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# All About Liquidation under the Insolvency and Bankruptcy Code 2016

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## Abstract

India's insolvency framework was fundamentally restructured in 2016 through the enactment of the Insolvency and Bankruptcy Code (IBC), which unified and modernised the previously fragmented laws governing insolvency and restructuring of individuals, partnerships, and corporate entities. Under this consolidated statutory regime, liquidation refers to the formal termination of a corporate debtor's business operations, accompanied by the systematic realisation and distribution of its assets among eligible stakeholders in circumstances where revival is no longer feasible. Liquidation may be triggered either upon a determination by the Committee of Creditors that winding up represents the most commercially prudent outcome or upon the failure of the corporate insolvency resolution process to yield an approved resolution plan. The process is conducted under the supervisory jurisdiction of the National Company Law Tribunal (NCLT), which ensures institutional oversight and procedural compliance. In accordance with Section 34 of the IBC, the liquidator assumes control over the corporate debtor's estate and is entrusted with functions including the verification of claims, custody and preservation of assets, and their realisation in a manner aimed at maximising value. The allocation of proceeds from liquidation is regulated by the statutory priority framework set out in Section 53, which accords precedence to secured creditors and certain protected claims, including those relating to employees. By instituting a creditor-driven, time-bound, and rule-based mechanism, the IBC has substantially improved the transparency, predictability, and efficiency of liquidation proceedings as compared to the pre-IBC regime. Although liquidation is generally viewed as a measure of last resort due to comparatively lower recovery outcomes, it plays a critical role in enforcing credit discipline and resolving cases of sustained financial failure. Ongoing legislative amendments and judicial interpretation have further refined the liquidation process, particularly in relation to stakeholder entitlements, valuation standards, and the avoidance of preferential, undervalued,

or fraudulent transactions. This paper examines the legal framework, procedural mechanics, and practical implications of liquidation under the IBC, 2016, underscoring its significance within India's evolving insolvency system.

## Introduction

Businesses of all scales require swift and reliable mechanisms not only for commencement but also for orderly exit when continuation becomes untenable. As enterprises grow, factors such as ineffective governance, flawed commercial strategies, or unethical conduct may render operations economically non-viable. Historically, India lacked a coherent and efficient framework to facilitate timely business exit or meaningful rehabilitation of distressed entities. Earlier insolvency and bankruptcy laws were scattered across multiple statutes, resulting in fragmented procedures, excessive delays, and ineffective debt recovery. The absence of a consolidated system often led to prolonged litigation, substantial erosion of asset value, and costly winding-up processes. These deficiencies underscored the necessity for a unified, time-bound legal regime capable of addressing defaults decisively and preserving financial stability through prompt resolution of distress.

To address these structural deficiencies, the Insolvency and Bankruptcy Code (IBC) was enacted following the grant of presidential assent on 28 May 2016. The legislation, passed by Parliament, established a unified and time-bound insolvency regime governing individuals, partnership firms, corporate persons, and limited liability partnerships. Central to the Code's design is the objective of maximising the value of distressed assets, a goal pursued through the replacement of multiple fragmented insolvency statutes with a single, coherent legislative framework.<sup>1</sup>

Prior to the IBC, India's debt recovery landscape was characterised by chronic procedural delays and prolonged judicial intervention, severely undermining creditor confidence. The IBC sought to reverse this trend by instituting a structured and predictable insolvency resolution process. Under the Code, liquidation of a corporate debtor is contemplated only when the Corporate Insolvency Resolution Process (CIRP) fails to produce a feasible resolution plan. Through transparency, creditor participation, and strict timelines, the IBC aims to balance stakeholder interests, foster entrepreneurship, and improve access to

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<sup>1</sup> Dr. Jayendra Kasture, Liquidation Process under the Insolvency and Bankruptcy Code 2016, Vol. 6 Issue 2, IJCRT, 1346, 1346-1348 (2018) <https://ijcrt.org/papers/IJPUB1802226.pdf>

institutional credit. Timely resolution under the Code also mitigates the depreciation of asset value that typically accompanies prolonged financial distress.

The urgency of these reforms was amplified by the sharp escalation of non-performing assets (NPAs), amounting to several trillion rupees, which posed a severe threat to the Indian banking system. Since economic stability depends on uninterrupted capital circulation, the swift resolution of stressed assets is indispensable. Accordingly, a robust insolvency framework is essential not only for resolving NPAs but also for safeguarding the resilience of the banking sector and sustaining overall economic growth.

Although often used interchangeably, insolvency and bankruptcy are legally distinct concepts. Insolvency refers to a factual financial condition in which an entity is unable to service its debts as they fall due or where liabilities exceed assets.<sup>2</sup> Bankruptcy, by contrast, is a formal legal status declared through judicial proceedings acknowledging such financial incapacity.<sup>3</sup> Insolvency thus operates as the foundational condition that triggers bankruptcy proceedings. The IBC was specifically designed to address insolvency at an early stage by integrating multiple legal regimes into a unified framework, thereby simplifying, and expediting both resolution and liquidation processes.

Within the IBC structure, liquidation is treated as an exceptional remedy rather than a default outcome. The Code prioritises corporate revival and permits liquidation only when resolution efforts prove impracticable or unsuccessful. Liquidation entails the conversion of the corporate debtor's assets into monetary value for the purpose of satisfying outstanding liabilities. It is typically initiated when the debtor can no longer meet its financial obligations or when continuation of business operations is commercially irrational. Upon commencement, a liquidator is appointed to assume control over the debtor's estate, oversee asset realisation, and distribute proceeds among creditors, employees, shareholders, and other stakeholders in accordance with statutory priorities. The liquidation process ultimately culminates in the dissolution of the corporate entity, signifying the termination of its legal existence.<sup>4</sup>

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<sup>2</sup> CA Rajkumar S. Adukia, A Study on Insolvency Laws in India Including Corporate Insolvency, available at: <http://www.mbcindia.com/Image/18%20.pdf> (last visited on November 11, 2024, at 05:34 PM)

<sup>3</sup> Ran Chakrabarti & Nandita Bose, Insolvency and Bankruptcy Code, 2016: A Critical Analysis, available at: <https://www.mondaq.com/india/insolvencybankruptcy/546802/insolvency-and-bankruptcy-code-2016-a-critical-analysis> (last visited on November 12, 2024, at 05:38 PM)

<sup>4</sup> Trisha Prasad, Liquidation of a Company, iPlaaders (November 16, 2024, 05:56 PM)  
<https://blog.ipladers.in/liquidation-of-a-company/>

## Modes of Corporate Liquidation

A corporate entity may be wound up either by its own decision or through a mandatory process imposed by a competent authority, depending upon the financial and regulatory context. Liquidation most frequently follows a finding of insolvency, where the company is unable to discharge its liabilities as they fall due, necessitating cessation of business activities and settlement of outstanding obligations. In other situations, liquidation may be initiated by promoters or controlling shareholders when continued operation no longer makes commercial sense. Such determinations are often influenced by adverse economic conditions, sustained financial losses, erosion of market share, loss of strategic clients, or shifts in consumer demand toward competing enterprises.

In some instances, stakeholders may regard liquidation as preferable to transferring ownership of the business, particularly where an uncomplicated and definitive exit is sought. Liquidation may also be adopted as a preventive strategy to avoid further deterioration of financial health before insolvency becomes inevitable. Additionally, winding up may be compulsorily ordered by judicial or regulatory bodies for non-compliance with statutory duties, including persistent failure to file mandated disclosures or to meet tax liabilities. On this basis, liquidation is generally categorised into two broad types, depending on its origin and underlying rationale.

### **Self-Initiated Liquidation**

Voluntary liquidation takes place when a company elects to discontinue its operations without being compelled by judicial orders or enforcement measures. This choice is exercised by the members of the company when continuation is no longer considered viable or advantageous. In such cases, the liquidation process is commenced internally, without intervention by the National Company Law Tribunal. Voluntary liquidation manifests in two distinct forms.

Members' voluntary liquidation applies where the company remains financially solvent, yet shareholders decide to bring operations to an end for strategic, commercial, or personal considerations. Conversely, creditors' voluntary liquidation arises when the company is unable to meet its financial commitments and its members acknowledge insolvency, leading to a consensual winding-up process undertaken with the participation and approval of creditors.

## **Tribunal-Directed Liquidation**

Compulsory liquidation is initiated through an order of a judicial authority, most commonly upon an application by creditors or regulatory agencies. This form of liquidation constitutes a formal legal mechanism that requires the company to cease operations due to insolvency or failure to comply with statutory and regulatory requirements. It is imposed irrespective of the company's internal preferences and is governed strictly by procedural and substantive legal mandates.

## **Legislative Scheme Governing Liquidation under the IBC**

The Insolvency and Bankruptcy Code, 2016 treats liquidation as a structured legal mechanism rather than a natural or inevitable consequence of insolvency. It involves the formal discontinuation of the corporate debtor's business operations, followed by the systematic conversion and allocation of its assets in accordance with statutory provisions. Liquidation is initiated only where the Corporate Insolvency Resolution Process does not result in an approved or implementable resolution plan, or where the Committee of Creditors determines that revival is commercially impracticable. This design reflects the legislative objective of preventing prolonged insolvency proceedings, safeguarding asset value, and ensuring an equitable distribution of proceeds among competing stakeholders.

