

## Help Us to Serve You Better

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

(.....Continued from the previous edition)

#### PART II (LIQUIDATION)

##### 2.6. Observations related to Valuation:

Observations	Relevant Provisions of Law	Remarks
<p>i. There was a substantial time gap between the valuation reports conducted during the CIRP and liquidation commencement date. Despite this, the Liquidator proceeded with the same valuation reports without consulting the Stakeholders Consultation Committee (as required under Regulation 31A) to consider fresh valuations.</p> <p>ii. For gaps in appointment of valuers Please refer to 1.12 of this document (similar to CIRP).</p> <p>iii. The valuers were not appointed by the Liquidator because the IRP/RP did not appoint the Valuers during CIRP, despite of the fact that assets were appearing in the balance sheet specifically for securities and financial assets</p>	<ul style="list-style-type: none"> <li>Regulation 15 &amp; 35 of IBBI (Liquidation) Regulations 2016</li> </ul>	<p>i. A procedural gap of approximately 12 months between the commencement of the liquidation process and the date of valuation reports, especially during the COVID-19 period, may have a substantive impact on asset valuations in the real estate sector. The pandemic's effects on market conditions could have caused significant fluctuations in property values, affecting the accuracy and fairness of the valuations. Additionally, any procedural discrepancies in the appointment of valuers, as referenced in section 1.12 of the relevant document, must be addressed to ensure compliance.</p> <p>ii. The liquidator shall convene SCC meeting to discuss the methodology of the valuers before arriving at the estimated Values. and in case difference in valuation reports of two valuers are more than 25% than the Liquidator shall appoint third valuer as mandated. Also, wherein the valuation of the asset is not conducted during CIRP, the liquidator in consultation with SCC may form an opinion to conduct fresh valuation within 7 days of the Liquidation Commencement Date.</p>

**2.7. Observations related to Sale of Assets, Auction and eligibility of 29A:**

Observations	Relevant Provisions of Law	Remarks
<p>i. Calculation of 90 days from the Letter of Intent for payment to be made by the bidder as per clause 12 of Schedule 1 of the Liquidation Regulations.</p> <p>ii. Regulations.</p> <p>iii. Delay in issuance of sale certificate</p> <p>iv. The liquidator did not check eligibility u/s 29A for selling any asset of the corporate debtor to anyone who is ineligible to present resolution plan in line with Section 35(1) (f) of the Code.</p> <p>v. The Auction notice did not provide a reasonable time to bidder to submit the Bid</p> <p>vi. The Bidders bid accepted after the last date without any approval/apprise to the SCC.</p> <p>vii. The same bidder was declared as the highest bidder in the 2nd round of auction without apprising to the SCC about the fact that the same Bidder had not submitted the EMD in the previous round of auction.</p>	<ul style="list-style-type: none"> <li>Clause 11 and 12 of Schedule 1 of the Liquidation Regulations.</li> <li>Section 35(1)(f) of the IBC</li> </ul>	<p>i. Procedurally, the identified issues highlight significant deviations from established protocols within the insolvency framework. The miscalculation of payment timelines, delays in issuing sale certificates, and inadequacies in auction notices demonstrate a lack of adherence to prescribed procedures, leading to potential inconsistencies and inefficiencies in the resolution process.</p> <p>ii. Substantively, the failure to verify bidder eligibility under Section 29A and the lack of transparency in bid acceptance procedures raise fundamental concerns regarding fairness and integrity. By allowing bids to be accepted without requisite approvals and neglecting to disclose critical information to stakeholders, the substantive integrity of the process is compromised, potentially resulting in outcomes that are not in the best interest of creditors or the corporate debtor.</p>

**2.8. Observations related to Model Timelines:**

Observations	Relevant Provisions of Law	Remarks
<p>i. Delay in filing of reports/ applications before AA.</p> <p>ii. Completion of Liquidation process within timelines.</p>	<ul style="list-style-type: none"> <li>Regulation 47 of IBBI (Liquidation) Regulations 2016</li> </ul>	<p>i. Procedurally, the observed delays in filing reports and applications before the Adjudicating Authority (AA) disrupt the smooth flow of the liquidation process.</p>

