

ch-5 Liquidation of C.P.

Reg - Insolvency & Bankruptcy Board of India (Liquidation Process) Reg. 2016

[ Sec 33 to 54 ] of  
ch-III of Part II of IBC, 2016

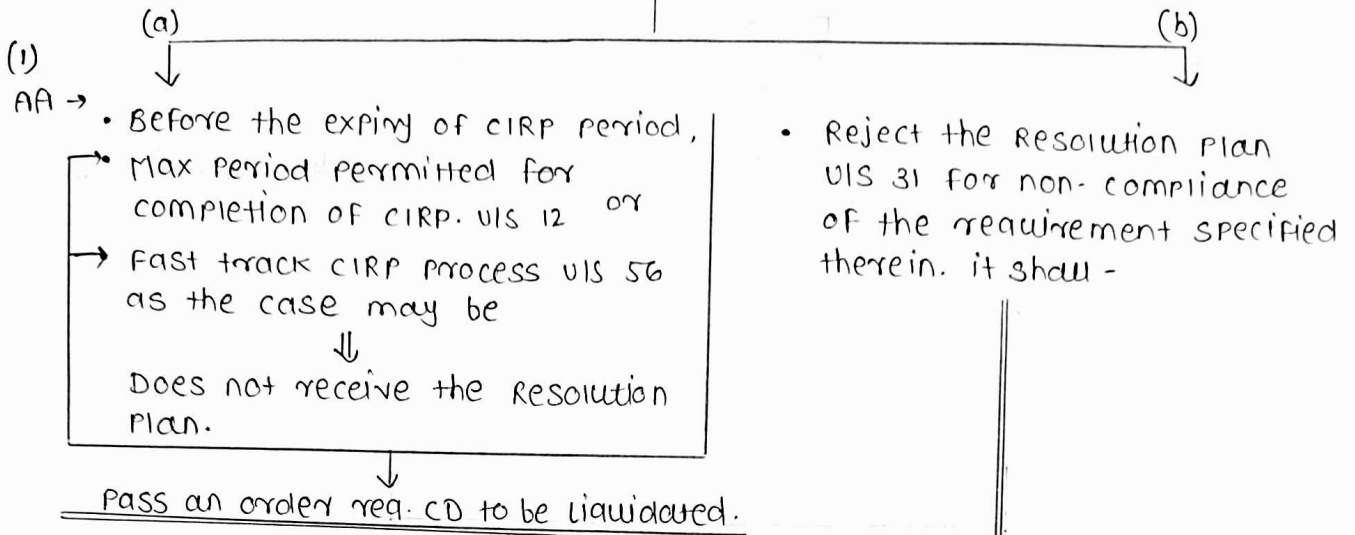
SYNOPSIS.

section / Reg.	Particulars
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Section 51  
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2(1)(ca)  
Reg. 52  
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Extortionate credit transactions  
orders of AA in respect of Extortionate credit transaction  
secured creditor in Liquidation Proceedings  
Distribution of Assets.  
Meaning of Liquidation cost  
Sale of Asset  
Mode of sale  
completion of liquid<sup>n</sup>  
Final Report prior to dissolution  
Dissolution of corpo. debtor  
Preservation of Records  
Sale as a going concern.

## Section - 33 Initiation of Liquidation



- Pass an order requiring C.D. to be liquidated.
- Issue a public announcement stating that CD is in liquidation
- Such order → authority with which CD is Reg.

(2) where the R. Pro. at any time during the CIRP but before the confirm<sup>n</sup> of R. Plan intimate the AA the decision of the CoC [app. by at least 66%] of voting sh. to liquidate the CD., the AA shall pass the liquid<sup>n</sup> order ref. in sub cl. (i), (ii), (iii) of clause (b) of section (1).

(3) where the R. Plan is approved by AA (vis 31 or 54L(i)) is contravened by the concerned CD, any person other than CD whose interests are pre-judicially affected by such contravention  $\xrightarrow{\text{Appn}}$  AA for liquid<sup>n</sup> order.

(4) on receipt of application if AA determined that the CD has contravened the provisions of the Resolution Plan it shall pass a liquid<sup>n</sup> order.