At the liquidation stage, the liquidator may, with the necessary approvals, temporarily continue the business operations of the corporate debtor where such continuation is expected to result in improved value realisation, in which case the completion of the liquidator's functions may be deferred accordingly. Upon the commencement of liquidation, a statutory moratorium comes into operation, prohibiting the institution or continuation of suits or other proceedings against the corporate debtor before courts, tribunals, or similar adjudicatory bodies. Nevertheless, the liquidator may, with the permission of the Adjudicating Authority, initiate or contest legal proceedings on behalf of the corporate debtor where such action is considered appropriate. It is also pertinent that the moratorium does not extend to proceedings that have been specifically carved out by the Central Government through statutory notification.<sup>5</sup>

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<sup>5</sup> Madhu Ayachit, Liquidation under the Insolvency and Bankruptcy Code 2016 with special focus upon the priority of claims, iPleaders (November 17, 2024. 06:46 AM)  
<https://blog.ipleaders.in/liquidation-insolvency-bankruptcy-code-2016-special-focus-upon-priority-claims/>

## Statutory Triggers for Commencement of Liquidation under the IBC, 2016

Under the Insolvency and Bankruptcy Code, 2016, the authority to order liquidation vests in the Adjudicating Authority once the statutory conditions set out in Section 33 are satisfied. At this stage, the role of the tribunal is largely mechanical rather than discretionary, as the initiation of liquidation is activated upon the occurrence of clearly defined legal contingencies. These include the failure of the resolution process or an express commercial determination by creditors favouring liquidation. The Code consciously curtails judicial latitude in such situations, underscoring that liquidation flows as a rule-based statutory outcome triggered by procedural lapse or creditor consensus, rather than judicial assessment of merits.

### Non-Submission of a Resolution Plan within the Statutory Timeline

The Adjudicating Authority is empowered to direct liquidation where no resolution plan is placed within the time prescribed for completion of the Corporate Insolvency Resolution Process. In *Pariman Enterprises Pvt. Ltd. v. Atlantis Life Sciences Pvt. Ltd.*, the National Company Law Tribunal ordered liquidation after the CIRP period expired without any resolution plan being submitted, notwithstanding multiple meetings of the Committee of Creditors.<sup>6</sup> The tribunal emphasised that the timelines under the IBC are mandatory in nature and cannot be extended endlessly.

### Rejection of a Resolution Plan for Statutory Non-Compliance

Approval of a resolution plan is contingent upon compliance with Section 31 of the Code, including prior approval by the Committee of Creditors with the requisite voting majority of not less than 66%.<sup>7</sup> Where a plan fails to meet these statutory requirements, it is liable to be rejected, triggering liquidation under Section 33(1).<sup>8</sup> In *Rajputana Properties Pvt. Ltd. v. Ultra Cement Ltd. & Ors.*, the Adjudicating Authority ordered liquidation after concluding that the proposed resolution plan did not conform to the mandatory provisions of the Code.<sup>9</sup>

### Commercial Decision of the Committee of Creditors to Liquidate

The Insolvency and Bankruptcy Code accord decisive weight to the commercial judgment of

<sup>6</sup> 2018 SCC OnLine NCLT 32124

<sup>7</sup> The Insolvency & Bankruptcy Code, 2016, § 31

<sup>8</sup> The Insolvency & Bankruptcy Code, 2016, § 33(1)

<sup>9</sup> CIVIL APPEAL No. 10998 of 2018

the Committee of Creditors by empowering it to determine, with a minimum voting share of sixty-six per cent, that liquidation should be pursued in preference to the approval of a resolution plan. Upon such a determination being conveyed by the resolution professional, the Adjudicating Authority is statutorily bound to issue an order directing liquidation. This principle was affirmed in *Punjab National Bank v. Sri Guruprabha Power Ltd.*, where the tribunal upheld the CoC's unanimous decision to liquidate.<sup>10</sup> The Supreme Court endorsed this position in *K. Sashidhar v. Indian Overseas Bank & Ors.*,<sup>11</sup> holding that where the statutory voting threshold under Section 33(2)<sup>12</sup> is met, the Adjudicating Authority lacks jurisdiction to scrutinise or override the CoC's commercial determination. This limited scope of judicial review was further reinforced in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors.*, wherein the Court clarified that interference by the NCLT or NCLAT in CoC decisions is narrowly circumscribed.<sup>13</sup>

### **Violation of an Approved Resolution Plan**

Section 33(3) of the Code provides that liquidation may also be initiated where the terms of an approved resolution plan are breached by the corporate debtor or any other obligated party.<sup>14</sup> In *Yavar Dhala v. JM Financial Asset Reconstruction Co. Ltd. & Ors.*, the National Company Law Appellate Tribunal held that failure to honour the financial commitments contained in an approved resolution plan justified the commencement of liquidation proceedings.<sup>15</sup>

Once a liquidation order is passed, the Adjudicating Authority directs the issuance of a public announcement inviting claims from creditors and formally commences the process of asset realisation under the supervision and control of the appointed liquidator.

## **Institutional Architecture of the Insolvency Resolution Process**

### **Adjudicative Bodies under the IBC**

The Insolvency and Bankruptcy Code, 2016 creates specialised adjudicatory forums to deal exclusively with insolvency and bankruptcy disputes. For matters concerning corporate entities, including companies and limited liability partnerships, jurisdiction is vested in the

<sup>10</sup> 2020 SCC OnLine NCLT 13313

<sup>11</sup> Civil Appeal No. 10673 of 2018

<sup>12</sup> The Insolvency & Bankruptcy Code, 2016, § 33(2)

<sup>13</sup> (2020) 8 SCC 531

<sup>14</sup> The Insolvency & Bankruptcy Code, 2016, § 33(3)

<sup>15</sup> Company Appeal (AT) (Insolvency) No. 13 of 2019

National Company Law Tribunal (NCLT), which functions as the forum of first instance. Orders passed by the NCLT are subject to appeal before the National Company Law Appellate Tribunal (NCLAT), with a further statutory appeal lying to the Supreme Court of India.

By contrast, insolvency proceedings concerning individuals and partnership firms, excluding limited liability partnerships, are adjudicated by the Debt Recovery Tribunal (DRT). Decisions of the DRT are appealable before the Debt Recovery Appellate Tribunal (DRAT), with a further statutory appeal lying to the Supreme Court. The Insolvency and Bankruptcy Code clearly delineates the jurisdictional boundaries of the National Company Law Tribunal and the Debt Recovery Tribunal, thereby maintaining a distinct division between corporate insolvency matters and those relating to non-corporate persons.

## **Commercial Authority of the Committee of Creditors**

The Insolvency and Bankruptcy Code places the Committee of Creditors at the core of both the resolution and liquidation architecture. Consisting solely of financial creditors, the CoC is charged with assessing the commercial viability and financial merits of resolution proposals and with deciding whether the continuation of the insolvency resolution process aligns with the interests of the stakeholders involved.<sup>16</sup> The Code accords overriding importance to the collective commercial wisdom of the CoC, on the premise that financial creditors are best equipped to assess risk, viability, and value preservation. Accordingly, decisions taken by the CoC, whether to approve a resolution plan or to proceed with liquidation, carry binding legal effect, subject only to compliance with statutory requirements and procedural safeguards.

## **Insolvency Resolution Professionals and Their Functions**

The Insolvency and Bankruptcy Code provides for two distinct insolvency professionals who perform functions during the resolution phase, namely the Interim Resolution Professional (IRP) and the Resolution Professional (RP). Following the admission of an insolvency application, the Adjudicating Authority is required to appoint an IRP within the stipulated period to manage the preliminary stage of the Corporate Insolvency Resolution Process. At the inaugural meeting of the Committee of Creditors, the members may elect to continue the IRP as the Resolution Professional or, in accordance with the prescribed voting requirements, decide to appoint another qualified professional.

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<sup>16</sup> The Insolvency & Bankruptcy Code, 2016, § 21

Where the Committee of Creditors recommends a substitution, such a proposal is transmitted by the Adjudicating Authority to the Insolvency and Bankruptcy Board of India (IBBI) for confirmation. In the event that the IBBI does not communicate its decision within a period of ten days, the IRP remains authorised to perform the duties of the Resolution Professional until approval is received.

## Supervisory Role of the Insolvency Regulator

The Insolvency and Bankruptcy Board of India (IBBI), established on 1 October 2016, functions as the apex regulatory body overseeing insolvency and bankruptcy administration in the country. It is entrusted with the implementation of the Insolvency and Bankruptcy Code and with the regulation and supervision of insolvency professionals, insolvency professional agencies, and information utilities. The Board also performs ancillary functions such as the empanelment of resolution professionals, oversight of professional standards and conduct, and the recommendation of statutory or regulatory reforms where deficiencies in the framework are identified. By discharging these responsibilities, the IBBI aims to promote transparency, accountability, and ethical compliance across insolvency resolution proceedings involving corporate entities, partnership firms, and individuals.<sup>17</sup>

## Initiation of Corporate Insolvency Resolution Proceedings

### Financial Creditors and Triggering of CIRP

Section 5(7) of the Insolvency and Bankruptcy Code, 2016 characterises financial creditors as persons or entities that extend finance in return for the time value of money. This class includes conventional lenders such as banks and financial institutions, as well as specified non-traditional creditors, including homebuyers who contribute funds with the expectation of a financial return.<sup>18</sup> Financial creditors are vested with the statutory right to initiate insolvency proceedings upon the occurrence of a repayment default. The initiation mechanism functions as follows:

- (a) Upon default, the financial creditor may apply before the designated Adjudicating Authority, most commonly the National Company Law Tribunal (NCLT).
- (b) The Adjudicating Authority is required to determine the existence of default within a period of fourteen days from receipt of the application.

