

Liquidation of Corporate Persons under Insolvency and Bankruptcy Code 2016

Madhusudan Sharma

When?


- AA, does not receive a resolution plan approved by CoC, before expiry of the CIRP period
- AA rejects resolution plan for non-compliance of the requirements u/s 30(2)
- Resolution plan approved by AA is contravened by the CD
- CoC approves to liquidate the CD


How?

- CoC may decide to liquidate the CD any time after its constitution and before the confirmation of the resolution plan
- CoC approval by not less than 66% voting share for Resolution Plan or to liquidate

After effects

- No suit or other legal proceeding shall be instituted by or against the CD.
- Exceptions:–
 - Subject to Sec 52
 - by Liquidator with prior approval of AA
 - in relation to transactions notified by the Central Government in consultation with any financial sector regulator.

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- Deemed notice of discharge to the officers, employees and workmen of the CD,
 - Exception- when the business of the CD is continued during the liquidation process by the liquidator.
 - All powers of the board of directors, key managerial personnel and the partners of the CD, shall cease to have effect and shall be vested in the liquidator.

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- Personnel of CD shall extend all assistance and cooperation to the liquidator in managing the affairs of CD
 - Liquidator shall form liquidation estate comprising all the assets for the benefit of all the creditors. Sec 36

Process?

- Public announcement inviting Claims
- Verification of Claims
- Appointment of Valuers, if required
- Preparation of Asset Memorandum
- Formation of liquidation estate
- Sale of Assets
- Distribution of Assets
- Dissolution of Corporate Debtor

Liquidator Appointment

- RP, after written consent, shall act as liquidator unless replaced by AA
- AA shall replace the RP if:
 - Resolution plan submitted by RP was rejected for failure to comply with Sec 30 (2); or
 - Board recommends to AA for replacement of RP, for reasons to be recorded
 - RP fails to submit written consent
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Liquidator Fee

- In proportion to the value of the liquidation estate assets, as may be specified by the Board.
- Fees shall be paid from the proceeds of the liquidation estate

Fee as per Regulations


Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realized / distributed			
	in the first six months	in the next six months	in the next one year	Thereafter
<i>Amount of Realisation (exclusive of liquidation costs)</i>				
On the first 1 crore	5.00	3.75	2.50	1.88
On the next 9 crore	3.75	2.80	1.88	1.41
On the next 40 crore	2.50	1.88	1.25	0.94
On the next 50 crore	1.25	0.94	0.68	0.51
On further sums realized	0.25	0.19	0.13	0.10
<i>Amount Distributed to Stakeholders</i>				
On the first 1 crore	2.50	1.88	1.25	0.94
On the next 9 crore	1.88	1.40	0.94	0.71
On the next 40 crore	1.25	0.94	0.63	0.47
On the next 50 crore	0.63	0.48	0.34	0.25
On further sums distributed	0.13	0.10	0.06	0.05

Reports by Liquidator to AA

- preliminary report;
- asset memorandum;
- progress report(s);
- sale report(s);
- minutes of consultation with stakeholders;
final report prior to dissolution


Secured creditors – Sec 52


- A secured creditor may-
 - relinquish its security interest and receive proceeds as per priority u/s 53; or
 - realise its security interest
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- A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in and apply the proceeds to recover the debts due to it

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- Where the enforcement of the security interest yields an amount in excess of the debts, shall tender to the liquidator such surplus
 - Where the realisations are not adequate to repay debts, unpaid debts shall be paid by the liquidator in the manner specified in Sec 53(1) (e).
 - Insolvency resolution process costs, due from the secured creditors shall be deducted from the proceeds of realisation

Distribution Priority - Sec 53

- CIRP and liquidation costs
- debts which shall rank equally
 - debts owed to a **secured creditor** in the event such secured creditor has relinquished security
 - **workmen's dues** for the period of **24 months** preceding the liquidation commencement date
- wages and any unpaid dues owed to **employees**
 - other than workmen for the period of **12 months** preceding the liquidation commencement date
- financial debts owed to **unsecured creditors**

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- dues which shall rank equally
 - amount due to the **Central and State Govt.** in respect of the whole or any part of the period of **2 years** preceding the liquidation commencement date;
 - debts owed to a **secured creditor** for any amount **unpaid** following the enforcement of security interest;
 - any remaining debts and dues;
 - preference shareholders, if any; and
 - equity shareholders or partners, as the case may be.

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- Any contractual arrangements between recipients with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.
 - 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, if the proceeds are insufficient to meet the debts in full; and
 - Fees payable to liquidator shall be deducted proportionately from the proceeds payable to each class of aforementioned recipients

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Thanks

Madhusudan Sharma

Advocate, Insolvency Professional, FCS, FCMA

madhusudan.ip@outlook.com; 9868872918

www.madhusudansharma.in

www.linkedin.com/in/madhusudans