L&S Update

An e-update to clients from
Lakshmikumaran & **Sridharan**

GST Update No. 8 of 2020
25th March, 2020

- **Special Procedure for corporate debtors undergoing CIRP under IBC, 2016**
- **Special Procedure for notified persons in merged UT of Daman & Diu and Dadra & Nagar Haveli**

Special Procedure applicable on corporate debtors undergoing CIRP under IBC, 2016
Notification No. 11/2020-C.T.

✓ **Notified person**:

Registered person who are corporate debtors **(CD)** under the provisions of the IBC, 2016 undergoing Corporate Insolvency Resolution process **(CIRP)** and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals **(RP)**.

✓ **Notified person shall follow the special procedure**

The Registered Person shall follow the special procedure from the date of the appointment of the IRP/RP till the period they undergo the CIRP:

A. Registration:

- Notified persons shall be treated as a distinct person of the corporate debtor from the date of appointment of IRP/RP.
- Such person shall be liable to take a new registration in each of the States/UTs where corporate debtor was registered earlier, within 30 days of appointment of the IRP/RP.
- Where IRP/RP has already been appointed, registration to be obtained within 30 days from commencement of this notification w.e.f. 21.03.2020.

Special Procedure applicable on corporate debtors undergoing CIRP under IBC, 2016

B. First Return under section 40:

The notified persons shall file first return under section 40 after obtaining registration from the date on which he becomes liable to registration to date on which registration granted.

C. ITC:

ITC in hands of Notified Person:

- The notified in first return shall be eligible for ITC on invoices for supplies received since appointment as IRP/RP bearing GSTIN of erstwhile registered person
- The conditions under Section 16(4) and Rule36(4) shall not be applicable.

ITC in the hands of recipients of Notified Person:

- Recipient eligible to avail ITC on invoices bearing GSTIN of earlier registered person for supplies received **from** notified person since the date of appointment of IRP/RP till the date of registration as required in this notification **or** within 30 days from notification (whichever earlier),
- The conditions stated under Rule 36(4) shall not be applicable.

Special Procedure applicable on corporate debtors undergoing CIRP under IBC, 2016

D. Refund:

Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP/RP to the date of registration in terms of this notification shall be available for refund to the erstwhile registration.

Issues under GST law for companies under IBC, 2016
Circular No. 134/04/2020-GST

Issue	Clarification
How are dues under GST for pre-CIRP period be dealt?	• As per IBC provisions, no coercive action can be taken against the CD for the dues of pre-CIRP period. • The dues of pre-CIRP period treated as 'operational debt'. • Claims may be filed by the proper officer before the NCLT. • Tax officer shall seek the details of supplies made /received and tax dues pending from CD to file the claim. • Section 14 of the IBC also mandates moratorium period.
Should the GST registration of CD be cancelled?	• Registration of an entity for which CIRP has been initiated should not be cancelled under section 29. • Proper officer may suspend the registration (if need be). • If registration already cancelled, it may be revoked if within the period of revocation.

Issues under GST law for companies under IBC, 2016

Issue	Clarification
Is IRP/RP liable to file returns of pre-CIRP period?	• No, IRP/RP are not under an obligation to file returns of pre-CIRP period. • As per IBC, the IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date.
During CIRP Period	
Some of the IRP/RPs deposited in the cash ledger of erstwhile registration of CD. How to claim refund?	• Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification shall be **available for refund to the erstwhile registration** under the head refund of cash ledger, **even though the relevant GSTR-3B/GSTR-1 are not filed** for the said period.

Special Procedure applicable on notified persons in the merged UT of Daman & Diu and Dadra & Nagar Haveli Notification No. 10/2020-C.T.

✓ **Notified Persons**:

Person shall follow the special procedure till 31.05.2020 (transition date) whose

- PPOB/POB was in erstwhile UT of Daman & Diu or UT of Dadra and Nagar Haveli *till 26.01.2020* **and**
- PPOB/POB is in merged UT of Daman & Diu and Dadra & Nagar Haveli from *27.01.2020.*

[Principal place of business (PPOB) or Place of business (POB)]

✓ **The tax period for notified person shall be as follows**:

- January, 2020 : 01.01.2020 to 25.01.2020
- February, 2020 : 26.01.2020 to 29.02.2020

✓ **Notified person shall pay tax**

Irrespective of the particulars of tax charged in invoices or like documents raised from 26.01.2020 till transition date, pay the applicable tax through Section 39 return.

Special Procedure applicable on notified persons in the merged UT of Daman & Diu and Dadra & Nagar Haveli

✓ **Transfer of ITC of Daman & Diu**

Notified person who have registered GSTIN under erstwhile UT of Daman & Diu **and** Dadra & Nagar Haveli till 25.01.2020, they have an option to

- transfer the **balance of ITC in UT of Daman & Diu** to new GSTIN after filing the return for January, 2020

✓ **Procedure for Transfer of ITC of Daman & Diu**

i. Intimate the jurisdictional tax officer of the transferor and the transferee regarding the transfer of ITC, within 1 month of obtaining new registration.

ii. the ITC shall be transferred on the basis of the balance in the e-credit ledger upon filing of the return in the erstwhile UT of Daman and Diu, for the tax period immediately before the transition date.

iii. Transfer of ITC to be carried through section 39 return (GSTR-3B) for tax period before transition date and

- transferor GSTIN to debit the ITC from e-credit ledger in Table 4(B)(2).
- transferee GSTIN to credit an equal amount ITC in its e-credit ledger in Table 4(A)(5).

Special Procedure applicable on notified persons in the merged UT of Daman & Diu & Dadra & Nagar Haveli

✓ **Balance of UT Tax in e-credit ledger of Daman & Diu**

Balance of UT Tax in e-credit ledger of said class of persons whose principal place of business is in UT of Daman & Diu shall be transferred as balance of UT Tax in e-credit ledger.

L&S Comments

- Paragraph 2(iii) specifies that the registered persons having GSTIN in erstwhile UTs of Daman & Diu **and** Dadra & Nagar Haveli. The use of the term 'and' signifies that the procedure of transfer of ITC shall apply to registered persons having registration in both the erstwhile UTs?
- The date 25.01.2019 mentioned in Paragraph 2(iii) appears to be 25.01.2020 (typo error).

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