<sup>17</sup> Girijesh, All you need to know about the Insolvency and Bankruptcy Code, iPleaders (September 4, 2020) <https://blog.ipleaders.in/all-need-know-about-insolvency-bankruptcy-code/>

<sup>18</sup> The Insolvency & Bankruptcy Code, 2016, § 5(7)

- (c) Where default is established, the application is admitted; in the absence of such proof, the application stands rejected.
- (d) Admission of the application marks the formal commencement of the Corporate Insolvency Resolution Process (CIRP), and the applicant is notified of the decision within seven days.

### **Participation of Operational Creditors in Insolvency Proceedings**

Operational creditors, as defined under Section 5(20) of the Code, are persons or entities that supply goods or services to the corporate debtor, rather than extending financial credit. For instance, a vendor supplying industrial machinery on deferred payment terms qualifies as an operational creditor. The procedural route available to such creditors differs from that of financial creditors and typically involves the following stages:

1. Upon default, the operational creditor must serve a demand notice on the corporate debtor.
2. The debtor is granted ten days to either discharge the outstanding liability or raise a genuine dispute regarding the claim.
3. If the dispute remains unresolved, the operational creditor may approach the Adjudicating Authority with an insolvency application.
4. The creditor is permitted to suggest the name of an insolvency resolution professional to manage the proceedings.
5. The Adjudicating Authority must decide on the admissibility of the application within fourteen days.
6. Once admitted, the Corporate Insolvency Resolution Process is deemed to have commenced.

### **Position and Obligations of Corporate Debtors under the IBC**

Read together, Sections 5(7), 5(8), and 5(20) of the Insolvency and Bankruptcy Code define a corporate debtor as a company or limited liability partnership that is liable in respect of either a financial debt or an operational debt.<sup>19</sup> The Code permits a corporate debtor to voluntarily invoke insolvency proceedings upon the occurrence of a default. In such cases, the debtor may apply directly before the Adjudicating Authority seeking initiation of the Corporate Insolvency Resolution Process.

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<sup>19</sup> The Insolvency & Bankruptcy Code, 2016, § 5(8)

Upon receipt of the application, the Adjudicating Authority is required to examine it and render a decision within fourteen days as to its admission or rejection. Where the application is admitted, the Corporate Insolvency Resolution Process formally begins. If the application is rejected, the corporate debtor is notified accordingly and may be granted an opportunity to rectify procedural defects or deficiencies in documentation, where permissible.

Once the Corporate Insolvency Resolution Process is initiated, the National Company Law Tribunal imposes a statutory moratorium for a period of 180 days. This moratorium, often characterised as a suspension or freeze period, prohibits the institution or continuation of recovery proceedings, enforcement of security interests, transfer or alienation of assets, and termination of essential contracts against the corporate debtor during the resolution phase.

Compulsory liquidation under Section 33 of the Code is triggered where the insolvency resolution process does not culminate in an effective resolution within the prescribed statutory timelines. The underlying rationale of this provision is to prevent prolonged insolvency proceedings that may erode asset value and undermine creditor confidence. Liquidation may be directed due to procedural failures such as the absence of a resolution plan within the stipulated period, substantive non-compliance of a proposed plan, or a commercial determination by the Committee of Creditors that liquidation better serves the interests of stakeholders. Judicial authorities have consistently affirmed that once the statutory thresholds are met, liquidation follows as a legal consequence rather than an exercise of discretionary adjudication.

Where no separate appointment is made, the resolution professional overseeing the Corporate Insolvency Resolution Process may assume the office of liquidator, provided that written consent is furnished to the Adjudicating Authority. Additionally, if at any point before the approval of a resolution plan the resolution professional conveys the Committee of Creditors' determination to proceed with liquidation, the Adjudicating Authority is statutorily obligated to issue a liquidation order in terms of Section 33(1)(b)(i)–(iii) of the Code. Similarly, upon an application under Section 33(3), where a breach of an approved resolution plan by the corporate debtor is established, the Authority is required to direct liquidation in accordance with the same statutory scheme, subject to the operation of Section 52.<sup>20</sup>

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<sup>20</sup> The Insolvency and Bankruptcy Code, 2016, § 52

Following the issuance of a liquidation order, the initiation or continuation of any legal proceedings by or against the corporate debtor is barred, save for exceptions expressly provided under sub-sections (5)<sup>21</sup> and (6)<sup>22</sup> of Section 33 of the Code.

## Statutory Grounds for Enforced Liquidation under the IBC

Section 33 of the Insolvency and Bankruptcy Code, 2016 provides the legal basis for ordering compulsory liquidation by the Adjudicating Authority. The tribunal may direct liquidation where the creditor-initiated Corporate Insolvency Resolution Process fails to culminate in an effective or legally compliant resolution. In such situations, liquidation is not discretionary but follows upon the fulfilment of specific statutory conditions enumerated under the Code.

### Rejection of a Resolution Plan for Statutory Deficiencies

A proposed resolution plan is liable to be refused approval where it does not satisfy the mandatory requirements laid down under the Code. Approval under Section 31 is conditional upon compliance with Section 30(2),<sup>23</sup> which mandates, *inter alia*, priority payment of insolvency resolution and liquidation costs, fair treatment of operational creditors by ensuring payment not less than their entitlement under the liquidation waterfall in Section 53, and protection of dissenting financial creditors. In addition, a resolution plan is required to specify the way the corporate debtor will be managed following its approval, ensure compliance with all applicable legal requirements, and incorporate practical mechanisms for effective implementation and monitoring. The Insolvency and Bankruptcy Board of India is further empowered to prescribe additional conditions that must be satisfied for a plan to be approved.<sup>24</sup>

### Commercial Determination of Liquidation by the Committee of Creditors

The Insolvency and Bankruptcy Code authorise the Committee of Creditors to determine that liquidation should be pursued at any point during the Corporate Insolvency Resolution Process, so long as no resolution plan has been approved and the decision is taken in accordance with the requisite voting threshold. This authority was recognised in *Sunil S. Kakkad v. Atrium Infocom Ltd.* and subsequently affirmed by the Supreme Court.<sup>25</sup> The

<sup>21</sup> The Insolvency and Bankruptcy Code, 2016, § 33(5)

<sup>22</sup> The Insolvency and Bankruptcy Code, 2016, § 33(6)

<sup>23</sup> The Insolvency and Bankruptcy Code, 2016, § 30(2)

<sup>24</sup> Dinesh Gupta v. Vikram Bajaj, Liquidator of M/s Best Foods Ltd., Company Appeal (AT) (Insolvency) No.276 of 2021

<sup>25</sup> Company Appeal (AT) (Insolvency) No. 194 of 2020

National Company Law Appellate Tribunal reiterated this position in *ACRE-31 Trust v. Pawan Kumar Goyal*, holding that the CoC retains the discretion to opt for liquidation at any point prior to approval of a resolution plan.<sup>26</sup>

## **Liquidation Triggered by Breach of an Approved Resolution Plan**

In circumstances where a corporate debtor defaults on the obligations stipulated in an approved resolution plan, any aggrieved stakeholder is entitled to move the Adjudicating Authority seeking liquidation. If the Authority is satisfied that the terms of the resolution plan have been breached, it may direct the liquidation of the corporate debtor. Alongside ordering liquidation, the tribunal is also empowered to levy monetary penalties on the resolution applicant or any party found responsible for such non-compliance. In the case of S.K. Wheels Pvt. Ltd., liquidation was ordered on account of the failure to implement the sanctioned resolution plan, and a penalty of ₹2,00,000 was imposed on the resolution applicant.

## **Legal Consequences Flowing from a Liquidation Order**

Once a liquidation order is issued, the Adjudicating Authority must ensure that the order is publicly announced and communicated to the relevant Registrar of Companies. In accordance with Section 33(5) of the Code, the initiation or continuation of legal proceedings by or against the corporate debtor is prohibited unless prior permission of the tribunal is obtained. Nevertheless, the Central Government is empowered, in consultation with the relevant financial sector regulators, to notify specific categories of proceedings that are exempted from this restriction. Additionally, Section 33(7) of the Code provides further statutory guidance governing the legal consequences flowing from the liquidation order,<sup>27</sup> the passing of a liquidation order ordinarily brings about the cessation of service of all officers and employees of the corporate debtor. An exception exists where the business of the corporate debtor is allowed to continue as a going concern during liquidation, in which case employment may be retained to the extent necessary to facilitate an orderly winding up and maximise asset value.

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<sup>26</sup> Company Appeal (AT)(Ins) - 447/2023

<sup>27</sup> The Insolvency and Bankruptcy Code, 2016, § 33(7)

## Office of the Liquidator in the Liquidation Regime

### Appointment, Transition, and Administrative Continuity

Upon the commencement of liquidation, control over the corporate debtor's assets vests in the liquidator, who is entrusted with conducting the winding-up process strictly in compliance with the provisions of the Code. The designation of a liquidator ensures administrative consistency, especially in situations where the individual previously serving as the resolution professional transitions into the liquidation role following the liquidation order. Acting under the supervision of the Adjudicating Authority, the liquidator is responsible for safeguarding the value of the liquidation estate, scrutinising and admitting claims, and facilitating a structured, transparent, and accountable dissolution of the corporate debtor.

