



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

Volume 05 | Number 35

(August 29, 2022)

*Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs*  
CIVIL APPEAL No. 7667 of 2021

DATE OF SUPREME COURT'S JUDGMENT: August 26, 2022.

*IBC, 2016 to prevail over Customs Act, 1962 once moratorium is executed.*

### Facts of the Case: -

In April 2019, a liquidation order was passed against the Corporate Debtor (CD), that was in the business of shipbuilding, by the National Company Law Tribunal, Ahmedabad (NCLT) whereby the NCLT had directed the release of certain goods belonging to the CD, lying in the Customs Bonded Warehouses without payment of custom duty and other levies. An appeal was filed against this order by the Central Board of Indirect Taxes and Customs (CBIC/ Respondent). The National Company Law Appellate Tribunal (NCLAT) observed that the goods lying in the customs bonded warehouse were not the assets of CD as they were neither claimed by the CD after their import, nor were the bills of entry cleared for some of the said goods. Further, the NCLAT held that the CD had lost his title to the imported goods under Section 48 and 72 of the Customs Act, 1962 and set aside the order of NCLT. Aggrieved by this, the Liquidator of the CD preferred the present appeal before the Supreme Court challenging the order of the NCLAT, wherein it was held that the goods lying in the customs bonded warehouses are not the assets of the CD.

The question under consideration was whether the provisions of IBC will prevail over the provisions of the Customs Act and whether the Customs Authority is entitled to confiscate the goods of the CD, which is currently under liquidation in terms of the IBC.

### Supreme Court's Observations: -

The Supreme Court observed that the Customs Act and the IBC act in their own spheres. In case of any conflict, the IBC, 2016 overrides the Customs Act. Section 238 of the IBC, being the non-obstante clause, clearly overrides any provision of law which is inconsistent with the Code.



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It was observed that the demand notices issued by the CBIC under Section 72 of the Customs Act seeking enforcement of Customs dues during the moratorium period violated the provisions of Section 14 or 33(5) of the IBC, as the case may be. This is because demand notices are an initiation of legal proceedings against the CD.

The Court noted that Customs Authority could only initiate assessment or re-assessment of the duties and other levies. They cannot transgress such boundaries and proceed to initiate recovery in violation of Sections 14 or 33(5) of the IBC, 2016. 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 would only have a limited jurisdiction to assess/determine the quantum of Customs Duty and other levies. The customs authority would not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act. After such assessment, the Customs Authority would 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 NCLT. It was further held that the title to the goods would not pass on to the Customs Authority and that the Authority would not confiscate the goods which are the assets of the CD for the purpose of recovering Customs Duties. The Court held that the IRP/RP/Liquidator has the right to take control of the assets belonging to the CD in terms of the IBC.

## **Order: -**

The order of NCLAT was set aside.

## **Case Review: -**

*Appeal allowed.*

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