

**Handbook on
Liquidation Process and Voluntary Liquidation Process
under
The Insolvency and Bankruptcy Code, 2016**



**Committee on Insolvency & Bankruptcy Code
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi**

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Foreword

The primary objective of the Insolvency and Bankruptcy Code, 2016 is to resolve the insolvency of corporate debtor and prevent it from going into liquidation process. However, in certain circumstances the liquidation process is unavoidable. In that scenario, the Code and the Regulations thereunder provide for the process of liquidation to enable orderly exit. There are times when the corporate person would like to voluntarily liquidate itself and if it has not committed any default it can apply for voluntary liquidation process under IBC.

The Liquidation process and Voluntary Liquidation process are performed by the Liquidators appointed under the Code. The Powers and Duties of the Liquidator are enumerated in the Code and accordingly the Liquidator so appointed has been given the responsibility to comply with various Reporting requirements under the Code. Further, for the benefit of the stakeholders, Model timeline of liquidation process of a Corporate Debtor from the Liquidation Commencement Date is also provided in the Code.

I appreciate the Committee on Insolvency & Bankruptcy Code of ICAI in taking the initiative of bringing out the publication - Handbook on Liquidation Process and Voluntary Liquidation Process under The Insolvency and Bankruptcy Code, 2016 to help the professionals understand the relevant provisions relating to Liquidation Process and Voluntary Liquidation Process under the Code and also to know about the practical aspects based on case laws.

I commend the entire Committee and extend my sincere appreciation to CA. Durgesh Kumar Kabra, Chairman, and CA. Prakash Sharma, Vice- Chairman, Committee on Insolvency & Bankruptcy Code in bringing out this useful publication.

I am sure that this publication would be helpful to the members, especially to insolvency professionals and other stakeholders.

CA. Nihar N. Jambusaria

President ICAI

Date: 31st January, 2022

Place: New Delhi

Preface

As per the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority may order for the liquidation of the corporate debtor in the following circumstances: (i) where before the expiry of the Insolvency Resolution Process period for completion of the corporate insolvency resolution process, no Resolution Plan is received or (ii) if the Adjudicating Authority rejects the Resolution Plan or (iii) If the resolution professional before the expiry of the resolution process intimates the Adjudicating Authority, of the decision of the Committee of Creditors that they have passed an order for the liquidation of corporate debtor or (iv) where the Resolution Plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interest is prejudicially affected by the contravention, may make an application to the Adjudicating Authority to pass the liquidation order.

In other words, where insolvency resolution of Corporate Debtor does not succeed under Corporate Insolvency Resolution Process under the Code, it leads to liquidation process. Again, under the Code, a corporate person who intends to liquidate itself voluntarily and has not committed any default can initiate voluntary liquidation proceedings. For both the liquidation process and voluntary liquidation process, Liquidator is appointed, who plays a significant role and performs various functions till the dissolution of the corporate debtor.

The Committee on Insolvency & Bankruptcy Code of ICAI as part of its initiative to bring Handbooks on important topics under IBC has brought out this publication - Handbook on Liquidation Process and Voluntary Liquidation Process under The Insolvency and Bankruptcy Code, 2016 so as to help members understand the provisions relating to Liquidation Process and Voluntary Liquidation Process under the Code.

We would like to sincerely thank the President of ICAI, CA. Nihar N. Jambusaria and Vice President of ICAI, CA. (Dr) Debashis Mitra for their encouragement and support in bringing out this publication.

We would like to thank all the Committee Members for their guidance in bringing out this publication.

We would like to sincerely appreciate and thank the Group of Insolvency Professionals- CA. Devang P. Sampat, CA. Rakesh Kumar Tulsyan, CA. Ashish Vyas and CA. Rajeev Mannadiar who prepared the Draft of the publication under the Convenorship and guidance of Chairman of the Committee.

We appreciate the efforts put in by Shri Rakesh Sehgal, Director, Directorate of Corporate and Economic Laws, ICAI, Ms. S. Rita, Secretary, Committee on Insolvency & Bankruptcy Code, ICAI, CA. Sarika Singhal, Deputy Secretary, ICAI and the Committee Secretariat comprising of CA. Abhishek Tarun and Shri Eshaan Kambiri for providing their technical and administrative support in bringing out this publication.

We are sure that the members of the profession, industries and other stakeholders will find the publication useful.

CA. Durgesh Kumar Kabra
Chairman
Committee on Insolvency &
Bankruptcy Code, ICAI

CA. Prakash Sharma
Vice- Chairman
Committee on Insolvency &
Bankruptcy Code, ICAI

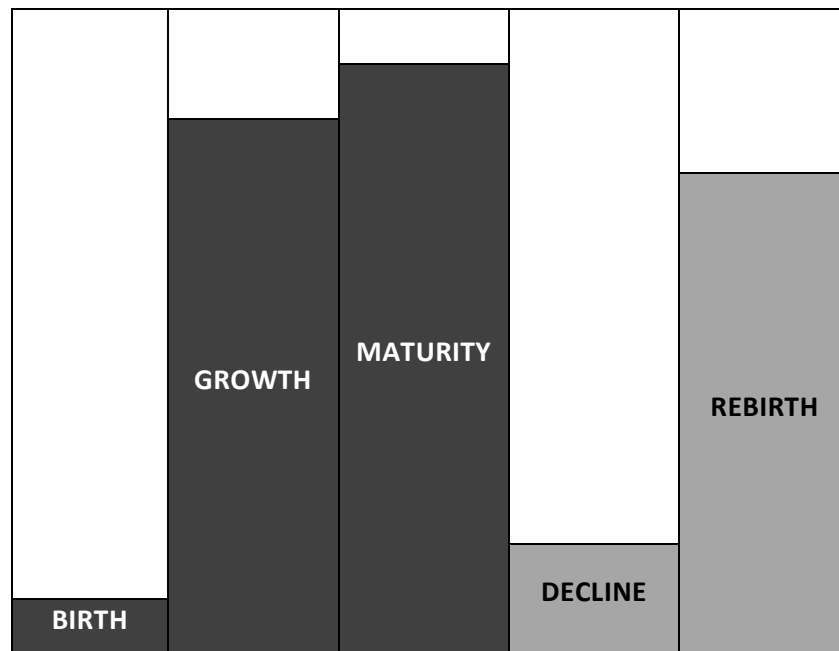
Date: 29th January, 2022

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Chapter 1 Introduction

Every business face life cycle comprising of phases: Birth, Growth, Maturity, Decline and at times Rebirth.



PHASES IN BUSINESS LIFE CYCLE

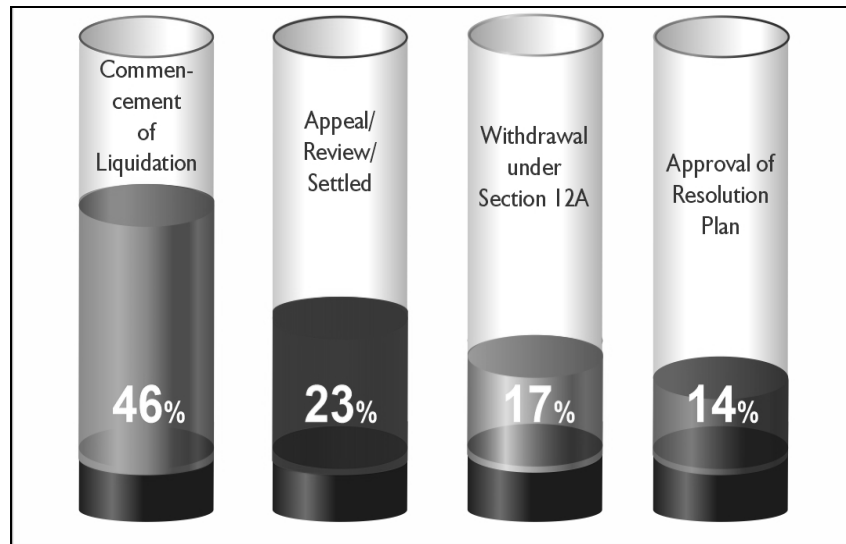
In a dynamic, challenging and competitive business environment sometimes businesses face financial distress perhaps in a phase of decline and are unable to meet the financial obligations. In such cases businesses need timely resolution of insolvency and if that is not possible then orderly exit may be required to overcome the situation. To fulfil this need, The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted with the objective of consolidating and amending the laws relating to re-organisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. The purpose of the Code is maximisation of value of assets, promote entrepreneurship and balance the interest of all stakeholders.

Though the primary aim is to revive the businesses through resolution of insolvency under IBC, but at times when it does not happen and in that case the Code provides for Liquidation Process and detailed regulations thereunder. Further the Code also provides that a corporate person who intends to liquidate itself voluntarily and has not committed any default can initiate Voluntary Liquidation Proceedings. Both the Liquidation Process and Voluntary Liquidation Process are being carried out by Insolvency Professionals registered with Insolvency and Bankruptcy Board of India (IBBI) in a time bound process, which is different as compared to Winding up in Companies Act, 2013.

In the Event of the following there is initiation of the Liquidation Process against the Corporate Debtor under IBC

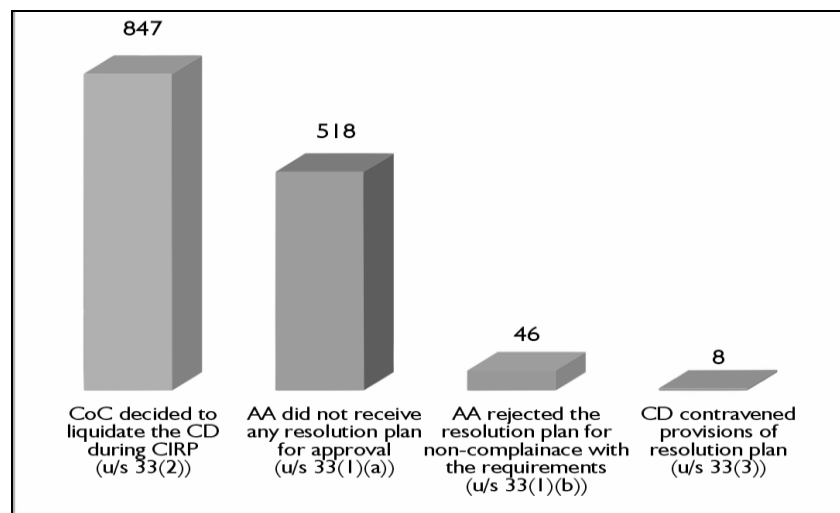
- Committee of Creditors resolving by requisite majority (sixty-six percent of voting share) to go for Liquidation during CIRP but before confirmation of Resolution Plan.
- There is no Resolution Plan until completion of CIRP period.
- Resolution Plans received are not approved by Committee of Creditors, hence no Resolution Plan submitted for Approval of Adjudicating Authority.
- Resolution Plan is submitted to Adjudicating Authority for approval but not approved.
- Resolution Plan approved by Adjudicating Authority contravened by concerned corporate debtor.

As per IBBI newsletter – July – Sept 2021 – Mode of closure of CIRP is given in the figure below –



Source - Quarterly newsletter of IBBI - July - Sept 2021 (Vol -20)

As on September 30, 2021 as per the said IBBI newsletter 1419 orders for liquidation have been passed. The AA passes an order for liquidation under four circumstances. The details of liquidation in these circumstances are given in the figure below:



Source - Quarterly newsletter of IBBI - July - Sept 2021 (Vol -20)

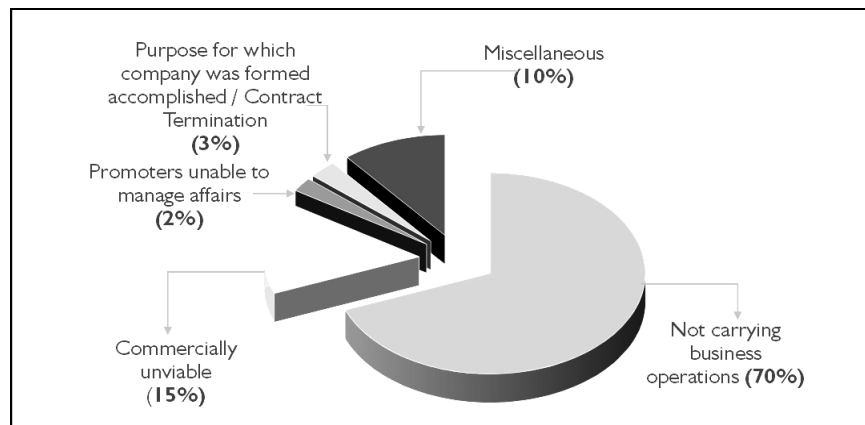
Under IBC, a corporate person can liquidate itself voluntarily if it has not committed any default.

A corporate person that has not defaulted may undergo Voluntary Liquidation as per Section 59 of the Code.

Section 59 provides the following conditions:

- Corporate Debtor has no debt or that it will be able to pay its debts fully.
- Corporate Debtor is not being liquidated to defraud any person.

As per IBBI newsletter – July – Sept 2021- 1042 corporate persons initiated voluntary liquidation. Of the 1042 corporate persons that initiated voluntary liquidations till September 30, 2021, the reasons for these initiations are available for 869 cases, which are presented in figure below.



Source - Quarterly newsletter of IBBI – July – Sept 2021 (Vol -20)

Chapter 2

Highlights related to the Liquidation Process and Voluntary Liquidation Process under The Insolvency and Bankruptcy Code, 2016 (IBC)

Highlights related to Liquidation Process

Details	Provision w.r.to Liquidation
Applicability	<ul style="list-style-type: none"> • To Corporate Debtor
When will the Liquidation Process be triggered?	<ul style="list-style-type: none"> • Where Adjudicating Authority does not receive a resolution plan either before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56. • Where Adjudicating Authority rejects the Resolution Plan under section 31. • Where the Resolution Professional, at any time during the Corporate Insolvency Resolution Process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the Committee of Creditors approved by not less than sixty-six per cent. of the voting share to liquidate the Corporate Debtor subject to order of AA. • Where the resolution plan approved by the Adjudicating Authority under section 31 is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order.

Important Definitions	<ul style="list-style-type: none"> • Liquidation cost • Liquidation commencement date • Liquidator
Adjudicating Authority	<ul style="list-style-type: none"> • National Company Law Tribunal
Appointment of Liquidator	After passing an order for liquidation by NCLT, the Resolution Professional appointed for the Corporate Insolvency Resolution Process shall act as the Liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.
Liquidation Fees	<ul style="list-style-type: none"> • The fee payable to the Liquidator shall form part of the liquidation cost. • The fee payable to the Liquidator shall be in accordance with the decision taken by the Committee of Creditors. • The fees for the conduct of the Liquidation proceedings shall be paid to the Liquidator from the proceeds of the liquidation estate under section 53
Effect of Liquidation Order	<ul style="list-style-type: none"> • All powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the Liquidator.
Liquidation estate	<ul style="list-style-type: none"> • The Liquidator shall form an estate of the assets which will be called the liquidation estate in relation to the corporate debtor. • Section 36 covers provisions regarding what shall be included or excluded from liquidation estate.
Powers of Liquidator	<ul style="list-style-type: none"> • 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. • To verify claims of all the creditors • The Liquidator shall have the power to consult any

Highlights related to the Liquidation and Voluntary Liquidation Process

	of the stakeholders entitled to a distribution of proceeds under section 53
Duties of Liquidator	<ul style="list-style-type: none"> • To carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary; • To evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report; • The Liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors. • The Liquidator shall report to AA about the following transactions: <ul style="list-style-type: none"> ❖ preferential transactions ❖ undervalued transactions ❖ transactions for defrauding creditors ❖ Extortionate credit transactions
Collection / Consolidation / Verification of Claims	<ul style="list-style-type: none"> • 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. • The Liquidator shall verify the claims submitted. • The Liquidator may, after verification of claims either admit or reject the claim, in whole or in part, as the case may be.
Distribution of assets	<p>Liquidation assets shall be distributed in the following order of priority</p> <ol style="list-style-type: none"> I. the insolvency resolution process costs and the liquidation costs paid in full II. workmen's dues and debts owed to a secured creditor in the event such secured creditor has relinquished security (rank equally) III. employees dues IV. financial debts owed to unsecured creditor V. Following shall be ranked equally:

	<p>Government dues and debts owed to a secured creditor for any amount unpaid following the enforcement of security interest</p> <p>VI. any remaining debts and dues</p> <p>VII. preference shareholders</p> <p>VIII. equity shareholders or partners, as the case may be.</p>
Dissolution of corporate debtor	<p>Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor and the AA shall pass the dissolution order.</p>

Highlights related to Voluntary Liquidation Process

Details	Provision w.r.to Voluntary Liquidation
Applicability	<ul style="list-style-type: none"> To Corporate Person
When can the Voluntary Liquidation Process be initiated?	<ul style="list-style-type: none"> A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation.
Conditions for Voluntary Liquidation.	<ul style="list-style-type: none"> A declaration from majority of the directors of the company that company is not being liquidated to defraud any person and they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation. A special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator;
Adjudicating Authority	<ul style="list-style-type: none"> National Company Law Tribunal

Highlights related to the Liquidation and Voluntary Liquidation Process

Applicability of liquidation provisions	<ul style="list-style-type: none">• The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.
Dissolution of corporate debtor	<ul style="list-style-type: none">• Where 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 for the dissolution of such corporate person.

Chapter 3

Initiation of the Liquidation Process against the Corporate Debtor under IBC

Provisions with respect to initiation of Liquidation Process against the Corporate Debtor are given below.

