

# Insolvency and Bankruptcy Board of India

5<sup>th</sup> October, 2023

## Discussion Paper on Streamlining the Voluntary Liquidation Process

The Code and IBBI (Voluntary Liquidation Process) Regulations, 2017 (' Voluntary Liquidation Regulations') provide for completely market-driven approach in voluntary liquidation process in order to ensure faster outcomes at least possible cost.

### Disclosures by Corporate Person

2. Keeping into consideration the principle of preservation of time value enshrined in the BLRC report, the Voluntary Liquidation Regulations provide that the liquidator shall endeavour to complete the liquidation process of the corporate person within 90 or 270 days from the liquidation commencement date. As on 31<sup>st</sup> August, 2023, around 55% of the ongoing cases are continuing for more than one year. On perusal of such cases, it has been observed that the delay is generally on account of delay in making foreign remittances, pending appeal regarding demand/ penalty imposed and refund from statutory departments and other litigations.

**3. Proposal 1: *The directors of the corporate person while making declaration for initiation of the process, shall also make:***

- *Disclosure about pending proceedings or assessments before statutory authorities, and pending litigation, in respect of the corporate person.*
- *Sufficient provision has been made to meet the obligations arising, if any, on account of these pending matters.*

### Status Report

4. Before the Voluntary Liquidation Regulation was amended on 05<sup>th</sup> April 2022, Regulation 37(1) provided that the liquidator shall endeavour to complete the liquidation process of the corporate person within the twelve months from the liquidation commencement date. In the amended regulation 37(1), timelines in which liquidator shall endeavour to complete the liquidation process of the corporate person and submit the Final Report under regulation 38 have been provided as under:

*(a) two hundred and seventy days from the liquidation commencement date where the creditors have approved the resolution under clause (c) of sub section (3) of section 59 or clause (c) of sub-regulation (1) of regulation 3, and*

*(b) ninety days from the liquidation commencement date in all other cases.*

5. As on 31<sup>st</sup> August 2023, out of 408 cases in which voluntary liquidation process has commenced, final report has been filed in 175 cases. These 175 cases took an average 155 days for submission of final report. Further, out of these 175 cases, the final report has been submitted within 90 days in 64 cases.

6. Sub regulation (2) of the aforesaid regulation provides that in the event of the liquidation process continuing for more than twelve months, the liquidator shall-

*(a) hold a meeting of the contributories of the corporate person within fifteen days from the end of the twelve months from the liquidation commencement date and at the end every succeeding twelve months till dissolution of the corporate person: and*

*(b) Shall present and Annual Status Report(s) indicating progress in liquidator.....*

7. Thus, the timelines provided in sub-regulation (2) are not in consonance with the timelines of 90 days or 270 days in the regulations amended on 5<sup>th</sup> April 2022. Therefore, there is a need to amend the sub-regulation (2) to carry out consequential changes required to bring them in line with the timelines provided in sub-regulation (1). Further, there is no mechanism in place for reporting the reason for delay where liquidator fails to liquidate the corporate person within the stipulated period of 90 days or 270 days, to the Board.

**8. Proposal 2: *If the liquidator fails to liquidate the corporate person within stipulated period of 90 days or 270 days as the case may be, he shall hold a meeting of contributories of the corporate person and file within fifteen days after the end of the quarter in which the stipulated period for completion of liquidation has expired, a Status Report to the Board explaining why the liquidation has not been completed and specify, along with reasons, the additional time that shall be required for completing the process.***

### **Voluntary Liquidation of Financial Service Providers (FSP)**

9. Section 3(7) of the Code provides that the “corporate person” means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider. Further, Section 227 provides that the Central Government may, in consultation with the appropriate financial sector regulators, notify FSPs or categories of FSPs for insolvency resolution. Vide notification dated 18.11.2019, the central government notified “*Non-banking finance companies (which include housing finance companies) with asset size of Rs.500 crore or more, as per last audited balance sheet.*” for which the insolvency resolution and liquidation proceedings shall be undertaken in accordance with the provisions of the Code.

10. However, there have been instances of initiation of voluntary liquidation process of corporate persons which come under the ambit of FSP but which have not been notified. In this regard, it is proposed that in case the corporate person falls under the category of FSP which has been notified by the central government under section 227 of the Code, the declaration by corporate person shall also provide that corporate person has obtained prior permission of appropriate regulator for initiating voluntary liquidation proceedings.

