**CBEC-20/16/12 /2020 -GST**
**Government of India**
**Ministry of Finance**
**Department of Revenue**
**Central Board of Indirect Taxes and Customs**
**GST Policy Wing**

New Delhi, dated the 23rd March, 2020

To,
The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)
The Principal Director Generals / Director Generals (All)

Madam/Sir,

**Subject: Clarification in respect of issues under GST law for companies under Insolvency and Bankruptcy Code, 2016 - Reg.**

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Various representations have been received from the trade and industry seeking clarification on issues being faced by entities covered under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC").

2. As per IBC, 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")

3. To address the aforementioned problems, notification No.11/2020- Central Tax, dated 21.03.2020 has been issued by the Government prescribing special procedure under section 148 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the

Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies various issues in the table below:-

| S.No. | Issue | Clarification |
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| 1. | **How are dues under GST for pre-CIRP period be dealt?** | In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. 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. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT.<br><br>Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited. |
| 2. | **Should the GST registration of corporate debtor be cancelled?** | It is clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation |

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| | | may be revoked by taking appropriate steps in this regard. |
| 3. | **Is IRP/RP liable to file returns of pre-CIRP period?** | 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**. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period. |
| **<u>During CIRP period</u>** | | |
| 4. | **Should a new registration be taken by the corporate debtor during the CIRP period?** | The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of notification No.11/2020- Central Tax, dated 21.03.2020, he shall take registration within thirty days of issuance of the said notification, with effect from date of his appointment as IRP/RP. |
| 5. | **How to file First Return after obtaining new registration?** | The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under section 40 of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted. |

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| 6. | **How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of notification No.11/2020- Central Tax, dated 21.03.2020 and no return has been filed by the IRP during the CIRP ?** | The special procedure issued under section 148 of the CGST Act has provided the manner of availment of ITC while furnishing the first return under section 40.<br><br>The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-section (4) of section 16 of the CGST Act and sub-rule (4) of rule 36 of the CGST Rules. In terms of the special procedure under section 148 of the CGST Act issued vide notification No.11/2020- Central Tax, dated 21.03.2020. **This exception is made only for the first return filed under section 40 of the CGST Act.** |
| 7. | **How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the notification No.11/2020 - Central Tax, dated 21.03.2020?** | Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-rule (4) of rule 36 of the CGST Rules. |

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| 8. | **Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?** | 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 specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even though the relevant **FORM GSTR-3B/GSTR-1** are not filed for the said period.<br><br>The instructions contained in Circular No. 125/44/2019-GST dt. 18.11.2019 stands modified to this extent. |

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4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

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