Section 33: Initiation of liquidation

- (1) Where the Adjudicating Authority, -
 - (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or
 - (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,it shall –
 - (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
 - (ii) issue a public announcement stating that the corporate debtor is in liquidation; and
 - (iii) require such order to be sent to the authority with which the corporate debtor is registered.
- (2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent. of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

(3) Where the resolution plan approved by the Adjudicating Authority under section 31 or under sub-section (1) of section 54L, is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority,

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Regulation 39B - Meeting liquidation cost.

(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet

liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.

(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).

(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.

(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

Explanation. - For the purposes of this regulation, 'liquidation costs' shall have the same meaning as assigned to it in clause (ea) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Regulation 39C - Assessment of sale as a going concern

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be."

Regulation 39 D - Fee of the liquidator

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for –

- (a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;
- (b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and
- (c) the balance period of liquidation

Chapter 4

Appointment and Remuneration of the Liquidator under IBC

Provisions with respect to Appointment and Remuneration of Liquidator are given below.

Section 34 - Appointment of liquidator and fee to be paid. –

(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II or for the pre-packaged insolvency resolution process under Chapter III-A shall, subject to submission of a written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

(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 corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

(3) The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor 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 interim resolution professional.

(4) The Adjudicating Authority shall by order replace the resolution professional, if–

- (a) 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
- (b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing; or

- (c) the resolution professional fails to submit written consent under sub-section (1).
- (5) For the purposes of clause (a) and clause (c) of sub-section (4), the Adjudicating Authority may direct the Board to propose name of another insolvency professional to be appointed as a liquidator.
- (6) The Board shall propose the name of another insolvency professional along with written consent from the insolvency professional in the specified form within ten days of the direction issued by the Adjudicating Authority under sub-section (5).
- (7) The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.
- (8) An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.
- (9) The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.

Regulation 3 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Eligibility for appointment as liquidator.

- (1) An insolvency professional shall be eligible to be appointed as a liquidator if he, and every partner or director of the insolvency professional entity of which he is a partner or director, is independent of the corporate debtor.

Explanation – A person shall be considered independent of the corporate debtor, if he-

- (a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013 (18 of 2013), where the corporate debtor is a company;
- (b) is not a related party of the corporate debtor; or
- (c) has not been an employee or proprietor or a partner:

- (i) of a firm of auditors or secretarial auditors or cost auditors of the corporate debtor; or
- (ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor contributing ten per cent or more of the gross turnover of such firm, in the last three financial years.

(2) A liquidator shall disclose the existence of any pecuniary or personal relationship with the concerned corporate debtor or any of its stakeholders as soon as he becomes aware of it, to the Board and the Adjudicating Authority.

(3) An insolvency professional shall not continue as a liquidator if the insolvency professional entity of which he is a director or partner, or any other partner or director of such insolvency professional entity represents any other stakeholder in the same liquidation process.

Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Liquidator's fee

(1) The fee payable to the liquidator shall be in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) 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 resolution professional was entitled to during the corporate insolvency resolution process, 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 under:

Appointment and Remuneration of the Liquidator

Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realised / distributed		
	in the first six months	in the next six months	thereafter
Amount of Realisation (exclusive of liquidation costs)			
On the first 1 crore	5.00	3.75	1.88
On the next 9 crore	3.75	2.80	1.41
On the next 40 crore	2.50	1.88	0.94
On the next 50 crore	1.25	0.94	0.51
On further sums realized	0.25	0.19	0.10
Amount Distributed to Stakeholders			
On the first 1 crore	2.50	1.88	0.94
On the next 9 crore	1.88	1.40	0.71
On the next 40 crore	1.25	0.94	0.47
On the next 50 crore	0.63	0.48	0.25
On further sums distributed	0.13	0.10	0.05

Clarification: For the purposes of clause (b), it is hereby clarified that where a liquidator realises any amount, but does not distribute the same, he shall be entitled to a fee corresponding to the amount realised by him. Where a liquidator distributes any amount, which is not realised by him, he shall be entitled to a fee corresponding to the amount distributed by him.

(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.

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.

2A. Contributions to liquidation costs.

(1) Where the committee of creditors did not approve a plan under sub-regulations (3) of regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall call upon the financial creditors, being financial institutions, to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, as estimated by him, in proportion to the financial debts owed to them by the corporate debtor.

Illustration

Assume that the excess of liquidation costs over liquid assets is Rs.10, as estimated by the liquidator. Financial creditors will be called upon to contribute, as under:

Sl. No.	Financial creditors	Amount of debt due to financial creditors (Rs.)	Amount to be contributed towards liquidation cost (Rs.)
(1)	(2)	(3)	(4)
1	Financial institution A	40	04
2	Financial institution B	60	06
3	Non-financial institution A	50	0
4	Non-financial institution B	50	0
Total		200	10

(2) The contributions made under the plan approved under sub-regulation (3) of regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or contributions made under sub-regulation (1), as the case may be, 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.

(3) The amount contributed under sub-regulation (2) shall be repayable with interest at bank rate referred to in section 49 of the Reserve Bank of India Act, 1934 (2 of 1934) as part of liquidation cost.

Chapter 5

Powers and Functions of the Liquidator under IBC

Provisions with respect to powers and functions of the Liquidator are given below.

Section – 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:

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.

- (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 on behalf of the corporate debtor;
- (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.

Section 36. Liquidation estate. -

- (1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.
- (2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.
- (3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following: -
 - (a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;
 - (b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;
 - (c) tangible assets, whether movable or immovable;
 - (d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;
 - (e) assets subject to the determination of ownership by the court or authority;
 - (f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;
 - (g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;
 - (h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and
 - (i) all proceeds of liquidation as and when they are realised.
- (4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: -

- (a) assets owned by a third party which are in possession of the corporate debtor, including -
 - (i) assets held in trust for any third party;
 - (ii) bailment contracts;
 - (iii) all sums due to any workmen 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
 - (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;
- (b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;
- (c) 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 under this Chapter;
- (d) assets of any Indian or foreign subsidiary of the corporate debtor; or
- (e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

Section 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.

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Regulation 12 - Public announcement by liquidator.

The liquidator shall make a public announcement in Form B of Schedule II within five days from his appointment

Regulation 31A. - **Stakeholders' consultation committee.**

- (1) The 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
- a) appointment of professionals and their remuneration under regulation 7;
 - b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy:

Regulation 5 - Reporting.

Regulation 5 (2) The liquidator shall preserve a physical as well as an electronic copy of the reports and minutes referred to in sub-regulation (1) for eight years after the dissolution of the corporate debtor.

Regulation 5 (3)

Subject to other provisions of these Regulations, the liquidator shall make

the reports and minutes referred to sub-regulation (1) available to a stakeholder in either electronic or physical form, on receipt of

- (a) an application in writing;
- (b) costs of making such reports and minutes available to it; and
- (c) an undertaking from the stakeholder that it shall maintain confidentiality of such reports and minutes and shall not use these to cause an undue gain or undue loss to itself or any other person.

Regulation 6 - Registers and books of account

Where the books of account of the corporate debtor are incomplete on the liquidation commencement date, the liquidator shall have them completed and brought up-to-date, with all convenient speed, as soon as the order for liquidation is passed

Regulation 7.- Appointment of professionals

A liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.

Regulation 9 - Personnel to extend cooperation to liquidator.

(1) The liquidator may make an application to the Adjudicating Authority for a direction that a person who-

- (a) is or has been an officer, auditor, employee, promoter or partner of the corporate debtor;
- (b) was the interim resolution professional, resolution professional or the previous liquidator of the corporate debtor; or
- (c) has possession of any of the properties of the corporate debtor;

shall cooperate with him in the collection of information necessary for the conduct of the liquidation.

(2) An application may be made under this Regulation only after the liquidator has made reasonable efforts to obtain the information from such person and failed to obtain it.

Regulation 10. Disclaimer of onerous property

The liquidator may make an application to the Adjudicating Authority within

six months from the liquidation commencement date, or such extended period as may be allowed by the Adjudicating Authority, to disclaim the property or contract.

Regulation 8 - Consultation with stakeholders.

(1) The stakeholders consulted under section 35(2) shall extend all assistance and cooperation to the liquidator to complete the liquidation of the corporate debtor.

(2) The liquidator shall maintain the particulars of any consultation with the stakeholders made under this Regulation, as specified in Form A of Schedule II.

Regulation 2B. Compromise or arrangement.

(1) Where a 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 section 33.

Provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.

(2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.

(3) 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 under sub-section (6) of section 230:

Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230

Chapter 6

Submission and Verification of the claims during the Liquidation Process under IBC

Provisions with respect to submission and verification of the claims during the Liquidation Process are given below.

Section 38. Consolidation of claims. -

(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:

Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner provided for the submission of claims for the operational creditor under sub-section (3).

(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.

Section 39. Verification of claims. -

(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.

Section 40. Admission or rejection of claims. -

(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.

Section 41. Determination of valuation of claims. -

The liquidator shall determine the value of claims admitted under section 40 in such manner as may be specified by the Board.

Section 42. Appeal against the decision of liquidator. -

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision.

Section 52. Secured creditor in liquidation proceedings. -

(1) 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.

(2) Where the secured creditor realises security interest under clause (b) of sub section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which 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.

(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

(5) If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.

(6) The Adjudicating Authority, on the receipt of an application from a secured creditor under sub-section (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.

(7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, 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.

(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, 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.

(9) Where 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 clause (e) of sub-section (1) of section 53.

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Regulation 16. Submission of claim.

(1) 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.

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

Regulation 17. Claims by operational creditors.

(1) A person claiming to be an operational creditor of the corporate debtor, other than a workman or employee, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form C of Schedule II.

(2) The existence of debt due to an operational creditor under this Regulation may be proved on the basis of-

- (a) the records available with an information utility, if any; or
- (b) other relevant documents which adequately establish the debt, including any or all of the following -
 - (i) a contract for the supply of goods and services with corporate debtor;
 - (ii) an invoice demanding payment for the goods and services supplied to the corporate debtor;
 - (iii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; and
 - (iv) financial accounts.

Regulation 18. Claims by financial creditors.

(1) A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the liquidator in electronic means in Form D of Schedule II.

(2) The existence of debt due to the financial creditor may be proved on the basis of-

- (a) the records available in an information utility, if any; or
- (b) other relevant documents which adequately establish the debt, including any or all of the following-
 - (i) a financial contract supported by financial statements as evidence of the debt;

- (ii) 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;
- (iii) financial statements showing that the debt has not been repaid; and
- (iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

Regulation 19. Claims by workmen and employees.

- (1) A person claiming to be a workman or an employee of the corporate debtor shall submit proof of claim to the liquidator in person, by post or by electronic means in Form E of Schedule II.
- (2) Where there are dues to numerous workmen or employees of the corporate debtor, an authorized representative may submit one proof of claim for all such dues on their behalf in Form F of Schedule II.
- (3) The existence of dues to workmen or employees may be proved by them, individually or collectively, on the basis of-
 - (a) records available in an information utility, if any; or
 - (b) other relevant documents which adequately establish the dues, including any or all of the following -
 - (i) a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;
 - (ii) evidence of notice demanding payment of unpaid amount and any documentary or other proof that payment has not been made; and
 - (iii) an order of a court or tribunal that has adjudicated upon the non-payment of dues, if any.
- (4) The liquidator may admit the claims of a workman or an employee on the basis of the books of account of the corporate debtor if such workman or employee has not made a claim

Regulation 20. Claims by other stakeholders.

- (1) A person, claiming to be a stakeholder other than those under Regulations 17(1), 18(1), or 19(1), shall submit proof of claim to the liquidator in person, by post or by electronic means in Form G of Schedule II.

- (2) The existence of the claim of the stakeholder may be proved on the basis of -
- (a) the records available in an information utility, if any, or
 - (b) other relevant documents which adequately establish the claim, including any or all of the following-
 - (i) 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;
 - (ii) documentary or electronic evidence of his shareholding; and
 - (iii) an order of a court, tribunal or other authority that has adjudicated upon the non-payment of a claim, if any.

Regulation 21. Proving security interest.

The existence of a security interest may be proved by a secured creditor on the basis of-

- (a) the records available in an information utility, if any;
- (b) certificate of registration of charge issued by the Registrar of Companies; or
- (c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India.

Regulation 21A. Presumption of security interest.

(1) 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.

- (2) Where a secured creditor proceeds to realise its security interest, it shall pay -
- (a) 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, to the liquidator within ninety days from the liquidation commencement date; and

- (b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date:

Provided that where the amount payable under this sub-regulation is not certain by the date the amount is payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator:

Provided further that any difference between the amount payable under this sub regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.

- (3) Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.

Regulation 22. Production of bills of exchange and promissory notes.

Where a person seeks to prove a debt in respect of a bill of exchange, promissory note or other negotiable instrument or security of a like nature for which the corporate debtor is liable, such bill of exchange, note, instrument or security, as the case may be, shall be produced before the liquidator before the claim is admitted.

Regulation 23. Substantiation of claims.

The liquidator may call for such other evidence or clarification as he deems fit from a claimant for substantiating the whole or part of its claim.

Regulation 24. Cost of proof.

- (1) A claimant shall bear the cost of proving its claim.
- (2) Costs incurred by the liquidator for verification and determination of a claim shall form part of liquidation cost:

Provided that if a claim or part of the claim is found to be false, the liquidator

shall endeavour to recover the costs incurred for verification and determination of claim from such claimant, and shall provide the details of the claimant to the Board.

Regulation 28. Debt payable at future time.

(1) A person may prove for a claim whose payment was not yet due on the liquidation commencement date and is entitled to distribution in the same manner as any other stakeholder.

(2) Subject to any contract to the contrary, where a stakeholder has proved for a claim under sub-regulation (1), and the debt has not fallen due before distribution, he is entitled to distribution of the admitted claim reduced as follows-

$$X / (1+r)^n$$

where-

- (a) "X" is the value of the admitted claim;
- (b) "r" is the closing yield rate (%) of government securities of the maturity of "n" on the date of distribution as published by the Reserve Bank of India; and
- (c) "n" is the period beginning with the date of distribution and ending with the date on which the payment of the debt would otherwise be due, expressed in years and months in a decimalized form.

Regulation 29. Mutual credits and set-off.

Where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party.

Illustration: X owes Rs. 100 to the corporate debtor. The corporate debtor owes Rs. 70 to X. After set off, Rs. 30 is payable by X to the corporate debtor.

Regulation 30A. Transfer of debt due to creditors.

(1) A creditor may assign or transfer the debt due to him or it to any other person during the liquidation process in accordance with the laws for the time being in force dealing with such assignment or transfer.

(2) Where any creditor assigns or transfers the debt due to him or it to any other person under sub-regulation (1), both parties shall provide to the liquidator the terms of such assignment or transfer and the identity of the assignee or transferee.

(3) The liquidator shall modify the list of stakeholders in accordance with the provisions of regulation 31.

Chapter 7

Preparation and Submission of various reports by the Liquidator under IBC

The liquidator prepares and submit various reports to Adjudicating Authority. The Chapter III and Chapter IV of IBBI (Liquidation Process) Regulation 2016 deal with such reporting.

Regulation 5. Reporting

- (1) The liquidator shall prepare and submit:
 - (a) a preliminary report;
 - (b) an asset memorandum;
 - (c) progress report(s);
 - (d) sale report(s);
 - (e) minutes of consultation with stakeholders; and
 - (f) the final report prior to dissolution

to the Adjudicating Authority in the manner specified under these Regulations.

(2) The liquidator shall preserve a physical as well as an electronic copy of the reports and minutes referred to in sub-regulation (1) for eight years after the dissolution of the corporate debtor.

(3) Subject to other provisions of these Regulations, the liquidator shall make the reports and minutes referred to sub-regulation (1) available to a stakeholder in either electronic or physical form, on receipt of

- (a) an application in writing;
- (b) costs of making such reports and minutes available to it; and
- (c) an undertaking from the stakeholder that it shall maintain confidentiality of such reports and minutes and shall not use these to cause an undue gain or undue loss to itself or any other person.

Under Chapter IV of IBBI (Liquidation Process) Regulation 2016 detailed provision relating to preparation and submission of various reports are mentioned.

Regulation 13. Preliminary Report:

The liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the date of liquidation commencement date, detailing-

- (a) the capital structure of the corporate debtor;
- (b) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate debtor

Provided that if the liquidator has reasons to believe, to be recorded in writing, that the books of the corporate debtor are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him;

- (c) whether, he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the corporate debtor or the conduct of the business thereof; and
- (d) the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

Note - A specimen copy of Preliminary Report is placed as Annexure for guidance purpose only

Regulation 14. Early dissolution.

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 may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution.

Regulation 34. **Asset's memorandum:**

- (1) On forming the liquidation estate under section 36, the liquidator shall

prepare an asset memorandum in accordance with this Regulation within 75 days from the liquidation commencement date.

(2) The asset memorandum shall provide the following details in respect of the assets which are intended to be realized by way of sale-

- (a) value of the asset, valued in accordance with Regulation 35;
- (b) value of the assets or business(s) under clauses (b) to (f) of regulation 32, valued in accordance with regulation 35, if intended to be sold under those clauses;
- (c) intended manner of sale in accordance with Regulation 32, and reasons for the same;
- (d) the intended mode of sale and reasons for the same in accordance with Regulation 33;
- (e) expected amount of realization from sale; and
- (f) any other information that may be relevant for the sale of the asset.

(3) The asset memorandum shall provide the following details in respect of each of the assets other than those referred to in sub-regulation (2)-

- (a) value of the asset;
- (b) intended manner and mode of realization, and reasons for the same;
- (c) expected amount of realization; and
- (d) any other information that may be relevant for the realization of the asset.

