

Insolvency and Bankruptcy Board of India

Frequently Asked Questions (FAQs) on Liquidation Process

(As on 31.10.2021)

A. Initiation

Question 1. Under what circumstances, the liquidation process of the corporate debtor commences?

Answer. Section 33 of the Insolvency and Bankruptcy Code, 2016 ('Code') provides that the liquidation process of the corporate debtor commences when an order for liquidation is passed by the Adjudicating Authority, under the following four circumstances:

- i) Non-receipt of a resolution plan by the Adjudicating Authority during the corporate insolvency resolution process;
- ii) Adjudicating Authority rejects the resolution plan under section 31 of the Code for the non-compliance of the requirements mentioned therein;
- iii) Committee of creditors decides to liquidate the corporate debtor;
- iv) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor.

Question 2. Does the corporate debtor cease to carry on its business upon commencement of liquidation process?

Answer. The liquidator shall carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary (section 35(1)(e) of the Code).

Question 3. Whether all the powers of board of directors, key managerial personnel and the partners of the corporate debtor cease to have effect upon the appointment of liquidator during liquidation process?

Answer. The powers of the board of directors, key managerial personnel and the partners of the corporate debtor shall be vested in the liquidator, upon initiation of liquidation process (section 34(2) of the Code).

B. Appointment, Remuneration and Role of Liquidator

Question 4. How does the liquidator get appointed during liquidation process?

Answer. Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33 of the Code, the resolution professional appointed for the corporate

insolvency resolution process shall act as the liquidator, unless replaced by the Adjudicating Authority (section 34(1) of the Code).

Question 5. What are the duties of liquidator during liquidation process?

Answer. The liquidator may, *inter alia*, perform the following duties:

- i) Make public announcement to call upon stakeholders to submit their claims;
- ii) Verify claims of creditors;
- iii) Take into custody or control all the assets, property, effects and actionable claims of the corporate debtor;
- iv) Realise all assets of the corporate debtor;
- v) Distribute the proceeds from realization;
- vi) File application to the Adjudicating Authority for dissolution of the corporate debtor or closure of the liquidation process.

Question 6. What shall be the fee of liquidator during liquidation process?

Answer. In accordance with regulation 39D of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations'), the fee of the liquidator may be decided by the Committee of Creditors, in consultation with the resolution professional, while approving a resolution plan under section 30 of the Code or deciding to liquidate the corporate debtor under section 33 of the Code (regulation 4 of the IBBI (Liquidation Process) Regulations, 2016 ('Liquidation Regulations')).

Question 7. If the Committee of Creditors did not fix the fee of the liquidator in accordance with regulation 39D of the CIRP Regulations, then what should be the fee of the liquidator during liquidation process?

Answer. In such cases, the fee of the liquidator shall be:

- (i) at the same rate as the resolution professional was entitled to during the corporate insolvency resolution process, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (regulation 4(2)(a) of the Liquidation Regulations); and
- (ii) a percentage of the amount realised net of other liquidation costs and the amount distributed to the stakeholders, for the balance period of liquidation, as per the table provided under regulation 4(2)(b) of the Liquidation Regulations.

Question 8. Suppose the liquidator has sold some assets of the corporate debtor and distributed the realized proceeds amongst the stakeholders. Is the liquidator eligible for fee based on the amount realised as well as the amount distributed separately as per the table provided under regulation 4(2)(b) of the Liquidation Regulations?

Answer. The liquidator is eligible for fee based on the amount realised as well as the amount distributed separately as per the table provided under regulation 4(2)(b) of the Liquidation Regulations.

Question 9. Suppose the liquidator did not sell any assets of the corporate debtor but has merely distributed the assets (including cash or bank balance) available with the corporate debtor. Is the liquidator still eligible for fee based on the amount realised as well as the amount distributed separately as per the table provided under regulation 4(2)(b) of the Liquidation Regulations?

