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## IBC CODE - 2016 AND GST – PERFECTLY MATCHED?

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**T**o ease out the stress of Non-Performing Assets in the country, Government introduced **Insolvency and Bankruptcy Code, 2016** (31 of 2016) from FY 2016 with an idea to speed up the process and bring the distressed assets in the economy. On the other side, in Indirect taxes government came out with one of the biggest reforms by introducing GST Act w.e.f July 2017.

In the process of IB Code -2016, IRP/RP experienced different types of problems while doing compliances under GST and were unable to deal with various provisions of GST Acts. Government and GST Council got many representations from different corners of society as usual and in March 2020, just before COVID-19 pandemic, came out with a notification no 11/2020 dt 21.03.2020 which was a sigh of relief for IRP/RO professionals to speed up the IB process. But the above said notification alone was not sufficient to resolve all issues of IRP/RP professionals.

*After gone through the above notifications and having discussions with IRP/RP professionals, we also sent some recommendations to GST council for further improvement. Accordingly, council accepted our recommendations and issued necessary notifications/circulars/clarifications to the facts.*

Based on notifications no 11/2020 dt 21.03.2021 and 39/2020 dt 05.05.2020 followed by two *Circulars No 134/04/2020 -GST dt. 23.03.2020 and Circular Dt. 138/08/2020-GST* and for the better understanding of subject matter, we have compiled the following FAQs having match/mismatch between **IB Code-2016** and **GST Acts 2017**.

### **FAQ: IBC-2016 and GST**

**Q.1 Which Section of CGST Act, empowers the Center Government to make rules and regulation in respect to functioning of IRP/IP under IBC-2016 to compliance under GST Act.**

**Answer:**

Section 148 of CSGT Act.

**Q.2 Under which Notification no CBIC notified the procedure for IRP/RPs to be followed under GST Act.**

**Answer:**

Notification no 11/2020 Dt 21.03.2020 and Notification no 39/2020 dt 05.05.2020.

### **Q.3 What was the need to issue the Notification no 11/2020?**

#### **Answer:**

Due to non-payment of government taxes under GST, registration numbers of defaulters/ Corporate Debtors were suspended/ cancelled, resulting after appointment of IRP/RP, these IRP/RP were unable to compliance under GST. Considering all factors this notification with special procedure notified.

### **Q.4 When role of IRP/RP comes into existence under GST Act?**

#### **Answer:**

As per IB Code-2016, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (hereafter referred to as "CIRP") gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (hereafter referred to as "IRP") or resolution professional (hereafter referred to as "RP"). It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (hereinafter referred to as the "NCLT")

### **Q.5 Who is Corporate Debtors under IBC-2016 Code?**

#### **Answer:**

As per Section 3(8) of IBC Code -2016, Corporate Debtors mean a corporate person who owes a debt to any person. In other words, who has to pay money in market including government dues.

### **Q.6 What procedure with respect to Registration under GST of Corporate Debtor, IRP/RP has to follow after his appointment and after issue of Notification no 11/2020 dt 21.03.2020?**

#### **Answer:**

**As per the notification no 11/2020 dt 21.03.2020** with effect from the date of appointment of IRP/ RP, he will be treated as a distinct person of the corporate debtor, and he shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier, **within thirty days** of the appointment of the IRP/ RP.

Where IRP/RP has been appointed prior to the said notification no 11/2020 dt 21.03.2020, he shall apply for registration in all such states where the corporate debtor was registered within 30 days from the issue of this notification. (due to lockdown in the country from March, 2020 till June, 2020 in proviso to the said notification the words "within 30 days of the commencement of this notification i.e 21.03.2020" has been substituted as "*within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later*" - notification no 39/2020 dt 05.05.2020). This new registration shall be effective from the date of his appointment.

*Example: If an IRP/RP has been appointed wef 30.06.2019. So he should have applied for new registrations on or before 30.06.2020 apply and all new registrations shall be effective from the date of his appointment i.e 30.06.2019.*

Notification no 39/2020 dt 05.05.2020 further states that such class of person does not include the corporate debtors who have already filed their all returns/statements under section 37 and 39 of CGST Act, for the period prior to the appointment of IRP/RP. **Meaning there by, the corporate debtors who have compliance under above said sections need not to obtain new registration under notification no 11/2020.**

**Q.7 Is it possible for a corporate debtor having appointed IRP/IP, have another GSTIN with same name and title, products or services or both, premises, HSNs, against same PAN no? In case of PAN, no one can have another PAN no for same entity/person.**

**Answer:**

It is allowed to have separate GSTIN no for same entity for same premises, products, services etc.

**Q.8 Which PAN no shall be used to obtain new registration under GST by IRP/IP?**

**Answer:**

Corporate Debtors PAN no. shall be used for new registration. IRP/RP should not use his /her PAN for this registration.

**Q.9 Who's DSCs shall be used for filing of registration application and other compliances.**

**Answer:**

IRP/RP or person authorized by him/her shall use his/her DSCs for filing of registration application and other compliance under GST.

**Q.10 What is the procedure for filling of Returns has been described under Notification no 11/2020 dt. 21.03.2020 and Notification no 39/2020 dt 05.05.2020?**

**Answer:**

After obtaining new registration, if his appointment is prior to the notification dt 21.03.2020, IRP/RP have to file ,first return of corporate debtor for each such registration obtained till the period of registrations have been granted. He has to make all tax payments and comply other provisions of the ACT.

