

Comments on IBBI's Discussion Paper on Liquidation Process

- Resolution Division
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The Insolvency and Bankruptcy Board of India ('IBBI' / 'Board') issued [Discussion Paper on Corporate Liquidation Process](#), dated 14th June, 2022 ¹('Discussion Paper') which envisages - (a) Streamlining the constitution of SCC (b) Expanding power of SCC; (c) Relinquishment of security interest by the Secured Financial Creditors; (d) Reduction of timeline of compromise or arrangement process; (e) Clarification regarding submission of progress reports to Board; (f) Event based timelines of Auction; (g) timeline for successive auction, (h) treatment of avoidance application before closure of liquidation process, and (i) consideration of claims submitted during CIRP, and the Board has solicited comments of the same.

Following are our general and specific comments on the proposals made in the Discussion Paper and other aspects of liquidation processes -

A. General Comments

The following are our general comments/suggestions on the proposals made in the Discussion Paper:

1. Kindly note that, pursuant to meeting held with IBBI on concerns pertaining to the liquidation processes under the Code, the various issues faced by liquidators and suggested solutions are as listed below:
 - 1.1. **Lightening litigation burden**
 - 1.1.1. Infrastructure issues - NCLTs need to be strengthened in terms of benches and bench members;
 - 1.1.2. Continuing engagement with professionals as quite often there are serious gaps in alignment
 - 1.1.3. NCLT members to have strong incentive for better time management
 - 1.1.4. De-clogging NCLTs
 - i. Remove operational creditors' claim beyond a hard timeline
 - ii. Move extension application or other matters not requiring adjudication from the domain of NCLTs
 - iii. Create expert advisory cell in IBBI/IPA (similar to informal guidance scheme of SEBI), which the IPs can approach for clarifications/interpretations pertaining to law
 - iv. Identify other non-adjudicative matters, not need exercise of judicial discretion, and move them out of NCLTs

¹ <https://www.ibbi.gov.in/uploads/whatsnew/b3a47a6df67ffb00832dc7baec47123c.pdf>

1.2. Permitting IPEs to be appointed as liquidators:

1.2.1. Liquidation and resolution are both multi-faceted. Expecting an individual to bring all the skills to replace the BoD of a company is both counter-intuitive, as also counter productive.

1.2.2. Individual liberty and matter of choice are completely curbed with an individual having taken an office of liquidator that drags on and on. Sale of not readily realisable assets (NRRA) exists on the face of the regulation, but rarely practical. Therefore, individuals should have the liberty to carry on leaving the rest of the members of the IPE to carry liquidation. The present situation is highly dissuasive for individuals who just cannot offload a liquidation having signed-in once.

1.3. Auction platforms:

1.3.1. Searchable auction platforms for distressed assets; possibly integrated with SARFAESI sales; current problem is one of information asymmetry, and there is no reason for this asymmetry to continue. A willing buyer for a distressed asset has to browse through unconnected auction notices to find an asset of interest. In the age of technological integration, this is hardly business-like.

1.4. Hard stop to claims by operational creditors beyond certain time:

1.4.1. No realisation expected. Claims are filed merely for having the claim on record. Takes precious time of the NCLT for inconsequential action on the part of the creditor.

1.5. Section 230 has no relevance to insolvent liquidation:

1.5.1. The section has a history but that is not relevant for insolvent liquidation. There is a process of going concern sale in IBC itself. Our detailed views are here: <https://indiacorplaw.in/2021/03/a-case-for-exclusion-of-schemes-of-arrangement-from-liquidation.html>

1.6. Promoter non-cooperation:

1.6.1. Dissuade promoters by prompt and decisive prosecutions

1.6.2. Prosecution is the only way for errant behaviour.

2. As regards consultation committee, we have the following general comments:

2.1. section 35(2) of IBC empowers the liquidator to consult any of the stakeholders entitled to distribution u/s 53. Such consultation shall not be binding on the liquidator. Records of such consultation should be made available to other stakeholders not consulted in a manner specified by IBBI. Hence, the idea is an enabling one, allowing the liquidators to have guidance wherever needed.

