



W.A.(MD)No.2662 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: **09.04.2026**

DELIVERED ON : **17.04.2026**

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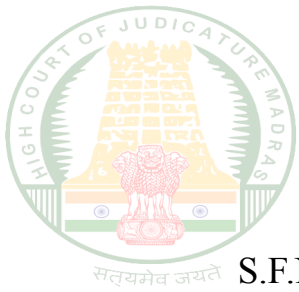
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A.(MD)No.2662 of 2025
and
C.M.P.(MD)No.15106 of 2025

M/s.Avenue Realty (A Partnership Firm)
Rep. By its Managing Partner Mr.T.M.Elayaraja,
Reg. Office No.39/19 Second Floor, 1st Cross Street,
West CIT Nagar, Nandanam, Chennai – 600 035. ... Appellant

Vs.

- 1.The Assistant Commissioner,
Srirangam (GST Circle),
Moolathoppu Melur Road,
Srirangam, Tiruchirapalli – 620 006.
- 2.Sub-Registrar, Keezhasathanur,
Palani Nagar, K.K.Nagar,
Tiruchirappalli,
Tamil Nadu – 620 021.
- 3.RLS Alloys Private Limited (Under Liquidation)
Rep. By its Liquidator, Mr.S.R.Shiraam Shekher,
CIN:U27108TN2006PTC058862
Rep. By its Managing Director/Authorized
Representative,



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S.F.No.:118/1,2,3, Sethurapatti Road,
Fathima Nagar, Tiruchirappalli,
Tamil Nadu, India – 620 012.

... Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 14.08.2025 passed in W.P.(MD)No.8260 of 2025.

For Appellant : Mr.T.Mohan, Senior Counsel,
for Mr.V.G.Suresh Kumar

For Respondents : Mr.R.Suresh Kumar,
Addl. Govt. Pleader for R1
Mr.F.Deepak,
Spl. Govt. Pleader for R2
Mr.Ramasamy Meyyappan for R3

JUDGMENT

(Judgment of the Court was delivered by **N.SATHISH KUMAR, J.**)

Aggrieved over the order of the learned Single Judge, dismissing the Writ Petition, by holding that the petitioner is to recover the amount from the person to whom amounts were paid by the liquidator through the liquidation process, the present Writ Appeal has been filed.

2. The Writ Petition has been originally filed by the appellant to quash the attachment over the properties purchased under public



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auction conducted under the provisions of the 'Insolvency Bankruptcy Code, 2016' (hereinafter referred to as 'the IBC').

3. The following of the brief facts, which are necessary for the disposal of the Writ Appeal, are as follows:

3.1. The subject property originally held by the third respondent viz., RLS Alloys Private Limited. On the basis of the application filed by one M/s.Foseco India Limited, an operational creditor, the third respondent company was ordered to be liquidated by the 'National Company Law Tribunal' (hereinafter referred to as 'NCLT'), vide order dated 14.06.2019. As there was no successful resolution application, the NCLT ordered the company into liquidation. In a public auction conducted by the liquidator, the Writ Petitioner become successful bidder and has purchased the property on 24.10.2024. It is relevant to note that for tax arrears under the Tamil Nadu Value Added Tax, the order of attachment was passed by the first respondent as early as on 03.02.2016. The same has been reflected in the Encumbrance Certificate. The Writ Petitioner being successful auction purchaser under the IBC proceedings, sought for quashing of the attachment order.



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4. The learned Single Judge, after considering the facts of the case, while dismissing the Writ Petition, has held that tax due is also secured and the first respondent also comes under the purview of the secured creditor and hence, secured interest is created. Therefore, the liquidator could not have ignored the rights of the 1st respondent, as the 1st respondent is a secured creditor within the meaning of Section 3(30) of the IBC. Challenging the said order, the present Writ Appeal has been filed.

5. The learned Senior Counsel appearing for the appellant would submit that the learned Single Judge has simply followed the judgments of the Hon'ble Supreme Court in *State Tax Officer Vs. Rainbow Papers Ltd.*, reported in (2023) 9 SCC 545 and came to the conclusion, whereas other judgments of the Hon'ble Supreme Court have taken a different view and have clearly held that *Rainbow Papers's case* will apply on the facts of a particular case.

