Indian Institute of Insolvency Professionals of ICAI (IIIPI)

New Delhi

Background Guidance on

Valuation Process under Insolvency and Bankruptcy Code, 2016 – Best Practices

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VALUATION

"Valuation that is not backed up by a story is both soulless and untrustworthy and that we remember stories better than spreadsheets"- **Aswath Damodaran, Professor - Finance at the Stern School of Business, New York University, USA.**

In today's dynamic world every organisation feels the need to know the worth of value of its assets, business or even the company. Valuation in simple terms means the economic value or worth of a business, asset or company.

Why Valuation?

A. Valuation is required in many contexts including investment analysis, capital budgeting, merger and acquisition transactions, financial reporting, taxable events to determine the proper tax liability, and in litigation. Moreover, valuation provides a baseline for future targets and a course for future. Valuation is the epicenter of financial decision making.

B. The regulations on business valuation in India have evolved swiftly in the last one and a half decades and has greatly impacted transactions. The Regulators in India have framed regulations under different Laws requiring valuations to be obtained for different purposes to take care of mis-pricing concerns from Tax, Forex control and Public Shareholders perspectives. Valuation requirements are also there under the Companies Act, Insolvency Code etc. to derive the fair value of assets/liabilities. Financial Reporting also requires Valuations for Accounting of ESOP, Investments, Impairment purposes etc. so that the balance sheet represent a true and fair view of the assets/liabilities of companies.

C. Valuation is required as per following Laws in India depending upon the nature of the transaction:

   I. **Fresh issue and Transfer of shares:** Valuation requirement under Company Law, Income Tax Law, Foreign Exchange Management Act (FEMA) & Regulations thereunder and Securities Exchange Board of India (SEBI) regulations.

   II. **Business combinations/Mergers & Amalgamations:** Valuation requirement under Financial Reporting, Income Tax Law, Company law and SEBI regulations.

   III. **Employee Stock Options (ESOP) and Sweat Equity:** Valuation requirement under Financial Reporting, Income Tax Law and Company Law.

   IV. **Insolvency & Bankruptcy Code:** Valuation requirement as per Insolvency & Bankruptcy Code and its regulations.

   V. **Financial reporting:** Fair Value is required for Financial Reporting in accordance with Indian Accounting Standards (Ind AS).

Objective of Valuation under IBC

A. Valuation exercise is one of the critical activities under IBC and assumes importance towards ensuring time-bound resolution, value maximization and balancing of rights of stakeholders.

B. Under the Insolvency and Bankruptcy Code, 2016 ("IBC"), valuation of assets is one of the core features dealt with in a corporate insolvency resolution process ("CIRP"). The process of valuation conducted by "Registered Valuers" or valuation professionals helps determine the current value of the assets which are to be liquidated. The requirement of valuation under the

IBC is an important concern for Registered Valuers in all three asset classes: plant and machinery ("P&M"), land and building ("L&B"), as well as securities or financial assets.

C. A key objective is ***to be transparent and have credible determination of value of the assets to facilitate comparison and informed decision making by the committee of creditors***.

D. The importance of accurate valuation under IBC are as follows:

   I. Valuation Report guides the actions of the Insolvency Professional, COC & NCLT;
   II. Fair Value and Liquidation Value are frequently used by IBBI for statistical purpose to gauge performance of IBC;
   III. A Registered Valuer typically competes with market and endeavours to estimate a value which is more authentic than price of an asset;
   IV. Valuation report is a common cause of dispute for Financial or Operational Creditor and may cause delay in Corporate Insolvency Resolution Process/ Liquidation Process;
   V. Difference in facts between two valuation reports can be trouble for IRP/RP.
   VI. Few of the possible effects of under/ over valuation is as under:

      (a) <u>Possible effects of Under Valuation:</u>
      (i) **Abnormal gain** by resolution applicant or Promoters of the company;
      (ii) **Loss of Realisable Value** for Financial and Operational Creditors;
      (iii) Possible **loss of reputation** for Registered Valuer.

      (b) <u>Possible effects of Over Valuation</u>
      (i) **Rejection of Resolution Plan** which could have been approved;
      (ii) **Delay** in Liquidation Process due to requirement to repeat process;

Types of Valuation under IBC

A. **Fair Value**: Regulation 2(hb) of CIRP Regulations defines Fair Value as *"estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion".*

B. Liquidation Value

I. Regulation 2(k) of CIRP Regulations defines Liquidation Value as "*estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date*".

II. *When a Corporate Debtor is under liquidation, the term "liquidation value" may refer to a valuation of assets when the seller is compelled to sell wherein a reasonable period of time is given to find a purchaser(s) (less than required marketing period).*

III. The said definition in its bare reading indicates that liquidation value is the notional realizable valuation of the corporate debtor's assets if the corporate debtor's assets were liquidated on the insolvency commencement date (and not the value that may be realized under a resolution plan).

IV. Characteristically, an asset can have different value under different scenarios.

C. Realisable Value

Realisable value has not been defined under IBC or it's regulations or even under IVS. However, the general understanding of the 'Realisable Value' is the value arrived after reducing the cost incurred to sell the assets from fair or liquidation value, as the case may be**.**

The Insolvency Professionals shall note that the CIRP Regulations mentions about determination of the fair and liquidation value of the Corporate Debtor, whereas the Liquidation regulations mentions about determination of the realisable value of the assets or the businesses under various scenarios of sale.

It may further be noted that both the Fair Value and Liquidation Value as defined under IBC mentions that it is the estimated realizable value of the assets. This gives the impression that Fair Value is Liquidation Value which is not correct. The estimated Realisable Value of the assets of the CD in case of Fair Value is considering a willing buyer and a willing seller and after proper marketing (meaning giving sufficient marketing time) whereas the estimated Realisable Value of the assets of the CD in case of Liquidation Value is considering that the seller is compelled to sell given a reasonable marketing time (typically less than sufficient marketing time). This premise differentiates the Fair Value and Liquidation Value.

Section - I

Appointment of Valuers

Under Insolvency & Bankruptcy Code ("IBC") and Insolvency and Bankruptcy Board of India Regulations, 2016 – Registered Valuer means a person registered in accordance with the Companies Act, 2013 and rules made thereunder.

A. Identifying types of assets and selection of Registered Valuer for inviting quotations:

I. Insolvency Professional should identify the types of assets based on the financial statements of the Corporate Debtor, nature of business of the Corporate Debtor and divide them into the following asset class:

(a) Land and Building
(b) Plant and Machinery
(c) Securities and Financial Assets (SFA)

As per the Companies (Registered Valuers and Valuation) Rules, 2017: *"asset class" means a distinct group of assets, such as land and building, machinery, and equipment, displaying similar characteristics, that can be classified and requires separate set of valuers for valuation.*

A sample prototype of Balance Sheet (Asset side) is illustrated below for ease of understanding the asset classes:

Sr. No.	Particulars	Book value
1	**Non-current assets**	
	(a) Property, Plant and Equipment	XXX
	(b) Right of use assets	
	(c) Capital Work in Progress	X
	(d) Intangible assets	X
	(e) Financial Assets	
	Investments	X
	(f) Deferred Tax assets	XX
	(g) Other Non-Current Assets	XXX
2	**Current assets**	
	(a) Inventories	XX
	(b) Financial Assets	
	(i) Trade Receivables	XX
	(ii) Cash and Cash Equivalents	XX
	(iii) Bank balances other than (ii) above	X
	(iv) Other	X
	(c) Current Tax assets (gross)	X
	(d) Other Current Assets	XX
	Total Assets	**XXXX**

Asset Class- Land and Building		
Sr. No.	**Asset Class**	**Book value**
1	Land	XX
2	Building	XXX
3	Capital work in progress- related to Land and Building	XX
4	Right of use assets- related to land and building	X
	Total	**XXX**
Asset Class- Plant & Machinery		
1	Plant & Machinery	XXX
2	Furniture & Fixture	X
3	Office Equipment	X
4	Vehicles	X
5	Capital work in progress- related to Plant and Machinery	XX
6	Right of use assets- related to Plant and Machinery	X
	Total	**XXXX**

Asset Class- Securities and Financial Assets		
1	Non- Current Investments	X
2	Deferred Tax assets	XX
3	Other Non- Current Assets	XXX
4	Inventories*	XX
5	Trade Receivables	XX
6	Cash and Cash Equivalents	XX
7	Bank balances	X
8	Other financial assets	X
9	Current Tax assets	X
10	Other Current Assets	XX
** Joint efforts of Tangible assets valuers and SFA valuers are recommended based on the nature of asset.*		

II. Insolvency Professional should study the Balance sheet of the Corporate Debtor. The Valuer should be appointed keeping in view the (1) nature of business, (2) nature of assets held by the Corporate Debtor and (3) size of the corporate Debtor. Above tables should be helpful for selection of the Registered Valuers for specific asset class. For larger companies having various types of assets like real estate, machinery, manufacturing, financial assets, etc, it is recommended that the IP should consider appointing a Registered Valuer Entity, which is registered for all three asset classes.

