



***Rainbow Papers Ltd. (2023) 9 SCC 545*** without examining the applicability of the said judgment in the facts and circumstances of the present case. It is submitted that the present case deals with the distribution of the sale proceeds during liquidation proceedings as per Section 53 of the IBC whereas, in the case of *Rainbow Papers (Supra)*, the case was relating to resolution plan.

- b. The principles of natural justice were not followed while passing the order dated 19.09.2022 as the order was passed without issuing notice to the affected parties.
- c. This Tribunal has passed clarificatory order on 15.05.2024 in I.A. 2659/2023 and consequential order in I.A. 2734/2022 which affects the applicants herein.

#### **Background of the order dated 19.09.2022**

- 2. The Deputy Commissioner, State Tax, Baddi, Himachal Pradesh has recorded red entry in the revenue record on 31.01.2020 thereby attaching the property of the Corporate Debtor, which property was sold by the Liquidator during the liquidation period. When the Sales Tax Department refused to issue NOC to the successful bidder, the Successful bidder filed IA seeking directions to Sales Tax Department to issue NOC.
- 3. The Tribunal, vide order dated 05.05.2022, directed the Applicant to issue NOC to Successful Bidder. Aggrieved by the same, the Tax Department filed two I.A. No. 1949/2022 and I.A. No. 1951/2022 seeking recall of the order dated 05.05.2022.
- 4. While the above IAs were pending adjudication, the Hon'ble Supreme Court passed judgment on 06.09.2022 in the matter of **State Tax Officer (1) v. Rainbow Papers Ltd. [2022 SCC Online SC 1162]** wherein it was held that State is a Secured Creditor under GVAT Act. Thereafter, IA 1951/2022 was disposed of on 19.09.2022 considering the submission

of the Liquidator that the claim of the Tax Department has to be considered in view of the judgment of Hon'ble Supreme Court passed in **Rainbow Papers** (supra).

5. Keeping in view the submission of the Applicant, this Tribunal disposed of IA 1949/2022 & IA 1951/vide order dated 19.09.2022 in following terms:

*"Today Ld, counsel appearing for the Liquidator fairly submitted before the Bench that, in view of the recent judgement of the Hon'ble Apex Court in the matter of State Tax Officer (1) Versus Rainbow Paper Limited in Civil Appeal No. 1661 of 2020 the claim of the Department has priority and have to be included under the category of "Secured Financial Creditors" and shall be paid to them at the time of distribution for which the Department has no objection."*

6. The above order 19.09.2022 is sought to be recalled on the grounds already stated in para 1.
7. The Liquidator had filed an IA 2659/2023 for rectification of order dated 19.09.2022 seeking *inter alia* following prayers:-
  - "b. Clarify that the claim of the Respondent mentioned in the order dated 19.09.2022 has to be considered as per law;
  - c. Delete the word "financial" from the line "...have to be included under the category of "Secured Financial Creditor..." in this tribunal's order dated 19.09.2022."
8. This Tribunal after examining the order dated 19.09.2022, passed order in IA 2659/2023 on 15.05.2024 rectifying the order dated 19.09.2022 by deleting "financial" as prayed for. As far as the clarification on claim of the Sales Tax Department, order was passed in IA 2734/2022 filed by the Sales Tax Department. It was held that Rainbow Judgment is applicable in the present case and also held that the claim of the Respondent No. 1 being Sale Tax Department has to be treated as secured debt in terms of the provisions of Central Sale Tax Act and

Himanchal Pradesh Value Added Tax. As the said provision in the acts are *pari materia* to the provisions of G-VAT Act based on which Rainbow judgment was delivered.

9. During the course of the hearing of the instant IA, it was submitted that the consequential clarificatory order passed by this Tribunal on 15.05.2024 has been challenged before the Hon'ble NCLAT.
10. The present application has been filed for recall of the Order dated 19.09.2022. In the impugned order dated 19.09.2022, sought to be recalled, the Liquidator had submitted before this Court that the claim of Sale Tax Officer be treated in accordance with the recent judgment of Hon'ble Apex Court in the case of Rainbow Papers (Supra). Thereafter, the Tribunal has disposed of the application stating that the claim of the department has priority and shall be included under the category of Secured Financial Creditor and shall be paid to them at the time of distribution under Section 53. Thereafter, the Tribunal disposed of the IAs directing Sale Tax Department Himanchal Pradesh to issue NOC to the Liquidator.
11. We are of the considered view that no case for recall of order dated 19.09.2022 is made out for the following reasons:
  - a. There is no violation of principles of natural justice. From the averments in the present application, it is clear that the applicants were very much aware of the order dated 19.09.2022 but they had been waiting for the outcome in consequential I.A.s No. 2659 of 2023 and 2734 of 2022 which were finally disposed of on 15.05.2024.
  - b. It was only after passing of consequential order dated 15.05.2024, that the applicants have filed present application on 28.06.2024 for recall of order dated 19.09.2022, after twenty-one months.
  - c. The order dated 19.09.2022 simply disposed of the IAs of the Sales Tax department directing them to issue NOC to the successful

bidder and that their claims would be dealt with the law laid down the Hon'ble Supreme Court in rainbow Papers (supra). The liquidation proceedings are proceedings *in rem* and not *in personam*. Hence there was no need to issue notices to all creditors before accepting the law laid down by the Hon'ble Supreme Court in Rainbow Papers (supra).

- d. The applicants have argued that subsequent to Rainbow Papers (supra), the Hon'ble Supreme Court in the matter of *Paschimanchal Vidyut Vitran Nigam Ltd. Versus Raman Ispat Private Limited & Ors. (2023)* has held that Government dues will be considered as unsecured creditors in the event of liquidation process. Therefore,
- e. Rainbow Papers (supra) will not be applicable but Pashimanchal (supra) would be applicable.
- f. By seeking to recall the order dated 19.09.2022, the applicants are actually seeking review of the order dated 19.09.2022. We are of the opinion that once a view has been taken by this Tribunal following judgment of Rainbow Papers (supra), the applicant is legally not permitted to canvass before this Tribunal to follow the judgment of *Paschimanchal (supra)* and it would amount to review of the order which is not legally permissible.
- g. Further, the consequential order dated 15.05.2024 has been challenged before Hon'ble NCLAT and the applicability of Rainbow Papers or Paschimanchal (supra) in the present case would be dealt with in the appeal and no prejudice will be caused to the applicants on dismissal of this application.

12. For all the reasons discussed above, **I.A. 3616/2024** is **dismissed**.

Sd/-  
CHARANJEET SINGH GULATI  
Member (Technical)  
---Sanjeet---

Sd/-  
LAKSHMI GURUNG  
Member (Judicial)