5.1. Further, it is also submitted by the learned Senior Counsel appearing for the Appellant that now the amendment has been brought for removing the doubts. Section 2 of the Amendment Act, amending



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Section 3(31) of the IBC, clarifies the nature of security interest. That amendment also received the assent of the President on 06.04.2026. Therefore, once the clarificatory amendment was brought, it has to be held that it applies only retrospectively and therefore, the interpretation of the learned Single Judge that the first respondent has also come within the purview of the secured creditor was not correct.

5.2. It is further submitted that once the claim application has not been filed in the liquidation process and a sale has been held under the IBC under Section 3(30) of the IBC, the assets of the corporate debtor have to be dealt with only under Section 53 of the IBC, which is commonly known as “waterfall mechanism”. Therefore, the learned Single Judge has not considered this aspect.

6. The learned Additional Government Pleader appearing for the first respondent, the learned Special Government Pleader appearing for the second respondent and the learned counsel appearing for the third respondent would submit that admittedly, there was an attachment order passed by the first respondent as early as on 03.02.2016. Section 42 of the Tamil Nadu Value Added Tax Act, 2006, makes it clear that arrears of



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tax could operate as a charge on the properties of the person liable to pay such tax, penalty or interest. This aspect has already been decided in the ***Rainbow Papers's case.***

6.1. Hence, it is their submission that as long as there is a statutory right created, the attachment cannot be raised. Therefore, their submission is that the learned Single Judge is right. They also placed reliance on the judgment of the Division Bench of this Court in W.P.No. 26362 of 2024, dated 01.09.2025, to buttress their submissions. Further, it is their contention that there is no provision to remove the attachment in the Registration Act. In support of their contention, they relied on a judgment of the Hon'ble Supreme Court in ***Tamil Nadu Mercantile Bank Ltd., Vs. Sub Registrar and another*** reported in ***2024 SCC OnLine Mad 5692.***

7. We have heard the submissions made on either side and perused the materials available on record.

8. The admitted fact is that the first respondent has sent a letter dated 10.08.2020, bearing reference Rc.No.169/2020/A5, to the

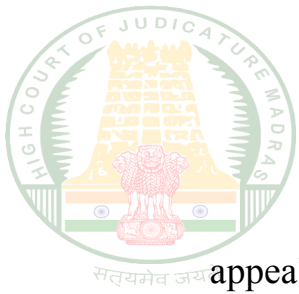


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Resolution Professional, indicating that the amount payable to the first respondent may be taken into consideration and requested the liquidator to settle the sales tax dues to the Government, when the sale proceeds on the property is made. It is also an admitted case that the first respondent made a claim with the Official Liquidator and the same has been rejected by the Official Liquidator as a time-barred claim and in fact, the liquidator requested the first respondent to move the NCLT to get approval to add the first respondent's claim list. This communication has been sent by the Official Liquidator on 24.08.2020.

8.1. In the meanwhile, the Liquidator has also filed an application before the NCLT for removal of attachment in the property. The said application in I.A.No.932/2020 was also dismissed by the NCLT by order dated 15.07.2022. An application filed by the first respondent, after being rejected by the Official Liquidator, was also dismissed for non-prosecution by the NCLT in Ia/372(CHE)/2022 in MA559/2019, vide order dated 08.01.2024. Now it is stated during the submission that an application has been filed to restore the same. Be that as it may, the claim of the first respondent is not admitted and according to the petitioner, the same is still pending, but the documents indicate that



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appeal filed by the first respondent is dismissed for non-prosecution as early as on 08.01.2024.

9. In this background, now the issue arise in this Writ Appeal is whether an auction purchaser, who has purchased an asset in liquidation proceedings under the IBC, can seek removal of attachment made by the authority under the TNVAT Act, 2006, vide order dated 03.02.2016, for arrears payable by the corporate debtor for the assessment years 2007-08 to 2014-15.

