

Insolvency and Bankruptcy Board of India

20th October, 2023

Discussion Paper on ‘Strengthening the Liquidation Process’

The first and foremost objective of the Insolvency and Bankruptcy Code, 2016 (‘Code’) is resolution of the corporate debtor (CD), and only upon its failure, liquidation commences. During the liquidation process, the liquidator invites claims from stakeholders, forms a liquidation estate, endeavours to sell assets, in consultation with the Stakeholders’ Consultation Committee (SCC) and distributes the realized proceeds to stakeholders as per the waterfall mechanism provided under section 53 of the Code.

2. To respond to emerging needs, the regulatory framework of the liquidation process has been amended on several occasions. With the emergence of new issues, as detailed in this paper, a need is felt to further strengthen the regulatory framework of the liquidation process in terms of certain matters related to sale, accountability of liquidator towards stakeholders, etc as detailed below:

A. Sale related issues

3. Section 35(1)(f) of the Code provides that the liquidator may sell the assets of the corporate debtor (CD) through public auction or private contract. Sub-regulation (1) of Regulation 33 of IBBI (Liquidation Process) Regulations, 2016 (‘Liquidation Regulations’) provides 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), event-based timelines for auction, etc. to be adhered to by the liquidator. Sub-regulation (2) of Regulation 33 provides that the liquidator may adopt the mode of private sale in four specific circumstances only.

A1. Review of Auction Framework

4. Schedule I provides timelines for specific events during the auction process. Clause 1(1D) provides that the liquidator shall provide at least 14 days for submission of eligibility documents to prospective bidders. After declaring the qualified bidders, the liquidator shall provide at least 7 days to them for inspection of assets (as provided in Clause 1(1E)). Thus, the Liquidator is to conduct due diligence of all prospective bidders before they can participate in auction, which, *inter alia*, involves verification of KYC documents and compliance with section 29A of the Code.

5. Further, the liquidator declares the highest bidder in an auction as the successful bidder. However, the liquidator may reject the highest bid if it does not seem to maximize the realization, as per the conjoint reading of Clause 1(11) and 1(11A) of Schedule I. Clause 1(13) of Schedule I provides that on payment of full amount by the highest bidder, the sale of assets shall stand completed and the liquidator shall execute certificate of sale or sale deed to transfer such assets.

6. However, the existing provisions results in:

- i. Prospective bidders effectively get only 14 days for participation in auction.
- ii. Liquidators spend a significant amount of time in verifying/ inspecting the eligibility of *all* bidders.
- iii. Possibility of collusion between liquidator and bidders.
- iv. Exercise of discretion of a single person, i.e., liquidator in rejecting the highest bidder even when the bid is above the reserve price instead of collective wisdom of stakeholders who are the real beneficiary of proceeds of the process.

7. In order to address above issues, it is proposed to allow the prospective bidders in auction process on the basis of affidavit/declaration on his eligibility under section 29A. In case the liquidator finds that a prospective bidder has submitted a wrong affidavit of being section 29A compliant, then apart from losing the right to participate in the auction, the EMD shall stand forfeited. The provision for forfeiture of EMD will act as a deterrent and ensure that only serious and eligible participants enter the bidding process. Further, since bidders, a priori, would be careful in submitting correct information, the possibility of forfeiture of EMD would be rare and as the liquidator will consult the SCC before effectuating the forfeiture, the possibility of misuse of this proposed provision will be insignificant. It is also proposed that in case the highest bid above the reserve price, is being rejected by the liquidator, for any reason, consultation with SCC shall be mandatory.

8. Proposal 1: Schedule I may be amended to provide that:

a) The auction notice shall provide that the prospective bidders shall undertake that they are eligible under section 29A of the IBC, 2016 to participate in the auction process. It shall also provide that in case the bidder at any stage during the auction is found to be ineligible, his EMD shall stand forfeited by the liquidator.

b) To ensure confidentiality of the names of prospective bidders participating in the auction process, manner in which earnest money to be deposited by prospective bidder shall be notified through Circular by the Board.

c) The Liquidator shall within 3 days of declaration of H1 bidder conduct due diligence and verification of the eligibility of the bidder, who stood as the H1 (highest) bidder in the auction process.

d) The liquidator shall place before the SCC for its consideration under regulation 31A the result of the auction, the details of the highest bidder, due diligence conducted by him on its eligibility and the result of such due diligence. In case the highest bid above reserve price is not acceptable for any reason to the liquidator, the consultation with SCC shall be mandatory.

