

# LIQUIDATION PROCESS

***Presented by, Sajeve Deora  
Director, Integrated Capital Services Ltd., India***

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# TRIGGERS TO LIQUIDATION, 33

## *Trigger of Liquidation of corporate debtor*

- AA does not receive resolution plan under 12 or 56 under 30/6, 33
- AA rejects the resolution plan under 31 not being in conformity with 30
- Creditor's committee resolves for liquidation during resolution process
- Contravention of approved resolution plan (affected person may apply)
- Fast Track resolution process fails, 55
- Voluntary liquidation, 59

## *On order of liquidation, 33/5*

- Moratorium imposed on commencement of resolution period is vacated
- Suit/ legal proceedings cannot be instituted by or against debtor
- Debtors assets and Proceeds of liquidation will vest in liquidation estate
- IP can institute the suit with prior approval of AA
- Except those notified by CG after consulting a financial sector regulator*

# BROAD LIQUIDATION PROCESS

Appointment of Liquidator, IP

Formation of liquidation estate

Consolidation of claims

Verification

Admission or Rejection of claims

Determination of value of claims  
Set-off, Advertisement

Appeal by Creditor to AA, 14  
days

Investigate financial affairs for:

- Preferential transactions
- Under-valued transactions
- Extortionate credit arrangements
- Defrauding of creditors

Value assets and liabilities, 35/ILP

Carry on business for beneficial for  
liquidation

Distribution of assets

Dissolution of Corporate Debtor

# ELIGIBILITY OF LIQUIDATOR

- Partner/director of IP entity is independent of debtor
- IP discloses pecuniary/personal relationship with debtor/ stakeholders
- IP entity not to represent multiple stakeholders in a liquidation process

## *Independent of Corporate Debtor*

- IP has role and responsibilities of a fiduciary
- Eligible to be appointed independent director on Board of a company
- Not a related party of debtor
- Not an employee or proprietor or partner of:
  - Firm of auditor/ company secretaries/ cost auditors
  - Legal/consulting firm deriving revenue > 10% in 3 financial years

***When in doubt about independence, Disclose  
Counter parties, AA decide***

# LIQUIDATOR APPOINTING EXPERTS

## *IP may appoint experts and professionals*

- To assist in discharge of duties, obligations and functions
- Pay reasonable remuneration, which shall form part of liquidation cost

## *Experts and professionals shall not*

- Be a relative of IP or relative of debtor
- Not served as auditor in last 5 years

Appointee shall disclose existence of pecuniary or personal relationship

# POWERS OF IP

Possession of Assets, Disclaim Onerous Property

Appointment of Professionals, Demand co-operation from Personnel

Possession of registers, books of account, Termination of contracts

Continuing operations for benefit of liquidation, Investigations

Access information for admission and proof of claims,  
identification of liquidation estate assets from:

IU, Credit information systems

Data bases, Registration Authorities

Seek earlier dissolution:

Costs not likely to be recovered, No investigation needed

# FUNCTIONS OF IP

*Reporting*

*Preservation*

*Inspection*

## **Preservation**

Preserve physical, electronic copy of the reports and minutes for 8 years

## **Allow Inspection**

- Application received
- Cost paid
- Undertaking to maintain confidentiality

# REPORTING BY IP

<b>Nature of Report</b>	<b>Days</b>	<b>Event triggering reporting</b>
<b>Preliminary report</b>	<b>75</b>	<b>Liquidation Commencement</b>
<b>Asset Memorandum</b>	<b>75</b>	<b>Liquidation Commencement</b>
<b>Progress report/s</b>	<b>15</b>	<b>End of quarter in which IP appointed</b>
<b>Sale report/s</b>		<b>Part of Progress report</b>
<b>Minutes of consultations with Stakeholders</b>		<b>Form A of Schedule II, 8/ILP</b>
<b>Final report prior to dissolution</b>		



*IP to Receive or collect, claims of creditors in 30 days*

*Filings as per ILP*

Financial creditor	Form D, Schedule II, electronic
Operational creditor	Form C, Schedule II, post/ electronic
Workman, employee; Through AR	Form E/F, Schedule II, post/ electronic
Other stakeholders	Form G, Schedule II, post/ electronic
Partly financial, Partly operational creditor	Claim to the extent of financial debt and operational debt, respective Form

