



# DEMYSTIFYING GST PROVISIONS FOR RESOLUTION PROFESSIONAL

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**B**eing insolvent is not a crime; it can be for reasons like the change in the market dynamics or change in the regulations or change in consumer habits or reasons beyond anyone's control. There was no time-bound manner for resolution of insolvency, and it used to take ages. As a part of ease of doing business and also provide faster resolution for the creditors and banks, IBC was introduced in 2016 with a time-bound manner for resolution, in case of companies it 180 days and can be extended by another 90 days up to maximum of 330 days including any time taken for legal proceedings. In the case of a start-up, it is 90 days can be extended by another 45 days.

There is a specific provision in the CGST Act 2017 which states that *Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.*

When companies are under liquidation, it means that they are not financially goods, and there will be a liability for GST also. In such cases, will the department have the first charge on the property? The answer is no, and the amount payable to the GST department will be like any other corporate creditor. There is clarity on this, but the other questions which an IRP/RP have while liquidating the company are

- Do they have to pay the taxes on the new supplies which are being made?
- Can they take the input tax credit on their inward supplies?
- Do they have to file the returns of the company if they have not paid?
- How to file the returns if the old returns are pending to be filed and tax payment due?
- Do they have to collect taxes for the assets put on auction?

These questions have been addressed in the recently concluded 39<sup>th</sup> GST Council Meeting, and the basis on that CBIC has issued the following documents

1. Notification No. 11/2020 – Central Tax Dated 21st March 2020
2. Circular No.134/04/2020-GST dated 23rd March 2020

Clarity has been provided in the following cases

1. After being appointed as an IRP/RP for a corporate debtor, the IRP/RP should use the same GST Registration or take new registration?  
The IRP/RP, after being appointed for a corporate debtor, has to take a new registration under GST. They cannot use the existing GST Registration of the Corporate Debtor.
2. In how many days does the IRP/RP has to obtain the GST Registration?  
The IRP/RP has to obtain the registration within 30 days from the date of appointment.

3. What should the existing IRP/RPs do who have been appointed before this notification being published?  
The existing IRP/RPs who have been appointed before the issue of the notification should apply for registration within 30 days of the commencement of the information.
4. The IRP/RP who have to obtain new registration under GST, have to take GST Registration on their PAN Number or on what basis?  
The IRP/RP has to obtain a new registration under GST as a distinct person of the corporate debtor. As per the provisions of GST, a distinct person is one who has the same PAN number across registrations.
5. Should the IRP/RP surrender the existing GST Registration of the Corporate Debtor?  
The existing registration of the corporate debtor will remain active, and in case if an application for cancelation has been filed, the jurisdictional officer has to keep the registration under "Suspension" status.
6. What should the RP/IRP do if the registration number of the corporate debtor is already cancelled?  
If the registration number of the corporate debtor is already cancelled, the RP/RIP should apply for revocation of the same if time has not lapsed.
7. Should IRP/RP file returns for the corporate debtor who has not filed returns for the pre CIRP period?  
The IRP/RP need not file the returns of the corporate debtor for the pre CIPR Period, where returns have not been filed.
8. Can the GST Department initiate recovery proceedings on the corporate debtor when the resolution process is going on?  
No, as per Section 14 of the IBC Act 2016, it is prohibited.
9. How will the department recover the tax liability from the corporate debtor?  
The tax liability for GST will also be treated as operational debt as per the provisions of the IBC, and the concerned officer has to file a claim in prescribed Form B before IPR/RP.
10. If the Corporate Debtor has GST Registrations in different states, in such case how it should be filed?  
If the corporate debtor has multiple registrations in different states, then it is recommended to file each claim for each state.
11. Does the IRP/RP have to file returns after obtaining the registration as a distinct person of the corporate debtor?  
Yes, the IRP/RP has to file returns as normal taxpayers from time to time till the resolution process is over.
12. Can input tax credit be taken on supplier invoices with the corporate debtors GSTIN after obtaining the new GSTIN as a distinct person of corporate debtor?  
Yes, the Input tax credit can be availed on the supplier invoices with corporate debtors GSTIN.
13. Will, all the provisions of the input tax credit, will be applicable for the IRP/RP who obtained registration as a distinct person of corporate debtor?  
Yes, all the provisions of the input tax credit as per GST will be applicable except for the provision of availing input tax credit on tax invoices or debit notes in a time-bound manner as specified in Section 16(4) of the CGST Act 2017 and Rule 36(4) which relates to availing input tax credit not more than 110% of GSTR – 2A.
14. Can the recipients avail input tax credit on the invoices issued by the corporate debtor before the appointment of IRP/RP?  
Yes, they can avail input tax credit on the supplies made by the corporate debtor from the date of appointment of IRP/RP or within 30 days of issue of Notification No 11/2020, Central Tax dated 21<sup>st</sup> March 2020.

15. Cash has been deposited by the IRP/RP into the cash ledger of the corporate debtors GSTIN. Can refund be claimed in such cases?  
Yes, the refund can be claimed if cash is deposited into the cash ledger of the corporate debtors GSTIN.
16. Are all the issues resolved with the issue of the notification and circular related to the IBC?  
No, all the issues are not resolved; some of them still need to be issued. Some clarity if required in the following areas
- a) When the resolution process is over, and the amount of GST liability is recovered with a haircut, in such cases, is it required to file the GST Returns? If yes, how to show the amount of haircut in the returns? Or it has to be cancelled or surrendered?
  - b) Is the corporate debtor required to file the Final Return as on date of CIRP commencement?
  - c) What should be the treatment of the input tax credit lying in the input tax credit ledger of the Corporate debtor (old)?
  - d) Is IRP/RP are required to surrender and file the final return the GST Registration after the end of CIRP?
  - e) After the end of the CIRP, does the IRP/RP have to surrender their registration? What will happen to the unutilized input tax credit in the ITC ledger?

The circular and the notification have answered many of the unanswered questions and make the resolution process now simple and with clarity. Still there are some questions to be answered and as it is evolving process, we expect the above questions or any other questions to be resolved over a period of time. For any Act to gauge it is successful or not it requires about 3 to 5 years of time and in this case both the laws IBC and GST are new once. So it will take definitely some time to settle all these issues.

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