



Voluntary Liquidation of Corporate Persons

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IBC Provisions

- Section 59 notified on 30.03.2017
- Sections 35 to 53 [applied by virtue of sec 59 (6)]
- By virtue of Schedule 11 of IBC, sections 304 to 323 of Companies Act stand deleted
- Companies Act 2013
 - Sections 304 to 323 – specific sections applicable to voluntary winding up
 - Sections 324 to 358- provisions applicable to every mode of winding up
 - Section 365 – dissolution
- IBBI (Voluntary Liquidation Process) Regulations, 2017 – 31st March 2017

Entities that may go for VL

- Any Company
 - Public or private
 - Listed or unlisted
- LLPs
- Other bodies corporate with limited liability

Not for:

- Insolvent entities
- Financial services providers

Corporate Person

- Sec 3 (7) Definition of Corporate Person
- "corporate person" means
- a company as defined in clause (20) of section 2 of the Companies Act, 2013,
- a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, 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;

Primary Conditions

- Corporate Person who has **Not** Committed any Default - Sec 59(1)
- Default defined in Sec. 3 (12) -
- "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;

Procedure

- Declaration of Solvency
- Members' Resolution
- Creditors' Resolution

Declaration Solvency


- Sec 59 (2) (a) , Regulation 3 (1) (a)
- By majority of the directors
- Verified by an affidavit
- Stating that :
 - they have made a full inquiry into the affairs of the company
 - they have formed an opinion that:
 - either the company has no debt or
 - that it will be able to pay its debts in full and
 - the company is not being liquidated to defraud any person;
- List each debt as on the date of making the DoS (Regu 3(4))


Documents Required


- **Sec 59 (3)(b), Regu 3 (1) (b)**
- audited financial statements and
- record of business operations
- for the previous two years or
- for the period since its incorporation, ;
- a report of the valuation of the assets, if any
- prepared by a registered valuer;

Members Resolution

- Special Resolution
- Within 4 weeks of DoS for
 - Voluntary Liquidation
 - Appointment of liquidator along with his remuneration
- Ordinary Resolution if liquidated as a result of expiry of the period of its duration, fixed by its articles

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- Within 7 days of SR/ OR – approval of the resolution by creditors representing 2/3 in value of the debt Sec 59(3)
 - Within 7 days of SR/ OR / creditors' approval (as the case may be) – notification to RoC and IBBI - Sec 59(4)
 - Within 5 days of SR/OR Public Announcement in Form A of Schedule 1 one in English and one in vernacular language – Regu 14

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- Intimation to AO u/s 178 of Income Tax Within 1 month of appointment of Liquidator
 - Receive claims from the Stakeholders Within 30 days of LCD
 - Submit preliminary report Within 45 days of LCD
 - Verify claims and prepare list of stakeholders Within 30 days from the last day of receiving claims
 - Realise all the assets and distribute realisation among stakeholders after deducting liquidation cost
 - Submit final report to IBBI and Registrar

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- The corporate person shall cease to carry on its business except as far as required for beneficial winding up of its business from the date of passing SR/OR
 - Once the affairs are completely wound up **and** assets completely liquidated – the liquidator shall make an application to the NCLT for dissolution of the corporate person 59(7)
 - NCLT passes an order for dissolution 59(8)
 - Within 14 days of the Order – the Order to be forwarded to the RoC 59(9)

Liquidation Commencement Date

- Section 59 (5)
 - Subject to approval of creditors, the date on which members pass special / ordinary resolution
- Two situations
 - Members pass special resolution, creditors do NOT approve it – voluntary liquidation does not commence
 - Members pass special resolution, creditors approve it – voluntary liquidation commences
- From what date?
 - Members' resolution 18th Jan
 - Creditors' approval 25th Jan
 - Liquidation commences, on 25th Jan, with effect from on 18th



Consequences of liquidation commencement

- Cease to carry business but exists until dissolution
 - Except for the beneficial winding up of the business
- Name, stationary to reflect company in liquidation
- Registered office of the company stays
- Discharge of employees

Public announcement by Liquidator

- In Form A of Schedule I
- Within 5 days of appointment
 - Thus the creditors approval has to be actually obtained within 4 days of SR / OR passed
- To call upon the stakeholders to submit their claims along with the proof thereof
 - As on the liquidation commencement date
 - Within 30 days from the liquidation commencement date

Public announcement contd.

- To be published in
 - English
 - One regional language newspaper with wide circulation
 - At the location of the registered office of the CP
 - At the location of the principal office of the CP
 - At any other location, where in the opinion of the liquidator, the CP conducts material business
 - On the website of the CP, if any
 - On the website of the IBBI

Preliminary Report


- By the Liquidator To the corporate person
- Within 45 days of liquidation commencement date
- Contents of the PR:
 - Capital structure of the CP
 - Estimates of the assets and liabilities as on the liquidation commencement date
 - Based on the books of the CP – if reliable , or
 - based on reliable records and data otherwise
 - Whether the liquidator intends to make any further inquiry into the matter relating to promotion, formation, failure or the conduct of the corporate person
 - Proposed plan of action, estimated timelines and estimated liquidation costs

List of stakeholders

- To be prepared Within 45 days of the last date of acceptance of claims
- The list can be modified from time to time
- Available for inspection by
 - Claimants
 - Members, partners, directors, guarantors of the CP
- Displayed on the website of
 - the CP
 - IBBI
- Shall contain
 - Amount accepted
 - Extent to which secured / unsecured
 - Details of stakeholders
 - Proofs admitted / rejected in parts and proofs wholly rejected

Distribution of assets –Priority

- The 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 CG and the SG 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.
 - Fees payable to liquidator shall be deducted proportionately from the proceeds payable to each class of aforementioned recipients

Timelines

- Endeavour to complete the liquidation process within 12 months of liquidation commencement date
- If the process continues beyond 12 months.

The liquidator has to :

- Hold a meeting of contributories
 - within 15 days of the end of 12 months, every year, until dissolution
- Present an Annual Status Report
 - indicating progress in liquidation and
 - containing the audited accounts of liquidation showing receipts and payments since liquidation commencement date

Final Report

- To be prepared on completion of the liquidation process
- To consist of
 - Audited accounts of the liquidation, showing receipts and payments pertaining to liquidation since liquidation commencement date
 - Statement demonstrating that the
 - Assets have been disposed of
 - Debts have been discharged to the satisfaction of the creditors
 - Litigation
 - A sale statement in respect of all assets
- This Report shall be send to the RoC and IBBI
- And submitted to the NCLT along with the application for dissolution

Unclaimed Amount

- The Liquidator shall apply to the NCLT for order to deposit such amount
 - In the Companies Liquidation Account in the Public Account of India
 - If not – the liquidator will have to pay interest at 12% p.a and also will be liable to penalty
- While making such payment, a statement of the details of such unclaimed / undistributed amount to be furnished
 - To RoC and IBBI
- The RBI will give a receipt to the liquidator in this regard
 - such receipt shall be an effectual discharge of the liquidator in respect thereof
- Can be claimed by applying to IBBI within 15 years
- If remains unclaimed – after 15 years shall be transferred to the general revenue account of the Central Government.

जय हिन्द

Jai Hind

धन्यवाद

Thanks

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