*Creditor may withdraw, vary claim within 14 days of submission*



# SUPPORTING DOCUMENTS FOR CLAIM

<i>Documents</i>	<i>OC</i>	<i>FC</i>	<i>Workmen</i>	<i>Stakeholders</i>
Record with IU	▲	▲	▲	▲
Contract	▲	▲	▲	▲
Invoice, Delivery note	▲	▲	▲	▲
Proof of employment	▲	▲	▲	▲
Financial Accounts/ statements	▲	▲	▲	▲
Evidence/ Documentary Statement	▲	▲	▲	▲
Order of a court/ tribunal adjudicating non-payment	▲	▲	▲	▲

*Liquidator to verify the claims under 38  
within 30 days from the last date for receipts of claim*

Creditor or Debtor or any other person to produce document or evidence,  
IP may seek further documents, Section 39(2)

Costs of proof on claimant

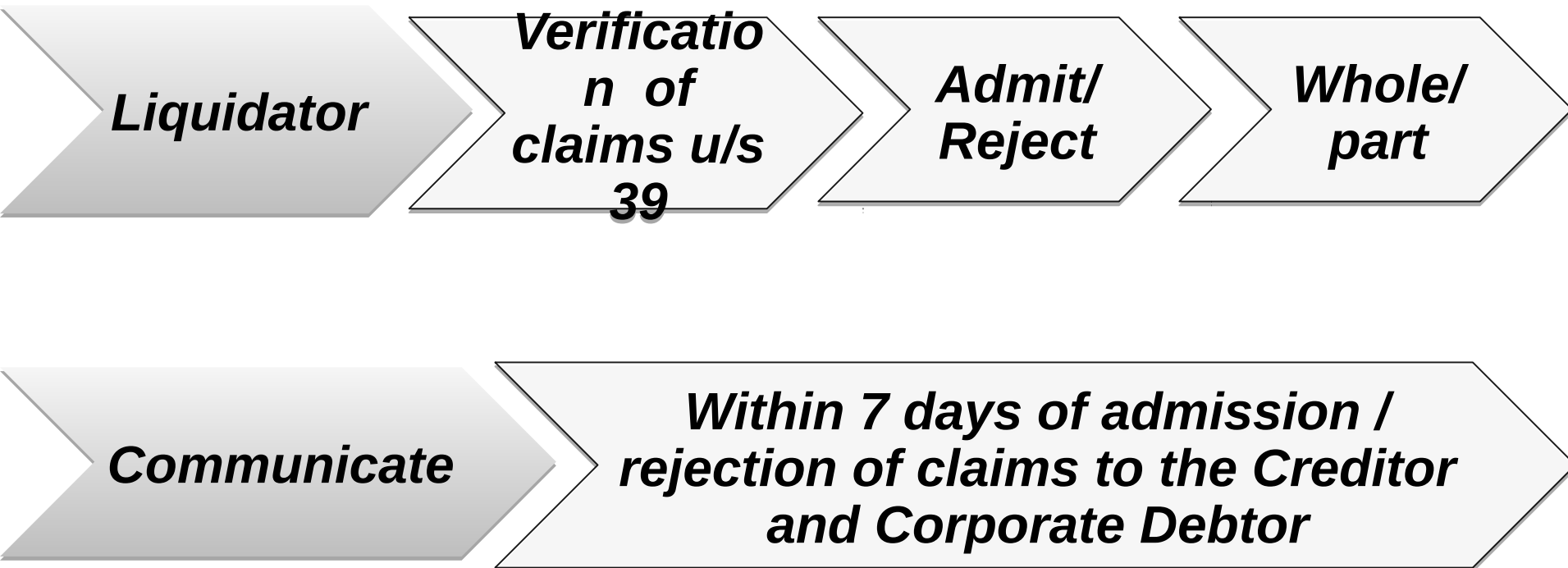
Best estimate where Claim not precise due contingency/ any other reason

*Creditor, 3/10*

- *Any person to whom a debt is owed:  
Financial, Operational, Secured, Unsecured*
  - *Decree holder*



# CLAIMS, ADMISSION/REJECTION, 40



*Reasons to be recorded for partial rejection, full rejection of claim  
IP to determine value of claims*

# APPEALS, 42

Decision of IP rejecting a claim is appealable  
Appeal may be filed by Creditor to AA (NCLT)  
Within 14 days of receipt of decision

Decision of AA appealable to NCLAT within 30 days,  
amongst others:

*On ground that Order for liquidation under 33  
suffers from material irregularity, fraud*

Order of NCLAT appealable to Supreme Court within 45 days  
On question of law

Civil courts, authorities shall have no jurisdiction to entertain proceeding  
in matters on which AA or NCLAT have jurisdiction



