

GST CAFÉ

***Special Procedure under GST for
Corporate Debtors undergoing CIRP***

Taxpayers (“**Corporate Debtor**”) undergoing the Corporate Insolvency Resolution Process (“**CIRP**”) under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) have been facing difficulties due to the inconsistencies between the provisions of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) and the IBC.

Section 39(10) of the CGST Act, prevents the Interim Resolution Professional/Resolution Professional (“**IRP/RP**”) of the Corporate Debtor from filing of subsequent GST returns upon his appointment and discharging current tax liabilities without filing of past returns, for which the IRP/RP is not liable under the IBC.

In order to bring GST laws in line with IBC, the 39th GST Council Meeting recommended formulation of a special procedure for such Corporate Debtors. To give effect to the recommendations, new rules providing for the special procedure were notified *vide* Notification No. 11/2020-CT dated 23.03.2020. Subsequently, Circular No. 134/04/2020-GST dated 23.03.2020 was issued clarifying issues under GST for such Corporate Debtors.

The Special Procedure notified is detailed as under:

1. REGISTRATION

The IRP/RP of the Corporate Debtor would be required to obtain fresh registration in each of the States or Union Territories where the Corporate Debtor was earlier registered (“Erstwhile Registration”), within 30 days of the appointment of the IRP/RP.

In cases where the IRP/RP has already been appointed at an earlier date, the IRP/RP is liable to take fresh registration within 30 days of the notification i.e. 23.03.2020. Such registration would be effective from date of his appointment as IRP/RP.

2. FIRST RETURN AND INPUT TAX CREDIT (“ITC”)

Pursuant to obtaining fresh registration(s), the IRP/RP would be required to file the first return under section 40 of the CGST Act for the period commencing from when the IRP/RP is liable to be registered till the date on which registration is granted.

2. [CONTD.] FIRST RETURN AND INPUT TAX CREDIT

The notification also provides for availability of ITC in respect of supplies received since the appointment of the IRP/RP, notwithstanding any of the following –

- i. that the last date for availment of such ITC under section 16(4) of the CGST Act has lapsed; or
- ii. that such invoice bears the GSTIN of the Erstwhile Registration of the Corporate Debtor; or
- iii. that such invoice is not reflected against the Corporate Debtor's Form GSTR-2A in terms of rule 36(4) of the Central Goods and Services Tax Rules, 2017 ("CGST Rules").

Circular No. 134/04/2020-GST dated 23.03.2020 clarifies that this relaxation is available only for the first return filed by the IRP/RP.

Likewise, registered persons receiving supplies from the Corporate Debtor after appointment of the IRP/RP using the GSTIN of the Erstwhile Registration may avail ITC against the same, notwithstanding rule 36(4) of the CGST Rules.

3. TREATMENT OF ERSTWHILE REGISTRATION

The fresh registration(s) of the Corporate Debtor are to be treated as 'distinct person(s)' of the Erstwhile Registrations. However, the circular dated 23.03.2020 clarifies that the **Erstwhile Registration held by the Corporate Debtor is not to be cancelled, although it may be suspended by the jurisdictional officer.**

Where the GST registration held by entities already undergoing CIRP has been cancelled, the Corporate Debtor may apply for revocation of such cancellation within the statutory time limit therefor under section 30 of the CGST Act i.e. **within 30 days from the date of service of the cancellation order.**

3. [CONTD.] TREATMENT OF ERSTWHILE REGISTRATION

Any amount deposited by the IRP/RP as cash in the electronic cash ledger of the Erstwhile Registration from the date of his appointment up to the date of fresh registration will be available for refund against the Erstwhile Registration, notwithstanding non-filing of monthly returns i.e. Form GSTR-1 and Form GSTR-3B for the said period.

VA COMMENTS:

1. Registration procedure (i.e. fresh registration for IRP) has to be clarified by the council as to whether a special procedure will be laid down for IRP or it is required to be registered as authorized representative when applying for fresh registration.

2. The circular provides for refund of balance from the electronic cash ledger under the Erstwhile Registration from the date of appointment of IRP/RP during CIRP period, however for cases where the return has previously been filed after disposing of tax liability (either through ITC or Cash), it is silent as to whether the IRP/RP would be required to re-consider all supplies in the first return cumulatively. Further, if such is the case, no modality on treatment of such invoices in returns and payment of tax liability already disposed off through GSTR-3B for interim period of appointment of IRP till issuance of this notification has been provided .
3. The treatment of accumulated balances of ITC in cases where there is no pending liability of Corporate Debtor, is yet to be clarified so as to provide, whether the accumulated balance of Erstwhile Registration would be refunded or allowed to be carried forward to the fresh registration (i.e. taken by the IRP/RP).

For any details and clarifications, please feel free to write to:

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