

# **VOLUNTARY LIQUIDATION**

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**A HANDBOOK**

August 2018  
Reprint January 2019  
Reprint May 2019

Price : Rs. 400/- (*Postage extra*)

ISBN No. 978-93-86676-04-7

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**Published by :**

**ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS**

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Laser typesetting at: AArushi Graphics

Printed at: Chandu Press/300/May 2019

## Preface

As a professional, if I am to look back into the history of corporate India, words like liquidation, winding-up, and industrial sickness, etc. were looked down, more as a 'corporate stigma' rather than a way to bail out and start afresh. However, the enactment of the Insolvency and Bankruptcy Code, 2016 has turned the tables for everyone.

From professionals to corporates and individuals to entities, the scenarios changed overnight. The liquidation process which once stood as one of the most dreaded activities, did not seem demonic anymore. From a documentation running into heaps of files and pages galore to a straightforward list of attachments, things have definitely changed for good.

And to top it all, the notification of sections pertaining to Voluntary Liquidation of corporate persons by the Ministry of Corporate Affairs goes a long way in reiterating the Government's seriousness and dedication to promote ease of doing business across the nation. The same were followed by the notification of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 by IBBI.

It is quite evident that the notification of these legal provisions has been majorly to provide for the conditions and procedural requirements pertaining to the voluntary liquidation process and the same necessitate the presence of professionals, well attuned and accustomed to the provisions of the law and the requirements under the existing legal structure.

With more than 230 companies taking the route of voluntary winding-up and the appointment of Insolvency Professionals as liquidator, a pre-requisite threat, it seems the need of the hour to apprise this brigade of professionals regarding all the critical functions intended to form part of his work profile.

With this intent in sight, this publication titled 'Voluntary Liquidation – A hand book' has been developed to cover the practical and procedural

aspects of voluntary liquidation right from the approval of voluntary liquidation at the Board meeting upto the dissolution order by National Company Law Tribunal.

I commend the dedicated efforts of the Team ICSI-IIP led by CS Lakshmi Arun (Head, Education & Training) & Company Secretary under the supervision and guidance of CS Alka Kapoor, Chief Executive Officer, ICSI Institute of Insolvency Professionals in bringing out this publication.

I would also like to place on record my gratitude towards CS Munish Sharma, CS Amit Gupta and CS Amit Kaushal for thoroughly reviewing the manuscripts of this publication and also for providing necessary specimen formats/Reports for this publication. I also take this opportunity to appreciate CS Ilam C. Kamboj, CS Satwinder Singh, CA Ankit Goel, CS Ramamurthy, for their value additions to this publication.

I am sure that this book would be a handy reference especially for those insolvency professionals who would be taking up voluntary liquidation for the first time.

**CS Makarand Lele**

August 24, 2018

President

The Institute of Company Secretaries of India

## About the Book

Voluntary Liquidation – A Hand Book covers the entire procedure involved in the process of voluntary liquidation under the Insolvency and Bankruptcy Code, 2016 and the procedural aspects of voluntary liquidation of companies as dealt under Section 59 of the Code and IBBI (Voluntary Liquidation) Regulations, 2017.

The procedural and practical aspects of voluntary liquidation includes convening of board and general meeting for approving voluntary liquidation, filing declaration of solvency, obtaining the approval of creditors, valuation of assets, verification of claims, taking over the custody of assets, submission of preliminary report, final report etc.

This book not only covers the procedural aspects of voluntary liquidation of corporate persons as covered under Section 59 read with IBBI(Voluntary liquidation)Regulations, 2017, but also the specimen formats of Board resolution, shareholders' resolution, engagement letter, intimations to various authorities, preliminary report, final report, application to NCLT for dissolution, FEMA and taxation aspects of Voluntary liquidation etc.

I am sure that this book would be a handy reference for those insolvency professionals who are appointed as liquidators to carry out voluntary liquidation process under the Insolvency and Bankruptcy Code.

In any publications of this type, there is always scope for improvement. I personally request the readers to inform us of any omissions and/or suggestions for improvement. Your feedback is important for us.

Hope you would find the publication useful.

**CS ALKA KAPOOR**

Chief Executive Officer  
ICSI IIP



## **About ICSI IIP**

ICSI Institute of Insolvency Professionals is a frontline regulator registered with Insolvency and Bankruptcy Board of India under the Insolvency and Bankruptcy Code, 2016. It is a company incorporated under section 8 of the Companies Act, 2013 and is a wholly owned subsidiary of the Institute of Company Secretaries of India. ICSI IIP is cast with onerous task of enrolling, educating, training, as well as monitoring the performance of the members, laying down the standards of professional conduct and disciplining the members whenever required. ICSI IIP has registered about 700 IPs who are Company Secretaries, Management experts, Advocates, Cost Accountants and Chartered Accountants. The governing Board of ICSI IIP consists of eminent persons as Independent Directors and the nominees from ICSI.

Since its inception, ICSI IIP has carried out a number of activities for the education and development of Insolvency Professionals such as bringing out practical oriented publications : Practical Aspects of Insolvency Law, Interim Resolution Professional : A Handbook, Judicial Pronouncements under IBC Code 2016 – Issue Analysis, organising intensive training programmes, interactive sessions with Regulators, Adjudicating Authorities, webinar sessions specially focussing on practical challenges etc. ICSI IIP is the first organisation to bring out a monthly journal exclusively on Insolvency and Bankruptcy. In the years to come, ICSI IIP strives to establish itself as a supportive wing of IPs for their development and to have an effective oversight mechanism for monitoring and disciplining of insolvency professionals.





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# Chapter I

## **REGULATORY FRAMEWORK OF VOLUNTARY LIQUIDATION PROCESS UNDER THE CODE**

### **Introduction**

Section 255 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") provides that the Companies Act, 2013 ("**Companies Act**") shall be amended in the manner specified in the Eleventh (XI) Schedule to the Code. Eleventh Schedule to the Code *inter alia* provides that in section 2 of the Companies Act after clause 94, a new clause 94A shall be inserted to provide for new definition of winding up to mean winding up under the Companies Act or liquidation under the Code as applicable. In view of aforesaid, winding up proceeding may now be governed either by the Companies Act or the Code, as the case may be.

It is pertinent to note that provisions relating to voluntary winding up of companies and winding up of a company on the grounds of inability to pay debts have been removed from the Companies Act and are now (with effect from April 01, 2017) governed by the Code which provides for resolution of corporate persons, liquidation and voluntary liquidation process amongst other things. It is also pertinent to note that in terms of Rule 4 of the Companies (Transfer of Pending Proceedings) Rules, 2016 notified on December 07, 2016 and brought into force from April 01, 2017 all applications and petitions relating to voluntary winding up of companies pending before High Court prior to April 01, 2017, shall continue to be dealt by the respective High Court.

### **Voluntary Liquidation Process under the Code**

Ministry of Corporate Affairs vide notification dated March 30, 2017 notified section 59 of the Code relating to voluntary liquidation of corporate persons to be effective from April 01, 2017. Subsequently, for the purpose

of implementing section 59 of the Code, Insolvency and Bankruptcy Board of India ("IBBI") notified the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process), Regulations, 2017 ("**Voluntary Liquidation Process Regulations**") effective April 01, 2017.

Section 59(1) of the Code read with Regulation 3 of the Voluntary Liquidation Process Regulations lays down the provisions for the commencement of the voluntary liquidation process. Section 59 of the Code provides that, a corporate person<sup>1</sup> who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of the Chapter V, Part II of the Code.

Section 59(2) of the code lays down that voluntary liquidation of a corporate person under section 59 (1) shall meet such conditions and procedural requirements as may be specified by the IBBI.

Section 59(3) and Regulation 3(1) of the Voluntary Liquidation Process Regulations lays down the conditions and procedural requirements commencing the voluntary liquidation process. The conditions that have been laid down under Section 59(3) of the Code for corporate person i.e. Company and Regulation 3 of Voluntary Liquidation Process Regulations for corporate person other than company i.e. Limited Liability Partnership are discussed below:

- **Declaration of solvency;**
- **Resolution by Corporate Person;**
- **Notice to Registrar and IBBI.**

## **Declaration by Corporate Person**

### *In the case of a Company*

As per section 59 (3) (a) of the Code a declaration from the majority of the directors of the company verified by an affidavit stating that –

- (i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has

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1. Section 3 (7) of the Code provides that "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

- (ii) the company is not being liquidated to defraud any person;

As per Regulation 3(4), such declaration shall list each debt of the corporate person as on that date and state that the corporate person will be able to pay all its debts in full from the proceeds of assets to be sold in the liquidation.

Also, as per Section 59 (3) (b), the above mentioned declaration is to be accompanied with the following documents:

- (i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
- (ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

*In the case of a Limited Liability Partnership and other corporate person*

According to regulation 3 (1) (a) of the Voluntary Liquidation Process Regulations, liquidation proceedings of a corporate person shall meet the following conditions, namely: –

a declaration from majority of –

- (i) the designated partners, if a corporate person is a limited liability partnership,
- (ii) individuals constituting the governing body in case of other corporate persons, as the case may be, verified by an affidavit stating that
  - (a) they have made a full inquiry into the affairs of the corporate person and they have formed an opinion that either the corporate person has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the liquidation; and
  - (b) the corporate person is not being liquidated to defraud any person;

Also, in accordance with the Regulation 3 (1) (b) of the Voluntary Liquidation Process Regulations, such declaration needs to be accompanied with the following documents, namely –

- (i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
- (ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

**(A sample format of the Declaration of Solvency is placed as Annexure 1.1)**

### **Resolution by Corporate Person**

*In the case of a Company*

Section 59 (3) (c) of the Code provides that within four weeks of a declaration mentioned above, there shall be-

- (i) a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or
- (ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator:

*In the case of a Limited Liability Partnership and other corporate person*

Within four weeks of a declaration made under Regulation 3 (1) (a), there shall be –

- (i) a resolution passed by a special majority of the partners or contributories, as the case may be, of the corporate person requiring the corporate person to be liquidated and appointing an insolvency professional to act as the liquidator; or
- (ii) a resolution of the partners or contributories, as the case may be, requiring the corporate person to be liquidated as a result of expiry of the period of its duration, if any, fixed by its constitutional documents or on the occurrence of any event in respect of which the constitutional documents provide that the corporate person shall be dissolved, as the case may be, and appointing an insolvency professional to act as the liquidator:

*Approval of Resolution passed by creditors representing 2/3<sup>rd</sup> value of the debt of the corporate person*

Provided that the corporate person owes any debt to any person, creditors representing two-thirds in value of the debt of the corporate person shall approve the resolution passed under sub-clause (c) within seven days of such resolution.

**(A sample format of resolution for voluntary liquidation and minutes of extra ordinary general meeting of the members of the corporate person is placed as Annexure 1.2)**

### **Notice to Registrar and IBBI**

Section 59(4) of the Code read with Regulation 3(2) of Voluntary Liquidation Process Regulations states that the corporate person shall notify the Registrar<sup>1</sup> and the IBBI about the resolution mentioned above to liquidate the corporate person within seven (7) days of such resolution or the subsequent approval by the creditors, as the case may be.

### **Commencement of the Voluntary Liquidation Process**

In terms of Regulation 2 (1) (c) of Voluntary Liquidation Process Regulations, "liquidation commencement date" means the date on which the proceedings for voluntary liquidation commence as per section 59 (5) and Regulation 3 (4).

The voluntary liquidation process in respect of a corporate person is deemed to have commenced from the date of the passing of the resolution mentioned above, however this is subject to the approval of the creditors of the company if required (see Section 59 (3) (5) of the Code read with Regulation 3 (1) (3) of Voluntary Liquidation Process Regulations ).

### **Effect of liquidation from Liquidation Commencement Date**

As per Regulation 4 of Voluntary Liquidation Process Regulations, the corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business. However, the corporate person shall continue to exist until it is dissolved under section 59 (8) of the Code.

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1. Regulation 2 (1) (d) of the Voluntary Liquidation Process Regulations provides that "Registrar" shall have the same meaning assigned to it under section 2(75) of the Companies Act, 2013 or section 2(1)(s) of the Limited Liability Partnership Act, 2008 or the authority administering the Act under which the corporate person is incorporated, as applicable.

**Adjudicating Authority for giving effect to Voluntary Liquidation Process**

In terms of section 60 (1) of the Code the Adjudicating Authority, in relation to liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal ("**NCLT**") having territorial jurisdiction over the place where the registered office of a corporate person is located.

Section 60 (2) of the Code provides that without prejudice to section 60 (1) of the Code and notwithstanding anything to the contrary contained in this Code, where a liquidation proceeding of a corporate debtor is pending before NCLT, an application relating to the liquidation of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the NCLT.

Section 60 (3) of the Code provides that liquidation of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with liquidation proceeding of such corporate debtor.

Section 60 (5) of the Code provides that notwithstanding anything to the contrary contained in any other law for the time being in force, NCLT shall have jurisdiction to entertain or dispose of - (a) any application or proceeding by or against the corporate debtor or corporate person; (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

**Appellate Authority**

Section 61 of the Code provides that any person aggrieved by the order of the Adjudicating Authority (NCLT) may prefer an appeal to the National Company Law Appellate Tribunal.

Section 61 (2) of the Code provides that every appeal under section 61 (1) of the Code shall be filed within thirty days before the National Company Law Appellate Tribunal ("**NCLAT**"). However, the NCLAT may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.



**Completion of Liquidation**

Regulation 37 (1) of the Voluntary Liquidation Process Regulations provides that the liquidator shall endeavour to complete the liquidation process of the corporate person within twelve months from the liquidation commencement date.

Regulation 37 (2) of the Voluntary Liquidation Process Regulations provides that in the event of the liquidation process continuing for more than twelve months, the liquidator shall-

- (a) hold a meeting of the contributories of the corporate person within fifteen days from the end of the twelve months from the liquidation commencement date, and at the end every succeeding twelve months till dissolution of the corporate person; and
- (b) present an Annual Status Report(s) indicating progress in liquidation, including –
  - (i) settlement of list of stakeholders,
  - (ii) details of any assets that remains to be sold and realized,
  - (iii) distribution made to the stakeholders, and
  - (iv) distribution of unsold assets made to the stakeholders;
  - (v) developments in any material litigation, by or against the corporate person; and
  - (vi) filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code.

Aforesaid Annual Status Report under Regulation 37 (2) (b) of the Voluntary Liquidation Process Regulations shall enclose the audited accounts of the liquidation showing the receipts and payments pertaining to liquidation since the liquidation commencement date.

**Dissolution of corporate person after winding up of the affairs of corporate person**

Section 59 (7) of the Code provides that where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority (NCLT) for the dissolution of such corporate person.

**Preservation of records relating to Voluntary Liquidation Process**

In terms of Regulation 41 of the Voluntary Liquidation Process Regulations, the liquidator shall preserve a physical or an electronic copy of the reports, registers and books of account referred to in Regulations 8 and 10 for at least eight years after the dissolution of the corporate person, either with himself or with an information utility.

**ANNEXURE 1.1****DECLARATION OF SOLVENCY**

We, Mr. X and Mr. P , only directors of ABC Private Limited do solemnly affirm and declare that we have made a full enquiry into the affairs of this company, and that having done so, we have formed the opinion that this Company has no debts or if claimed during the liquidation process, the company will be able to pay its debts/ claims in full from the proceeds of assets to be sold in liquidation within a period of six months from the date of commencement of liquidation, and we append a statement of the Company's assets and liabilities as at ..... being the latest practicable date before the making of this declaration. We also solemnly affirm and declared that no business and no transaction of any kind has been carried for the period from ..... till the date of the Board Meeting to be held on xx.xx.xx17 in which Declaration of solvency has been placed, and we make this solemn declaration believing the same to be true.

The Declaration of solvency has been submitted to the Board Meeting not to defraud the Creditors, Government, any other company, firm and other person.

Solemnly affirmed and declare at (PLACE) on (DATE), before me.

---

Mr. X  
DIN: xxxxx  
Address:

---

Mr. Y  
DIN: xxxxx  
Address:

**AFFIDAVIT OF CONCURRENCE IN DECLARATION OF SOLVENCY**

We, Mr. X S/o (xx), Director aged about ..... years r/o (xx) and Mr. Y S/o(xx), Director aged about ..... years r/o (xx), the only directors in the company, do hereby solemnly affirm and state as follows:

1. We two are the only directors of the company, therefore, authorized to give Affidavit for Declaration of solvency required under section 59(3) of the Insolvency and Bankruptcy Code, 2016 and the relevant Regulations there under;
2. That we have placed before the Board the Financial Statements for the two years ended on ..... and ..... and perused the same along with the Declaration of solvency submitted by majority of the directors of the company unanimously and to the best of our information, knowledge and behalf, we state that the company is solvent and it will pay all its outstanding, if any, to the creditors, Government dues and others.
3. We have made a full enquiry into the affairs of this company, and that having done so, we have formed the opinion that the company has no debts or if claimed during the liquidation process, the company will be able to pay its debts/claims in full from the date of commencement liquidation;
4. We also state that the company is not being liquidated under the provisions of the Insolvency and Bankruptcy Code, 2016 to defraud any creditor, Government, company, firm or any other person.

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DEPONENT

Mr. X

Director

DIN:

Residence:

---

DEPONENT

Mr. Y

Director

DIN:

Residence

## ANNEXURE 1.2

**RESOLUTION FOR VOLUNTARY WINDING UP**

RESOLUTION FOR VOLUNTARY WINDING-UP AS APPROVED BY THE MEMBERS OF..... (NAME OF THE CORPORATE PERSON) AT THE EXTRA ORDINARY GENERAL MEETING HELD ON AT ..... (DAY AND DATE) ..... AT ..... (PLACE) AT ..... (TIME)

**APPROVAL OF VOLUNTARY LIQUIDATION OF THE COMPANY AND APPOINTMENT OF INSOLVENCY PROFESSIONAL AS LIQUIDATOR**

**RESOLVED THAT** pursuant to the provisions of Section 59 of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board (Voluntary Liquidation Process) Regulations, 2017, any other legislations governing voluntary liquidation and the provisions of the Companies Act, 2013 as may be applicable and subject to approval of creditors having atleast two-thirds in value of the debts of the corporate person with in seven days of this resolution, the consent of the members of ..... (name of the Corporate Person) be and is hereby accorded to initiate voluntary liquidation of ..... (name of the Corporate Person).

**RESOLVED FURTHER THAT** Ms/Mr. ....Insolvency Professional holding Registration Number..... being eligible to be appointed as liquidator pursuant to the provisions of Regulation 6 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation, 2017, be and is hereby appointed to act as the liquidator of ..... (name of the Corporate Person) and subject to approval of creditors having atleast two-thirds in value of the debts of the corporate person with in seven days of this resolution, on the remuneration of Rs..... (Rupees in Words) exclusive of costs of engaging other professionals , statutory expenses, expenses incurred on publication of notices, other incidental expenses and applicable taxes.

**RESOLVED FURTHER THAT** all the directors of the Company and Liquidator be and are hereby severally and/or jointly authorised to and take such steps and to do all such acts, deeds and things as may be necessary to give effect to the aforesaid resolution.

**MINUTES OF EXTRA ORDINARY GENERAL MEETING**

**MINUTES OF EXTRA ORDINARY GENERAL MEETING OF THE MEMBERS/ CONTRIBUTORIES OF ..... (NAME OF THE CORPORATE PERSON) HELD ON (DAY AND DATE) ..... AT ITS REGISTERED OFFICE SITUATED AT ..... COMMENCED AT ..... A.M/ P.M AND CONCLUDED AT .....A.M/ P.M.**

**MEMBERS PRESENT AT THE MEETING:**

- 1. Mr. XYZ (Member/Authorised Representative)
- 2. Mr. ABC (Member/ Authorised Representative)

**CHAIRMAN OF THE MEETING:**

Mr. XYZ was appointed as the chairman with the consent of all the Members/Contributories present at the meeting.

**QUORUM:**

After ascertaining that the requisite quorum for the Meeting was present, the Chairman confirmed that the quorum was present and called the Meeting to order. He then welcomed the members to the Extra Ordinary General Meeting.

**NOTICE**

With the consent of the Members/contributories at the meeting, the notice convening the meeting was read.

**DECLARATION**

The Chairman informed members that no proxies had been received by the corporate person.

**APPROVAL OF VOLUNTARY LIQUIDATION AND APPOINTMENT OF INSOLVENCY PROFESSIONAL AS LIQUIDATOR**

The Chairman informed the Members that it is proposed to voluntarily wind up the affairs of ..... (name of the Corporate Person) and after detail deliberations the following resolution was passed unanimously:

**RESOLVED THAT** pursuant to the provisions of Section 59 of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and

Bankruptcy Board (Voluntary Liquidation Process) Regulations, 2017, any other legislations governing voluntary liquidation and the provisions of the Companies Act, 2013 as may be applicable, and subject to approval of creditors having two-thirds in value of the debts of corporate person within seven days of this resolution, the consent of the members of ..... (name of the Corporate Person) be and is hereby accorded to initiate voluntary liquidation of ..... (name of the Corporate Person).

**RESOLVED FURTHER THAT** Ms/Mr. ....Insolvency Professional holding Registration Number..... being eligible to be appointed as liquidator pursuant to the provisions of Regulation 6 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation, 2017, be and is hereby appointed to act as the liquidator of ..... (name of the Corporate Person), subject to approval of creditors having at least two-third in value of the debts of the corporate person within seven days of this resolution, on the remuneration of Rs. .... (Rupees in Words) exclusive of costs of engaging other professional(s), statutory expenses, expenses incurred on publication of notices, other incidental expenses and applicable taxes.

**RESOLVED THAT** all the directors of the Company and Mr. .... Liquidator be and are hereby severally and/or jointly authorised to and take such steps and to do all such acts, deeds and things as may be necessary to give effect to the aforesaid resolution.

## Chapter II

# APPOINTMENT AND REMUNERATION OF THE LIQUIDATOR

Regulations 5 to 7 of the Voluntary Liquidation Process Regulations read with Section 59 of the Code governs the provisions relating to appointment and remuneration of the liquidator.

Section 5(18) of the Code lays down the definition of 'liquidator'. It says liquidator means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or V of the Part II of the Code, as the case may be.

### **Appointment of Liquidator**

An Insolvency Professional to act as, the liquidator for the purposes of voluntary liquidation process is appointed through the special resolution/ resolution passed by a special majority by the members of the company or partners or contributories, as the case may be in accordance with Section 59 (3) (c) of the Code read with Regulation 3 (1) (c) of Voluntary Liquidation Process Regulations.

(The format for the resolution for the appointment of the liquidator in case of a company is placed as **Annexure 1.2 Chapter I**)

Also, Regulation 5 of the Voluntary Liquidation Process Regulations provides that:

An insolvency professional shall not be appointed by a corporate person if he is not eligible under Regulation 6 of the Voluntary Liquidation Process Regulations.

The resolution passed under regulation 3(2) (c) of the Voluntary Liquidation Process Regulations or under section 59(3) (c) of the Code, as the case may be, shall contain the terms and conditions of the appointment of the liquidator, including the remuneration payable to him.

(The format for draft engagement letter is placed as **Annexure 2.1**)

### **Eligibility for appointment as liquidator**

Regulation 6 of the Voluntary Liquidation Process Regulations prescribes the eligibility of a liquidator which are as follows:

1. An insolvency professional shall be eligible to be appointed as a liquidator if he, and every partner or director of the insolvency professional entity of which he is a partner or director is independent of the corporate person:

The Explanation appended to the Regulation 6 (1) of the Voluntary Liquidation Process Regulations while elucidating the meaning of 'partner or director independent of the corporate person' states that:

A person shall be considered independent of the corporate person, if he –

- (a) is eligible to be appointed as an independent director on the board of the corporate person under section 149 of the Companies Act, 2013 (18 of 2013), where the corporate person is a company;
  - (b) is not a related party of the corporate person; or
  - (c) has not been an employee or proprietor or a partner-
    - (i) of a firm of auditors or company secretaries or cost auditors of the corporate person; or
    - (i) of a legal or a consulting firm, that has or had any transaction with the corporate person contributing ten per cent or more of the gross turnover of such firm, at any time in the last three years.
2. An insolvency professional shall not be eligible to be appointed as a liquidator if he or the insolvency professional entity of which he is a partner or director is under a restraint order of the IBBI.
  3. A liquidator shall disclose the existence of any pecuniary or personal relationship with the concerned corporate person or any of its stakeholders as soon as he becomes aware of it, to the IBBI and the Registrar.



4. An insolvency professional shall not continue as a liquidator if the insolvency professional entity of which he is a director or partner, or any other partner or director of such insolvency professional entity represents any other stakeholder in the same liquidation.

**Liquidator's remuneration**

Liquidator's remuneration is to be agreed between the liquidator and the corporate person and should invariable be mentioned in the resolution passed for his appointment. As per the Regulation 7 of the Voluntary Liquidation Process Regulations, the remuneration payable to the liquidator shall form part of the liquidation cost.

**ANNEXURE 2.1**

Date: .....

..... **Private Limited**

.....

.....

Dear Mr. ....,

**Sub: To Act as Liquidator in voluntary liquidation of .....  
Private Limited under the provisions of the Insolvency and Bankruptcy  
Code, 2016**

I thank you for giving an opportunity to me to be the liquidator and to provide related services for the voluntary liquidation of ..... Private Limited ("the Company") under the provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC"/"Code") including rules prescribed thereunder This letter is to confirm and specify the terms of my engagement with you and to clarify the nature and extent of the services I will provide.

**Background of the Company**

- The Company is a private company limited by shares, incorporated under the Companies Act, 1956 on .....  
..... The Company is a subsidiary of ..... The Company is engaged in the business of .....  
.....

- The registered office of the Company is situated at .....  
.....and.
- The Company is under process of considering the option of Voluntry Liquidation under IBC. In this regard, I have been requested to be appointed as Liquidator for the voluntary liquidation of the Company under the provisions of the IBC and rules made thereunder.

### Scope of Work

I will be acting as liquidator in the voluntary Liquidation of the Company from the date of my appointment as liquidator. I shall be responsible for liaising with .....Company in preparation/review of all the documents required during voluntary liquidation process of the Company including obtaining final order from the National Company Law Tribunal and/or any other authority in relation to the volutnry liquiaton of the Company. The Company would be responsible to provide all the information required for the preparation of complete documents. Our scope of services as liquidator to the Company will comprise of following:

Drafting /Reviewing of associated documents,

- Filing of Declaration, Statement of Assets & Liabilities, Audited Financial statement, records of business operation of previous 2 years with ROC and Insolvency and Bankruptcy Board,
- Public announcement,
- Intimation to ROC, RD, Income tax and other authorities regarding the notice of appointment of liquidator,
- Submission of preliminary report,
- To obtain and verify the claims from different stakeholders in the format prescribed in regulations, Realization and distribution of money to various stake holders.
- Filing of final report in NCLT and getting order form NCLT for dissolution of the Company.
- Assistance in preparation of requisite e-forms / applications to be filed with Register of Companies / NCLT for voluntary liquidaton.

