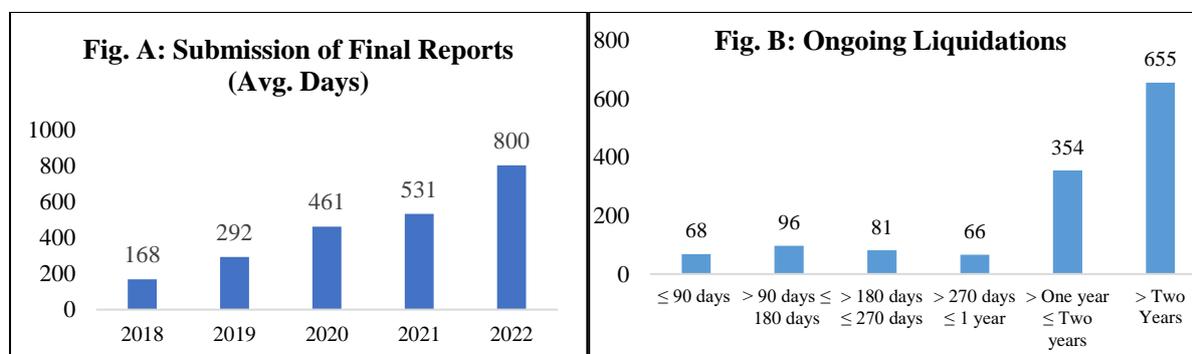


Discussion Paper on Streamlining the Liquidation Process

**Introduction**

The Bankruptcy Law Reforms Committee (BLRC) in its report under the section ‘*A time-bound, efficient Liquidation*’ observed that “*In India, it is widely accepted that liquidation is a weak link in the bankruptcy process and must be strengthened as part of ensuring a robust legal framework.*” It further observed that preservation of time value is the most important principle driving the design of the liquidation process. The IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) as it stood before the amendment dated 25<sup>th</sup> July 2019, provided that the liquidator shall liquidate the corporate debtor (CD) within a period of two years from the liquidation commencement date (LCD). Keeping in mind the principle of time value as enshrined in the BLRC report, the said time limit was reduced to one year vide amendment dated 25<sup>th</sup> July 2019.

2. However, as per data available with the Board, as on 31<sup>st</sup> May, 2022, 1666<sup>1</sup> corporate insolvency resolution processes (CIRP) have ended up with an order for liquidation. However, in 346 cases only, the liquidators have submitted final reports with the Adjudicating Authority (AA), while taking an average period of 471 days and this period is increasing over the years as shown in **Fig. A**. Further, as is clear from **Fig. B**, out of 1320 ongoing liquidation cases (more than 79% of the total cases), almost half of the cases have already crossed 2 years. Thus, the goal of a *time-bound* liquidation process as envisaged in the BLRC report is yet to be achieved.



3. Such an inordinate delay compromises the objective of the Code of maximizing the value of assets as the value of assets declines with time. The AA has also alluded to such delay and lapses committed by liquidators in the matter of Bluefern Ventures Private Limited and Oceanic Tropical Fruits Pvt. Ltd. To reduce delay by further streamlining the process, several interactions have been held with the liquidators. After examining the suggestions provided therein, the following amendments are proposed to the Liquidation Regulations:

<sup>1</sup> This excludes 14 cases where liquidation order has been set aside by NCLT / NCLAT / High Court / Supreme Court.

## **A. Stakeholders' Consultation Committee (SCC)**

### **A1: Streamlining the Constitution of SCC:**

4. The Insolvency and Bankruptcy Code, 2016 (Code) does not envisage any mechanism for oversight and monitoring of liquidation process and liquidator by creditors, similar to that provisioned for CIRP through Committee of Creditors (CoC). Sub-section (2) of section 35 of the Code only provides that, "*The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53*". To fill this gap, the Board under the Liquidation Regulations has provided a formal monitoring mechanism in the form of SCC.

5. Regulation 31A of the Liquidation Regulations, in this regard, provides that a SCC shall be constituted within 60 days from LCD, to advise the liquidator on matters relating to (a) appointment of professionals and their remuneration under regulation 7 and (b) sale under regulation 32. The decision(s) taken by the liquidator prior to the constitution of SCC shall be placed before SCC in its first meeting, for information. However, the liquidator takes significant decisions related to appointment (including that of valuers) and sale of assets in the first 60 days (i.e., before the constitution of SCC), and mandating such decisions to be placed before the committee on ex-post basis weakens the accountability of liquidator. Further, the present composition of SCC includes representatives of *all* classes of stakeholders, irrespective of the amount of their claims (in proportion to total claims against the CD).

