

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

Company Appeal (AT) (Insolvency) No. 1804 of 2025

(Arising out of Order dated 30.09.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Court-1, Ahmedabad in IA No.766(AHM)2021 in CP (IB)-289 of 2020)

IN THE MATTER OF:

State Tax Officer ...Appellant

Versus

Nitin Narang, RP of Afcan Impex Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant : Ms. Ritu Guru, Advocate.

For Respondents : Mr. Gaurav Joshi, Advocate for Monitoring Committee.

With

Company Appeal (AT) (Insolvency) No. 1805 of 2025

(Arising out of Order dated 30.09.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Court-1, Ahmedabad in IA No.447(AHM)2025 in CP (IB)-289 of 2020)

IN THE MATTER OF:

State Tax Officer ...Appellant

Versus

Nitin Narang, RP of Afcan Impex Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant : Ms. Ritu Guru, Advocate.

For Respondents : Mr. Gaurav Joshi, Advocate for Monitoring Committee.

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeal(s) have been filed by the State Tax Officer against two separate orders dated 30.09.2025 passed by National Company Law

Tribunal, Division Bench, Court-1, Ahmedabad in IA No.766 of 2021 and IA No.447 of 2025. The Adjudicating Authority by the impugned order allowed IA No.766 of 2021 approving the Resolution Plan and has partly allowed IA No.447 of 2025 filed by the Appellant. Aggrieved by both the orders these two Appeal(s) have been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal(s) are:

- (i) The Corporate Debtor (“**CD**”) – M/s Afcan Impex Pvt. Ltd. was admitted to Corporate Insolvency Resolution Process (“**CIRP**”) by order dated 17.02.2021 based on an application filed by Bank of Maharashtra under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”).
- (ii) The RP issued public announcement on 23.02.2021 inviting the claims. The Appellant – State Tax Officer filed its claim in Form-B on 19.04.2021, which was provisionally accepted by the RP.
- (iii) On 10.03.2023, the Appellant addressed a letter to the RP to consider the Appellant’s claim as secured creditor as per the judgment of the Hon’ble Supreme Court in **Rainbow Papers Pvt. Ltd.** The RP sent a reply dated 03.04.2023, in which the Appellant’s claim was not accepted as secured creditor. The RP informed the Appellant that Committee of Creditors (“**CoC**”) has approved the Resolution Plan, which has been submitted before the Adjudicating Authority for approval.

- (iv) In the Resolution Plan, the State Tax Officer was not considered as secured creditor. The assets of the CD were attached by the State Tax Department, for which the RP filed an application – IA No.1513 of 2024 for removing the attachment. An order was passed on 06.12.2024 by the Adjudicating Authority directing removal of attachment.
- (v) The Appellant filed an application – IA No.447 of 2025 praying for a direction that claim of the Appellant be considered as secured creditor and RP be directed to consider and accept the whole claim of Applicant being Rs.5,80,64,381/- under the Gujarat Value Added Tax Act, 2003 (“**GVAT Act**”) and under the Central Sales Tax Act, 1956 (“**CST Act**”) as secured creditor.
- (vi) The Resolution Plan submitted by the Resolution Applicant, came to be considered and was approved by the Adjudicating Authority by the order dated 30.09.2025 and by order of the same date, the application – IA No.447 of 2025 filed by the Appellant was partly allowed and claim of the Appellant under GVAT Act was held to be secured claim, whereas the claim of the Appellant under CST Act was held not to be secured. In the Resolution Plan out of the admitted claim of GVAT dues of Rs.4,95,83,045/-, an amount of Rs.1,17,03,390.40 crores was proposed and out of CST Act dues (unsecured) of Rs.84,81,335, an amount of Rs.5,15,935

was proposed. The Adjudicating Authority allowed IA No.766 of 2021 and partly allowed IA No.447 of 2025.