<p>iii. Liquidator do not file application to AA wherein Liquidation is not completed within one year.</p> <p>iv. In addition to above, delay in all other model timelines were observed which ultimately impact the overall timelines for completion of Liquidation process.</p>		<p>ii. Substantively, these delays undermine the substantive objectives of the insolvency framework by impeding the impact the overall timelines for completion of Liquidation process. timely distribution of assets to creditors. Additionally, the systemic impact of delays in meeting the model timelines exacerbates the challenges faced in liquidation proceedings, eroding trust in the effectiveness of the process.</p> <p>iii. Time is the essence of IBC, IP to ensure the timelines prescribed under the Code &amp; Regulations for the smooth process.</p>
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**2.9. Observations related to preservation of Records:**

Observations	Relevant Provisions of Law	Remarks
<p>i. In the event of replacement, the Liquidator hand over the records to the newly appointed liquidator and did not maintain a copy of the liquidation process records for his purposes</p> <p>ii. The liquidator do not preserve records in line with Regulation 45A(2) of Liquidation Regulations.</p> <p>iii. The liquidator did not maintain Registers as mandated in the Regulations</p> <p>iv. The Receipt and payment accounts do not have supportings in Invoices for the payments</p>	<ul style="list-style-type: none"> <li>• Regulation 45A of IBBI (Liquidation) Regulations 2016</li> <li>• Regulation 7(2)(g) of IBBI (IP) Regulations, 2016</li> </ul>	<p>i. Procedurally, the lack of record preservation by the liquidator, particularly in the event of replacement, raises concerns regarding the continuity and accessibility of crucial information throughout the liquidation process.</p> <p>ii. Substantively, the failure to preserve records in accordance with Regulation 45A (2) of the Liquidation Regulations undermines the transparency and accountability of the liquidation process. This lack of record-keeping jeopardizes the integrity of the proceedings and may impede the fair distribution of assets to creditors.</p>

<p>v. The Liquidator was unable to retrieve the documents preserved while seeking records during Inspection by IPA</p> <p>vi. The Liquidator did not maintain the written contemporaneous records of all his decisions as mandated in the code of conduct</p>	<p>iii. Failure to provide records upon request by the IPA/IBBI constitutes a substantial lapse. Similarly, preserving records but being unable to retrieve them is considered non-preservation of records.</p> <p>iv. The IP must ensure the preservation of all records as per the list suggested in the Regulations</p>
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**2.10. Observations related to the Liquidation Estate:**

Observations	Relevant Provisions of Law	Remarks
<p>i. Liquidation estate not formed by the IP in line with Section 36.</p> <p>ii. Liquidator did not presume that the assets covered under the security interest as a part of liquidation estate as secured creditor did not intimate its decision within thirty days from the liquidation commencement date.</p> <p>iii. Liquidator considered asset as liquidation estate wherein the corporate debtor had given possession to an allottee in a real estate project and such asset was neither considered for valuation nor formed part of the liquidation estate of the corporate debtor. It reflects ambiguity in the approach of Liquidator.</p>	<ul style="list-style-type: none"> <li>• Section 36 of the Code and Regulation 21A of IBBI (Liquidation) Regulations 2016</li> </ul>	<p>i. Procedurally, the liquidation estate as mandated by Section 36 raises significant concerns regarding the proper initiation and management of the liquidation process. Additionally, the liquidator's omission to include assets covered under security interests in the liquidation estate due to the secured creditor's non-response within the specified timeframe highlights procedural lapses that could impede the fair and transparent distribution of assets.</p> <p>ii. Substantively, the liquidator's decision to exclude assets from the liquidation estate based on the possession granted to an allottee in a real estate project may have substantive implications on creditor rights and the overall distribution.</p>

**2.11. Observations related to filing of Application/Reports with Adjudicating Authorities:**

Observations	Relevant Provisions of Law	Remarks
<p>i. The Liquidator did not file any application to AA to explain reasons for delay beyond 1 year.</p> <p>ii. The liquidator did not submit a compliance certificate along with the final report before dissolution to AA</p> <p>iii. The liquidator did not submit Progress Reports to AA/IBBI within fifteen days after the end of every quarter.</p> <p>iv. The liquidator did file a preliminary report within the stipulated timeline under the Liquidation Regulations.</p> <p>v. The Progress Report did not contain all relevant details as mentioned in the Regulations.</p> <p>vi. Delay in filing list of stakeholders before AA.</p> <p>vii. Liquidator did not file final report to the AA in case of Sale as going concern during Liquidation was approved by AA</p>	<ul style="list-style-type: none"> <li>• Regulations 13, 15, 44, 45 of IBBI (Liquidation) Regulations 2016</li> </ul>	<p>i. Procedurally, the liquidator did not adhere to statutory requirements, such as filing applications to the Adjudicating Authority (AA) to explain delays in liquidation timeline beyond one year and submitting progress reports to the AA/IBBI within stipulated timelines, raises concerns regarding procedural compliance and transparency in the liquidation process. Moreover, the delays in filing the list of stakeholders before the AA.</p> <p>ii. Further compounding these procedural shortcomings, potentially leading to disruptions and inefficiencies, the absence of compliance certificates along with the final report and the incomplete details in progress reports undermine the substantive integrity and accountability of the process.</p> <p>iii. The Progress report may be filed by way of any other documents/application as per the standard practice of the concerned AA. with AA within the timelines provided in the Regulations and in case required by the AA by way of an application.</p>

**2.12. Observations Related To The Duties Of The Liquidator & Managing The Bank Account During Liquidation:**

Observations	Relevant Provisions of Law	Remarks
<p>i. The Liquidator did not open a separate bank account in the name of CD.</p> <p>ii. The liquidator did not complete/maintain books of accounts of the CD.</p> <p>iii. The liquidator did not prepare/submit preliminary report, asset memorandum, progress reports, sale report, minutes of the SCC meeting, and final report prior to dissolution in the manner specified before the AA.</p> <p>iv. Undertaking from the stakeholder not sought before sharing preliminary report, asset memorandum, progress reports, sale report, minutes of SCC meeting, and final report prior to dissolution.</p> <p>v. Liquidator did not make any application before AA to seek co-operation from the personnel of the CD, whenever required.</p> <p>vi. The liquidator did not file relationship disclosure of the professional appointed.</p>	<ul style="list-style-type: none"> <li>• Regulations 6, 41 of IBBI (Liquidation) Regulations 2016</li> </ul>	<p>i. The procedural lapses by the liquidator may have substantive impacts on the liquidation process. Firstly, the failure to open a separate bank account in the name of the Corporate Debtor (CD) affects financial integrity and transparency requirements.</p> <p>ii. Secondly, not completing or maintaining the books of accounts of the CD undermines accurate financial reporting and accountability. Thirdly, the liquidator's omission to prepare and submit crucial reports—such as the preliminary report, asset memorandum, progress reports, sale report, minutes of the Stakeholders Consultation Committee (SCC) meeting, and the final report—compromises the thoroughness and compliance of the liquidation process. Additionally, not seeking undertakings from stakeholders before sharing these reports disregards confidentiality protocols.</p> <p>iii. The liquidator shall comply and file a refund to the statutory Authorities before the dissolution of the CD.</p>

2.13. Observations Related to PUF E Transactions

Observations	Relevant Provisions of Law	Remarks
<p>i. Liquidator did not determine PUF E transactions considering the fact that IRP/ RP did not make an opinion on the same despite the fact that he had reasons to form an opinion on the same</p> <p>ii. Undue delay in filing application for PUF E transactions to AA</p> <p>iii. Undue delay in dissolution of the CD considering pending application for PUF E transaction with AA</p> <p>iv. Non-filing of Sec 19(2) application for not receiving the books of accounts from the Suspended Board of Directors</p>	<ul style="list-style-type: none"> <li>Regulations 31A of IBBI (Liquidation) Regulations 2016</li> <li>Sections 43 and 51 and Section 66 of the Code</li> </ul>	<p>i. The Liquidator may seek from SCC to decide the manner in which proceedings in respect of preferential transactions, undervalued transactions, extortionate credit transactions or fraudulent or wrongful trading, if any, shall be pursued after the closure of liquidation proceedings and the manner in which the proceeds, if any, from these proceedings shall be distributed.</p>

(to be continued...)



**Indian Institute of Insolvency Professionals of ICAI**  
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**EXECUTIVE DEVELOPMENT PROGRAM  
CROSS BORDER INSOLVENCY  
(For IPs)**

**HIGHLIGHTS**

UNCITRAL MODEL LAW → CBIRC RECOMENDATION → CASE STUDIES

CROSS-COUNTRY COMPARISON → LANDMARK JUDGEMENTS

**CPE: 8 Hours** | **Duration: 14 Hours (over 2 days)** | **Mode: Online** | **Limited Seats**