
Amendments in IBBI (Liquidation Process) Regulations, 2016 and IBBI (Voluntary Liquidation Process) Regulations, 2017

1. Streamlining the constitution of SCC

Present framework

- ❖ Reg. 31A → Stakeholders' Consultation Committee (SCC) be constituted within 60 days from LCD and decision(s) taken prior to that be placed before it, for information only.
- ❖ Liquidator takes significant decisions related to appointment and sale of assets in first 60 days in absence of guidance from SCC.
- ❖ Further, the present SCC includes representatives of all classes of stakeholders, irrespective of amount of their claims.

Amendment

- ❖ *CoC shall function as SCC for first 60 days*
- ❖ *First meeting of SCC within seven days*
- ❖ *SCC will be reconstituted with voting rights based on amount of admitted claims within 60 days*
- ❖ *Shareholders/ partners and related creditors to have representation in SCC without voting right*

2. Enlarging scope of SCC consultation

Present framework

- ❖ There is no framework stipulated for conducting meetings of SCC and scope of consultation is limited.
- ❖ In case liquidator takes decision different to advice of SCC, he shall submit reasons for the same in writing in quarterly progress report to AA.

Amendment

- ❖ *Liquidator to put the agendas before the SCC on need for fresh valuation, avoidance proceedings after process closure, liquidator fee besides remuneration of professionals, asset sale, etc.*
- ❖ *SCC shall advise the liquidator by a vote of not less than 66% of the representatives of SCC voting.*
- ❖ *For conducting voting, relevant CIRP Regulations (18-26) to be followed with suitable modifications*
- ❖ *For reporting of all such decision taken by the liquidator in different to advice of SCC with reasons in writing in the form (specified by the board), to AA and Board within five days of said decision.*

3. Replacement of Liquidator

Present framework

- ❖ It does not provide any provision for replacement of liquidator and stakeholders face great difficulty in replacing him, even if circumstances warrant.
- ❖ Creditors are important stakeholders on whose behalf liquidator works to realize assets of the CD and they should be adequately empowered to recommend the replacement of liquidator, to the AA.
- ❖ In a matter, NCLT Chennai has held that since NCLT is the appointing authority for liquidator, it also has the power to remove him.

Amendment

- ❖ SCC may, by a vote of not less 66% propose replacement of the liquidator
- ❖ SCC to file an application before the AA for replacement of the liquidator.
- ❖ Outgoing liquidator shall be suitably remunerated for work performed, in consultation with SCC, and the existing liquidator shall continue to work till his replacement.

4. Fixation of fee of the Liquidator

Present framework

- ❖ It provides CoC to fix the fees of the liquidator while proposing for liquidation. Table given in regulation 4(b) operates where the fees are not so fixed. At times fees as per the table are not sufficient and at times excessive.
- ❖ Market has been flagging this gap desiring a suitable opportunity for fixing liquidator's fee in cases where it has not been fixed by CoC during CIRP while recommending liquidation.

Amendment

- ❖ *SCC, in its first meeting, may fix the fees of the liquidator, if the CoC did not fix the same under regulation 39D of the CIRP Regulations.*

5. Compromise or Arrangement

Present framework

- ❖ Regulation 2B provides a time limit of 90 days for completion of compromise or arrangement. However time taken in practice is much longer.
- ❖ As on 31st July 2022, **only 8 liquidation processes** closed by way of compromise or arrangement, while taking an **average 466 days** for completion against the stipulated time of 90 days.
- ❖ Current practice of exploring the process of compromise or arrangement, at first instance and moving to auction mechanism only upon its failure, leads to delay in realization of assets.

Amendment

- ❖ *Wherever CoC decides, under regulation 39BA(1) of CIRP Regulations, that process of compromise or arrangement may be explored, the liquidator shall file application (**only in such cases**) before AA for considering the proposal of compromise or arrangement, if any, within thirty days.*

6. Filing Progress Reports & SCC Minutes

Present framework

- ❖ Regulation 15 → Liquidator to submit Progress Reports to AA every quarter.
- ❖ Section 208(2)(d) → every IP to submit a copy of records of every proceeding before the AA to the Board.
- ❖ Several liquidators don't submit copies of records of proceeding filed with AA, to Board.
- ❖ Format for progress reports not specified and only the broad aspects to be covered in the Report specified in Regulation 15.

Amendment

- ❖ *Copy of progress reports, along with minutes of SCC, to be submitted to the Board when the same is filed with AA.*
- ❖ *Format of Progress report to be provided in detail by way of a Circular.*

7. Timelines for certain auction events

Present framework

- ❖ No timelines from issue of public notice of auction to date of auction is stipulated. Some liquidators have conducted auction within unreasonably short period of 5-6 days limiting market participation or selling to a pre-identified buyer at reduced price in an unfair manner.
- ❖ At times, option of sale as a going concern is attempted in several auctions even if there are no participants, thus delaying the process.

Amendment

<i>Event</i>	<i>Timeline</i>
<i>Submission of Eligibility Documents by Prospective Bidder (Section 29A Affidavit, etc.)</i>	<i>Min. 14 days</i>
<i>Data Room Access, Site Visits and Discussion Meeting</i>	<i>Min. 7 days</i>
<i>Submission of Earnest Money Deposit (EMD)</i>	<i>Any time up to 2 days before the auction date</i>

- ❖ *Timelines proposed as minimum threshold*
- ❖ *Can be extended in consultation with SCC (except submission of bids which is on 35th day).*
- ❖ *First auction notice to be issued within 45 days if there is no compromise or arrangement proposal*
- ❖ *If 1st auction notice issued for sale as a going concern only, then 2nd notice shall also include possibility of selling assets in other manner(s).*

8. Timeline for successive auction

Present framework

- ❖ Due to market conditions and assets being stressed in nature, it often takes more than one auction to sell all assets of the CD.
- ❖ In some cases, there is large gap of 3-4 months between successive auction(s) at, without any reasonable ground, thereby delaying whole liquidation process and eroding the value of assets.

Amendment

- ❖ *In the event of failure of an auction, the successive auction notice shall be issued within next 15 days of a failed auction unless SCC agrees to extension of this timeline, on specific ground(s).*

9. Designating Auction Portal

Present framework

- ❖ Clause 1(7) of Schedule I → Assets to be sold through online portal, if any, designated by Board.
- ❖ Several online auction platforms available. However, none designated so far. Market regularly raises questions on confidentiality and transparency of procedures followed by them.
- ❖ Board has empanelled 2 Platform for Distressed Assets (PDAs) after evaluation on specified parameters, but not exclusively designated them for providing auction services
- ❖ Such designation will ensure greater confidentiality (about bidders) and transparency in process

Amendment

- ❖ *Auction platforms as empanelled from time to time be designated for auction services.*
- ❖ *The amendment shall be implemented from a future date (notified through a circular) after empanelment of auction platforms.*

10. Preparing & sharing Asset Memorandum

Present framework

- ❖ Regulation 34 mandates liquidator to prepare Asset Memorandum (AM) within 75 days
- ❖ Sale process of assets is started only after its preparation.
- ❖ Most of information to be presented in AM is already available in the Information Memorandum (IM) as valuation is conducted during CIRP. Thus, it can be prepared in a shorter time frame.
- ❖ Further, sharing of AM with stakeholders is currently not permitted which prevents them with limited information for correct decisions on sale of assets.

Amendment

- ❖ *Where the valuation conducted during CIRP is being considered, the Liquidator shall prepare the AM within 30 days, while using the information provided in IM and in other cases, the AM shall be prepared within 75 days.*
- ❖ *AM to be shared with SCC after receiving confidentiality undertaking from members of the SCC, and with the Board.*

11. Avoidance proceedings after closure

Present framework

- ❖ Regulation 44 → CD be liquidated notwithstanding pendency of any application for avoidance of transactions.
- ❖ Market lacks clarity on conduct of such proceedings after dissolution of CD/ closure of the process.