(4) The liquidator shall file the asset memorandum along with the preliminary report to the Adjudication Authority.

(5) The asset memorandum shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority.

Regulation 15. Progress reports

(1) The liquidator shall submit Progress Reports to the Adjudicating Authority as under-

- (a) the first Progress Report within fifteen days after the end of the quarter in which he is appointed;

- (b) subsequent Progress Report(s) within fifteen days after the end of every quarter during which he acts as liquidator; and

Provided that if an insolvency professional ceases to act as a liquidator during the liquidation process, he shall file a Progress Report for the quarter up to the date of his so ceasing to act, within fifteen days of such cessation.

- (2) A Progress Report shall provide all information relevant to liquidation for the quarter, including-

- (a) appointment, tenure of appointment and cessation of appointment of any professionals;
- (b) a statement indicating progress in liquidation, including-
 - (i) settlement of list of stakeholders,
 - (ii) details of any property that remain to be sold and realized,
 - (iii) distribution made to the stakeholders, and
 - (iv) distribution of unsold property made to the stakeholders;
- (c) details of fee or remuneration, including-
 - (i) the fee due to and received by the liquidator together with a description of the activities carried out by him,
 - (ii) the remuneration or fee paid to professionals appointed by the liquidator together with a description of activities carried out by them,
 - (iii) other expenses incurred by the liquidator, whether paid or not;
- (d) developments in any material litigation, by or against the corporate debtor;
- (e) filing of, and developments in applications for avoidance of transactions under Part II of the Code; and
- (f) changes, if any, in estimated liquidation costs.

- (3) A Progress Report shall enclose an account maintained by the liquidator showing-

- (a) his receipts and payments during the quarter; and

(b) the cumulative amount of his receipts and payments since the liquidation commencement date.

(4) A Progress Report shall enclose a statement indicating any material change in expected realization of any property proposed to be sold, along with the basis for such change

Provided that this statement shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority.

(5) The Progress Report for the fourth quarter of the financial year shall enclose audited accounts of the liquidator's receipts and payments for the financial year

Provided that in case an insolvency professional ceases to act as liquidator, the audited accounts of his receipts and payments for that part of the financial year during which he has acted as liquidator, shall be enclosed with the Progress Report to be filed after cessation of his appointment.

Regulation 36. Asset sale report:

On sale of an asset, the liquidator shall prepare an asset sale report in respect of said asset, to be enclosed with the Progress Reports, containing -

- (a) the realized value;
- (b) cost of realization, if any;
- (c) the manner and mode of sale;
- (d) if the value realized is less than the value in the asset memorandum, the reasons for the same;
- (e) the person to whom the sale is made; and
- (f) any other details of the sale.

Regulation 8. Consultation with stakeholders.

(1) The stakeholders consulted under section 35(2) shall extend all assistance and cooperation to the liquidator to complete the liquidation of the corporate debtor.

(2) The liquidator shall maintain the particulars of any consultation with the stakeholders made under this Regulation, as specified in Form A of Schedule II.

The liquidator should file the minutes of consultation with the stakeholders to Adjudicating Authority.

SCHEDULE II

FORM A: PROFORMA FOR REPORTING CONSULTATIONS WITH STAKEHOLDERS

(Under Regulation 8 of the IBBI (Liquidation Process) Regulation 2016)

NAME AND REGISTRATION NO. OF LIQUIDATOR:	
NAME OF CORPORATE DEBTOR BEING LIQUIDATED:	
LIQUIDATION CASE NO:	
NAME OF THE STAKEHOLDER: DATE OF CONSULTATION (IF HELD IN PERSON):	
NUMBER AND DATES OF COMMUNICATIONS RECEIVED FROM STAKEHOLDER: SUMMARY OF CONSULTATION:	

Regulation 45. Final report prior to dissolution:

- (1) When the corporate debtor is liquidated, the liquidator shall make an account of the liquidation, showing how it has been conducted and how the corporate debtor's assets have been liquidated.
- (2) If the liquidation cost exceeds the estimated liquidation cost provided in the Preliminary Report, the liquidator shall explain the reasons for the same.
- (3) The liquidator shall submit an application along with the final report and the compliance certificate in form H to the Adjudicating Authority for –
 - a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or
 - b) for the dissolution of the corporate debtor, in cases not covered under clause (a).

FORM H
COMPLIANCE CERTIFICATE

*[Under Regulation 45(3) of the Insolvency and Bankruptcy Board of India
(Liquidation Process) Regulations, 2016]*

I, *[Name of the Liquidator]*, an insolvency professional enrolled with *[name of insolvency professional agency]* and registered with the Board with registration number *[registration number]*, am the Liquidator for the Liquidation Process of *[name of the corporate debtor (CD)]*.

2. The details of the Liquidation Process are as under:

Sl. No.	Particulars	Description
(1)	(2)	(3)
1	Name of the corporate debtor	
2	Case No. & NCLT Bench	
3	Date of initiation of liquidation	
4	Date of appointment of liquidator	
5	Date of commencement of CIRP	
6	Name of RP during CIRP and his registration No. as IP	
7	Name of Liquidator and his registration No. as IP	
8	Date of Publication of Public Announcement under Form B	
9	Date of Intimation to Registry and Information Utility, if any, about commencement of Liquidation	
10	Date of handover of charge by RP	
11	Date of submission of compliance, if any, directed by AA in the liquidation order and its particulars	
12	Date of appointment of registered valuers, if any	
13	Date of notice for uncalled capital/unpaid capital contribution	
14	Date of realisation of uncalled capital/unpaid capital contribution	

15	Date of opening of liquidation account with Bank A/c details	
16	Date of constitution of Consultation Committee	
17	No. of meetings of consultation committee held	
18	Date of submission of list of stakeholders to AA	
19	Date of filing of preliminary report & assets memorandum to AA	
20	Fair value	
21	Liquidation value	
22	Date of public notice for auction (please add additional rows, if required)	
23	Date of order of AA to dispense with the public notice for Auction	
24	Date of permission of AA for physical Auction	
25	Date of permission of AA for private sale	
26	Date of permission of AA for distribution of unsold assets to stakeholders	
27	Date of permission of the liquidator to realise the un-relinquished security interest by the secured creditor	
28	Modified list of stakeholders and date of submission to AA	
29	Date of first realisation	
30	Date of second realisation	
31	Date of first distribution	
32	Date of second distribution	
33	Date of submission of Quarterly Progress Report-I (FY-1)	
34	Date of submission of Asset Sales Report to AA	
35	Date of submission of Quarterly Progress Report-II	

Preparation and submission of various reports

36	Date of submission of Quarterly Progress Report-III	
37	Date of submission of Quarterly Progress Report-IV & Audit Report	
38	Date of submission of Quarterly Progress Report-I (FY-2)	
39	Date of submission of Quarterly Progress Report-II	
40	Date of submission of Quarterly Progress Report-III	
41	Date of submission of Quarterly Progress Report-IV & Audit Report	
42	Date of intimation to statutory authority as applicable. a) PF b) ESI c) Income Tax Dept d) Inspector of Factory e) GST/VAT f) Others	
43	Date of deposit of unclaimed dividends or undistributed proceeds and income and interest thereon, if any, under sub-regulations (2), (3) or (4) of regulation 46	
44	Amount deposited into Corporate Liquidation Account: (a) Amount of unclaimed dividends (b) Amount of undistributed proceeds (c) Income referred to in sub-regulation (2) and (3) of regulation 46 (d) Interest referred to in sub-regulation (4) of regulation 46 Total	
45	Date of submission to the Board and the Authority under sub- regulation (5) of regulation 46]	
46	Date of Final Report to AA (prior to dissolution application)	

3. The details of the assets as per Asset Memorandum and Final Sale Report are as under:

Sl. No.	Assets	Mode of Sale	Estimated Liquidation Value	Realisation Amount (Rs.)	Date of Transfer to Liquidation Account
(1)	(2)	(3)	(4)	(5)	(6)

4.(a) Liquidation value of the liquidation estate:

(b) Amount realised from sale of liquidation estate:

(c) The amounts distributed to stakeholders as per section 52 or 53 of Code are as under:

Sl. No.	Stakeholders* under section 53 (1)	Amount Claimed	Amount Admitted	Amount Distributed	Amount Distributed to the Amount Claimed (%)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	(a): CIRP Costs					
2	(a):Liquidation Costs					
3	(b)(i)					
4	(b)(ii)					
5	(c)					
6	(d)					
7	(e)(i)					
8	(e) (ii)					

Preparation and submission of various reports

9	(f)					
10	(g)					
11	(h)					
Total						

(Amount in Rs. lakh)

5. The Liquidation Process has been conducted as per the timeline indicated in regulation 47 as under:

Section of the Code / Regulation No.	Description of Task	Timeline as per regulation 47	Actual Timeline
(1)	(2)	(3)	(4)
Section 33	Commencement of LCD and Appointment of Liquidator	T	T

6. The following are deviations /non-compliances with the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made, or circulars issued there under (If any deviation/ non- compliances were observed, please state the details and reasons for the same):

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
(1)	(2)	(3)	(4)	(5)
1				
2				
3				

7. The dissolution application has been filed [before expiry of the period of one year] / [after expiry of one year]. Please state details of any extension sought with the reason and granted:

8. The details of application(s) filed / pending in respect of avoidance of transactions.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
(1)	(2)	(3)	(4)	(5)
1	Preferential transactions under section 43			
2	Undervalued transactions under section 45			
3	Extortionate credit transactions under section 50			
4	Fraudulent transactions under section 66			

9. All undischarged or matters pending before any Court or Tribunal relating to corporate debtor, if any, have been reported to AA.

10 I (Name of Liquidator), hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed there from.

(Signature)

Name of the Liquidator:

IP Registration No:

Address as registered with the Board:

Email id as registered with the Board:

Date:

Place:

Chapter 8

Role **of the Stakeholder's** Consultation Committee under IBC

Provisions related to the role of the Stakeholder's Consultation Committee are given below.

Regulation 2(1)(k). Stakeholders

"stakeholders" means the stakeholders entitled to distribution of proceeds under section 53.

Regulation 31. List of stakeholders.

- (1) The liquidator shall prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and accepted under these Regulations, with-
 - (a) the amounts of claim admitted, if applicable,
 - (b) the extent to which the debts or dues are secured or unsecured, if applicable,
 - (c) the details of the stakeholders, and
 - (d) the proofs admitted or rejected in part, and the proofs wholly rejected.
- (2) The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of the claims.
- (3) The liquidator may apply to the Adjudicating Authority to modify an entry in the list of stakeholders filed with the Adjudicating Authority, when he comes across additional information warranting such modification, and shall modify the entry in the manner directed by the Adjudicating Authority.
- (4) The liquidator shall modify an entry in the list of stakeholders filed with the Adjudicating Authority, in the manner directed by the Adjudicating Authority while disposing off an appeal preferred under section 42.
- (5) The list of stakeholders, as modified from time to time, shall be-
 - (a) available for inspection by the persons who submitted proofs of claim;
 - (b) available for inspection by members, partners, directors and guarantors of the corporate debtor;

- (c) displayed on the website, if any, of the corporate debtor.
- (d) filed on the electronic platform of the Board for dissemination on its website:

Provided that this clause shall apply to every liquidation process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021.

Regulation 31A. Stakeholders' consultation committee

(1) The 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 matters relating to-

- (a) appointment of professionals and their remuneration under regulation 7;
- (b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy:

Provided that the decision(s) taken by the liquidator prior to the constitution of consultation committee shall be placed before the consultation committee for information in its first meeting.;

(2) The composition of the consultation committee under sub-regulation (1) shall be as shown in the Table below:

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

Role of the Stakeholder's Consultation Committee

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		1

(3) The liquidator may facilitate the stakeholders of each class to nominate their representatives for inclusion in the consultation committee.

(4) If the stakeholders of any class fail to nominate their representatives, under sub- regulation (3), such representatives shall be selected by a majority of voting share of the class, present and voting.

(5) Subject to the provisions of the Code and these regulations, representatives in the consultation committee shall have access to all relevant records and information as may be required to provide advice to the liquidator under sub-regulation (1).

(6) The liquidator shall convene a meeting of the consultation committee when he considers it necessary and shall convene a meeting of the consultation committee when a request is received from at least fifty-one percent of representatives in the consultation committee.

(7) The liquidator shall chair the meetings of consultation committee and record deliberations of the meeting.

(8) The liquidator shall place the recommendation of committee of creditors made under sub- regulation (1) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, before the consultation committee for its information.

(9) The consultation committee shall advise the liquidator, by a vote of not less than sixty-six percent of the representatives of the consultation committee, present and voting.

(10) The advice of the consultation committee shall not be binding on the liquidator:

Provided that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing and mention it in the next progress report.

Section 35(2) of the Code states that 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

Chapter 9

Realisation of assets of the Corporate Debtor under IBC

CHAPTER VI of IBBI (Liquidation Regulation) 2016

The Chapter VI of IBBI (Liquidation Regulation) 2016 provides for the realisation of Assets which consist of Regulation 32 to Regulation 40 which are as follows.

Regulation 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.

Regulation 32A. Sale as a going concern

(1) Where the committee of creditors 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 maximize the value of the corporate debtor, he shall endeavour to first sell under the said clauses.

(2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.

(3) Where the committee of creditors has not identified the assets and liabilities under sub- regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) 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.

(4) 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.

Regulation 33. Mode of sale

(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.

(2) The liquidator may sell the assets of the corporate debtor by means of private sale in the manner specified in Schedule I when-

- (a) the asset is perishable;
- (b) the asset is likely to deteriorate in value significantly if not sold immediately;
- (c) the asset is sold at a price higher than the reserve price of a failed auction; or
- (d) the prior permission of the Adjudicating Authority has been obtained for such sale:

Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

- (a) a related party of the corporate debtor;
 - (b) his related party; or
 - (c) any professional appointed by him.
- (3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.

Regulation 34. Asset memorandum

- (1) On forming the liquidation estate under section 36, the liquidator shall prepare an asset memorandum in accordance with this Regulation within seventy-five days from the liquidation commencement date.
- (2) The asset memorandum shall provide the following details in respect of the assets which are intended to be realized by way of sale-
 - (a) value of the asset, valued in accordance with Regulation 35;
 - (b) value of the assets or business(s) under clauses (b) to (f) of regulation 32, valued in accordance with regulation 35, if intended to be sold under those clauses;
 - (c) intended manner of sale in accordance with Regulation 32, and reasons for the same;
 - (d) the intended mode of sale and reasons for the same in accordance with Regulation 33;
 - (e) expected amount of realization from sale; and
 - (f) any other information that may be relevant for the sale of the asset.
- (3) The asset memorandum shall provide the following details in respect of each of the assets other than those referred to in sub-regulation (2)-
 - a. value of the asset;
 - b. intended manner and mode of realization, and reasons for the same;
 - c. expected amount of realization; and
 - d. any other information that may be relevant for the realization of the asset.
- (4) The liquidator shall file the asset memorandum along with the preliminary report to the Adjudicating Authority.
- (5) The asset memorandum shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority.

Regulation 35. Valuation of assets intended to be sold.

- (6) Where the valuation has been conducted under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or regulation 34 of the Insolvency and

Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, 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.

(7) In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, 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) a relative of the liquidator;
- b) a related party of the corporate debtor;
- c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or
- d) a partner or director of the insolvency professional entity of which the liquidator is a partner or director.

(8) 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.

(9) The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.

Regulation 36. Asset sale report

On sale of an asset, the liquidator shall prepare an asset sale report in respect of said asset, to be enclosed with the Progress Reports, containing -

- (a) the realized value;
- (b) cost of realization, if any;
- (c) the manner and mode of sale;
- (d) if the value realized is less than the value in the asset memorandum, the reasons for the same;

- (e) the person to whom the sale is made; and
- (f) any other details of the sale.

Regulation 37. Realization of security interest by secured creditor

(1) A secured creditor who seeks to realize its security interest under section 52 shall intimate the liquidator of the price at which he proposes to realize its secured asset.

(2) The liquidator shall inform the secured creditor within twenty-one days of receipt of the intimation under sub-regulation (1) if a person is willing to buy the secured asset before the expiry of thirty days from the date of intimation under sub-regulation (1), at a price higher than the price intimated under sub-regulation (1).

(3) Where the liquidator informs the secured creditor of a person willing to buy the secured asset under sub-regulation (2), the secured creditor shall sell the asset to such person.

(4) If the liquidator does not inform the secured creditor in accordance with sub-regulation (2), or the person does not buy the secured asset in accordance with sub-regulation (2), the secured creditor may realize the secured asset in the manner it deems fit, but at least at the price intimated under sub-regulation (1).

(5) Where the secured asset is realized under sub-regulation (3), the secured creditor shall bear the cost of identification of the buyer under sub-regulation (2).

(6) Where the secured asset is realized under sub-regulation (4), the liquidator shall bear the cost incurred to identify the buyer under sub-regulation (2).

(7) The provisions of this Regulation shall not apply if the secured creditor enforces his security interest under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) or the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993).

(8) A secured creditor shall not sell or transfer an asset, which is subject to security interest, to any person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor.

Regulation 37A. Assignment of not readily realisable assets

(1) A liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders' consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

Explanation. — For the purposes of this sub-regulation, “not readily realisable asset” means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code.

Regulation 38. Distribution of unsold assets

(1) The liquidator may, with the permission of the Adjudicating Authority, distribute amongst the stakeholders, an asset that could not be sold, assigned or transferred due to its peculiar nature or other special circumstances.

