

Ch-6 Voluntary Liquidation of companies.

IBBI (Voluntary Liquidation) Regulations, 2017.

Synopsis

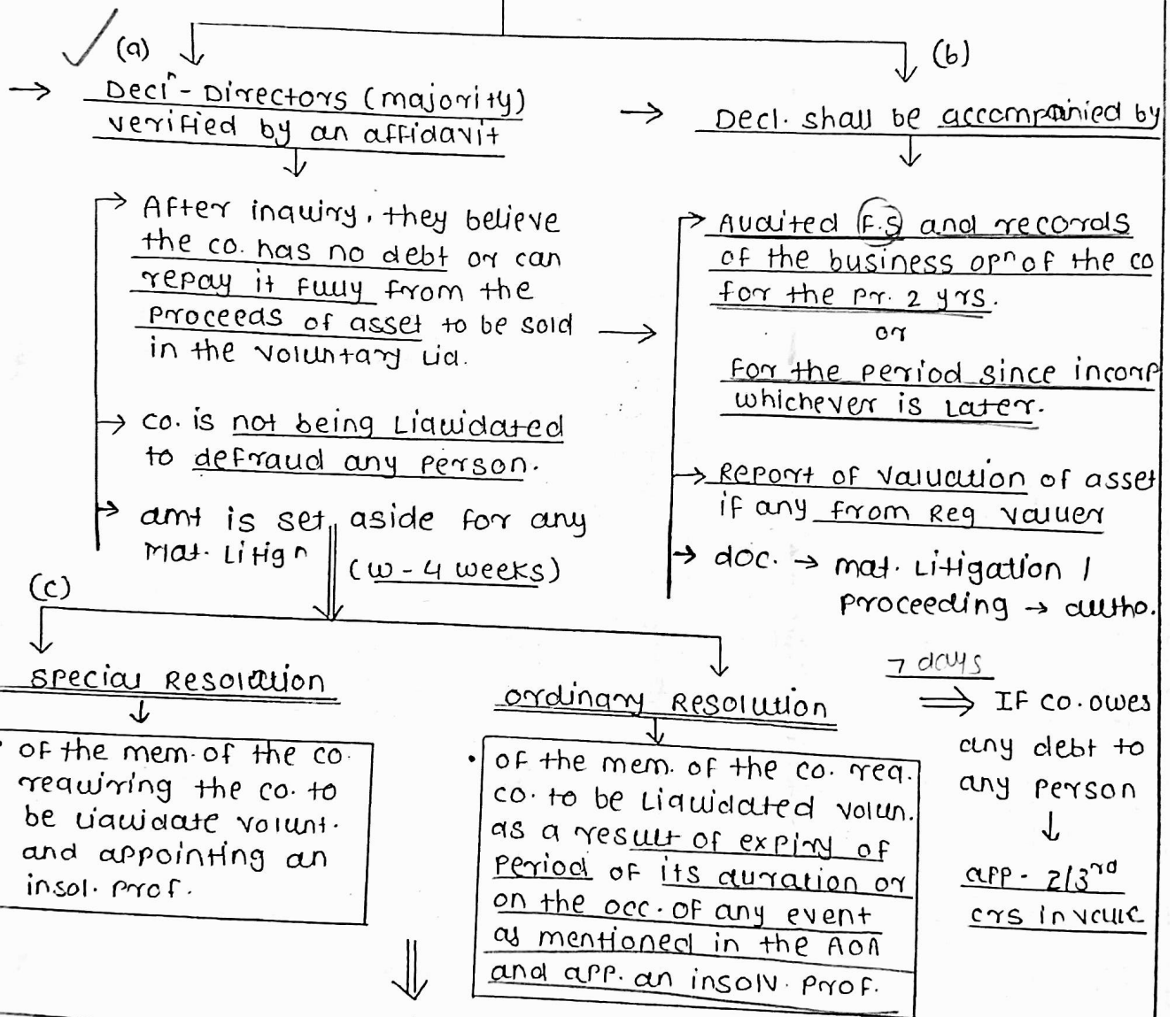
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Section 59 - Voluntary Liquidation of Corp. P.

