Voluntary Liquidation

Lesson 23

KEY CONCEPTS

■ Liquidation ■ Liquidator ■ Liquidation Commencement Date ■ Voluntary Liquidation ■ Process of voluntary liquidation ■ Declaration of solvency

Learning Objectives

To understand:

- Concept of Voluntary Liquidation
- Initiation of Voluntary Liquidation
- Powers & Duties of Liquidator in Voluntary Liquidation
- Effect of Voluntary Liquidation
- Dissolution of company under voluntary liquidation
- Reports to be filed by Liquidator
- Preservation of Records by Liquidator
- Distribution of proceeds by Liquidator

Lesson Outline

- Introduction
- Regulatory Mechanism
- Steps involved in Voluntary Liquidation
- Initiation of Voluntary Liquidation
- Who may initiate voluntary liquidation
- Declaration of Solvency
- Appointment of Liquidator
- Eligibility for appointment as liquidator
- Intimation to Regulatory Authorities
- Voluntary Liquidation Commencement Date
- Effect of liquidation
- Order by Adjudicating Authority
- Powers and Functions of the Liquidator
- Claims
- Realisation of Assets
- Proceeds of Liquidation and Distribution of Proceeds
- Timeline for Voluntary Liquidation Process
- Case Laws
- Lesson Round-Up
- Test Yourself
- References

REGULATORY FRAMEWORK

- Section 59 of the Insolvency and Bankruptcy Code, 2016
- The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

INTRODUCTION

The Banking Law Reform Committee (BLRC) Report- Volume 1, Rationale for the Code provides voluntary liquidation as a mechanism of liquidation of a non- defaulting company- "As an application for voluntary liquidation Where a firm has not defaulted on any debt (or where a firm has no debt), it may make any application to be liquidated voluntarily in such manner as may be specified by the Board". Voluntary Liquidation is a gateway for easy exit for company which has not defaulted on any debt and has no intention to defraud creditors.

The winding-up process by creditors and the voluntary winding up by members of a company have been shifted from the Companies Act, 1956, and the Companies Act, 2013, to the IBC, and these are regarded as "Liquidation Process" and "Voluntary Liquidation Process" under it. Section 255 of the IBC, notified with effect from November 15, 2016, amended the Companies Act, 2013, in accordance with Schedule XI of the IBC, which now defines the term "winding up." A new section was added to the Companies Act, 2013, namely section 2(94A), which defines the expression "winding up" as "winding up under this Act or liquidation under the IBC."

It is also relevant that the enactment of the IBC triggered the removal of provisions of "voluntary winding up" and winding up on the grounds of "inability to pay debts" from the Companies Act, 2013. The proceedings relating to these are now under the ambit of the IBC.

Liquidation in cases of default in payment or repayment of any debt is not directly possible. For such entities, the emphasis is on resolution, and if the resolution process does not result in an approved resolution plan, a liquidation order is passed by the AA under section 33 of the IBC. As opposed to this, in a case of "no default," or in other words, in case there is no "insolvency," a corporate person can initiate voluntary liquidation directly under section 59 of the IBC.

Regulatory Mechanism

The IBC sets out a clear procedure for the voluntary liquidation of a corporate person. Section 59(1) of the IBC states that a corporate person who intends to liquidate voluntarily and has not committed any default, may initiate voluntary liquidation proceedings under the provisions of Chapter V of the IBC. Section 59(2) states that voluntary liquidation in the case of a corporate person under subsection (1) shall follow the procedural requirements and meet the conditions as may be prescribed by IBBI.

The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (Voluntary Liquidation Regulations) details the process to be followed in the voluntary liquidation of corporate persons. There are seven chapters in these regulations, detailing the process from the commencement of liquidation to the distribution of liquidation proceeds.

Steps Involved in Voluntary Liquidation

Submission of Declaration(s) to ROC, stating that the company will be able to pay its dues and is not being liquidated to defraud any person;

→ Passing of special resolution for approving the proposal of voluntary liquidation and appointment of liquidator, within four weeks of the aforesaid declaration(s). If a corporate person owes debts, approval of two-third majority creditors would also be required;

→ **Public Announcement** inviting claims of all stakeholders, within five days of such approval, in newspaper as well as on website of the corporate person;

→ Intimation to the ROC and the Board about the approval, within seven days of such approval;

→ Preparation of **Preliminary Report** about the capital structure, estimates of assets and liabilities, proposed plan of action etc., and submission of the same to a corporate person within forty-five days of such Approval;

→ Verification of claims, within thirty days form the last date for receipt of claims and preparation of list of stakeholders, within forty-five days from the last date for receipt of claims;

→ Opening of a bank account in the name of the corporate person followed by the words '**in voluntary liquidation'**, in a scheduled bank, for the receipt of all moneys due to the corporate person;

→ Sale of assets, recovery of monies due to corporate person, realization of uncalled capital or unpaid capital contribution;

→ Distribution of the proceeds to the stakeholders within 30 days from receipt of the amount;

→ Submission of **Final Report** by the liquidator to the corporate person, ROC and the Board and application to the National Company Law Tribunal (NCLT) for the dissolution;

→ Submission of NCLT order regarding the dissolution, to the concerned ROC within fourteen days of the receipt of order.

Regulatory Framework for Voluntary Liquidation of Corporate Persons:

Chapter V of Part II of the Insolvency and Bankruptcy Code, 2016 and The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

Initiation of Voluntary Liquidation

Section 59 of the Code sets out the process of initiation of voluntary liquidation of a company. Sub-section 2 of section 59 provides that the voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions and procedural requirements as may be specified by the Board.

This process has been adapted in regulation 3 of the Voluntary Liquidation Regulations for corporate persons other than a company. The process is elaborated as follows:

Who may initiate Voluntary Liquidation?

A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter. [Section 59(1)]

Declaration of Solvency

There should be a declaration from a majority of the directors verified by an affidavit stating that:

(a) they have made a full inquiry into the affairs of the company and formed an opinion that it has no debt, or in case it has, it will be able to pay its debts completely from the value obtained from the assets to be sold in the voluntary liquidation proceedings; and

(b) the company is not being liquidated to defraud any person.

Documents accompanying Solvency:

The said declaration should be accompanied by:

(a) audited financial statements and record(s) of business operations of the company for the previous two years, or for the period since its incorporation, whichever is most recent;

(b) a report of valuation of the assets of the company, in case it is prepared by a registered valuer.

