



3Days Cert. Course on
Insolvency & Bankruptcy
Code 2016
VOCA & CA's Association
Jointly welcomes you
on
Role of IPs as a liquidator
and liquidation process
Online on Webex.

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Kinds of Liquidator -

Companies Act provides for the following kinds of Liquidator

∅ Official Liquidator (OL)

∅ Provisional Liquidator

∅ Company Liquidator

IBC 2016 Provides for one liquidator as appointed u/s 34

Liquidator

“Liquidator under the IBC 2016 has been defined as *“an insolvency professional” appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be*”.



Winding up of company under Company Law

- **24.1 Winding up of company**
- Companies Act, 2013 contains provisions relating to winding up of companies.
- However, Insolvency and Bankruptcy Code, 2016 has made substantial changes in these provisions.
- Provision for application for winding up for 'inability to pay debts' has been omitted.
- Powers of winding up have been transferred from Courts to NCLT w.e.f. 15-12-2016.
- ***Provisions in Companies Act relating to winding up are still relevant*** - Under the Insolvency Code, most of winding up applications will have to go through procedure of Insolvency and Bankruptcy Code, 2016. However, this would be only in cases where the company is in default of payments. In other cases, like winding up for 'just and equitable' reasons, company can still approach NCLT. Similarly, **if scheme or arrangement under section 230 of Companies Act, 2013 does not work, NCLT can order winding up.**
- The provisions are also relevant for winding up of unregistered company or a foreign company.

Winding up of company by NCLT



The provisions of Part I of Companies Act, 2013 [sections 271 to 303 of Companies Act] shall apply to the winding up of a company by the Tribunal under the Companies Act - section 270 of CA, 2013.



Provision relating to voluntary winding up have been omitted.



Meaning of winding up - "Winding up" means winding up under this Act (i.e. Companies Act, 2013) or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable - section 2(94A) of Companies Act, 2013.



From aforesaid definition, it is clear that 'winding up' under the Companies Act, 2013 has been treated to be "liquidation" under the Insolvency Code - *Forech India v. Edelweiss Assets Reconstruction Co. Ltd.* (2018) 91 taxmann.com 163 (NCLAT).

Mode of ending existence of company



Liquidation under Insolvency Code - A company can be liquidated under Insolvency and Bankruptcy Code, 2016.



Compulsory winding up by NCLT - Winding up by order of NCLT on receiving petition under section 272(1) of Companies Act, 2013 - section 270(1)(a) of Companies Act, 2013.



Winding up order by NCLT if scheme or arrangement not working - If scheme of compromise or arrangement sanctioned by NCLT under section 230(6) of Companies Act, 2013 is not working satisfactorily with or without modifications, and the company is unable to pay its debt, NCLT can order winding up under section 231(2) of Companies Act, 2013. Such order shall be deemed to be order of winding up under section 273 of Companies Act, 2013.



Mode of ending existence of company

- **Winding up by Central Government under summary procedure** - Small companies with assets of book value less than Rs one crore and belonging to specified class of companies can be wound up by order of Central Government by following summary procedure specified under sections 361 to 365 of Companies Act, 2013. Here, NCLT comes into picture only if (a) fraud is committed and Central Government decides that winding up should be by NCLT - section 361(6) of Companies Act, 2013 or (b) if Central Government decides to refer the matter to NCLT under section 364(4) of Companies Act, 2013 for settlement of claims.
- **Removal of name of company from register by Registrar** - Registrar of Companies has power under section 248 of Companies Act, 2013 to remove name of a non-functioning company from the register.
- **Application by Registrar if wrong information given at the time of reservation of name** - After reservation of name of company, if it is found that wrong/incorrect information was supplied while making application for reservation of name, Registrar can apply for winding up, if company does not change the name within three months - section 4(5) of Companies Act, 2013 [would be in very rare situations]
- **Winding up of unregistered or foreign company** - An unregistered company or a foreign company can also be wound up under provisions of Companies Act, 2013 [sections 375 and 376 of Companies Act, 2013]

Appointment of company liquidator



- "Company Liquidator" means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act - section 2(23) of Companies Act, 2013.
- Section 275 of Companies Act, 2013 makes provisions for appointment of 'Company Liquidator' who will supervise work relating to winding up of company.
- A professional like Advocate, practicing CA/CMA/CS can be appointed as 'Company Liquidator'.
- An 'Official Liquidator' can also be appointed as 'company liquidator'.
- NCLT shall appoint Company Liquidator (who can be Official Liquidator) at the time of passing of order of winding up - section 275(1) of Companies Act, 2013.
- The provisional liquidator or the Company Liquidator, as the case may, shall be appointed by NCLT from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016 - section 275(2) of Companies Act, 2013.
- **Provisional liquidator may continue as Company Liquidator** - If Provisional Liquidator was appointed earlier under section 273(1)(c) of Companies Act, 2013 (before order of winding up), he may be appointed by NCLT as Company Liquidator - section 275(7) of Companies Act, 2013.

Following are some of the Provisions which govern the Provisional or Company Liquidator under the Companies Act, 2013:

Section 275: Company Liquidators and their appointment

Section 276: Removal and replacement of liquidator

Section 277: Intimation to Company Liquidator, Provisional Liquidator and Registrar.

Section 281: Submission of Report by Company Liquidator.

Section 282: Directions of Tribunal on Report of Company Liquidator.

Section 290: Powers and Duties of Company Liquidator.

Section 291: Provision for Professional Assistance to Company Liquidator.

Section 291: Exercise and Control of Company Liquidator's Powers.