**6. Proposal 1:** *In this regard, it is proposed that the CoC as constituted during CIRP on the basis of admitted claims shall function as SCC during liquidation process with the voting share of members of SCC being same as that in the CoC. The stakeholders who are part of CoC without voting rights will be part of SCC without voting rights. The liquidator shall convene first meeting of SCC within seven days of liquidation commencement date.*

**7.** *After adjudication of claims received during liquidation process and within 60 days of liquidation commencement date, composition of the SCC will be changed with stakeholders having voting rights in proportion to the share of payments they will receive as per waterfall mechanism in Section 53 if the liquidation value as per the latest valuation available is taken as the proceeds for sale. In case, any valuation is undertaken subsequently, voting rights of the stakeholders may be revised accordingly.*

### **A2: Advice of SCC:**

8. As stated above, section 33(5) of the Code empowers the liquidator to consult any of the stakeholders entitled to distribution of proceeds under liquidation, however, such consultation is not binding on the liquidator. Regulation 31A (9) of the Liquidation Regulations specifies voting percentage to arrive at a decision by stakeholders, by stating that, "*The consultation committee shall advise the liquidator, by a vote of not less than sixty-six percent of the representatives of the consultation committee, present and voting.*". Though the regulation provides that the liquidator shall record the reasons in writing if he takes a decision different from the advice provided by the SCC, the same is not considered adequate to ensure accountability of liquidator and leaves monitoring of liquidation process much to be desired. Hence, the present arrangement needs to be strengthened to provide for strong checks and balances if the liquidator takes a decision contrary to the advice of the SCC.

**9. Proposal 2:** *The liquidator shall put the agendas for deciding on remuneration of professionals, sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy, need for fresh valuation, etc. before the SCC. The SCC shall advise the liquidator by a vote of not less than sixty-six percent of the representatives of the consultation committee, present and voting. In cases where the liquidator takes a decision contrary to the advice of the SCC, he shall record the reasons for the same in writing and forward the records relating to the said decision in a separate Form (prescribed by the Board), to the Adjudicating Authority and the Board within five days of the said decision.*

**A3: Relinquishment of Security Interest by Secured Financial Creditors:**

10. Regulation 21A (1) of the Liquidation Regulations provides that where a secured financial creditor does not intimate its decision regarding relinquishment of its security interest within thirty days from the LCD, the assets shall be presumed to be part of liquidation estate. However, it is experienced by the liquidator that intimation of relinquishment generally communicated belatedly in piecemeal resulting into delay in auction process. Hence, there is a need to introduce a structured mechanism to deal with this issue of relinquishment of security interest.

**11. Proposal 3:** *A secured creditor shall intimate its decision regarding realisation or relinquishment of its security interest under section 52 of the Code, in the first meeting of the SCC itself (instead of the currently mandated 30 days from liquidation commencement date). Where a secured creditor does not intimate its decision in the first meeting, the assets covered under the security interest shall be deemed to be part of the liquidation estate. Further, if a secured creditor decides not to relinquish its security interest, such creditor shall not be part of SCC and the voting share of remaining members of the SCC shall be modified accordingly.*

**A4: Replacement of Liquidator**

12. For timely and speedy reorganization which is the essence of the Code, section 34(1) of the Code provides that under normal circumstances, the resolution professional (RP) shall continue as the liquidator. Sub-section (4) provides the circumstances in which the AA shall by order replace the RP. The Code and the Regulations made thereunder bestow various powers on the CoC which includes appointing the Interim Resolution Professional (IRP) as the RP, supervising their functioning and conduct, and in the event, the conduct of the RP is not up to its satisfaction, even replace the RP under section 27 of the Code. However, there is no provision like section 27 to provide for replacement of liquidator during the liquidation process.