The IBBI(Voluntary Liquidation Process) Regulations,2017 provides in Regulation 3(4) that the declaration under sub-regulation (1)(a) or under section 59(3)(a) shall list each debt of the corporate person as on that date and state that the corporate person will be able to pay all its debts in full from the proceeds of assets to be sold in the liquidation.

The IBBI (Voluntary Liquidation Process) Regulations, 2017 provides in Regulation 3(5) that the declaration under sub-regulation (1)(a) or under section 59(3)(a) shall provide that the corporate person has made provision for preservation of its records after its dissolution.

Shareholders/Contributories Approval

Section 59(3) (c) of the Code provides mandatory timeline for holding of general meeting of members of the corporate debtor to approve voluntary winding up. Within four weeks of a declaration by the Board of Directors, there shall be

(i) a **special resolution** of the members of the company in a general meeting requiring the company to be liquidated voluntarily and **appointing an insolvency professional** to act as the liquidator; or

(ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator:

In either case, an insolvency professional to act as the liquidator shall be appointed by a resolution.

Creditors' Resolution: It is also provided that if the company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed by shareholders within seven days of such resolution.

Regulation 3 (1) to 3(3) of Voluntary Liquidation Regulations provide similar provisions for voluntary liquidation of corporate persons other than company as follows:

1) Declaration of solvency to be made by majority of

    (i) the designated partners, if a corporate person is a limited liability partnership,

    (ii) individuals constituting the governing body in case of other corporate persons, as the case may be.

2) Such declaration shall be verified by an affidavit stating that-
   (i) they have made a full inquiry into the affairs of the corporate person and they have formed an opinion that either the corporate person has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the liquidation
   (ii) the corporate person is not being liquidated to defraud any person;
   (iii) the corporate person has made sufficient provision to meet the obligations arising on account of pending matters.
3) Such declaration shall be accompanied with the documents, namely: —
   (i) audited financial statements and record of business operations of the corporate person for the previous two years or for the period since its incorporation, whichever is later;
   (ii) a report of the valuation of the assets of the corporate person, if any prepared by a registered valuer.
   (iii) disclosure about pending proceedings or assessments before statutory authorities, and pending litigations, in respect of the corporate person
4) within Four weeks of such declaration , there shall be-
   (i) a resolution passed by a special majority of the partners or contributories, as the case may be, of the corporate person requiring the corporate person to be liquidated and appointing an insolvency professional to act as the liquidator; or
   (ii) a resolution of the partners or contributories, as the case may be, requiring the corporate person to be liquidated as a result of expiry of the period of its duration, if any, fixed by its constitutional documents or on the occurrence of any event in respect of which the constitutional documents provide that the corporate person shall be dissolved, as the case may be, and appointing an insolvency professional to act as the liquidator.

If the corporate person owes any debt to any person, creditors representing two-thirds in value of the debt of the corporate person shall approve the resolution passed by partners or contributories, as stated above, within seven days of such resolution.

Appointment of Liquidator

Regulation 5 of Voluntary Liquidation Regulations provides that-

- the corporate person shall appoint an insolvency professional as liquidator, and, wherever required, may replace him by appointing another insolvency professional as liquidator.
- Appointment or replacement of liquidator shall be made by a resolution passed under clause (c) of sub-section (3) of section 59 or clause (c) of sub-regulation (1) of regulation 3, as the case may be.
- Only an insolvency professional who meets the eligibility criterion laid down in Regulation 6 can be appointed as Liquidator.
- It is provided that such resolution, passed by the members, partners, or contributories, shall contain the terms and conditions of appointment of the liquidator, including the remuneration payable to him.
- A duty has been casted on the insolvency professional that he shall, within seven days of his appointment as liquidator, intimate the Board about such appointment.

Eligibility for appointment as liquidator

Regulation 6 sets out the eligibility requirement, which is similar to the eligibility requirement for appointment of a liquidator under the Liquidation Process Regulations. Primarily, it deals with the requirement of a liquidator to be **"independent."** Regulation 6 lays down following criterion for appointment of liquidator:

(1) An insolvency professional shall be eligible to be appointed as a liquidator if he, and every partner or director of the insolvency professional entity of which he is a partner or director is independent of the corporate person:

Explanation:

1) A person shall be considered independent of the corporate person, if he-

    (a) is eligible to be appointed as an independent director on the board of the corporate person under section 149 of the Companies Act, 2013 , where the corporate person is a company;

    (b) is not a related party of the corporate person; or

    (c) has not been an employee or proprietor or a partner-

        (i) of a firm of auditors or secretarial auditors or cost auditors of the corporate person at any time in the last three years; or

        (ii) of a legal or a consulting firm, that has or had any transaction with the corporate person contributing ten per cent or more of the gross turnover of such firm at any time in the last three years.

(2) An insolvency professional shall not be eligible to be appointed as a liquidator if he, or the insolvency professional entity of which he is a partner or director is under a restraint order of the Board.

(3) A liquidator shall disclose the existence of any pecuniary or personal relationship with the concerned corporate person or any of its stakeholders as soon as he becomes aware of it, to the Board and the Registrar.

(4) An insolvency professional shall not continue as a liquidator if the insolvency professional entity of which he is a director or partner, or any other partner or director of such insolvency professional entity represents any other stakeholder in the same liquidation.

Liquidator's remuneration: Regulation 7 of Voluntary Liquidation Regulations provides for that the remuneration payable to the liquidator shall form part of the liquidation cost.

Intimation to Regulatory Authorities

Section 59(4) of the Code provides that –

- the company shall notify the Registrar of Companies and the Board about the resolution passed to liquidate the company.
- the intimation shall be sent within seven days of such a resolution or the subsequent approval by the creditors, as the case may be.

Similar provisions are specified for corporate person other than a company in the Regulation 3(2) of Voluntary Liquidation Regulations that the corporate person shall notify the Registrar and the Board about the resolution passed by partners or contributories to liquidate the corporate person within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

Voluntary Liquidation Commencement Date

According to section 59(5) of the Code, subject to approval of the creditors, the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution by the members, partners or contributories.

Regulation 3(3) provides that the liquidation proceedings in respect of a corporate person other than a company shall be deemed to have commenced from the date of passing of the resolution by partners or contributories under sub-clause (c) of sub-regulation (1) subject to approval of the creditors as stated in proviso to regulation 3 (1) (c).

