

IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH

KOLKATA, COURT- I

I.A. (IB) No. 1540/ KB/ 2024

And

I.A. (IB) No. 1314/ KB/ 2024

In

C.P. (IB) No. 03/ KB/ 2017

An Application under section 60(5) of the IBC, 2016

IN THE MATTER OF:

Deputy Commissioner of Commercial Taxes & GST, C.T & GST Circle,
Mayurbhanj, Odisha

...APPLICANT

VERSUS

Shri Vinod Kothari, Liquidator of M/S. Nicco Corporation Limited

...RESPONDENT

AND

An Application under section 60(5) of the IBC, 2016

IN THE MATTER OF:

State Tax Officer-1, Unit- 39, Vadodara

...APPLICANT

VERSUS

Shri Vinod Kothari, Liquidator of M/S. Nicco Corporation Limited

...RESPONDENT

IN

An Application under section 10 of the IBC, 2016

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In
C.P. (IB) No. 03/ KB/ 2017**

IN THE MATTER OF:

Nicco Corporation Limited (In Liquidation)

...CORPORATE DEBTOR

Date of Pronouncement 09.06.2026

CORAM:

Cmde. Siddharth Mishra, Member (Technical)

Smt. Bidisha Banerjee, Member (Judicial)

APPEARANCE:

Mr. Anand Das, Adv.] For Applicant in IA (IBC) 1540/KB/2024

Ms. Barsha Dikshit, PCS] For Liquidator

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O R D E R

Per: Bidisha Banerje, Member (Judicial)

1. The Court convened in hybrid mode today.
2. The application **IA (IB) 1540/KB/2024** has been filed by the Deputy Commissioner of Commercial Taxes & GST, C.T & GST Circle, Mayurbhanj, Odisha, seeking for the following prayers:
 - “1. *The Hon'ble Tribunal may be pleased to admit the Petition and direct the Respondent to treat its **claim under Secured Creditor and update the list of stakeholders accordingly.***
 2. *The Hon'ble Tribunal may be pleased to pass any other orders as this Hon'ble Tribunal deems fit and proper in the interest of Justice.”*
3. The application **IA (IB) 1314/KB/2024** has been filed by the State Tax Officer-1, Unit-39, Vadodara, seeking for the following prayers:
 - “A. *YOUR LORDSHIP MAY BE PLEASED TO allow this application.*
 - B. *YOUR LORDSHIP MAY BE PLEASED TO issue directions to the Liquidator to recognize the claim of the applicant as secured creditors and make payments to the applicants as receivable to the secured creditors in light of the decision of the Hon'ble Supreme Court.*
 - C. *YOUR LORDSHIP MAY BE PLEASED TO grant any other and further relief as may be deemed fit and proper in the facts of the present case.”*

4. BRIEF BACKGROUND

- 4.1 The Corporate Debtor, **M/s. Nicco Corporation Limited**, carried out business activities in the State of Odisha and was registered under various state taxing statutes.
- 4.2 During the course of its business, the Corporate Debtor was assessed for dues under the **Central Sales Tax (Orissa) Rules (CST Rules)**, and

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the **Orissa Entry Tax (OET) Act**, totalling an outstanding amount of **Rs. 5,68,97,061/-**.

4.3 The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by this Tribunal on **18.01.2017**. Due to the unavailability of a viable resolution plan, this Tribunal ordered the **liquidation** of the company on **17.10.2017**, and appointed Shri Vinod Kothari, the Respondent herein, as the Liquidator.

4.4 Upon commencement of liquidation, the Liquidator issued public announcement for inviting claims from creditors, in terms of IBBI (Liquidation Process) Regulations, 2016 ("Liquidation Regulations") in four newspapers being 'Financial Express', 'Aaj Kal', 'Odisha Bhaskar' on 25th October, 2017 and 'Mumbai Mitra' on 26th October, 2017, wherein the last date for submission of claims was **22nd November, 2017**.

4.5 Pursuant to the said public announcement, and claims received thereof, the list of stakeholders as on 17th October, 2017 was prepared and submitted to this Bench. The said list of stakeholders was also uploaded on the website of the Liquidator.