2.2. Further, the sequence is quite clear. When the entity is solvent, the control is in the hands of the directors/shareholders; when the entity goes insolvent, the control rests with creditors. Thus, creditors have a chance to 'decide' on the fate of the entity. However, once the entity slips into liquidation, the control comes to the court, which acts through its officer, that is, the liquidator.

- 2.3. Further, experience shows that more often than not, the collective body of creditors or stakeholders would not come to a decision/conclusion. Such indecisiveness is obvious and may be for varied reasons - including reporting and accountability norms these stakeholders are subjected to, diverse nature of interests each of these stakeholders have in the liquidation process, etc. Such indecisiveness costs a lot - many times, leading the informal restructuring process (like, JLF, etc.) to fail, and then leading the formal resolution process to fail, ultimately landing the entity in liquidation. Liquidation is a terminal process. Hence, the model of collective decision making cannot be applied to liquidation process. Such a process leads to conflict of interest (given varied set of stakeholders), leads to inordinate delays, increases costs, leads to unnecessary litigation, and does not benefit the liquidation process.
- 2.4. Hence, we are of the strong view that the role of a consultation committee should be limited to advisory role, and the intervention of such consultation committee in the functions of the liquidator shall be minimal, as is the case with other jurisdictions as well.
- 2.5. There seems to be no provision in IBC which requires that the decisions taken by the liquidator which do not match with the consultations, should be reported (other than to AA, to which liquidator anyway is accountable).
- 2.6. Further, the Discussion paper, all through, has enhanced the intervention of SCC in the liquidator's functions; which in our view, is neither warranted, nor the same is in the interests of the liquidation processes, and also, not aligned with the objectives of the Code.
3. There should be **clear stipulation as to which of the amendments would apply/would not apply to ongoing liquidations**. For example:
- 3.1. In case of proposed reg. 44A (enabling SCC to provide for treatment of avoidance proceedings and proceeds therefrom), it is extremely crucial that the benefit of such a provision is extended to ongoing liquidation processes. There have been instances where liquidation proceedings are stuck because of inconclusive/pending avoidance proceedings/investigations, etc.
- 3.2. On the other hand, the provisions relating to the constitution of SCC should not impact ongoing liquidations. Overhaul in such provisions would lead to difficulties in implementation and would cost invaluable time and money to the liquidation proceedings.

We have indicated our view as to applicability under each Proposal.

All our specific comments should be read in conjunction with the general comments as above.

B. Specific Comments

Proposal 1:

- (1) There shall be an interim SCC from the time the liquidation application is initiated, until a proper SCC is constituted within 60 days of LCD. This interim

SCC shall replicate COC in terms of constitution - voting rights shall be the same as in CoC.

- (2) The SCC shall comprise of stakeholders having voting rights in proportion to the share of payments they will receive as per waterfall mechanism in Section 53 (as per liquidation value).

VKC comments:

Having an interim consultation committee during the period commencing from the date of filing of application and receipt of liquidation order is a welcome move to bridge the much needed gap.

As regards composition of SCC, it has been proposed to constitute SCC basis share of payments a stakeholder would receive in terms of section 53 waterfall. However, we the following comments:

- While the intent of the regulations looks like only such stakeholders would form the SCC who can be expected to have distribution u/s 53, the language of the draft regulations is not that clear. Proviso to the proposed draft regulation 31A(2) indicates that representatives of stakeholders not having voting rights may attend the meetings. In our view, only such stakeholders who, based on the liquidation value, may be expected to get realisation u/s 53 should form SCC, and have proportional voting rights. This needs to come out clearly from the text of the regulations. Allowing other stakeholders to be members of SCC and/or attend SCC meetings, whose possibilities of realising anything from the liquidation estate looks remote, would lead to disputes and increase chances of litigation.
- Similarly, there seems to be no reason as to attendance of directors, partners of CD is needed in SCC. Directors of CD are not stakeholders (they are not entitled to any distribution, unless they are shareholders). The Liquidator has anyway the right to consult a stakeholder (including a shareholder) wherever required. However, allowing the (ex)directors and partners of CD a right under law to attend SCC meetings might raise concerns as to confidentiality of liquidation proceedings as well. Also, liquidation value is never that sufficient to cover the last set of claimants.
- The draft regulations talk about 'representatives of stakeholders' who shall act on behalf of the stakeholders he represents, on the basis of majority decision (50%) of such stakeholders taken by way of voting. In our view, this would lead to complications and delays - imagine a representative of workmen seeking votes of all workmen. Further, such representation may not be needed for say secured creditors, who are few in number.
- In the case of stakeholders which are large in numbers, the existing method of choosing nominees, and the manner in which such nominees should act, in our view, is optimal and needs no change. We are, therefore, of the strong view, that the proposed method of representation and voting should not be adopted.
- In essence, liquidation is a terminal proceeding and should be seen in that way.