Answer. Since there was no realisation of assets by the liquidator, he / she is not eligible for the fee based on the amount realised, i.e., first part of the table provided under regulation 4(2)(b) of the Liquidation Regulations. However, since the liquidator has made distribution to the stakeholders, he / she is eligible for the fee based on the distribution as per second part of the said table.

Question 10. Shall the liquidator receive the complete fee based on the amount realised, soon after the realisation?

Answer. The liquidator shall get half of the fee based on the amount realised after the realisation and the rest half amount to be paid after such realised amount is distributed. Therefore, the fee based on realisation is to be paid in two phases, i.e., 50% after realisation and 50% after distribution (regulation 4(3) of the Liquidation Regulations).

Question 11. Shall the liquidator get the fee based on the amount distributed, soon after the distribution?

Answer. Yes.

Question 12. How will the fee of the liquidator be paid if the corporate debtor has negligible assets?

Answer. In accordance with regulation 14 of the Liquidation Regulations, where the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process and the affairs of the corporate debtor do not require any further investigation, the liquidator may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution.

C. Compromise or Arrangement

Question 13. What is the stipulated time limit for completion of compromise or arrangement under section 230 of the Companies Act, 2013, in the Code?

Answer. Ninety days from the liquidation commencement date (regulation 2B (1) of the Liquidation Regulations).

Question 14. Is section 29A of the Code applicable at the stage of compromise or arrangement?

Answer. Yes (regulation 2B (1) of the Liquidation Regulations).

D. Legal Proceedings

Question 15. Can the legal proceedings be initiated and / or continued by or against the corporate debtor undergoing liquidation?

Answer: Subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the corporate debtor under liquidation except by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority (section 33(5) of the Code). However, there is no bar on continuation of legal proceedings by or against the corporate debtor undergoing liquidation.

E. Claims

Question 16. What is the stipulated timeline for making public announcement calling upon the stakeholders to submit their claims?

Answer. The liquidator shall make public announcement within five days from his / her appointment calling upon the stakeholders to submit their claims or update the claims submitted during corporate insolvency resolution process (sub-regulation (1) and (2) of regulation 12 of Liquidation Regulations).

Question 17. What is the process of filing claim as a stakeholder?

Answer. A stakeholder shall submit the proof of his claim to the liquidator in the specified Form:

- (i) through electronic means only, if he is a financial creditor (regulation 18(1) of the Liquidation Regulations);
- (ii) in person, by post or by electronic means, if he is an operational creditor including workmen and employee or any other stakeholder (regulation 17(1), 19(1) and 20(1) of the Liquidation Regulations).

Question 18. What forms have been specified for submitting the claims by various stakeholders during liquidation process?

Answer. The forms to be filed by various stakeholders, accessible through the link-<https://ibbi.gov.in/home/downloads>, are:

S. No.	Stakeholder	Form
1.	Operational Creditors except Workmen and Employees	C
2.	Financial Creditors	D
3.	Workman or Employee	E
4.	Authorised Representative of Workmen or Employees	F
5.	Any other stakeholder	G

Question 19. Can mutual dealings between corporate debtor and creditors be set-off?

Answer. Regulation 29 of the Liquidation Regulations provides that where there are mutual dealings between the corporate debtor 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 debtor or to the other party.

Question 20. Can a creditor appeal the admission or rejection of claims by the liquidator?

Answer. A creditor has the option to file an appeal to the Adjudicating Authority against the decision of the liquidator within 14 days of the receipt of such decision (section 42 of the Code).

F. Appointment of Professionals

Question 21. Is there any limit on the number of professionals to be appointed by liquidator and their fees?

Answer. There is no prescribed upper limit under the Code / Liquidation Regulations regarding the number of professionals to be appointed and their fees. However, the number of professionals appointed and the fee payable to them, determined in consultation with SCC, should be commensurate with the size and complexity of the liquidation process.

Question 22. Is there any restriction on the liquidator regarding appointment of professionals?

Answer. Regulation 7 of the Liquidation Regulations provides that the liquidator shall not appoint a professional, if:

- i) he / she is his / her relative;
- ii) he / she is a related party of the corporate debtor; or
- iii) he / she has served as an auditor to the corporate debtor in the five years preceding the liquidation commencement date.

As regards the appointment of registered valuers, in addition to the three afore-mentioned conditions, the liquidator shall not appoint a person as registered valuer if the person is a partner

or director of the insolvency professional entity of which the liquidator is a partner or director (regulation 35(2) of the Liquidation Regulations).

Question 23. Are there any disclosure requirements regarding appointment of professionals?

Answer. Regulation 7(3) of the Liquidation Regulations provides that a professional appointed or proposed to be appointed by the liquidator shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders, or the concerned corporate debtor as soon as he becomes aware of it, to the liquidator.

G. Stakeholders' Consultation Committee (SCC)

Question 24. What is the scope of consultation with the SCC during liquidation process?

Answer. The liquidator shall *mandatorily* consult the SCC for the appointment of professionals and their remuneration, and the matters relating to sale including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy (regulation 31A (1) of the Liquidation Regulations).

Question 25. Can the liquidator take decision(s) on matters requiring mandatory consultation with the SCC before its constitution?

Answer. The decision(s) taken by the liquidator on such matters prior to the constitution of SCC needs to be placed before the SCC in its first meeting, for information (regulation 31A (1) of the Liquidation Regulations).

Question 26. Can the liquidator consult the SCC for any matter other than those mentioned in regulation 31A (1) of the Liquidation Regulations?

Answer. In addition to the matters requiring *mandatory* consultation as mentioned in the regulation 31A (1) of the Liquidation Regulations, the SCC may be consulted for any other matter as deemed fit by the liquidator or based on the request of representatives of SCC in the specified manner (regulation 31A (6) of the Liquidation Regulations).

Question 27. Is it mandatory for the liquidator to constitute a SCC?

Answer. The liquidator shall constitute a SCC, within sixty days from the liquidation commencement date (regulation 31A (1) of the Liquidation Regulations).

Question 28. What is the voting threshold for taking decisions in the meetings of SCC?

Answer. The SCC shall take decision for advising the liquidator, with not less than 66% of the representatives present and voting (regulation 31A (9) of the Liquidation Regulations).

Question 29. Are decisions taken by the consultation committee binding on the liquidator?

Answer. The liquidator can take a decision different from the advice of the consultation committee by recording reasons in writing and mentioning it in the next progress report (regulation 31A (10) of the Liquidation Regulations).

Question 30. Is there any additional mechanism for consultation with the stakeholders?

Answer. Section 35(2) of the Code allows the liquidator to consult any of the stakeholders entitled to distribution of proceeds under section 53 of the Code.

Question 31. Is the liquidator required to maintain records of consultation with stakeholders under section 35(2) of the Code?

Answer. Regulation 8 of the Liquidation Regulations provides that the liquidator shall maintain the particulars of any consultation with the stakeholders made under section 35(2) of the Code, as specified in Form A of Schedule II of the Liquidation Regulations.

Question 32. Can any stakeholder seek records of consultation with the stakeholder(s) from the liquidator?

Answer. The liquidator shall make the minutes of such stakeholders' consultation available to a stakeholder on the receipt of a written application, confidentiality undertaking and the cost of making such minutes available (regulation 5(3) of the Liquidation Regulations).

H. Valuation

Question 33. What is the mechanism of conducting valuation of assets of the corporate debtor during liquidation process?

Answer. Where the valuation of assets of the corporate debtor has been conducted during corporate insolvency resolution process under regulation 35 of the CIRP Regulations or regulation 34 of the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, as the case may be, the liquidator shall consider the average of the estimates of the values arrived under that provision for the purposes of valuation during liquidation process (regulation 35(1) of the Liquidation Regulations).

In cases where the valuation has not been conducted as mentioned above or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall, within seven days of the liquidation commencement date, appoint two registered valuers to conduct valuation (regulation 35(2) of the Liquidation Regulations).

Question 34. Can the liquidator or registered valuer(s) share valuation report of the corporate debtor with other stakeholders?

Answer. The liquidator and the registered valuers shall maintain confidentiality of valuation report of the corporate debtor.

I. Security Interest

Question 35. What are the options regarding security interest available to secured creditor(s) during liquidation process?

Answer. A secured creditor has the option to either relinquish or realize its security interest during liquidation process (section 52 of the Code).

Question 36. How much time is available to secured creditor(s) for taking decision on realisation or relinquishment of security interest?

Answer. Regulation 21A (1) of the Liquidation Regulations provides that a secured creditor shall intimate the liquidator about its decision in regard to relinquishment or realization of the security interest within 30 days from the liquidation commencement date.

Question 37. What happens if a secured creditor does not intimate its decision within the specified time limit under regulation 21A (1) of the Liquidation Regulations?

Answer. In case of non-intimation of such decision by the secured creditor(s) within the specified time limit, the assets covered under the security interest shall be presumed to be part of the liquidation estate (proviso to regulation 21A (1) of the Liquidation Regulations).

Question 38. What are the liabilities of a secured creditor if it proceeds to realise the security interest?

Answer. Regulation 21A (2) of the Liquidation Regulations provides that where a secured creditor proceeds to realise its security interest, it shall pay:

- i) its share of insolvency resolution process costs, liquidation cost and workmen's dues as it would have paid had it relinquished the security interest, within 90 days from the liquidation commencement date, and
- ii) the excess of realised value of the asset, which is subject to security interest, over the amount of his claims admitted, within 180 days from the liquidation commencement date.

Question 39. What is the consequence of non-payment of the aforesaid payments within the specified time limit?

Answer. In case of non-payment, the asset, which is subject to security interest, shall become part of the liquidation estate (regulation 21A (3) of the Liquidation Regulations).

J. Sale

Question 40. What are the modes by which liquidator can sell assets of the corporate debtor?

Answer. The liquidator shall ordinarily sell assets of the corporate debtor through an auction in the manner specified in schedule I of Liquidation Regulations. However, the liquidator may sell the assets by private sale under the circumstances specified in regulation 33(2) of the Liquidation Regulations.

Question 41. Is the liquidator required to issue public notice while selling asset(s) through auction?

Answer. The liquidator is required to issue public notice of an auction in the manner specified in regulation 12(3) of the Liquidation Regulations (clause 1(5) of Schedule I of the Liquidation Regulations).

Question 42. What shall be the reserve price of the asset in case the liquidator proceeds to sell them by way of auction?

Answer. The reserve price shall be the value of the asset arrived at in accordance with regulation 35 of the Liquidation Regulations (clause 1(4) of Schedule I of the Liquidation Regulations).

Question 43. Can the liquidator conduct fresh auction even if the previous auction was successful, i.e., the highest bid received at a price higher than the reserve price?

Answer. In case the liquidator rejects the highest bid (received at a price higher than the reserve price) in an auction process, in consultation with SCC, he shall intimate the reasons for such rejection to the highest bidder and mention it in the next progress report (clause 1(11A) of Schedule I of the Liquidation Regulations).

Question 44. If the auction fails at the reserve price, then how many subsequent auctions can the liquidator conduct?

Answer. There is no bar on the number of subsequent auctions to be conducted, in case of failure of an auction.

Question 45. If the auction fails at the reserve price, then how much reduction in the reserve price is permitted for the subsequent auction?

Answer. The liquidator may reduce the reserve price by up to 25% of the value of the asset in such a situation, in accordance with clause 1(4A) of Schedule 1 of the Liquidation Regulations.

Question 46. If the auction fails even at the reduced price as mentioned above, can the liquidator reduce the reserve price further?

Answer. In the subsequent auctions, the reserve price may be reduced by not more than 10% at a time, in accordance with clause 1(4B) of Schedule 1 of the Liquidation Regulations.

Question 47. Is the liquidator required to sell asset through electronic or physical auction?

Answer. The liquidator shall ordinarily sell the assets through an electronic auction on an online portal. He / she may sell the assets through a physical auction only after obtaining the permission of the Adjudicating Authority (sub-clause (7) and (8) of clause 1 of Schedule 1 of the Liquidation Regulations).

Question 48. What are the circumstances under which a liquidator may sell the assets of the corporate debtor by means of private sale?

Answer. Regulation 33(2) of the Liquidation Regulations provides that the liquidator may sell the assets of the corporate debtor by means of private sale if:

- (i) the asset is perishable;
- (ii) the asset is likely to deteriorate in value significantly if not sold immediately;
- (iii) the asset is sold at a price higher than the reserve price of a failed auction; or
- (iv) the prior permission of the Adjudicating Authority has been obtained for such sale.

Question 49. Where should the liquidator keep proceeds received during liquidation process?

Answer. The liquidator is required to open a separate bank account in the name of the corporate person followed by the words 'in liquidation' for receipt of all money received by him as the liquidator (regulation 41(1) of the Liquidation Regulations).

K. Sale as a Going Concern

Question 50. Under what circumstances, can the corporate debtor or its' business be sold as a going concern?

Answer. Regulation 32A of the Liquidation Regulations provides that where the committee of creditors has recommended for sale as a going concern or the liquidator is of the opinion that sale as a going concern shall maximise the value of the corporate debtor, the liquidator shall endeavour to first sell the corporate debtor as a going concern.

Question 51. What is the time limit for completion of sale as a going concern?

Answer. The sale as a going concern needs to be completed within 90 days from the liquidation commencement date in accordance with regulation 32A (4) of the Liquidation Regulations.

L. Assignment of not readily realisable assets (NRRA)

Question 52. Does the liquidator need to conduct valuation of NRRA?

Answer. The valuation of NRRA is to be governed by regulation 35 of the Liquidation Regulations.

Question 53. What is the mechanism for assignment of NRRA during liquidation process?

Answer. The liquidator may assign or transfer NRRA through transparent process, in consultation with the SCC in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor (regulation 37A of the Liquidation Regulations).

M. Distribution

Question 54. At what stage, should the liquidator proceed with distribution of unsold assets?

Answer. After trying to sell, assign or transfer the asset(s) reasonable number of times, the liquidator may, with the permission of the Adjudicating Authority, distribute the unsold assets amongst the stakeholders.

Question 55. When should the liquidator distribute the proceeds from realisation of assets amongst the stakeholders?

Answer. The liquidator is to distribute the proceeds from realization of assets within 90 days from the receipt of the amount to the stakeholders.

N. Reporting

Question 56. What reports / documents are to be submitted by liquidator during liquidation process, to Adjudicating Authority?

Answer. The liquidator shall prepare and submit the following reports / documents to the Adjudicating Authority, in accordance with regulation 5(1) of the Liquidation Regulations:

- i) preliminary report;
- ii) asset memorandum;
- iii) progress report(s);
- iv) sale report(s);
- v) minutes of consultation with stakeholders; and
- vi) the final report prior to dissolution.

Question 57. Is the liquidator required to submit the reports / documents mentioned under regulation 5(1) of the Liquidation Regulations, to the Board?

Answer. Section 208(2)(d) of the Code provides that an Insolvency Professional shall submit a copy of the records of every proceeding before the Adjudicating Authority to the Board (as well as to the insolvency professional agency of which he is a member).

Question 58. Does the liquidator need to share the reports / documents mentioned under regulation 5(1) of the Liquidation Regulations, with the stakeholders?

Answer. Subject to the limitations mentioned in the forthcoming question, the liquidator shall share the reports / documents mentioned under regulation 5(1) of the Liquidation Regulations with the stakeholder(s) on receipt of a written application, confidentiality undertaking and the cost of making such minutes available (regulation 5(3) of the Liquidation Regulations).

Question 59. Are there any limitations with respect to sharing of the aforesaid reports / documents during liquidation process?

Answer. The sharing of reports / documents is subject to various conditions stipulated under the provisions of the Code / Liquidation Regulations. For instance, regulation 34(5) of the Liquidation Regulations provides that the asset memorandum shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority; regulation 15(4) of the Liquidation Regulations provides that the progress report shall enclose a statement indicating any material change in expected realization of any property proposed to be sold, along with the basis for such change and this statement shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority.

