

LIQUIDATION UNDER IBC CODE



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When Liquidation Can be initiated ?

Section 33

- Adjudicating authority does not receive a resolution plan on or before the expiry of the maximum time permitted for CIRP;
- Resolution plan is rejected by the Adjudicating authority (under section 31);
- Committee of Creditor resolves to liquidate before approval of resolution plan with 66% voting share.
- If the approved resolution plan is contravened by the corporate debtor
- **Resolution Plan:** A plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part-II



Liquidation (Section 33) continue.....

- 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,
- 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

Appointment of Liquidator (Section 34)

- 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 1[Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,] shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub- section (4).
- 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.
- Extend Cooperation
- Replace the resolution professional

Powers and Duties of Liquidator (Section 35)

- (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: (29A applicable)

Powers and Duties of Liquidator

- (g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;
- h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

Powers and Duties of Liquidator

- (i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;
- (j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;
- (k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor;
- (l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

Powers and Duties of Liquidator

- (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
- The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53 . Not binding. MoM to be shared with other stakeholders

Liquidation Estate

Following should be included:

- (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;

Liquidation Estate

- (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.

Liquidation Estate

- The following shall not include in the liquidation estate
 - 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;

Liquidation Estate

- (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; 41
- (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.

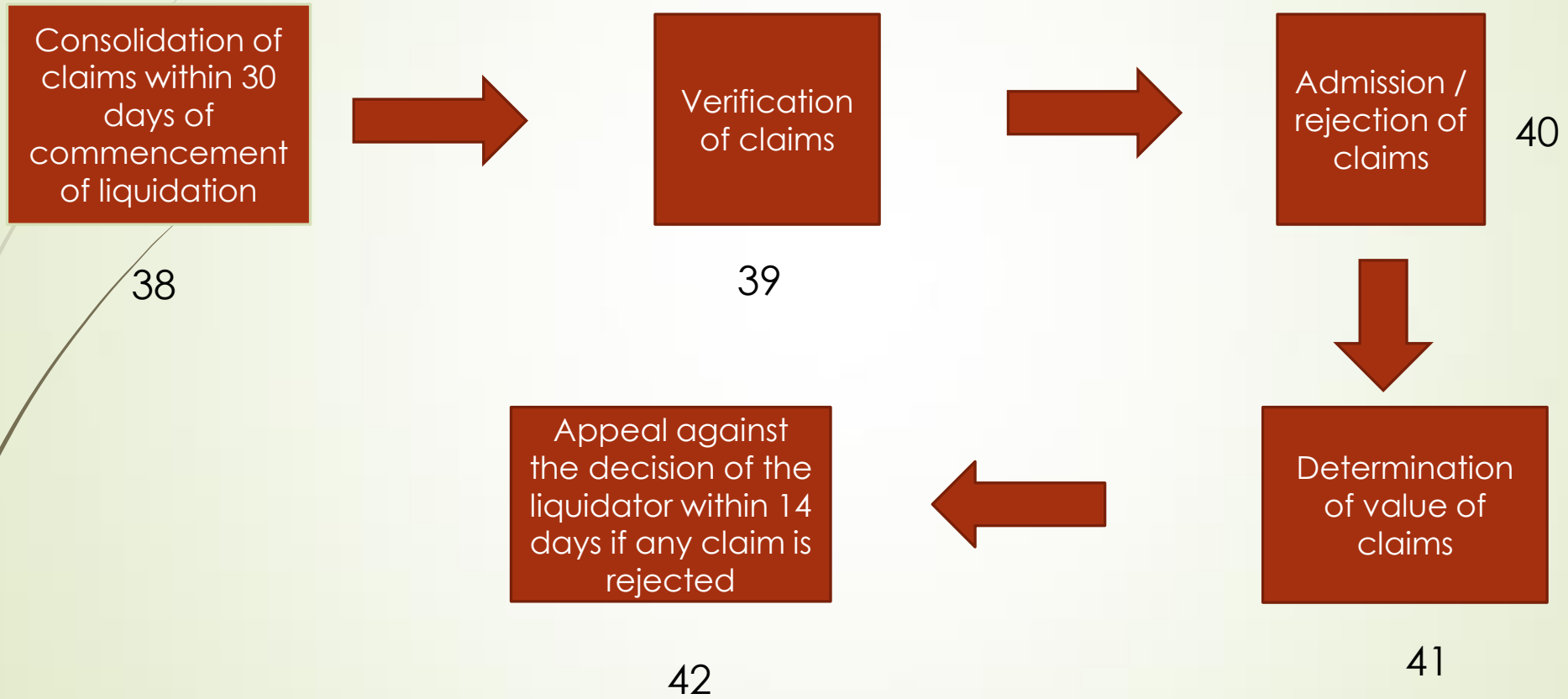
Power to access the information (Section 37)

- (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.