Section 293: Books to be Kept by Company Liquidator



Initiation of Liquidation (S.33) under IBC

❖ 3 things to be done by the Tribunal

- ❖ Pass an order of Liquidation
- ❖ Issue Public Announcement stating that Corporate Debtor is in liquidation
- ❖ Order to be sent to Authority with which Corporate Debtor is registered (ROC)





Appointment of the Liquidator in IBC- sec 34

- The **resolution professional appointed for the corporate insolvency resolution process under Chapter II of Part II (*corporate insolvency resolution process*) of the Code** shall act as the liquidator (subject to submission of a written consent by the resolution professional to the Adjudicatory Authority)for the purposes of liquidation unless replaced by the Adjudicating Authority under the following circumstances –
- The Resolution Plan submitted by the resolution professional under Section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or
- The Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing.
- c) the resolution professional fails to submit written consent under sub-section (1).

Powers and Duties of Liquidator:



Sec 34(2) On the appointment of a liquidator under this section, all powers of the board of directors, key managerial personnel and the partners of the CD, as the case may be, shall cease to have effect and shall be vested in the liquidator.



(3) The personnel of the CD shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the CD and provisions of section 19 shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the IRP.



Custody of assets -liquidator shall take custody and control of all the assets, property, actionable claims and effects of the company.

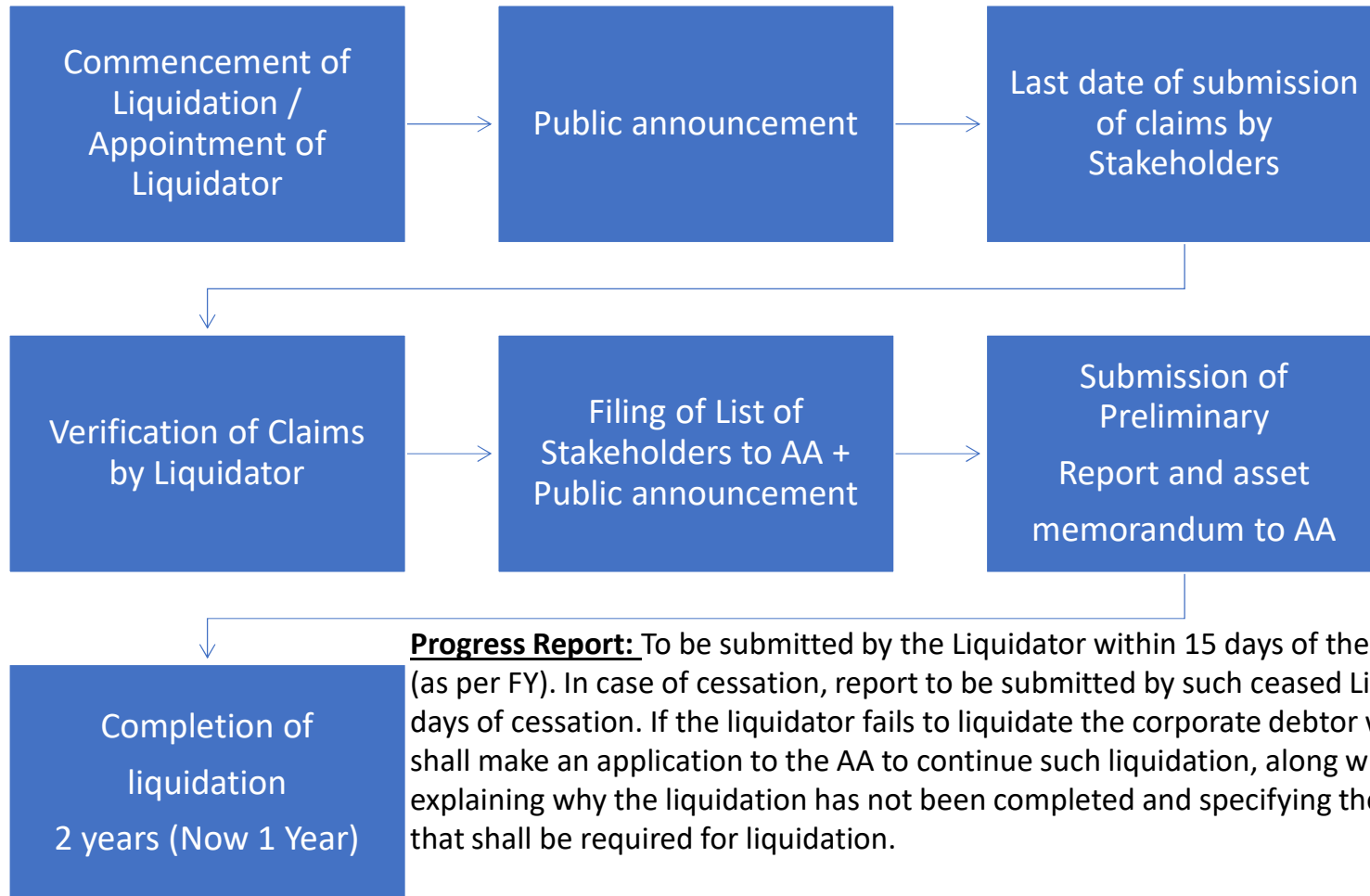


Evaluation of Assets-The liquidator appointed shall evaluate the asset and other properties of the corporate debtor and shall prepare a detailed report of the same.



- **Beneficial Liquidation-** Liquidator of the company shall carry on the business of corporate debtor for its beneficial liquidation.
- **Right to dispose-** Liquidator has the rights to sell or dispose of the property of the company in liquidation.
- **CLAIMS-** Liquidator shall invite, receive and collate the claims of creditors within thirty days from the initiation of liquidation proceedings.

Liquidation Process - Timelines





Reg 12 Public announcement by liquidator.

12 (2)The public announcement shall-

call upon stakeholders **to submit their claims or update their claims** submitted during the corporate insolvency resolution process, as on the liquidation commencement date; and

provide the last date for submission or updation of claims, which shall be thirty days from the liquidation commencement date.]

16 Submission of claim.

A person, who claims to be a stakeholder, shall submit its claim, or update its claim submitted during the corporate insolvency resolution process, including interest, if any, on or before the last date mentioned in the public announcement.

A person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.]



Reg 2(ba) “Consultation committee” & Reg 31A

- ✓ liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date.
- ✓ based on the list of stakeholders prepared under regulation 31, to advise him on the matters relating to sale under regulation 32.
- ✓ liquidator may facilitate the stakeholders of each class to nominate their representatives
- ✓ If the stakeholders of any class fail to nominate their representatives, the required number of stakeholders with the highest claim amount to be included.
- ✓ representatives in the consultation committee shall have access to all relevant records and information as may be required to provide advice to the liquidator.
- ✓ The liquidator shall convene a meeting of the CC when he considers it necessary and shall convene a meeting of the CC when a request is received from at least fifty-one percent of representatives in the CC.
- ✓ liquidator shall chair the meetings of consultation committee and record deliberations of the meeting.
- ✓ liquidator shall place the recommendation of COC made under sub- regulation (1) of regulation 39C before CC.
- ✓ CC shall advise the liquidator, by a vote of not less than sixty-six percent Present. & Voting.
- ✓ **advice of the consultation committee shall not be binding on the liquidator, Provided he records reasons for the same.**

Consultation committee Constitution

Class of Stakeholders	Description	Number of Representatives
(1)	(2)	(3)
Secured financial creditors, who have relinquished their security interests under section 52	Where claims of such creditors admitted during the liquidation process is less than 50% of liquidation value	Number of creditors in the category, subject to a maximum of 2
	Where claims of such creditors admitted during the liquidation process is at least 50% of liquidation value	Number of creditors in the Category, subject to a maximum of 4
Unsecured financial creditors	Where claims of such creditors admitted during the liquidation process is less than 25% of liquidation value	Number of creditors in the category, subject to a maximum of 1
	Where claims of such creditors admitted during the liquidation process is at least 25% of liquidation value	Number of creditors in the category, subject to a maximum of 2
Workmen and employees	1	1
Governments	1	1
Operational creditors other than Workmen, employees and Governments	Where claims of such creditors admitted during the liquidation process is less than 25% of liquidation value	Number of creditors in the category, subject to a maximum of 1
	Where claims of such creditors admitted during the liquidation process is at least 25% of liquidation value	Number of creditors in the category, subject to a maximum of 2
Shareholders or partners, if any		1

2 (ea) “liquidation cost” under clause (16) of section 5

- (i) fee payable to the liquidator under regulation 4;
 - (ii) remuneration payable by the liquidator under sub-regulation (1) of regulation 7;
 - (iii) costs incurred by the liquidator for claim verification under sub-regulation (2) of regulation 24;
 - (iv) costs incurred by the liquidator for preserving and protecting the assets, properties, effects and actionable claims, including secured assets, of the corporate debtor;
 - (v) costs incurred by the liquidator in carrying on the business of the corporate debtor as a going concern;
 - (vi) interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower;
 - (vii) the amount repayable to contributories under sub-regulation (3) of regulation 2A;
 - (viii) any other cost incurred by the liquidator which is essential for completing the liquidation process:
- Provided that the cost, if any, incurred by the liquidator in relation to compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013), if any, shall not form part of liquidation cost.]**



2A. Contributions to liquidation costs.

- Where the **COC did not approve a plan** under sub-regulations (3) of regulation 39B of CIRP, the **liquidator shall call upon the FCs**, being financial institutions, **to contribute the excess of the liquidation costs over the liquid assets of the CD**, as estimated by him, in proportion to the financial debts owed to them by the CD.
- Contributions **shall be deposited in a designated escrow account** to be opened and maintained in a scheduled bank, within seven days of the passing of the liquidation order.
- contribution under sub-regulation (2) **shall be repayable with interest at bank rate as part of liquidation cost.**



2B. Compromise or Arrangement.

- If compromise or arrangement is proposed under section 230 of the Companies Act, 2013 (18 of 2013), **it shall be completed within ninety days of the order of liquidation** under sub-sections (1) and (4) of section 33.
- The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.
- Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal.
- If Not then by the applicant.



Reg. 4 Liquidator's fee.

1. The fee payable to the liquidator shall be **in accordance with the decision taken by the COC under regulation 39D of the CIRP Regulations, 2016.**
2. **In cases other than those covered under sub-regulation (1),** the liquidator shall be entitled to a fee-
 - a. **at the same rate as the RP was entitled to during the CIRP, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013); and**
 - b. as a **percentage of the amount realised net of other liquidation costs**, and of the amount distributed, for the balance period of liquidation, as per new chart
3. Where the fee is payable under clause (b) of sub-regulation (2), the liquidator shall be entitled to receive half of the fee payable on realisation only after such realised amount is distributed.
4. Clarification: Regulation 4 of these regulations, as it stood before the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 shall continue to be applicable in relation to the liquidation processes already commenced before the coming into force of the said amendment Regulations.]

35. Powers and duties of liquidator

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -

(a) to verify claims of all the creditors;

(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;

(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;

(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;

(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;

(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified:

1[Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.]

