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# EFFECTIVE TAX RATE ON COMPLEX, BUILDING, FLAT ETC[1]

It is brought to the notice of buyers of constructed property that there is no GST on sale of complex/ building and ready to move-in flats where sale takes place after issue of completion certificate by the competent authority. GST is applicable on sale of under construction property or ready to move-in flats where completion certificate has not been issued at the time of sale.

Effective rate of tax and credit available to the builders for payment of tax are summarized in the table for pre-GST and GST regime.

| Period | Output Tax Rate | Input Tax Credit details | | Effective Rate of Tax |
|---|---|---|---|---|
| Pre- GST | Service Tax: 4.5%<br>VAT: 1% to 5%<br>(composition scheme) | Central Excise on most of the construction materials: 12.5%<br>VAT: 12.5 to 14.5%<br>Entry Tax: Yes | No input tax credit (ITC) of VAT and Central Excise duty paid on inputs was available to the builder for payment of output tax, hence it got embedded in the value of properties. Considering that goods constitute approximately 45% of the value, embedded ITC was approximately 10- 12%. | Effective pre-GST tax incidence: 15- 18% |
| GST | Affordable housing segment: 8%,<br>Other segment: 12% after 1/3rd abatement of value of land | Major construction materials, capital goods and input services used for construction of flats, houses, etc. attract GST of 18% or more. | ITC available and weighted average of ITC incidence is approximately 8 to10%. | Effective GST incidence,<br>for affordable segment and for other segment has not increased as compared to pre-GST regime. |

Housing projects in the affordable segment such as Jawaharlal Nehru National Urban Renewal Mission, Rajiv Awas Yojana, Pradhan Mantri Awas Yojana or any other housing scheme of State Government etc., attract GST of 8%. For such projects, after offsetting input tax credit, the builder or developer in most cases will not be required to pay GST in cash as the builder would have enough ITC in his books of account to pay the output GST.

For projects other than affordable segment, it is expected that the cost of the complex/ buildings/ flats would not have gone up due to implementation of GST. Builders are also required to pass on the benefits of lower tax burden to the buyers of property by way of reduced prices/ installments, where effective tax rate has been down.

[1] Available at: http://pib.nic.in/PressReleseDetail.aspx?PRID=1555274

## FM ADDRESSES THE CONFERENCE ON 'INSOLVENCY AND BANKRUPTCY CODE – A NEW PARADIGM FOR STRESSED ASSETS' VIA VIDEO CONFERENCING, BEING ORGANIZED BY THE IBBI JOINTLY WITH THE CONSULATE GENERAL OF INDIA, NEW YORK, USA[2]

*FM: Given the future potential of the Indian economy and the fair process followed under the Code, it is a great opportunity for investors who are seriously thinking about investing in India;*

*There can't be a better opportunity than the present one which is being offered through the Code;*

*This is the right time and right place to be in India for these kinds of investments.*

The Union Minister of Finance and Corporate Affairs, Mr. Arun Jaitley said that the scattered regime prior to the enactment of the Insolvency and Bankruptcy Code (IBC), 2016 had impacted the domestic private investment with over capacities in certain sectors coupled with unacceptably high levels of Non-Performing Assets (NPAs) in the Banking System, hindering growth. To address these concerns, the Finance Minister said that this Government not only enacted the Code expeditiously, but also has been implementing it at an unprecedented pace. It was anticipated that in the initial days, there would be some teething troubles. He said that the Government is addressing these troubles on priority. Despite the initial difficulties, the outcome from implementation of the Code has been better than the anticipated. The process is governed by the Rules and Regulations and the Government maintains an arms' length distance from the process and has no favourites. The Finance Minister, Shri Arun Jaitley was addressing through Video Conferencing the Conference on 'Insolvency and Bankruptcy Code – A New Paradigm for Stressed Assets' organised in New York, USA on 5th December, 2018 by the Insolvency and Bankruptcy Board of India (IBBI) jointly with the Consulate General of India, New York, USA.

Speaking further on the occasion, the Minister of Finance and Corporate Affairs, Shri Arun Jaitley said that the only downside has been that in some of the cases because of appeals and counter-appeals and litigations, the process has got somewhat delayed. But then the Supreme Court has stood-up to the occasion. While referring to the regrettable phenomenon of unwillingness of the debtors to repay the debts in the past, the Finance Minister emphasized that the Code has significantly changed the lender-borrower relationship in India. Shri Jaitley further said that a very large number of debtors who fear that they are about to touch or cross the red line after which they will be in the NCLT (National Company Law Tribunal) are now refraining themselves from becoming defaulters.

The Minister of Finance and Corporate Affairs, Shri Arun Jaitley further said that unquestionably, it has now been established over the last few years that India is a fast-growing economy, faster than some of its contemporaries amongst the emerging economies and my own view is that India, over the next decade or so, is likely to maintain this high growth rate of at least 7-8 per cent. Highlighting the investment opportunities emerging from the processes under the Code, Shri Jaitley stated that given the future potential of the Indian economy, and the fair process followed under the Code, it is a great opportunity for investors who are seriously thinking about investing in India. There can't be a better opportunity than the present one which is being offered through the Code. The Finance Minister, Shri Jaitley stated that this is the right time and right place to be in India for these kinds of investments. Noting the number of Corporate Debtors undergoing Resolution, the Minister stated that the number of assets that are available for take-over through the Code is extremely large.

Dr. M. S. Sahoo, Chairperson, IBBI touched upon the key features of the new regime which provides for a market mechanism for resolution of insolvency, wherever possible, and exit, wherever required. Mr. Sanjeev Sanyal, Principal Economic Advisor, Ministry of Finance, Govt of India stated that the Code has changed the culture of rolling-over debt and ever-greening. Mr. Sandeep Chakravorty, Consul General of India in New York invited attention to the changes in the Indian economy in the last five years due to the deep economic reforms, including GST and the Code, to make it easy for doing business.

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[2] Available at: http://pib.nic.in/PressReleseDetail.aspx?PRID=1555274

The other eminent speakers at the Conference included Dr. Arunish Chawla, Minister Economic, Embassy of India; Mr. Shardul Shroff, Executive Chairman and National Practice Head, Insolvency & Bankruptcy, Shardul Amarchand Mangaldas & Co.; Dr. Mamta Suri, Executive Director, IBBI; Mr. Anoop Rawat, Partner, Insolvency & Bankruptcy, Shardul Amarchand Mangaldas & Co.; Mr. Nilanjan Sinha, Head Legal, ICICI Bank; Mr Manish Aggarwal, Partner, Head - Resolutions & Restructuring Special Situations Group, KPMG; Mr. Aneek Mamik, Senior Managing Partner, Varde Partners; Ms. Debra A. Dandeneau, Partner, Baker & McKenzie; Mr Sanjeev Krishan, Partner & Leader - Private Equity & Deals, PricewaterhouseCoopers Pvt Ltd.; Mr Sanjay Gupta, Director, ICAI Insolvency Professional Agency; Mr. Sumit Khanna, Partner & National Head Corporate Finance & Restructuring, Deloitte India, Mr Karamvir Dahiya, Bankruptcy Litigation Lawyer, and Ms. Jyoti Vij, Deputy Secretary General, FICCI.

The Conference was followed by a roundtable with prospective stakeholders of the Indian insolvency regime. This witnessed participation of fund houses and law firms, including Kirkland, KKR, Hartford, Wachtell, Lipton, Rosen, KTC, Debevoise, Plimpton, MSD, Raffael Surety Group, and State Bank of India. The participants were keen to understand the process certainty, time certainty and outcome certainty.

***Team ICSI***