(5) sub. to sec. 52 when a liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the CD.

↓  
It may be instituted by liquidator on behalf of CD by prior approval of Adjudicating authority.

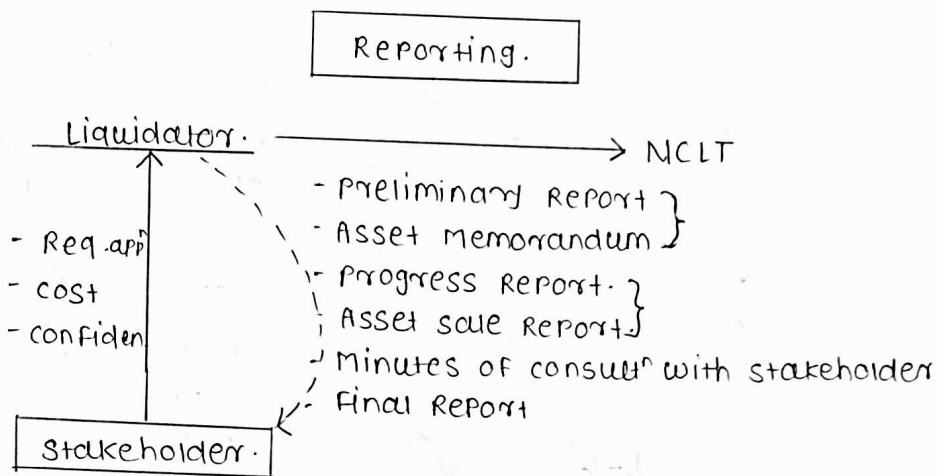
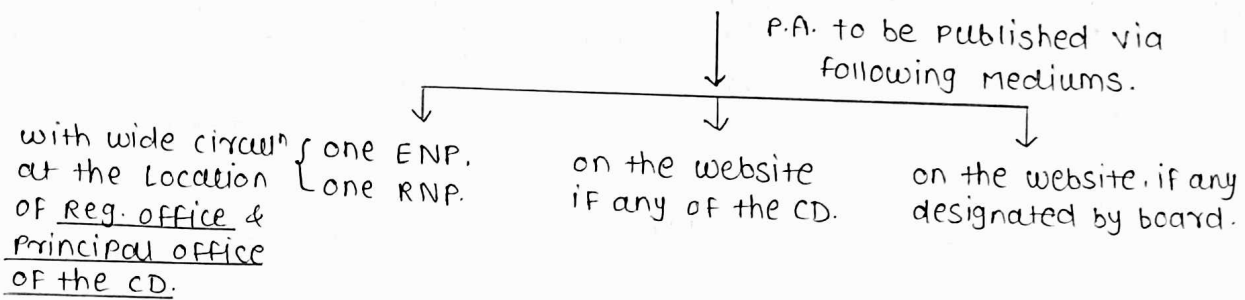
↓  
(6) sub-sec. (5) shall does not apply to legal proceeding in rel<sup>n</sup> to such transaction as may be notified by CG in consultation with any Fin. sector Regulator

(7) the order for liquid<sup>n</sup> shall be deemed to be a notice of discharge to the officers, employees and workmen of the CD

↓  
Except when the business of the CD is continued during the liquidation process by the liquidator.



Regulation - 12 - Liquidator shall make a public announcement calling stakeholders to submit their claims or update their claims submitted during CIRP. in Form B within 5 days from his appointment.



Reg-13 preliminary Report.

→ Shall submit within 75 days from liquid<sup>n</sup> commencement date.

+ details.

- Capital structure of c.p.
- Estimates of its assets and liab as on liquid<sup>n</sup> comm. date.
- whether he intends to make any further inquiry into any matter relating to promotion, formation or failure of c.p. or conduct of business thereof.
- Proposed plan of action incl. timeline.

→ submitted to :-

- NCLT
- CP (corpo. person)
- IBBI

Reg 34 - Asset Memorandum.