A2. Reduction in reserve price

9. Clause (4) of Schedule I provides that the liquidator shall put the assets of the CD on auction at the reserve price arrived at in accordance with the valuation of assets conducted during CIRP or liquidation process. Clause (4A) provides that where an auction fails at the reserve price, the

liquidator may reduce the reserve price by up to 25% to conduct subsequent auction. Further, Clause (4B) states that where an auction fails at reduced price under clause (4A), the reserve price in subsequent auctions may be further reduced by not more than 10% at a time.

10. The 25% reduction in reserve price was provided as the upper threshold which was to be considered after accounting for the prevailing market conditions. However, in several instances, the reserve price is being reduced by maximum permissible limit of 25% at the instance of first failure of the auction, instead of taking a staggered and nuanced approach of reducing the reserve price in steps to test the marketability of the asset after reducing the price of assets gradually. Some stakeholders have also expressed the opinion that the value maximization objective gets compromised on account of such large reduction in reserve price, in a single shot.

11. Proposal 2: Clause (4A) may be deleted from Schedule I which shall ensure that the reserve price in an auction is reduced by maximum 10% at a time.

A3. Monitoring Private Sale

12. As stated above, the liquidator may sell the assets of the CD through private sale in four circumstances only (Regulation 33(2)). These circumstances are when:

- (a) the asset is perishable;*
- (b) the asset is likely to deteriorate in value significantly if not sold immediately;*
- (c) the asset is sold at a price higher than the reserve price of a failed auction; or*
- (d) the prior permission of the Adjudicating Authority has been obtained for such sale:*

13. Though the regulation provides some checks and balances on the private sale, the same is not considered adequate (except where the prior permission of Adjudicating Authority (AA) has been obtained) to ensure transparency in the process and the accountability of liquidator, especially when the sale transaction does not take place publicly. In some instances, the stakeholders have not even been consulted by the liquidator before the conduct of a private sale, thus, leaving them disempowered and disenchanted.

14. Further, one of the conditions for the private sale is that *"the asset is sold at a price higher than the reserve price of a failed auction"*. This condition allows for a private sale if the asset is being sold at a price higher than the reserve price of a failed auction. However, this could discourage competitive bidding, as potential buyers may wait for an auction to fail to negotiate a private sale. Further, it could also discourage participation in public auctions, thereby, reducing the pool of potential buyers and possibly affecting the final sale price negatively.

15. Proposal 3: Clause (c) of Regulation 33 to be omitted. Further, Regulation 33(2) may be amended to provide that the liquidator may sell the assets of the CD by means of private sale only after the prior consultation with SCC and the successful buyer shall also be confirmed after such consultation.

A4. Listing of all assets on listing platform

16. One of the primary issues that is presently inhibiting value maximization in liquidation is that the assets are publicly listed at the time of auction only. This practice significantly limits the amount of time for which the information about assets is available to potential bidders before an auction begins, potentially reducing both the number of interested parties and the final bid prices.

17. A second issue is the lack of a centralized listing platform for all assets undergoing the liquidation process. The lack of availability of information on a single platform reduces participation and creates confusion among potential bidders. It also raises transparency concerns as different platforms may have disparate processes for giving details of assets, leading to a lack of a level playing field for all participants. This lack of freely available information affects the transparency of the bidding process and potentially discourages participation.

18. Proposal 4: *The regulations may provide that the liquidator should list all assets of the CD as per the Asset Memorandum, on a listing platform in the manner to be notified by the Board, which would significantly improve the visibility of assets, reduce information asymmetry and simplify the process for potential bidders. Each asset listed should contain all material information about the assets such as status of attachment or lien, geographic coordinates, envisaged mode of sale and likely date of auction. By listing assets much earlier than the auction date, the process would ensure greater engagement for the prospective bidders and availability of more time with bidders for due diligence, leading to more competitive bidding.*

B. Circulation of progress reports to stakeholders

19. Regulation 15 of Liquidation Regulations provides that the liquidator shall submit Progress Reports, to the Adjudicating Authority (AA) and the Board within fifteen days after the end of every quarter. A progress report indicates progress in the liquidation process, including the status of sale of assets, distribution to stakeholders, expenses incurred by the liquidator, developments in litigation, etc. Though the regulation provides the submission of progress reports to the AA and the Board, it does not get shared with the key stakeholders of the ecosystem, i.e., creditors, thus, leaving them unaware about the progress of the process and creating information asymmetry.