III. It is important for an IP to check that a Registered Valuer can undertake valuation of assets only for the class of asset for which he/she is registered.

IV. A list of Registered Valuers and Registered Valuers Entity is available on the website of the Insolvency and Bankruptcy Board of India[1].

B. Statutory provisions enabling the appointment of Registered Valuers under IBC

I. Section **59(3)(b)(ii)** of IBC states that where a proposal for Voluntary winding up has been made by a Company, the Declaration of Insolvency given by Directors shall be accompanied with the Valuation report issued by Registered Valuer.

II. Section **46(2)** of IBC states that in an application for avoiding a transaction as 'undervalued', the Adjudicating Authority may require an independent expert to assess evidence relating to the value of the transactions.

III. Regulation **27** of the CIRP Regulations mandates the appointment of two registered valuers by the Resolution Professional within seven days of his appointment but not later than forty-seventh day of CIRP Commencement date.

IV. Regulation **35** of the CIRP Regulations states that:

(a) the two Registered Valuers are to be appointed;

(b) if the two estimates of a value in an **asset class** are **significantly different**, or on receipt of a proposal to appoint a third Registered Valuer from the committee of creditors, the resolution professional may appoint a third Registered Valuer for an asset class;

(*"significantly different" means a* ***difference of twenty-five per cent****. in liquidation value under an asset class and the same shall be calculated as (L1-L2)/L1, where,*
L1= higher valuation of liquidation value
L2= lower valuation of liquidation value)

(c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value.

V. Regulation **17** of CIRP Regulation states that in case there is a change of IRP to RP and the appointment of resolution professional is delayed due to any unforeseen reason then Regulation 17 requires IRP to perform the function of RP from the fortieth day of Insolvency Commencement Date, in that case IRP shall ensure appointment of two Registered Valuer before the forty-seventh day of Insolvency Commencement.

VI. Regulation **35** of the Liquidation Regulations states that where the valuation has been conducted under regulation 35 of the CIRP Regulations or Regulation 34 of Fast Track Regulations, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations, else, if the Liquidator is of the view that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, appoint two registered valuers.

VII. Regulation **26** of Fast Track CIRP Regulations states that the resolution professional shall within seven days of his appointment, appoint one Registered Valuer to determine the fair value and the liquidation value of the corporate debtor in accordance with Regulation 34.

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[1] https://www.ibbi.gov.in/service-provider/rvs
https://www.ibbi.gov.in/service-provider/rvo-entities

VIII. Regulation **34** of Fast Track CIRP Regulations states that the Registered Valuer appointed under Regulation 26 shall submit to the resolution professional an estimate of the fair value and Liquidation value in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor.

IX. Regulation **3(1)(b)(ii)** of Voluntary Liquidation Regulations states that the Declaration of Insolvency given by Directors shall be accompanied with the Valuation report issued by Registered Valuer.

C. Best Practices for Appointment of Registered Valuers

I. Process for Appointment of Valuers

(a) **Invitation of Quotations:-**

(i) The IRP should invite the quotations from multiple Registered Valuers during the initial weeks of CIRP Commencement.

(ii) IRP should use its wisdom to decide on the Registered Valuer for submitting the quotations depending upon the complexity and size of the Corporate Debtor.

(b) **Seeking the Approval of COC**:-

(i) Basis Regulation 34 of the CIRP Regulations, the professional fees payable to the Registered Valuers forms part of Insolvency Resolution Process Cost, therefore, the RP shall take the approval of Fees to be paid to the Registered Valuers.

(ii) It does not require RP to take the approval for the appointment of specific Registered Valuer in the COC Meeting which states that the RP is free to decide on the Registered Valuer within the cost approved by the COC.

(c) Appointment of Registered Valuers:

(i) Regulation 27 of CIRP Regulations states that the Resolution Professional shall, within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date, appoint two Registered Valuers to determine the fair value and the liquidation value of the corporate debtor. In case the Resolution Professional is not appointed, Interim Resolution Professional to continue to function as the Resolution Professional until appointment of Resolution Professional.

(ii) ***However, following changes are proposed in the Discussion paper(s) recently issued by IBBI (yet to be notified):***

In the Discussion paper dated 15th February 2022 on "Engagement and appointment of professionals in a corporate insolvency resolution process", it is proposed that a sub-regulation (5) be added under regulation 27 of the CIRP Regulations and it shall state the following:

"(5) The interim resolution professional or the resolution professional, as the case may be, shall perform the following actions before making an appointment under this Regulation:

(a) The request for appointment of professional must be laid before the COC for ratification.
(b) Such request for appointment must be accompanied by a statement in writing providing the reason and justification for the appointment by way of cost benefit analysis, the scope of work assigned, the absence of such services in the corporate debtor, the manner of selection and reasonableness of cost for such service.
(c) The request must also be accompanied by a declaration by the IP that,
(i) he has exercised reasonable due diligence before proposing such appointment
(ii) the appointment is not of a related party
(iii) he has obtained an undertaking that the same professional(s) will not associate himself, in any way, with other stakeholders involved in the process, and
(iv) requisite disclosures have been made regarding such appointments."

II. Incorporating Confidentiality

(a) During the Valuation Process, varied data of financial as well as non-financial nature is shared by the Insolvency Professional with the Registered Valuers, which may include propriety information.
(b) It is necessary to incorporate a Non-disclosure Clause in the appointment letter of the Registered Valuers to avoid misuse of information.
(c) The Non-disclosure clause may include but not limited to the following:-
 (i) *Advise not to disclose any confidential information at any stage.*
 (ii) *An undertaking to:*
  a. maintain confidentiality;
  b. keep confidential information safe and secure;
  c. use confidential information solely for the purpose of considering, evaluating, negotiating or concluding aspects of the assignment and not for any other purpose;
  d. comply with provisions of law for the time being in force relating to confidentiality and insider trading;
  e. protect any intellectual property of the Company;
  f. not to disclose any confidential information / relevant information to any third party/person or entity with exceptions like it is made publicly available or is disclosed with consent or is required under law.
  g. remain liable for any unauthorized disclosure by any such person or entity.
(d) Effective period for the confidentiality condition: It will remain valid even after the completion of the assignment.

III. Compliance to Regulation 27 of the CIRP Regulations

Regulation 27 restricts following person to be appointed as the Registered Valuer:
i) a relative of the resolution professional;
ii) a related party of the corporate debtor;
iii) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or

iv)a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.

Resolution professional while appointing the Registered Valuers should take the declaration from them that they are complying to Regulation 27 and the same may be taken in the appointment letter itself.

IV. Disclosure of relationship as per IBBI Circular No. IP/005/2018

IBBI Circular No. IP/005/2018 requires that insolvency professional shall ensure disclosure of the relationship by every professional engaged by him, to be filed with concerned IPA. Accordingly, a disclosure of relationship could be taken along with the Appointment letter from the Registered Valuer. For details on the said disclosure, kindly refer *Example format of Appointment Letter attached as* ***Annexure- A.***

Section - II

Information Sharing with the Valuer

As per Section 17(2)(d) of IBC read with Regulation 4 of CIRP regulation on "Access to books", RP has the access to all the books, records, information, and documents as required for discharge of the duties. Since, the RP has the access to all the records, hence, he is expected to share all the information for facilitating the valuation process.