→ It shall contain

- Value of the asset (in acc. with R. 35)
- Value of Business
- Manner and mode of sale of asset or business.
- Expected amount of realization from sale.
- any other information.

→ submitted to

- NCLT
- IBBI
- mem of scc(conf)

### Reg. 15 Progress Report.

- shall submit → AA, IBBI
- First Report - within 15 days from end of the quarter.
- subseq. Report - within 15 days after the end of each quarter.

#### - content -

- Appointment of Professionals (tenure, cessation).
- statement - progress in Liquidation
- Details of fees or remuneration
- Development in any material litigation.
- Filing of and developments in application for avoidance of transf.
- changes if any in estimating Liquidation cost.

### Reg. 36 Asset Sale Report.

- shall contain the following details
- submit to → AA, IBBI

- Realized value
- cost of Realization.
- Manner and mode of sale.
- IF value realised < value in the Asset memo.  
↓  
Reason.
- The person to whom sale is made
- any other details of sale.

### Section 35 Powers and Duties of Liquidator.

(1)

The Liquidator shall have a following power :-

- To verify claims of all the crs.
- To take into his control all the assets, property, effects and actionable claim of C.D.
- To take measures to protect and preserve the assets and property of C.D.
- To invite and settle claims of crs and claimants & distribute proceeds.
- sub. to sec. 52 to sell the imm. & movable prop. and actionable claims of the CD in liquidation by
  - public auction or
  - private contractwith power to transf. such prop. to any other person or body c. but such person → eligible Resoln applic.

(2)

- Power to consult any of the stakeholder entitled to a distribution of proceeds under section 53.  
↓
- Any such consultation shall not be binding on the liquidator.  
↓
- Records of any such consultation shall be made available to all other stakeholders not so consulted.

Reg-7 - Liquidator has also power to appoint professionals to assist him in the discharge of its duties. but such professional (X) -

- Relative
- Related party of CD
- served as an auditor to the CD in the 5 yrs pre. Liquidation comm. date.

Section 36 - Liquidation Estate.