10. It is admitted case that the claim has not been filed in time by the first respondent before the Liquidator. The claim application filed before the liquidator has been rejected and the application filed before the NCLT was also dismissed for non-prosecution. Though it is stated that the appellant has filed an application for restoration, the fact remains that the claim has not been admitted. In this background, we have to see whether the charge created under Section 42 of the TNVAT Act, 2006 has come within the ambit of Section 3(30) of the IBC.



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11. Section 42 of the TNVAT Act, 2006 provides that tax which has become due under Section 21 shall become payable without notice of demand, and arrears of such tax would operate as a charge on the properties of the person liable to pay such tax, penalty or interest.

12. Section 3(30) of the IBC defines “secured creditor” as follows:

“secured creditor” means a creditor in favour of whom security interest is created”

13. Section 3(31) defines “security interest” as follows:

“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.”



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14. The question as to whether a statutory dues of Central and State Governments would stand extinguished upon the approval of the resolution plan under Section 31 of the IBC, came up for consideration before the Supreme Court in ***Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.***, reported in (2021) 9 SCC 657, wherein it was held as follows:

“All the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

15. In the context of dues payable by the corporate debtor to the Income Tax Department, in the aforementioned judgment, it was held as follows:

“146. It is further to be noted that the Income Tax Authorities had approached this Court with respect to income tax dues concerning the present petitioner by way of Special Leave Petition (Civil) No. 6483 of 2018. This Court passed the following order in the said special leave petition on 10-8-2018:

- “1. Heard. Delay, if any, is condoned.*
- 2. Given Section 238 of the Insolvency and*



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Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act.

3. We may also refer in this connection to Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. reported in (2000) 5 SCC 694 and its progeny, making it clear that income tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons.

4. We are of the view that the High Court [CIT v. Monnet Ispat & Energy Ltd., 2017 SCC OnLine Del 12759] of Delhi, is, therefore, correct in law.

5. Accordingly, the special leave petitions are dismissed. Pending applications, if any, stand disposed of.”

16. The decision in ***Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.***, reported in (2021) 9 SCC 657, concerned a stage where a resolution plan had been approved under Section 31 of the IBC. The present case, however, pertains to a situation where there is no successful resolution applicant, and the NCLT has consequently ordered the company into liquidation under Section 33 of the IBC. Once an order of liquidation is passed and a statutory liquidator is appointed, the assets of the corporate debtor are required to be dealt with in accordance with Section 53 of the IBC, which is commonly known as the “waterfall mechanism”. The dues are to be paid in the order of priority set out in Section 53 of the IBC. It is pertinent to note that



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Section 238 of the IBC contains a non-obstante clause giving primacy to the mechanism for distribution of the assets of the corporate debtor in the manner prescribed under the IBC.

17. The learned Single Judge, in the impugned judgment, has held that the authorities under the TNVAT Act are secured creditors and that the VAT dues could, therefore, be recovered as if they were dues payable to a secured creditor.

18. In *STO v. Rainbow Papers Ltd.*, reported in (2023) 9 SCC 545, the question before the Hon'ble Supreme Court was whether the provisions of Section 53 of the IBC would override the provisions of Section 48 of the Gujarat VAT Act. Section 48 of the said Act reads as follows:

“48. Tax to be first charge on property.— Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such dealer, or as the case may be, such person.”



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19. The Department had challenged the resolution plan approved by the Resolution Professional, whereby the statutory dues payable under the GVAT Act were waived, before the Ahmedabad Bench of the NCLT, contending that the Sales Tax Officer is a secured creditor under the IBC. The NCLT rejected the application, and the said order was affirmed by the NCLAT. The matter was thereafter carried to the Hon'ble Supreme Court. It is to be noted that the case arose under the unamended provisions of Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Regulation 12 was subsequently amended in 2018, which has been discussed in paragraph 22 of the decision in ***Rainbow Papers Ltd. (cited supra)***, as under:

“22. Prior to amendment by Notification No.IBBI/2018-19/GN/REG013 dated 3rd July 2018, with effect from 4th July, 2018, Sub-Regulation (1) of Regulation 12 read with Sub-Regulation (2) provided that a creditor shall submit proof of claim on or before the last date mentioned in the public announcement. Sub-Regulation (2) was amended with effect from 4th July, 2018 and now reads “a creditor shall submit claim with proof on or before the last date mentioned in the public announcement.”