Effect of liquidation

As per regulation 4 of the Voluntary Liquidation Regulations,

- The corporate person shall cease to carry on its business from the liquidation commencement date, except as far as required for the beneficial winding up of its business.
- However, the corporate person shall continue to exist until it is dissolved under section 59(8) of the IBC.

Application of Sections 35 to 53 of the IBC

Section 59(6) of the Code provides for that the provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

Chapter III deals with the liquidation process of a corporate person in case of failure of the insolvency resolution process to receive a resolution plan and the subsequent order by the AA for liquidation of corporate persons. Chapter VII deals with offences and penalties. Hence, provisions in the IBC relating to the powers and duties of the liquidator, claim verifications, the conduct of the liquidation process, and offences and penalties that apply to a post-CIRP liquidation also apply to voluntary liquidation.

Application to Adjudicating Authority (AA) for dissolution of corporate person

Section 59(7) of the Code mandates the liquidator to make an application to the Adjudicating Authority for dissolution of such corporate person, where the affairs of the corporate person have been completely wound up, and its assets completely liquidated.

Regulation 38(3) of Voluntary Liquidation Regulations provides that the liquidator shall submit the Final Report and the compliance certificate in Form-H along with the application under sub-section (7) of section 59 to the Adjudicating Authority.

Order by Adjudicating Authority-

The Adjudicating Authority shall on an application filed by the liquidator under sub-section (7), pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly. [Section 59(8)]

Thus, once the affairs of the corporate debtor have been wound up and its assets completely liquidated, the liquidator shall make an application to the adjudicating authority for the dissolution of the corporate debtor and the corporate debtor shall be dissolved by the order of the adjudicating authority.

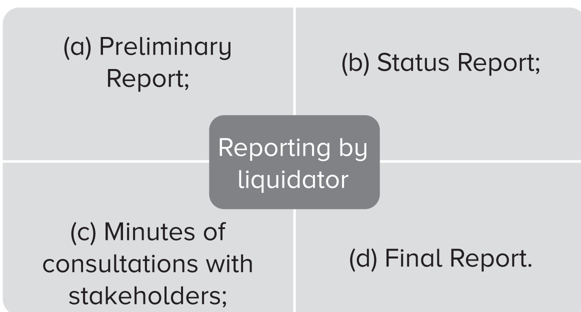
Copy of Order- A copy of an order under sub-section (8) shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered. [Section 59(9)]

Powers and Functions of the Liquidator

Chapter IV of Voluntary Liquidation Regulations provides for powers and functions of the Liquidator for voluntary liquidation of the corporate persons in Regulation 8 to 14.

Reporting

Regulation 8(1) provides that the liquidator shall prepare and submit following reports and minutes in the manner specified under these Regulations:



According to regulation 8(2), subject to other provisions of these Regulations, the liquidator shall make

- the above stated reports and minutes available to a stakeholder in either electronic or physical form, on receipt of-
  - (a) an application in writing;
  - (b) cost of making such reports available to it; and
  - (c) an undertaking from the stakeholder that it shall maintain confidentiality of such reports and shall not use these to cause an undue gain or undue loss to itself or any other person.

Preliminary Report (Regulation 9)

Timeline for submission of Preliminary Report:

The liquidator shall submit a Preliminary Report to the corporate person within forty five days from the liquidation commencement date.

Preliminary Report shall provide for the following contents in detail-

The liquidator shall submit a Preliminary Report detailing-[Regulation 9(1)]

- (a) the capital structure of the corporate person;
- (b) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate person: Provided that if the liquidator has reasons to believe, to be recorded in writing, that the books of the corporate person are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him;
- (c) Whether he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the corporate person or the conduct of the business thereof; and
- (d) the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

Registers and books of account (Regulation 10)

Completion of registers and books of account: Where the books of account of the corporate person are incomplete on the liquidation commencement date, the liquidator shall have them completed and brought up-to-date, with all convenient speed. [Regulation 10(1)]

Registers and books of accounts to be maintained: The liquidator shall maintain the following registers and books, as may be applicable, in relation to the liquidation of the corporate person:- (a) Cash Book; (b) Ledger; (c) Bank Ledger; (d) Register of Fixed Assets and Inventories; (e) Securities and Investment Register; (f) Register of Book Debts and Outstanding Debts; (g) Tenants Ledger; (h) Suits Register; (i) Decree Register; (j) Register of Claims and Dividends; (k) Contributories Ledger; (l) Distributions Register; (m) Fee Register; (n) Suspense Register; (o) Documents Register; (p) Books Register; (q) Register of unclaimed dividends and undistributed proceeds; and] (r) such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate person. [Regulation 10(2)]

Forms for maintaining the registers and books: The registers and books under sub-regulation (2) may be maintained in the forms indicated in Schedule II, with such modifications as the liquidator may deem fit in the facts and circumstances of the liquidation. [Regulation 10(3)]

Duty of Liquidator to keep account of expenses: Regulation 10(4) also makes it mandatory for the liquidator to keep receipts for all payments made or expenses incurred by him.

Engagement of professionals (Regulation 11)

Who may be appointed by a Liquidator: A liquidator may engage professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost. [Regulation 11(1)]

Who cannot be engaged by the liquidator: Following professionals cannot be engaged by a liquidator

- his relative,
- a related party of the corporate person, or
- one who has served as an auditor to the corporate person at any time during the five years preceding the liquidation commencement date. [Regulation 11(2)]

Disclosure by a professional: A professional engaged or proposed to be engaged under sub-regulation(1) shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders, or the corporate person as soon as he becomes aware of it, to the liquidator. [Regulation 11(3)]

Consultation with stakeholders (Regulation 12)

Duty of stakeholders to extend assistance: The stakeholders consulted under section 35(2) shall extend all assistance and cooperation to the liquidator to complete the liquidation of the corporate person. [Regulation 12(1)]

Particulars of consultation: The liquidator shall maintain the particulars of any consultation with the stakeholders made under this Regulation. [Regulation 12(2)]

Extortionate credit transactions (Regulation 13)

A transaction shall be considered an extortionate credit transaction under section 50(2) where the terms-

(a) require the corporate person to make exorbitant payments in respect of the credit provided; or

(b) are unconscionable under the principles of law relating to contracts.

