

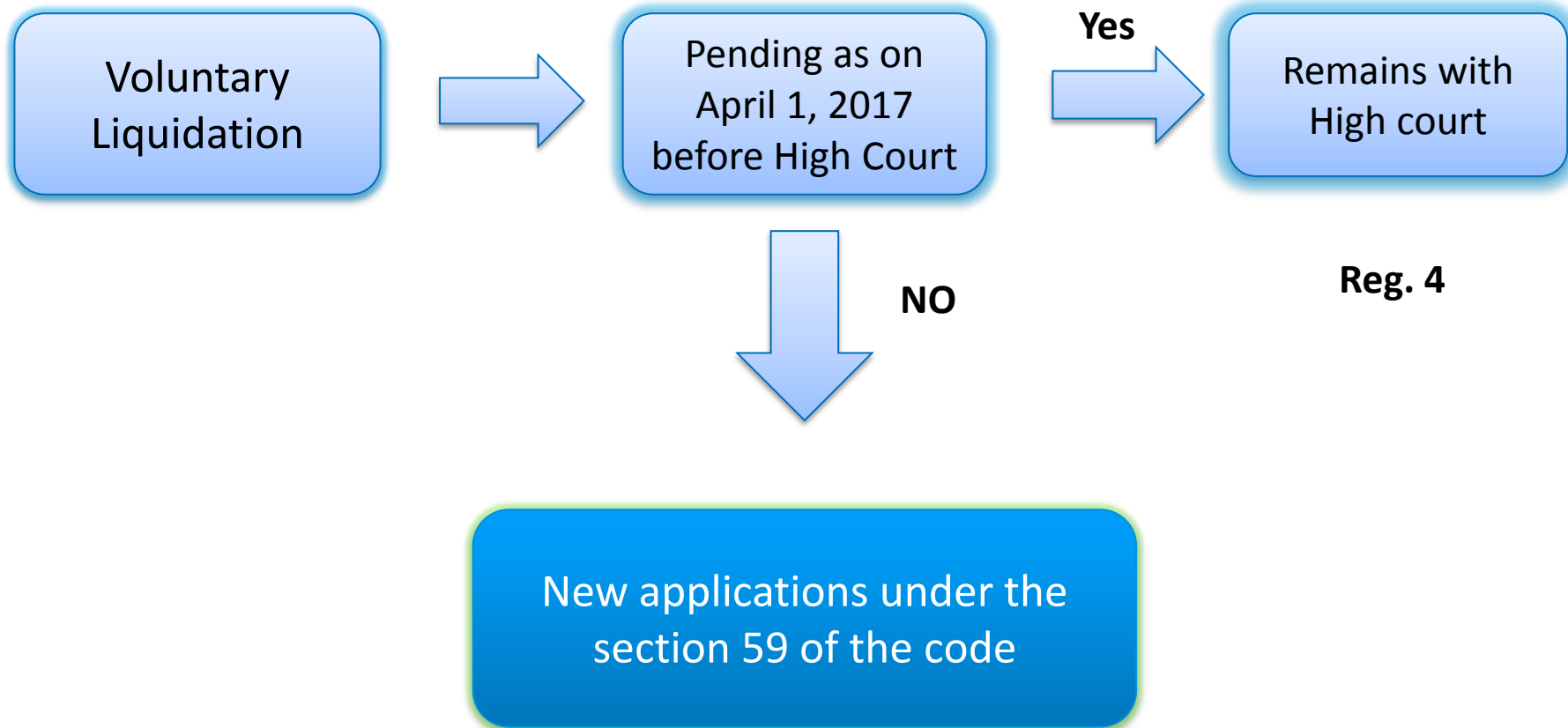
VOLUNTARY LIQUIDATION

UNDER INSOLVENCY & BANKRUPTCY CODE, 2017

A presentation by:

UDAYRAJ PATWARDHAN
Insolvency Professional

- » As per **section 255 and schedule XI** of Insolvency & Bankruptcy Code, 2016 (“IBC”)- **sections 304-325** for Voluntary winding up **“Omitted”** from Companies Act, 2013 (never notified)
- » Notification No. IBBI/2016-17/GN/REG010 dated 31st March, 2017- IBBI has notified the **Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.**
- » Regulations shall apply to the voluntary liquidation of **corporate persons** under Chapter V of Part II of the IBC



WHEN COMPANY MAY BE WOUND UP VOLUNTARILY. (Section 484 - 521)

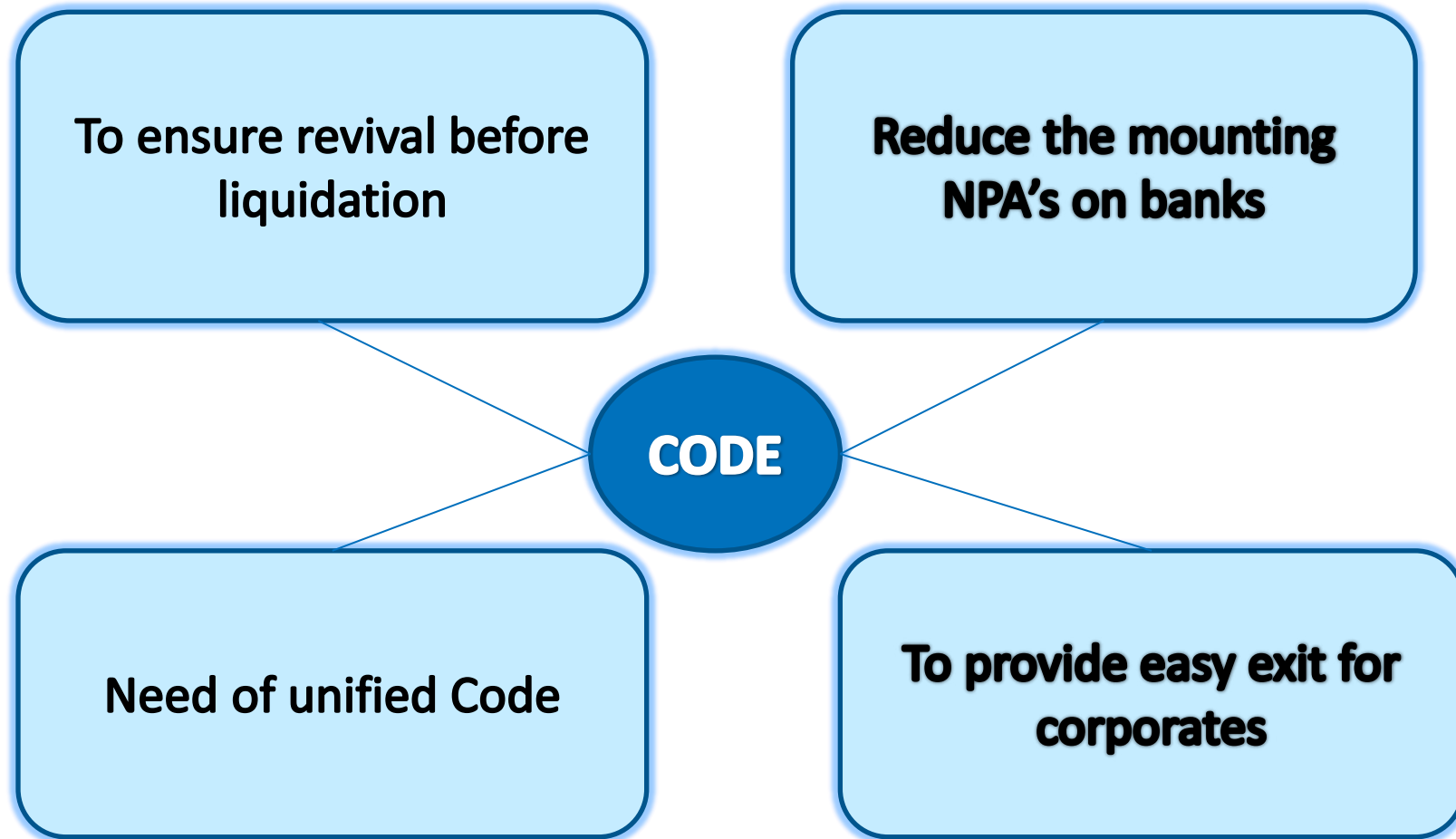
- » Duration of company by its AOA has expired, or
- » On Occurrence of event-AOA provides that the company is to be dissolved & in GM passes an resolution for winding up.
- » If the company passes a Special Resolution.

WHO INVOLVES IN VOLUNTARY WINDING UP

- » Company
- » Liquidator
- » Registrar Of Companies
- » Official Liquidator
- » High Court

SECTION	BEFORE AMENDMENT	AFTER AMENDMENT
2(23)	<p>“Company Liquidator” means a person appointed by-</p> <p>a)The Tribunal in case of winding up by tribunal; or</p> <p>b) The Company or creditors in case of voluntary winding up</p>	<p>“Company Liquidator” means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act;”</p>
2(94A)	New insertion.	<p>“Winding up” means winding up under this Act or liquidation under the IBC, 2016, as applicable</p>
117(3)(f)	<p>The provisions of this section shall apply to—</p> <p>resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;</p>	<p>The provisions of this section shall apply to- resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304 Section 59 of the Insolvency and Bankruptcy Code, 2016;</p>

Why IBC was needed?



Highlights of Voluntary Liquidation under IBC..

Option	Concern
Liquidator	<ul style="list-style-type: none">■ Insolvency Professionals shall act as liquidator.
Business Operations	<ul style="list-style-type: none">■ The corporate person shall from the liquidation commencement date cease to carry on its business except required.
Time Frame	<ul style="list-style-type: none">■ Endeavor to complete the liquidation process <i>within 12 months</i> from the <u>liquidation commencement date</u>.
Preservation of Records	<ul style="list-style-type: none">■ Preservation of records for at least 8 years after the dissolution, either with himself or with an information utility.

VOLUNTARY LIQUIDATION UNDER THE CODE

Corporate committed any default

- **Yes, then cannot go.**



Declaration from majority of Directors- Affidavit of no -ve net worth or not to defraud

- **With 2 years Audited BS & Valuation Report**



Within 4 weeks of Declaration, Sp. Resolution in GM and appointing IP

- **Creditors 2/3rd in value of debts to pass resolution in 7 days**

Public Announcement
within 5 days in
newspapers

- **Of commencement date, stating Claims and last date of submission.**



Intimation to ROC and
IBBI within 7 days of
CoC approval

- **Sec.35 to 53 of chapter III shall apply to the proceedings of Liquidation**



Application to AA for
Dissolution upon
liquidation

- **AA will pass an Order which shall be filed with ROC in 14 days**

VOLUNTARY LIQUIDATION PROCESS

- » “**Section**” means a section of the Code
- » “**Regulations**” means Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017
- » As per sec 3 (7) "**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.
- » As per Reg. 2 (1) (b) ‘**contributory**’ means a member of a company, partner of a LLP, and any other person liable to contribute towards the assets of the corporate person in the event of its liquidation.
- » As per Reg. 2 (1) (c) “**Liquidation commencement date**” means the date on which the proceedings for voluntary liquidation commence as per section 59(5) and Regulation 3(4)

INITIATION PROCESS (Reg.3 & Sec. 59(3))

- » Majority of the directors/designated partners - Declaration verified by an affidavit that-
 - (i) corporate person has **no debt** or will be able to **pay its debts in full**
 - (ii) liquidation is not initiated to defraud any person;
- » Declaration + audited financial statements and valuation report;
- » within 4 weeks of declaration, a special resolution is passed by the contributories for liquidation and appointing an IP as a liquidator (Contributories' Resolution);
 - *(an ordinary resolution suffice in cases of voluntary liquidation by reason of expiry of its duration or occurrence of any dissolution event)*

APPROVAL OF CREDITORS IF COMPANY OWES DEBT: (Reg. 3)

- » If the company owes any debt to any person,-
 - creditor(s) representing **2/3rd in value** of the total debt owed, approve the Contributories' Resolution **within 7 days (Creditors' Approval)** of passing of such special resolution.
 - Subject to the Creditors' Approval, the voluntary liquidation proceedings shall be **deemed to have commenced from the date of passing of the Contributories' Resolution**
- » **(Reg. 4)** On and from the Liquidation Commencement Date, the corporate person shall **cease to carry on its business** except as far as required for the beneficial winding up of its business.
- » the corporate person shall continue to exist until it is dissolved

Primary functions of the Liquidator

- » Various **Reporting** such as Preliminary, Annual status, Final Reports etc.
- » **Engagement of professionals** to assist him in the discharge of his duties, obligations and functions
- » To **value, sell, recover and realize** all assets of and monies due to such corporate persons in a ***time-bound*** manner;
- » **Opening a bank account** for the purpose of receiving all moneys due to the corporate person;
- » **Distribution of proceeds** to the stakeholders ***within a period of 6 (six) months*** of receipt of the proceeds (**reg. 35**) ; and
- » To **preserve** a physical or an electronic copy of the reports, registers and books of account for at ***least 8 (eight) years*** after the dissolution of the corporate person, either with himself or with an information utility (**Reg. 41**)

Public announcement and Collation of Claims (Reg. 14)

- » Form A- immediately (and **not later than 5 days**) upon appointment- for calling upon all the stakeholders to **submit their claims within 30 (thirty) days** from liquidation commencement date.
- » Publication in
 - English & Regional language newspaper at regd. office & principal office & location where material business operations are conducted;
 - On the website, of the corporate person; and
 - On the website, of the Board
- » The liquidator to **verify the claims within 30 days** of the last date of receipt of the claims.
- » Prepare a list of stakeholders, basis the claims admitted.

- » Submit a **Preliminary Report** to the Corporate person within 45 days from the liquidation commencement date **(Reg. 9)**
- » Shall maintain the registers and books in relation to voluntary liquidation.
- » Where books of account are incomplete, the liquidator shall have them completed
- » **Verification of claims:** may either admit or reject the claim, a creditor may appeal to the AA against the decision **(Reg. 29)**
- » Prepare the **list of stakeholders** within 45 days from the last date for receipt of claims **(Reg. 30)**

Chapter VI & VII

- » **Manner of sale-** value and sell the assets in the manner and mode approved by the corporate person in compliance with provisions **(Reg. 31)**
- » Liquidator to realize uncalled capital or unpaid capital contribution from any contributory to Corporate Person. No distribution, unless he makes his contribution **(Reg.33)**
- » Shall open a bank a/c in the name of the corporate person followed by the words **'in voluntary liquidation'**, in a scheduled bank, for the receipt of all moneys due. **(Reg. 34)**
- » All payments by the liquidator **above Rs. 5000/-** shall be made by cheque drawn or online.
- » Distribute the proceeds **within six months** from the receipt of the amount to the stakeholders, liquidation costs shall be deducted before such distribution **(Reg. 35)**

Endeavor to **wind up the affairs within 12 months (Reg. 37)**

Continuing for more than 1 year, the liquidator shall-

- » call a meeting of the contributories **within 15 days** from the end of the year in which he is appointed, and at the end of each succeeding year until dissolution; and
- » Shall present an **Annual Status Report** indicating progress in liquidation, including-
 - Settlement of list of stakeholders,
 - Details of any property that remain to be sold and realized,
 - Distribution made to the stakeholders, and
 - Distribution of unsold property made to the stakeholders; etc.

The Annual Status Report shall enclose an audited accounts showing the **receipts and payments** pertaining to liquidation.

Reg. 38- Liquidator shall prepare & send the **Final Report** on completion of the process, to –

- The registrar; and
- The board

Report shall consist of-

- » Audited account & Statement demonstrating that-
 - the assets has been disposed of;
 - the debt discharged to the satisfaction of the creditors;
 - no litigation is pending/sufficient provision to meet the obligations
- » Sale statement in respect of all assets containing:
 - the realized value, cost of realization, if any;
 - the manner and mode of sale;
 - an explanation- if the value realized is less than valuation.

Regulation 39

- » Before order of dissolution,- apply to the AA for an order to pay into the **Companies Liquidation Account in the Public Account of India** any unclaimed proceeds or undistributed assets.
- » Furnish **a statement** to the Registrar and the Board setting forth -
 - nature of the sums,
 - the names & last known addresses of the stakeholders,
 - the amount entitled & nature of their claim.
- » Liquidator who retains any money- interest **@12% p.a. + Penalty**.
- » Entitled to a receipt from the RBI, such shall be an effectual discharge.
- » A person claiming any money paid into the Companies Liquidation A/c may **apply to the Board**.
- » If satisfied board shall order for the payment, after taking such security from him as it may think fit.