Include

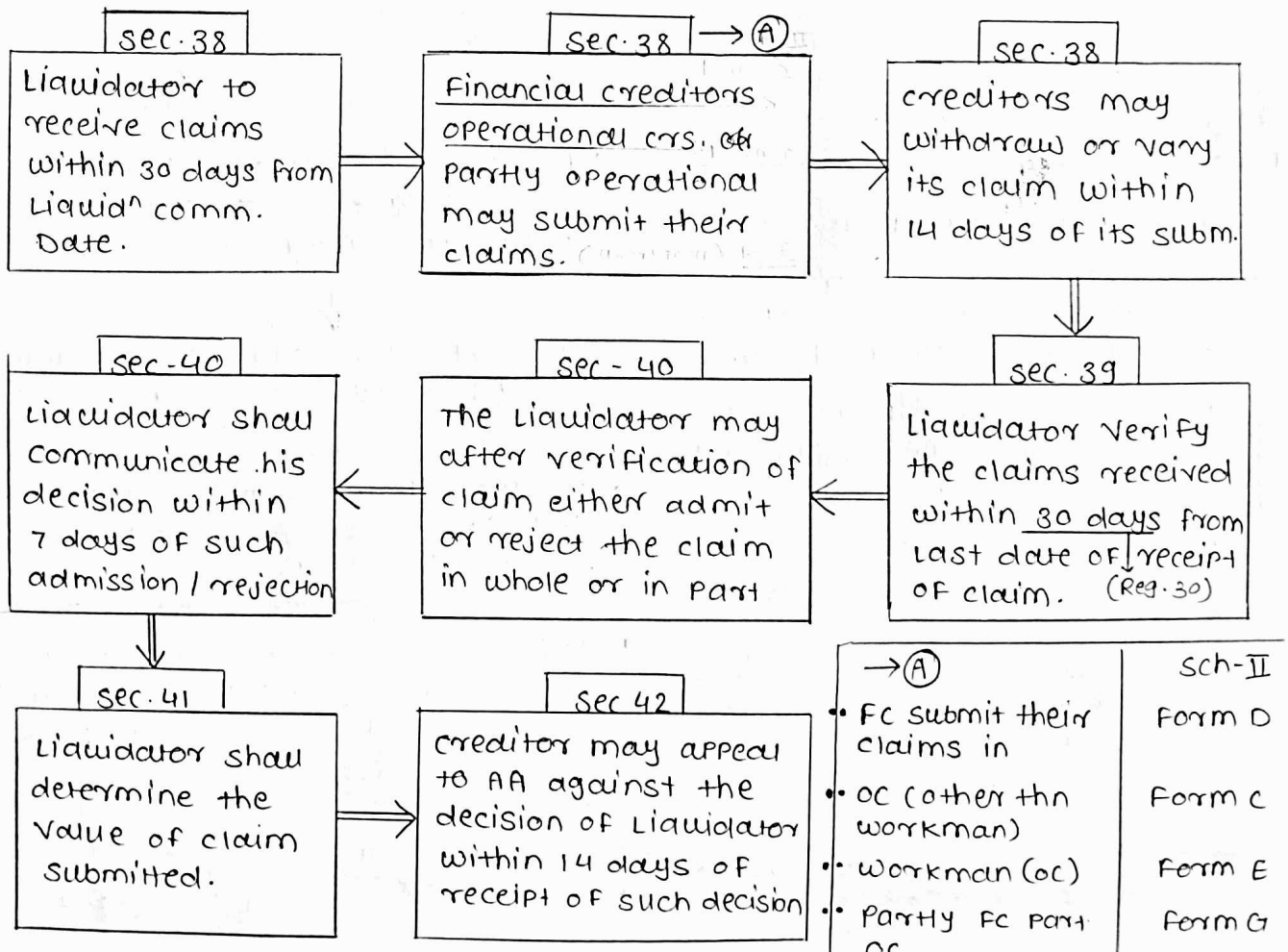
Exclude

Any Asset → ownership with CD.

- Possession is with CD or not.
- Encumbered or not
- Tangible or intangible
- Movable or immovable
- \* → Disputed
- \* → Any Asset relinquished by sec. crs. (sec. 52).
- Proceeds of Liquidation.
- \* → Any Asset or value from avoidance transactions.
- sec. held in subsidiary co.

- Any Asset
  - Possession - CD ✓
  - ownership - CD x
- Provident Fund, Pen. Fund, Grant F.

- Assets -
  - used as collateral
  - Held by Financial Service Provider.
  - sub. to netting off and set off in trans<sup>n</sup>
- Asset owned by Promoter / sh. hold.
- other Asset specified by IBBI
- Asset of sub. co. [Indian / Foreign]



Section 37 - Power of Liquidator to Access info (Read with Reg. g)



→ The Liquidator shall have the power to access any info. system for the purpose of admission and proof of claims and identification of liquidator's estate assets relating to the CD from the following sources.

- An info. utility.
- credit info. system.
- any agency of CG/SG/Local Govt
- info. system for financial & non financial liabilities
- info system for sec. & asset posted as security int
- any database maintained by the board.
- any other source as may be specified.



→ The liquidator shall provide info → crs → within 7 days from request



→ Regulation-g : person shall also co-operate with liquidator for collecting info →

- who has been officer, employee, promoter, partner of the CD
- who was the IRP, RESOL<sup>n</sup> professional or the previous liquidator of CD
- any one who has possession of any of the properties of the CD.