As a general practice, the resolution professional appointed during the Corporate Insolvency Resolution Process continues as the liquidator after the liquidation order is passed, provided that written consent is submitted to the Adjudicating Authority in the prescribed manner. In the absence of such consent, the Authority is empowered to appoint another qualified insolvency professional as liquidator. Additionally, where a resolution plan is rejected due to failure to comply with statutory mandates, the Adjudicating Authority is required to replace the resolution professional.<sup>28</sup> If the resolution professional does not provide written consent to take on the position of liquidator, the Insolvency and Bankruptcy Board of India may recommend the professional's substitution, recording the justification for such advice in writing. In such circumstances, the Adjudicating Authority instructs the IBBI to nominate another eligible insolvency professional for appointment as liquidator, and the Board must submit its nomination together with the nominee's written consent within ten days.<sup>29</sup>

The Liquidation Process Regulations lay down detailed eligibility conditions for appointment as a liquidator.<sup>30</sup> The appointee must maintain independence from the corporate debtor and meet the standards prescribed for an independent director under the Companies Act, 2013.<sup>31</sup> A person appointed as liquidator is required to be independent of the corporate debtor and must not fall within the category of related parties. Further, such person should not have served as the corporate debtor's proprietor, employee, partner, or cost auditor during the three

<sup>28</sup> The Insolvency and Bankruptcy Code, 2016, § 34 (1)

<sup>29</sup> The Insolvency and Bankruptcy Code, 2016, § 34 (4)

<sup>30</sup> The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 3 (1)

<sup>31</sup> The Companies Act, 2013, § 149

financial years immediately preceding the commencement of liquidation.<sup>32</sup> In addition, the liquidator is statutorily obligated to make full disclosure to the Adjudicating Authority as well as to the Insolvency and Bankruptcy Board of India of any personal, professional, or financial relationships with the corporate debtor or its shareholders.

### Remuneration of the Liquidator

The liquidator is entitled to receive remuneration for services rendered in the administration of the liquidation, with such fees being determined on the basis of the liquidation value of the asset pool and in accordance with the fee structure prescribed by the Insolvency and Bankruptcy Board of India.<sup>33</sup> The remuneration payable to the liquidator is drawn from the liquidation estate and is distributed in accordance with the priority waterfall set out under Section 53 of the Insolvency and Bankruptcy Code. As provided under the Liquidation Process Regulations, the quantum of such remuneration is determined since a resolution adopted by the Committee of Creditors in terms of Regulation 39D of the Corporate Insolvency Resolution Process Regulations.<sup>34</sup> The responsibility for determining the liquidator's remuneration ordinarily lies with the Committee of Creditors during the Corporate Insolvency Resolution Process. In the absence of such a determination, the liquidator is entitled to receive compensation at the rate applicable to the Resolution Professional during the CIRP, computed as a percentage of the sums realised, together with reimbursement of other net liquidation costs. Fifty per cent of the fee payable becomes due upon the realisation of the assets.

### Public Announcement Inviting Stakeholder Claims

Following appointment, the liquidator is required to issue a public notice calling for claims against the corporate debtor. This announcement must be made within five days from the date the liquidator assumes office and must comply with the format prescribed in Form B of Schedule II. Through this notice, all stakeholders, including shareholders, are invited to submit fresh claims or to revise and reconfirm claims earlier filed during the Corporate Insolvency Resolution Process, thereby mandating re-verification by prior claimants. The notice must clearly indicate the final date for the submission or updating of claims.

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<sup>32</sup> The Insolvency and Bankruptcy Code, 2016, § 34 (6)

<sup>33</sup> The Insolvency and Bankruptcy Code, § 34 (8)

<sup>34</sup> The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 4 (1)

The announcement is to be published through multiple media channels, including at least one English-language newspaper and one regional-language newspaper with wide circulation in the area where the corporate debtor's registered office is located.<sup>35</sup> At the liquidator's discretion, the announcement may also be published in additional locations where the corporate debtor carries on significant business operations. Further, the notice is required to be hosted on the corporate debtor's website, where such a website exists, as well as on the official website of the Insolvency and Bankruptcy Board of India.

## Statutory Powers and Duties of the Liquidator

The Insolvency and Bankruptcy Code confers extensive powers and corresponding duties upon the liquidator to ensure that liquidation proceedings are conducted in an orderly manner and that the assets of the corporate debtor are distributed fairly among entitled stakeholders. A core component of this mandate involves taking custody and control of the corporate debtor's property, examining, and admitting claims lodged by stakeholders, and realising asset value through sale mechanisms that are legally sanctioned and procedurally transparent. Where the continuation of business activities is considered conducive to value preservation or enhancement, the liquidator may operate the corporate debtor as a going concern during the liquidation period.

To effectively perform these responsibilities, the liquidator is authorised to initiate or defend legal proceedings in the name of the corporate debtor and to engage professional services as may be necessary. The Code further permits the liquidator to manage the affairs of the corporate debtor to the extent required for value-maximising liquidation, and to dispose of movable and immovable property, as well as actionable claims, through public auction or private sale in compliance with statutory requirements. Assets may be transferred to natural persons or corporate entities, sold in lots where appropriate, and negotiable instruments, including hundis and bills of exchange, may be executed, endorsed, or accepted by the liquidator on behalf of the corporate debtor.

Further, the liquidator may engage in consultations with shareholders who are entitled to receive distributions in accordance with Section 53.<sup>36</sup> However, such interactions do not create any binding obligation on the liquidator.<sup>37</sup> Likewise, the liquidator may solicit the

<sup>35</sup> The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 3 (3)

<sup>36</sup> The Insolvency and Bankruptcy Code, 2016, § 53

<sup>37</sup> The Insolvency and Bankruptcy Code, 2016, § 35 (2)

opinions of other stakeholders eligible for distribution under Section 53,<sup>38</sup> but these consultations are purely advisory and do not impose any mandatory duties or constraints on the exercise of the liquidator's statutory powers.<sup>39</sup>

The liquidator is mandated to establish a Stakeholders' Consultation Committee within sixty days from the commencement of liquidation, consisting of representatives selected from various classes of stakeholders, for the purpose of providing non-binding guidance on matters concerning asset realisation.<sup>40</sup> In addition to this consultative function, the liquidator is responsible for calling for, scrutinising, and adjudicating creditor claims, and for distributing the proceeds of liquidation strictly in accordance with the provisions of the Code.

The liquidator is also vested with the authority to initiate or defend civil and criminal proceedings on behalf of the corporate debtor, to review the debtor's financial dealings to identify preferential, undervalued, or other avoidable transactions, and to seek appropriate directions from the Adjudicating Authority as may be necessary for the effective conduct of the liquidation process.<sup>41</sup> Further, the liquidator is empowered to obtain information required for verification of claims and identification of liquidation estate assets from a broad range of sources, including information utilities, credit information companies, records maintained by central, state, or local government bodies, regulated systems containing data on secured assets and security interests, and any other sources specified by the Insolvency and Bankruptcy Board of India.<sup>42</sup>

## Removal of the Liquidator from Appointment

Although the Insolvency and Bankruptcy Code, 2016 does not expressly lay down a procedure for the removal of a liquidator, the Adjudicating Authority possesses the competence to order such removal where the liquidator is shown to be negligent, unsuitable, or otherwise unable to discharge the functions of the office. This power is traceable to Section 16 of the General Clauses Act, which encapsulates the settled principle that the authority to appoint ordinarily carries with it the authority to remove, unless the governing statute provides otherwise.<sup>43</sup> By way of illustration, in *Subrata Maity v. Mr. Amit C. Poddar*

<sup>38</sup> The Insolvency and Bankruptcy Code, 2016, § 53

<sup>39</sup> The Insolvency and Bankruptcy Code, 2016, § 35 (2)

<sup>40</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 31

<sup>41</sup> The Insolvency and Bankruptcy Code, 2016, § 37

<sup>42</sup> Amrut Bairagra, Analysis of Liquidation Process, Taxguru (28 September 2021, 06:46 AM)

[https://taxguru.in/company-law/analysis-liquidation-process.html#\\_ftn22](https://taxguru.in/company-law/analysis-liquidation-process.html#_ftn22)

<sup>43</sup> The General Clauses Act, 1897, § 16

& Ors., the National Company Law Tribunal removed the liquidator on the ground that a pending criminal investigation rendered him unsuitable to continue in office, and this decision was later upheld by the National Company Law Appellate Tribunal.<sup>44</sup>

Where the Insolvency and Bankruptcy Code does not expressly provide for the removal of a liquidator, adjudicatory bodies have drawn guidance from the principles embodied in Section 276 of the Companies Act, 2013, which sets out the grounds on which a company liquidator may be removed from office.<sup>45</sup> This interpretation was reaffirmed in *IDBI Bank Ltd. v. Venkata Sivakumar*, wherein it was clarified that the authority to assess the conduct of a liquidator and order removal lies exclusively with the tribunal, and that the Committee of Creditors has no statutory power to effect such removal.<sup>46</sup>

The 2021 amendment to the IBBI (Liquidation Process) Regulations, however, introduced an alternate mechanism by mandating the formation of a Stakeholders' Consultation Committee, predominantly consisting of creditors. Under this framework, the Committee is empowered to make a written request to the Adjudicating Authority for the substitution of the liquidator, provided such proposal is endorsed by a voting share of not less than sixty-six per cent. Notably, the amendment refrains from specifying the grounds on which such removal may be sought, a lacuna that has drawn academic criticism for potentially weakening the original design of the IBC and limiting the scope of judicial evaluation. Notwithstanding this regulatory intervention, the dominant scholarly view continues to hold that decisions relating to the removal of a liquidator ought to be guided by the benchmarks embodied in Section 276 of the Companies Act, 2013.

