

WEEKLY CORPORATE UPDATES

Saturday 17th February, 2024

(Curated & compiled by)

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MCA UPDATES

The Companies (Registration Offices and Fees) Amendment Rules, 2024 (February 14, 2024)

Dated: 15th February, 2024

The Ministry of Corporate Affairs (MCA) on February 14, 2024, issued the Companies (Registration Offices and Fees) Amendment Rules, 2024 to further amend the Companies (Registration Offices and Fees) Rules, 2014.

The following amendments have been stated:

After rule 10, the following rule has been inserted, namely: -

"10A. Central Processing Center. (1) The Registrar of the Central Processing Center established under sub-section (1) of section 396 shall examine or cause to be examined every application or e-Form or document required or authorised to be filed or delivered as provided under sub-rule (3), for approval, registration or taking on record by the Registrar.

(2) The Registrar shall take a decision on the application, e-forms or documents within thirty days from the date of its filing excluding the cases in which an approval of the Central Government or the Regional Director or any other competent authority is required.

(3) The provisions of sub-rule (2) to (5) of rule 10 shall apply mutatis mutandis in relation to the examination of application, e-Forms or documents under this rule.

(4) The Registrar of the Central Processing Center shall exercise jurisdiction all over India in respect of the examination of the application, e-Forms or documents, namely: -

<i>S.No.</i>	<i>Details of application, e-Form or documents</i>
<i>(i)</i>	<i>Filing of Resolutions and agreements to the Registrar under section 117 of the Act in e-Form no. MGT-14</i>
<i>(ii)</i>	<i>Notice to Registrar of any alteration of share capital under section 64 of the Act in e-Form no. SH-7</i>
<i>(iii)</i>	<i>Application for approval of Central Government for change of name under section 13 of the Act in e-Form no. INC-24</i>
<i>(iv)</i>	<i>One Person Company- Application for Conversion under section 18 of the Act in e-Form no. INC-6</i>
<i>(v)</i>	<i>Conversion of public company into private company or private company into public company under sections 14 and 18 of the Act in e-Form no. INC-27</i>
<i>(vi)</i>	<i>Intimation to Registrar of revocation/surrender of license issued under section 8 of the Act in eForm no. INC-20</i>
<i>(vii)</i>	<i>Return of deposits under sections 73 and 76 of the Act in e-Form no. DPT-3</i>
<i>(viii)</i>	<i>Application to ROC for obtaining the status of dormant company under sub-section (1) of section 455 of the Act in e-Form no. MSC-1</i>

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(ix)	Application for seeking status of active company under sub-section (5) of section 455 of the Act in e-Form no. MSC-4
(x)	Letter of Offer under section 68 of the Act in form e-Form no. SH-8
(xi)	Declaration of Solvency under sub-section (6) section 68 of the Act in e-Form no. SH-9
(xii)	Return in respect of buy-back of Securities under sub-section 10 of section 68 of the Act in e-Form no. SH-11

(5) In case multiple applications, e-Forms or documents are filed at a time under sub-rule (4), then all the applications, e-Forms or documents shall be examined and decided by the Registrar of the Central Processing Center.

(6) Nothing in this rule shall confer any power on the Registrar of the Central Processing Center under section 399 of the Act in case of applications, e-Forms or documents filed under sub-rule (4), and the Registrar having territorial jurisdiction shall continue to exercise his powers under the said section.”

Related Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=TC5liKr%252B0SpGVt5U%252BSzi%252Bw%253D%253D&type=open>

Ministry of Corporate Affairs incorporation related services can also be accessed through the National Single Window System (NSWS)

Dated: 12th February, 2024

Ministry of Corporate Affairs incorporation related services can also be accessed through the National Single Window System (NSWS) by going through the following link: <https://www.nsws.gov.in/>

Related Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=NkaICgCOPXM37dpK8VUeVA%253D%253D&type=open>

SEBI UPDATES

SEBI cautions public against dealing with un-Registered entities

Dated: 13th February, 2024

SEBI Investor Caution Brief: Safeguard Your Investments

Background: The Securities and Exchange Board of India (SEBI) has noticed a surge in deceptive entities and online platforms falsely claiming SEBI registration. These entities allure investors with fake SEBI certificates, promising high returns on investments. SEBI emphasizes the need for investors to exercise caution and due diligence.

Key Points:

1. **Verify Registration Status:**

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- Before engaging with any investment service provider, verify their registration status on the SEBI website.
 - Visit www.sebi.gov.in Intermediaries / Market Infrastructure Institutions → Recognised Intermediaries.
2. **Beware of High Return Promises:**
 - Exercise caution with entities promising assured or exceptionally high returns.
 - Remember, higher returns often accompany higher risks, including the risk of losing invested capital.
 3. **Check SEBI Enforcement Actions:**
 - Review any enforcement actions taken by SEBI against entities/intermediaries.
 - Access details on the SEBI website: www.sebi.gov.in → Enforcement → Orders.
 4. **Stay Informed:**
 - Empower yourself with knowledge about the securities market for a safer investment journey.
 - Knowledge is your best defense against fraud.
 - Explore comprehensive resources on understanding investing basics and the importance of dealing with registered intermediaries.

Conclusion: SEBI urges investors to be vigilant, verify intermediary registrations, and avoid falling for unrealistic promises of high returns. Stay informed, conduct due diligence, and rely on registered intermediaries for secure investments.

For detailed information and resources, visit www.sebi.gov.in. Protect your investments and financial well-being.

Related Link: https://www.sebi.gov.in/media-and-notifications/press-releases/feb-2024/sebi-cautions-public-against-dealing-with-unregistered-entities_81395.html

RBI UPDATES

Payment Intermediary by Card Network – Restraining of Unauthorized Payment System

Dated: 15th February, 2024

The Reserve Bank of India (RBI) has discovered that a Card Network facilitated a scheme allowing businesses to make card payments through intermediaries to entities not accepting card payments. This setup involves the intermediary accepting card payments from corporates and then transferring funds to non-card accepting recipients via IMPS/RTGS/NEFT.

Upon scrutiny, it was found that this arrangement constitutes a payment system and requires authorization under the Payment and Settlement Systems (PSS) Act, 2007, which was lacking. Thus, the activity lacked legal sanction.

Furthermore, concerns were raised regarding the pooling of funds into an account not designated under the PSS Act and non-compliance with originator and beneficiary information requirements outlined in the KYC Master Direction issued by the RBI.

Only one card network has implemented this arrangement in India so far. As the matter undergoes examination, the Card Network has been advised to suspend such arrangements until further notice. It's clarified that the RBI has not imposed restrictions on the normal usage of business credit cards.

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Related Link: https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=57335

Terms of Reference signed between Reserve Bank of India and Nepal Rastra Bank on Integration of Unified Payments Interface (UPI) of India with National Payments Interface (NPI) of Nepal for cross-border remittances

Dated: 15th February, 2024

Reserve Bank of India and Nepal Rastra Bank today signed and exchanged Terms of Reference for integration of fast payment systems of India and Nepal, viz., Unified Payments Interface (UPI) of India and National Payments Interface (NPI) of Nepal, respectively. The integration is aimed at facilitating cross-border remittances between India and Nepal by enabling users of the two systems to make instant, low-cost fund transfers.

2. The collaboration between India and Nepal in linking their fast payment systems through the UPI-NPI linkage will further deepen financial connectivity and reinforce the enduring historical, cultural, and economic ties between the two countries.

3. Based on the Terms of Reference exchanged between RBI and NRB, the necessary systems will be put in place for interlinking of UPI and NPI. The formal launch of the linkage i.e., commencement of operations will be done at a later date.

Related Link: https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=57332

NCLT UPDATES

Income Tax Refund of liquidation period cannot be adjusted/ set off against past years outstanding demands | Insolvency Code overrides Income Tax Act, 1961 – Vinod Kumar Kothari, Liquidator of CD Vs. The Assessing Officer, Income Tax Department and Ors. – NCLT Kolkata Bench

Dated: 01st February, 2024

Based on the provided information, it seems that the Adjudicating Authority has made several determinations regarding the liquidation of Nicco Corporation Limited and its interaction with the Income Tax Act, 1961. Here's a breakdown of the key points:

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1. **Liquidation Order:** The Adjudicating Authority issued a liquidation order against Nicco Corporation Limited on 17th October 2017.
2. **Notice to Income Tax Department:** The Applicant, likely the Liquidator, served notice to the Income Tax Department pursuant to section 178 of the Income Tax Act, 1961, informing them of the initiation of the liquidation process.
3. **Income Tax Return and Refund:** The Liquidator filed the Income Tax Return for the Assessment Year 2019-2020 under section 139(1) of the Income Tax Act. An order was received indicating an income tax refund of Rs. 54,40,064/- for the same assessment year.
4. **Adjustment of Income Tax Refund:** The Income Tax Department issued a notice stating that the refund determined would be adjusted against outstanding demands from previous assessment years, which were prior to the liquidation commencement date.
5. **Liquidator's Response:** The Liquidator responded to the adjustment stating that the Income Tax Department should file its claim in the liquidation proceedings and cannot exercise its right under Section 245 of the Income Tax Act in the case of a company in liquidation.
6. **Decision of the Adjudicating Authority:**
 - The Adjudicating Authority held that the Corporate Debtor undergoing liquidation falls under the Insolvency and Bankruptcy Code (IBC), and in case of inconsistency between the Income Tax Act and the IBC, the IBC overrides the Income Tax Act.
 - The Authority relied on the judgment of *Tata Steel Ltd. Vs. Deputy Commissioner of Income Tax (2023)* which upheld the supremacy of the IBC over inconsistent laws.
 - The Income Tax Department's claim would fall under the category of an Operational Creditor, and they should file their claim before the Liquidator.
 - The Income Tax refund is considered an asset of the Corporate Debtor and should be added to the liquidation assets. Therefore, the adjustment of the Income Tax returns against past dues during the liquidation period is deemed void.

In summary, the Adjudicating Authority has ruled that the Income Tax Department's adjustment of the income tax refund against past dues during the liquidation period is not valid. Instead, the Income Tax Department should file its claim before the Liquidator, and the Income Tax refund should be treated as part of the liquidation assets.

Related Link: <https://ibclaw.in/vinod-kumar-kothari-liquidator-of-cd-vs-the-assessing-officer-income-tax-department-and-ors-nclt-kolkata-bench/>

Once Resolution Plan has been approved by NCLT, appeal pending for refund of Service Tax stands abated as CESTAT has become functus officio – Ballarpur Industries Ltd. Vs. CCE & ST, Panchkula – CESTAT Chandigarh

Dated: 12th February, 2024

The appellant filed a refund claim for service tax paid on the services of Transport of Goods by Road for the period 16.11.1997 to 02.06.2008, along with interest, before the Assistant Commissioner of Service Tax, Panchkula. However, the Assistant Commissioner rejected the refund claim, and the appellant challenged this decision before the Commissioner (Appeals), who also upheld the rejection.

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Subsequently, during the appeal process, a financial creditor filed an application under section 7 of the Insolvency and Bankruptcy Code, 2016 against the appellant, and Corporate Insolvency Resolution Process (CIRP) against the appellant was admitted. The Resolution Plan submitted before the National Company Law Tribunal (NCLT) Mumbai was approved on 31.03.2023, making the Resolution Plan effective from that date.

In considering the appeal, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) noted similar cases where the appeals were abated once the Resolution Plan was approved by the NCLT. Specifically, in the case of M/s Jet Airways (India) Limited vs. Commissioner of Service Tax-IV, Mumbai Bench, and Icomm Tele Ltd. vs. Commissioner of Central Tax, Puducherry-GST, Hyderabad Bench, it was held that appeals stand abated once the Resolution Plan is approved by NCLT and CESTAT becomes functus officio in matters relating to such appeals.

In alignment with the above decisions, CESTAT concluded that once the Resolution Plan is approved by the NCLT, the present appeal stands abated as CESTAT becomes functus officio in matters related to the appeal. Therefore, the appeal regarding the refund claim for service tax paid stands abated following the approval of the Resolution Plan by the NCLT.

Related Link: <https://ibclaw.in/ballarpur-industries-ltd-vs-cce-st-panchkula-cestat-chandigarh/>

Dissenting Secured Financial Creditor cannot insist payment of amount as per security interest, when there is resolution of Corporate Debtor through a Resolution Plan | Resolution Plan submitted by Flat Buyers Association cannot be faulted on the ground that CoC have chosen not to take any performance security – Paridhi Finvest Pvt. Ltd. Vs. Value Infracon Buyers Association and Anr. – NCLAT New Delhi

Dated: 17th February, 2024

In summary, the appellate tribunal made the following key decisions:

A. Payment to Dissenting Financial Creditor: The tribunal determined that the dissenting financial creditor, in this case, the appellant, is entitled to an amount not less than what they would receive in the event of the corporate debtor's liquidation. The payment proposed to the appellant in the resolution plan is deemed adequate and in accordance with the provisions of the Insolvency and Bankruptcy Code (IBC). The tribunal cited legal precedents to support the principle that a security holder cannot insist on payment according to their security interest when a resolution plan is in effect.

B. Performance Security from Successful Resolution Applicant: The tribunal noted that the resolution plan was permitted to be filed by the Flat Buyers Association, and no resolution plan was submitted until after the liberty was granted by the adjudicating authority. The absence of performance security from the successful resolution applicant was not deemed a fault, especially considering that the flat buyers themselves constituted a significant portion of the Committee of Creditors (CoC) and did not demand performance security. The tribunal also dismissed the argument regarding the inclusion of the successful resolution applicant's name in the prospective resolution applicant list prepared after Form-G issuance.

C. Conclusion: The tribunal upheld the resolution plan's approval by the CoC, considering its substantial vote share and the fact that it facilitates the completion of the unfinished project, thereby aiding in the resolution of the corporate insolvency resolution process (CIRP). Given these factors and the payment to the appellant as per Section 30(2) of the IBC, the tribunal found no grounds to set aside the impugned order and dismissed the appeal.

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In summary, the appellate tribunal dismissed the appeal, affirming the approval of the resolution plan by the CoC and emphasizing its role in resolving the CIRP by facilitating the completion of the project with the participation of the flat buyers.

Related Link: <https://ibclaw.in/paridhi-fininvest-pvt-ltd-vs-value-infracon-buyers-association-and-anr-nclat-new-delhi/>

When CoC disapproved MSME Promoter Resolution Plan by requisite voting, NCLAT shall not sit in appeal over Commercial decision nor it is jurisdiction to compare Resolution Plan offers – Rajesh Kumar Damani Vs. Committee of Creditors of Pami Metals Pvt. Ltd. and Ors. – NCLAT New Delhi

Dated: 15th February, 2024

The case involves the dismissal of appeals filed by the Appellant against the approval of the Resolution Plan submitted by Respondent No.16, Eastern Copper Manufacturing Company Pvt. Ltd., in the context of insolvency proceedings. Here's a brief summary of the case:

Summary of Proceedings:

1. Approval of Resolution Plan:

- Respondent No.16's Resolution Plan received a significant vote in favor (86.02%) and was approved by the Committee of Creditors (CoC).
- In contrast, the plan submitted by the Appellant was disapproved by a substantial margin, with only 11.48% of the votes in favor.

2. Consideration of Appellant's Plan:

- The Appellant contended that their plan was not duly considered by the CoC. However, the minutes of the 8th and 9th CoC meetings clearly indicate that the Appellant's plan was thoroughly deliberated upon.
- All aspects of both plans, including their respective values, were scrutinized before voting.

3. Adoption of Swiss Challenge Method:

- The Appellant raised concerns about the Swiss Challenge Method not being adopted regarding their plan. However, it was clarified that this method was used between other respondents when the Appellant's plan was not compliant, and Respondent No.16 was declared as H-1.

4. Commercial Wisdom of CoC:

- The decision-making process of the CoC in approving the Resolution Plan is recognized as possessing commercial wisdom and is generally not subject to judicial review unless there are clear violations of statutory provisions.
- The Court stated that it does not have the jurisdiction to compare the plan offers or sit in appeal over the CoC's decisions regarding plan values and payments.

Court's Decision:

- The National Company Law Appellate Tribunal (NCLAT) concluded that the Adjudicating Authority's rejection of the Appellant's application was done after considering all submissions.

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- The NCLAT found no grounds to interfere with the order rejecting the appeals, and consequently, both appeals were dismissed.

In essence, the Court upheld the decision of the CoC in approving Respondent No.16's Resolution Plan, emphasizing the commercial wisdom of the CoC and the due consideration given to all plans during the process. The Court found no justification to interfere with the lower authority's decision, thus dismissing the appeals.

Related Link: <https://ibclaw.in/rajesh-kumar-damani-vs-committee-of-creditors-of-pami-metals-pvt-ltd-and-ors-nclat-new-delhi/>

IBC UPDATES

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024

Dated: 12th February, 2024

In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations to further amend the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, namely: –

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as 'the principal regulations'), in regulation 2B, in sub-regulation (1), for the second proviso, the following provisos shall be substituted, namely:-

“Provided further that the liquidator shall file the proposal of compromise or arrangement only in cases where such recommendation has been made by the committee under regulation 39BA of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

Provided further that the liquidator shall not file such proposal after expiry of thirty days from the liquidation commencement date.”

3. In the principal regulations, in regulation 14, for the words “he may apply to the Adjudicating Authority”, the words “he shall consult the consultation committee and if it advises for early dissolution, he may apply, along with a detailed report incorporating the views of the consultation committee, to the Adjudicating Authority”, shall be substituted.

4. In the principal regulations, in regulation 31A,

(i) in sub-regulation (1),

(a) in clause (e), for the word and mark “distributed.”, the word and mark “distributed;”, shall be substituted.

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Solicitors and Advocates

(b) after clause (e), the following clauses shall be inserted, namely:-

“(f) review of marketing strategy in case of failure of sale of corporate debtor as a going concern;

(g) continuation or institution of any suits or legal proceedings by or against the corporate debtor;

(h) extension of payment of balance sale consideration as provided in clause (12) of Para 1 of Schedule I, beyond ninety days, to be disclosed in the auction notice.”

(ii) in sub-regulation (6), after the proviso, the following additional provisos, shall be inserted, namely:-

“Provided further that the liquidator shall convene subsequent meetings within thirty days of the previous meeting, unless the consultation committee has extended the period between such meetings:

Provided further that there shall be at least one meeting in each quarter.”

(iii) after sub-regulation (6), the following sub-regulations shall be inserted, namely:-

“(6A) In all cases where the liquidator proposes to continue or initiate any legal proceeding, he shall, after presenting the economic rationale for the proposal, seek the advice of the consultation committee.

(6B) In every meeting, the liquidator shall present to the consultation committee:

(a) the actual liquidation cost along with reasons for exceeding the estimated cost, if any;

(b) the consolidated status of all the legal proceedings; and

(c) the progress made in the process.”

(iv) in sub-regulation (9), the following explanation shall be inserted, namely:-

“Explanation: For the purpose of this sub-regulation, the term „voting“ shall mean voting cast by the representatives of the consultation committee.”

5. In the principal regulations, in regulation 32A,

(i) in sub-regulation (4), the following explanation shall be inserted, namely:-

“Explanation: For the purpose of this sub-regulation, it is hereby clarified that the sale of the corporate debtor under clause (e) of regulation 32 cannot be offered as the only option for bidders after the first auction.”

(ii) after sub-regulation (4), the following sub-regulation shall be inserted, namely:-

“(5) Where the liquidator is of the opinion that it is viable to run the corporate debtor as a going concern, he shall consult the consultation committee and only on its advice he shall run the affairs of the corporate debtor as a going concern to the extent approved.”

6. In the principal regulations, in regulation 33, in sub-regulation (2),

(i) for the words “private sale in the manner specified in Schedule I when”, the words, “private sale only after prior consultation with the consultation committee under regulation 31A, in the manner specified in Schedule I when”, shall be substituted.

(ii) in clause (b), after the word and mark “immediately;”, the word “or”, shall be inserted.

(iii) clause (c) shall be omitted.

7. In the principal regulations, in regulation 35,

(i) in sub-regulation (2), for the words, “where the liquidator is of the opinion”, the words, “where the liquidator after consultation with the consultation committee under regulation 31A, is of the opinion”, shall be substituted.

(ii) after sub-regulation (4), the following sub-regulations shall be inserted, namely:-

Concerns:

“(5) Where valuation is undertaken as per sub-regulation (2), the liquidator shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the consultation committee before finalisation of valuation reports.

(6) The liquidator shall share the valuation reports with the members of the consultation committee after obtaining an undertaking that they shall maintain the confidentiality of such reports and shall not use these reports to cause an undue gain or undue loss to itself or any other person.

(7) In case there is deviation of twenty five percent in the valuation of an asset class under sub-regulation (2) from valuation under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall facilitate a meeting wherein the registered valuers shall explain the reasons for the difference to the consultation committee.”

8. In the principal regulations, in regulation 46,

(i) for sub-regulation (7), the following sub-regulations shall be substituted, namely: -

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

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

(ii) in sub-regulation (8), for the expression “sub-regulation (7)”, the expression “sub-regulation (7D)”, shall be substituted.

9. In the principal regulations, after regulation 46, the following regulation shall be inserted, namely: -

“46A. Exclusion of certain assets from the liquidation estate.

For the purposes of clause (e) of sub-section (4) of section 36, wherever the corporate debtor has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate of the corporate debtor.”

10. In the principal regulations, in Schedule I, in para 1,

(i) in clause 3, after the proviso, the following proviso shall be inserted, namely: -

“Provided further that the liquidator shall mention in the auction notice, the period extended under clause (h) of sub-regulation (1) of regulation 31A.”

(ii) for clause (4), clause (4A) and clause (4B), the following clause shall be substituted, namely: -

“(4) The reserve price shall be the value of the asset arrived at in accordance with regulation 35 and where an auction fails, the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time:

Provided that in cases where the reserve price of the failed auction of the asset was fixed as per the valuation under sub-regulation (1) of regulation 35, the liquidator may, on the advice of the consultation committee, reduce the reserve price up to twenty-five percent, once during the process.”

Concerns:

(iii) for clause (12), the following clause shall be substituted, namely: -

“(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days or such period as mentioned in the auction notice under clause 3, of the date of such demand: Provided that payments made after thirty days shall attract interest at the rate of twelve per cent.:

Provided further that the sale shall be cancelled if the payment is not received within the period provided under this clause.”

11. In the principal regulations, in Schedule I, in para 2, after clause (3), the following clause shall be inserted, namely: “(3A) The private sale shall be confirmed to the buyer after consultation with the consultation committee under regulation 33.”

12. In the principal regulations, in Schedule II, for Form A, the following Form shall be substituted, namely: -

Related Link: <https://ibclaw.in/insolvency-and-bankruptcy-board-of-india-liquidation-process-amendment-regulations-2024/>

Compliances for initiation of Voluntary Liquidation of a Financial Service Provider and Reporting / Sharing of information in the Voluntary Liquidation process – IBBI Circular IBBI/LIQ/67/2024 dated 13.02.2024

Dated: 13th February, 2024

1. The Code provides for the voluntary liquidation process of corporate persons. However, the definition of ‘corporate person’ in sub-section (7) of section 3 excludes any financial service provider (FSP). Section 227 read with the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 allows FSPs who have been notified by the Central Government, after consulting financial regulators, to undergo a voluntary liquidation process after obtaining prior permission of the appropriate regulator. It has been noted that some FSPs have commenced the voluntary liquidation process without notification and / or prior permission of the appropriate financial regulator.

2. Accordingly, it is hereby directed that the liquidator shall ensure that, if the corporate person falls under the category of financial service provider, it shall declare that:

(i) the category of Financial Service Providers has been notified by the Central Government under section 227 of the Code, and

(ii) the corporate person has obtained prior permission from the appropriate regulator.

Sharing of final report, Form H, and dissolution order with IBBI

3. It is hereby directed that the liquidator shall submit a copy of Form H and the final report filed before the Adjudicating Authority as per Regulation 38, and the order for dissolution to the Board to the email ID: liqvol@ibbi.gov.in.

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4. This is issued in the exercise of the powers conferred under section 196 of the Insolvency and Bankruptcy Code, 2016.

Related Link: <https://ibclaw.in/reporting-sharing-of-information-in-the-voluntary-liquidation-process-ibbi-circular-ibbi-liq-67-2024-dated-13-02-2024/>

Deposit and withdrawal of unclaimed dividends and / or undistributed proceeds in accordance with regulation 39 of IBBI (Voluntary Liquidation Process) Regulations, 2017 – IBBI Circular No. IBBI/LIQ/68/2024 dated 13.02.2024

Dated: 13th February, 2024

1. Regulation 39 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 provides a framework for the management of unclaimed deposits and undistributed proceeds during the voluntary liquidation process. As per the regulation, liquidators are mandated to deposit unclaimed / undistributed amounts into the Corporate Voluntary Liquidation Account and inform the Insolvency and Bankruptcy Board of India (IBBI / Board) in Form-G containing the details regarding the stakeholders entitled to such deposited amount.

2. To facilitate the request received from a stakeholder, under regulation 39(7), who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account for withdrawal before the dissolution of the corporate person, the liquidator shall apply to the Board in the form as per Annexure, for the release of the amount for onward distribution to the stakeholders.

3. This is issued in exercise of the powers conferred under section 196 of the Insolvency and Bankruptcy Code, 2016.

Related Link: <https://ibclaw.in/deposit-and-withdrawal-of-unclaimed-dividends-and-or-undistributed-proceeds-inaccordance-with-regulation-39-of-ibbi-voluntary-liquidation-process-regulations-2017/>

IBBI amends the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Dated: 13th February, 2024

The Insolvency and Bankruptcy Board of India notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024 ('Amendment Regulations') on 12th February 2024.

2. To strengthen the regulatory framework of the liquidation process, certain key amendments have been made to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. These changes are aimed at facilitating a smoother process for liquidation, ensuring accountability, and bolstering the confidence of stakeholders in the liquidation process. Key amendments include:

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Solicitors and Advocates

a. The liquidator may reduce the reserve price by up to 25% for assets with existing valuation of the Corporate Insolvency Resolution Process (CIRP) on one occasion with the approval of the Stakeholders' Consultation Committee (SCC) at any time during the process. For assets where fresh valuation is conducted during liquidation, the reserve price can be reduced by up to 10% in subsequent auctions with SCC's approval.

b. The liquidator may sell the assets of the corporate debtor (CD) by means of private sale only upon prior consultation with SCC, and the successful buyer shall be confirmed only after such consultation. Further, the option for the private sale of an asset, i.e., 'the asset is sold at a price higher than the reserve price of a failed auction' by the liquidator, has been removed.

c. Liquidators are mandated to convene SCC meetings with a maximum interval of 30 days, to ensure timely decisions and oversight. However, the SCC may reduce the frequency of meetings if deemed necessary, provided that at least a minimum of one meeting is held per quarter. Decisions during these meetings are to be taken based on present and voting members.

d. At every SCC meeting, liquidators are required to present a comprehensive report which inter alia includes progress made in the liquidation process, the consolidated status of all legal proceedings, and cumulative costs incurred during the process. Any cost overruns beyond initial estimates must be justified with a rationalization plan.

e. For fresh asset valuations, liquidators are required to facilitate meetings where registered valuers explain their methodology and reasons for significant deviations, if any, from the CIRP valuations. Further, the liquidator shall share the valuation reports with the SCC members after obtaining a confidentiality undertaking.

f. Before initiating or continuing any legal proceedings, liquidators must consult the SCC, presenting the economic rationale.

g. The liquidator, upon considering the viability, must consult the SCC before deciding to run the affairs of the corporate debtor as a going concern. Further, the sale of the CD as a going concern cannot be put on an auction exclusively after the first auction, and in case of a failed auction, the liquidator shall review the marketing strategy in consultation with the SCC.

h. Prior to applying for early dissolution, the liquidator must seek the SCC's views and recommendations, providing a detailed report in the application to the Adjudicating Authority (AA).

i. To capture additional details regarding the realisation and distribution made during the process, the Compliance Certificate under Form H has been modified.

j. During the period after submission of the final report but before a corporate debtor is dissolved, stakeholders claiming entitlement to any amounts deposited in the Corporate Liquidation Account can apply to the liquidator for withdrawal. Upon receiving such a request, the liquidator shall verify the claim and request the Board to release the funds to him/her for onward distribution.

k. The liquidator shall file the proposal of compromise or arrangement only in cases where the Committee of Creditors made such a recommendation during the CIRP and such proposal shall not be filed after the expiry of thirty days from the liquidation commencement date.

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l. The liquidator may extend the payment period of balance sale consideration beyond ninety days, after consultation with the SCC.

m. Wherever the corporate debtor has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate of the corporate debtor.

n. The Form A for reporting consultation with the stakeholders has been modified to capture the meetings details such as the interval between two meetings, dissent by the SCC etc.

3. The Amendment Regulations are effective from 12th February, 2024. These are available at <http://www.mca.gov.in> and <http://www.ibbi.gov.in>.

Related Link: <https://ibclaw.in/ibbi-amends-the-insolvency-and-bankruptcy-board-of-india-liquidation-process-regulations-2016/>

Insolvency Mediation – Report on framework for use of Mediation under Insolvency and Bankruptcy Code, 2016(IBC) – January, 2024

Dated: 15th February, 2024

- **Event:** *The Expert Committee, appointed by the Insolvency and Bankruptcy Board of India (IBBI), submitted its report on January 31, 2024, to examine the feasibility of introducing mediation in processes governed by the Insolvency and Bankruptcy Code, 2016 (IBC).*
- **Participants:** *Dr. T. K. Viswanathan, Chairperson of the Expert Committee, handed over the report to Mr. Ravi Mital, Chairperson of IBBI, in New Delhi. Other members, Mr. Sudhaker Shukla, Mr. Sumant Batra, and Mr. Santosh Kumar Shukla, were present during the handover.*
- **Recommendations:** *The Expert Committee recommended a framework for introducing mediation as a complementary mechanism for resolving disputes within the IBC processes. This mediation framework would operate independently within the Code, aligned with the Mediation Act, 2023, and would be voluntary in nature.*
- **Framework Highlights:**
 - *The mediation framework should be self-contained within the IBC, with independent infrastructure.*
 - *It should not compromise the core objectives of the Code, including time-bound reorganization and maximization of value.*
 - *Mediation should be voluntary, allowing parties to opt for out-of-court dispute resolution.*
 - *The introduction of mediation should be phased to maintain the timelines of existing insolvency resolution processes.*
 - *The framework should be flexible and independent, allowing for quick incorporation of implementation learning.*
- **Objective:** *The primary aim of introducing mediation is to enhance the efficiency of the insolvency resolution process while maintaining the fundamental principles and objectives of the IBC.*

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- **Conclusion:** *The Expert Committee's report emphasizes the cautious introduction of mediation within the IBC framework, aiming to strike a balance between the need for timely resolution and the autonomy of parties to opt for mediation as an alternative dispute resolution mechanism.*

Related Link:

<https://ibclaw.in/framework-for-use-of-mediation-under-the-insolvency-and-bankruptcy-code-2016-january-2024/>

Thanking You,

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