



Goods and Services Tax

AAR-West Bengal-Sale of assets of a corporate debtor by NCLT appointed liquidator is a supply of goods by said liquidator, who is required to take registration under section 24.

Facts

- 1.) The National Company Law Tribunal passed an order declaring the applicant a corporate debtor under the provisions of the Insolvency and Bankruptcy Code, 2016 and appointed a liquidator.

Issue before the AAR

- 1.) Whether any sale done by the liquidator of the assets of the applicant results in a supply of goods and/or services or both within the meaning of “supply” as defined under section 7 of the GST Act.
- 2.) If the answer is affirmative, then what will be the rate of GST? The applicant also wants to know whether the liquidator needs to get registered under the GST Act

Discussion and Findings of the AAR

- 1.) SL No 4 (a) of Schedule II of the GST Act says, where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.
- 2.) The liquidator is appointed under section 34 (1) of IBC after NCLT initiates liquidation in terms of section 33 of IBC. As the applicant – the corporate debtor – is not a going concern, the liquidator is required to sell its assets under clauses (a) to (d) of Regulation 32 of the Insolvency and Bankruptcy Board of India (liquidation process) Regulations.
- 3.) The sale of the applicant's assets like the plant and machinery, office equipment & furniture is, therefore, a supply of goods by the liquidator. Liquidator is required to take registration under section 24 of the GST Act.
- 4.) NCLT appoints the resolution professional, as defined under section 3 (27) of IBC, as the liquidator subject to her consent. If liquidator is already registered as a distinct person of the corporate debtor in terms of Notification No. 11/2020 – Central Tax dated 21/03/2020, liquidator should continue to remain registered till liability ceases under section 29 (1) (c) of the GST Act.
- 5.) It may be noted that the RP/liquidator acts as the authorized person of the corporate debtor. Once an insolvency professional takes registration as the authorized person of the corporate debtor, it remains in effect with suitable amendment in the certificate of registration if the status or person of the authorized person gets changed (refer to Circular No.138/08/2020 – GST dated 06/05/2020).

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