(1) A corp. person that has not committed any default may initiate voluntary liquidation proceedings.

(2) V. Liquidation of C.P. shall meet such conditions & procedures req. as may be specified by board.

(3) V. Liquidation proceedings of a C.P. reg. as a co shall meet ↓ conditions



(4) Company — w- 7 days Notify of such resolu^n → Roc
→ IBBI

(5) V. Lia. of a co. shall deemed to have commenced from the date of passing Resolution.

(6) Provision of sec. 25-53 of ch III & ch VII shall apply

Regulation-3 - initⁿ of liq.

EXACTLY same sec-59

Regulation 4 - EFFECTS of Liquidation.

CP shall from the liquidⁿ comm. date ceases to carry on its business except as far as req. for the beneficial winding up of its business

Eligibility for App. as a Liquidator. - Read with Reg. 6

He is an independent Director on the board of the corpo. Person. VIS 149 of the CO. ACT. 2013.

Not a related Party of a Corpo. Person.

Not been an employee or prop. or partner of
→ CA, CS, CMA Firm
→ of legal / consult. Firm ⇒ transⁿ with C.P contributing 10% or more of the gross T10 of the Firm

(A)

Regulation 5 - APP. OF Liquidator

CP shall appoint an I. Pro as liquidator and if req. may replace him by app. another I. Pro as liquidator.

only I. Prof. who meets the eligibility criteria V/Reg. 6 can be appointed as liquidator.

liquidator shall within 7 days from his appointment intimate the board

App/ replacement shall be made by passing resolⁿ 59(3)(c).

The Resolⁿ shall contain terms and condⁿ of - app. of liquidator incl. rem. payable.

(A)

Reg. 6

Eligibility For app. as a liquidator

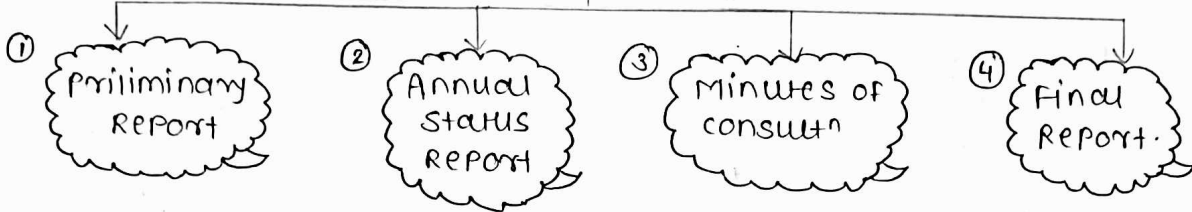
An I. Pro. shall not be eligible to be appointed as lia. if he or insol. prof. entity of which he is PID is under restraint order of the Board.

Lia. shall disci. the existance of any pecuniary rel. or personal rel. with concerned C.P. or any of its stakeholder.

IF insol. prof. entity of which insol. prof. is a DVP represent any other stakeholder in the same liquidator.

Regulation - 7 - Remuneration payable to the Liquidator shall form part of liquidation cost.

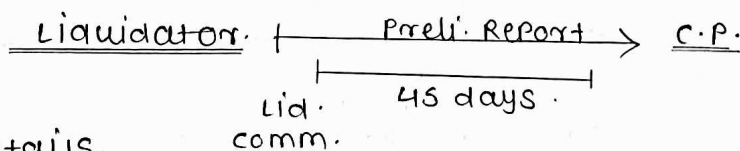
Regulation - 8
Reporting.



→ The liquidator shall also make such reports & minutes available to the stakeholder in either physical or in electronic mode on receipt of:

- Application - in writing
- cost of such report.
- undertaking - shall maintain confidentiality.

Regulation - 9 Preliminary Report.



Details.