20. Proposal 5: *Regulation 15 may be amended to provide that the progress reports shall also be shared with the SCC.*

C. Simplification of calculation of liquidator's fee

21. In cases where the liquidator fee is not fixed, Regulation 4(2)(b) provides for a fee as a percentage of the amount realised net of other liquidation costs, and of the amount distributed. It provides for 'Percentage of fee on the amount realised / distributed' in the following time intervals:

- in the first six months from the liquidation commencement date

- in the next six months
- thereafter

22. Regulation 15 provides that the liquidator shall prepare Progress Report, along with receipts and payments, at the end of each quarter. Thus, while the receipt and payments are being prepared on quarterly basis, he is also required to maintain receipt and payment account for the six months periods from LCD and so on for the purpose of calculation of liquidator fee. In order to facilitate calculation of liquidator fee in a transparent manner and also to remove duplication of work, it is proposed that instead of bucketing the periods into six months periods with reference to liquidation commencement date, the same may be considered from the end of quarter in which the liquidation has commenced. This will align the periods of realisation on which fee is calculated with the periods in quarterly progress reports and therefore, fee can be calculated based on figures of realisation given in quarterly progress reports rather than requiring a separate calculation of realisation in six months from liquidation commencement date. It will make calculation easy and transparent to all stakeholders and overall impact on the liquidator fee as such would not be much. For instance:

Liquidation Commencement date (LCD): 15.05.2023.

First Quarter after LCD ending on 30.06.2023

Thus, in the instant case, the first column of the liquidator fees will be for realisation till 31.12.2023, instead of 14.11.2023.

23. At present, exclusions from these periods are being availed for the assets which cannot be sold because of litigations etc. These exclusions again make the process of fee calculation very tedious. To simplify the same, it is proposed that no periods should be excluded from these six months periods which will strictly align with the end of quarters. However, in few cases where most of the assets are under litigation, the fee structure may become unviable for liquidators. Hence, a flexibility may be added for renegotiation of fees with Stakeholder Consultation Committee in such cases. These proposals will apply to cases in which liquidation has commenced after these proposed changes.

24. Proposal 6: *Liquidator's fee specified in the first column will be applicable for the realisation made up to the end of six months from the end of quarter in which liquidation has commenced. However, no period will be allowed to be excluded on account of inability to sell assets because of any litigation. Renegotiation of fees with Stakeholders' Consultation Committee will be permitted in cases where fees are unviable because of the majority of assets being under litigation.*

D. Consultation with SCC

D1. Meetings of SCC at regular intervals

25. In some liquidation cases, it has been observed that there is a lack of *regular* communication between the Liquidator and the SCC, which left the stakeholders unaware about the progress and direction of the liquidation, leading to uncertainty and disputes. The proposed amendment, therefore, seeks to address these issues by institutionalizing regular, transparent, and inclusive

communication mechanisms, ensuring that all stakeholders are adequately informed, engaged, and aligned throughout the liquidation journey.

26. Proposal 7: *The Liquidator shall be mandated to hold meeting of the SCC in such a way that interval between two consecutive meetings does not exceed 30 days.*

D2. Preliminary Report

27. The current framework of Regulation 13 of the Liquidation Regulations mandates the Liquidator to submit a Preliminary Report to the AA detailing various aspects of the corporate debtor and the intended plan of action for carrying out liquidation. However, a crucial component that seems to be missing is the consultation with the SCC during the preparation of the report. As SCC represents the interests of various stakeholders involved in the liquidation process, by not consulting them while preparing the report, there is a risk of overlooking their concerns, insights, and suggestions, which could be invaluable in preparing a comprehensive and balanced report. Further, stakeholders, through the SCC, might possess critical information or perspectives about the corporate debtor that the Liquidator might not be privy to. Their input can help in ensuring the accuracy and completeness of the report, especially in cases where the books of the corporate debtor are either not available or unreliable.