Reg. 31 List of stakeholders

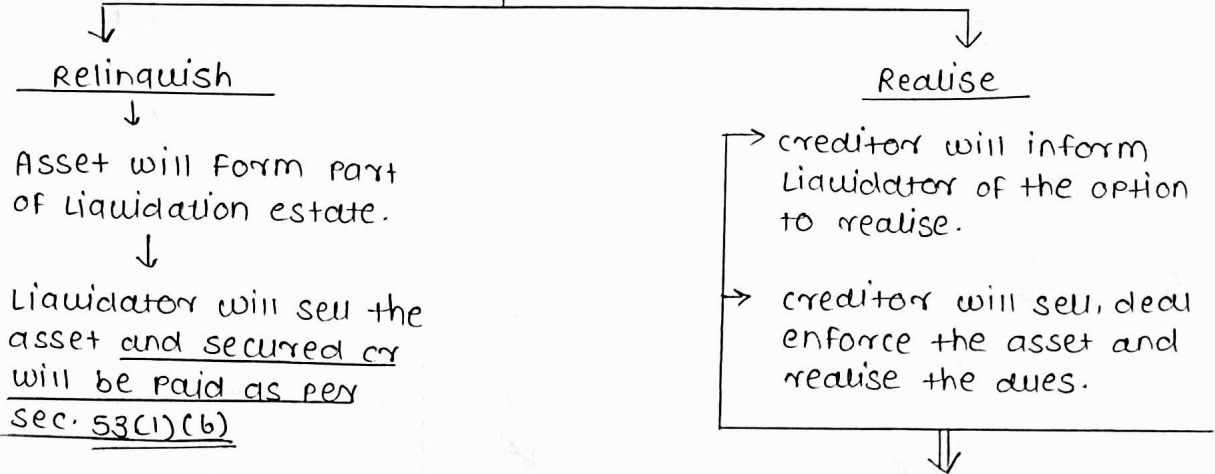
- The liquidator shall prepare the list on the basis of claim submitted and accepted under these Reg. mentioning
  - amt. of claim admitted.
  - ext. to which debt / dues 
    - ← secured
    - ← unsecured
  - Details of the stakeholders, and proof of decision (Admit / Reject) → Reason
  - Liquidator 
    - AA
    - List of st. hol (w- 45 days)
    - (List)
  - It shall be -
    - available for inspection by person who submitted claim
    - av. for inspection by mem / P / dir.
    - Displayed on website
    - File on the e-platform of the board

Reg. 31A Stakeholder consult<sup>n</sup> committee

- The liquidator shall constitute S.C.C. comprising of all crs (FC + OC) of CD within 60 days from the liquidation comm. date.
- within 7 days from liquidator's comm date liquidator must call 1<sup>st</sup> meeting of SCC
- The SCC should advise the liquidator on the following matter.
  - Remun<sup>n</sup> of professional
  - Manner of sale, pre bid qualify reserve price, marketing strategy
  - Fees of liquidator, valuation
- The SCC shall advise the liquidator by vote of min 60% of the represent. of SCC. also advice shall not be binding on liquidator.

Section 52 - Secured crs in Liquid<sup>n</sup> Proceedings.

Options available for secured crs.



Amendment

Reg-32A - IF coc Recomm / Liq. opinion  
 ↓  
 1<sup>st</sup> try - Reg 32 - (e) & (f)  
 ↓  
 IF not sale in (e) & (f) in 90 days from liq. comm. then go for a), b), c), d)

Reg-2B - Liq. shall file the proposal if any for compr. or arr. (w-30 days) → liq. comm.

- any proposal of C & A to be completed within 90 days from liq. comm. of liq.
- This 90 days excluded from time period

