

IBC Prevails over Customs Act-Supreme Court

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NEW DELHI: When there is a moratorium on recovery of dues from a bankrupt company by its creditors, customs authorities do not have the power to initiate recovery of dues under the Customs Act, according to an order by the Supreme Court.

The apex court last Friday ruled in a case between the liquidator of ABG Shipyard and the Central Board of Indirect Taxes and Customs that the Insolvency and Bankruptcy Code (IBC) would prevail over the Customs Act, to the extent that once moratorium is imposed on creditor's recovery action, the customs authority only has a limited jurisdiction to assess or 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 or confiscation, as provided under the Customs Act, the Supreme Court said in the order.

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, the order said.

In any case, the insolvency resolution professional or liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC, the order said.

The apex court ruling brings clarity that the tax authority has to follow IBC procedures for recovery of any tax dues when the lenders and resolution professional examine the feasibility of a plan to rescue the company out of its financial stress.

The ruling suggests that authorities can only take steps to determine the tax, interest, fines or any penalty which is due and cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium.