

NITYA's TAKE:

**SPECIAL PROCEDURE
FOR CORPORATE
DEBTORS
UNDERGOING
CORPORATE
INSOLVENCY
RESOLUTION
PROCESS**

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April 2020

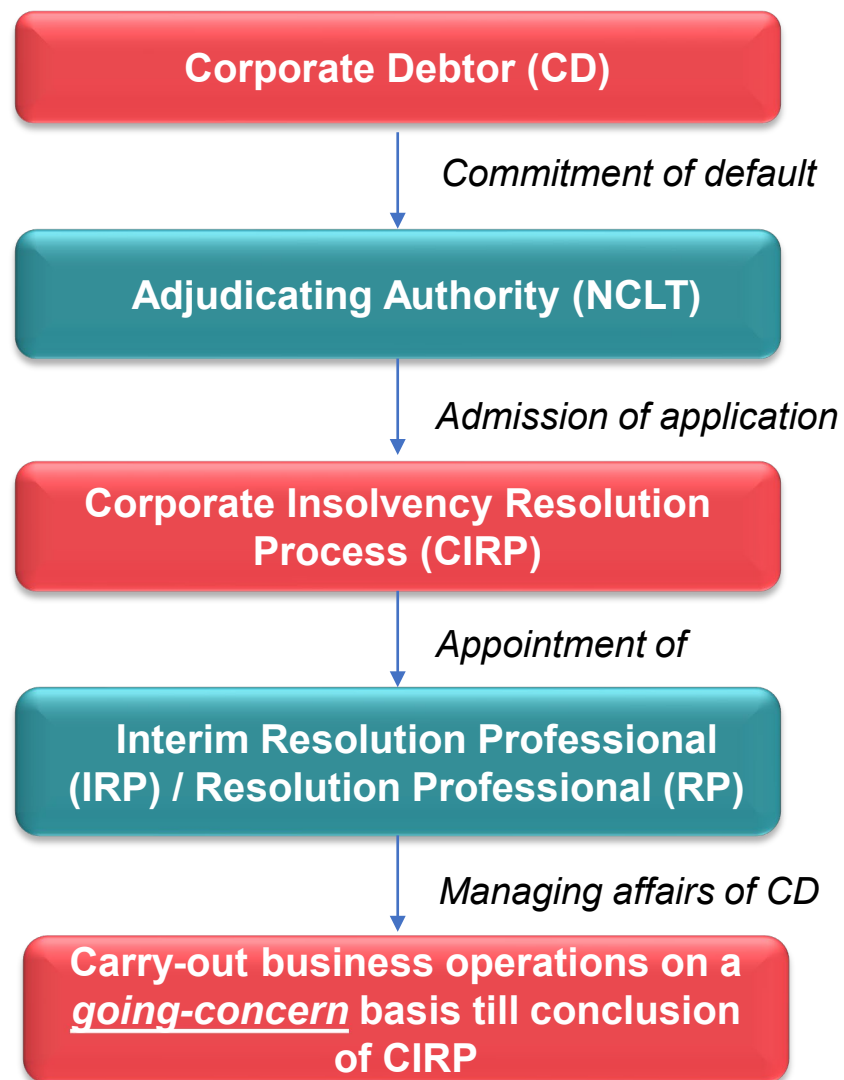
Contents

- 01 **Background**
- 02 **NITYA's take on special procedure under GST**
- 03 **Unaddressed issues**



Background





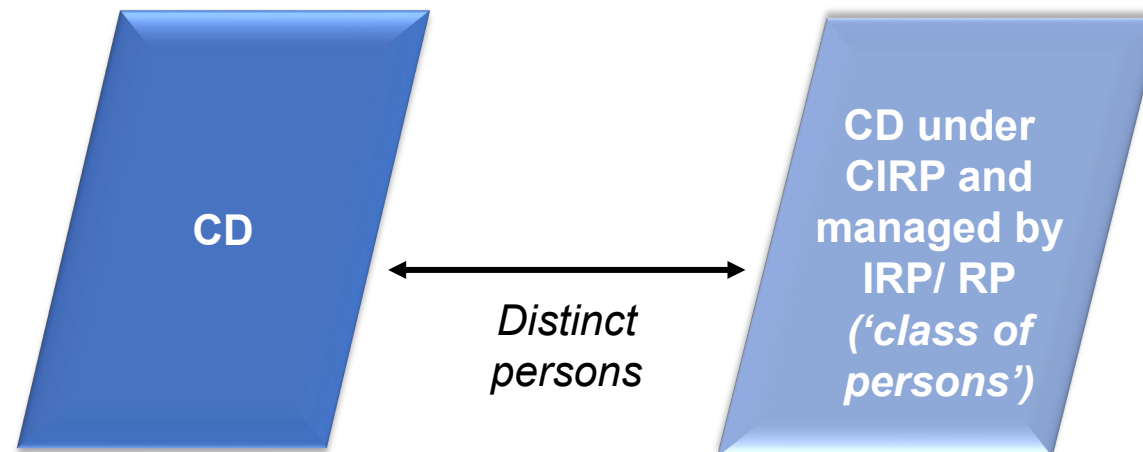
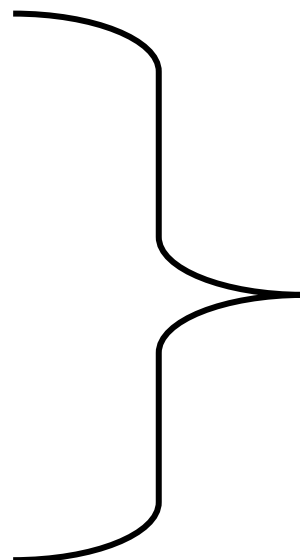
Contradiction of IBC with GST Law

