



WINDING UP OF CORPORATE ENTITY UNDER COMPANY ACT, 2013 AND IBC 2016

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ABSTRACT

Winding up of corporate entities is a process whereby the assets of corporate person are sold off to discharge the liabilities of corporate debtor. Insolvency and Bankruptcy Code, 2016 is an umbrella legislation that take care of in resolution process and liquidation process of corporate and non corporate entities. Main aim of the IBC is to facilitate revival of sick industries in a time bound manner with the help of resolution professionals registered with Insolvency and Bankruptcy Board of India, 2016. Both NCLT and IBBI are regulated under IBC, 2016 to expedite the resolution process of insolvent corporate persons. This article will discuss in detail the various methods available to windup the affairs of corporate person under company Act, 2013 as well as under IBC, 2016.

Key Words: Insolvency Resolution professional, Corporate person, Liquidation, winding up

INTRODUCTION

Conducting winding up proceedings facilitates the orderly dissolution of a company, ensuring its assets are liquidated to settle debts. Once debts are cleared, any surplus is distributed among members based on their respective capital contributions. The liquidation or winding up of a company marks the conclusion of its operations, initiating a process where its assets are managed for the benefit of both creditors and members. An appointed Administrator, known as a liquidator, assumes control of the company, overseeing asset collection, debt settlement, and eventual surplus distribution among members as per their entitlements. "In the words of Pennington 'winding up' or 'liquidation' is a process by which the management of the company's affairs is taken out of its director's hands, its assets are realized by a liquidator and its debt and liabilities are discharged out of the proceeds of realization and any surplus assets are returned to its members or shareholders.

As per section 2(94A) of the Companies Act, 2013, "winding up" means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016.¹ Thus, winding up ultimately leads to the dissolution of the company. In between winding up and dissolution the legal entity of the company remains and it can be sued in a Tribunal of law.

¹ Sec. 255, Amendments to Companies Act, 2013 vide Eleventh Schedule of the Insolvency and Bankruptcy Code, 2016

VARIOUS MODES OF WINDING UP OF CORPORATE ENTITY UNDER COMPANY ACT, 2013 AND IBC, 2016

	Relevant Enactment	Different modes of winding up			Regulatory Authority
1.	Company Act, 2013	(a) Compulsory winding up by the Tribunal, chapter XX, Section 271 to 302			National Company Law Tribunal
2.	IBC, 2016	(b) Inability to pay debts under section 7, 8, 9, 10 part II	(c) Voluntary Winding up (Liquidation) under section 59, part II, chapter 5	(c) Fast track Insolvency resolution process, Section 53-58 of part II, chapter 2	Insolvency and Bankruptcy Board of India Insolvency and Bankruptcy Code, 2016

I. COMPULSORY WINDING UP UNDER COMPANIES ACT, 2013

After the introduction of Insolvency and Bankruptcy Code, 2016, now corporate entities can be wound up only by the Tribunal (Compulsory winding up) as per section 271 of the Act. Concept of Voluntary winding up² has been removed and now regulated under Chapter XX part 2 of IBC, 2016. now as per section 271 the Tribunal has been empowered to order winding up of corporate entities on an application made by any person enlisted under section 272 of companies Act, 2013.

A. Grounds for Compulsory Winding up Section 271 Company Act, 2013

A corporate entity may be wound up by the Tribunal-

- If the company by a special resolution, resolved that the company be wound up by the Tribunal;
- If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
- if on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;
- if the company has made a default in filing with the Registrar its financial statement or annual returns for immediately preceding five consecutive financial year ; or
- if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

B. Sec.272. Who can file petition to NCLT to windup corporate entity under section 271.

(1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

- the company;
- any contributory or contributories;
- all or any of the persons specified in clauses (a) and (b);
- the Registrar ;
- any person authorized by the Central Government in that behalf; or
- in a case falling under clause (b) of section 271, by the Central Government or a State Government.

² Section 304 to 323 which deals with the voluntary winding up has been deleted with the passing of the Insolvency and Bankruptcy Code, 2016

(2) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

(3) The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) of that section or clause (e) of that sub-section:

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

(4) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

(5) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.

