

## GST Compliance Procedure for persons Under Insolvency and Bankruptcy Code, 2016 (IBC)

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In the 39<sup>th</sup> GST Council meet, there was a mention made about the GST Compliance Procedure under IBC for Corporate Debtors undergoing Corporate Insolvency and resolution process (CIRP). Corporate Debtors simply means a person who has made default in repayment of the amount above prescribed threshold limit. Earlier the threshold limit was **Rs 1 lakh** which was recently changed to **Rs 1 crore** due to COVID-19 Pandemic.

The management operations of the corporate debtor undergoing CIRP are transferred to an IRP (Insolvency Resolution Professional) or RP (Resolution Professional) during the process of insolvency. Such Corporate Debtor ( Defaulting Company ) undergoing the CIRP and whose management of the affairs are undertaken by the IRP or RP shall now be treated as a distinct person for this purpose and will be liable to take New GST Registration **within 30 days** from the date on which IRP/RP is appointed. Such corporate debtor shall comply with the compliance procedure and file GST Returns, comply with all the other related compliances till the period they are undergoing CIRP under IBC.

A **notification no 11/2020** under CGST with this regard was issued by CBIC dated 23.03.2020. A **circular** was also issued with this regard for the purpose of clarifying some frequently asked questions.

### **This article deals with:**

1. What is the special procedure for Corporate Debtor undergoing CIRP?
2. How the existing dues under existing GST Number for the pre CIRP period dealt with?
3. Will the existing registration of the Corporate Debtor be cancelled?
4. Who is liable to file return for pre CIRP Period?
5. Who is liable to file First Return after obtaining new registration under CIRP?
6. How will be the ITC of invoices issued before notification, to the erstwhile registered person be taken?

7. How will be ITC claimed by the persons availing supplies from Corporate Debtor on existing Registration number?
8. Can amount deposited by IRP/RP in the cash ledger in the existing registration liable for refund?

### **What is the special procedure for Corporate Debtor undergoing CIRP?**

- Corporate Debtor will be treated as a distinct person, from the date IRP/RP is appointed.
- Corporate Debtor would be liable to take New Registration in every state in which he was earlier registered.
- If IRP/RP is appointed prior to the date of notification, Corporate Debtor shall take registration within 30 days of notification.
- First return under Section 40 of the CGST Act shall be filed for the period; he becomes liable to take registration till date on which registration is granted.
- ITC of invoices covering the supplies of goods & services received since appointment of IRP/RP but bearing the GSTIN of the erstwhile registered person ( Previous GSTIN ) can be claimed in first return subject to the condition of Chapter V of the act, except Section 16(4) and sub rule (4) of rule 36. It means Capping of 10% on ITC shall not be applicable.

### **How the existing dues under existing GST Number for the pre CIRP dealt with?**

- As per IBC, no coercive action can be taken against the Corporate Debtor in respect of dues for the period prior to the insolvency commencement date.
- Such dues will be treated as Operational Debts and Tax authorities may file claim before NCLT in IBC.

**Note:** *As per section 14 of IBC, which mandates imposition of Moratorium period, no fresh proceedings can be initiated and no pending suits shall be continued during this period.*

### **Will the existing registration of the Corporate Debtor be cancelled?**

- The existing registration shall not stand cancelled.
- If required, the proper officer may suspend the registration.

- In case registration is already cancelled, such cancellation may be revoked after taking appropriate steps.

### **Who will be liable to file return for the Pre- CIRP period?**

It is clarified that IRP/RP are under no obligation to file return for the pre-CIRP period. Therefore it can be reasonably assumed that Corporate Debtor will file the return for pre-CIRP period.

### **Who is liable to file first return first return after obtaining new registration under CIRP?**

- It is the duty of IRP/RP to furnish returns, pay tax and comply with GST law during CIRP period.
- IRP/RP to make sure that first return for period beginning from , date from which corporate debtor is liable to take registration till date on which registration is granted.

### **How will be the ITC of invoices issued before notification, to the erstwhile registered person be taken?**

- The corporate debtor, in the first return will be eligible to avail input tax credit on the invoices which covers the supplies of goods or services both received after the commencement of CIRP during CIRP period but bearing GSTIN of the erstwhile registered person (Old GSTIN).
- The capping limit of 10% ITC will not be applicable.
- This exception is made only for the first return filed under section 40 of the CGST Act.

### **How will be the ITC claimed by a person making supplies from Corporate Debtor on existing GSTIN?**

- Registered persons who are receiving supplies in the period beginning from the date IRP/RP is appointed till the date new registration is granted to Corporate Debtor or 30 days from the date of notification, whichever is earlier will be eligible to claim ITC on the basis of invoices issued by corporate debtor on the existing GSTIN.
- The capping of 10% will also be not applied here.

## **Can amount deposited by IRP/RP in the cash ledger of existing registration of Corporate Debtor be eligible for refund?**

- Any amount deposited by IRP/RP in the existing registration number of Corporate Debtor Shall be eligible for refund even though the relevant form GSTR1 and GSTR3B is not filed.
- The period of deposit should be between date of appointment of IRP/RP to the date of notification specifying procedure for undergoing CIRP.

### **Conclusion**

To provide relief to MSME, Govt has increased the threshold limit for applying under IBC from Rs 1 Lakh to Rs 1 cr.

Moreover, introduction of Special procedure undergoing CIRP is a step taken by government to maintain the continuity of compliances by Corporate Debtor undergoing CIRP.

The onus to file first return is put on the IRP/RP so that correct and appropriate information is presented.

Also removing capping of 10% while claiming ITC in first returns is a welcome move.