

Discussion Paper on Corporate Liquidation Process along with Draft Regulations

This discussion paper discusses various issues, that have been brought up by stakeholders, relating to liquidation process under the Insolvency and Bankruptcy Code, 2016.

Reorganisation of Corporate Debtor

2. The Insolvency and Bankruptcy Code, 2016 (Code) provides for a market mechanism for rescuing, failing but viable corporate debtors (CDs) and liquidating, failing and unviable ones. There is no precise mathematical formula, however, to identify a CD as an unviable one. The market may wrongly classify a viable CD as unviable and vice versa because of market imperfections. Accordingly, it may rescue an unviable CD and close a viable one. Rescuing an unviable CD may not be of great concern as it can be closed later. Closing a viable CD, however, is of grave concern as it impacts the daily bread of its stakeholders and it cannot be rescued later. The Code, therefore, has adopted a very cautious approach and 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 corrections 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 insolvency 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 Arcelor Mittal 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 In the matter of *Rasiklal S. Mardia Vs. Amar Dye Chem Limited & Ors.*, a shareholder filed a petition seeking revival of the company in liquidation through a compromise with creditors. The NCLT held that liquidator alone is authorized to file petition either for compromise or arrangement in respect to the company in liquidation. The National Company Law Tribunal held that it is the liquidator alone who is authorised to file the company petition either for compromise or arrangement in respect of the company in liquidation. The Hon’ble NCLAT, while setting aside the impugned order of NCLT, observed:

“The Judgement in the matter of “National Steel & General Mills Versus Official Liquidator” makes it quite clear that Liquidator is only an additional person and not exclusive person who can move application under Section 391 of the old Act when the company is in liquidation. Looking to these Judgements, we are unable to support the view taken by NCLT that the Appellant could not have filed the Petition under Section 391 of the old Act.”

2.14 In several matters it has been held that creditors and members of a CD in liquidation have a right to file application for compromise or arrangement under section 391 of the Companies Act, 1956, which is similar section 230 of Companies Act, 2013:

(a) *Meghal Homes (P) Ltd. Vs. Shree Niwas Girni K.K. Samiti & Ors.*: The Hon’ble Supreme Court held:

“.. 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.”

(b) *National Steel & General Mills Vs. Official Liquidator*: The Hon’ble High Court held:

“.. 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.”

(c) *Vasant Investment Corporation Vs. Official Liquidator*: The Hon'ble High Court held:
“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 into liquidation. The section does not say that when a company is being wound up the liquidator alone will have a right to apply.”

(d) *Rajendra Prosad Agarwalla & Ors Vs. Official Liquidator*: The Hon'ble High Court held:
“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.”

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

(a) In the matter of M/s. Gujarat NRE Coke Limited:

“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.”

(b) 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.”

(c) 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.”

(d) 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...”

2.16 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.

.....”

2.17 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, a member, a creditor or the Liquidator may make an application to the NCLT under the Companies Act, 2013 (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 closure / failure, liquidation under the Code may 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 seven 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 ten days of the order of liquidation under section 33 of the Code. A member or a creditor may file an application under section 230 of the Act within 10 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 ten 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 for conclusion of the process for compromise or arrangement to ensure that the liquidation process is concluded without undue delay.

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 form of 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.

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

3.3.1 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.

3.3.2 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.

3.3.3 Ineligibility: Proviso to section 35(1)(f) 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, the law does not prohibit such ineligible persons to participate in compromise or arrangement under section 230 of the Act. It may be necessary to harmonise the provisions in the Code and the Act to provide level playing field. Some stakeholders feel that the ineligibility norms under section 29A of the Code may also apply to compromise or arrangement under section 230 of the Act. Other stakeholders feel that unlike liquidation under the Code, which is mostly Liquidator driven, the compromise or arrangement under the Act is mostly driven by the Tribunal. Further, section 29A of the Code has several exceptions, while section 230 of the Act deals with all kinds of companies in all situations. There will be practical difficulties in implementation of ineligibility for the purposes of section 230 of the Act. Therefore, it is proposed that the ineligibility norms under section 29A of the Code may not apply to compromise or arrangement under section 230 of the Act.

3.3.4 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 GCS 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

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

4.1 Who may exercise the option for GCS?

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

4.1.1 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.

4.1.2 If there is no recommendation from the CoC, the Liquidator shall explore all options of sale simultaneously keeping in view market practice in the line of business of the CD. 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.

4.2 Should 'Going Concern Sale' be defined?

4.2.1 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.

4.2.2 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 the matter of *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.

4.3 Whether the Liquidator needs any guidance or supervision?

4.3.1 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.

4.3.2 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 also wishes to have some comfort and guidance from stakeholders given the value and complications involved in transactions.

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

4.3.4 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.

4.3.5. A monitoring mechanism existed in the erstwhile liquidation framework under the Companies Act, 2013. This is also a global practice. Section 287 of the Companies Act, 2013 provides for an advisory committee to advise the Liquidator and to report to the Tribunal.

"Section 287. Advisory Committee
(1) The Tribunal may, while passing an order of winding up of a company, direct that there shall be, an advisory committee to advise the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may direct.
(2) The advisory committee appointed by the Tribunal shall consist of not more than twelve members, being creditors and contributories of the company or such other persons in such proportion as the Tribunal may, keeping in view the circumstances of the company under liquidation, direct.
(3) The Company Liquidator shall convene a meeting of creditors and contributories, as ascertained from the books and documents, of the company within thirty days from the date of order of winding up for enabling the Tribunal to determine the persons who may be members of the advisory committee.
(4) The advisory committee shall have the right to inspect the books of account and other documents, assets and properties of the company under liquidation at a reasonable time.
(5) The provisions relating to the convening of the meetings, the procedure to be followed thereat and other matters relating to conduct of business by the advisory committee shall be such as may be prescribed.
(6) The meeting of advisory committee shall be chaired by the Company Liquidator."

4.3.6 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. Such matters can be dealt by stakeholders.

4.3.7 Stakeholders Consultation 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 Stakeholders Consultation Committee, Committee of Creditors, Monitoring Committee, Oversight Committee, etc. Most stakeholders prefer to have Stakeholder Consultation Committee (SCC). 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 SCC. Keeping the cost of associating many stakeholders in the process but the need for meaningful representation from all relevant stakeholders, the SCC may have the following composition:

Representative of	Number	Remarks
Secured Financial Creditors	≤ 4	If their claims admitted during CIRP is less than 50% of liquidation value, the number shall be limited to 2.

Unsecured Financial Creditors	≤ 2	If their claims admitted during CIRP is less than 25% of liquidation value, the number shall be limited to 1.
Employees/Workmen	≤ 1	
Sovereign Claims	≤ 1	
Other Operational Creditors	≤ 2	If their claims admitted during CIRP is less than 25% of liquidation value, the number shall be limited to 1.
Shareholders (Not ineligible under 29A)	≤ 1	

4.3.8 The representatives shall be selected by the majority of the stakeholders in the respective 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 of 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 SCC, which should be an advisory body. This is in consonance with the provisions in section 292(1) of the Companies Act, 2013 which provides that the Liquidator shall, in the administration of the assets of the company and the distribution thereof among its creditors, have regard to any directions which may be given by the resolution of the creditors or contributories at any general meeting or by the advisory committee. Wherever the Liquidator takes decisions that are contrary to the views expressed by the 66% majority of the SCC, he shall record the reasons for such contrary view or action. The SCC 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.

4.3.9 The role of SCC may be limited to advising the Liquidator. The Liquidator has three broad responsibilities, namely, claim adjudication, sale of assets/business and distribution of liquidation proceeds. The advice of SCC may be limited to sale of assets and/ or business. The SCC may have access to relevant records and information as may be required for effective deliberation. It may advise only through deliberations in a meeting chaired by the Liquidator. The Liquidator shall record a summary of discussion in the meeting of the SCC.

B. Other Improvements in Liquidation Framework

5. 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.

5.1 Security Interest

5.1.1 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.

5.1.2 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, it is proposed to allow the secured creditors to intimate their decision up to sixtieth day from the liquidation commencement date. In the Schedule II, in the Form D - Proof of Claim Form by financial creditors, the secured creditors may intimate their decision whether they wish to relinquish their security interest or not. Non-communication of such decision would imply that they have relinquished their security interest.

5.1.3 It is noted that in practice, most secured creditors do not relinquish their security interest. 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 in the prior regime as well and is one that lenders appear comfortable with.

5.1.4 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 SCC may address this concern.

5.1.5 Where the secured creditors decide to realize their security interest, the workmen would recover lesser amount or nothing depending upon the realisation 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 share of the expenses incurred by the Liquidator for the preservation of the security before its realisation by the secured creditor.

5.1.6 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

5.2.1 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 SCC, 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 discussion paper, timelines will be finalised. A tentative timeline is included in draft Regulations attached this paper.

5.2.2 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%.

5.2.3 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.

5.2.4 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. A similar provision in the Liquidation Regulations may be made to accommodate claims of creditors who have failed to submit their claim, particularly when the corporate debtor is getting liquidated. 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 liquidator up to forty-fifth day of the liquidation commencement date.

5.2.5 In order to expedite the liquidation process, some stakeholders suggest that it may not be 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. It is proposed to continue the extant provisions requiring submission of fresh claims and updating of claims already submitted. A few, however, feel 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.

5.3 Vulnerable Transactions: The Code read with Regulations require filing of applications in respect of vulnerable transactions. The BLRC recognises recovery from vulnerable transactions as an additional source of value during liquidation. However, such applications meet tough resistance and litigation for a 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.

5.4 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.

5.5 Valuation

5.5.1 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 be ‘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.

5.5.2 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.

5.6 **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. The position is as under:

Section	Prohibition on		Prohibition	
	Institution of Suits	Continuation of Suits	By CD	Against CD
14	Yes	Yes	No	Yes
33	Yes	No	Yes	Yes

Section 35 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. However, some stakeholders feel that the proceedings were held in abeyance because of CIRP. Section 60(6) of the Code enables the stakeholders to continue the suits after expiry of moratorium. If they are denied this right at the liquidation stage, they will be deprived of their right for ever. Hence continuation of proceeding should not be denied during CIRP.

5.7 **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 compliance 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 compliance certificate in the specified Form under regulation 45 of the Regulations. A tentative format is included in draft Regulations attached this paper.

5.8 Financial Support

5.8.1 As stated in Para 5.1.6, 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.

5.8.2 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. This may, however, be burdensome for retail individual creditor. It is, therefore, proposed that secured institutional creditors may be obliged to bring in interim finance to run the CD as a going concern or liquidate the CD, if there is no liquid assets available to defray these expenses. However, if there is no asset, the Insolvency and Bankruptcy Fund under section 224 of the Code may be operationalised and allowed to support the liquidation proceedings for specific expenses within limits in the manner prescribed /specified.

5.9 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 creditor in the waterfall under section 53 of the Code. The regulations may clarify the ranking of different charges on the same secured asset.

5.10 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.

5.11 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.

5.12 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.

6. Public Comments

6.1 The proposals in the preceding paragraphs aim at avoiding closure of a viable CD or businesses of the CD and expedite liquidation process, both of which promote the objective of maximising the value of the assets of the CD. This is issued in pursuance to regulation 4 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. The Board accordingly solicits comments on:

- a. any specific para in this discussion paper; and
- b. any specific regulations in the draft Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019, placed at **Annexure - A.**

by 19th May, 2019.

