Insolvency and Bankruptcy Board of India

Subject: Discussion Paper on Corporate Liquidation Process

The Governing Board in its meeting on 28th December, 2018 had directed that a discussion paper may be prepared covering the issues dealt in the Board Note No.42A/2018, including (a) valuation during liquidation, if the liquidator considers it necessary, (b) validity period of valuation in the annexure, (c) sale of the business as a going concern, (d) meeting the expenses of liquidation when the corporate has no resources, (e) period during which sale consideration should be received, (f) possibility of a monitoring committee to monitor liquidation, etc., and put out for public comments. Accordingly, this note proposes a discussion paper. This factors in the inputs received at several roundtables organised by the IBBI, three IPAs and the SIPI, as consolidated by the SIPI, and notes received by the IBBI for the Liquidator's meeting held on 30th January, 2019.

A. Sale as a Going Concern

2. The Insolvency and Bankruptcy Code, 2016 (Code) provides a market mechanism for rescuing, failing but viable corporate debtors (CD) and liquidating, failing and unviable ones. There is no mathematical formula to identify a CD as viable and another as unviable. If correct identification is not made, a viable CD will be liquidated and unviable one will be rescued. If an unviable CD is rescued, it is bad. But it can be rectified. However, if a viable one is liquidated, it is disastrous for an economy and cannot be rectified. That is why the Code envisages the market to make an endeavour first to rescue the CD and liquidate it after arriving at a conclusion that it is not viable. It also envisages course correction, if the market wrongly proceeds to liquidate a viable CD. The law does not envisage the State to intervene in wrong identification but provides a flexibility to market to make course correction if it so wishes. The provisions in the law and judicial pronouncements support this, as explained hereunder:

2.1 The Code is a law for resolution, as evident from the long title to the Code, which reads as under:

"An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of

credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, ….."

2.2 The Hon'ble NCLAT, in the matter of Binani Industries Limited Vs. Bank of Baroda & Anr., clarified the objectives of the Code as under:

"*The first order objective is "resolution". The second order objective is "maximisation of value of assets of the 'Corporate Debtor'' and the third order objective is "promoting entrepreneurship, availability of credit and balancing the interests". This order of objective is sacrosanct*."

2.3 Section 12A, inserted by an Ordinance, allows withdrawal of application after it has been admitted. It reads as under:

"*12A. Withdrawal of application admitted under section 7, 9 or 10. –*

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."

2.4 The Hon'ble Supreme Court, in the matter of Brilliant Alloys Private Limited Vs. Mr. S. Rajagopal & Ors, clarified that withdrawal may be allowed even after invitation of expression of interest:

"*According to us, this Regulation (30A allowing withdrawal up to invitation of expression of interest) has to be read along with the main provision Section 12A which contains no such stipulation. Accordingly, this stipulation can only be construed as directory depending on the facts of each case*."

2.5 The Hon'ble Supreme Court, in the matter of Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors, clarified as under:

"We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case."

2.6 The Code does not enable a stakeholder to file an application for liquidation. It enables filing an application for initiating corporate insolvency resolution process. Only after a resolution fails to yield resolution plan, the CD is ordered into liquidation. As evident from section 33 of the Code:

"33. Initiation of liquidation. –

(1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period ..... does not receive a resolution plan …… 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) ...

(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….

(3) Where the resolution plan approved by the Adjudicating Authority 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 ...."

2.7 The Companies Act, 2013 (Act) envisages compromise or arrangements. Section 230 thereof, as amended by the Code, enables compromise or arrangement on the application by a liquidator appointed under the Code, as under:

"*230. Power to compromise or make arrangements with creditors and members.—*

(1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them,

the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, order

a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs…."

2.8 Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016 (Regulations) envisage sale as a going concern. It reads as under:

"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."

2.9 While relying on regulation 32 (e) of the Regulations, the Hon'ble Supreme Court in the matter of Arcelormittal India Private Limited Vs. Satish Kumar Gupta & Ors observed:

"*The only reasonable construction of the Code is the balance to be maintained between timely completion of the corporate insolvency resolution process, and the corporate debtor otherwise being put into liquidation. We must not forget that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible*."

2.10 While relying on regulation 32 (e) of the Regulations, the Hon'ble Supreme Court in the matter of Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors, observed:

"What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. ...

It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation."

2.11 The Hon'ble NCLAT, in the matter of S. C. Sekaran Vs. Amit Gupta & Ors, directed as under:

" .. we direct the 'Liquidator' to proceed in accordance with law. He will verify claims of all the creditors; take into custody and control of all the assets, property, effects and actionable claims of the 'corporate debtor', ***carry on the business of the 'corporate debtor' for its beneficial liquidation*** *etc. as prescribed under Section 35 of the I&B Code…. Before taking steps to sell the assets of the 'corporate debtor(s)' (companies herein), the Liquidator will take steps in terms of Section 230 of the Companies Act, 2013. The Adjudicating Authority, if so required, will pass appropriate order. Only on failure of revival, the Adjudicating Authority and the Liquidator will first proceed with the sale of company's assets wholly and thereafter, if not possible to sell the company in part and in accordance with law.*

.. The 'Liquidator' if initiates, will complete the process under Section 230 of the Companies Act within 90 days…".

2.12 The Hon'ble NCLAT, in the matter of Y. Shivram Prasad Vs. S. Dhanapal & Ors, observed as under:

".. we hold that the liquidator is required to act in terms of the aforesaid directions of the Appellate Tribunal and take steps under Section 230 of the Companies Act. If the members or the 'Corporate Debtor' or the 'creditors' or a class of creditors like 'Financial Creditor' or 'Operational Creditor' approach the company through the liquidator for compromise or arrangement by making proposal of payment to all the creditor(s), the Liquidator on behalf of the company will move an application under Section 230 of the Companies Act, 2013 before the Adjudicating Authority i.e. National Company Law Tribunal, Chennai Bench, in terms of the observations as made in above. On failure, as observed above, steps should be taken for outright sale of the 'Corporate Debtor' so as to enable the employees to continue.".