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20. It is pertinent to note that, prior to the amendment, it was sufficient to submit “proof of claim”, whereas, subsequent to the amendment, a creditor is required to submit a “claim with proof”. In ***Rainbow Papers's case (cited supra)***, the proceedings had taken place prior to the amendment to Regulation 12. In the aforesaid factual context, it was held as follows

“In this case, claims were invited well before 5-10-2017 which was the last date for submission of claims. Under the unamended provisions of Regulation 12(1), the appellant was not required to file any claim. Read with Regulation 10, the appellant would only be required to substantiate the claim by 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 or the resolution professional, as the case may be, to revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1) of the said Regulation as soon as might be practicable, when he came across additional information warranting such revision.”

21. Thus, the Hon’ble Supreme Court found fault with the rejection of the claim of the STO, since the unamended Regulation did not required the STO to file a claim, but only required to substantiate the

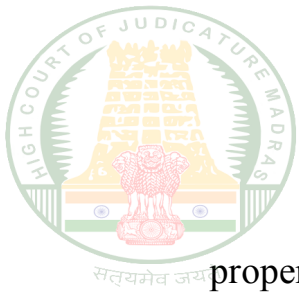


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claim with such material as may be called for. However, the present case arises after the amendment to Regulation 12, under which there can be no manner of doubt that “a creditor shall submit a claim with proof on or before the last date mentioned in the public announcement”. In the case on hand, the Department had, in fact, preferred its claim belatedly, which came to be rejected by the NCLT. In the context of submission of claims, the Hon’ble Supreme Court in ***RPS Infrastructure Ltd. v. Mukul Kumar***, reported in **(2023) 10 SCC 718**, has held that belated claims cannot be entertained under the scheme of the IBC.

22. As a matter of fact, ***STO v. Rainbow Papers Ltd.***, reported in **(2023) 9 SCC 545**, arose at the stage of the Corporate Insolvency Resolution Process (CIRP) and not at the stage of liquidation, as in the present case. In ***Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd.***, reported in **(2023) 10 SCC 60**, PVVL had attached the properties of the secured creditor for non-payment of electricity dues amounting to Rs. 4,32,33,883/-. Subsequently, the company was ordered to be liquidated under the provisions of the IBC. The liquidator moved the NCLT seeking to set aside the attachment on the ground that, unless the same was lifted, it would not be possible to secure buyers for the



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property. Considering the scheme of the IBC, the NCLT allowed the application, and the said order was affirmed by the NCLAT. Before the Hon'ble Supreme Court, reliance was placed on the decision in ***STO v. Rainbow Papers Ltd. (cited supra)***. However, it was held as follows:

*“53. **Rainbow Papers's case** did not notice the “waterfall mechanism” under Section 53—the provision had not been adverted to or extracted in the judgment. Furthermore, **Rainbow Papers's case** 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.”*

23. More importantly, in the context of tax dues, as arose in ***Rainbow Papers's case (cited supra)***, it was held as follows:

“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



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the present case, having lower priority. As noticed earlier, this intention is also evident from a reading of the Preamble to the Act itself.”

24. In ***Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd.***, reported in (2023) 10 SCC 60 , it was, thereafter, held as follows:

“In view of the above discussion, it is held that the reliance on Rainbow Papers [STO v. Rainbow Papers Ltd., (2023) 9 SCC 545] is of no avail to the appellant. In this Court's view, that judgment has to be confined to the facts of that case alone.”

