



**Government of Karnataka
(Department of Commercial Taxes)**

No. Adcom(R&R)/NCLT/CR-39/2020-21

Office of the
Commissioner of Commercial Taxes
Vanijya Therige Karyalaya, Gandhinagar,
Bengaluru-560 009, Dated: 28.12.2020

COMMISSIONER OF COMMERCIAL TAXES CIRCULAR No. GST-15/2020

Subject: Procedures to be followed in the case of companies and LLPs undergoing corporate insolvency resolution and liquidation processes under the Insolvency and Bankruptcy Code, 2016.

This office is in receipt of correspondence from various authorities seeking clarifications and directions on various issues in relation to the procedures and actions to be adopted pertaining to arrears of companies and LLPs undergoing corporate insolvency resolution process ('CIRP') or liquidation proceedings under the provisions of the Insolvency and Bankruptcy Code, 2016 ['IBC' or 'the Code'].

2. Although the IBC came into force on 01.12.2016, there is some confusion still prevailing among the officers regarding the provisions of the Code and the procedures to be adopted for filing of claims covering arrears payable by companies and LLPs before the Resolution Professionals ('RP') / Interim RPs/ Liquidators. In order to have uniformity in the procedures to be adopted for all IBC related actions, this Circular is issued in exercise of the powers conferred under Section 168(1) of the KGST Act 2017.

The Code and provisions largely relevant to CTD

3. Firstly, it is to be noted that currently, only companies and LLPs (collectively referred to as the 'Corporate Debtor' or 'CDR') can be subject to the provisions of the IBC. Thus, partnership firms, proprietary concerns, individuals etc. do not fall under IBC as on date and thus such persons will not be governed by the provisions of the Code. Hence, if arrears are payable by persons other than companies or LLPs, there is no requirement for following IBC related actions to be taken by the officers.

4. Various stakeholders of the CDR such as its employees, shareholders, creditors etc. may approach the National Company Law Tribunal ('NCLT') against a CDR if it has defaulted in

payment of its dues. Importantly, even the officers of the Department can file a petition before the jurisdictional Bench of the NCLT, after service of a demand notice prescribed under the IBC (which would be in addition to and separate from the demand notice issued by the officer under the tax Act as per which arrears are payable) if tax, interest or penalty have not been paid by the CDR. Also, the CDR may on its own seek its voluntary liquidation.

5. If the petition filed by the stakeholder of a CDR is admitted, the NCLT also declares a moratorium under Section 14 of the IBC which, *inter alia*, prohibits the institution of any proceedings or the continuation of any pending proceedings against the CDR. This would prohibit the initiation of recovery proceedings against the CDR after the date of admission of the petition by the NCLT and would also prohibit the continuation of any previously initiated recovery proceedings against the CDR. However, the moratorium does not prohibit the initiation or continuation of any criminal proceedings [such as the filing of or the continuation of a Criminal Miscellaneous case before the JMFC (Sales Tax)] against the CDR or the individuals who were its directors or partners until the date of admission of the petition by the NCLT.

6. Also, at the time of admission of the application, the NCLT appoints an Interim RP ('IRP'). The IRP forms a Committee of Creditors of the CDR which in turn appoints a RP who may or may not be the same person as the IRP. While so, and immediately after the NCLT passes the order of admission referred to above, the IRP issues a Public Announcement announcing the initiation of CIRP against the CDR and calls for the submission of claims by all the creditors of the CDR. The Public Announcement will be available in local and national newspapers, and on the website of the Insolvency and Bankruptcy Board of India (www.ibbi.gov.in). CTD Officers should regularly (preferably every week) visit the said website and see if any of the CDRs from whom arrears are payable are undergoing CIRP / Liquidation. The authorities, categorized as operational creditors of the CDR for the purposes of the Code, who have pending arrears from the CDR as on the date of commencement of insolvency shall file claims in the prescribed Form B before the RP/IRP within 90 days from the date of commencement of CIRP in accordance with Regulation 12(2) of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016. The claim is to be submitted by RPAD and by email to the specified email address of the IRP / RP as well, if available. Assessment order(s) that form(s) the basis for claimed amount are to be annexed to the claim. Once submitted, the authorities should follow-up with the IRP/RP in order to ascertain the status of the claim, i.e. whether it has been admitted in full. If not, suitable action in law may be taken so as to have the claim admitted.