2.13 After appointment of the RP as Liquidator in the matter of M/s. Gujarat NRE Coke Limited, workmen and employees submitted that the regulations provide for slump sale of assets and, therefore, permits sale of the business of the CD, including all its assets and properties, as a going concern and Hon'ble Supreme Court and High Courts have often directed

sale of assets of the company as a going concern to preserve employment, particularly when CD is a going concern. Accordingly, the Hon'ble NCLT directed: *"The Liquidator shall try to dispose off the Corporate Debtor company as a going concern after publication of notice in newspaper with the reserve price which shall be equal to the total debt amount including interest and maximum period applicable for trying the sale of the Corporate Debtor as a going concern will be only three month from the date of the order if the process of sale as a going concern is failed during this period, then process of the sale of the assets of the company will be according to the provisions of sale of asset of the Corporate Debtor prescribed under section 33, Chapter VI of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. In case it is not concluded within this period, the order of this Court directing the sale of the company as a going concern shall stand set aside and corporate debtor to be liquidated in the manner as laid down in Chapter III of the Liquidation process provided in Insolvency & Bankruptcy Code."*

2.14 The Adjudicating Authority (AA) has directed sale as going concern in several matters:

(a) In the matter of Edelweiss Asset Reconstruction Company Ltd. Vs. Bharati Defence and Infrastructure Ltd.:

".... we direct that the Liquidator shall endeavour to sell the Corporate Debtor company as a going concern.

.... The maximum period applicable for trying the sale on a going concern basis of the Corporate Debtor will be only six months from the date of the order.

In case the efforts to sell the company as a going concern fails during the stipulated period of six months, then the process of the sale of the assets of the company will be undertaken by the liquidator as prescribed under Chapter- III of IBC, 2016 and the relevant regulations of IBBI."

(b) In the matter of Reid & Taylor:

".. However, last but not the least, we request the creditors and the RP to somehow see that the Company is sold as a going concern and the interest of workers/ employees be protected to their level best."

(c) In the matter of Rukmani Infra Projects Private Limited:

"...this Authority would advice the liquidator to liquidate them as going concern as to fetch maximum liquidation price…".

2.15 The Bankruptcy Law Reforms Committee (BLRC) drew on the liquidation experiences both in India as well as other countries and listed two other ways, in addition to sale of assets,

in which higher economic value can be realised other than just sale of assets. It provided the following drafting instruction:

"Box 5.21: Drafting instructions for regulations on realisation in Liquidation other than through sale of assets

a. There could be two sources of additional value in Liquidation other than sale of assets. These include:

(a) Proposals for sale of the business as a whole or in parts.

(b) Value recovered from vulnerable transactions.

b. In proposals for sale of the business:

(a) The liquidator will call for proposals to buy the business, either in parts or as a whole, to maximise economic value.

(b) The proposals in Liquidation will be evaluated on both:

i. Value offered, and

ii. Ranking of the proposal in terms of impact on non-secured creditors, including operational creditors.

(c) The creditors committee as the board of the erstwhile entity will select the best of the proposed solutions.

……"

2.16 The BLRC made a distinction between business and firm. The business is the underlying structure whose operations generate revenue, either as a whole or in parts. The firm includes management, ownership and financial elements around this core business. In the liquidation phase, the liquidator can coordinate proposals from the market on sale of the business, in parts or even as a whole. The evaluation of these proposals come under matters of business. The selection of the best proposal is, therefore, left to the creditors' committee which form the board of the erstwhile firm in liquidation.

3. It thus emerges that rescuing the CD or its business, even after liquidation order has been passed under section 33 of the Code, has certain advantages and is the preferred choice of the law, the authorities and the stakeholders. Many recent decisions of the Appellate Authority and the AA have directed the liquidators to make efforts to sell the CD as a going concern. The BLRC anticipated this for realisation of higher value. It helps in realisation of higher value, value preservation, and rescuing a viable business. It minimises disruption to business and prevents loss of employment. The law enables broadly two options in this regard:

3.1 **Compromise or arrangement under section 230 of the Companies Act, 2013**: If there is a proposal for a compromise or arrangement, the Liquidator should make an application to the NCLT under the Act (not the Adjudicating Authority under the Code) and then proceed in the manner directed by the NCLT in accordance with the Act. While compromise or arrangement under section 230 of the Act is proposed, it must be utilised first and only on its failure, liquidation under the Code should commence. The Code read with regulations may provide that where a credible proposal is made to the Liquidator under section 230 of the Act for compromise or arrangement of the CD within three days of the date of order under section 33 of the Code for liquidation, the Liquidator shall file an application under the said section within seven days of the order of liquidation. If approved by the NCLT, the Liquidator shall complete the process under section 230 within 90 days of the order of liquidation. The Regulations may provide that liquidation process under the Code shall commence at the earliest of the four events (a) there is no proposal for compromise or arrangement within three days, (b) the NCLT does not approve the application under section 230 of the Act, (c) the process under section 230 is not completed within 90 days or such extended period as may be allowed by the NCLT, or (d) the process under section 230 is not sanctioned under section 230(6) of the Act. A tight time schedule is necessary to ensure that the liquidation process is concluded in view of provision in the regulation 44(1) of the Regulations which requires the Liquidator to liquidate the CD within a period of two years.