28. Proposal 8: *Regulation 13 may be amended to provide that the Liquidator shall seek suggestions / observations of the SCC on the draft preliminary report and finalize it, after considering such suggestions / observations, and thereafter, submit it to the AA, Board and members of SCC.*

D3. Liquidation Cost

29. The Preliminary Report, as currently structured, provides an initial estimate of the liquidation costs, and any subsequent changes in the estimated cost are reported in the quarterly progress report. However, there is no mandate to inform the SCC if the actual liquidation costs exceed the estimated costs. The SCC represents the interests of various stakeholders, including creditors, who have a direct financial stake in the liquidation process. As any increase in the liquidation costs would potentially reduce the recoverable amount for these stakeholders, it is crucial for them to be informed promptly about any deviations to ensure complete financial transparency. Early information about cost overruns may enable the SCC to engage in discussions with the Liquidator about alteration in strategy or corrective actions to mitigate further financial deviations.

30. Proposal 9: *Regulation 31A may be amended to mandate the liquidator to place the reason for liquidation cost exceeding the estimates of liquidation cost before SCC and discuss ways to rationalise the same by presenting cost and benefits analysis of various expenses:*

- i) if it exceeds the estimated cost mentioned in the preliminary report or.*
- ii) if it exceeds 10 percent of the liquidation value of the CD.*

D4. Valuation related

31. Regulation 31A(1)(d) provides that the liquidator shall constitute an SCC to advise him on matters relating to valuation under sub-regulation (2) of regulation 35. Further, Regulation 35(2) provides that, *“In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, 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”*.

32. It has been observed that in several cases, the liquidators are undertaking fresh valuation during the liquidation process, however, methodology adopted by the registered valuers for valuation and the valuation reports are not being shared with the members of the SCC. This results in asymmetry of information among stakeholders and delays the decision-making process.

33. Proposal 10: *In all such cases where the liquidator decides to undertake a fresh valuation of assets of the CD under regulation 35(2) after consultation with the SCC under regulation 31A:*

i) The liquidator shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation, to the consultation committee before finalisation of valuation reports.

ii) The Liquidator shall share the valuation report with the SCC members.

D5. Litigation related

34. Section 33(5) provides that *“Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor: Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.”*

35. Further, section 35(1) provides for the liquidator *“to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor”* and *“to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and”*.

36. Based on the interactions with the stakeholders, it has been observed that in most of the cases, the main reason for the delay in the liquidation process is litigation by or against the CD. Excessive litigation not only delays the process but also adds to the liquidation costs, hence reducing the distribution to the stakeholders.

37. On commencement of the liquidation, the moratorium no longer exists. This results in the revival of cases by and against corporate debtors which were instituted before the commencement of CIRP. Pursuing all such cases, after the commencement of the liquidation process may not bring value to the CD. In some cases, the cost of litigating may be more than the expected benefit to the CD, especially when one considers the expected payout of the claim

in terms of section 53 instead of the claim amount itself. Therefore, the continuation of such litigations must be deliberated by the liquidator before the SCC. Such deliberation must take into consideration the expected cost of litigation and cost/ benefit to the CD. Hence, the liquidator, in the first meeting of the SCC, after its reconstitution, shall place all such litigations before the SCC. He shall also place the cost-benefit of all such litigations and take advice from the SCC on whether to pursue such cases.

38. Also, on the commencement of the liquidation process, the liquidator may decide to file a new suit or proceedings. The liquidator shall also place the cost-benefit analysis of any such new suit or proceedings that the liquidator intends to file before the SCC and take its advice.

39. Proposal 11: *In all cases where the liquidator proposes to continue or initiate any legal proceeding before any authority, he shall seek the advice of the consultation committee, upon its reconstitution as per Regulation 31A, after presenting the economic rationale for the proposal. The consolidated status of all the legal proceedings shall be placed before the consultation committee in its every meeting.*

D6. Running business of the CD as Going Concern

40. Section 35(1)(e) provides for the liquidator “to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary”. Operating a CD as a going concern involves various operational expenses, including salaries, utilities, maintenance, and other overheads. Continuous operation without a clear exit strategy or potential buyer can lead to the accumulation of significant costs, which might eventually outweigh the benefits of keeping the CD running. The stakeholders must be informed of the economic benefits of running the CD as a going concern and their advice must be sought on the same.