INSOLVENCY AND BANKRUPTCY CODE, 2016

This Act was formulated to consolidate insolvency laws in India. Prior to the introduction of IBC, liquidation process of various corporate and non corporate entities used to be regulated by different scattered legislative provisions. These provisions were not adequate to deal with the rising economic concerns of India and thereby government took the bold step and formulated an umbrella legislation to regulate the liquidation and insolvency process of corporate entities, individuals as well as partnerships in a time bound manner.

The legislation for this code was initiated when Finance Minister Arun Jaitley introduced the bill in the Lok Sabha in 2015. Following a series of deliberations and revisions, the Parliament gave its nod to the bill in May 2016, marking a significant milestone. Subsequently, after due process and preparation, the code was officially enacted and became effective in December 2016.

This Code represents a landmark effort in India's legal framework, aiming to address the complexities surrounding insolvency and bankruptcy matters. Its implementation signifies a concerted effort to establish a robust and efficient mechanism for resolving such issues within a reasonable time frame. By streamlining procedures and enhancing accountability, the Code seeks to promote economic stability and facilitate smoother transitions for distressed businesses and creditors alike."

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Objective of IBC

- a. To consolidate and amend all existing insolvency laws in India.
- b. To simplify and expedite the Insolvency and Bankruptcy Proceedings in India.
- c. To protect the interest of creditors including stakeholders in a company.
- d. To revive the company in a time-bound manner.
- e. To promote entrepreneurship.
- f. To get the necessary relief to the creditors and consequently increase the credit supply in the economy.
- g. To work out a new and timely recovery procedure to be adopted by the banks, financial institutions or individuals.
- h. To set up an Insolvency and Bankruptcy Board of India.
- i. Maximization of the value of assets of corporate persons

II. WINDING UP PROCESS AND INSOLVENCY RESOLUTION PLAN UNDER IBC, 2016.**A. SECTION 7-10, INABILITY TO PAY DEBTS (INSOLVENT CORPORATE ENTITY)****(I) Initiation of the Resolution process under section 7 of IBC (Default 1 Crore)**

Initiation of resolution process is vested with financial creditor, operational creditor and corporate debtor itself in case of default crosses the threshold of one crore.

Application to the NCLT

Financial Creditor can file an application for winding up of corporate entity in case company has made default of 1 crore Rs. After application is filed, NCLT has to decide within 14 days whether to allow the application or not based on the default documents submitted by the Financial creditor in this regard. At this juncture, NCLT will either accept or reject the application. In case of rejection, applicant has to rectify the application within 7 days and resubmit the application. NCLT may accept the application and issue the order for commencement of Corporate Insolvency Resolution Plan (CIRP).

Commencement of Corporate Insolvency Resolution Plan (CIRP)

Within 14 days of commencement of CIRP, public announcement is made to call for further claim of creditors to prepare details of corporate debt. During this period Court issued moratorium as per section 14 of the IBC, 2016. Moratorium is issued in order to safeguard the assets of the corporate debtor and make sure that resolution plan can be set in motion without disturbing the movable and immovable assets of the corporate debtor. Furthermore, a resolution professional is appointed by the NCLT to take over the control of the corporate debtor during the resolution process. Resolution professional or interim resolution professional can either be brought by the financial creditor or by the NCLT itself.

Interim Resolution Professional (Powers and Responsibilities)

- Manage the affair of corporate debtor
- Exercise the power of board of director and board of directors are suspended
- All the managers, officers, staff and personnel will report to interim resolution professional
- IRP has access to all the documents, records and account statement of corporate debtor
- Financial institutions responsible for maintaining the accounts of corporate debtor shall act on the instructions of the IRP and furnish all important information to him.

Committee of Creditors (COC)

It is responsibility of IRP to make a detail list of all the creditor within 30 days of his appointment. After collation of all the claims, IRP will constitute committee of creditors. COC usually comprise financial creditor except related party financial creditors. Operational creditors do not have the right of representation. OCs can be a part of the COC but without voting rights if their aggregate dues are not less than 10 % of the total debt. Decision are taken by majority representing 75% voting share (value based).

Meeting of the Committee of creditors

Within 7 days of constitution of COC, meeting is to be held of creditors to decide whether to carry on with the same resolution professional or appoint a new RP to take over the reins of the corporate debtor. Decision will be taken by 75% voting share.