Public announcement by the Liquidator (Regulation 14)

Form of Public Announcement: The liquidator shall make a public announcement in Form A of Schedule I within five days from his appointment. [Regulation 14(1)]

Invitation of claim: The public announcement shall-

(a) call upon stakeholders to submit their claims as on the liquidation commencement date; and

(b) provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date. [Regulation 14(2)]

Publication of Public Announcement: The announcement shall be published-

(a) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate person and any other location where in the opinion of the liquidator, the corporate person conducts material business operations;

(b) on the website, if any, of the corporate person; and

(c) on the website, if any, designated by the Board for this purpose [Regulation 14(3)].

CLAIMS

Provisions for claims are provided in Chapter V from Regulations 15 to 30 of Voluntary Liquidation Regulations.

Proof of claim (Regulation 15)

A person, who claims to be a stakeholder, shall prove his claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.

Claims by operational creditors (Regulation 16)

Form to be filed: A person claiming to be an operational creditor of the corporate person, other than a workman or employee, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form B of Schedule I. [Regulation 16(1)]

Proof of claim: The existence of debt due to an operational creditor under this Regulation may be proved on the basis of-

(a) the records available with an information utility; or

(b) other relevant documents which adequately establish the debt, including any of the following –

   (i) a contract for the supply of goods or services with corporate person, supported by an invoice demanding payment for the goods and services supplied to the corporate person;

   (ii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; and

   (iii) financial accounts of the corporate person. [Regulation 16(2)]

Claims by financial creditors (Regulation 17)

Form to be filed: A person claiming to be a financial creditor of the corporate person shall submit proof of claim to the liquidator in electronic means in Form C of Schedule I. [Regulation 17(1)]

Proof of claim: The existence of debt due to the financial creditor may be proved on the basis of-

(a) the records available in an information utility; or

(b) other relevant documents which adequately establish the dwebt, including any or all of the following –

   (i) a financial contract supported by financial statements as evidence of the debt;

   (ii) a record evidencing that the amounts committed by the financial creditor to the corporate person under a facility has been drawn by the corporate person;

   (iii) financial statements showing that the debt has not been repaid; and

   (iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any. [Regulation 17(2)]

Claims by workmen and employees (Regulation 18)

Form to be filed: A person claiming to be a workman or an employee of the corporate person shall submit proof of claim to the liquidator in person, by post or by electronic means in Form D of Schedule I. [Regulation 18(1)]

One proof of claim: Where there are dues to numerous workmen or employees of the corporate person, an authorized representative may submit one proof of claim for all such dues on their behalf in Form E of Schedule I. [Regulation 18(2)]

Proof of claim: The existence of dues to workmen or employees may be proved by them, individually or collectively, on the basis of-

(a) records available in an information utility; or

(b) other relevant documents which adequately establish the dues, including any or all of the following -

   (i) a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;

   (ii) evidence of notice demanding payment of unpaid amount and any documentary or other proof that payment has not been made; and

   (iii) an order of a court or tribunal that has adjudicated upon the non-payment of dues, if any. [Regulation 18(3)]

Duty of the liquidator to admit claim in absence of claim by workman or employee: The liquidator shall admit the claims of a workman or an employee on the basis of the books of account of the corporate person if such workman or employee has not made a claim. [Regulation 18(4)]

Claims by other stakeholders (Regulation 19)

Form to be filed: A person, claiming to be a stakeholder other than those under Regulations 16, 17 or 18 shall submit proof of claim to the liquidator in person, by post or by electronic means in Form F of Schedule I. [Regulation 19(1)]

Proof of claim: The existence of the claim of the stakeholder may be proved on the basis of –

(a) the records available in an information utility;

Or

(b) other relevant documents which adequately establish the claim, including any or all of the following-

(i) documentary evidence of notice demanding payment of unpaid amount or bank statements of the claimant showing that the claim has not been paid and an affidavit that the documentary evidence and bank statements are true, valid and genuine;

(ii) documentary or electronic evidence of his shareholding; and

(iii) an order of a court, tribunal or other authority that has adjudicated upon the non-payment of a claim, if any.[Regulation 19(2)]

Proving security interest (Regulation 20)

The existence of a security interest may be proved by a secured creditor on the basis of-

(a) the records available in an information utility;

(b) certificate of registration of charge issued by the Registrar of Companies;

(c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India; or

(d) other relevant documents which adequately establish the security interest.

Production of bills of exchange and promissory notes (Regulation 21)

Where a person seeks to prove a debt in respect of a bill of exchange, promissory note or other negotiable instrument or security of a like nature for which the corporate person is liable, such bill of exchange, note, instrument or security, as the case may be, shall be produced before the liquidator before the claim is admitted.

Substantiation of claims (Regulation 22)

The liquidator may call for such other evidence or clarification as he deems fit from a claimant for substantiating the whole or part of its claim.

Cost of proof (Regulation 23)

A claimant shall bear the cost of proving its claim. Costs incurred by the liquidator for verification and determination of a claim shall form part of liquidation cost. It is provided that if a claim or part of the claim is found to be false, the liquidator shall endeavor to recover the costs incurred for verification and determination of claim from such claimant, and shall provide the details of the claimant to the Board.

Determination of amount of claim (Regulation 24)

Where the amount claimed by a claimant is not precise due to any contingency or any other reason, the liquidator shall make the best estimate of the amount of the claim, based on consultation with the claimant and the corporate person and the information available with him.

Debt in foreign currency (Regulation 25)

The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the liquidation commencement date.

Explanation- "The official exchange rate" is the reference rate published by the Reserve Bank of India or derived from such reference rates.

Periodical payments (Regulation 26)

In the case of rent, interest and such other payments of a periodical nature, a person may claim only for any amounts due and unpaid up to the liquidation commencement date.

Debt payable at future time (Regulation 27)

A person may prove for a claim whose payment was not yet due on the liquidation commencement date and is entitled to distribution in the same manner as any other stakeholder. Subject to any contract to the contrary, where a stakeholder has proved for a claim under sub-regulation (1), and the debt has not fallen due before distribution, he is entitled to distribution of the admitted claim reduced as follows:

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

where–

(a) "x" is the value of the admitted claim;

(b) "r" is the closing yield rate (%) of government securities of the maturity of "n" on the date of distribution as published by the Reserve Bank of India; and

(c) "n" is the period beginning with the date of distribution and ending with the date on which the payment of the debt would otherwise be due, expressed in years and months in a decimalized form.

Mutual credits and set-off (Regulation 28)

Where there are mutual dealings between the corporate person and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate person or to the other party.

Illustration: X owes Rs.100 to the corporate person. The corporate person owes Rs.70 to X. After set off, Rs.30 is payable by X to the corporate person.