41. Further, there are instances where the CD has value only when it is sold on a going concern basis. For instance, in cases where the CD is into EPC business or having lease right, or operating in real estate sector, dissolution of the CD would result in loss of economic value. In such cases where CD is being run as a going concern and liquidator is unable to sell it on a going concern basis, the SCC must be consulted to decide marketing strategy to attract potential bidders.

42. Proposal 12:

a. In the event the running of business of the CD is economically unviable, the liquidator shall consult the SCC, to decide whether to keep the CD as a going concern or otherwise. In case, the SCC decides not to run the business of the CD as a going concern, the liquidator shall act as per the advice of SCC.

b. Where the liquidator is unable to sell the CD as a going concern though business of the CD is running as going concern, he shall inform the reason for such failure to SCC and seek its advice to review the marketing strategy already adopted for previous auctions, to attract potential bidders in future auctions.

E. Form H - Compliance Certificate

43. Regulation 45(3) provides that *“The liquidator shall submit an application along with the final report and the compliance certificate in form H to the Adjudicating Authority for –*

(a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or

(b) for the dissolution of the corporate debtor, in cases not covered under clause (a)”

44. Form H, *inter alia*, provides for the liquidator to mention the details of the *“amount realised from sale of liquidation estate”* and *“The amounts distributed to stakeholders as per section 52 or 53 of Code”*. On perusal of Form H filed by the liquidators in various cases, it has been observed that there is a discrepancy in the total amount realised and distributed by the liquidator. For instance, in some cases, the amount distributed has been shown to be more than the amount realised during the process.

45. Proposal 13: *Form H may be amended to capture certain other details regarding the realisation and distribution made during the process.*

F. Assignment of Not Readily Realisable Assets (NRRA)

46. Regulation 37A provides that a liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders’ consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor. Further, it has been explained that an NRRA may also include assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions.

47. Dissolution of the CD, while there is a possibility to recover some value which is lying in NRRA, is against the interest of stakeholders. On the other hand, if the dissolution is kept pending for want for realisation of such assets, the liquidation process cost gets accumulated on continuous basis, while the value of the assets keeps on depreciating with time. Presence of substantial NRRA in liquidation estate creates a situation of stalemate. Hence, it might be worthwhile that the liquidators should be able to assign the proceeds out of avoidance application after due process even before its determination by AA.

48. Proposal 14: *A liquidator may assign assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code even before the adjudication of such proceedings by the AA.*

G. Early Dissolution

49. The current framework of Regulation 14 provides the liquidator with the discretion to apply for early dissolution of the corporate debtor if certain conditions are met. However, the decision-making process is solely vested in the liquidator without any mandatory consultation with the stakeholders. The decision to dissolve a corporate debtor early is significant and can have ramifications for all stakeholders involved. Without a consultative process, stakeholders

might feel left out, leading to a lack of transparency and potential distrust in the liquidation process.

50. Proposal 15: *Before applying to the Adjudicating Authority for early dissolution under this regulation, the liquidator shall mandatorily consult the Stakeholder Consultation Committee (SCC) to seek their views and recommendations. The liquidator shall provide a detailed report of the consultation and the views of the SCC in the application to the Adjudicating Authority.*

H. Withdrawal from Corporate Liquidation Account

51. Regulation 46 of Liquidation Regulations provides a framework for the management of unclaimed deposits and undistributed proceeds during the liquidation process. As per the regulation, liquidators are mandated to deposit unclaimed/ undistributed amounts into the Corporate Liquidation Account along with details of stakeholders entitled to such deposited amount with the Board. This mechanism has been established to ensure a swift and efficient closure of the liquidation process. Post the transfer of funds, stakeholders or any other person who claims to be entitled to any amount deposited into the Corporate Liquidation Account, may apply to the Board for withdrawal of the amount.