Our Scope of work does not include obtaing NOCs for the statuorty authorities.

**ENGAGEMENT TERMS****Timing and Validity**

The term of the Contract shall be effective from the date of issuance of the engagement letter.

The time for completing the said engagement is dependent upon the availability of relevant documents, accurate and timely information and availability of personnel of the Client for ongoing information and interaction.

**Fee and expenses**

We would be charging a consolidated fee of Rs...../- (plus applicable taxes) as our professional fees for our services. Of the total fees, 25% shall be paid in advance, the next 25% would be payable on my appointment as liquidator by the shareholders, the next 25% would be payable on the submission of Preliminary Report and the remaining amount would be payable at the time of filing of final report with NCLT. The Payment of liquidator's professional fees shall be done from the account of the Company.

The cost of filings fee, documentation cost, paper advertisement and out of pocket expenses including travelling, if any, is not included in above fee and would be charged on actual basis.

In the event client withdraws / discontinues the engagement at any stage for any reasons, the client would pay the fee for work performed.

**Conclusion**

We are keen to serve the Company and would be delighted to work on this Engagement. We assure you that this engagement will receive our closest attention.

We request you to sign and return a copy of this letter to us as your confirmation of the scope of work and the terms of the Contract.

In case you require any clarifications, please let us know.

Yours faithfully,

.....

Practising Company Secretary and Insolvency Professional

.....

Accepted and agreed to by ..... Private Limited

Signature : .....

Name : .....

Designation : .....

Date : .....

## Chapter III

# POWERS, DUTIES AND FUNCTIONS OF THE LIQUIDATOR

For the purposes of carrying out Voluntary Liquidation Process, the Liquidator has a very important role under the Code and has been discussed in detail hereinafter. Amongst others, major functions of Liquidator during the Voluntary Liquidation Process include endeavour to recover and realize all assets of and dues to the corporate person in a time-bound manner for maximization of value for the stakeholders<sup>1</sup> and to distribute the proceeds from realization within six months from the receipt of the amount to the stakeholders<sup>2</sup>.

In terms of section 59 (6) of the Code, the provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

### **Powers and duties of the liquidator**

Section 35 of the Code lays down the powers and duties of a liquidator for the purposes of carrying out liquidation process which are as follows:

Section 35(1) of the Code prescribes that subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: –

- (a) to verify claims of all the creditors;
- (b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;
- (c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;

---

1. Regulation 32 of Voluntary Liquidation Process Regulations

2. Regulation 35 of Voluntary Liquidation Process Regulations

- (d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;
- (e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;
- (f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;
- (g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;
- (h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;
- (i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;
- (j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;
- (k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor;
- (l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;
- (m) to take all such actions, steps, or to sign, execute and verify any

paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;

- (n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and
- (o) to perform such other functions as may be specified by the Board.

Further, Section 35(2) of the Code prescribes that the liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53. However, any such consultation shall not be binding on the liquidator

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

Section 59 (6) provides that provisions of Section 35 to 53 of Chapter III and Chapter IV shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary. It may be noted that Section 34, which provides for cessation of powers of Board of Directors, Key Managerial Personnel and partners of corporate person, is not applicable to proceedings under Section 59. It means that powers of the Board of Directors, Key Managerial Personnel and partners of corporate person do not cease and liquidator only get those powers which are necessary for him to carry out the liquidation of the corporate and Board of Directors, Key Managerial Personnel and partners of corporate person shall continue exercise residual power, though after taking liquidator into confidence, wherever situation so warrants.

### **Formation of liquidation estate**

Section 36 (1) of the Code provides that for the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.

In terms of Section 36 (2) of the Code, the liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors. Though this sub-section provides that estate is to be held "*as a fiduciary for the benefit of all the creditors*", however, in case of voluntary liquidation it should be read "*as a fiduciary for the benefit of all the stakeholders*". Since in case of voluntary liquidation the corporate person is always a solvent entity and stakeholders other than creditors have stake in the liquidation estate.

*Assets forming part of liquidation estate*

Section 36(3) of the Code prescribes that subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following : –

- (a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;
- (b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;
- (c) tangible assets, whether movable or immovable;
- (d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;
- (e) assets subject to the determination of ownership by the court or authority;
- (f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;
- (g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;
- (h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and



- (i) all proceeds of liquidation as and when they are realised.

*Assets not forming part of liquidation estate*

Section 36(4) of the Code further prescribes that the following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: –

- (a) assets owned by a third party which are in possession of the corporate debtor, including –
  - (i) assets held in trust for any third party;
  - (ii) bailment contracts;
  - (iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;
  - (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and
  - (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;
- (b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;
- (c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;
- (d) assets of any Indian or foreign subsidiary of the corporate debtor;  
or
- (e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

**Powers of liquidator to access information**

*Information systems that may be accessed by the liquidator*

Section 37(1) of the Code provides that notwithstanding anything contained in any other law for the time being in force, the liquidator

shall have the power to access any information systems for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor from the following sources, namely: –

- (a) an information utility;
- (b) credit information systems regulated under any law for the time being in force;
- (c) any agency of the Central, State or Local Government including any registration authorities;
- (d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;
- (e) information systems for securities and assets posted as security interest regulated under any law for the time being in force;
- (f) any database maintained by the Board; and
- (g) any other source as may be specified by the Board.

*Manner and time period for providing financial information to creditors*

In terms of Section 37(2) of the Code, the creditors may require the liquidator to provide them any financial information relating to the corporate debtor in such manner as may be specified.

Further, Section 37(3) of the Code provides that the liquidator shall provide such financial information to such creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information.

## **Reporting obligations of the liquidator**

*Reports to be submitted by the liquidator*

In terms of Regulation 8 (1) of Voluntary Liquidation Process Regulations, the liquidator shall prepare and submit-

- (a) Preliminary Report;
- (b) Annual Status Report;
- (c) Minutes of consultations with stakeholders; and

(d) Final Report

in the manner specified under these Regulations.

*Conditions for making reports and minutes available to stakeholders*

Regulation 8 (2) of the Voluntary Liquidation Process Regulations further provides that subject to other provisions of these Regulations, the liquidator shall make the reports and minutes referred to sub regulation (1) available to a stakeholder in either electronic or physical form, on receipt of-

- (a) an application in writing;
- (b) cost of making such reports available to it; and
- (c) an undertaking from the stakeholder that it shall maintain confidentiality of such reports and shall not use these to cause an undue gain or undue loss to itself or any other person.

### **Maintaining registers and books of account**

Regulation 10 (1) of Voluntary Liquidation Process Regulations provides that where the books of account of the corporate person are incomplete on the liquidation commencement date, the liquidator shall have them completed and brought up-to-date, with all convenient speed.

*Registers and books to be maintained*

In terms of Regulation 10 (2) of Voluntary Liquidation Process Regulations, the liquidator shall maintain the following registers and books, as may be applicable, in relation to the liquidation of the corporate debtor:-

- (a) Cash Book;
- (b) Ledger;
- (c) Bank Ledger;
- (d) Register of Fixed Assets and Inventories;
- (e) Securities and Investment Register;
- (f) Register of Book Debts and Outstanding Debts;
- (g) Tenants Ledger;
- (h) Suits Register;

- (i) Decree Register;
- (j) Register of Claims and Dividends;
- (k) Contributories Ledger;
- (l) Distributions Register;
- (m) Fee Register;
- (n) Suspense Register;
- (o) Documents Register;
- (p) Books Register;
- (q) Register of unclaimed dividends and undistributed properties deposited in accordance with Regulation 39; and
- (r) Such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor.

*Manner and time period for maintaining such registers and books*

In terms of Regulation 10(3) of the Voluntary Liquidation Process Regulations, the registers and books under sub-regulation (2) may be maintained in the forms indicated in Schedule II, with such modifications as the liquidator may deem fit in the facts and circumstances of the liquidation. The forms have been placed as **Annexure 3.1**.

Further, in terms of Regulation 10(4) of the Voluntary Liquidation Process Regulations, the liquidator shall keep receipts for all payments made or expenses incurred by him.

Regulation 41 of Voluntary Liquidation Process Regulations also provides that the liquidator shall preserve a physical or an electronic copy of the reports, registers and books of account referred to in Regulations 8 and 10 for at least eight years after the dissolution of the corporate person, either with himself or with an information utility.

### **Engagement of professional by the liquidator**

In terms of Regulation 11(1) of Voluntary Liquidation Process Regulations, a liquidator may engage professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.

In terms of Regulation 11(2) of the Voluntary Liquidation Process Regulations, the liquidator shall not engage a professional under sub-regulation (1) who is his relative, is a related party of the corporate person or has served as an auditor to the corporate person at any time during the five years preceding the liquidation commencement date. The term auditor has been defined in sub-section (2) of Section 5 to mean a chartered accountant certified to practice as such by the Institute of Chartered Accountant of India under section 6 of the Chartered Accountant Act, 1949. It means any person who happens to hold certificate of practice issued by the Institute of Chartered Accountant of India under Section 6 of the Chartered Accountant Act, 1949 and who has provided any services to the corporate is barred from being appointed under this Regulation 11(2).

Further, in terms of Regulation 11(3) of the Voluntary Liquidation Process Regulations, a professional engaged or proposed to be engaged under sub-regulation (1) shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders, or the corporate person as soon as he becomes aware of it, to the liquidator.

### **Detection of fraud or insolvency**

In terms of Regulation 40(1) of Voluntary Liquidation Process Regulations, where the liquidator is of the opinion that the liquidation is being done to defraud a person, he shall make an application to the Adjudicatory Authority to suspend the process of liquidation and pass any such orders as it deems fit.

Also, in terms of Regulation 40(2) of Voluntary Liquidation Process Regulations, where the liquidator is of the opinion that the corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the liquidation, he shall make an application to the Adjudicating Authority (NCLT) to suspend the process of liquidation and pass any such orders as it deems fit.

ANNEXURE 3.1

SCHEDULE II

(Under Regulation 10 of the Insolvency and Bankruptcy Board of India  
(Voluntary Liquidation Process) Regulations, 2017)

The formats contained in this Schedule are indicative in nature, and the liquidator may make such modifications to them as he deems fit in view of the facts and circumstances of the liquidation.

CASH BOOK

Name of Corporate person .....  
(in liquidation)

Date	Parti- culars	Led- ger Folio No.	Receipt				Payments				Balance		
			Vou- cher No.	Cash	Bank	Total	Vou- cher No.	Cash	Bank	Total	Cash	Bank	Total
1	2	3	4	5	6	7	8	9	10	11	12	13	14

Under column ‘particulars’, the head of account to which the entry relates to should be indicated so that the entry may be posted under the proper head in the General Ledger.

GENERAL LEDGER

Name of Corporate person .....  
(in liquidation)

.....(Head of account)

Date	Particulars	Dr. (Rs.)	Cr. (Rs.)	Balance (Rs.)
1	2	3	4	5

*Instructions:*

1. A General Ledger should be maintained with such heads of account as the liquidator may think necessary and appropriate. The following heads of account may be found suitable:

- (1) Asset account
- (2) Investments account
- (3) Book Debts and Outstanding account
- (4) Calls
- (5) Rent Collected/rent receivable
- (6) Interest on Securities and Deposits
- (7) Advances received
- (8) Miscellaneous receipts payments
- (9) Establishment
- (10) Legal charges
- (11) Rents, Rates and Taxes payable
- (12) Fees and Commission account
- (13) Other expenses
- (14) Suspense account
- (15) Secured creditors
- (16) Dividend account.

2. The entries in the General Ledger should be posted from the Cash Book.

3. The total of the debit balances and the total of the credit balances of the several heads of account in the General Ledger should agree, after taking into consideration the cash and bank balances as shown in the Cash Book. The totals should be tallied once a month.

**BANK LEDGER****Corporate person's (in voluntary liquidation) account with the  
Scheduled Bank**

Date	Particulars	Deposits		Withdrawals		Balance
		Challan Number	Rs.	Cheque Number	Rs.	Rs.
1	2	3	4	5	6	7

**REGISTER OF ASSETS**

Sl. No.	Description of assets	Date of taking possession	Serial number of Sales Register	Date of sale	Date of realization	Amount	Remarks
1	2	3	4	5	6	7	8
1.							
2.							

Instructions:

1. All the assets of the corporate person except the liquidator's investments in securities and outstanding to be realized should be entered in this Register.

**SECURITIES AND INVESTMENTS REGISTER**

Sl. No.	Petition number and name of the corporate person	Date of investment	Nature and particulars of security in which investment is made	Amount invested (Rs.)	Dividend or interest received with date of receipt (Rs.)	Date of disposal	Remarks
1	2	3	4	5	6	7	8
1.							
2.							



REGISTER OF BOOK DEBTS AND OUTSTANDINGS

<i>Sl. No.</i>	<i>Name and address of debtor</i>	<i>Particulars of debt</i>	<i>Amount due (Rs.)</i>	<i>Date of bar by limitation</i>	<i>Amount realised (Rs.)</i>	<i>Action taken</i>	<i>Date of realisation</i>	<i>Reference to Suits Register</i>	<i>Remarks</i>
1	2	3	4	5	6	7	8	9	10
1.									
2.									
3.									

Instructions:

1. All debts due to the corporate person, both secured and unsecured, including amounts due for arrears of calls made prior to the liquidation, should be entered in this Register.

TENANTS LEDGER

- 1. Description of assets:
- 2. Name and address of tenant:
- 3. Date of tenancy:
- 4. Period of tenancy:
- 5. Rent (monthly or annual):
- 6. Special terms, if any:
- 7. Arrears on date of taking charge of assets:
- 8. Advance received, if any:

<i>Month</i>	<i>Demand</i>	<i>Realization</i>		<i>Balance</i>	<i>Remarks</i>
	<i>Amount (Rs.)</i>	<i>Date</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>	
1	2	3	4	5	6
January					

February					

### SUITS REGISTER

Sl. No.	Number of suit or appeal and court	Name and address of plaintiff/appellant and his advocate	Name and address of defendant/respondent and his advocate	Amount of claim	Date of filing	Dates of hearing	Date of decree or final order	Nature of relief granted	Amount decreed	Costs decreed	Reference to Decree Register	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13
1.												
2.												

#### Instructions:

1. Applications made by or against the corporate person which are in the nature of suits should also be entered in this Register.

### DECREE REGISTER

Number of suit or appeal and court	Name and address of judgment debtor	Amount Decreed (Rs.)	Date of decree	Action taken	Amount realized (Rs.)	Date of realisation	Reference to Suits Register
1	2	3	4	5	6	7	8
1.							
2.							

#### Instructions:

1. The purpose of the Register is to enable the liquidator to keep watch on the progress of the realization of decrees in favor of the corporate person in his charge.

2. Every decree or order for payment of money or delivery of assets in favor

of the corporate person including an order for payment of costs whether made in a suit, appeal or application, should be entered in this Register.

REGISTER OF CLAIMS AND DISTRIBUTIONS

Claims						Distributions declared and paid									Remarks
Sl. No.	Name and Address of creditor	Amount claimed (Rs.)	Nature of claim (Rs.)	Amount admitted (Rs.)	Whether ordinary or preferential	Date	Amount (Rs.)	Date and Mode of Payment	Rate	Amount (Rs.)	Date and mode of payment	Rate	Amount (Rs.)	Date and mode of payment	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1.															
2.															

Instructions:

- 1. Only claims admitted either wholly or in part should be entered in this Register.
- 2. The page on the left side should be reserved for claims and the page on the right side for Distributions.

CONTRIBUTORY'S LEDGER

Sl. No.	Name and address of contributory	Number of shares or extent of interest held, and amount paid thereon	Calls		Remarks	Returns of share capital			Remarks
			First Call	2 <sup>nd</sup> call/ 3 <sup>rd</sup> call		Date of return	Date of Pay-ment	Amo-unt paid (Rs.)	

			<i>Date of call and amount called</i>	<i>Amount paid and date of payment</i>	<i>(Repeat columns as under first call)</i>					
1	2	3	4	5	6 to 9	10	11	12	13	14
1.										
2.										

*Instructions:*

Only contributories settled on the list should be entered in this Register and they should be entered in the same order as in the list.

### **DISTRIBUTIONS REGISTER**

Date on which distribution is made:

Total amount payable in this round of distribution:

<i>Date</i>	<i>Number on list of stakeholders</i>	<i>Particulars</i>	<i>Receipts</i>	<i>Payments</i>
1	2	3	4	5
1.				
2.				

*Instructions:*

1. Separate pages should be set apart for preferential and ordinary distributions.
2. The payments should be entered as and when they are made. Any amount which is returned unpaid should be re-entered in the account under 'Receipts'.
3. The number in column 2 should be the number of the stakeholders in the list of stakeholders as finally settled.
4. The total amount of unclaimed distribution payable into the Public Account of India, and the amount paid into the Bank with the date of payment, should be shown at the end of the account.

FEE REGISTER

<i>Amount realized on which fee are payable</i>	<i>Amount distributed on which fee are payable</i>	<i>Fee payable on the amounts in the two preceding columns</i>	<i>Total fee payable</i>	<i>Date of payment</i>
1	2	3	4	5
1.				
2.				

Instructions:

- 1. There should be a fresh opening for each year.
- 2. The fees due to the liquidator should be entered in the Register as soon as the audit of the account for a quarter is completed.

SUSPENSE REGISTER

<i>Date</i>	<i>Particulars</i>	<i>Debit (Rs.)</i>	<i>Credit (Rs.)</i>	<i>Balance (Rs.)</i>
1	2	3	4	5
1.				
2.				

Instructions:

- 1. Advances made by the liquidator to any person should be entered in this Register.
- 2. There should be a separate opening for each person.

DOCUMENTS REGISTER

<i>Sl. No.</i>	<i>Description of document</i>	<i>Date of receipt</i>	<i>From whom received</i>	<i>Reference number of shelf in which document is kept</i>	<i>How disposed of</i>	<i>Remarks</i>
1	2	3	4	5	6	7
1.						
2.						

*Instruction:* All documents of title like title-deeds, shares, promissory notes, etc., should be entered in this Register.

### BOOKS REGISTER

<i>Date</i>	<i>From whom received</i>	<i>Serial Number</i>	<i>Description of books, including files</i>	<i>Shelf number</i>	<i>How disposed of</i>	<i>Remarks</i>
1	2	3	4	5	6	7
1.						
2.						

*Instruction:* All books and files of the corporate person which come into the hands of the liquidator should be entered in this Register.

### REGISTER OF UNCLAIMED DIVIDENDS AND UNDISTRIBUTED ASSETS DEPOSITED

<i>Sl. No.</i>	<i>Name of person entitled to the dividend or return</i>	<i>Whether Creditor or Contributory</i>	<i>Number on list of stakeholders</i>	<i>Date of declaration of dividend or return</i>	<i>Rate of dividend or return</i>	<i>Total amount payable (Rs.)</i>
1	2	3	4	5	6	7
1.						
2.						

## Chapter IV

# PUBLIC ANNOUNCEMENT

The liquidator appointed for the voluntary liquidation proceedings is required to make a public announcement regarding the voluntary liquidation of the corporate person under Regulation 14 of the Voluntary Liquidation Process Regulations calling the stakeholders to submit their claims.

### Definition

Regulation 2(f) of Voluntary Liquidation Process Regulations provides that the term 'stakeholders' means the stakeholders entitled to proceeds from the sale of liquidation assets under Section 53 of the Code.

### Public Announcement by the Liquidator

As per the Regulation 14(1) of Voluntary Liquidation Process Regulations provides that the liquidator shall within five days of his appointment make a public announcement in Form A of Schedule I annexed to the Regulations. Whereas according to proviso to section 59 (3)(c) consent from creditors is required within seven days of passing the resolution for initiation and for appointment of liquidator.

The format of such public announcement in accordance with Form A is enclosed herewith below as **Annexure 4.1** for reference.

### Information to be contained in a Public Announcement

Regulation 14 (2) of Voluntary Liquidation Process Regulations provides that the public announcement shall –

- (a) Call upon stakeholders to submit their claims as on the liquidation commencement date; and
- (b) Provide the last date for the submission of the claim, which shall be thirty (30) days from the liquidation commencement date.

### Manner of making the Public Announcement

In accordance with Regulation 14 (3) of Voluntary Liquidation Process Regulations, the public announcement shall be published-

- (a) In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate person and any other location where in the opinion of the liquidator, the corporate person conducts material business operations;
- (b) On the website, if any, of the corporate person; and
- (c) On the website, if any, designated by the Board for this purpose.

The Board has not designated any separate website and public announcement are published on [www.ibbi.gov.in](http://www.ibbi.gov.in) Liquidator shall send a copy of public announcement to [public.ann@ibbi.gov.in](mailto:public.ann@ibbi.gov.in) for publication on the website of the Board.

#### Annexure 4.1

#### FORM A

#### PUBLIC ANNOUNCEMENT

[Regulation 14 of the Insolvency and Bankruptcy Board of India  
(Voluntary Liquidation Process) Regulations, 2017]

#### FOR THE ATTENTION OF THE STAKEHOLDERS OF [Name of Corporate person]

1.	NAME OF CORPORATE PERSON	
2.	DATE OF INCORPORATION OF CORPORATE PERSON	
3.	AUTHORITY UNDER WHICH CORPORATE PERSON IS INCORPORATED / REGISTERED	
4.	CORPORATE IDENTITY NUMBER / LIMITED LIABILITY IDENTITY NUMBER OF CORPORATE PERSON	
5.	ADDRESS OF THE REGISTERED OFFICE AND PRINCIPAL OFFICE (IF ANY) OF CORPORATE PERSON	



6.	LIQUIDATION COMMENCEMENT DATE OF CORPORATE PERSON	
7.	NAME, ADDRESS, EMAIL ADDRESS, TELEPHONE NUMBER AND THE REGISTRATION NUMBER OF THE LIQUIDATOR	
8.	LAST DATE FOR SUBMISSION OF CLAIMS	

Notice is hereby given that the *[name of the corporate person]* has commenced voluntary liquidation on *[liquidation commencement date]*.

The stakeholders of *[name of the corporate person]* are hereby called upon to submit a proof of their claims, on or before *[insert the date falling thirty days after the liquidation commencement date]*, to the liquidator at the address mentioned against item 7.

The financial creditors shall submit their proof of claims by electronic means only. All other stakeholders may submit the proof of claims in person, by post or by electronic means.

Submission of false or misleading proofs of claim shall attract penalties.

Name and Signature of the Liquidator:

Date:

Place:

## Chapter V

# INTIMATIONS – VOLUNTARY LIQUIDATION

As per the provisions of Section 59 of the Insolvency and Bankruptcy Code, 2016, the company shall notify the Registrar of Companies and the Board about the resolution under sub-section (3) to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be. Regulation 3(2) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 also state that the corporate person shall notify the Registrar and the Board about the resolution under sub-regulation (1) to liquidate the corporate person within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

It is the duty of the liquidator to intimate the commencement of voluntary liquidation and appointment of liquidator to a number of authorities/ stakeholders including banks, IBBI, Insolvency Professional Agency, Assessing Officer, Income Tax, ROC etc.

The specimen of the various intimation letters to the concerned are as follows:

### **1. INTIMATION LETTER TO BANK**

To,

XYZ Bank

Delhi-\*\*\*\*

**Subject: Change in Operating Instructions Due to Commencement of Voluntary Liquidation and appointment of Liquidator pursuant to Section 59 of the Insolvency and Bankruptcy Code, 2016.**

**Reference: ABC Private Limited**

Dear Sir/Madam,

This is to inform you that ABC Private Limited ("the Company") having **CIN: \*\*\*\*\*** and its registered office at (Address), pursuant to Section 59 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 ("VLP Regulations") or any other legislations governing voluntary liquidation and the provisions of the Companies Act, 2013 as may be applicable has passed a Special Resolution at its Annual General Meeting held on ..... to liquidate the Company by way of Voluntary Liquidation process. The resolution has been approved by sole creditor/creditors of requisite value on .....

I, PQR, Insolvency Professional, holding Registration Number \*\*\*\*\*, have been appointed as liquidator for this purpose.

I, being the liquidator, have been authorized as sole signatory to said account. You are requested to change the details of authorized signatory and not act on any instruction, orders, directions or mandates except that of the undersigned for operation of the said account.

A copy of the special resolution, approval by sole creditor /creditors of requisite value and copy of board resolution appointing me as sole authorized signatory are attached for your reference, record and necessary action.

You are requested to intimate the undersigned in case something more is required to be done for change in the authorized signatory.

Thanking you,

Yours Faithfully

For ABC Private Limited

PQR

Liquidator

IBBI Registration No: \*\*\*\*\*

Date:

Place:

**2. INTIMATION TO IBBI**

To,

Insolvency and Bankruptcy Board of India  
7<sup>th</sup> Floor, Mayur Bhawan, Shankar Market  
Connaught Circus, New Delhi-110001

**Subject: Intimation regarding Commencement of Voluntary Liquidation Process of ABC Private Limited (“the Company”) and appointment of Liquidator pursuant to Section 59 of the Insolvency and Bankruptcy Code, 2016.**

Dear Sir/Madam,

This is to inform you that (“the Company”) having **CIN:\*\*\*\*\*** and its registered office at (Address), pursuant to Section 59 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (“VLP Regulations”) or any other legislations governing voluntary liquidation and the provisions of the Companies Act, 2013 as may be applicable has passed a Special Resolution at its General Meeting held on ..... to liquidate the Company by way of Voluntary Liquidation process. The resolution has been approved by sole creditor/creditors of requisite value on .....

I, XYZ Insolvency Professional, holding Registration Number -\*\*\*\*\* ,have been appointed as liquidator for this purpose.

A copy of the special resolution and approval by sole creditor along with other prescribed documents is enclosed for your record and reference.

You are requested to take the same on record.

Thanking you,

Yours Faithfully

For ABC Private Limited

XYZ

Liquidator

IBBI Registration No: \*\*\*\*\*

Date:

Place:

Encl:

1. Copy of special resolution dated \*\*\*\*
2. Copy of Creditor Approval dated \*\*\*\*
3. Copy of Form A – Public Announcement

**3. INTIMATION TO IBBI (PUBLIC ANNOUNCEMENT)**

To,

Insolvency and Bankruptcy Board of India  
7<sup>th</sup> Floor, Mayur Bhawan, Shankar Market  
Connaught Circus, New Delhi-110001

Dear Sir/Madam,

This is to inform you that ABC Private Limited ("the Company") having **CIN: \*\*\*\*\*** and its registered office at (Address), pursuant to Section 59 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 ("VLP Regulations") or any other legislations governing voluntary liquidation and the provisions of the Companies Act, 2013 as may be applicable has passed a Special Resolution at its General Meeting held on ..... to liquidate the Company by way of Voluntary Liquidation process. The resolution has been approved by sole creditor/creditors of requisite value on .....  
.....

