

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Additional Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such Appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	M/s Mansi Oils and Grains Pvt Ltd
Address	304,Block H, Vikram Vihar, 493/B/18 G T Road, Shibpur, Howrah - 711102
GSTIN	Unregistered
Case Number	02 of 2020
ARN	Not Applicable
Date of application	11/02/2020
Order number and date	02/WBAAR/2020-21 dated 29/06/2020
Applicant's representative heard	Rachna Jhunhunwala, NCLT appointed Liquidator

This order is passed in terms of Notification No. 35/2020 – Central Tax dated 03/04/2020, extending up to 30/06/2020 the time limit for completion or compliance of any action by any authority or by any person under the GST Act where the due date for such completion or compliance otherwise falls during the period from 20/03/2020 to 29/06/2020.

1. Admissibility of the Application

1.1 The National Company Law Tribunal (hereinafter NCLT), Kolkata Bench, passed an order on 19/07/2019, declaring the applicant a corporate debtor under the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter IBC) and appointed a liquidator. The applicant wants to know 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. 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.

1.2 The questions are admissible under section 97(2) (f)&(g) of the GST Act. The applicant states that the questions raised in the application have neither been decided nor are pending before any authority under any provision of the GST Act. The application is, therefore, admitted.

1.3 The applicant submits that its business has been closed for ten years. It had been registered under the West Bengal Value Added Tax Act, 2003 and provided provisional registration under the GST Act for migration. It did not file REG-26 and thus did not migrate to the GST Act. The applicant being unregistered, neither the central nor the state administration has ascertained administrative jurisdiction on the applicant. Requirement under section 98(1) of the GST Act is, therefore, dispensed with.

2. Submissions of the Applicant

2.1 The applicant submits that NCLT has appointed Smt. Rachna Jhunjhunwala as liquidator, having IP Registration No IBBI/IPA-001/IP-P00389/2017-18/10707. After her appointment as liquidator all powers of directors in decision making are vested in Ms. Jhunjhunwala under section 34 (2) of IBC.

2.2 The plant and machinery, office equipment and furniture of the applicant were auctioned as per regulation laid down under section 32 (c) of the IBC at the price Rs. 2.82 cr.

3. Observations and findings of the Bench

3.1 SI 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.

3.2 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. The sale of the applicant's assets like the plant and machinery, office equipment & furniture is, therefore, a supply of goods by the liquidator. She is required to take registration under section 24 of the GST Act.

3.3 NCLT appoints the 'resolution professional' (hereinafter RP), as defined under section 3 (27) of IBC, as the liquidator subject to her consent. If she is already registered as a distinct person of the corporate debtor in terms of Notification No. 11/2020 – Central Tax dated 21/03/2020, she should continue to remain registered till her liability ceases under section 29 (1) (c) of the GST Act. 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).

3.4 According to the applicant, the goods sold are plant and machineries, office equipment and furniture. They are broad categories classifiable under different HSN and taxable under appropriate SI Nos of the Schedules under Notification No. 1/2017 – CT (Rate) dated 28/06/2017.

Based on the above discussion, we rule as under,

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The sale of the assets of the applicant by NCLT appointed liquidator is a supply of goods by the liquidator, who is required to take registration under section 24 of the GST Act. If she is already registered as a distinct person of the corporate debtor in terms of Notification No. 11/2020 – Central Tax dated 21/03/2020, she should continue to remain registered till her liability ceases under section 29 (1) (c) of the GST Act.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

(SUSMITA BHATTACHARYA)
Member
West Bengal Authority for Advance Ruling

(PARTHASARATHI DEY)
Member
West Bengal Authority for Advance Ruling