3.2 **Going Concern Sale under regulation 32 of the Regulations**: The Liquidator has the option to explore Going Concern Sale (GCS) - sale of the CD as a going concern or sale of the business of the CD as going concern - alongside other available modes for sale. It is necessary to provide a complete framework to enable him to exercise this option. Sale of CD as a going concern under regulation 32(e) and sale of business of CD as a going concern under regulation 32(f) are different.

3.2.1 **Sale under regulation 32(e):** In this GCS, the CD will not be dissolved. It will form part of liquidation estate. It will be transferred along with the business, assets and liabilities, including all contracts, licenses, concessions, agreements, benefits, privileges, rights or interests to the acquirer. The consideration received from sale will be split into share capital and liabilities, based on a capital structure that the acquirer decides. There will be an issuance of shares by the CD being sold to the extent of the share capital. The existing shares of the CD

will not be transferred and shall be extinguished. The existing shareholders will become claimants from liquidation proceeds under section 53 of the Code.

3.2.2 **Sale under regulation 32(f):** The business(s) along with assets and liabilities, including intangibles, will be transferred as a going concern to the acquirer, without transfer of the CD, and therefore, the CD will be dissolved. The existing shares will be extinguished. The remaining assets, other than those sold as part of business will be sold and the proceeds thereof will be used to meet the claims under section 53 of the Code.

4. Both the options under the Act and the Code have some common threads:

4.1 **Employment:** In terms of section 33(7) of the Code, the order for liquidation is deemed to be a notice of discharge to the officers, employees and workmen of the CD, except when the business of the CD is continued during the liquidation process by the Liquidator. Section 35(1)(e) allows the Liquidator to carry on the business of the CD for its beneficial liquidation. Since both the options require continuation of business in beneficial interest, the employees may not be discharged. They should be transferred along with the CD or the business of the CD.

4.2 **Continuation of Going Concern:** The issue of an order under section 33 of the Code for liquidation does not mean cessation of business immediately. The classic jurisprudence of liquidation laws suggests that the Liquidator can keep the entity as a going concern for the benefit of stakeholders. Even section 35 (1) (e) of the Code requires the Liquidator to carry on the business of the CD for its beneficial liquidation as he considers necessary. He may carry on business to the extent necessary for realization of better value from GCS.

4.3 **Ineligibility:** Section 35(1)(g) of the Code mandates that the Liquidator shall not sell the immovable and movable property or actionable claims of the CD in liquidation to any person who is not eligible to be a resolution applicant. This prohibits GCS to persons ineligible under section 29A. However, such ineligible persons may retain or acquire the CD under section 230 of the Act. It may be necessary to harmonise these provisions to provide level playing field.

4.4 **Dissolution:** In either case, the CD may continue to exist with or without business on completion of the process. If the CD is left without any business, it shall be liquidated and then dissolved. If it is left with business, it shall carry on business. In that case, the CD shall not be

liquidated or dissolved. It is important to note that even if an order under section 33 of the Code has been passed for liquidation of a CD, on completion of the process under section 230 of the Act or GCD under the Code, the CD may not be liquidated or dissolved. If the assets of the CD are not completely liquidated, it shall not be necessary for the Liquidator to make an application under section 54(1) of the Code to the AA for the dissolution of the CD.

Going Concern Sale

5. The framework for GCS may need to provide for the following:

5.1 **Who may exercise the option for GCS?**

The stakeholders as well as the Liquidator may exercise the option as under:

5.1.1 The CoC may be enabled to recommend, in case it deems fit, GCS, including the type of GCS - sale of the CD as a going concern or sale of the business of the CD as going concern - and the timeline for its completion, while passing a resolution for liquidation during the corporate insolvency resolution process (CIRP). If the CoC recommends GCS, the Liquidator shall proceed with the other options for sale, on failure of GCS or expiry of timeline for GCS given by the CoC. This means GCS and other options for sale will be sequential.

5.1.2 If there is no recommendation from the CoC, the Liquidator shall explore all options of sale simultaneously. He shall offer for sale a package of assets, a business comprising select assets and / or liabilities, or CD comprising select assets and / or liabilities, to the extent possible, simultaneously.

5.2 **Should 'Going Concern Sale' be defined?**

5.2.1 The term is well-understood in legal parlance. The jurisprudence in this regard is fairly well-developed out of the erstwhile liquidation regime under the Companies Act, 1956. The Code recognises 'going concern' and envisages resolution as a 'going concern' but does not define it. It has been in vogue for more than two years and has not caused any difficulty. The Insolvency Law Committee in its report dated 26th March, 2016 noted that the phrase "as a going concern" implies that the CD would be functional as it would have been prior to initiation of CIRP, other than the restrictions put by the Code. It may not, therefore, be defined. However, it may be explained that going concern means all such assets and the liabilities, which constitute an integral business or the CD, that must be transferred together, and the consideration must be for the business or the CD. The buyer of the assets and liabilities should be able to run business without any disruption. The business or the CD must be a running one, and it must be

transferred along with its employees. In case of sale of the CD as going concern, the equity shareholding of the CD must be transferred, and the buyer must take over the CD, its business, affairs and operations, including its licenses, assets, entitlements, beneficial interests, trademarks, brand, government approvals, etc.