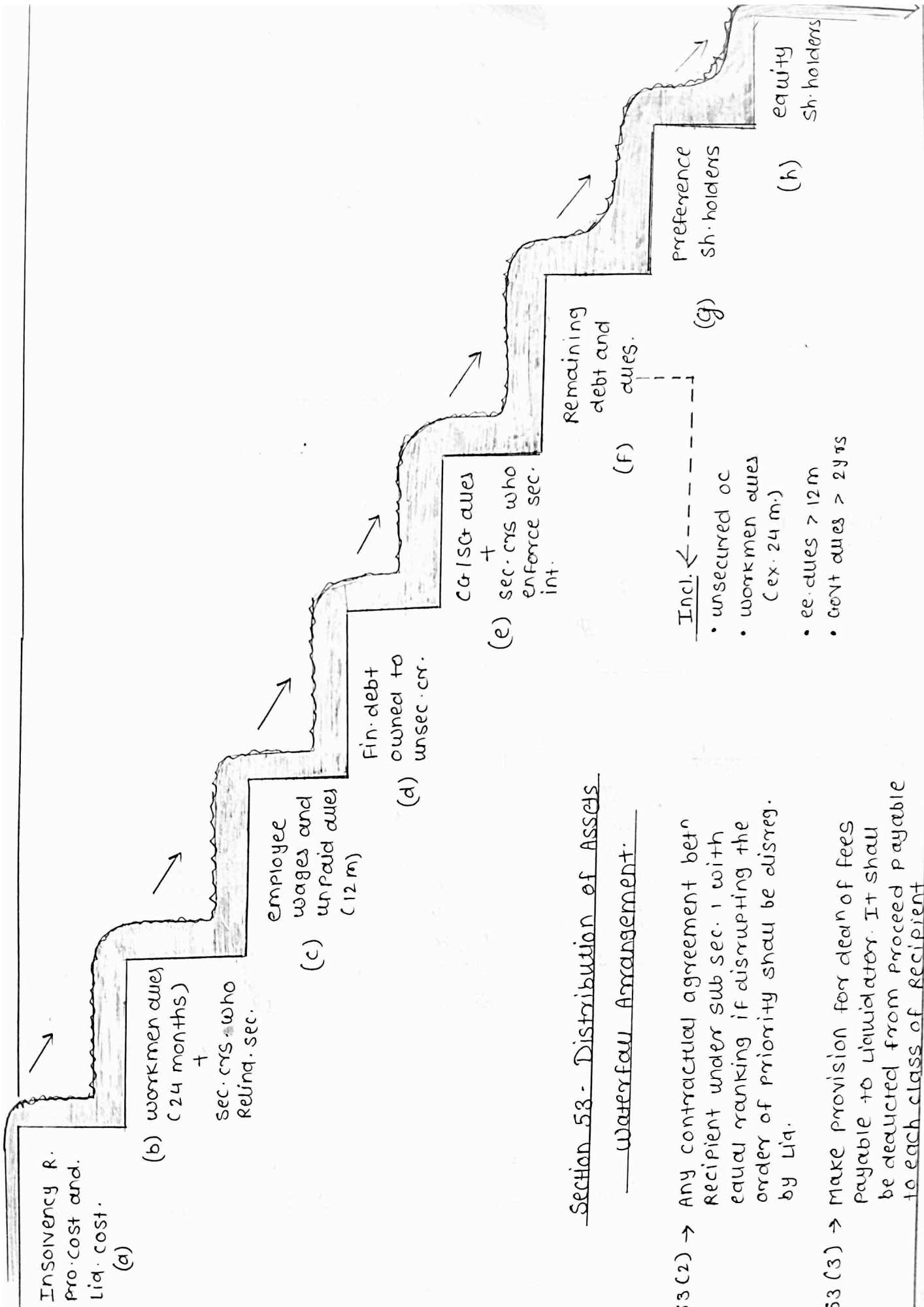
- If there is any issue in selling the asset creditor can approach NCLT
- IF there is any surplus.
  - account to liquidator
  - tender the amount to liquidator which will form part of liq. estate
- IF there is any deficit
  - creditors can claim the deficit amt - uls 53(1)(c)
- ⊗ CIRP cost due from such crs shall be first deducted from proceeds of such real

→ AS PER Regulation 32 - Liquidator may sell the assets of the CD by following ways -

- sale of an asset on an standalone basis.
- in slum sale
- sale of a set of asset collectively
- sale of the asset in parcel
- sale of CD as going concern
- sale of B'ness of CD as going concern.

→ AS PER Regulation 33 - Liquidator may sell the asset of CD by way of an auction or private sale.

- ↓
- when Asset is perishable
    - Likely to depreciate in value if not sold immedi.
  - when asset is sold at a price ↑ than Reserve price of a failed auction
    - when prior permission of the AA has been obtain
- other than this sold only if ↓
- liq. shall not sale asset → Rel. Party without prior approval of AA



Insolvency R.  
Pro-cost and.  
Lid. cost.

(a) workmen dues  
(24 months)  
+  
sec. crs who  
Relinq. sec.

(b) employee  
wages and  
unpaid dues  
(12m)

(c) Fin. debt  
owned to  
unsec. cr.