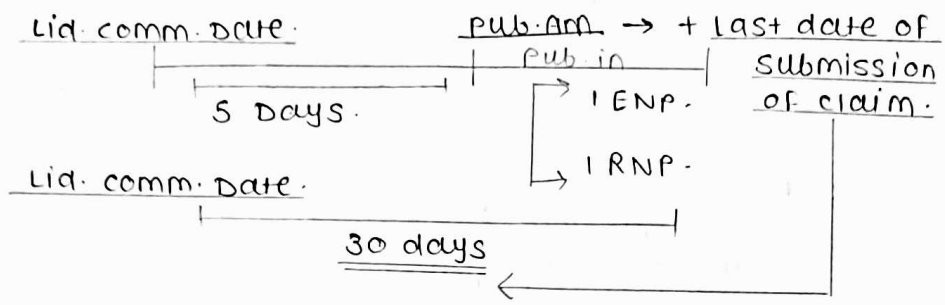
- The capital structure of the C.P.
- Estimates of Assets / Liabilities as on Lia. comm. date.
- intend to make any further inquiry into any matter
- Proposed plan of action for carrying out the Liawⁿ incl. timeline within and estimated Lia. cost.

Regulation 10 - Register and BOA.

- The Lia. shall complete all the incomplete BOA of the C.P. as on the Lia. comm. date and bring them up to the date with all conveni. Speed.
- The reg. and Books may be maintained in the forms - indi. ⁱⁿ Sch II
- It is mandatory for the Liquidator to keep receipts of all payments made or exp. incurred.

⇒

Regulation 14 - Public Ann. by Liquidator



Regulation 15 - Proof of claim.
 → A person who claims to be a stakeholder shall prove his claim for debt or dues to him

Regulation 21.
 where a person seeks to prove a debt in respect of B.O.E, promisory note or other negotiable instrument or security for which C.P. is liable
 ↓
 such shall be produced → Liquidator before the claim is admitted.

Regulation - 16, 17, 18 & 19

Regulation - 22
 Liq. may call such other evidence or clarification as he deems fit

Person.	Proof of claim submit in form no.
→ <u>OP. creditor.</u>	Form B
→ <u>Fin. creditor</u>	Form C
→ <u>O.C. (workman/ee)</u>	Form D
→ <u>other</u>	Form F
	↓ sch. I

Regulation - 23 *
cost incurred by liquidator for verification and determination of claim shall form part of liquidator cost.
 ↓
 if claim or part of claim is found to be false, the liquidator shall recover the cost incurred for verification/det. of claim from claimant

Regulation - 20 - Proof of sec. int.

- sec. int. may be proved by sec. cr on the basis of -
- The records available in an info. utility.
 - certificate of Reg. of charge issued by Roc.
 - Proof of Reg. of charge with the central registry of security Asset Reconstⁿ and sec. int. of India
 - other relevant document

Regulation 24.
 where the amount claimed by the claimant is not precise, the Liq. shall make the best estimates of the amount of the claim based on the info avail. with them

Regulation - 25. *
 The debt denominated in Foreign curr. shall be valued in INR at the ex. rate as on the Liq. comm. date.

Regulation - 26 - periodical payment

A person may claim only for any amount due and unpaid up to the Liquidation comm. date.

Regulation - 27.

A person may prove for a claim whose payment was not yet due on the Lia. comm. date in same manner as any other stakeholder. He is entitled to distribution of the admitted claim reduced as follows.

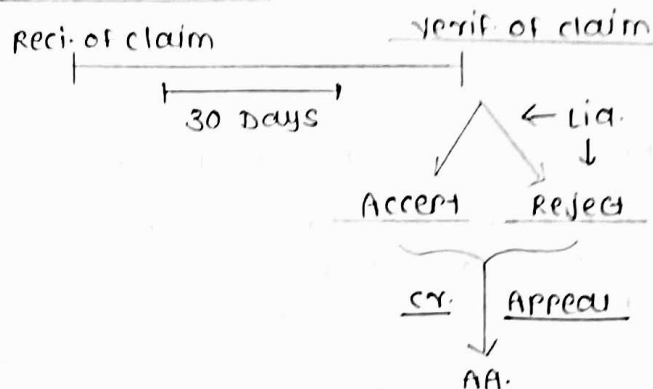
$$\frac{x}{(1+r)^n}$$

x = value of admit. claim
r = cl. yield rate
n = Tenure.