52. There is now a substantial increase in the requests for withdrawals in cases where final report has been submitted but the dissolution order has not been passed as the time gap between the order of dissolution and submission of application for dissolution/closure of the process is widening. As per data available with the Board, the average time taken for dissolution/closure of the liquidation from the date of submission of the final report is 154 days. This causes delays in distribution and inconvenience to the claimants as the claimants are anxious about their claims. However, the present mechanism does not provide for a situation wherein distribution can be made after the final report but before the order of dissolution. Therefore, there is a need to provide for distribution to these claimants as the same will help them get their dues and will reduce the correspondence being made to the Board.

53. The Liquidator, while submitting dissolution application to the AA, provides the details of the unclaimed/ undistributed amount, if any, deposited into the Corporate Liquidation Account in the final report as well as in the compliance certificate. Section 35(1)(j) of the Code mandates the liquidator to invite and settle the claims of creditors and claimants and distribute proceeds in accordance with the provisions of the code. The liquidator gets discharged from his duties only on dissolution order or closure of the liquidation process. Therefore, till the dissolution order/ process closure, it is the duty of the liquidator to distribute proceeds to the claimant which were deposited with the Board.

54. Proposal 16: *Where a request for withdrawal is received from the claimant, the Board shall direct the liquidator in all such cases where a dissolution order or process closure order has not been passed, for verification of the claim. This includes checking the legitimacy of the claim, the amount involved, and any other relevant details. Post verification, the liquidator shall submit their findings and opinion to the IBBI to enable it to permit withdrawal even before dissolution.*

Economic Analysis

55. The proposed amendments would improve transparency in the auction process, thus resulting in higher realisation and expediting the process. Listing of assets on centralised platform would improve visibility of assets, reduce information asymmetry, and simplify the process for potential bidders. Increased involvement of the SCC in the valuation process, auction process, private sale and the receipt of progress reports would result in better monitoring of the process.

Amendment Regulations

56. A draft of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2023 (**Annexure**) is enclosed.

Public Comments

57. The Board accordingly solicits comments on the **sixteen (16) proposals** discussed above, along with the draft Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2023 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 10th November 2023. 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 Process October, 2023';
- (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 57(v) onwards.

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

**THE GAZETTE OF INDIA
EXTRAORDINARY
PART III, SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, XXXXXDAY, OCTOBER XX, 2023**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION**

New Delhi, the **October, 2023**

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2023

No. IBBI/2022-23/GN/REG091.- 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 to amend further, 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, 2023.

(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 4, after sub-regulation (3), the following sub-regulation shall be inserted, namely:-

“(4) Where the fee is payable under clause (b) of sub-regulation (2),

(a) The first six months would be counted from the end of quarter in which liquidation process has commenced.

(b) The exclusion of period on any account including the stay on the process by judicial order, shall not be permissible.”

3. In the principal regulations, in regulation 8, in sub-regulation (2), after the words “Schedule II”, the words, “and submit it on the electronic platform of the Board from the date to be notified by the Board” shall be inserted.

4. In the principal regulations, Regulation 13 shall be renumbered as sub-regulation (1) thereof, and in sub-regulation (1) so renumbered, for the words “submit a Preliminary Report to the Adjudicating Authority within seventy five days from the liquidation commencement date”, the words “prepare a Preliminary Report in consultation with the consultation committee” shall be substituted.

5. In the principal regulations, in Regulation 13, after sub-regulation (1), the following sub-regulation shall be inserted, namely:-

“(2) The liquidator shall submit the Preliminary Report to the Adjudicating Authority, Board and members of consultation committee within seventy-five days from the liquidation commencement date.”

6. In the principal regulations, for regulation 14, the following regulation shall be substituted, namely:-

“14. Early dissolution.

(1) Any time after the preparation of the Preliminary Report, if it appears to the liquidator that-

(a) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and

(b) the affairs of the corporate debtor do not require any further investigation;

the liquidator shall consult the consultation committee to file for early dissolution of the corporate debtor.

(2) In the event the consultation committee advises, the liquidator shall file an application for early dissolution, along with a detailed report of the consultation and the views of the consultation committee, with the Adjudicating Authority.”

7. In the principal regulations, in regulation 15, in sub-regulation (1), for the words “Adjudicating Authority and the Board”, the words “Adjudicating Authority, consultation committee and the Board” shall be substituted.