6.2 Comments may be submitted electronically by 19th May, 2019. For providing comments, please follow the process as under:

- (i) Visit IBBI website, www.ibbi.gov.in;
- (ii) Select 'Public Comments'; and then select 'Discussion paper - Liquidation';
- (iii) Provide your Name, and Email ID;
- (iv) Select the stakeholder category, namely,-
 - a) Corporate Debtor;
 - b) Personal Guarantor to a Corporate Debtor;
 - c) Proprietorship firms
 - d) Partnership firms
 - e) Creditor to a Corporate Debtor;
 - f) Insolvency Professional;
 - g) Insolvency Professional Agency;
 - h) Insolvency Professional Entity;
 - i) Academics;
 - j) Investor; or
 - k) Others.
- (v) Select the kind of comments you wish to make, namely,
 - a) General Comments; or
 - b) Specific Comments.
- (vi) If you have selected 'General Comments', please select one of the following options:
 - c) Inconsistency, if any, between the provisions within the regulations (intra regulations);
 - d) Inconsistency, if any, between the provisions in different regulations (inter regulations);

- e) Inconsistency, if any, between the provisions in the regulations with those in the rules;
- f) Inconsistency, if any, between the provisions in the regulations with those in the Code;
- g) Inconsistency, if any, between the provisions in the regulations with those in any other law;
- h) Any difficulty in implementation of any of the provisions in the regulations; and
- i) Any provision that should have been provided in the regulations, but has not been provided; or
- j) Any provision that has been provided in the regulations, but should not have been provided.

And then write comments under the selected option.

(viii) If you have selected 'Specific Comments', please select para/regulation number and then sub-para/sub-regulation number and write comments under the selected para/sub-para or regulation/sub-regulation number.

(ix) You can make comments on more than one para/sub-para or regulation / sub-regulation number, by clicking on more comments and repeating the process outlined above from point 6.2 (v) onwards.

(x) Click 'Submit', if you have no more comments to make.

**GAZETTE OF INDIA
EXTRAORDINARY
PART III, SECTION 4
PUBLISHED BY AUTHORITY**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION**

New Delhi,, 2019

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (LIQUIDATION PROCESS)
(AMENDMENT) REGULATIONS, 2019**

IBBI/2019-20/GN/REG.....-In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016(31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following Regulations further to amend the Insolvency and Bankruptcy Board of India (Liquidation process) Regulations, 2016, namely: -

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019.
(2) They shall come into force on the date of their publication in the Official Gazette.

2. In Insolvency and Bankruptcy Board of India (Liquidation process) Regulations, 2016, (hereinafter referred to as the principal regulations), in regulation 2, after clause (k), the following clause shall be inserted, namely: -
“(1) “Tribunal” means the National Company Law Tribunal defined under clause (90) of section 2 of the Companies Act, 2013.”.

3. In the principal regulations, for regulation 8, the following regulation shall be substituted, namely: -
“8. Stakeholders’ Consultation Committee.
(1) The liquidator shall constitute a Stakeholder’s Consultation Committee comprising representatives of financial creditors, employees, workmen, operational creditors, representatives of the Government and shareholders, where relevant, to advise him on matters relating to the liquidation process.
(2) Subject to sub-regulation (3), the composition of the Stakeholders’ Consultation Committee shall be as under:

Representative of	Number	Remarks
--------------------------	---------------	----------------

Secured Financial Creditors	≤ 4	If their claims admitted during CIRP is less than 50% of liquidation value, the number shall be limited to 2.
Unsecured Financial Creditors	≤ 2	If their claims admitted during CIRP is less than 25% of liquidation value, the number shall be limited to 1.
Employees/Workmen	≤ 1	
Representative of the Government	≤ 1	
Other Operational Creditors	≤ 2	If their claims admitted during CIRP is less than 25% of liquidation value, the number shall be limited to 1.
Shareholders	≤ 1	

(3) The shareholders ineligible under section 29A shall not be part of the Stakeholder's Consultation Committee.

(4) The liquidator shall convene the first meeting of the Stakeholders' Consultation Committee not later than thirty days from the date of the liquidation order.