## Processing of Claims and Asset Realisation in Liquidation

### Scrutiny and Determination of Creditor Claims

The examination and determination of creditor claims form a critical component of the liquidation framework, as this stage directly influences the allocation of proceeds among stakeholders. Creditors are required to support their claims with relevant documentary proof, upon receipt of which the liquidator undertakes an impartial assessment to verify their authenticity and accuracy. Based on this evaluation, claims may be accepted either wholly or partially, or disallowed altogether, with reasons for rejection duly recorded. This verification

<sup>44</sup> Comp. App. (AT) (Ins.) No. 1234 of 2022

<sup>45</sup> The Companies Act, 2013, § 276

<sup>46</sup> Company Appeal (AT) (CH) (Ins.) No. 269/2022

mechanism promotes procedural equity while safeguarding the liquidation estate against exaggerated or unsupported demands. Creditors must submit their claims to the liquidator within thirty days from the liquidation commencement date.<sup>47</sup> Operational creditors are required to file their claims in Form C as prescribed under Schedule II, and such submissions may be made in physical form, sent by post, or filed through electronic means.<sup>48</sup> In a similar manner, financial creditors as well as employees or workmen are required to submit their claims in the prescribed Form D<sup>49</sup> and Form E, respectively. Additionally, stakeholders falling outside the categories of financial or operational creditors may submit their claims in Form G as prescribed under Schedule II.<sup>50</sup> Where a creditor holds both financial and operational dues, a bifurcated statement of claims must be furnished, clearly indicating the respective amounts in accordance with the formats applicable to financial and operational creditors.<sup>51</sup> Further, secured creditors are required to support their claims with appropriate evidence, which may include records obtained from an Information Utility, a certificate of charge issued by the Registrar of Companies, or proof of registration with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India.<sup>52</sup>

Once all claims have been submitted, the liquidator must conclude the process of claim verification within a period of thirty days from the date on which the last claim is received.<sup>53</sup> Upon examination, the liquidator may admit a claim either in full or in part, or may reject it altogether. The burden of proving the validity of a claim rests with the claimant, while the expenses incurred by the liquidator in verifying and determining claims are treated as liquidation costs. Where a claim is determined to be fraudulent, the liquidator is required to make reasonable efforts to recover the costs incurred during verification from the claimant and must additionally report the misconduct to the Insolvency and Bankruptcy Board of India. Further, any claim expressed in a foreign currency is to be converted into Indian rupees by applying the official exchange rate prevailing on the liquidation commencement date.<sup>54</sup> Additionally, claims relating to unpaid dues such as rent, interest, or similar liabilities may be lodged as outstanding as of the commencement of liquidation.<sup>55</sup>

<sup>47</sup> The Insolvency and Bankruptcy Code, 2016, § 38

<sup>48</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 17

<sup>49</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 18

<sup>50</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 20

<sup>51</sup> The Insolvency and Bankruptcy Code, 2016, § 38(4)

<sup>52</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 21

<sup>53</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 30

<sup>54</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 26

<sup>55</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 27

Upon completion of the verification exercise, the liquidator is empowered to either wholly or partially allow or disallow each claim. In cases where a claim is rejected, the liquidator must provide a written explanation setting out the reasons for such rejection.<sup>56</sup> The liquidator is required to notify the corporate debtor of the acceptance or rejection of claims within seven days of arriving at a decision. Where a creditor is dissatisfied with the determination made by the liquidator, an appeal may be preferred before the Adjudicating Authority within fourteen days from the date on which the decision is communicated.<sup>57</sup>

## **Position and Entitlements of Secured Creditors in Liquidation**

Secured creditors play a critical role in economic growth by facilitating access to capital, fostering entrepreneurial activity, and supporting wealth creation. To incentivise secured lending, insolvency and secured transaction laws accord priority to secured claims over competing interests, including certain governmental dues. Consistent with this approach, the Insolvency and Bankruptcy Code allow secured creditors to realise their security interests independently, without being compelled to participate in the liquidation process. They are not required to contribute their secured assets to the liquidation estate and may pursue enforcement of their security outside the collective insolvency framework.

Within liquidation proceedings, the Code assigns secured creditors a distinct and preferential status. It grants them a statutory option either to relinquish their security and take part in the collective distribution process or to enforce their security interest separately in accordance with applicable law. This dual option reflects a deliberate legislative balance between respecting creditor autonomy and maintaining the objectives of an orderly, collective liquidation process, while continuing to preserve the statutory priority afforded to secured claims under the distribution waterfall.<sup>58</sup> The Insolvency and Bankruptcy Code provides secured creditors with two distinct options. They may either relinquish their security interest to the liquidation estate and receive payment from the proceeds realised by the liquidator, or they may choose to stand outside the liquidation proceedings and enforce their security independently in the manner prescribed under the Code. Where a secured creditor opts to surrender its security and participate in the liquidation process, its claim is positioned in the statutory distribution waterfall to rank *pari passu* with workmen's dues for the period of twenty-four months immediately preceding the liquidation commencement date. Such claims

<sup>56</sup> The Insolvency and Bankruptcy Code, 2016, § 40

<sup>57</sup> The Insolvency and Bankruptcy Code, 2016, § 42

<sup>58</sup> The Insolvency and Bankruptcy Code, 2016, § 52 (1)

are accorded priority over other categories of debt, subject to the prior discharge of insolvency resolution and liquidation costs.

Where a secured creditor elects to realise its security independently of the liquidation process, the liquidator is nonetheless required to examine and confirm the existence and validity of the claim. In such circumstances, the creditor must intimate the liquidator of the security interest and clearly specify the asset sought to be enforced. Evidence of the security interest may be furnished by reference to records held with an Information Utility or through any other mode of proof recognised by the Insolvency and Bankruptcy Board of India.<sup>59</sup> In the event that a secured creditor encounters resistance from the corporate debtor or any third party in obtaining possession of, or enforcing rights over, the secured asset, the creditor is entitled to seek appropriate relief or directions from the Adjudicating Authority.<sup>60</sup>

## Asset Realisation and Disposal during Liquidation

The Insolvency and Bankruptcy Code entrusts the liquidator with comprehensive authority, coupled with corresponding duties, to manage the affairs of the corporate debtor during liquidation with a view to achieving optimal value realisation. As part of this mandate, the liquidator is empowered to sell the corporate debtor's movable and immovable property by way of public auction or private arrangement, and to convey such assets to natural persons or corporate bodies in compliance with the applicable procedural framework. More broadly, the Code adopts a graduated approach that emphasises market-oriented resolution and value maximisation, resorting to liquidation and ultimate dissolution only where attempts at revival prove unviable.

Permitting the continuation of business operations even after the passing of a liquidation order can yield significant advantages, including preservation of asset value, enhanced realisation from sales, and the potential rescue of an otherwise viable enterprise. Recognising these benefits, both the National Company Law Tribunal and the National Company Law Appellate Tribunal have, in several cases, directed liquidators to examine the feasibility of selling the corporate debtor as a going concern during liquidation.

Under the earlier winding-up regime governed by the Companies Act, 1956, it was common for creditors or shareholders of a company under liquidation to pursue schemes of

<sup>59</sup> The Insolvency and Bankruptcy Code, 2016, § 52 (3)

<sup>60</sup> The Insolvency and Bankruptcy Code, 2016, § 52 (5)

compromise or arrangement as an alternative means of resolving financial distress.<sup>61</sup> Section 391 of the Companies Act was, in several instances, utilised to facilitate the revival of companies undergoing winding up. Reflecting this earlier practice, the Liquidation Amendment Regulations now provide a mechanism allowing shareholders to put forward a proposal for compromise or arrangement during liquidation. Under this framework, any scheme proposed in terms of Section 230 of the Companies Act, 2013 is required to be completed within a period of ninety days from the date on which the liquidation order is passed.<sup>62</sup> Any expenditure incurred by the liquidator in facilitating or pursuing such a compromise or arrangement is to be borne in the first instance by the liquidator. However, where the proposal fails to obtain approval from the Adjudicating Authority, the costs incurred are required to be recovered from the persons who proposed the compromise or arrangement.

In *S.C. Sekaran v. Amit Gupta and Ors.*, the former management of the corporate debtor assailed the liquidation order issued by the Adjudicating Authority after the resolution process failed to yield an approved plan. The National Company Law Appellate Tribunal underscored that the commencement of liquidation does not foreclose attempts to preserve the corporate debtor as a going concern, and clarified that the mechanism available under Section 230 of the Companies Act, 2013 may still be invoked at that stage.<sup>63</sup> The Tribunal instructed the liquidator to comply strictly with the statutory responsibilities attached to the office, including the verification of claims, taking custody and control of assets and actionable claims, and managing the estate of the corporate debtor. It further observed that, before initiating any sale of the corporate debtor's assets, the liquidator must first examine the feasibility of a compromise or arrangement under Section 230 of the Companies Act, 2013, and complete such efforts within a period of ninety days. Only if this revival measures failed were the Adjudicating Authority and the liquidator expected to proceed with the disposal of the corporate debtor's assets, preferably through a sale of the business, and where that proved impracticable, through the sale of assets in parts in accordance with the applicable statutory framework.

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<sup>61</sup> The Companies Act, 2013, § 230

<sup>62</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 2B

<sup>63</sup> Company Appeal (AT) (Insolvency) No. 495 & 496 of 2018

## Disposal of the Corporate Debtor as a Going Concern

Chapter VI of the Liquidation Process Regulations sets out the mechanism through which a liquidator may realise assets during the liquidation of a corporate debtor. These provisions operate in situations where no scheme of compromise or arrangement is proposed. In such circumstances, the liquidator is required to proceed with the sale of the corporate debtor, its undertaking, or its assets in accordance with the procedures prescribed under the Regulations.

The regulatory framework offers multiple modes of sale, including the disposal of individual assets, sale by way of slump transaction, sale in asset-wise lots, or transfer of the corporate debtor as a going concern. Like the objective underlying compromise or arrangement proceedings, a going concern sale seeks to preserve the operational continuity of the enterprise, safeguard employment, and potentially yield superior value realisation. Owing to these advantages, adjudicatory authorities have, in several cases, directed liquidators to prioritise the sale of the corporate debtor as a going concern.

