



# IBBI AMENDMENTS TO THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (LIQUIDATION PROCESS) REGULATIONS, 2016.

*This note delves into the recent amendments made by the Insolvency and Bankruptcy Board of India (IBBI) to the Liquidation Process Regulations of 2016 notified on 12.02.2024. It analyses the impact of these amendments on the efficiency of the liquidation process and assess the benefits ensued to the Stakeholders' Consultation Committee (SCC). The SCC constitutes of Secured Financial Creditor, Operational Creditor, Workmen and employees, Government etc.*

## • **Enhancing Asset Valuation: A Step-by-Step Approach to Reserve Price Reduction in Auctions**

The IBBI notified and provided clarity on Clause 4 of Schedule I of the Regulation wherein it provided clarity that the Liquidator may reduce the reserve price by up to the threshold of 25% for assets with existing valuation of the CIRP Process with the prior approval of the SCC at anytime during the auction proceedings. In case of fresh evaluation to be done, the reserve price can only be reduced up to 10% only with the SCC's approval. Stakeholders' input on reducing the reserve price is crucial for striking a balance between maximizing asset value and ensuring greater participation of the Committee of Creditors (CoC) in the liquidation proceedings.

## • **Valuation Procedures and Consultation Committee Oversight in Insolvency Proceedings**

Insertion of new sub-regulation (5), (6) and (7) under Regulation 35: Where fresh asset valuation is required, the liquidator is now mandated to hold meetings between the valuers and SCC wherein the registered valuers have to explain their methodology and give reasons for any significant deviations from the CIRP valuations. After the meeting, the finalization of the valuation report is to be done. The liquidator is further required to share the valuation report with the SCC after obtaining a confidentiality undertaking for non-disclosure purpose. This amendment aims to enhance transparency and accountability in the valuation process, ensuring fair and accurate assessments in liquidation proceedings. With the oversight of the SCC, the chances of disputes regarding the methodology adopted to arrive at the value will be minimized.

## • **SCC's advice required for early dissolution and private sale.**

Regulation 14: As per the amendment, prior to applying for early dissolution of the Corporate Debtor, the liquidator now must seek the SCC's views and recommendation. After seeking advice on the same, the liquidator has to provide a detailed application to the Adjudicating Authority. This amendment recognizes the importance of SCC's inputs and application of mind to matters of early dissolution, while safeguarding their interests as well.

Regulation 33 sub-regulation (2): As per the recent amendment prior consultation with the SCC is required of the liquidator wants to sell the assets of the corporate debtor by means of private sale and a successful buyer will be confirmed only post consultation with the SCC.

## • **Mandatory requirement of inputs by the Stakeholders Consultation Committee**

Regulation 31A: As per the amendment, the SCC's inputs on certain matters have been deemed necessary to bring transparency and direct involvement of the stakeholders in the liquidation proceedings:

1. Review of marketing strategy upon failure of the sale of the Corporate Debtor as a going concern after first auction;
2. Continuation or initiation of any legal proceedings by examining the present economic rationale of the country; and
3. Extension of balance sale consideration beyond 90 days.

## • **IBBI's Revised Framework: Enhancements to Stakeholders' Consultation Committee Meetings**

Regulation 31A sub-regulation 6: As per the amended regulation, the liquidator must organize meetings with the Stakeholders' consultation committee within 30 days of the last meeting. This should happen regularly unless the SCC decides to have more time between meetings. Also, there must be at least one meeting every three months(quarter). This change is meant to encourage regular communication and decision-making. It helps make the process of resolving things smoother and involves stakeholders more effectively.



- **Proposal of compromise or arrangement**

Regulation 2B, in sub-regulation (1): As per the amended regulation, the liquidator shall only file any proposal for compromise or arrangement in cases where the Committee of Creditors have made such recommendation during the CIRP process, and such proposal cannot be filed post 30days of the liquidation commencement date. This approach seeks to streamline procedures by ensuring comprehensive evaluation and endorsement of proposals by the committee before advancing. The goal is to enhance transparency and accountability in decision-making.

### **Our Comment:**

This amendment significantly streamlines the involvement of the SCC in the liquidation proceedings. It ensures the involvement of all the stakeholders in order to bring transparency and accountability in taking effective and timely decision to benefit of the parties involved in the liquidation of the corporate debtor. This significantly benefits the Creditors of the Corporate Debtor as well, as they are directly involved in the decision-making process along with the liquidator by putting in their inputs regarding information that is privy to the stakeholders of the Corporate Debtor, thus making the process transparent and unbiased. The amendments have been discussed in detail in the discussion paper titled "Strengthening the Liquidation Process" dated 20.10.2023. It was observed that due to the first failed auction of the assets of the corporate debtor, the reserve price of the assets was significantly reduced directly to 25% rather than gradual reduction without the stakeholder's intervention/input. This ultimately didn't provide the stakeholders with the actual realizable market value for those assets thus resulting in loss of the actual value of the assets. The Stakeholder's now as per the recent amendment has a holistic role to play in the liquidation process and it has been made mandatory to get the SCC's recommendation on marketing strategy upon failure of the sale of the Corporate Debtor as a going concern, extension of balance sale consideration, selling of assets of the corporate debtor by means of private sale etc.

The IBBI's amended regulations are a laudable step towards ensuring that the wisdom and inputs of the Stakeholders are not overshadowed in the complex and lengthy process of insolvency resolutions. The Boards commitment to fostering transparency and involvement amongst all stakeholders, parties involved, and liquidator in these intricate proceedings has established a precedence.

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