Information memorandum

Within days of appointment, resolution professional makes information memorandum by taking into accounts the assets and liabilities of the corporate debtor. This memorandum is very helpful in understanding the present position of the corporate debtor for preparing future rehabilitation and restructure of corporate debtor. Resolution Professional now invites the various RPs registered with IBBI to bring forth their plans to restructure the corporate debtor with best possible ways. Resolution professional takes decision based on the current position of the company and choose the best corporate restructure plans and present this to Committee of creditors for approval. Now committee of creditors will accept or reject the plan by majority voting (75%) presented to them by the RP. In case it is rejected, the corporate entity will have to be wound up by presenting a petition to the NCLT by the Creditors. On the other hand, if resolution plan has been approved

by the COC, then it is presented before NCLT for further approval and dismissal of resolution proceedings. It has to be kept in mind that this process of approval or disapproval of resolution plan has to be completed within 270 (180+90) days.

Corporate Insolvency Resolution Plan

Resolution plan or restructure plan approved by the COC is presented before the NCLT. NCLT has to take decision based on the relevant information and documentary materials put before it. The basic idea behind introducing IBC is to give second life to those corporate entities who have potential to restructure and regain the trust of business market but in right hands and with right restructure plan. Earlier this was not available as financial sick industries were usually wound up and the process took 8 to 9 years that used to damage the assets and trust of commercial entities in long run. But now, after the introduction of IBC, winding up of sick companies is done in a time bound manner to expedite the process of liquidation to avoid decay of non performing assets.

Implementation of Corporate Insolvency resolution Plan

Once Insolvency resolution plan has been approved by the NCLT, Resolution professional take over the control of the company and start implementing the plan phase wise to restructure the company. Liquidation proceedings are then suspended by the NCLT.

(B). WINDING UP PROCEEDINGS BY THE OPERATIONAL CREDITORS **(SECTION 8 AND 9 OF IBC, 2016)**

An operational creditor is defined under Section 5(20) of the Insolvency and Bankruptcy Code to mean “any person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred”, and is owed an operational debt which is defined under section 5(21) of the IBC to mean: “a claim in respect of the provisions of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.

Operational Debt: means debt incurred in exchange for the provision of goods or services (including employment) or debt in respect of the payment of dues arising under any law for the time being in force payable to the Central Govt., any State Govt. or any regulator.

Earlier, operational creditors were not empowered to file application in front of NCLT for winding up of corporate entity in case of financial default.

Initiation of Winding up proceedings by Operational Creditors

Default

Just in case of financial creditor, Operational creditors may also file application in front of NCLT for winding up of corporate entity in case of default crosses the threshold of 1 crore Rs.

Demand Notice

Operational creditor cannot directly file for winding up in case of default made by the company unlike financial creditor. OCs has to first send demand notice to the defaulting company for making the payment. Corporate entity has to either make payment or provide proof of payment already made to the operational creditor. Further corporate entity may also send notice of pending dispute to the operational creditor to justify not making the payment as demanded by the operational creditor.

Application to NCLT for Insolvency Corporate Resolution Proceeding (ICRP)

Where corporate entity does not give any kind of reply to the operational creditor within 10 days of sending demand notice, operational creditor may file application for resolution proceedings by submitting all the documentary evidence of default and non reply of demand notice within stipulated timeline.

Initiation of CIRP

It is up to the discretion of NCLT to either approve or disapprove the application. NCLT take decision based on the evidence produced before it by the applicant. NCLT has to decide within 14 days to decline or accept the application. In case application is rejected, it is sent back to be resubmitted within 7 days after necessary rectification. On the other hand if, NCLT is satisfied that default has actually been committed and resolution

proceedings has to be initiated then Tribunal issue order accordingly. CIRP is ordered and other subsequent steps follow as per discussed earlier. All the remaining process is same as it is in case of financial creditor.