4.6 Long thereafter, the Deputy Commissioner of Commercial Taxes & GST, C.T & GST Circle, Mayurbhanj, Odisha, being the Applicant in present IA (IB) 1540/KB/2024, submitted its delayed claim in Form-C on 09.10.2020. While the Liquidator initially rejected the claim due to the delay, the present Applicant preferred **IA 1298/2020** to seek condonation of delay. This Tribunal, in the said I.A. No. 1298/2020, condoned the delay on 09.12.2020, and directed the Liquidator to adjudicate the claim on its merits. On **17.04.2023**, the Liquidator admitted the full claim of the said Deputy Commissioner under the head of "**Government dues**", effectively treating the Applicant as an **Operational Creditor**.

4.7 Similarly, the State Tax Officer-1 of Unit 39, Vadodara, being the Applicant in present IA (IB) 1314/KB/2024, lodged its delayed claim in Form-C on 23.11.2022, which was initially rejected by the Liquidator due to the claim being filed after the last date of submission of claim i.e. 22nd November, 2017. Later, pursuant to the delay being condoned

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by this Bench vide order dated 20.04.2021 in the matter of IA Nos. 300/KB/2021 and 301/KB/2021, the claim was also subsequently fully admitted as Government dues.

4.8 Again after a considerable delay, the present applications, **I.A. (IB) 1540/KB/2024 and I.A. (IB) 1314/KB/2024**, have been filed by the respective Applicants *inter alia* seeking a direction to the Liquidator to update their status from operational creditors to secured creditors.

SUBMISSIONS OF THE APPLICANTS

5. IA (IB) 1540/KB/2024

5.1 The Applicant in IA 1540/KB/2024 primarily relies on the judgment of the Hon'ble Supreme Court in **State Tax Officer vs. Rainbow Papers Ltd.**, which held that if a statutory charge is created by operation of law, the government authority must be treated as a **Secured Creditor** under Sections 3(30) and 3(31) of the Insolvency and Bankruptcy Code, 2016 (IBC).

5.2 It is submitted by the Applicant that **Section 11 of the OET Act** explicitly provides that unpaid tax dues shall be a **charge on the property of the dealer**. Furthermore, while demands were also raised under the Central Sales Tax (Orissa) Rules, the Applicant points out that these rules do not independently prescribe a method for recovery in cases of non-payment. However, by strength of Rule 22 of the CST(O) Rules, the provisions of the Orissa Value Added Tax Act, 2004, are made applicable *mutatis mutandis* to such matters. Consequently, the Applicant relies on **Section 55 of the OVAT Act**, which stipulates that tax dues shall be a "**first charge**" on the **property of the dealer**, as being legally relevant and applicable to the outstanding CST and OET liabilities.

5.3 The Applicant contends that since the **assessment orders determining the tax liability were passed much prior to the initiation of the CIRP**, a statutory charge was created by operation of law over the assets of the Corporate Debtor. In support of this position, the Applicant relies on the proposition of law affirmed by the **Hon'ble High Court of Gujarat in Shree Radhekrushna Ginning and Pressing Pvt. Ltd. v.**

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State of Gujarat (Special Civil Application No. 5413 of 2022), which held that a charge is established in favor of the State by operation of law "**the day the assessment order came to be passed determining the liability**". Consequently, the Applicant argues that because the determination of dues preceded the insolvency process, they must be recognized as a Secured Creditor.

5.4 Furthermore, the Applicant cites various orders from other NCLT Benches (Cuttack, Ahmedabad, and Mumbai) where state tax departments were accorded secured creditor status in liquidation following the *Rainbow Papers* ratio.

6. IA (IB) 1314/KB/2024

6.1 The State Tax Officer-1, Unit-39, Vadodara, being the Applicant in IA 1314/KB/2024, also primarily relies on the judgment of the Hon'ble Supreme Court in **State Tax Officer vs. Rainbow Papers Ltd.**, contending that the said judgment squarely covers the issue in question, namely, whether the State Tax Officer is entitled to priority in recovery of dues under Section 48 of the Gujarat Value Added Tax Act, 2003 and rules in the affirmity.