Further, when the Committee of Creditors approves a resolution plan or resolves to liquidate the corporate debtor, it may recommend that the liquidator first explore the feasibility of a going concern sale. Where such a recommendation is made, the Committee of Creditors is required to identify and classify the assets and liabilities of the corporate debtor based on their commercial viability for facilitating a sale on a going concern basis.<sup>64</sup> Such a recommendation is required to be placed by the Resolution Professional before the Adjudicating Authority, together with the application seeking either approval of the resolution plan or the commencement of liquidation proceedings.

## Claims during the Liquidation Stage

Following the appointment of the liquidator, the liquidation process advances to the stage of inviting claims from creditors and consolidating their dues. Creditors intending to participate in the distribution of liquidation proceeds are required to submit their claims along with supporting documentation within the prescribed period. Upon receipt, the liquidator is obligated to examine and verify these claims in accordance with the procedure laid down for their admission or rejection.

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<sup>64</sup> The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 32

The process of collating and verifying claims constitutes a pivotal stage in liquidation, as it establishes the basis on which creditors become entitled to a proportionate distribution of the liquidation proceeds. This exercise enables the liquidator to ascertain the total liabilities of the corporate debtor, thereby ensuring that asset distribution is carried out in an orderly manner and in accordance with the statutory priority waterfall. Pursuant to Section 38 of the Insolvency and Bankruptcy Code, the liquidator is required to invite and receive claims from all classes of creditors within thirty days from the liquidation commencement date.

Creditors, whether financial, operational, or holding claims of varying nature, are required to submit their claims in the manner prescribed under the Code and the relevant regulations. Financial creditors are encouraged to rely on records maintained with Information Utilities to substantiate their claims. In cases where such records are unavailable, financial creditors may submit claims in the format applicable to operational creditors. Operational creditors, on the other hand, must directly lodge their claims with the liquidator, supported by documentary evidence, within the timelines specified by the Insolvency and Bankruptcy Board of India. Where a creditor holds both financial and operational claims, such claims must be filed separately in accordance with the provisions governing each category. Further, Section 38 permits creditors to revise or withdraw their claims within fourteen days of submission.

Under Section 39 of the Code, the liquidator is entrusted with the responsibility of verifying the claims received. For verification, the liquidator may call upon creditors to furnish additional information or evidence as may be necessary to establish the validity and quantum of their claims.<sup>65</sup> Upon completion of the verification process, the liquidator is authorised to accept or reject claims, whether wholly or in part. The outcome of such determination must be intimated to both the concerned creditor and the corporate debtor within seven days. In cases where a claim is disallowed, either fully or partially, the liquidator is required to record the reasons for such rejection and communicate them in writing. After claims are admitted, Section 41 of the Code mandates the liquidator to determine the value of each admitted claim in accordance with the regulations framed by the Insolvency and Bankruptcy Board of India.<sup>66</sup> Creditors who are dissatisfied with the way the liquidator has dealt with their claims are entitled to seek redress. Where a claim has been wholly or partly rejected, the aggrieved creditor may prefer an appeal before the Adjudicating Authority against the liquidator's decision, in accordance with the procedure prescribed under the IBC Rules.

<sup>65</sup> The Insolvency and Bankruptcy Code, 2016, § 39

<sup>66</sup> The Insolvency and Bankruptcy Code, 2016, § 41

While reviewing the financial conduct of the corporate debtor, the liquidator is also authorised to examine prior transactions with a view to identifying dealings that are liable to be avoided under Sections 43<sup>67</sup> to 51<sup>68</sup> of the Insolvency and Bankruptcy Code. Such transactions include those that are preferential, undervalued, extortionate, or otherwise detrimental to the interests of creditors, and may be invalidated or reversed in accordance with the provisions of the statutory scheme.

Section 43(2) of the Insolvency and Bankruptcy Code characterises a transaction as preferential where the corporate debtor, in discharge of an existing obligation, conveys property or any interest therein to a creditor, guarantor, or surety, with the effect of conferring upon such party a position more favourable than that enjoyed by other creditors.<sup>69</sup> Such transactions effectively confer an undue benefit by enabling certain creditors to recover more than they otherwise would in liquidation. However, sub-section (3) carves out specific exceptions to this rule.<sup>70</sup> Transfers made in the ordinary course of business, security interests created for new value and duly registered with an Information Utility within thirty days, and transactions executed pursuant to judicial orders are excluded from the scope of preferential treatment. Through Section 43(1), the Code seeks to prevent the distortion of creditor equality prior to the commencement of insolvency proceedings. Where a transaction is identified as preferential, the liquidator is empowered to approach the Adjudicating Authority seeking appropriate orders to set aside such a transaction.<sup>71</sup>

Once an application challenging an avoidable transaction is filed, Section 44 empowers the Adjudicating Authority to pass a range of remedial orders. These include directing the restoration of transferred property to the corporate debtor, extinguishing any security interests created in relation to such property, compelling the beneficiary to disgorge the gains received, and even reviving liabilities that had been discharged in favour of guarantors.<sup>72</sup> Concurrently, the tribunal must ensure the protection of bona fide third parties who have acquired property for value, without awareness of the insolvency proceedings and without any association with the corporate debtor. For this purpose, the issuance of public notice of the insolvency proceedings is treated as adequate notice in law.

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<sup>67</sup> The Insolvency and Bankruptcy Code, 2016, § 43

<sup>68</sup> The Insolvency and Bankruptcy Code, 2016, § 51

<sup>69</sup> The Insolvency and Bankruptcy Code, 2016, § 43(2)

<sup>70</sup> The Insolvency and Bankruptcy Code, 2016, § 43(3)

<sup>71</sup> The Insolvency and Bankruptcy Code, 2016, § 43(1)

<sup>72</sup> The Insolvency and Bankruptcy Code, 2016, § 44

Section 45 addresses undervalued transactions, which arise where the corporate debtor transfers assets or property for consideration that is significantly below their fair market value.<sup>73</sup> Such transactions may be challenged by the liquidator, or, in the event of inaction, by a creditor or member of the corporate debtor. If the tribunal concludes that a transaction is undervalued, it may declare the transaction void and order appropriate restitution. The timeframe within which such transactions may be scrutinised is prescribed under Section 46(3)<sup>74</sup> read with Section 43(4),<sup>75</sup> which identifies a “relevant period” of two years preceding the insolvency commencement date for transactions involving related parties, and one year for transactions with unrelated parties.

Under Section 48, the Adjudicating Authority is authorised to issue corrective orders in respect of undervalued transactions, including directing the return of assets to the corporate debtor, nullifying security interests, ordering beneficiaries to repay the advantages obtained, or requiring payment of adequate consideration.<sup>76</sup> Further, Section 49 empowers the tribunal to restore the parties to their pre-transaction position where the undervalued dealing was intended to defraud creditors, while simultaneously ensuring protection for parties adversely affected by such restoration. Innocent third parties are shielded from adverse orders unless they are shown to have been complicit in the fraudulent conduct.<sup>77</sup>

Section 50 deals with extortionate credit transactions, which arise where the corporate debtor enters credit arrangements involving grossly unfair, unconscionable, or unlawful terms within two years prior to the commencement of insolvency proceedings.<sup>78</sup> Upon application by the liquidator, the tribunal may set aside or modify such transactions. However, credit facilities extended by legitimate financial service providers in the ordinary course of business are excluded from this provision. Regulation 5 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 identifies indicators of extortionate credit, including repayment obligations that are manifestly unreasonable or terms that offend fundamental principles of contractual fairness.<sup>79</sup>

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<sup>73</sup> The Insolvency and Bankruptcy Code, 2016, § 45

<sup>74</sup> The Insolvency and Bankruptcy Code, 2016, § 46(3)

<sup>75</sup> The Insolvency and Bankruptcy Code, 2016, § 43(4)

<sup>76</sup> The Insolvency and Bankruptcy Code, 2016, § 48

<sup>77</sup> The Insolvency and Bankruptcy Code, 2016, § 49

<sup>78</sup> The Insolvency and Bankruptcy Code, 2016, § 50

<sup>79</sup> The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 5

## Priority of Claims in Liquidation

### Hierarchy of Claims in Liquidation Proceedings

Once a corporate debtor enters liquidation under the Insolvency and Bankruptcy Code, 2016, creditors do not stand on equal footing with respect to repayment. The Code establishes a structured order of distribution whereby certain liabilities are accorded precedence over others. These preferential entitlements, commonly referred to as priority claims, are satisfied before subordinate claims during the allocation of the liquidation estate. After completing the verification and valuation of claims, the liquidator determines the sequence in which stakeholders are to be paid from the realised assets.

The distribution of proceeds arising from liquidation is governed primarily by Section 53 of the IBC, read together with Regulations 33<sup>80</sup> and 35<sup>81</sup> of the IBBI (Liquidation Process) Regulations. Upon realisation of assets and deduction of applicable costs, the liquidator is required to disburse the net proceeds strictly in accordance with the statutory order of priority prescribed under Section 53, widely known as the “waterfall mechanism.”

At the top of the waterfall are the insolvency resolution and liquidation expenses, which must be paid in full before any distribution is made to creditors. Once these costs are satisfied, the remaining proceeds are distributed in the following order:

At the highest level of priority, workmen's dues for the period of twenty-four months immediately preceding the liquidation commencement date rank *pari passu* with the claims of secured creditors who have elected to relinquish their security interests to the liquidation estate. The next tier comprises wages and outstanding dues payable to employees other than workmen, followed thereafter by financial liabilities owed to unsecured creditors.