**13. Proposal 4:** *To further empower the stakeholders during liquidation process, it is proposed that the SCC may, by a majority vote of not less sixty-six per cent, present and voting, propose replacement of the liquidator and it shall file an application before the Adjudicating Authority for appointment of the proposed liquidator.*

**A5. Fee of the Liquidator**

14. At present, considerable time passes between the application filed for seeking liquidation and the liquidation order by the AA, thus, the fees of the liquidator fixed by CoC may no longer

be relevant. Further, CoC may not decide to fix this fee while deciding to liquidate the CD. Therefore, there may be a need to fix/ review the fees of the liquidator in the initial phase of the liquidation process. Further, in cases where fee structure under regulation 4(2)(b) of the Liquidation Regulations is applicable, there will be an opportunity for stakeholders to review the same.

**15. Proposal 5: SCC will fix/ review the fees of the liquidator in its first meeting.**

**B. Compromise or Arrangement**

16. The Code provides for a market mechanism for rescuing failing but viable CDs and liquidating failing and unviable ones. The liquidation process starts in case the insolvency resolution process fails or the CoC decides to liquidate the company at any time during CIRP. During liquidation process, the Companies Act, 2013 (Act) envisages compromise or arrangement as mode of revival of CD. 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....”*

17. Regulation 2B of the Liquidation Regulations provides an upper threshold of ninety days for the completion of process under section 230 of the Act. However, it has been observed that the process under section 230, in majority of the cases where it is explored, is continued beyond the specified period of ninety days and the Tribunal interpret this timeline as only directory in nature. Such delay has a cascading effect on the timely conclusion of liquidation process as the liquidator cannot proceed with the auction of assets of the CD when the process under section 230 is underway.

18. As on 31<sup>st</sup> May 2022, only eight liquidation processes have been closed by way of compromise or arrangement under section 230 of the Act, which took an average 466 days for completion and the liquidator has realised only 87% of the liquidation value in these eight cases. Further, at present, time is taken by the AA to pass the liquidation order after the application in this regard has been submitted to the AA. It is being proposed that CoC in its last meeting may decide whether the CoC members would explore the compromise or arrangement when the liquidation is proposed and if so, they will use the time taken by the AA for exploring compromise or arrangement. Since this time will also be available with the members of CoC who are also members of the initial SCC, time of 90 days given for concluding compromise or arrangement is proposed to be reduced to 30 days.

**19. Proposal 6:** *It is proposed that in case COC decides during CIRP process to explore the process under section 230 of the Companies Act, 2013, the liquidator shall complete such process within thirty days from the liquidation commencement date. Regulation 39C of CIRP Regulations will be suitably amended in this regard.*

### **C. Valuation**

20. Regulation 35 of the Liquidation Regulations provides that the liquidator shall either consider the valuation as conducted during the CIRP or appoint valuers for fresh valuation if required under the circumstances, within seven days of the LCD. However, there are several problems with the present arrangement of valuation during the liquidation process:

Firstly, though the Liquidation Regulations provides that the liquidator shall consider the valuation as conducted during the CIRP and conduct fresh valuation if required under the circumstances, it has been observed the liquidators are opting for fresh valuation in majority of liquidation cases. Out of 994 cases in which liquidation value in both CIRP and liquidation process is available, in 63% cases, the fresh valuations were conducted. This may be due to the fact that the valuation conducted during the CIRP do not represent the current value of assets of the CD. However, such fresh valuation results in additional cost (in terms of appointment of valuers) and delay the liquidation process (as the conduct of auction is contingent upon value of assets arrived under the valuation, which shall act as the reserve price).

Secondly, the actual realisation from sale depends more on the marketing efforts by the liquidator, extent of market participation resulting therefrom during the auction and transparency of the process, rather than the reserve price, which only acts as benchmark for conducting auction.

21. Nevertheless, it is still imperative that an option to conduct fresh valuation with the approval of the SCC be provided to the liquidator, if he is of the opinion that such fresh valuation is required for ascertaining correct picture of value of liquidation estate of the CD. However, such an option for appointing valuers should be available without any specific timeline to provide requisite flexibility to liquidator to get valuation done anytime during the process. It is apposite to mention that such determination of fresh valuation should not delay the auction process.