(vii) Company Appeal (AT) (Ins.) No.1804 has been filed challenging the order passed in IA No.766 of 2021 and Company Appeal (AT) (Ins.) No.1805 of 2025 has been filed against the order passed in IA No.447 of 2025 where claim as secured creditor was not accepted under the CST Act.

3. In both the above Appeal(s), the prayers made are as follows:

Company Appeal (AT) (Ins.) No.1804 of 2025

- “a) This Hon’ble Appellate Tribunal may be pleased to quash and set aside the impugned order dated 30.09.2025 passed by the Hon’ble Adjudicating Authority in Interlocutory Application No. 766 of 2021 in C.P. (IB) No. 289 of 2020 and direct the resolution professional to consider the claim of the appellant under the CST Act,1956 as secured creditor as per the judgment of Hon’ble Supreme Court in the case of Rainbow Papers Limited;
- b) This Hon’ble Appellate Tribunal may be pleased to direct the Respondent No. 1 to deposit the amount of claim under the GVAT Act 2003 and under the CST Act 1956 which the appellant is entitled to receive under section 53(1)(b)(ii) of the Code before the registry of this Hon’ble Appellate Tribunal;
- c) That this Hon’ble Appellate Tribunal may be pleased to declare the status of the unpaid CST dues of the Appellant as a secured dues as such that the Appellant be consider as a secured creditor under section 53(1)(b)(ii) of the Code;

- d) Pass such other/further order(s) or direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

Company Appeal (AT) (Ins.) No.1805 of 2025

- “a) This Hon'ble Appellate Tribunal may be pleased to quash and set aside the impugned order dated 30.09.2025 passed by the Hon'ble Adjudicating Authority in Interlocutory Application No. 447 of 2025 in C.P. (IB) No. 289 of 2020 and direct the resolution professional to consider the claim of the appellant under the CST Act,1956 as secured creditor as per the judgment of Hon'ble Supreme Court in the case of Rainbow Papers Limited;;
- b) This Hon'ble Appellate Tribunal may be pleased to direct the Respondent No. 1 to deposit the amount of claim which the appellant is entitled to receive under section 53(1)(b)(ii) of the Code before the registry of this Hon'ble Appellate Tribunal;
- c) That this Hon'ble Appellate Tribunal may be pleased to declare the status of the unpaid CST dues of the Appellant as a secured dues as such that the Appellant be consider as a secured creditor under section 53(1)(b)(ii) of the Code;
- d) Pass such other/further order(s) or direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

4. We have heard Ms. Ritu Guru, learned Counsel appearing for the Appellant(s) and Shri Gaurav Joshi, learned Counsel appearing for the Respondent.

5. Learned Counsel appearing for the Appellant challenging the impugned order passed by the Adjudicating Authority in IA No.447 of 2025 and IA No.766 of 2021 submits that although the Adjudicating

Authority has accepted the dues under the GVAT Act as secured dues, whereas Adjudicating Authority committed error in rejecting the claim under CST Act to be as secured creditor. Learned Counsel for the Appellant submits that under Section 9 sub-section (2) of CST Act, for Central Sales Tax dues also assessment and recovery have to be followed and the dues under Central Sales Tax has to be treated in the same manner as that of under the GVAT ACT. When the same power is exercised for recovery of dues of CST, the whole mechanism for recovery including the first charge on the property of the assessee has to be there. Learned Counsel for the Appellant submits that the deeming provision under Section 9 sub-section (2) of CST Act, had to be given its meaning and purpose. It is further submitted that the CST dues have to be recovered under Gujarat Land Revenue Code, 1879 under which the claim of the State Government has precedence over all others. Learned Counsel has referred to Section 137 of the Gujarat Land Revenue Code, 1879 and submits that a conjoint reading of Section 9 sub-section (2) of the CST Act and Section 48 of the GVAT ACT clearly indicate that Section 48 of the GVAT ACT also applies to the tax levied under CST Act. As per above mentioned provisions, the Appellant has also created first charge over the property. The Adjudicating Authority committed error in not recognizing the claim of the Appellant under CST Act as secured debt. Learned Counsel for the Appellant in support of her submission has relied on judgment of the Hon'ble Supreme Court in **Rainbow Papers Ltd.**,

judgment of this Tribunal; judgment of the Delhi High Court and judgment of Gujarat High Court, which we shall refer hereinafter.