Timely provision of information to the Registered Valuers would help in timely completion of valuation and thereby achieving the timely decision making in the CIRP and Liquidation Process.

A. Timelines for Completion of Valuation process, which requires timely action from RP for information sharing with the Registered Valuer

I. **In CIRP**

As per the model timeline as applicable currently, the Resolution Plans are to be received within 135 days of commencement of CIRP. Out of these 135 days, considering the outer limit for appointment of Registered Valuer, i.e. 47 days, then the entire exercise of valuation needs to be completed in 88 days which shall include the Information sharing, physical visits, preparation of draft report and submission of final report.

However, the discussion paper recently released by IBBI suggests that a timeline should be inserted in the Code & its regulations for receipt of Valuation Report by IRP/ RP to avoid delay in the receipt of report and subsequently delay in the process. The timeline suggested for the same is T+90 days (where T is the date of commencement of CIRP).

II. **In Liquidation**

In Liquidation Process, Liquidator is required to submit an Asset Memorandum within 75 days of Liquidation Commencement Date with the Hon'ble NCLT containing the Valuations. Hence the entire activity needs to be completed within Maximum 75 days including appointment of Registered Valuers.

B. Best practices in sharing the information with the Registered Valuers

I. Given the stringent timelines, it is recommended that the RP or Liquidator should start collecting the information, data required for the valuation exercise from the initial phase of CIRP/Liquidation. Usually RP/ Liquidator faces challenges in collation of information, therefore RP/ Liquidator may collect the available data on basis of best efforts from Corporate Debtor, Creditors, public portals, etc. Corporate Debtor and creditors must provide all the relevant information to the IP, which in turn would be provided by IP to Registered Valuers.

II. Valuation is a continuous exercise and therefore, continuous coordination should be ensured between the RP/ Liquidator and Valuers to avoid any omission in sharing of information or to update valuer upon occurrence of any major events.

III. Authenticity of any Valuation Report depends upon the type of information shared with the Registered Valuer. Hence, the authenticity of the documents shared with the Registered Valuer needs to be verified as the Registered Valuer is not responsible and makes no representations for the accuracy, completeness or authenticity of the records or information available to him. Therefore, the IRP/RP shall make sure that the Registered Valuer is provided with the accurate and reliable information.

IV. The information required for the valuation depends upon the varied factors such as nature of business, size of business, type of assets etc. However, there are certain inputs which are required for the valuation process irrespective of varied factor as indicated in following paras. IP should endeavour to collate all these information at the earliest so that the valuation exercise may be initiated in a timely manner.

V. ***In a recent amendment as on 14th June, 2022 in the CIRP Regulations***, *the creditor shall provide to the IRP or RP*, as the case may be, the information in respect of assets and liabilities of the corporate debtor from the *last valuation report*, stock statement, receivables statement, inspection reports of properties, audit report, stock audit report, title search report, technical officers report, bank account statement and such other information which shall assist the IRP or RP in preparing the information memorandum, *getting valuation determined* and in conducting the CIRP.

VI. The below list is an inclusive but not an exhaustive list on the information to be shared with the Registered Valuers:

(a) Memorandum of Association and Articles of Association of CD;
(b) Annual Report for past three years;
(c) Audited/Provisional financial Statements as on CIRP/Liquidation Commencement date;
(d) Brief profile of the company;
(e) Past Project Report, Valuation Report, TEV reports, etc., if any;
(f) Secretarial compliance document including ROC Charge forms;
(g) Any sanction letter and mortgage deeds for loans taken by the company;
(h) Financial projections (business plan) carried out by any third-party agencies / internal management for at least 5 years along with supporting assumptions;
(i) Information about any special benefits e.g., exempted taxes, subsidies etc. applicable to the company;

Serial No	**Area**	**Information required**
1	Property, Plant & Equipment (“PPE”)	Land & Building, Plant & Machinery, Furniture & Fixtures, IT equipment, Vehicles etc. generally form part of PPE. Depending upon the nature of the assets, the following details are required by the Registered Valuer: - Fixed asset register as on valuation date; - Clarity about Original / Revaluation numbers captured in Fixed Asset Register - Report on physical location, verification, and mapping of assets with Fixed Asset Register - Summary of Land area with details about type of ownership, area, unit of measurement etc. - Documents such as Layout, Title Deed, Sale Deed/Lease Deed, Allotment Letter, Concession Agreement and other subsequent agreement executed. - Property tax bills, rent receipts, etc. - Insurance policies taken for fixed assets.

		- Information/Data about the encroachment of assets. - Utilization level and Key performance parameters of the plant for last 5 years - Copy of Key Contracts like Power Purchase Agreement, Fuel Supply Agreement, Iron ore supply agreement, Raw material supply agreement, finished product sale tie-up, etc. if any. - Any other details deemed necessary.
2	Capital work-in-progress	- Details of Capital Work in Progress with its progress status as on the date of valuation and supporting documents like Contract Copy, Invoices, Purchase orders etc. - Details/ Specifications like make, model no., capacity, material of construction etc. for high valued assets. - Payment terms as per the defined milestones of the contract in CWIP. - Details of any amendment in the CWIP during execution of the project in terms of process or expenditure. - Details of onsite procured material.
3	Intangibles	Brands, Trademark, Goodwill, Customer relationship, patents etc generally form Intangible assets. Depending upon the nature of the assets, the following details are generally sought: - List, Nature and detailed description of the intangibles. - Potential projected cashflows associated with such intangibles. - Any other details deemed necessary.
4	Non- Current Investments	Investment in securities, mutual funds, Investment in subsidiary/associate/joint venture generally form other non-current investments. Depending upon the nature of the assets, the following details are generally sought: -Nature, details, and certificate of investments depending on the type of investment. - In case investment is made in any other entity, details of the investee company with the latest audited/ provisional financial statement, financial projection of the investee company. - Any other details deemed necessary.
5	Deferred tax assets	- Copy of Income Tax returns along with Computation of last 3 Financial Years.

		- Future projections of the business for next 5 years to assess the future availability of profits. -Working of Deferred Tax Asset/ Liability. -Ledger of DTA/ DTL as on valuation date.
6	Other Non-Current Assets	Loans and Advances, Deposits, Balance with revenue authorities, MAT credit, claims, etc., generally form other non-current assets. Depending upon the nature of the assets, the following details are generally sought: - Detailed break-up of asset and ageing analysis - Expected date of realization/comments on recoverability. - Copy of Ledger as on valuation date - Balance confirmation from the parties. - If the receivable is under litigation, current status of the matter, legal opinion, outcome of the appeal, recovery amount and management comment etc. - Agreement entered, if any. - Any other details deemed necessary.
7	Current Assets	Inventories, Trade receivables etc generally form current assets. Depending upon the nature of the assets, the following details are generally sought: - Ageing of the assets; - Provision created, if any. - Reason for long due balance. - Details of disputes along with current status of the matter, legal opinion, outcome of the appeal and recovery amount, management comment etc. - details of inventories lying at premises of third party along with ageing analysis. - Balance confirmations. - Any other details deemed necessary.
8	Cash & Cash Equivalents	The following details are sought for cash & cash equivalents: - Nature of the balance. - Bank statements along with bank confirmation & Bank Reconciliation Statement. - Cash certificate. - Details of any lien. - Any other details deemed necessary.

9	Other Current Assets	Loans and Advances, Deposits, Balance with revenue authorities, Claims, advance tax generally form Other Current Assets. Depending upon the nature of the assets, the following details are generally sought: - Detailed break-up of asset and ageing analysis. - Expected date of realization/ comments on recoverability of the receivable. - Copy of Ledger. - Balance confirmation from the parties. - If the receivable is under litigation, current status, legal opinion, outcome of the appeal and recovery amount, management comment etc. - Any other details deemed necessary.
10	Contingent Liability	List of contingent liability along with its nature, details, legal opinion, current status with management comments or any other details deemed necessary.