(2) The application seeking permission of the Adjudicating Authority under sub-regulation (1) shall-

- (a) identify the asset;
- (b) provide a value of the asset;
- (c) detail the efforts made to sell the asset, if any; and
- (d) provide reasons for such distribution.

Regulation 39. Recovery of monies due

The liquidator shall endeavor to recover and realize all assets of and dues to the corporate debtor in a time-bound manner for maximization of value for the stakeholders.

Regulation 40. Liquidator to realize uncalled capital or unpaid capital contribution

(1) The liquidator shall realize any amount due from any contributory to the corporate debtor.

(2) Notwithstanding any charge or encumbrance on the uncalled capital of

the corporate debtor, the liquidator shall be entitled to call and realize the uncalled capital of the corporate debtor and to collect the arrears, if any, due on calls made prior to the liquidation, by providing a notice to the contributory to make the payments within fifteen days from the receipt of the notice, but shall hold all moneys so realized subject to the rights, if any, of the holder of any such charge or encumbrance.

(3) No distribution shall be made to a contributory, unless he makes his contribution to the uncalled or unpaid capital as required in the constitutional documents of the corporate debtor.

SCHEDULE I
MODE OF SALE

(Under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016)

1. AUCTION

- 1) Where an asset is to be sold through auction, a liquidator shall do so in the manner specified herein.
- 2) The liquidator shall prepare a marketing strategy, with the help of marketing professionals, if required, for sale of the asset. The strategy may include-
 - a) releasing advertisements;
 - b) preparing information sheets for the asset;
 - c) preparing a notice of sale; and
 - d) liaising with agents.
- 3) The liquidator shall prepare terms and conditions of sale, including reserve price, earnest money deposit as well as pre-bid qualifications, if any.

Provided that the liquidator shall not require payment of any non-refundable deposit or fee for participation in an auction under the liquidation process:

Provided further that the earnest money deposit shall not exceed ten percent of the reserve price

- 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.
- 5) The liquidator shall issue a public notice of an auction in the manner specified in Regulation 12(3);

Provided that the liquidator may apply to Adjudicating Authority to dispense with the requirement of Regulation 12(3)(a) keeping in view the value of the asset intended to be sold by auction.
- 6) The liquidator shall provide all assistance necessary for the conduct of due diligence by interested buyers.
- 7) The liquidator shall sell the assets through an electronic auction on an online portal, if any, designated by the Board, where the interested buyers can register, bid and receive confirmation of the acceptance of their bid online.
- 8) If the liquidator is of the opinion that a physical auction is likely to maximize the realization from the sale of assets and is in the best interests of the creditors, he may sell assets through a physical auction after obtaining the permission of the Adjudicating Authority. The liquidator may engage the services of qualified professional auctioneers specializing in auctioning such assets for this purpose.
- 9) An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders.
- 10) If the liquidator is of the opinion that an auction where bid amounts are not visible is likely to maximize realizations from the sale of assets and is in the best interests of the creditors, he may apply, in writing, to the Adjudicating Authority for its permission to conduct an auction in such manner.
- 11) If required, the liquidator may conduct multiple rounds of auctions to maximize the realization from the sale of the assets, and to promote the best interests of the creditors.

- 11A) Where the liquidator rejects the highest bid in an auction process, he shall intimate the reasons for such rejection to the highest bidder and mention it in the next progress report.
- 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.

2. PRIVATE SALE

- 1) Where an asset is to be sold through private sale, a liquidator shall conduct the sale in the manner specified herein.
- 2) The liquidator shall prepare a strategy to approach interested buyers for assets to be sold by private sale.
- 3) Private sale may be conducted through directly liaising with potential buyers or their agents, through retail shops, or through any other means that is likely to maximize the realizations from the sale of assets.
- 4) The sale shall stand completed in accordance with the terms of sale.
- 5) Thereafter, the assets shall be delivered to the purchaser, on receipt of full consideration for the assets, in the manner specified in the terms of sale.

Chapter 10

Proceeds of liquidation and distribution of liquidation proceeds under IBC

Provisions related to proceeds of liquidation and distribution of liquidation proceeds are given below.

Section 53. Distribution of Assets.-

(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely: —

- (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.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation – For the purpose of this section —

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.

CHAPTER VII of IBBI (Liquidation Process) Regulations, 2016 deals with Proceeds of Liquidation and Distribution of Proceeds

Regulation 41. All money to be paid in to bank account.

(1) 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.

(2) 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.

(3) 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.

(4) 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 42. Distribution.

(1) Subject to the provisions of section 53, the liquidator shall not commence distribution before the list of stakeholders and the asset memorandum has been filed with the Adjudicating Authority.

(2) The liquidator shall distribute the proceeds from realization within ninety days from the receipt of the amount to the stakeholders.

(3) The insolvency resolution process costs, if any, and the liquidation costs shall be deducted before such distribution is made.

Regulation 43. Return of money.

A stakeholder shall forthwith return any monies received by him in distribution, which he was not entitled to at the time of distribution, or subsequently became not entitled to.

Regulation 46. Corporate Liquidation Account.

A liquidator shall deposit the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a liquidation process along with any income earned thereon till the date of deposit into the Corporate Liquidation Account before he submits an application under sub-regulation (3) of regulation 45.

A liquidator, who holds any amount of unclaimed dividends or undistributed proceeds in a liquidation process on the date of commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2020, shall deposit the same within fifteen days of the date of such commencement, along with any income earned thereon till the date of deposit.

A liquidator, who fails to deposit any amount into the Corporate Liquidation Account under this regulation, shall deposit the same along with interest thereon at the rate of twelve percent per annum from the due date of deposit till the date of deposit.

A stakeholder, who claims to be entitled to any amount deposited into the Corporate Liquidation Account, may apply to the Board in Form J for an order for withdrawal of the amount:

Provided that if any other person other than the stakeholder claims to be entitled to any amount deposited into the Corporate Liquidation Account, he shall submit evidence to satisfy the Board that he is so entitled.

Capital gains on distribution of assets by companies in liquidation.

Section 46 of Income Tax Act, 1961

(1) Notwithstanding anything contained in section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45.

(2) Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head "Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub-clause (c) of clause (22) of section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.

CGST Act on sale of assets

Section 88 of CGST Act 2017– Liability in case of company in liquidation

(1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the "liquidator"), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

(2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

(3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Chapter 11

Voluntary Liquidation Process under IBC

As per section 59 (1) of the Code, a corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter.

Provision for a company with respect to Voluntary Liquidation :

1.	<p>A Declaration of Solvency shall be given by majority of the Directors duly verified by an Affidavit stating that they have made an enquiry into the affairs of the company, and they have formed an opinion that the company has no debts or that it will be able to pay its debts in full from the proceeds of the assets to be sold in the voluntary liquidation and the company is not being liquidated to defraud any person. (Section 59(3)(a) and (b) of the Code)</p> <p>The above declaration shall be accompanied by:</p> <ul style="list-style-type: none"> (i) Audited financial statements and record of business operations of the corporate person for the previous two years or since its incorporation whichever is later. (ii) Report of the valuation of assets of the corporate person, if any, prepared by a registered valuer. <p>If the company owes any debt, approval of creditors representing two-third in value, shall be required for the resolution passed for Voluntary Liquidation.</p>
3.	<p>A meeting of Board of Directors of the company be convened for taking on record the Declaration of Solvency given by the Directors of the company. (Section 173 of the Companies Act,2013)</p> <p>The following resolutions be passed at the Board meeting:</p> <ul style="list-style-type: none"> (i) Voluntary liquidation of the company subject to approval of members by passing special resolution and creditors <i>(If applicable)</i> and taking on record Declaration of Solvency. (Section 59(3)(c)(i) of the Code) (ii) Appointment of insolvency professional to act as liquidator

	<p>and fixation of remuneration along with other terms and conditions, subject to approval of members by passing special resolution and creditors <i>(If applicable)</i>. (Section 59(3)(c)(i), proviso to Section 59(3) of the Code and Regulation 5(2) of Insolvency And Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)</p> <p>(iii) Fixation of time, date, place and agenda of the general meeting seeking members' approval. (Read with Section 101 (2) of Companies Act, 2013)</p>
4.	<p>For convening the General Meeting by giving notice in writing proposing the Special resolutions with Explanatory Statement. (Section 101 of the Companies Act, 2013)</p>
5.	<p>Filing of Form MGT-14 (one) with the Registrar of Companies within 30 days from the date of passing of resolution for registration of following documents:</p> <p>(i) Board Resolution for approval of Voluntary liquidation of the company and taking on record Declaration of Solvency. (Section 117(3)(f) of the Companies Act, 2013)</p> <p>Board Resolution passed for appointment of insolvency profession to act as liquidator. (Section 117(3)(f) of the Companies Act, 2013)</p>
6.	<p>Convene Members Meeting within maximum 4 weeks of Declaration of Solvency and pass Special resolution for Voluntary Liquidation and appointment of insolvency professional to act as liquidator. Voluntary Liquidation commences from the date of passing the said resolution. (Section 59(3)(c) of the Code)</p>
7.	<p>Liquidator shall make public announcement in Form A of Schedule I of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 within 5 days from his appointment inviting stakeholders to submit their claims (as on date of liquidation) within 30 days from the date of commencement of liquidation. (Regulation 14 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)</p> <p>The aforesaid public announcement shall be published in English and Regional language newspaper with wide circulation at the</p>

	<p>location of the registered office or principal office of the company and any other location where in the opinion of the liquidator, the company conducts material business operations. The announcement shall be published on the website, if any, of the corporate person and also on the website, if any, designated by the Board for this purpose.</p>
8.	<p>If applicable, to obtain approval from creditors representing 2/3rd of the value of debt of the company on resolutions passed for Voluntary Liquidation of the company and appointment of liquidator within 7 days from the date of members meeting. (Proviso to Section 59(3) of the Code)</p>
9.	<p>Liquidator shall disclose his relationship with professionals engaged by him through relevant web portal of IPA within 3 days of such appointment. Public Announcement also to be uploaded in this web portal. (As per IBBI Circular No. IP/005/2018 dated 16.01.2018)</p>
10.	<p>Clarification issued by IBBI regarding filing of intimation with Income Tax Department within 1 month from the date of passing of special resolution regarding voluntary winding up of the company and obtaining No Objection Certificate in this respect. (Section 178(1) of the Income Tax Act, 1961) As per Circular No. No. IBBI/LIQ/45/2021 of IBBI dated 15th November, 2021 It is hereby clarified that as per the provisions of the Code and the Regulations read with Section 178 of the Income-tax Act, 1961, an Insolvency Professional handling voluntary liquidation process is <i>not required to seek any NOC/NDC from the Income Tax Department as part of compliance in the said process.</i></p>
11.	<p>The company shall intimate Insolvency Board and Registrar of Companies regarding initiation of Voluntary Winding up within 7 days from the date of approval of creditors of the company (<i>If applicable</i>) or date of passing of special resolution. Form MGT-14 shall be filed with the Registrar of Companies within 7 days from the date of approval of creditors of the company for registration of following resolutions:</p>

	<p>(i) Special Resolution passed for approval of Voluntary liquidation of the company. (Section 59(3)(c) of the Code and Section 117(3)(a) of the Companies Act,2013)</p> <p>(ii) Special Resolution passed for appointment of insolvency profession to act as liquidator. (Section 59(3)(c) of the Code and Section 117(3)(a) of the Companies, Act 2013)</p>
12.	<p>Liquidator shall open bank account within 1 month from the date of passing of special resolution in the name of the company followed by words "in voluntary liquidation" in a scheduled bank, for receiving all moneys due to the corporate person and for meeting all the liquidation cost. (Regulation 34 of Insolvency And Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)</p>
13.	<p>Creditors to submit their claim in prescribed Forms within 30 days from the date of commencement of liquidation. (Regulation 14 (2) of Insolvency And Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)</p>
14.	<p>The liquidator shall verify the claims submitted within 30 days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, section 40 of the Code. A creditor may appeal to the Adjudicating Authority against the decision of the liquidator as per section 42 of the Code. (Regulation 29 of Insolvency And Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)</p>
15.	<p>The liquidator shall submit a Preliminary Report to the company within 45 days from the liquidation commencement date, detailing as given below.</p> <p>(i) the capital structure of the company</p> <p>(ii) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the company</p> <p>(iii) whether he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof; and</p> <p>the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the</p>

Voluntary Liquidation Process

	<p>estimated liquidation costs. (Regulation 9 of Insolvency And Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)</p>
16.	<p>The Liquidator shall prepare a list of stakeholders within 45 days from the last date for receipt of claims stating therein:</p> <ul style="list-style-type: none"> (i) Amount of claim admitted; (ii) extent of dues to which the debts dues are secured or unsecured; (iii) details of stakeholders; and (iv) proof admitted or rejected in parts, and the parts wholly rejected. <p>(Regulation 30 of Insolvency And Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)</p>
17.	<p>The Liquidator shall realize the assets and distribute the proceeds from the realization within 6 months from the receipt of realization, to the stakeholders (liquidation costs shall be deducted before such distribution). (Regulation 35 of Insolvency And Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017).</p>
18.	<p>The liquidator shall endeavor to complete the liquidation process within twelve months from the liquidation commencement date.</p> <p>In the event of the liquidation process continuing for more than twelve months, the liquidator shall-</p> <ul style="list-style-type: none"> (a) hold a meeting of the contributories of the corporate person within fifteen days from the end of the twelve months from the liquidation commencement date, and at the end every succeeding twelve months till dissolution of the corporate person; and (b) shall present an Annual Status Report(s) indicating progress in liquidation. <p>(Regulation 37 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)</p>
19.	<p>(1) On completion of the liquidation process, the liquidator shall</p>

	<p>prepare the Final Report consisting of -</p> <p>(a) audited accounts of the liquidation, showing receipts and payments pertaining to liquidation since the liquidation commencement date; and</p> <p>(b) a statement demonstrating that-</p> <p>(i) the assets of the corporate person has been disposed of;</p> <p>(ii) the debt of the corporate person has been discharged to the satisfaction of the creditors;</p> <p>(iii) no litigation is pending against the corporate person or sufficient provision has been made to meet the obligations arising from any pending litigation.</p> <p>(c) a sale statement in respect of all assets containing -</p> <p>(i) the realized value;</p> <p>(ii) cost of realization, if any;</p> <p>(iii) the manner and mode of sale;</p> <p>(iv) an explanation for the shortfall, if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets under section 59(3)(b)(ii) or Regulation 3(1)(b)(ii), as the case may be;</p> <p>(v) the person to whom the sale is made; and</p> <p>(vi) any other relevant details of the sale.</p> <p>(2) The liquidator shall send the Final Report forthwith, to the Registrar and the Board.</p> <p>(3) The liquidator shall submit the Final Report to the Adjudicating Authority along with the application under section 59(7).</p>
20.	<p>Before the order of dissolution is passed, the liquidator shall apply to NCLT for an order to pay into the Companies Liquidation Account in the Public Account of India, any unclaimed proceeds of liquidation or undistributed assets or any other balance payable to the stakeholders in his hands on the date of the order of dissolution.</p>

Voluntary Liquidation Process

	<p>(Regulation 39 of Insolvency And Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)</p> <p>Where the Tribunal is satisfied with the application, NCLT shall pass an order that the company shall be dissolved from the date of that order and the company shall be dissolved accordingly. (Section 59 (8) of the Code)</p>
21.	<p>The copy of order shall be filed with the Registrar of Companies and IBBI and IPA within 14 days from the date of such order (Section 59(9) of the Code).</p>
22.	<p>PRESERVATION OF RECORDS –The copy of the reports and books of account (physical or electronic) referred to Regulation 8 and 10 of Insolvency And Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 shall be preserved for at least 8 years after dissolution either with himself or with an information utility. (Regulation 41 of Insolvency And Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)</p>

<p>FORMS UNDER INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (VOLUNTARY LIQUIDATION PROCESS) REGULATIONS 2017</p>	
a) Public announcement (reg 14)	Form A of Schedule I
b) Proof of claim by operational creditors except workmen and employees (reg 16).	Form B of Schedule I
c) Proof of claim by financial creditors (reg 17).	Form C of Schedule I
d) Proof of claim by workman or employee (reg 18(1))	Form D of Schedule I
e) Proof of claim by authorised representative of workmen or employee (reg 18(2))	Form E of Schedule I
f) Proof of claim by other stakeholders (reg 19)	Form F of Schedule I

Chapter 12

Timelines and Forms with respect to the Liquidation Process under IBC

Timelines as per Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 [Amended upto 30-09-2021]

Sl. No.	Section / Regulation	Description of Task	Norm	Latest Timeline (Days)
(1)	(2)	(3)	(4)	(5)
1	Section 33 and 34	Commencement of liquidation and appointment of liquidator	LCD	0 = T
2	Section 33 (1)(b)(ii) / Reg. 12 (1, 2, 3)	Public announcement in Form B	Within 5 days of appointment of liquidator.	T + 5
3	Reg. 35 (2)	Appointment of registered valuers	Within 7 days of LCD	T + 7
4	Section 38 (1), Reg. 17, 18, 19, 20 and 21A	Submission of claims; Intimation of decision on relinquishment of security interest	Within 30 days of LCD	T + 30
5	Section 38 (5)	Withdrawal/ modification of claim	Within 14 days of submission of claim	T + 44
6	Reg. 30	Verification of claims received under regulation 12(2)(b)	Within 30 days from the last date for receipt of claims	T + 60
7	Reg. 31A	Constitution of SCC	Within 60 days of LCD	T + 60

8	Section 40 (2)	Intimation about decision of acceptance/rejection of claim	Within 7 days of admission or rejection of claim	T + 67
9	Reg. 31 (2)	Filing the list of stakeholders 43	Within 45 days from the last date of receipt of claims	T + 75
10	Section 42	Appeal by a creditor against the decision of the liquidator	Within 14 days of receipt of such decision	T + 81
11	Reg. 13	Preliminary report to the AA	Within 75 days of LCD	T + 75
12	Reg. 34	Asset memorandum	Within 75 days of LCD	T + 75
13	Reg. 15 (1), (2), (3), (4) and (5), and 36	Submission of progress reports to AA; Asset Sale report to be enclosed with every Progress Report, if sales are made	First progress report	Q1 + 15
			Q-2	Q2 + 15
			Q-3	Q3 + 15
			Q-4	Q4 + 15
			FY:1 Audited accounts of liquidator's receipt & payments for the financial year	15th April
14	Proviso to Reg. 15 (1)	Progress report in case of cessation of liquidator	Within 15 days of cessation as liquidator	Date of cessation + 15

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15	Reg. 37 (2, 3)	Information to secured creditors	Within 21 days of receipt of intimation from secured creditor	Date of intimation + 21
16	Reg. 42 (2)	Distribution of the proceeds to the stakeholders	Within 3 months from the receipt of amount	Date of Realisation + 90
17	Reg.10 (1)	Application to AA for Disclaimer of onerous property	Within 6 months from the LCD	T + 6 months
18	Reg.10 (3)	Notice to persons interested in the onerous property or contract	At least 7 days before making an application to AA for disclaimer.	
19	Reg. 44	Liquidation of corporate debtor.	Within one year	T + 365
20	Reg. 46	Deposit the amount of unclaimed dividends and undistributed proceeds	Before submission of application under sub-regulation (3) of regulation 45	
21	Sch-1 Sl. No 12	Time period to H1 bidder to provide balance sale consideration	Within 90 days of the date of invitation to provide the balance amount.	

