

AMENDMENTS IN IBC
THE REGULATIONS AND THE CODE-
LIQUIDATION PROCESS

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

25 JULY 2019

(APPLICABLE ONLY TO LIQUIDATION PROCESSES, WHICH
COMMENCED ON OR AFTER 25TH JULY, 2019)

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019

- The Government introduced the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019 in the Lok Sabha on December 12, 2019.
- However, the same could not be taken up for discussion as the Parliament Session ended.
- Consequently, the President of India promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, on December 28, 2019 to further amend the Code in order to remove certain ambiguities and ensure smooth implementation

IBBI (CIRP)(SECOND AMENDMENT) REGULATIONS, 2019- 25 JULY 2019

- At the stage of approval of resolution plan or deciding to liquidate CD
 - Financial support to liquidator by members of CoC (Reg 39B)
CoC may approve plan for contribution to meet liquidation cost
 - Sale as a going concern (Reg 39C)
CoC may recommend sale of the CD or sale of business of CD as going concern
 - Fees of liquidator (Reg 39D)
CoC may in consultation with RP , fix the fee payable to liquidator

INITIATION OF LIQUIDATION (SEC 33 OF CODE)

The liquidation order can be passed :-

- ✓ Where the resolution professional, **at any time during the CIRP but before confirmation of resolution plan**, intimates the NCLT of the decision of the COC (**approved by not less than 66% of the voting share**) to liquidate the corporate debtor, the adjudicating authority shall pass a liquidation order.- (under Section 33(2))
 - ✓ **The COC may take the decision to liquidate the corporate debtor, any time after its constitution under Section 21(1) and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum**

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LIQUIDATION STEPS- CHANGES MADE

Step I - Appointment of liquidator and consequences

Step II -

Announcement of Liquidation and Calling for Submission of Claims and **Appointment of Valuers**

Step III

A. Verification and Acceptance of Claims

B. Preparation of Asset Memorandum and Other Reports

Step IV - Formation of liquidation estate (With Inclusions and Exclusions)

Step V - **Sale of Assets**

Step VI - **Distribution of Assets as per Waterfall**

Step VII - Dissolution of Corporate Debtor (**to be completed within 1 year**)

PUBLIC ANNOUNCEMENT OF LIQUIDATION- UPDATE OF CLAIMS ALLOWED

- As soon as the Adjudicating authority passes the liquidation order, liquidator is required to public announcement **within 5 days of Liquidation order in Form B of Schedule II**
- The public announcement shall-
 - call upon stakeholders to **submit their claims or update their claims submitted during the corporate insolvency resolution process**, as on the liquidation commencement date; and
 - provide the last date for **submission or updation of claims**, which shall be **thirty days from the liquidation commencement date**.

LIQUIDATOR FEES TO BE PAID..... CONTD

Liquidator Fee:- Regulation 4 of Liquidation Regulations

- The fee payable to the liquidator shall form part of the liquidation cost (EARLIER)
- **Provided that the cost, if any, incurred by the liquidator in relation to compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013), if any, shall not form part of liquidation cost**
- The fee payable to the liquidator shall be **in accordance with the decision taken by the committee of creditors under Regulation 39D of the IBBI CIRP Regulations, 2016**
- **In cases other than those covered under sub-regulation (1), the liquidator shall be entitled to a fee-**
 - *A. At the same rate as the RP was entitled to during the corporate insolvency resolution process, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013); and*
 - *B. as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation, as under*
- Where the fee is payable under clause (b) of sub-regulation (2), the liquidator shall be entitled to receive half of the fee payable on realisation only after such realised amount is distributed.