I, XYZ, Insolvency Professional, holding Registration Number \*\*\*\*\*, have been appointed as liquidator for this purpose.

Public Announcement for the same is published in .....  
Name of Newspaper (English) and ..... Name of Newspaper (Hindi) Newspapers on ..... Scanned copies of said announcement in newspapers and a copy of announcement in Form A for publishing on website are attached herewith.

You are requested to publish announcement on the designated website and take on record the newspaper publications.

Thanking you,

Yours Faithfully

For ABC Private Limited

XYZ

Liquidator

IBBI Registration No: \*\*\*\*\*

Date:

Place:

Encl:

1. Copy of special resolution dated \*\*\*\*
2. Copy of Creditor Approval dated \*\*\*\*
3. Copy of Form A – Public Announcement

#### 4. INTIMATION TO IIPA

To,

ICSI Insolvency Professional Agency

1<sup>st</sup> Floor, ICSI House

22, Institutional Area

Lodhi Road, New Delhi - 110003

**Subject : Intimation of Assignment as Voluntary Liquidator of ABC Private Limited ("the Company") under Section 59 of the Insolvency and Bankruptcy Code, 2016.**

Dear Sir/Madam,

This is to inform you that ABC Private Limited ("the Company") having **CIN:\*\*\*\*\*** and its registered office at (Address), pursuant to Section 59 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 ("VLP Regulations") or any other legislations governing voluntary liquidation and the provisions

of the Companies Act, 2013 as may be applicable has passed a Special Resolution at its General Meeting held on ..... to liquidate the Company by way of Voluntary Liquidation process. The resolution has been approved by sole creditor/creditors of requisite value on .....  
.....

I, XYZ, Insolvency Professional, holding Registration Number \*\*\*\*\*, have been appointed as liquidator for this purpose.

A copy of the special resolution and approval by sole creditor are enclosed for your record and reference.

You are requested to take the same on record.

Thanking you,  
Yours Faithfully

XYZ  
Insolvency Professional  
IBBI Registration No: \*\*\*\*\*

Date:

Place:

Encl:

1. Copy of special resolution dated \*\*\*\*
2. Copy of Creditor Approval dated \*\*\*\*

## **5. INTIMATION TO ASSESSING OFFICER, INCOME TAX**

To,

Assessing Officer, Income Tax  
Circle 23(2), Delhi  
CR Building, Delhi

**Subject : Intimation Under Section 178 of Income Tax Act, 1961 regarding Commencement of Voluntary Liquidation Process and appointment of Liquidator pursuant to Section 59 of the Insolvency and Bankruptcy Code, 2016.**

**Ref: ABC Private Limited - PAN:\*\*\* ("the Company")**

Dear Sir/Madam,

This is to inform you that ABC Private Limited ("the Company") having **CIN:\*\*\*\*\***, **PAN:\*\*\*** and its registered office at (Address), pursuant to Section 59 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 ("VLP Regulations") or any other legislations governing voluntary liquidation and the provisions of the Companies Act, 2013 as may be applicable has passed a Special Resolution at its General Meeting held on ..... to liquidate the Company by way of Voluntary Liquidation process. The resolution has been approved by sole creditor/creditors of requisite value on .....

I, XYZ Insolvency Professional, holding Registration Number \*\*\*\*\* have been appointed as liquidator for this purpose.

You are requested to notify the amount that would be sufficient to provide for any tax which is now, or is likely hereafter to become, payable by the Company. You are also requested to intimate undersigned any other information that you consider relevant for the purpose of liquidation, income tax liability or otherwise.

A copy of the special resolution is enclosed for your record and reference.

Thanking you,

Yours Faithfully

For ABC Private Limited

XYZ

Liquidator

IBBI Registration No: \*\*\*\*\*

Date:

Place:

Encl:

1. Copy of special resolution dated \*\*\*\*

2. Copy of Creditor Approval dated \*\*\*\*



## 6. INTIMATION TO ROC

To,

Ministry of Corporate Affairs,  
The Registrar of Companies,  
NCT of Delhi & Haryana,  
4th Floor, IFCI Tower,  
61, Nehru Place,  
New Delhi-110019

**Subject: Intimation regarding Commencement of Voluntary Liquidation Process of ABC Private Limited (“the Company”) and appointment of Liquidator pursuant to Section 59 of the Insolvency and Bankruptcy Code, 2016.**

Dear Sir/Madam,

This is to inform you that ABC Private Limited (“the Company”) having **CIN: \*\*\*\*\*** and its registered office at (Address) pursuant to Section 59 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (“VLP Regulations”) or any other legislations governing voluntary liquidation and the provisions of the Companies Act, 2013 as may be applicable has passed a Special Resolution at its General Meeting held on ..... to liquidate the Company by way of Voluntary Liquidation process. The resolution has been approved by sole creditor/creditors of requisite value on .....  
.....

A copy of the special resolution and approval by sole creditor along with other prescribed documents is enclosed for your record and reference.

You are requested to take the same on record.

Thanking you,

Yours Faithfully

For ABC Private Limited

Name of Director .....

Director :

DIN :

Address :

Date:

Place:

Encl:

1. Copy of special resolution dated \*\*\*\*

2. Copy of Creditor Approval dated \*\*\*\*

Note : Above intimation to RoC should also be made by company/ corporate debtor in terms of section 59(4) read with Regulations 3(2) as attachment of Form MGT-14 of the Companies Act, 2013.

## Chapter VI

# CLAIMS IN VOLUNTARY LIQUIDATION

### **Invitation of Claim**

As per Regulation 14 of the Voluntary Liquidation Process Regulations, Liquidator shall make a public announcement, within five (5) days from his appointment. Further, Regulation 14 of Voluntary Liquidation Process Regulations provides that the public announcement shall call upon stakeholders to submit their claims as on the liquidation commencement date and also provide the last date for submission of claim, which shall be thirty (30) days from the liquidation commencement date.

### **Steps taken by Liquidator in respect to claims under Voluntary Liquidation Process**

After Public Announcement by Liquidator inviting claims, following steps are taken by Liquidator for the purposes of Voluntary Liquidation Process:

1. Collation of claims once claims and its proof are submitted by the stakeholders to the liquidator
2. Consolidation of claims by the liquidator
3. Verification of claims by the liquidator
4. Acceptance or rejection of claims
5. Preparation of list of stakeholders

In the aforesaid context, it may be noted that Voluntary Liquidation Process Regulations prescribe for: Manner of submission of claims by financial creditors, operational creditors, workmen and employees and other stakeholders; Proof of claims; Last date for submission of claims; Reporting requirements of Liquidator with respect to verification of claims including preparation of list of stakeholders and the same are discussed below at appropriate places.

## **Understanding the basic definitions for Voluntary Liquidation Process**

For the purposes of collation, consolidation, verification of claims, etc., following definitions may be noted as prescribed under the Code read with Voluntary Liquidation Process Regulations .

### ***Definition of the term 'Claim'***

The process of collation, acceptance and satisfaction of claims forms an integral part of the voluntary liquidation process. As per Section 3(6) of the Code, "claim" means-

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

### ***Definition of the term 'Operational Creditor'***

As per Section 5 (20) of the Code, 'operational creditor' means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

### ***Definition of the term 'Financial Creditor'***

As per Section 5(7) of the Code, 'Financial Creditor' means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

### ***Definition of the term 'Workman'***

As per Section 3(36) of the Code, 'workman' shall have the same meaning as assigned to it in clause(s) of section 2 of the Industrial Disputes Act, 1947.

### ***Definition of the term 'stakeholders'***

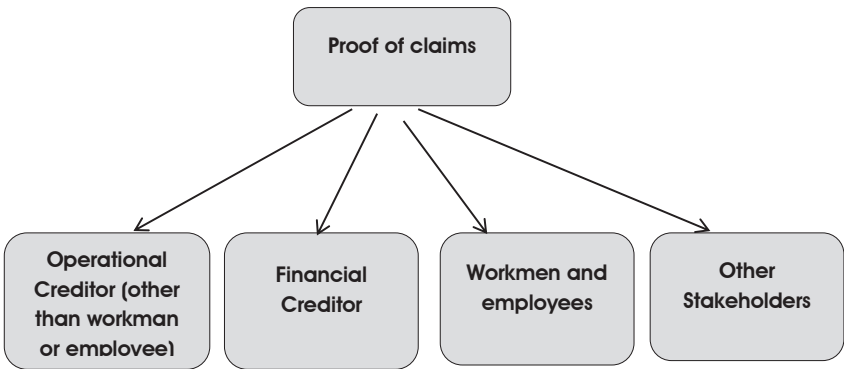
The provisions of the Code stresses very heavily on the stakeholders and the importance of ensuring the benefit of all such stakeholders in the case of both resolution and liquidation. In this light, we need to coherently understand the term stakeholders.

As per Regulation 2(1)(f) of Voluntary Liquidation Process Regulations, the term ‘stakeholders’ means the stakeholders entitled to proceeds from the sale of liquidation of assets under Section 53 of the Code.

Section 53 of the Code lays down the order of priority (waterfall mechanism) in which the proceeds from the sale of the liquidation assets are to be distributed.

**Proof of claim to Liquidator by stakeholders of corporate person**

Regulation 15 of Voluntary Liquidation Process Regulations, states that a person, who claims to be a stakeholder, shall prove his claim for debt or dues to him (proof of claims), including interest, if any, as on the liquidation commencement date. In this context, Voluntary Liquidation Process Regulations provides for requirements regarding proof of claim to the liquidator by operational creditor, financial creditor, workmen and employees, other stakeholders of the corporate person and the same are discussed below.



**Claims by Operational Creditors**

*Mode and manner of submission of proof of claims*

In terms of Section 38 (3) read with Regulation 16 (1) of Voluntary Liquidation Process Regulations , a person claiming to be an operational creditor of the corporate person, other than a workman or employee, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form B of Schedule I. The prescribed format is placed as **Annexure 6.1**.

*Basis of proof of claims*

The existence of debt must be proved on the basis of documents submitted by an operational creditor. Regulation 16(2) of the Voluntary Liquidation Process Regulations states that the existence of debt due to an operational creditor under this Regulation may be proved on the basis of –

- (a) the records available with an information utility; or
- (b) other relevant documents which adequately establish the debt, including any of the following -
  - (i) a contract for the supply of goods or services with corporate person, supported by an invoice demanding payment for the goods and services supplied to the corporate person;
  - (ii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; and
  - (iii) financial accounts of the corporate person.

**Claim by Financial Creditors***Mode and manner of submission of proof of claims*

In terms of Section 38(2) read with Regulation 17(1) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations 2017, a person claiming to be a financial creditor of the corporate person shall submit proof of claim to the liquidator in electronic means in Form C of Schedule I. The prescribed format is placed as **Annexure 6.2**.

*Basis of proof of claims*

Similar to the case of the operational creditors, even in case of financial creditors, the existence of debt must be proved by way of submission of relevant documents. Regulation 17(2) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 states that the existence of debt due to the financial creditor may be proved on the basis of –

- (a) the records available in an information utility; or
- (b) other relevant documents which adequately establish the debt, including any or all of the following –

- (i) a financial contract supported by financial statements as evidence of the debt;
- (ii) a record evidencing that the amounts committed by the financial creditor to the corporate person under a facility has been drawn by the corporate person;
- (iii) financial statements showing that the debt has not been repaid; and
- (iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

### **Claims by a creditor who is partly financial creditor and partly an operational creditor**

In a case where a creditor is partly a financial creditor and partly an operational creditor, Section 38(4) of the Code prescribes that he shall submit his claims to the liquidator to the extent of his financial debt in the manner as provided in Section 38(2) of the Code and to the extent of his operational debt under Section 38(3) of the Code.

### **Claims by Workmen and Employees**

#### *Mode and manner of submission of proof of claims*

The claims by workmen and employees have been bifurcated into the following:

1. By a person claiming to be workman or an employee of the corporate person shall submit proof of claim to the liquidator in person, by post or by electronic means in Form D of Schedule I. The specified form is placed as **Annexure 6.3**. [Regulation 18(1) of Voluntary Liquidation Process) Regulations]
2. In case of numerous workmen or employees of the corporate person, an authorized representative may submit one proof of claim for all such dues on their behalf in Form E of Schedule I. The specified form is placed as **Annexure 6.4**. [Regulation 18(2) of Voluntary Liquidation Process) Regulations]

#### *Basis of proof of claims*

Regulation 18(3) of Voluntary Liquidation Process Regulations lays down

the documents that are required to prove the claims. As per the regulation, the existence of dues to workmen or employees may be proved by them, individually or collectively, on the basis of –

- (a) records available in an information utility; or
- (b) other relevant documents which adequately establish the dues, including any or all of the following –
  - (i) a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;
  - (ii) evidence of notice demanding payment of unpaid amount and any documentary or other proof that payment has not been made; and
  - (iii) an order of a court or tribunal that has adjudicated upon the non-payment of dues, if any.

However, there may be cases where the workman or employee has not submitted any claim. In this case, Regulation 18(4) of Voluntary Liquidation Process Regulations states that the liquidator shall admit the claims of a workman or an employee on the basis of the books of account of the corporate person if such workman or employee has not made a claim.

## Claims by Other Stakeholders

### *Mode and manner of submission of proof of claims*

As per Regulation 19(1) of Voluntary Liquidation Process Regulations , a person claiming to be a stakeholder other than those under Regulations 16, 17 or 18 shall submit proof of claim to the liquidator in person, by post or by electronic means in Form F of Schedule I. The specified form is placed as **Annexure 6.5**.

### *Basis of proof of claims*

Regulation 19(2) of Voluntary Liquidation Process Regulations states that the existence of the claim of the stakeholder may be proved on the basis of –

- (a) the records available in an information utility; or



- (b) other relevant documents which adequately establish the claim, including any or all of the following –
  - (i) documentary evidence of notice demanding payment of unpaid amount or bank statements of the claimant showing that the claim has not been paid and an affidavit that the documentary evidence and bank statements are true, valid and genuine;
  - (ii) documentary or electronic evidence of his shareholding; and
  - (iii) an order of a court, tribunal or other authority that has adjudicated upon the non-payment of a claim, if any.

**Proving security interest**

In terms of Regulation 20 of Voluntary Liquidation Process Regulations , the existence of a security interest may be proved by a secured creditor on the basis of –

- (a) the records available in an information utility;
- (b) certificate of registration of charge issued by the Registrar of Companies;
- (c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India; or
- (d) other relevant documents which adequately establish the security interest.

**Proving of debt in respect of bills of exchange and promissory notes**

As per Regulation 21 of Voluntary Liquidation Process Regulations , where a person seeks to prove a debt in respect of a bill of exchange, promissory note or other negotiable instrument or security of a like nature for which the corporate person is liable, such bill of exchange, note, instrument or security, as the case may be, shall be produced before the liquidator before the claim is admitted.

### **Substantiation of claims**

The liquidator may call for such other evidence or clarification as he deems fit from a claimant for substantiating the whole or part of its claim pursuant to Regulation 22 of Voluntary Liquidation Process Regulations .

### **Cost of proof**

Another important aspect in respect of claims is in understanding the concept of bearing the cost of proof. As per Regulation 23(1) of Voluntary Liquidation Process Regulations , a claimant shall bear the cost of proving its claim.

However, Regulation 23 (2) of Voluntary Liquidation Process Regulations also covers the costs that may be undertaken by the liquidator. In this case, costs incurred by the liquidator for verification and determination of a claim shall form part of liquidation cost. However, it must also be borne in mind that if a claim or part of the claim is found to be false, the liquidator shall endeavour to recover the costs incurred for verification and determination of claim from such claimant, and shall provide the details of the claimant to the Board.

### **Determination of quantum of claim**

Section 41 of the Code read with Regulation 24 of Voluntary Liquidation Process Regulations states that where the amount claimed by a claimant is not precise due to any contingency or any other reason, the liquidator shall make the best estimate of the amount of the claim, based on consultation with the claimant and the corporate person and the information available with him.

### **Debt in foreign currency**

Regulation 25 of Voluntary Liquidation Process Regulations states that the claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the liquidation commencement date.

*Explanation-* “The official exchange rate” is the reference rate published by the Reserve Bank of India or derived from such reference rates.

### **Periodical payments**

Regulation 26 of Voluntary Liquidation Process Regulations addresses the

issue of periodical payments and states that in the case of rent, interest and such other payments of a periodical nature, a person may claim only for any amounts due and unpaid up to the liquidation commencement date.

**Debt payable at future time**

*Proving of claim wherein the payment was not yet due on the liquidation commencement date*

Regulation 27(1) of Voluntary Liquidation Process Regulations states that a person may prove for a claim whose payment was not yet due on the liquidation commencement date and is entitled to distribution in the same manner as any other stakeholder.

*Calculation of such claim*

Regulation 27(2) of Voluntary Liquidation Process Regulations states that Subject to any contract to the contrary, where a stakeholder has proved for a claim under sub-regulation (1), and the debt has not fallen due before distribution, he is entitled to distribution of the admitted claim reduced as follows –

$$X / (1 + r)^n$$

where –

- (a) "X" is the value of the admitted claim;
- (b) "r" is the closing yield rate (%) of government securities of the maturity of "n" on the date of distribution as published by the Reserve Bank of India; and
- (c) "n" is the period beginning with the date of distribution and ending with the date on which the payment of the debt would otherwise be due, expressed in years and months in a decimalized form

**Mutual credits and set off**

As per Regulation 28 of Voluntary Liquidation Process Regulations ,where there are mutual dealings between the corporate person and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate person or to the other party.

*Illustration:* X owes Rs.100 to the corporate person. The corporate person owes Rs. 70 to X. After set off, Rs.30 is payable by X to the corporate person.

### **Consolidation of claims**

As per Section 59(6) of the Code, the provisions of sections 35 to 53 of Chapter III and Chapter VII of the Code shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

#### *Time limit for receiving claims*

As per Section 38(1), the liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.

#### *Time limit for withdrawal or variation of claims by a creditor*

As per Section 38 (5) of the Code, a creditor may withdraw or vary his claim within fourteen days of its submission.

### **Verification of claims**

#### *Time limit and manner of verification of claims*

As per Section 39 (1) of the Code read with Regulation 29 (1) of Voluntary Liquidation Process Regulations , the liquidator shall verify the claims submitted within thirty (30) days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be, as per section 40 of the Code.

#### *Production of additional documents for verification*

As per Section 39(2) of the Code, the liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

#### *Appeal to the Adjudicating Authority*

Section 42 of the Code read with Regulation 29(2) of Voluntary Liquidation Process Regulations also states that a creditor may appeal to the Adjudicating Authority against the decision of the liquidator rejecting the claims within fourteen (14) days of the receipt of such decision.

**Admission or rejection of claims***Manner of admission or rejection of claim*

As per Section 40(1) of the Code, the liquidator may, after verification of claims under section 39 of the Code, either admit or reject the claim, in whole or in part, as the case may be. However, where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

*Communication of admission or rejection of claims by the liquidator*

As per Section 40(2) of the Code, the liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

**List of stakeholders***Detailed list of stakeholders*

Regulation 30(1) of Voluntary Liquidation Process Regulations states that the liquidator shall prepare a list of stakeholders on the basis of proofs of claims submitted and accepted under these Regulations, with -

- (a) the amounts of claim admitted, if applicable,
- (b) the extent to which the debts or dues are secured or unsecured, if applicable,
- (c) the details of the stakeholders, and
- (d) the proofs admitted or rejected in part, and the proofs wholly rejected.

*Last date of receipt of claims*

The liquidator shall prepare the list of stakeholders within forty-five (45) days from the last date for receipt of claims.

*Publication of the list of stakeholders*

The list of stakeholders, as modified from time to time, shall be-

- (a) available for inspection by the persons who submitted proofs of claim;
- (b) available for inspection by members, partners, directors and guarantors of the corporate person;

- (c) displayed on the website, if any, of the corporate person;
- (d) displayed on the website, if any, designated by the Board for this purpose.

**Annexure 6.1****FORM B**

**PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN  
AND EMPLOYEES**

*[Under Regulation 16 of the Insolvency and Bankruptcy Board of India  
(Voluntary Liquidation Process) Regulations, 2017]*

[Date]

To

The Liquidator

*[Name of the Liquidator]*

*[Address as set out in the public announcement]*

From

*[Name and address of the operational creditor]*

**Subject:** Submission of proof of claim in respect of the voluntary liquidation of *[name of corporate person]* under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

*[Name of the operational creditor]* hereby submits this proof of claim in respect of the voluntary liquidation of *[name of corporate person]*. The details for the same are set out below:

1.	NAME OF OPERATIONAL CREDITOR  (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION, IF A PARTNERSHIP OR INDIVIDUAL)	
2.	ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE	

3.	TOTAL AMOUNT OF CLAIM, INCLUDING ANY INTEREST, AS AT VOLUNTARY LIQUIDATION PROCESS COMMENCEMENT DATE AND DETAILS OF NATURE OF CLAIM	
4.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OF SUIT OR ARBITRATION PROCEEDINGS	
5.	DETAILS OF HOW AND WHEN DEBT INCURRED	
6.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE PERSON AND THE OPERATIONAL CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
7.	DETAILS OF ANY RETENTION OF TITLE IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE DEBT REFERS OR ANY OTHER SECURITY	
8.	DETAILS OF ANY ASSIGNMENT OR TRANSFER OF DEBT IN HIS FAVOUR	
9.	DETAILS OF THE BANK ACCOUNT TO WHICH THE OPERATIONAL CREDITOR'S SHARE OF THE PROCEEDS OF LIQUIDATION CAN BE TRANSFERRED	
10.	LIST OUT AND ATTACH THE DOCUMENTS RELIED ON IN SUPPORT OF THE CLAIM	
Signature of operational creditor or person authorised to act on his behalf  (Please enclose the authority if this is being submitted on behalf of the operational creditor)		
Name in BLOCK LETTERS		
Position with or in relation to creditor		
Address of person signing		

\*PAN, Passport, AADHAAR Card or the identity card issued by the Election Commission of India.

### AFFIDAVIT

I, *[name of deponent]*, currently residing at *[address of deponent]*, do solemnly affirm and state as follows:

1. The above named corporate person was, at liquidation commencement date, that is, the ..... day of ..... 20..... and still is, justly and truly indebted to me [or to me and [insert name of co-partners], my co-partners in trade, or, as the case may be] for a sum of Rs. .... for ..... [please state consideration].

2. In respect of my claim of the said sum or any part thereof, I have relied on and the documents specified below:

*[Please list out the documents relied on as evidence of debt.]*

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

4. In respect of the said sum or any part thereof, I have not, nor have my partners or any of them, nor has any person, by my/our order, to my/our knowledge or belief, for my/ our use, had or received any manner of satisfaction or security whatsoever, save and except the following:

*[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate person and the operational creditor which may be set-off against the claim.]*

Solemnly, affirmed at ..... on ..... day, the ..... day of ..... 20.....

Before me,

Notary / Oath Commissioner

Deponent's signature

### VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of para \_\_\_ to \_\_\_ of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed therefrom.

Verified at ..... on this ..... day of ..... 201 .....

Deponent's signature



FORM C

PROOF OF CLAIM BY FINANCIAL CREDITORS

[Under Regulation 17 of the Insolvency and Bankruptcy Board of India  
(Voluntary Liquidation Process) Regulations, 2017]

[Date]

To

The Liquidator

[Name of the Liquidator]

[Address as set out in the public announcement]

From

[Name and address of the registered office and principal office of the  
financial creditor]

**Subject:** Submission of proof of claim in respect of the voluntary liquidation  
of [name of corporate person] under the Insolvency and Bankruptcy  
Code, 2016.

Madam/Sir,

[Name of the financial creditor] hereby submits this proof of claim in  
respect of the voluntary liquidation of [name of corporate person]. The  
details for the same are set out below:

1.	NAME OF FINANCIAL CREDITOR  (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION, IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
2.	ADDRESS AND EMAIL OF FINANCIAL CREDITOR FOR CORRESPONDENCE.	
3.	TOTAL AMOUNT OF CLAIM, INCLUDING ANY INTEREST, AS AT THE LIQUIDATION COMMENCEMENT DATE AND DETAILS OF NATURE OF CLAIM (WHETHER TERM LOAN, SECURED, UNSECURED)	

4.	DETAILS OF ANY ORDER OF A COURT OF TRIBUNAL THAT HAS ADJUDICATED ON THE NON-PAYMENT OF DEBT	
5.	DETAILS OF HOW AND WHEN DEBT INCURRED	
6.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE PERSON AND THE FINANCIAL CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
7.	DETAILS OF ANY SECURITY HELD, THE VALUE OF THE SECURITY, AND THE DATE IT WAS GIVEN	
8.	DETAILS OF ANY ASSIGNMENT OR TRANSFER OF DEBT IN HIS FAVOUR	
9.	DETAILS OF THE BANK ACCOUNT TO WHICH THE FINANCIAL CREDITOR'S SHARE OF THE PROCEEDS OF LIQUIDATION CAN BE TRANSFERRED	
10.	LIST OUT AND ATTACH THE DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED AND IN SUPPORT OF THE CLAIM.	
Signature of financial creditor or person authorised to act on his behalf		
(please enclose the authority if this is being submitted on behalf a financial creditor)		
Name in BLOCK LETTERS		
Position with or in relation to creditor		
Address of person signing		

\*PAN, Passport, AADHAR Card or the identity card issued by the Election Commission of India.

### AFFIDAVIT

I, *[name of deponent]*, currently residing at *[address of deponent]*, do solemnly affirm and state as follows:

1. The above named corporate person was, at the voluntary liquidation commencement date, that is, the ..... day of ..... 20..... and still is, justly and truly indebted to me *[or to me and [insert name of co-partners], my co-partners in trade, or, as the case may be]* for a sum of Rs. .... for ..... *[please state consideration]*.

2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

*[Please list the documents relied on as evidence of debt and of non-payment.]*

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

4. In respect of the said sum or any part thereof, I have not, nor have my partners or any of them, nor has any person, by my/our order, to my/our knowledge or belief, for my/our use, had or received any manner of satisfaction or security whatsoever, save and except the following:

*[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate person and the financial creditor which may be set-off against the claim.]*

Solemnly, affirmed at ..... on ..... day, the ..... day of ..... 20.....

Before me,

Notary / Oath Commissioner

Deponent's signature.

#### VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of para ..... to ..... of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed there from.

Verified at ..... on this ..... day of ..... 201 .....

Deponent's signature.