Proposal 2: Liquidator to report reasons to deviate from the decision of SCC to IBBI and to AA within 5 days apart from mentioning in progress report

VKC comments:

Please refer our General Comments.

Proposal 3: Intimation of relinquishment of security interest by the Secured Financial Creditors within 7 days of LCD or first meeting of SCC, whichever is earlier

VKC Comments:

Existing timeline is 30 days. The proposal would bring more certainty for the liquidator while constituting the liquidation estate and reduce delays in the liquidation process.

However, a minor change may be required in Form D (Schedule II) that provides for 'Proof of claim by Financial Creditors', which requires the secured creditor to state whether 'security interest has been relinquished'. Such entry may be modified as follows :

'8B: Whether intimation regarding relinquishment of security interest given to the Liquidator within 7 days from the Liquidation Commencement date or First SCC meeting, whichever is later? If no, the secured asset shall be considered to be a part of liquidation estate'

Proposal 4: SCC may propose replacement of liquidator and file application for appointment of new liquidator

VKC Comments:

Of course, there has to be strong reasons for proposing such replacement, that is, limited to material irregularity in conducting liquidation process or exercise in powers. The same may be explicitly stated in the regulations.

As a corollary, the liquidators too, should be allowed to opt out during the liquidation processes .

Proposal 5: SCC may fix/review the fees of the Liquidator in its first meeting

VKC Comments:

Kindly see our General Comments. In addition, please note:

The liquidator's fee is at present decided by reg. 4 of Liquidation Regs.

A bare reading of the said Proposal 5 indicates that the proposal relates to the time period elapsed between the application filed for liquidation and the passing of liquidation order. We understand that such period does not come under liquidation period. Such review may be needed specifically where such interim period is long and the creditors feel a need to review the fee already fixed for the liquidator by CoC.

Hence, the idea is to fill the gap w.r.t. the fees of the Insolvency Professional during the interim period, that is the period from the date of filing of application for liquidation till the date of receiving liquidation commencement order. However, the Draft Regulations seek an amendment in reg. 31A, allowing the consultation committee to “to advise him (liquidator) on matters relating to - review fees of the liquidator”. The draft provision has not been adequately placed - the present language used indicates that SCC is empowered to review the liquidator’s fee on a continuing basis, which is not the intent of the Proposal.

Accordingly, we suggest that, instead of a provision under reg. 31A, a provision may be inserted under reg. 4 of the Liquidation Regulations or alternatively under CIRP Regulations, as follows:

Existing Draft	Proposed changes (VKC)
<p>31A. (1) The liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to- xxx (c) review fees of the liquidator</p>	<p><i>Reg. 4 of Liquidation Regulations</i> <i>The consultation committee constituted under reg. 31A(IA) may decide or review, as the case may be, fees of the resolution professional for the period commencing from the date of filing of application for liquidation till the liquidation commencement date, at any time during such period.</i></p>

Proposal 6: Reduction of timeline of compromise or arrangement process to 30 days

The proposal has been given to make necessary changes in the CIRP Regulations to discuss the possibility of exploring compromise or arrangement process in the last meeting of CoC itself instead of waiting for the liquidation commencement order so as to reduce the timeline given to complete the compromise or arrangement process to 30 days from the existing timeline of 90 days.

VKC comments:

- First of all, in our view, there is a strong case for exclusion of schemes of arrangement in the context of IBC. The Supreme Court too, in *Arun Kumar Jagatramka v. Jindal Steel and Power Ltd.*, refused to comment on the “merits” of such schemes. Given that CIRP is nothing but an attempt to revive the CD, as also, there are possibilities of a going concern sale in even liquidation, we are of the view that IBC would be better off without schemes of arrangement. We have detailed our views in this article named “[A Case for Exclusion of Schemes of Arrangement from Liquidation](#)”.