Subsequently, statutory dues payable to the Central Government or the State Governments, including amounts credited to the Consolidated Fund, for the two years preceding the commencement of liquidation are ranked *pari passu* with the claims of secured creditors who have opted to enforce their security interests outside the liquidation process rather than surrender them to the liquidation estate.

After these claims are all remaining liabilities not otherwise specified, followed by payments due to preference shareholders. The lowest priority is accorded to equity shareholders or

<sup>80</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 33

<sup>81</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 35

partners of the corporate debtor, who receive distributions only after all higher-ranking claims have been satisfied.

The liquidator's remuneration is deducted from the total sale proceeds and apportioned proportionately across the various classes of claimants. Where multiple creditors fall within the same level of priority and the available funds are insufficient to discharge all claims in full, distribution is made on a pro rata basis.

Section 52 of the Insolvency and Bankruptcy Code safeguards the discretion of secured creditors by allowing them either to surrender their security interest and participate in the collective liquidation process or to realise their security independently. Where a secured creditor elects to enforce its security outside the liquidation estate, Regulation 37 of the Liquidation Regulations provides that such creditor loses its preferential status and is ranked as an unsecured creditor for the purpose of distribution under the priority framework.

Judicial interpretation has further clarified the scope of priority claims. In *State Bank of India v. Moser Baer Karamchari Union*, the National Company Law Appellate Tribunal expanded the meaning of "workmen's dues" under Section 53 to include the employer's statutory contributions towards provident fund, pension fund, and gratuity. This interpretation significantly strengthened the protection afforded to workers during liquidation proceedings.<sup>82</sup> A straightforward interpretation of Section 53 of the Insolvency and Bankruptcy Code indicates that financial creditors are accorded precedence over operational creditors within the distribution framework. While financial creditors are expressly accommodated within defined levels of the statutory waterfall, operational creditors fall within the residual class of "other debts and dues," resulting in their claims being satisfied only after higher-priority entitlements have been discharged. This asymmetry in treatment was examined in *Binani Industries Ltd. v. Bank of Baroda & Anr.*, wherein the National Company Law Appellate Tribunal noted that the design of Section 53 effectively disadvantages operational creditors by placing them at a lower rung within the statutory priority waterfall.<sup>83</sup> The Tribunal held that operational creditors ought to be accorded precedence over financial creditors in the allocation of liquidation proceeds. This view was later affirmed by the Supreme Court, which recognised the importance of ensuring equitable treatment among different classes of creditors.

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<sup>82</sup> Company Appeal (AT) (Insolvency) No. 396 of 2019

<sup>83</sup> [2018] 147 CLA 320

## Allocation and Distribution of Liquidation Proceeds

A core responsibility of the liquidator under the Insolvency and Bankruptcy Code is to invite, verify, and adjudicate claims submitted by creditors and other entitled stakeholders. Once this process is completed, the liquidator must distribute the proceeds realised from the sale of the corporate debtor's assets strictly in accordance with the statutory framework. To regulate this exercise, the Code prescribes a structured "waterfall mechanism" that determines the exact sequence in which payments are to be made, ensuring a uniform and predictable distribution of liquidation proceeds.

The foremost priority in the distribution framework is accorded to the costs incurred in conducting the Corporate Insolvency Resolution Process as well as the liquidation proceedings, all of which must be satisfied in full before any payments are made to creditors. Following this, two classes of claims are placed on an equal footing: the dues owed to workmen for the twenty-four months immediately preceding the liquidation commencement date, and the claims of secured creditors who have elected to relinquish their security interests to the liquidation estate.

The next tier comprises unpaid wages and dues owed to employees other than workmen, limited to a period of twelve months prior to the initiation of liquidation. Following this, the claims of unsecured financial creditors are addressed. Government dues, whether owed to the Central or State Governments and relating to the two years preceding liquidation, are placed lower in the order of priority, along with any residual amounts payable to secured creditors after they have independently enforced their security interests.

Subsequently, all remaining debts and liabilities not covered in the earlier categories are settled. Claims of preference shareholders are addressed thereafter, while equity shareholders or partners of the corporate debtor occupy the lowest rung in the priority hierarchy and receive distributions only after all superior claims have been satisfied.

Prior to the enactment of the Insolvency and Bankruptcy Code, statutory dues payable to the government enjoyed a higher priority under earlier winding-up regimes. The Code has significantly altered this position by relegating government claims to a lower tier, while elevating insolvency resolution and liquidation costs above all other liabilities. These costs are required to be settled upfront and are excluded from the pool of funds available for distribution to stakeholders.

In certain circumstances, specific assets may prove difficult to realise due to their nature or prevailing market conditions. In such cases, the liquidator may, with the approval of the Adjudicating Authority, distribute such unsold assets directly among the stakeholders in lieu of monetary proceeds.<sup>84</sup> When applying for such approval, the liquidator is required to clearly specify the asset in question, disclose its assessed value, outline the steps undertaken to effect its sale, and explain the reasons for opting for direct distribution rather than proceeding with a sale.

## Dissolution

Under the earlier regime, the liquidation of a corporate debtor often extended over a period of up to two years. With the introduction of the Liquidation Process Regulations, a clear and fixed timeframe has been prescribed, mandating that the liquidation process be completed within one year from the liquidation commencement date.<sup>85</sup> Where liquidation is undertaken through the sale of the corporate debtor as a going concern, the statutory framework permits an additional period of ninety days for completion. In situations where the liquidator is unable to conclude the liquidation within the prescribed one-year timeframe, an application seeking extension must be submitted to the Adjudicating Authority. Such application is required to be accompanied by a reasoned report explaining the factors contributing to the delay and specifying the additional period necessary for completion of the process.

Further, the liquidator is obligated to file a preliminary report before the Adjudicating Authority within seventy-five days from the liquidation commencement date.<sup>86</sup> This report must provide an overview of the capital structure of the CD, an estimate of its assets and liabilities on the commencement date, and an assessment of whether further inquiry is warranted into the company's formation, promotion, failure, or business conduct. The report must also outline a proposed plan and timeline for the liquidation process, including estimated costs. Should the liquidation costs exceed the initial estimates, the liquidator is required to justify the increase in the preliminary report.

In accordance with Section 53 of the Insolvency and Bankruptcy Code, liquidation proceeds may be distributed only after full satisfaction of the costs incurred during the Corporate Insolvency Resolution Process and the liquidation proceedings. The liquidator is further

<sup>84</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 38

<sup>85</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 44

<sup>86</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 13

obligated to maintain a separate liquidation account that accurately reflects the way assets are realised and the proceeds are applied. In addition, the Insolvency and Bankruptcy Board of India is mandated to establish and administer a designated “Corporate Liquidation Account” for the purposes stipulated under the Code.<sup>87</sup> The Corporate Liquidation Account constitutes a component of the Public Account of India. Any dividends or sale proceeds that remain unpaid or undistributed, together with the interest or income accrued thereon, must be deposited into this account before the liquidator applies for the closure or dissolution of the liquidation proceedings. Where such amounts are not deposited within the stipulated period, interest at the rate of twelve per cent per annum becomes payable, calculated from the date on which the amount fell due until the date of actual deposit. Shareholders and other entitled stakeholders are entitled to seek withdrawal of their respective dues from this account in accordance with the prescribed procedure. If the amounts remain unclaimed for a continuous period of fifteen years from the date of dissolution of the corporate debtor, the principal along with any accumulated interest or income is required to be transferred to the Consolidated Fund of India.

The concept of winding up, which was earlier regulated under the Companies Act, 1956 and subsequently under the Companies Act, 2013, has now been subsumed within the Insolvency and Bankruptcy Code framework and is described as the liquidation process. In terms of Schedule XI of the Code, references to “winding up” in the Companies Act, 2013<sup>88</sup> are to be construed as corresponding to liquidation proceedings under the IBC.<sup>89</sup> Before commencing voluntary liquidation, a majority of the company’s directors are required to submit a declaration, supported by an affidavit, stating that the company has no outstanding liabilities or that any existing debts will be discharged from the proceeds realised through liquidation. The declaration must further affirm that the proposed liquidation is not being undertaken with the intent to defraud any person.

Where the company has subsisting debts, the resolution for voluntary liquidation must be approved by creditors representing not less than two-thirds of the total value of such debts. This approval must be obtained within seven days of the resolution being passed, which itself must take the form of a special resolution adopted by the members of the company.

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<sup>87</sup> Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 46

<sup>88</sup> The Insolvency and Bankruptcy Code, 2016, § 255

<sup>89</sup> The Companies Act, 2013, § 2(94A)

Following the commencement of voluntary liquidation, the liquidator is required to convene a meeting within fifteen days after the close of each year from the liquidation commencement date until the company is dissolved. An annual progress report must be prepared for this purpose, detailing the status of the liquidation, including distributions made to shareholders, assets realised, and a comprehensive account of the liquidation's receipts and expenditures. This report must be accompanied by audited financial statements relating to the liquidation.

On completion of the liquidation proceedings, the liquidator is required to compile and submit a final report, which must include the duly audited accounts of the liquidation process.<sup>90</sup> The final report must comprehensively reflect all receipts and expenditures incurred from the commencement of the liquidation process. It should also provide particulars of the assets liquidated, the way liabilities were discharged to satisfy creditor claims, and a confirmation that no legal proceedings remain pending against the company. In addition, the liquidator is required to submit a separate statement relating to asset realisation, specifying the sale consideration received, costs associated with the sale, the mode and manner of disposal, the identity of the purchaser, and a justification where the realised value falls below the valuation determined by a registered valuer. These documents are required to be filed with both the Insolvency and Bankruptcy Board of India and the Registrar of Companies.