25. After the said decision, a review application was filed against the judgment in ***Rainbow Papers's case***, which came to be decided in ***Sanjay Kumar Agarwal v. State Tax Officer***, reported in (2024) 2 SCC 362, wherein the decision in ***Rainbow Papers's case*** was affirmed on merits. However, subsequent to the aforesaid decision, the ratio laid down in the said case was once again distinguished in ***JSW Steel Ltd. v. Pratishtha Thakur Haritwal***, reported in (2025) 9 SCC 673, wherein it was held as follows:

“44. In Rainbow Papers's case the State Tax



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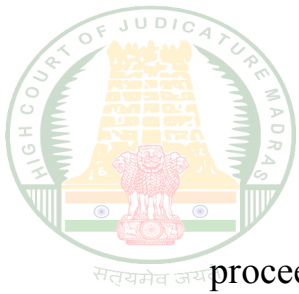


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Officer had raised the claim before the CoC, which was not taken into consideration by the CoC. As such, this Court came to a finding that the satisfaction arrived at by the adjudicating authority under Section 31 of the Code was vitiated.

45. Undoubtedly, in the present case, in spite of public notice, neither the State of Chhattisgarh nor its authorities raised any claim before the CoC. In that view of the matter, we are of the considered view that the case of the present petitioner is specifically covered by the judgment of this Court in Ghanashyam Mishra, which judgment was brought to the notice of the respondents/authorities, the respondents/authorities could not have proceeded with the recovery proceedings.”

26. It is to be noted that in ***Rainbow Papers's case***, the VAT authorities had specifically challenged the rejection of their claims by the Resolution Professional, which was subsequently affirmed by the NCLAT, and it was the correctness of the said orders that was under challenge before the Hon'ble Supreme Court. Whereas, in the present case, the claims have been rejected by the NCLT. Thus, owing to their own default, the doors stand closed on the VAT authorities, and the orders rejecting their claims cannot be collaterally revived in the present



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proceedings, as has been done by the learned Single Judge. In view of the overriding effect of Section 238 of the Insolvency and Bankruptcy Code, the order of attachment must necessarily be set aside.

27. In the impugned judgment, the learned single judge has framed the following question for consideration in paragraph 47:

“Thus the point for consideration is whether, as a “secured creditor” within the meaning of Section 3(30) of the IBC, 2016, the Commercial Taxes Department, represented by 1st Respondent, was required to file a claim petition within the time stipulated in the order passed on 03.12.2018 under Section 13 of the Code, and within the period stipulated in the public announcement regarding the last date for submission of claims under Section 15(1)(c) of the Code or whether the 1st Respondent was required to file a claim petition at all?

28. The said question has been answered in the judgment as follows:

“112. As far as the question of delay in the filing of claim, the Court in RPS Infrastructure Ltd. Vs. Mukul Kumar and others, (2023) 10 SCC 718, the Hon'ble Supreme Court held that NCLAT's impugned judgment [Mukul Kumar v. RPS Infrastructure Ltd., 2021 SCC OnLine NCLAT 648] cannot be faulted to reopen the chapter at the behest of the appellant. It



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further observed that the Court is not inclined to unleash the hydra-headed monster of undecided claims on the resolution applicant.”

.....

*Therefore, it has to be held that the view of the Hon'ble Supreme Court in Rainbow Papers case (cited supra) has been affirmed by the Hon'ble Supreme Court in **Sanjay Kumar Agarwal vs. State Tax Officer (1) and another** (cited supra) and lays the correct position of law to be followed.*

CONCLUSION:

117. I am of the view that even if the 1st Respondent had failed to file a claim statement within the time stipulated in the passed under Section 13 of the Code on 03.12.2018 when Mr.Ramasamy Shanmugam was appointed as an Insolvency Resolution Professional (IRP), the claims of the 1st Respondent as a secured creditor cannot be defeated.....”

29. The learned Single Judge has overlooked the fact that the decision in Rainbow Papers Ltd. arose under the unamended Regulation 12, which did not require a statutory authority to file a separate claim, which is not the position after the amendment to Regulation 12. As a matter of fact, in the entire judgment, there is no reference to Regulation 12 at all. At the risk of repetition, the relevant paragraphs in Rainbow Papers's case Ltd. are once again extracted hereunder:



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“22. Prior to amendment by Notification No.IBBI/2018-19/GN/REG013 dated 3rd July 2018, with effect from 4th July, 2018, Sub-Regulation (1) of Regulation 12 read with Sub-Regulation (2) provided that a creditor shall submit proof of claim on or before the last date mentioned in the public announcement. Sub-Regulation (2) was amended with effect from 4th July, 2018 and now reads “a creditor shall submit claim with proof on or before the last date mentioned in the public announcement.

