

VOLUNTARY LIQUIDATION OF FINANCIAL SERVICE PROVIDERS

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Glossary

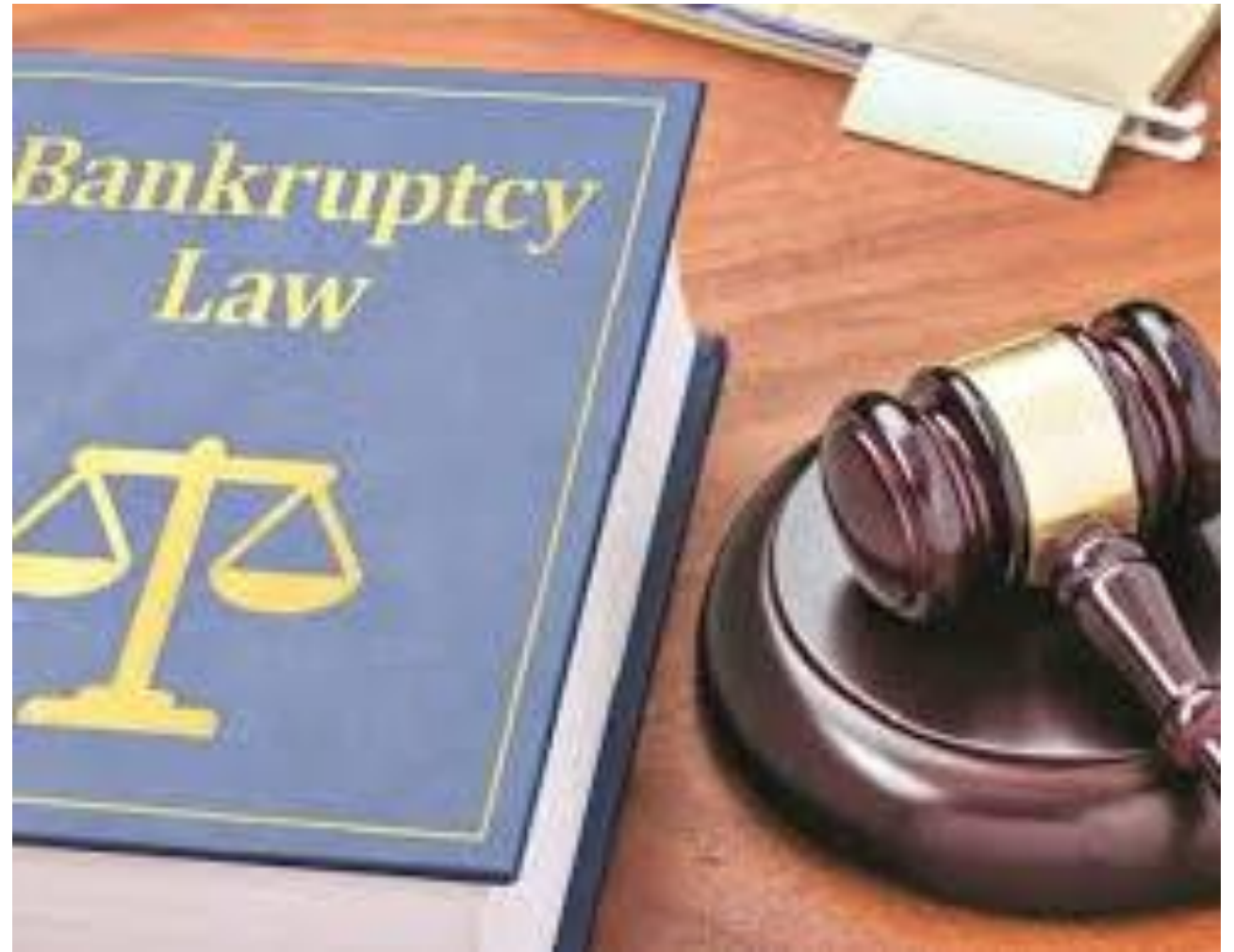
| Abbreviations | Full form |
|-----------------------------|--|
| CA, 2013 | Companies Act, 2013 |
| CIRP | Corporate Insolvency Resolution Process |
| Corporate Agent Regulations | IRDAI (Registration of Corporate Agents) Regulations, 2015 |
| Cr. | Crores |
| FSPs | Financial Service Providers |
| FSP rules | IB (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 |
| GST | Goods and Services Tax |
| IBBI | Insolvency and Bankruptcy Board of India |
| IBC or the code | Insolvency and Bankruptcy Code, 2016 |
| ID | Independent Director |
| Insurance Act | Insurance Act, 1938 |
| IP | Insolvency Professional |
| IRDAI | Insurance Regulatory and Development Authority of India |