O. Unclaimed Dividends / Undistributed Proceeds

Question 60. Where should the unclaimed dividends and /or undistributed proceeds be deposited during liquidation process?

Answer. In accordance with regulation 46(1) and (2) of the Liquidation Regulations, the liquidator shall deposit the amount of unclaimed dividends and / or undistributed proceeds, if any, into Corporate Liquidation Account operated as part of the Public Accounts of India. However, since the said account has not yet been operationalised, the liquidator needs to deposit the said amount into Corporate Liquidation Account maintained by the Board with a scheduled bank. The liquidator shall thereafter submit Form-I, mentioning the nature of the amount deposited, etc., along with the supporting documents, to the Board and the authority with which the corporate person is registered (regulation 46(5) of the Liquidation Regulations).

Question 61. When should the liquidator deposit the unclaimed dividends and / or undistributed proceeds into Corporate Liquidation Account?

Answer. The unclaimed dividends and / or undistributed proceeds, if any, needs to be deposited into Corporate Liquidation Account by the liquidator prior to submission of application for dissolution of the corporate debtor / closure of the liquidation process to Adjudicating Authority under regulation 45(3) of the Liquidation Regulations (regulation 46(2) of the Liquidation Regulations).

Question 62. How should a stakeholder apply for withdrawal from the Corporate Liquidation Account?

Answer. A stakeholder, who claims to be entitled to any amount deposited into the Corporate Liquidation Account, may apply to the Board in Form-J for an order for withdrawal of the said amount, after the dissolution of the corporate debtor (regulation 46(7) of the Liquidation Regulations).

P. Dissolution

Question 63. At what stage of liquidation process, can the liquidator apply for early dissolution of the corporate debtor?

Answer. The application for early dissolution can be filed by the liquidator at any time after the preparation of the preliminary report (regulation 14 of the Liquidation Regulations).

Question 64. Under what conditions, can the liquidator apply for early dissolution of the corporate debtor?

Answer. The liquidator may apply for early dissolution of the corporate debtor if:

- i) the realizable properties of the corporate debtor are insufficient to cover the cost of liquidation process; and
- ii) the affairs of the corporate debtor do not require any further investigation (regulation 14 of the Liquidation Regulations).

Question 65. Can the liquidator file dissolution application with Adjudicating Authority during pendency of application for avoidance of transactions?

Answer. The liquidator can file dissolution application with Adjudicating Authority even during pendency of application for avoidance of transactions. (regulation 44(1) of the Liquidation Regulations).

Q. Withdrawal from Liquidation Process

Question 66. Can the liquidation process be withdrawn once it has commenced?

Answer. There is no provision for withdrawing corporate debtor from the liquidation process, after the liquidation order has been passed by the Adjudicating Authority.

R. Avoidance Transactions

Question 67. What is the role of liquidator in relation to Preferential, Undervalued, Fraudulent and Extortionate (PUFE) transactions?

Answer. The liquidator is required to:

- i) follow up the PUFÉ transactions' application(s) filed, if any, by the IRP / RP during insolvency resolution process and take them to their logical conclusion; and
- ii) form a fresh opinion regarding the existence of any additional PUFÉ transaction(s) and file an application regarding the same with the Adjudicating Authority and take them to their logical conclusion, during liquidation process.

S. Non-Cooperation

Question 68. Against whom, the liquidator can file application for non-cooperation during liquidation process?

Answer. The liquidator may make an application to the Adjudicating Authority for a direction that a person who-

- i) is or has been an officer, auditor, employee, promoter or partner of the corporate debtor;
- ii) was the interim resolution professional, resolution professional or the previous liquidator of the corporate debtor; or
- iii) has possession of any of the properties of the corporate debtor;

shall cooperate with him in the collection of information necessary for the conduct of the liquidation process (regulation 9(1) of the Liquidation Regulations).

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