

Modes of Sale

UNDER LIQUIDATION REGULATIONS (REG. 32 AND 33)



Types of Sale

CD as
Going
concern

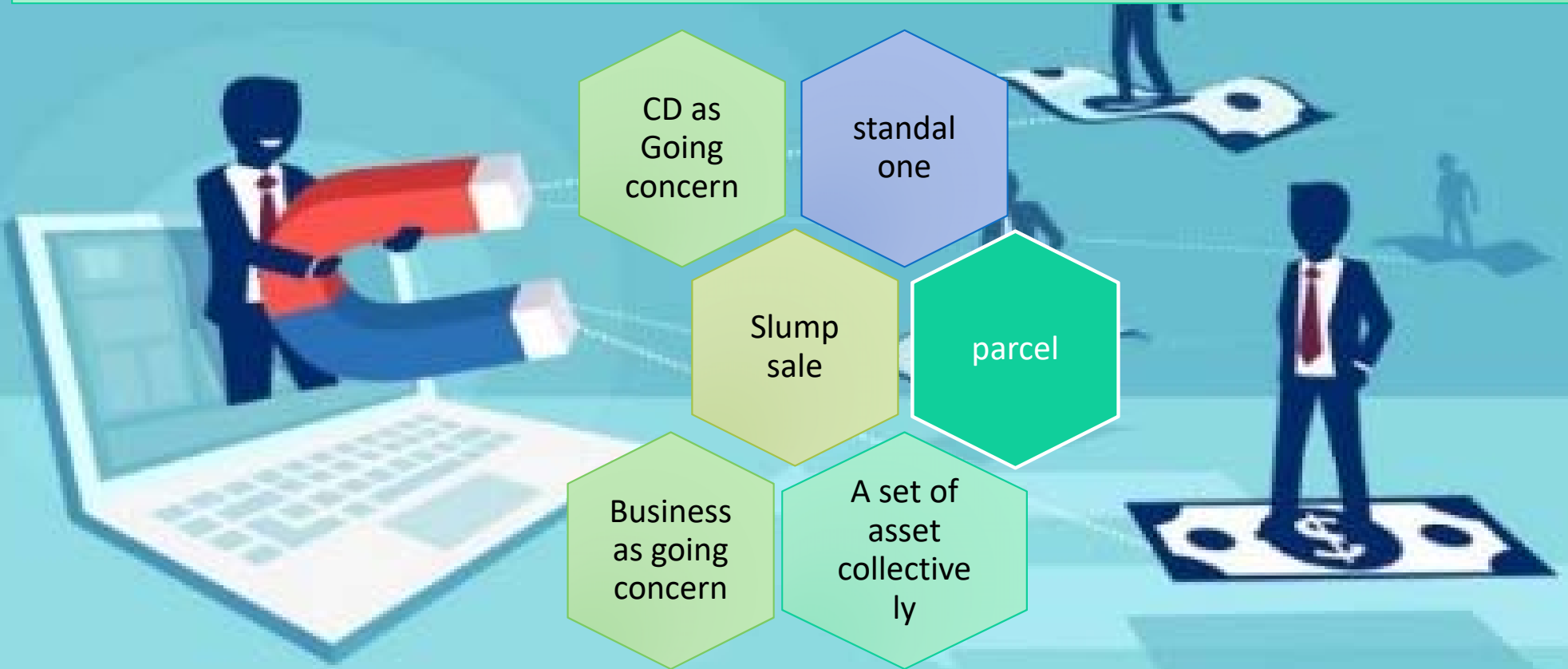
standal
one

Slump
sale

parcel

Business
as going
concern

A set of
asset
collective
ly



There's still time!

- **A provision for compromise & arrangements have been provided post the liquidation order- a window of 90 days from the commencement of liq. date has been provided.**
- **Since the amendment remains silent on whether the promoters can be party to the same, its still is a relief to the promoters to claim back the company that they are almost at the brink of losing!**
- **The procedure for such arrangement shall be as per the Companies Act, hence, one will have to juggle between the Code and the Act to successfully implement the same**



What is Going Concern Sale:

Its nothing but the transfer of undertaking as a whole from the liquidator to the acquirer

- May also include the ex-employees of the entity (however the same is debatable)
- Retention of certain services

The CD survives, only the ownership has been shifted from the liquidator to the acquirer.