LIQUIDATOR FEES TO BE PAID

REGULATION 39(D) OF CIRP REGULATIONS

Fee of the liquidator

While approving a resolution plan under section 30 or **deciding to liquidate** the corporate debtor under section 33, **the committee may**, in consultation with the resolution professional, **fix the fee payable to the liquidator**, if an order for liquidation is passed under section 33 –

- **For the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;**
- **For the period, if any, used for sale under clauses (e) and (f) of Regulation 32 of the IBBI Liquidation Process Regulations, 2016;(Sale as Going Concern) and**
- **For the balance period of liquidation.**

LIQUIDATOR'S FEES AS PER THE REGULATIONS (IF NOT DECIDED BY COC)

Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realised / distributed		
	in the first six months	in the next six months	thereafter
Amount of Realisation (exclusive of liquidation costs)			
On the first 1 crore	5.00	3.75	1.88
On the next 9 crore	3.75	2.80	1.41
On the next 40 crore	2.50	1.88	0.94
On the next 50 crore	1.25	0.94	0.51
On further sums realized	0.25	0.19	0.10
Amount Distributed to Stakeholders			
On the first 1 crore	2.50	1.88	0.94
On the next 9 crore	1.88	1.40	0.71
On the next 40 crore	1.25	0.94	0.47
On the next 50 crore	0.63	0.48	0.25
On further sums distributed	0.13	0.10	0.05

*MEETING LIQUIDATION COSTS –
REGULATION 39(B) OF CIRP REGULATIONS*

- While approving a resolution plan under Section 30(4) or deciding to liquidate the corporate debtor under Section 33 (2), the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.
- The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).
- Where the estimated value of the liquid assets is less than the estimated liquidation costs, the committee shall approve a plan providing for contribution for meeting the difference between the two.
- The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

CONTRIBUTION TO LIQUIDATION COSTS-
REGULATION 2(A)

Where **the committee of creditors did not approve a plan** under sub-regulations (3) of regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, **the liquidator shall call upon the financial creditors, being financial institutions, to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, as estimated by him, in proportion to the financial debts owed to them by the corporate debtor**

CONTRIBUTION TO LIQUIDATION COSTS- REGULATION 2(A)

Eg. Assume that the excess of liquidation costs over liquid assets is Rs.10, as estimated by the liquidator. Financial creditors will be called upon to contribute, as under:

Sl. No.	Financial creditors	Amount of debt due to financial creditors (Rs.)	Amount to be contributed towards liquidation cost (Rs.)
(1)	(2)	(3)	(4)
1	Financial institution A	40	04
2	Financial institution B	60	06
3	Non-financial institution A	50	00
4	Non-financial institution B	50	00
Total		200	10

The contributions made under the plan approved under Regulation 39B (3) of the CIRP Regulations, 2016 or contributions made under sub-regulation (1), as the case may be, shall be deposited in a designated escrow account to be opened and maintained in a scheduled bank, within seven days of the passing of the liquidation order

The amount contributed under sub-regulation (2) shall be repayable with interest at bank rate referred to in section 49 of the Reserve Bank of India Act, 1934 (2 of 1934) as part of liquidation cost

ASSESSMENT OF SALE AS GOING CONCERN – REGULATION 39(C) OF CIRP REGULATIONS

- While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, **the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern** under Regulation 32(E) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 **or sale of the business of the corporate debtor as a going concern under Regulation 32 (f)**, if an order for liquidation is passed under section 33.
- **Where the committee recommends sale as a going concern**, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- **The resolution professional shall submit the recommendation of the committee under sub- regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.”**.

Sale as a Going Concern- Regulation 32 A

- Where the **committee of creditors has recommended sale** under clause (e) or (f) of regulation 32 or where the **liquidator is of the opinion** that sale under clause (e) or (f) of regulation 32 **shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses**
- The **group of assets and liabilities of the corporate debtor, as identified by the committee of creditors** under Regulation 39C (2) of the CIRP Regulations, 2016 **shall be sold** as a going concern
- Where **the committee of creditors has not identified the assets and liabilities** under Regulation 39C (2) of the CIRP Regulations, 2016, the **liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee**
- If the **liquidator is unable to sell** the corporate debtor or its business under clause (e) or (f) of regulation 32 **within ninety days** from the liquidation commencement date, **he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32**

Stakeholders' Consultation Committee - Regulation 31 A

- ❑ 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 the matters relating to sale under regulation 32
- ❑ The liquidator shall place the recommendation of COC made under Regulation 39C(1) of the IBBI CIRP Regulations, 2016, before the consultation committee for its information. (Assessment of Sale as a Going Concern)
- ❑ 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.
- ❑ The advice of the consultation committee shall not be binding on the liquidator:
- ❑ Provided that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing.