Verification of claims (Regulation 29)

Time for verification of claim: The liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be, as per section 40 of the Code. [Regulation 29(1)]

Appeal to the Adjudicating Authority: A creditor may appeal to the Adjudicating Authority against the decision of the liquidator as per section 42 of the Code. [Regulation 29(2)}

List of stakeholders (Regulation 30)

Contents of list of stakeholders:

The liquidator shall prepare a list of stakeholders on the basis of proofs of claims submitted and accepted under these Regulations, with-

(a) the amounts of claim admitted, if applicable,

(b) the extent to which the debts or dues are secured or unsecured, if applicable,

(c) the details of the stakeholders, and

(d) the proofs admitted or rejected in part, and the proofs wholly rejected. [Regulation 30 (1)]

Timeline for preparing list of stakeholders[Regulation 30 (2)]*:*

- *When claim is filed by stakeholder:* The liquidator shall prepare the list of stakeholders within forty-five days from the last date for receipt of claims.
- *When no claim is filed by stakeholder:* It is provided that where no claim from creditors has been received till the last date for receipt of claims, the liquidator shall prepare the list of stakeholders within fifteen days from the last date for receipt of claims.

List of stakeholders available for inspection or display: The list of stakeholders, as modified from time to time, shall be-

(a) available for inspection by the persons who submitted proofs of claim;

(b) available for inspection by members, partners, directors and guarantors of the corporate person;

(c) displayed on the website, if any, of the corporate person;

(d) displayed on the website, if any, designated by the Board for this purpose. [Regulation 30 (3)]

REALISATION OF ASSETS

Provisions for realization of assets are provided in Chapter VI from Regulations 31 to 33 of Voluntary Liquidation Regulations.

Manner of Sale (Regulation 31)

As approved by corporate person: The liquidator may value and sell the assets of the corporate person in the manner and mode approved by the corporate person in compliance with provisions, if any, in the applicable statute.

> *Explanation:* “assets” include an asset, all assets, a set of assets or parcel of assets, as the case may be, in relation to sale of assets.

Recovery of monies due (Regulation 32)

Maximisation of value of assets and dues: The liquidator shall endeavor to recover and realize all assets of and dues to the corporate person in a time-bound manner for maximization of value for the stakeholders.

Liquidator to realize uncalled capital or unpaid capital contribution (Regulation 33)

Realisation of amount due from contributory: The liquidator shall realize any amount due from any contributory to the corporate person. [Regulation 33 (1)]

Realisation of uncalled capital and calls in arrear:

- The liquidator shall be entitled to call and realize the uncalled capital of the corporate person and to collect the arrears if any due on calls made prior to the liquidation commencement date.
- The liquidator shall exercise this power notwithstanding any charge or encumbrance on the uncalled capital of the corporate person.
- A 15 days demand notice shall be served to the contributory to make the payments within fifteen days from the receipt of the notice.
- Along with right to serve demand notice to collect dues or calls-in-arrear, the liquidator is vested with the right to hold all moneys so realized subject to the rights, if any, of the holder of any such charge or encumbrance. [Regulation 33 (2)]

Distribution to be made to contributory: No distribution shall be made to a contributory, unless he makes his contribution to the uncalled or unpaid capital as required in the constitutional documents of the corporate person. [Regulation 33 (3)]

PROCEEDS OF LIQUIDATION AND DISTRIBUTION OF PROCEEDS

Provisions for claims are provided in Chapter VII from Regulations 34 to 41 of Voluntary Liquidation Regulations.

All money to be paid in to bank account (Regulation 34)

Opening Bank Account in a scheduled bank: The liquidator shall open a bank account

- in the name of the corporate person followed by the words 'in voluntary liquidation',
- in a scheduled bank,
- for the receipt of all moneys due to the corporate person. [Regulation 34 (1)]

Deposit of the realized amount by next working day: The liquidator shall pay to the credit of the bank account opened under sub-regulation (1) all moneys, including cheques and demand drafts received by him as the liquidator of the corporate person, and the realizations of each day shall be deposited into the bank account without any deduction not later than the next working day. [Regulation 34 (2)]

Use of deposits in bank: The money in the credit of the bank account shall not be used except in accordance with section 53(1) i.e. waterfall mechanism for distribution of realized amount in accordance with the priority and manner laid down in Section 53(1). [Regulation 34 (3)]

Cheque or online payment above specified limit: All payments out of the account by the liquidator above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account. [Regulation 34 (4)].

Distribution (Regulation 35)

Timeline for distribution of proceeds: The liquidator shall distribute the proceeds from realization within thirty days from the receipt of the amount to the stakeholders. [Regulation 35 (1)]

Deduction of liquidation costs before such distribution: The liquidation costs shall be deducted before such distribution is made. [Regulation 35 (2)]

Distribution of asset to stakeholder: The liquidator may, with the approval of the corporate person, distribute amongst the stakeholders, an asset that cannot be readily or advantageously sold due to its peculiar nature or other special circumstances. [Regulation 35 (3)]

Return of money (Regulation 36)

Refund of money to which stakeholder is not entitled to: A stakeholder shall forthwith return any monies received by him in distribution, which he was not entitled to at the time of distribution, or subsequently became not entitled to.

Completion of liquidation (Regulation 37)

Timeline for completion of Liquidation process: Regulation 37(1) provides for that the liquidator shall endeavour to complete the liquidation process of the corporate person and submit the Final Report under regulation 38 within: -

(a) two hundred and seventy days from the liquidation commencement date where the creditors have approved the resolution under clause (c) of sub-section (3) of section 59 or clause (c) of sub-regulation (1) of regulation 3, and

(b) ninety days from the liquidation commencement date in all other cases.

In the event of the liquidation process continuing for more than the period stipulated in Regulation 37(1) the liquidator shall

(a) hold a meeting of the contributories of the corporate person within fifteen days –

  (i) from the end of two hundred and seventy days or ninety days, as the case may be, and

  (ii) thereafter at the end of every succeeding two hundred and seventy days or ninety days, as the case may be, as stipulated in Regulation 37(1), till submission of application for dissolution of the corporate person; and

(b) shall present Status Report(s)indicating progress in liquidation, including-

  (i) settlement of list of stakeholders;

  (ii) details of any assets that remains to be sold and realized;

  (iii) distribution made to the stakeholders;

  (iv) distribution of unsold assets made to the stakeholders;

  (v) developments in any material litigation, by or against the corporate person;

  (vi) filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code. [Regulation 37 (2)]

Enclosures with the Status Report: The Status Report shall enclose the audited accounts of the liquidation showing the receipts and payments pertaining to liquidation since the liquidation commencement date. [Regulation 37 (3)]

Final Report (Regulation 38)

Contents of Final Report: Regulation 38 (1) provides for that the liquidator shall prepare the Final Report on completion of the liquidation process.