- Second, there is little guidance on what constitutes 'completion of process'. The regulations do not detail out the mechanics of a scheme in liquidation. If all the tasks including inviting schemes to NCLT approval for meetings to NCLT approval for the proposed scheme are sought to be completed in 30 days, the timeline appears to be too short. In any case, it has been observed that the process under section 230, in majority of the cases where it is explored, is continued beyond the specified period of ninety days. Thus, reduction of timeline to 30 days will not be of much use and instead will become burdensome on the Liquidator.
- Thirdly, the timelines taken by the judiciary (say, for ordering meetings and for approving schemes) should ideally be excluded from the timeline of 30 days as stipulated in the Proposal.
- Lastly, shorter timelines would lead to the need for more extensions, for which liquidators would knock on the doors of NCLT every 30 days. This would again lead to clogging of NCLTs, and consequent delays.

Applicability: Should be prospective only.

Proposal 7: Fresh valuations may be conducted anytime during the liquidation process, with advice of SCC

VKC comments:

Please read the below with our General Comments:

Considering that fresh valuation conducted during liquidation process results in results in additional cost (in terms of appointment of valuers) and delay the liquidation process (as the conduct of auction is contingent upon value of assets arrived under the valuation, which shall act as the reserve price, it has been proposed that during liquidation, the Liquidator should consider the value determined during CIRP, unless he is of the opinion that fresh valuation is required.

Earlier, fresh valuation could be conducted only within 7 days of the LCD; however, the proposal makes it quite flexible. As per the Proposal, the liquidator can go for fresh valuations with the advice of SCC anytime during the liquidation period.

In our view, this is a positive measure; as it would enable the liquidator to fix reserve prices based on latest market scenarios and asset conditions, etc.

Applicability: Should apply to ongoing liquidations as well.

Proposal 8: Submission of progress reports and minutes of SCC to IBBI

VKC Comments:

As per section 208 of the Code, the Liquidator is anyway required to submit a record of proceedings to the IBBI and IPA. We understand that due to disparity in the process followed by the Liquidator w.r.t. submission of the record of proceedings it is proposed to insert clarification in the Regulation as well that alongwith the details of ongoing and pending proceedings before the Adjudicating Authorities, the liquidators are also

required to submit a copy of each of the progress reports to IBBI as they submit to the AA.

The Proposal may also mention IPA besides IBBI.

Applicability: Would apply to ongoing liquidations as well.

Proposal 9: Event based timelines for conducting auction process, extension with the advice of SCC

VKC Comments:

Please read the below in conjunction with our General Comments:

The Proposal indicates minimum timelines for various stages during auction, which can be extended with the advice of SCC. While this might be needed to ensure fairness in the conduct of auction proceedings, the stipulation that “liquidator shall complete the auction process within thirty-five days from the issue of public notice for auction” may be an impediment when there are potential bidders who want to participate in the process.

Also, timelines imposed on the liquidator, e.g. declaration of qualified bidder in 1 to 3 days seems unrealistic, as the liquidator may be required to assess the eligibility u/s 29A, check the documents submitted, etc.

Besides, we understand that, at present, there is a gap in terms of clarity as to powers of the liquidator to fix terms and conditions of sale. For example, while the terms and conditions of sale would obviously include power to forfeit EMD in case of defaults, NCLTs may not be inclined to accept such a view given that there is no explicit enabling provision granting such power (unlike in case of laws like SARFAESI), which poses problems before the liquidator. Hence, such enabling powers should be clearly stated under Schedule I of the Liquidation Regulations, along with the fact that such provisions are only clarificatory. The following is suggested:

Existing regulations	Proposed changes (VKC)
<p>(1) The liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to-</p> <p>(a) remuneration of professionals appointed under regulation 7;</p> <p>(b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy;</p>	<p>(1) The liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to-</p> <p>(a) remuneration of professionals appointed under regulation 7;</p> <p>(b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, <i>terms of forfeiture of earnest money and other monies, marketing strategy, etc.;</i></p>

Applicability: Should be prospective only, in so far as prescribing timelines is concerned. However, clarificatory provisions like those relating to powers of liquidator should be applied to ongoing liquidations as well.