CD as Going concern

CD is sold with a presumption that it can still survive with certain tweaks

Value preservation of the undertaking

CD to function as it was before CIRP

All the assets, tangibles, resources as needed to cont. operate independently w/o any value being assigned individually

Enabling Going Concern

Applicable both in
CD and business of
CD as GC

- ✓ Recommendation of CoC
- ✓ Opinion of the liquidator that the same shall maximize the value of CD
- ✓ If the liquidator is unable to sell of the CD or its business within 90 days from the liq. commence. Date, he shall have to drop this method and proceed with the other modes.*

**Amendment with affect from 25.07.2019*

Difference between sale of CD as GC and sale of Bus. Of CD as GC

Points	Sale of CD as GC	Sale of business of CD as GC
Transfer	The CD as a whole is transferred	Any one of the several business is transferred
Eq. shareholding of the entity	Stands transferred	Extinguished, once the distribution has been made
Cont. of business	The acquirer is to cont. its business	Bus. Is expected to be cont.
Dissolution	CD is acquired, hence, the legal entity survives	Only the business is acquired, the CD may be dissolved

Essentials of GC

Cont. of former bus.

Transfer of stock

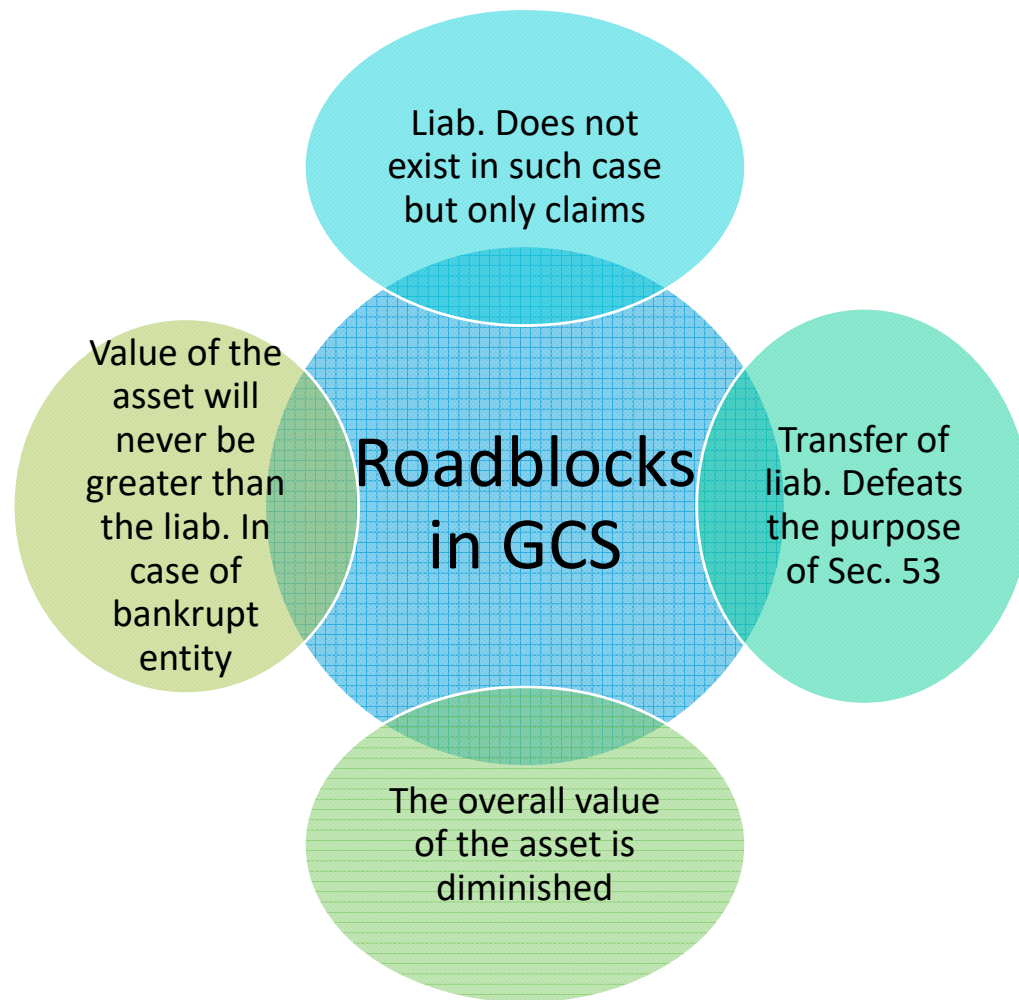
Plant and premises

Staff

Goodwill

ROADBLOCK AND POSSIBLE SOLUTION





Possible solution

- As per the amended Reg. the liab. may be determined by the CoC or the liquidator, however, it may be noted that if liab. are to be made part of it, the purpose of Sec 53. shall stand frustrated as the liab. arising outside the liq. does not form part of the waterfall and thereby ultimately affect the overall realization of the same. Hence, the liab. may be avoided altogether.

Diff b/w GCS and scheme

- Schemes are an alt. to liq., meaning- if the scheme succeeds, the question of liq. is eroded altogether whereas GCS is merely a mode to further catalyze the effect of liq. It is not an alt. way out of liq.

ASSETS

SLUMP SALE



Slump Sale

Sale of the units of an entity as a whole along with its assets and liabilities for a lump sum cons. w/o any value being assigned to such asset separately.

Checklist for Slump Sale