- ❑ IBC requires IRP/ RP to manage operations of CD on going-concern basis post CIRP. This includes entering in routine sale / purchase transactions, payment of applicable GST
- ❑ Section 39(10) of CGST Act, bars furnishing return for a tax period till all returns for previous tax periods have been filed
- ❑ Thus, GST compliance for post CIRP period cannot be done till completion of past period (pre-CIRP) compliances
- ❑ Hence, GST contradicts IBC, as it doesn't consider:
 - a) Existence of a moratorium period for past dues
 - b) Section 238 of IBC which has an overriding effect over any other inconsistent law in force

In past, NCLT in several petitions has directed GST Department to open GST portal or accept manual filings for post CIRP period

*Notification No. 11/2020 –
Central Tax, dated March 21,
2020*

*Circular No.134 04/2020,
dated March 23, 2020*



***Special Procedure from
appointment of IRP/ RP till
the process of CIRP***

Registration

First return

Input tax credit (ITC)



Special Procedure under GST

SPECIAL PROCEDURE - REGISTRATION

Legal requirement

- ☐ Class of persons (i.e. CD managed by IRP/ RP) to seek new registration in every state / UT where CD is registered within 30 days of appointment of IRP/ RP
- ☐ In case IRP/ RP already appointed, registration to be taken within 30 days of Notification (effective from date of appointment of IRP/ RP)

NITYA'S take

- ☐ Notification does not provide any clarity over continuation of existing registration of CD. Hence, CDs advised to continue with existing registration
- ☐ No relaxations granted for registration provisions amid COVID-19. Thus, where IRP/ RP already appointed, registration needs to be sought by April 20, 2020

SPECIAL PROCEDURE - FIRST RETURN

Legal requirement

- ❑ Class of persons to furnish 'first return' under Section 40 of CGST Act
- ❑ Such return to be filed covering transactions from the 'date of being liable for registration' till the 'date on which registration is granted'

NITYA'S take

- ❑ There is no specific format of return prescribed under Section 40 of CGST Act. Hence, such return needs to be filed in Form GSTR-3B
- ❑ Importantly, such first return needs to be filed from the '*date of being liable for registration*'. The liability to get registered under the CGST Act arises from the issuance of this Notification. Hence, first return to be filed from date of Notification i.e. March 21, 2020 till grant of registration

Legal requirement

- ❑ Class of persons eligible to avail ITC on supplies received post appointment of IRP/ RP but bearing old GST registration (GSTIN) of the CD
- ❑ Recipients of CD allowed ITC on supplies effected by CD bearing old GSTIN of CD but after appointment of IRP/ RP till its registration or April 20, 2020 (30 days from Notification); whichever is earlier
- ❑ Such ITC shall be eligible notwithstanding the requirement contained under Rule 36(4) of CGST Rules

NITYA'S take

- ❑ While giving the benefit of ITC from the appointment of IRP/ RP, language of Notification contrasts in imposing output tax liability from the date of liability for registration (i.e. date of Notification)
- ❑ Where new registration cannot be obtained till April 20, 2020, and supplies are made post that date using old GSTIN of CD, ITC restriction shall trigger on the recipient for such supplies

Unaddressed issues



UNADDRESSED ISSUES



No clarity on revival of existing registration and cancellation of new registrations post closure of CIRP
(and related consequences, like balance ITC in credit ledger etc.)

No clarity on adopting of this special procedure in case CD is undertaking routine GST compliances under its old registration
(and related consequences, like tax liabilities already discharged, ITC availed, balance ITC in credit ledger etc.)



Thank You

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