Section - III

Carrying Out Valuation Process

The approach and process adopted by each Registered Valuer may look similar on the outside but can significantly change the outcome in the valuation report when compared with similar/other reports. Therefore, it is important for the IP to understand how the valuation process has been carried out and following steps are usually adopted by the Registered Valuers to arrive at the valuation:

Suggestive steps to arrive at the valuation

A. Planning the Valuation Process

Valuer needs to plan entire valuation process in terms of time, efforts and resources that are required for each assignment.

B. Review of Appointment Letter

I. Understanding the Intended Use:

(a) Understanding the applicable regulation under which valuation is required like Regulation 27 read with regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or Regulation 35 of the IBBI (Liquidation Process) Regulations, 2016, etc.

(b) Understanding the purpose of valuation: The purpose for which the valuation assignment is being prepared must be clearly identified and documented as the purpose of the valuation will also influence or determine the basis of value to be used. e.g. Liquidation Valuation under the specified scenario from the six scenarios as mentioned below:

(i) An asset on standalone basis
(ii) The assets in a slump sale
(iii) A set of assets collectively
(iv) The assets in parcels
(v) The corporate debtor as a going concern
(vi) The business(s) of the corporate debtor as a going concern

II. **Understanding of Assets:** It includes understanding the type of assets covered (i.e. Land & Building, Plant & Machinery and Securities & Financials assets), type of industry/ business, physical spread of assets (i.e. location).

III. Understanding key information & limitations (if any):

(a) Corporate Debtor: Information related to Corporate Debtor is important when determining the form and content of the report. to ensure that it contains information relevant to their needs.
(b) COC & Other stakeholders: Information related to other intended users such as COC & Other stakeholders shall also be covered as part of report.
(c) Date of Valuation.
(d) Limitations on Physical inspection, Data availability etc.

(i) Limitation or restrictions on the physical inspection if any.
(ii) Limitation or restrictions on data availability if any.

(e) Expected date of completion of assignment

C. Gathering the background information and submission of Information Requirement List

Kindly refer "*Section II- Information sharing with the Valuers*" for detailed understanding.

D. Due diligence of received data/ information & Physical Inspection

I. **Investigations** made during the course of a valuation assignment must be appropriate for the purpose of the valuation assignment and the basis(es) of value.

II. **Sufficient evidence** must be assembled by means such as inspection, inquiry, computation and analysis to ensure that the valuation is properly supported. When determining the extent of evidence necessary, **professional judgement** is required to ensure the information to be obtained is adequate for the purpose of the valuation.

III. When a valuation assignment involves reliance on information supplied by a party other than the Registered Valuer, consideration should be given as to whether the information is credible or that the information may otherwise be relied upon without adversely affecting the credibility of the valuation opinion. Significant inputs provided to the Registered Valuer (e.g. by management/owners) should be considered, investigated and/or corroborated. In cases where **credibility or reliability of information** supplied cannot be supported, consideration should be given as to whether or how such information is used.

E. Documenting the findings of the study

Registered Valuer needs to document findings to formulate an opinion on arriving at appropriate valuation.

F. Determination of Valuation Parameters, Methods

I. Bases of Valuation

ICAI Valuation Standard 102 defines valuation bases as the indication of the type of value being used in an engagement. Different valuation bases may lead to different conclusions of value. Therefore, it is important for the *Registered Valuer* to identify the bases of value pertinent to the engagement. ICAI Valuation Standard-defined bases of value are indicated below:

(a) **Fair value:** Fair value is the **price** that would be received to sell an asset or paid to transfer a liability in an **orderly transaction** between **market participants** at the **valuation date**. Fair value assumes that the ***price*** is negotiated in a free market.

(i) ***Orderly transaction*** is a transaction that assumes exposure to the market for a period before the valuation date to allow for marketing activities that are usual and customary for transactions involving such assets or liabilities and it is not a forced transaction.

(ii) ***Market participants*** are willing buyers and willing sellers in the principal (or most advantageous) market for the asset or liability who are independent, knowledgeable, able, and willing.

(iii) ***Valuation date*** is the specific date at which the Registered Valuer estimates the value of the underlying asset.

(b) **Participant specific value**: Participant specific value is the estimated value of an asset or liability considering specific advantages or disadvantages of either of the owner or identified acquirer or identified participants.

(c) **Liquidation Value:** Liquidation value is the amount that will be realized on sale of an asset or a group of assets when an actual/hypothetical termination of the business is contemplated/assumed.

II. Premise of Value

Premise of Value refers to the conditions and circumstances how an asset is deployed. Some common premises of value are as follows:

(a) **Highest and Best use**: The highest and best use of a non-financial asset considers the use of the asset that is physically possible, legally permissible and financially feasible.

(b) **Going concern value**: Going concern value is the value of a business enterprise that is expected to continue to operate in the future.

(c) **As-is-where-is basis**: As-is-where-is basis will consider the existing use of the asset which may or may not be its highest and best use.

(d) **Orderly Liquidation**: An orderly liquidation refers to the realizable value of an asset in the event of a liquidation after allowing appropriate marketing efforts and a reasonable period to market the asset on an as-is, where-is basis.

(e) **Forced transaction:** Forced transaction is a transaction where a seller is under constraints to sell an asset without appropriate marketing period or effort to market such asset.

III. Other considerations: Synergies, Integration costs and Transaction costs.

IV. Valuation Approaches and Methods

Consideration must be given to the relevant and appropriate valuation approaches. One or more valuation approaches may be used in order to arrive at the value in accordance with the basis of value.

The principal valuation approaches are:

(a) Market approach,
(b) Income approach, and
(c) Cost approach

Registered Valuers are not required to use more than one method for the valuation of an asset, particularly when the Registered Valuer has a high degree of confidence in the accuracy and reliability of a single method, given the facts and circumstances of the valuation engagement.

However, more than one valuation approach or method should be considered and may be used to arrive at an indication of value, particularly when there are insufficient factual or observable inputs for a single method to produce a reliable conclusion.

Where more than one approach and method are used, or even multiple methods within a single approach are used, the conclusion of valuation based on those multiple approaches and/or methods should be reasonable and the process of analysing and reconciling the differing values into a single conclusion, without averaging, should be described by the Registered Valuer in the report.

Approach and methodology are broadly explained in ***Annexure- B.***

V. Caveats, Limitations, and Disclaimers

Need for Caveats, Limitations, and Disclaimers:

(a) A caveat is required as valuation is arrived at after factoring in multiple parameters and externalities.
(b) A limitation is required as Registered Valuer is unable to obtain sufficient information and explanations considered necessary for the purpose of the valuation.
(c) A disclaimer is required in a valuation report to mitigate the potential risk of the RV. The reasons for providing disclaimers in a valuation report are as under:

    (i) A disclaimer protects the rights of a RV by cautioning and dissuading others when using the contents of a valuation report.
    (ii) A disclaimer limits the liability of a RV since it serves both as a warning and a way to mitigate risk, a disclaimer protects a RV from liability. Anyone who reads the disclaimers should understand the risks involved in using the valuation report or acting upon the information that it contains.
    (iii) A disclaimer protects the RV from incurring liability or limits the liability of the RV from the actions of the company or management or insolvency professional at whose instructions the valuation has been carried out.

(d) A valuation report should not carry a disclaimer, which has potential to dilute the responsibility of the RV or makes the valuation unsuitable for the purpose for which the valuation was conducted.

(e) The Rules notified under the Companies Act, 2013 designates IBBI as the authority for development and regulation of the valuation profession. Rule 7 (m) provides that a RV shall comply with such other conditions as may be imposed by the authority. Rule 8 (3) (l) provides that the RV shall include caveats, limitations, and disclaimers in the valuation report, to the extent that they explain or elucidate the limitations faced by the RV.