Exclusion of period of lockdown.

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.

Provisions (IBC, 2016 and IBBI (Liquidation) Regulation, 2016	Particulars	Compliances/ Requisites	Timelines
Sec. 33	Initiation of Liquidation	<p>The Adjudicating Authority may pass an order initiating Liquidation of a Corporate Debtor (CD)</p> <p>i) if it does not receive a Resolution Plan or rejects the resolution plan of a CD undergoing CIRP or fast-track CIRP or (before the expiry or maximum period allowed for the completion of the insolvency resolution process).</p> <p>ii) non-compliance of the requirements specified in resolution plan submitted u/s 31.</p> <p>iii) the RP shall apply to the AA for an order of initiating liquidation proceedings based on the decision of the COC by not less than 66% of the voting share.</p>	

<p>Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</p>	<p>Meeting Liquidation Cost</p>	<p>(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.</p> <p>(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).</p> <p>(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between</p>	
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		<p>the two.</p> <p>(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.</p> <p><i>Explanation.</i> – For the purposes of this regulation, ‘liquidation costs’ shall have the same meaning as assigned to it in clause (ea) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.</p>	
Regulation 2A of the liquidation process	Meeting Liquidation Cost	<p>1) The liquidator shall call upon the financial creditors, being financial institutions, to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, as estimated by him, in proportion to the financial debts owed to</p>	

		<p>them by the corporate debtor.</p> <p>2) The 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.</p> <p>3) The amount contributed shall be repayable with interest at bank rate referred to in section 49 of the Reserve Bank of India Act, 1934 (2 of 1934) as part of liquidation cost.</p>	
<p>S. 34. Regulations 3, of the liquidation process</p> <p>Regulations 4 of the liquidation process</p>	<p>Appointment of Liquidator</p> <p>Liquidator's Fees</p>	<p>The RP shall act as the Liquidator unless replaced by the AA. Liquidator must be independent of the Corporate Person.</p> <p>Liquidator's fees form a part of the Liquidation cost.</p> <p>1)The fees of the Liquidator will be decided by the COC under Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency</p>	

		<p>Resolution Process for Corporate Persons) Regulations, 2016,</p> <p>2) In cases not covered under sub-regulation (1), the liquidator shall be entitled to a fee-</p> <p>a) For the period of Compromise or arrangement under sec 230 of the Companies Act, 2013 (to be completed within ninety days and this period shall not be included in the liquidation period. Reg 2B) at the rate as the resolution professional was entitled to during CIRP.</p> <p>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 the chart provided in the regulation.</p> <p>3) Where the fees is payable under clause (b) as above the liquidator shall be entitled to receive half of the fee payable on realisation only after</p>	
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		such realised amount is distributed.	
Sec 33(1)(b)(ii) Reg 12	Public Announcement (Form B of Schedule II)	The liquidator to make a public announcement in one regional and one English Newspaper and on the corporate debtor's website, the Board's website.	Within 5 days of his appointment
Sec. 35, Sec 37,43,44,45, 46,50 Reg 5,6,7,8,9, 10,11. 41	Powers and Duties of Liquidator (Schedule III)	To take into his custody all the assets of the CD, protect and preserve them, evaluate them and prepare a report of the same. Subsequently, realize them at the best possible price. Maintain records. 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 CD from a host of entities. Provide financial information relating to the CD to the	Monthly Returns, Appointment of professional within 3 days

		<p>stakeholders within seven days from the date of such request.</p> <p>Open a bank account in the name of the CD followed by the words 'In Liquidation' in a scheduled bank. All moneys to be deposited not later than the next working date.</p> <p>May maintain cash balance of One Lakh rupees or such higher amount as may be permitted by AA to meet liquidation cost.</p> <p>All payments above Rs,5000/- shall be made by account payee cheques or online banking transaction.</p>	
<p>Sec 38, 39, Reg 16,17,18, 19,20</p> <p>Reg 29,30</p>	<p>Collection of Claims (Form C, D, E, F, G of Schedule II)</p>	<p>The liquidator shall collect the claims of creditors within, a period of thirty days from the date of commencement of liquidation.</p> <p>Verify them within thirty days from the last date of receipt of claims.</p> <p>(Note: A creditor may withdraw or vary his</p>	<p>Within 30 days of LCD</p> <p>Within 30 days of last date of receipt of claims.</p> <p>Modification of claims within</p>

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		claim within fourteen days of its submission.	14 days.
Sec 40, 41, 42	Communicate decision of acceptance or rejection of Appeal	The liquidator shall <i>communicate his decision of acceptance or rejection</i> of claim within seven days of such acceptance or rejection, against which the creditor can appeal before the AA within fourteen days of receipt of such communication	Seven days for communication appeal before the AA within fourteen days of receipt of such communication ,
Reg 31, 12(3)	List of stakeholders	The liquidator shall file the category wise <i>list of stakeholders</i> with the Adjudicating Authority within forty-five days from the last date for receipt of claims and to be uploaded on IBBI website, CD website.	(30+45) days
Reg 5, 31A Schedule II Form A	Stakeholders' consultation committee	The liquidator shall <i>constitute a consultation committee</i> within sixty days from the liquidation commencement date, to advise him on the matters <i>relating to sale</i> of the liquidation estate. The composition of the consultation committee	sixty days from the LCD

		would be as per Reg 31A(2). Minutes of consultations with stakeholders to be filed with AA.	
Reg 13	Preliminary Report	Detailing the a) capital structure, b) estimates of its assets and liabilities as on the liquidation commencement date. c) Any further inquiry into any matter relating to the promotion, formation or failure or conduct of the business of the CD, d) Proposed plan of action, timeline and liquidation cost	within seventy-five days from the LCD.
Reg 15	Progress Report	first Progress Report within fifteen days after the end of the quarter in which he is appointed Within 15 days from the end of every quarter, providing all information relevant to liquidation for the quarter, details of the receipts and payments, statement indicating any material change in the value of any property proposed to	Quarterly progress Report

		<p>be sold along with the basis of such change(<i>this material change report shall not be accessible to any person unless permitted by the AA</i>) and for the last quarter of the financial year the audited accounts of the liquidators receipts and payments for the financial year should be attached.</p>	
Sec 36 Reg 34	Asset Memorandum	<p>The liquidator shall form a Liquidation Estate of all the assets of the CD which it shall hold in fiduciary capacity for the benefit of all the creditors.</p> <p>Liquidation Estate assets include assets over which the CD has ownership rights as evidenced in the balance sheet, tangible assets, moveable or not. The liquidator shall prepare an asset memorandum within seventy-five days from the liquidation commencement date.</p>	within seventy-five days from the LCD
Reg 32,32A,33,35	Asset Sale Report	Modes of Sale:- Auction/Private Sale,	Quarterly with the progress

		<p>(b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date: and</p> <p>(b) the excess of the realised value of the asset, to be paid to the liquidator within one hundred and eighty days from the liquidation commencement date: Provided that where the amount payable is not certain, the secured creditor shall pay the amount, as estimated by the liquidator: Provided further that any difference between the amount payable under this sub-regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed</p>	<p>Excess Amount within 180 days</p>
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		<p>by the liquidator.</p> <p>3) Where a secured creditor fails to comply with the provisions, the asset which is subject to security interest shall become part of the liquidation estate.</p> <p><i>37. Realization of security interest by secured creditor</i></p> <p>(1) A secured creditor who seeks to realize its security interest under section 52 shall intimate the liquidator of the price at which he proposes to realize its secured asset.</p> <p>(2) The liquidator shall inform the secured creditor within twenty one days of receipt of the intimation under sub-regulation (1) if a person is willing to buy the secured asset before the expiry of thirty days from the date of intimation under sub-regulation (1), at a price higher than the price intimated under sub-regulation (1).</p> <p>(3) Where the</p>	
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		<p>liquidator informs the secured creditor of a person willing to buy the secured asset under sub-regulation (2), the secured creditor shall sell the asset to such person.</p> <p>(4) If the liquidator does not inform the secured creditor in accordance with sub-regulation (2), or the person does not buy the secured asset in accordance with sub-regulation (2), the secured creditor may realize the secured asset in the manner it deems fit, but at least at the price intimated under sub-regulation(1).</p> <p>(5) Where the secured asset is realized under sub-regulation (3), the secured creditor shall bear the cost of identification of the buyer under sub-regulation (2).</p> <p>(6) Where the secured asset is realized under sub-regulation (4), the liquidator shall bear the</p>	
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		<p>cost incurred to identify the buyer under sub-regulation (2).</p> <p>(7) The provisions of this Regulation shall not apply if the secured creditor enforces his security interest under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) or the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993).</p> <p>(8) A secured creditor shall not sell or transfer an asset, which is subject to security interest, to any person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor.</p> <p>Where the proceeds of realisation are not sufficient to repay the Secured creditor, the balance amount shall be paid as per 53(1)(e).</p>	
<p>Sec 230 of the Companies</p>	<p>Compromise or Arrangement</p>	<p>(1) Where a compromise or arrangement is</p>	

<p>Act, Reg 2B</p>		<p>proposed under section 230 of the Companies Act, 2013 (18 of 2013), it shall be <i>completed within ninety days of the order of liquidation under section 33.</i></p> <p><i>Provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.</i></p> <p>(2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.</p> <p>(3) 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 under sub-section (6) of section 230:</p>	
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		<p>Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230.</p>	
Reg32(e), (f), 32A	<p>Sale of Assets of the CD as a going concern or the business(s) of the CD as a going concern.</p>	<p>32A. Sale as a going concern.</p> <p>(1) Where the committee of creditors 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 corporate debtor, he shall endeavour to first sell under the said clauses.</p> <p>(2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation</p>	

		<p>(2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.</p> <p>(3) Where the committee of creditors has not identified the assets and liabilities under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) 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.</p> <p>(4) 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</p>	
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		clauses (a) to (d) of regulation 32.	
Sec 53 Reg 42,43	Distribution of Assets		
Reg 44	Completion of Liquidation	<p>a) 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 Part II of the Code, before the Adjudicating Authority or any action thereof.</p> <p>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</p> <p>b) 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</p>	

		not been completed and specifying the additional time that shall be required for liquidation	
Reg 45	Final Report prior to dissolution (Form H)	<p>1) When the corporate debtor is liquidated, the liquidator shall make an account of the liquidation, showing how it has been conducted and how the corporate debtor's assets have been liquidated.</p> <p>2) If the liquidation cost exceeds the estimated liquidation cost provided in the Preliminary Report, the liquidator shall explain the reasons for the same.</p> <p>3) The liquidator shall submit an application along with the final report and the compliance certificate to the Adjudicating Authority for –</p> <p>(a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or</p>	

		(b) for the dissolution of the corporate debtor, in cases not covered under clause (a)..	
Reg 46	Unclaimed proceeds of Liquidation or undistributed assets (Form I)	A liquidator shall submit to the authority with which the corporate debtor is registered and the Board, the evidence of deposit of the amount into the Corporate Liquidation Account, and a statement setting forth the nature of the amount deposited into the Corporate Liquidation Account, and the names and last known addresses of the stakeholders entitled to receive the unclaimed dividends or undistributed proceeds.	
Sec 54, Reg 14	Dissolution	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	

HB on Liquidation & Voluntary Liquidation Process under IBC

		require any further investigation; he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution.	
Reg 5(2), 6(2)		Records to be kept for 8 years after dissolution	8 Years
Sec 35(n)		Apply to the AA for such orders or directions as may be necessary	

Chapter 13

Offences and Penalties under Part II of the Code

Provisions related to Offences & penalties are provided in Section 65 & Section 68 to Section 77 of Part II of the Code.

Sr. No.	Provi sion (IBC, 2016)	Offender	Offences	Penalty
1.	S.65	Any Person	<p>(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be</p> <p>(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person,</p>	<p>Adjudicating Authority may impose upon a such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.</p> <p>Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees</p>
2.	S. 68	Any officer of the corporate debtor	<p>Where any officer of the corporate debtor has, –</p> <p>(i) within the twelve months immediately</p>	<p>Imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine, which</p>

			<p>preceding the insolvency commencement date, –</p> <p>(a) wilfully concealed any property or part of such property of the corporate debtor or concealed any debt due to, or from, the corporate debtor, of the value of ten thousand rupees or more; or</p> <p>(b) fraudulently removed any part of the property of the corporate debtor of the value of ten thousand rupees or more; or</p> <p>(c) wilfully concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property of the corporate debtor or its affairs, or</p> <p>(d) wilfully made any false entry in any book or paper affecting or relating to the property of the corporate debtor or its affairs, or</p>	<p>shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.</p>
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		<p>(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the property of the corporate debtor or its affairs, or</p> <p>(f) wilfully created any security interest over, transferred or disposed of any property of the corporate debtor which has been obtained on credit and has not been paid for unless such creation, transfer or disposal was in the ordinary course of the business of the corporate debtor, or</p> <p>(g) wilfully concealed the knowledge of the doing by others of any of the acts mentioned in clauses (c), (d) or clause (e); or</p> <p>(ii) at any time after the insolvency commencement date, committed any of the acts mentioned in sub-clause (a) to (f) of</p>	
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			<p>clause (i) or has the knowledge of the doing by others of any of the things mentioned in sub-clauses (c) to (e) of clause (i); or</p> <p>(iii) at any time after the insolvency commencement date, taken in pawn or pledge, or otherwise received the property knowing it to be so secured, transferred or disposed.</p> <p>Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor.</p>	
3.	S. 69	<i>Any officer of the corporate debtor or the corporate debtor</i>	<p>If an officer of the corporate debtor or the corporate debtor-</p> <p>(a) has made or caused to be made any gift or transfer of, or charge on, or</p>	<p>Imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or</p>

		<p>has caused or connived in the execution of a decree or order against, the property of the corporate debtor;</p> <p>(b)has concealed or removed any part of the property of the corporate debtor within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor,</p> <p>Provided that a person shall not be punishable under this section if the acts mentioned in clause (a) were committed more than five years before the insolvency commencement date; or if he proves that, at the time of commission of those acts, he had no intent to defraud the creditors of the corporate debtor</p>	<p>with both.</p>
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4.	S. 70	Any officer of the corporate debtor	<p>On or after the insolvency commencement date, where an officer of the corporate debtor —</p> <p>(a) does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information as the resolution professional may require; or</p> <p>(b) does not deliver to the resolution professional all or part of the property of the corporate debtor in his control or custody and which he is required to deliver; or</p> <p>(c) does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver;</p>	<p>Imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.</p>
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			<p>or</p> <p>(d) fails to inform their solution professional the information in his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process; or</p> <p>(e) prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor; or</p> <p>(f) accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor within the twelve months immediately preceding the insolvency commencement date.</p> <p>Provided that nothing in this</p>	
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			section shall render a person liable to any punishment under this section if he proves that he had no intent to do so in relation to the state of affairs of the corporate debtor.	
5.	S. 71	Any person	On and after the insolvency commencement date, where any person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of account or document belonging to the corporate debtor with intent to defraud or deceive any person.	Imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.
6.	S. 72	Any officer of the corporate debtor	Making any material and wilful omission in any statement relating to the affairs of the corporate debtor.	Imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

7.	S. 73	Any officer of the corporate debtor	<p>Where any officer of the corporate debtor —</p> <p>(a) on or after the insolvency commencement date, makes a false representation or commits any fraud for the purpose of obtaining the consent of the creditors of the corporate debtor or any of them to an agreement with reference to the affairs of the corporate debtor, during the corporate insolvency resolution process, or the liquidation process;</p> <p>(b) prior to the insolvency commencement date, has made any false representation, or committed any fraud, for that purpose</p>	<p>Imprisonment for a term which shall not be less than three years, but may extend to five years or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.</p>
8.	S. 74	Corporate Debtor or any of its officer	<p>(1)Where the corporate debtor or any of its officer violates the provisions of section 14, any such officer</p>	<p>Imprisonment for a term which shall not be less than three years, but may extend to five years or with fine which shall not be less than one lakh</p>

		<p>Any Creditor</p> <p>The corporate debtor, any of its officers or creditors or any person</p>	<p>who knowingly or wilfully committed or authorised or permitted such contravention shall be punishable.</p> <p>(2) Where any creditor violates the provisions of section 14, any person who knowingly and wilfully authorised or permitted such contravention by a creditor shall be punishable.</p> <p>(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable.</p>	<p>rupees, but may extend to three lakh rupees, or with both.</p> <p>Imprisonment for a term which shall not be less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.</p> <p>Imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.</p>
9.	S. 75	Any person	Furnishes information in the application made	Fine which shall not be less than one lakh rupees, but may extend

			under section 7, which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material, such person shall be punishable.	to one crore rupees.
10.	S. 76	Operational Creditor or any Person Any Person	Where- (a) an operational creditor has wilfully or knowingly concealed in an application under section 9 the fact that the corporate debtor had notified him of a dispute in respect of the unpaid operational debt or the full and final payment of the unpaid operational debt; or (b) any person who knowingly and wilfully authorised or permitted such concealment under clause (a)	Imprisonment for a term which shall not be less than one year but may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees, or with both.
11.	S. 77	i. Corporate Debtor	Where- (a) a corporate debtor provides information in the application under	Imprisonment for a term which shall not be less than three years, but which may extend to five years or with fine which

		ii. Any Person	<p>section 10 which is false in material particulars, knowing it to be false and omits any material fact,</p> <p>knowing it to be material; or</p> <p>(b) any person who knowingly and wilfully authorised or permitted the furnishing of such information under sub-clause (a)</p>	<p>shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.</p>
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Punishment / Penalty where no Specific Penalty/Punishment provided

Sec 235A. *If any person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees."*

COGNISANCE OF OFFENCES

The cognisance of offences can be taken only by the Special Court pursuant to a complaint made by the designated entities on the basis of the findings or observation made by the AA to form a basis of the said complaint.