The composition of the consultation committee

Class of Stakeholders	Description	Number of Representatives
(1)	(2)	(3)
Secured financial creditors, who have relinquished their security interests under section 52	Where claims of such creditors admitted during the liquidation process is less than 50% of liquidation value	Number of creditors in the category, subject to a maximum of 2
	Where claims of such creditors admitted during the liquidation process is at least 50% of liquidation value	Number of creditors in the category, subject to a maximum of 4
Unsecured financial creditors	Where claims of such creditors admitted during the liquidation process is less than 25% of liquidation value	Number of creditors in the category, subject to a maximum of 1
	Where claims of such creditors admitted during the liquidation process is at least 25% of liquidation value	Number of creditors in the category, subject to a maximum of 2
Workmen and employees	1	1
Governments	1	1
Operational creditors other than Workmen, employees and Governments	Where claims of such creditors admitted during the liquidation process is less than 25% of liquidation value	Number of creditors in the category, subject to a maximum of 1
	Where claims of such creditors admitted during the liquidation process is at least 25% of liquidation value	Number of creditors in the category, subject to a maximum of 2
Shareholders or partners, if any		1

**LIQUIDATION
SALE**

Valuation of assets intended to be sold- Regulation 35

- ▣ Where the valuation has been conducted under regulation 35 of the IBBI CIRP Regulations, 2016 the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.
- ▣ 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
- ▣ The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses

Presumption of Security Interest- Regulation 21A

- A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II
- Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

Mode of Sale Regulation 33

- ✓ In case of **auction fails**, the **Reserved Price can be reduced upto 25% of earlier RP** for subsequent auction
- ✓ Where an auction fails at reduced price under clause (4A), the reserve price in subsequent auctions **may be further reduced by not more than ten percent at a time**
- ✓ Highest bidder shall be invited for making balance sale consideration within **ninety days** of the date of such demand (EARLIER 15 DAYS)
- ✓ **Payments made after thirty days shall attract interest at the rate of 12%**
- ✓ **Sale shall be cancelled if the payment is not received within ninety days**

COMPROMISE OR ARRANGEMENT – REGULATION 2(B)

- Where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013 (18 of 2013), **it shall be completed within ninety days of the order of liquidation** under sub-sections (1) and (4) of section 33.
- The **time taken on compromise or arrangement**, not exceeding ninety days, **shall not be included in the liquidation period.**
- Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub-section (6) of section 230:
- Provided that **such cost shall be borne by the parties who proposed compromise or arrangement**, where such compromise or arrangement is **not sanctioned** by the Tribunal under sub-section (6) of section 230.

COMPLETION OF LIQUIDATION (Regulation 44)

- ▣ The Liquidator shall liquidate the Corporate Debtor within a period of **One year**, , notwithstanding pendency of any application for avoidance of transactions under Chapter III of Part II of the Code, before the Adjudicating Authority or any action thereof:
- ▣ Provided that where the **sale is attempted under Regulation 32A(1)- SALE AS A GOING CONCERN**, the liquidation process may take an **additional period up to ninety days**

FINAL REPORT PRIOR TO DISSOLUTION (REGULATION 45)

- ▣ The liquidator shall **submit an application along with the final report** and the **compliance certificate in form H** to the Adjudicating Authority for –
 - closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or
 - for the dissolution of the corporate debtor, in cases not covered under clause (a).

DISTRIBUTION OF PROCEEDS –REG 42.

- The liquidator shall distribute the proceeds from realization **within 90 Days (earlier six months)** from the receipt of the amount to the stakeholders.

THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
AMENDS THE INSOLVENCY AND BANKRUPTCY
BOARD OF INDIA (LIQUIDATION PROCESS) REGULATIONS,
2016 -6 JANUARY 2020

Clarifies 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 a compromise or arrangement** of the corporate debtor under section 230 of the Companies Act, 2013.

- Clarifies that a **secured creditor cannot sell or transfer an asset**, which is subject to security interest, **to any person, who is not eligible under the Code to submit a resolution plan** for insolvency resolution of the corporate debtor .

THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA AMENDS THE
INSOLVENCY AND BANKRUPTCY
BOARD OF INDIA (LIQUIDATION PROCESS) REGULATIONS, 2016 –
6 JANUARY 2020

- A secured creditor, who proceeds to realise its security interest, shall **contribute its share of the insolvency resolution process cost**, liquidation process cost and workmen's dues, **within 90 days of the liquidation commencement date**.
- It shall also **pay excess of realised value of the asset**, which is subject to security interest, over the amount of its claims admitted, **within 180 days** of the LCD.
- Where the **secured creditor fails to pay such amounts** to the Liquidator within 90 days or 180 days, as the case may be, the **asset shall become part of Liquidation Estate**.

THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA AMENDS THE
INSOLVENCY AND BANKRUPTCY
BOARD OF INDIA (LIQUIDATION PROCESS) REGULATIONS, 2016 –
6 JANUARY 2020

Liquidator shall deposit the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a liquidation process along with any income earned thereon into the Corporate Liquidation Account before he submits an application for dissolution of the corporate debtor .

MODEL TIME LINE FOR LIQUIDATION PROCESS

Sl. No. (1)	Section / Regulation (2)	Description of Task (3)	Norm (4)	Latest Timeline (Days) (5)
1	Section 33 and 34	Commencement of liquidation and appointment of liquidator	LCD	0 = T
2	Section 33 (1) (b) (ii) /Reg. 12 (1, 2, 3)	Public announcement in Form B	Within 5 days of appointment of liquidator.	T + 5
3	Reg. 35 (2)	Appointment of registered valuers	Within 7 days of LCD	T + 7
4	Section 38 (1) and (5), Reg. 17, 18 and 21A	Submission of claims; Intimation of decision on relinquishment of security interest	Within 30 days of LCD	T + 30
5	Section 38 (5)	Withdrawal/ modification of claim	Within 14 days of submission of claim	T + 44
6	Reg. 30	Verification of claims received under regulation 12(2)(b)	Within 30 days from the last date for receipt of claims	T + 60
7	Reg. 31A	Constitution of SCC	Within 60 days of LCD	T + 60
8	Section 40 (2)	Intimation about decision of acceptance/ rejection of claim	Within 7 days of admission or rejection of claim	T + 67
9	Reg. 31 (2)	Filing the list of stakeholders and announcement to public	Within 45 days from the last date of receipt of claims	T + 75
10	Section 42	Appeal by a creditor against the decision of the liquidator	Within 14 days of receipt of such decision	T + 81
11	Reg. 13	Preliminary report to the AA	Within 75 days of LCD	T + 75
12	Reg. 34	Asset memorandum	Within 75 days of LCD	T + 75

MODEL TIME LINE FOR LIQUIDATION PROCESS

13	Reg. 15 (1), (2), (3), (4) and (5), and 36	Submission of progress reports to AA; Asset Sale report to be enclosed with every Progress Report, if sales are made	First progress report	Q1 + 15
			Q-2	Q2 + 15
			Q-3	Q3 + 15
			Q-4	Q4 + 15
			FY: 1 Audited accounts of liquidator's receipt & payments for the financial year	15th April
14	Proviso to Reg. 15 (1)	Progress report in case of cessation of liquidator	Within 15 days of cessation as liquidator	Date of cessation + 15
15	Reg. 37 (2, 3)	Information to secured creditors	Within 21 days of receipt of intimation from secured creditor	Date of intimation + 21
16	Reg. 42 (2)	Distribution of the proceeds to the stakeholders	Within 3 months from the receipt of amount	Date of Realisation + 90
17	Reg.10 (1)	Application to AA for Disclaimer of onerous property	Within 6 months from the LCD	T + 6 months
18	Reg.10 (3)	Notice to persons interested in the onerous property or contract	At least 7 days before making an application to AA for disclosure.	
19	Reg. 44	Liquidation of corporate debtor.	Within one year	T + 365
20	Reg. 46	Apply to AA for order on unclaimed proceeds of liquidation or undistributed assets.	Before dissolution order	
21	Sch-1 Sl. No 12	Time period to H1 bidder to provide balance sale consideration	Within 90 days of the date of invitation to provide the balance amount.]	



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