5.2.2 It may not be possible to offer a complete business or the CD for GCS, as certain assets may not be surrendered by secured creditors to the liquidation estate, certain assets may be subject to protracted litigations, etc. It is also possible that in the facts and circumstances of a CD, a GCS may not be possible. It should, therefore, be left to the CoC or the Liquidator to find creative, innovative cost-effective structures to minimise and mitigate legal and commercial risks associated with GCS. In fact, the Supreme Court in Industrial Finance Corporation Vs. Official Liquidator, High Court, Calcutta, held that there is no standard or uniform pattern to be followed for disposing the assets of the company and should be examined on a case to case basis. In case, the GCS is undertaken at the choice of the CoC, the CoC, including secured financial creditors, shall indicate composition of assets and / liabilities to be sold as going concern. In any other case, the Liquidator may have flexibility to package the assets and liabilities as per market practice and offer every option under regulation 32 of the Regulations simultaneously. He will compute value of each option and each combination of options and sell the asset, business or the CD in the manner which gives the highest value. For example, a CD has three assets A, B, and C, and three liabilities X, Y and Z. He may offer for sale, (a) A only, (b) B only, (c) C only, (d) A and B, (e) B and C, (f) A and C, (g) A, B and C, (h) A and X, (i) A and Y, (j) A and Z, (k) A, B and X, and so on. After receipt of bids for each package, he may find that sale of one business comprising A, B and Y, and sale of one asset (C) give the highest value. He may sell these and discharge the liabilities X and Z from the sale proceeds as per section 53 of the Code.

5.3 **Whether the Liquidator needs any guidance or supervision?**

5.3.1 The Code envisages that as long as debt is serviced; equity has complete control of the CD. When the CD fails to service the debt, the Code shifts control of the CD to creditors for resolving insolvency. When creditors fail to resolve insolvency, the Code shifts the control to a Liquidator for the purpose of liquidating it and distributing the proceeds.

5.3.2 Often CDs are very large with assets worth thousands of crores. Sale of assets of such magnitude, particularly through GCS, is very complicated and risky. The stakeholders,

particularly, creditors wish to have some say in liquidation as it affects their interests directly. They advocate an effective mechanism for participation of secured and unsecured creditors in the liquidation process, oversight of the process by secured creditors, and checks and balances on the powers of liquidators. The Liquidator wish to have some comfort and guidance from stakeholders given the value and complications involved in transactions.

5.3.3 As stated in Para 2.15, the BLRC envisaged that the CoC should have some say in case of GCS.

5.3.4 Section 35(2) of the Code enables the Liquidator to consult any of the stakeholders entitled to a distribution of proceeds under section 53 of the Code subject to the condition that such consultation shall not be binding on him.

5.3.5. A monitoring mechanism existed in the erstwhile liquidation framework under the Companies Act, 2013. This is also a global practice.

5.3.6 Section 35(1)(n) of the Code empowers the Liquidator to apply to the AA for directions or orders for the liquidation and to report the progress of the liquidation process. However, it will burden the AA. Some matters can be dealt by a stakeholders.

5.3.7 **Liquidation Committee:** While there is broad consensus among the stakeholders about the need for having arrangement for oversight and monitoring of the liquidation process, to provide a formal structure for consultation under section 35(2) of the Code, there is no unanimity on its name, its composition and role. This arrangement could be Stakeholder Committee, Committee of Creditors, Monitoring Committee, Oversight Committee, etc. Most stakeholders prefer to have Liquidation Committee. It could comprise only (a) financial creditors, (b) top 'n' creditors – financial and operational, (c) top 'n' shareholders and top 'n' creditors, or (d) top 'n' shareholders, top 'n' creditors and top 'n' employees. It will be complex and costly to have all stakeholders or all kinds of stakeholders in the Liquidation Committee. Keeping the cost of associating many stakeholders in the process but the need for meaningful representation from all relevant stakeholders, the Liquidation Committee may comprise three representatives of each category, namely, secured creditors, unsecured creditors, shareholders and employees, who will have voting power in the ratio of 60:15:15:10. The representatives shall be selected by the majority of the stakeholders in the class. The Liquidator shall constitute this Committee within one month of the order of liquidation under section 33 of the Code. The

Committee will have access to certain information and will recommend suggested course of action in case of sale assets, including GCS, while the Liquidator shall continue to have the ultimate authority to take decisions, as is the global practice. The liquidator should give due regard and consideration to the views, suggestions and recommendations of Liquidation Committee, which should be an advisory body. Wherever the Liquidator takes decisions that are contrary to the views expressed by the 66% majority of the Liquidation Committee, the Liquidator shall record the reasons for such contrary view or action. The Liquidation Committee and all other stakeholders shall extend all cooperation to the Liquidator in taking possession, inventory, valuation, deciding the manner of the sale of assets, etc. of the CD.

B. Other Improvements in Liquidation Framework

6. The stakeholders have suggested review of various other provisions. Most of the suggestions aims at facilitating the liquidation process in general but have important bearing for GCS.

6.1 Security Interest

6.1.1 In terms of section 36 (3)(g) of the Code, the liquidation estate comprises all liquidation estate assets which include any asset of the CD in respect of which a secured creditor has relinquished security interest. The Code enables a secured creditor in the liquidation proceedings to (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 section 52 of the Code. Regulation 32 of the Regulations prohibits the Liquidator to sell an asset which is subject to security interest, unless the security interest therein has been relinquished to the liquidation estate. The Code, however, does not provide any timelines for opting to relinquish or exercise security interest.

6.1.2 As there is no timeline provided for a secured creditor to convey its decision to relinquish its security interest or enforce security outside of the liquidation process, it creates uncertainty particularly in considering a GCS. It is reported that often secured creditors are neither confirming their relinquishment nor proceeding to sell the asset outside liquidation. Until the secured lenders intimate their decision to the liquidator, i.e., whether they wish to relinquish their security interest to the liquidation estate or not, it is difficult for the Liquidator to prepare the Asset Memorandum. Therefore, a time limit may be introduced within which secured creditors have to intimate their decision. In the Schedule II, in the Form D - Proof of Claim Form by financial creditors, the secured creditors may intimate their decision of whether they

want to relinquish their security interest or not. Non-communication of such decision would imply that they have relinquished their security interest.