## Annexure 6.3

## FORM D

## PROOF OF CLAIM BY A WORKMAN OR EMPLOYEE

*[Under Regulation 18(1) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017]*

[Date]

To

The Liquidator

*[Name of the Liquidator]*

*[Address as set out in public announcement]*

From

*[Name and address of the workman / employee]*

**Subject:** Submission of proof of claim in respect of voluntary liquidation of *(Name of corporate person)* under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

*[Name of the workman / employee]*, hereby submits this proof of claim in respect of the voluntary liquidation of *[name of corporate person]*. The details for the same are set out below:

1.	NAME OF WORKMAN / EMPLOYEE	
2.	PAN, PASSPORT, THE IDENTITY CARD ISSUED BY THE ELECTION COMMISSION OF INDIA OR AADHAAR CARD OF WORKMAN / EMPLOYEE	
3.	ADDRESS AND EMAIL ADDRESS (IF ANY) OF WORKMAN/ EMPLOYEE FOR CORRESPONDENCE	
4.	TOTAL AMOUNT OF CLAIM  <i>(INCLUDING ANY INTEREST AS AT THE VOLUNTARY LIQUIDATION COMMENCEMENT DATE)</i>	
5.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS	

6.	DETAILS OF HOW AND WHEN CLAIM AROSE	
7.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE PERSON AND THE WORKMAN / EMPLOYEE WHICH MAY BE SET-OFF AGAINST THE CLAIM	
8.	DETAILS OF THE BANK ACCOUNT TO WHICH THE WORKMAN / EMPLOYEE'S SHARE OF THE PROCEEDS OF LIQUIDATION CAN BE TRANSFERRED	
9.	LIST OUT AND ATTACH THE DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED AND RELIED ON IN SUPPORT OF THE CLAIM.	
Signature of workman / employee or person authorised to act on his behalf		
<i>[Please enclose the authority if this is being submitted on behalf of an operational creditor]</i>		
Name in BLOCK LETTERS		
Position with or in relation to creditor		
Address of person signing		

### AFFIDAVIT

I, *[name of deponent]*, currently residing at *[insert address]*, do solemnly affirm and state as follows:

1. *[Name of corporate person]*, the corporate person was, at the liquidation commencement date, that is, the ..... day of ..... 20....., justly and truly indebted to me for a sum of Rs. *[insert amount of claim]*.

2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

*[Please list the documents relied on as evidence of claim]*

The said documents are true, valid and genuine to the best of my knowledge, information and belief.

3. In respect of the said sum or any part thereof, I have not nor has any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

*[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate person and the workman / employee which may be set-off against the claim.]*

Solemnly, affirmed at *[insert place]* on ..... day, the ..... day of ..... 20.....

Before me,

Notary/ Oath Commissioner

Deponent's signature

### VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph \_\_\_ to \_\_\_ of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed there from.

Verified at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_

Deponent's signature

## ANNEXURE 6.4

### FORM E

#### PROOF OF CLAIM BY AUTHORISED REPRESENTATIVE OF WORKMEN OR EMPLOYEES

(Under Regulation 18(2) of the Insolvency and Bankruptcy Board of India  
(Voluntary Liquidation Process) Regulations, 2017)

*[Date]*

To

The Liquidator

*[Name of the Liquidator]*

*[Address as set out in the public announcement]*

From

*[Name and address of the authorised representative of workmen/ employees]*

**Subject:** Submission of proof of claim in respect of the voluntary liquidation of *[name of corporate person]* under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

I, *[name of duly authorised representative of the workmen/ employees]* currently residing at *[address of duly authorised representative of the workmen/ employees]*, on behalf of the workmen and employees employed by the above named corporate person, solemnly affirm and say:

1. That the abovenamed corporate person was, on the voluntary liquidation commencement date, that is, the ..... day of ..... 20 ..... and still is, justly truly indebted to the several persons whose names, addresses, and descriptions appear in the Annexure below for amounts severally set against their names in such Annexure for wages, remuneration and other amounts due to them respectively as workmen or/ and employees in the employ of the corporate person in respect of services rendered by them respectively to the corporate person during such periods as are set out against their respective names in the said Annexure.

2. That for which said sums or any part thereof, they have not, nor has any of them, had or received any manner of satisfaction or security whatsoever, save and except the following:

*[Please state details of any mutual credits, mutual debts, or other mutual dealings between the corporate person and the workmen / employees which may be set-off against the claim.]*

Signature:

### ANNEXURE

1. Particulars of how dues were incurred by the corporate person, including particulars of any dispute as well as the record of pendency of suit or arbitration proceedings.

2. Particulars of any mutual credit, mutual debts, or other mutual dealings

between the corporate person and the workmen / employee which may be set-off against the claim.

3. Please list out and attach the documents relied on to prove the claim.

1. Details of Employees/ Workmen

S. NO.	NAME OF EMPLOYEE/ WORKMEN	IDENTIFICATION NUMBER (PAN/, PASSPORT NUMBER/, AADHAAR NO. / ID CARD ISSUED BY THE ELECTION COMMISSION AND EMPLOYEE NO., IF ANY	TOTAL AMOUNT DUE AND DETAILS ON NATURE OF CLAIM	PERIOD OVER WHICH AMOUNT DUE	DETAILS OF EVIDENCE OF DEBT INCLUDING EMPLOYMENT CONTRACTS AND OTHER PROOFS
1.					
2.					
3.					

#### AFFIDAVIT

I, *[insert full name, address and occupation of deponent]* do solemnly affirm and state as follows:

1. The above named corporate person was, at the liquidation commencement date that is, the ..... day of ..... 20..... and still is, justly and truly indebted to the workmen and employees for a sum of Rs. .... for ..... *[please state the nature and duration of employment]*.

2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

*[Please list the documents relied on as evidence of proof]*

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

4. In respect of the said sum or any part thereof, the workmen / employees have not, nor has any person, by my order, to my knowledge or belief,



for my use, had or has received any manner of satisfaction or security whatsoever, save and except the following:

*[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate person and the workmen / employees which may be set-off against the claim.]*

Solemnly, affirmed at ..... on ..... day, the  
..... day of ..... 20 .....

Before me,

Notary / Oath Commissioner

Deponent's signature

### **VERIFICATION**

I, the Deponent hereinabove, do hereby verify and affirm that the contents of para ..... to ..... of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed therefrom.

Verified at ..... on this ..... day of ..... 201.....

Deponent's signature

### **ANNEXURE 6.5**

#### **FORM F**

#### **PROOF OF CLAIM BY ANY OTHER STAKEHOLDER**

*[Under Regulation 19 of the Insolvency and Bankruptcy Board of India  
(Voluntary Liquidation Process) Regulations, 2017]*

*[Date]*

To

The Liquidator

*[Name of the Liquidator]*

*[Address as set out in the public announcement]*

From

*[Name and address of the other stakeholder]*

**Subject:** Submission of proof of claim in respect of the voluntary liquidation of *[name of corporate person]* under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

*[Name of the stakeholder]* hereby submits this proof of claim in respect of the liquidation in the case of *[name of corporate person]*. The details for the same are set out below:

1.	NAME OF STAKE-HOLDER  (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
2.	ADDRESS AND EMAIL OF THE STAKEHOLDER FOR CORRESPONDENCE.	
3.	TOTAL AMOUNT OF CLAIM, INCLUDING ANY INTEREST AS AT LIQUIDATION COMMENCEMENT AND DETAILS OF NATURE OF CLAIM	
4.	DETAILS OF HOW AND WHEN CLAIM AROSE	
5.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE PERSON AND THE OTHER STAKEHOLDER WHICH MAY BE SET-OFF AGAINST THE CLAIM	
6.	DETAILS OF ANY RETENTION OF TITLE IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE CLAIM REFERS	
7.	DETAILS OF ANY ASSIGNMENT OR TRANSFER OF DEBT IN HIS FAVOUR	
8.	DETAILS OF THE BANK ACCOUNT TO WHICH THE OTHER STAKEHOLDER'S SHARE OF THE PROCEEDS OF LIQUIDATION CAN BE TRANSFERRED	

9.	LIST OUT AND ATTACH THE DOCUMENTS BY REFERENCE TO WHICH THE CLAIM CAN BE SUBSTANTIATED OR WHICH CAN BE RELIED UPON IN SUPPORT OF THE CLAIM.	
Signature of stakeholder or person authorised to act on his behalf  (Please enclose the authority if this is being submitted on behalf of the other stakeholder)		
Name in BLOCK LETTERS		
Position with or in relation to creditor		
Address of person signing		

\*PAN, Passport, AADHAAR Card or the identity card issued by the Election Commission of India.

### AFFIDAVIT

I, *[insert full name, address and occupation of deponent to be given]* do solemnly affirm and state as follows:

1. The above named corporate person was, at the liquidation commencement date, that is, the ..... day of ..... 20.... and still is, justly and truly indebted to me *[or to me and [insert name of co-partner], my co-partners in trade, or, as the case may be,]* for a sum of Rs. .... for ..... *[please state consideration]*.

2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

*[Please list the documents relied on as evidence of proof.]*

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

4. In respect of the said sum or any part thereof, I have not, nor have my partners or any of them, nor has any person, by my/our order, to my/our knowledge or belief, for my/ our use, had or received any manner of satisfaction or security whatsoever, save and except the following:

*[Please state details of any mutual credit, mutual debts, or other mutual*

*dealings between the corporate person and the other stakeholder which may be set-off against the claim.]*

Solemnly, affirmed at ..... on ..... day, the  
..... day of ..... 20 .....

Before me,

Notary / Oath Commissioner.

Deponent's signature.

### VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of para ..... to .....of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed therefrom.

Verified at ..... on this ..... day of ..... 201.....

Deponent's

Signature

## Chapter VII

# PRELIMINARY REPORT AND MINUTES OF CONSULTATIONS WITH STAKEHOLDERS

Chapter IV of the Voluntary Liquidation Process) Regulations laying down the powers and functions of the liquidator, provides for the duty of the liquidator to furnish preliminary report to the corporate person. While Regulation 8 of Voluntary Liquidation Process Regulations specifies all kinds of reports to be prepared and submitted by the liquidator, Regulation 9 expressly deals with the Preliminary Report. This chapter focuses on preliminary report and minutes of consultations with stakeholders to be prepared by the liquidator, while other reports are dealt in later chapters.

### Definition

Regulation 2 (c) of the Voluntary Liquidation Process Regulations defines “liquidation commencement date” in terms of the date on which the proceedings for voluntary liquidation commence as per Section 59 (5) of the Code and Regulation 3 (4) of Voluntary Liquidation Process Regulations;

And the said Section 59 (5) of the Code and Regulation 3 (4) of Voluntary Liquidation Process Regulations provides that the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under Section 59 (3) (c) of the Code read with Regulation 3 (1) (c) of Voluntary Liquidation Process Regulations.

### Reporting

Regulation 8 of the Chapter IV of the Voluntary Liquidation Process Regulations provides for the following kinds of report which are to be prepared by the liquidator appointed in the liquidation process:

- (a) Preliminary Report;

- (b) Annual Status Report;
- (c) Minutes of consultations with stakeholders; and
- (d) Final Report

These reports are to be submitted by the liquidator in the manner provided in the Voluntary Liquidation Process Regulations.

Also, Regulation 8 (2) of Voluntary Liquidation Process Regulations provides that subject to the other provisions of the regulations, the liquidator shall make the reports and minutes referred to sub regulation (1) available to a stakeholder in either electronic or physical form, on receipt of –

- (a) an application in writing;
- (b) cost of making such reports available to it; and
- (c) an undertaking from the stakeholder that it shall maintain confidentiality of such reports and shall not use these to cause an undue gain or undue loss to itself or any other person.

### **Preliminary Report**

Regulation 9 of Voluntary Liquidation Process Regulations lays down the manner in which the liquidator shall submit a Preliminary Report to the corporate person. The liquidator shall submit a Preliminary Report to the corporate person within forty five days from the liquidation commencement date, detailing –

- (a) the capital structure of the corporate person;
- (b) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate person:

Provided that if the liquidator has reasons to believe, to be recorded in writing, that the books of the corporate person are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him;

- (c) Whether he intends to make any further inquiry into any matter relating to the promotion, formation or failure of the corporate person or the conduct of the business thereof; and

- (d) the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

**A Specimen copy of preliminary Report is placed as Annexure 7.2.**

## **MINUTES OF CONSULTATIONS WITH STAKEHOLDERS**

### **Definition**

Regulation 2 (f) of the Voluntary Liquidation Process Regulations, lays down the definition of the 'stakeholder' as the stakeholders entitled to proceeds from the sale of liquidation assets under Section 53 of the Insolvency and Bankruptcy Code, 2016.

### **Minutes/Records of consultations with the stakeholders by the liquidator**

Regulation 8 (1) (c) of Voluntary Liquidation Process Regulations provides for the liquidator to prepare and submit minutes of consultations with stakeholders pursuant to Section 35 (2) of the Code. Section 35 (2) of the Code provides that the liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under Section 53 of the Code.

### **Assistance and Co-operation**

Regulation 12 of the Voluntary Liquidation Process Regulations provides that:

1. The stakeholders consulted under Section 35(2) of the Code shall extend all assistance and cooperation to the liquidator to complete the liquidation of the corporate person;and,
2. The liquidator shall maintain the particulars of any consultation with the stakeholders made under this Regulation. The format for reporting consultations with stakeholders has been placed as **Annexure 7.1.**

**ANNEXURE 7.1****PROFORMA FOR REPORTING CONSULTATIONS WITH STAKEHOLDERS**

*[Under Regulation 12 of the Insolvency and Bankruptcy Board of India  
(Voluntary Liquidation Process) Regulations, 2017]*

Separate proforma to be used for each stakeholder or group of  
homogenous stakeholders

NAME AND REGISTRATION NO. OF LIQUIDATOR:	
NAME OF CORPORATE DEBTOR BEING LIQUIDATED:	
NAME OF THE STAKEHOLDER:	
DATE OF CONSULTATION (IF HELD IN PERSON):	
NUMBER AND DATES OF COMMUNICATIONS RECEIVED FROM STAKEHOLDER:	
SUMMARY OF CONSULTATION:	

**ANNEXURE 7.2****PRELIMINARY REPORT**

**Under Regulation 9  
of  
IBBI (Voluntary Liquidation Process) Regulations, 2017**

**NAME OF THE COMPANY (in Voluntary Liquidation)**

**CIN :**

**Address :**

**Liquidator: Name**

Registration No.

Address

Mail:

Phone:



Background:

Shareholders of [Company Name] [CIN:] (the Company) have passed a special resolution at its Annual/Extra-ordinary General Meeting held on [Date] to liquidate the company by way of voluntary liquidation under Section 59 of Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. I, [Name of IP], Insolvency Professional, having registration number [●], have been appointed as a liquidator for the purpose. The Company will be liquidated in accordance with applicable provisions of the law and its assets distributed to the stakeholders as per their entitlement. This report is the Preliminary Report as required to be prepared under Regulation 9 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

Mandatory Contents:

(a) Capital Structure of the Company:

Description	No. & Type of Shares	Amount Per Share (INR)	Total Amount (INR)
Authorised Capital	[●]	[●]	[●]
Issued Capital	[●]	[●]	[●]
Subscribed Capital	[●]	[●]	[●]
Paid Up Capital	[●]	[●]	[●]

(b) Estimate of Assets and Liabilities as on liquidation commencement date [●] All amounts in Indian Rupees

LIABILITIES:	
Shareholders' Funds:	
Share Capital	[●]
Reserve & Surplus	[●]
	[●]
	[●]
Current Liabilities	[●]
Total Liabilities	[●]
Assets:	
Non-Current Assets:	

Non Current Investment	[●]
Long Term Loans & Advances	[●]
Other Non- Current Assets	[●]
Current Assets:	
Cash and Bank Balances	[●]
Short-Term Loans and Advances	[●]
Other Current Assets	[●]
Total Assets	[●]

The above figures are based on the audited Balance Sheet of Corporate Person as on .....(Date, just before the liquidation commencement date)..... and on our verification and information provided by corporate person there is no change between Audited Balance Sheet date and liquidation commencement date. There are no other Assets or liabilities in the Company except as mentioned above.

Note: It is advisable that a Provisional Balance Sheet should to be prepared (preferably get audited by Auditors of the Company) just before the passing Board Resolution for Voluntary Liquidation of the Company.

- (c) I do not intend to make any further inquiry in to the any matter relating to the promotion, formation or failure of the corporate person or the conduct of the business thereof.
- (d) Directors of the company have stated on affidavit dated [●] that there is/are [●] operational creditor and financial creditors details of which are as follows:

Financial Creditors				
Sl. No.	Name	Address	Amount	Remarks, if any

Operation Creditors				
Sl. No.	Name	Address	Amount	Remarks, if any
Other Creditors				
Sl. No.	Name	Address	Amount	Remarks, if any

Details of claims received and admitted by me are as follows:

Financial Creditors					
Sl. No.	Name	Address	Amount Claimed	Amount Admitted	Remarks, if any
Operation Creditors					
Sl. No.	Name	Address	Amount Claimed	Amount Admitted	Remarks, if any
Other Creditors					
Sl. No.	Name	Address	Amount Claimed	Amount Admitted	Remarks, if any

(e) Based on these facts, I can, prima facie, conclude that there

are no outstanding demand as on liquidation commencement date, except those mentioned above.

The following steps are planned to carry out liquidation of the Company:

- (i) Current Account No. [●] of the Company with [●] will be closed and new account will be opened with [●]. Regulation 34 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 requires liquidator to open a bank account in the name of corporate person for receipt of all moneys due to the corporate person.

(If already new Bank Account has been opened by Liquidator in terms of Regulation 34 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, then detail of said account should be given)

- (ii) Unless some other factors/information emerges during liquidation, the liquidation proceeds will be distributed in the order as mentioned in Section 53 of the Code.
- (iii) For calculation of TDS payable to distribution of liquidation proceeds, services of a qualified chartered accountant will be used as required under the Indian Income Tax Act, 1961.
- (iv) Liquidation Accounts will be prepared, and a chartered accountant will be appointed to audit those accounts.
- (v) Necessary records and registers will be prepared.
- (vi) Final report will be prepared which will be sent as follows:
  - To Registrar of Companies;
  - To Insolvency and Bankruptcy Board of India; and
  - National Company Law Tribunal with application to dissolve the Company.

- (f) The **estimated liquidation cost** of the Company is INR [●] plus applicable taxes, wherever applicable, with following break up:

- (i) Liquidator Fee - [●] plus GST
- (ii) Audit Fee for pre-liquidation period – INR [●] plus GST
- (iii) Audit Fee for liquidation period – INR [●] plus GST

(iv) Fee for TDS Certificates/Income Tax Related Assignment – INR [●] plus GST

(v) Other Liquidation Expenses – INR [●]

(g) The liquidation of the Company is estimated to be over by [●].

**Summary of Proceedings:**

<i>Sl. No.</i>	<i>Event</i>	<i>Date</i>	<i>Annexure</i>
1	Board Meeting to decide on liquidation and convening of Annual/Extra-ordinary General Meeting	[●]	[●]
2	Annual/Extra-ordinary General Meeting for taking decision on voluntary liquidation of the Company and appointment of [●], IP as liquidator	[●]	[●]
3	Public Announcement on website maintained by Insolvency and Bankruptcy Board of India (IBBI)	[●]	[●]
4	Public Announcement in Newspapers – [●] (In English Language) and [●] (In Hindi Language)	[●]	[●]
5	Filing of forms MGT 14 with Registrar of Companies	[●]	[●]
6	Filing of forms GNL 2 with Registrar of Companies	[●]	[●]
7	Intimation to Income Tax Department – Circle [●]	[●]	[●]
8	Intimation to [●] Bank for change of authorised signatory.	[●]	[●]
9	Proof of Claim Received from [●].	[●]	[●]

Concluded

[●]

Liquidator

[Company Name]

Date:

Place:

## Chapter VIII

# REALISATION OF ASSETS

Realisation of assets under the voluntary liquidation forms a very important part of the entire process. The liquidator must endeavour to maximise the amount of money realised to ensure that all the claims of the stakeholders are satisfied. This may be done by way of securing the best possible price for the assets of the corporate person undergoing voluntary liquidation process.

### **Manner of sale**

In terms of Regulation 31 of Voluntary Liquidation Process Regulations, the liquidator may value and sell the assets of the corporate person in the manner and mode approved by the corporate person in compliance with provisions, if any, in the applicable statute.

*Explanation:* “assets” include an asset, all assets, a set of assets or parcel of assets, as the case may be, in relation to sale of assets.

### **Recovery of monies due**

Regulation 32 of Voluntary Liquidation Process Regulations, states that the liquidator shall endeavour to recover and realize all assets of and dues to the corporate person in a time-bound manner for maximization of value for the stakeholders.

### **Liquidator to realize uncalled capital or unpaid capital contribution**

In terms of Regulation 33(1) of Voluntary Liquidation Process Regulations, the liquidator shall realize any amount due from any contributory to the corporate person.

Regulation 33(2) of Voluntary Liquidation Process Regulations, prescribes that notwithstanding any charge or encumbrance on the uncalled

capital of the corporate person, the liquidator shall be entitled to call and realize the uncalled capital of the corporate person and to collect the arrears if any due on calls made prior to the liquidation commencement date, by providing a notice to the contributory to make the payments within fifteen days from the receipt of the notice, but shall hold all moneys so realized subject to the rights, if any, of the holder of any such charge or encumbrance.

Regulation 33(3) of Voluntary Liquidation Process) Regulations states that no distribution shall be made to a contributory, unless he makes his contribution to the uncalled or unpaid capital as required in the constitutional documents of the corporate person.

### **Realisation by Secured Creditors**

Section 52 of the Code covers provisions with regard to secured creditors in the voluntary liquidation proceedings.

In terms of Section 52 (1) of the Code, a secured creditor in the liquidation proceedings may –

- (a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or
- (b) realise its security interest in the manner specified in this section.

#### *Realisation of security interest by a secured creditor*

In terms of Section 52 (2) of the Code, where the secured creditor realises security interest, he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

#### *Proving of security interest*

In terms of Section 52 (3) of the Code, before any security interest is realised by the secured creditor, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either –

- (a) by the records of such security interest maintained by an information utility; or
- (b) by such other means as may be specified by the Board.

Regulation 20 of Voluntary Liquidation Process Regulations has prescribed the following basis on which the existence of security interest may be proved:

- (a) the records available in an information utility;
- (b) certificate of registration of charge issued by the Registrar of Companies;
- (c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India; or
- (d) other relevant documents which adequately establish the security interest.

*Actions that can be taken by the secured creditor*

In terms of Section 52 (4) of the Code, a secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

Section 52 (7) of the Code also states that where the enforcement of the security interest under section 52 (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall –

- (a) account to the liquidator for such surplus; and
- (b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

Section 52 (8) of the Code further states that the amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

*Resistance from corporate debtor or any person connected therewith with regard to such security*

Section 52 (5) of the Code prescribes that if in the course of realising a



secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.

In terms of Section 52 (6) of the Code, the Adjudicating Authority (NCLT), on the receipt of an application from a secured creditor under Section 52(5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.

*Inadequacy of proceeds to repay debts owed to the secured creditor*

Section 52(9) of the Code lays down that where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in Section 53(1)(e) of the Code.

### **Issues with regard to liquidation assets and its realisation**

*Liquidation assets tend to be undervalued*

Asset is more valuable when it is going concern and generates adequate cash flow as compared to an asset under liquidation and this is the essence of the Code that is to prevent fire-sale liquidation of assets (i.e. selling assets at undervalued price) that are capable of generating economies of scale and this is the reason the resolution plan should be made so as to promote bids for assets that preserves going concern valuations, and also to develop market for such financially distressed assets.

## Chapter IX

# PROCEEDS OF LIQUIDATION AND DISTRIBUTION OF PROCEEDS

In terms of the Code and Voluntary Liquidation Process Regulations, the liquidator, after consolidation of claims and realisation of assets, is required to distribute the proceeds of liquidation among the stakeholders whose name appears in the list of stakeholders. The distribution of proceeds must be undertaken with extreme care and caution by the liquidator to ensure that the stakeholders get their appropriate dues in accordance with section 53 of the Code relating to waterfall mechanism.

### **All money to be paid into bank account**

*Opening of bank account in the name of the corporate person*

In terms of Regulation 34 (1) of Voluntary Liquidation Process Regulations, the liquidator shall open a bank account in the name of the corporate person followed by the words 'in voluntary liquidation', in a scheduled bank, for the receipt of all moneys due to the corporate person.

*Credit transactions of the account*

In terms of Regulation 34(2) of the Voluntary Liquidation Process Regulations, the liquidator shall pay to the credit of the bank account opened as per Regulation (1) all moneys, including cheques and demand drafts received by him as the liquidator of the corporate person, and the realizations of each day shall be deposited into the bank account without any deduction not later than the next working day.

Regulations 34(3) of the Voluntary Liquidation Process Regulations also states that the money in the credit of the bank account shall not be used except in accordance with section 53(1) of the Code.

Section 53(1) of the Code lays down the order of priority for distribution of proceeds of liquidation.

*Payment out of the account*

Regulation 34 (4) of the Voluntary Liquidation Process Regulations prescribes that all payments out of the account by the liquidator above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account.

**Distribution of proceeds***Order of priority for distribution of proceeds of liquidation*

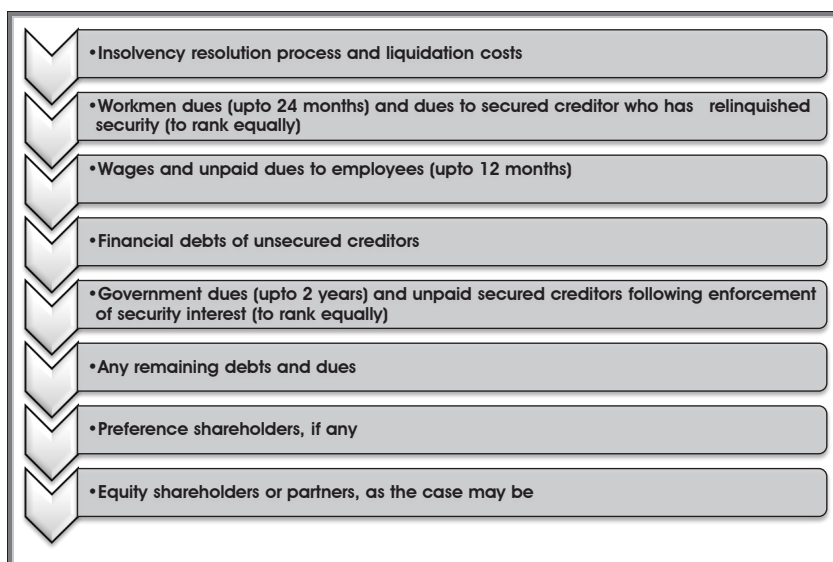
Section 53(1) of the Code lays down the order of priority (waterfall mechanism) for distribution of proceeds of liquidation. As per the Section, notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely : –

- (a) the insolvency resolution process costs and the liquidation costs paid in full;
- (b) the following debts which shall rank equally between and among the following : –
  - (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
  - (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
- (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- (d) financial debts owed to unsecured creditors;
- (e) the following dues shall rank equally between and among the following: –
  - (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the

whole or any part of the period of two years preceding the liquidation commencement date;

- (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- (f) any remaining debts and dues;
- (g) preference shareholders, if any; and
- (h) equity shareholders or partners, as the case may be.

