

**Dues of the CBIC, Department of Revenue will be paid as per the waterfall mechanism stipulated under the IBC**

The Hon'ble Supreme Court in the case of *Principal Commissioner of Customs v. Rajendra Prasad Tak & Ors [Civil Appeal Nos. 6432-6433 of 2023 dated October 30, 2023]* reinforces the primacy of the waterfall mechanism under the Insolvency and Bankruptcy Code in Section 53 of the Insolvency and Bankruptcy Code, 2016 ("the IBC").

**Background:**

The central issue in this case is the order of priority for the distribution of proceeds from the sale of liquidation assets, as stipulated in Section 53 of the IBC. This section delineates a hierarchical distribution mechanism essential for the equitable settlement of debts and obligations in an insolvency scenario.

As per Section 53 of the IBC, the priority list commences with the payment of insolvency resolution process costs, followed by the Secured Creditors and workmen dues up to 24 months preceding the Liquidation Commencement Date. Subsequently, the dues of employees (other than workmen) up to 12 months preceding the Liquidation Commencement Date take precedence. Following this, Financial Creditors (unsecured creditors) are entitled to their dues, followed by the Central Government and State Government dues up to 2 years preceding the Liquidation Commencement Date. At the lowest rung of this priority list are any remaining debt and dues, preference shareholders, and Equity.

**Issue:**

Whether the dues of the Central Board of Indirect Taxes & Customs ("CBIC"), Department of Revenue will be paid as per the waterfall mechanism stipulated under Section 53 of the IBC?

**Held:**

The Hon'ble Supreme Court in ***Civil Appeal Nos. 6432-6433 OF 2023*** held as under:

- Observed that, the fundamental principles of priority laid out in Section 53 of the IBC, underscores the significance of adhering to the legislative intent behind this provision, ensuring that creditors and stakeholders are treated fairly and equitably in insolvency proceedings.
- Held that, the CBIC, Department of Revenue dues will be paid as per the waterfall mechanism stipulated under Section 53 of the IBC.

**Our Comments:**

The Judgment is applauding as it underscores the significance of adhering to the legislative intent behind the provisions, ensuring that creditors and stakeholders are treated fairly and equitably in insolvency proceedings. This judgment reinforces the primacy of the waterfall mechanism under Section 53 of the IBC and serves as a pivotal reference point for future insolvency proceedings.

*(Author can be reached at [info@a2ztaxcorp.com](mailto:info@a2ztaxcorp.com))*

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