35. Powers and duties of liquidator



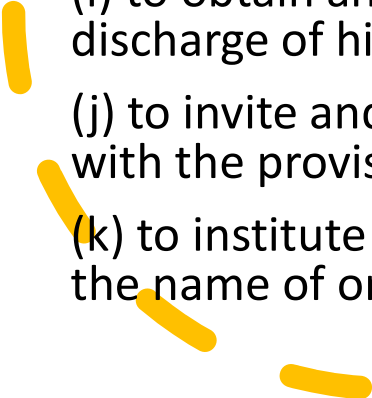
(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;

(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;

(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor;



35. Powers and duties of liquidator

(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and

(o) to perform such other functions as may be specified by the Board.

(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:

Provided that any such consultation shall not be binding on the liquidator:

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.


37. Powers of liquidator to access information

(1) **Notwithstanding anything contained in any other law for the time being in force, the liquidator shall have the power to access any** information systems for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor from the following sources, namely: -


- (a) an information utility;
- (b) credit information systems regulated under any law for the time being in force;
- (c) any agency of the Central, State or Local Government including any registration authorities;
- (d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;
- (e) information systems for securities and assets posted as security interest regulated under any law for the time being in force;
- (f) any database maintained by the Board; and
- (g) any other source as may be specified by the Board.

(2) The creditors may require the liquidator to provide them any financial information relating to the corporate debtor in such manner as may be specified.

(3) The liquidator shall provide information referred to in sub-section (2) to such creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information.



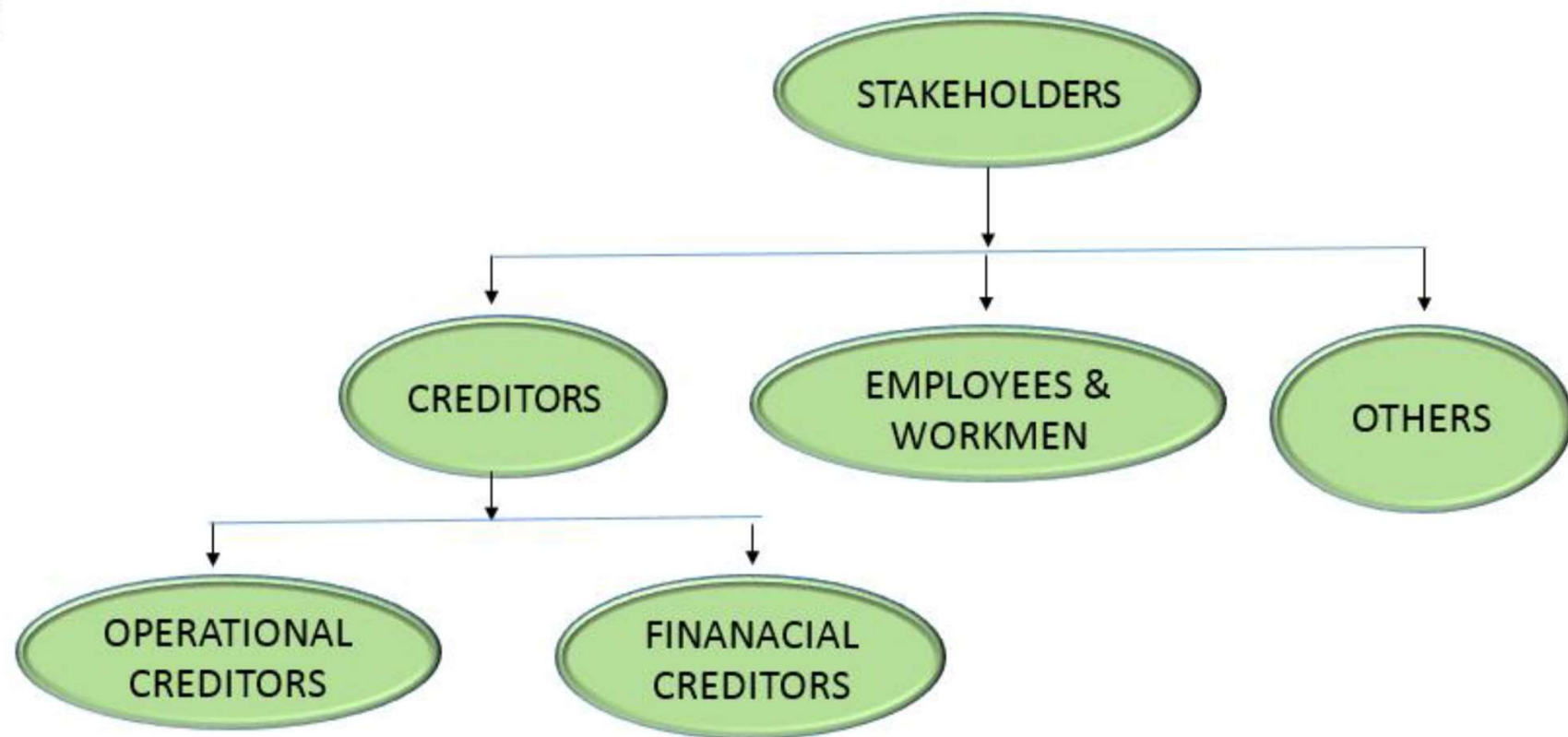
Even during liquidation, the liquidator should keep company as going concern

- In ***Swiss Ribbons v. UOI (2019) 101 taxmann.com 389 (SC)***, it was observed that primary focus of Insolvency Code is to ensure revival and continuation of corporate debtor. It is to protect corporate debtor from its own management and corporate death by liquidation. Insolvency Code is a beneficial legislation which puts the corporate debtor back on its feet. It is not mere recovery legislation for creditors.
 - Primary focus of Insolvency Code is to ensure revival. Even during liquidation, the liquidator should keep company as going concern and he can enter into arrangement. Liquidator can take steps under section 230 of Companies Act, 2013 (compromise or arrangement). He can sale company as 'going concern' even during liquidation – ***SC Sekaran v. Amit Gupta (2019) 152 SCL 536 = 103 taxmann.com 222 (NCLAT)***.
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Appointment of professional by liquidator to assist him

- The Liquidator can appoint professionals to assist him in discharge of his duties. The professional should not be relative of corporate debtor or employee of corporate debtor in last five years. The professional shall disclose his pecuniary or personal relationship with any stakeholder or corporate debtor - Regulation 7 of IBBI (Liquidation Process) Regulations, 2016.

