

GST NEWSLETTER

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ARTICLE

GST Implication For Companies Under Insolvency And Bankruptcy Code, 2016

Introduction


The INSOLVENCY AND BANKRUPTCY CODE, 2016 (hereinafter referred to as "IBC") is a bankruptcy law that consolidates all frameworks related to insolvency and bankruptcy under one law. Once a long process, it is now a clear, coherent, and speedy process for early identification of financial distress and resolution of entities. As per IBC, if an entity defaults in payment exceeding Rs. 1 Crore, Corporate Insolvency Resolution Process (hereafter referred to as "CIRP") gets triggered subject to approval by the adjudicating authority 'National Company Law Tribunal' (hereafter referred to as "NCLT") based on an application filed by the aggrieved creditor.

On the commencement of CIRP, the management of such entity (hereafter referred to as "Corporate Debtor") and its assets vest with an interim resolution professional (hereafter referred to as "IRP") or resolution professional (hereafter referred to as "RP"). The operation of such entity is thereafter entirely managed by Resolution Professional as a going concern till the insolvency proceeding is over and the National Company Law Tribunal passes an order.

✔ What Are GST Procedures For Corporate Debtors?

To adhere to compliances under GST, there is a special procedure under CGST Act 2017 for the corporate debtors as laid down in Notification No. 11/2020 – Central Tax Dated 21st March 2020 and Circular No.134/04/2020-GST dated 23rd March 2020.





However, the below procedures will NOT apply to such Corporate Debtor who has filed all the applicable GST returns and have paid GST till the date of appointment of RP.

1 Registration

On commencement of CIRP, the IRP/RP has to obtain new GST registration for each of the states/union territories where the corporate debtor was registered earlier. The registration has to be obtained within 30 days of the appointment of IRP/RP. Further, it is not required that the old registration should be cancelled. The officer may suspend the registration if required. However, where the registration of an entity has already been cancelled and the period for revoking the cancellation has not lapsed then it is advised that such cancellation may be revoked by taking appropriate steps in this regard.

When a new RP/Liquidator replaces the IRP there would be no need for new registration every time. Such cases would merely require the change in the name of the authorized signatory of the registered person.

2 Returns

The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during the CIRP period. The IRP/RP is liable to file their first return on obtaining the registration number as per Section 40 of the CGST Act. The first return will include all the outward supplies from the date of commencement of CIRP till the date on which registration has been granted. The CBIC has clarified that IRP/RP is under an obligation to comply with all the legal requirements for the period after the insolvency commencement date. Accordingly, IRP is not liable to furnish GST returns of the pre-CIRP period. It is the responsibility of the earlier management to file returns pertaining to the pre-CIRP period.

3 Availment Of Input Tax Credit By Corporate Debtor

The newly registered person shall be eligible to avail the entire input tax credit (ITC) for the supplies received from the date of appointment of IRP/IP to the date of registration in its first return. The ITC will be available even though it bears the GST details of the erstwhile registered person, subject to provisions of the ITC under Chapter V of the CGST Act, 2017. In other words, even if the inward supply invoices have not been uploaded by the supplier in their Form GSTR 1, the restrictions related to last date for availing the ITC and the restrictions of availing ITC only to the extent of the invoices/debit notes uploaded have been lifted by the government. Accordingly, the newly registered person can claim ITC in its first return despite the last date for availing ITC being lapsed and/or his supplier not furnishing his return of outward supplies. The CBIC has further clarified that the above exception has been made only for the first returns filed under the relevant GST Legislation.

4 **Availment Of Input Tax Credit By Customers Or Clients Of The Corporate Debtor**


Registered persons under GST i.e., the customers or clients who are receiving supplies from the corporate debtors shall, for the period from the date of appointment of IRP / RP till the date of registration be eligible to avail input tax credit on invoices issued using the GSTIN of the Corporate Debtor before the proceedings were commenced, subject to the conditions of Chapter V of the CGST Act.

✓ **What Will Be The Position Of Tax Dues Pending Before Commencement Of CIRP?**

As per the IBC provisions, if there are dues pertaining to a period before commencement of CIRP, no coercive action can be taken against the corporate debtor with respect to such amounts. Such dues will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT.

If the authorities fail to file any claim during the resolution process, once the resolution plan is approved, the Corporate Debtor/RP is dissolved from discharging such liability.





Section 31 of the IBC is the main driving section which freezes the liability of the Corporate Debtor relevant portion of which is reproduced hereunder:

“31(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, **including the Central Government, any State Government or any local authority** to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.”

The above section was specifically amended w.e.f. 16.8.2019 to include the Central Government, any State Government or any local authority. This means that the resolution planned which is approved by NCLT is binding even on Government authorities.

✔ **Supreme Court Judgement - Ghanshyam Mishra & Sons Pvt Ltd vs Edelweiss Asset Reconstruction Company Ltd.**

The Hon'ble Supreme Court in the above case held that the statutory claims of the State Government and the Central Government in respect of the period prior to the approval of the resolution plan by NCLT, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues could be continued.

In the above mentioned case, the Hon'ble Supreme Court adjudicated Civil Appeal No.1554 where on the application of Bank of Baroda, CIRP proceedings were initiated against Binani Cement who was unable to pay their debt to Bank of Baroda vide an order dated 25.07.2017. Further, on 28.07.2017, the RP had also made a public announcement inviting claims from all the creditors of the CD, and subsequently, a resolution plan was submitted, and the same was approved by the NCLAT vide order dated 14.11.2018. However, the tax authorities, even after being informed by the appellant that after the resolution plan was approved by NCLT, all proceedings instituted against the corporate debtor, arising and pending before the transfer date stood withdrawn, the tax authorities insisted that since there was no specific stay imposed on tax assessment or on creation of demand, the demand created by the department was payable by the appellant. Being aggrieved, the appellant had filed a miscellaneous writ petition before the Allahabad High court, and the same was then appealed to the Supreme Court.

The Hon'ble Supreme Court, also stated that one of the principal objects of the IBC is to provide for the revival of the Corporate Debtor and to make the same a going concern, and that the legislative intent behind making the approved plan binding, is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims, since otherwise the very calculation on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

✔ Enquiries/Suits/Proceedings During CIRP Process (Moratorium Period)

As per Section 14 of IBC law, on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for **prohibiting** the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority. This means that apart from others, even Government authorities should not issue any fresh demand notice or continue any pending notice, if the same is not part of the approved resolution plan. Hence, if any such notices are issued then reference of section 14 of IBC act should be given in order to prohibit them from proceeding further.


✔ What Are The GST Implications On Sale Of Assets Under IBC?

As per GST law, for the transaction to be liable to tax, it must fall under the purview of “supply” defined in sec 7 of the CGST Act. The relevant portion of the meaning of supply is reproduced below:

1. (a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(c) The activities specified in Schedule I, made or agreed to be made without a consideration





As per Para 1 of Schedule 1 – “activities to be treated as supply even if made without consideration”; **Permanent transfer or disposal of business assets where input tax credit has been availed on such assets** will be treated as supply and accordingly GST will be applicable on the same regardless of whether they are made with or without consideration.

Recently, the Authority of Advance Ruling (West Bengal), in the case of M/s Mansi Oils and Grains Pvt Ltd. pronounced the judgment based on Sl. No. 4(a) of Schedule-II of the GST Act that sale of assets of Corporate Debtor by liquidator, whether or not for a consideration, would amount to supply of goods and liable to discharge GST on it.

GST exemption in case of sale of assets by way of transfer of a business as a going concern

As per Notification no 12/2017 Central tax (rate) dated 28.6.2017, there is exemption from GST if the entire business is transferred by way of a going concern.

Conclusion

The government has attempted to solve the various complexities and challenges that are faced with respect to GST compliances to be carried out by IRP/RP. However, there are various inevitable gaps in the procedures prescribed under notifications and circulars, which need to be clarified for proper implementation of objectives of the IBC, 2016 as the only other alternative is adjudication in the Courts which are time-consuming, impacts the process and can be expensive for companies under insolvency or bankruptcy.

CASE LAWS

GST Impact On Taxability Of Dried, Whole Turmeric And Ancillary Services – Maharashtra AAR

Facts Of The Case

The Applicant, Nitin Bapusaheb Patil, is a Commission Agent for farmers who produce whole, dried and polished turmeric and supply it to traders in APMC, Sangli, and receives 3% fixed commission.

The turmeric crop is sowed and harvested by the farmer, who also cleans and boils it. It's further dried, polished, and transported to the APMC yard after being packed in gunny bags.

Hence, based on this, the Applicant has approached the AAR for obtaining a ruling on the following:

- Whether turmeric is an agricultural produce and is exempted under GST? If it's taxable then what is the GST rate and HSN code applicable?
- Whether the Applicant services as Commission Agent is taxable to GST or exempt as ancillary services provided to agricultural produce? If so, then is the Applicant liable to obtain registration under GST.

Provision Of Law

As per Notification No. 11/2017-C.T. (Rate) and 12/2017-C.T. (Rate), both dated 28-6-2017, agricultural produce is defined as any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

As per Sl .No. 54 of Notification No. 11/2017-C.T. (Rate) dated 28-06-2017 support services for agriculture which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market is exempt from GST.

In Notification No. 11/2017-C.T. (Rate) and 12/2017-C.T. (Rate), both dated 28-6-2017; the HSN code 0910 30 10 refers to fresh turmeric which attracts 'Nil' rate GST and HSN code 0910 30 20 refers to dried turmeric which attracts 5% GST rate.

Circular No. 16/16/2017-GST dated 15.11.2017 has been issued to clarify that processed products such as spices fall outside the definition of agricultural produce.



Ruling of AAR

The learned Maharashtra AAR held that:

- The processes carried out by the farmer convert the fresh turmeric to dried turmeric for sale to traders at APMC, and hence, the dried turmeric is taxable under GST at 5% under HSN 0910 30 20. These processes may have been undertaken to make the produce marketable, but the turmeric is changed from fresh turmeric to dried turmeric, which is a spice. The same ruling was held by Rajasthan AAR in the case of M/s Sardar Mal Cold Storage & Ice Factory.
- The services provided by the Applicant are not exempt under GST as the sale of dried turmeric is taxable under GST.
- The Applicant is liable to obtain registration under GST.

GST Impact On Goods Supplied For A Nominal Amount Under A Promotional Scheme – West Bengal AAR



Facts Of The Case

The Applicant, Kanahiya Realty Pvt. Ltd, manufactures and supplies hosiery goods such as Vests, Briefs, etc. They have introduced a promotional scheme wherein they will provide various goods such as gold coins, refrigerators, coolers, split air conditioner, etc. for a nominal amount to their retailers if they buy certain units of their manufactured goods.

Therefore, the Applicant has approached the AAR to obtain a ruling on the following:

- Whether the supply of the promotional items under their promotional scheme for a nominal amount should be considered an individual supply or a mixed supply under GST?
- Whether input tax credit is available for such supply of goods for a nominal amount?



Provisions Of Law

As per Section 2(74) of the CGST Act, 2017 - "mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

As per Section 8(b) of the CGST Act, 2017 - a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

As per Section 17(5)(h) of CGST Act, 2017 credit of input tax has been restricted if the goods are written off, destroyed, stolen or given as gift.

As per Section 15(1) of the CGST Act, 2017 The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related. The price is the sole consideration for the supply.

Ruling of AAR

The learned AAR held that:

- The supply of the promotional goods occurs after the supply of the manufactured goods of the Applicant and the supply is for a consideration which is a nominal amount as set by the Applicant. Hence, the supply of the promotional and manufactured goods does not take place for a single price. Therefore, the supply of the promotional goods is a separate supply and GST will be applicable accordingly.
- However, since the supply of the promotional goods is not made with price as the sole consideration for the supply, the valuation as to be determined in accordance with the relevant GST Acts and applicable Rules.
- In case of the input tax credit, since the Applicant is making a separate supply of the promotional goods, it's not ineligible from claim under Section 17(5) of the CGST Act, 2017 and since it's made in the course of furtherance of business the entire ITC will be eligible for claim to the Applicant.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF DECEMBER 2021