(d) CG/Sec dues  
+  
sec. crs who  
enforce sec.  
int.

(e) Remaining  
debt and  
dues.

(f) Preference  
sh. holders

(g) equity  
sh. holders

- Incl. ← -----
- unsecured oc
  - workmen dues  
(ex. 24 m.)
  - ee. dues > 12m
  - Govt dues > 2yrs

SECTION 53 - Distribution of Assets

Waterfall Arrangement.

53(2) → Any contractual agreement betn Recipient under sub sec. 1 with equal ranking if disrupting the order of priority shall be disreg. by Lia.

53(3) → Make provision for dearn of fees payable to liquidator. It shall be deducted from proceed payable to each class of recipient

Regulation 44 - Completion of Liquidation

↓  
Required to be completed in a year.

↓  
IF NOT

↓  
Liquidator.

↓  
To continue  
Liquidation.

→ AA  
apply  
+ Reason for  
non compl.  
and add. time  
that will be needed.

Regulation 45 - Final Report Prior Dissoln

Liquidator.

↓  
For closure of Liquid.  
Process of the CD  
where CD is sold as  
going concern.

→ Appn for dissolution

+ Final Report  
+ compliance certifi  
(Form H)

→ AA

Section 54 - Dissolution of corpo. dr.

Liquidator.

→ Appn for dissolution

↓  
closure of  
Liquidation  
Process.

↓  
IF CD is sold  
as going  
concern.

↓  
For dissolution  
of the corpo.  
debtor.

↓  
IF CD is not  
Sold as going  
concern

→ AA

↓  
order

↓  
CD shall be  
dissolved

↓  
copy of order  
(w- 7 days)  
forwarded to

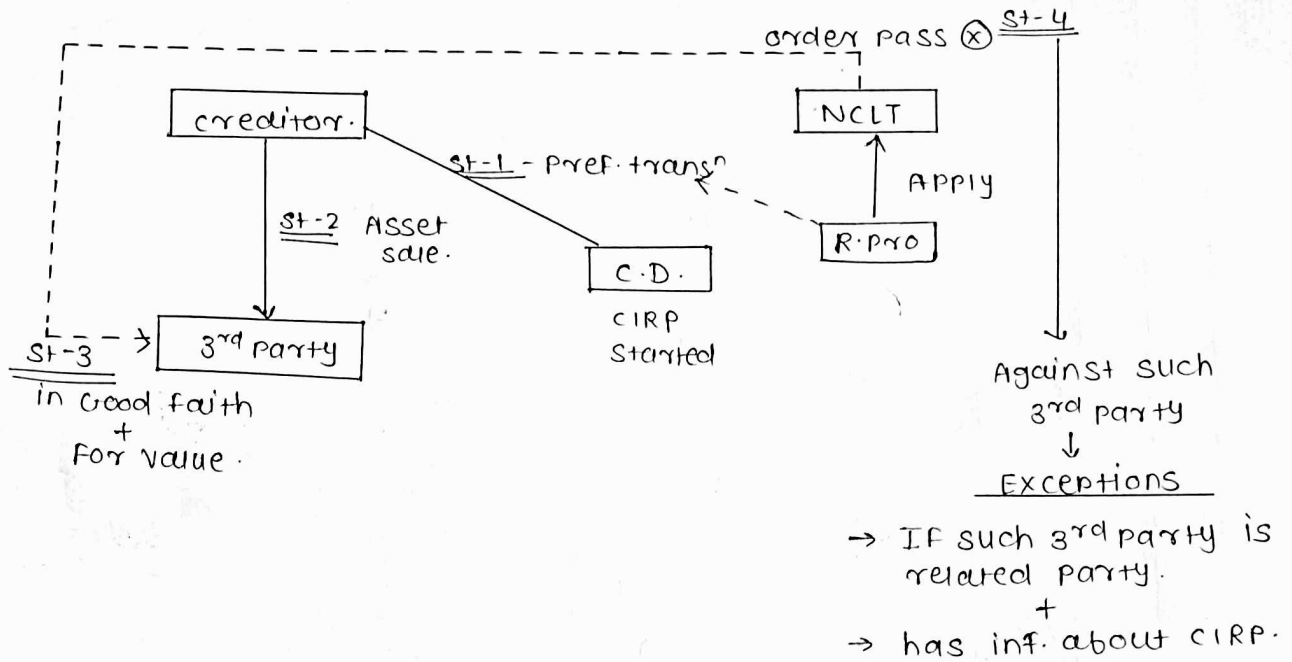
↓  
Authority with  
which CD is reg.