6. Learned Counsel appearing for the Respondent supported the impugned order and submits that there are no *pari materia* provision under CST Act to that of GVAT Act. Section 48 of GVAT Act provides for creation of statutory charge on the assets of the CD, whereas Section 9 sub-section (2) of CST Act, does not provide creation of statutory charge by operation of law. Section 9 sub-section (2) simply says that CST shall be assessed, re-assessed, collected and enforced by the State Authorities as if it were tax under the State VAT law. It is submitted that provision of Section 9 sub-section (2) is a machinery provision, not a provision creating a separate statutory charge unlike GVAT Act Section 48. Section 9 sub-section (2) imports only the procedural machinery of VAT law for assessment and recovery. It does not and cannot import the substantive first charge created under Section 48 of the GVAT Act. The CST Act does not contain any *pari-materia* provision like Section 48 of GVAT Act. The deeming fiction in Section 9 sub-section (2) is expressly limited to procedural matters, i.e. assessment, returns, recovery steps, appeals, penalties etc. It is submitted that the Resolution Plan which has been approved by the impugned order dated 30.09.2025 has already been implemented and payments to all creditors have been made including the Appellant. The Appellant after accepting the payment under the Resolution Plan cannot challenge the order approving the Resolution Plan. Learned Counsel for the Respondent has also relied on judgment of

this Tribunal in **Company Appeal (AT) (Ins.) No.495 of 2025** in support of its submissions.

7. We have considered the submissions of learned Counsel for the parties and have perused the record.

8. The only question, which has arisen for consideration in these Appeal(s) is as to whether the dues of the Appellant under CST Act are secured debt or unsecured debt. The Appellant has filed its claim under CST dues of Rs.84,81,336/-, which is an admitted amount. Insofar as GVAT dues are concerned, the Appellant claim of secured creditor has been accepted by the order dated 30.09.2025 passed in IA No.447 of 2025. The Appellant's prayer in IA No.447 of 2025 was to accept both the dues. i.e. GVAT dues and CST dues as secured creditors. The claim of the Appellant under the GVAT dues, which was admitted of Rs.4,95,84,045, has also been admitted and accepted by the impugned order and only dues with regard to CST dues were not admitted as secured creditor. The judgment of the Hon'ble Supreme Court in **State Tax officer vs. Rainbow Papers Ltd. - (2023) 9 SCC 545**, was a case where dues of State Tax officer under Gujarat Value Added Tax Act, 2003 was not accepted as secured debt, against which the Appeal was filed by the State Tax Officer. The Hon'ble Supreme Court has allowed the Appeal of the State Tax Officer and relying on Section 48 of the GVAT Act, 2003. In Paragraph 2 of the judgment of the Hon'ble Supreme Court, Section 48 of the GVAT Act was extracted. Paragraph 2 of the judgment of the Hon'ble Supreme Court is as follows:

“2. The short question raised by the appellant in this appeal is, whether the provisions of IBC and, in particular, Section 53 thereof, overrides Section 48 of the GVAT Act which is set out hereinbelow 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.””

8.1. The Hon’ble Supreme Court in the above judgment held that secured interest could be created by operation of law. Relying on Section 48 of the GVAT Act, the Hon’ble Supreme Court held that security interest has been created by operation of law. In Paragraphs 56 to 59, the Hon’ble Supreme Court has laid down following:

“56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of IBC. Under Section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.

57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) IBC defines “secured creditor” to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of “secured creditor” in IBC does not exclude any Government or Governmental Authority.

58. We are constrained to hold that the appellate authority (Nclat) and the adjudicating authority erred in law in rejecting the application/appeal of the appellant. As observed above, delay in filing a claim cannot be the sole ground for rejecting the claim.