It may be noted that as per section 59, the declaration solemnly by majority of directors verifies that the company will be able to pay its debts in full from the proceeds of assets.



**Fig.: Priority Waterfall Chart**

*Time period and manner of distribution of proceeds*

Regulation 35 of Voluntary Liquidation Process Regulations, also prescribes the following with respect to distribution of proceeds:

In terms of Regulation 35(1) of the Voluntary Liquidation Process Regulations, the liquidator shall distribute the proceeds from realization within six months from the receipt of the amount to the stakeholders.

Regulation 35(2) of the Voluntary Liquidation Process Regulations

prescribes that the liquidation costs shall be deducted before such distribution is made.

Regulation 35(3) of the Voluntary Liquidation Process Regulations further prescribes that the liquidator may, with the approval of the corporate person, distribute amongst the stakeholders, an asset that cannot be readily or advantageously sold due to its peculiar nature or other special circumstances.

**Return of money**

In terms of Regulation 36 of Voluntary Liquidation Process Regulations, a stakeholder shall forthwith return any monies received by him in distribution, which he was not entitled to at the time of distribution, or subsequently became not entitled to.

# Chapter X

## **TAXATION ASPECTS OF VOLUNTARY LIQUIDATION**

### **Role of income Tax Officer & obligations of Liquidator**

#### **Section 178 of the Income Tax Act, 1961**

#### **Company in liquidation**

**178.** (1) Every person –

- (a) who is the liquidator of any company which is being wound up whether under the orders of a court or otherwise ; or
- (b) who has been appointed the receiver of any assets of a company; (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Income-tax Officer who is entitled to assess the income of the company.

(2) The Income-tax Officer shall, after making such enquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Income-tax Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

(3) The liquidator –

- (a) shall not, without the leave of the Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Income-tax Officer under sub-section (2) ; and
- (b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not

part with any of the assets of the company or the properties in his hands :

**Provided** that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such cost and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax which the company would be liable to pay:

**Provided** that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.]

(5) Where there are more than liquidators one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force [except the provisions of the Insolvency and Bankruptcy Code, 2016]<sup>1</sup>.

#### **Distribution of Assets on liquidation not to be regarded as transfer:**

Section 46 of the Income Tax Act, 1961 states that –

“Notwithstanding anything contained in section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45.

Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head “Capital gains”, in respect of the money so received or the market value of the other assets on the date of distribution,

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1. Inserted by IBC, 2016

as reduced by the amount assessed as dividend within the meaning of section 2(22)(c) and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48”.

**Meaning of the term “dividend distributed by a company”:**

Section 2 (22) (c) of the IT Act, which states that the term dividend distributed by a company includes –

“Any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not”.

Provided that –

1. The shareholder is entitled to participate in the surplus assets of the company on liquidation.
2. Distribution should not be out of capitalised profits representing bonus shares of the company.
3. Accumulated profits does not include capital gains earned by the company.

The word used in section 2(22)(c) is “accumulated profits”, which refers to the amount in nature of profits which the company could have distributed to its shareholders and represents mean commercial profits and not profits as assessed for income-tax purposes.

**Taxation in the hands of the Company:**

For deemed dividend distributed under section 2(22)(c) the company is liable to dividend distribution tax at the rate of 20.56% (herein referred to as effective rate) on net dividend under section 115-O. One of the terms used in section 2(22)(c) is “to the extent to which the distribution is attributable to the accumulated profits”. Thus where a company is in liquidation and there are no accumulated profits available with the company, and in such a situation the company will not be liable to dividend distribution tax.

Also, distribution by a liquidator, by itself, does not trigger taxability as dividend income, unless the company had accumulated profits before it went into liquidation.



**Tax implications in hands of Shareholder:**

The shareholder will be charged to capital gains tax, calculated as under:

Amount (Rs.)

Full value of consideration:	
Money received	
Add: Market value of the asset	
Less: Deemed dividend u/s 2(22) (c)	
Total	
Less: Cost of acquisition	
Capital Gain	

Alternative Method:

Full value of consideration:	
Paid up Share Capital	
Add: Securities Premium	
Add: General Reserve and Other Reserves	
Add; Adjustment for difference between Fair Market Value of Assets distributed and their Book Value	
Less: Negative Balance of Profit and Loss Account (Ignore positive Balance of Profit and Loss Account)	
<b>Total</b>	
Divided by total shares outstanding	
Multiplied by number of shares owned by assessee	
<b>Sale Consideration to be considered for computation</b>	
Less: Cost of acquisition/ Indexed Cost of Acquisition	
Capital Gain	

- *Period of Holding* : As per section 2(42A) in case of a share held in a company in liquidation, the period subsequent to the date on which the company goes into liquidation should be excluded. In other words, the period of holding will be from the date of acquisition of the shares till the date of liquidation.
- *Cost of acquisition* : The cost at which the shares were originally acquired by the shareholder. Hon'ble Supreme Court in the matter of Vijay Kumar Budhia observed that sec 55(2)(b)(iii) which provides to treat the FMV as cost in hands of the shareholder would operate only if the asset was assessed under the head Capital Gain. In other situations the provision of section 49(1) will apply and the cost in the hands of the shareholder shall be the cost to the previous owner.
- *Year of Chargeability* : Capital gain on distribution of assets to the shareholders is chargeable in his hands in the year in which the assets is distributed to him.

### **Tax on Dividend**

As per Income Tax Act, 1961 as amended by Finance Act, 2016, a shareholder receiving dividend is liable to pay Basic Tax on such receipt @ 10%, Surcharge and Education Cess, if any applicable where the total amount received exceeds 10 Lakhs.

### **Tax implications in case of a Foreign shareholders**

If the shareholder of the company is a non-resident, who on liquidation receives assets of the company, he shall be liable to pay tax. Section 9 of the IT Act, states that, "any dividend paid by an Indian company outside India is income deemed to accrue and arise in India".

The provisions of section 46 of the IT Act will be equally applicable to the non resident shareholder.

Section 195 requires the payer to deduct TDS @ 20% on Sale Consideration which is remitted to Foreign Shareholders. Foreign Shareholders may apply for Certificate u/s 197 to decrease the TDS to be deducted on amount remitted by the liquidator.

**Buy back distribution tax – in line with dividend distribution tax**

In terms of the provisions of Sections 115QA to 115QC of the IT Act, when a domestic unlisted company buys back its own shares it is required to pay a tax at the rate of 20% on the distributed income.

The above provision was inserted vide Finance Act, 2013 to plug the loop hole. A company distributing dividend to its shareholders was liable to pay Dividend Distribution Tax @ 20.56% u/s 115-O of the IT Act. However, taking advantage of Double Tax Avoidance Agreement (DTAA) entered into by India, many foreign subsidiaries started using provisions of DTAA to avoid the payment of DDT on distribution of dividends. As a part of tax avoidance scheme, company distributed dividend to its shareholders through Buy back of shares, particularly those shareholders where capital gain arising to them, from buy back of shares, was not liable to tax, say because they resided in a jurisdiction where capital gain was exempted. As a result, neither company nor shareholder was liable to pay tax and consequently, entire transaction used to escape the tax.

## Chapter XI

# **FEMA Compliance – Voluntary Liquidation**

In case, the company having foreign investment must have filed all FC-GPR/FC-TRS through authorised dealer with Reserve Bank of India. The same must have been acknowledged by the RBI. Otherwise one need to ensure those forms are filed and taken on record by the RBI before proceeding for liquidation. If there is any compounding proceeding before the RBI, one needs to obtain the compounding order and proceed further.

### **FEMA Regulation**

As per as per regulation 4(3) Foreign Exchange Management (Remittance of Assets) Regulations, 2016 dated April 1, 2016, an authorised dealer in India may, also allow remittance out of the assets of Indian companies under liquidation under the provisions of the Companies Act, 2013, subject to the following conditions:

- (i) Authorised Dealer shall ensure that the remittance is in compliance with the order issued by a court in India/ order issued by the official liquidator or the liquidator in the case of voluntary winding up; and
- (ii) no remittance shall be allowed unless the applicant submits:-
  - (a) Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for;
  - (b) Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 2013;
  - (c) In case of winding up otherwise than by a court, an auditor's certificate to the effect that there is no legal proceedings

pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

### **In Practice**

Further, apart from aforesaid documents following needs to be submitted to Authorised dealer Bank for remittance of fund:

- (1) Attested true Copy of FC-GPR letter issued by RBI for having noted allotment of shares to the non-resident investors (or);
- (2) In place of the FC-GPR, if the Reserve Bank has given the unique identification number, the same may be also quoted if available with the company.
- (3) Attested true copy of FC-TRS duly certified by the AD Bank, as the case may be for total holding held by the non-resident investors through transfer of shares.
- (4) Form 15CA/CB for remittance of Money taxable u/s 9 where tax deduction u/s 195 is required.

Post remittance, the liquidators is required to file form FC-TRS with RBI for cancellation of shares of the Company.

## Chapter XII

# COMPLETION OF LIQUIDATION AND SUBMISSION OF FINAL REPORT

The Code read with Voluntary Liquidation Process Regulations provides various reporting formalities that are need to be undertaken by the liquidator in the completion stage of voluntary liquidation process and even in the case of non-completion of liquidation within the prescribed time limits. In this regard it is essential to understand the completion stage of liquidation.

### **Completion of liquidation process**

#### *Time period for completion of liquidation*

The liquidator shall endeavour to complete the liquidation process of the corporate person within twelve months from the liquidation commencement date as per Regulation 37(1) of Voluntary Liquidation Process Regulations.

#### *In the event of non-completion of liquidation within twelve months*

Regulation 37(2) of Voluntary Liquidation Process Regulations, prescribes that in the event of the liquidation process continuing for more than twelve months, the liquidator shall-

- (a) hold a meeting of the contributories of the corporate person within fifteen days from the end of the twelve months from the liquidation commencement date, and at the end every succeeding twelve months till dissolution of the corporate person; and
- (b) shall present an Annual Status Report(s) indicating progress in liquidation, including –
  - (i) settlement of list of stakeholders,

- (ii) details of any assets that remains to be sold and realized,
- (iii) distribution made to the stakeholders, and
- (iv) distribution of unsold assets made to the stakeholders;
- (v) developments in any material litigation, by or against the corporate person; and
- (vi) filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code.

Regulation 37(3) of Voluntary Liquidation Process) Regulations, further prescribes that the Annual Status Report shall enclose the audited accounts of the liquidation showing the receipts and payments pertaining to liquidation since the liquidation commencement date.

### **Final Report**

In terms of Regulation 38(1) of Voluntary Liquidation Process Regulations, on completion of the liquidation process, the liquidator shall prepare the Final Report consisting of -

- (a) audited accounts of the liquidation, showing receipts and payments pertaining to liquidation since the liquidation commencement date; and
- (b) a statement demonstrating that-
  - (i) the assets of the corporate person has been disposed of;
  - (ii) the debt of the corporate person has been discharged to the satisfaction of the creditors;
  - (iii) no litigation is pending against the corporate person or sufficient provision has been made to meet the obligations arising from any pending litigation.
- (c) a sale statement in respect of all assets containing -
  - (i) the realized value;
  - (ii) cost of realization, if any;
  - (iii) the manner and mode of sale;

- (iv) an explanation for the shortfall, if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets under section 59(3)(b)(ii) of the Code or Regulation 3(1)(b)(ii) of the Voluntary liquidation Process Regulations, as the case may be;
- (v) the person to whom the sale is made; and
- (vi) any other relevant details of the sale.

Further, in terms of Regulation 38(2) and (3) of Voluntary Liquidation Process Regulations, the liquidator shall send the Final Report to:

- (i) the Registrar
- (ii) the Insolvency and Bankruptcy Board of India and
- (iii) the Adjudicating Authority along with the application under section 59(7).

The application under Section 59(7) is the application filed by the liquidator for the dissolution of the corporate person.

**A specimen format of Final Report is placed as Annexure 12.1**

#### **ANNEXURE 12.1**

##### **FINAL REPORT**

**Under Regulation No.38**

**of**

**IBBI (Voluntary Liquidation Process) Regulations, 2017**

**Name of the Company:**

**CIN:**

**Registered address:**

**Nature of Proceedings:**

**Date of Commencement of the winding up:**

**Name and address of the Liquidator:**



**FINAL REPORT**  
**OF**  
**ABC PRIVATE LIMITED**  
**[As per Regulation No.38 of Insolvency and Bankruptcy Board of India**  
**(Voluntary Liquidation Process) Regulations,2017]**

1. Summary of events:

1. DATE OF INCORPORATION	
2. DATE OF BOARD MEETING <ul style="list-style-type: none"><li>• FOR CONSIDERING AND APPROVING THE VOLUNTARY LIQUIDATION,</li><li>• DECLARATION OF SOLVENCY,</li><li>• APPOINTMENT OF LIQUIDATOR AND REGISTERED VALUER</li><li>• APPROVAL OF NOTICE OF EGM CONSIDERING VOLUNTARY LIQUIDATION.</li></ul>	
3. DATE OF FILING OF DECLARATION OF SOLVENCY BY MAJORITY OF DIRECTORS, VERIFIED BY AN AFFIDAVIT WITH THE ROC IN GNL-2 ACCOMPANIED BY THE AUDITED FINANCIAL STATEMENTS AND RECORD OF BUSINESS OPERATIONS FROM 01 JUNE 2014 TO 31 MARCH 2016.  (Date of commencement of voluntary liquidation)	
4. DATE OF EGM FOR PASSING THE SPECIAL RESOLUTION BY THE MEMBERS FOR APPROVING THE VOLUNTARY LIQUIDATION AND APPOINTMENT OF MR.X TO ACT AS THE LIQUIDATOR.	
5. DATE OF APPROVAL OF ABOVE RESOLUTION BY CREDITORS REPRESENTING TWO THIRD IN VALUE OF DEBT OF THE COMPANY	
6. DATE OF FILING OF RESOLUTION ALONG WITH A CERTIFIED TRUE COPY OF MGT 14.	

7. DATE OF PUBLIC ANNOUNCEMENT MADE IN (i) ENGLISH NEWSPAPER (ii) ONE REGIONAL NEWSPAPER (iii) AT public.ann@abbi.gov.in	
8. DATE OF INTIMATION TO ROC ,IBBI AND OTHER REGULATORY AUTHORITIES	
9. DATE OF CLOSURE OF BANK ACCOUNTS	
10. DATE OF OPENING A NEW BANK ACCOUNT NAMED ABC PRIVATE LIMITED(In voluntary liquidation)	
11. DATE OF FILING PRELIMINARY REPORT	
12. DATE OF LIST OF STAKEHOLDERS ON THE BASIS OF RECIEPT OF CLAIMS	
13. DATE OF RECEIPT OF NOC, IF ANY, FROM INCOME TAX DEPARTMENT	
14. DATE OF FINAL DISTRIBUTION OF ASSETS	
15. DATE OF COMPLETION OF LIQUIDATION PROCESS	
16. DATE OF PREPARATION OF LIQUIDATION ACCOUNT	
17. DATE OF AUDIT OF LIQUIDATION ACCOUNT	
18. SUBMISSION OF FINAL REPORT TO ROC, IBBI AND NCLT	

2. Details of bank account and dues/receivables of the corporate person.

- (a) Old bank account no. [●] of the corporate person maintained at [●] was closed on [●] and new account in the name of ABC Private Limited (In voluntary liquidation) was opened on [●] in [Bank Name and Branch] and all the balances of old bank account and FDs were transferred in the new account on [●].
- (b) The liquidation account no. [●] of the corporate person maintained at [●] in the name of ABC Private Limited (In voluntary liquidation) has been closed on [●].
- (c) All the dues have been duly paid off and so there remains no amount which is payable to any stakeholder.

3. Receipts and Payments account-

Audited accounts of the liquidation, showing receipts and payments account pertaining to liquidation since the liquidation commencement date i.e. duly audited by [●] are annexed as **Annexure A**.

It is hereby stated that –

- (a) The fixed assets on the date of commencement of voluntary liquidation were amounting to Rs.[\*] have been disposed of through public auction for Rs. [●]. Fixed Deposit has been encashed and amount of Rs. [●] realized on encashment was deposited in the liquidation account on [●].
- (b) Creditors of the corporate person as on the commencement of voluntary liquidation were Rs.[\*].The debts of the corporate person has been discharged to the satisfaction and details of payment made to the creditors are given **Annexure A**; and
- (c) No litigation is pending against the corporate person.

5. Sale statement in respect of all assets-

Description of Asset	Assigned Value	Realised Value	Cost of Realisation	Manner and Mode of Sale	Explanation for Short fall	The Person to whom sale is made	Other Relevant Information

Thank you

(Signature)

Mr. X

(Liquidator)

Registration No. \*\*\*\*\*

ANNEXURE A

Receipts since (Date)	Estimated Value (INR)	Value Realized (INR)	Payments since (Date)	Payments (INR)
			Legal, Liquidation Fee and other incidental payments	
			1.Liquidator’s Fee	
			2.	
			3.	
			Payment to Creditors	
			1.	
			2.	
			3.	
			Payment to Members	
			1.Payment to Members	
			2.Capital Per Rupee 10 @ Share	

## Chapter XIII

# DISSOLUTION OF CORPORATE PERSON

Dissolution is the last stage of the voluntary liquidation process which formally brings the status of corporate person to an end. The provisions relating to the pre-dissolution and dissolution stage are summarised in this chapter.

### **Unclaimed proceeds of liquidation or undistributed assets**

#### ***Payment of any unclaimed proceeds or undistributed assets or any other balance payable to the stakeholders into the Companies Liquidation Account***

In terms of Regulation 39(1) of Voluntary Liquidation Process Regulations, before the order of dissolution is passed under section 59(8), the liquidator shall apply to the Adjudicating Authority for an order to pay into the Companies Liquidation Account in the Public Account of India any unclaimed proceeds of liquidation or undistributed assets or any other balance payable to the stakeholders in his hands on the date of the order of dissolution.

In terms of Regulation 39(3) of Voluntary Liquidation Process Regulations, the liquidator shall, when making any payment mentioned above, furnish to the Registrar and the IBBI, a statement setting forth the nature of the sums included, the names and last known addresses of the stakeholders entitled to participate therein, the amount to which each is entitled to and the nature of their claim.

#### ***Retention of any unclaimed proceeds or undistributed assets or any other balance payable to the stakeholders by the liquidator***

As per Regulation 39(2) of Voluntary Liquidation Process Regulations, any liquidator who retains any money which should have been paid by him into the Companies Liquidation Account under this Regulation shall pay interest on the amount retained at the rate of twelve per cent per annum,

and also pay such penalty as may be determined by the Board.

Further Regulation 39(4) of Voluntary Liquidation Process Regulations provides that the liquidator shall be entitled to a receipt from the Reserve Bank of India for any money paid to it under Regulation 39(2), and such receipt shall be an effectual discharge of the liquidator in respect thereof.

***Any person claiming money paid into the Companies Liquidation Account to apply to the IBBI***

Regulation 39(5) of Voluntary Liquidation Process Regulations states that a person claiming to be entitled to any money paid into the Companies Liquidation Account may apply to the IBBI for an order for payment of the money claimed; which may, if satisfied that such person is entitled to the whole or any part of the money claimed, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.

Unclaimed proceeds subsisting for a period of fifteen years to be transferred to the general revenue account

In terms of Regulation 39(6) of Voluntary Liquidation Process Regulations, any money paid into the Companies Liquidation Account in pursuance of this Regulation, which remains unclaimed thereafter for a period of fifteen (15) years shall be transferred to the general revenue account of the Central Government.

## **Dissolution Order**

In terms of Section 59 (7) of the Code, where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority (NCLT) for the dissolution of such corporate person. The liquidator is also required to file an affidavit verifying the petition to the Adjudicating Authority (NCLT). **The format of such application has been placed in Annexure 13.1.**

Section 59(8) of the Code prescribes that the Adjudicating Authority (NCLT) shall on an application filed by the liquidator, pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

Section 59(9) of the Code further prescribes that a copy of an order, as

mentioned above, be forwarded to the authority with which the corporate person is registered within fourteen (14) days from the date of such order.

**Preservation of Records relating to Voluntary Liquidation Process**

The liquidator shall preserve a physical or an electronic copy of the reports, registers and books of account referred to in Regulations 8 and 10 for at least eight years after the dissolution of the corporate person, either with himself or with an information utility.

**ANNEXURE 13.1**

**Form No. NCLT-1**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, .....**

**BENCH AT .....**

**IN THE MATER OF SECTIONS 59 OF THE INSOLVENCY AND BANKRUPTCY  
CODE, 2016**

**AND**

**IN THE MATTER OF ..... PRIVATE LIMITED**

**(In Member's Voluntary Liquidation)**

**COMPANY APPLICATION NO. .... OF 2017**

**..... PRIVATE LIMITED**

**(CIN: .....)**

**.....**

**INDEX**

**The Joint Applicants have annexed hereto the documents or copies thereof as specified below:**

SERIAL NO.	PARTICULARS	PAGE NO.
1.	Synopsis of petition	
2.	List of events (Annexure I )	

3.	Notice of admission in form NCLT-2	
4.	Application under section 59(7) of the Insolvency And Bankruptcy Code, 2016 in Form NCLT-1	
5.	Affidavit verifying petition in form NCLT-6	
6.	<b>Annexure A</b> – Copy of Memorandum and Articles of Association and extract of Master data	
7.	<b>Annexure B</b> – Copy of declaration along with audited financial statements and record of business operations of the company for the previous two years	
8.	<b>Annexure C</b> – Copy of form GNL-2 along with paid Challan filed for declaration of solvency	
9.	<b>Annexure D</b> – Copy of Members Resolution and Notice of Extraordinary General Meeting	
10.	<b>Annexure E</b> - Copies of the consent of creditors	
11.	<b>Annexure F</b> – Copy of Form A, public Announcement, in newspapers and IBBI website	
12.	<b>Annexure G</b> – Copy of the form MGT-14 and form GNL-2 along with paid Challan filed for appointment of liquidator	
13.	<b>Annexure H</b> – Copies of the claims form from the Creditors	
14.	<b>Annexure J</b> – Copy of preliminary report	
15.	<b>Annexure K</b> - Copy of No objection certificate from the Income tax	
16.	<b>Annexure M</b> – Certificates on the liquidation, showing receipts and payments pertaining to liquidation	
17.	<b>Annexure N</b> – Copy of final report	
18.	<b>Annexure P</b> – A copy of GNL-2 for submission of final report with ROC along with payment receipt and proof of dispatch to IBBI	
19.	<b>Annexure Q</b> - Certificate from the Bank for closure of the account	
20.	Copy of Demand Draft	
21.	Memorandum of Appearance along with Resolution	



Form No. NCLT-1

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, .....

BENCH AT .....

IN THE MATTER OF SECTIONS 59 OF THE INSOLVENCY AND BANKRUPTCY  
CODE, 2016

AND

IN THE MATTER OF ..... PRIVATE LIMITED

(In Member's Voluntary Liquidation)

COMPANY APPLICATION NO. .... OF 2017

..... PRIVATE LIMITED

(CIN: .....)

.....

.....

**I. Details of Applicant**

1. **Name, CIN, main business, Share capital, registered office address, valid email id and telephone number of the Petitioner Company:**

The ..... **PRIVATE LIMITED**, the Applicant Company is incorporated in India and the Particulars of applicant are given below:

- a) CIN:.....
- b) That **the main objects of the Company** are as follows:
- c) **The Authorised Share Capital** of the Company is Rs. .... dividend into.
- d) **Registered Office address:** .....
- e) **E-mail ID:**.....
- f) **Telephone Number:** .....

A copy of Memorandum and Articles of Association and extract of Master data from MCA Website is enclosed and marked as **Annexure A.**

**2. The Name and office address of the Directors of the applicant Company are as follows:**

Name	DIN	Office Address	Designation

**II. Jurisdiction of the Bench**

The Applicant declares that the subject-matter of the application is within the jurisdiction of the National Company Law Tribunal (NCLT), ..... Bench as the registered office of applicant is situated at the state of Karnataka.

**III. Limitation**

The Applicant further declares that the application is not barred by the limitation period.

**IV. Facts of the Case given below:**

- (1) The applicant was incorporated under the provisions of the Companies Act, 1956/2013 on .....with the objective of carrying .....
- (2) The applicant is not carrying any business from the preceding two years and not earning any profits except the income from investments.
- (3) The Board of Directors of the Company considered the matter and was of the opinion that .....
- (4) The Board of Directors of the Company in their Meeting held on ..... passed a proposal to liquidate the Company voluntarily.
- (5) As required under the provisions of Section 59 of the Insolvency and Bankruptcy Code, 2016, Mr. .... A Copy of declaration along with audited financial statements and record of business operations of the company for the previous two years is enclosed herewith and Marked as **Annexure B.**

- (6) The declaration by majority of Directors along with audited financial statements and record of business operations of the company for the previous two years were filed with Registrar of Companies, Bangalore in form GNL-2 vide ..... A copy of form GNL-2 along with paid challan is enclosed and Marked as **Annexure C.**
- (7) As proposed by the Board, the members of the Company in their Extraordinary General Meeting held on ..... passed a special resolution required under Section 59 of the Code read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (Regulations) to liquidate the Company voluntarily and appointed ....., an Insolvency Professional, having IP registration No..... to act as liquidator of the Company. A copy of special resolution along with notice of Extraordinary General Meeting is enclosed herewith and Marked as **Annexure D.**
- (8) On ....., the Creditors of the Company had provided their consent confirming the special resolution passed by the Members of the Company for the liquidation. A copy of the consent of creditors is enclosed and Marked as **Annexure E.**
- (9) The liquidator made a public Announcement of commencement of liquidation in Form A, in ....., English Newspaper and .....( (Vernacular) Newspaper on ..... respectively, seeking submission of the claim by the stakeholders, if any, within 30 days for the date of commencement of liquidation i.e. .... The public Announcement was simultaneously submitted to the Insolvency and Bankruptcy Board of India (IBBI) to place the same on its website. The same was published on IBBI website on ..... A copy of the public announcement as publish in Newspapers and placed on IBBI Website is enclosed and marked as **Annexure F.**
- (10) The commencement of liquidation, appointment of liquidator and the public announcement made in newspapers was submitted to the Registrar of Companies, Bangalore in form MGT-14 and form GNL-2. A copy of the form MGT-14 and form GNL-2 along with paid challan is enclosed as marked as **Annexure G.** The MGT-14 and form GNL-2 filed with Registrar of Companies, Bangalore has been approved and taken on the record.