.....

In this case, claims were invited well before 5-10-2017 which was the last date for submission of claims. Under the unamended provisions of Regulation 12(1), the appellant was not required to file any claim. Read with Regulation 10, the appellant would only be required to substantiate the claim by 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 or the resolution professional, as the case may be, to revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1) of the said Regulation as soon as might be practicable, when he came across additional information warranting such revision.”



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30. The learned Single Judge has overlooked the fact that, under the unamended Regulation 12, a creditor was required to separately file a claim and was only required to submit proof in support of such claim. On that basis, it was held that there was no requirement to file a claim in a particular manner. However, after the amendment to Regulation 12, a creditor is now required to submit a claim with proof. The learned Single Judge, unfortunately, did not notice either the Regulation or its amendment, whereby sub-regulation (2) of Regulation 12 was amended from “submit proof of claim” to “shall submit claim with proof”.

31. As was held in *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd.*, reported in (2023) 10 SCC 60, the decision in *Rainbow Papers's case* is required to be confined to the facts of that case alone. The learned Single Judge was, therefore, not right in holding that the claims of the VAT authorities cannot be ignored even if no claims have been made by them before the liquidator, by erroneously placing reliance on *Rainbow Papers's case* which has no application to the facts of the present case.



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VAT AUTHORITES AS SECURED CREDITORS

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32. Under Section 42 of the TNVAT Act, 2006, a charge is created over the properties of the assessee by operation of law in respect of unpaid/outstanding tax dues. It is a settled position of law that neither a charge nor the resultant order of attachment confers any title over the property of the assessee. In *Moti Lal v. Karrabuldin (1897) I.L.R. 25 Cal. 179*, the Privy Council observed that “Attachment, however, only prevents alienation; it does not confer title.” A charge is only a security for the payment of money due (see *Dattatreya Shanker Mote v. Anand Chintaman Datar*, reported in *(1974) 2 SCC 799*). In the context of Section 48 of the Gujarat Value Added Tax Act, in *Shree Radhekrushna Ginning and Pressing Pvt. Ltd. v. State of Gujarat [SCA No. 5413 of 2022]*, decided on 29.03.2022, it was held as follows:

“16. The concept of charge emanates from Section 100 of the Transfer of Property Act, 1882. Section 100 of the Transfer of Property Act, 1882 defines "charge" as follows:

"100. Charges.- Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not



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amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge. Nothing in this section applies to the charge of a trustee on the trust- property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

17. The above-mentioned Section clearly indicates the following types of charges :

- 1) Charges created by act of parties; and*
- 2) Charges arising by operation of law.*

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 Section 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."

33. Thus, a first charge under Section 48 of the GVAT Act like a charge under Section 42 of the TNVAT Act, is created by operation of law.



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34. It is now to be considered whether the creation of a charge in favour of the Department by operation of law would elevate it to the status of a secured creditor. Section 3(30) of the Insolvency and Bankruptcy Code defines a “secured creditor” to mean a creditor in whose favour a security interest is created. Thus, it is first required to be examined whether any security interest has been created in favour of the VAT authority.

35. Section 3(31) of the IBC defines “security interest” as follows:

“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.”

36. On a plain reading, it is clear that the aforesaid definition does not cover cases where a charge is created by operation of law and is



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restricted to cases where a security interest is created by act of parties.

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However, in Rainbow Papers's case, it was held as follows:

“As argued by the learned Solicitor General, the term “secured creditor” as defined under IBC is comprehensive and wide enough to cover all types of security interests, namely, the right, title, 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.”