59. The appeals are allowed. The impugned orders [*Tourism Finance Corp. of India Ltd. v. Rainbow Papers Ltd.*, 2019 SCC OnLine NCLAT 910] · [*STO v. Chandra Prakash Jain*, 2020 SCC OnLine NCLAT 536] are set aside. The resolution plan approved by the CoC is also set aside. The resolution professional may consider a fresh resolution plan in the light of the observations made above. However, this judgment and order will not prevent the resolution applicant from submitting a plan in the light of the observations made above, making provisions for the dues of the statutory creditors like the appellant.

9. There can be no quarrel to the proposition laid down by the Hon'ble Supreme Court in the above case. In the present cased also, the claim of the Appellant under GVAT Act has been accepted as secured creditor and with regard to which there is no dispute between the parties. The only issue which needs to be considered in the present case with regard to the dues of the Appellant under the CST Act as secured creditor. The Appellant has pleaded reliance on the judgment of the Hon'ble Supreme Court and on Section 9 sub-section (2) of the CST Act. Section 9 sub-section (2) of the CST Act provides as follows:

“9(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess re-assess, collect and enforce payment of tax, including any [interest or penalty,] payable by a dealer under this Act as if the tax or [interest or penalty] payable by such a dealer under this Act is a tax or [interest or penalty] payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law,

including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matter specified in this sub-section.”

10. The question to be answered is as to whether by virtue of Section 9 sub-section (2) of the CST Act, a security interest has to be held to be created on the assets of the CD. When we look into Section 9 sub-section (2), the heading of Section 9 starts with “*Levy and collection of tax and penalties*”. When we look into Section 9 sub-section (2), the provision empowers the Authorities under general sales tax law to assess, reassess, collect and enforce payment of any tax, payable by a dealer under the CST Act as if the tax or interest payable under the general sales tax law of the State and further it provides and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State. The provision further provides “*and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State*”. The provision further provides “*and the provisions of*

such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, 8 [refunds, rebates, penalties,] 9 [charging or payment of interest,] compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly". The above provision indicate two features of the statutory provision, they are – (i) Authorities for collecting the dues of CST have been empowered to exercise all or any of the powers they have under the general sales tax law of the State; (ii) the provision of such law as detailed in sub-section (2) are also applicable. The above statutory provision, although applies various provisions, which is an inclusive definition, but it does not create any charge on the assets of the CD.

11. Section 48 of the GVAT Act specifically provides that any amount payable by a dealer, the Government shall have the first charge on the property of such dealer. Section 9 sub-section (2) clearly applies to machinery provision for recovery and enforcement of payment of tax, but it does not create any first charge on the assets of the CD. We, thus, are in agreement with the submission of the learned Counsel for the Respondent that Section 9 sub-section (2) is a machinery provision and not a provision creating separate statutory charge unlike Section 48 of

GVAT Act. The provision of Section 9 sub-section (2) expressly limited to procedural matters – assessment, returns, recovery steps, appeals, penalties etc. and does not import any substantive rights of the State, much less a statutory first charge as created under Section 48 of the GVAT Act.

12. Now, we need to notice the judgments relied by the Appellant in support of its submissions. Learned Counsel for the Appellant has relied on judgment of this Tribunal in ***Company Appeal (AT) (Ins.) No. 720 of 2021 – State Tax Officer vs. Premraj Ramratan Laddha & Ors.*** In the above case, the Appellant had claimed that a sum of Rs.11,70,47,801/- has accrued under the GVAT Act. The State Tax Officer had filed a claim. Although the claim of Rs.11,70,47,801/- had been admitted by the RP, but nothing was given to the Appellant in the Resolution Plan, it being an Operational Creditor. The Appellant's case was that it is a secured creditor on ground of charge created by operation of law. Reliance was placed on Hon'ble Supreme Court judgment in ***State Tax Officer vs. Rainbow Papers Ltd.*** The Respondent therein supported the classification of the Appellant as Operational Creditor. This Tribunal after hearing both the parties allowed the Appeal, relying on the judgment of the Hon'ble Supreme Court in the ***State Tax Officer vs. Rainbow Papers Ltd.*** This Tribunal held that the Resolution Plan is in violation of Section 30, sub-section (2), since the claim of the Appellant as a secured creditor was not considered as per judgment of ***Rainbow Papers Ltd.*** It is useful

to notice Paragraphs 27, 28 and 29 of the judgment of this Tribunal in, which are as follows:

“27. At this stage, we may also refer to some observations made in the case of Rainbow Papers (Supra) which read as under:-

“51. If the established facts and circumstances require discretion to be exercised in a particular way, discretion has to be exercised in that way. If a Resolution Plan is *ex facie* not in conformity with law and/or the provisions of IBC and/or the Rules and Regulations framed thereunder, the Resolution would have to be rejected. It is also a well settled principle of interpretation that the expression “may”, if circumstances so demand can be construed as “Shall”.

52. If the Resolution Plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan.

53. In other words, if a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 of the IBC.”

28. Thus, in view of the aforesaid discussion, we are of the considered opinion that the resolution plan is in violation of the statutory provisions and is directly hit by the judgement of the Hon’ble Supreme court rendered in the case of Rainbow papers (Supra) as it is clearly a case of material irregularity, in terms of Section 30(2) of the Code.

29. Hence, the appeal is allowed and the impugned order is set aside and the matter is remanded back to the Adjudicating Authority to take further action in accordance with law.”

13. The above was a case where the Appeal was allowed relying on the decision of the Hon'ble Supreme Court in **Rainbow Papers Ltd.** However, there is no separate consideration in the judgment of this Tribunal regarding dues under CST Act. Thus, the above judgment does not help the Appellant in the present case.

14. Learned Counsel for the Appellant has relied on judgment of the Gujarat High Court in ***State of Gujarat vs. Sanjay Kumar Agarwal R/Special Civil Application No.23256 of 2019*** decided on 23.09.2024. The above Writ Petition was filed by the State of Gujarat challenging the order dated 18.11.2019 passed by National Company Law Tribunal, Mumbai Bench in Misc. Application No.2357 of 2019, wherein the Tribunal directed the State to lift its attachment from the assets of the Company, which was undergoing liquidation. In the Writ Petition, the State claimed that under GVAT Act, the State has first charge on the assets of the CD. Therefore, it could be treated as secured creditor for purposes of liquidation. The Writ Petition was allowed and High Court directed the Liquidator to treat the Appellant as secured creditors. In Paragraphs 9 to 12, following were held:

“9. In view of the above, the respondent No.1 - liquidator is directed to treat the petitioner as a secured creditor within the meaning of Section 53(1)(b)(ii) of the Code and do the needful in this behalf in the matter before the learned Tribunal.

10. Considering the aforesaid developments, this Court finds it appropriate to dispose of the present petition and the connected Civil Application No.1 of 2024 with a direction to the Registry to transfer the funds of Rs.9,98,87,647.81/- deposited by the

Liquidator (lying in a fixed deposit with the State Bank of India Gujarat High Court Branch), along with the interest accrued from the date of deposit till the date of release, to the liquidation account operated by the liquidator bearing account No.627905017087, IFSC Code ICIC0006279 as maintained with the ICICI Bank, Burra Bazar Branch, Kolkata, under the name of "Biotor Industries Limited in Liquidation". The Liquidator would be at liberty to distribute the said funds as per Section 53 of the Code, as discussed hereinabove.

11. In view of the above, the attachments by the petitioner on the assets of the Corporate Debtor stand released/raised so that the liquidator may proceed with the sale of those assets. It goes without saying that the order dated 26.12.2019 ceases to exist in view of the final disposal of this petition as per the above terms.

12. Accordingly, the present petition stands allowed in the above terms.”

15. There cannot be any quarrel to the proposition laid down by the Hon'ble High Court in the above case, where the dues under the GVAT Act were held to be as secured debt and Liquidator was directed to treat it as secured debt.

16. The next judgment relied by the Appellant is judgment of the Delhi High Court in IFCI Ltd. vs. Commercial Taxes Officer. The above was a case where the Appellant has challenged the order passed by DRAT. In the above case before the Recovery Officer, Commercial Tax Officer filed an application seeking right of first appropriation from amounts released by the sale of assets of the debtor towards discharge of statutory liability under Rajasthan Sales Tax Act, 1994 and CST Act. Right of first appropriation was claimed by virtue of Section 50 of RST Act. The

Application filed by Commercial Tax Officer was rejected by Recovery Officer, against which Commercial Tax Officer filed an Appeal before the DRT, Jaipur, which Appeal was allowed giving first appropriation rights. The Appellant preferred an Appeal before the DRAT, the DRAT dismissed the Appeal filed by the Appellant, against which the Writ Petition was filed before the High Court. Before the DRT, the Appellant conceded the right of first appropriation insofar as the dues under RST Act was concerned. However, an objection was raised with regard to CST Act and it was submitted that provision of Section 9 sub-section (2) of CST Act, could not give priority to the Respondent over the claim of secured creditors. The above submission of the Appellant was noticed in Paragraph 6 of the judgment, which is as follows:

“(6.) The petitioner in the proceedings before the DRAT conceded the right of first appropriation insofar as the dues under the RST Act were concerned in view of the provisions of Section 50 of RST Act, but sought to raise the issue in view of what was claimed to be the absence of any provision for such appropriation under the CST Act. The petitioner claimed that the provisions of Section 9(2) of the CST Act could not give priority to the respondent over the claim of secured creditors. This plea was, however, not accepted by the DRAT in terms of the impugned order dated 04.11.2010. It is in view of this factual matrix that the question of law as referred to aforesaid arises for consideration.”

16.1. The Delhi High Court has also noticed Section 50 of the RST Act, 1994 and in Paragraph-3 of the judgment, which is as follows:

“(3.) Such a right of first appropriation insofar as the dues under the RST Act are concerned, was claimed on the basis of Section 50 of the RST Act, which reads as under:

"50. LIABILITY UNDER THIS ACT TO BE THE FIRST CHARGE. Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax and any other sum payable by a dealer or any other person under this Act, shall be the first charge on the property of such dealer or person.””

16.2. The Delhi High Court in the above context considered the RST Act and the provisions of CST Act and has also noticed Section 9 sub-section (2) and it was held that Section 9 sub-section (2) of CST Act makes a deeming provision that the assessment and collection under CST Act is to be taken as tax. The Delhi High Court has held that not only assessment and re-assessment but also mode of recovery and the principle of priority of claim as incorporated under Section 50 of the RST Act would be application to the CST within the State of Rajasthan. In Paragraphs 26 and 27 of the judgment, the Delhi High Court laid down following:

“(26.) If the aforesaid scheme is appreciated in its true spirit and with the legislative enactment in mind (preamble to the CST Act itself stating that the Act was to formulate principles determining inter State trade or commerce and for levy and collection of taxes on sale of goods in the course of inter State trade or commerce), we have no doubt that not only assessment & re-assessment but also mode of recovery and the principle of priority of claim as incorporated under Section 50 of the RST Act would be available for collection of Central sales tax within the State of Rajasthan in view of the provisions of Section 9(2) of the CST Act. The judgments cited at the bar and referred to aforesaid, in fact, incorporate this general principle of not only Crown debt but the collection of Central sales tax for the benefit of State and thus the provisions of the State Act being available for such enforcement.