6.1.3 It is noted that in practice, most secured creditors do not relinquish their security. Instead, they only authorise the liquidator to sell their secured assets on their behalf and distribute the proceeds to them in accordance with the waterfall provided. This is a market practice that has been followed during the prior regime as well and is one that lenders appear comfortable with.

6.1.4 Some stakeholders feel that it should be sufficient if a requisite percentage, say, 60% of the charge holders relinquish their security interest. Such decision should be binding on the other charge holders. Some others, however, feel that the Code and the Regulations should not venture into majority decision making. Instead, efforts should be made to incentivise the secured creditors to relinquish security interest in appropriate cases so as to maximise the value, by offering a transparent and consultative process. Some feel that because the secured creditors do not often have adequate information about the valuation, status of charge on assets, and other information, they are not able to make an informed decision. Also, in the absence of mechanism for participation of secured creditors, they do not have visibility of the process which leads to doubts and creates trust deficit between the secured creditors and the Liquidator. The Liquidation Committee may address this concern.

6.1.5 Where the secured creditors decide to realize their security interest, the workmen would recover lesser amount or nothing depending upon the realization during the liquidation process. The stakeholders feel that there is a need to make necessary changes in section 52 of the Code on the lines of section 529 (1) of the Companies Act, 1956 or in the Regulations to protect the dues of workmen. The said section entitled the Liquidator to recover the cost of preservation of security if the secured lenders sell assets independently. The secured creditor was liable to pay his portion of the expenses incurred by the Liquidator for the preservation of the security before its realisation by the secured creditor. Regulation 21 of the Regulations may provide that if a secured creditor, instead of relinquishing his security and proving for his debt, proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the Liquidator for the preservation of the security before its realisation by the secured creditor.

6.1.6 Similarly, if a CD has only secured assets and all security holders decide to realise their security interests outside the liquidation assets, there will be no liquidation proceeds and hence there will be no resource to meet the liquidation costs. It is necessary to provide that the

liquidation costs must be met out of proceeds from sale of secured assets whether these are sold as part of liquidation asset or security interests are realised outside.

Model Timeline

6.2.1 As the 270-day period is sacrosanct in CIRP, liquidation time frame should also be time bound and honoured. The aspirations should be to achieve liquidation in one year. There should be model time line for each stage of liquidation process (akin to CIRP Regulations). The liquidator should provide explanation and justification to the Liquidation Committee, if he fails to meet the time line. If he crosses one year, he should apply to the Adjudicating Authority to seek extension. Depending on the outcome of the proposals in the discusison paper, timelines will be finalised. A very tentative timeline is at Annexure A.

6.2.2 The schedule I to Regulations requires the successful bidder to make payment of consideration within fifteen days. Many Liquidators find this too short. Some have suggested to increase this period to 90 days in sync with the time period of three months provided under SARFAESI Act. However, payment made after 30 days may attract interest at the rate of 12%.

6.2.3 Regulation 12(2)(b) of Regulations provides that the Public announcement by the Liquidator shall 'provide the last date for submission of a claim, which shall be thirty days **from** the liquidation commencement date. However, Form B in the Schedule II to the Regulations requires the stakeholders to submit a proof of their claims, on or before (insert the date falling thirty days **after** the liquidation commencement date), to the liquidator. In order to harmonise provisions of the Schedule with the said regulation, the word 'from' may be substituted in place of the word 'after' in the Schedule.

6.2.4 The Regulation 12(2) of the CIRP Regulations provides that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the RP, as the case may be, on or before the ninetieth day of the insolvency commencement date. Some stakeholders feel the need for similar provision in the Liquidation Regulations to accommodate claims of creditors who have failed to submit their claim.

6.2.5 In order to expedite the liquidation process, some stakeholders suggest that it may not necessary to invite claims afresh during the liquidation process, as this exercise has been

undertaken during CIRP. However, many stakeholders feel that the claims are adjudicated by the Liquidator unlike the RP. New claims also arise after the commencement of CIRP. Some others felt that Regulations may require submission of fresh claims and updating of claims already submitted. A few feels that the Code could be amended to empower the RP to adjudicate claims during the 90 days of CIRP so that disputes or other contentious issues can be resolved at CIRP stage itself and legacy issues are minimised in liquidation.

6.3 **Vulnerable Transactions:** The Code read with Regulations requiring filing of applications in respect of vulnerable transactions. The BLRC recognises recovery from vulnerable transaction as an additional source of value during liquidation. However, such applications meet tough resistance and litigation for long period. Section 26 of the Code, therefore, clarifies that the filing of an avoidance application under section 25 by the RP shall not affect the proceedings of the CIRP. Similarly, the liquidation proceeding, or dissolution of the CD should not be held up even if the matters relating to avoidance transactions are yet to be disposed of. If any money is recovered after dissolution of the CD, the same may be distributed as per waterfall in section 53 of the Code and the excess recoveries and unclaimed amounts may be credited to the Insolvency and Bankruptcy Fund.

6.4 Resolution Professional as Liquidator: Some feel that the Resolution Professional (RP) should not continue as Liquidator. They argue that he has a vested interest in liquidation as he would earn fee as Liquidator for years and, therefore, would not endeavour for a resolution plan. Since he failed as a RP as there was no resolution plan, he should not be the Liquidator. However, some others argue that he is familiar with the CD and has details of claims and assets and liabilities, it will be easier for him to run the CD as a going concern and obtain good values from sale. Therefore, he must be appointed as Liquidator except in cases of misconduct.

