



IMPORTANT AMENDMENTS TO LIQUIDATION PROCESS UNDER IBC

Effective from 6 th January, 2020

A. Last two Loopholes Plugged - Promoters cannot take the company back:

1. It is now provided that if a compromise or arrangement is proposed u/s 230 of the Companies Act, 2013, any person who not eligible either u/s 29A or otherwise under the Code shall not be a party to the scheme – Reg 2B
2. A secured creditor after invoking section 52 and deciding to sell his assets himself, shall not sell the assets to any person who is not eligible u/s 29A or otherwise under IBC – Reg 37(8)

The first amendment is based on the feedback that the suspended management or other interest parties was looking forward to take over the Corporate Debtor under 230 of the Companies Act, 2013 and to achieve this, they were making all efforts to suffocate the CIRP and push the Corporate Debtor to liquidation process.

The second amendment is based on reports that some secured creditors were making arrangements with the suspended management that the secured asset would be sold to them under Sarfaesi Act or otherwise, as the case may be, after invoking section 52 during liquidation process.

These two loopholes were big deterrent and hindrance for finding an acceptable resolution Plan during CIRP and the amendment will now ease the process as the suspended management will not have any such hope.



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B. Invoking section 52 and realising or selling the secured asset by the secured creditor made more difficult:

Where any secured creditor decides to sell its asset u/s 52, it shall pay to liquidator following amount - (Reg 21A(2)): -

- CIRP Cost as he would have paid if the assets were sold by liquidator and the cost would be paid within 90 days of Liquidation Commencement Date.
- Liquidation Cost as he would have paid if the assets are sold by liquidator and the cost would be paid within 90 days of Liquidation Commencement Date.
- Any excess amount realised from the sale of assets over the claim amount of the secured creditor shall be paid to liquidator within 180 days.
- In case the asset is not sold or realised and the amount payable to Liquidator as per para (c) above is not certain within 180 days, then the secured creditor shall pay to the liquidator within 180 days an amount which is the difference of the estimated value of the asset as per liquidator and the amount of claim.
- In case the secured creditor fails to comply the above provisions, then the secured asset will form part of Liquidation Estate and the asset will be sold by the Liquidator.

Earlier w.e.f. 25 th July, 2019 the amendment was made that the secured creditor will decide invoking section 52 along with the submission of claim i.e. within 30 days from the liquidation commencement date.

Even otherwise, the proceeds from sale to assets would be distributed by the Liquidator to the secured creditor considering the amount of debt and the value of security interest of each creditor.

Therefore, the secured creditors would not now have any advantage to invoke section 52.

C. Corporate Liquidation Account of IBBI:

- IBBI will open, operate and maintain a bank account called 'Corporate Liquidation Account' for managing unclaimed dividends or undistributed Proceeds.
- Liquidator shall deposit any unclaimed dividend or undistributed proceeds into the Corporate Liquidation Account within 15 days of the due date.
- In case Liquidator, fails to deposit then he will deposit along with interest @ 12% from the due date to the actual date of deposit.
- The amount would be deposited by the Liquidator along with an application in Form 1 containing the detail of last known details of the stakeholders.
- Any stakeholder later may claim any amount from IBBI by an application in Form J.
- IBBI will keep full account of this account and will get it audited also.
- After 15 years of no claim from any stakeholder, the balance in that account would go to Consolidated Fund of India.

Earlier the unclaimed dividend or undistributed proceeds was required to be deposited with RBI, whereas now the structure of Corporate Liquidation Account is created and the entire responsibility has been taken by IBBI.