- ✓ Two Central Tax Circular. - [Click here](#)
- ✓ Four Central Tax Notification. - [Click here](#)
- ✓ Five Central Tax (Rate) Notification. - [Click here](#)
- ✓ Five Integrated Tax (Rate) Notification. - [Click here](#)
- ✓ One Compensation Cess (Rate) Notification. - [Click here](#)

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Mechanisms for filing of refunds claim by the taxpayers registered in erstwhile union territory of Daman and Diu for period prior to the merger with U.T Dadra and Nagar Haveli.	168/24/2021-GST, Dated 30-12-2021
2.	GST on service supplied by restaurants through e commerce operators -reg.	167/23/2021-GST, Dated 17-12-2021
3.	Seeks to make amendments (tenth amendments,2021) to the CGST rules, 2017.	40/2021-Central Tax Dated 29-12-2021
4.	Seeks to notify 01.01.2022 as the date of which provision of section 108,109 and 113 to 122 of the finance,2021 shall come into force.	39/2021-Central Tax Dated 21-12-2021
5.	Seeks to bring sub-rule (2) and sub rule (3), clause (1) of sub rule (6) and sub rule (7) of rule 2 of the GST (Eight Amendment) Rules,2021 come into force w.e.f. 01.01.2022.	38/2021-Central Tax Dated 21-12-2021
6.	Seeks to make amendment (Ninth Amendment,2021) to the CGST Rules,2017.	37/2021-Central Tax Dated 01-12-2021
7.	Seeks to supersede Notification 15/2021-CT(R) dated 18.11.2021 and amend notification no 11/2017-CT (Rate) dated 28.06.2017.	22/2021-Central tax (Rate) Dated 31-12-2021
8.	Seeks to supersede Notification 14/2021-CT(R) dated 18.11.2021 and amend notification no 1/2017-CT (Rate) dated 28.06.2017.	21/2021-Central tax (Rate) Dated 31-12-2021

9.	Seeks to amend Notification no 21/2018-Central Tax (Rate) dated 26.07.2018.	20/2021-Central tax (Rate) Dated 28-12-2021
10.	Seeks to amend Notification no 2/2017-Central Tax (Rate) dated 28.06.2017.	19/2021-Central tax (Rate) Dated 28-12-2021
11.	Seeks to amend Notification no 1/2017-Central Tax (Rate) dated 28.06.2017.	18/2021-Central tax (Rate) Dated 28-12-2021
12.	Seeks to supersede notification 14/2021-IT(R) dated 18.11.2021 and amend notification no.1/2017-Integrated Tax (Rate) dated 28.06.2021.	22/2021- Integrated Tax (Rate), Dated. 31-12-2021
13.	Seeks to supersede notification 15/2021-IT(R) dated 18.11.2021 and amend notification no.8/2017-Integrated Tax (Rate) dated 28.06.2021.	21/2021- Integrated Tax (Rate), Dated. 31-12-2021
14.	Seeks to amend Notification No 22/2018-Integrated Tax (Rate) dated 26.07.2018	20/2021- Integrated Tax (Rate), Dated. 28-12-2021
15.	Seeks to amend Notification No 2/2017-Integrated Tax (Rate) dated 28.06.2017.	19/2021- Integrated Tax (Rate), Dated. 28-12-2021
16.	Seeks to amend Notification No 1/2017-Integrated Tax (Rate) dated 28.06.2017.	18/2021- Integrated Tax (Rate), Dated. 28-12-2021
17.	Seeks to amend Notification No 1/2017-Compensation Cess (Rate) dated 28.06.2017.	02/2021- Compensation Cess (Rate), Dated. 28-12-2021

DUE DATES OF GST FOR THE MONTH OF JANUARY 2022

JANUARY

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
9	GSTR-7, GSTR-8 10	*GSTR-1 11	12	*GSTR-1 & GSTR 6 13	14	15
16	17	CMP-08 18	19	*GSTR-3B, GSTR-5,5A 20	21	*GSTR-3B 22
23	*GSTR-3B 24	25	26	27	28	29
30	31					

2022

* Monthly return for taxpayers with Annual Turnover more than Rs.1.50 Crores or Taxpayer who has opted Monthly return option.

* For taxpayers with Annual Turnover less than Rs.1.50 Crores or Taxpayer who has opted quarterly return option (QRMP); based on the State of the taxpayer




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