

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

**Company Appeal (AT) (Insolvency) No. 1302 of 2023**

**In the matter of:**

**Income Tax Department**

**....Appellant**

**Vs.**

**Mr. G. Madhusudhan Rao**

**...Respondents**

**Resolution Professional of M/s. Midland Polymers**

**Ltd. & Anr.**

**For Appellant**

**Mr. Maithili Mehta, Advocate.**

**For Respondents**

**Mr. Rohit Rathi, Mr. Yashas RK, Advocates.**

**ORDER**

**(Hybrid Mode)**

**12.12.2023:** Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the order dated 18.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Indore Bench, by which order Adjudicating Authority has allowed the application IA No.177 of 2023 filed by the Resolution Professional for approval of the Resolution Plan. Appellant before us is the Income Tax Department who was an Operational Creditor and has filed the claim in the CIRP for an amount of Rs.26,06,41,424/-. In the Resolution Plan, the Appellant has been allocated only Rs.5 lakhs which allocation is under challenge in this Appeal.

3. Learned Counsel for the Appellant submitted that the Appellant's claim was only partially accepted since the Appeal against the order of assessment was pending. It is submitted that the Appellant is secured operational creditor

and it was entitled for the benefit of the judgment of the Hon'ble Supreme Court in ***“State Tax Officer vs. Rainbow Papers Limited- Civil Appeal No. 1661 of 2020”***.

4. Learned Counsel for the Respondents refuting the submission of the Appellant contends that the judgment of the Hon'ble Supreme Court in *‘Rainbow Papers Ltd.’* (supra) has been clarified subsequently and there is no error in allocation of amount of Rs.5 lakhs in the Resolution Plan, the Appellant being only an operational creditor.

5. We have considered the submissions of the Counsel for the Appellant and perused the record. The Appellant has filed the claim of Rs.26,06,41,424/- and the claim was admitted for the same amount. The nature of claim was mentioned as contingent liability. As appeal was pending against the assessment order. The amount of Rs.5 lakhs which was allocated the Appellant being operational creditor, Appellant was entitled for allocation of the amount which is not less than the amount which the Appellant would have been paid in event the Corporate Debtor is liquidated. It is not shown that the amount of Rs.5 lakh is below the amount which the Appellant was entitled in the event of liquidation of the Corporate Debtor. We, thus, are of the view that no error can be found out in allocation of Rs.5 lakhs in the Resolution Plan.

6. Insofar as judgment of the Hon'ble Supreme Court is concerned, we are of the view that in *‘Rainbow Papers Ltd.’* (supra), the Operational Creditor was held to be secured creditor on the basis of relevant statutory provisions whereas there is no basis to contend that the Appellant is secured operational

creditor. We, thus, do not find any error in the impugned order approving the Resolution Plan. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Barun Mitra]**  
**Member (Technical)**

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

***Anjali/nn***