Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

26th August, 2022

Subject: Judgment[1] dated 26th August, 2022 of the Hon'ble SC in the matter Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs [Civil Appeal No. 7667 of 2021].

The Hon'ble Supreme Court vide its order dated 26th August, 2022 held that the Insolvency and Bankruptcy Code, 2016 (the Code), would prevail over the Customs Act, and once moratorium is imposed in terms of sections 14 or 33(5) of the Code, the customs authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The Hon'ble SC made some important findings and observations as under:

Sl. No.	Subject / Issue	Ruling	Para / Page No.
1	**Stages of CIRP**	(a) Upon admission of an application by the NCLT, the claims of the creditor will be frozen for 180 days, during which time, the NCLT will hear proposals for revival of the CD and decide on future course of action.	34/21
		(b) During this period, a moratorium is imposed to ensure no coercive proceedings are launched or continued against the CD in any other forum or under any other law, until approval of the resolution plan or initiation of the liquidation process.	34/21
		(c) The CIRP must normally be completed within 180 days of admission of the	34/22

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		application by the NCLT.	
		(d) Even if a company goes into liquidation, a moratorium continues in terms of Section 33(5) of the IBC.	37/26
2	**Interplay between IBC and the Customs Act, 1962?**	(a) The Customs Act and the IBC act in their own spheres. In case of any conflict, the IBC overrides the Customs Act.	40/27
		(b) The Customs Act and IBC can be read in a harmonious manner wherein authorities under the Customs Act have a limited jurisdiction to determine the quantum of operational debt.	47/32
		(c) The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the customs authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The customs authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.	53/36
		(d) After such assessment, the customs authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.	54/36
		(e) In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC.	
			54/37
3	**Conclusion**	(a) The authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium.	44/31
		(b) The customs authority could only initiate assessment or re-assessment of the duties and other levies. They cannot transgress such boundary and proceed to initiate recovery in violation of	45/31

| | | sections 14 or 33(5) of the IBC.

(c) The interim resolution professional, resolution professional or the liquidator, as the case may be, has an obligation to ensure that assessment is legal, and he has been provided with sufficient power to question any assessment, if he finds the same to be excessive.

The appeal was allowed and the order of NCLAT is set aside. | 45/31 |