

Insolvency and Bankruptcy Board Amends Voluntary Liquidation Process Regulations

The Insolvency and Bankruptcy Board (IBBI) vide notification dated **5 April 2022** amended **IBBI (Voluntary Liquidation Process) Amendment Regulations, 2022 (Amendment Regulations)**.

The Budget 2022 had laid down the intent to fast track the voluntary liquidation process to provide greater flexibility

to entities that desire to exit the business. In pursuance of that, IBBI released a discussion paper along with draft regulations for public comments in February 2022. Subsequent to that, IBBI has now notified the Amendment Regulations. The key highlights of the Amendment Regulations are summarized in below table:

Provision	Comments
Intimation of appointment of liquidator to IBBI	The liquidator is required to intimate his appointment to IBBI within seven days from the date of his appointment compared to an earlier three-day timeline. Nexdigm Comments: Breather is provided to the liquidator as three days timeline was proving to be administratively difficult.
Timeline for preparation of stakeholders list reduced in certain cases	A proviso to sub-regulation (2) of regulation 30 is added pursuant to which if no claims are received till the last day of submission of a claim, the liquidator shall prepare a stakeholders list within 15 days therefrom as compared to the earlier 45 days timeline. Nexdigm Comments: This significantly shortens the time of liquidation in cases where no claims are received or likely to be received.
Timeline for distribution of proceeds to stakeholders reduced	The liquidator shall distribute the proceeds from realization within one month from the receipt of the amount to the stakeholders as compared to the earlier six-month timeline. Nexdigm Comments: This is a welcome step as the period of distribution is reduced and the liquidator and stakeholders need not wait until a period of six months is completed. Furthermore, it will ensure the conservation of assets value.
Completion of voluntary liquidation	Timeline for completion of voluntary liquidation revised as follows: <ul style="list-style-type: none"> • The liquidator shall endeavor to complete liquidation within 270 days from commencement, in cases where creditor approval has been received for the commencement of liquidation; and • The liquidator shall endeavor to complete liquidation within 90 days from commencement in all other cases. Nexdigm Comments: This provides greater flexibility where liquidation will have no adverse impact on stakeholders.

Provision	Comments
<p>Liquidator to submit compliance certificate along with the final report</p>	<p>The liquidator is now required to furnish a compliance certificate in Form H along with the final report in an application to the Tribunal. The compliance certificate contains a summary of the voluntary liquidation process, including the time taken for various actions by the liquidator (against the prescribed time limit), details of receipts and payment during the process, etc.</p> <p>Nexdigm Comments: The compliance certificate is in line with the certificate under CIRP. This enables the Tribunal to quickly ascertain the status of various actions undertaken or not in accordance with the law by the liquidator in a concise manner.</p> <p>More importantly, para 9 of the aforesaid compliance certificate states that <u>“All undischarged matters pending, if any, before any Court or Tribunal relating to corporate person have been reported to AA, along with the details of provision made to sufficiently meet the obligations arising from such pending litigations.”</u> This reiterates and envisages that the entity may be dissolved pending any litigation so long as sufficient provision is made against such pending litigation [Re SCA Hygiene Products India Pvt. Ltd in CP 981 of 2020].</p>

Our Comments

The Insolvency & Bankruptcy Code, 2016 provides a completely market-driven approach in the voluntary liquidation process to ensure faster outcomes at the least possible cost. The Amendment Regulations reflect the objective of IBBI to be further faster and more cost-effective. The reduced timelines provide ease of doing for the liquidator and stakeholders. The requirement of a compliance certificate is most welcome as it may not be possible for the Tribunal to go through bulky documents in

each case to verify the compliances by the liquidator. It is pertinent to note that the voluntary liquidation proceedings before Tribunal are not adversarial, and the dissolution of a corporate person by the Tribunal would be expeditious if the checklist of compliances is made available. However, the compliance certificate is onerous in nature and the liquidator should be more careful in following the due process of voluntary liquidation.

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