6.5 Valuation

6.5.1 Regulation 35 of the Regulations require the Liquidator to consider the average of the estimates of the values arrived at during the CIRP. There could ‘n’ reasons why the valuation on liquidation commencement date could be different from that on insolvency commencement date. If valuations arrived during CIRP are used, it may be difficult to achieve sale in some cases. The stakeholders suggest that the Liquidator may consider valuation conducted during CIRP, even if it is more than six months old or where he does not consider such valuation to

be appropriate, he may appoint registered valuers in the liquidation process in the manner specified in regulation 35(2) of the Regulations.

6.5.2 Schedule I of the Regulations specifies that the reserve price shall be the value of the asset arrived at in accordance with regulation 34 of the said Regulations, but such valuation shall not be more than six months old. This creates difficulty where the gap between the valuation in CIRP and liquidation commencement date is more than six months. It is difficult to use valuations conducted during CIRP if it is more than six-month old. It has been suggested that the requirement that the valuation should not be more than six-month old may be dispensed with.

6.6 **Moratorium:** Section 14 of the Code prohibits institution of suits or continuation of pending suits or proceedings against the CD, in case of CIRP. However, section 33(5) of the Code prohibits institution of suit or other legal proceedings by or against the CD. It does not prohibit continuation of pending suits / proceedings, while prohibiting the CD from instituting any legal proceeding. This may lead to revival of old cases that were filed against the CD and were dormant during CIRP, causing undue hardship, especially when the CD does not have funds to defend such proceedings. A prohibition like that under section 14 of the Code may be available under section 33(5) for liquidations.

6.7 **Compliance Certificate:** The AA is not having an adversarial litigation and hence there is no other party to bring up deficiency in the process. Further, it may not be possible for the AA to go through the bulky documents to verify compliance with every provision of law. The approval of liquidation would be expeditious and quicker, if a comprehensive certificate is available. In case there are any non-compliances, they could also get flagged for the assistance of AA so that findings could be recorded whether such lapse is curable or fatal. It is, therefore, proposed to provide for submission of final report to AA, along with a comprehensive certificate in the specified Form under regulation 45 of the Regulations. A tentative format is at Annexure B.

6.8 Financial Support

6.8.1 As stated in Para 6.1.6, if a CD has only secured assets and all security holders decide to realise their security interests outside the liquidation assets, there will be no resource to meet the liquidation costs. Further, while a sale as a going concern under liquidation is being

explored, the Liquidator may require funds to run the business of the CD as a going concern. Some stakeholders suggest that since the secured financial creditors will be the major beneficiaries of the liquidation estate, they should consider providing interim finance to facilitate sale as a going concern under liquidation as well as to defray the liquidation expenses.

6.8.2 It is observed that in some cases the Liquidator faces acute shortage of funds during the liquidation process. In some cases, the assets of the CD are not enough to cover even the liquidation cost. In some other cases, the Liquidator faces scarcity of funds to meet liquidation cost till the sale of the assets. There are many activities, such as Public Announcement, that have to be performed in all the cases, irrespective of the size of the assets or resources of the CD. The AA directed in the matter of Hind Motors: "*...corporate debtor has no liquid assets so it is clarified that the expenses of the public announcement and for service of process etc. incurred by the liquidator shall be reimbursed by the Union Bank of India presently and the same shall be part of liquidation cost*". Therefore, some suggest that the cost of liquidation may be borne by the financial creditors upfront and the same may be recovered from sale of assets. However, if there is no asset, the Insolvency and Bankruptcy Fund under section 224 of the Code may be operationalised and allowed to be to support the liquidation proceedings for specific expenses within limits in the manner prescribed /specified.

6.9 **Validity of First and second charge**

Section 53(1) of the Code specifies priority in distribution of liquidation proceeds. Sub-section (2) thereof provides that any contractual arrangements between recipients with equal ranking, if disrupting the order of priority shall be disregarded by the Liquidator. The Insolvency Law Committee considered this. It concluded: *"The Committee felt that there was no requirement for an amendment to the Code since a plain reading of section 53 was sufficient to establish that valid inter-creditor and subordination provisions are required to be respected in the liquidation waterfall under section 53 of the Code."* Nevertheless, there is debate as to whether a senior creditor has better rights than a junior credit in the waterfall under section 53 of the Code.

6.10 **ROC filing:** The Liquidator should comply with all the regulatory stipulations under various statutes such as Income-tax Act, 1961, etc. Since many regulators source data from MCA, the master data needs to reflect the fact that the CD is under liquidation. The MCA may

provide a separate tab on MCA portal for filings in relation to corporates undergoing Liquidation.

6.11 **Sale of Assets:** For faster conclusion of the liquidation process, the Liquidator may sell the asset on 'as-is-where-is' basis. He may disclose in the announcement for sale, all the disputes relating to the assets proposed to be sold. In case the liquidator waits for all disputes to be settled, the liquidation process would never be completed. He may be allowed to reduce the floor price for the auction of the assets in a phased manner in successive auctions in case of failure of sale.

6.12 **Conciliation:** Since conciliation is a faster process than arbitration, it is suggested that the Liquidator may be empowered to provide for conciliation in case of disputes regarding the ownership of assets. This should be possible in view of section 35 (1) (m) of the Code which provides wide powers to the Liquidators and there may not be a need for any further explicit provision.

7. Since the above proposals are very fluid, draft Regulations have not been attempted. Once the proposals are approved by the Governing Board with / without modifications, a discussion paper on approved lines along with draft Regulations will be issued seeking public comments.

