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Voluntary Liquidation proceedings of corporate person –
(A overview on Insolvency and Bankruptcy Code, 2016)

Legal background

Finally, the voluntary liquidation transformed from Companies Act, 2013 to IBBI. The earlier sections 304 to 325 of Companies Act in connection with voluntary winding up jumped to only one section i.e. 59 of Insolvency and Bankruptcy Code, 2016 apart from other sections including 35 to 53. IBBI VOLUNTARY LIQUIDATION PROCESS REGULATIONS, 2017 effective from 1st April 2017 with the recent amendment until 15th January 2020. The concept of members' voluntary winding and creditors' voluntary winding up become no more from the system of Companies Act, 2013 as and when Sec. 59 of IB Code has been introduced. Normally the IB Code applies when there is default of payment of dues. Interestingly, IB code applies in Voluntary liquidation when there is no default by corporate person.

Voluntary Liquidation Process

Role Board of Directors – declaration and affidavit

When the Corporate person in intends the voluntarily liquidation, the majority directors need to issue a declaration mentioning that it has no debts or able to pay the debts out of the sale of assets through the liquidation process. And they must ensure that the mentioned liquidation not to defraud any others. Such Declaration and affidavit required by the majority Directors. The declaration is annexed with the documents namely audited financial statements and records of the business for the previous two years along with Valuation Report by the Registered Valuer.

Role of Members level – Resolution (Special Resolution – bus sometimes ordinary resolution)

As and when Declaration is ready, the Board of Directors conducts a General Meeting of the members to pass ordinary Resolution or special resolution. The General meeting should be conducted within four weeks of above mentioned declaration. The special resolution indicates the voluntary liquidation of the Company. Whereas the Ordinary Resolution refers voluntary liquidation is made due to the expiry of period mentioned in the Articles of Association of the Company. In Both cases, the appointment of Insolvency Professional as Liquidator is mandatory and Company itself makes such appointment. In case company has creditors, the resolution must be approved at creditors meeting with 2/3 majority within seven days of Ordinary Resolution and Special Resolution. Simultaneously, the Company has to inform to the Registrar of Companies and IBBI within seven days of such Resolution pasting the voluntarily liquidation and appointment of Liquidator. But there is no official information to the Adjudicating Authority.

Role of Adjudicating Authority

There is no role of adjudicating authority about the admission of liquidation of the corporate person and appointment of Liquidator. The date of Special Resolution or the Ordinary Resolution as the case may be the Liquidation Commencement Date. However in the following situations, the intended personalities approach Adjudicating Authority (relevant jurisdiction)

1. The Creditor makes an appeal with Adjudicating Authority in connection with admission of rejection of claim.
2. The Liquidator shall make application to suspend the process of liquidation in case the liquidator is of the opinion to defraud a person.
3. If the Assets of Corporate person not sufficient to clear the dues out of the sale proceeds, the Liquidator approaches to the Adjudicating Authority to suspend the Liquidation process and for further orders.
4. During the Liquidation Process, the Liquidator shall make Final Report to Adjudicating Authority.

Role of Liquidator

Appointment of Liquidator

Within four weeks of declaration, the members of the company pass special or ordinary resolution wherever necessary and appoint Insolvency Professional as Liquidator. Unlike entire code of Insolvency & Bankruptcy, the Company appoints Liquidator. In all other areas like CIRP, Liquidation, Fresh Start etc, the Adjudicating Authority appoints Insolvency Professional as Resolution Professional, Liquidator wherever necessary. From the Liquidation Commencement date, the business of corporate person ceases. Again the appointed Insolvency Professional must be qualified as per qualifications mentioned and required to be registered with the Insolvency Bankruptcy Board of India.

Appointment of other Professionals

While discharting the duties, the Liquidator feels necessary can engage other professionals with reasonable remuneration. The Liquidator ensure that intended appointments not be related party to the corporate person at least five years preceding to the Liquidation Commencement Date.

Public Announcement

Public Announcement in Form A will be issued by the Liquidator within five days of appointment as Liquidator.

Claims

The stakeholders need to provide their claims within 30 days as mentioned last date mentioned in Public Announcement. The stakeholders provide their claim or dues including interest as on

Liquidation Commencement date. Various Forms have been provided to submit the claims similar to CIRP such as Form B for Operational Creditors, Form C for Financial Creditors etc. The liquidator shall verify claims within 30 days of last date of receipt of claims. Based on the proofs available to the liquidator, the Liquidator admits or rejects the claim. The Liquidator prepare the list of claimants within 45 days last of receipt of claims. In case, if the person not satisfied make an appeal with the Adjudicating Authority. The prepared list of creditors prepared by Liquidator will be available for inspection by the relevant stakeholders.

Liquidator Reporting

The Liquidator submits a Preliminary Report to the Corporate Person. The Preliminary Report includes the basic details like Capital Structure, Assets and Liabilities etc. The basic details will be retrieved from the books of Account of the company or any other reliable source but the data must be as on Liquidation Commencement Date and the Preliminary Report required to be made within 45 days of Liquidation Commencement Date. During the process, the Liquidator makes consultations with the stakeholders wherever necessary. In this regard, the Liquidator shall maintain the particulars of consultations.

The statutory period of voluntary liquidation mentioned within 12 months from Liquidation Commencement Date. If the Liquidation is not completed within such period, the Liquidator needs to conduct the contributors meeting within 15 days end of 12 months from the Liquidation Commencement Date. At the meeting, the Liquidator has to present Progress on liquidation in the shape of Annual Status Report indicating settlement of list of creditors and details of unsold assets. The Liquidator also submits Audited accounts starting from Liquidation Commencement Date.

