

OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
ODISHA, CUTTACK

Letter No 60901
Rev-24/8/2016-REV-CCT.

Dated: 17/4/18

To,

**Addl.CCT / JCCT in charge of Territorial Ranges
DCCT / ACCT in charge of Circles
CTOs in charge of Assessment Units**

Sub: In the matter of Tax Audit, Assessment, Appeal, Issue of Demand Notice and Recovery of Tax in case of dealer companies during pendency of their proceedings under Insolvency and Bankruptcy Code' 2016

Madam / Sir,

It has come to the notice of the undersigned that companies whose insolvency resolution case has been admitted by National Company Law Tribunal (NCLT) under Insolvency and Bankruptcy Code (IBC), 2016 are requesting assessing officers not to proceed with tax audit/ assessment / appeal / recovery during the pendency of their case in the NCLT. Sometimes, Interim Resolution Professionals (IRP), appointed by the NCLT for managing the company affairs during the adjudication period, are also writing to assessing authority directly in this matter.

The relevant portion of the IBC' 2016 is furnished below:

" Section 12.

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days: Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

Section 13.

(1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order— (a) declare a moratorium for the purposes referred to in section 14; (b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and (c) appoint an interim resolution professional in the manner as laid down in section 16.

(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional.

Section 14.

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:— (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

Section 15.

(1) The public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely:—

(a) name and address of the corporate debtor under the corporate insolvency resolution process;

(b) name of the authority with which the corporate debtor is incorporated or registered;

(c) the last date for submission of claims;

(d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;

(e) penalties for false or misleading claims; and

(f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

(2) The public announcement under this section shall be made in such manner as may be specified"

In this connection, it is hereby clarified that tax audit, assessment and appeal under OVAT Act/ CST Act/ OET Act are processes for determination of one's tax liability which can be initiated / continued even during the moratorium period of the insolvency resolution proceeding. Once the tax liability is determined, communicating the same through Demand Notice can also be made during the moratorium period of the insolvency resolution proceeding. However, recovery proceeding to collect tax dues cannot be undertaken during the moratorium period of the insolvency resolution proceeding. But, if the dealer volunteers for payment of tax or does not object to payment of tax by way of adjustment of any refund due; tax can be collected or refund can be adjusted against outstanding tax liability even during the moratorium period of the insolvency resolution proceeding.

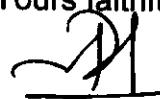
As per Sec 12 of the IBC '2016, the Insolvency Resolution Process shall normally be completed within 6 months, extendable by another 3 months. But, as per Sec 55 of the IBC '2016, Fast Track Insolvency Resolution Processes shall have to be completed within 3 months, extendable by another one and half months. Therefore, the moratorium declared under Sec 14 shall cease to have effect once the Insolvency Resolution Process is completed. This aspect should be kept in mind so that companies cannot hide behind moratorium order for long.

As per the IBC '2016, Insolvency Resolution Process may have one of the following two outcomes:

- (a) The Insolvency Resolution Plan is approved by the Adjudicating Authority
- (b) The Insolvency Resolution Plan is rejected by the Adjudicating Authority OR the Insolvency Resolution Plan is not received by the Adjudicating Authority within the prescribed time frame; and the Adjudicating Authority orders for liquidation of the dealer company (i.e. the corporate debtor)

In case of (a) above, tax dues of the dealer company can be collected as per the tax laws after the moratorium period. But in case of (b) above, tax dues of the dealer company can be collected as per the tax laws subject to the provisions of Sec 53 of the IBC '2016.

Yours faithfully

A handwritten signature in black ink, appearing to be the initials 'M' or 'N' with a horizontal line underneath.

17.4.18

**Commissioner of Commercial Taxes
Odisha, Cuttack**