Section 236 (2) is as follows:

"No Court shall take cognisance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf."

Chapter 14

Role of Liquidator in respect of Avoidance transactions

Sections 25 and 37 of the IBC provides the duties of a Resolution Professional (RP) and a Liquidator respectively. These duties include certain actions in respect of avoidance transactions known as preferential transactions (section 43), undervalued transactions (section 45), extortionate transactions (section 50) and fraudulent trading (section 66).

As per Section 43, 45, 50 and 66 of IBC, the RP and the Liquidator are required to file applications with the Adjudicating Authority (AA) seeking appropriate reliefs and directions under the Code.

Preferential transactions

Section 43 Preferential transactions and relevant time. -

- (1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.
- (2) A corporate debtor shall be deemed to have given a preference, if—
 - (a) there is a transfer of property or an interest thereof of the corporate debtor 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 transfer under clause (a) 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.
- (3) For the purposes of sub-section (2), a preference shall not include the following transfers—
 - a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

- b) 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:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation. – For the purpose of sub-section (3) of this section, “new value” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

A preference shall be deemed to be given at a relevant time, if –

- (a) It is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or
- (b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

Section 44. Orders in case of preferential transactions. -

- (1) The Adjudicating Authority, may, on an application made by the resolution professional or liquidator under sub-section (1) of section 43, by an order:
 - (a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;
 - (b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;

- (c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;
- (d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;
- (e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;
- (f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and
- (g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that an order under this section shall not -

- (a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;
- (b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional.

Explanation-1: For the purpose of this section, it is clarified that where a person, who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference, -

- (a) had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor;
- (b) is a related party,

it shall be presumed that the interest was acquired, or the benefit was received otherwise than in good faith unless the contrary is shown.

Explanation-II. – A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13

Undervalued transactions

Section 45. Avoidance of undervalued transactions. -

(1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in subsection (2) determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

(2) A transaction shall be considered undervalued where the corporate debtor–

- (a) makes a gift to a person; or
- (b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor,

and such transaction has not taken place in the ordinary course of business of the corporate debtor.

Section 46. Relevant period for avoidable transactions. -

(1) In an application for avoiding a transaction at undervalue, the liquidator or the resolution professional, as the case may be, shall demonstrate that –

- (i) such transaction was made with any person within the period of one year preceding the insolvency commencement date; or
- (ii) such transaction was made with a related party within the period of two years preceding the insolvency commencement date.

(2) The Adjudicating Authority may require an independent expert to assess evidence relating to the value of the transactions mentioned in this section.

Section 47 Application by creditor in cases of undervalued transactions. -

1) Where an undervalued transaction has taken place and the liquidator or the resolution professional as the case may be, has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor, as the case may be, may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect in accordance with this Chapter.

2) Where, the Adjudicating Authority, after examination of the application made under sub-section (1), is satisfied that -

- (a) undervalued transactions had occurred; and
- (b) liquidator or the resolution professional, as the case may be, after having sufficient information or opportunity to avail information of such transactions did not report such transaction to the Adjudicating Authority,

it shall pass an order-

- (a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 45 and section 48;
- (b) requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.

Extortionate credit transactions

Section 50. Extortionate credit transactions -

(1) Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

(2) The Board may specify the circumstances in which a transactions which shall be covered under sub-section (1).

Explanation. - For the purpose of this section, it is clarified that any debt extended by any person providing financial services which is in compliance

with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

Section 51 Orders of Adjudicating Authority in respect of extortionate credit transactions. -

Where the Adjudicating Authority after examining the application made under sub-section (1) of section 50 is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by an order –

- (a) restore the position as it existed prior to such transaction;
- (b) set aside the whole or part of the debt created on account of the extortionate credit transaction;
- (c) modify the terms of the transaction;
- (d) require any person who is, or was, a party to the transaction to repay any amount received by such person; or
- (e) require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional, as the case may be.

Defrauding creditors

Section 66. Fraudulent trading or wrongful trading. -

(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

- (a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable

prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

- (b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.
- (3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.

Explanation. – For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

Section 67 - Proceedings under section 66. -

- (1) Where the Adjudicating Authority passes an order under sub-section (1) or sub-section (2) of section 66, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the Adjudicating Authority may—
 - (a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and
 - (b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section.

Explanation. – For the purposes of this section, “assignee” includes a person to whom or in whose favour, by the directions of the person held liable under clause (a) the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds on which the declaration has been made.

- (2) Where the Adjudicating Authority has passed an order under sub-section (1) or (2) of section 66, as the case may be, in relation to a person

who is a creditor of the corporate debtor, it may, by an order, direct that the whole or any part of any debt owed by the corporate debtor to that person and any interest thereon shall rank in the order of priority of payment under section 53 after all other debts owed by the corporate debtor.

Chapter 15

Frequently Asked Questions on the Liquidation Process under IBC

1. What are the circumstances under which a winding up proceeding pending on the file of a High Court could be transferred to the NCLT and at whose instance, such transfer could be ordered?

The Supreme Court has answered above question in judgment dated November 19, 2020 in Civil Appeal no. 3735 OF 2020 between M/S Kaledonia Jute and Fibres Pvt. Ltd. Vs. M/S Axis Nirman and Industries Ltd. & Ors.

In the background of case, One M/s Girdhar Trading Co., filed a petition under section 433 of the Companies Act, 1956 for winding up of a Company M/S Axis Nirman and Industries Limited, on the ground that the company was unable to pay its debt. On 10th March 2016 the Company Court (High Court) appointed the official liquidator attached to the High Court of Allahabad as the Liquidator and directed him to take over the assets and books of accounts of the Company. The order of winding up was also directed to be advertised in two newspapers.

Later the IBC code was notified and during the continuance of above mentioned winding up activities, the appellant filed an application under section 7 of IBC with NCLT and also a Civil Miscellaneous Application was filed with the Company Court (High court) seeking a transfer of the winding up petition to the NCLT, Allahabad. The miscellaneous application rejected by the company Court on the sole ground that a winding up order had already been passed. Aggrieved by order of High Court the appellant has approached Supreme Court. The main issues that arose for consideration in the appeal to supreme court were as follows:

- (i) what are the circumstances under which a winding up proceeding pending on the file of a High court could be transferred to the NCLT and
- (ii) at whose instance, such transfer could be ordered.

It was noted that Section 434 as it was incorporated originally in the

Companies Act, 2013 was actually substituted by the Insolvency and Bankruptcy Code, 2016 which came into force on 15-11-2016. Further Sub-section (2) of Section 434 empowers the Central Government to make Rules, to ensure timely transfer of all matters pending before the Company Law Board or the Courts, to the Tribunal. In exercise of the power, the Central Government issued a set of Rules known as 'The Companies (Transfer of Pending Proceedings) Rules, 2016.

Before referring to Rules, it is necessary to note that for the purpose of transfer, winding up proceedings pending before the High Courts, are classified by Section 434 into two categories namely:-

- (a) Proceedings for voluntary winding up where notice of resolution by advertisement has been given under Section 485(1) of the Companies Act, 1956, but the company has not been dissolved before 01.04.2017; and
- (b) Other types of winding up proceedings.

The first case, i.e. proceeding of voluntary winding up for which notice of resolution by advertisement has been given but the company has not been dissolved before 01.04.2017; are covered by the fourth proviso under Clause (c) of Sub-section (1) of Section 434, and those shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959 and accordingly continue to be dealt with by the High court.

The second case, i.e., other types of winding up proceedings, can further divided in two categories:

- (i) proceedings for winding up on the ground of inability to pay debts; and
- (ii) proceedings for winding up on grounds other than inability to pay debts.

The Rule 5 and rule 6 of The Companies (Transfer of Pending Proceedings) Rule, 2016 provides for transfer of proceedings for winding up in above referred cases.

Rule 5 covers the Transfer of pending proceedings of Winding up on the ground of inability to pay debts, it reads as follows:

“(1) All petitions relating to winding up of a company under clause (c) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and, where the petition has not been served on the

respondent under Rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Companies Act, 2013 exercising territorial jurisdiction to be dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal upto 15th day of July, 2017, failing which the petition shall stand abated.

Provided further that any party or parties to the petitions shall, after the 1st day of July, 2017, be eligible to file fresh applications under Sections 7 or 8 or 9 of the Code, as the case may be in accordance with the provisions of the Code:

Provided also that where a petition relating to winding up of a company is not transferred to the Tribunal under this Rule and remains in the High Court and where there is another petition under Clause (e) of Section 433 of the Act for winding up against the same company pending as on 15th December, 2016, such other petition shall not be transferred to the Tribunal, even if the petition has not been served on the respondent.”

Further Rule 6 of the aforesaid Rules deals with transfer of proceedings for winding up, on grounds other than inability to pay debts. It reads as follows:-

“All petitions filed under clauses (a) and (f) of section 433 of the Companies Act, 1956 pending before a High Court and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal exercising territorial jurisdiction and such petitions shall be treated as petitions under the provisions of the Companies Act, 2013 (18 of 2013).”

From above reading it is clear Rules 5 and 6 of the Companies (Transfer of Pending Proceedings) Rules 2016, fix the stage of service of notice under Rule 26 of the Companies (Court) Rules, 1959, as the stage at which a winding up proceeding can be transferred.

Rule 26 of the Companies (Court) Rules, 1959 reads as follows:

“Service of petition- Every petition shall be served on the respondent, if any, named in the petition and on such other persons as the Act or these rules may require or as the Judge or the Registrar may direct. Unless otherwise ordered, a copy of the petition shall be served along with the notice of the petition.”

The normal requirement of Rule 26, as seen from its last limb is that the copy of the petition under the Act shall be served on the respondent along with the notice of the petition, unless otherwise ordered. The notice of the petition, required under Rule 26 to be served along with the copy of the petition, should be in Form No.6, due to the mandate of Rule 27.

Further, due to the usage of the words “*was admitted*” in Form No.6, there was a confusion as to whether the service referred to in Rule 26, is of a pre-admission notice or post-admission notice, in a winding up proceeding. Different High Courts took different views. Eventually, the Supreme Court settled the position in *Forech India Ltd. vs. Edelweiss Assets Reconstruction Co. Ltd.* by holding “*that Rules 26 and 27 clearly refer to a pre-admission scenario.*”

Further the Supreme court has mentioned that as observed by this Court in *Forech India Limited (supra)*, the object of IBC will be stultified if parallel proceedings are allowed to go on in different fora. If the Allahabad High Court is allowed to proceed with the winding up and NCLT is allowed to proceed with an enquiry into the application under Section 7 IBC, the entire object of IBC will be thrown to the winds.

The Supreme court also mentioned that the proceedings for winding up of a company are actually proceedings in rem to which the entire body of creditors is a party.

Accordingly, the petitioner, financial creditor is entitled to seek a transfer of the pending winding up proceedings against the corporate debtor, to the NCLT. The Supreme court has flawed the impugned order of the High court rejecting the petition for transfer on the basis of Rule 26 of the Companies (Court) Rules, 1959.

2. Can Liquidator sell assets of the Company under liquidation to person who are not eligible to submit the resolution plan?

Ans. **No the Liquidator can not sell assets of the Company under liquidation to person who is not eligible to submit the resolution plan.**

As per provisio to section 35(1)(f) of IBC, 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.

3. Can secured creditor, who seeks to realize its security interest under section 52 is permitted to sell assets of the Company under liquidation to person who are not eligible to submit the resolution plan?

Ans. **As per provision of section 52 of IBC a secured creditor can opt to realise its security interest. Further Section 29A of IBC barred few persons from submitting resolution plan. The above question is regarding whether a secured creditor can sell those assets to any of ineligible person. This was clarified by inserting a sub-regulation (8) in regulation 37 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 effective 6th January, 2020. The sub-regulation reads as follows:**

A secured creditor shall not sell or transfer an asset, which is subject to security interest, to any person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor.

Accordingly, a secured creditor, who seeks to realize its security interest is not permitted to sell assets of the Company under liquidation to person who are not eligible to submit the resolution plan.

4. Can liquidator sell not readily realisable assets to person who are not eligible to submit the resolution plan?

Ans. **No, the liquidator cannot sale not readily realisable assets to person who are not eligible to submit the resolution plan.**

As per regulation 37A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:

(1) A liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders' consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

Explanation. — For the purposes of this sub-regulation, “not readily realisable asset” means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code.]

5. What are the provisions for companies under liquidation relating to Compromise or arrangement ?

Ans. Regulation 2B of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 deals with the provisions relating to Compromise or arrangement, which reads as follows:

(1) Where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013, it shall be completed within ninety days of the order of liquidation under section 33.

Provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.

(2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.

(3) 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 under sub-section (6) of section 230:

Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230.

6. Whether a person who is ineligible under Section 29A of the Insolvency Bankruptcy Code, 2016 to submit a resolution plan can propose a scheme of compromise and arrangement under Section 230 of the Companies Act, 2013?

Ans. A person who is ineligible under Section 29A of the Insolvency Bankruptcy Code, 2016 to submit a resolution plan, is also barred from proposing a scheme of compromise and arrangement under Section 230 of the Companies Act, 2013. As clarified by proviso to sub-regulation (1) of regulation 2B.

7. Which regulation is inserted for the period of lockdown under liquidation?

Ans. Vide notification No. IBBI/2020-21/GN/REG060, dated 20th April, 2020, w.e.f. 17.4.2020 a regulation 47A has been inserted in Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, which reads as follows:

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.

8. Which assets will not form part of liquidation estate assets under liquidation process?:

Ans. As per Section 36(4)(d) of IBC, following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—

- (a) assets owned by a third party which are in possession of the corporate debtor, including—
 - (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
 - (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;
- (b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;
- (c) 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 under this Chapter;
- (d) assets of any Indian or foreign subsidiary of the corporate debtor;

- (e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

9. How liquidator will value the Contingent claims?

Ans. As per regulation 25 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, states that, where the amount claimed by a claimant is not precise due to any contingency or any other reason, the liquidator shall make the best estimate of the amount of the claim based on the information available to him. Hence, even contingent claims can be admitted by the liquidator, making the best estimate of the claim amount.

10. How liquidator will value the claim containing debt in foreign currency?

Ans. As per regulation 26 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 states that the claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the liquidation commencement date. "The official exchange rate" is the reference rate published by the RBI or derived from such reference rates.

11. Whether liquidator authorised to release Periodical payments?

Ans. As per regulation 27 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 states that in the case of rent, interest and such other payments of a periodical nature, a person may claim only for any amounts due and unpaid up to the liquidation commencement date.

12. How does Liquidator distribute the Debt payable at future time while distributing the assets?

Ans. As per Regulation 28 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

(1) A person may prove for a claim whose payment was not yet due on the liquidation commencement date and is entitled to distribution in the same manner as any other stakeholder.

(2) Subject to any contract to the contrary, where a stakeholder has proved for a claim under sub-regulation (1), and the debt has not fallen due

before distribution, he is entitled to distribution of the admitted claim reduced as follows-

$$X / (1+r)^n$$

where-

- (a) "X" is the value of the admitted claim;
- (b) "r" is the closing yield rate (%) of government securities of the maturity of "n" on the date of distribution as published by the Reserve Bank of India; and
- (c) "n" is the period beginning with the date of distribution and ending with the date on which the payment of the debt would otherwise be due, expressed in years and months in a decimalized form.

13. Can Liquidator set off Mutual credits?

Ans. As per Regulation 29 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party.

Illustration: X owes Rs. 100 to the corporate debtor. The corporate debtor owes Rs. 70 to X. After set off, Rs. 30 is payable by X to the corporate debtor.

