

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1945 of 2024
& I.A. No. 6970, 7207 of 2024

IN THE MATTER OF:

**Department of State Tax,
Through The Deputy Commissioner of State Tax**

...Appellant

Versus

Pranav Constructions Systems Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant : Ms. Shweal Shepal, Advocate.

For Respondents :

O R D E R
(Hybrid Mode)

14.11.2024: **I.A. No.7207 of 2024:** This is an application praying for condonation of 14 days' delay in filing the application. Learned counsel for the applicant submits that time was taken in seeking necessary approval from the departmental authority for filing the appeal. Sufficient cause has been shown in the application for condonation of delay. Delay condoned. I.A. No.7207 of 2024 is disposed of.

2. This appeal has been filed against order dated 16.01.2024 passed in IA No.773/2023 which was filed by the Resolution Professional for approval of the Resolution Plan. By the impugned order dated 16.01.2024, the Adjudicating Authority has approved the Resolution Plan with regard to the Corporate Debtor – Pranav Constructions. Appellant claim that they filed their claim with regard to MVAT and GST and amount which has been paid in the plan to the Appellant is only 0.45% as is reflected from the plan.

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3. In **Company Appeal (AT) (Ins.) No.246 of 2022, Department of State Tax, Through the Dy. Commissioner of State Tax vs. Zicom Saas Pvt. Ltd. & Anr.** we have considered the similar contention raised by the Appellant and had upheld the approval of the plan by our order dated 07.02.2023. The Appellant's claim of being Secured Creditor was considered and it was held that the Appellant cannot claim that they are Secured Creditors. In Para 7 to 10 of aforesaid judgment, we have held following:

“7. There are no dispute between the parties regarding the facts which took place in the CIRP and the claim which was admitted in the CIRP. In “Rainbow Paper Limited” (supra), Section 48 of the GVAT Act was relied, which has been quoted in paragraph 2 of the Judgement which is to the following effect:

“The short question raised by the appellant in this appeal is, whether the provisions of the IBC and, in particular, Section 53 thereof, overrides Section 48 of the GVAT Act which is set out herein below for convenience:-

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”

8. The Provision of Section 37 of Maharashtra Value Added Tax, 2002 is to the following effect:

“37. Notwithstanding anything contained in any contract to the contrary, but subject to any provision regarding creation of first charge in any Central Act for the time being

in force, any amount of tax, penalty, interest, sum forfeited, fine or any other sum, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer, or as the case may be, person.”

9. When we compare the provisions of Section 48 of the provision of Gujarat Values Added Tax which was relied in “Rainbow Papers Limited” and the Provisions of Section 37 which is sought to be relied on in the present Appeal, distinction between the provisions is clear. Section 37 specifically uses the expression “subject to any provision regarding creation of first charge in any central act”. The provision itself contemplated thus that Section 37 was subject to any provision in Central Act. The IBC Section 53 itself provides waterfall mechanism which may be treated to be law which has been contemplated under Section 37 of the MVAT Act, 2002.

10. We thus are of the view that the Judgement of the Hon’ble Supreme Court in “Rainbow Paper Limited” relied by Learned Counsel for the Appellant is distinguishable. The Appellant having been treated as Operational Creditor allocation of amount in the Resolution Plan cannot be said to be in violation of Section 30 (2)(b). We thus are of the view that no ground has been made to interfere with the Impugned Order.”

4. We, thus, are of the view that Appellant’s claim cannot be accepted as Secured Creditor and as per Section 30(2) of the Code, the Appellant was entitled only for amount not less than the amount to be received by the Appellant in event of liquidation. Present is not a case where it is claimed

that amount is less than the liquidation value. We, thus, do not find any ground to interfere with the order approving the Resolution Plan. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Archana/nn