**11. Proposal 3: *If the corporate person falls under the category of financial service provider, it shall declare that:***

***(a) the category of financial service provider has been notified by the central government under section 227 of the Code***

***(b), the declaration by corporate person shall also provide that the corporate person has obtained prior permission of appropriate regulator for initiating voluntary liquidation proceedings.***

### **Withdrawal from Corporate Voluntary Liquidation Account**

12. Regulation 39 of Voluntary Liquidation Regulation provides a framework for the management of unclaimed deposits and undistributed proceeds during the liquidation process. As per the regulation, liquidators are mandated to deposit unclaimed/ undistributed amounts into the Corporate Voluntary Liquidation Account along with details of stakeholders entitled to such deposited amount with the Board. This mechanism has been established to ensure a swift and efficient closure of the liquidation process. Post the transfer of funds, stakeholders or any other person who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account, may apply to the Board for withdrawal of the amount.

13. There is now a substantial increase in the requests for withdrawals in cases where final report has been submitted but dissolution order has not been passed as the time gap between order of dissolution and submission of application for dissolution of the process is widening. As per data available with the Board, the average time taken for dissolution of voluntary liquidation process from the date of submission of final report is 280 days. This causes delays in distribution and inconvenience to the claimants as the claimants are anxious about their claims. However, the present mechanism does not provide for a situation wherein distribution can be made after final report but before order of dissolution. Therefore, there is a need to provide for distribution to these claimants as the same will help them get their dues and will reduce the correspondence being made to the Board.

14. The Liquidator, while submitting dissolution application to the AA, provides the details of the unclaimed/ undistributed amount, if any, deposited into the Corporate Voluntary Liquidation Account in the final report as well as in the compliance certificate. Section 35(1)(j) of the Code mandates the liquidator to invite and settle the claims of creditors and claimants and distribute proceeds in accordance with the provisions of the code. The liquidator gets discharged from his duties only on dissolution order or closure of the liquidation process. Therefore, till the dissolution order, it is the duty of the liquidator to distribute proceeds to the claimant which were deposited with the Board.

**15. Proposal 4: *Where a request for withdrawal is received from the claimant, the Board shall direct the liquidator in all such cases where dissolution order has not been passed, for verification of the claim. This includes checking the legitimacy of the claim, the amount involved, and any other relevant details. Post verification, the liquidator shall submit their findings and opinion to the IBBI to enable it to permit withdrawal even before dissolution.***

### **Sharing final report and Form H**

16. At present, the final report and compliance certificate are submitted to the AA as per Regulation 38. The same are required to be submitted to the Board as per section 208(2)(d). However, the same are being submitted to the Board in various forms such as physical, soft copies in pen drive, CD and by email. This results in difficulty in compiling all such filings in one place. To ensure that the reports and compliance certificates submitted by them are available in one place, the IPs may be required to submit the same on the electronic platform to be notified by a circular by the Board.

**17. Proposal 5: *Form H and final report may be submitted on the electronic platform to be notified by Circular by the Board.***

### **Order of dissolution**

18. Section 59 (9) of the Code provides that the “*A copy of an order under sub-section (8) shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.*” The provisions of the Code/regulations do not explicitly provide for submission of the order of dissolution of the voluntary liquidation process to the Board. It has been observed that in several cases such orders are received after a substantial period of time. Further, in several cases, the details pertaining to realisations and distribution undergo change between submission of application for dissolution and the order. Therefore, updated data is not available with the Board.

**19. Proposal 6: *Regulations may be amended to provide for submission of order of dissolution to the Board, along with the final data in the electronic platform to be notified by Circular by the Board.***

### **Economic Analysis**

20. The proposed amendments would provide requisite clarification to the stakeholders with regard to the initiation of the process. The new disclosures shall ensure that both the liquidator and corporate person are aware about the pending issues and the corporate person make necessary provisioning for the same. Further, the proposal regarding financial service provider shall ensure that the only eligible corporate persons initiate the process.

### **Amendment Regulations**

21. A draft of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2023 (**Annexure**) is enclosed.

## Public Comments

22. The Board accordingly solicits comments on the **six (6) proposals** discussed above, along with the draft Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2023. This is issued in pursuance to regulation 4 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. Comments may be submitted electronically by **26<sup>th</sup> October, 2023**. For providing comments, please follow the process as under:

(i) Visit IBBI website, [www.ibbi.gov.in](http://www.ibbi.gov.in);

(ii) Select 'Public Comments'; and then select 'Discussion paper – Streamlining the Voluntary Liquidation Process, October, 2023';

(iii) Provide your Name, and Email ID;

(iv) Select the stakeholder category, namely, -

- a) Corporate Debtor;
- b) Personal Guarantor to a Corporate Debtor;
- c) Proprietorship firm;
- d) Partnership firm;
- e) Creditor to a Corporate Debtor;
- f) Insolvency Professional;
- g) Insolvency Professional Agency;
- h) Insolvency Professional Entity;
- i) Academics;
- j) Investor; or
- k) Others.

(v) Select the kind of comments you wish to make, namely,

- a) General Comments; or
- b) Specific Comments.