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

(i) in sub-regulation (1), after clause (e), the following clause shall be inserted, namely:-

“(f) review of marketing strategy in case of failure of sale of corporate debtor as a going concern;

(g) continuation or institution of any suits or legal proceedings by or against the corporate debtor;

(h) actual liquidation cost exceeding the estimated liquidation cost as mentioned in the preliminary report;

(i) actual liquidation cost exceeding ten percent of the liquidation value of the corporate debtor;

(j) running the business of the corporate debtor as going concern in the event the same is economically unviable.”

(ii) in sub-regulation (6), for the words “may convene other meetings, if he considers necessary, on a request received from one or more members of the consultation committee: ”, the words “shall convene subsequent meetings such that the period between two consecutive meetings does not exceed thirty days. Further, he may convene other meetings on a request received from one or more members of the consultation committee:” shall be substituted.

(iii) after sub-regulation (6), the following sub-regulation shall be inserted, namely:-

“(6A) In all cases where the liquidator proposes to continue or initiate any legal proceeding before any authority, he shall seek the advice of the consultation committee, upon its reconstitution, after presenting the economic rationale for the proposal. The consolidated status

of all the legal proceedings shall be placed before the consultation committee in its every meeting.”

(iv) after proviso to sub-regulation (10), the following proviso shall be inserted, namely:-

“Provided that where the consultation committee advises the liquidator not to continue the business of the corporate debtor on the ground of it being economically unviable, the liquidator shall act as per advice of consultation committee.”

9. In the principal regulations, in regulation 33, in sub-regulation (2),

(i) for the words “private sale in the manner specified in Schedule I when” the words, “private sale only after prior consultation with the consultation committee under regulation 31A, in the manner specified in Schedule I when” shall be substituted.

(ii) clause (c) shall be omitted.

10. In the principal regulations, in regulation 34, after sub-regulation (4), the following sub-regulation shall be inserted, namely:-

“(4A) The liquidator shall list all assets of the corporate debtor as per the Asset Memorandum, on a listing platform in the manner to be notified by the Board.

(4B) Each listed asset shall contain all material information about the assets such as status of attachment or lien, geographic coordinates, envisaged mode of sale, and likely date of auction.”

11. In the principal regulations, in regulation 35,

(i) in sub-regulation (2), for the words, “where the liquidator is of the opinion”, the words, “where the liquidator after consultation with the consultation committee under regulation 31A is of the opinion” shall be substituted.

(ii) after sub-regulation (4), the following sub-regulation shall be inserted, namely:-

“(5) Where a fresh valuation is undertaken as per sub-regulation (2), the liquidator shall facilitate a meeting wherein valuers can explain the methodology being adopted to arrive at valuation, to the consultation committee before finalisation of valuation reports. ”

12. In the principal regulations, in regulation 37A, after the words and figures “section 66 of the Code” the words “even before the adjudication of such proceedings by the Adjudicating Authority” shall be inserted.

13. In the principal regulations, in regulation 46, after sub-regulation (8), the following proviso shall be inserted, namely:-

“Provided that where a claim for withdrawal under sub-regulation (7) has been received after the submission of dissolution application but before the order of the dissolution of the corporate person, the Board shall direct the liquidator to submit report opining his view on such claim(s) to enable the Board to decide on such claim.”

14. In the principal regulations, in Schedule I, in para (1),

(i) Clause (1D) shall be omitted.

(ii) for Clause (1E), the following clause shall be substituted, namely:-

“(1E) The liquidator shall provide to the prospective bidder, access of the assets under auction for a period of at least 7 days before the date of auction, to facilitate their inspection and due Odiligence.

(iii) For clause (1F), the following clause shall be substituted, namely:-

“(1F) A prospective bidder in an auction process shall deposit earnest money in the manner notified through circular by the Board.

Provided that until such circular is notified, the prospective bidder shall deposit earnest money at least two days before the date of auction with the liquidator.

(iv) Clause (4A) shall be omitted.

(v) after clause (5), the following clause shall be inserted, namely:-

“(5A) The auction notice shall mandatorily state that prospective bidders shall confirm their eligibility under section 29A of the Code to participate in the auction process.”

(vi) Clause (11A) shall be omitted.

(vii) after clause (12), the following clauses shall be inserted, namely:-

“(12A) Within three days of declaring the H1 bidder, the Liquidator shall conduct due diligence and verify the eligibility of the H1 bidder.

