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Guidance on Common Issues Observed by IIIPI During Monitoring/ Inspections of IPs

PART II (LIQUIDATION)

(...Continue from the previous edition)

2.1. Observations related to Public Announcements:

Observations	Relevant Provisions of Law	Remarks
<p>i. Delay in Public announcement was observed.</p> <p>ii. Despite direction from AA to publish public announcement in specific newspaper, IP published in some other newspaper.</p> <p>iii. Public announcement not made in two newspapers</p>	<ul style="list-style-type: none"> Regulation 12 of IBBI (Liquidation) Regulations 2016 	<p>i. Delays in making public announcements and disregarding directives from the Adjudicating Authority (AA) regarding publication hold both procedural and substantive implications.</p> <p>ii. <i>Substantively</i>, delayed public announcements undermine transparency and hinder creditors' ability to assert their claims promptly, thus jeopardizing their recovery prospects. Moreover, prolonged uncertainty may deter potential investors or buyers, further complicating the liquidation process.</p> <p>iii. IP should ensure timely public announcement. The IP should publish corrigendum in case any correction is required in the Public Announcement as the incomplete public announcement leads to substantial lapse</p>

2.2 Observations related to Claim Verification & Distribution u/s 53 of the Code:

Observations	Relevant Provisions of Law	Remarks
<p>i. Claims not verified within timeline.</p> <p>ii. IP did not intimate the reasons in writing for rejection or partial admission of claim amount to the claimants.</p> <p>iii. List of stakeholders not filed on the IBBI website.</p> <p>iv. Non-maintenance of calculation/verification sheets of claims admitted.</p> <p>v. Verification of claim without verification of security interest.</p> <p>vi. No Intimation received on the decision for relinquishment of security interest within 30 days of the Liquidation Commencement date. Also, the same was not considered as part of the Liquidation estate by the Liquidator.</p>	<ul style="list-style-type: none"> • Section 40(2) of the Code • Regulation 31 of IBBI (Liquidation) Regulations, 2016 	<p>i. Procedurally, delays in verifying claims within the mandated timeline create uncertainty and delays the entire process. Furthermore, wherein the insolvency professionals (IPs) did not provide written reasons for rejecting or partially admitting claims undermines transparency and procedural fairness, potentially leading to disputes and litigation. The non-filing of stakeholder lists on the Insolvency and Bankruptcy Board of India (IBBI) website exacerbates transparency concerns, impeding Stakeholders' ability to access critical information.</p> <p>ii. <u>Substantively</u>, the absence of calculation/verification sheets for admitted claims and the verification of claims without verifying security interests compromise the accuracy and integrity of the liquidation process, jeopardizing creditor recovery.</p> <p>iii. The IP is expected to verify the claim and maintain transparency in the process by intimating/ communicating with the claimant along with reasons for non/partial admission of claim and maintain contemporaneous records for all decisions taken, the reason for taking the decision, and the information and evidence in support of such decisions.</p> <p>iv. IP shall maintain all documents wrt verification of all claims.</p>