(vi) If you have selected 'General Comments', please select one of the following options:

- a) Inconsistency, if any, between the provisions within the regulations (intra regulations);
- b) Inconsistency, if any, between the provisions in different regulations (inter regulations);

- c) Inconsistency, if any, between the provisions in the regulations with those in the rules;
- d) Inconsistency, if any, between the provisions in the regulations with those in the Code;
- e) Inconsistency, if any, between the provisions in the regulations with those in any other law;
- f) Any difficulty in implementation of any of the provisions in the regulations; and
- g) Any provision that should have been provided in the regulations, but has not been provided; or
- h) Any provision that has been provided in the regulations but should not have been provided.

And then write comments under the selected option.

(vii) If you have selected ‘Specific Comments’, please select para/regulation number and then sub-para/sub-regulation number and write comments under the selected para/sub-para or regulation/sub-regulation number.

(viii) You can make comments on more than one para/sub-para or regulation / sub-regulation number, by clicking on More Comments and repeating the process outlined above from point 22(v) onwards.

(ix) Click ‘Submit’, if you have no more comments to make.

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**THE GAZETTE OF INDIA  
EXTRAORDINARY  
PART III, SECTION 4  
PUBLISHED BY AUTHORITY  
NEW DELHI, XXXXXDAY, OCTOBER XX, 2023**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
NOTIFICATION**

New Delhi, the **October, 2023**

**Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2023**

**No. IBBI/2022-23/GN/REG091.-** In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, namely: -

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2023.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (hereinafter referred to as 'the principal regulations'), in regulation 3, in sub-regulation (1), in clause (a), after sub-clause (ii), the following sub-clauses shall be inserted, namely:-

“(iii) Disclosure about pending proceedings or assessments before statutory authorities, and pending litigation, in respect of the corporate person.

(iv) The corporate person has made sufficient provision to meet the obligations arising on account of pending matters mentioned in sub-clause (iii).

(v) If the corporate person falls under the category of financial service provider:

(a) the category of financial service provider has been notified by the central government under section 227 of the Code

(b) the corporate person has obtained prior permission of appropriate regulator for initiating voluntary liquidation proceedings.”

3. In the principal regulations, in regulation 8, in sub-regulation (1), in clause (b), the word “Annual” shall be omitted.

4. In the principal regulations, in regulation 37,
- (i) in sub-regulation (2), for the words “twelve months”, the words “the period stipulated in sub-regulation (1)”
  - (ii) in sub-regulation (2), for clause (a), the following clause shall be substituted, namely:-  
“(a) hold a meeting of the contributories of the corporate person within fifteen days from the end of the period stipulated in sub-regulation (1), and at the end of every succeeding period stipulated in sub-regulation (1) till dissolution of the corporate person; and”
  - (iii) in sub-regulation (2) and (3), the word “Annual” shall be omitted.
  - (iv) after sub-regulation (3), the following sub-regulation shall be inserted, namely:-  
“(4) The liquidator shall file the Status Report with the Board explaining why the liquidation has not been completed and specifying along with reasons the additional time that shall be required for completing the process within fifteen days after the end of the quarter in which the stipulated period for completion of liquidation has expired and at the end of every succeeding quarter till submission of Final Report to the Adjudicating Authority.”
5. In the principal regulations, in regulation 38, in sub-regulation (3), after the words “Adjudicating Authority”, the words “, and to the Board on the electronic platform to be notified by circular,” shall be inserted.
6. In the principal regulations, in regulation 39, after sub-regulation (8), the following proviso shall be inserted, namely:-  
“Provided where a claim for withdrawal under sub-regulation (7) has been received after the submission of dissolution application but before the order of the dissolution of the corporate person, the Board shall direct the liquidator to submit report opining his view on such claim(s) to enable the Board to decide on such claim.
7. In the principal regulations, after regulation 39, the following regulation shall be inserted, namely:-  
“39A. The liquidator shall forward a copy of an order under section 59 to the Board within seven days from the date of such order on the electronic platform of the Board, to be notified through Circular by the Board.”
8. In the principal regulations, in regulation 41, in sub-regulation (2), in clause (k), the word “Annual” shall be omitted.
9. In the principal regulations, in Schedule I, in FORM-H COMPLIANCE CERTIFICATE, in Table provided in para 6, in Sl.No. 19, the word “Annual” shall be omitted.

RAVI MITAL, Chairperson  
[ADVT .....]



Note: The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 were published vide notification No. IBBI/2016-17/GN/REG010 on 31st March, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 130 dated 31st March, 2017 and were last amended by the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Second Amendment) Regulations, 2022 published vide notification No. IBBI/2022-23/GN/REG.095 dated 16th September 2022 in the Gazette of India, Extraordinary, Part III, Section 4, No. 457 on 16th September, 2022.