8. It is submitted for consideration of the Governing Board.

Annexure A

Model Timeline for Liquidation Process

Sl. No.	Section / Regulation	Description of Task	Norm	Latest Timelines (Days from)
1	Section 33 and 34	Commencement of Liquidation; Appointment of Liquidator	Order of Liquidation	**0 = T**
2	230 of the Companies Act, 2013	Proposal for compromise or arrangement to liquidator	Within three days of the date of order under section 33 of the Code	**0 + 3**
		Application to NCLT	Within seven days of the order of liquidation.	**0 + 7**
		Closure of Process by sanction by NCLT	Within 90 days of the order of liquidation or such extended time as may be allowed by NCLT	**0 + 90 = T**
3		Beginning of Process under Regulations	Order of Liquidation, Closure of Process under section 30 of the Companies Act, as the case may be.	T
4	Section 33 (1) (b) (ii) / Reg. 12 (1, 2, 3)	Public Announcement - Form B	Within 5 days of appointment of Liquidator.	T + 5
5	Reg. 35 (2)	Appointment of registered valuers	Within 7 days of Liquidation commencement date	T + 7
6		Constitution of Liquidation Committee	Within 30 days of the order of liquidation	T + 30
7	Section 38 (1), (5) / Reg. 12(2)(b)	Submission of Claims	Within 30 days of the order of liquidation	T + 30
		Withdrawal/ Modification of Claim	Within 14 days of submission of Claim	T + 44
8	Reg. 30	Verification of claims received under Regulation 12(2)(b)	Within 30 days from the last date for receipt of claims	T + 60
9	Section 40 (1)	Recording reasons for Rejection of its Claims	Within 7 days of rejection of claim	T + 67
10	Section 40 (2)	Intimation about decision of Acceptance/ rejection of Claim	Within 7 days of admission or rejection of claim	T + 67
11	Reg. 31 (1 & 2) Reg. 12 (3)	List of Stakeholders, category wise		T + 75
		Publication of Filing of List of Stakeholders to be announced to Public		
12	Section 42	Appeal by Creditor against the decision of the Liquidator	Within 14 days of receipt of such decision	T + 81
13	Reg. 13	Preliminary Report to the AA	Within 75 days of Liquidation Commencement Date	T + 75

14	Reg. 34	Asset Memorandum	Within 75 days of Liquidation Commencement Date	T + 75
15	Reg. 15 (1), (2), (3), (4) and (5), and 36	Submission of Progress Reports to NCLT; 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
16	Proviso to Reg. 15 (1)	Progress Report in case of Cessation of Liquidator	Within 15 days of cessation as Liquidator	
17	Reg. 37 (2, 3)	Information to secured creditors	Within 21 days of receipt of intimation from secured creditor	
18	Reg. 42 (2)	Distribution of the proceeds to the stakeholders	Within 6 months from the receipt of amount	
19	Reg.10 (1)	Application to AA for Disclaimer of onerous property	Within 6 months from the liquidation commencement date	T + 180
20	Reg.10 (3)	Notice to persons interested in the onerous property or contract	At least 7 days before making an application AA for disclosure.	
21	Reg. 44	Liquidation of Corporate Debtor.	Within one year	T + 365
22	Reg. 46	Apply to AA for order Unclaimed Proceeds of Liquidation or Undistributed assets.	Before Dissolution Order	
23	Sch-1 Sl. No 12	Time period to H1 bidder to provide balance sale consideration	Within 15 days of the date of invitation to provide the balance amount.	

Annexure B

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	Name of the CD	
2	Date of Commencement of Liquidation	
3	Case No. & NCLT Bench	
4	Date of appointment of Liquidator	
5	Date of commencement of CIRP	
6	Name of RP	
7	Registration No. of RP	
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	
13	Date of Opening of Liquidation Account	
14	Date of submission of List of Stakeholder to AA	
15	Date of Public Announcement of List of Stakeholders	
16	Date of filing of Preliminary Report & Assets Memorandum to AA	
17	Fair Value	
18	Liquidation value	
19	Permission of the Liquidator to realize the security interest by the Secured Creditor	
20	Modified List of Stakeholders and Date of submission to AA	
21	Date of First Distribution	
22	Date of Second Distribution	
23	Date of Submission of Quarterly Progress Report-I (FY-1)	
24	Details of Submission of Sales Public Announcement, Assets Sales Report and date of Progress Report to AA	
25	Date of Submission of Quarterly Progress Report-II	
26	Date of Submission of Quarterly Progress Report-III	
27	Date of Submission of Quarterly Progress Report-IV & Audit Report	
28	Date of Submission of Quarterly Progress Report-I (FY-2)	
29	Date of Submission of Quarterly Progress Report-II	

30	Date of Submission of Quarterly Progress Report-III	
31	Date of Submission of Quarterly Progress Report-IV & Audit Report	
32	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	
33	Date of Any order or Direction of AA	
34	Date of Submission of compliance of order of AA, if specific	
35	Date of Consultation with Stakeholders	
36	Date of Final Report to AA (prior to Dissolution Application)	
37	Date of Dissolution Order	
38	Date of Intimation to Registry and Information Utility	
39	Bank and Account detail of Liquidation Account	
40	Transfer of Undistributed Liquidation Fund to Public Account	

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

Sl. No.	Assets	Mode of Sale	Estimated Liquidation Value	Realisation Amount	Date of Transfer to Liquidation Account

4. The amounts distributed to stakeholders as per section 52 or 53 of Code are as under:

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Distributed	Amount Distributed to the Amount Claimed (%)	Remarks
1	CIRP Cost					
2	Liquidation Cost					
3	Workmen					
4	Secured Creditors					
5	Secured Creditors adjusted with Security (not relinquish to Liquidator)					Detail of Assets and Liquidation Value
6	Unsecured Creditors					
7	Government dues					
8	Operational Creditors					

9	Preference Creditors					
10	Equity Holders					
Total						

*If there are sub-categories in a category, please add rows for each sub-category.