2.3 Observations related to Stakeholders Consultation Committee:

Observations	Relevant Provisions of Law	Remarks
<p>i. SCC not formed within the timeline stipulated.</p> <p>ii. The procedure and gaps in notices for SCC meetings and sharing of minutes are like as highlighted in observations under CIRP Point 1.5 of this document.</p> <p>iii. The Liquidator did not seek advice from the SCC on matters related to the Auction process, Reserve Price and acceptance of EOI after the last date.</p> <p>iv. Liquidator did not seek a confidential undertaking before sharing the progress reports with the members of the Stakeholders’ Consultation Committee (SCC).</p> <p>v. Liquidator did not maintain proper written contemporaneous records reflecting the reason for liquidator taking a decision different than the advice of SCC.</p>	<ul style="list-style-type: none"> • Regulation 5(3) (c), 31A of IBBI (Liquidation) Regulations 2016 	<p>i. Procedurally, the failure to adhere to stipulated timelines and procedures undermines the efficiency and transparency of stakeholder engagement, potentially hindering timely decision-making and resolution progress. Substantively, the Liquidator's disregard for seeking advice from the SCC on critical matters such as the auction process and reserve price compromises the integrity and fairness of the liquidation proceedings, raising concerns about equitable treatment of stakeholders and optimal asset realization. Moreover, the absence of a confidential undertaking before sharing progress reports diminishes confidentiality protections, impacting stakeholder trust and potentially exposing sensitive information.</p> <p>ii. The IP shall present all agenda items in the subsequent SCC meeting immediately after any decision is made, appointment is made, or cost is incurred, without delay.</p> <p>iii. The first meeting of SCC shall be conducted with the same COC members as were there in CIRP process within 7 days of LCD till the time formation of SCC in place. The liquidator shall convene subsequent meetings within thirty days of the previous meeting, unless the consultation committee has extended the period between such meetings. Provided further that there shall be at least one meeting in each quarter. IP shall report differences in decisions to IBBI/AA as per the mandate and the format provided.</p> <p>iv. Mandatorily, in every SCC meeting, the liquidator shall present to the consultation committee: (a) the actual liquidation cost along with reasons for exceeding the estimated cost, if any; (b) the consolidated status of all the legal proceedings; and (c) the progress made in the process.</p>

2.4 Observations related to Appointment and Fee of Liquidator:

Observations	Relevant Provisions of Law	Remarks
<p>i. The fee of the liquidator calculated not in line with Regulation 4(2) of IBBI (Liquidation) Regulations, 2016 in terms of realisation. Overcharging of fees.</p> <p>ii. Liquidation cost was not deducted from the sale proceeds.</p> <p>iii. Detail of fee of the liquidator was not disclosed in progress reports.</p> <p>iv. The fees of the Liquidator were not placed before the SCC for its approval if already not placed and approved u/r 39D of CIRP regulations at the time of approving the Liquidation by the COC</p>	<ul style="list-style-type: none"> • Regulation 4 of IBBI (Liquidation) Regulations 2016 • Regulation 39D of IBBI (CIRP) Regulations 2016 • IBBI Circular No. IBBI/LIQ/61/2023 dated 28th September, 2023 • IBBI CIRCULAR No. IBBI/LIQ/71/2024 dated 18th April, 2024 	<p>i. Procedurally, the observed discrepancies in the calculation of liquidator fees, the omission of liquidation costs from sale proceeds, and the arbitrary exclusion of time periods for fee computation reflect systemic shortcomings in adherence to regulatory protocols. These procedural lapses undermine the integrity and fairness of insolvency proceedings, potentially affecting the distribution of assets and creditor satisfaction.</p> <p>ii. Collective procedural lapses, lack of transparency regarding fee disclosure in progress reports and the absence of requisite approvals for fee determinations indicate substantive deficiencies in oversight and accountability may create a substantive lapse.</p> <p>iii. The RP should continue to function till the order for the appointment of a Liquidator is passed by NCLT.</p> <p>iv. The fee of the liquidator calculated should be in line with Regulation 4(2) of IBBI (Liquidation) Regulations 2016</p>

2.5. Observations related to the Appointment of professionals:

Observations	Relevant Provisions of Law	Remarks
<p>i. For gaps in the appointment of professionals and guidance Please refer to Point 1.16(similar to CIRP)</p>	<ul style="list-style-type: none"> • Regulation 15 of IBBI (Liquidation) Regulations 2016 	<p>i. Procedurally, the gaps in the appointment of professionals and the absence of guidance create ambiguity and potential inconsistencies in the insolvency process. Furthermore, the failure to detail appointments, tenures, and cessations in progress reports adds to procedural uncertainties, hindering effective oversight and accountability.</p>

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<p>ii. Details of appointment, tenure of appointment and cessation of appointment was not mentioned in the Progress Report.</p> <p>iii. The Professionals continuing from the CIRP period were not reappointed with a detailed scope of work.</p>		<p>ii. Substantively, the continuation of professionals from the CIRP period without clear reappointments and defined scopes of work raises substantive concerns regarding expertise utilization and potential conflicts of interest.</p> <p>iii. IP shall be able to always demonstrate in cases where assistance has been taken by IP by the professionals appointed, through written contemporaneous records for all decisions taken, the reason for taking the decision, and the information and evidence in support of such decisions.</p>
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