Public announcement and receipt of claims R-12

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

Verification of Claims



Preferential transactions and relevant time (Section 43)

(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.

➤ (4) 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.

Powers of liquidator to access information.

(1) 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 sources as may be prescribed by 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.

Orders in case of preferential transactions (Section 44)

- any property transferred in connection with the giving of the preference to be vested in the corporate debtor;
- 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
- release or discharge (in whole or in part) of any security interest created by the corporate debtor;
- require any person to pay such sums in respect of benefits received by him from the corporate debtor
- 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
- 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
- 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:

Avoidance of undervalued transactions (section 45)

- (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.

Relevant period for avoidable transactions (Section 46)

- (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.

Application by creditor in cases of undervalued transactions (Section 47)

- (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.

Order in cases of undervalued transactions (section 48)

- (a) require any property transferred as part of the transaction, to be vested in the corporate debtor;
- (b) release or discharge (in whole or in part) any security interest granted by the corporate debtor;
- (c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be, as the Adjudicating Authority may direct; or
- (d) require the payment of such consideration for the transaction as may be determined by an independent expert.

Transactions defrauding creditors (Section 49)

(1) Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor -

- (a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or
- (b) in order to adversely affect the interests of such a person in relation to the claim, the Adjudicating Authority shall make an order-
 - (i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and
 - (ii) protecting the interests of persons who are victims of such transactions:
- Provided that an order under this section -
 - (a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and
 - (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

Extortionate credit transactions (section 50)

- (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.

Orders of Adjudicating Authority in respect of extortionate credit transactions (section 51)

- 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.

Secured creditor in liquidation proceedings (section 52)

- (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.

Secured creditor in liquidation proceedings (section 52)

(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.

Distribution of Assets: Order of priority (Section 53)

- (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;

Distribution of Assets: Order of priority (section 53)

- (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

Dissolution of corporate debtor (section 54)

- 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.
- The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly
- A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.

VOLUNTARY LIQUIDATION OF CORPORATE PERSONS (Section 59)

Declaration
from Directors

A corporate person can liquidate itself even if there is no debt or it will be paid fully from the proceeds

Company is not being liquidated to defraud any person

Special
Resolution

Annex-audited financial statements (previous 2 years) & valuation report of assets

Approval for liquidation & appointment of Insolvency Professional(Within 4 weeks of declaration)

Creditors
Approval

Creditors representing 2/3rds in value of debt shall approve the special within 7 days- The voluntary liquidation process shall commence

VOLUNTARY LIQUIDATION OF CORPORATE PERSONS

ROC &
BOARD

Within 7 days the Registrar of Companies & Board shall be intimated

Adjudicating
Authority

Where affairs are completely wound up and assets liquidated – liquidator shall apply to adjudicating authority for dissolution

Dissolution

Adjudicating authority shall order for dissolution – copy of order shall be filed with Registrar within 14 days

Powers and Functions of Liquidator – Regulation


- The liquidator shall prepare and submit:
 - (a) a preliminary report; (Within 75 days from the liquidation commencement date) (Regulation 13)
 - The report should include capital structure of corporate debtor
 - Estimates of its assets and liabilities based on books of the CD
 - Whether he intends to do any inquiry in promotion formation or failure of CD
 - The proposed plan of action for liquidation –time line- estimated liquidation cost
 - (b) an asset memorandum;

(c) Progress report(s): (Regulation 15)

First progress report with in 15 days after the end of quarter in which he is appointed

- subsequent Progress Report(s) within fifteen days after the end of every quarter during which he acts as liquidator
- (a) appointment, tenure of appointment and cessation of appointment of 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



- 
- (d) developments in any material litigation, by or against the corporate debtor;**
 - (e) filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of 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**

 - (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:**



(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

➤ 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.

➤ 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.

Asset memorandum. (R-34)

- (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 set of assets or assets in parcels or assets in a slump sale, as the case may be, valued in accordance with Regulation 35, if intended to be sold as specified in Regulation 32(b);
 - (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.

