

SECTION IV: LIQUIDATION PROCESS

Liquidation Process

Editor's Note:

"Liquidation is the last resort" is the principle on which the Code is drawn upon, as is evident from the preamble itself. After expiry of the moratorium, if no resolution plan is achieved or the CoC decides to liquidate the Corporate Debtor before expiry of the moratorium, the Corporate Debtor goes into liquidation vide an order of the AA, under section 33 of the Code. The AA, in its order also appoints an insolvency professional as the liquidator of the corporate debtor. It may so happen that the resolution professional is appointed as the liquidator, subject to his consent for the same.

Once liquidation process commences, the liquidator shall make public announcement of the same and thereby invite claims from all creditors, upto the date of liquidation. The creditors who filed their claims during CIRP are also required to file fresh claims upto the liquidation commencement date. These claims must be filed within 30 days (please see: As per the Draft IBBI (Liquidation Process)(Amendment) Regulations, 2019 ("[Draft Regulations](#)"), claims along with proof, if not filed within 30 days, shall be filed within 45 days of Liquidation Commencement Date). If it so happens that the claims are not filed within the stipulated time frame, the claims are categorised as delayed claims. The Code has neither denied nor explicitly allowed a liquidator to accept delayed claims; and as such, in order to ensure admission of its claims, the creditor shall file an application under section 42 of the Code, for condonation of delay by the AA.

Though there exists no mandatory requirement for constitution of a CoC under liquidation process, the Draft Regulations provide for mandatory constitution of a Stakeholders Committee, comprising of representation from financial creditors, employees, workmen, operational creditors, representatives of the Government and

Liquidation, like death, is the last resort, but sometimes becomes inevitable. If that is the hard reality of a business, the Code must facilitate efficient and equitable distribution of the assets.

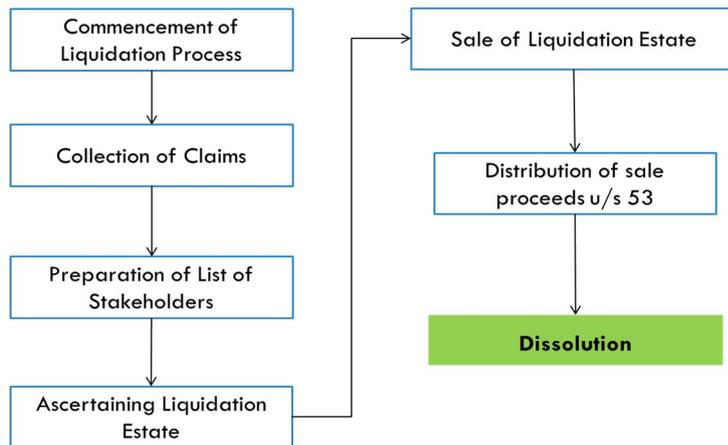
shareholders, where relevant, to advise him on matters relating to the liquidation process; the advice however, shall not be binding on the liquidator.

The most vital duty of the liquidator is to ascertain the assets that shall form part of the Liquidation Estate u/s 36 of the Code. A pertinent question here is relinquishment of security interest by secured creditors. Section 52 of the Code provides that unless the secured creditor relinquishes its security interest w.r.t. asset, the liquidator shall not include the same under Liquidation Estate. In light of the dilemma w.r.t. such relinquishment, the Draft Regulations provide that if the secured creditor does not provide an explicit relinquishment within 60 days of Liquidation Commencement Date, it shall be a deemed relinquishment. On ascertainment of the Liquidation Estate, the Liquidator shall cause sale of the same by way of e-auction. Another interesting angle that has gained much importance off-late is sale on going-concern basis. While the Code always provided for sale of corporate debtor on going-concern basis, vide Notification dated 22.10.2018, sale of the business of the corporate debtor on

going concern has also been brought under the ambit of the Code. While there have been several deliberations on the same, our detailed opinion has been provided in our write-ups on going concern sales.

Realisation from sale proceeds shall be then distributed to the stakeholders in the order of priority laid down in section 53 of the Code. Section 53 of the Code is one of the mainstay provisions of any insolvency law; evidently, therefore, this provision has attracted the most attention from the beginning. There have been several questions and judicial developments w.r.t the constitutional

validity of section 53 and its implications. The same has been discussed in details in our write-ups.



The fee of the liquidator, unless specifically fixed by the CoC before commencement of liquidation, is provided for in Code in terms of percentage of the amount realized on sale of assets and subsequently in the amount distributed.

All employees and directors of the corporate debtor stand terminated

and he liquidator may, is s/he deems fit retain officials of the Corporate Debtor in consideration of a retainership fee.

The Regulations provide that the liquidation process will usually be completed within 2 years of commencement, failing which the liquidator shall take the approval of the Adjudicating Authority for extension.

Finally, on completion of the liquidation process, the liquidator shall file an application before the Adjudicating Authority, for dissolution of the corporate debtor.