Glossary

| Abbreviations | Full form |
|--------------------------|--|
| LLP | Limited Liability Partnership |
| LLP Act | Limited Liability Partnership Act, 2008 |
| NCLT | National Company Law Tribunal |
| Pension Fund Regulations | PFRDA (Pension Fund) Regulations, 2015 |
| PFRA | Pension Fund Regulatory Authority |
| RBI | Reserve Bank of India |
| RBI Act | Reserve Bank of India Act, 1934 |
| Reg. | Regulation |
| RoC | Registrar of Companies |
| r.w. | Read with |
| S. | Section |
| SEBI | Securities and Exchange Board of India |
| VL | Voluntary Liquidation |
| VL regulations | IBBI (Voluntary Liquidation Process) Regulations, 2017 |

What is VL?

- Voluntary winding up of the company's affairs
- No CIRP involved
- Corporate person is solvent
- Involvement of the NCLT at the last stage i.e. dissolution
- Earlier covered under ss. 304 to 323 of CA, 2013
- Now governed by s. 59 of the code and VL regulations



Who are FSPs?



Financial Service Providers

- S. 3 (17) of IBC
- engaged in the business of providing financial services
- authorisation/ registration granted by a financial sector regulator



Financial Services

- S. 3 (16) of IBC
- accepting deposits
- Safeguarding financial products,
- contracts of insurance
- offering/ managing financial products
- rendering advice
- establishing/ operating an investment scheme;
- Maintaining/ transferring records of ownership of a financial product;
- underwriting
- selling, providing/ issuing stored value or payment instruments



Financial Service Regulators

- S. 3 (18) of IBC
- Authority/ body constituted to regulate services or transactions of financial sector
- includes RBI, SEBI, IRDAI, PFRA and other regulatory authorities as may be notified by the Central Government

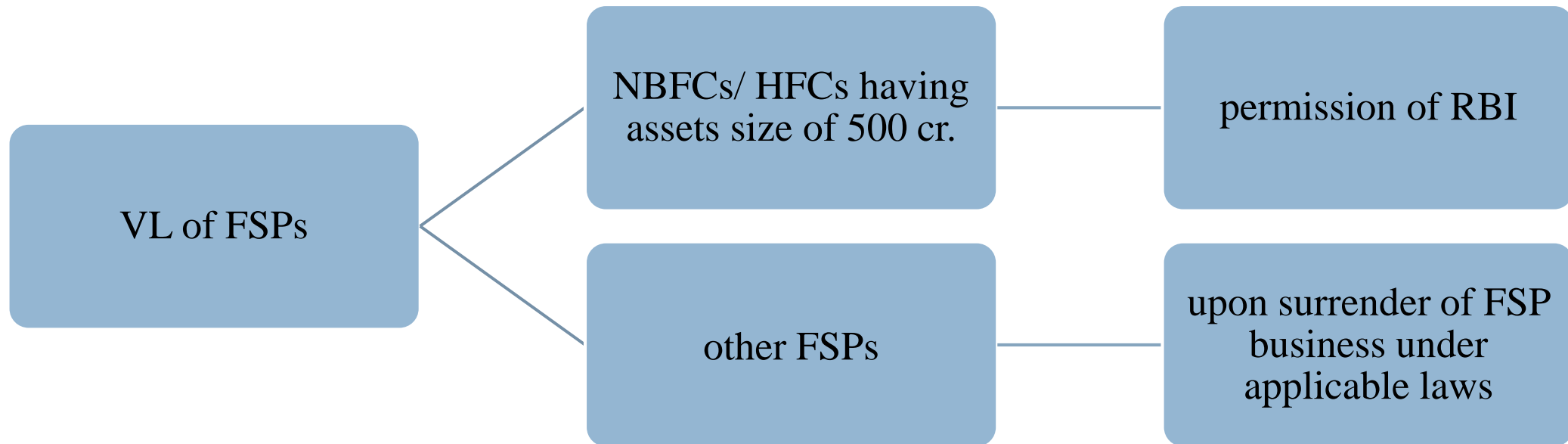
Applicability of IBC to FSPs – 1/2

- IBC is applicable only to ‘Corporate Persons’, which as per section 3 (7) includes –
 - a. Companies incorporated under the Companies Act, 2013; or
 - b. LLPs under the LLP Act; or
 - c. Any other person incorporated with limited liability under any law;