7. SUBMISSIONS OF THE RESPONDENT

7.1 Per Contra, the Respondent Liquidator would submit that the judgment in **State Tax Officer v. Rainbow Papers Ltd.**, relied upon by the Applicant, was **distinguished later on** by the Hon'ble Supreme Court in the case of **Paschimanchal Vidyut Vitran Nigam Ltd. (PVVNL) v. Raman Ispat Private Limited**, where the Hon'ble Apex Court clarified that dues payable or requiring credit to the Treasury, such as taxes and tariffs, are "government dues" and are therefore covered by the waterfall mechanism under Section 53 of the IBC.

7.2 It is further submitted that a **Curative Petition (Civil) No. 50001 of 2023** challenging the *Rainbow Papers* judgment is currently pending consideration before the Hon'ble Supreme Court. The Respondent contends that in view of such pendency, reliance on the *Rainbow Papers* judgment is neither appropriate nor conclusive at this stage.

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- 7.3 The Respondent places heavy reliance on the **legislative intent** underlying the proposed **Insolvency and Bankruptcy Code (Amendment) Bill, 2025**. The Respondent points out that the proposed amendment seeks to insert an explanation clarifying that the **mere operation of law shall not, in itself, be construed as having created a security interest**. This reinforces the principle that a security interest must arise from an express act or agreement, not by automatic operation of statutory provisions. The Respondent argues that since the proposed amendment is clarificatory and explanatory in nature, once enforced, it will apply retrospectively as ruled by the Hon'ble Supreme Court in **Zile Singh vs State of Haryana & Ors.** [2004 AIR SCW 5842].
- 7.4 The Liquidator further relies on judgments of this Hon'ble Bench in similar matters, specifically **Kolkata Municipal Corporation v. Uttam Tekriwal, Liquidator of Maximum Agency Private Limited** and **Assistant Commissioner, Central Excise, CGST & CX, Dankuni Division Howrah Commissionerate v. Shri Kshitiz Chhawchharia**. In these cases, it was held that claims raised by Government departments are in the nature of "**crown debts**" and must be classified as Government dues or operational debts to be dealt with under the **waterfall mechanism** provided under Section 53.
- 7.5 Finally, the Respondent submits that the liquidation process of the Corporate Debtor is at its **verge of completion**. The Liquidator has already realized all assets and distributed a **substantial chunk of the proceeds** among the stakeholders. Allowing the Applicant's prayer to treat government dues at par with first-priority secured creditors at this late stage would **fundamentally disrupt the entire liquidation process** and undermine the framework and objectives of the Code.

ANALYSIS AND FINDINGS

8. Learned Counsels appearing for the parties were heard and the documents on record perused.
9. Having noted commonality of issues, prayers and grounds in both the applications, they are taken up for consideration analogously, to be disposed of by a common order.

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10. Evidently, to seek their respective reliefs, both the Applicants have heavily relied upon the decision of Rainbow Papers Private Limited. It is to be noted that since the Rainbow Papers decision did not address the waterfall mechanism prescribed in section 53 of the Code the above case was distinguished later on by the Hon'ble Supreme Court in the case of **Paschimanchal Vidyut Vitram Nigam Ltd. (PVVNL) v. Raman Ispat Private Limited** having noted as follows:

“46. The specific mention of other class of creditors whose dues are statutory, such as dues payable to workmen or employees, “the provident fund, the pension fund, the gratuity fund” under Section 36(4), which excludes these enumerated amounts from the liquidation, especially clarifies that not all dues owed under statute are treated as ‘government’ dues. In other words, dues payable to statutory corporations which do not fall within the description “amounts due to the central or state government” such as for instance amounts payable to corporations created by statutes which have distinct juristic entity but whose dues do not constitute government dues payable or those payable into the respective Consolidated Funds stand on a different footing. Such corporations may be operational creditors or financial creditors or secured creditors depending on the nature of the transactions entered into by them with the corporate debtor. On the other hand, dues payable or requiring to be credited to the Treasury, such as tax, tariffs, etc. which broadly fall within the ambit of Article 265 of the Constitution are ‘government dues’ and therefore covered by Section 53(1)(f) of the IBC.

...

49. Rainbow Papers (supra) did not notice the ‘waterfall mechanism’ under Section 53 – the provision had not been adverted to or extracted in the judgment. Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This

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design was either not brought to the notice of the court in Rainbow Papers (supra) or was missed altogether. In any event, the judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government.