(f) Detailed note on Caveat, Limitations and Disclaimers is given as ***Annexure- C.***

G. Arriving at first stage valuation

Once the findings are collated, they need to be analysed to arrive at first stage valuation. First stage valuation should be based on all the findings of study carried out in previous step. The first stage valuation must cover all the aspects such that very minimum or no modifications are required later.

H. Evaluating the valuation so arrived for secondary evidence and empirical testing

This stage is the most important stage. This is the stage where the Registered Valuer and his team need to thoroughly test the valuation done by them and challenge every aspect of the finding, such that, their valuation should stand the test of purpose for which it is prepared.

I. Drafting the valuation report

Once the valuation is arrived at, report needs to be prepared as a final deliverable for the client. The first draft of the report must be prepared extensively incorporating the specific elements of the assignment. Templatization in report creation should be avoided. Each report should be specific, relevant and to the point for the client. Detailed note on key points to be considered for Valuation Report is mentioned in **Section- IV** of this publication.

J. Finalizing the report by revisiting it for completeness and accuracy

Valuer shall ensure that report must provide right perspective and all perspectives are covered during preparation.

The RP may adopt the procedure of getting a draft report/presentation from the valuers wherein valuer is able to give a draft report/presentation to the RP on the key assumptions and methodology to be adopted by him. This will enable a check that the methodology and the assumptions adopted by both the valuers are not materially different to avoid delay in the process on account of the valuation. The existing legal provisions stipulate that valuation report is to be shared with the RP by the valuer and the RP on receipt of Resolution plan and undertaking of confidentiality should share the valuation report with the COC.

The valuation report and the approach being adopted for the same may be shared by the RP and or RV concerned with other stakeholders keeping in mind emerging jurisprudence and prevalent legal/regulatory provisions.

Section - IV

Valuation Report

This is the final deliverable by the Registered Valuer.

A valuation report should be the ambassador of valuer's work and his professional skill and expertise. A well drafted report not only serves the purpose of conveying the valuation mentioned in it, but also creates the goodwill in the mind of readers about the valuer and his firm.

There is not a particular form or format of report; however, the report must be sufficient to communicate to the intended users the scope of the valuation assignment, the work performed, and the conclusions reached.

An inclusive and not exhaustive list on contents of Valuation Report is provided as under, which may be checked by the IP on receipt of Valuation Report:

A. **Background Information of the asset being valued**
The Registered Valuer may provide background information of the company in the valuation report; assets being valued in order to give a fair idea to the reader about the company and its assets based on the information provided by the IP.

B. **Title & Executive Summary**
Title and executive summary of the report would provide a bird's eye view to the reader of the report. The busy CXOs, who have very little or no time to go through the report, find it very useful to grasp the valuer's perspective from the summary itself. Summary should be drafted in a manner where all the important points are covered, and trivial ones are kept out.

C. **Assumptions & Limiting conditions being considered while carrying out valuation**
It is very important for a reader to understand assumptions and limiting conditions considered while preparing the valuation report. These provide the framework under which the valuation premise is held valid. Without mentioning the same, a valuer would leave the report to the mercy of reader's interpretation and a reader, from a different background may perceive a completely different meaning of the report and the valuation.

It is also important to mention about departure where specific legislative, regulatory, or other authoritative requirements must be followed which differ from the requirement within ICAI Valuation Standard/ International Valuation Standard.

D. **Deliverables delivered through the report**
It is very important to specify to the readers of the report that what are the clear deliverables presented, which were agreed in the scope of work of the engagement letter. Clients would usually cross- verify the completeness of service by comparing the scope provided in engagement vis-à-vis deliverables provided in the valuation report. Other stakeholders will find the information useful in grasping the entire hold of the report when deliverables are clearly mentioned.

E. **Timelines in terms of valuation date, report generation and submission date**

Timelines here would have several meanings. Many a times, valuation is done on a date and the report would come out much later. Many a times, it may also happen that, when the valuation is carried out discounting the future to present, the timelines will have a significant impact on the overall valuation itself. Providing timeline would give appropriate perspective to the reader of the report for sound understanding of the same.

F. Approach(es) of Valuation:

There are three popular approaches usually followed for the purpose of carrying out valuation. They are - a. Market Approach b. Income Approach & c. Cost Approach. However, it is important for the reader of the report to know as to which approach was followed by the valuer to arrive at proper valuation. It will enable the reader to determine the course of action to be followed.

G. Valuation Method Applied

There are several methods used by valuers in arriving at valuation. One of the hallmarks of a professional valuer is that he will disclose the method of valuation used in the report itself. It displays the kind of transparency and professionalism the valuer has. Also, the method used has relevance to stakeholders and can also be used for the purpose of justification in the court of law.

H. Key inputs used in report

There are several factors which drive the valuation. Many key inputs like timing of cash flows, required rate of return and tenure of cash flows, Clarity about original / Revaluation numbers of Gross block/Net Block of fixed assets, condition of assets to operate at optimum level, ownership details, key contracts' details and validity thereof, insolvency clauses in ownership documents like sale deed/lease deed and in key contracts, status of ongoing litigation, court judgement about litigation pertaining to assets/ownership, any kind of internal/external bottlenecks affecting the plant operations, limitation on physical verification of assets play a vital role in arriving the value of asset or business in consideration. It is important for valuer to provide this information to give clarity to the reader of the report. The reader's opinion about valuation can be affirmed if the key inputs are provided beforehand.

I. The estimates / projections used in the report

When valuation is based on futuristic developments, it is imperative for a valuer to rely on projections and estimates. These projections and estimates form the very basis on which the valuation is carried out. These are mandatory inputs which must go in the report for report to make sense to the end-users. As mentioned earlier, valuation being a scientific art, the liberty of choosing the parts of the report completely lie with the valuer concerned.

Section - V

Considerations for Liquidation Process

Regulation 35 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016: Valuation of Assets intended to be sold

A. Where the valuation has been conducted under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or regulation 34 of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, as the case may be, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.

B. In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor:

   Provided that the following persons shall not be appointed as registered valuers, namely: -

   (a) a relative of the liquidator;

   (b) a related party of the corporate debtor;

   (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or

   (d) a partner or director of the insolvency professional entity of which the liquidator is a partner or director.

C. The Registered Valuers appointed under sub-regulation (2) shall independently submit to the liquidator the estimates of realisable value of the assets or businesses, as the case may be, computed in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017, after physical verification of the assets of the corporate debtor.

D. The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.

Regulation 32 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016: Sale of Assets

The liquidator may sell-

(a) an asset on a standalone basis;
(b) the assets in a slump sale;
(c) a set of assets collectively;
(d) the assets in parcels;
(e) the corporate debtor as a going concern; or
(f) the business(s) of the corporate debtor as a going concern:

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

The discussion paper dated 14th June 2022 on "Streamlining the Liquidation Process" has suggested few proposals as under:

A. ***The COC as constituted during CIRP on the basis of admitted claims shall function as SCC during liquidation process with the voting share of members of SCC being same as that in the COC. The stakeholders who are part of COC without voting rights will be part of SCC without voting rights. The liquidator shall convene first meeting of SCC within seven days of liquidation commencement date.***

B. ***The liquidator shall put the agenda for deciding the remuneration of professionals, need for fresh valuation, etc., before the SCC. The SCC shall advise the liquidator by a vote of not less than 66% of the representatives of the committee, present and voting.***

C. Regulation 35 of the Liquidation Regulations provides that the liquidator shall consider the valuation as conducted during the CIRP and conduct fresh valuation if required under the circumstances, it has been observed the liquidators are opting for fresh valuation in majority of liquidation cases. The reason being, valuation conducted during the CIRP does not represent the current value of assets of the CD, however entailing, additional cost for fresh valuation and delay in the liquidation process. Also, the actual realisation from sale depends more on the marketing efforts by the liquidator, extent of market participation resulting therefrom during the auction and transparency of the process rather than the reserve price, which only acts as benchmark for conducting auction.