**22. Proposal 7:** *In this regard, it is proposed that the liquidator shall consider the valuation report as arrived at during the CIRP for conducting auction. However, where the liquidator is of the opinion that fresh valuation is required, he shall seek advice of SCC for the same and such valuation may be considered for subsequent auctions.*

### **D. Submission of Progress Reports and SCC Minutes**

23. Regulation 15 of the Liquidation Regulations provides that the liquidator shall submit Progress Reports to the AA, within 15 days after the end of every quarter. Further, section 208(2)(d) of the Code provides that every insolvency professional (IP) shall abide by the code of conduct “to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member”. However, several liquidators do not submit copies of such records of proceeding

filed with the AA, to the Board. Further, the Format for the progress reports have not been specified and only the broad aspects to be covered in the Report have been specified in Regulation 15.

**24. Proposal 8:** *The Liquidation Regulations may be amended to provide that the liquidator shall submit the copy of progress reports, along with the minutes of the SCC, with the Board as and when the same is filed with AA. Further, the format of Progress report, along with its contents, may be provided in detail by way of a Circular.*

## **E. Auction Framework**

### **E1: Events-based timelines of Auction**

25. Accurate value discovery plays a crucial role in matching supply and demand of stressed assets in the market, and auction is an effective mechanism for determining such value in a fair and transparent manner. Regulations 33(1) of Liquidation Regulations stipulates that the liquidator shall *ordinarily* sell the assets of the CD through an auction in the manner specified in Schedule I. Schedule I, *inter alia*, mentions detailed mechanism for auction including marketing strategy for sale of assets, terms and conditions of sale, mode of auction (electronic or physical), etc. to be adhered to by the liquidator.

26. Schedule I of the Liquidation regulations, however, does not specify any timelines from the issue of public notice of auction to date of auction. Taking unfair advantage of this regulatory gap, liquidators in some processes have conducted e-auction within an unreasonably short period of 5-6 days, despite the nature of assets requiring much larger timeframe. Such an act has limited market participation in auction leading to either failure of auction or sale of assets to a buyer, pre-identified in an unfair manner, thereby compromising transparency and fairness of the process.

**27. Proposal 9:** *The following events-based timelines for auction may be stipulated in Schedule I:*

<b>Sl. No.</b>	<b>Event</b>	<b>Timeline</b>
1	Public Notice of E-Auction (including availability of Process Memorandum and other relevant documents)	T = 0 day
2	Submission of Eligibility Documents by Prospective Bidder (Application Form, Section 29A compliant Affidavit, Confidentiality Undertaking, etc.)	Minimum 14 days
3	Declaration of Qualified Bidder by Liquidator	1 to 3 days
4	Data Room Access, Site Visits and Discussion Meeting (Access to be given only to Qualified Bidders, within one day of such declaration)	Min. 7 days
5	Submission of Earnest Money Deposit	Minimum 2 days
6	Submission of Bids on E-auction Date	T+35 day

**28.** *The foregoing timelines (which may run parallel for some events) have been proposed as minimum threshold, with the freedom to the liquidator, in consultation with SCC, to provide additional time for any event (except submission of bids which is mandated on 35<sup>th</sup> day) on the facts and circumstances of the case.*

**29. Further, the first auction notice, for sale of corporate debtor as a going concern or in other manner, may be issued within 45 days from LCD subject to the process of compromise or arrangement under Regulation 2B being not pending. If the first auction notice has been issued for sale of the corporate debtor as a going concern only, it is proposed that the second auction notice shall also include the possibility of selling the assets in other manner(s) though it may give an option of selling CD as a going concern as well.**

#### **E2: Timeline for successive auction**

30. Due to the specific nature of assets (including their status as stressed assets), it often takes more than one auction to sell *all* assets of the company. However, in some cases, it has been noticed that the liquidator conducts successive auction(s) at large interval of 3-4 months, without any reasonable ground, thereby delaying the whole liquidation process which invariably adversely impacts the realization by the stakeholders.

**31. Proposal 10: It is proposed that in the event of failure of an auction, the successive auction notice shall be issued within the next 15 days of a failed auction (while following the foregoing events-based timeline) unless the SCC agrees to extension of this timeline, on specific ground(s).**

#### **E3: Designating Auction Portal**

32. Clause 1(7) of Schedule I of Liquidation Regulations provides that “*The liquidator shall sell the assets through an electronic auction on an online portal, if any, designated by the Board, where the interested buyers can register, bid and receive confirmation of the acceptance of their bid online.*”. At present, there exist plethora of online auction platforms in the market, however, the security of information / data collected / hosted by them is not up to the desired level, and the market regularly raises questions on confidentiality and transparency of procedures followed by them.