- (11) As required under regulations, the liquidator opened a Bank account in the name of “..... **Private Limited in voluntary liquidation**” with Corporation Bank for realisation and payment to the creditors and Members.
- (12) The liquidator had received the claims form the financial creditors on ..... The copy of the claims form are enclosed and Marked as **Annexure H.**
- (13) As required under regulations, the Liquidator submitted its preliminary report to the Company on ..... A copy of preliminary report is enclosed and Marked as **Annexure K.**
- (14) Based on the verification of books and claim received from the creditors of the Company, the liquidators made payments to the creditors in following manner:

Sl. No.	Name of the Creditors	Amount
1		
2		
3		

- (15) As per provisions of Section 178 of the Income Tax Act, 1961, the liquidator intimated the commencement of liquidation and appointment of liquidator to the Income Tax Authority on ..... A copy of No objection certificate from the Income tax, subject to payment of an advance tax of Rs...../- and dividend distribution tax( DDT) of Rs. ....../-, is enclosed and Marked as **Annexure J.** The liquidator made the payment of advance tax on ..... and DDT on .....
- (16) Post payment to the creditors and DDT on the accumulated profit to be distributed to the members, the accumulated profit of Rs. ....../- as dividend and investment in share capital of Rs...../- were paid to the members of the company and with the aforesaid payments to the Members the asset of the Company were fully liquidated.
- (17) The Auditors Certificates on the liquidation, showing receipts and payments pertaining to liquidation since the liquidation commencement date, is enclosed and Marked as **Annexure M.**

- (18) A copy of final report showing the realisation and payment to the creditors and Members of the Company, containing the details as required under regulation 38 of the regulations is enclosed and Marked as **Annexure N.**
- (19) The copy of final report was submitted to the Registrar of Companies in form GNL-2 and was send to the IBBI trough email and registered post. A copy of GNL-2 along with payment receipt and proof of dispatch to IBBI are enclosed and marked as **Annexure P.**
- (20) Subsequent to the payment to creditors and Members of the Company, the liquidator has closed the liquidation Account. A certificate from the Bank for closure of the account is enclosed and Marked as **Annexure Q.**

#### V. Relief(s) sought

It is therefore respectfully prayed before this Hon'ble Tribunal:

- (a) That the applicant, ..... Private Limited (in voluntary liquidation) may kindly be ordered to be dissolved;
- (b) To pass such order or further order(s) with this Hon'ble Tribunal may deem fit, proper and just under the circumstances of the case.

#### VI. Particulars of Bank draft evidencing payment of fee for the petition or application made:

Branch of the Bank on which drawn: .....

Name of the issuing branch: .....

Demand Draft No. ...

Date: .....

Amount Rs.1,000/-

For ..... Private Limited

.....

Liquidator

( .....)(Regd.Number)

**FORM NO. NCLT -2****[See rule34]****BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,****BENCH, AT ....., .....****NOTICE OF ADMISSION**

Date: .....

Thirupal Gorige

Practicing Company Secretary

..... **PRIVATE LIMITED**

(CIN: .....)

.....

Email ID: .....

Phone No. ....

**To****The Registrar,****National Company Law Tribunal**

The party named above requests that the Tribunal grant the following relief:

- (c) That the applicant,..... Private Limited (in voluntary liquidation) may kindly be ordered to be dissolved;
- (d) To pass such order or further order(s) with this Hon'ble Tribunal may deem fit, proper and just under the circumstances of the case.

**For the following reasons:**

As per section 59 of the Insolvency and Bankruptcy Code, 2016, the Directors and Members of the Company in their respective meeting approved to liquidate the Company voluntarily and appointed undersigned as liquidator. The liquidator, in accordance with provisions of section 59 read with rules made therein, has completed the liquidation of the Company and the present application is being filed as per Section 59(7) to for the dissolution of the Company.

Name and Title of person signing on behalf of Appellant:

Liquidator

.....

Tele : ..... Mobile : .....

Email : .....

**ANNEXURE I****Form No. NCLT-1****BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, .....****BENCH AT .....****IN THE MATTER OF SECTIONS 59 OF THE INSOLVENCY AND BANKRUPTCY  
CODE, 2016****AND****IN THE MATTER OF ..... PRIVATE LIMITED****(In Member's Voluntary Liquidation)****COMPANY APPLICATION NO. .... OF 2017****..... PRIVATE LIMITED**

(CIN: .....)

(Address: .....)

**LIST OF EVENTS**

<b>Sl. No.</b>	<b>Event</b>	<b>Date</b>
<b>1.</b>	Date of Board Meeting for proposing the voluntary liquidation of the Company to the Members of the Company for their approval	
<b>2.</b>	Declaration of Solvency by Majority of Directors	
<b>3.</b>	Filing of Declaration of Solvency in form GNL-2 with Registrar of Companies, Bangalore	
<b>4.</b>	Date of Extra Ordinary General Meeting of the Members for approval to liquidate the company voluntarily and to appoint liquidator	

5.	Consent of the Creditors	
6.	Publication of Form A in Business Standard, English Newspaper	
7.	Publication of Form A in Udayavani, Kannda Newspaper	
8.	Publication of Form A on IBBI Website	
9.	Filing of commencement of liquidation, appointment of liquidator and the public announcement made in newspapers was submitted to the Registrar of Companies	
10.	Claims received from the creditors	
11.	Intimation to Income Tax authorities	
12.	Submission of preliminary report to the Company	
13.	Date of opening of liquidation Account	
14.	Payment to the Creditors	
15.	NOC From Income Tax Act	
16.	Payment of Advance tax	
17.	Payment of Dividend Distribution Tax	
18.	Distribution of accumulated profit dividend to the Members the Company	
19.	Return of investment in share capital to the Members of the Company	
20.	Closure of the Liquidation account of the Company	
21.	Date of Auditors Certificate on liquidation	
22.	Date of Final Report	
23.	Date of submission of final report to ROC in form GNL-2	
24.	Date of dispatch of final report to IBBI	

Liquidator

Address;



**FORM NO. NCLT. 12**

**(see rule 45)**

**Memorandum of Appearance**

**To,**

**The Registrar,**

**National Company Law Tribunal, .....,**

**IN THE MATTER OF SECTIONS 59 OF THE INSOLVENCY AND BANKRUPTCY  
CODE, 2016**

**AND**

**IN THE MATTER OF ..... PRIVATE LIMITED**

**(In Member's Voluntary Liquidation)**

**COMPANY APPLICATION NO. .... OF 2017**

**Sir,**

Please take notice that I, ....., Practicing Company Secretary, ....., duly authorised to enter appearance, and do hereby enter appearance on behalf of the ..... PRIVATE LIMITED, in the above mentioned application.

A copy of the resolution passed by the Board of Directors authorizing me to enter appearance and to act for every purpose connected with the proceedings for the said party is enclosed duly signed by me for identification.

Yours Sincerely,

Dated: .....

Place:

.....  
Practicing Company Secretary

.....  
.....  
.....

**Enclosures: as Aforesaid**

**FORM NO. NCLT -6****(General)****[See rule 34]****BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, .....****BENCH AT .....****IN THE MATTER OF SECTIONS 59 OF THE INSOLVENCY AND BANKRUPTCY  
CODE, 2016****AND****IN THE MATTER OF ..... PRIVATE LIMITED****(In Member's Voluntary Liquidation)****COMPANY APPLICATION NO. \_\_\_\_\_ OF 2017****..... PRIVATE LIMITED****(CIN: .....)**

.....

.....

I, ....., S/o ..... aged about ..  
 ..... years resident of ..... do  
 solemnly affirm and say as follows:

That I am the Liquidator of M/s. .... **Private Limited**,  
 applicant in the above matter and am duly authorised by the said  
 applicant to make this affidavit on its behalf.

That the statements made and contents of the said application herein  
 now shown to me are true to my knowledge, and the statements made  
 in joint application are based on information, and I believe them to be  
 true.

Place :

**Solemnly affirmed**

Date :

Deponent

## Chapter XIV

# VOLUNTARY LIQUIDATION PROCESS : A SNAPSHOT

- **Declaration from majority of Directors/Designated Partners of Corporate Person:** Declaration from majority of Directors/Designated Partners of Corporate Person along with affidavit and accompanied with documents that the company has no debt or that it will be able to pay its debt in full from the proceeds and the company is not being liquidated to defraud any person. *(Section 59 (3) (a) and 59 (3) (b) of the Code read with Regulation 3 (1) (a) and 3 (1) (b) of Voluntary Liquidation Process Regulations) ;*
- **Passing of resolution and appointment of Liquidator:** Special Resolution/Resolution, as the case may be, of the members of the company in a general meeting to be passed and appointment of Insolvency Professional to act as Liquidator- **Within 4 weeks of Declaration.** *(Section 59 (3) (c) of the Code read with Regulation 3 (1) (c) of Voluntary Liquidation Process Regulations) ;*
- **Approval by Creditors:** Approval by Creditors (representing 2/3<sup>rd</sup> in the value of Debt of the Company) of the Special Resolution/Resolution which becomes the Liquidation Commencement date- **Within seven days of said resolution.** *(Proviso to section 59 (3) of the Code read with proviso to Regulation 3 (1) (c) of Voluntary Liquidation Process Regulations);*
- **Notification to the IBBI and Registrar by corporate person:** **Within 7 days of such resolution or subsequent approval by the creditors** as the case may be. *(Section 59 (4) of the Code read with Regulation 3 (2) of Voluntary Liquidation Process Regulations)*
- **Public announcement calling upon stakeholders to submit their claims:** The Liquidator to make public announcement in Form A of Schedule I **within five days from his appointment** calling

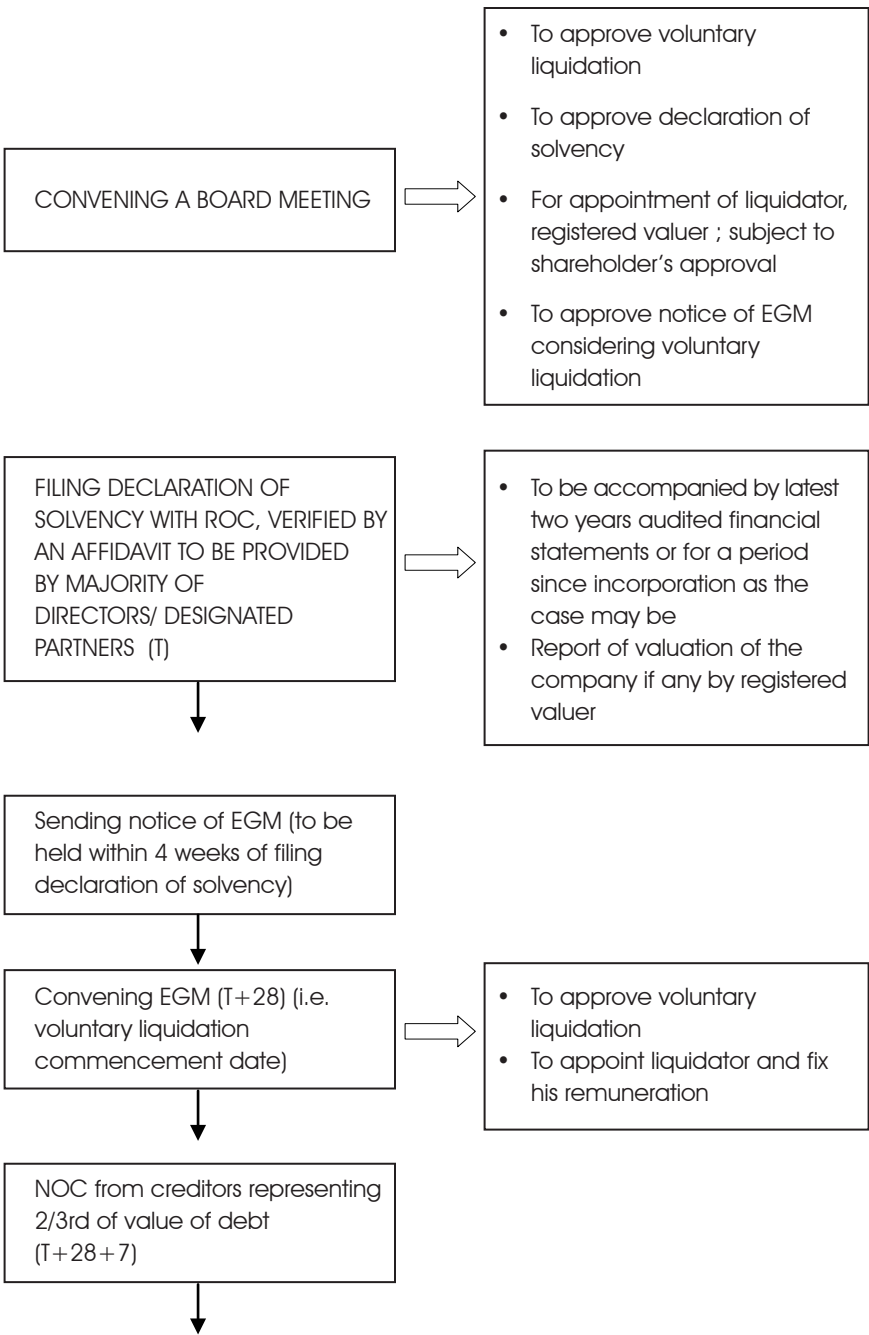
upon stakeholders to submit their claims as on the liquidation commencement date. *(Regulation 14 of Voluntary Liquidation Process Regulations)*.

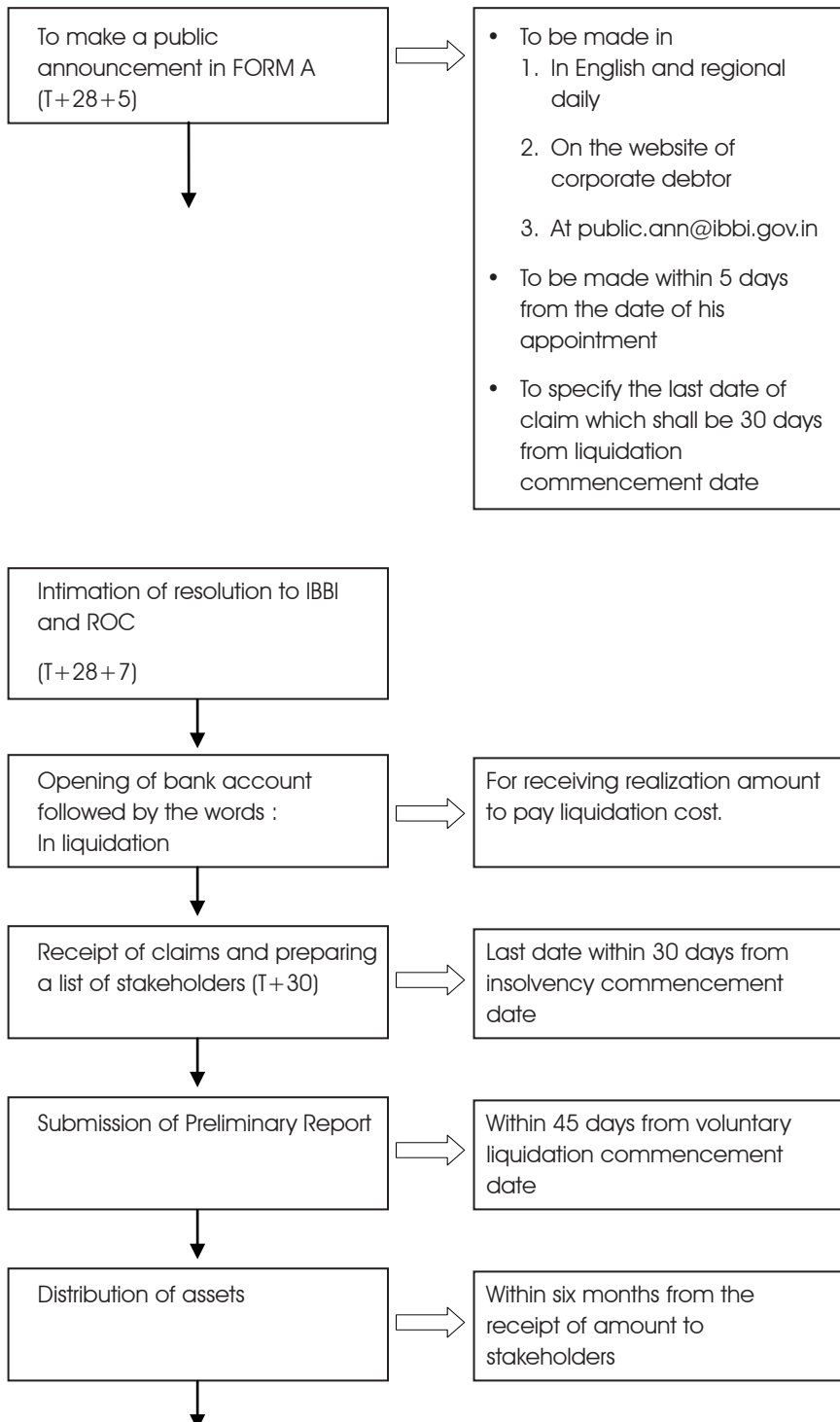
- **Submission of claims:** Last day for submission of claims shall be **thirty days from the liquidation commencement date**. *(Regulation 14 of Voluntary Liquidation Process Regulations)*.
- **Verification of Claims-** Liquidator shall verify the claims submitted **within thirty days from the last date for receipt of claims** and may either admit or reject the claim, in whole or in part, as the case may be. *(Regulation 29 of Voluntary Liquidation Process Regulations)*;
- **Preparation of list of stakeholders-** The Liquidator shall prepare a list of stakeholders on the basis of proofs of claims submitted and accepted **within forty-five days from the last date for receipt of claims**. *(Regulation 30 of Voluntary Liquidation Process Regulations)*
- **Preliminary Report to corporate person-**The Liquidator shall submit a Preliminary Report to the corporate person **within forty five days from the liquidation commencement date**, detailing- (a) the capital structure of the corporate person; (b) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate person. However, if the liquidator has reasons to believe, to be recorded in writing, that the books of the corporate person are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him. *(Regulation 9 of Voluntary Liquidation Process Regulations)*;
- **Completion of voluntary liquidation process:** Voluntary Liquidation Process to be completed within 12 months from Liquidation commencement date. *(Regulation 37 of Voluntary Liquidation Process Regulations)*.
- **Meeting of the contributories of the corporate person Annual Status Report:** In the event of the liquidation process continuing for more than twelve months, the Liquidator shall hold a meeting

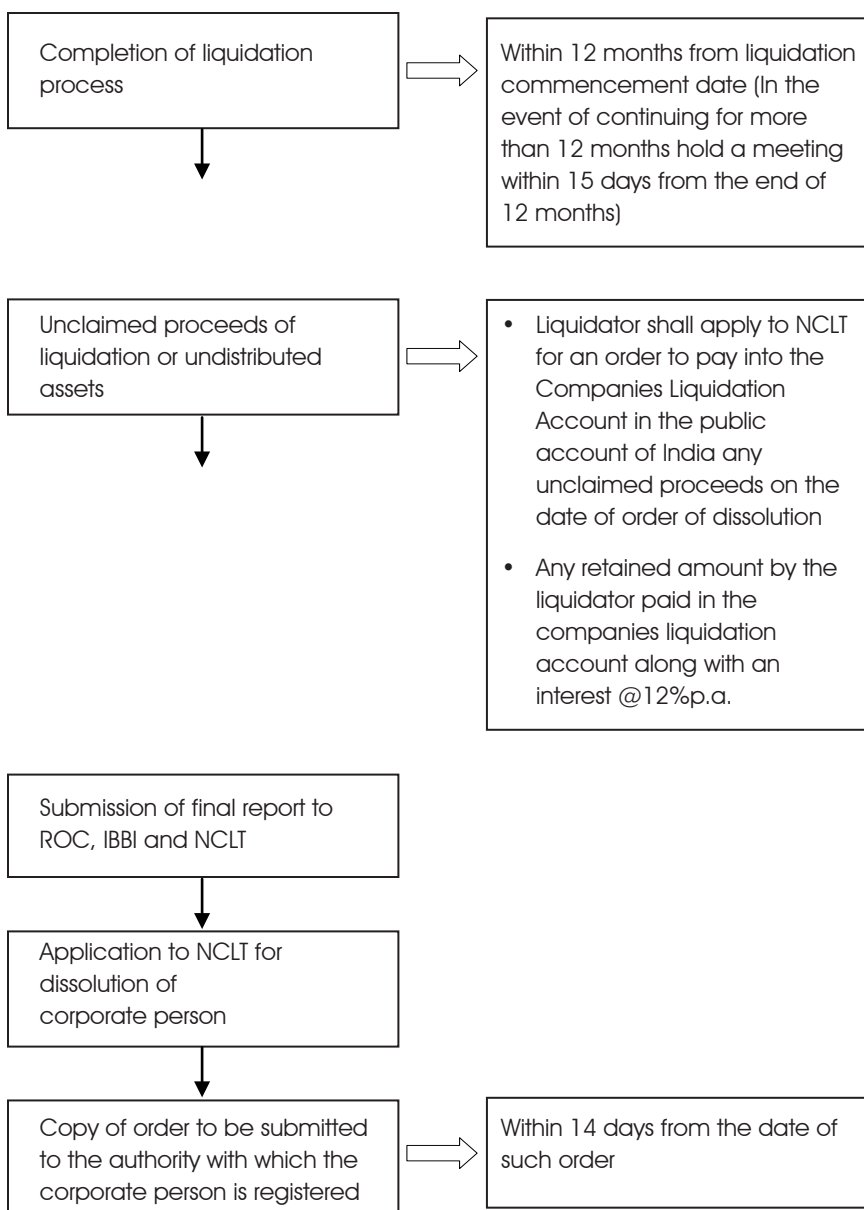
of the contributories of the corporate person **within fifteen days from the end of the twelve months from the liquidation commencement date**, and **at the end every succeeding twelve months till dissolution of the corporate person**; and shall present an Annual Status Report(s) indicating progress in liquidation. *(Regulation 37 of Voluntary Liquidation Process Regulations)*.

- **Preparation of Final Report on completion of liquidation proceedings:** On completion of the liquidation process, the Liquidator shall prepare the Final Report and send the Final Report forthwith, to the Registrar and the IBBI. Liquidator shall submit the Final Report to the Adjudicating Authority (NCLT) along with the application to adjudicating authority for dissolution of corporate person. *(Regulation 38 of Voluntary Liquidation Process Regulations)*.
- **Application to Adjudicating Authority (NCLT) for dissolution of corporate person:** Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the Liquidator shall make an application to the Adjudicating Authority (NCLT) for the dissolution of such corporate person. *(Section 59 (7) of the Code)*.
- **Filing of Dissolution Order :** A copy of an order under need to be forwarded to the authority with which the Company is registered within 14 days from the date of such of order. *(Section 59 (9) of the Code)*.
- **Preservation of records:** The liquidator is required to preserve a physical or an electronic copy of the reports, registers and books of account referred to in Regulations 8 and 10 for at least eight years after the dissolution of the corporate person, either with himself or with an information utility. *(Regulation 41 Voluntary Liquidation Process Regulations)*.

FLOWCHART









## **APPENDIX 1**

### **RELEVANT SECTIONS OF INSOLVENCY AND BANKRUPTCY CODE, 2016**

#### **35. Powers and duties of liquidator.**

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -

- (a) to verify claims of all the creditors;
- (b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;
- (c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;
- (d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;
- (e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;
- (f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified:  
  
[Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.]
- (g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name

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1. Ins. by Act 8 of 2018, sec. 7 (w.r.e.f. 23-11-2017).

and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;

- (h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;
- (i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;
- (j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;
- (k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor;
- (l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;
- (m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;
- (n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and
- (o) to perform such other functions as may be specified by the Board.

(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:

Provided that any such consultation shall not be binding on the liquidator:

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

### **36. Liquidation estate.**

(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following :

- (a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;
- (b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;
- (c) tangible assets, whether movable or immovable;
- (d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;
- (e) assets subject to the determination of ownership by the court or authority;
- (f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;
- (g) any asset of the corporate debtor in respect of which a secured

creditor has relinquished security interest;

- (h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and
- (i) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: -

- (a) assets owned by a third party which are in possession of the corporate debtor, including –
  - (i) assets held in trust for any third party;
  - (ii) bailment contracts;
  - (iii) all sums due to any workmen or employee from the provident fund, the pension fund and the gratuity fund;
  - (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and
  - (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;
- (b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;
- (c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;
- (d) assets of any Indian or foreign subsidiary of the corporate debtor; or
- (e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

### **37. Powers of liquidator to access information.**

- (1) Notwithstanding anything contained in any other law for the time

being in force, the liquidator shall have the power to access any information systems for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor from the following sources, namely: -

- (a) an information utility;
- (b) credit information systems regulated under any law for the time being in force;
- (c) any agency of the Central, State or Local Government including any registration authorities;
- (d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;
- (e) information systems for securities and assets posted as security interest regulated under any law for the time being in force;
- (f) any database maintained by the Board; and
- (g) any other source as may be specified by the Board.

(2) The creditors may require the liquidator to provide them any financial information relating to the corporate debtor in such manner as may be specified.

(3) The liquidator shall provide information referred to in sub-section (2) to such creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information.

### **38. Consolidation of claims.**

(1) The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.

(2) A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility:

Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner provided for the submission of claims for the operational creditor under sub-section (3).

(3) An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.

(4) A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt in the manner as provided in sub-section (2) and to the extent of his operational debt under sub-section (3).

(5) A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

### **39. Verification of claims.**

(1) The liquidator shall verify the claims submitted under section 38 within such time as specified by the Board.

(2) The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

### **40. Admission or rejection of claims.**

(1) The liquidator may, after verification of claims under section 39, either admit or reject the claim, in whole or in part, as the case may be:

Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

### **41. Determination of valuation of claims.**

The liquidator shall determine the value of claims admitted under section 40 in such manner as may be specified by the Board.

### **42. Appeal against the decision of liquidator.**

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator '[accepting or] rejecting the claims within fourteen days of the receipt of such decision.

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1. Ins. by Ord. No 6 2018, sec 27 (w.e.f. 6-6-2018).

**43. Preferential transactions and relevant time.**

(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

(2) A corporate debtor shall be deemed to have given a preference, if–

- (a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and
- (b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers –

- (a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;
- (b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that –
  - (i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and
  - (ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property;

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

*Explanation.* – For the purpose of sub-section (3) of this section, “new

value” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

(4) A preference shall be deemed to be given at a relevant time, if –

- (a) It is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or
- (b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

#### **44. Orders in case of preferential transactions.**

(1) The Adjudicating Authority, may, on an application made by the resolution professional or liquidator under sub-section (1) of section 43, by an order:

- (a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;
- (b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;
- (d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;
- (e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;
- (f) direct for providing security or charge on any property for the



discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and

- (g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that an order under this section shall not -

- (a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;
- (b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional.

*Explanation-I* : For the purpose of this section, it is clarified that where a person, who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference, –

- (a) had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor;
- (b) is a related party,

it shall be presumed that the interest was acquired, or the benefit was received otherwise than in good faith unless the contrary is shown.

*Explanation II.* – A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13.

#### **45. Avoidance of undervalued transactions.**

- (1) If the liquidator or the resolution professional, as the case may be,

on an examination of the transactions of the corporate debtor referred to in sub-section (2) :[\*] determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

(2) A transaction shall be considered undervalued where the corporate debtor –

- (a) makes a gift to a person; or
- (b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor,

and such transaction has not taken place in the ordinary course of business of the corporate debtor.