# SECURED CREDITOR, LIQUIDATION PROCEEDING, 52

## *Secured Creditor, 3(30)*

A Creditor in favour of whom security interest is created

## *Security Interest*

*Right, title or interest or a claim to property, created in favour of  
or provided for a secured creditor by a transaction*

*Which secures payment or performance of an obligation*

*Includes mortgage, charge, hypothecation, assignment and encumbrance  
or any other agreement or arrangement securing payment  
or performance of any obligation of any person*

*Not includes performance guarantee*



# PROVING SECURITY INTEREST, 21 /ILP

Records available with Information Utility

*Certificate of Registration of Charge issued by Registrar of Companies*

Proof of Registration of Charge with Central Registry of Securitisation  
Asset Reconstruction and Security Interest of India



# SECURED CREDITOR, LIQUIDATION PROCEEDINGS

## *Relinquish Security Interest*

- Asset becomes part of Liquidation Estate
- Receive proceeds from realisations, per 53

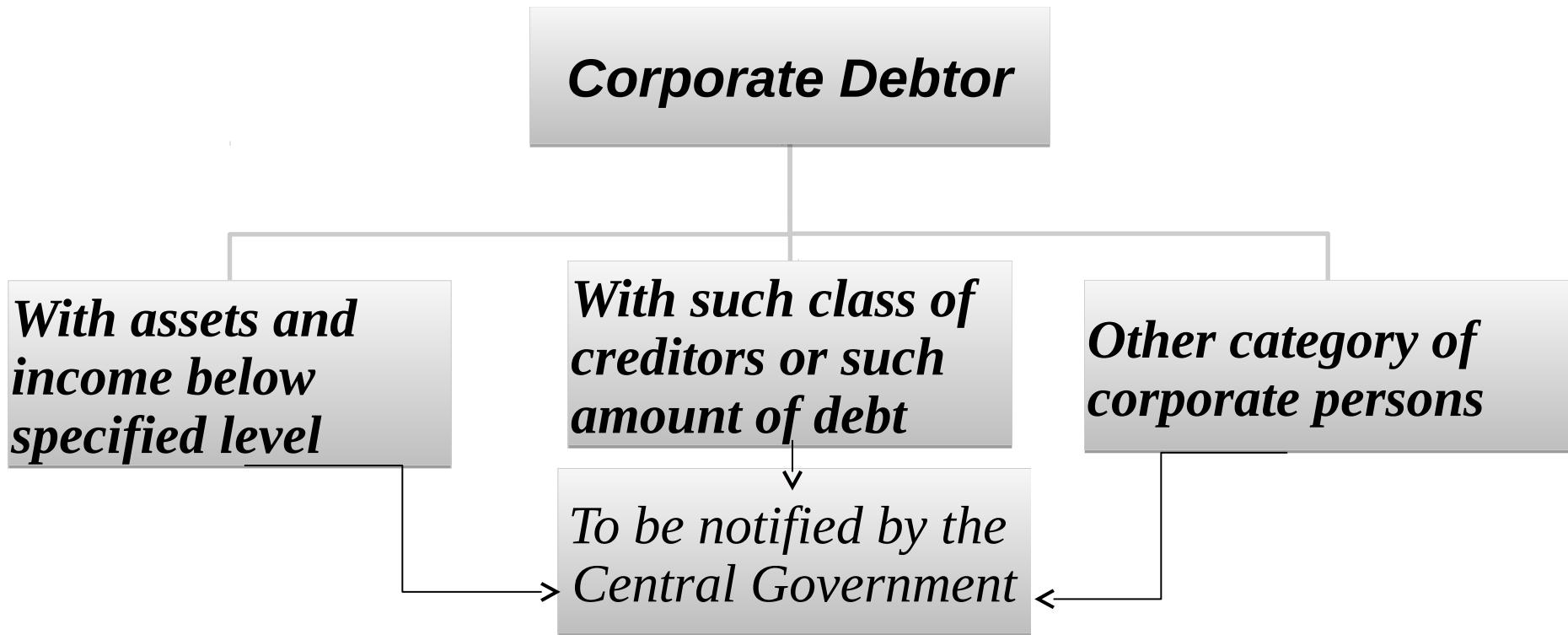
## *Realise Security Interest*

- Inform IP of realisable price
- Liquidator shall verify security interest
- Permit the realisation of proven security interest if IP cannot find a buyer willing to buy at the indicated price or higher, 37 ILP