37. This interpretation has given rise to certain issues. The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 clarifies that security interests, including statutory charges in respect of government dues, shall be treated as “secured” only where such interest is created by way of contract. This marks a departure from the position laid down by the Hon’ble Supreme Court in ***State Tax Officer v. Rainbow Papers Ltd. (2022 SCC OnLine SC 1162)***, wherein statutory dues were accorded the status of secured debts. The said Amendment Bill was introduced in the Lok Sabha on 12.08.2025, has since received the assent of the President on 06.04.2026, and has been published in the Official Gazette.



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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



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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.

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



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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



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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 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."



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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), 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



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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.



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44. In view of the above, we are of the view that when the claim application has not been decided, the property has been brought to public auction, and even the first respondent has also given no-objection for the sale of the property, the validity of the sale cannot be questioned. Since the claim has not been decided and was not placed before the liquidator within the prescribed time, merely on the basis of the attachment reflected in the Encumbrance Certificate, now it cannot be said that the claim stands automatically revived. Therefore, the order of attachment has to necessarily be set aside.

45. A Division Bench of this Court (*Central Board of Trustees Vs. The Deputy Registrar, National Company Law Tribunal and Otrs, in W.P.No.26326 of 2024, dated 01.09.2025*) has also taken a view that a Government entity is a secured creditor within the meaning of Section 3(30) of the IBC. The said finding was also recorded by placing reliance on Rainbow Papers's case. However, in view of the subsequent development of law, the said judgment would not support the case of the respondents. No doubt, there is no specific provision under the Registration Act enabling the Registering Authority to delete an entry already reflected in the Encumbrance Certificate. In this regard, a



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Division Bench of this Court in ***Tamil Nadu Mercantile Bank Ltd. v. Sub Registrar and Another in W.P. No. 15451 of 2024***, held as follows:

“21. With regard to deletion of the entry, namely, the attachment in favour of the 2nd respondent, we do not find any provisions in the Registration Act which permit the registering authorities to delete an entry which is already finding place in the Encumbrance Register/Certificate. However, in terms of the customary practice and well settled procedure, the Registrar is duty bound to cause a contra entry stating that the said attachment in favour of the 2nd respondent stands raised in view of the exercise of the priority right by the Petitioner Bank by bringing the property for sale in public auction and consequently, conveying the said property in favour of the auction purchaser, Mrs.Kala Ramu. Insofar as this limb of the prayer, we therefore direct the 1st respondent to make an entry in the Encumbrance Records to reflect in the Encumbrance Certificate, notifying that the attachment in favour of the 2nd respondent in entry, Document No.04 of 2022 dated 05.01.2022, stands cancelled in view of the auction sale conducted by the Petitioner Bank in favour of Mrs.Kala Ramu on 31.08.2023 and consequent registration of the sale certificate which is also being ordered in this writ petition.”



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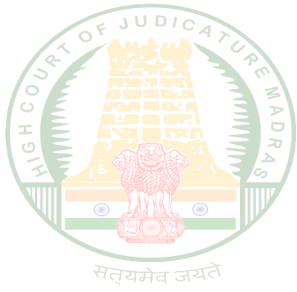
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46. In view of the above, since the attachment is not binding on the Registering Authority, the Registering Authority viz., the second respondent is directed to make an appropriate entry in the Encumbrance Certificate, clarifying that the earlier attachment will not operate as a bar for the writ petitioner to deal with the property free from encumbrance. It is further made clear that though it is stated that an appeal against the rejection of the claim petition is pending before the NCLAT and an application for restoration has also been filed, in the event the respondents succeed in the said proceedings before the appellate authority or any higher forum, the orders passed herein shall be subject to modification in accordance with the outcome of such proceedings.

47. With the above directions, this Writ Appeal is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[N.S.K., J.] & [M.J.R., J.]
17.04.2026

Index :Yes/No
NCC :Yes/No
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N.SATHISH KUMAR, J.
AND
M.JOTHIRAMAN, J.

vsm

To

- 1.The Assistant Commissioner,
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Moolathoppu Melur Road,
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- 2.Sub-Registrar, Keezhasathanur,
Palani Nagar, K.K.Nagar,
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Judgment in
W.A.(MD)No.2662 of 2025

17.04.2026