Test to be satisfied.

- ✓ Assets are sold off as a whole;
- ✓ Sale is for a lump-sum consideration
- ✓ Material available on record do not indicate item- wise value of the assets transferred.
- ✓ Such asset and liab. Shall be transferred to the buyer.

TAXATION ASPECT



Taxation on Slump Sale

- Transfer of only FA and not liab., goodwill, debtors, stock
- All the employees and workmen stand discharged
- Business of the CD stood discontinued
- The business of CD is not transferred

GST shall be likely to be attracted in case of the above

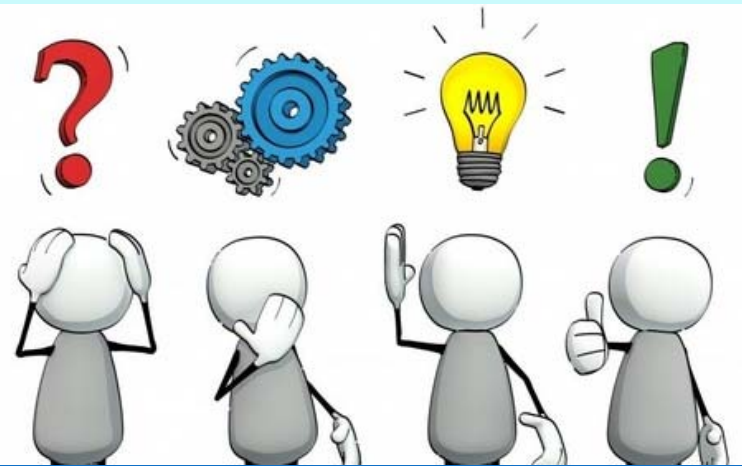
Taxation on Slump Sale

Slump sale is covered under Section 50B under the IT Act.

- The gain/loss shall form part of LTCG or STCG
 - $\text{Gain/loss} = \text{net cons.} - \text{net worth}$

Difference b/w Slump sale and GCS

- In case of GCS, the acquirer shall have to carry out the business of the CD which is not applicable in case of slump sale
- The employees, workmen, goodwill shall form a component in case of GCS which is not applicable in slump sale



STANDALONE SALE



Piecemeal/Standalone basis

- There may exist assets which are unrelated to each other, hence cannot be sold together. In such situations, the assets are sold in pieces to one or more buyers.
- Situation may also arise when the liquidator is unable to sell of the assets under slump sale, he may then opt to sell the asset under this method

Diff b/w standalone and slump sale

Points	Standalone basis	Slump Sale
Transfer	Any one or more asset transferred with proper value identified	Assets are transferred as a whole with no separate value to ind. asset



How is the sale carried out?

May be carried out through the following:

- Auction
- Private Sale

When can Private Sale be carried out?

1. The asset is perishable
2. The value is likely to distinguish
3. The asset is sold at a price higher than reserve price of a failed auction
4. Prior permission of AA taken

AUCTION



Process of carrying out the auction

Prep of tnc of sale, reserve price, emd

In case of failed auction, the liquidator *may* reduce the res price by upto 25% of subse. auction

in case of further failure: reserve price may further be red. By not more than 10% at a time

Thank
you