(12B) The liquidator shall present the auction results, details of highest bidder, and the due diligence conducted on it to the consultation committee under regulation 31A.

(12C) The liquidator shall declare the highest bidder as the successful bidder or reject such bid after consultation with the consultation committee under regulation 31A.

(12D) In case of rejection of highest bid, he shall intimate the reasons for such rejection to the highest bidder and mention it in the next progress report.

(12E) If a bidder is found ineligible, the earnest money deposited by him shall be forfeited.”

15. In the principal regulations, in Schedule I, in para (2), after sub-regulation (3), the following sub-regulation shall be inserted, namely:-

“(3A) The successful buyer in private sale shall be confirmed after consultation with the consultation committee under regulation 31A.”

16. In the principal regulations, in Schedule II, for Form A, the following Form shall be substituted, namely:-

“FORM A

PROFORMA FOR REPORTING CONSULTATIONS WITH STAKEHOLDERS

(Under Regulation 8 and Regulation 31A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016)

Basic details of CD and meeting		
Name and Registration no. of Liquidator		
Name of corporate debtor		
Date of the Meeting		

Date of last meeting		
Number of days since last meeting		
Details of agenda of last meeting which were not approved by the SCC		
Details of agenda items	Para of the minutes of the meeting where the same was discussed	Disagreement with SCC? (Yes / No)
(a) Remuneration of professionals appointed under regulation 7, including process advisors, IPE, etc.		
(b) Sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process		
(c) Fees of the liquidator		
(d) Valuation under sub- regulation (2) of regulation 35		
(e) Status of Litigations and cost benefit analysis of pursuing these litigations		
(f) Preliminary report		
(g) Manner in which proceedings in respect of preferential transactions, undervalued transaction, extortionate credit transaction or fraudulent or wrongful trading, if any, shall be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from these proceedings shall be distributed		
(h) Actual liquidation cost exceeding the estimated liquidation cost as mentioned in the Preliminary report		
(i) Actual liquidation cost exceeding ten percent of the liquidation value of the corporate debtor		
(j) Running the business of the corporate debtor in the event the same is economically unviable		
(k) Early dissolution of the corporate debtor		
(l) Any other agenda item		

“

17. In the principal regulations, in Schedule II, in Form H,

(i) in para 4, for clause (b), the following clause shall be substituted, namely:-

“Amount realised during the liquidation process:

S. No.	Realisations	Amount (Rs)
1.	Opening balance as on liquidation commencement date (A)	
Realisations (B)		
2.	Auctions of assets	
3.	Private sales of assets	
4.	Assignment of not readily realisable assets	
5.	Distribution of unsold asset	
6.	Revenue earned as a going concern	
6.	Others (specify)	
Total (A+B)		

Note: The total amount of realisation must be equal to the total amount distributed in clause (c)”

(ii) after para 4, the following para shall be inserted, namely:-

4A. Details of realisation of security interest by secured creditor under section 52.

S. No.	Particulars	Details
1.	Number of secured creditors who did not relinquish security interest	
2.	Liquidation value of such security interest (Rs.)	
3.	Amount of admitted claim of secured creditors (Rs.)	
4.	Total realisation from such security interest (Rs.)	
5.	Total Contribution made as per regulation 21A(2) (Rs.) (i+ii+iii)	
	i. Contribution made by secured creditors toward workmen's dues (Rs.)	
	ii. Contribution made by secured creditors toward unpaid CIRP and Liquidation Cost (Rs.)	
	iii. the excess of the realised value of the asset (Rs.)	
6.	Realised value received by secured creditor (Rs.)	
7.	date of realisation by secured creditor	

4B. Details of assignment of not readily realisable assets.

S. No.	Particulars	Details
1.	Details of the assets	
2.	Liquidation value of the assets (Rs.)	
3.	Amount realised (Rs.)	
4.	Name of the bidder	

5.	Sharing of proceeds between bidder and creditors/ corporate debtor, if any	
6.	Schedule of realisation by bidder	

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 15th 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) (Second Amendment) Regulations, 2022 vide notification No. IBBI/2022-23/GN/REG094 dated the 16th September, 2022 in the Gazette of India, Extraordinary, Part III, Section 4, vide No. 456 on 16th September, 2022.