5. The time frame proposed for obtaining relevant approvals is as under:

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant approval	When to be obtained	Date of Submission of compliance or discharge
1					
2					
3					

6. I hereby declare that Liquidation Process has been conducted as per the timeline indicated in time line sheet except the following deviations / non-compliances of 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				

7. The dissolution application has been filed before expiry of the period of two years and if any extension sought with the reason:

8. Provide details of application filed / pending for avoidance of transactions.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Amount recovered under the Order (Rs. lakh)
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. Any matter related to bonafide party pending in any court or tribunal which is reported to AA:

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

(Signature)
Name of the Liquidator:
IP Registration No:
Address as registered with the Board:
Email id as registered with the Board:

Additional material pertaining to discussion paper on liquidation process

The following case laws illustrate that the rights of the creditors or the members of the company to make an application under Section 391 of the Companies Act, 1956 (section 230 of Companies Act, 2013) are not taken away when a company goes in to liquidation .

(1) M/s Meghal Homes Pvt Ltd Vs Shree Niwas Girni K.K. Samiti & Ors [Appeal Civil 3179 -3181 of 2005] date of Judgment 24.08.2007 [Supreme Court]

The company was ordered for wound up and official liquidator appointed. Company Court passed an order directing the OL to issue public notice inviting offers for revival of the textile mills. At that stage, a contributory filed an application seeking directions of the company court for holding a meeting of creditors, contributories and other interested persons to consider a scheme proposed for revival of the company, which was allowed by Company Court. The order of allowing holding the meeting was challanged by worker's Union, which was allowed by High Court and set aside the directions for holding of such meeting. The Supreme Court held as

"...The argument that Section 391 would not apply to a company which has already been ordered to be wound up, cannot be accepted in view of the language of Section 391(1) of the Act, which speaks of a company which is being wound up. If we substitute the definition in Section 390(a) of the Act, this would mean a company liable to be wound up and which is being wound up. It also does not appear to be necessary to restrict the scope of that provision considering the purpose for which it is enacted, namely, the revival of a company including a company that is liable to be wound up or is being wound up and normally, the attempt must be to ensure that rather than dissolving a company it is allowed to revive. Moreover, Section 391(1)(b) gives a right to the liquidator in the case of a company which is being wound up, to propose a compromise or arrangement with creditors and members indicating that the provision would apply even in a case where an order of winding up has been made and a liquidator had been appointed. Equally, it does not appear to be necessary to go elaborately into the question whether in the case of a company in liquidation, only the Official Liquidator could propose a compromise or arrangement with the creditors and members as contemplated by Section 391 of the Act or any of the contributories or creditors also can come forward with such an application. By and large, the High Courts are seen to have taken the view that the right of the Official Liquidator to make an application under Section 391 of the Act was in addition to the right inhering in the creditors, the contributories or members and the power need not he restricted to a motion only by the liquidator. For the purpose of this case, we do not think that it is necessary to examine this question also in depth. We are inclinded to proceed on the basis that the Somani's, as contributories or the members of the Company are entitled to make an application to the Company Court in terms of Section 391 of the Act for the purpose of accptance of a compromise or arrangement with the creditors and members."

(2) National Steel & General Mills Vs Official Liquidator order dated 09th March, 1989 [Delhi High Court].

The issue raised in the petition was whether summons or application can be moved by the (i) Company (2) Creditor (3) Member with a view to promposing compromise or arrrangmenet between Company and Creditors and Members under section 391 of the Companies Act, 1956 in case the company is being wound up or can it be filed in such a situation exclusively by the liquidator alone? It was one of the contention of the party that only liquidator can file the application under section 391 and company, creditor or member cannot.

The High Court held that *"Furthermore under section 446 (2) (c) of the Act the Court which is winding up the company notwithstanding anything contained in other law for the time being in force has been*

given jurisdiction to entertain and dispose of any application made under section 391 of the Act by or in respect of the Company. In case of liquidation of the Company, in case the liquidator exclusively is interpreted to mean to have a right to move under Section 391 of the Act, and that Company is not to have such a right, there would be direct conflict between Sections 391 (1) and 446 (2) (c) of the Act which would not be in consonance of the principle of harmonious interpretation of statutes. Therefore, the only rational interpretation, which can be put is that in case the company is wound up, liquidator is the additional person who can move the application under Section 391 of the Act apart from members, creditors and the Company."

(3) Vasant Investment Corporation Vs Official Liquidator dated 6th July, 1979, Bombay High Court held as

*"*This does not appear to be a correct interpretation of the provisions of s. 391. When a company is being wound up a liquidator is an additional person who enjoys a right to make an application under this section. The rights of the creditors or the members of the company to make an application are not taken away when a company goes in to liquidation. The section does not say that when a company is being wound up the liquidator alone will have a right to apply."

(4) Rajendra Prosad Agarwalla & Ors Vs Official Liquidator order dated 12thAugust, 1977 [Calcutta High Court]

The petition was dismissed on the ground that when the company is in liquidation, only liquidator can file application under section 391 of the Companies Act, 1956. The High Court held that *"A plain reading of the section clearly indicates that the legislature intended that if any compromise or arrangement is proposed, the company or any creditor or any member of the company will be entitled to make the necessary application and in case where the company is being wound up, as the board has ceased to function and is no longer there and the company is represented by the liquidator, the liquidator will also be entitled to make the necessary application. The right which is conferred on the contributories or the creditors is not intended to be taken away when the company has gone into liquidation and in such a case an additional right is also conferred on the liquidator. The provisions contained in Sub-section (2) which require the approval of the majority of the creditors or class of creditors or members or class of members in case of any compromise or arrangement for the same being sanctioned, even when the company is in liquidation, clearly go to indicate that the legislature never intended that the wishes of the creditors or contributories would be ignored. In our opinion, in the case of a company in liquidation, apart from the rights which are conferred on the creditors or contributories of a company, an additional right is also conferred on the liquidator…".*