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### IBBI GIVES FILLIP TO EXPEDITIOUS COMPLETION OF VOLUNTARY LIQUIDATION OF CORPORATE PERSONS

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#### **Facts and Background**

In addition to providing for a mechanism for resolution of stressed assets, the Insolvency and Bankruptcy Code, 2016 (**IBC**) also provides for a framework whereby a corporate person who is not under any financial stress may also voluntarily undergo liquidation to wind up its affairs. Section 59 of the IBC set out in Chapter V of Part II (*Voluntary Liquidation of Corporate Persons*), read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations 2017 (VLP Regulations), provides for a framework whereby a corporate person who has not taken any debt or has not defaulted under its debt obligations, can take necessary measures for undergoing voluntary liquidation.

However, in a recent discussion paper dated 1 February 2022 (Discussion Paper), the Insolvency and Bankruptcy Board of India (IBBI) noted that while the IBC and the VLP Regulations provide for a speedy and timebound mechanism for voluntary liquidation of corporate persons whereby, a liquidator is required to endeavour to complete the voluntary liquidation process within 1 (one) year from the date of commencement of liquidation. However, most voluntary liquidation processes have taken substantially longer time. To point out, the Discussion Paper highlighted that out of the 559 (five hundred fifty nine) pending cases under voluntary liquidation process, around 293 (two hundred ninety three) (ie 52%) of such cases exceeded the limit of 1 (one) year as prescribed under the VLP Regulations.

To address this issue, the Discussion Paper proposed the reduction of outer time-limits for the completion of certain actions stipulated in the VLP Regulations. It was further observed that it may often be the case that companies undergoing voluntary liquidation may not have any creditors and therefore, the voluntary liquidation process may not be complicated and time consuming. Accordingly, the Discussion Paper proposed distinct and shorter timelines for completion of various actions during the course of voluntary liquidation of a corporate person which does not have any creditors.

Based on the above recommendations, the IBBI on 5 April 2022 issued the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2022 (Amendment Regulations). The key changes brought through the Amendment Regulations in the VLP Regulations are as follows:

## **Shorter timelines for Preparation of the list of Stakeholders**

Prior to the Amendment Regulations, under Regulation 30(2) of the VLP Regulations, a liquidator was required to prepare the list of stakeholders within 45 (forty-five) days from the last date for receipt of claims (Last Date). The Amendment Regulations introduced a proviso to Regulation 30(2) of the VLP Regulations which states that in case no claim has been received from any of the creditors of the concerned corporate person, the liquidator is required to prepare the list of stakeholders within 15 (fifteen) days from the Last Date.

## **Shorter timelines for Distribution of Proceeds of Liquidation**

Prior to the Amendment Regulations, Regulation 35(1) of the VLP Regulations required the liquidator to distribute the proceeds from realization under liquidation, within a period of 6 (six) months. Now, pursuant to the Amendment Regulations, this time period has been reduced to 30 (thirty) days.

## **Shorter timelines for Completion of the Liquidation Process**

Prior to the Amendment Regulations, Regulation 37 of the VLP Regulations stipulated that the liquidator should endeavour to complete the liquidation process within a period of 12 (twelve) months from the liquidation commencement date. However, pursuant to the Amendment Regulations, Regulation 37(1) has been amended whereby the liquidator is required to endeavour to complete the liquidation process within a period of: (i) 270 (two hundred and seventy) days from the liquidation commencement date where creditors have filed their claims against the corporate debtor; and (ii) 90 (ninety) days in all other cases (ie, where no creditor has filed its claim against the corporate person).

## **Final Report and Compliance Certificate**

Regulation 38 of the VLP Regulations require the liquidator to prepare and file a final report before the Adjudicating Authority (Final Report) consisting details of *inter-alia*: (a) audited accounts of liquidation; (b) value realised from sale of assets; (c) persons to whom sale is made; (d) manner and mode of sale etc., along with necessary supporting documents. The Discussion Paper acknowledged that the Final Report which a liquidator submits in the form and manner as set out in Regulation 38 of the VLP Regulations tends to be bulky and substantial, which increases the time typically taken by the Adjudicating Authority to verify the compliances by liquidators and complete the liquidation process. Accordingly, the Amendment Regulations amended Regulation 38(3) of the VLP Regulations whereby liquidators are now required to provide a checklist/certificate in Form-H under Schedule I, which would enable the Adjudicating Authorities to expeditiously dispose of and complete voluntary liquidation of corporate persons.

## **Other changes**

Regulation 5(2) of the VLP Regulations has been amended which now requires the liquidator to intimate the IBBI within 7 (seven) days from his appointment date, from the earlier timeline of 3 (three) days. Further, the word 'corporate debtor' used in Regulation 10(2)(r) is now substituted with the word 'corporate persons'.

## **Comment**

One of the fundamental objectives of IBC which distinguishes this legislation from all other pre-existing legislations pertaining to insolvency resolution/ liquidation has been expeditious and time-bound completion of the processes envisaged under IBC. However, the statistics set out in the Discussion Paper demonstrates that the scheme of the IBC in its present form was not living up to the goal that it sought to achieve. In

light of this, the modifications introduced by way of the Amendment Regulations are definitely a step in the right direction to fast track voluntary liquidation processes.

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