33. The Board has empanelled two Platforms for Distressed Assets (PDAs) after carefully evaluating them on specified technical / security parameters and has mandated adherence to stringent compliance requirements at all times, but has not exclusively designated them for providing such services (as per clause 1(7) of Schedule I). Such designation would result in ensuring greater confidentiality (about bidders) and transparency in the process which shall generate greater trust amongst stakeholders in IBC ecosystem.

**34. Proposal 11: The Liquidation Regulations may provide that the auction platforms of PDAs as empanelled from time to time may be exclusively designated for offering auction services.**

#### **E4: Preparation of Asset Memorandum**

35. Regulation 34 of the Liquidation Regulations mandates the liquidator to prepare an asset memorandum within 75 days from LCD and only after its preparation, the sale process of assets is undertaken by the liquidator. It is observed that large amount of information which is required to be presented in the Asset Memorandum is already covered in the Information Memorandum (IM) and valuation conducted during CIRP. Further, regulation 34(5) provides

that the asset memorandum shall not be accessible to any person during liquidation, unless permitted by the AA. However, it is submitted that sharing of the asset memorandum with the SCC may be permitted to arrive at better decision for sale of the assets of the CD.

**36. Proposal 12:** *The Liquidator shall use the information provided in IM and valuation conducted during CIRP for preparation of Asset Memorandum and submit the same to AA within 30 days. Further, the liquidator shall share the asset memorandum with the SCC after receiving confidentiality undertaking from the members of the SCC.*

#### **F. Interim Finance availed during CIRP**

37. The Code provides that a resolution professional during CIRP may raise interim finance and such interim finance shall form part of the insolvency resolution process costs. The provision for interim finance aids the RP in resolution of the CD by providing timely and adequate financial support. The Liquidation Regulations provide that, “*interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower;*” shall form part of the liquidation cost. Thus, the liquidation cost covers maximum twelve months of interest on interim finance. In case the liquidation process continues for more than twelve months, the interim finance ceases to earn any interest, which acts as a strong disincentive for lenders to provide interim finance during the CIRP.

**38. Proposal 13:** *The liquidation cost shall include the interest on interim finance till the same is repaid.*

#### **G. Treatment of Avoidance Applications**

39. Regulation 44 of the Liquidation Regulations provides that the liquidator shall liquidate the corporate debtor notwithstanding pendency of any application for avoidance of transactions. Thus, the liquidation proceeding, or dissolution of the CD or closure of the process should not be held up even if the matters relating to avoidance transactions are yet to be disposed of. However, there is a need for clarity on treatment of such proceedings after the dissolution of the CD / closure of the process. This assumes importance especially after the order of High Court of Delhi in the matter of Venus Recruiters Private Limited v. Union of India.

**40. Proposal 14:** *Before filing of an application of dissolution or closure of the process by liquidator, 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.*

#### **H. Claims**

41. Section 38(1) of the Code provides that, “*The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.*” Further, Regulation 12 of the Liquidation Regulations provides that the liquidator shall make a public announcement calling upon stakeholders to submit their claims or update

their claims submitted during the CIRP, as on the LCD. Hence, under the present dispensation, there is duplication of effort in terms of invitation of fresh claims during the liquidation process.

**42. Proposal 15: *The liquidator shall consider the claims collated during the CIRP in respect of claimant who have not submitted their claim during liquidation.***

### **Economic Analysis**

43. The Code provides an orderly exit mechanism for an inefficient or defunct firms so as to release idle resources for efficient uses in the economy. The objective of the Code, *inter alia*, to maximize value of assets of the CD can be achieved only if the processes under the Code are completed in a time bound manner. Each ‘early’ action may translate into ‘higher’ realization for stakeholders under the Code. The proposed amendments would aid in achievement of objectives of the Code by raising the participation of creditors in the liquidation process, providing a better monitoring framework of the liquidation process and prescribing timeline framework for auction of assets, thereby, ensuring time bound disposal of assets and completion of liquidation process. The proposed amendments would also balance the interest of stakeholders.