(5) Members of the Stakeholders Consultation Committee shall have access to all relevant records and information as may be required for effective deliberation for advice under sub-regulation (1).

(6) Where the stakeholders are consulted under sub-section (2) of section 35 of the Code, they shall extend all assistance and cooperation to the liquidator in taking possession, inventory, valuation, deciding the manner of the sale of assets, etc. of the corporate debtor.

(7) Where the liquidator consults stakeholders in exercise of power vested under sub-section (2) of section 35, he shall maintain the records of such consultation in the manner as specified in Form A of Schedule II.

(8) The advice of the Stakeholders' Consultation Committee shall not be binding on the liquidator:

Provided that where the liquidator takes a decision against the advice of not less than sixty-six per cent of the members of the Stakeholders' Consultation Committee, he shall record the reasons in writing.

(9) The liquidator shall chair the meetings of Stakeholders' Consultation Committee.”.

4. In the principal regulations, in regulation 12, for sub-regulation (2), the following sub-regulation shall be substituted, namely: -

“(2) The public announcement shall-

(a) call upon stakeholders to submit their claims or update the claims which were submitted during the corporate insolvency resolution process of the corporate debtor as on the liquidation commencement date;

(b) provide the last date of submission of claims, which shall be thirty days from the liquidation commencement date; and”;

(c) provide that a creditor, who fails to submit claim with proof within the time stipulated may submit the claim with proof to the liquidator, on or before the forty-fifth day of the liquidation commencement date”.

5. In the principal regulations, after regulation 12, the following regulation shall be inserted, namely: -

“12A. Application for compromise or arrangement: -

(1) The liquidator, creditor or a class of creditors, members or class of members, as the case may be, may file an application before the Tribunal proposing for compromise or arrangement under section 230 of the Companies Act, 2013, within seven days from the date of the liquidation order:

Provided that where no application is filed, the liquidator shall proceed with the corporate debtor under Chapter III of Part II of the Code.

(2) After filing of the application under sub-regulation (1), the liquidator shall conduct meetings of creditors or a class of creditors, members or class of members, as the case may be, in such manner as the Tribunal may direct for the purposes of compromise or arrangement.

(3) Where in a meeting under sub-regulation (2), majority of members agree to a compromise or arrangement in accordance with sub-section (6) of section 230 of the Companies Act, 2013, the liquidator shall file the same with the Tribunal for its sanction.

(4) The process of compromise or arrangement initiated under sub-regulation (1) shall be completed within ninety days of the order of liquidation or such extended period as may be allowed by the Tribunal:

Provided that where process of compromise or arrangement is not completed within the specified time or extended time allowed, as the case may be, the liquidation process under the Code shall forthwith commence after the expiry of such period.

(5) Where compromise or arrangement is not sanctioned by the Tribunal under sub-section section (6) of section 230 of the Companies Act, 2013, the liquidation process under the Code shall commence forthwith.

6. In the principal regulations, in regulation 17, after sub-regulation (2), the following sub-regulation shall be inserted, namely: -

“(3) A secured operational creditor shall inform the liquidator his intention to relinquish or not to relinquish his security interest in Form C of Schedule II:

Provided, where the secured operational creditor does not intimate his decision within forty-fifth day from the liquidation commencement date, he shall be deemed to have relinquished his security interest.”.

7. In the principal regulations, in regulation 18, after sub-regulation (2), the following sub-regulation shall be inserted, namely: -

“(3) A secured financial creditor shall inform the liquidator his intention to relinquish or not to relinquish his security interest in Form D of Schedule II:

Provided, where the secured creditor does not intimate his decision within forty fifth day from the liquidation commencement date, he shall be deemed to have relinquished his security interest.”

8. In the principal regulations, after regulation 21, the following regulation shall be inserted, namely: -

“21A. Realizing security interest. -

(1) Where a secured creditor proceeds to realize its security interest, he shall be liable to pay the portion of the expenses incurred by the liquidator for the preservation of the security before its Realisation by the secured creditor.