Final Report shall consist of-[Regulation 38 (1)]

- (a) audited accounts of the liquidation, → showing receipts and payments pertaining to liquidation since the liquidation commencement date; and
- (b) a statement demonstrating that-
  - (i) the assets of the corporate person has been disposed of;
  - (ii) the debt of the corporate person has been discharged to the satisfaction of the creditors;
  - (iii) no litigation is pending against the corporate person or sufficient provision has been made to meet the obligations arising from any pending litigation.
- (c) a sale statement in respect of all assets containing -
  - he realized value;
  - (i) cost of realization, if any;
  - (ii) the manner and mode of sale;
  - (iii) an explanation for the shortfall, if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets under section 59(3)(b)(ii) or Regulation 3(1)(b)(ii), as the case may be;
  - (iv) the person to whom the sale is made; and (vi) any other relevant details of the sale.

Final Report to be submitted to Regulatory Authorities: The liquidator shall send the Final Report forthwith, to the Registrar and the Board. [Regulation 38 (2)]

Submission of Final Report and Compliance Certificate to AA: The liquidator shall submit the Final Report and the compliance certificate in Form-H along with the application under sub-section (7) of section 59 to the Adjudicating Authority. [Regulation 38 (3)]

Corporate Voluntary Liquidation Account (Regulation 39)

Open Corporate Voluntary Liquidation Account: The Board shall operate and maintain an Account to be called the Corporate Voluntary Liquidation Account in the Public Accounts of India.

It is provided that until the Corporate Voluntary Liquidation Account is operated as part of the Public Accounts of India, the Board shall open a separate bank account with a Scheduled bank for the purposes of this regulation. [Regulation 39(1)]

Unclaimed dividend and undistributed proceeds to be deposited in the account: A 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 till the date of deposit, into the Corporate Voluntary Liquidation Account before he submits an application under sub-section (7) of section 59 for dissolution of the corporate person. [Regulation 39(2)]

15 days' time for deposit of unclaimed dividends or undistributed proceeds in hand: A liquidator, who holds any amount of unclaimed dividends or undistributed proceeds in a liquidation process on the date of commencement of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2020, shall deposit the same within fifteen days of the date of such commencement, along with any income earned thereon till the date of deposit. [Regulation 39(3)]

Interest for delay in deposit in the Account: A liquidator, who fails to deposit any amount into the Corporate Voluntary Liquidation Account under this regulation, shall deposit the same along with interest thereon at the rate of twelve percent per annum from the due date of deposit till the date of deposit. [Regulation 39(4)]

Submission of evidence of deposit of the amount in the Account to Regulatory Authorities: A liquidator shall submit to the authority with which the corporate person is registered and the Board, the evidence of deposit of the amount into the Corporate Voluntary Liquidation Account under this regulation, and a statement in Form-G setting forth the nature of the amount deposited into the Corporate Voluntary Liquidation Account, and the names and last known addresses of the stakeholders entitled to receive the unclaimed dividends or undistributed proceeds. [Regulation 39(5)]

Receipt of Deposit: The liquidator shall be entitled to a receipt from the Board for any amount deposited into the Corporate Voluntary Liquidation Account under this regulation. [Regulation 39(6)]

Form for filing claim for amount deposited in the account: A stakeholder, who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account, may apply to the Board in Form-I for an order for withdrawal of the amount.

Regulation (7) provides that prior to dissolution of the corporate person, a stakeholder, who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account, may apply to the liquidator in Form-I for withdrawal of the amount.

As per Regulation (7A), on receipt of request under sub-regulation (7), the liquidator after verification of the claim, shall request the Board for release of amount to him for onward distribution.

Regulation (7B) states that the Board on receipt of request under sub-regulation (7A) may release the amount to the liquidator.

Regulation (7C) provides that the liquidator shall, after making the distribution to the stakeholder shall intimate the Adjudicating Authority of such distribution.

According to Regulation (7D), after dissolution of the corporate person, a stakeholder, who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account, may apply to the Board in Form-I for an order for withdrawal of the amount.

Regulation (7E) states that if any other person other than the stakeholder claims to be entitled to any amount deposited to the Corporate Voluntary Liquidation Account, he shall submit evidence to satisfy the liquidator or the Board, as the case may be, that he is so entitled.

Detection of Fraud or Insolvency (Regulation 40)

Application to AA to suspend the process of liquidation: Regulation 40 lays down following situations in which the liquidator shall make an application to the Adjudicatory Authority to suspend the process of liquidation and pass any such orders as it deems fit:

(i) Where the liquidator is of the opinion that the liquidation is being done to defraud a person [Regulation 40(1)]

(ii) Where the liquidator is of the opinion that the corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the liquidation [Regulation 40(2)]

Preservation of records (Regulation 41)

Preservation of copies of records: The liquidator shall preserve copies of all such records which are required to give a complete account of the voluntary liquidation process. [Regulation 41(1)]

Records to be preserved: Without prejudice to the generality of the obligations under sub-regulation (1), the liquidator shall preserve copies of records relating to or forming the basis of:-

[Regulation 41(2)]

(a) his appointment as liquidator, including the terms of appointment;

(b) handing over / taking over of the assignment;

(c) initiation of voluntary liquidation process;

(d) public announcement;

(e) claims, verification of claims, and list of stakeholders;

(f) engagement of professionals, registered valuers, etc. including work done, reports etc., submitted by them;

(g) all filings with the Adjudicating Authority, Appellate Authority, High Courts, Supreme Court, whichever applicable and their orders;

(h) statutory filings with Board and insolvency professional agencies;

(i) correspondence during the voluntary liquidation process;

(j) cost of voluntary liquidation process;

(k) all reports, registers, documents such as preliminary report, annual status report, final report prior to dissolution, various registers and books, etc. mentioned in Regulation 8 and 10 of principal regulations; and

(l) any other records, which is required to give a complete account of the process.