7. The CIRP has to be completed within 180 days from the insolvency commencement date which may be extended by 90 days and no more than 330 days from the insolvency commencement date. If no resolution plan, which is to be submitted by a prospective Resolution Applicant, is approved by the NCLT within the prescribed time, then the NCLT is to pass an order initiating liquidation proceedings against the CDR under the IBC. In this case, a Liquidator is appointed by the NCLT who issues a Public Announcement announcing the initiation of Liquidation against the CDR and calls for the submission of claims by all the creditors of the

CDR. As stated above, the Public Announcement will be available in local and national newspapers, and on the website of the Insolvency and Bankruptcy Board of India (www.ibbi.gov.in). The authorities who have pending arrears from the CDR as on the date of commencement of liquidation shall submit the claims to the Liquidator in the prescribed Form C within 30 days from the date of commencement of liquidation process. Please note that the authorities shall file the claims afresh before the Liquidator within prescribed time notwithstanding filing of claims during CIRP and even if such claims were admitted in full by the IRP/RP. As stated above, the claim is to be submitted by RPAD and by email to the specified email address of the Liquidator as well, if available. As stated above, assessment order(s) that form(s) the basis for claimed amount are to be annexed to the claim. Once submitted, the authorities should follow-up with the Liquidator in order to ascertain the status of the claim, i.e. whether it has been admitted in full. If not, suitable action in law may be taken in a timely manner so that the claim is admitted.

8. Further, as part of the NCLT's order directing that CDR is to be liquidated, the NCLT declares a moratorium under Section 33(5) of IBC which, *inter alia*, prohibits institution of any legal proceeding against CDR. It has been held that the declaration of moratorium at the time of liquidation is *pari materia* to declaration of moratorium at the time of CIRP and, hence, recovery proceedings directly against the CDR may not be initiated or continued with after the date on which the NCLT directs that CDR is to be liquidated.

9. As stated above, State Government authorities are categorized as operational creditors under the IBC. As such, they are placed at the fifth position in the waterfall mechanism of distribution of proceeds under Section 53(1) of the IBC below CIRP and liquidation costs, workers, financial creditors (secured creditors and unsecured creditors) etc.

10. In case of a successful resolution of the CDR by the NCLT approving a resolution plan submitted by Resolution Applicant, the said resolution plan is binding on the CDR, its members and creditors including the State Government authorities under Section 31 of the IBC. Thus, the amount stated to be payable as per the resolution plan to the officers (so long as it satisfies the conditions and waterfall mechanism specified in Sections 30 and 53 of the IBC) is binding on the officers and direct recovery action cannot be taken against the Resolution Applicant or its directors or partners for the unpaid dues of the CDR.

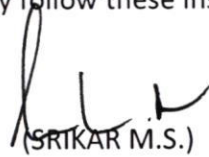
11. Section 238 of the IBC gives overriding effect to the provisions of the Code over any other law in force. Thus, the provisions of any other law including the provisions of the KVAT Act, KGST Act, CST Act etc. shall be subject to the provisions of the IBC. In fact, Section 82 of the KGST / CGST Act clearly provides that the first charge which tax authorities have over properties of the CDR shall be subject to the provisions of the IBC thus making clear that IBC provisions shall prevail over contrary provisions of the KGST / CGST Act.

12. The orders of the NCLT are binding on all the authorities and hence actions are to be taken in accordance with such orders. As the CIRP and liquidation proceedings are time-bound

processes, every stage of each process is limited by time including the filing of any delay condonation applications before the NCLT / NCLAT. Therefore, it is incumbent upon the authorities to keep a close track of the CIRP and liquidation processes and to take appropriate actions within the prescribed time periods.

13. Circular No.134/04/2020-GST dated 23rd March 2020 under CGST Act / Commissioner of Commercial Taxes Circular No.GST-03/2020 dated 27th April 2020 under KGST Act and Notification No.11/2020-Central Tax dated 21st March 2020 under CGST Act / Notification No.(05/2020) - FD 03 CSL 2020 dated 27th March 2020 under KGST Act are to be referred to and strictly adhered to by the officers with regard to the interplay of IBC provisions with provisions of the GST Acts and Rules.

14. All the officers are hereby directed to scrupulously follow these instructions.



(SRIKAR M.S.)
Commissioner of Commercial Taxes
(Karnataka) Bengaluru

Commissioner of Commercial Taxes
Karnataka, Bangalore.

To,
All the officers of the Department in the State