Once the affairs of the company have been completely wound up and the liquidation of all assets has been concluded, the liquidator must apply seeking closure of the liquidation process<sup>91</sup> with the AA for the dissolution<sup>92</sup> of the corporate person. Upon reviewing the application, the AA will issue an order for dissolution, which takes effect from the date mentioned in the order.<sup>93</sup> A copy of this order must be forwarded within 14 days<sup>94</sup> to the relevant authority with which the corporate person is registered. Additionally, the order of the National Company Law Tribunal (NCLT) initiating the liquidation will be considered an official notice of discharge to the CD's employees, officers, and workmen.

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<sup>90</sup> The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, Regulation 38

<sup>91</sup> Nishith Desai Associates, A Primer on the Insolvency & Bankruptcy Code, 2016 [https://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research\\_Papers/A-Primer-on-the-Insolvency-and-Bankruptcy-Code.pdf](https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/A-Primer-on-the-Insolvency-and-Bankruptcy-Code.pdf) (Last Visited on 4 June 2025)

<sup>92</sup> The Insolvency and Bankruptcy Code, 2016, § 59 (7)

<sup>93</sup> The Insolvency and Bankruptcy Code, 2016, § 59 (8)

<sup>94</sup> The Insolvency and Bankruptcy Code, 2016, § 59 (9)

## Voluntary Winding Up of Corporate Entities

### Initiation of the Voluntary Liquidation Mechanism

Under the Insolvency and Bankruptcy Code, a corporate person is permitted to undertake voluntary liquidation subject to the fulfilment of prescribed conditions. To begin with, the entity must not have committed any default. Further, most of its directors or designated partners are required to execute a declaration supported by an affidavit. This declaration must confirm that a thorough examination of the company's financial and operational affairs has been conducted and that, based on such assessment, they are of the view that:

- I. the corporate entity does not have any outstanding liabilities, or that all existing debts can be fully discharged from the proceeds realised through liquidation of its assets; and
- II. the decision to liquidate is not being taken with the intention of deceiving or defrauding creditors or any other stakeholders.

After the execution of the declaration, the corporate entity is required to adopt a special resolution within four weeks approving the initiation of voluntary liquidation. In cases where the company has outstanding liabilities, the members' resolution must also be ratified by creditors holding at least two-thirds of the aggregate value of the debt, and such creditor approval is required to be secured within a period of seven days.

### Commencement and Legal Consequences of Voluntary Liquidation

The date on which the special resolution is passed, along with creditor approval, where applicable, is treated as the liquidation commencement date. From this stage onwards, the corporate entity is required to cease carrying on its business operations, except to the extent necessary for the orderly winding up of its affairs. However, notwithstanding the cessation of business activities, the corporate entity continues to retain its legal personality until the Adjudicating Authority passes a formal order of dissolution.<sup>95</sup>

Voluntary liquidation is a member-driven mechanism through which a company is wound up in accordance with the collective intent of its stakeholders. This route is generally adopted where the company has fulfilled the objective for which it was incorporated, where its

<sup>95</sup> Navdeep Baidwan, Voluntary Liquidation under the Insolvency and Bankruptcy Code, 2016, iPleaders (23 June 2018, 11:04 AM)  
[https://blog.ipleaders.in/voluntary-liquidation-under-the-insolvency-and-bankruptcy-code-2016/#\\_ftn1](https://blog.ipleaders.in/voluntary-liquidation-under-the-insolvency-and-bankruptcy-code-2016/#_ftn1)

constitutional documents mandate dissolution upon the occurrence of a specified event, or where the continuation of business is no longer economically or operationally viable. Prior to initiating voluntary liquidation, certain statutory conditions must be satisfied, including the execution of a declaration of solvency, obtaining the requisite approvals from members and creditors, and giving due intimation to the Registrar of Companies as well as the Insolvency and Bankruptcy Board of India. The liquidation process formally begins upon the passing of a special resolution by the members, coupled with creditor approval where applicable. From this point onward, the company may carry on only such activities as are necessary to facilitate an orderly winding up.

Following the declaration of solvency, the members are required to pass a special resolution appointing a qualified Insolvency Professional, registered under the IBC, to act as the liquidator. Upon appointment, the liquidator must issue a public notice within five days, calling upon creditors and other interested persons to submit their claims. Claimants are required to furnish documentary evidence substantiating their entitlement to recover amounts from the corporate person. Once the claim submission period concludes, the liquidator is granted thirty days to scrutinise and verify the claims received. Based on this verification, claims may be admitted or rejected. Thereafter, within forty-five days, the liquidator must prepare a consolidated list of stakeholders comprising only those claims that have been accepted.

The next stage involves the monetisation of the corporate person's assets. The liquidator may undertake this task independently or engage a registered valuer to ensure that valuation and sale are conducted in accordance with the prescribed norms and with appropriate consent. For managing the proceeds, the liquidator is required to open a separate bank account in the name of the corporate person, clearly designated for voluntary liquidation. All amounts realised from asset sales must be deposited into this account.

Once asset realisation is complete, the liquidator proceeds to distribute the funds among stakeholders in accordance with the applicable priorities. Such distribution must be completed within six months from the date of receipt of the proceeds. After completing the distribution, the liquidator is obligated to prepare a comprehensive final report detailing each stage of the liquidation, supported by audited financial statements. This report must be submitted to the Registrar of Companies, the National Company Law Tribunal, and the Insolvency and Bankruptcy Board of India.

After all activities connected with liquidation, including the realisation of assets and the discharge of stakeholder claims, have been completed, the liquidator is required to move an application before the Adjudicating Authority seeking the dissolution of the corporate person. Upon being satisfied that the liquidation process has been conducted in accordance with the applicable legal framework, the Authority will issue an order dissolving the corporate person with effect from the date specified in such order. The issuance of a dissolution order marks the formal termination of the corporate person's legal existence.<sup>96</sup>

Where a person initiates voluntary liquidation with the intention of misleading or defrauding any person or entity, such conduct attracts penal consequences. In such cases, the individual may be liable to a monetary penalty, which shall not be less than one lakh rupees and may extend up to one crore rupees.<sup>97</sup> This approach is consistent with the well-established legal principle that transactions vitiated by fraud are void in law. Where the Adjudicating Authority concludes that voluntary liquidation was initiated by the directors with a fraudulent or dishonest intent, it is empowered to annul the process altogether or keep it in abeyance. Further, if during liquidation, the liquidator forms a bona fide opinion that the business of the corporate person was conducted with the intent to defraud creditors or for an unlawful purpose, the liquidator may approach the Adjudicating Authority by filing an appropriate application in accordance with the relevant provisions of the NCLT Rules. Upon examining such an application, the Authority may direct any person who knowingly participated in the fraudulent conduct to make such contributions to the assets of the corporate person as it deems fit. Additionally, if the liquidator concludes that the proceeds expected from asset realisation will be insufficient to discharge the corporate person's liabilities, the liquidator may seek directions from the Adjudicating Authority to halt the voluntary liquidation process and pass such further orders as may be necessary.

The Insolvency and Bankruptcy Code further provides an appellate mechanism against orders issued by the Adjudicating Authority. A corporate person aggrieved by such an order may seek redress by preferring an appeal before the National Company Law Appellate Tribunal. As stipulated under Section 61(2) of the Code, the appeal is required to be filed within a period of thirty days from the date of the impugned order.<sup>98</sup> Additionally, a party dissatisfied

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<sup>96</sup> Ansh Sharma, Voluntary Liquidation of Corporate Persons, Legal Service India (4 June 2025, 11:09 AM) <https://www.legalserviceindia.com/legal/article-6369-voluntary-liquidation-of-corporate-persons.html>

<sup>97</sup> The Insolvency and Bankruptcy Code, 2016, § 3(23)

<sup>98</sup> The Insolvency and Bankruptcy Code, 2016, § 61(2)

with the NCLAT's decision may approach the Hon'ble Supreme Court of India within forty-five days from the date of receiving the order from the appellate tribunal.

## Conclusion

The Insolvency and Bankruptcy Code, 2016 marks a transformative shift in India's insolvency and economic governance by strengthening and streamlining the mechanisms for insolvency resolution and liquidation. It introduces a coherent, time-bound framework designed to preserve asset value while ensuring an equitable distribution of proceeds among stakeholders. Although liquidation under the IBC is conceived as a measure of last resort, it performs a vital function in protecting creditor interests, reinforcing financial discipline, and facilitating the orderly exit of economically unviable enterprises from the market.

The Code lays down comprehensive procedures governing both voluntary and compulsory liquidation, clearly defining the responsibilities of adjudicating authorities, liquidators, and creditors. It establishes an organised system for the submission, verification, and adjudication of claims, followed by asset realisation and distribution through a statutorily mandated priority hierarchy. By vesting the liquidator with substantial authority, subject to regulatory oversight and reporting obligations, the IBC ensures transparency, accountability, and procedural efficiency throughout the liquidation process. The framework further incorporates safeguards to deter misuse, including provisions addressing fraudulent and avoidable transactions, supported by tribunal supervision and penal consequences.

Despite these advances, liquidation under the IBC is not without challenges. Practical difficulties relating to asset monetisation, valuation disputes, and resistance from stakeholders continue to arise. Nevertheless, evolving judicial interpretations and periodic regulatory refinements have progressively strengthened the framework, enhancing its consistency and fairness. In this evolving landscape, liquidation under the IBC contributes significantly to the Code's overarching objective of balancing competing stakeholder interests, sustaining economic stability, and bolstering confidence in India's credit ecosystem. As jurisprudence and implementation mature, the liquidation regime is poised to become increasingly robust, reflecting India's continued commitment to an effective and credible insolvency system.