Asset sale report (R-36)

- 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.

Registers and books of account. (R-6)

(a) Cash Book;

- **(b) Ledger;**
- **(c) Bank Ledger;**
- **(d) Register of Fixed Assets and Inventories;**
- **(e) Securities and Investment Register;**
- **(f) Register of Book Debts and Outstanding Debts;**
- **(g) Tenants Ledger;**
- **(h) Suits Register;**
- **(i) Decree Register;**
- **(j) Register of Claims and Dividends;**
- **(k) Contributories Ledger;**
- **(l) Distributions Register;**
- **(m) Fee Register;**
- **(n) Suspense Register;**
- **(o) Documents Register;**
- **(p) Books Register;**
- **(q) Register of unclaimed dividends and undistributed properties deposited in accordance with Regulation 45; and**
- **(r) such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor.**

Appointment of professionals (R-7)

- (1) 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.
- (2) The liquidator shall not appoint a professional under sub-regulation (1) who is his relative, is a related party of the corporate debtor or has served as an auditor to the corporate debtor in the five years preceding the liquidation commencement date.
- (3) A professional appointed or proposed to be appointed under sub-regulation (1) shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders, or the concerned corporate debtor as soon as he becomes aware of it, to the liquidator.

Consultation with stakeholders (R-8)

- (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.
- Personnel to extend cooperation to liquidator (R-9)

Disclaimer of onerous property (R-10)

- (1) Where any part of the property of a corporate debtor consists of-
- (a) land of any tenure, burdened with onerous covenants;
- (b) shares or stocks in companies;
- (c) any other property which is not saleable or is not readily saleable by reason of the possessor thereof being bound either to the performance of any onerous act or to the payment of any sum of money; or
- (d) unprofitable contracts;
- the liquidator may, notwithstanding that he has endeavored to sell or has taken possession of the property or exercised any act of ownership in relation thereto or done anything in pursuance of the contract, 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.

Disclaimer of onerous property (R-10)

(2) The liquidator shall not make an application under sub-regulation (1) if a person interested in the property or contract inquired in writing whether he will make an application to have such property disclaimed, and he did not communicate his intention to do so within one month from receipt of such inquiry.

- (3) The liquidator shall serve a notice to persons interested in the onerous property or contract at least seven days before making an application for disclaimer to the Adjudicating Authority:
- *Explanation:* A person is interested in the onerous property or contract if he-
- (a) is entitled to the benefit or subject to the burden of the contract ; or
- (b) claims an interest in a disclaimed property or is under a liability not discharged in respect of a disclaimed property.
- (4) Subject to the order of the Adjudicating Authority approving such disclaimer, the disclaimer shall operate to determine, from the date of disclaimer, the rights, interest and liabilities of the corporate debtor in or in respect of the property or contract disclaimed, but shall not, except so far as is necessary for the purpose of releasing the corporate debtor and the property of the corporate from liability, affect the rights, interest or liabilities of any other person.
- (5) A person affected by the disclaimer under this Regulation shall be deemed to be a creditor of the corporate debtor for the amount of the compensation or damages payable in respect of such effect, and may accordingly be payable as a debt in liquidation under section 53(1)(f).

Extortionate credit transactions (R-11)

- A transaction shall be considered an extortionate credit transaction under section 50(2) where the terms-
- (1) require the corporate debtor to make exorbitant payments in respect of the credit provided; or
- (2) are unconscionable under the principles of law relating to contracts.

➤ Early dissolution – (R-14)

- 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.

➤ CLAIMS

- 16. Proof of claim
- 17. Claims by operational creditors.
- 18. Claims by financial creditors.
- 19. Claims by workmen and employees.
- 20. Claims by other stakeholders.
- 21. Proving security interest.
- 22. Production of bills of exchange and promissory notes.
- 23. Substantiation of claims.
- 24. Cost of proof.
- 25. Determination of quantum of claim.
- 26. Debt in foreign currency.
- 27. Periodical payments.
- 28. Debt payable at future time. $X / (1+r)^n$
- 29. Mutual credits and set-off.
- 30. Verification of claims : 30 days

List of stakeholders. (R - 31)

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.
- The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of claims, and the filing of the list shall be announced to the public in the manner specified in Regulation 12(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.
 - 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.
 - 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.

