumit Shukla, Advocates for  
Liquidator

**J U D G M E N T**  
**(Hybrid Mode)**

**[Per: Arun Baroka, Member (Technical)]**

The present Appeal is filed by the Appellant - Federal Bank against the Order dated 30.05.2025 passed by the Hon'ble National Company Law Tribunal, New Delhi Bench, Court - 4 in I.A. No. 2341 (ND)/ 2024 in CP (IB) No. 1581 (ND)/ 2019 vide which the Adjudicating Authority finds no merit in the

contentions raised by the Appellant - Federal Bank – Bank and directed to take steps as per the provisions of law.

2. Brief facts as narrated by the Appellant - Federal Bank are that the present Appeal is against the Order dated 30.05.2025 passed by the Hon'ble National Company Law Tribunal, New Delhi Bench, Court-4 in I.A. No. 2341 (ND)/2024 in CP (IB) No. 1581 (ND)/ 2019.

3. The Operational Creditor, M/s Roofs and Ceilings (I) Private Limited, had filed an application bearing no IB- 1581(ND) / 2019 under Section 9 of the Insolvency and Bankruptcy, 2016 for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor M/s. Dugal Associates Private Limited. Vide an order dated 11.12.2019, the Hon'ble Adjudicating Authority had initiated the CIRP of the Corporate Debtor. Further, on the application made by the Respondent, the then Resolution Professional under Section 33(2) of Insolvency and Bankruptcy Code, 2016 liquidation proceeding was initiated vide an order dated 12.01.2022.

4. Upon initiation of the liquidation process, the Appellant - Federal Bank had filed its claim with the Respondent - Liquidator for an amount of Rs. 6,09,82,591/- on 11.03.2022 by relinquishing security interest on free hold industrial property having plot area 600sq yards and double storey building with basement; mazanine floor having area 5264.89 sq ft at plot no. F-38/2 Okhla Industrial Area, Phase II, New Delhi 110020.

5. During the liquidation process the aforesaid asset was sold for a sum of Rs. 4,91,00,000/- against a reserve price of Rs. 4,90,00,000/- vide e-auction dated 12.07.2023 and the Respondent – Liquidator has intimated the same to the members of the Stakeholders Consultation Committee (SCC) in 13th meeting dated 04.08.2023.

6. In terms of Section 53 of the insolvency and Bankruptcy Code, 2016 read with Regulation 42 of IBBI (Liquidation Process) Regulations, 2016, the Respondent - Liquidator is supposed to distribute the sale proceeds within 90 days to the creditors.

7. The Respondent - Liquidator in the 15th meeting of Stakeholders Consultation Committee (SCC) has intimated that the pending assets such as AC, fans, Almirah, Furniture, electric equipment's generators etc. were sold on auction dated 11.09.2023 for a sum of Rs. 3,15,000/-. Apart from these the Respondent has also sold Toyota Innova Car and Tata Safari Car in the auction process. Respondent has duly received the sale proceeds for both the assets sold.

8. Further the receipts and expenditures has been discussed in the 15th meeting of the SCC dated 26.03.2024. The Respondent - Liquidator has intimated that out of total Receipts/ Sale realization, it has distributed the sum of Rs. 3,55,72,021/- to the Appellant - Federal Bank (as Rs. 3,00,00,000 towards the claim filed during the liquidation process and Rs. 55,72,021 towards the CIRP cost contributed earlier). It is submitted that the Respondent after the

distribution of the above mentioned amount has withheld the amount of Rs. 1,05,54,823/- and has not distributed the same as per the mandate under Regulation 42 of the Liquidation Process Regulation, 2016 within 90 days from the date of receipt of the amount from the sale realisation.

9. After the distribution of amount of Rs. 3 crores the Respondent has issued a cheque of Rs. 90,00,000/- but after issuing the said cheque, the Respondent has instructed for 'Stop Payment' and didn't allow Appellant - Federal Bank to realise the amount in terms of Section 53 of the Code, 2016.

10. In the 16th meeting of SCC dated 30.03.2024, the Respondent has revised the structure of distribution of the sale proceeds to the secured financial creditors against the mandate of Section 53 of the Code, 2016 by including the Excise and Taxation Department Gurgaon in the list of secured financial creditor despite the fact that the said department doesn't own any security interest within the meaning of Section 52 read with Section 53(1)(b)(ii) by wrongly placing the reliance on the Hon'ble Supreme Court judgment passed in the matter of **State Tax officer (1) versus Rainbow Papers Limited (2023) 9 SCC 545**.