Regulation - 28

- where there are mutual dealing betⁿ C.P and another party the sum due on another party shall be set off against the sum due on from other.

Regulation - 29.



Regulation - 30.

List of stakeholders -

contents of list of stakeholders

- The amounts of claim admitted if applicable.
- The extent to which debt or dues are sec / unsecured.
- Details of the stakeholder
- proofs admitted / rejected in part, and the proof wholly rejected.

Timeline for preparing List of stakeholders

when claim is filed by st. hol.

within 45 days from last date of receipt of claims

when no claim is filed by st. hol.

within 15 days from last date of receipt of claims

List of stakeholders avail. for inspection

- av. for inspections by the persons who submitted proof of claims.
- by the mem / partner / dir / gur. of the C.P.
- Displayed on the website of the C.P
- Displayed on the website designated by the board.

Regulation 31. - Liquidator may value and sell the assets of the c.p in the manner and mode approved by the c.p

Regulation - 32 - The liquidator shall endeavor to recover and realize all assets of and dues to the c.p in a time bound manner for maximizⁿ of value for the st. holder.

Regulation - 33



Realisation of amount due from contributory :

- Liq. shall entitled to call and realize the uncalled capital of the c.p and to collect the arrears if any due on calls
- The liquidator may exercise this power despite any charge or encum. on the uncalled capital.
- A 15 days notice shall require payment within 15 days.
- The liquidator may hold and realize all money, subject to rights of charge holders along with the right to serve notices and collect dues.

→ No Distribution shall be made to a contributory unless he makes his contribution to the uncalled or unpaid capital.

Regulation - 34

- The liquidator shall open a bank account in the name of c.p followed by words 'in Voluntary Liquidation' in sch. bank for receipt of all monies.
- The liquidator shall deposit all receipts, without deduction into the bank acc. by the next working day.
- Money in the bank acc. shall not be used except in accord. with sec. 53(1).
- All payments above ₹ 5000 shall be made by cheque or online trf from the bank account.

Regulation - 35

- Liq. shall distribute the proceeds from realiⁿ within 30 days* from the receipt of amt to st. holder.
- Liq. cost shall be deducted from such distribution.
- with the approval of c.p. liq. distribute among the st. holder an asset that can't be easily sold due to its peculiar nature.

Regulation - 36. - Refund

- A stakeholder shall return any monies received by him in distribution, which he was not entitled to at the time of distrib

Regulation - 37.



Liq. shall try to complete Liq. Process of the c.p and submit the Final Report under Reg. 38 within-

IF Liq. Pass resolution U/s 53(3)(c) or Reg. 3(i)(c) of VI Reg.	<u>within 270 Days.</u>	
<u>In all other cases</u>	<u>within 90 days.</u>	
• If Liq. goes beyond 12 months.		
<u>Hold meeting of contributoryies.</u> (a)	<u>within 15 days from the end of</u> of 12m from liq. comm date	270/90 days. ↓ Status Report
	end of every suc- 12 months till dissolution	

