

Highlights of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024 notified on February 12, 2024

- a. Regulation 2B(1):** The liquidator shall file the proposal of compromise or arrangement only in cases where such recommendation has been made by the committee of creditors under regulation 39BA of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 within 30 days of liquidation of commencement date. The earlier proviso provided for the Liquidator to file 'the recommendation to explore a proposal of compromise or arrangement' by the Stakeholders' Consultation Committee. The amendment tightens the timelines on such proposal whereby only firm proposals by the Stakeholders' Consultation Committee are to be filed by the Liquidator within 30 days of the liquidation commencement date. Beyond the thirty- day period, no such proposals shall be filed.
- b. Regulation 14:** The liquidator had unfettered right to apply to the Adjudicating Authority for an early dissolution subject to meeting two conditions. The amendment requires the Liquidator to consult the Stakeholders' Consultation Committee on an early dissolution and if the Stakeholders' Consultation Committee advises for the same, the liquidator shall apply to the Adjudicating Authority, providing a detailed report incorporating the Consultation Committee's views.
- c. Regulation 31A:** Sub-Regulation (1) prescribes the list of matters on which the Stakeholders' Consultation Committee shall advise the liquidator on. The following matters have been added to the said list:
- i. Review of marketing strategy in case of failure of sale of corporate debtor as a going concern;
 - ii. Continuation or institution of legal proceedings by or against the corporate debtor;
 - iii. Disclosure of balance payment extensions in auction notices.

The amendment also requires the Stakeholders' Consultation Committee to meet once every quarter, and unless the consultation committee extends the interval between each meeting, the liquidator must convene further Committee meetings within 30 days of the prior ones. Regardless, the Stakeholders' Consultation Committee shall meet once every quarter.

- d. Regulation 32A:** Amendment incorporates nuances in auction procedures, emphasizing that liquidators must not solely offer the sale of corporate debtor as a going concern, as an option after the first auction. Where the liquidator is of the opinion that it is viable to run the corporate debtor as a going concern, he may do so only on the advice of the Stakeholders' Consultation Committee.
- e. Regulation 33:** The liquidator may sell the assets of the corporate debtor by means of private sale only after prior consultation with the Committee in the manner specified in Schedule I of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 i.e., when asset is perishable; likely to deteriorate in value significantly if not sold immediately or the prior permission of the Adjudicating Authority has been obtained for such sale. The option for the private sale of an asset, at a price higher than the reserve price of a failed auction, has been removed.

405, 7th Cross, IV Block, Koramangala, Bangalore – 560 034

☎: 080-25534374 / 25536618

✉: info@sharadasc.com

www.sharadasc.com

f. Regulation 35: The liquidator after consultation with the Stakeholders' Consultation Committee is of the opinion that fresh valuation is required under the circumstances, he shall within 7 days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of Regulation 32 of the corporate debtor. The amendment also mandates the liquidator must organize a meeting of registered valuers to explain their valuation methodology to the Stakeholders' Consultation Committee before finalizing valuation reports and shall address any significant deviations from standard valuation regulations. The members of Stakeholders' Consultation Committee shall sign confidentiality undertakings that they shall not use such reports for to cause an undue gain or undue loss to itself or any other person.

The liquidator may reduce the reserve price by up to 25% for assets with existing valuation of the Corporate Insolvency Resolution Process on one occasion with the approval of the Committee at any time during the process. For assets where fresh valuation is conducted during liquidation, the reserve price can be reduced by up to 10% in subsequent auctions with Committee's approval.

g. Regulation 46: Stakeholder wanting to withdraw funds from the Corporate Liquidation Account, must apply to the liquidator in Form I, who verifies claims and requests the Board for release of funds which will be then distributed to them accordingly. The liquidator shall, after making the distribution to the stakeholder, shall intimate the Adjudicating Authority of such distribution. Post-dissolution, stakeholders shall apply their claims in Form I to the Board for withdrawal. Non-stakeholders who claim to be entitled to an amount in the Corporate Liquidation Account, must provide evidence of entitlement to the liquidator or the Board, as the case may be.

h. Regulation 46A: Wherever the corporate debtor has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate of the corporate debtor

i. Schedule I:

- i. Inclusion of an additional proviso mandating liquidators to specify extended periods in auction notices;
- ii. Substitution of clauses regarding reserve price determination, allowing reductions up to 10% in subsequent auctions, with flexibility to reduce by up to 25%, once during the auction process with Stakeholders' Consultation Committee's approval.
- iii. Replacement of Clause (12) of the Schedule to stipulate the highest bidder's obligation to furnish balance sale consideration within 90 days, subject to 12% interest after 30 days and even cancellation of sale for non-payment within the stipulated timeframe.
- iv. A new clause (3A) of the Schedule mandates consultation with the Stakeholders' Consultation Committee before confirming the private sale to the buyer.
- v. Form A and Form H have been modified.

Amritha Vittal Puranik, Executive
Sreenivasan Narasimhan, Senior Associate

Date: February 29, 2024

405, 7th Cross, IV Block, Koramangala, Bangalore – 560 034

☎: 080-25534374 / 25536618

✉: info@sharadasc.com

www.sharadasc.com