Invitation & Collection of Claims



Chapter V
(regulations 16 to
30) of the
*Liquidation Process
Regulations provides
for a detailed
procedure regarding
the processing of
claims by the
Liquidator-*



Acceptance of Claims: The liquidator accepts the claims of the following stakeholders in terms of the regulations in respective forms applicable:



Claims by Operational Creditors (Form C of Schedule II)



Claims by Financial Creditors (Form D of Schedule II)



Claims by Workmen and employees (individually Form E) else (Form F of Schedule II)



Claims by Other Stakeholders (Form G of Schedule II)

OC, shall submit
proof of claim to the
liquidator in person,
by post or by
electronic means
Form C Reg 17



Debt due to an OC under this Regulation may be proved



(i) the records available with an information utility, if any; or



(ii) other relevant documents which adequately establish the debt, including any or all of the following -



- a contract for the supply of goods and services with corporate debtor;



- an invoice demanding payment for the goods and services supplied to the corporate debtor;



-an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; and




-Financial accounts.



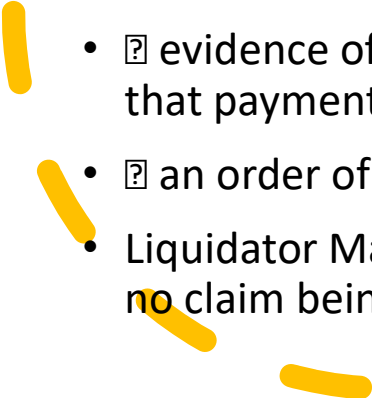
FC, shall submit proof of claim to the liquidator in electronic means Form D Reg 18

Debt due to an FC under this Regulation may be proved

- (i) the records available in an information utility, if any; or
- (ii) other relevant documents which adequately establish the debt, including any or all of the following-
 - a financial contract supported by financial statements as evidence of the debt;
 - a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;
 - financial statements showing that the debt has not been repaid; and
 - an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.



EMPLOYEE or WORKMEN shall submit proof of claim to the liquidator in person, by post or by electronic means Form E Reg 19 or Form F

- dues to workmen or employees may be proved by them, individually or collectively, on the basis of-
 - (i) records available in an information utility, if any; or
 - (ii) other relevant documents which adequately establish the dues, including any or all of the following –
 - ☐ a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;
 - ☐ evidence of notice demanding payment of unpaid amount and any documentary or other proof that payment has not been made; and
 - ☐ an order of a court or tribunal that has adjudicated upon the non-payment of dues, if any.
 - Liquidator May Admit claim for Workmen or Employees on the basis of books of accounts of CD if no claim being made.
- 



Other **STAKEHOLDERS** in the Company but are not the creditors and neither are workmen or employees shall submit proof of claim to the liquidator in person, by post or by electronic means in Form G of Schedule II.

- The existence of the claim of the stakeholder may be proved on the basis of –
- (i) the records available in an information utility, if any, or
- (ii) other relevant documents which adequately establish the claim, including any or all of the following-
- documentary evidence of notice demanding payment of unpaid amount or bank statements of the claimant showing that the claim has not been paid and an affidavit that the documentary evidence and bank statements are true, valid and genuine;
- documentary or electronic evidence of his shareholding; and
- An order of a court, tribunal or other authority that has adjudicated upon the non-payment of a claim, if any.



Consolidation of Claims: Section 38

- (1) The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.
- (2) *A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility*
- (3) *An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.*
- (4) *A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt in the manner as provided in sub-section (2) and to the extent of his operational debt under sub-section (3).*
- (5) *A creditor may withdraw or vary his claim under this section within fourteen days of its submission.*

- **Regulation 16 Submission of claim.**

- A person, who claims to be a stakeholder, shall submit its claim, **or update its claim submitted during the corporate insolvency resolution process, including interest, if any, on or before the last date mentioned in the public announcement.**
- A person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.]



Verification of Claims - Section 39

(1) The liquidator shall verify the claims submitted under section 38 within such time as specified by the Board.

(2) The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.



Admission or Rejection of Claims: Section 40.

(1) The liquidator may, after verification of claims under section 39, either admit or reject the claim, in whole or in part, as the case may be:

Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

- The decision of accepting or rejection made by liquidator is appealable and the aggrieved party can file an appeal within 14 days of receipt of order of rejection. Sec 42**

Liquidation Estate –

For the purpose of liquidation, the liquidator shall form a liquidation estate which shall comprise of assets and effects of the defaulter company.

The following asset forms the part of Liquidation Estate sec 36

Assets over which Corporate debtor has Ownership Rights.