→ The Liquidator shall preserve electronic copy of all records for a min period of 8 years. and physical copy - for a min period of 3 yrs

Section (43 to 51)

	Preferential trans <sup>n</sup> (Sec 43, 44)	Undervalued trans <sup>n</sup> (45-48)	Extortionate credit tran. (50-51)
<u>Meaning.</u>	<p>Transfer of prop. / int. + to crs / Surety / Guarantor + antecedent debt + Ben. Position vis 53. [MT - unsec. crs. → secured cr.]</p> <p><u>EXCEPTION</u> A - ordinary course of bines B - CD received new value + purchase an asset + rec. with info. utility. [MT - New Loan]</p>	<p>C.D. — Asset → 3<sup>rd</sup> person           Gift  C.D. — Asset → 3<sup>rd</sup> p.           at signif. lower           Price</p> <p>→ <u>ordinary course of business.</u></p>	<p><u>Terms</u> → Payment - extortionate → unconscionable → exorbitant</p>
<u>Relevant time</u>	<p>2 years - Related Party 1 year - any other person</p>	<p>→ 2 years - Related Party. 1 year - any other person</p>	<p>→ 2 years.</p>
<u>Order of court</u>	<p>→ Bring back any prop. given for pref. to the C.D. → The prop. if bought from the sale of that trf. prop. or with that money, must go to the C.D. → Release any sec. int. creau by CD → anyone who got benefit from CD pay it back to the liq. or R. prof.</p>	<p>→ any prop. trf. must go back to the C.D. → Release / disch. sec. int. (if any) granted by the CD → The independent expert will decide how much to pay → [same]</p>	<p>→ Restore back the position. → set aside the whole or part of debt → modify the terms of trans<sup>n</sup> → Person who is/was party to the trans<sup>n</sup> to repay any amount received.</p>

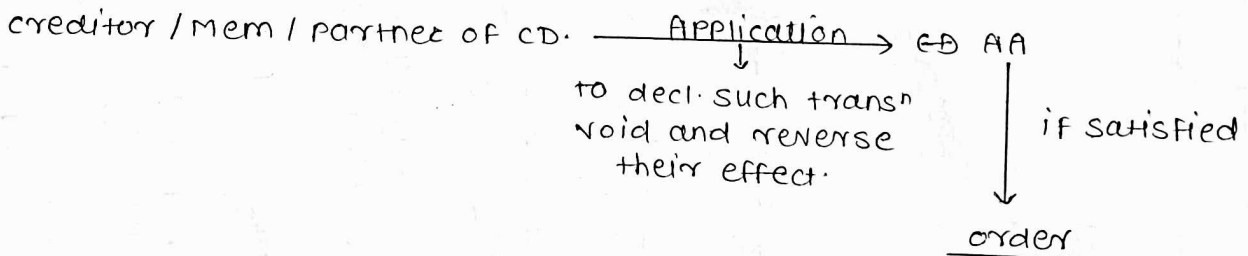
Transaction in Good Faith and for Value.



App<sup>n</sup> by creditors in case of undervalued

Transactions

→ where an undervalued transaction has taken place and the liquidator and R. Pro as the case may be has not reported to the AA



Recent changes.

Reg. 46 A

The units (Chat) of which possession has been given by CD undergoing Liquidation



will not be part of liqui<sup>n</sup> estate.

Reg - 14 -

Now early dissol<sup>n</sup>, req. advice of CC

Reg. 31 A -

A few points have been added

- Restoring the position as it existed before such transaction and reversing the effects thereon.
- Requiring the board to initiate disciplinary proce. against the Liquidator or the R. Pro.