

Voluntary Liquidation Process

A Handbook for the Guidance of Insolvency Professionals



Committee on Insolvency & Bankruptcy Code
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

The Insolvency and Bankruptcy Code, 2016 (IBC or the Code) is one of the most significant economic reforms brought out in the country. Since introduction over the past seven years, the Code has proven to be a vital legislation in the debt resolution sphere. For effective and efficient functioning, the IBC has been amended six times by the Parliament. Also, the Regulations made under the Code are being amended regularly to overcome impediments in the implementation of the processes and to be in sync with emerging requirements.

The Code provides for one of the important processes related to voluntary liquidation, wherein a corporate person, who has not committed any default but wants to liquidate itself voluntarily can initiate Voluntary Liquidation Process under IBC. The process is being conducted under the provisions of the Code with the appointment of an Insolvency Professional as Liquidator.

I compliment the Committee on Insolvency & Bankruptcy Code of ICAI for bringing out the publication- ***“Voluntary Liquidation Process - A Handbook for the Guidance of Insolvency Professionals”*** to facilitate professionals understand the intricacies and provisions related to conduct of Voluntary Liquidation Process under IBC and to know about the practical aspects thereunder.

I extend my sincere appreciation to CA. Gyan Chandra Misra, Chairman, CA. Rajendra Kumar P., Vice-Chairman and all other members of the Committee on Insolvency & Bankruptcy Code for putting up their efforts and bringing out this publication.

I am sure that this publication would be helpful to the members, especially to insolvency professionals and other stakeholders.

1st February, 2024

CA. Aniket Sunil Talati
President, ICAI

Preface

The whole objective of The Insolvency and Bankruptcy Code, 2016 (IBC or the Code) is to provide a time bound and market determined mechanism for orderly resolution of stressed asset wherever probable and orderly and easy exit wherever needed. Marked by six amendments to date, the Code has achieved several institutional milestones and has built a sense of optimism and confidence among the stakeholders. The country is witnessing today the results of the successful implementation of IBC which has been possible because of the establishment of effective institutional set-up.

Besides providing framework for insolvency resolution, the Code also provides for Voluntary Liquidation Process, wherein a corporate person may initiate voluntary liquidation process if majority of the directors or designated partners of the corporate person make a declaration to the effect including that the corporate person has no debt or it will be able to pay its debts in full, from the proceeds of the assets to be sold under the proposed liquidation.

The Committee on Insolvency & Bankruptcy Code of ICAI as part of its various initiatives towards knowledge dissemination is bringing out this publication – **Voluntary Liquidation Process – A Handbook for the Guidance of Insolvency Professionals** to facilitate professionals in understanding the provisions and specific processes in conducting Voluntary Liquidation Process under IBC.

We would like to sincerely thank the President of ICAI, CA. Aniket Sunil Talati and Vice President of ICAI, CA. Ranjeet Kumar Agarwal for their support and encouragement in all the endeavours of the Committee.

We would like to thank all the Committee Members for their guidance in bringing out this publication.

We would like to sincerely appreciate and thank CA. Kamal Garg, who prepared the Draft of the publication and would also like to thank CA. Shashikant S Dhamne for reviewing the Draft publication.

We appreciate the efforts put in by Ms. S. Rita, Secretary, Committee on Insolvency & Bankruptcy Code, ICAI, CA. Sarika Singhal, Deputy Secretary, ICAI and the Committee Secretariat comprising of Ms. Sarita Aggarwal,

CA. Yash Agarwal and CA. Shreya Vashisht for providing their technical and administrative support in bringing out this publication.

We are sure that the members of the profession, especially insolvency professionals and other stakeholders will find the publication very useful.

CA. Gyan Chandra Misra
Chairman
Committee on Insolvency &
Bankruptcy Code, ICAI

CA. Rajendra Kumar P
Vice- Chairman
Committee on Insolvency &
Bankruptcy Code, ICAI

Date: 1st February, 2024

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Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC or the Code) has established a contemporary, strong and decisive insolvency resolution framework in the country. We are witnessing the outcomes of the successful implementation of IBC which is focused on rescuing businesses by time bound resolution process. The major objective of the Code is to promote the going concern status through revival and resolution thereby providing economic stability and growth within the nation. With changing market dynamics, persisting global financial uncertainties and emerging challenges, the Code has come forth as a key tool in building confidence and safeguarding interests of all stakeholders in the ecosystem.

IBC also provides detailed framework for Voluntary Liquidation Process, which is significant for a corporate person who intends to liquidate itself voluntarily.

As provided in Section 59 of IBC, a corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings and the following conditions have to be met:

- 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 voluntary liquidation
- The Corporate Person is not being liquidated to defraud any person

As per IBBI Newsletter- July-September 2023, of the 1649 Corporate Persons that initiated voluntary liquidations (excluding withdrawals) till September 30, 2023, the reasons for these initiations are available for 1571 cases, which are presented in figure below. Most of these corporate persons are small entities. 1022 of them have paid-up equity capital of less than Rs. 1 Crore. Only 234 of them have paid-up capital exceeding Rs. 5 crores. The corporate persons, for which details are available, have an aggregate paid-up capital of Rs. 12,040 crores.

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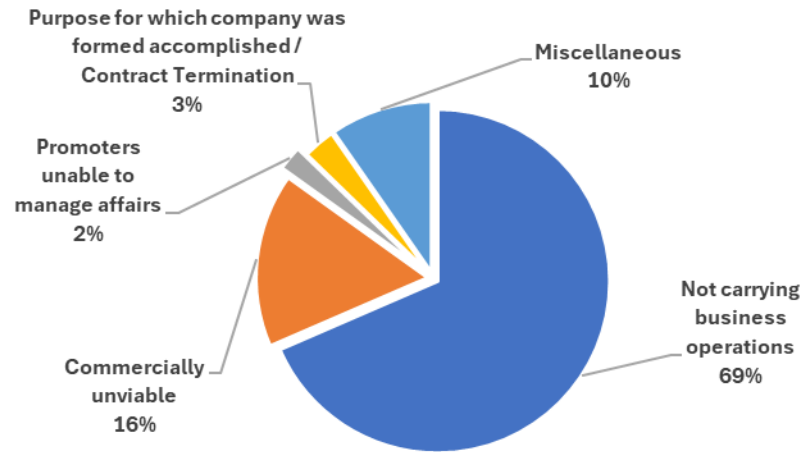


Figure: Reasons for Voluntary Liquidation

1. Voluntary liquidation by corporate persons

A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under Chapter V Part II of Insolvency and Bankruptcy Code, 2016 (IBC or the Code) - section 59(1).

The voluntary liquidation of a corporate person shall be allowed on such conditions and procedural requirements as may be specified by the Board - section 59(2).

2. Process for Voluntary Liquidation

The Process for voluntary liquidation is described below:

(1) Declaration from majority of the directors of the company verified by an affidavit: The company should first take declaration from majority of the directors of the company verified by an affidavit stating that—

- (i) 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
- (ii) the company is not being liquidated to defraud any person - section 59(3)(a).

The declaration shall be accompanied with the following documents, namely:

- (i) 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;
- (ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer - section 59(3)(b).

The expression “affidavit” has been commonly understood to mean a sworn statement in writing made especially under oath or on affirmation before a court or an officer. Affidavit has been defined in the General Clauses Act [section 3(3)] to include “affirmation and declaration in the case of a person by law allowed to affirm or declare instead of swearing.” It is a statement in the name of a person, called deponent, by whom it is voluntarily signed or sworn to or affirmed. It must be confined to such statements as the deponent is able of his own knowledge to prove, but in certain cases may contain statements of information and belief with sources and grounds thereof. A

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person may be allowed to give evidence without taking an oath, either on the ground that taking an oath is contrary to the person's religious belief, or that the person has no religious belief, or where it is not practicable to administer oath as required by a person's religious belief.

The essential ingredients of an affidavit are the statements or declaration which are made by the deponent relevant to the subject-matter. In order to add sanctity to it, he swears or affirms the truth of the statement made in the presence of a person who in law is authorized either to administer the oath or to accept the affirmation. The responsibility of making precise and accurate statements in the affidavit were emphasized by the Supreme Court in Krishna Chander Nayer v. Chairman, Central Tractor Organisation AIR 1962 SC 602. The part or role assigned to the person entitled to administer oath is no less sacrosanct (M. Veerbhadra Rao v. Tek Chand AIR 1985 SC 28)

Further, affidavits without verification are not admissible in evidence. The importance of verification is to test the genuineness and authenticity of assertions and also to make the deponent responsible for such assertions. In essence verification is required to enable the court to find out as to whether it will be safe to act on such affidavit evidence (A.K.K. Nambiar v. Union of India AIR 1970 SC 652).

Inquiry means search for knowledge; investigation; a question [Real Value Appliances Ltd. v. Canara Bank[1998] 93 Comp. Cas. 26 (SC)].

In the Indian Company law, the affairs of the company by and large are governed by the memorandum of association and articles of association insofar as they are not ultra vires the provisions of the Companies Act and other laws. Generally, the administration and management of the company is entrusted by the general body of the shareholders of the company to the duly constituted board of directors. The board of directors is empowered to deal with all matters and only in respect of certain items like appointment of directors, giving guarantees to others, issue of unsubscribed share capital and enhancing authorized capital, reduction of share capital, scheme of arrangement or compromise with other persons or company, amendment of memorandum of association or articles of association, etc., are to be placed before the general body. The decision taken by the general body in respect of these subjects is considered as final and has to be respected. However, company law has provided safeguard for the shareholders and other members of the company as well as public at large who deal with the company. In matters of scheme of arrangement, compromise, reduction of share capital etc., law provides that a company has to apply and get approval

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or sanction of the company court. While considering a scheme of arrangement for amalgamation or compromise or any other arrangement or considering a minute for reduction of share capital, does a law envisage an automatic routine sanction by the court? The answer must be definitely in the negative [Global Trust Bank, In re [2005] 127 Comp. Cas. 604 (AP)]

"Debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt – Section 3(11) of the Code.

Opinion means something more than mere retaining of gossip or hearsay; it means judgment or belief, that is a belief or conviction resulting from what one thinks on a particular question (Dolgobinda Paricha v. Nimai Charan Misra AIR 1959 SC 914). It means judgment or belief based on grounds short of proof (Concise Oxford English Dictionary). If a man is to form an opinion and his opinion is to govern, he must form it himself on such reasons and grounds as seem good to him [Lord Bramwell in Allcroft v. London (Bishop) (1891) RC 666; VLS Finance Ltd. v. CIT [2000] 246 ITR 707 (Delhi)].

Supplementing this ratio the word person used in the phrase "defraud any person" includes "defraud any creditors' too and hence, if a company continues to carry on business and to incur debts at a time when there is to the knowledge of the directors no reasonable prospect of the creditors even receiving payment of those debts, it is, in general, a proper inference that the company is carrying on business with intent to defraud such persons as creditors - William C. Leitch Bros. Ltd., In re [1933] 3 Comp. Cas. 97 (Ch.D).

(2) Special resolution after declaration of solvency: Within four weeks of the declaration, 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 - section 59(3)(c).

(3) Approval of creditors if company owes debt: 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 under sub-clause (c)

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within seven days of such resolution - proviso to section 59(3) of Insolvency Code, 2016.

(4) Notification to Registrar after resolution: The company shall notify the Registrar of Companies and the Board about the resolution under section 59(3) to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be - section 59(4).

(5) Commencement of voluntary liquidation proceedings: The voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution by members, subject to approval of creditors - section 59(5).

The provisions of sections 35 to 53 of Chapter III¹ and Chapter VII² of Part II of the Code shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary- Section 59(6)

35. Powers and duties of liquidator.
36. Liquidation estate.
37. Powers of liquidator to access information.
38. Consolidation of claims.
39. Verification of claims.
40. Admission or rejection of claims.
41. Determination of valuation of claims.
42. Appeal against the decision of liquidator
43. Preferential transactions and relevant time.
44. Orders in case of preferential transactions.
45. Avoidance of undervalued transactions.
46. Relevant period for avoidable transactions.
47. Application by creditor in cases of undervalued transactions.
48. Order in cases of undervalued transactions.
49. Transactions defrauding creditors.
50. Extortionate credit transactions.

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² Offence and Penalties

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51. Orders of Adjudicating Authority in respect of extortionate credit transactions.
52. Secured creditor in liquidation proceedings.
53. Distribution of assets.

Note: For detailed discussion of above mentioned sections, ICAI Publication on Liquidation Process - A Handbook for the Guidance of Insolvency Professionals may be referred.

(6) Application to Adjudication Authority: After the affairs of the corporate person have been completely wound up and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person - section 59(7).

The Adjudicating Authority shall on such an application filed by the liquidator 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).

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).

3. Conditions and Procedural requirements for voluntary liquidation

The procedure has been prescribed in Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

3.1. Initiation of Liquidation

Regulation 3 of IBBI (Voluntary Liquidation Process) Regulations, 2017 (Amended upto 31.01.2024) provides as under:

- (1) Without prejudice to section 59(2), liquidation proceedings of a corporate person shall meet the following conditions, namely:—
 - (a) a declaration from 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,

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as the case may 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; **and**
 - (iii) **the corporate person has made sufficient provision to meet the obligations arising on account of pending matters mentioned in sub-clause (iii) of clause (b).**
- (b) the declaration under sub-clause (a) shall be accompanied with the following 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; **and**
 - (iii) **disclosure about pending proceedings or assessments before statutory authorities, and pending litigations, in respect of the corporate person.**
- (c) within four weeks of a declaration under sub-clause (a), 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:

Provided that the corporate person owes any debt to any person, creditors representing two-thirds in value of the debt of the corporate person shall

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approve the resolution passed under sub-clause (c) within seven days of such resolution.

(2) The corporate person shall notify the Registrar and the Board about the resolution under sub-regulation (1) to liquidate the corporate person within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

(3) Subject to approval of the creditors under sub-regulation (1), the liquidation proceedings in respect of a corporate person shall be deemed to have commenced from the date of passing of the resolution under sub-clause (c) of sub-regulation (1):

Explanation: For the purposes of sub-regulations (1) to (3), corporate person means a corporate person other than a company.

(4) 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.

(5) 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.

The expression “*record of business operations of the corporate person*” is not defined under the Regulations. this may include, for instance:

- the statements, records and reports to be prepared under section 134 of the Companies Act, 2013 if the corporate person is a company,
- the books of accounts, other records and annual return submitted under sections 34 and 35, respectively of the Limited Liability Partnership Act, 2008 if the corporate person is a limited liability partnership, or
- financial statements, if the corporate person is other than a company or a limited liability partnership.

The declaration under sub-clause (a) shall also be accompanied by a report of the valuation of the assets of the corporate person, *if any* prepared by a registered valuer. The words “if any” signify that submission of such report would not be required when the company has not appointed any registered valuer for valuation of the assets. It is worthy here to note that the company is not required to appoint registered valuer for the purpose of verifying

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declaration under sub-clause (a); but in terms of section 59(6) of the Code which states 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, section 35(1)(c) accordingly requires that the liquidator shall evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board (i.e. IBBI³) and prepare a report. The liquidator shall also form an estate of the assets – Section 36(1). Further, in terms of Regulation 11(1) it is provided that 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.

Section 35(1)(l) also requires the liquidator to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions. Section 41 also requires that the liquidator shall determine the value of claims admitted under section 40 in such manner as may be specified by the Board.

Thus, the liquidator may be required to appoint 'registered valuer' to discharge his duty for evaluating the assets and property of the company, formation of liquidation estate, etc. although no registered valuer need to be appointed mandatorily in terms of Section 59(3)(b)(ii) as well as Regulation 3(1)(b)(ii) (*supra*).

In terms of Section 114(2) of the Companies Act, 2013, a resolution shall be a special resolution when—

- (a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- (b) the notice required under this Act has been duly given; and
- (c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

"Constitutional document", in relation to a corporate person, includes articles of association, memorandum of association of a company and incorporation document of a Limited Liability Partnership – Section 5(4) of the Code.

³ Insolvency and Bankruptcy Board of India

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It should be noted that only an insolvency professional can be appointed to act as the liquidator. Section 3(19) of the Code states that "insolvency professional" means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207.

3.2. Effect of liquidation

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 - Regulation 4(1) of IBBI (Voluntary Liquidation Process) Regulations, 2017.

"Liquidation commencement date" means the date on which the proceedings for voluntary liquidation commence as per section 59(5) and Regulation 3(3) - Regulation 2(1)(c) of IBBI (Voluntary Liquidation Process) Regulations, 2017.

However, the corporate person shall continue to exist until it is dissolved under section 59(8) - Regulation 4(2) of IBBI (Voluntary Liquidation Process) Regulations, 2017.

In Webster's Third New International Dictionary, the phrase "carry on" is defined as "conduct and manage". The phrase "carry on" would mean that the person carries on the business only at its principal office where the business decisions are made and the management and control are exercised over the business [CIT v. Associated Finance Co. Ltd. [1992] 195 ITR 742 (Cal.)]

The words "carrying on business" require something more than merely selling or buying, etc. Whether a person "carries on business" must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and transactions must ordinarily be entered into with a profit motive [Board of Revenue v. A.M. Ansari (1976) 38 STC 577 (SC)]. It is carrying on any useful activity for profit. The activity of venture carried out by a stock exchange does not amount to carrying on of a business [see V. V. Ruia v. S. Dalmia [1968] 38 Comp. Cas. 572 (Bom.)]

Where the assessee-company having been voluntarily wound up, did not carry on any business during the relevant assessment year but earned interest income from bank deposits and government securities, it was held that in the case of a voluntary winding up, the company shall cease to carry on its business, except so far as may be required for a beneficial winding up

of the business. It does not prohibit a company, which is being voluntarily wound up, from receiving income from other sources and interest on securities. Having found that income was derived by the assessee during the assessment year in the form of interest on deposits and interest on Government securities, the Tribunal erred in holding that the impugned receipts were capital receipts. So the contention that after the commencement of the winding up, the assessee-company could carry on business only for the realisation of its capital and, hence, interest and other receipts by the assessee were capital receipts, being not liable to tax, is not valid - Commissioner of Income-tax v. Liquidator of Ratlam Electric Supply & Wvg. Mills Co. Ltd. [[1982] 138 ITR 184 (Madhya Pradesh)]

3.2.1. Reporting

Regulation 8 of IBBI (Voluntary Liquidation Process) Regulations, 2017 (Amended upto 31.01.2024) provides as under:

- (1) The liquidator shall prepare and submit—
 - (a) Preliminary Report;
 - (b) Status Report;
 - (c) Minutes of consultations with stakeholders; and
 - (d) Final Report

in the manner specified under these Regulations.

- (2) Subject to other provisions of these Regulations, the liquidator shall make the reports and minutes referred to sub-regulation (1) 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.

The word “undertaking” signifies an affirmation and declaration in the case of a person by law allowed to affirm or declare instead of swearing. Generally, such an undertaking is taken through an affidavit.

3.2.2. Preliminary Report

Regulation 9 provides that the liquidator shall submit a Preliminary Report to the corporate person within forty-five days from the liquidation commencement date, detailing—

- (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.

3.2.3. Registers and books of account

Regulation 10(1) provides that 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. Further as per Regulation 10(2) the liquidator shall maintain the following registers and books, as may be applicable, in relation to the liquidation of the corporate debtor:—

- (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.

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. The liquidator shall keep receipts for all payments made or expenses incurred by him.

3.2.4. Engagement of professionals

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. The liquidator shall not engage such a professional who is his relative, is a related party of the corporate person or has served as an auditor to the corporate person at any time during the five years preceding the liquidation commencement date. A professional so engaged or proposed so to be engaged 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.

3.2.5. Consultation with stakeholders

The stakeholders consulted under section 35(2) shall extend all assistance and cooperation to the liquidator to complete the liquidation of the corporate person. The liquidator shall maintain the particulars of any consultation with the stakeholders made under this Regulation - Regulation 12.

3.2.6. Public announcement by the liquidator

Regulation 14 provides as under:

- (1) The liquidator shall make a public announcement in Form A of Schedule I within five days from his appointment.

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- (2) 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.
- (3) 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.

3.2.7. Clarification regarding requirement of seeking no objection certificate or no dues certificate from the Income Tax Department during voluntary liquidation process

Regulation 14 of the IBBI (Voluntary Liquidation Process) Regulations, 2017 (the Regulations) mandates the liquidator to make the public announcement within five days of his appointment, calling for submission of claims by stakeholders within thirty days from the liquidation commencement date. The Regulations also obligate all the financial creditors, operational creditors including government, and other stakeholders to submit their claims within the specified period. If the claims are not submitted in time, the corporate person may get dissolved without dealing with such claims and such claims may consequently get extinguished.

It has been noticed that even after providing opportunity for filing of claims, the liquidators seek 'No Objection Certificate' (NOC) or 'No Dues Certificate' (NDC) from the Income-tax Department despite the fact that the Code or the Regulations do not envisage seeking such NOC/NDC.

In this regard, section 178 of the Income-tax Act, 1961 which, *inter alia*, obligates the liquidator to fulfil certain income tax related requirements, explicitly states that the provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force except the provisions of the Code.

The process of applying and obtaining of such NOC/NDC from the Income-tax Department consumes substantial time and thus militates against the express provisions of the Code, and also defeats the objective of time-bound completion of process under the Code.

Therefore, IBBI vide its Circular No. IBBI/LIQ/45/2021 Dated 15-11-2021 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.

3.3. Appointment, remuneration, powers and duties of Liquidator

Regulation 5 as substituted by the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Second Amendment) Regulations, 2020, w.e.f. 5-8-2020 provides that:

(1) Subject to regulation 6, the corporate person shall appoint an insolvency professional as liquidator, and, wherever required, may replace him by appointing another insolvency professional as liquidator, 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:

Provided that such resolution shall contain the terms and conditions of appointment of the liquidator, including the remuneration payable to him.

(2) The insolvency professional shall, within seven days of his appointment as liquidator, intimate the Board about such appointment.

3.3.1. Eligibility for appointment as liquidator

Regulation 6 provides as under:

(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: 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 (18 of 2013), where the corporate person is a company;

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- (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*⁴ or cost auditors of the corporate person; 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.

3.3.2. Liquidator's remuneration

The remuneration payable to the liquidator shall form part of the liquidation cost – Regulation 7.

3.4. Claim by various creditors Proof of claim

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 – Regulations 15.

"Stakeholders" mean the stakeholders entitled to proceeds from the sale of liquidation assets under section 53 - Regulation 2(1)(f) of IBBI (Voluntary Liquidation Process) Regulations, 2017.

Regulations 16 to 19 of IBBI (Voluntary Liquidation Process) Regulations, 2017 deal with submitting of claims by various stakeholders, as follows:

⁴ Substituted for words "Company Secretaries" by Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2019, w.e.f. 15-1-2019.

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Claims by operational creditors [Regulation 16]	Claims by financial creditors [Regulation 17]	Claims by workmen and employees [Regulation 18]	Claims by other stakeholders [Regulation 19]
(1) 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.	(1) 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.	(1) 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.	(1) 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.
(2) 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	(2) 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 debt, including any or all of the following— (i) a financial contract supported by financial statements as	(2) 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.	(2) 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

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Claims by operational creditors [Regulation 16]	Claims by financial creditors [Regulation 17]	Claims by workmen and employees [Regulation 18]	Claims by other stakeholders [Regulation 19]
<p>corporate person, supported by an invoice demanding payment for the goods and services supplied to the corporate person;</p> <p>(ii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; and</p> <p>(iii) financial accounts of the corporate person.</p>	<p>evidence of the debt;</p> <p>(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;</p> <p>(iii) financial statements showing that the debt has not been repaid; and</p> <p>(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if</p>		<p>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;</p> <p>(ii) documentary or electronic evidence of his shareholding; and</p> <p>(iii) an order of a court, tribunal or other authority that has adjudicate</p>

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Claims by operational creditors [Regulation 16]	Claims by financial creditors [Regulation 17]	Claims by workmen and employees [Regulation 18]	Claims by other stakeholders [Regulation 19]
	any.		d upon the non-payment of a claim, if any.
		<p>(3) The existence of dues to workmen or employees may be proved by them, individually or collectively, on the basis of—</p> <p>(a) records available in an information utility; or</p> <p>(b) other relevant documents which adequately establish the dues, including any or all of the following—</p> <p>(i) a proof of employment such as contract of employment for</p>	

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Claims by operational creditors [Regulation 16]	Claims by financial creditors [Regulation 17]	Claims by workmen and employees [Regulation 18]	Claims by other stakeholders [Regulation 19]
		<p>the period for which such workman or employee is claiming dues;</p> <p>(ii) evidence of notice demanding payment of unpaid amount and any documentary or other proof that payment has not been made; and</p> <p>(iii) an order of a court or tribunal that has adjudicated upon the non-payment</p>	

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Claims by operational creditors [Regulation 16]	Claims by financial creditors [Regulation 17]	Claims by workmen and employees [Regulation 18]	Claims by other stakeholders [Regulation 19]
		of dues, if any.	
		(4) 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.	

3.4.1. Cost of proof

A claimant shall bear the cost of proving its claim - Regulation 23(1) of IBBI (Voluntary Liquidation Process) Regulations, 2017.

3.4.2. Costs incurred by liquidator

Costs incurred by the liquidator for verification and determination of a claim shall form part of liquidation cost. However, if a claim or part of the claim is found to be false, the liquidator shall endeavour 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 Regulation 23(2) of IBBI (Voluntary Liquidation Process) Regulations, 2017.

3.5. Proving security interest

Regulation 20 states that 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.

3.6. Production of bills of exchange and promissory notes

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 - Regulation 21.

Related Judgments:

The effect of endorsement of a bill of exchange is that the property in the promissory note is transferred to the endorsee with the right to further negotiation. The original debt in respect of which the promissory note was passed is not assigned to the endorsee. The endorsee has no title to the debt. No privity is established with regard to the debt between the endorsee and the maker of the promissory note. All that the endorsee gets, by the endorsement is the right to sue on the promissory note and to recover the amount due under it. It, therefore, follows from this is that an endorsee of the promissory note can only sue on the promissory note itself. He cannot sue on the debt as he is not entitled to that debt (Narayan Rajaram v. Prabhakar Keshav AIR 1951 Bom. 345).

If a debt is not assigned in favour of the person in whom the bill of exchange is endorsed then the right to sue on the original debt or original cause of action still subsists and survives in favour of the endorser who has endorsed the bill of exchange in favour of the third party [Clicquot Asia Ltd. v. Red Robin International Ltd. [2005] 126 Comp. Cas. 51 (Bom.)]

The essential of a promissory note are:

- (1) An unconditional undertaking to pay;*
- (2) The sum of money should be a sum of money and should be certain;*
- (3) The payment should be to the order of a person who is certain, or to the bearer of the instrument; and*
- (4) The maker should sign it.*

If these four conditions exist, the instrument is a promissory note [Sant Singh v. Madandas Panika 1976 JLJ 235(MP)(FB)].

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The features which distinguish a promissory note from a bond are :

- i. If money payable under an instrument is not certain, it cannot be a promissory note, although it can be a bond.*
- ii. If the instrument is not attested by a witness, it cannot be bond, although it may be a promissory note.*
- iii. If the instrument is payable to order or bearer, it cannot be a bond, but it can be a promissory note [Sant Singh v. Madandas Panika 1976 J LJ 235 (MP)(FB)].*

In Indus Airways (P.) Ltd. v. Magnum Aviation (P.) Ltd. [2014] 12 SCC 539 the Supreme Court noted that the question therein was whether post dated cheque issued by way of advance payment for a purchase order could be considered for discharge of legally enforceable debt. The cheque was issued by way of advance payment for the purchase order but the purchase order was cancelled and payment of the cheque was stopped. Accordingly, this Court held that while the purchaser may be liable for breach of the contract, when a contract provides that the purchaser has to pay in advance and cheque towards advance payment is dishonoured, it will not give rise to criminal liability under Section 138. Thus, it was summarised that the issuance of cheque towards advance payment could not be considered as discharge of any subsisting liability.

That dishonour of cheque issued for discharge of later liability is clearly covered by the Statute. It is to be noted that whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. If on the date of the cheque liability or debt exists or the amount has become legally recoverable, then the Section 138 of the Negotiable Instruments Act is attracted and not otherwise. If a drawer of a cheque issues a cheque for consideration and if it is dishonoured then he is liable under Section 138 of the Negotiable Instruments Act. In other words, the drawer of the cheque is liable for debt or other liability which is legally enforceable debt or other liability and not for dishonour of cheque given for security of the total loan. Usually, the cheque for repayment of the loan will be given as a post dated cheque as "security". This means that the drawer of the cheque is liable even for dishonour of the cheque given for security if on the date of the cheque, liability or debt exists or the amount has become legally recoverable. This highlights the fact that the Supreme Court in the case of Sampelly Satyanarayan Rao v. Indian Renewable Energy Development Agency Ltd, [2016] 74 taxmann.com 68/138 SCL 73 has given the judgment that

dishonour of post dated cheques issued for discharge of existing liability shall be covered by the Negotiable Instruments Act.

3.7. Substantiation of claims

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 – Regulation 22.

4. Determination of quantum of claim

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 - Regulation 24 of IBBI (Voluntary Liquidation Process) Regulations, 2017.

4.1. Debt in foreign currency

The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the liquidation commencement date Regulation 25 of IBBI (Voluntary Liquidation Process) Regulations, 2017. "The official exchange rate" is the reference rate published by the Reserve Bank of India or derived from such reference rates.

4.2. Periodical payments

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 - Regulation 26 of IBBI (Voluntary Liquidation Process) Regulations, 2017.

4.3. Debt payable at future time

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. Its value will be determined as per formula given in Regulation 27 of IBBI (Voluntary Liquidation Process) Regulations, 2017.

Regulation 27(2) provides that 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—

$$X / (1+r)^n$$

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.

4.4. Mutual credits and set-off

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: If X owes Rs. 100 to the corporate person and the corporate person owes Rs. 70 to X. After set off, Rs. 30 is payable by X to the corporate person - Regulation 28 of IBBI (Voluntary Liquidation Process) Regulations, 2017.

5. Verification of claims

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 40⁵ of the Code.

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator as per section 42 of the Code - Regulation 29 of IBBI (Voluntary Liquidation Process) Regulations, 2017.

⁵ Admission or rejection of claims.

40. (1) The liquidator may, after verification of claims under section 39, either admit or reject the claim, in whole or in part, as the case may be:

Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

5.1. 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 details as specified in Regulation 30 of IBBI (Voluntary Liquidation Process) Regulations, 2017. Regulation 30 provides as under:

- (1) 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.
- (2) The liquidator shall prepare the list of stakeholders within forty-five days from the last date for receipt of claims.

⁶[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.]

- (3) 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.

6. Realisation of Assets

The liquidator shall realise value of assets, recover monies due and realise uncalled capital or unpaid capital contribution as provided in Regulations 31 to 33 of IBBI (Voluntary Liquidation Process) Regulations, 2017.

All money will be kept in Bank account in a scheduled bank, as provided in Regulation 34 of IBBI (Voluntary Liquidation Process) Regulations, 2017.

⁶ Inserted by the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2022, w.e.f. 5-4-2022

"Contributory" means a member of a company, partner of a limited liability partnership, and any other person liable to contribute towards the assets of the corporate person in the event of its liquidation - Regulation 2(1)(b) of IBBI (Voluntary Liquidation Process) Regulations, 2017.

6.1. Manner of sale

Regulation 31 provides that 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.

6.2. Recovery of monies due

Regulation 32 provides that 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.

6.3. Liquidator to realize uncalled capital or unpaid capital contribution

Regulation 33 provides as under:

- (1) The liquidator shall realize any amount due from any contributory to the corporate person.
- (2) Notwithstanding any charge or encumbrance on the uncalled capital of the corporate person, 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, by providing a notice to the contributory to make the payments within fifteen days from the receipt of the notice, but shall hold all moneys so realized subject to the rights, if any, of the holder of any such charge or encumbrance.
- (3) 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.

6.4. All money to be paid in to bank account and shall not be used except for distribution in accordance with section 53(1)

Regulation 34 provides that the liquidator shall open a bank account in the

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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.

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.

The money in the credit of the bank account shall not be used except in accordance with section 53(1).

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.

7. Distribution of proceeds and Return of money

The liquidator shall distribute the proceeds from realization within ⁷[thirty days] from the receipt of the amount to the stakeholders. The liquidation costs shall be deducted before such distribution is made. 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 of IBBI (Voluntary Liquidation Process) Regulations, 2017.

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 - Regulation 36 of IBBI (Voluntary Liquidation Process) Regulations, 2017.

8. Detection of Fraud or Insolvency

Where the liquidator is of the opinion that the liquidation is being done to defraud a person, he shall make an application to the Adjudicatory Authority to suspend the process of liquidation and pass any such orders as it deems fit - Regulation 40(1) of IBBI (Voluntary Liquidation Process) Regulations, 2017.

⁷ Substituted for "six months" by the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2022, **w.e.f. 5-4-2022**

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, he shall make an application to the Adjudicating Authority to suspend the process of liquidation and pass any such orders as it deems fit - Regulation 40(2) of IBBI (Voluntary Liquidation Process) Regulations, 2017.

9. Completion of liquidation

Regulation 37 of IBBI (Voluntary Liquidation Process) Regulations, 2017 (Amended upto 31.01.2024) provides that:

- (1) 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.
- (2) In the event of the liquidation process continuing for more than **the period stipulated in sub-regulation (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 sub-regulation (1), till submission of application for dissolution of the corporate person; and**
 - (b) shall present an 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;

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- (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; **and**
- (vii) the reasons for not completing the process within stipulated time period and the additional time required for completing the process.**

(3) The Status Report shall enclose the audited accounts of the liquidation showing the receipts and payments pertaining to liquidation since the liquidation commencement date.

(4) The liquidator shall file the Status Report with the Board within seven days of the meeting of contributories.

9.1. Final Report

On completion of the liquidation process, the liquidator shall prepare the Final Report giving details as specified in 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—
 - (i) the realized value;
 - (ii) cost of realization, if any;
 - (iii) the manner and mode of sale;
 - (iv) 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;

- (v) the person to whom the sale is made; and
- (vi) any other relevant details of the sale.

The liquidator shall send the Final Report forthwith, to the Registrar and the Board – Regulation 38(2).

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) of IBBI (Voluntary Liquidation Process) Regulations, 2017

9.2. Corporate Voluntary Liquidation Account

Regulation 39 of IBBI (Voluntary Liquidation Process) Regulations, 2017 (Amended upto 31.01.2024) provides that:

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

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.

(2) 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.

(3) 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 (i.e., 15-1-2020), shall deposit the same within fifteen days of the date of such commencement, along with any income earned thereon till the date of deposit.

(4) 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.

(5) 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

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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.

(6) The liquidator shall be entitled to a receipt from the Board for any amount deposited into the Corporate Voluntary Liquidation Account under this regulation.

(7) 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.

(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.

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

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

(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.

(7E) 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.

(8) The Board may, if satisfied that the stakeholder or any other person referred to under sub-regulation (7D) is entitled to withdrawal of any amount from the Corporate Voluntary Liquidation Account, make an order for the same in favour of that stakeholder or that other person.

(9) The Board shall maintain a corporate person-wise ledger of the amount deposited into and the amount withdrawn from the Corporate Voluntary Liquidation Account under this regulation.

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(10) The Board shall nominate an officer of the level of Executive Director of the Board as the custodian of the Corporate Voluntary Liquidation Account and no proceeds shall be withdrawn without his approval.

(11) The Board shall maintain proper accounts of the Corporate Voluntary Liquidation Account and get the same audited annually.

(12) The audit report along with the statement of accounts of the Corporate Voluntary Liquidation Account referred to in sub-regulation (11) shall be placed before the Governing Board and shall be forwarded to the Central Government.

(13) Any amount deposited into the Corporate Voluntary Liquidation Account in pursuance of this regulation, which remains unclaimed or undistributed for a period of fifteen years from the date of order of dissolution of the corporate person and any amount of income or interest received or earned in the Corporate Voluntary Liquidation Account shall be transferred to the Consolidated Fund of India.

9.2.1. Particulars of corporate liquidation account

Vide its Circular No. IBBI/VL/028/2020, Dated 20-1-2020, IBBI has specified a separate bank account for deposit of unclaimed dividends and/or undistributed proceeds of liquidation processes. The particulars of this account are as under:

Name of the Account	:	IBBI-Corporate Voluntary Liquidation Account
Account Number	:	2254002100020356
Nature of Account	:	Current
Name of the Bank	:	Punjab National Bank
IFSC Code	:	PUNB0225400
Name of the Branch	:	Barakhamba Road Branch, New Delhi

The liquidators are, therefore, advised to deposit the amount of unclaimed dividends and/or undistributed proceeds of voluntary liquidation processes into the aforesaid account in accordance with regulation 39 of the Regulations. They are further advised to provide the particulars of the amount deposited into the said account as per Form-G of the Schedule I to the Regulations and send a scanned signed copy of the said Form-G electronically to liqvol@ibbi.gov.in

9.3. Preservation of records

Regulation 41 of IBBI (Voluntary Liquidation Process) Regulations, 2017 as substituted by the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Second Amendment) Regulations, 2022, w.e.f. 16-9-2022 provides that:

- (1) The liquidator shall preserve copies of all such records which are required to give a complete account of the voluntary liquidation process.
- (2) 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:-
 - (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 Regulations 8 and 10 of principal regulations; and
 - (l) any other records, which is required to give a complete account of the process.
- (3) 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;

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from the date of dissolution of the corporate person, before the Board, the Adjudicating Authority, Appellate Authority or any Court, whichever is later.

(4) In case of replacement of liquidator during the process, the outgoing liquidator shall handover the records under sub-regulations (1) and (2) to the new liquidator.

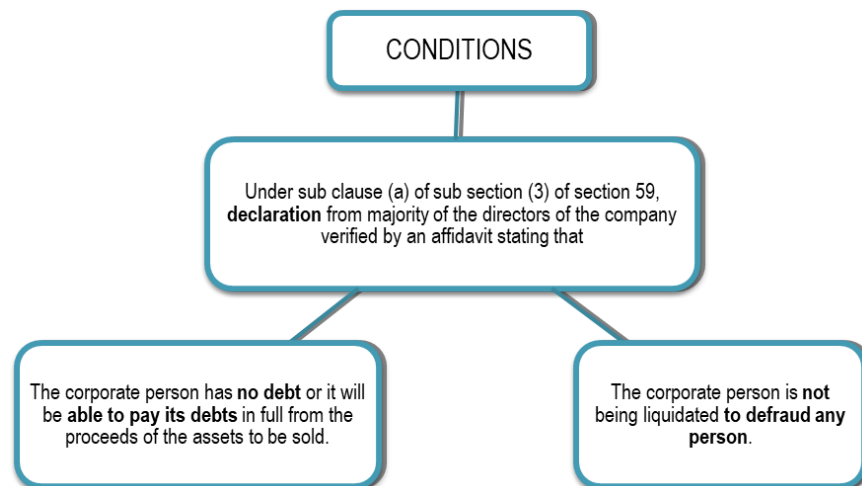
(5) The liquidator shall preserve the records at a secure place and shall be obliged to produce records as may be required under the Code and the principal regulations.

(6) 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-regulations (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.

PROCESS FLOW - VOLUNTARY LIQUIDATION OF CORPORATE PERSON

Section 59 of the Insolvency and Bankruptcy Code, 2016 provides that 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 the Code. The IBBI (Voluntary Liquidation Process) Regulations, 2017 govern the process.



PROCESS

PASS A SPECIAL RESOLUTION

Within **4 weeks** of declaration under sub-clause (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 (IP)** to act as the **Liquidator**.

(Date of Special resolution is deemed to be taken as the **Date of Commencement of Voluntary Liquidation under sub clause (c) of sub section (3)**)

- Provided that 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 within **7 days** of such resolution.
- The corporate person shall notify the Registrar and the Board about the resolution to liquidate the corporate person within **7 days** of such resolution or the subsequent approval by the creditors, as the case may be.

MAKE PUBLIC ANNOUNCEMENT

Under Regulation 14 of IBBI (Voluntary Liquidation Process) Regulations, 2017, the liquidator makes a public announcement (**Form A**) within **5 days** from his appointment calling upon stakeholders to submit their claims within **30 days** from the liquidation commencement date.

- The announcement is published in-
 - English Newspaper
 - Regional Language Newspaper
 - On the Website of the corporate person (if any)
 - on the website, if any, designated by the Board for this purpose.

(continued in next Page)

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VERIFICATION OF CLAIMS AND PREPARATION OF LIST OF STAKEHOLDERS

- The liquidator then verifies the claims submitted within **30 days** from the last date for receipt of claims
- The liquidator shall prepare a list of stakeholders on the basis of proofs of claims submitted and accepted within **45 days** from the last date for receipt of claims.
- 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 **15 days** from the last date for receipt of claims.
- The Liquidator then endeavors 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



DISTRIBUTION OF PROCEEDS

The liquidator distributes the proceeds from realization within **30 Days** from the receipt of the amount to the stake holders



TIMELINE

The Liquidation Process shall be completed within **270 days** from the date of commencement of the liquidation process. If the liquidation process continues for the period **more than stipulated in Reg. 37(1)**, the liquidator holds a meeting of the contributories of the corporate person within **15 days** from the end of 270 days or 90 days, as the case may be and thereafter at the end of every succeeding 270 days or 90 days , as the case may be, till submission of application for dissolution of the corporate person from the liquidation commencement date and present an Status Report

(continued in next Page)

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FINAL REPORT

On completion of the liquidation process, the liquidator prepares the final report as per Regulation 38 of IBBI (Voluntary Liquidation Process) Regulations, 2017 consisting of audited accounts of the liquidation, disposal of the assets of the corporate person, sale statement, etc.

- The Liquidator makes an application to the **Adjudicating Authority** for the dissolution of such corporate person along with final report under sub section (7) of section 59.
- The liquidator shall send the Final Report forthwith, to the Registrar and the Board.
- 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.



FILING THE PETITION BEFORE HON. NCLT

Once the affairs of the corporate person have been completely wound up and its assets fully liquidated -

- The Liquidator shall make an application along with Final Report to the NCLT for the dissolution of such Company (Reg. 38 (3))
- The Tribunal shall fix a date for the hearing of the petition.
- Where Tribunal is satisfied- NCLT shall pass an order for dissolution (Sec.59 (8))
- Entity shall stand dissolved from the date of NCLT's order

10. Statement that company is in liquidation

Section 238 of the Code states that the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. It, thus, follows that the provisions contained in Part III of Chapter XX of the Companies Act, 2013 shall be applicable even in case of voluntary winding up of a company undertaken under the provisions of the Code and such provisions shall be applicable to extent these are not inconsistent with the provisions contained in the Code.

Accordingly, it should further be noted that section 344 of the Companies Act, 2013 as contained in Part III (*supra*) provides as under:

(1) Where a company is being wound up, whether by the Tribunal or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a Company Liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If a company contravenes the provisions of sub-section (1), the company, and every officer of the company, the Company Liquidator and any receiver or manager, who wilfully authorises or permits the non-compliance, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.

11. Books and papers of company to be evidence

Where a company is being wound up, all books and papers of the company and of the Company Liquidator shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be recorded therein – Section 345 of the Companies Act, 2013.

Section 2(12) of the Companies Act, 2013 defines "book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form.

"Books of account" includes records maintained in respect of—

- (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- (ii) all sales and purchases of goods and services by the company;

- (iii) the assets and liabilities of the company; and
- (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section; - Section 2(13) of the Companies Act, 2013

12. Powers of Tribunal to declare dissolution of company void

Section 356 of the Companies Act, 2013 provides as under:

- (1) Where a company has been dissolved, whether in pursuance:
 - of this Chapter XX; or
 - of section 232 dealing with merger and amalgamation of companies; or
 - otherwise – this word ‘otherwise’ seems to cover in its sweep dissolution under the Insolvency and Bankruptcy Code, 2016,

the Tribunal may at any time within two years of the date of the dissolution, on application by the Company Liquidator of the company or by any other person who appears to the Tribunal to be interested, make an order, upon such terms as the Tribunal thinks fit, declaring the dissolution to be void, and thereupon such proceedings may be taken as if the company had not been dissolved.

- (2) The Tribunal shall—
 - (a) forward a copy of the order, within thirty days from the date thereof, to the Registrar who shall record the same; and
 - (b) direct the Company Liquidator or the person (such as insolvency professional appointed as liquidator under the Code) on whose application the order was made, to file a certified copy of the order, within thirty days from the date thereof or such further period as allowed by the Tribunal, with the Registrar who shall record the same.]

13. Voluntary winding up of company, etc., not to stop investigation proceedings

Section 226 of the Companies Act, 2013 provides that an investigation under Chapter XIV may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—

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- (a) an application has been made under section 241;
- (b) the company has passed a special resolution for voluntary winding up;
or
- (c) any other proceeding for the winding up of the company is pending before the Tribunal:

Provided that where a winding up order is passed by the Tribunal in a proceeding referred to in clause (c), the inspector shall inform the Tribunal about the pendency of the investigation proceedings before him and the Tribunal shall pass such order as it may deem fit:

Provided further that nothing in the winding up order shall absolve any director or other employee of the company from participating in the proceedings before the inspector or any liability as a result of the finding by the inspector.

14. Documents required for Voluntary Liquidation Process - A checklist

1. Form MGT 14 - For filing of resolution with ROC, in case of companies –
<ul style="list-style-type: none">• Certified true copy of resolution along with copy of explanatory statement under section 102 of the Companies Act, 2013.
2. Form B - For proof of claim by operational creditors except workmen and employees –
<ul style="list-style-type: none">• PAN, Passport, AADHAAR Card or the identity card issue by the Election Commission of India.• Affidavit verifying the proof.
3. Form C - For proof of claim by financial creditors –
<ul style="list-style-type: none">• PAN, Passport, AADHAAR Card or the identity card issue by the Election Commission of India.• Affidavit verifying the proof.
4. Form D - For proof of claim by a workmen or employee –
<ul style="list-style-type: none">• Affidavit verifying the proof.

Voluntary Liquidation Process

5. Form E - For proof of claim by authorised representative of workmen or employee –
<ul style="list-style-type: none">• Affidavit verifying the proof.• Documents relied on to prove the claim.
6. Form F - For proof of claim by any other stakeholder –
<ul style="list-style-type: none">• PAN, Passport, AADHAAR Card or the identity card issue by the Election Commission of India.• Affidavit verifying the proof.
7. Form GNL-2 - For submission of documents with ROC, in case of companies –
<ul style="list-style-type: none">• Copy of final Report.
8. Form NCLT 1 (in triplicate)- For application to NCLT –
<ul style="list-style-type: none">• Copy of MOA and AOA (in case of company) or copy of the LLP agreement (in case of LLP), as the case may be.• Copy of Final Report as filled with ROC & IBBI.• Notice of admission in Form NCLT-2.• Affidavit verifying the petition in Form NCLT-6.• Bank draft evidencing the payment of application fee.• Memorandum of appearance in Form NCLT-12 or the executed Vakalatnama, as the case may be.• Other necessary documents
9. Form INC 28- For filing confirmation order to ROC, in case of companies –
<ul style="list-style-type: none">• Certified true copy of order given by NCLT.
10. Form 22- For filing confirmation order to ROC, in case of LLPs –
<ul style="list-style-type: none">• Certified true copy of order given by NCLT.

**Model Formats for assistance of Readers during Voluntary
Liquidation of Corporate Entities**

1. Declaration of Solvency

DECLARATION OF SOLVENCY

*(pursuant to the provisions of section 59 of The Insolvency and
Bankruptcy Code, 2016 and rules made thereunder)*

I, _____, S/o _____,
R/o _____, Director of **XYZ Private Limited** (the
"Company") do solemnly affirm and declare that-

- i) I have made a full inquiry into the affairs of the company and have formed an opinion that the company has no debt / company will be able to pay its debts in full from the proceeds of assets to be sold in the liquidation; and
- ii) the company is not being liquidated to defraud any person;

Also appended herewith are the audited financial statements and record of business operations of the company for the previous two years and a report of the valuation of the assets of the Company, prepared by _____, registered valuer.

That the information given above is true and correct to the best of my knowledge and belief and that it conceals nothing and that no part of it is false.

Verified this day the _____ day of _____, 20....

(Deponent)

Voluntary Liquidation Process

2. Notice for the Board Meeting

[on the letterhead of the company]

XYZ PRIVATE LIMITED

NOTICE FOR THE _____ BOARD MEETING

NOTICE IS HEREBY GIVEN that the _____ meeting of the board of directors (the "**Board**") of XYZ Private Limited (the "**Company**") shall be held at ___ a.m./p.m., on __ __, 20.... at the registered office of the Company at _____, New Delhi _____, to transact the following businesses:

1. To take note of the minutes of the previous Board meeting.

The minutes of the previous meeting of the Board held on __, 20.... were signed and circulated to all the directors of the Company and shall be noted by the Board.

2. Approval of the board of directors for voluntarily liquidating the affairs of the XYZ Private Limited.

Pursuant to the provisions of the Companies Act, 2013 and all other applicable provisions, regulation, if any, of the Insolvency and Bankruptcy Code, 2016 (the "**Code**"), read with the rules or regulations made thereunder, as amended, and subject to the approval of members of the Company in general meeting, the Board proposes the voluntary winding up (the "**liquidating**") the affairs of the Company and appointment & fixing remuneration of Mr. _____, an insolvency professional, to act as the liquidator of the Company.

Draft declaration of solvency from the directors of the Company verified by an affidavit under Section 59 of the Code along with audited financial statements and record of business operations of the Company for last two years as **Annexure 1** and a report of valuation of the assets of the Company by _____, registered valuer as **Annexure 2** is annexed herewith for consideration and approval of the Board.

It is proposed that the Board may consider, and if thought fit, approve the voluntary liquidation and recommending the same for member's approval.

3. To call Extra Ordinary General Meeting ("EGM") of the shareholders of the Company on a shorter notice and approval of such notice.

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Pursuant to Section 101 of the Act, the General Meeting of the Company may be called by giving not less than clear 21 days' notice, in writing or through electronic mode. Provided that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by members of the company holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting or having, if the company has no share capital, not less than ninety-five per cent of the total voting power exercisable at that meeting.

Due to time constraints the EGM is proposed to be convened by giving a shorter notice. Shareholders are requested to send their consent in writing or through electronic mode for convening the EGM by shorter notice. The draft of shorter notice for calling the EGM will be placed before the Board for its approval and is annexed hereto as **Annexure 3**.

By order of the Board
For XYZ Private Limited

Name: Mr. S

Designation: Director

DIN: _____

Address: _____

Dated:

Place:

ANNEX -A-
TEXT OF RESOLUTIONS PROPOSED FOR ADOPTION
AT __TH BOARD MEETING

2. Approval of the board of directors for voluntarily liquidation of the affairs of the XYZ Private Limited.

"**RESOLVED THAT** pursuant to the provisions laid down under Section 59 of Chapter V of the Insolvency and Bankruptcy Code, 2016, and Companies Act, 2013, read with rules or regulations thereunder, as amended and subject to the approval of the members of the Company in the general meeting of the Company, the consent of board of directors of the Company be and is hereby accorded to voluntarily liquidating the affairs of the Company."

"**RESOLVED FURTHER THAT** the board of directors have made a pragmatic assessment of the affairs of the Company and have reasonable grounds to form an opinion that the Company will be able to pay its debts, if any, in full after realizing the assets belonging to the Company."

"**RESOLVED FURTHER THAT** the declaration of solvency along with an affidavit to verify the declaration accompanied with audited financial statements and record of business operations of the Company for the last two years as **Annexure 1** and a report of valuation of the assets of the Company by _____, registered valuer as **Annexure 2** and subject to the approval of the members of the Company in the general meeting of the Company, the consent of board of directors of the Company be and is hereby accorded.

"**RESOLVED FURTHER THAT** the Board subject to the approval of the members of the Company in the general meeting hereby proposes the name of the following insolvency professional, as the liquidator of the Company with a total remuneration of INR _____ to be paid in _____ or _____:

- **Name:** _____
- **Registration No:** _____
- **Address:** _____
- **Name of IPA enrolled with:** _____

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"RESOLVED FURTHER THAT any director of the Company be and is hereby authorized to do all such acts, deeds, matters and things as are necessary or required to implement the above said resolution of the Board before the concerned registrar of companies and all other relevant authorities, as and when required.

- 3. To call Extra Ordinary General Meeting ("EGM") of the shareholders of the Company on a shorter notice and approval of such notice.**

"RESOLVED THAT, the Extraordinary General Meeting of the members of the Company be held on _____, the _____ day of _____, 20.... at the registered office of the Company located at _____, New Delhi _____, India.

FURTHER RESOLVED THAT, the Notice of the Extraordinary General Meeting of the members of the Company, as placed before the members of the Board in **Annexure 3** be and is hereby approved.

FURTHER RESOLVED THAT, Mr. _____ be and is hereby authorized to sign the notice of the meeting for and on behalf of the Board of Directors of the Company for its issuance to the members of the Company."

- 3. Notice of Extraordinary General Meeting**

NOTICE OF THE EXTRA ORDINARY GENERAL MEETING

NOTICE IS HEREBY GIVEN that the extra-ordinary general meeting of the members of XYZ Private Limited (the "**Company**") will be held on _____, December _____, 20.... by shorter notice at a.m./p.m. IST at the registered office of the Company located at _____, New Delhi _____, India, to transact the following business:

Voluntary Liquidation Process

Special Business:

4. **Approval for voluntarily liquidating the affairs of the XYZ Private Limited.**

By order of the Board
For XYZ Private Limited

Name: Mr. Z

Designation: Director

DIN: _____

Address: _____

Dated:

Place:

ANNEX- A-

**TEXT OF RESOLUTION PROPOSED FOR ADOPTION AT
THE EXTRA ORDINARY GENERAL MEETING OF XYZ PRIVATE LIMITED**

Special Business:

4. Approval for voluntarily liquidating of the affairs of the XYZ Private Limited.

"**RESOLVED THAT** pursuant to the provisions laid down under Section 59 of Chapter V of the Insolvency and Bankruptcy Code, 2016, and Companies Act, 2013, read with rules or regulations thereunder, as amended, consent of the shareholders be and is hereby accorded to voluntarily liquidate the affairs of the Company."

"**RESOLVED FURTHER THAT** the pragmatic assessment of the affairs of the Company by the directors, where they have reasonable grounds to form an opinion that the Company will be able to pay its debts, if any, in full after realizing the assets belonging to the Company, be and hereby approved.

"**RESOLVED FURTHER THAT** the declaration of solvency along with an affidavit to verify the declaration accompanied with audited financial statements and record of business operations of the Company for the last two years as **Annexure 1** and a report of valuation of the assets of the Company by _____, registered valuer as **Annexure 2** the consent be and is hereby accorded."

"**RESOLVED FURTHER THAT** the name of the following insolvency professional suggested by the Board as the liquidator of the Company with a total remuneration of INR_____ to be paid in _____ or _____ be and hereby approved unanimously.

- **Name:** _____
- **Registration No:** _____
- **Address:** _____
- **Name of IPA enrolled with:** _____

"**RESOLVED FURTHER THAT** any director of the Company be and is hereby authorized to do all such acts, deeds, matters and things as are necessary or required to implement the above said resolution before the concerned registrar of companies and all other relevant authorities, as and when required.

Voluntary Liquidation Process

NOTES:

1. A member entitled to attend and vote at the extra ordinary general meeting is also entitled to appoint a proxy to attend and vote instead of him and such proxy is not necessarily required to be a member of the Company. The instrument of proxy in order to be effective, should be deposited at the registered office, at least 48 hours before the commencement of the meeting, duly completed and signed.
2. Each shareholder and its proxy, wherever applicable, is required to bring the duly filled attendance slip for attending the meeting.
3. Any member of the Company is entitled to inspect the proxies lodged, during the period commencing 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting.
4. Pursuant to Section 101 of the Act, the General Meeting of the Company may be called by giving not less than clear 21 days' notice, in writing or through electronic mode. Provided that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by members of the company holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting or having, if the company has no share capital, not less than ninety-five per cent of the total voting power exercisable at that meeting.

Due to time constraints the EGM is proposed to be convened by giving a shorter notice. Shareholders are requested to send their consent in writing or through electronic mode for convening the EGM by shorter notice.
5. The relative explanatory statement pursuant to Section 102 of the Act in respect of the special business under Item No. 1 of the notice convening extra-ordinary general meeting, is annexed hereto as Annex B.
6. Corporate shareholders intending to send their authorized representative are requested to send a duly certified copy of the board resolution pursuant to Section 113 of the Act, authorizing their representative to attend and vote at the meeting.

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7. Each shareholder is requested to notify to the Company immediately for any changes in their addresses including e-mail addresses.
8. Copies of all documents referred to in the notice and explanatory statements are available for inspection at the registered office of the Company, during normal business hours on all working days up to and including the date of the meeting.
9. The route map of the venue of the extra ordinary general meeting forms part of this notice.

Voluntary Liquidation Process

ANNEX- B

EXPLANATORY STATEMENT

Pursuant to Section 102 of the Companies Act, 2013

The following statement sets out all material facts relating to their special business mentioned of the accompanying notice:

Special Business

ITEM NO. 1

Approval for voluntarily liquidation of the affairs of the XYZ Private Limited.

In view of the aforesaid, the Board recommends the resolution as set out at Item No.1 for approval by the shareholders of the Company.

By order of the Board
For XYZ Private Limited

Name: Mr. Z
Designation: Director
DIN: _____
Address: _____

Dated:

Place:

4. Notice convening final meeting

Name of company

NOTICE CONVENING FINAL MEETING

Notice is hereby given in pursuance of Section 35(1)(m) of the Insolvency and Bankruptcy Code, 2016 and Regulation 8(1)(d) read with Regulation 38 of Insolvency And Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 that a general meeting of the members of the above-named company will be held at.....on the.....day of20...., at.....o'clock in thenoon [and a meeting of the creditors will be held at.....on theday of.....20...., ato'clock in the.....noon] for the purpose of having an account laid before them showing the manner in which the liquidation has been conducted and the property of the company disposed of and of hearing any explanation that may be given by the liquidator.

Dated this.....day of.....20...

Signature of the Liquidator

5. Preliminary report of the Liquidator

Name of the Company _____ (in voluntary liquidation)

**PRELIMINARY REPORT OF THE LIQUIDATOR IN TERMS OF
REGULATION 9 OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(VOLUNTARY LIQUIDATION PROCESS) REGULATIONS, 2017**

The Liquidator, in pursuance of Regulation 9 of Insolvency And Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, hereby submits his preliminary report to the _____ (name of the Corporate Person) as follows :—

1. Capital : The nominal capital of the company is Rs.... divided into....shares of Rs....each.

The number of shares issued is.....and comprises.....shares allotted as fully paid and.....shares subscribed for cash and fully called up (or on which Rs....per share has been called up.) The unpaid calls amount to Rs.

Voluntary Liquidation Process

2. Assets : The assets of the company are estimated by the directors (or as the case may be) to be of the value of Rs. and they comprise the following :—

Assets not specifically pledged :

- | | | |
|-----|---|---------|
| (1) | Cash in hand | Rs..... |
| | Cash at Bank | Rs..... |
| | Negotiable Securities | Rs..... |
| (2) | Debts due from contributories | Rs..... |
| (3) | Debts due to the Company : | |
| | (a) Secured | Rs..... |
| | Securities available : (give particulars of the properties given as security) | |
| | (b) Unsecured | Rs..... |
| (4) | Movable & Immovable properties : | |
| | (a) Movable properties : | |
| | (i) Inventories | |
| | (ii) Other movables (give particulars) | |
| | (b) Immovable properties : (give particulars) | |
| (5) | Unpaid Calls | Rs..... |
| (6) | Other assets | Rs..... |

Assets specifically pledged :

- | | | |
|-----|---|---------|
| (1) | Assets held by fully secured creditors
(give particulars) | Rs..... |
| (2) | Assets held by partly secured creditors
(give particulars) | Rs..... |

3. Liabilities : The liabilities of the company are returned as amounting to and include the following :

- | | | |
|-----|--------------------------|---------|
| (1) | Fully secured creditors | Rs..... |
| (2) | Partly secured creditors | Rs..... |
| (3) | Preferential creditors | Rs..... |
| (4) | Debenture holders | Rs..... |
| (5) | Unsecured creditors | Rs..... |

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4. *Causes of failure* : The company was formed to carry on the business of.....

The failure of the company is, in the opinion of the Liquidator, due to.....

5. *Further enquiry* : [The Liquidator is not at present aware of any matters relating to the promotion or formation of the company, or to the conduct of its business, as to which in his opinion further enquiry is desirable] or [The Liquidator is of the opinion that further enquiry is desirable concerning the promotion, formation or failure of the company and the conduct of its business].

6. Proposed plan of action and Liquidation Cost :

Dated this.....day of.....20...

.....
Signature of the Liquidator

6. Notice by Liquidator requiring payment of money or delivery of property, books, etc., to the Liquidator

Name of the Company _____ (in voluntary liquidation)

NOTICE BY LIQUIDATOR REQUIRING PAYMENT OF MONEY OR DELIVERY OF PROPERTY, BOOKS, ETC., TO THE LIQUIDATOR IN TERMS OF REGULATION 32 OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (VOLUNTARY LIQUIDATION PROCESS) REGULATIONS, 2017

I, the undersigned, the Liquidator of the above-named company, hereby require you, the under-mentioned.....(name of person to whom notice is addressed) to pay to me (or deliver, convey, surrender, transfer to or into my hands) at my office the sum of Rs.being the amount appearing to be due from you on your account with the said company [or any money, property*, books or papers] now in your hands and to which the said company is entitled [or otherwise, as the case may be].

Dated this.....day of.....20...

Sd./
Liquidator

Voluntary Liquidation Process

To

.....

(name and address of the person to whom the notice is addressed)

*Property to be specifically described.

7. Status report

STATUS REPORT IN TERMS OF REGULATION 37 OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (VOLUNTARY LIQUIDATION PROCESS) REGULATIONS, 2017

1. Name of company:
2. Date of commencement of liquidation
3. Date to which this statement is brought down:

	<i>Realisations (Rs.)</i>	<i>Disbursements (Rs.)</i>
Brought forward		
Total realisation for the period from.....to.....		
Total disbursements for the period from.....to.....		
Total		
Balance		
<i>Analysis of Balance</i>	<i>(Rs.)</i>	<i>(Rs.)</i>
The balance is made up as follows:—		
1. Cash in the hand of the Official Liquidator		
2. Total payments into Bank including balance at date of commencement of winding-up as per Bank pass book		
Less: Total withdrawals from Bank		
Balance at Bank		

A Handbook for the Guidance of Insolvency Professionals

*3. Amounts invested by the Official Liquidator		
Less: Amounts received by realisation of investment		
Deduct: Profit or add loss on realisation of investment (carried into the account)		
Balance under investment		
Total balance as shown above		
*Note : Full details of investments made and realizations thereof should be given in a separate statement		

Statement as to the position of the liquidation as on.....(the date to which the statement is brought down)

	(Rs.)		
1. Assets			
Total amount of estimated* assets at the date of the commencement of the liquidation after deducting amounts charged to secured creditors (As per statements of affairs or liquidator's estimate)			
Assets realised			
Estimated value of assets still to be realised			
2. Liabilities			
	<i>Total amount due</i>	<i>Amount paid</i>	<i>Amount outstanding</i>
Secured creditors			
Preferential creditors			
Debenture holders			
Unsecured creditors			

Voluntary Liquidation Process

3.	Total amount of capital paid up at the date of commencement of liquidation	
	Paid up in cash	
	Issued as paid otherwise than for cash	
4.	General description and estimated value of outstanding assets still to be realised (if any):	
5.	Material litigation, by or against the corporate person	
6.	Causes which delay the termination of liquidation:	
7.	Period within which the winding-up may probably be completed:	
8.	Statement of the moneys paid into the Companies Liquidation Account in the Reserve Bank of India Regulation 39 during the period:	
	<i>Number on list of creditors or contributors</i>	<i>Name and address of creditor or contributory</i>
	<i>Amount of unclaimed dividend or undistributed assets</i>	<i>Date when payable to creditor or contributory</i>
	<i>Date of payment into Companies Liquidation Account</i>	<i>Remarks</i>
	(1)	(2)
	(3)	(4)
	(5)	(6)

Dated.....

(Sd/-)
Liquidator

DECLARATION

I declare that the particulars set out in the above statement are true and that the above statement sets out the true position of the liquidation as on.....to the best of my knowledge and belief.

Dated.....

(Sd/-)
Liquidator

*As per statement of affairs, or Liquidator's estimate.

8. AFFIDAVIT VERIFYING ACCOUNT

**AFFIDAVIT VERIFYING ACCOUNT IN TERMS OF SECTION 59(7)
OF THE CODE AND REGULATION 38(3) OF THE INSOLVENCY
AND BANKRUPTCY BOARD OF INDIA
(VOLUNTARY LIQUIDATION PROCESS) REGULATIONS, 2017**

Name of company :

Nature of proceeding :

Date of commencement of liquidation :

Affidavit verifying account

I,....., Liquidator of the above-named company solemnly affirm and say :—

That the account hereunto annexed and marked 'A' contains a full and true account of my receipts and payments in liquidation of the above-named company from the.....day of.....20....., to theday of.....20....., inclusive and that I have not nor has any other person by my order or for my use during such period, received or paid any moneys on account of the said company other than and except the items mentioned and specified in the said account.

I further say that the particulars in the annexed account marked 'A' and the annexures thereto, with respect to the proceedings in and position of the liquidation, are true to the best of my knowledge and belief.

Solemnly affirmed by the Liquidator at.....this.....day of.....20....

Before me

Oath Commissioner

Liquidator

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