14. Whether minority Secured creditor can insist to realise its security interest.

Ans. No. As per the judgment of Hon'ble NCLAT in the Company Appeal (AT) (insolvency) No. 1510/2019 in the matter of Mr. Srikanth Dwarkanath, Liquidator of Surana Power Limited vs. Bharat Heavy Electricals Limited it was held that Secured Creditor who does not have a requisite 60% value in secured interest, does not have a right to realize its security interest out of the Liquidation Process because it will be detrimental to the Liquidation Process and interest of the remaining secured creditors.

Chapter 16

Case laws under Insolvency and Bankruptcy Code, 2016 with respect to the Liquidation Process

1. Exclusion of period of Lockdown (Miscellaneous Application 21/2022 in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020 in re: cognizance for extension of limitation)

The Supreme Court took *Suo Motu* cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic. Accordingly, following directions are issued:

1. The order (*Suo Moto Writ (Civil) NO. 3 of 2020*) dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
2. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.
3. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.
4. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which

prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

2. Failure to implement the Resolution Plan by the resolution applicant, despite of giving various opportunities by Court, will result in liquidation order

In the matter of Kridhan Infrastructure Pvt Ltd, (now known as Krish Steel and Trading Pvt Ltd) Vs. Venkatesan Sankaranarayan & Ors [Civil Appeal No 3299 of 2020]

Hon'ble Supreme Court held that time is a crucial facet of the scheme under the IBC. To allow such proceedings to lapse into an indefinite delay will plainly defeat the object. As a consequence of the order, the management shall revert to the liquidator for taking steps in accordance with law.

3. The Assistant Commissioner of State Tax directed to defreeze the Account No. held in the name of Corporate Debtor on appeal by liquidator

In the matter of Pinakin Shah-Liquidator of Brew Berry Hospitalities Pvt. Ltd. Vs The Assistant Commissioner of State Tax & Anr (Company Appeal (AT) (Insolvency) No. 32 of 2021)

Hon'ble NCLAT held that, Liquidation Proceedings are time-bound to maximize the value and all the Creditors are entitled to get their dues only in terms of Section 53 of I & B Code, 2016 and different Creditors cannot be allowed to resort to different proceedings and enactments only because they are Authorities under earlier enactments considering the Provision of Section 238 of I & B Code, 2016.

Further the appellat authority, NCLAT has directed to defreeze the Account held in the name of Corporate Debtor.

4. Section 53(1)(e) of the Code shall have overriding effect by virtue of section 238 of the Code.

- In the matter of Om Prakash Agarwal Vs. Chief Commissioner of

Income Tax (TDS) & Anr. (Company Appeal (AT) (Insolvency) No. 624 of 2020)

TDS was recovered on priority to other creditors of the transferor which is partial capital gain tax whereas sec 53(1)(e) of the Code in waterfall mechanism provides that the Government dues comes fifth in order of priority. In regard to recovery of the Government dues (including Income Tax) from a company in liquidation under the Code, if there is inconsistency between section 194 IA of the Income-tax Act, 1961 and section 53(1)(e) of the Code, section 53(1)(e) of the Code shall have overriding effect on the provisions of the section 194 IA of the Income-tax Act, 1961 by virtue of section 238 of the Code. Thus, NCLAT directed Chief Commissioner of Income Tax (TDS) to refund the amount of TDS to the appellant which was deposited by the purchaser of the immovable property.

- In the matter of Ms. Pooja Bahry, Liquidator and Anr. Vs. Gee Ispat Pvt. Ltd. [CA666/2019 in (IB)/250(ND)/2017]

The liquidator sold certain properties relinquished by the secured creditors. Before proceeding to distribute the proceeds, she filed an application with the AA seeking guidance whether she is required to deposit capital gains on sale of secured assets and include it in the liquidation cost to be defrayed first and distribute the balance amongst the claimants. The AA opined that upon realisation of the liquidation estate of the CD, it must be distributed in accordance with the waterfall mechanism under section 53. The dues towards Government, be it tax on income or on sale of properties, would qualify as operational debt and must be dealt with accordingly. It noted that a secured creditor is entitled to effect sale under the SARFAESI Act and appropriate the entire amount towards its dues, without any liability to first pay capital gain. If the capital gain is first to be provided for, and then be included as liquidation cost, it would create an anomalous situation in the secured creditor getting a lesser remittance than what it could have realised had it not released the security into the common corpus. It is for this purpose that the provision of section 178 of the Income-tax Act, 1961 has been amended giving priority to the waterfall mechanism over government dues. The AA held: "We therefore hold that the tax liability arising out of the sale shall be distributed in accordance with the provision of Sec 53 of the Code. The applicability of Section 178 or 194

IA of the IT Act will not have an overriding effect on the water fall mechanism provided under Section 53 of the Code, which is a complete code in itself, and the capital gain shall not be taken into consideration as the liquidation cost.”

5. Claims which are time-barred shall be rejected

In the matter of Vinod Singh Negi Vs. Kiran Shah, Liquidator of ORG Informatics Ltd. [CA (AT) (Ins.) No. 1101 of 2020]

NCLAT held that the writers of law were conscious that there could be situation where time-barred debts are claimed before the IRP or the RP. The employee submitting claim during the liquidation stage for salary of 2012, without showing as to how it is within limitation, is liable to be rejected. The Adjudicating Authority has not erred in rejecting the application of the Appellant, the claim which was sought to be filed late before the liquidator itself was time-barred claim.

6. Duties and Powers of Liquidator during liquidation process

- In the matter of Nicco Corporation Ltd. in Liquidation [C.A. (IB) No. 487/KB/2017 connected to C.P. No. 03/2017]

The liquidator is duty bound to exercise his powers under the Code and does not require the prior permission of AA for every action to be performed under the Code

- In the matter of Reliance India Power Fund Vs. Raj Kumar Ralhan [CA (AT) (Ins.) No. 318 of 2020]

Liquidator has a duty under section 35(1)(k) of the Code but the FC has no right to force the liquidator to take part in the arbitration proceedings. The duty of the liquidator would include a conscious decision not to take part in the proceedings

- In the matter of B.R. Traders Vs. Venkataramanarao Nagarajan & Ors. [CA (AT) (Ins.) No. 189 of 2019 and other appeals]

The liquidator is duty bound to make every endeavour to protect and preserve the value of the property of the CD and manage the operations as a going concern.

- In the matter of IFCI Ltd. & Ors. Vs. BS Ltd. (in liquidation) [IA No. 1148/2020 in CP(IB) No. 278/7/HDB/2018]

The liquidator has been endowed with very wide powers as a quasi-judicial functionary under the Code. Section 35(2) empowers the liquidator to consult any of the stakeholders entitled to a distribution of proceeds under section 53, but the proviso makes it amply clear that such consultation is not binding on the liquidator.

7. Liquidation order shall not be deemed as a notice of discharge to officers, employees, or workmen

In the matter of Milind Dixit & Anr. Vs Elecon Engineering Company Ltd. & Ors. [Company Appeal (AT) (Insolvency) No. 500 of 2019]

The order to liquidate the CD as a going concern was passed and NCLAT held that it found no ground to interference with the impugned order of liquidation. However, it was further held that the AA landed in error in directing that the liquidation order shall be deemed as a notice of discharge to the officers/ employees and workmen of the 'CD'. And hence, the direction was accordingly set aside.

8. Whether the Provident Fund, Pension Fund and Gratuity Fund **come within the meaning of assets of 'Corporate Debtor' for distribution** under Section 53 of the Insolvency and Bankruptcy Code, 2016?

In the matter, State Bank of India Vs. Moser Baer Karamchari Union & Anr. [Company Appeal (AT) (Insolvency) No. 396 of 2019]

Pursuant to an application under Section 7 of Insolvency and Bankruptcy Code, 2016, the Corporate Insolvency Resolution Process was initiated against Corporate Debtor. Finally the National Company Law Tribunal, Principal Bench, New Delhi passed a liquidation order and the workmen stood discharged under Section 33(7) of the Insolvency and Bankruptcy Code, 2016. Afterwards, the Liquidator, by email, denied payment of Gratuity Fund, Provident Fund and Pension Fund preferentially and included the same for the payments under the waterfall mechanism under Section 53 of the Insolvency and Bankruptcy Code, 2016.

Thereafter, "Moser Baer Karamchari Union" prayed that – Directions be issued to the liquidator to exclude amount due to them towards: Provident

Fund, Pension Fund and Gratuity Fund from the Waterfall Mechanism under Section 53 of I&B Code, 2016 as these will not constitute part of liquidation estate.

The Adjudicating Authority ruled in favour of the Karamchari Union and by order held that the Provident Fund, Pension Fund and Gratuity Fund did not constitute part of the liquidation estate of the corporate debtor.

An appeal was preferred by the State Bank of India against the order passed by the National Company Law Tribunal, Principal Bench, New Delhi.

The question arises for consideration in this appeal is whether the provident fund, pension fund and gratuity fund come within the meaning of assets of the 'Corporate Debtor' for distribution under Section 53 of the 'I&B Code'.

After hearing the parties, the NCLAT noted that from Section 36(4)(a)(iii), it was clear that all sums due to any workman or employee from the provident fund, the pension fund, and the gratuity fund were not to be included in the liquidation estate assets and could not be used for recovery in the liquidation.

Therefore, the question of distribution of the provident fund, pension fund or the gratuity fund in order of priority and within such period as prescribed under Section 53(1) did not arise, it added. NCLAT quoted that "the provisions of the I&B Code have overriding effect in case of consistency in any other law for the time being enforced, we hold that Section 53(1) (b) read with Section 36(4) will have overriding effect on Section 326(1) (a), including the Explanation (iv) mentioned below Section 326 of the Companies Act, 2013." Adding further, "Once the liquidation estate/ assets of the Corporate Debtor under Section 36(1) read with Section 36 (3), do not include all sum due to any workman and employees from the provident fund, the pension fund and the gratuity fund, for the purpose of distribution of assets under Section 53, the provident fund, the pension fund and the gratuity fund cannot be included."

The appeal was accordingly, dismissed.

9. Extension of time in case of bidding process during liquidation process

In the matter of Mr. S. S. Chockalingam Vs. Mr. CA Mahalingam Suresh Kumar [MA/661/2018 in TCP/431/2017]

The applicant participated in e-auction and declared as successful bidder, who offered the highest bid amount, sale letter has been issued in the favor of the Applicant. Applicant was asked to deposit 25% of total bid amount within 24 hours and the rest within 15 days. Applicant has paid 25% of the bid amount on 3rd day and thereafter sought extension of time and respondent viz. liquidator granted extension of time twice for making payment of rest 75% of bid amount but applicant could not adhere to the timeline. Therefore, liquidator cancelled the proposed sale and negotiated with 2nd highest bidder who paid bid amount in one shot and machinery stood sold to the 2nd highest bidder. Applicant submitted that the process that has been initiated by the liquidator to cancel the proposed sale and proceed to negotiate with 2nd bidder is not in accordance with law and he has no authority to forfeit amount that he has paid towards the payment as part of highest bid amount.

As per Adjudicating Authority, there does not appear any provision in the I&B Code, 2016 to give extension of time as far as bidding process is concerned. Moreover, the liquidator negotiated with 2nd bidder who already made payment equivalent to the amount offered by applicant being highest bidder. Therefore, the application of the applicant has become infructuous and the same stands dismissed.

10. Recalling of Liquidation Order by Adjudicating Authority

In the matter of Kiev Finance Limited [IA No. 905/KB/2018 in CP(IB) No.110/KB/2018]

The application was filed by liquidator on the ground that after the order for liquidation was passed, one prospective resolution applicant has approached Resolution Professional evincing interest to submit a resolution plan for the corporate debtor under liquidation.

Earlier the case was admitted on 28.02.2018 on an application made by the Operational Creditor. The IRP was confirmed to RP and was also appointed as liquidator. During the CIRP process period of 180 days, no resolution plan was received hence the CoC resolved to liquidate the company and an order was passed on 10.09.2018. However, before that on 04.09.2018 a prospective resolution applicant approached Resolution professional and hence a CoC meeting was called on 08.09.2018 wherein it was resolved to make an application to Adjudicating Authority for extension of CIRP period of

90 days. Before the RP could make an application, the liquidation order was passed. Hence the application was made for recalling of liquidation order.

Ld. Counsel of CoC submitted that the Adjudicating Authority may pass such order invoking its inherent power under Rule 9 of Companies (Court) Rules 1959 or under Rule 11 of NCLT Rules.

The Adjudicating Authority made it clear that the inherent powers cannot be used to circumvent the procedure. Secondly, as the NCLT Rules are made applicable even to the Adjudicating Authority under Section 5(1) of the Insolvency and Bankruptcy Code, the Rules under Companies (Court) Rules 1959 cannot be invoked because they are replaced by NCLT Rules. The order of liquidation of Corporate Debtor passed by the Authority cannot be reviewed or revoked as prayed by RP. It was pointed out that the RP can sell the Corporate Debtor as a going concern as per Regulation 32 (c) of IBBI (Liquidation Process) Regulations 2016. Since the Authority cannot review its own order, it was held that the application requesting for recalling of liquidation order is not maintainable and hence stands rejected.

11. Right of Secured Creditor with respect to relinquishment of its Security Interest

In the matter of Technology Development Board Vs. Anil Goel & Ors. [CA (AT) (Ins.) No. 731 of 2020]

A conjoint reading of sections 52 and 53 of the Code leaves no room for doubt that the legislature in its wisdom thought it proper to provide an option to the secured creditor armed with a security interest to choose out of the two options, namely, either enforce security interest against the asset out of liquidation estate which is the subject of security interest or relinquish the same and claim as secured creditor in the manner set out under section 53(1)(b)(ii) ranking equal to other secured creditors. First charge holder will have priority in realising its security interest if it elects to realise its security interest and does not relinquish the same. However, if it opts to relinquish its security interest, the distribution of assets would be governed by the section 53(1)(b)(ii) whereunder all secured creditors having relinquished security interest rank equally.

12. Avoidance Application once the CIRP is concluded.

In the matter of Venus Recruiters Pvt. Ltd. Vs. Union of India & Ors. [W.P. (C) 8705/2019 & CM APPL. 36026/2019]

In the context of CIRP, it was observed that:

- i. Avoidance applications cannot survive beyond the conclusion of the CIRP. It is meant to give benefit to the creditors of the CD and not to the CD in its new avatar, after the approval of the resolution plan.
- ii. The NCLT has the jurisdiction to deal with all applications and petitions 'in relation to insolvency resolution and liquidation for corporate persons'. After the approval of the resolution plan and the new management has taken over the CD, no proceedings remain pending before the NCLT, except issues relating to the resolution plan itself, as permitted under section 60. It has no jurisdiction to entertain and decide avoidance applications, in respect of a CD which is now under a new management unless provision is made in the final resolution plan.
- iii. The RP cannot continue to act on behalf of the CD under the title of 'Former RP', once the plan is approved and the new management takes over. His continuation beyond the closure of the CIRP would in effect mean an interference in the conduct and management of the company.
- iv. The successful resolution applicant cannot file an avoidance application, as it is neither for the benefit of the resolution applicant nor for the CD after the resolution is complete.
- v. Section 26 of the Code cannot be read in a manner to mean that an application for avoidance of transactions under section 25(2)(j) can survive after the CIRP. Once the CIRP process itself comes to an end, an application for avoidance of transactions cannot be adjudicated. If the CoC or the RP are of the view that there are any transactions which are objectionable in nature, the order in respect thereof would have to be passed prior to the approval of the resolution plan.

13. Can COC replace the liquidator once appointed by AA?

In the matter of In Punjab National Bank Vs. Mr. Kiran Shah, Liquidator of ORG Informatics Ltd. [Company Appeal (AT)(Insol.) No. 102 of 2020]

The lead bank in the CoC challenged the appointment of the liquidator after the AA passed the liquidation order. The NCLAT held that after the liquidation order, the CoC has no role to play and that they are simply claimants, whose matters are to be determined by the liquidator and hence cannot move an application for his removal.

14. Liquidator is entitled to sell the perishable assets without the prior approval of AA

In the matter of Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Limited [CA- 769(PB)/2019 in C.P. No. IB-378(PB)/2017]

An application was filed by the liquidator under regulation 33(2)(d) of the IBBI (Liquidation Process) Regulations, 2016 for seeking prior permission to sell the assets of the CD by means of a private sale. The AA considered the issue whether all the requirements of clauses (a) to (d) of regulation 33(2) are required to be fulfilled to sell the assets by private sale. It held: "To our mind the proper interpretation on clauses (a) & (b) would be that a liquidator is entitled to sell the assets without requirement of prior permission after reaching the conclusion that the assets are perishable and it is likely to deteriorate significantly in value if not sold immediately. Otherwise the purpose of regulation would be defeated if the time is required to be spent in filing an application and taken permission because the assets which are perishable may not remain available for sale and perish or it may deteriorate significantly in value if not sold immediately." However, the assets to be sold at a price higher than the reserve price of a failed auction have to be sold with the prior permission of the AA.

15. Can a Liquidator replace nominee directors because of non-cooperation and the unresponsive attitude?

In Rajive Kaul Vs. Vinod Kumar Kothari & Others [Company Appeal (AT) (Ins) No. 44, 224 & 1518/2020]

The liquidator moved the AA to remove the nominee directors of the CD on the Board of its subsidiary, due to non-cooperation, active obstruction, breach of duty and breach of code of conduct. The AA held that the liquidator has the power to remove and also appoint nominee directors of the CD, which the company is bound to follow. On an appeal against the order of the

AA, the NCLAT upheld the order of the AA and held that it is an axiomatic principle in law that a company in liquidation acts through the liquidator and the liquidator steps into the shoes of the board of directors of the company under liquidation for the purpose of discharging its statutory duties. It further held that the liquidator is armed with requisite powers to remove the nominee directors and is entitled to nominate the directors, and the company is enjoined to act upon the replacement proposal of the existing nominee directors. He is not required to inform the reasons for replacing nominee directors.