   However, such an option for appointing valuers should be available without any specific timeline to provide requisite flexibility to liquidator to get valuation done anytime during the process. It is apposite to mention that such determination of fresh valuation should not delay the auction process.

   Best Practice: In this regard, it is recommended that the liquidator should consider the valuation report as arrived at during the CIRP for conducting auction. However, where the liquidator is of the opinion that fresh valuation is required, he should seek advice of SCC for the same and such valuation may be considered for subsequent auctions.

Section - VI

Practical issues and suggested solutions

1. **What are the steps that an IP should undertake to assess the reasonable cost and suitability of Valuers w.r.t size and nature of the assets of the CD?**
   The following steps may be undertaken by the IP to assess the reasonable cost and suitability of Valuers:
   (a) Relative experience of the Registered Valuer in Valuation industry;
   (b) Past Credentials of the Registered Valuer in the similar industry w.r.t CD;
   (c) By analysing comparable quotes submitted by the Registered Valuers in conjunction with the above pointers. While analysing the quotes, more weightages may be given to the valuer(s) who has carried out the valuation of the assets of the CD in past for the lender/s.

2. **Whether in Liquidation, fresh valuations should be obtained in case valuation exercise is already done during CIRP?**
   (a) As per Regulation 35 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the liquidator shall consider the average of the estimates of the value arrived during CIRP process. However, if the liquidator is of the opinion that fresh valuation is required, he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realizable value of the assets.
   (b) Typically, for the cases which has gone through the entire process of CIRP for the full duration of the CIRP, it should be encouraged to get a fresh valuation as by the time the company goes into liquidation, as there may be a substantial change in the asset base/condition of the assets. Hence, it is recommended to carry out a fresh valuation on the date of liquidation commencement.

3. **Is IP supposed to review the Valuation reports or what precautions should an IP consider while accepting the valuation reports?**
   (a) IP should review the valuation reports to ensure that it comprehensively covers all the assets so that maximum value of the assets of the CD under CIRP can be realised.
   (b) IP should also ensure that all details pertaining to Related Party transactions are adequately captured in the Valuation report.
   (c) IP should ensure that the valuation reports follow the ICAI/ Internationally accepted valuation standards.
   (d) IP should ensure that the methodology, process, assumptions, etc are appropriately applied for the Corporate Debtor.

4. **What shall be the validity period of a Valuation Report where the IBC process gets elongated or if there are subsequent material events?**
   (a) Valuation report may continue to remain valid for CIRP period, however if there are any material events or CIRP period is extended beyond 330 days then RP may approach COC for fresh valuation.
   (b) Industry specific event that can materially impact the operations of the business may include instances such as shortage of semiconductor chips in automobile industry, or any political decisions / sanctions imposed which may have direct impact on the performance of that industry.

Also, the ***discussion paper on "changes in the corporate insolvency resolution process to reduce delays and improve the resolution value" dated 27th June 2022*** proposes that the committee may choose to repeat the valuation exercise undertaken in terms of this Section ***where the process has extended beyond the time-limit stipulated under Section 12*** for completion of insolvency resolution process for reasons to be recorded in writing.

5. **Can COC members call for a fresh valuation in case of revival of CIRP?**
   (a) There is no specific provision in the Code or it's regulations giving power to COC to call for fresh valuation in case of revival of CIRP, however there is no bar under IBC for the same.
   (b) Therefore, if a COC agrees to call for a fresh valuation, then a fresh valuation exercise shall be carried out by RP.

   Case law reference: ***Indian Bank v. Charu Desai, Erstwhile Resolution Professional & Chairman of Monitoring Committee of GB Global Ltd. & Anr. (Formerly Mandhana Industries Limited) [Company Appeal (AT) (Insolvency) No. 644 of 2021].***

6. **Which type of Disclaimers/Limitations are acceptable by IPs in the Valuation report?**
   (a) IP may accept those Disclaimers/Limitations for which no documentation/details have been provided.
   (b) IP may also accept Disclaimers/Limitations which are outside the purview of scope of work of the Registered valuer.
   (c) IP may also accept Disclaimers/Limitations which are agreed upon as the Scope of work of valuer at the time of appointment of the valuer.

   Refer Annexure C for detailed note on Disclaimers/ Limitations.

7. **How to ascertain which class of valuer is authorised for valuation of inventory?**
   Registered Valuer shall be authorised based on nature of the business of the Corporate Debtor and asset being valued.

   For instance, if the business pertains to real estate, then valuation expert of Land and Building should be appointed for valuation of inventory.

8. **What kind of intervention is required by User for determination of value by two registered valuers without interfering in the independent status of valuer?**
   If RP is of the opinion that the value of an asset when valued in isolation by the Registered Valuers will be impacted due to lack of understanding from RP then in that scenario, RP can intervene without interfering independency of the Registered Valuers. Further as suggested earlier, the RP may seek a draft report from the Registered Valuers so as to ensure the facts, methodology and assumptions of both the Registered Valuers are not materially different.

9. **Whether difference in value has to be ascertained at consolidated level, class level or asset level?**
   Recent amendment in CIRP Regulation 35(1)(b) states that: "if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value…".

   Accordingly, difference in value should be ascertained at an asset class level.

10. **What should be the basis/method for valuation of the following assets?**
    (a) **Avoidance application filed by the user**
    Avoidance application can be filled by the RP under section 66 of IBC where the RP found that CD has been carrying business with an intent to defraud the creditors or any fraudulent transaction has already taken place. In such scenario, the valuer should independently conduct the valuation process of such transactions and highlight the facts for the respective transaction.

    (b) **Special assets like jewellery, diamond, aircraft.**
    In such cases, the valuer can consider the market approach.

    (c) **Share investments especially when there is large valuation difference between book value of underlying assets and assessed value of underlying assets.**
    In such scenario, the valuer should seek necessary comments or reconciliation from the management for such large differences and arrive at the fair value based on the details provided by the management.

    (d) **Valuation of minority interest / controlling interest of downstream companies.**
    (i) Book value may be considered in case where financial statements of the downstream companies are not available.
    (ii) Where financials are available, fair value pertaining to such minority interest/controlling interest can be estimated.

11. **Whether Valuation report be shared with ex-management?**
    (a) There is no specific provision for not sharing the copy of valuation report with ex-management, however the intent of code is to maximize the value and all concerned persons shall be given an access to the document as the same is crucial for deciding the worth of the Corporate Debtor subject to undertaking of confidentiality.
    (b) Also, the ex-management is part of COC even though without the voting rights and therefore access of all documents shared in the COC shall be given to them.

    Case law references: ***Vijay Kumar Jain Vs. Standard Chartered Bank & Ors., supreme Court [2019]*** and **Hemant Shantilal Shah Anr. Vs. Care Office Ltd. NCLT, Ahmedabad bench [2022].**

12. **Would there be any action taken against the valuer if the valuer gives a different value at the time of sanction of loan and when valued as a stressed asset?**
    There would be no action against the valuer in such situations because the valuer is valuing both the instances separately at different point of time and premise of valuation is different in both the scenarios.

13. **Under what circumstances shall a draft/final valuation report number change?**
    There are generally three circumstances under which there can be change in the final report number:
    (a) Additional data has been received after the draft report;
    (b) There are changes in the circumstances where the assumptions taken need to be reconsidered;
    (c) Additional information was made available which led to change in valuation methodology. For example, the company was initially valued assuming it to be going concern and later the assumption changed.

14. **Can an IRP/RP assign a third person to appoint a valuer?**
    (a) Section 25(2)(d) of the Code, the resolution professional shall appoint accountants, legal or other professionals in the manner as specified by Board.
    (b) Hence, it is the explicit mandate of the Code that it is the primary duty of the RP to appoint professionals including valuers. The RP cannot delegate or assign his duties and responsibilities as provided under the Code to any third party. This has also been clarified in Para 3.3[2] of IBBI Order dated 21st April, 2020 and circular no. IP/003/2018 of IBBI *on "Insolvency Professional not to outsource his responsibilities"*.