***IP shall have formed a Liquidation Estate, 36/3/g***



# FAST TRACK PROCESS, 55-58



**Existence of default**  
**Failure of resolution within 90+45 days**

# VOLUNTARY LIQUIDATION, 59

## *Corporate person*

Intends to liquidate itself voluntarily, Not committed any default

*Declaration from majority of directors that there are no debts or debts can be paid from sale of assets*

Full inquiry made into the affairs,  
Not being liquidated to defraud

**Audited financial statements** & record of business operations for previous 2 years or since incorporation, whichever is later

**Valuation report** by registered valuer

**Within 4 weeks of declaration:**

Special resolution – voluntary liquidation, appointing IP

Resolution of members that period or event for dissolution as occurred

Voluntary liquidation proceedings commence, Date of passing resolution



# VOLUNTARY LIQUIDATION, ACTIONS

2/3rd creditors to approve members resolution where debt owed, 7 days

*Company to notify ROC and Board in 7 day of resolution or approval by the creditor, as the case may be*

***If no approval: 35 to 53 of Chapter III & VII apply with modifications***

## *Application by IP*

- Affairs of the Company wound up***
- Assets completely liquidated***

***Application to AA***

## *Order by AA*

***Passes order on application by IP, Debtor dissolved***

***Order copy to be forwarded within 14 days to the authority with which the corporate person is registered***

# WATERFALL MECHANISM, 53

## Insolvency resolution and liquidation cost

Secured creditor (in case he has relinquished security)



+



Workmen's dues (for period of 24 months preceding liquidation commencement)

Wages and unpaid dues to employees (other than workmen) for a period of 12 months preceding liquidation commencement date



## Unsecured creditors

Central and State government dues

+

Secured creditor for an unrealised amount

Any remaining debts or dues



Preference shareholders, if any



Equity shareholders or partners, as the case may be

# CLOSURE OF LIQUIDATION

## *Unclaimed Proceeds of Liquidation or Undistributed assets*

## *Dissolution of Corporate Debtor*

Unsold assets distributed to stakeholders  
 AA approval for payment of undistributed amount paid into Companies Liquidation Account in Public Account of India  
 IP to pay interest @ 12% and penalty on retained amounts  
 IP files statement to AA  
 Person claiming to apply to Board  
 Unclaimed for 15 years transfers to General Revenue Account

*Corporate Debtor (Assets)*

**Liquidated**

IP may make an application to AA

AA shall pass an **Order**

Within 7 days copy of order forwarded to authority with which Corporate debtor is registered

# RECORDS TO BE MAINTAINED BY IP

*Suggested records for maintenance by IP are:*

Fee Register, Bank Ledger

Books Register, Documents Register

Suspense Register, Contributory Register

Register of Claims and Distributions, Distributions Register

Register of Assets, Tenants Register, Suits Register, Decree Register

Securities & Investment Register, Register of Bookdebts & Outstandings

Register of Unclaimed Assets and Undistributed Assets Deposited

# IP EXPECTED TO

## **Review transactions and conduct of Directors in Twilight zone**

*Fraudulent transfers*

*Avoidable transactions*

*Preferential treatments*

*Undervalued transactions*

*Disclaimer onerous property*

*Fraudulent or wrongful trading*

*Transactions defrauding creditors*

*Extortionate credit transactions (unconscionable)*

# ISSUES OF INTEREST, 1

- Independence, Insurance of IP, Indemnity by IP
- Creditors liability in keeping debtors green
- Employee management buy-ins
- Bond markets
- Pre-packs, Conflicts of price discovery
- Transfer of title on sales of assets, taxes by Estate
- Sale of Intellectual Property, Soft assets
- Status of ongoing contracts and termination
- Change of ownership: Allocations, Grants, Rights, by Government
- Workers and Change of owner on sale of assets
- Cross border overseas investments, overseas assets



# ISSUES OF INTEREST, 2

- What happens when there is nothing in estate, fraud suspected
- Environmental liabilities
- Sense is: Owings have to be settled, discharged
- Attachments
- Robotic IP, IP Judges in France
- Valuation of assets
- Personal guarantors, 60/2, and Corporate Guarantors
- Affiliates, Subsidiaries, Joint ventures: Change of control conditions

# LIQUIDATOR'S FEE

## 4 ILP

- Forms part of the Liquidation Cost
- Fee as decided by the committee of creditors before a liquidation order is passed
- Fee as a % of the amount realized, net of other liquidation costs & amount distributed

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

# THANK YOU

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