#### **46. Relevant period for avoidable transactions.**

(1) In an application for avoiding a transaction at undervalue, the liquidator or the resolution professional, as the case may be, shall demonstrate that –

- (i) such transaction was made with any person within the period of one year preceding the insolvency commencement date; or
- (ii) such transaction was made with a related party within the period of two years preceding the insolvency commencement date.

(2) The Adjudicating Authority may require an independent expert to assess evidence relating to the value of the transactions mentioned in this section.

#### **47. Application by creditor in cases of undervalued transactions.**

(1) Where an undervalued transaction has taken place and the liquidator or the resolution professional as the case may be, has not reported it to the Adjudicating Authority, a creditor, member or a partner of a

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1. Omitted by Act 26 of 2018, sec 28 (w.e.f. 6-6-2018). Before omitted, it stood as "of section 43".

corporate debtor, as the case may be, may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect in accordance with this Chapter.

(2) Where, the Adjudicating Authority, after examination of the application made under sub-section (1), is satisfied that -

- (a) undervalued transactions had occurred; and
- (b) liquidator or the resolution professional, as the case may be, after having sufficient information or opportunity to avail information of such transactions did not report such transaction to the Adjudicating Authority, it shall pass an order-
  - (a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 45 and section 48;
  - (b) requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.

#### **48. Order in cases of undervalued transactions.**

(1) The order of the Adjudicating Authority under sub-section (1) of section 45 may provide for the following: -

- (a) require any property transferred as part of the transaction, to be vested in the corporate debtor;
- (b) release or discharge (in whole or in part) any security interest granted by the corporate debtor;
- (c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be, as the Adjudicating Authority may direct; or
- (d) require the payment of such consideration for the transaction as may be determined by an independent expert.

#### **49. Transactions defrauding creditors.**

(1) Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the

Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor -

- (a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or
- (b) in order to adversely affect the interests of such a person in relation to the claim,

the Adjudicating Authority shall make an order –

- (i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and
- (ii) protecting the interests of persons who are victims of such transactions:

Provided that an order under this section –

- (a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and
- (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

## **50. Extortionate credit transactions.**

(1) Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

(2) The Board may specify the circumstances in which a transactions which shall be covered under sub-section (1).

*Explanation.* – For the purpose of this section, it is clarified that any debt extended by any person providing financial services which is in

compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

### **51. Orders of Adjudicating Authority in respect of extortionate credit transactions.**

Where the Adjudicating Authority after examining the application made under sub-section (1) of section 50 is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by an order –

- (a) restore the position as it existed prior to such transaction;
- (b) set aside the whole or part of the debt created on account of the extortionate credit transaction;
- (c) modify the terms of the transaction;
- (d) require any person who is, or was, a party to the transaction to repay any amount received by such person; or
- (e) require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional, as the case may be.

### **52. Secured creditor in liquidation proceedings.**

(1) A secured creditor in the liquidation proceedings may-

- (a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or
- (b) realise its security interest in the manner specified in this section.

(2) Where the secured creditor realises security interest under clause (b) of sub- section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either –

- (a) by the records of such security interest maintained by an information utility; or

- (b) by such other means as may be specified by the Board.
- (4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.
- (5) If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.
- (6) The Adjudicating Authority, on the receipt of an application from a secured creditor under sub-section (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.
- (7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall-
  - (a) account to the liquidator for such surplus; and
  - (b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.
- (8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.
- (9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of section 53.

### **53. Distribution of assets.**

- (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the

following order of priority and within such period as may be specified, namely: -

- (a) the insolvency resolution process costs and the liquidation costs paid in full;
  - (b) the following debts which shall rank equally between and among the following: -
    - (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
    - (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
  - (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
  - (d) financial debts owed to unsecured creditors;
  - (e) the following dues shall rank equally between and among the following:
    - (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
    - (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
  - (f) any remaining debts and dues;
  - (g) preference shareholders, if any; and
  - (h) equity shareholders or partners, as the case may be.
- (2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.
- (3) The fees payable to the liquidator shall be deducted proportionately

from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

*Explanation.* – For the purpose of this section-

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and
- (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).



## **APPENDIX 2**

### **INSOLVENCY AND BANKRUPTCY BOARD OF INDIA NOTIFICATION**

New Delhi, the 31st March, 2017

## **INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (VOLUNTARY LIQUIDATION PROCESS) REGULATIONS, 2017**

**IBBI/2016-17/GN/REG010.** – In exercise of the powers conferred by sections 59, 196 and 208 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Board hereby makes the following Regulations, namely : –

### *CHAPTER I*

### **PRELIMINARY**

#### **1. Short title and commencement.**

(1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

(2) These Regulations shall come into force on 1<sup>st</sup> April, 2017.

(3) These Regulations shall apply to the voluntary liquidation of corporate persons under Chapter V of Part II of the Insolvency and Bankruptcy Code, 2016.

#### **2. Definitions.**

(1) In these Regulations, unless the context otherwise requires-

- (a) "Code" means the Insolvency and Bankruptcy Code, 2016;
- (b) "contributory" means a member of a company, partner of a limited liability partnership, and any other person liable to contribute towards the assets of the corporate person in the event of its liquidation;
- (c) "liquidation commencement date" means the date on which

the proceedings for voluntary liquidation commence as per section 59(5) and Regulation 3(4);

- (d) "Registrar" shall have the same meaning assigned to it under section 2(75) of the Companies Act, 2013 or section 2(1)(s) of the Limited Liability Partnership Act, 2008 or the authority administering the Act under which the corporate person is incorporated, as applicable;
- (e) "section" means a section of the Code; and
- (f) "stakeholders" mean the stakeholders entitled to proceeds from the sale of liquidation assets under section 53.

(2) The term liquidation in these Regulations refers to voluntary liquidation.

(3) Unless the context otherwise requires, words and expressions used and not defined in these Regulations, but defined in the Code, shall have the meanings assigned to them in the Code.

## *CHAPTER II*

### **COMMENCEMENT OF LIQUIDATION**

#### **3. Initiation of Liquidation**

(1) Without prejudice to section 59(2), liquidation proceedings of a corporate person shall meet the following conditions, namely: –

- (a) a declaration from majority of
  - (i) the designated partners, if a corporate person is a limited liability partnership,
  - (ii) individuals constituting the governing body in case of other corporate persons,

as the case may be, verified by an affidavit stating that –

- (i) they have made a full inquiry into the affairs of the corporate person and they have formed an opinion that either the corporate person has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the liquidation; and
- (ii) the corporate person is not being liquidated to defraud any person;

- (b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely: –
  - (i) audited financial statements and record of business operations of the corporate person for the previous two years or for the period since its incorporation, whichever is later;
  - (ii) a report of the valuation of the assets of the corporate person, if any prepared by a registered valuer;
- (c) within four weeks of a declaration under sub-clause (a), there shall be –
  - (i) a resolution passed by a special majority of the partners or contributories, as the case may be, of the corporate person requiring the corporate person to be liquidated and appointing an insolvency professional to act as the liquidator; or
  - (ii) a resolution of the partners or contributories, as the case may be, requiring the corporate person to be liquidated as a result of expiry of the period of its duration, if any, fixed by its constitutional documents or on the occurrence of any event in respect of which the constitutional documents provide that the corporate person shall be dissolved, as the case may be, and appointing an insolvency professional to act as the liquidator;

Provided that the corporate person owes any debt to any person, creditors representing two-thirds in value of the debt of the corporate person shall approve the resolution passed under sub-clause (c) within seven days of such resolution.

(2) The corporate person shall notify the Registrar and the Board about the resolution under sub-regulation (1) to liquidate the corporate person within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

(3) Subject to approval of the creditors under sub-regulation (1), the liquidation proceedings in respect of a corporate person shall be deemed to have commenced from the date of passing of the resolution under sub-clause (c) of sub-regulation (1):

*Explanation :* For the purposes of sub-regulations (1) to (3), corporate person means a corporate person other than a company.

(4) The declaration under sub-regulation (1)(a) or under section 59(3)(a) shall list each debt of the corporate person as on that date and state that the corporate person will be able to pay all its debts in full from the proceeds of assets to be sold in the liquidation .

#### **4. Effect of liquidation.**

(1) The corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business.

(2) Notwithstanding the provisions of sub-section (1), the corporate person shall continue to exist until it is dissolved under section 59(8).

### *CHAPTER III*

## **APPOINTMENT AND REMUNERATION OF LIQUIDATOR**

### **5. Appointment of Liquidator.**

(1) An insolvency professional shall not be appointed by a corporate person if he is not eligible under Regulation 6.

(2) The resolution passed under regulation 3(2)(c) or under section 59(3)(c), as the case may be, shall contain the terms and conditions of the appointment of the liquidator, including the remuneration payable to him.

### **6. Eligibility for appointment as liquidator.**

(1) An insolvency professional shall be eligible to be appointed as a liquidator if he, and every partner or director of the insolvency professional entity of which he is a partner or director is independent of the corporate person:

*Explanation :* A person shall be considered independent of the corporate person, if he-

- (a) is eligible to be appointed as an independent director on the board of the corporate person under section 149 of the Companies Act, 2013 (18 of 2013), where the corporate person is a company;

- (b) is not a related party of the corporate person; or
- (c) has not been an employee or proprietor or a partner-
  - (i) of a firm of auditors or company secretaries or cost auditors of the corporate person; or
  - (ii) of a legal or a consulting firm, that has or had any transaction with the corporate person contributing ten per cent or more of the gross turnover of such firm,

at any time in the last three years.

(2) An insolvency professional shall not be eligible to be appointed as a liquidator if he, or the insolvency professional entity of which he is a partner or director is under a restraint order of the Board.

(3) A liquidator shall disclose the existence of any pecuniary or personal relationship with the concerned corporate person or any of its stakeholders as soon as he becomes aware of it, to the Board and the Registrar.

(4) An insolvency professional shall not continue as a liquidator if the insolvency professional entity of which he is a director or partner, or any other partner or director of such insolvency professional entity represents any other stakeholder in the same liquidation.

## **7. Liquidator's remuneration.**

The remuneration payable to the liquidator shall form part of the liquidation cost.

### *CHAPTER IV*

## **POWERS AND FUNCTIONS OF THE LIQUIDATOR**

### **8. Reporting.**

(1) The liquidator shall prepare and submit –

- (a) Preliminary Report;
- (b) Annual Status Report;
- (c) Minutes of consultations with stakeholders; and
- (d) Final Report

in the manner specified under these Regulations.

(2) Subject to other provisions of these Regulations, the liquidator shall make the reports and minutes referred to sub-regulation (1) available to a stakeholder in either electronic or physical form, on receipt of –

- (a) an application in writing;
- (b) cost of making such reports available to it; and
- (c) an undertaking from the stakeholder that it shall maintain confidentiality of such reports and shall not use these to cause an undue gain or undue loss to itself or any other person.

### **9. Preliminary Report.**

(1) The liquidator shall submit a Preliminary Report to the corporate person within forty five days from the liquidation commencement date, detailing-

- (a) the capital structure of the corporate person;
- (b) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate person:

Provided that if the liquidator has reasons to believe, to be recorded in writing, that the books of the corporate person are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him;

- (c) Whether he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the corporate person or the conduct of the business thereof; and
- (d) the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

### **10. Registers and books of account.**

(1) Where the books of account of the corporate person are incomplete on the liquidation commencement date, the liquidator shall have them completed and brought up-to-date, with all convenient speed.

(2) The liquidator shall maintain the following registers and books, as may

be applicable, in relation to the liquidation of the corporate debtor:-

- (a) Cash Book;
- (b) Ledger;
- (c) Bank Ledger;
- (d) Register of Fixed Assets and Inventories;
- (e) Securities and Investment Register;
- (f) Register of Book Debts and Outstanding Debts;
- (g) Tenants Ledger;
- (h) Suits Register;
- (i) Decree Register;
- (j) Register of Claims and Dividends;
- (k) Contributories Ledger;
- (l) Distributions Register;
- (m) Fee Register;
- (n) Suspense Register;
- (o) Documents Register;
- (p) Books Register;
- (q) Register of unclaimed dividends and undistributed properties deposited in accordance with Regulation 39; and
- (r) such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor.

(3) The registers and books under sub-regulation (2) may be maintained in the forms indicated in Schedule II, with such modifications as the liquidator may deem fit in the facts and circumstances of the liquidation.

(4) The liquidator shall keep receipts for all payments made or expenses incurred by him.

**11. Engagement of professionals.**

(1) A liquidator may engage professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.

(2) The liquidator shall not engage a professional under sub-regulation (1) who is his relative, is a related party of the corporate person or has served as an auditor to the corporate person at any time during the five years preceding the liquidation commencement date.

(3) A professional engaged or proposed to be engaged under sub-regulation (1) shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders, or the corporate person as soon as he becomes aware of it, to the liquidator.

**12. Consultation with stakeholders.**

(1) The stakeholders consulted under section 35(2) shall extend all assistance and cooperation to the liquidator to complete the liquidation of the corporate person.

(2) The liquidator shall maintain the particulars of any consultation with the stakeholders made under this Regulation.

**13. Extortionate credit transactions.**

A transaction shall be considered an extortionate credit transaction under section 50(2) where the terms –

- (a) require the corporate person to make exorbitant payments in respect of the credit provided; or
- (b) are unconscionable under the principles of law relating to contracts.

**14. Public announcement by the liquidator.**

(1) The liquidator shall make a public announcement in Form A of Schedule I within five days from his appointment.

(2) The public announcement shall-

- (a) call upon stakeholders to submit their claims as on the liquidation commencement date; and



- (b) provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date.
- (3) The announcement shall be published-
  - (a) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate person and any other location where in the opinion of the liquidator, the corporate person conducts material business operations;
  - (b) on the website, if any, of the corporate person; and
  - (c) on the website, if any, designated by the Board for this purpose.

## *CHAPTER V*

### **CLAIMS**

#### **15. Proof of claim.**

A person, who claims to be a stakeholder, shall prove his claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.

#### **16. Claims by operational creditors.**

(1) A person claiming to be an operational creditor of the corporate person, other than a workman or employee, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form B of Schedule I.

(2) The existence of debt due to an operational creditor under this Regulation may be proved on the basis of –

- (a) the records available with an information utility; or
- (b) other relevant documents which adequately establish the debt, including any of the following -
  - (i) a contract for the supply of goods or services with corporate person, supported by an invoice demanding payment for the goods and services supplied to the corporate person;
  - (ii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; and

- (iii) financial accounts of the corporate person.

### **17. Claims by financial creditors.**

(1) A person claiming to be a financial creditor of the corporate person shall submit proof of claim to the liquidator in electronic means in Form C of Schedule I.

(2) The existence of debt due to the financial creditor may be proved on the basis of –

- (a) the records available in an information utility; or
- (b) other relevant documents which adequately establish the debt, including any or all of the following –
  - (i) a financial contract supported by financial statements as evidence of the debt;
  - (ii) a record evidencing that the amounts committed by the financial creditor to the corporate person under a facility has been drawn by the corporate person;
  - (iii) financial statements showing that the debt has not been repaid; and
  - (iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

### **18. Claims by workmen and employees.**

(1) A person claiming to be a workman or an employee of the corporate person shall submit proof of claim to the liquidator in person, by post or by electronic means in Form D of Schedule I.

(2) Where there are dues to numerous workmen or employees of the corporate person, an authorized representative may submit one proof of claim for all such dues on their behalf in Form E of Schedule I.

(3) The existence of dues to workmen or employees may be proved by them, individually or collectively, on the basis of –

- (a) records available in an information utility; or
- (b) other relevant documents which adequately establish the dues, including any or all of the following –

- (i) a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;
- (ii) evidence of notice demanding payment of unpaid amount and any documentary or other proof that payment has not been made; and
- (iii) an order of a court or tribunal that has adjudicated upon the non-payment of dues, if any.

(4) The liquidator shall admit the claims of a workman or an employee on the basis of the books of account of the corporate person if such workman or employee has not made a claim.

### **19. Claims by other stakeholders.**

(1) A person, claiming to be a stakeholder other than those under Regulations 16, 17 or 18 shall submit proof of claim to the liquidator in person, by post or by electronic means in Form F of Schedule I.

(2) The existence of the claim of the stakeholder may be proved on the basis of –

- (a) the records available in an information utility; or
- (b) other relevant documents which adequately establish the claim, including any or all of the following-
  - (i) documentary evidence of notice demanding payment of unpaid amount or bank statements of the claimant showing that the claim has not been paid and an affidavit that the documentary evidence and bank statements are true, valid and genuine;
  - (ii) documentary or electronic evidence of his shareholding; and
  - (iii) an order of a court, tribunal or other authority that has adjudicated upon the non-payment of a claim, if any.

### **20. Proving security interest.**

The existence of a security interest may be proved by a secured creditor on the basis of –

- (a) the records available in an information utility;
- (b) certificate of registration of charge issued by the Registrar of Companies;
- (c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India; or
- (d) other relevant documents which adequately establish the security interest.

## **21. Production of bills of exchange and promissory notes.**

Where a person seeks to prove a debt in respect of a bill of exchange, promissory note or other negotiable instrument or security of a like nature for which the corporate person is liable, such bill of exchange, note, instrument or security, as the case may be, shall be produced before the liquidator before the claim is admitted.

## **22. Substantiation of claims.**

The liquidator may call for such other evidence or clarification as he deems fit from a claimant for substantiating the whole or part of its claim.

## **23. Cost of proof.**

(1) A claimant shall bear the cost of proving its claim.

(2) Costs incurred by the liquidator for verification and determination of a claim shall form part of liquidation cost:

Provided that if a claim or part of the claim is found to be false, the liquidator shall endeavor to recover the costs incurred for verification and determination of claim from such claimant, and shall provide the details of the claimant to the Board.

## **24. Determination of quantum of claim.**

Where the amount claimed by a claimant is not precise due to any contingency or any other reason, the liquidator shall make the best estimate of the amount of the claim, based on consultation with the claimant and the corporate person and the information available with him.

## **25. Debt in foreign currency.**

The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the liquidation commencement date.

*Explanation* - "The official exchange rate" is the reference rate published by the Reserve Bank of India or derived from such reference rates.

## **26. Periodical payments.**

In the case of rent, interest and such other payments of a periodical nature, a person may claim only for any amounts due and unpaid up to the liquidation commencement date.

## **27. Debt payable at future time.**

(1) A person may prove for a claim whose payment was not yet due on the liquidation commencement date and is entitled to distribution in the same manner as any other stakeholder.

(2) Subject to any contract to the contrary, where a stakeholder has proved for a claim under sub-regulation (1), and the debt has not fallen due before distribution, he is entitled to distribution of the admitted claim reduced as follows –

$$X / (1 + r)^n$$

where—

- (a) "X" is the value of the admitted claim;
- (b) "r" is the closing yield rate (%) of government securities of the maturity of "n" on the date of distribution as published by the Reserve Bank of India; and
- (c) "n" is the period beginning with the date of distribution and ending with the date on which the payment of the debt would otherwise be due, expressed in years and months in a decimalized form.

## **28. Mutual credits and set-off.**

Where there are mutual dealings between the corporate person and another party, the sums due from one party shall be set off against the

sums due from the other to arrive at the net amount payable to the corporate person or to the other party.

*Illustration* : X owes Rs.100 to the corporate person. The corporate person owes Rs.70 to X. After set off, Rs.30 is payable by X to the corporate person.

## 29. Verification of claims

(1) The liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be, as per section 40 of the Code.

(2) A creditor may appeal to the Adjudicating Authority against the decision of the liquidator as per section 42 of the Code.

## 30. List of stakeholders.

(1) The liquidator shall prepare a list of stakeholders on the basis of proofs of claims submitted and accepted under these Regulations, with-

- (a) the amounts of claim admitted, if applicable,
- (b) the extent to which the debts or dues are secured or unsecured, if applicable,
- (c) the details of the stakeholders, and
- (d) the proofs admitted or rejected in part, and the proofs wholly rejected.

(2) The liquidator shall prepare the list of stakeholders within forty-five days from the last date for receipt of claims.

(3) The list of stakeholders, as modified from time to time, shall be-

- (a) available for inspection by the persons who submitted proofs of claim;
- (b) available for inspection by members, partners, directors and guarantors of the corporate person;
- (c) displayed on the website, if any, of the corporate person;
- (d) displayed on the website, if any, designated by the Board for this purpose.

CHAPTER VI

**REALISATION OF ASSETS**

**31. Manner of sale.**

The liquidator may value and sell the assets of the corporate person in the manner and mode approved by the corporate person in compliance with provisions, if any, in the applicable statute.

*Explanation :* “assets” include an asset, all assets, a set of assets or parcel of assets, as the case may be, in relation to sale of assets.

**32. Recovery of monies due.**

The liquidator shall endeavor to recover and realize all assets of and dues to the corporate person in a time-bound manner for maximization of value for the stakeholders.

**33. Liquidator to realize uncalled capital or unpaid capital contribution.**

(1) The liquidator shall realize any amount due from any contributory to the corporate person.

(2) Notwithstanding any charge or encumbrance on the uncalled capital of the corporate person, the liquidator shall be entitled to call and realize the uncalled capital of the corporate person and to collect the arrears if any due on calls made prior to the liquidation commencement date, by providing a notice to the contributory to make the payments within fifteen days from the receipt of the notice, but shall hold all moneys so realized subject to the rights, if any, of the holder of any such charge or encumbrance.

(3) No distribution shall be made to a contributory, unless he makes his contribution to the uncalled or unpaid capital as required in the constitutional documents of the corporate person.

CHAPTER VII

**PROCEEDS OF LIQUIDATION AND DISTRIBUTION OF PROCEEDS**

**34. All money to be paid in to bank account.**

(1) The liquidator shall open a bank account in the name of the corporate

person followed by the words 'in voluntary liquidation', in a scheduled bank, for the receipt of all moneys due to the corporate person.

(2) The liquidator shall pay to the credit of the bank account opened under sub-regulation (1) all moneys, including cheques and demand drafts received by him as the liquidator of the corporate person, and the realizations of each day shall be deposited into the bank account without any deduction not later than the next working day.

(3) The money in the credit of the bank account shall not be used except in accordance with section 53(1).

(4) All payments out of the account by the liquidator above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account.

### **35. Distribution.**

(1) The liquidator shall distribute the proceeds from realization within six months from the receipt of the amount to the stakeholders.

(2) The liquidation costs shall be deducted before such distribution is made.

(3) The liquidator may, with the approval of the corporate person, distribute amongst the stakeholders, an asset that cannot be readily or advantageously sold due to its peculiar nature or other special circumstances.

### **36. Return of money.**

A stakeholder shall forthwith return any monies received by him in distribution, which he was not entitled to at the time of distribution, or subsequently became not entitled to.

### **37. Completion of liquidation.**

(1) The liquidator shall endeavor to complete the liquidation process of the corporate person within twelve months from the liquidation commencement date.

(2) In the event of the liquidation process continuing for more than twelve months, the liquidator shall-

- (a) hold a meeting of the contributories of the corporate person



within fifteen days from the end of the twelve months from the liquidation commencement date, and at the end every succeeding twelve months till dissolution of the corporate person; and

- (b) shall present an Annual Status Report(s) indicating progress in liquidation, including –
  - (i) settlement of list of stakeholders,
  - (ii) details of any assets that remains to be sold and realized,
  - (iii) distribution made to the stakeholders, and
  - (iv) distribution of unsold assets made to the stakeholders;
  - (v) developments in any material litigation, by or against the corporate person; and
  - (vi) filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code.

(3) The Annual Status Report shall enclose the audited accounts of the liquidation showing the receipts and payments pertaining to liquidation since the liquidation commencement date.

### **38. Final Report.**

(1) On completion of the liquidation process, the liquidator shall prepare the Final Report consisting of -

- (a) audited accounts of the liquidation, showing receipts and payments pertaining to liquidation since the liquidation commencement date; and
- (b) a statement demonstrating that –
  - (i) the assets of the corporate person has been disposed of;
  - (ii) the debt of the corporate person has been discharged to the satisfaction of the creditors;
  - (iii) no litigation is pending against the corporate person or sufficient provision has been made to meet the obligations arising from any pending litigation.

- (c) a sale statement in respect of all assets containing –
  - (i) the realized value;
  - (ii) cost of realization, if any;
  - (iii) the manner and mode of sale;
  - (iv) an explanation for the shortfall, if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets under section 59(3)(b)(ii) or Regulation 3(1)(b)(ii), as the case may be;
  - (v) the person to whom the sale is made; and
  - (vi) any other relevant details of the sale.

(2) The liquidator shall send the Final Report forthwith, to the Registrar and the Board.

(3) The liquidator shall submit the Final Report to the Adjudicating Authority along with the application under section 59(7).

### **39. Unclaimed proceeds of liquidation or undistributed assets.**

(1) Before the order of dissolution is passed under section 59(8), the liquidator shall apply to the Adjudicating Authority for an order to pay into the Companies Liquidation Account in the Public Account of India any unclaimed proceeds of liquidation or undistributed assets or any other balance payable to the stakeholders in his hands on the date of the order of dissolution.

(2) Any liquidator who retains any money which should have been paid by him into the Companies Liquidation Account under this Regulation shall pay interest on the amount retained at the rate of twelve per cent per annum, and also pay such penalty as may be determined by the Board.

(3) The liquidator shall, when making any payment referred to in sub-regulation (1), furnish to the Registrar and the Board, a statement setting forth the nature of the sums included, the names and last known addresses of the stakeholders entitled to participate therein, the amount to which each is entitled to and the nature of their claim.

(4) The liquidator shall be entitled to a receipt from the Reserve

Bank of India for any money paid to it under sub-regulation (2), and such receipt shall be an effectual discharge of the liquidator in respect thereof.

(5) A person claiming to be entitled to any money paid into the Companies Liquidation Account may apply to the Board for an order for payment of the money claimed; which may, if satisfied that such person is entitled to the whole or any part of the money claimed, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.

(6) Any money paid into the Companies Liquidation Account in pursuance of this Regulation, which remains unclaimed thereafter for a period of fifteen years shall be transferred to the general revenue account of the Central Government.

#### **40. Detection of Fraud or Insolvency**

(1) Where the liquidator is of the opinion that the liquidation is being done to defraud a person, he shall make an application to the Adjudicatory Authority to suspend the process of liquidation and pass any such orders as it deems fit.

(2) Where the liquidator is of the opinion that the corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the liquidation, he shall make an application to the Adjudicating Authority to suspend the process of liquidation and pass any such orders as it deems fit.

#### **41. Preservation of records.**

The liquidator shall preserve a physical or an electronic copy of the reports, registers and books of account referred to in Regulations 8 and 10 for at least eight years after the dissolution of the corporate person, either with himself or with an information utility.