15. **Is the resolution professional required to get a fresh valuation done post COVID-19?**
    There is no requirement of fresh valuation. The Resolution Professional and the COC will factor the COVID-19 scenario in the plan.

16. **Can a RP or COC interfere in a Valuation exercise?**
    As per Para 3.4[3] of IBBI order dated 27th April, 2020, valuation is a vital part of the CIRP, and a proper understanding of liquidation value is crucial to protect the interest of stakeholders and to formulate a compliant resolution plan. Any error in determining the liquidation value in the CIRP can have far-reaching consequences including the effect of undermining of reversing any resolution plan that may be approved based on an incorrect liquidation value. Hence, valuation needs to be conducted independently by the valuers without the influence of any stakeholders.

17. **Will there be any contravention where the Resolution Professional directed the valuer to value properties not owned by corporate debtor but owned by Personal Guarantor?**
    (a) Clause 5 of the Code of Conduct as given in the First Schedule of IP Regulations provides that an Insolvency Professional must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences.
    (b) The responsibilities of COC and IP are clearly demarcated by the Code. The COC must not encroach upon the role of IP and must not allow the IP to encroach upon its role. Similarly, the IP must not compromise his independence in favour of the COC. This has also been clarified in Para 3.1[4] of IBBI Order dated 26th February, 2020.
    (c) Therefore, directing the valuer to value properties owned by personal guarantor is in contravention as per the Code even though the fees paid to the valuer for valuing properties of personal guarantor does not fall under IRPC cost as per the definition u/s 5(13) of the Code.

18. **Will there be any contravention where the IP obtained approval of COC for higher amount towards valuer fees than actually incurred?**
    The Code does not prohibit for incurring expenditure less than those sanctioned by COC and hence there is no contravention.

19. **How should a valuer deal in case of increase in scope of work?**
    Generally, the quote for valuation fees by the valuer is dependent on the limited information available about the company. The best practice shall be to start the engagement with the information available and when it is found that the scope has increased subsequently with

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[2] https://www.ibbi.gov.in/uploads/order/bcad1e538d937001fd3b5cbfceb900f7.pdf
[3] https://www.ibbi.gov.in/uploads/order/a4e423df7f782f503b0ca4227a66cfce.pdf
[4] https://www.ibbi.gov.in/uploads/order/2020-02-26-190454-1lc0d-14eebbdd4cb3e5f6622665426637fbae.pdf

additional information coming, the valuer shall seek additional fees provided the same has been approved by the COC.

20. **The company has already been valued under CIRP however it wishes to get valued again when under liquidation. Can the same valuer issue a fresh valuation?**
When a fresh valuation is required then the best practice is to appoint a new valuer.

21. **Which qualities of valuers should an IP check while appointing them?**
    (a) Integrity, reputation and character,
    (b) Absence of convictions and restraint orders,
    (c) Competence and financial solvency.

22. **Can a valuer be registered as valuer for all asset classes?**
Yes, subject to having the qualification and experience provided in the Rules for each asset class and having passed the valuation examination for each asset class.

23. **Can a valuer be enrolled with two Registered Valuer Organisations ("RVO")?**
An individual can be a member of only one RVO for a particular asset class. However, for other asset class, an individual can be a member with another RVO which is recognised for the said asset class.

24. **Whether and when can a Valuation report or figures be shared with COC members?**
As per Regulation 35 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, it is the responsibility of RP to provide the fair value and the liquidation value to every member of the committee in electronic form post receipt of resolution plan and on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the said information in accordance with IBC and its Regulations.

25. **When methodology/techniques are uniform, are there chances for differences in valuation figures of same assets class by two different valuers?**
Even though the methodology/techniques are uniform, there may be a possibility of difference in valuation figure on account of different assumptions being taken by the valuer.

26. **How can procedural delays be mitigated in valuation?**
Procedural delays can be mitigated in Valuation by adopting standard checklist/documents, which is required to value a particular class of asset. Further checklist can be modified depending on the nature of industry/business.

The illustrative checklist of documents/ information to be provided to the Registered Valuers can be referred from Section II of this publication.

27. **How to assess the value of assets, when the financial statement for the cut-off date is not available?**
Latest available financial statements before the cut-off date can be considered and material changes between the latest available financial statements and cut-off date should be factored in the valuation's working.

ANNEXURE - A

Specimen Format of Appointment letter for Valuation

Date:

Reference No:

To,

Name of Professional (Valuer)

<ADDRESS>

Subject: Appointment as registered valuer to determine Fair Value and Liquidation Value of __________ (name of Corporate Debtor) under the Insolvency and Bankruptcy Code, 2016.

Dear <Name of Professional>,

(a) Provide reference of the Quotation.
(b) Brief description of the engagement, say estimation of fair and liquidation valuation of assets of Corporate Debtor as per the Insolvency and Bankruptcy Code, 2016.

The following paragraphs may form part of this overall outline:

(a) Brief about the Company
(b) Purpose of Engagement
(c) Scope of Engagement
(d) Timeline for Completion of assignment
(e) Engagement Fees and Billing Arrangement
(f) Non- disclosure of Confidential information (*for detailed note please refer Section- I part B of this book)*
(g) Conflict of Interest
(h) Limitation of Liability
(i) Legal Action Limitation
(j) Termination of Engagement
(k) Governing Law
(l) Assignment terms

Yours Sincerely,

<Name, Address, Registration no. of IP>

(a) Acknowledgment by the Registered Valuer on the engagement terms and appointment.
(b) Disclosure of relationship as per IBBI Circular No. IP/005/2018 (*format as under):*

"Disclosure of relationship as per IBBI Circular No. IP/005/2018

IBBI Circular No. IP/005/2018 dated 16th January 2018 requires the disclosure of relationship with following parties:-

a) Insolvency professional
b) Corporate Debtor
c) Financial Creditor
d) Interim Finance Provider(s)
e) Prospective Resolution Applicant

The details of the above mentioned parties are given below:-

S. No.	***Insolvency Professional***	***Corporate Debtor***	***Financial Creditor***	***Interim Finance Provider(s)***	***Prospective Resolution Applicant***

As per the Circular the following relationship needs to be disclosed with all of the above mentioned parties :-

Kind of Relationship	***Nature of Relationship***
A	*Where the Insolvency Professional or the Other Professional, as the case may be, has derived 5% or more of his / its gross revenue in a year from professional services to the related party.*
B	*Where the Insolvency Professional or the Other Professional, as the case may be, is a Shareholder, Director, Key Managerial Personnel or Partner of the related party.*
C	*Where a relative (Spouse, Parents, Parents of Spouse, Sibling of Self and Spouse, and Children) of the Insolvency Professional or the Other Professional, as the case may be, has a relationship of kind A or B with the related party.*
D	*Where the Insolvency Professional or the Other Professional, as the case may be, is a partner or director of a company, firm or LLP, such as, an Insolvency Professional Entity or Registered Valuers, the relationship of kind A, B or C of every partner or director of such company, firm or LLP with the related party*

You are requested to disclose the relationship, if any, with any of the parties mentioned above in the table below:-

Related Party	***Nature of Relationship***
Insolvency professional	
Corporate Debtor	
Financial Creditor	
Interim Finance Provider(s)	
Prospective Resolution Applicant	

By Signing this appointment letter, you also undertake that you shall inform the Resolution Professional as and when any relationship arises with any of the stakeholder mentioned above."

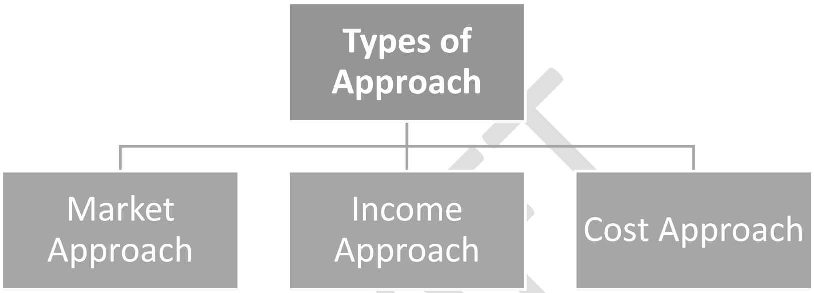
ANNEXURE - B

Approach and Methodologies for Valuation

Consideration must be given to the relevant and appropriate valuation approaches. One or more valuation approaches may be used in order to arrive at the value in accordance with the basis of value.