Assets possessed by the corporate debtor

Tangible & Intangible Assets

Assets recovered through proceedings for avoidance of transactions

Other Assets

ASSETS EXCLUDED FROM THE ESTATE 36(4)

Assets that are specifically excluded and shall not be considered to in valuation of liquidation estate:

1. Assets owned by third party

Assets owned by the third party which are in possession of the company but on which company has no ownership rights are not counted for the purpose of calculating the liquidation estate. It includes:

(i) Assets held in trust for any third party;

(ii) Bailment contracts;

(iii) All sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

(iv) Other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

(iv) Such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

ASSETS EXCLUDED FROM THE ESTATE

2. **Personal Assets**

Personal assets of any shareholder or partner of a corporate debtor as the case may be, provided such assets are not held on account of avoidance transactions that may be avoided.

3. **Assets pledged as security collateral**

Assets in security collateral held by financial services providers and **are subject to netting and set-off in multi-lateral trading or clearing transactions.**

4. **Other Assets**

Assets which are held by the **Indian or even foreign subsidiary of the Company** and any other assets as may be specified by the Board.

REPORTING BY LIQUIDATOR -


- (A) A PRELIMINARY REPORT**
- (B) AN ASSET MEMORANDUM**
- (C) PROGRESS REPORT(S)**
- (D) SALE REPORT**
- (E) MINUTES OF CONSULTATION
WITH STAKEHOLDERS**
- (F) THE FINAL REPORT PRIOR TO
DISSOLUTION**

Submission of Preliminary Report by Liquidator

- The liquidator shall submit a Preliminary Report to the AA **within seventy-five days from the liquidation commencement date**, detailing capital structure of corporate debtor, estimates of assets and liabilities, whether he intends to make further enquiry and proposed plan to carry out liquidation and liquidation costs - Regulation 13 of IBBI (Liquidation Process) Regulations, 2016.
- **Asset Memorandum prepared as per regulation 34 shall be filed along with preliminary report** - Regulation 34(4) of IBBI (Liquidation Process) Regulations, 2016.



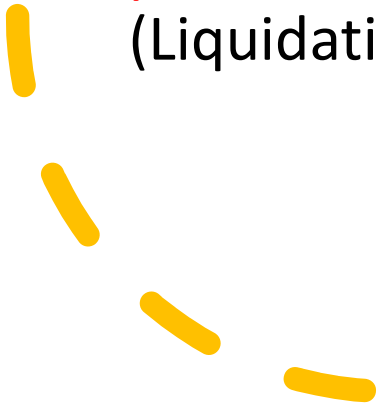
Early dissolution if property insufficient to meet cost of liquidation

- Any time after the preparation of the Preliminary Report, if it appears to the liquidator that- (a) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; **and** (b) the affairs of the corporate debtor do not require any further investigation; he (*i.e.* liquidator) may apply to the AA for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution - Regulation 14 of IBBI (Liquidation Process) Regulations, 2016.
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Progress Reports by Liquidator

- The Liquidator shall submit progress report on quarterly basis **within 15 days from close of quarter**. The report should provide all information relevant to liquidation, with specified details, accounts and material changes. Annual audited accounts shall also be submitted. **The report shall not be available to any person, unless permitted by Adjudicating Authority (i.e. NCLT) - Regulation 15 of IBBI (Liquidation Process) Regulations, 2016.**





Registers / Records to be maintained by the Liquidator -


- (a) Cash Book;
- (b) Ledger;
- (c) Bank Ledger;
- (d) Register of Fixed Assets and Inventories;
- (e) Securities and Investment Register;
- (f) Register of Book Debts and Outstanding Debts;
- (g) Tenants Ledger;
- (h) Suits Register;



- (i) Decree Register;
- (j) Register of Claims and Dividends;
- (k) Contributories Ledger;
- (l) Distributions Register;
- (m) Fee Register;
- (n) Suspense Register;
- (o) Documents Register;
- (p) Books Register;
- (q) Register of unclaimed dividends and undistributed properties deposited in accordance with Regulation ; and
- (r) such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor.

Avoidance of preferential transactions by liquidator

- CD shall be deemed to have given a preference, if—
- (a) there is a transfer of property or an interest thereof of the CD for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor **and**
- (b) the above transfer has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53 of Insolvency Code, 2016 - section 43(2) of Insolvency Code, 2016.
- Even if any transfer is made in pursuance of the order of a court, such transfer can be held to be deemed as giving of preference by the corporate debtor, if aforesaid circumstances exist - *proviso* to section 43(3) of Insolvency Code, 2016.



What is not 'preference'

- The preference shall not include the following transfers [section 43(3) of Insolvency Code, 2016
 1. transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee.
 2. any transfer creating a security interest in property acquired by the corporate debtor to the extent that — (i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property, and (ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property.

Liquidator can apply for avoidance of preferential transactions



Secured creditor in liquidation proceedings

"Secured creditor" means a creditor in **favour of whom security interest is created - section 3(30) of Insolvency Code, 2016.**

A secured creditor in the liquidation proceedings **may**—

(a) **relinquish its security** interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53 *or*

(b) **realise its security interest** in the manner specified in this section - section 52(1) of Insolvency Code, 2016.

If the secured creditor intends to realise security interest under section 52(1)(b) of Insolvency Code, 2016, **he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.**

21A. Presumption of security interest.

- A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:

Provided that, **where a secured creditor does not intimate its decision within thirty days** from the liquidation commencement date, the assets covered under the **security interest shall be presumed to be part of the liquidation estate.**

- Where a secured creditor proceeds to realise its security interest, it shall pay as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest.]



Verification by liquidator before secured creditor realises his security interest

Before realization of security interest by the secured creditor under section 52(1)(b) of Insolvency Code, 2016, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest.

The existence of security interest may be proved either—

(a) by the records of such security interest maintained by an information utility or

(b) by such other means as may be specified by the Board (IBBI) - section 52(3) of Insolvency Code, 2016.