16. The decision of majority creditors would bind the dissenting secured creditor at the time of sale of asset

In the matter of Mr. Srikanth Dwarkanath, Liquidator of Surana Power Limited Vs. Bharat Heavy Electricals Limited [Company Appeal (AT) (Insolvency) No. 1510 of 2019]

The liquidator faced a deadlock, when secured creditors (ten out of eleven) having 73.76% share in security interest relinquished their security interests to the liquidation estate, but one secured creditor (respondent) with 26.24% of share did not. Consequently, he could not attempt a slump sale of the CD, as all secured creditors didn't relinquish their security interests. He filed an application before the AA seeking permission to sell the assets of the CD under liquidation. The AA rejected the application stating that an arbitration award has granted lien over the assets of the CD to respondent prior to the initiation of CIRP. The liquidator challenged the order of the AA. The NCLAT relied on section 13 of the SARFAESI Act, 2002 which requires confirmation by creditors having at least 60% of the value of total debt for taking any steps about the realisation of assets by secured creditors. It noted that that since respondent did not have requisite 60% value in security interest, it did not have the right to realise its security interest. It observed that since secured creditors with 73.76% in value have relinquished the security interest into the liquidation estate, it would be prejudicial to stall the process at the instance of a creditor who has share of only 26.24%. While allowing the appeal, the NCLAT further observed that respondent did not hold a superior charge over the rest of the secured creditors and the decision of 73.76% of majority creditors would bind the dissenting secured creditor.

17. Directions from Adjudicating Authority on resistance faced by Liquidator during liquidation process

- In the matter of S. Muthuraju Vs. Commissioner of Police and Another [MA/504/2019 in CP/288/IB/2018]

A group / mob of unknown persons hurled threats with weapons and did not allow the liquidator to enter the premise of the corporate debtor (CD) and carry out his functions. The AA directed the Superintendent of Police to give adequate police protection to the liquidator to enable him to perform his duties.

- In the matter of Alchemist Asset Reconstruction Company Limited Vs. Precision Fasteners Ltd. [MA 1007/2018, MA 751/2019 in CP No. (IB)1339(MB)/2017]

The liquidator filed an application seeking possession of the flats under occupation of respondents. He submitted that refusal to handover the flats owned by the CD is likely to affect the creditors who are entitled to liquidation proceeds. The respondents claimed that they had possession of the flat based on a letter issued by the CD. The AA noted that the said letter cannot be treated as valid document whereby the alleged property has been transferred to the respondents. It ordered the respondents to vacate the flats and handover the same to the liquidator, failing which the liquidator would be entitled to get the possession in accordance with law with the help of police.

18. Distinction between the power of Resolution Professional and Liquidator

In the matter of Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]

The RP has administrative powers as opposed to quasi-judicial powers. The RP is really a facilitator of the resolution process, whose administrative functions are overseen by the CoC and by the AA. Under the CIRP Regulations, the Resolution Professional has to vet and verify claims made, and ultimately, determine the amount of each claim. As opposed to this, the liquidator, in liquidation proceedings under the Code, has to consolidate and verify the claims, and either admit or reject such claims under Sections 38 to 40 of the Code. When the liquidator determines the value of claims admitted under Section 40, such determination is a decision, which is quasi-judicial in nature,

and which can be appealed against to the Adjudicating Authority under Section 42 of the Code.

19. Equitable treatment of creditors in distribution

In the matter of *Swiss Ribbons Private Limited v. Union of India* (2019), the Supreme Court had referred the United Nations Commission on International Trade Law, Legislative Guide on Insolvency Law [UNCITRAL Guidelines] which recognizes the importance of ensuring equitable treatment to similarly placed creditors and states as follows:

“The objective of equitable treatment is based on the notion that, in collective proceedings, creditors with similar legal rights should be treated fairly, receiving a distribution on their claim in accordance with their relative ranking and interests. This key objective recognizes that all creditors do not need to be treated identically, but in a manner that reflects the different bargains they have struck with the debtor. This is less relevant as a defining factor where there is no specific debt contract with the debtor, such as in the case of damage claimants (e.g. for environmental damage) and tax authorities. Even though the principle of equitable treatment may be modified by social policy on priorities and give way to the prerogatives pertaining to holders of claims or interests that arise, for example, by operation of law, it retains its significance by ensuring that the priority accorded to the claims of a similar class affects all members of the class in the same manner. The policy of equitable treatment permeates many aspects of an insolvency law, including the application of the stay or suspension, provisions to set aside acts and transactions and recapture value for the insolvency estate, classification of claims, voting procedures in reorganization and distribution mechanisms. An insolvency law should address problems of fraud and favouritism that may arise in cases of financial distress by providing, for example, that acts and transactions detrimental to equitable treatment of creditors can be avoided.”

Further in the case of *Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta & Ors.* Civil Appeal No. 8766-67 of 2019 and Ors., the Apex court has also mentioned that the equality principle cannot be stretched to treating unequals equally, as that will destroy the very objective of the Code - to resolve stressed assets. Equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or unsecured, financial, or operational.

Source

1. IBBI- Facilitation letter - In aid of Insolvency Professionals conducting Liquidation Process dated 05th August, 2020.
2. IBBI - Publication: Section-wise Jurisprudence on IBC upto 30.09.2020
3. Judicial Pronouncements under Insolvency and Bankruptcy Code, 2016 Series 3 by Committee on Insolvency & Bankruptcy Code of ICAI

Annexure

Model Format for Assistance

Model Format of Preliminary report for the benefit of the reader is given as follows:

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH DIVISION BENCH No. _____
CP (IB) No. _____

IN THE MATTER OF

_____PRIVATE LIMITED

PRELIMINARY REPORT

(Pursuant to Regulation 13 of the IBBI (Liquidation process) Regulations, 2016

LIQUIDATOR

Reg. no.: IBBI/_____

Contents

1. Background
2. Capital Structure
3. Estimates of Asset and Liabilities as on Liquidation Commencement Date
i.e., _____ (Order dated _____)
4. Inquiries into matters relating to promotion, formation or failure of the Company
5. Proposed Plan of Action including Timeline for Liquidation along with Estimated Liquidation costs

PRELIMINARY REPORT

1. Background

_____ Private Limited is a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at _____ (hereinafter referred to as the "Corporate Debtor" for the convenience of this Hon'ble Tribunal).

On _____, Hon'ble National Company Law Tribunal (NCLT), _____ has admitted petition u/s section 7/9/10 of Insolvency and Bankruptcy Code (IBC). The petition was filed by the Company's operational / Financial creditor _____ (petitioner). Corporate Insolvency Resolution Process Commencement date is _____

Some brief information should be provided for CIRP period.

Therefore, the RP filed the application no. _____ under section 33 _____ of the IBC, 2016, seeking liquidation of the Corporate Debtor in accordance with Chapter III in part III of the IBC, 2016.

The Hon'ble NCLT Mumbai Bench allowed MA _____ and passed the order of liquidation under Section 33 of the IBC, 2016 and appointed the Liquidator, vide its order dated _____.

The Company will be liquidated in accordance with applicable provisions of the law and its assets distributed to the stakeholders as per their entitlement. This report is the Preliminary Report as required to be prepared under Regulation 13 of Insolvency and bankruptcy Board of India (Liquidation Process) Regulations, 2016.

2. Capital Structure

The Capital Structure of the Company as on Liquidation Commencement Date (i.e., _____) is as under:

Share Capital

Equity Shares

Description	No. of Shares	Face Value per share	Total Amount
Authorised Capital			
Issued Capital			

HB on Liquidation & Voluntary Liquidation Process under IBC

Subscribed Capital			
Paid-up Capital			

The Company has only one class of shares referred to as equity shares. Each holder of equity shares is entitled to one vote per share.

The details of shareholders are as under:

Sr No.	Name of the Shareholder	No. of Shares	% held
1			
2			
3			
	Total		100.00%

3. Estimates of Asset and Liabilities as on Liquidation Commencement Date

The above figures are based on the Provisional Balance Sheet of the Corporate Debtor as on _____ (i.e., Liquidation Commencement Date (LCD)).

Valuation of Liabilities:

Particulars	Book Value as on LCD	Estimated Payable
Shareholder's Funds		
Share Capital		
Reserves and Surplus		
Long Term Borrowings		
Related Parties borrowings		
Other Liabilities		
Total Value		

Annexure

Estimated claims to be paid (Based on the claim received by the liquidator till date):

Secured Financial Creditors

Name of creditor	Details of claim received	Details of claim admitted				Remarks, if any
	Date of receipt	Amount of claim admitted	Amount covered by security interest	Whether security interest relinquished? (Yes/No)	% share in total amount of claims admitted	

Operational Creditors

List of operational creditors (Government Dues)						(Amt in ₹)
Details of Claimant		Details of claim received	Details of claim admitted			Remarks, if any
Department	Government	Date of receipt	Amount of claim admitted	Whether lien / attachment removed? (Yes/No)	% share in total amount of claims admitted	

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List of operational creditors (other than Workmen, Employees and Government Dues)							
Sr No	Name of creditor	Details of claim received		Details of claim admitted			Amount of claim rejected
		Date of receipt	Amount claimed	Amount of claim admitted	Whether lien/attachment removed? (Yes/No)	% share in total amount of claims admitted	
1							
2							
3							
4							

Valuation of Land and Building:

Sr No	Particulars	Book Value as on _____	Estimated Value to realise
1	Factory Land		
2	Factory Building and sheds		
Total Value			

Annexure

Factory Unit at _____

This consisted of Land and Building detail as follows:

Land & Buildings at _____			
Sr. No	Details	Type of structure	Area In sq. mtrs.
A	Land		
B	Building Structures		
1	Factory Building		

Valuation of Plant and Machinery:

Sr.	Particulars	Book Value in INR	Estimated Value to realise
1			
2			
Total Value			

Plant & Machinery at

Sr. No.	Description of Machineries and Equipment	Qty.	Average Realisable Value in Rs.
1			
	Total		

HB on Liquidation & Voluntary Liquidation Process under IBC

NOTES:

Valuation of Securities or Financial Assets:

Sr.	Particulars	Book Value in INR as on LCD	Estimated Value to realise
	ASSET CLASS		
A	Non-Current Assets		
I	Investments		
	Total (A)		
B	Current Assets		
I	Inventories		
II	Cash & Bank Balances		
III	Sundry Debtors		
IV	Loans & Advances		
V	Income Tax		
VI	GST Receivables		
	Total (B)		
	Total Value (A+B)		

Intangible Assets:

This includes Artwork and Trademarks and Copyrights.

Sr. No.	Description of Intangible Assets	Qty.	Realisable Value
1.	Trademark		
2.	Artwork		
	Total		

4. Inquiries into matters relating to promotion, formation or failure of the Company

At the time of CIRP, the Liquidator (then RP) had already carried out the detailed Forensic Audit of the Corporate Debtor and there were no material findings in the same. Hence, I (do not) intend to make any further inquiry into any matter relating to the promotion, formation or failure of the corporate debtor or the conduct of the business thereof.

5. Proposed Plan of Action including Timeline for Liquidation along with Estimated Liquidation costs

The following steps are carried out/ planned to carry out for liquidation of the Company:

1. The Corporate Debtor has current accounts with _____
2. M/s _____ has been appointed to prepare and maintain the Registers and Books of accounts in compliance with Regulation 6 of IBBI (Liquidation Process) Regulations, 2016. _____ appointed to certify receipt and payment account for each quarter end.
3. A List of Stakeholders is being filed with the Adjudicating Authority, along with this report, in pursuance of Regulation 31 of IBBI (Liquidation Process) Regulations, 2016. While care has been exercised to finalise the list of Stakeholders and the claim amounts mentioned therein, the same is subject to further modifications, if any, and such modifications will be carried out in the manner as directed by the Adjudicating Authority.
4. A Public Announcement for filing of List of Stakeholders with the Adjudicating Authority is being made in following newspapers in pursuance of Regulation 31(2) in the manner specified in Regulation 12 (3) on _____ in the following newspaper
 - A.
 - B.
5. The First Progress report will be filed with the Adjudicating Authority by _____
6. All the assets of the Company are charged to the _____. The Liquidator has received communication for relinquishment of rights on property from the Bank in pursuance of Section 52 (1) (a).

7. The Asset Memorandum in pursuance of Regulation 34 of IBBI (Liquidation Process) Regulations, 2016 is being filed along with this Preliminary Report.

Realisation of Assets

- 1) The objective being maximise the value in realisation of Assets, as a first step the Liquidator will reach out to potential buyers, who may give better value. The Liquidator shall endeavour to generate their interest in proposed Public Auction of the assets of the Corporate Debtor.
- 2) A brief Information Memorandum will be prepared by the Liquidator, containing the information sheet of the different categories of assets.
- 3) The Liquidator will send the Information Memorandum to the potential buyers, and also inform them about the dates and details of Public Auction.
- 4) Newspaper Advertisements (Notice of Sale) will be given for sale of assets including at Factory Unit classifying the different assets into broad categories and mentioning the reserve price for each category of assets along with Earnest Money Deposit. The Public Announcement of the auction shall be made in the manner specified in Regulation 12 (3).
- 5) The Assets will be sold strictly on “as is where is” basis and “non-recourse” basis.
- 6) Terms and conditions of sale will be provided in Tender documents, which will be issued to potential buyers (bidders) pursuant to the Notice of Sale.
- 7) The Liquidator may be required to make several visits to the Factory Unit to enable the potential bidder to inspect the assets and also require to stay in Factory Unit to meet the potential bidder and agents to sell the assets.
- 8) The assets will be sold through an electronic auction on an online portal, where the interested buyers can register, bid and receive confirmation of the acceptance of their bid online.
- 9) The bid of the highest bidder will be accepted, and such bidder will be invited to make the balance payment within 30 to 45 days of intimation to him about acceptance of his bid.

- 10) The Successful Bidder shall bear all the necessary expenses like applicable stamp duties / additional stamp duty / transfer charges, registration expenses, fees, etc., for transfer of the Property (ies) in his / her name.
- 11) The sale certificate will be issued to the successful bidder only in accordance with the applicable laws. The sale certificate will be issued in the name of the Successful Bidders specified in the bidding application form
- 12) Alternatively, in case the Asset Sale is not successful at Reserve Price through Public Auction made in pursuance of Regulation 33(1) or in case, any one or more categories of assets are not sold through online Public Auction, the Liquidator will endeavour to sell the unsold assets of the Corporate Debtor by means of private sale in pursuance of Regulation 33(2).
- 13) In case of Private Sale, The Liquidator will categorise and sell different sets of assets collectively and in parcels. This can be categorised as under:
 - (i) Plant & Machinery
 - (ii) Land & Building (may be as one unit or in multiple unit basis)
 - (iii) Intangible assets (including patent & artwork)
 - (iv) Selling the business as going concern

Plant & Machinery: The value of the assets are not significant and old and not used since the last... year. Hence the assets may be sold as scrap if the auction failed.

Unless some other factors/information emerges during liquidation, the liquidation proceeds will be distributed in the order as mentioned in Section 53 of the code.

The Final Report in pursuance of Regulation 45 shall be filed with the Adjudicating Authority, along with the application for dissolution of Corporate Debtor under Section 54 of the IBC, 2016.

Time-line

Activity	Start Date	End Date
Preparing Information Memorandum covering information sheet on different categories of Assets proposed to be sold		
Approaching industry manufacturers, industry Players and other potential bidders		
Tie-up with online auction platform		
Cleaning of Factory Building		
Public Announcement (Newspaper Ads) of the Auction		
Visits to Factory Unit along with Potential Bidders for different categories of assets		
Commencement & Closure of E-Auction Process		
Payment Completion by Successful Bidder		
Alternate Option (in case of failure of online auction)		
Private Sale – Approaching other people for sale of varied category of Assets		
Visits to Factory unit with various potential buyers of different asset categories.		
Approaching estate brokers and Agents, along with visits to Factory Unit		
Completion of Sale of Assets		
Payment Completion		
Distribution of Liquidation Proceeds to Stakeholders		
Filing of Final Report to NCLT, Mumbai along with application for Dissolution of the Corporate Debtor		

The Liquidation of the Company is estimated to be over by _____
i.e., within 1 year of Start of Liquidation order.

Annexure

Estimated Liquidation Costs

The break-up of estimated Liquidation Costs, inclusive of Liquidator's fee and applicable taxes would be as under:

Sr. No.	Particulars	Amount already incurred	Estimated to be incurred	Total
1	Expenses towards Newspaper Advertisements			
2	Insurance Premium (Standard Fire & Allied Perils) Policy			
3	Expenses towards Factory Unit Visit			
4	Conveyance & Misc. expenses for visiting Bank, office of the Corporate Debtor, Auditors, etc.			
5	Postage, Stationery, Xerox, & Misc. Charges			
6	Filing Fee with ROC			
7	Valuation Fees			
8	Fee payable to Accounting Support Staff			
9	Audit fee for Pre – Liquidation period & Liquidation Period.			
10	Fees for cleaning of factory area			
11	Fee payable to E Auction Service Provider			
12	Legal and Filing expenses			
13	Security Fees			
14	Contingencies			
	Total other Liquidation Costs			
15	Liquidator's Fee as per provision			
	Total			

Liquidator for _____ Private Limited
(Reg. no. IBBI/_____)

Date:

Place: