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Liquidation Process: IBBI Discontinues 'Going Concern Sale' Of Corporate Debtors



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Preface

The Insolvency and Bankruptcy Board of India ("**IBBI**") on October 14, 2025, notified (a) IBBI (*Insolvency Resolution Process for Corporate Persons*) (*Sixth Amendment*) Regulations, 2025 and the IBBI (*Liquidation Process*) (*Second Amendment*) Regulations, 2025 thereby prospectively abolishing the mechanism of "Sale of a corporate debtor as a going concern" during the liquidation process.

Overview of the Amendments

As per the Notification¹ dated October 14, 2025, the following amendments have been incorporated to IBBI (*Liquidation Process*) Regulations, 2016 ("**Liquidation Regulations**"):

- (i) Clause (f) in Sub-Regulation (1) of Regulation 31A which required to obtain Stakeholders' Consultation Committee's advice, to review the marketing strategy in case of failure of sale of the corporate debtor as a going concern, has been omitted.
- (ii) Clauses (e) and (f) in Regulation 32 which permitted the liquidator to sell the corporate debtor or its business as a going concern, has been omitted.

The new Regulation 32 can be read as follows:

The liquidator may sell-

- a. an asset on a standalone basis;
- b. the assets in a slump sale;
- c. set of assets collectively; or
- d. the assets in parcels.

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (d) unless the security interest therein has been relinquished to the liquidation estate.

- (iii) Regulation 32A of Liquidation Regulations which, inter-alia, dealt with sale of business as going concern for maximization of value, has been omitted in its entirety.

¹ IBBI Notification (F. No. IBBI/2025-26/GN/REG129) dated October 14, 2025 available at: <https://ibbi.gov.in/uploads/legalframework/85d48cede86251c9446cf712d1812308.pdf>

Regulation 32A of Liquidation Regulations provided that when the committee of creditors recommends a sale under Regulation 32(e) or Regulation 32(f) of Liquidation Regulations, when the corporate debtor is under insolvency process, or if the liquidator believes such a sale will maximise value of the corporate debtor, the liquidator must first attempt to sell the assets and liabilities identified by the committee of creditors under Regulation 39C of CIRP Regulations (defined hereinafter) as a going concern. If the committee of creditors has not identified such assets and liabilities, the liquidator shall identify and group the assets and liabilities to be sold as going concern, in consultation with the stakeholder's consultation committee under the liquidation process. The liquidator may sell the assets of the corporate debtor under regulation 32(e) exclusively only at the first auction, if the liquidator considers it feasible to operate the corporate debtor as a going concern, he may do so only after consulting the stakeholders' consultation committee and to the extent approved by it. The said regulation has now been omitted.

Further, IBBI through another Notification² dated October 14, 2025, incorporated the following amendments to IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") with respect to doing away of the going concern sale of a Corporate Debtor under liquidation process:

- (i) Regulation 39C which, inter-alia, permitted the liquidator to first explore sale of the corporate debtor as a going concern under clause (e) and (f) of regulation 32 of Liquidation Regulations, has been omitted in its entirety.
- (ii) Clause (b) of Regulation 39D, which had reference to sale of corporate debtor as going concern during liquidation proceedings (in reference to fee payable to liquidator), has been omitted.

Rationale for Discontinuing Sale of Corporate Debtor as Going-Concern Under Liquidation

Brief Background

Going Concern Concept: In accounting parlance, 'going concern' basis entails preparation of financial statements on the assumption that the entity will continue operations in the foreseeable future. This basis is used unless management intends or is forced **to liquidate or cease operations**.

IBBI had introduced the "sale of corporate debtor as going concern" as an option available for manner of sale in Liquidation Regulations vide the notification of IBBI (*Liquidation Process*) (*Amendment*) Regulations 2018³ (*Notification No. IBBI/2017-18/GN/REG028, dated March 27, 2018*).

² IBBI Notification (F. No. IBBI/2025-26/GN/REG130) dated October 14, 2025 available at: <https://ibbi.gov.in/uploads/legalframework/f006fdcf9cc35f461e320375809cbf3.pdf>

³ Notification No. IBBI/2017-18/GN/REG028, dated March 27, 2018 available at: [https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Apr/IBBI%20\(Liquidation%20Process\)%20Amendment%20,%20%20Regulations%20%202018_2018-04-03%2018:24:02.pdf](https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Apr/IBBI%20(Liquidation%20Process)%20Amendment%20,%20%20Regulations%20%202018_2018-04-03%2018:24:02.pdf)

It is pertinent to note that the aforesaid notification introducing the sale of corporate debtor as going concern, appeared to have been largely influenced by the observations made in the matter of M/s. Gujarat NRE Coke Limited. In this case, the Hon'ble National Company Law Tribunal, taking into consideration the operations of the Corporate Debtor and its prospects for revival, permitted sale of corporate debtor as going concern during liquidation process.

Although, the concept was introduced with the intention of facilitating revival of the corporate debtor until the last possible stage, the Standing Committee on Finance (2020–21), in its 32nd Report, recommended the deletion of Regulation 32(e) of Liquidation Regulations, which permitted the sale of a corporate debtor as a going concern. Similar recommendations were subsequently expressed in various reports, including, the Insolvency Law Committee ("**ILC**") report of February 2020⁴ and the Colloquium on Functioning and Strengthening of the Code Ecosystem in its November 2022⁵.

The ILC observed that attempts by liquidators to sell the corporate debtor as a going concern at the liquidation stage often result in unnecessary delays, particularly in cases where revival is not viable. The Committee further noted that the disadvantages associated with selling a corporate debtor as a going concern outweigh the potential benefits.