But does not include FSPs

- On November 15, 2019 the FSP rules were notified under S. 227 and 239 (zk) of the IBC – extending the provisions of the code to FSPs *‘as may be notified by the Central Government under section 227’*
- Vide notification dated November 18, 2019 under S. 227 of the IBC, provisions of IBC and FSP rules were made applicable to NBFCs and HFCs with asset size of Rs.500 crore or more, as per last audited balance sheet.

Applicability of IBC to FSPs – 2/2



Pre-requisites for opting VL

S. 59 (1) & (3) of the code read with reg. 3 of VL regulations

No Default – as per s. 3 (12)
of the code

Board resolution for VL and
appointment of Liquidator

Declaration of solvency from
majority directors

Special resolution by
contributories

Approval of creditors
representing 2/3rd in value

Pre-requisites in case of FSPs

- NBFCs/ HFCs having assets size of 500 cr.
 1. prior permission of RBI for initiating VL liquidation
 2. declaration of solvency must include an declaration that the permission has been obtained [rule. 8 (a) and (b) of FSP rules]
- Other FSPs - surrender of FSP business under applicable laws:

| Type of FSP | Provisions of surrender of business |
|---|--|
| NBFCs/ HFCs having assets size of less than 500 cr. | s. 45IA (6) of the RBI act |
| Insurance Companies | s. 3 (4) (d) of Insurance act |
| Corporate Agents | reg. 28 r.w. schedule V of Corporate Agent Regulations |
| Pension Funds | reg. 33 (c) of Pension Funds Regulations |
| Entities registered with SEBI | Surrender of registration obtained |

Effect of initiation of VL

Reg. 4 of VL regulations

Corporate person will cease to carry on its business

Liquidator to take charge of the affairs of the corporate person

Directors and employees are discharged from their duties

Eligibility for appointment as liquidator

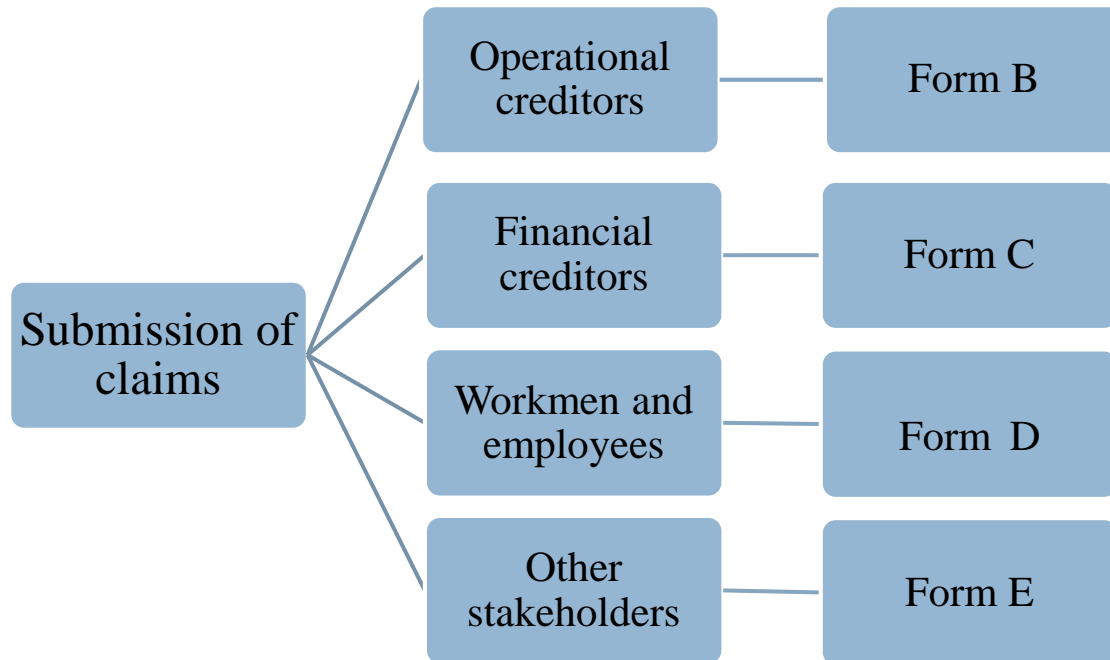
- Reg. 6 of VL regulations
- IP and every partner/director of the entity should be independent of the corporate person:
 - a. eligible to be appointed as ID
 - b. should not be a related party
 - c. during the last 3 years, has not been an employee/ proprietor/ partner of
 - i. firm of statutory/ secretarial/ cost auditors
 - ii. legal/ consulting firm having had any transaction contributing 10% or more of the gross turnover
- IP and his entity should not be under a restraint order
- Disclosure of any pecuniary/ personal relationship with the concerned corporate person or any of its stakeholders to be made to the IBBI and RoC.
- The entity to which the IP belongs should represent other stakeholders