(2) Where a secured creditor proceeds to realize its security interest, he may retain the sale proceeds of his secured assets after depositing the workmen's and employees' dues with the liquidator in accordance with the provisions of section 53 of the Code.”.

9. In the principal regulations, in regulation 35:-

(i) for sub-regulation (1), the following shall be substituted, namely: -

“(1)Where valuation has been conducted under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or under regulation 34 of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, as the case may be, the liquidator, for the purposes of valuation under these regulations, may consider the average of the estimates of the values arrived during the corporate insolvency resolution process:

Provided that where the liquidator is of opinion that the average of the estimates of the values arrived during the corporate insolvency resolution process is not to be considered, he shall appoint registered valuers in accordance with sub-regulation (2).”;

(ii)in sub-regulation (2), for “In cases not covered under sub-regulation (1)”, the following shall be substituted, namely: -

“In cases the valuation has not been conducted during corporate insolvency resolution process or fast track corporate insolvency resolution process, as the case may be.”.

10. In the principal regulations, in regulation 44:-

(i) for sub-regulation (1), the following sub-regulation shall be substituted, namely: -

“(1) The liquidator shall liquidate the corporate debtor within a period of one year irrespective of pending litigation regarding avoidance transactions.”

(ii) in sub-regulation (2), for the words “two years”, the words “one year” shall be substituted.

11. In the principal regulations, in regulation 45:-

(i) for sub-regulation (3), the following sub-regulation shall be substituted, namely: -

“(3) The liquidator shall submit the application for the dissolution of the corporate debtor along with the final report and compliance certificate in form H to the Adjudicating Authority under section 54 of the Code:

“Provided that where the corporate debtor is sold as a going concern, the final report of liquidator to the Adjudicating Authority as required under sub-regulation(3) of regulation 45 shall form part of the application for the closure of the liquidation process of the corporate debtor and not for the dissolution of the corporate debtor;

Provided further that if the liquidator is not able to sell the corporate debtor as a going concern within ninety days from the date of order of liquidation, he shall proceed to sell the assets of the corporate debtor under regulation 32.”.

12. In the principal regulations, after regulation 46, the following regulation shall be inserted, namely: -

“47. Model time-lines for liquidation process.

The following Table presents a model timeline of liquidation process of corporate debtor on the assumption that the liquidator is appointed on the liquidation commencement date:

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 (to be seen)	Within seven days of the date of order under section 33 of the Code	0 + 7
		Application to NCLT (time by which creditors approval to be filed with NCLT)	Within fourteen days of the order of liquidation.	0 + 14
		Constitution of Stakeholders Consultation Committee	Within 30 days of the order of liquidation	T + 30
		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	Section 33	Beginning of Liquidation Process under Regulations	Order of Liquidation, closure of process under section 230 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
7	Reg. 8(2)	Constitution of Stakeholders Consultation Committee	Within 30 days of the order of liquidation	T + 30
8	Section 38 (1), (5) / Reg. 12(2)(b)	Submission of Claims	Within 45 days of the order of liquidation	T + 45
		Withdrawal/ Modification of claim	Within 14 days of submission of Claim	T + 59
9	Reg. 30	Verification of claims received under Regulation 12(2)(b)	Within 30 days from the last date for receipt of claims	T + 75