Similarly, the Colloquium on the Functioning and Strengthening of the Code Ecosystem observed that, in the majority of cases, it would be more advantageous to sell the functional or viable aspects of the corporate debtor's business rather than the corporate debtor as a whole. The report further noted that if liquidators are provided with adequate flexibility and the necessary infrastructure to facilitate the sale of such functional or viable components, the need for a sale of the corporate debtor as a going concern would largely be eliminated.

Liquidation – A broad perspective:

Insolvency and Bankruptcy Code, 2016 ("**IBC**" or "**Code**") envisages a clear, sequential framework for resolving the insolvency of a corporate debtor. The Corporate Insolvency Resolution Process ("**CIRP**") is the stage where the committee of creditors evaluates viability and considers revival of the Corporate Debtors through resolution plans. Liquidation, on the other hand, becomes relevant only if CIRP fails to yield any result.

The concept of sale as going concern was introduced in liquidation proceedings as a last-mile option to revive the corporate debtor keeping in mind the intent of value maximisation, being one of the tenets of the Code. However, available data indicates that such sales have not yielded

⁴ <https://ibbi.gov.in/uploads/whatsnew/4e94077d49f9dbd49c875097dbdcf791.pdf>

⁵ <https://ibbi.gov.in/uploads/resources/f0cca521f619483efb1c372ccf000b8a.pdf>

superior results. Recoveries from going-concern sales under liquidation have been significantly lower—creditors received only 2.4% (75% of *liquidation value*), whereas regular dissolution resulted in 3.7% (101% of *liquidation value*). This suggests that going-concern sales do not offer any meaningful value-preservation over conventional dissolution.

In light of the aforesaid data, it was observed that permitting revival-like efforts at the liquidation stage would create delays and dilute the time-bound structure envisaged under the Code. Any attempts to revive the corporate debtor, more particularly, by means of going concern sale, at the liquidation stage, can be viewed as undermining the corporate insolvency resolution process and the same is inconsistent with the overall scheme of the Code. Hence, such sales were recommended to be eliminated from the Liquidation Process.

Challenges surrounding the "sale as going concern" concept:

- (i) *Lower asset realisation value*: Permitting sale as a going concern may encourage resolution applicants to prefer acquiring the corporate debtor during liquidation, at a lower price. Further, during the liquidation process, the reserve price—being the minimum price at which the liquidator is permitted to sell the assets—is typically determined on the basis of the realizable value of the assets as assessed in the valuation reports obtained during CIRP. Since this reserve price often reflects distressed-sale conditions and may be subject to further reductions in subsequent auction rounds, it can result in significantly lower recoveries compared to what might have been achievable through a resolution plan during CIRP.
- (ii) *Higher Costs*: Maintaining a corporate debtor as a going concern during liquidation results in higher costs especially when such sales do not materialise and where the sales do materialize the recovery by creditors very less considering the high cost and extended time spent for recovery from such sale.
- (iii) *Delay in payment to creditors*: Attempting going-concern sales even where the corporate debtor is not genuinely viable as a going concern, further prolonging liquidation timelines and contributing to lower recoveries.

These systemic concerns have led to calls for reconsidering and potentially removing the going-concern sale mechanism from the liquidation framework. Accordingly, IBBI in its Discussion Paper dated February 04, 2025, on 'Streamlining Processes under the Code: Reforms for Enhanced Efficiency and Outcomes'⁶ ("**Discussion Paper**"), *inter-alia*, invited comments on discontinuing the sale as going concern under liquidation process, pursuant to which references to sale of corporate debtor as going concern during liquidation proceedings have been omitted from Liquidation Proceedings and CIRP Regulations.

⁶ Discussion paper dated February 4, 2025 on "Streamlining Processes under the Code: Reforms for Enhanced Efficiency and Outcomes" available at: https://ibbi.gov.in/uploads/public_comments/Discussion%20Paper%20on%20Streamlining%20Processes%20under%20the%20Code%20Clean.pdf

It is pertinent to note that the Colloquium on Functioning and Strengthening of the Code Ecosystem in its report did not recommend the deletion of the provision permitting the sale of the business of the corporate debtor as a going concern (which has eventually been deleted along with the mode of sale of corporate debtor as a going concern). On the contrary, the report suggested amending the Code to empower the committee of creditors to resolve the functional components of the business. Despite these recommendations, the Notifications issued on October 14, 2025, have also deleted the option to sell the corporate debtor's business as a going concern.

While the recent notification removes explicit references to going-concern sales from the Liquidation Regulations and CIRP Regulations, it does remain silent on the liquidator's inherent powers under Section 35 of the Code, more specifically where the liquidator is empowered to take necessary steps for beneficial outcome in liquidation.

The Discussion Paper indicates the rationale for deletion of going concern under liquidation considering the option of slump sale which continues to exist under the Liquidation Regulations as one of the modes of sale. However, a slump sale may not adequately fill the void created by the deletion of Regulation 32(f) and to address a situation akin to Gujarat NRE Coke Limited.

Conclusion

The elimination of sale of a corporate debtor as a "going concern," from the Liquidation Regulations is a significant step intending to refine the liquidation process under the Code. This aims to streamline and expedite the liquidation process especially if one considers the time bound processes being the key element under the Code. By doing away the sale of going concern under liquidation, it appears that the regulator has conveyed as message that expeditious asset realization and creditor recovery are the objectives of liquidation rather than a rebirth through sale as going concern which by all means is meant to take place under the insolvency process.

All things considered, the amendments is likely to ease out the delays associated with going-concern transactions under liquidation thereby upholding the essence of time forming the bedrock of the Code.

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