Distribution of amount realised by secured creditor

If the secured creditor realises an amount by way of proceeds which is in excess of the debts due to him, the secured creditor shall— (a) account to the liquidator for such surplus. And (b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

The amount of insolvency resolution process costs, due from secured creditors who realise their security interests shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate - section 52(8) of Insolvency Code, 2016.

If the proceeds of the realisation of the **secured assets are not adequate** to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in section 53(1)(e) of Insolvency Code, 2016.

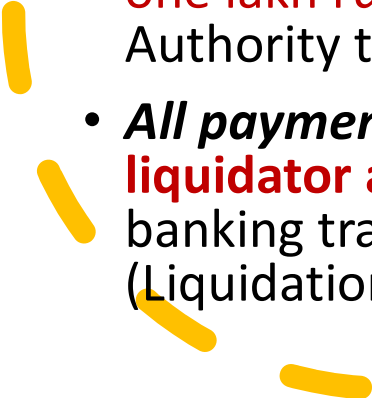
Sec 53 Waterfall



- (a) the insolvency resolution process costs and the liquidation costs paid in full;
- (b) the following debts which shall rank equally between and among the following:
 - (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
 - (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
- (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- (d) financial debts owed to unsecured creditors;
- (e) the following dues shall rank equally between and among the following: -
 - (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
 - (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- (f) any remaining debts and dues;
- (g) preference shareholders, if any; and
- (h) equity shareholders or partners, as the case may be.



Bank account In Liquidation

- The **liquidator shall open a bank account** in the name of the corporate debtor followed by the words 'in liquidation', in a scheduled bank, for the receipt of all moneys due to the corporate debtor.
 - The liquidator **shall deposit in the bank account opened** under sub-regulation (1) all moneys, including cheques and demand drafts received by him as the liquidator of the corporate debtor, and the realizations of each day shall be deposited into the bank account without any deduction not later than the next working day - Regulation 41(2) of IBBI (Liquidation Process) Regulations, 2016.
 - **Cash upto Rs. one lakh for petty expenses** - **The liquidator may maintain a cash of one lakh rupees** or such higher amount as may be permitted by the Adjudicating Authority to meet liquidation costs.
 - **All payments by cheque or online** - **All payments out of the account by the liquidator above five thousand rupees** shall be made by cheques drawn or online banking transactions against the bank account - Regulation 41(4) of IBBI (Liquidation Process) Regulations, 2016.
- 



Distribution of assets

- The proceeds from the sale of the liquidation assets shall be distributed in accordance of order of priority as per section 53 and within specified period and in specified manner only.
- These are overriding provisions, notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force - Section 53(1) of Insolvency Code, 2016.
- The **priority as indicated in section 53 of Insolvency Code, 2016 override provisions of sections 326 and 327 of Companies Act, 2013, as per section 327(7) of Companies Act, 2013 as inserted by Schedule XI of Insolvency and Bankruptcy Code, 2016.**
- This priority overrides any contract between corporate debtor and recipients to the contrary - section 53(2) of Insolvency Code, 2016.
- **Section 53(1) of Insolvency Code prescribes priority of distribution of assets in liquidation. Validity of this section has been upheld in *Swiss Ribbons v. UOI* (2019) 4 SCC 17 = 152 SCL 365 = 101 taxmann.com 389 (SC).**



Distribution of cash to stakeholders

- Subject to the provisions of section 53 of Insolvency Code, 2016, the liquidator **shall not commence distribution before the list of stakeholders and the asset memorandum has been filed with the AA - Regulation 42(1) of IBBI (Liquidation Process) Regulations, 2016.**
- The liquidator shall distribute the proceeds **from realization within 90 Days from the receipt of the amount to the stakeholders - Regulation 42(2) of IBBI (Liquidation Process) Regulations, 2016.**
- The insolvency resolution process costs, if any, and the **liquidation costs shall be deducted before such distribution is made - Regulation 42(3) of IBBI (Liquidation Process) Regulations, 2016.**

Reg. 32 Sale of Assets, etc.

- The liquidator may sell-
 - a. an asset on a standalone basis;
 - b. the assets in a slump sale;
 - c. a set of assets collectively;
 - d. the assets in parcels;
 - e. the corporate debtor as a going concern; or
 - f. the business(s) of the corporate debtor as a going concern:
- **Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.]**

32A. Sale as a going concern.

- Where the COC has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the CD, he shall endeavour to first sell under the said clauses.
- For the purpose of sale under sub-regulation (1), the **group of assets and liabilities** of the CD, as identified by the COC under sub-regulation (2) of regulation 39C of the CIRP Regulations, 2016 shall be sold as a going concern.
- Where the **COC has not identified the assets and liabilities** under sub- regulation (2) of regulation 39C of the CIRP Regulations, 2016, the **liquidator shall identify** and group the assets and liabilities to be sold as a going concern, **in consultation with the consultation committee.**
- If the **liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date**, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.]

Reg 35 Valuation of assets intended to be sold.

- Where the valuation has been conducted under CIRP or under Fast Track CIRP as the case may be, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.
- In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required ,he shall within seven days] of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor:
- Provided that the following persons shall not be appointed as registered valuers, namely: -
 - a relative of the liquidator;
 - a related party of the corporate debtor;
 - an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or
 - a partner or director of the insolvency professional entity of which the liquidator is a partner or director.
- The Registered Valuers appointed under sub-regulation (2) shall independently submit to the liquidator the estimates of realisable value of the assets or businesses, as the case may be, computed in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017, after physical verification of the assets of the corporate debtor.
- The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.



Reg 44 Completion of liquidation.