**SCHEDULE I****FORM A****PUBLIC ANNOUNCEMENT**

*[Regulation 14 of the Insolvency and Bankruptcy Board of India  
(Voluntary Liquidation Process) Regulations, 2017]*

**FOR THE ATTENTION OF THE STAKEHOLDERS OF  
[Name of Corporate person]**

1.	NAME OF CORPORATE PERSON	
2.	DATE OF INCORPORATION OF CORPORATE PERSON	
3.	AUTHORITY UNDER WHICH CORPORATE PERSON IS INCORPORATED / REGISTERED	
4.	CORPORATE IDENTITY NUMBER / LIMITED LIABILITY IDENTITY NUMBER OF CORPORATE PERSON	
5.	ADDRESS OF THE REGISTERED OFFICE AND PRINCIPAL OFFICE (IF ANY) OF CORPORATE PERSON	
6.	LIQUIDATION COMMENCEMENT DATE OF CORPORATE PERSON	
7.	NAME, ADDRESS, EMAIL ADDRESS, TELEPHONE NUMBER AND THE REGISTRATION NUMBER OF THE LIQUIDATOR	
8.	LAST DATE FOR SUBMISSION OF CLAIMS	

Notice is hereby given that the [name of the corporate person] has commenced voluntary liquidation on [liquidation commencement date].

The stakeholders of [name of the corporate person] are hereby called upon to submit a proof of their claims, on or before [insert the date falling thirty days after the liquidation commencement date], to the liquidator at the address mentioned against item 7.

The financial creditors shall submit their proof of claims by electronic

means only. All other stakeholders may submit the proof of claims in person, by post or by electronic means.

Submission of false or misleading proofs of claim shall attract penalties.

Name and Signature of the Liquidator:

Date and Place:

**FORM B**

**PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN  
AND EMPLOYEES**

*[Under Regulation 16 of the Insolvency and Bankruptcy Board of India  
(Voluntary Liquidation Process) Regulations, 2017]*

*[Date]*

To

The Liquidator

*[Name of the Liquidator]*

*[Address as set out in the public announcement]*

From

*[Name and address of the operational creditor]*

**Subject:** Submission of proof of claim in respect of the voluntary liquidation of *[name of corporate person]* under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

*[Name of the operational creditor]* hereby submits this proof of claim in respect of the voluntary liquidation of *[name of corporate person]*. The details for the same are set out below:

1.	NAME OF OPERATIONAL CREDITOR  (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION, IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
----	--	--

2.	ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE	
3.	TOTAL AMOUNT OF CLAIM, INCLUDING ANY INTEREST, AS AT VOLUNTARY LIQUIDATION PROCESS COMMENCEMENT DATE AND DETAILS OF NATURE OF CLAIM	
4.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OF SUIT OR ARBITRATION PROCEEDINGS	
5.	DETAILS OF HOW AND WHEN DEBT INCURRED	
6.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE PERSON AND THE OPERATIONAL CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
7.	DETAILS OF ANY RETENTION OF TITLE IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE DEBT REFERS OR ANY OTHER SECURITY	
8.	DETAILS OF ANY ASSIGNMENT OR TRANSFER OF DEBT IN HIS FAVOUR	
9.	DETAILS OF THE BANK ACCOUNT TO WHICH THE OPERATIONAL CREDITOR'S SHARE OF THE PROCEEDS OF LIQUIDATION CAN BE TRANSFERRED	
10.	LIST OUT AND ATTACH THE DOCUMENTS RELIED ON IN SUPPORT OF THE CLAIM	
Signature of operational creditor or person authorised to act on his behalf  (Please enclose the authority if this is being submitted on behalf of the operational creditor)		
Name in BLOCK LETTERS		
Position with or in relation to creditor		
Address of person signing		

\*PAN, Passport, AADHAAR Card or the identity card issued by the Election Commission of India.

### AFFIDAVIT

I, *[name of deponent]*, currently residing at *[address of deponent]*, do

solemnly affirm and state as follows:

1. The above named corporate person was, at liquidation commencement date, that is, the ..... day of ..... 20..... and still is, justly and truly indebted to me *[or to me and [insert name of co-partners], my co-partners in trade, or, as the case may be]* for a sum of Rs. .... for ..... *[please state consideration].*

2. In respect of my claim of the said sum or any part thereof, I have relied on and the documents specified below:

*[Please list out the documents relied on as evidence of debt.]*

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

4. In respect of the said sum or any part thereof, I have not, nor have my partners or any of them, nor has any person, by my/our order, to my/our knowledge or belief, for my/ our use, had or received any manner of satisfaction or security whatsoever, save and except the following:

*[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate person and the operational creditor which may be set-off against the claim.]*

Solemnly, affirmed at ..... on ..... day, the ..... day of ..... 20.....

Before me,

Notary / Oath Commissioner

Deponent's signature

### **VERIFICATION**

I, the Deponent hereinabove, do hereby verify and affirm that the contents of para \_\_\_\_ to \_\_\_\_ of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed therefrom.

Verified at ..... on this ..... day of ..... 201.....

Deponent's signature

## FORM C

## PROOF OF CLAIM BY FINANCIAL CREDITORS

*[Under Regulation 17 of the Insolvency and Bankruptcy Board of India  
(Voluntary Liquidation Process) Regulations, 2017]*

*[Date]*

To

The Liquidator

*[Name of the Liquidator]*

*[Address as set out in the public announcement]*

From

*[Name and address of the registered office and principal office of the  
financial creditor]*

**Subject:** Submission of proof of claim in respect of the voluntary liquidation of *[name of corporate person]* under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

*[Name of the financial creditor]* hereby submits this proof of claim in respect of the voluntary liquidation of *[name of corporate person]*. The details for the same are set out below:

1.	NAME OF FINANCIAL CREDITOR  (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION, IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
2.	ADDRESS AND EMAIL OF FINANCIAL CREDITOR FOR CORRESPONDENCE.	
3.	TOTAL AMOUNT OF CLAIM, INCLUDING ANY INTEREST, AS AT THE LIQUIDATION COMMENCEMENT DATE AND DETAILS OF NATURE OF CLAIM (WHETHER TERM LOAN, SECURED, UNSECURED)	
4.	DETAILS OF ANY ORDER OF A COURT OF TRIBUNAL THAT HAS ADJUDICATED ON THE NON-PAYMENT OF DEBT	



5.	DETAILS OF HOW AND WHEN DEBT INCURRED	
6.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE PERSON AND THE FINANCIAL CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
7.	DETAILS OF ANY SECURITY HELD, THE VALUE OF THE SECURITY, AND THE DATE IT WAS GIVEN	
8.	DETAILS OF ANY ASSIGNMENT OR TRANSFER OF DEBT IN HIS FAVOUR	
9.	DETAILS OF THE BANK ACCOUNT TO WHICH THE FINANCIAL CREDITOR'S SHARE OF THE PROCEEDS OF LIQUIDATION CAN BE TRANSFERRED	
10.	LIST OUT AND ATTACH THE DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED AND IN SUPPORT OF THE CLAIM.	
Signature of financial creditor or person authorised to act on his behalf  (please enclose the authority if this is being submitted on behalf a financial creditor)		
Name in BLOCK LETTERS		
Position with or in relation to creditor		
Address of person signing		

\*PAN, Passport, AADHAAR Card or the identity card issued by the Election Commission of India.

### AFFIDAVIT

I, *[name of deponent]*, currently residing at *[address of deponent]*, do solemnly affirm and state as follows:

1. The above named corporate person was, at the voluntary liquidation commencement date, that is, the ..... day of ..... 20..... and still is, justly and truly indebted to me *[or to me and[inset name of co-partners], my co-partners in trade, or, as the case may be]* for a sum of Rs. .... for ..... *[please state consideration]*.

2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

*[Please list the documents relied on as evidence of debt and of non-payment.]*

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

4. In respect of the said sum or any part thereof, I have not, nor have my partners or any of them, nor has any person, by my/our order, to my/our knowledge or belief, for my/our use, had or received any manner of satisfaction or security whatsoever, save and except the following:

*[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate person and the financial creditor which may be set-off against the claim.]*

Solemnly, affirmed at ..... on ..... day, the ..... day of ..... 20.....

Before me,

Notary / Oath Commissioner

Deponent's signature.

### VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of para ..... to ..... of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed there from.

Verified at ..... on this ..... day of ..... 201 .....

Deponent's signature.

## FORM D

### PROOF OF CLAIM BY A WORKMAN OR EMPLOYEE

*[Under Regulation 18(1) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017]*

[Date]

To

The Liquidator

*[Name of the Liquidator]*

*[Address as set out in public announcement]*

From

*[Name and address of the workman / employee]*

**Subject:** Submission of proof of claim in respect of voluntary liquidation of *(Name of corporate person)* under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

*[Name of the workman / employee]*, hereby submits this proof of claim in respect of the voluntary liquidation of *[name of corporate person]*. The details for the same are set out below:

1.	NAME OF WORKMAN / EMPLOYEE	
2.	PAN, PASSPORT, THE IDENTITY CARD ISSUED BY THE ELECTION COMMISSION OF INDIA OR AADHAAR CARD OF WORKMAN / EMPLOYEE	
3.	ADDRESS AND EMAIL ADDRESS (IF ANY) OF WORKMAN/EMPLOYEE FOR CORRESPONDENCE	
4.	TOTAL AMOUNT OF CLAIM  <i>(INCLUDING ANY INTEREST AS AT THE VOLUNTARY LIQUIDATION COMMENCEMENT DATE)</i>	
5.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS	
6.	DETAILS OF HOW AND WHEN CLAIM AROSE	

7.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE PERSON AND THE WORKMAN / EMPLOYEE WHICH MAY BE SET-OFF AGAINST THE CLAIM	
8.	DETAILS OF THE BANK ACCOUNT TO WHICH THE WORKMAN / EMPLOYEE'S SHARE OF THE PROCEEDS OF LIQUIDATION CAN BE TRANSFERRED	
9.	LIST OUT AND ATTACH THE DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED AND RELIED ON IN SUPPORT OF THE CLAIM.	
Signature of workman / employee or person authorised to act on his behalf		
<i>[Please enclose the authority if this is being submitted on behalf of an operational creditor]</i>		
Name in BLOCK LETTERS		
Position with or in relation to creditor		
Address of person signing		

### AFFIDAVIT

I, *[name of deponent]*, currently residing at *[insert address]*, do solemnly affirm and state as follows:

1. *[Name of corporate person]*, the corporate person was, at the liquidation commencement date, that is, the ..... day of ..... 20....., justly and truly indebted to me for a sum of Rs. *[insert amount of claim]*.

2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

*[Please list the documents relied on as evidence of claim]*

The said documents are true, valid and genuine to the best of my knowledge, information and belief.

3. In respect of the said sum or any part thereof, I have not nor has any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

*[Please state details of any mutual credit, mutual debts, or other mutual*

*dealings between the corporate person and the workman / employee which may be set-off against the claim.]*

Solemnly, affirmed at *[insert place]* on ..... day, the ..... day of ..... 20.....

Before me,

Notary/ Oath Commissioner

Deponent's signature

### **VERIFICATION**

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph \_\_\_ to \_\_\_ of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed there from.

Verified at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_

Deponent's signature

### **FORM E**

#### **PROOF OF CLAIM BY AUTHORISED REPRESENTATIVE OF WORKMEN OR EMPLOYEES**

(Under Regulation 18(2) of the Insolvency and Bankruptcy Board of India  
(Voluntary Liquidation Process) Regulations, 2017)

*[Date]*

To

The Liquidator

*[Name of the Liquidator]*

*[Address as set out in the public announcement]*

From

*[Name and address of the authorised representative of workmen/  
employees]*

**Subject:** Submission of proof of claim in respect of the voluntary liquidation of *[name of corporate person]* under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

I, *[name of duly authorised representative of the workmen/ employees]* currently residing at *[address of duly authorised representative of the workmen/ employees]*, on behalf of the workmen and employees employed by the above named corporate person, solemnly affirm and say:

1. That the abovenamed corporate person was, on the voluntary liquidation commencement date, that is, the ..... day of ..... 20 ..... and still is, justly truly indebted to the several persons whose names, addresses, and descriptions appear in the Annexure below for amounts severally set against their names in such Annexure for wages, remuneration and other amounts due to them respectively as workmen or/ and employees in the employ of the corporate person in respect of services rendered by them respectively to the corporate person during such periods as are set out against their respective names in the said Annexure.

2. That for which said sums or any part thereof, they have not, nor has any of them, had or received any manner of satisfaction or security whatsoever, save and except the following:

*[Please state details of any mutual credits, mutual debts, or other mutual dealings between the corporate person and the workmen / employees which may be set-off against the claim.]*

Signature:

#### **ANNEXURE**

1. Particulars of how dues were incurred by the corporate person, including particulars of any dispute as well as the record of pendency of suit or arbitration proceedings.

2. Particulars of any mutual credit, mutual debts, or other mutual dealings between the corporate person and the workmen / employee which may be set-off against the claim.

3. Please list out and attach the documents relied on to prove the claim.

1. Details of Employees/ Workmen

S. NO.	NAME OF EMPLOYEE/ WORKMEN	IDENTIFICATION NUMBER (PAN/, PASSPORT NUMBER/, AADHAAR NO. / ID CARD ISSUED BY THE ELECTION COMMISSION AND EMPLOYEE NO., IF ANY	TOTAL AMOUNT DUE AND DETAILS ON NATURE OF CLAIM	PERIOD OVER WHICH AMOUNT DUE	DETAILS OF EVIDENCE OF DEBT INCLUDING EMPLOYMENT CONTRACTS AND OTHER PROOFS
1.					
2.					
3.					

**AFFIDAVIT**

I, *[insert full name, address and occupation of deponent]* do solemnly affirm and state as follows:

1. The above named corporate person was, at the liquidation commencement date that is, the ..... day of ..... 20..... and still is, justly and truly indebted to the workmen and employees for a sum of Rs. .... for ..... *[please state the nature and duration of employment]*.

2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

*[Please list the documents relied on as evidence of proof]*

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

4. In respect of the said sum or any part thereof, the workmen / employees have not, nor has any person, by my order, to my knowledge or belief, for my use, had or has received any manner of satisfaction or security whatsoever, save and except the following:

*[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate person and the workmen / employees]*

*which may be set-off against the claim.]*

Solemnly, affirmed at ..... on ..... day, the  
..... day of ..... 20 .....

Before me,

Notary / Oath Commissioner

Deponent's signature

### VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of para ..... to ..... of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed therefrom.

Verified at ..... on this ..... day of ..... 201.....

Deponent's signature

### FORM F

#### PROOF OF CLAIM BY ANY OTHER STAKEHOLDER

*[Under Regulation 19 of the Insolvency and Bankruptcy Board of India  
(Voluntary Liquidation Process) Regulations, 2017]*

[Date]

To

The Liquidator

*[Name of the Liquidator]*

*[Address as set out in the public announcement]*

From

*[Name and address of the other stakeholder]*

**Subject:** Submission of proof of claim in respect of the voluntary liquidation



of [name of corporate person] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Name of the stakeholder] hereby submits this proof of claim in respect of the liquidation in the case of [name of corporate person]. The details for the same are set out below:

1.	NAME OF STAKE-HOLDER  (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
2.	ADDRESS AND EMAIL OF THE STAKEHOLDER FOR CORRESPONDENCE.	
3.	TOTAL AMOUNT OF CLAIM, INCLUDING ANY INTEREST AS AT LIQUIDATION COMMENCEMENT AND DETAILS OF NATURE OF CLAIM	
4.	DETAILS OF HOW AND WHEN CLAIM AROSE	
5.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE PERSON AND THE OTHER STAKEHOLDER WHICH MAY BE SET-OFF AGAINST THE CLAIM	
6.	DETAILS OF ANY RETENTION OF TITLE IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE CLAIM REFERS	
7.	DETAILS OF ANY ASSIGNMENT OR TRANSFER OF DEBT IN HIS FAVOUR	
8.	DETAILS OF THE BANK ACCOUNT TO WHICH THE OTHER STAKEHOLDER'S SHARE OF THE PROCEEDS OF LIQUIDATION CAN BE TRANSFERRED	
9.	LIST OUT AND ATTACH THE DOCUMENTS BY REFERENCE TO WHICH THE CLAIM CAN BE SUBSTANTIATED OR WHICH CAN BE RELIED UPON IN SUPPORT OF THE CLAIM.	

Signature of stakeholder or person authorised to act on his behalf
(Please enclose the authority if this is being submitted on behalf of the other stakeholder)
Name in BLOCK LETTERS
Position with or in relation to creditor
Address of person signing

\*PAN, Passport, AADHAAR Card or the identity card issued by the Election Commission of India.

### AFFIDAVIT

I, *[insert full name, address and occupation of deponent to be given]* do solemnly affirm and state as follows:

1. The above named corporate person was, at the liquidation commencement date, that is, the ..... day of ..... 20..... and still is, justly and truly indebted to me *[or to me and [insertname of co-partner], my co-partners in trade, or, as the case may be,]* for a sum of Rs. .... for ..... *[please state consideration]*.

2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

*[Please list the documents relied on as evidence of proof.]*

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

4. In respect of the said sum or any part thereof, I have not, nor have my partners or any of them, nor has any person, by my/our order, to my/our knowledge or belief, for my/ our use, had or received any manner of satisfaction or security whatsoever, save and except the following:

*[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate person and the other stakeholder which may be set-off against the claim.]*

Solemnly, affirmed at ..... on ..... day, the ..... day of ..... 20 .....

Before me,

Notary / Oath Commissioner.

Deponent's signature.

VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of para ..... to .....of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed therefrom.

Verified at ..... on this ..... day of ..... 201.....

Deponent's Signature

SCHEDULE II

*(Under Regulation 10 of the Insolvency and Bankruptcy Board of India  
(Voluntary Liquidation Process) Regulations, 2017)*

The formats contained in this Schedule are indicative in nature, and the liquidator may make such modifications to them as he deems fit in view of the facts and circumstances of the liquidation.

CASH BOOK

Name of Corporate person .....  
(in liquidation)

Date	Parti- culars	Led- ger Folio No.	Receipt				Payments				Balance		
			Vou- cher No.	Cash	Bank	Total	Vou- cher No.	Cash	Bank	Total	Cash	Bank	Total
1	2	3	4	5	6	7	8	9	10	11	12	13	14

Under column 'particulars', the head of account to which the entry relates to should be indicated so that the entry may be posted under the proper head in the General Ledger.

GENERAL LEDGER

Name of Corporate person ..... (in liquidation)  
.....(Head of account)

<i>Date</i>	<i>Particulars</i>	<i>Dr. (Rs.)</i>	<i>Cr. (Rs.)</i>	<i>Balance (Rs.)</i>
1	2	3	4	5

Instructions:

1. A General Ledger should be maintained with such heads of account as the liquidator may think necessary and appropriate. The following heads of account may be found suitable:

- (1) Asset account
- (2) Investments account
- (3) Book Debts and Outstanding account
- (4) Calls
- (5) Rent Collected/rent receivable
- (6) Interest on Securities and Deposits
- (7) Advances received
- (8) Miscellaneous receipts payments
- (9) Establishment
- (10) Legal charges
- (11) Rents, Rates and Taxes payable
- (12) Fees and Commission account
- (13) Other expenses
- (14) Suspense account
- (15) Secured creditors
- (16) Dividend account.

2. The entries in the General Ledger should be posted from the Cash Book.

3. The total of the debit balances and the total of the credit balances of the several heads of account in the General Ledger should agree, after taking into consideration the cash and bank balances as shown in the Cash Book. The totals should be tallied once a month.

### **BANK LEDGER**

#### **Corporate person's (in voluntary liquidation) account with the Scheduled Bank**

<i>Date</i>	<i>Particulars</i>	<i>Deposits</i>		<i>Withdrawals</i>		<i>Balance</i>
		<i>Challan Number</i>	<i>Rs.</i>	<i>Cheque Number</i>	<i>Rs.</i>	<i>Rs.</i>
1	2	3	4	5	6	7

### **REGISTER OF ASSETS**

<i>Sl. No.</i>	<i>Description of assets</i>	<i>Date of taking possession</i>	<i>Serial number of Sales Register</i>	<i>Date of sale</i>	<i>Date of realization</i>	<i>Amount</i>	<i>Remarks</i>
1	2	3	4	5	6	7	8
1.							
2.							

Instructions:

1. All the assets of the corporate person except the liquidator's investments in securities and outstanding to be realized should be entered in this Register.

**SECURITIES AND INVESTMENTS REGISTER**

<i>Sl. No.</i>	<i>Petition number and name of the corporate person</i>	<i>Date of investment</i>	<i>Nature and particulars of security in which investment is made</i>	<i>Amount invested (Rs.)</i>	<i>Dividend or interest received with date of receipt (Rs.)</i>	<i>Date of disposal</i>	<i>Remarks</i>
1	2	3	4	5	6	7	8
1.							
2.							

**REGISTER OF BOOK DEBTS AND OUTSTANDINGS**

<i>Sl. No.</i>	<i>Name and address of debtor</i>	<i>Particulars of debt</i>	<i>Amount due (Rs.)</i>	<i>Date of bar by limitation</i>	<i>Amount realised (Rs.)</i>	<i>Action taken</i>	<i>Date of realisation</i>	<i>Reference to Suits Register</i>	<i>Remarks</i>
1	2	3	4	5	6	7	8	9	10
1.									
2.									
3.									

Instructions:

1. All debts due to the corporate person, both secured and unsecured, including amounts due for arrears of calls made prior to the liquidation, should be entered in this Register.

**TENANTS LEDGER**

1. Description of assets:
2. Name and address of tenant:
3. Date of tenancy:
4. Period of tenancy:
5. Rent (monthly or annual):
6. Special terms, if any:

7. Arrears on date of taking charge of assets:
8. Advance received, if any:

Month	Demand	Realization		Balance	Remarks
	Amount (Rs.)	Date	Amount (Rs.)	Amount (Rs.)	
1	2	3	4	5	6
January					
February					

**SUITS REGISTER**

Sr. No.	Number of suit or appeal and court	Name and address of plaintiff/appellant and his advocate	Name and address of defendant/respondent and his advocate	Amount of claim	Date of filing	Dates of hearing	Date of decree or final order	Nature of relief granted	Amount decreed	Costs decreed	Reference to Decree Register	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13
1.												
2.												

*Instructions:*

1. Applications made by or against the corporate person which are in the nature of suits should also be entered in this Register.

**DECREE REGISTER**

Number of suit or appeal and court	Name and address of judgment debtor	Amount Decreed (Rs.)	Date of decree	Action taken	Amount realized (Rs.)	Date of realisation	Reference to Suits Register
1	2	3	4	5	6	7	8
1.							
2.							

Instructions:

- 1. The purpose of the Register is to enable the liquidator to keep watch on the progress of the realization of decrees in favor of the corporate person in his charge.
- 2. Every decree or order for payment of money or delivery of assets in favor of the corporate person including an order for payment of costs whether made in a suit, appeal or application, should be entered in this Register.

REGISTER OF CLAIMS AND DISTRIBUTIONS

Claims						Distributions declared and paid									Remarks
Sl. No.	Name and Address of creditor	Amount claimed (Rs.)	Nature of claim (Rs.)	Amount admitted (Rs.)	Whether ordinary or preferential	Date	Amount (Rs.)	Date and Mode of Payment	Rate	Amount (Rs.)	Date and mode of payment	Rate	Amount (Rs.)	Date and mode of payment	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1.															
2.															

Instructions:

- 1. Only claims admitted either wholly or in part should be entered in this Register.
- 2. The page on the left side should be reserved for claims and the page on the right side for Distributions.



**CONTRIBUTORY'S LEDGER**

Sl. No.	Name and address of contributory	Number of shares or extent of interest held, and amount paid thereon	Calls			Remarks	Returns of share capital			Remarks
			First Call		2 <sup>nd</sup> call/ 3 <sup>rd</sup> call		Date of return	Date of Payment	Amount paid (Rs.)	
			Date of call and amount called	Amount paid and date of payment	(Repeat columns as under first call)					
1	2	3	4	5	6 to 9	10	11	12	13	14
1.										
2.										

*Instructions:*

Only contributories settled on the list should be entered in this Register and they should be entered in the same order as in the list.

**DISTRIBUTIONS REGISTER**

Date on which distribution is made:

Total amount payable in this round of distribution:

Date	Number on list of stakeholders	Particulars	Receipts	Payments
1	2	3	4	5
1.				
2.				

*Instructions:*

1. Separate pages should be set apart for preferential and ordinary distributions.

2. The payments should be entered as and when they are made. Any amount which is returned unpaid should be re-entered in the account under 'Receipts'.

3. The number in column 2 should be the number of the stakeholders in the list of stakeholders as finally settled.

4. The total amount of unclaimed distribution payable into the Public Account of India, and the amount paid into the Bank with the date of payment, should be shown at the end of the account.

### FEE REGISTER

<i>Amount realized on which fee are payable</i>	<i>Amount distributed on which fee are payable</i>	<i>Fee payable on the amounts in the two preceding columns</i>	<i>Total fee payable</i>	<i>Date of payment</i>
1	2	3	4	5
1.				
2.				

*Instructions:*

1. There should be a fresh opening for each year.
2. The fees due to the liquidator should be entered in the Register as soon as the audit of the account for a quarter is completed.

### SUSPENSE REGISTER

<i>Date</i>	<i>Particulars</i>	<i>Debit (Rs.)</i>	<i>Credit (Rs.)</i>	<i>Balance (Rs.)</i>
1	2	3	4	5
1.				
2.				

*Instructions:*

1. Advances made by the liquidator to any person should be entered in this Register.
2. There should be a separate opening for each person.

**DOCUMENTS REGISTER**

<i>Sl. No.</i>	<i>Description of document</i>	<i>Date of receipt</i>	<i>From whom received</i>	<i>Reference number of shelf in which document is kept</i>	<i>How disposed of</i>	<i>Remarks</i>
1	2	3	4	5	6	7
1.						
2.						

*Instruction:* All documents of title like title-deeds, shares, promissory notes, etc., should be entered in this Register.

**BOOKS REGISTER**

<i>Date</i>	<i>From whom received</i>	<i>Serial Number</i>	<i>Description of books, including files</i>	<i>Shelf number</i>	<i>How disposed of</i>	<i>Remarks</i>
1	2	3	4	5	6	7
1.						
2.						

*Instruction:* All books and files of the corporate person which come into the hands of the liquidator should be entered in this Register.

**REGISTER OF UNCLAIMED DIVIDENDS AND UNDISTRIBUTED ASSETS  
DEPOSITED**

<i>Sl. No.</i>	<i>Name of person entitled to the dividend or return</i>	<i>Whether Creditor or Contributory</i>	<i>Number on list of stakeholders</i>	<i>Date of declaration of dividend or return</i>	<i>Rate of dividend or return</i>	<i>Total amount payable (Rs.)</i>
1	2	3	4	5	6	7
1.						
2.						

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