11. The Appellant - Federal Bank and another secured financial creditor namely Punjab National Bank has strongly objected the above action of the Respondent - Liquidator in including the Excise and Taxation Department Gurgaon in the list of Secured creditors.

12. Respondent has blindly placed the reliance on the **Rainbow (Supra)** without considering the fact that the rainbow (Supra) judgment is passed based on the different facts and circumstances wherein the challenge was with respect to the hypothetical liquidation for giving effect to the Section 30(2)(b)(ii) and the Corporate Debtor is now is not in the stage of hypothetical liquidation but is actually undergoing the Liquidation Process. Moreover, the Rainbow case is about the non-consideration of claim filed after the approval of the Resolution Plan. Despite the fact that the Appellant - Federal Bank has apprised the non-applicability of the Rainbow (Supra) ruling in the present case, the Respondent by disregarding the law has instructed the secured creditors to escalate the matter before this Adjudicating Authority.

13. The Respondent has till the date of filing of the Application before Adjudicating Authority has not distributed the complete amount to the Appellant - Federal Bank as per the mandate of the Code, 2016 and Regulations specified thereunder and even did not keep the money in the interest bearing account. Such conduct of the Respondent has caused irreparable loss to the Appellant - Federal Bank as the Respondent - Liquidator has not acted in true spirit of law and even if there is a confusion or dispute with respect to the distribution of monies to the creditors then also no application has been moved by the Respondent for seeking appropriate directions from the Hon'ble Adjudicating Authority.

14. Respondent had wrongfully withheld the sale proceeds which were supposed to be distributed to the Appellant - Federal Bank in terms of Section 53 of the Code, 2016. The Appellant - Federal Bank is aggrieved by the conduct of the Respondent who was wrongfully withhold the monies belonging to the Appellant - Federal Bank and also failed to keep the same in the interest bearing account.

15. The Respondent has rigidly placed reliance on the Rainbow judgment by disregarding the opinion of the Hon'ble Supreme Court given in the matter of **Paschimanchal Vidyut Vitran Nigam Ltd. versus Raman Ispat Private Limited & Ors. (2023) 10 SCC 60** wherein the similar question of law arose and the state government did not get any relief from the Hon'ble Supreme Court as interpretation of Section 53 differs during the stage of the Corporate Insolvency Resolution Process as well as during the liquidation process.

16. The Respondent-liquidator contends that during the liquidation process, statutory dues payable to the Government of Haryana under the provisions of the Havana Value Added Tax Act, 2003 were considered. In view of the judgment of the Hon'ble Supreme Court in **State Tax Officer v. Rainbow Papers Ltd.**, wherein it has been held that where the statute creates a charge over the property of the assessee, the Government can be treated as a secured creditor under Section 53 of the IBC. Accordingly, the Liquidator, in compliance with the law laid down by the Hon'ble Supreme Court in Rainbow Papers (supra), considered Haryana VAT dues as secured debt subject to verification and

adjudication. the Appellant M/S Federal Bank Limited has filed an appeal before the Hon'ble NCLAT against the impugned order dated 30.05.2025 passed by the Hon'ble Adjudicating Authority taking plea against the treatment of Haryana VAT Department as a secured creditor and is claiming priority distribution under Section 53 of the IBC. The Respondent/Liquidator, relying on the reasoning laid down by the Hon'ble Supreme Court in the Rainbow Papers case, considered the claim of the Excise and Taxation Department as a 'Secured Creditor'. The claim of the Excise & Taxation Department is founded on Section 26 of the Haryana VAT Act, 2003, which is Pari Materia with Section 48 of the Gujarat VAT Act, as considered in the Rainbow Papers case, and thus qualifies as a 'Secured Creditor' under Section 3(30) of the IBC. Accordingly, the Respondent/Liquidator has treated the said department on par with other Secured Creditors in line with Section 53(1)(b)(ii) of the IBC and has distributed the sale proceeds among the members of the SCC accordingly. Liquidator submits that in the event this Hon'ble Appellate Tribunal allows the present appeal and decides the issue in favour of the Appellant, i.e., M/s Federal Bank Limited, and consequently holds that the Haryana VAT Department is not to be treated as a secured creditor for the purpose of distribution under Section 53 of the IBC, then the distribution of the liquidation proceeds may be made in favour of the Appellant/Federal Bank Limited accordingly. However, the Liquidator further submits that the issue regarding the status and priority of statutory dues of State Tax Authorities under the IBC has been the subject matter of various judicial pronouncements and is still evolving in different proceedings before competent courts. Therefore, in order

to safeguard the interest of the liquidation estate and to avoid multiplicity of proceedings, it is just, equitable and necessary that an appropriate protective direction be issued by this Hon'ble Appellate Tribunal to the following effect:

- i. In the event this Hon'ble Appellate Tribunal decides the present appeal in favour of the Appellant/Federal Bank Limited and any distribution of liquidation proceeds is made accordingly; and
- ii. Subsequently, if any competent court or tribunal, including the Hon'ble Supreme Court, finally adjudicates that the dues of the Haryana VAT Department constitute secured debt or are otherwise entitled to distribution under Section 53 of the IBC;

then M/s Federal Bank Limited shall furnish an indemnity undertaking to the Liquidator and shall refund or make good such proportionate amount as may become payable to the Haryana VAT Department pursuant to such final judicial determination. Such an indemnity direction would adequately protect the liquidation estate and ensure compliance with any subsequent judicial determination without causing prejudice to the stakeholders or resulting in avoidable litigation. In the event the appeal is allowed in favour of Federal Bank Limited, the Appellant shall furnish an indemnity undertaking to refund the proportionate amount received by it to the Liquidator, if any competent court subsequently holds that the Haryana VAT Department is entitled to distribution as a secured creditor under Section 53 of the IBC.

## **Analysis**

17. We have heard both sides and also gone through the material placed on record.

18. We note that on 30.05.2025, the Hon'ble Adjudicating Authority passed the impugned order stating that the application filed by the Appellant - Federal Bank does not warrant any merits and dismissed the Application filed by the Appellant - Federal Bank by referring the decision of the Hon'ble Supreme Court in State Tax Officer vs Rainbow Papers Limited (Civil Appeal Nos. 1661 of 2020 and 2568 of 2020 dated 06.09.2022) and giving various below-mentioned reasons:

“5. In the present matter we observe that the Excise & Taxation Department, Gurgaon has already submitted its claim, and its claim had been duly acknowledged and accordingly admitted by the Respondent - Liquidator as per the provisions of the Code.

6. We are inclined to refer the decision of the Hon'ble Supreme Court in the case of State Tax Officer vs Rainbow Papers Limited (Civil Appeal Nos. 1661 of 2020 and 2568 of 2020 dated 06.09.2022), wherein it is held that:

(I) Under the un-amended provisions of Regulation 12(1) of CIRP Regulations, the State Tax Officer (Appellant) was not required to file any claim. Read with regulation 10, the Appellant would only be required to substantiate the claim by the production of such materials: as might be called for. The time stipulations are not mandatory as is obvious from sub-regulation (2) of regulation 14, which enables the Interim Resolution Professional (IRP) or the RP, as the case may be, to revise the amounts of claims admitted,

including the estimates of claims made under the Sub-Regulations (1) of the said Regulation as soon as might be practicable, when he came across additional information warranting such revision. (Para 24).

(II) There was no obligation on the part of the State to lodge a claim in respect of dues which are statutory dues for which recovery proceedings have also been initiated. The state was never called upon to produce materials in connection with the claim raised towards statutory dues. (Para-25).

(III) The Books of Accounts of the Corporate Debtor would have reflected the liability of the Corporate Debtor to the State in respect of its statutory dues. In abdication of its mandatory duty, the RP failed to examine the Book of Accounts of the Corporate Debtor, verify and include the same in the information memorandum and make provision for the same in the Resolution Plan. The Resolution Plan does not conform to the statutory requirements of the Code and is, therefore, not binding on the State. (Para-26).

(IV) Regulation 12 of the 2016 Regulations deals with the time period for submission of a claim along with proof, as stipulated in the public announcement under Section 15 of the Code. The time period is, however, not mandatory but only directory. (Para-39)"

7. Further on careful perusal of Section 26 of Haryana Value Added Tax, 2003 we observe that the statute creates the first charge for the dues under the said act on the properties of the defaulter. The relevant extract is reproduced here-below:

"26. Amount due under this Act recoverable as arrears of land revenue Any amount due under this Act, including the Tax admitted to be due acceding to the returns filed, which remains unpaid after the last date specified for payment, shall be the first charge on the property of the defaulter and shall be recoverable from him as if the same were arrears of land revenue".

8. In view of the discussion above and the directions passed by the Hon'ble Supreme Court's in **State Tax Officer (1) v. Rainbow Papers Ltd., (2023) 9 SCC 545**, we do not find any merit in the contentions raised by the Applicant in the present application. The Ld. Respondent - Liquidator is directed to take steps as per the provisions of laws.