10	Reg. 18	Intimation of decision on relinquishment of security interest	Within 60 days of Liquidation commencement date	T + 60
11	Section 40 (1)	Recording reasons for Rejection of its Claims	Within 7 days of rejection of claim (to be modified)	T + 82
12	Section 40 (2)	Intimation about decision of Acceptance/ rejection of Claim	Within 7 days of admission or rejection of claim	T + 82
13	Reg. 31 (1 & 2) Reg. 12 (3)	List of Stakeholders, category wise		T + 90
		Publication of Filing of List of Stakeholders to be announced to Public		
14	Section 42	Appeal by Creditor against the decision of the Liquidator	Within 14 days of receipt of such decision	T + 96
15	Reg. 13	Preliminary Report to the AA	Within 75 days of Liquidation Commencement Date	T + 75
16	Reg. 34	Asset Memorandum	Within 75 days of Liquidation Commencement Date	T + 75
18	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	15 th April
19	Proviso to Reg. 15 (1)	Progress Report in case of cessation of Liquidator	Within 15 days of cessation as Liquidator	
20	Reg. 37 (2, 3)	Information to secured creditors	Within 21 days of receipt of intimation from secured creditor	
21	Reg. 42 (2)	Distribution of the proceeds to the stakeholders	Within 3 months from the receipt of amount	
22	Reg.10 (1)	Application to AA for Disclaimer of onerous property	Within 6 months from the liquidation commencement date	T + 180
23	Reg.10 (3)	Notice to persons interested in the onerous property or contract	At least 7 days before making an application to AA for disclosure.	
24	Reg. 44	Liquidation of Corporate Debtor.	Within one year	T + 365

25	Reg. 46	Apply to AA for order Unclaimed Proceeds of Liquidation or Undistributed assets.	Before Dissolution Order	
26	Sch-1 Sl. No 12	Time period to H1 bidder to provide balance sale consideration	Within 90 days of the date of invitation to provide the balance amount.	

13. In the principal regulations, in Schedule I:-

(i) in Paragraph 1:-

(a) after clause (3), the following clause shall be inserted, namely: -

“(3A). The Liquidator may sell the asset on “as-is-where-is” basis wherever possible.”;

(b) in clause (4):-

(A) , the words “Such valuation shall not be more than six months old” shall be omitted;

(B) the words “up to seventy-five per cent of such value” shall be omitted;

(ii) for paragraph 12, the following paragraph shall be substituted: -

“(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days of the date when he is invited to provide the balance sale consideration. However, payment made after thirty days shall attract interest at the rate of 12%. On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale.”.

14. In the principal regulations, in Schedule II:-

(i) in Form B, in for “[insert the date falling thirty days after the liquidation commencement date]”, the following shall be substituted, namely: -

“[insert the date falling thirty days from the liquidation commencement date]”;

(ii) in Form C, in table after serial number 8, the following shall be inserted, namely: -

“8A Whether security interest is relinquished Yes/ No”;

(iii) in Form D, after serial number 8, the following serial number and entries shall be inserted, namely: -

“8A Whether security interest is relinquished Yes/ No”.

15. (iv) after Form G, the following Form shall be inserted, namely: -

**“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	Case No. & NCLT Bench	
3	Date of Initiation of Liquidation	
4	Date of appointment of Liquidator	
5	Date of commencement of CIRP	
6	Name of RP	
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 IBC 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	Employees					
6	Unsecured Financial Creditors					
7	Government dues					
8	Secured Creditors adjusted with Security (not relinquish to Liquidator)					Detail of Assets and Liquidation Value
9	Unsecured Operational Creditors					
10	Preference Shareholders					
11	Equity Shareholder					
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/Process under section 230 of the Companies Act, 2013 has been conducted as per the timeline indicated in time line sheet except following are the 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 one year 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	Brief of the Order
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			
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9. Any undischarged, sub-judice matter which is reported to AA related to bonafide party in due course.

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

(Signature)

Name of the Liquidator:

IP Registration No:

Address as registered with the Board:

Email id as registered with the Board:

Date:

Place:”.

(Dr. M. S. Sahoo)

Chairperson

Insolvency and Bankruptcy Board of India

[ADVT]

Note: The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 were published *vide* notification No. IBBI/2016-17/GN/REG005 on 15th December, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 460 dated 15th December, 2016 and was subsequently amended by –

- (1) The Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2018 *vide* notification No. IBBI/2017-18/GN/REG028, dated the 27th March, 2018.
- (2) The Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2018 *vide* notification No. IBBI/2018-19/GN/REG037, dated the 22nd October, 2018.