Proposal 10: Timeline for successive auction ‘notice’

VKC Comments:

The Proposal states that in the event of failure of an auction, **the successive auction notice shall be issued within the next 15 days** of a failed auction (while following the foregoing events-based timeline) unless the SCC agrees to extension of this timeline, on specific ground(s)

On the other hand, the text of Draft Regulations (clause (IA) to Para 1 of Schedule I) states that,

“ . .. the liquidator shall issue a public notice of an auction for sale under regulation 32 within forty-five days from the liquidation commencement date and **shall conduct next auction in case of failure of auction within fifteen days** from the last failed auction unless the consultation committee agrees to extend the timeline for reason to be recorded in writing.”

Clearly, there is a disconnect - while the Proposal refers to issue of next auction notice, the Draft Regulations refer to ‘conduct next auction’. Hence, the following edit is suggested in the said clause:

“ . .. the liquidator shall issue a public notice of an auction for sale under regulation 32 within forty-five days from the liquidation commencement date and **shall issue next auction notice in case of failure of auction within fifteen days** from the last failed auction unless the consultation committee agrees to extend the timeline for reason to be recorded in writing.”

Applicability: May be applied to ongoing liquidations as well (to upcoming auctions for which no notice has been issued at the time the new regulations take effect).

Proposal 11: Designating e-auction platforms by IBBI for auctions

VKC Comments:

The Discussion paper says that it has been observed that the plethora of online auction platforms existing in the market are not up to the desired level, and the market regularly raises questions on confidentiality and transparency of procedures followed by them. Therefore, it has been proposed to designate auction portals, which only can be used for auctions, considering the compliance requirements of IBC.

We have the following comments to offer:

- First of all, we are of the view that there has to be a comprehensive searchable auction platform for distressed assets; possibly integrated with SARF AESI sales, which may be manned/supervised by IBBI/NeSL. Current problem is one of information asymmetry, and there is no reason for this asymmetry to continue. A willing buyer for a distressed asset has to browse through unconnected auction

notices to find an asset of interest. In the age of technological integration, this is hardly business-like. Therefore, the central platform should facilitate filter-based auctions, allowing wide access to sellers and buyers alike.

- On designating exclusive auction portals (as the liquidators will not be able to use any other auction portals), we are of the view that the outreach of sale invitations might reduce. The idea is to ensure that the asset under sale is marketed widely. If the auction platforms are designated exclusively by IBBI, the liquidators would be left with limited options to choose from, besides being compelled to agree to the cost structures of such auction platforms. Therefore, even if IBBI is considering designating auction platforms, the number of such platforms should be significantly increased. Secondly, there has to be some control on the cost side as well. Also, this has to be an interim measure, and target should be to enable a centralised platform (as above).

Applicability: Should be prospective only.

Proposal 12: Preparation of asset memorandum considering the IM prepared by RP and valuation conducted during CIRP, and sharing asset memorandum with the SCC

It has been proposed to -

- a) use the information provided in the IM and valuation conducted during CIRP in the AM.
- b) reduce the timeline of preparation of Asset Memorandum to 30 days;

VKC Comments:

The Proposal requires the liquidator to rely on the information memorandum for the purpose of preparation of Asset Memorandum and use the details with suitable modifications. Further, no changes have been proposed in the contents of Asset Memorandum u/r 34 (2).

Also, given that timeline for relinquishment of security interest has been reduced to 7 days from LCD, we understand that the same would facilitate early preparation of the asset memorandum.

We understand that the same is more of an enabling provision.

As to sharing of asset memorandum with SCC, there can be concerns as to confidentiality of information as to expected realisation, etc. Hence, the proposed changes may not be favourable. .

Applicability: Should be prospective only.

Proposal 13: Liquidation cost shall include the interest on interim finance till the same is repaid

Our Comments:

In order to encourage interim finance, it is proposed to provide interest till the repayment of the interim finance as a part of liquidation cost instead of limiting the same to 12 months from the LCD. The same, in our view, is in the interest of liquidation process.

Applicability: Should be prospective only.