**Q.11 Is IRP/RP liable to file returns of pre-CIRP period?**

**Answer:**

No. In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date.

**Q.12 Is IRP/RP is eligible for ITC for the period prior to his appointment?**

**Answer:**

No.

**Q.13 Is IRP/RP is eligible for ITC for the period falls between the date of his appointment and the date of GST registration?**

**Answer:**

Yes, he is eligible to avail ITC for the goods or services received for the period from his appointment as IRP/RP to the date of GST registration based on the invoices carrying GST no of erstwhile dealer (old GST no of Corporate Debtor). The provisions of sub-section (4) of section 16 of the said Act and sub-rule (4) of rule 36 of the Central Goods and Service Tax Rules, 2017 not applicable in that case.

**Q.14 Does registered persons. getting supplies from such class of persons (Corporate Debtor) for the period from the date of appointment of IRP / RP till the date of GST registration as required in the notification or as the case may be, eligible to avail ITC for the said invoices.**

**Answer:**

Yes, eligible subject to the conditions of Chapter V of the said Act and the rules made there under, except the provisions of sub-rule (4) of rule 36 of the said rules.

**Q.15 Is IRP/RP is eligible for ITC for the goods and services received after obtaining new GST registration?**

**Answer:**

Yes, subject to all provisions of GST Act.

**Q.16 Does IRP/RP is eligible to get refund for cash deposited by him in existing GSTIN after being appointed IRP/RP and getting new registration after notification no 11/2020.**

**Answer:**

Yes, he can get refund for cash deposited in GSTIN no of erstwhile dealer.

**Q.16 How are dues under GST for pre-CIRP period be dealt?**

**Answer:**

The dues of the period prior to the commencement of CIRP 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.

**Q.17 Which Corporate Debtor does not require fresh GSTIN after the appointment of IRP/RP?**

**Answer:**

A corporate debtor who has filed all statements/ returns of GST under section 37 and 39 for all the tax periods prior to appointment of IRP/RP does not need fresh GSTIN (Notification no 39/2020 dt 05.05.2020). Meaning there by, IRP/RP will file all returns/statements of period after his appointment in existing GSTIN no.

**Q.18 There are cases, where company under old registration has some cash balance in its Electronic Cash Ledger or in Electronic Credit Ledger. How it will be refunded or can be carried forwarded to new GSTIN no?**

**Answer:**

There is no clarification from CBIC in this regard. But from the drafting of the notification no 11/2020 dt 21.03.2020 and 39/2020 dt 05.05.2020, it seems that such cash will not be refunded to RP/RP.

**Q.19 Can IRP/RP apply for refund or to carry forward to new registration any refund against Export?**

**Answer:**

There is no clarification from CBIC in this regard. But from the drafting of the notification no 11/2020 dt 21.03.2020 and 39/2020 dt 05.05.2020, it seems that IRP/RP cannot apply for the refund or adjustment in new registration.

**Q.20 In a case, where though company has gone for CIRP, but does not have any liability towards GST or does not have any operations. Is there any need to get new registration for NIL returns?**

**Answer:**

Though there is no clarification on it. However, if we go by the case, if company has not filed even NIL GST statements/returns under the law and its registration has been suspended/cancelled, IRP/RP need to apply for new registration.

**Q.21 If in any case, IRP/RP completes CIRP with in stipulated time and handed over the company again to promoters or BOD or new promoters take over or NCLT order to withdraw the CIRP, will new registration (post IRP/RP) continue or original registration will be activated or again new registration will be taken?**

**Answer:**

No clarification is issued by CBIC so far. However, for all practical purposes it seems that new registration shall be surrendered by IRP/RP and if:

- company is handed over to previous promoters/BOD than old registration shall be revoked,
- Company is taken over by new promoters than in any case new registration is required,
- the CIRP is withdraw by virtue of the NCAL order, even in that case new registration obtained by the IRP/RP will be surrendered

**Q.22 In any case, IRP/RP could not succeed in CIRP and company goes for liquidation, will again new registration will be obtained by liquidator appointed for by NCLT?**

**Answer:**

No clarification by CBIC. However, for all practical purposes and provisions of laws, it seems that yes new registration by a liquidator must be obtained.

**Q.23 Is the Notification no 11/2020 dt. 21.03.2020 applicable to the companies already under Liquidation after CIRP?**

**Answer:**

No clarification on it has been issued so far. But it seems that yes, new registrations by the liquidator is to be obtained to do all compliances under the law.

**Q.24 What is the fate of pending returns of CD prior to the appointment of IRP/RP?**

**Answer:**

IRP/RP for such companies has been appointed for specific purposes. So, after completion of such objectives either such companies to be handed over to previous promoters/BOD or shall be taken over by new promoters/BOD. The cases shall be dealt accordingly.

**Q.25 How IRP/RP will make the payment of GST in time when there is cash crunch during the CIRP period also.**

**Answer:**

Companies goes into IBC when there is cash crunch or having trade payables. So, IRP/RP is appointed to streamline the operations and to improve the liquidity in given period of time.

**Q.26 There may be cases, when IRP has been replaced by RP in meeting of creditors within 30 days of appointment of IRP. In such cases RP will apply for registration if IRP not initiated the process. So provisions for time extension to RP must be there.**

**Answer:**

There is no clarification on it yet. But if it happens, the time shall be counted from the date of appointment of RP and not from the date of appointment of IRP.