50. The Gujarat Value Added Tax Act, 2003 no doubt creates a charge in respect of amounts due and payable or arrears. It would be possible to hold [in the absence of a specific enumeration of government dues as in the present case, in Section 53(1)(e)] that the State is to be treated as a 'secured creditor'. However, the separate and distinct treatment of amounts payable to secured creditor on the one hand, and dues payable to the government on the other clearly signifies Parliament's intention to treat the latter differently – and in the present case, having lower priority. As noticed earlier this intention is also evident from a reading of the preamble to the Act itself.”

(Emphasis Added)

11. Further, the Hon'ble Supreme Court in the same case of **Paschimanchal Vidyut Vitram Nigam Ltd. (PVVNL) v. Raman Ispat Private Limited** has also clarified the position and overriding effect of the IBC, 2016 over other statutes, where it held the following:

“52. In a similar manner, it is held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante Clauses (i.e., Section 173 and 174). The position of law with respect to primacy of the IBC, is identical with the position discussed in Sundaresh Bhatt and Duncan Industries (supra) [refer also: Innoventive Industries (supra), CIT v. Monnet Ispat & Energy Ltd. (2018) 18 SCC 786, Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.

...

69. We now turn our attention to Section 53 of the Code which begins with a non-obstante Clause and states that notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of liquidation assets shall be distributed in the order of priority, which is stipulated, and

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within such period and such manner as may be specified. The consequence of Sub-section (1) to Section 53 of the Code is that it will override the rights of parties, including the secured creditor, when the said provision applies. Section 53 of the Code is the complete and comprehensive code which ensures collection of assets and then provides the manner in which the creditors are to be paid. Even the rights of the secured creditor falling Under Section 53 of the Code to enforce, realise, settle, compromise or deal with the secured assets as applicable to the security interest are diluted and compromised.”

12. As pointed out by the Liquidator, this Tribunal has consistently followed the ratio of **PVVNL v. Raman Ispat Private Limited** in recent matters, including **Kolkata Municipal Corporation v. Uttam Tekriwal**, involving similar claims by statutory authorities.
13. The proposed amendments to the Code categorically deal with the distinguishing feature of dues that PVVNL seeks to highlight. The relevant amendments are as follows:

Sub-section (31) of section 3 of IBC, 2016:

“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 of any person:

Provided that security interest shall not include a performance guarantee;

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 Added)

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14. Having considered the implication of the said amendments in section 3(31) of the Code, Hon'ble High Court of Madras in **M/S. Avenue Realty (A Partnership Firm) vs The Assistant Commissioner** has observed as under:

“38. Section 2 of the Amendment Act amends Section 3(31) of the Insolvency and Bankruptcy Code, thereby clarifying the nature of “security interest”, which reads as follows:

“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.”

39. The Statement of Objects and Reasons for the aforesaid amendment is as follows:

“Clause 2 of the Bill seeks to amend section 3 of the Insolvency and Bankruptcy Code, 2016 (‘Code’). It seeks to insert an explanation in clause (31) of section 3 of the Code to clarify that security interest shall exist only when 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. Hence, a provision in central or state legislation or a subordinate law that states that a charge will be made on the property of the corporate debtor for non-payment of tax or a penalty shall not be considered a security interest. A security interest shall only exist where the parties to an agreement or arrangement agree to create a right, title or interest or a claim to a property, whether or not it is in writing. For instance, a charge created over the property of the corporate debtor to secure the financial debt under an agreement, or an arrangement where a mortgage is created by deposit of title deeds of its property between two or more persons.”

40. Thus, the amendment explicitly seeks to undo the consequences of the decision in Rainbow Papers. Being a clarificatory amendment, there is no doubt that it will have retrospective application.

