



Chapter 5

Special Cases

Interim resolution professionals



¹SECTION 148. SPECIAL PROCEDURE TO BE FOLLOWED BY IRP / RP

Those registered persons (hereinafter referred to as the erstwhile registered person), who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016, undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), as the class of persons who shall follow the following special procedure, from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process, as mentioned below.

2. **Registration** The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and 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: ^{with same PAN}

Provided that in cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days from the commencement of this notification, with effect from date of his appointment as IRP/RP.

3. **Return** The said class of persons shall, after obtaining registration file the first return under section 40 of the said Act, from the date on which he becomes liable to registration till the date on which registration has been granted.

4. **Input tax credit.-**

- (1) 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 his appointment as IRP/RP but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made thereunder ^{Blocked credit | 180 days | etc}, **except** the provisions of section 16(4) ^{limitation period} of the said Act and rule 36(4) ^{110%} of the Central Goods and Service Tax Rules, 2017. ^{This exception is made only for the first return filed under section 40 of the CGST Act.}

- (2) 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 said Act and the rules made thereunder, except the provisions of rule 36(4) ^{110%} of the said rules. ^{not 16(4)}

5. 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.

Explanation.- For the purposes of this notification, the terms “corporate debtor”, “corporate insolvency resolution professional”, “interim resolution professional” and “resolution professional” shall have the same meaning as assigned to them in the Insolvency and Bankruptcy Code, 2016.

Circular No.134/04/2020-GST dated 23-3-2020

Clarification in respect of issues under GST law for companies under Insolvency and Bankruptcy Code, 2016

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, NN 11/2020- CT 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:-

Issue 1: How are dues under GST for pre-CIRP period be dealt?

Clarification: The dues under GST for the pre-CIRP period would be dealt in accordance with the provisions of IBC. The dues 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.

Further, 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.

Issue 2: Should the GST registration of corporate debtor be cancelled?

Clarification: No, the registration should not be cancelled. The proper officer may 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 may be **revoked** by taking appropriate steps in this regard.

Issue 3: Is IRP/RP liable to file returns of pre-CIRP period?

Clarification: 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, therefore IRP/RP are not under an obligation to file returns of pre-CIRP period.

Issue 4: Should a new registration be taken by the corporate debtor during the CIRP period?

Clarification: 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 30 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 **30 days** of issuance of the said notification, with effect from date of his appointment as IRP/RP.

Issue 5: How to file First Return after obtaining new registration?

Clarification: 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.

Issue 6: How to avail ITC for invoices issued to the corporate debtor in case the IRP/RP has been appointed before issuance of NN 11/2020- CT, dated 21.03.2020 and no return has been filed by the IRP during the CIRP?

Clarification: The said class of persons shall, in his first return, be eligible to avail ITC on invoices covering the supplies of goods or services, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the corporate debtor, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of section 16(4) of the CGST Act and rule 36(4) of the CGST Rules. This exception is made only for the first return filed under section 40 of the CGST Act.

Issue 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 NN 11/2020 - CT dated 21.03.2020?

Clarification: 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 ITC on invoices issued using the GSTIN of the corporate debtor, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of rule 36(4) of the CGST Rules.

Issue 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?

Clarification: Any amount deposited in the cash ledger by the IRP/RP, in the existing registration of the corporate debtor, 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 corporate debtor under the head refund of cash ledger, even though the relevant FORM GSTR-3B/GSTR-1 are not filed for the said period. This instruction would override the instruction as provided in circular 125/44/2019 dated 18.11.2019.

Circular No.133/03/2020-GST dated 23-3-2020

Clarification in respect of apportionment of input tax credit (ITC) in cases of business reorganization under section 18(3) of CGST Act read with rule 41(1) of CGST Rules

Representations have been received from various taxpayers seeking clarification in respect of apportionment and transfer of ITC in the event of merger, demerger, amalgamation or change in the constitution/ownership of business. Certain doubts have been raised regarding the interpretation of section 18(3) of the Central Goods and Services Tax Act, 2017 and sub-rule (1) of rule 41 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) in the context of business reorganization.

2. According to sub-section (3) of section 18 of the CGST Act,

“Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation,

lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.”

Further, according to sub-rule (1) of rule 41 of the CGST Rules:

“A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de- merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

Explanation:- For the purpose of this sub-rule, it is hereby clarified that the “value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

3. The issues raised in various representations have been analyzed in the light of various legal provisions under GST. In order to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by sub-section (1) of section 168 of the CGST Act clarifies the issues involved in the Table below.