Minimum period of preservation of records

The liquidator shall preserve:

(a) electronic copy of all records(physical and electronic) for a minimum period of eight years; and

(b) a physical copy of records for a minimum period of three years; from the date of dissolution of the corporate person, before the Board, the Adjudicating Authority, Appellate Authority or any Court, whichever is later. [Regulation 41(3)]

Duty to handover records to new liquidator: In case of replacement of liquidator during the process, the outgoing liquidator shall handover the records under sub-regulation (1) and (2) to the new liquidator. [Regulation 41(4)]

Duty of liquidator to preserve record at safe place and produce them: The liquidator shall preserve the records at a secure place and shall be obliged to produce records as may be required under the Code and the principal regulations. [Regulation 41(5)]

Details of preservation of records to be filed with the application for dissolution of corporate person: The liquidator shall, along with the application filed under sub-section (7) of section 59 to the Adjudicating Authority, provide the details and manner of preservation of records under sub-regulation (1) and (2). Explanation - The records referred to in this regulation includes records pertaining to the period of a liquidation process during which the liquidator acted as such, irrespective of the fact that he did not take up the assignment from its commencement or continue the assignment till its conclusion. [Regulation 41(6)]

Time line for Voluntary Liquidation Process T=Liquidation Commencement Date			
Sl. No	**Section / Regulation**	**Description of Task**	**Norm (Number of Days)**
1	Section 59(3)(a), Regulation 3(1) (a)	Declaration from majority of directors / partners regarding solvency of corporate person and it not being liquidated to defraud any person	T – 28
2.	Section 59[(3)(c) and (5)], Regulation 3(1) (c) and 3(3)	Passing of resolution / special resolution by members / partners about commencement of voluntary liquidation process and appointment of insolvency professional as liquidator	T = 0
3.	Proviso to Section 59(3)(c), Regulation 3(1)(c)	Approval of creditors representing two-third in value of debt, if the corporate person owes any debt, of the resolution passed under section 59(3)(c) or regulation 3(1)(c)	T + 7
4.	Regulation 5(2)	Intimation by Insolvency Professional regarding his appointment as Liquidator, to the Board	T + 7
5.	Regulation 14 (1)	Public Announcement in Form A by the Liquidator	T + 5
6.	Section 59(4), Reg. 3(2)	Notification to Registrar of Companies and Board about the resolution passed under section 59(3)(c) and regulation 3(1)(c) or subsequent approval of creditors thereto, as the case may be, by corporate person	T + 7 or T + 14
7.	Section 38(1), Regulation 14 (2)	Submission of claims by stakeholders	T + 30
8.	Section 38(5)	Withdrawal/ modification of claim by stakeholders	T + 44
9.	Regulation 9(1)	Submission of preliminary report to the corporate person by the Liquidator	T + 45
10.	Regulation 29(1)	Verification of claims by the Liquidator	T + 60
11.	Section 40 (2)	Intimation about decision of acceptance/ rejection of claim to the stakeholders by the Liquidator	T + 67
12.	Regulation 30(2)	Preparation of list of stakeholders by the Liquidator	T + 45*/75
13.	Section 42	Appeal by creditor against the decision of the Liquidator	T + 81
14.	Regulation 35(1)	Distribution of the proceeds to stakeholders by the Liquidator	Date of realization + 30 days
15.	Regulation 39(2)	Deposit of amount of unclaimed dividends and undistributed proceeds in Corporate Voluntary Liquidation Account by the Liquidator	Prior to submission of application under sub-section (7) of section 59
16.	Regulation 38(2)	Submission of Final Report to the Board and Registrar of Companies by the Liquidator	T + 90*/270

17.	Section 59(7), Regulation 38(3)	Submission of Final Report, along with the application for dissolution, to AA	T + 90*/270
18.	Regulation 37(1)	Completion of Voluntary Liquidation Process	T + 90*/270
19.	Regulation 37(2)	Meeting of Contributories and presentation of Annual Status Report.	T + 365
*Applicable where approval of creditors was not required under section 59(3)(c) or regulation 3(1)(c)			
Source: The IBBI (Voluntary Liquidation Process) Regulations,2017			

SCHEDULE I		
FORMS	**Events**	**The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017**
FORM A	Public Announcement	Regulation 14
FORM B	Proof of claim by operational creditors except Workmen and Employees	Regulation 16
FORM C	Proof of claim by Financial Creditors	Regulation 17
FORM D	Proof of claim by a workman or employee	Regulation 18
FORM E	Proof of claim by Authorised Representative of workmen or employees	Regulation 18(2)
FORM F	Proof of claim by any other stakeholder	Regulation 19
FORM-G	Deposit of Unclaimed Dividends and/or Undistributed Proceeds	Regulation 39(5)
FORM-H	Compliance Certificate	Regulation 38(3)
FORM-I	Withdrawal from Corporate Voluntary Liquidation Account	Regulation 39(7)

CASE LAW-

Nippei Toyoma India Private Limited

The petition was filed by Nippei Toyoma India Private limited to initiate voluntary liquidation proceedings under section 59 of Insolvency and Bankruptcy Code, 2016 (IBC) before NCLT, Mumbai Bench.

Facts of the case

The Company was incorporated under the provisions of Companies Act, 1956 on 27.04.2007. It was engaged in the business of providing engineering services and trading of automotive components for automotive industries. The Company does not have any operations as not carrying on any business activities. Considering the cost and time involved in ensuring compliances regarding the Company, the members of the Company in their Extra Ordinary General Meeting held on 28.09.2017 resolved to voluntary liquidate the Company.

Judgement

The directors of the Company declared on affidavit dated 27.09.2017 that they have made full inquiry into the affairs of the Company, and are of the opinion that the Company has no debts/will be able to pay its debt in full from the proceeds of assets to be sold in the voluntary liquidation and that it is not being wound-up to defraud any person. The directors have appended to the aforesaid affidavit, audited financial statements and record of business operations of the company of previous two financial years viz. year ending on 31.03.2016 and 31.03.2017.

The statement of payment to stakeholders, annexed to the petition, detailed the payment made to various stakeholders and Dividend Distribution Tax. Post the aforementioned payment, the accumulated profit of Rs. 53,06,973/- as dividend and investment in share capital of Rs. 1,00,00,000/- were paid to the members of the Company, thereby, the assets of the company were fully liquidated.

The Independent Auditor certified that during the liquidation period 28.09.2017 to 23.07.2018, the proper books of accounts were kept and the said financial statements comply with the accounting standards under section 133 of Companies Act 2013. Further, it certified that there is no pending litigation involving the Company, there are no long term contracts with the Company for which there may be any foreseeable losses and there is no amount which is to be transferred to the Investor Education and Protection Fund by the Company.