- The liquidator shall liquidate the corporate debtor within a period of one year from the liquidation commencement date, notwithstanding pendency of any application for avoidance of transactions under Chapter III of Part II of the Code, before the Adjudicating Authority or any action thereof:
- Provided that where the sale is attempted under sub-regulation (1) of regulation 32A, the liquidation process may take an additional period up to ninety days.]
- If the liquidator fails to liquidate the corporate debtor within **One year**], he shall make an application to the Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation.

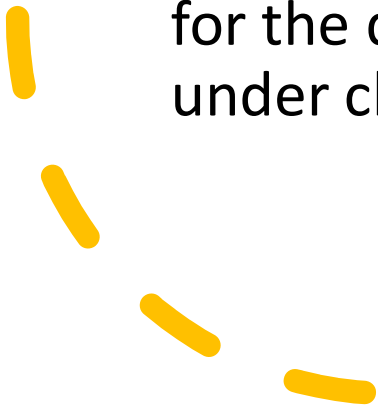


Reg 45 Final report prior to dissolution.

(3) **20**[The liquidator shall submit an application along with the final report and the compliance certificate in form H to the Adjudicating Authority for –

closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or

for the dissolution of the corporate debtor, in cases not covered under clause (a).]





Changes in SCHEDULE I MODE OF SALE

- (4) The reserve price shall be the value of the asset arrived at in accordance with regulation 35.
- (4A) Where an auction fails at the reserve price, the liquidator may reduce the reserve price by up to twenty-five percent of such value to conduct subsequent auction.
- (4B) Where an auction fails at reduced price under clause (4A), the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time.]



Changes in SCHEDULE I MODE OF SALE

- **(12)** On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days of the date of such demand:
 - Provided that payments made after thirty days shall attract interest at the rate of 12%:
 - Provided further that the sale shall be cancelled if the payment is not received within ninety days.
- **(13)** On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale.]



Application to NCLT after assets wound up

- After the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority (NCLT) for the dissolution of company.
- The Adjudicating Authority shall then pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly - Section 59(8) of Insolvency Code, 2016.
- A copy of an order of Adjudicating Authority shall be filed with ROC within fourteen days from the date of such order - Section 59(9) of Insolvency Code, 2016.



Liquidators Liability under the Code:

- Any insolvency professional who deliberately contravenes the provisions of the corporate insolvency resolution process, shall be punishable with imprisonment for a terms which may extend to six months, or with minimum fine of one lakh rupees, which may extend to five lakhs rupees or with both
- The NCLT is satisfied on an application by any creditor about any undervalued transaction, which the liquidator has not reported to the NCLT, despite having Section sufficient information or opportunity; it may direct the Board to initiate disciplinary proceedings against such liquidator.
- The Insolvency and Bankruptcy Board of India also has the power to impose penalty and/or suspend/cancel the registration of the liquidator as insolvency professional, after completion of the disciplinary proceedings, which could be initiated either on a direction by the NCLT or upon receipt of a complaint by any aggrieved person or by the Board itself.

Exclusion of Time from Liquidation Process Reg 47A

Regulation 47A added in Liquidation Regulations w.e.f. 17.4.2020

“47A. Subject to the provisions of the Code, the period of lockdown imposed by the **Central Government** in the wake of COVID-19 outbreak shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process”



Suo Moto -
Company
Appeal
(AT)(Insolvency)
No. 01 dated
30th March
2020

- “Period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for ‘Resolution Process...”

Suo Moto -
Company
Appeal
(AT)(Insolvency)
No. 01 dated
30th March
2020 cont...

- “It is further ordered that any interim order/ stay order passed by this Appellate Tribunal in anyone or the other Appeal under Insolvency and Bankruptcy Code, 2016 shall continue till next date of hearing, which may be notified later”

SUO MOTU WRIT
PETITION (CIVIL)
No(s).3/2020 IN
RE :
COGNIZANCE
FOR EXTENSION
OF LIMITATION
dated, 23-03-
2020

- “To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.”
- We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

Some Questions on Liquidation



As liquidator is it necessary to register your DSC and one as CEO DESIGNATE with MCA and if so under which notification or circular?



If the Progress Report and the audited accounts of Receipts and Payments due for submission by the Liquidators by 15th April 2020 or the time extended by IBBI are not filed due to partial lockdown in different districts such as in West Bengal what will happen?



CoC did not approved fees payable to Liquidator. Whether Liquidator can ask for fees for liquidation period ? if yes whether same as it was paid during CIRP?

Some Questions on Liquidation

When the liquidation is not able to take off due to continued litigations, it is most apt that the timeline for the purpose of calculation of fee for the Liquidator should trigger from a latter date, otherwise due to no fault of the Liquidator, he is penalised in the sense that he gets fee as per the lowest slab.

What are the parameters for deciding the reserve price, it is to be fixed by FC or by Liquidator?

If applications u/s 43,45,50,66 and others are pending before AA and are at advanced stage of adjudication. applications pending since Jan 2018 for adjudication . Could not be concluded without fault of RP/Liquidator . Sizeable amount is expected for reversal /restoration period of 2 years is expiring during lockdown , what to do?

Some Questions on Liquidation

During Liquidation, the Sale as a going concern could not be completed in 90 days Post Covid lock down, the sale can happen only at a lower valuation on lock down being lifted due to the economic slowdown. In the circumstance what can the liquidator do?

Investment in subsidiaries - how does the liquidator dispose off shares held in the subsidiaries, if he is not able to sell them for cash.

In case of avoidance transaction, the liquidator will have to defend the application including at the time when the prosecutors move ahead. This period may extend much beyond the liquidation period etc. Again, who bears the cost and how does one manage this logistically.



Thank you

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