

Provisions pertaining to Insolvency and Bankruptcy Code override GST provisions – National Company Law Tribunal

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Summary

The National Company Law Tribunal (NCLT), pursuant to a miscellaneous application filed before it, has allowed the corporate debtor to have access to its GST net portal account. The court permitted the Applicant to file GST returns of the corporate debtor after the commencement of the Corporate Insolvency Resolution Process (CIRP) without insisting upon payment of past GST liability, accept net GST liability after availing eligible input tax credit (ITC) from the date of commencement of CIRP and adjust such GST payment made by the corporate debtor towards discharge of GST during the CIRP period.

Facts of the case

- The Applicant¹ filed a miscellaneous application seeking permission for the corporate debtor to have access to its GST portal account to file GST returns during the period of CIRP.
- The Applicant requested the court to allow to pay the net liability from the date of commencement of CIRP till its completion disregarding non-payment of arrear dues of GST for the period prior to commencement of CIRP.

NCLT observations and order

- **Overriding effect:** The NCLT observed that the Insolvency and Bankruptcy Code, 2016 (IBC) shall have an overriding effect on all other laws which are in contravention².
- **Revenue authorities cannot raise an objection:** Accordingly, the court stated that the revenue authorities cannot raise an objection against the overriding provisions of IBC, as no provision has been made in the GST law or in its software to accept such accounts. This will lead to a cessation of business happening in

the market after initiation of CIRP through the debtor company and in such a situation, no company under CIRP can function as a going concern.

- **Access allowed:** In light of the above, the NCLT stated the following:
 - Allowed the corporate debtor to have access to its GST net portal account and permitted the Applicant to file GST returns of the corporate debtor generated after the commencement of CIRP without insisting of payments of past dues of GST
 - Accept net GST liability, i.e., after availing eligible ITC from the date of commencement of CIRP
 - Adjust such GST payment so remitted by the corporate debtor towards discharge of GST during the CIRP period

¹ M/s Kiran Global Chem Limited

² Section 238 of IBC

Our comments

The judgement states that the provisions of IBC override the GST provisions. This is an important judgement by the NCLT and shall be useful in imparting the required clarity on the matters pertaining to GST during the CIRP. However, it will be interesting to see whether the views expressed by the NCLT will be accepted by the GST authorities.

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