

Info Capsule

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IBBI, SEBI SIGN MOU FOR BETTER IMPLEMENTATION OF IBC¹

The Insolvency and Bankruptcy Board of India (IBBI) signed a Memorandum of Understanding (MoU) today with the Securities and Exchange Board of India (SEBI).

The IBBI and the SEBI seek effective implementation of the Insolvency and Bankruptcy Code, 2016 (Code) and its allied rules and regulations, which have redefined the debt-equity relationship and aims to promote entrepreneurship and debt market. They have agreed under the MoU to assist and co-operate with each other for the effective implementation of the Code, subject to limitations imposed by the applicable laws.

The MoU provides for:

- a. Sharing of information between the two parties, subject to the limitations imposed by the applicable laws;
- b. Sharing of resources available with each other to the extent feasible and legally permissible;
- c. periodic meetings to discuss matters of mutual interest, including regulatory requirements that impact each party's responsibilities, enforcement cases, research and data analysis, information technology and data sharing, or any other matter that the parties believe would be of interest to each other in fulfilling their respective statutory obligations;
- d. cross-training of staff in order to enhance each party's understanding of the other's mission for effective utilisation of collective resources;
- e. Capacity building of insolvency professionals and financial creditors;
- f. Joint efforts towards enhancing the level of awareness among financial creditors about the importance and necessity of swift insolvency resolution process of various types of borrowers in distress under the provisions of the Code, etc.

The MoU was signed by Shri Anand Baiwar, Executive Director, SEBI, and Shri Ritesh Kavdia, Executive Director, IBBI, at Mumbai.

¹ Available at: <http://www.pib.gov.in/PressReleaseDetail.aspx?PRID=1569075>

DECISIONS TAKEN BY THE GST COUNCIL IN THE 34TH MEETING HELD ON MARCH 19, 2019 REGARDING GST RATE ON REAL ESTATE SECTOR²

GST Council in the 34th meeting held on March 19, 2019 at New Delhi discussed the operational details for implementation of the recommendations made by the council in its 33rd meeting for lower effective GST rate of 1% in case of affordable houses and 5% on construction of houses other than affordable house. The council decided the modalities of the transition as follows.

Option in respect of ongoing projects:

2. The promoters shall be given a one -time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 01.04.2019) which have not been completed by 31.03.2019.
3. The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply.

New Tax Rates:

4. The new tax rates which shall be applicable to new projects or ongoing projects which have exercised the above option to pay tax in the new regime are as follows.
 - (i) New rate of 1% without input tax credit (ITC) on construction of affordable houses shall be available for,
 - (a) All houses which meet the definition of affordable houses as decided by GSTC (area 60 sqm in metros / 90 sqm in non- metros and value upto RS. 45 lakhs), and
 - (b) affordable houses being constructed in ongoing projects under the existing central and state housing schemes presently eligible for concessional rate of 8% GST (after 1/3rd land abatement).
 - (ii) New rate of 5% without input tax credit shall be applicable on construction of,-
 - a. All houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019. In case of houses booked prior to 01.04.2019, new rate shall be available on instalments payable on or after 01.04.2019.
 - b. All houses other than affordable houses in new projects.
 - c. Commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

Conditions for the new tax rates:

5. The new tax rates of 1% (on construction of affordable) and 5% (on other than affordable houses) shall be available subject to following conditions,-
 - a. Input tax credit shall not be available,
 - b. 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.

² Available at: <http://www.pib.gov.in/PressReleaseDetail.aspx?PRID=1569106>

Transition for ongoing projects opting for the new tax rate:

- 6.1 Ongoing projects (buildings where construction and booking both had started before 01.04.2019) and have not been completed by 31.03.2019 opting for new tax rates shall transition the ITC as per the prescribed method.
- 6.2 The transition formula approved by the GST Council, for residential projects (refer to para 4(ii)) extrapolates ITC taken for percentage completion of construction as on 01.04.2019 to arrive at ITC for the entire project. Then based on percentage booking of flats and percentage invoicing, ITC eligibility is determined. Thus, transition would thus be on pro-rata basis based on a simple formula such that credit in proportion to booking of the flat and invoicing done for the booked flat is available subject to a few safeguards.
- 6.3 For a mixed project transition shall also allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax will be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project.

Treatment of TDR/ FSI and Long term lease for projects commencing after 01.04.2019

7. The following treatment shall apply to TDR/ FSI and Long term lease for projects commencing after 01.04.2019.
- 7.1 Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.
- 7.2 The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under the reverse charge mechanism (RCM).
- 7.3 The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate.
- 7.4 The liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion. Decisions from para 7.1 to 7.4 are expected to address the problem of cash flow in the sector.

Amendment to ITC rules:

8. ITC rules shall be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in real estate projects. The change would clearly provide procedure for availing input tax credit in relation to commercial units as such units would continue to be eligible for input tax credit in a mixed project.
9. The decisions of the GST Council have been presented in this note in simple language for easy understanding. The same would be given effect to through Gazette notifications/ circulars which alone shall have force of law.