Intimations and Public Announcement

- Intimations to regulatory authorities [s. 59 (4) of the code]
 - Intimations to RoC and IBBI within 7 days from members/ creditors approval
 - Intimations to be made to other regulatory authorities
- Public Announcement [reg. 14 of VL regulations]
 - Within 5 days of appointment of liquidator
 - Format - Form A of schedule I
 - To call upon stakeholders to be submit their claims
 - Lime limit – 30 days of liquidation commencement date
 - To be published in:
 - a. one English and one regional language newspaper having wide ciruclation
 - b. website of the corporate person (if any)
 - c. website designated by IBBI

Claims by stakeholders

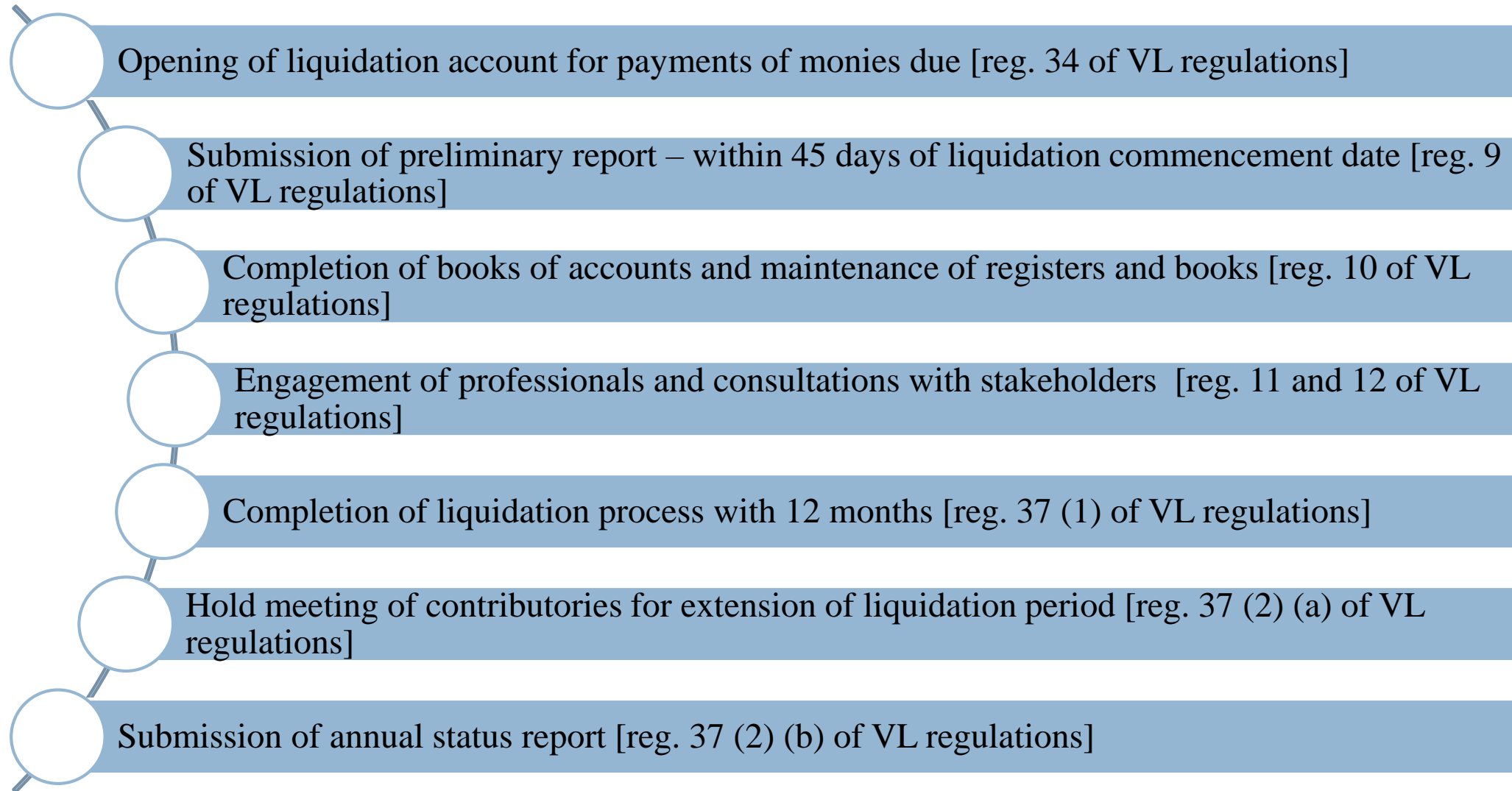
Reg. 15 – 21 of VL regulations



- While determining claim amount adjustments have to be made for: [reg. 24 – 28 of VL regulations]
 - a. Contingent claim
 - b. Debt in foreign currency
 - c. Periodical payments
 - d. Debt payable in the future
 - e. Mutual credits and set – off
- List of Stakeholder [reg. 30 of VL regulations]
 - a. To be prepared within 45 from last date to receive claim
 - b. To be available for inspection
 - c. To be displayed on the website of the corporate person and as designated by the board (if any)

existence of claim has to be proved on the basis of records available in an information utility or other relevant documents

Functions of the liquidator

- 
- Opening of liquidation account for payments of monies due [reg. 34 of VL regulations]
 - Submission of preliminary report – within 45 days of liquidation commencement date [reg. 9 of VL regulations]
 - Completion of books of accounts and maintenance of registers and books [reg. 10 of VL regulations]
 - Engagement of professionals and consultations with stakeholders [reg. 11 and 12 of VL regulations]
 - Completion of liquidation process with 12 months [reg. 37 (1) of VL regulations]
 - Hold meeting of contributories for extension of liquidation period [reg. 37 (2) (a) of VL regulations]
 - Submission of annual status report [reg. 37 (2) (b) of VL regulations]

Realisation of assets

- Manner of sale
 - Valuation and sale of assets – undertaken in the manner and mode approved by the corporate person [reg. 31 of VL regulations]