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41. *In this regard, the judgment of the Hon'ble Supreme Court in **R. Rajagopal Reddy vs Padmini Chandrasekharan** reported in **AIR 1996 SC 238**, is extracted below:*

“17. As regards, reason No. 3, we are of the considered view that the Act cannot be treated to be declaratory in nature. Declaratory enactment declares and clarifies the real intention of the legislature in connection with an earlier existing transaction or enactment, it does not create new rights or obligations. On the express language of Section 3, the Act cannot be said to be declaratory but in substance it is prohibitory in nature and seeks to destroy the rights of the real owner qua properties held benami and in this connection it has taken away the right of the real owner both for filing a suit or for taking such a defence in a suit by benamidar. Such an Act which prohibits benami transactions and destroys rights flowing from such transactions as existing earlier is really not a declaratory enactment. With respect, we disagree with the line of reasoning which commanded to the Division Bench. In this connection, we may refer to the following observations in ‘Principles of Statutory Interpretation’, 5th Edition 1992, by Shri G.P. Singh, at page 315 under the caption ‘Declaratory statutes’ :-

The presumption against retrospective operation is not applicable to declaratory statutes. As states in CRAIES and approved by the Supreme Court : “For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word ‘declared’ as well as the word ‘enacted’. But the use of the words ‘it is declared’ is not conclusive that the Act is declaratory for these words may, at times be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is to explain an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to

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supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force the amending Act also will be part of the existing law.

In Mithilesh Kumari v. Prem Bihari Khare, Section 4 of the Benami Transactions (Prohibition) Act, 1988 was, it is submitted, wrongly held to be an Act declaratory in nature for it was not passed to clear any doubt existing as to the common law or the meaning or effect of any statute. The conclusion however, that Section 4 applied also to past benami transactions may be supportable on the language used in the section."

42. *The Bill was later referred to a Standing Committee, which examined the aforesaid amendment and made the following observations:*

"Section 3 (30) of the Code defines a 'secured creditor' as a creditor in favour of whom security interest is created. In State Tax Officer v. Rainbow Papers Limited (Civil Appeal No. 1661 of 2020), the Supreme Court interpreted the definition of 'secured creditor' to hold that any government or governmental authority shall be a secured creditor as the charge created by a statutory law can be considered as a 'security interest'. The definition of 'security interest' under the Code means that a 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 of performance of an obligation. It is intended to be restricted to 'transactions', which means that the security interest should be created pursuant to an agreement on the part of the asset holder while giving rights to the other party. Further, 'transaction', as defined under section 3 (33),

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includes an agreement or arrangement in writing to transfer assets, funds, goods, or services from or to the CD. Thus, it is clear that the concept of security interest was intended to cover a consensual transaction between parties (and not any similar interest created through mere operation of a statute) Clause 2 of the Bill seeks to insert an explanation in clause (31) of section 3 of the Code to clarify that security interest shall exist only when 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. Hence, a provision in central or state legislation or a subordinate law that states that a charge will be made on the property of the corporate debtor for nonpayment of tax or a penalty shall not be considered a security interest. A security interest shall only exist where the parties to an agreement or arrangement agree to create a right, title or interest or a claim to a property, whether or not it is in 14 writing. For instance, a charge created over the property of the corporate debtor to secure the financial debt under an agreement, or an arrangement where a mortgage is created by deposit of title deeds of its property between two or more persons.”

43. *Later, the aforesaid amendment has also received the assent of the President on 06.04.2026 and published in the official gazette. The above clarificatory amendment also supports the interpretation given in in Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd., reported in (2023) 10 SCC that tax dues cannot be equated as being akin to the dues payable to a secured creditor.”*

(Emphasis Added)

15. In light of the binding clarifications in PVVNL, corresponding amendments that have come into effect on 26.05.2026, and the consistent view taken by this Tribunal that Section 53 must be strictly adhered to without interference from outside statutory charges, we find no legal infirmity in the Liquidator categorizing the Applicants’ claims as ‘Government dues’. Hence, the prayers to update the Applicants’ status to that of a Secured Creditor is devoid of merit.

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16. Hence, **I.A. (IB) No. 1540/ KB/ 2024 and IA 1314/KB/2024** are not maintainable and **both are dismissed** accordingly.

17. Urgent Certified Copies of this order, if applied for, be issued by the Registry upon compliance of all requisite formalities.

**Cmde. Siddharth Mishra
Member (Technical)**

**Smt. Bidisha Banerjee
Member (Judicial)**

Order signed on 09.06.2026

Bhatt, O. [LRA]