The copy of the final report of the Liquidator dated 12.09.2018 was annexed to the petition, stating how the liquidation process has been conducted from 28.09.2017 to 12.09.2018, that all the assets of the Company have been discharged to the satisfaction of the creditors and that no litigation is pending against the company. The said Final Report of the Liquidator was submitted with the Registrar of Companies vide Form GNL-2 dated 13.09.2018. The Liquidator had filed this petition before the Tribunal under section 59(7) of The Code seeking order of dissolution of the Company.

NCLT noted that on examining the submission made by the counsel appearing for the petitioner and the documents annexed to the petition, it appears that the affairs of the company have been completely wound-up, and its assets completely liquidated.

NCLT in view of the above facts and circumstances and Final Report of the Liquidator directed that the Company shall be dissolved from the date of its order. The Petitioner was further directed to serve a copy of the order upon the Registrar of Companies, with which the Company is registered, within fourteen days of receipt of the order.

Yogeshwar Enterprise Pvt Ltd, Order delivered on: 23/01/2023, National Company Law Tribunal Ahmedabad

Application under Section 59 of the Insolvency and Bankruptcy Code, 2016 read with the Regulation 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 was filed for voluntary liquidation of Yogeshwar Enterprise Private Limited (“Company”)

Facts of the case:

The Company was incorporated as a Private Limited Company under the provisions of the Companies Act, 1956, on 18.10.2010.

The main objects of the Company were doing business and real estate activities and construction. It is submitted that the Board of Directors of the Company were of the opinion to close down the business of the company by way of voluntarily liquidation, because of non-availability of business prospects and lack of long-term financial resources for the company. It was not financially viable to carry on the business activity of the company. Thus, the Directors (BOD) in their board meeting held on 28.10.2021 resolved to voluntarily liquidate the Company.

All the directors have declared on Affidavit dated 27.10.2021 that they have made full enquiry into the affairs of the Company and formed an opinion that the Company will be able to pay its debt in full within 12 months from the commencement of winding up, and further affirmed that by way of voluntary liquidation, the company is not being liquidated to defraud any person.

Audited financial statements and records of business operations of the Company of previous two financial years, viz. year ending 31.03.2020 and 31.03.2021 are also annexed.

The members of the Company in Extra-Ordinary General meeting held on 10.11.2021, as per provision of the Companies Act, 2013, had passed a Special Resolution to liquidate the Company voluntarily and appointed Insolvency Professional, to act as Liquidator.

The Liquidator had notified the Registrar of Companies, Ahmedabad (ROC) about the passing of a Special Resolution under sub-section (4) of Section 59 of the IBC to liquidate the Corporate Person and appointment of Liquidator in Form MGT and Form GNL 2.

The liquidator submitted that they have received no claims as there are no other stakeholders than equity shareholders.

The Liquidator has also submitted the IBBI Circular No. IBBI/LIQ/45/2021 dated 15.11.2021 stating that the point 5 of that circular hereby clarified that “as per the provisions of the Code and the Regulations read with Section 178 of the Income-tax Act, 1961, an Insolvency Professional handling voluntary liquidation process is not required to seek any NOC/NDC from the Income-Tax Department as part of compliance in the said process.”

However, the liquidator had served notice of appointment by email and speed post to the Income Tax Department informing them about the voluntary liquidation of the Company and that he has made compliance with the Regulation 14 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. However, no response was received nor any request for extension was made by the Income Tax Department.

Judgement:

Necessary compliances as per provisions of the Code have been made by the Corporate Person and the Liquidator. In exercise of the powers conferred under sub-section (8) of Section 59 of the Insolvency and Bankruptcy Code, 2016 Application is allowed with the following directions:

i. Yogeshwar Enterprise Private Limited having CIN U45200GJ2010PTC062656, stands dissolved from the date of this Order.

ii. The Liquidator is directed to file this order with the concerned Registrar of Companies, Income Tax Department and IBBI within 14 days from the date of receipt of an authentic copy this order, for information and necessary action.

iii. The Liquidator is also directed to file this order with all other Statutory Authorities connected with the affairs of the Company.

iv. The Liquidator shall preserve a physical or an electronic copy of the reports, registers and books of account referred to in Regulations 8 and 10 of IBBI Regulations for at least eight years after the dissolution of the Corporate Person, either with himself or with an information utility.

v. Copy of the order be served to the respective parties.

Source: https://nclt.gov.in/

LESSON ROUND-UP

- As per section 59, a corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of Chapter V of Part II of the Code.
- The Insolvency and Bankruptcy Board of India has made the IBBI (Voluntary Liquidation Process) Regulations, 2017 to regulate the voluntary liquidation of corporate persons.
- The corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding-up of its business.
- Passing of special resolution for approving the proposal of voluntary liquidation and appointment of liquidator, within four weeks of the aforesaid declaration(s). If a corporate person owes debts, approval of two-third majority creditors would also be required.
- Public announcement is issued inviting claims of all stakeholders, within five days of his appointment, in newspaper as well as on website of the corporate person and Board.
- A person, who claims to be a stakeholder, shall prove his claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.
- The liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be, as per section 40 of the Code.
- The liquidator may value and sell the assets of the corporate person in the manner and mode approved by the corporate person in compliance with provisions, if any, in the applicable statute.
- The liquidator shall distribute the proceeds from realization within thirty days from the receipt of the amount to the stakeholders.
- The liquidator shall endeavor to complete the liquidation process within 270 days (in case there are creditors in corporate person) and 90 days in other cases from Liquidation Commencement Date.

TEST YOURSELF

(These are meant for recapitulation only answer to these questions are not to be submittied for evaluation).

1. Who may initiate voluntary liquidation under IBC, 2016?
2. What are the essential contents of Preliminary Report to be filed by liquidator for a corporate person undergoing voluntary liquidation?
3. What are the provisions for preservation of records by liquidator for corporate person undergoing voluntary liquidation?
4. Who has to make public announcement and by what time and in what manner for a corporate person undergoing voluntary liquidation?
5. Write provisions w.r.t. Corporate Voluntary Liquidation Account under the IBBI (Voluntary Liquidation Process) Regulations,2017.

REFERENCES

- IBBI 2019 Handbook
- The IBBI (Voluntary Liquidation Process) Regulations,2017
- The IBC,2016