DISSOLUTION- Part II, Chapter V- Section 59 (7)

Once the affairs of the corporate person have been completely wound up and its assets fully liquidated-

- » the Liquidator shall make an application along with Final Report to the NCLT for the dissolution of such Company (Reg. 38 (3))
- » The Tribunal shall fix a date for the hearing of the petition.
- » Where Tribunal is satisfied- NCLT shall pass an order for dissolution (**Sec. 59 (8)**)
- » Entity shall stand dissolved from the date of NCLT's order
- » The Copy of order shall be filed with the Registrar by the company **within 14 days** of the receipt of the copy of order (**Sec. 59 (9)**)

- » Cash Book;
- » Ledger;
- » Bank Ledger;
- » Register of Fixed Assets and Inventories;
- » Securities and Investment Register;
- » Register of Book Debts and Outstanding Debts;
- » Tenants Ledger;
- » Suits Register;
- » Register of Claims and Dividends;
- » Decree Register;
- » Contributories Ledger;
- » Distributions Register
- » Fee Register;
- » Suspense Register;
- » Documents Register;
- » Books Register;
- » Register of unclaimed dividends and undistributed properties deposited

Reg. 10- *Such may be maintained in the forms indicated in Schedule II, with such modifications as the liquidator may deem fit in the facts & circumstances of the liquidation.*

PROCEEDINGS

Declaration from Majority of Directors/Designated Partners **(x day)**

Within 4 week resolution by special majority of the partners/contributories –
Appointing IP as Liquidator **(x+28 days)**

Within 7days Creditors (2/3rd of debt), to approve the resolution (liquidation
commencement date) **(x+35 days)**

Within 7 days notify Board and Registrar **(x+ 42 days)**

Public Announcement **(x+35 -40 days)** within 30 days

Last day of submission of claims **(x+ 65 – 70 days)**

Verification of claims **(x+ 95 days)**

Preliminary Report to the corporate person **(x+80 days)** LCD + 45 days

PROCEEDINGS

Prepare List of Creditors / stakeholders within 45 days from the last date for receipt of claims (**x+110 -115 days**)

Completion of liquidation process within **12 months from Liquidation commencement date**

More than 12 months- meeting of Contributories **within 15 days** from the end of the 12 months (Present annual status report)

On completion Prepare Final report

Application to NCLT for dissolution

NEW DELHI

B1/12, Safdarjung Enclave, 2nd Floor
New Delhi - 110 029.
Telephone: +91 11 5165 4481 / 4482
Fax: +91 11 5165 4483
Email: delhi@sumedhafiscal.com



AHMEDABAD

A/82, Parisima Complex, Opp. IFCI Bhawan,
C.G. Road, Ahmedabad – 380 009
Telephone: +91 79 3002 3337
Fax: +91 79 2645 0394
Email: ahmedabad@sumedhafiscal.com



KOLKATA

8 B, Middleton Street, 6 A, Geetanjali
Kolkata – 700071
Telephone: +91 33 2229 8936/6758/3237/4473
Fax: +91 33 2226 4140 / 2265 5830
Email: kolkata@sumedhafiscal.com



MUMBAI

C-703, Marathon Innova, Off G KMarg
Opp Peninsula Corporate Park, Lower Parel (West),
Mumbai - 400 013.
Telephone: +91 22 4033 2400/ 4033 2416
Fax: +91 22 2498 2878
Email: mumbai@sumedhafiscal.com



HYDERABAD

309/1, “Krishna Plaza”, Khairatabad,
Opp: Shadan College, Hyderabad-500 004
Telephone: +91 40 4020 2826 / 4026 7272
Fax: +91 40 4020 2826
Email: hyderabad@sumedhafiscal.com



BANGALORE

“Park Plaza” 1st Floor, No.1 Park Road
(Off Infantry Road), Tasker Town,
Bangalore – 560001
Telephone: +91 80 4124 2545 / 2546
Fax: +91 80 4124 2547
Email: bangalore@sumedhafiscal.com





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