(C) INITIATION OF CIRP ON THE BASIS OF APPLICATION MADE BY THE CORPORATE DEBTOR ITSELF (SECTION 10, IBC, 2016)

Before the enactment of IBC, corporate debtor (Unable to pay debt) may file for winding up under section 271(2) of company Act, 2013. It has been deleted after the introduction of Insolvency and bankruptcy Code, 2016. Now section 10, part II of IBC, 2016 regulate such proceedings under the regulation of Insolvency and Bankruptcy Board of India, 2016 in a time bound manner. This section was introduced to allow financially sick companies get second chance to restructure itself and turn into a successfully running entity. Following steps are to be followed by the corporate debtor to initiate CIRP proceedings before the NCLT.

Application before NCLT

Corporate debtor facing financial crunch may file application in front of NCLT on the basis of inability to pay its debt. Directors of company are empowered to file application before NCLT. Along with the application following documents has to be attached to satisfy the Court about the the current financial situation of the company.

- Detail information about its books of account and other documentary evidence.
- Information relating the proposed Insolvency resolution professional to be appointed as IRP.

Initiation of CIRP

NCLT has to decide within 14 days of filing application to either reject or accept it based on the documentary evidence produced before it. Where application is rejected, it is sent back to the corporate debtor to resubmit it within 7 day after making rectification. In case where application is accepted then NCLT will order issue of CIRP to restructure the corporate debtor. Once CIRP is issued, all subsequent steps are same as discussed earlier in case of financial creditor and operational creditor.

III.VOLUNTARY LIQUIDATION OF COMPANY SECTION 59, IBC 2016

A company which intends to liquidate voluntarily and has not committed any default and can pay off its debts fully from proceeds of liquidation of its assets may initiate voluntary liquidation proceedings under the provisions of Chapter V of the Insolvency and Bankruptcy Code 2016. The voluntary liquidation requires the following conditions to be met:

Declaration from the Directors

A declaration from majority of the directors of the company verified by an affidavit stating that—

- they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company 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 voluntary liquidation; and
- the company is not being liquidated to defraud any person.

Documents to be attached with the application

- audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
- a report of the valuation of the assets of the company, if any prepared by a registered valuer.

Passing of Special Resolution

Within four weeks of the declaration, the company is required to pass

- 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
- 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

Resolution of the Creditors

Where 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 the company within 7 days of such resolution.

Notice to the Registrar and the Board

The company is required to notify the Registrar of Companies and the Board about the resolution to liquidate the company within 7 days of such resolution or the subsequent approval by the creditors, as the case may be.

Commencement of Voluntary Liquidation

The voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution. Provisions of the voluntary liquidation shall apply.

Dissolution

Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Tribunal for the dissolution of such company. The Tribunal shall on an application filed by the liquidator pass an order that the company shall be dissolved from the date of that order.

IV.FAST TRACK INSOLVENCY RESOLUTION PROCESS SECTION 53-58 OF IBC, 2016

Chapter IV of Part II of the Insolvency and Bankruptcy Code, 2016 (Code) provides for fast track corporate insolvency resolution process (CIRP) also known as speedy winding up process. The fast track corporate insolvency resolution process shall be completed within a period of 90 days from the insolvency commencement date.³ It can be extended by Adjudicating Authority by further 45 days, if resolution passed at a meeting of the committee of creditors and supported by a vote of seventy five per cent of the voting shares - section 56(3) of Insolvency Code, 2016.

Companies competent to file for winding up under Section 52-58 of IBC, 2016

Following companies are eligible to file for fast track insolvency

- a. Small Company defined u/s 2 (85) of Company Act, 2013
- b. Start ups p (other than partnership firm) as defined by Ministry of Commerce and Industry notification No. GSR 501(E) dated 23-5-2017
- c. Unlisted company(having assets not exceeding 1 crore Rs)

Application for winding up under fast track insolvency

Under this section application for bankruptcy may be filed by Financial creditor, operational creditor and corporate debtor itself.

Documents to be attached with the application

- (a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board (IBBI)
- (b) such other information as may be specified by the Board (IBBI) to establish that the corporate debtor is eligible for fast track corporate insolvency resolution process.

Corporate Insolvency Resolution Process

Once NCLT accept the application filed under fast track insolvency, next steps are same as are in case of Insolvency resolution process under section 7 to 10 of the IBC, 2016. NCLT appoints Resolution Professional and issue public announcement to collect claims from other creditors of corporate entity. Moratorium is issued to protect the assets of the company.