Manner of sale. (R-32) Mode of sale. (R-33)

The

(a) sell an asset on a standalone basis; or (b) sell

liquidator

may

- ▶ (i) the assets in a slump sale,
 - ▶ (ii) a set of assets collectively, or
 - ▶ (iii) the assets in parcels; or;
 - ▶ (c) sell the corporate debtor as a going concern.
-
- ▶ (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.

MODE OF SALE (Regulation 33)

Auction:

- 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.

Auction

The liquidator shall prepare terms and conditions of sale, including reserve price, earnest money deposit as well as pre-bid qualifications, if any.

- (4) The reserve price shall be the value of the asset arrived at in accordance with Regulation 34. Such valuation shall not be more than six months old. However, in the event that an auction fails at such price, the liquidator may reduce the reserve price up to seventy-five per cent of such value to conduct subsequent auctions.
- (5) The liquidator shall make a public announcement 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.

Auction

- (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)** Physical auction- maximize the realization-permission from AA
 - **(9)** An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders.
 - **Multiple rounds to maximize the realization**
 - **On the close Invitation to highest bidder- balance sale consideration with in 15 days –on full payment execute certificate of sale**

Private Sale

- The liquidator shall prepare a strategy to approach interested buyers for assets to be sold by private sale.
- 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.
- The sale shall stand completed in accordance with the terms of sale.
- 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.

Valuation of assets intended to be sold (R-35)

- (1) The liquidator shall appoint at least two registered Valuer to value the assets as required under Regulation 34(2).
- (2) The provisions of Regulation 7 shall apply *mutatis mutandis* to registered Valuer appointed under sub-regulation (1).
- (3) The registered Valuer appointed under sub-regulation (1) shall independently submit to the liquidator the estimates of the realizable value of the asset(s) computed in accordance with internationally accepted valuation standards, after physical verification of the assets of the corporate debtor.
- (4) The average of the estimates received under sub-regulation (3) shall be considered the value of the assets.

Realization of security interest by secured creditor (R-37)

(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 of 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).

Distribution of unsold assets (R-38) Recovery of monies due (R-39)

(1) The liquidator may, with the permission of the Adjudicating Authority, distribute amongst the stakeholders, an asset that cannot be readily or advantageously sold 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.

➤ The liquidator shall endeavour 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.

Liquidator to realize uncalled capital or unpaid capital contribution (R-40)

- (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.
- *Explanation:* For the purpose of this chapter and Schedule I, 'assets' include an asset, all assets, a set of assets or parcel of assets, as the case may be, which are being sold.

PROCEEDS OF LIQUIDATION AND DISTRIBUTION OF PROCEEDS (R-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

Distribution (R-42) Return of money (R-43)

- (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 six months 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.
- 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.

Completion of liquidation (R-44)


- (1)** The liquidator shall liquidate the corporate debtor within a period of two years.
- (2)** If the liquidator fails to liquidate the corporate debtor within two years, he shall make an application to the Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation

Final report prior to dissolution (R-45)

- (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 final report shall form part of the application for the dissolution of the corporate debtor to the Adjudicating Authority to be made under section 54.

Unclaimed proceeds of liquidation or undistributed assets (R-46)

- (1) Before the order of dissolution is passed under section 54(2), the liquidator shall apply to the Adjudicating Authority 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.
- ▶ (2) Any liquidator who retains any money which should have been paid by him into the Companies Liquidation Account under this Regulation shall pay interest on the amount retained at the rate of twelve per cent per annum, and also pay such penalty as may be determined by the Board.
 - ▶ (3) The liquidator shall, when making any payment referred to in sub-regulation (1), furnish to the authority with which the corporate debtor is registered, and the Board, a statement setting forth the nature of the sums included, the names and last known addresses of the stakeholders entitled to participate therein, the amount to which each is entitled to and the nature of their claim.
 - ▶ (4) The liquidator shall be entitled to a receipt from the Reserve Bank of India for any money paid to it under sub-regulation (2), and such receipt shall be an effectual discharge of the liquidator in respect thereof.
 - ▶ (5) A person claiming to be entitled to any money paid into the Companies Liquidation Account may apply to the Board for an order for payment of the money claimed; which may, if satisfied that such person is entitled to the whole or any part of the money claimed, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.
 - ▶ (6) Any money paid into the Companies Liquidation Account in pursuance of this Regulation, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government.



R-



Thank you.....