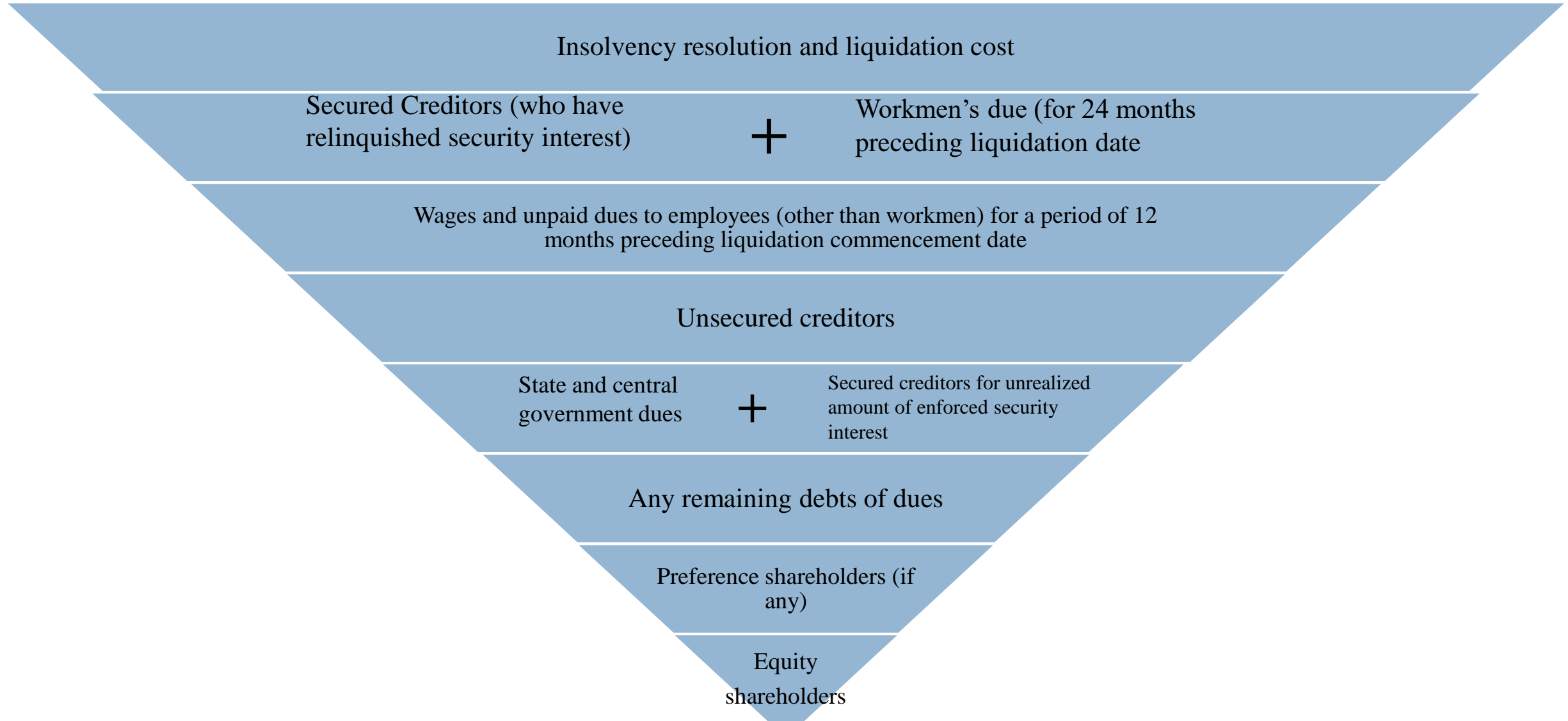
- Taxation on sale of assets
 - GST at 18%
 - LTCG/ STCG

- Recovery of monies due:
 - recovery and realization all assets of and dues to the corporate person in a time-bound manner [reg. 32 of VL regulations]

- Realisation of uncalled capital
 - Notwithstanding any charge or encumbrance on the uncalled capital
 - No distribution to the contributory until uncalled capital realized

- Distribution of proceeds
 - within six months from the receipt of the amount
 - as per s. 53 of the IBC
 - liquidation costs to be deducted before distribution
 - Distribution of asset that cannot be readily or advantageously sold – with approval of corporate debtor [reg. 35 of VL regulations]

Waterfall Mechanism



Final Report

To be submitted to

1. IBBI and RoC [reg. 38 (2) of VL regulations]
2. NCLT along with dissolution application [reg. 38 (3) of VL regulations]

Contents of the Final Report [reg. 38 (1) of VL regulations]

Audited accounts of liquidation:

- showing receipts and payments since liquidation commencement date

Statement demonstrating that:

- Assets have been disposed off
- Debt has been discharged
- No litigation is pending

Sale statement containing:

- Details realized value and its cost, manner and mode of sale, person to whom sale is made etc.

Dissolution

- Once the affairs of the corporate person have been completely wound up and its assets completely liquidated, liquidator to make an application to make an application for dissolution [reg. 59 (7) of VL regulations]
- NCLT, before passing a dissolution order will require:
 1. in case of NBCFs and HFCs having asset size of 500 cr. – to grant RBI an opportunity of being heard [rule 8 (c) of FSP rules]
 2. Affidavit certifying closure of liquidation account
 3. No dues certificate from the relevant IT office
 4. Submission of compliance report

Roadblocks in VL

1. Solvency position in case of preference shares and debentures
2. Multiple Branches
3. Terminal benefits of employees
4. Contingent liabilities and litigations
5. Role of directors and promoters vis-à-vis the Voluntary Liquidator
6. Detection of fraud or insolvency [reg. 40 of VL regulations]
7. Preferential transactions [s. 43 of IBC]
8. Undervalued transactions [s. 45 of IBC]
9. Extortionate credit transactions [s. 50 of IBC]