Submission and verification of Claims

Within 10 days of appointment of IRP, he has to verify the claims submitted by Operational creditors and financial creditors along with other supplementary document. IRP has to publish the list of creditors and form committee of creditors within 7 days of collation of claims.

³ SREI Infrastructure v. Right Towers (2019) 155 SCL 771 = 109 taxmann.com 412 (NCLT).

Meeting of Committee of Creditors

Creditors will take decision regarding the appointment of Resolution professional by majority voting. The appointed RP will make information memorandum based on list of claims collected by IRP. Resolution professional will choose the appropriate resolution plan to restructure the corporate debtor.

Under Regulation 38(2) of the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which was amended with effect from November 7, 2017, the role of the resolution professional in the insolvency resolution process is paramount. As per this regulation, the resolution professional is tasked with a multifaceted responsibility.

Firstly, the resolution professional is obligated to gather and present all resolution plans that meet the stringent requirements set forth by the Insolvency and Bankruptcy Code (IBC) and its associated regulations. These plans must not only align with the legal framework but also offer viable strategies for the resolution of the insolvent entity's financial distress.

Additionally, the resolution professional is entrusted with the task of disclosing details regarding various transactions that may have occurred during the course of the corporate entity's operations. These transactions include preferential transactions, undervalue transactions, extortionate credit transactions, and fraudulent transactions, as defined under sections 43, 45, and 50 of the IBC. Preferential transactions involve preferential treatment given to certain creditors over others, undervalue transactions pertain to assets being transferred at less than their true value, extortionate credit transactions relate to loans with exorbitant terms, and fraudulent transactions encompass activities conducted with deceitful intent.

Furthermore, the resolution professional is required to provide copies of orders issued by the adjudicating authority concerning these transactions. This ensures transparency and accountability throughout the insolvency resolution process, allowing all stakeholders to have access to relevant information and legal judgments.

By fulfilling these obligations, the resolution professional plays a crucial role in facilitating a fair and effective resolution of the corporate insolvency, safeguarding the interests of creditors, shareholders, and other stakeholders involved in the process.⁴

Approval of plan by NCLT

Committee of creditors will either accept or reject the resolution plan by majority voting. Approved resolution plan is submitted before NCLT. Once NCLT approves the plan, control of corporate debtor is transferred to new management as per the resolution plan. The process need to be completed within 135 days (90 + 45) as per section 55 of IBC, 2016.⁵

V. LIQUIDATION OF CORPORATE DEBTOR

Liquidation is a process whereby the affairs or operation of a corporate entity are wound up. Assets of company are converted into cash to pay off the liabilities of a company. IBC, 2016 was introduced with the aim to simplify winding up process by providing an umbrella legislation to regulate the liquidation process of corporate entities and non corporate entities. Further, this legislation provide another option to those corporate entities going insolvent to restructure their companies with the help of certified insolvency resolution professional registered with IBBI. Where resolution process fails, NCLT is authorized to issue liquidation order and windup the affairs of the company to safeguard the interest of creditors, investors and corporate sector as a whole. Winding up process of corporate entities are regulated by both IBC, 2016 and section 324-358, part III of chapter XX of Company Act, 2013.

The process of company liquidation, governed by Chapter III of Part II of the Insolvency and Bankruptcy Code (IBC), involves the Adjudicating Authority making critical decisions based on specific scenarios:

Approval of Resolution Plan

The Adjudicating Authority, typically the National Company Law Tribunal (NCLT), may approve a Resolution Plan under Section 31(1) within the stipulated timeline. This timeline spans from 180 to 270 days, extendable to 330 days from the admission date of the insolvency proceedings.

⁴ Regulation 38(2) of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2016 substituted w.e.f. 7-11-2017

⁵ Regulation 37(3) of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2016 inserted on 7-11-2017.