### **Amendment Regulations**

44. A draft of the amendment regulations is given in **Annexure**.

### **Public Comments**

45. The Board accordingly solicits comments on the fifteen (15) proposals discussed above, along with the draft Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022 (placed at Annexure). This is issued in pursuance to regulation 4 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. Comments may be submitted electronically by 05<sup>th</sup> July 2022. For providing comments, please follow the process as under:

- (i) Visit IBBI website, [www.ibbi.gov.in](http://www.ibbi.gov.in);
- (ii) Select ‘Public Comments’; and then select ‘Discussion paper – Liquidation Process June, 2022’;
- (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 firm;
  - d) Partnership firm;
  - 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:

a) Inconsistency, if any, between the provisions within the regulations (intra regulations);

b) Inconsistency, if any, between the provisions in different regulations (inter regulations);

c) Inconsistency, if any, between the provisions in the regulations with those in the rules;

d) Inconsistency, if any, between the provisions in the regulations with those in the Code;

e) Inconsistency, if any, between the provisions in the regulations with those in any other law;

f) Any difficulty in implementation of any of the provisions in the regulations; and

g) Any provision that should have been provided in the regulations, but has not been provided; or

h) Any provision that has been provided in the regulations but should not have been provided.

And then write comments under the selected option.

(vii) 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.

(viii) 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 45 (v) onwards.

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

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**THE GAZETTE OF INDIA  
EXTRAORDINARY  
PART III, SECTION 4  
PUBLISHED BY AUTHORITY  
NEW DELHI, XX JUNE, 2022**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
NOTIFICATION  
New Delhi, the XX June, 2022**

**Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022**

**No. IBBI/2020-21/GN/REG084.-** 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) (Second Amendment) Regulations, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as 'the principal regulations'), in regulation 2, in sub-regulation (1), in clause (ea), for sub-clause (vi), the following sub-clause shall be substituted, namely:-  
“(vi) interest on interim finance”

3. In the principal regulations, in regulation 2B,

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

“(1) Where under Regulation 39C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a compromise or arrangement is proposed under section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within thirty days of the order of liquidation under section 33.

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

(ii) in sub-regulation (2), for the word “ninety” the word “thirty” shall be substituted.

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

“Provided the liquidator shall consider any claim collated during the corporate insolvency resolution process but not submitted during the liquidation process.

5. In the principal regulations, in regulation 15, in sub-regulation (1), after the words “Adjudicating Authority” the words “and the Board” shall be inserted.

6. In the principal regulations, in regulation 21A, for sub-regulation (1), the following sub-regulation shall be substituted, namely:-

“(1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest within seven days from the liquidation commencement date or in the first meeting of the consultation committee, whichever is later:

Provided that, where a secured creditor does not intimate its decision within seven days from the liquidation commencement date or in the first meeting of the consultation committee, whichever is later, the assets covered under the security interest shall be presumed to be part of the liquidation estate.”

7. In the principal regulations, for regulation 30, the following regulations shall be substituted, namely:-

“The liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and any claim collated during the corporate insolvency resolution process but not submitted during the liquidation process and may either admit or reject the claim, in whole or in part, as the case may be.”

8. In the principal regulations, in regulation 31A,

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

(1) The liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to-

(a) remuneration of professionals appointed under regulation 7;

(b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy;

(c) review fees of the liquidator

(ii) after sub-regulation (1), the following sub-regulation shall be inserted, namely:-

“(1A) The committee of creditors under section 21 shall function as the consultation committee with same voting rights till its constitution under sub-regulation (1).

Provided the directors, partners and one representative of operational creditors, as referred in sub-section (3) of section 24, may attend the meetings, but shall not have any right to vote in such meetings”

(iii) for sub-regulation (2), the following sub-regulation shall be substituted, namely:-

“(2) The voting share of members of the consultation committee under sub-regulation (1) shall be proportionate to the share of payments they will receive in terms of Section 53 against their admitted claim during liquidation if the liquidation value is taken as the proceeds for sale.

Provided a secured creditor who has not relinquished their security interests under section 52 shall not be part of the consultation committee under regulation (1) or (1A), as the case may be.

Provided further, the representatives of stakeholders not having voting share in the consultation committee may attend the meetings, but shall not have any right to vote in such meetings”

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

(3) The liquidator may facilitate the stakeholders of each class namely financial creditors in a class, workmen, employees, government departments, other operational creditors, shareholders, to nominate their representative for participation in the consultation committee.