Amendment

- ❖ *Before application for dissolution or closure of process is filed, SCC shall decide*
 - *the manner in which proceedings in respect of avoidance transactions or fraudulent or wrongful trading, if any, will be pursued after closure of liquidation proceedings and*
 - *the manner in which the proceeds, if any, from such proceedings shall be distributed.*
- ❖ *This decision shall be part of the final report filed before the AA.*

12. Submission of Claims

Present framework

- ❖ Section 38(1) → Liquidator shall collect claims of creditors within 30 days from LCD
- ❖ Regulation 12 → Liquidator shall make public announcement calling upon stakeholders to submit their claims or update their claims (submitted during CIRP) as on LCD
- ❖ Duplication of effort in terms of submission of fresh claims during liquidation process
- ❖ Complaints/ suits are filed by claimants if they fail to submit their claim within time during liquidation (though the claim was duly collated by the IRP/ RP during CIRP)

Amendment

- ❖ *If any claim is not filed during liquidation process, then claim collated during CIRP shall be deemed to be submitted for the purpose of section 38 of Code.*
- ❖ *Further, the Liquidator shall verify all claims (claims submitted during liquidation as well as claims collated during CIRP but not submitted during liquidation).*

13. Process email ID and Consent form for IP to act as Liquidator

13.1 Present framework: As per regulation 4C of CIRP Regulations, the IRP shall be required to open an email account for conduct of CIRP and handover credentials of same to RP while he demits office. The RP should also handover the credentials to the other RP in the event of his replacement or to the Liquidator in the event of liquidation.

Amendment: The liquidator shall operate the process email account which was handed over to him by the resolution professional and in the event of replacement, the credentials of the same shall be handed over to the new liquidator.

13.2 Where SCC proposes to replace the liquidator (in accordance with the present amendment regulations), the written consent of the proposed liquidator is to be provided.

Amendment: A consent form to act as Liquidator to be filed by the IP/RP has been specified

14. Records Retention after completion of Liquidation and Voluntary Liquidation Processes (1/3)

Present framework

- ❖ Reg. 39A of CIRP Regulations → IRP / RP to preserve at a secured place
 - electronic copy of all records (physical and electronic) for a minimum period of **8 years**, and
 - physical copy of records for a minimum period of **3 years**
- ❖ Liquidation Regulations (5 & 6) → Maintenance of specific records in both physical **and** electronic form for **8 years** with the liquidator and
- ❖ Voluntary Liquidation Regulations (8,10 & 41) → Retention of specific records, in physical **or** electronic form, for **at least 8 years either** with the liquidator **or** an information utility.
- ❖ **Variations amongst these three regulations regarding:** (i) period of maintenance of records; (ii) form in which such records are to be maintained; (iii) with whom such are records are to be maintained; and (iv) categories of records to be maintained.
- ❖ A uniform record retention schedule seems necessary for providing clarity to the market.

14. Records Retention after completion of Liquidation and Voluntary Liquidation Processes (2/3)

Amendment

- ❖ *Liquidator shall retain records relating to liquidation and voluntary liquidation processes*
 - *in physical form for a minimum period of 3 years and*
 - *in electronic form for a minimum period of 8 years*

unless other laws require maintenance of particular records for longer period, or any investigation or legal proceedings are pending.

- ❖ *General records of CD may be preserved for such period and in such manner as required under the Companies Act, 2013 read with the applicable Rules*
 - *by liquidator under liquidation process and*
 - *by person specified in the resolution for commencement of voluntary liquidation process*
 - *by successful buyer when CD sold as a going concern – to be handed over by liquidator*

14. Records Retention after completion of Liquidation and Voluntary Liquidation Processes (3/3)

Amendment

- ❖ *Liquidator shall make best estimate of cost of preservation of records. Such cost shall form part of liquidation cost.*
- ❖ *In voluntary liquidation process, such cost shall be borne by the corporate person.*
- ❖ *It will be optional to liquidator to avail the services of information utility.*
- ❖ *In case the existing liquidator is replaced by a new liquidator, the new liquidator shall be responsible for the preservation of record.*
- ❖ *An indicative list of documents involved in liquidation and voluntary liquidation processes which are to be preserved, is given as a guidance for IPs. However, there may be a requirement to preserve additional documents depending on facts of the case involved.*

Thank You