(27.) The Central Bank of India v. State of Kerala's case , however, only refers to the priority of sales tax debt under the local sales tax act over a secured creditor. This aspect was reinforced in State Bank of Bikaner & Jaipur v. National Iron Steel Rolling Corporation and Ors's case , once again giving precedence to a charge created by operation of law over a charge by way of an existing mortgage. The judgments cited by learned counsel for the petitioner in M/s Builders Supply Corporation v. The Union of India and Ors.'s case and Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. and Ors.'s case are also on the same lines. However, the question involved in the present case is whether such a charge by operation of law has been created under the CST Act. We have come to a conclusion that such a charge stands created if meaning is to be given to the words "collection" and "enforcement" found in various provisions, more specifically Sections 9(1) and 9(3) of CST Act read with the relevant provisions of Section 9(2) of the CST Act, coupled with the right of appropriation conferred in the States though the tax may be collected by the Central Government. Thus, the priority given under Section 50 of the RST Act to the recovery of local sales tax will apply with equal force to the recovery of Central sales tax qua interState trade or commerce."

17. There can be no dispute to the proposition laid down by the Delhi High Court in the above case. In the present case, we are not concerned with the mode and manner of recovery of dues under CST Act. The question which is cropped-up is as to whether on the Central Sales Tax dues, there shall be first charge on the assets of the CD with respect to CST or not. The Delhi High Court was not considering the question as to whether dues under CST Act, there shall be first charge on the property of the dealer or not. The said question has not arisen for consideration in the above case, nor has been answered by the Delhi High Court. Thus,

the said judgment, does not come to any help to the Appellant in the present case.

18. Another judgment of Gujarat High Court has been relied by the Appellant in ***Shree Radhekrushna ginning and Pressing Pvt. Ltd. through Director Yash Pareshbhai Khachar vs. State of Gujarat R/Special Civil Application No.5413 of 2022*** decided on 29.03.2022.

In the above case, a Writ Petition was filed seeking direction to set aside the impugned order dated 13.08.2020 and further direction to release the charge from the property of the petitioner. In the above case, the Applicant had incurred liability towards VAT under the provisions of GVAT Act, 2003. The Gujarat High Court relying on Section 48 of the GVAT Act held that any amount payable by dealer, there shall be first charge on the property of such dealer. The Gujarat High Court held that the charge was created by operation of law, hence, Writ Petition filed by the Applicant was dismissed. In Paragraphs-18 to 21, following was held:

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.

19. A charge, as we have already seen, is a right to receive a certain sum of money. If a dealer registered under the GVAT Act incurs any liability towards payment of tax, then the State has a right to receive a certain sum of money as crystallized in the form of liability. This recovery of the money from the property can be by attaching the assets of the defaulting dealer, and thereafter, putting those to auction. This type of recovery would be governed by the provisions of Section 46 of the GVAT Act.

20. In the case on hand, it could be said that the day the assessment order came to be passed determining the liability of the writ applicant under the provisions of the GVAT Act, a charge over the immovable assets of the writ applicant could be said to have

been created in favour of the State by operation of law, as envisaged under Section 48 of the GVAT Act. Today, the recovery might have been stayed by the first appellate authority, but, tomorrow, if the first appeal as well as the second appeal that may be filed by the writ applicant is dismissed, then the next step in the process would be the recovery of the requisite amount. What could be said to have been done as on date is just to make one and all aware that by operation of law, as envisaged under Section 48 of the GVAT Act, there is a charge of the State Government over the immovable properties owned by the writ applicant, as described above. How would all come to know about the same. It is for this reason that an entry is ordinarily made in the revenue records.

21. We would like to clarify that what has been done by the Talati-cum-Mantri does not amount to attachment of the property. There is no attachment. We reiterate that there is a fine distinction between attachment of property and a charge over the property by operation of law.”

19. There can be no dispute to the proposition as laid down by the Gujarat High Court in the above judgment and also there cannot be any two opinions on dues under GVAT Act, which have first charge on the assets of the CD. The above judgment also, thus, in no manner helps the Appellant in the present case.