Proposal 14: Treatment of avoidance application before closure of liquidation process

The Proposal states that the liquidation proceeding, or dissolution of the CD or closure of the process should not be held up even if the matters relating to avoidance transactions are yet to be disposed of. However, there is a need for clarity on treatment of such proceedings after the dissolution of the CD / closure of the process. Hence, it has been proposed that before filing of an application for dissolution/closure of liquidation proceedings, **SCC shall decide** the manner in which proceedings in respect of avoidance transactions or fraudulent or wrongful trading, if any, will be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from such proceedings shall be distributed. This decision shall be part of the final report filed before the AA.

VKC Comments:

The following shall be read with our General Comments:

The question of continuance of avoidance proceedings has largely been in discussion and deliberation. While CIRP Regulations provide for the manner of continuation of proceedings initiated by RP post approval of resolution plan, there was lack of clarity on the treatment of same upon dissolution/completion of liquidation process.

As indicated above, SCC may remain indecisive in these matters; hence one may have to look for solutions outside of IBC. In our view, the pending proceedings, etc. may be transferred to the Official Liquidators, who have years of experience in such matters, and who would function in the best interests of the stakeholders. The Official Liquidators can carry on the proceedings until the proceedings reach fruitful conclusion. The members of SCC and the liquidator to remain obligated to co-operate as may be required. The proceeds from such proceedings may be distributed by OL to the stakeholders in accordance with section 53. This is what we propose, given the limitations of SCC as discussed above.

While our views are as above, we have the following comments with respect to the draft of regulations vis-a-vis the proposal made in the Discussion paper -

- As far as the proposal is concerned, it is for the SCC to decide the manner in which the avoidance proceedings/proceedings against fraudulent or wrongful

trading shall be pursued post closure of liquidation proceedings, and the manner in which the proceeds shall be dealt. Hence, while SCC has an advisory role to play in the liquidation proceedings, here the role of SCC is to ‘decide’, which is completely aligned with the fact that the stakeholders are the ones who would be ultimate beneficiaries of the realisations, if any, arising out of such proceedings.

- However, the text of the Draft Regulations say that, “**The liquidator shall, . . .**, provide for the manner in which proceedings in respect of avoidance transactions . . .”. The language, on a bare reading, puts onus on the liquidator. The same is not aligned with the intent of the amendment. Hence, the language of the Draft Regulations should be amended.
- Secondly, in such cases, given that there is no certainty as to time within which such proceedings would reach conclusion, there must be specific provisions requiring consent from the liquidator to continue for such extended period, and his remuneration for such period (which need not be restricted by the provisions of reg. 4(2)). These aspects must be specifically decided by the SCC. Also, in case the SCC fails to take a decision in the matter, the liquidator shall have the option to approach AA, which shall pass necessary directions fair to all stakeholders and the liquidator.
- In view of the above, we suggest the following changes in the Draft Regulations:

Existing Draft	Proposed draft (by VKC)
<p>“(44A) Treatment of avoidance of transaction</p> <p>The liquidator shall, in the application filed under sub-regulation (3) of regulation 45, provide for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed.</p>	<p>“(44A) Treatment of avoidance proceedings, etc. and proceeds therefrom</p> <p><i>The consultation committee constituted under reg. 31A(1) shall, before the liquidator files application under sub-regulation (3) of regulation 45, decide the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, or any pending investigation will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed.</i></p> <p><i>Provided that, the consultation committee requires the liquidator to continue and manage the proceedings as above, the consultation committee shall seek consent of the liquidator to continue as such, on such remunerations and</i></p>

	<p><i>terms and conditions as may be mutually agreed between the consultation committee and the liquidator.</i></p> <p><i>Provided further that the consultation committee shall have the discretion to appoint another insolvency professional to continue and manage the proceedings, under due intimation to the Adjudicating Authority.</i></p>
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- Further, there has to be a reasonable clarity on what would happen to pending avoidance proceedings/investigations, etc. on closure of liquidation proceedings, *sans* which, in certain cases, AA has refused to close the liquidation proceedings. At present. The language of reg. 44(1) may be open to interpretation, as it uses the words, “The liquidator shall liquidate the corporate debtor within a period of one year from the liquidation commencement date, notwithstanding pendency of any application for avoidance of transactions under Part II of the Code, before the Adjudicating Authority or any action thereof”. The language may imply that “liquidate” only means ‘realise the assets’. Further, this provision has to be linked to the proposed reg. 44A (as above).
- Hence, the suggested draft is as follows:

Existing text of section 44	Proposed changes
<p>44. Completion of liquidation</p> <p>(1) The liquidator shall liquidate the corporate debtor within a period of one year from the liquidation commencement date, notwithstanding pendency of any application for avoidance of transactions under Part II of the Code, before the Adjudicating Authority or any action thereof:</p> <p>Provided that where the sale is attempted under sub-regulation (1) of regulation 32A, the liquidation process may take an additional period up to ninety days.</p>	<p>44. Completion of liquidation</p> <p>(1) The <i>corporate debtor shall be dissolved or the liquidation thereof shall be completed</i>, within a period of one year from the liquidation commencement date, notwithstanding pendency of any <i>application for avoidance of transactions under Part II of the Code or fraudulent or wrongful trading under Chapter VI of Part II of the Code, or any pending investigation</i>, before the Adjudicating Authority <i>or any authority</i> or any action thereof:</p> <p><i>Provided that the application filed under sub-regulation (3) of regulation 45, shall contain decisions of the consultation committee taken in terms of</i></p>

	<p>regulation 44A.</p> <p><i>Provided further that</i>, where the sale is attempted under sub-regulation (1) of regulation 32A, the liquidation process may take an additional period up to ninety days.</p>
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Applicability: Should be applied to ongoing liquidation proceedings as well (including those where application for dissolution/completion of liquidation proceedings have been filed).

Proposal 15: Consideration of claims “collated” during CIRP

VKC Comments:

Currently, regulation 12 of the Liquidation Regulations provides that the liquidator shall make a public announcement calling upon stakeholders to submit their claims or update their claims submitted during CIRP, as on the LCD. Considering that the present provision may lead to duplication of effort in terms of invitation of fresh claim during liquidation, para 41 of the Discussion Paper seems to suggest that there should be no need of inviting fresh claims during liquidation process and that the claims admitted during CIRP may only be considered. However, the language of proposal in para 42 of the Discussion Paper is different. It states that ***“The liquidator shall consider the claims collated during the CIRP in respect of claimant who have not submitted their claim during liquidation.”***

In our view:

- Both ideas - to rely on claims during CIRP, and to consider the claims collated during CIRP for claimants who have not submitted their claims during liquidation - may not be feasible.
- Values of claims would differ at the insolvency commencement date and at the liquidation commencement date. Hence, placing reliance on claims filed during CIRP may be wrong.
- To ask the liquidator to consider all claims collated during CIRP will only lead to duplication, and will demand an unreasonable amount of effort and time of the liquidator.
- Also, across jurisdictions, the process of claims collation relies on the concept of ‘proofs of debt’, which has to be necessarily filed by the claimant. Placing reliance on the books or otherwise, without any proper proof of debt, may lead to incorrect conclusions.
- Hence, it is suggested that the provision should be restricted to the liquidator referring to the claims ‘admitted’ during the CIRP process but not submitted during the liquidation process.

- Accordingly, we suggest the following change in Draft Regulations:

Existing Draft	Proposed changes (VKC)
<p>Proviso to reg. 12(2):</p> <p>“Provided the liquidator shall consider any claim collated during the corporate insolvency resolution process but not submitted during the liquidation process.</p> <p>Reg. 30</p> <p>“The liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and any claim collated during the corporate insolvency resolution process but not submitted during the liquidation process and may either admit or reject the claim, in whole or in part, as the case may be.”</p>	<p>Proviso to reg. 12(2):</p> <p>“Provided the liquidator shall consider any <i>claim admitted</i> during the corporate insolvency resolution process but not submitted during the liquidation process, <i>in accordance with regulation 30.</i></p> <p>Reg. 30</p> <p>“The liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and any <i>claim admitted</i> during the corporate insolvency resolution process but not submitted during the liquidation process and may either admit or reject the claim, in whole or in part, as the case may be, <i>under intimation to the claimant.</i>”</p>

Applicability: Should be prospective only.