Issue 1: In case of demerger, proviso to rule 41(1) of the CGST Rules provides that the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets of the new units is to be considered at **State level or at all-India level**.

Clarification: Proviso rule 41(1) of the CGST Rules provides for apportionment of the input tax credit in the ratio of the value of assets of the new units as specified in the demerger scheme. Further, the explanation to sub-rule (1) of rule 41 of the CGST Rules states that “value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon. Under the provisions of the CGST Act, a person/ company (having same PAN) is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act. Accordingly, for the purpose of apportionment of ITC pursuant to a demerger under sub- rule (1) of rule 41 of the CGST Rules, **the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level**.

Illustration: A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth ₹ 100 crore, while its assets in State of M.P. and U.P are ₹ 60 crore and ₹ 40 crore respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to ₹ 30 Crore are transferred to company ABC in State of M.P, while assets amounting to ₹ 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to ₹ 40 crore at all-India level are transferred from XYZ to ABC). The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e. $30/60 = 0.5$ and not on the basis of all-India ratio of value of assets, i.e. $40/100=0.4$. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P., i.e. $10/40 = 0.25$.

Issue 2: Is the transferor required to file FORM GST ITC – 02 in all States where it is registered?

Clarification: No. The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.

Issue 3: The proviso to rule 41(1) of the CGST Rules explicitly mentions ‘demerger’. Other forms of business reorganization where part of business is hived off or business is transferred as a going concern etc. have not been covered in the said rule. Wherever business reorganization results in partial transfer of business assets along with liabilities, whether the proviso to rule 41(1) of the CGST Rules, 2017 shall be applicable to calculate the amount of transferable ITC?

Clarification: Yes, the formula for apportionment of ITC, as prescribed under proviso to sub-rule (1) of rule 41

of the CGST Rules, shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities.

Issue 3: Whether the ratio of value of assets, as prescribed under proviso to rule 41(1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess?

Clarification: No, the ratio of value of assets, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. **The said formula need not be applied separately** in respect of each heads of ITC (CGST/SGST/IGST). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.

Illustration A: The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakh, 5 lakh and 10 lakh respectively. Pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B. Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit) i.e. 12 lakh.

Issue 4: How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of FORM GST ITC-02 by the transferor?

Clarification: The total amount of ITC to be transferred to the transferee (i.e. sum of CGST, SGST/UTGST and IGST credit) should not exceed the amount of ITC to be transferred, as determined under sub-rule (1) of rule 41 of the CGST Rules [refer 3 (c) (i) above]. However, the transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head. This is shown in the illustration below:

State	Asset Ratio of Transferee	Tax heads	ITC balance of Transferor (pre-apportionment) as on the date of filing GST ITC-02	Total amount of ITC transferred to the Transferee under GST ITC- 02	ITC balance of Transferor (post-apportionment) after filing of GST ITC-02 [Col (4) – Col (5)]
Delhi	70%	CGST	10,00,000	10,00,000	0
		SGST	10,00,000	10,00,000	0
		IGST	30,00,000	15,00,000	15,00,000
		Total	50,00,000	35,00,000	15,00,000
MP	40%	CGST	25,00,000	3,00,000	22,00,000
		SGST	25,00,000	5,00,000	20,00,000
		IGST	20,00,000	20,00,000	0
		Total	70,00,000	28,00,000	42,00,000

Issue 5: In order to calculate the amount of transferable ITC, the apportionment formula under proviso to rule 41(1) of the CGST Rules has to be applied to the unutilized ITC balance of the transferor. However, it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor.

Clarification: According to section 18(3) of the CGST Act, “Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.” Further, rule 41(1) of the CGST Rules prescribes that the registered person shall file the details in **FORM GST ITC-02** for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.

A conjoint reading of section 18(3) of the CGST Act along with rule 41(1) of the CGST Rules would imply that the apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit

ledger **on the date of filing of FORM GST ITC-02** by the transferor.

Issue 6: Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41(1) of the CGST Rules, 2017?

Clarification: According to section 232(6) of the Companies Act, 2013, “The scheme under this section shall clearly indicate an **appointed date** from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date”. The said legal provision appears to indicate that the “appointed date of demerger” is the date from which the scheme for demerger comes into force and it is specified in the respective scheme of demerger. Therefore, for the purpose of apportionment of ITC under rule 41(1) of the CGST Rules, **the ratio of the value of assets should be taken as on the “appointed date of demerger”**.

In other words, for the purpose of apportionment of ITC under 41(1) of the CGST Rules, while the ratio of the value of assets should be taken as on the “appointed date of demerger”, the said ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC-02 to calculate the amount to transferable ITC.