Accordingly, the present application i.e. IA/2341/ND/2024 stands dismissed."

17. The counsel of the Respondent – Liquidator relies on the judgment of **Rainbow Papers Limited (supra)** and with respect to **Paschimanchal Vidyut Vitran Nigam Ltd. (supra)** he has not stated anything in his reply. Also, on a pointed query from this bench, he concedes that it is up to the bench to decide the case on the merit and the law position.

18. Basis the material placed on record we find that Adjudicating Authority has erred in ignoring the judgement of the Hon'ble Supreme Court given in the matter of **Paschimanchal Vidyut Vitran Nigam Ltd. versus Raman Ispat Private Limited & Ors. (2023) 10 SCC 60** wherein when the similar question of law arose, the state government did not get any relief from the Hon'ble Supreme Court as interpretation of Section 53 differs during the stage of the

Corporate Insolvency Resolution Process as well as during the liquidation process.

19. The key issue in **Paschimanchal Vidyut Vitran Nigam Ltd. (supra)** was whether the electricity dues owed to PVVNL could be prioritized over other claims in the liquidation process under the Insolvency and Bankruptcy Code, 2016 (IBC). Hon'ble Supreme Court of India held that PVVNL, as a secured creditor, must participate in the liquidation process as per the IBC's "waterfall mechanism," which prioritizes claims. The Court dismissed PVVNL's appeal, affirming that the IBC overrides the Electricity Act, 2003, and directed the Respondent - Liquidator to process PVVNL's claim within 10 weeks. The Court distinguished this case from **Rainbow Papers**, emphasizing the IBC's precedence in insolvency matters.

20. Furthermore, we observe that Hon'ble Adjudicating Authority has erred in not considering the difference between the factual aspect and interpretation of the provision during the stage of insolvency resolution process as well as during the liquidation. We find that the judgment relating to **Rainbow Papers Limited (supra)** is not applicable in this case.

21. We find that the claims of Excise and Taxation Department Gurgaon cannot be not listed in the list of secured Financial Creditors as the said department is not having any security interest within the meaning of Section 52 read with Section 53(1)(b)(ii) of the Code. Adjudicating Authority has relied on Section 26 of Haryana Value Added Tax, 2003, which according to the

Adjudicating Authority overrides over the Insolvency Code. We find that this is not correct position of law. The judgment of **Rainbow Papers Limited (supra)** was for the facts of the case and particularly in this case when resolution process has gone beyond CIRP and Corporate Debtor has entered into liquidation; this will have no relevance. The Respondent – Liquidator’s contention that he may be allowed to distribute the money on obtaining indemnification from the Appellant, in case of any reversal he has paid back, is not an acceptable contention, and he is against the settled position of law, and is therefore rejected. We also observe that the Respondent – Liquidator’s contention that the subject matter of various judicial pronouncements is still evolving in different proceedings before competent courts and *“in the event the appeal is allowed in favour of Federal Bank Limited, the Appellant shall furnish an indemnity undertaking to refund the proportionate amount received by it to the Liquidator, if any competent court subsequently holds that the Haryana VAT Department is entitled to distribution as a secured creditor under Section 53 of the IBC.”* is untenable as being against the settled position of law, and is therefore rejected. Furthermore, Section 238 overrides other laws, which clearly states that Section 238 as follows:

**“238. Provisions of this Code to override other laws.**

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

And therefore, Section 26 of Haryana Value Added Tax, 2003, cannot override over the Insolvency Code of 2016.

22. Thus, we are inclined to come to a conclusion that the Respondent – Respondent - Liquidator has wrongly withheld the amount and there is no basis to distribute the same to the State Tax Department when the dues of the Appellant - Federal Bank being Secured Financial Creditor are not fully satisfied having the higher ranking in the waterfall mechanism.

**Order**

19. In the facts and circumstances of the case, we are constrained not to agree with the order of Adjudicating Authority. Accordingly, we set aside the order and we allow the appeal and we direct the Respondent – Respondent - Liquidator to distribute the entire sale proceeds in terms of Section 53 of the Insolvency and Bankruptcy Code, 2016 in favour of Secured Financial Creditor, who has relinquished the security interest in terms of Section 52 i.e., Federal Bank Limited.

**[Justice N Seshasayee]  
Member (Judicial)**

**[Arun Baroka]  
Member (Technical)**

**New Delhi.  
May 11, 2026.**

*pawan/rashmi*