20. Learned Counsel for the Respondent has placed reliance on the judgment of this Tribunal in Company ***Appeal (AT) (Insolvency) No. 495 of 2025 in GST & Central Excise Angul Division Rourkela GST Commissionerate vs. Shri Dinesh Sood and Ors.*** decided on 30.06.2025. In the above case dues under the Central Excise were sought to be claimed as secured debt relying on judgment of the Hon'ble Supreme Court in ***State Tax Officer vs. Rainbow Papers Ltd.*** In the above case, this Tribunal had occasion to consider the provisions of Section 48 of the GVAT Act and judgment of the Hon'ble Supreme Court in ***Rainbow Papers Ltd.*** This Tribunal held that creation of security interest to declare a creditor as secured creditor is *sine-qua-non* for

treating a creditor as secured creditor. In Paragraph-12 of the judgment, following was laid down:

“12. The Hon’ble Supreme Court in the above case has held that State is a secured creditor under the GVAT Act. It was held that security interest could be created by operation of law, i.e., by Section 48 in the above case. It was held that definition of secured creditor in IBC does not exclude any Government or Governmental Authority. The Appellant’s submission is that in paragraph 52 of the judgment, it was held that if the Resolution Plan ignores the statutory demands payable to any State Government or a local authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan. The State Tax officer was declared as a secured creditor on the strength of Section 48 of the Gujarat VAT Act, which foundation is reflected in paragraphs 56 to 57 of the judgment. The State Tax Officer was held to be secured creditor by virtue of security interest created by operation of law, i.e. Section 48. The above judgment of Hon’ble Supreme Court cannot be read to mean that Hon’ble Supreme Court has held that all Government dues are secured debt whether any security interest is created or not. The creation of security interest to declare a creditor as secured creditor is sine-qua-non for treating a creditor as secured creditor. The due of the Appellant are dues under Section 11E of Central Excise Act, 1944. Section 11E of Central Excise Act provides as follows:

“11E. Liability under Act to be first charge.-- Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made thereunder shall, save as otherwise provided in Section 529A of the Companies Act, 1956 (1 of 1956), the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002

(54 of 2002) and the Insolvency and Bankruptcy Code, 2016, be the first charge on the property of the assessee or the person, as the case may be.”

21. Section 11E of the Central Excise Act came for consideration, noticing which provision, this Tribunal held that the said provision cannot be read to create any security interest in the assets and there can be no first charge on the assets of the CD by virtue of Section 11E. The above judgment was considering the provisions of Central Excise Act, hence, was on different statute and does not directly come to aid of the Respondent in the present case.

22. Section 9 sub-section (2) of the CST Act, which is sheet anchor submission of the Appellant has been noticed above. We have observed that provisions of Section 9 sub-section (2) cannot be read to mean that by virtue of said provision any charge can be created on the assets of the CD by operation of law. Although Section 9 sub-section (2) refers to various provisions, which had been made applicable specially to recovery by CST Act as was applicable in the general sales tax laws, but the provision of creating first charge on the assets of the CD is absent in Section 9 sub-section (2), nor it can be impliedly imported with respect to dues under CST Act. We, thus, are of the view that Adjudicating Authority did not commit any error in not accepting the claim of the Appellant insofar as central dues of CST Act are concerned. We, thus, are not persuaded to accept the submission of the Appellant that dues under CST Act has to be treated as secured debt.

23. We, thus, do not find any ground to interfere with the order dated 30.09.2025 passed by the Adjudicating Authority in IA No.447 of 2025. In respect of IA No.766 of 2021, the Appellant has also not been able to prove that the Resolution Plan, which has been approved by the CoC and the Adjudicating Authority violates any provisions of Section 30 sub-section (2) of the IBC. We, thus, upheld the order dated 30.09.2025 passed in IA No.766 of 2021.

24. In view of the above discussions and our conclusions, no interference is called for in the order dated 30.09.2025 passed in IA No.766 of 2021 and IA No.447 of 2025. In result, both the Appeal(s) are dismissed. Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

7th January, 2026

Ashwani