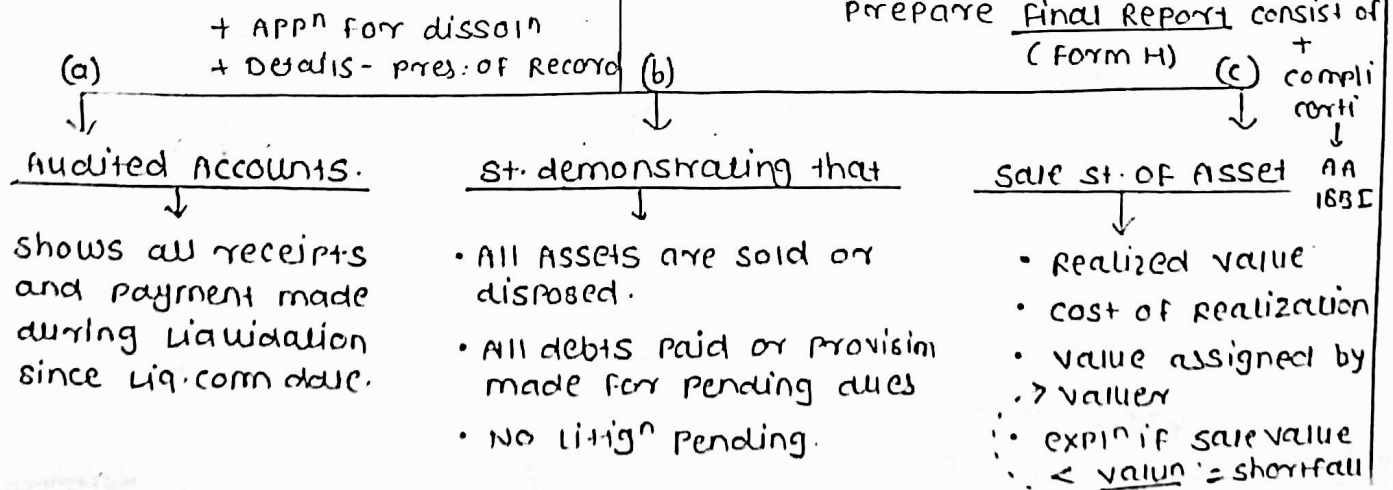
→ ~~Annual~~ status report should include -

(b)

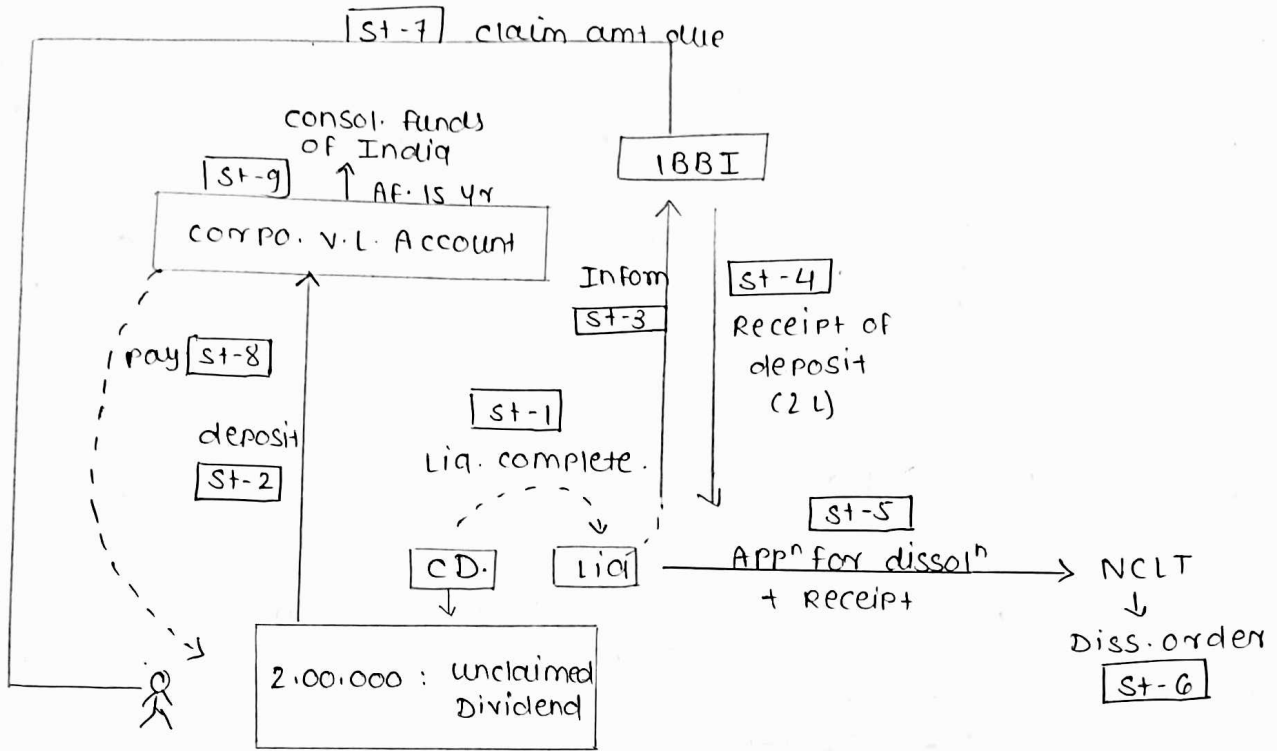
- stakeholder list settlement
- unsold assets details
- Distribution of unsold assets.
- ongoing / New litigations (by or against company)
- updates on avoidance transⁿ appⁿ.

Regulation - 38

- on Liq. Pro. Liquidator shall prepare Final Report consist of



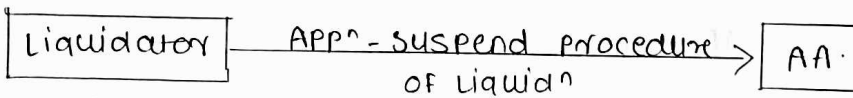
Regulation 39 - corpo. v.l. Account



Regulation 40 - Detection of fraud or insolv:

where Liq. is of the opinion that :

- Liq. is being done to defraud any person.
- CD will not be able to pay its debt in full from proceeds of Asset.



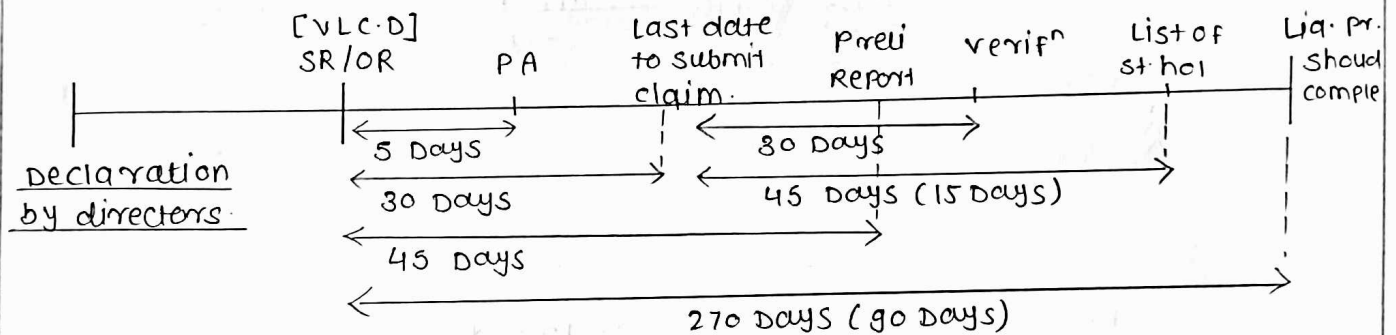
Regulation - 41 - Preservation of records.

The Liq. shall preserve copies of records relating to -

- His app. as liquidator incl. term
- Handling over / taking over of assigned
- Initiation of v.l. Process.
- Public Announcement
- claim, verifⁿ of claim, list of st holder
- statutory filings with board
- cost of v.l. Process
- correspondance during v.l. Process.

<u>Preservation of Records</u>	Electronic copy - Min period of 8 years Physical copy - 1 — 3 years
<u>Duty to handover records</u>	In case of replacement of Liquidator, the outgoing Liquidator shall handover the Records to new Lid.
<u>Duty to preserve Records at safe place</u>	The Liquidator shall preserve the record at a secure place and shall be obliged to produce records as may be required.

Timeline for Vol. Liquidⁿ [Sec. 59, read with IBBI (VLP) Reg 2017]



other timelines :-

- Approval of creditors to be obtained within 7 Days from SR/OR
- IBBI & ROC to be informed within 7 Days from SR/OR or approval of creditor (if applicable)
- order of dissolution to be forwarded to the authorities → 14 days
- Liquidator to inform IBBI about his Liquidⁿ appointment → 7 Days