

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Sanjay Kumar Agarwal Vs. State Tax Officer (1) & Anr.

Brief Facts

In the present case, the State of Gujarat was assessing Rainbow Papers Limited (CD) under the Gujarat Value Added Tax Act, 2003 (GVAT) through the State Tax Officer (I) (Department). According to one such assessment, the CD was found to be in arrears for the assessment year 2011-2012 to the tune of Rs. 53,71,65,489/-. In order to make up the difference, the Department attached some CD properties in October 2018. Prior to such an attachment, the CD was placed into the corporate insolvency resolution process (CIRP) in September 2017 by the National Company Law Tribunal, Ahmedabad (NCLT), which appointed a resolution professional (RP). A resolution applicant offered a resolution plan (Plan). The Plan was accepted by the CD's creditors committee in June 2018 with a 79.79% approval percentage. Following the Plan's approval, the Department filed a claim with the RP in October 2018 for Rs. 53,71,65,489/-. The RP notified the Department that its Rs. 53,71,65,489/- claim

had been waived under the Plan.

The Department filed a challenge to the Plan, which waived its claim on the grounds that government dues could not be waived. The NCLT denied the Department's application, claiming that government dues could be waived and that the Plan had already been authorized. The Department appealed to the National Company Law Appellate Tribunal (NCLAT), which upheld the NCLT's conclusions. As a result, the Department approached the SC.

The main issue before the Supreme Court in the Rainbow Judgment was the interaction of IBC and GVAT provisions, specifically Section 48 of the GVAT, which made a tax liability a first charge on an assessee's property, and Section 53 of the IBC, which provides for the priority of distribution of sale proceeds from the sale of assets in liquidation proceedings.

Decision

The Supreme Court found that the Department's claim should be acknowledged since it was secured and statutory, and based on a joint reading of the IBC and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations). The Supreme Court explained its decision by citing Section 53 of the IBC, which states that secured creditors are included in the waterfall system.

Following that, the Supreme Court ruled that a resolution plan that violates the provisions of the IBC cannot and should not be sanctioned by the NCLT and/or the NCLAT. The fact that the Department had a first charge on its demand and had also attached the CD's property precluded the NCLT and NCLAT from approving the Plan without addressing the Department's claim. The SC decided that a condition precedent for the adoption of the Plan was its conformity with Section 30(2) of the IBC and that a plan that did not meet the standards of Section 30(2) would be unlawful.'

The Supreme Court further stated that if a resolution plan completely disregards the statutory obligations payable to any State Government or legal authority, the NCLT and/or NCLAT must reject the resolution plan. The Supreme Court recognized that the Committee of Creditors could not protect their own dues at the expense of dues owed to the government or governmental authorities and set aside the Plan.

Unsatisfied with the conclusions of the Rainbow Judgment, the RP of the CD and the lead bank of the CD's committee of creditors, among others, filed the Rainbow Review before the SC, requesting that the Rainbow Judgment be reviewed. The Rainbow Review was heavily based on the Supreme Court's views in *Paschim Anchal Vidyut Vitran Nigam Limited v. Raman Ispat Private Limited*, 2023 SCC OnLine SC 842 (Paschim judgment). The Paschim judgment noted that the Rainbow Judgment made no mention of the waterfall mechanism anticipated under Section 53 of the IBC.

The Supreme Court held that the Rainbow Judgment was not altered by any of the circumstances that would require its review, and hence the Rainbow Judgment's merits remained unchanged. The observations of another bench of the Supreme Court could not be used to review a judgment because one bench of the Supreme Court could not question the accuracy of another bench's judgment. The Supreme Court stated that if there are any concerns about the correctness of a bench's decision, the proper course of action would be to send the decision to a larger court for law-making.

The Supreme Court further stated that the Paschim judgment used Section 53 of the IBC in the context of liquidation, whereas the Rainbow Judgment exclusively dealt with approval of the Plan as part of CIRP. As a result, the Supreme Court dismissed the Review Petitions and upheld the Rainbow Judgment.

Hence, the Supreme Court of India affirmed the view expressed by another bench of the SC in State Tax Officer (I) v. Rainbow Papers Limited 2022 SCC OnLine SC 1162 (Rainbow Judgment) that may have far-reaching effects on the treatment of dues to the Government or governmental authorities in insolvency resolution proceedings under the Insolvency and Bankruptcy Code, 2016 (Rainbow Review) in the exercise of its powers of review under Article 137 of the Constitution of India.

[Link of the Order](#)

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