Order for Liquidation

If certain conditions are met, the Adjudicating Authority may pass an order for the liquidation of the Corporate Debtor (CD), as outlined in Section 33 of the IBC. These conditions include:

- Failure to Submit a Resolution Plan:** If no application seeking approval of a resolution plan is filed within the prescribed timeline.
- Rejection of Resolution Plan:** If the NCLT rejects the resolution plan due to non-compliance.
- Committee of Creditors' Decision:** If the Committee of Creditors (CoC) resolves to liquidate the CD before confirmation of a resolution plan.
- Non-Compliance with Resolution Plan:** If the CD breaches the terms agreed upon in the resolution plan approved by the NCLT.

It's essential to interpret and implement these procedures in conjunction with the IBBI (Liquidation Process) Regulations, 2016, commonly referred to as the Company Liquidation Regulations. These regulations provide further guidance and specifics on the process and requirements for company liquidation under the IBC.

During liquidation, no suit or other proceedings shall be instituted by or against the company except with permission of the Tribunal. The order for liquidation shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during

the liquidation process by the liquidator.

Appointment of Liquidator (Section 34):

The appointment of a liquidator is a crucial step in the liquidation process. This individual or entity is entrusted with the responsibility of winding up the affairs of the corporate debtor in an orderly manner.

Section 34 of the IBC likely details the process for the appointment of the liquidator, including qualifications, eligibility criteria, and the manner in which the appointment is made, whether by the committee of creditors or by the National Company Law Tribunal (NCLT).

Written Consent in Form AA of Schedule II:

Once appointed, the liquidator must provide their written consent to serve in this role. This consent is typically submitted in a specific format prescribed by the IBC.

Form AA of Schedule II likely contains the required format for this written consent. It ensures that the appointed liquidator formally accepts their responsibilities and obligations under the IBC.

Public Announcement in Form B of Schedule II:

Within five days of the pronouncement of the order for liquidation by the NCLT, a public announcement must be made.

This announcement serves to inform creditors, stakeholders, and the general public about the initiation of the liquidation process. It typically includes details such as the name of the corporate debtor, the appointment of the liquidator, and instructions for creditors to submit their claims.

Form B of Schedule II provides the standardized format for this public announcement. It ensures consistency and clarity in communication regarding the liquidation proceedings.

Submission of Claims:

Creditors, including financial institutions, suppliers, employees, and any other parties with outstanding claims against the corporate debtor, are required to submit their claims within a specified timeframe.

Typically, creditors have 30 days from the date of initiation of liquidation to submit their claims to the liquidator. These claims include outstanding debts, liabilities, or any other dues owed to them by the corporate debtor.

It's crucial for creditors to adhere to this timeline to ensure their claims are properly considered and addressed during the liquidation process.

Filing of CIRP-5:

Once the liquidation order is passed, the resolution professional or the appointed liquidator must undertake certain administrative tasks to initiate the liquidation proceedings formally.

One of these tasks may involve filing CIRP-5, which is likely a form or document prescribed by the authorities. The purpose of CIRP-5 is to provide relevant information to regulatory authorities and stakeholders, signaling the commencement of the liquidation process and ensuring compliance with legal requirements.

By following these elaborate procedures outlined in the IBC, the liquidation process can proceed smoothly, with transparency, accountability, and legal compliance maintained throughout. Each step serves a specific purpose in facilitating the orderly winding up of the corporate debtor's affairs and addressing the claims of creditors in a fair and equitable manner.

Verification of Claims

Upon verification and acceptance of claims, as well as the appointment of Valuers, the following reports and documents are to be prepared and submitted as per regulatory requirements:

Asset Memorandum: A comprehensive evaluation of the assets of the Corporate Debtor (CD) must be conducted within 75 days, as mandated by Section 35(1)(c), Regulation 5(1), and Regulation 34.

Progress Report: A report detailing the progress of the liquidation proceedings is to be submitted within 15 days from the end of each quarter, as outlined in Section 35(1)(n). After forming the Liquidation Estate, subject to specified inclusions and exclusions, and opening a bank account in the name of the corporate debtor followed by the words 'in liquidation' in a scheduled bank, the Liquidator shall proceed with the sale of assets. It is mandated that the liquidation process of any Corporate Debtor (CD) under the IBC Code must be concluded within one year from the liquidation commencement date, regardless of pending applications for avoidance transactions. Furthermore, the Liquidator is prohibited from selling any property, including immovable, movable, or actionable claims of the corporate debtor under liquidation, to any individual or entity ineligible under Section 29A of the Code to become a resolution applicant.

The proceeds from realization must be distributed by the Liquidator within 90 days, previously six months, from the receipt of the amount among the stakeholders, as stipulated in Regulation 42. Subsequent to the filing of stakeholders and the asset memorandum with the Adjudicating Authority, the Liquidator is obligated to distribute the assets in accordance with the waterfall mechanism outlined in Section 53.

Dissolution of the corporate entity

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Upon the completion of liquidating all assets of the corporate debtor, it becomes imperative for the Liquidator to initiate the process of the corporate debtor's dissolution under Section 54 of the Code by filing an application before the Adjudicating Authority.

In cases where the Liquidator determines that the realizable assets are insufficient to cover the expenses of the company liquidation and further investigation into the affairs of the corporate debtor is unnecessary, they are empowered to seek early dissolution as per Regulation 14 of the Company Liquidation Regulations. This application for early dissolution may be made at any time subsequent to the submission of the initial report. Orders for dissolution are to be filed with the appropriate authority where the Corporate Debtor is registered, thereby concluding the insolvency proceedings in accordance with the provisions outlined in the Insolvency and Bankruptcy Code.

Preliminary Report: This report, prepared in accordance with Regulation 13, is to be submitted within 75 days, as specified in Regulation 2(1)(f) read with Regulation 13.

First Progress Report: A quarterly report under Regulation 15 must be submitted within 15 days of the end of every quarter, pursuant to Regulation 2(1)(g) read with Regulation 15.

Subsequent Progress Report: In the event of the insolvency professional ceasing to act as a liquidator, a progress report must be submitted within 15 days from the date of cessation.

Sale Reports: Reports detailing the sale of each asset are to be enclosed with the Progress report after the sale of each asset, as per Regulation 5(1) read with Regulation 36.

Minutes of Consultation with Stakeholders: Following every meeting, minutes of consultation with stakeholders are to be circulated in accordance with Regulation 5(1) read with Regulation 8.

Final Report: Prior to distribution, the Final Report must be submitted within one year, as required by Regulation 5(1) read with Regulation 45.

Additionally, stakeholders may request copies of reports and minutes in either electronic or physical forms. Such requests should be accompanied by the cost of making reports or minutes and a confidentiality undertaking, as stipulated by Regulation 5(3).

Where the assets of the company have been completely liquidated, the liquidator shall make an application to the Tribunal for the dissolution of such company. The Tribunal shall on application filed by the liquidator order that the company shall be dissolved from the date of that order and the company shall be dissolved accordingly.

CONCLUSION

The enactment of the Insolvency and Bankruptcy Code, 2016 ("IBC") stemmed from the pressing need to expedite the resolution of insolvent and bankrupt companies in India. The preceding mechanisms of winding up, as governed by the Companies Act, 1956, and the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA"), proved inadequate in ensuring timely resolutions for financially distressed entities. Under the Companies Act, 1956, the absence of a defined timeline led to protracted litigation in High Courts across the country, often stretching over several years, including lengthy appellate proceedings.

Similarly, proceedings before the Board of Industrial and Financial Reconstruction ("BIFR") under SICA suffered from inefficiencies, contributing to prolonged delays in resolving insolvency issues. The IBC thus emerged as a successor statute to the winding-up provisions of the Companies Act, 1956, and SICA, aiming to address these systemic shortcomings.

The current landscape reflects the urgency for reform, with a significant number of companies, as evidenced by data from the Official Liquidator attached to the Bombay High Court, undergoing liquidation proceedings under the outdated Companies Act, 1956. The inadequacies of SICA, as acknowledged by the Supreme Court of India in *Swiss Ribbons (P) v. Union of India*⁶, exacerbated the problem, creating what Justice R.F. Nariman described as a "defaulter's paradise." Consequently, there arose a compelling imperative to streamline the corporate insolvency framework, prompting the formulation and implementation of the IBC to foster more efficient and equitable resolution processes. IBC, 2016 provide different modes of winding up and insolvency resolution process in a time bound manner with the help of resolution professional, IBBI and NCLT.

⁶ (2019) 4 SCC 17