At the end, the Liquidator submits Final Report with Registrar of Companies and with IBBI. And accordingly, u/s 59 (7), the Liquidator makes application with the Adjusting Authority for dissolution of Corporate Person

To deposit unclaimed

The Liquidator ensures to deposit the unclaimed dividends, undistributed proceeds and income earned if any with the Voluntary Liquidation Account maintained by the Insolvency Bankruptcy Board of India. Such deposit should be made before making application of dissolution with the Adjudicating Authority. The Liquidator need to deposit along with the interest of 12% per annum in case of failing the deposit within due date. The evidence of deposit in Form G need to be submitted with the relevant authority i.e. ROC and with IBBI. The IBBI will issue a Receipt in this regard. The Form G includes all the claimants last known addresses those are associated with the unclaimed amounts. The interest claimant makes claim in Form H for withdrawal of amount.

To call uncalled capital

In case of uncalled capital existing, the Liquidator call and collect the arrears as on Liquidation Commence Date by giving notice of fifteen days. Further contributory not entitled any

distribution from available surplus of liquidation fund, unless the contributory paid the balance amount of unpaid called amount if any.

Liquidator – other areas

The powers and duties of Liquidator include creation of Liquidation of Estate consolidation, verification and rejection of claims etc. The Liquidator observes and interfere associated with the Preferential and avoidance of transactions etc. The Liquidator ensures the Secured Interest of the Secured Creditor to the extent of the relevant Interest.

AT A GLANCE - Some important Forms / declarations during Voluntary Liquidation Process

1. Declaration with a verified Affidavit - Declaration by Majority Directors stating that the liquidation not to defraud any person and they have made full enquiry into affairs of the company and made opinion that the corporate person able to pay debts or no debts
2. Declaration with enclosures - Audited Financial statements previous two years along with valuation report, if any prepared by Registered Valuer.
3. Ordinary Resolution/Special Resolution – (At Corporate person – members meet)
4. Form – A - Public Announcement (within 5 days appointment of Liquidator
5. Form – B – Claim submission by Operation Creditors – within 30 days of date mentioned in PA
6. Form – C – Claim submission by Financial Creditor - within 30 days of date mentioned in PA
7. Form – D - Claim submission by workers - within 30 days of date mentioned in PA
8. Form – E - Claim submission by numerous workers - within 30 days of date mentioned in PA
9. Form – F – Claims by other Creditors - within 30 days of date mentioned in PA
10. Verification of claims (within 30 days of last date of submission of claims)
11. Consultations – Liquidator wherever required make consultations
12. Preliminary Report – within 45 days of Liquidation Commencement Date, submit Preliminary Report to the Corporate Person
13. Annual Status Report – (it is required to be submitted within fifteen days of completion 12 months of Liquidation Commencement Date, in case when the Liquidation not completed within 12 months
14. Final Report – After completion of Liquidation, the Liquidator shall final report and submit the ROC, IBBI and Adjudicating Authority.
15. Corporate Voluntary Liquidation Account -
16. Form – G – deposit by Liquidator with the Bank account maintained by IBBI (with the details of unpaid and unclaimed stakeholders.
17. Application AA (Dissolution)
18. Form – H – Application for withdrawal by Stakeholders from Corporate Voluntary Liquidation Account.

COMPLIANCE

Filing of MGT-14 – Board Resolution and Special Resolution of Corporate Person
Filing of GNL – 2 – Declaration of Solvency, Appointment of Liquidator, Final Report
Filing of MGT-14 (Dissolution order) – Certified Copy of the order of dissolution issued by the Adjudicating Authority required to be filed in MGT-14 with the Registrar of Companies.

CONCLUSION

As and when as assets of corporate debtor exhausted or liquidated, the Liquidator seeks the Dissolution by making application to the Adjudicating Authority u/s 59 (7). The IB Code introduced Sec.59 in connection with Voluntary Liquidation. However, the other relevant sections also equally applicable mentioned from Sec.35 to 53 of IB Code.

At the conclusion, the Liquidator has to apply to the Adjudicating Authority for the order or Dissolution. The Adjusting Authority pass Dissolution Order based on the application filed by Liquidation. The Dissolution Order will be effective from the date of order mentioned in the Dissolution Order. After getting the Order of Dissolution, it should be filed within 14 days at the respective authorities i.e. Registrar of Companies. The Liquidator has to preserve the documents including registers and books so connected for a period of eight years from the date of dissolution. Such preservation can also be made with information utility or in self mode.

The timeline specifies one year from the Liquidation Commencement Date, but in many cases, the process of Liquidation and Dissolution will be completed so early for small big companies. The CIRP – Corporate Insolvency Resolution Process suspended for one year due to Covid 19, but still other provisions of IBC code prevail during that period. Hence IBC code active except only fresh CIRP. And as well, the Voluntary Liquidation available to the Companies and as well as Corporate Person.

Sources:

Insolvency and Bankruptcy Code, 2016
IBBI (Voluntary Liquidation Process) Regulations, 2017

Abbreviations used

Board – wherever used Board of Insolvency and Bankruptcy of India.
IBBI - Insolvency and Bankruptcy of India
ROC – Registrar of Companies of respective area
AA – Adjudicating Authority
Corporate Person – Corporate person includes Company, LLP, and Contributors etc
IB CODE - Insolvency and Bankruptcy Code, 2016
Regulations - IBBI (Voluntary Liquidation Process) Regulations, 2017