(v) for sub-regulation (4), the following sub-regulation shall be substituted, namely:-

“(4) the representative under sub-regulation (3) shall cast his vote on behalf of all the stakeholders he represents in accordance with the decision taken by a vote of more than fifty per cent of the voting share of the stakeholders he represents, who have cast their vote.”

(vi) for sub-regulation (6), the following sub-regulation shall be substituted, namely:-

(6) The liquidator shall convene first meeting of the consultation committee within seven days of the liquidation commencement date and shall convene a meeting when a request is received from at least thirty three percent of members of the consultation committee.

(vii) in sub-regulation (10), in the proviso, for the words “mention it in the next progress report” the words “submit the records relating to the said decision, to the Adjudicating Authority and the Board within five days of the said decision and mention it in the next progress report”

(viii) after sub-regulation (10), the following sub-regulation shall be inserted, namely:-

(11) The consultation committee may, by a majority vote of not less sixty-six per cent, present and voting, propose to replace the liquidator and shall file an application before the Adjudicating Authority for appointment of the proposed liquidator.

8. In the principal regulations, in regulation 32A, for sub-regulation (4), the following sub-regulation shall be substituted, namely:-

“The liquidator shall be permitted to sell exclusively under clause (f) of regulation 32 only at the first auction”

9. In the principal regulations, in regulation 34,

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

“(1) Within thirty days from the liquidation commencement date, the liquidator shall prepare an asset memorandum based on the information memorandum prepared under section 29 with suitable modifications”

(ii) for sub-regulation (5), the following sub-regulation shall be substituted, namely:-

“(5) The liquidator shall share the asset memorandum to the members of the consultation committee having voting rights after receiving an undertaking from each member to the effect that such member shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person.”

10. In the principal regulations, in regulation 35, for the sub-regulation (2), the following sub-regulation shall be substituted, namely:-

“(2) Where the liquidator is of the opinion that fresh valuation is required, he shall, with the advise of the consultation committee, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor: Provided that the following persons shall not be appointed as registered valuers, namely: -

- (a) a relative of the liquidator;
- (b) a related party of the corporate debtor;
- (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or
- (d) a partner or director of the insolvency professional entity of which the liquidator is a partner or director.”

11. In the principal regulations, in regulation (44), the proviso shall be omitted.

12. In the principal regulations, in regulation (44), the following regulation shall be inserted, namely:-

**“(44A) Treatment of avoidance of transaction**

The liquidator shall, in the application filed under sub-regulation (3) of regulation 45, provide for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed.

13. In the principal regulations, in Schedule I, in Para (1),

(i) after clause (1), the following clause shall be inserted, namely:-

(1A) Subject to regulation 2B, the liquidator shall issue a public notice of an auction for sale under regulation 32 within forty-five days from the liquidation commencement date and shall conduct next auction in case of failure of auction within fifteen days from the last failed auction unless the consultation committee agrees to extend the timeline for reason to be recorded in writing.

(1B) The liquidator shall complete the auction process within thirty-five days from the issue of public notice for auction.

(1C) Subject to clause (1B), the liquidator shall provide at least fourteen days from issue of public notice for submission of eligibility documents by prospective bidder.

(1D) Subject to clause (1B), the liquidator shall declare qualified bidder within three days of submission of eligibility documents by prospective bidder.

(1E) Subject to clause (1B), the liquidator shall provide to qualified bidder at least seven days, for inspection or due diligence of assets under auction, from declaration of qualified bidder.

(1F) Subject to clause (1B), the liquidator shall provide at least two days, from inspection or due diligence of assets under auction, for submission of earnest money deposit by prospective qualified bidder.

(ii) for clause (7), the following clause shall be substituted, namely:-

(7) The liquidator shall sell the assets through an electronic auction on a Platform for Distressed Assets as empanelled by the Board from time to time.

RAVI MITAL, Chairperson

[ADVT .....]

Note: The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 were published vide notification No. IBBI/2016-17/GN/REG005 dated 15<sup>th</sup> December, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, vide No. 460 on 15th December, 2016 and were last amended by Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2022 vide notification No. IBBI/2022-23/GN/REG082 dated the 28<sup>th</sup> April, 2022 in the Gazette of India, Extraordinary, Part III, Section 4, vide No. 231 on 28<sup>th</sup> April, 2022.