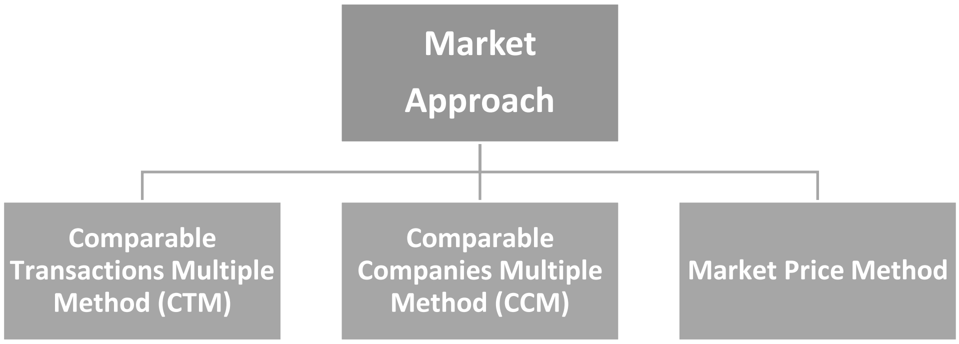
The goal in selecting valuation approaches and methods for an asset is to find the most appropriate method based on different circumstances. No one method is suitable in every possible situation. The selection process should consider, at a minimum:

(a) nature of asset to be valued;
(b) availability of adequate inputs or information and its reliability;
(c) strengths and weakness of each valuation approach and method; and
(d) valuation approach/method considered by market participants.



Approach 1: Market Approach

(a) Market approach is a valuation approach that uses prices and other relevant information generated by market transactions involving identical or comparable (i.e., similar) assets, liabilities or a group of assets and liabilities, such as a business.
(b) The market approach should be applied and given significant weight under the following circumstances:
  (i) where the asset to be valued or a comparable or identical asset is traded in the active market,
  (ii) there is a recent, orderly transaction in the asset to be valued; or
  (iii) there are frequent and/or recent observable transactions in substantially similar assets. there are recent comparable orderly transactions in identical or comparable asset(s) and information for the same is available and reliable.



Method 1: Comparable Transactions Multiple Method (CTM)

(a) Under Comparable Transaction Method, the value of the asset is determined based on market multiples of publicly disclosed transactions in the similar space as that of the subject company.

(b) Multiples are generally based on data from recent transactions in a comparable sector, but with appropriate adjustment after consideration has been given to the specific characteristics of the business being valued.

(c) The following are the major steps in deriving a value using the CTM method:

(i) identify comparable transaction appropriate to the asset to be valued;

(ii) select and calculate the transaction multiples from the identified comparable transaction;

(iii) compare the asset to be valued with the market comparable and make necessary adjustments to the transaction multiple to account for material differences;

(iv) apply the adjusted transaction multiple to the relevant parameter of the asset to be valued; and

(v) if value of the asset is derived by using transaction multiples based on different metrics or parameters, the Registered Valuer shall consider the reasonableness of the range of values.

Method 2: Comparable Companies Multiple Method (CCM)

(a) Under Comparable Companies Method, the value of the asset is determined based on market multiples of publicly traded comparable companies.

(b) The appropriate multiple is generally based on the performance of listed companies with similar business models and size.

(c) Although no two companies are entirely alike, the companies selected as comparable companies should be engaged in the same or a similar line of business as the subject company. Appropriate adjustments are required to be made to the market multiple to account for the differences.

(d) The following are the major steps in deriving a value using the CCM method:

(i) identify the market comparable.

(ii) select and calculate the market multiples of the identified market comparable.

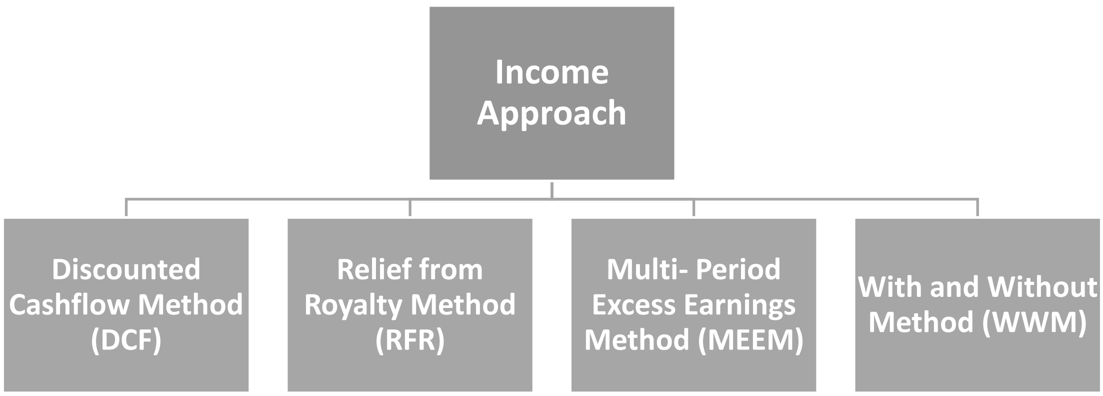
(iii) compare the asset to be valued with the market comparable to understand material differences and make necessary adjustments;
(iv) apply the adjusted market multiple to the relevant parameter of the asset to be valued; and
(v) if value of the asset is derived by using market multiples based on different metrics/parameters, the Registered Valuer shall consider the reasonableness of the range of values.

Method 3: Market Price Method

(a) Under this approach, the value of the business is arrived at considering the market price of the company on recognized stock exchange.
(b) A Registered Valuer shall also consider the market where the trading volume of asset is the highest, average price and also consider using weighted average or volume weighted average to reduce the impact of volatility or any one-time event in the asset value.

Approach 2: Income Approach

(a) Income approach is a valuation approach that converts maintainable or future amounts (e.g., cash flows or income and expenses) to a single current (i.e., discounted or capitalised) amount. The fair value measurement is determined on the basis of the value indicated by current market expectations about those future amounts.
(b) This approach involves discounting future amounts (cash flows/income/cost savings) to a single present value.
(c) The following are some of the instances where a Registered Valuer may apply the income approach:
(i) where the asset does not have any market comparable or comparable transaction.
(ii) where the asset has fewer relevant market comparable; or
(iii) where the asset is an income producing asset for which the future cash flows are available and can reasonably be projected.



Method 1: Discounted Cash Flow ('DCF') Method

(a) Under a DCF approach, forecast cash flows are discounted back to the present date, generating a net present value for the cash flow stream of the business. A terminal value at the end of the explicit Forecast Period is then determined and that value is also discounted back to the valuation date to give an overall value for the business.

(b) The rate at which the future cash flows are discounted ("the discount rate") should reflect not only the time value of money, but also the risk associated with the business' future operations. The discount rate most generally employed is Weighted Average Cost of Capital ("WACC") or Cost of Equity (Ke), reflecting an optimal as opposed to actual financing structure.

(c) In calculating the terminal value, regard must be given to the business' potential for further growth beyond the explicit Forecast Period. The "constant growth model", which applies an expected constant level of growth to the cash flow forecast in the last year of the Forecast Period and assumes such growth is achieved in perpetuity, is a common method. These results would be cross-checked, however, for reasonability to implied exit multiples.

(d) The rate at which future cash flows are discounted should reflect not only the time value of the cash flows but also the risk associated with the business' future operations. This means that in order for a DCF to produce a sensible valuation figure, the importance of the quality of the underlying cash flow forecasts is fundamental.

(e) The following are the major steps in deriving a value using the DCF method:

(i) Consider the projections to determine the future cash flows expected to be generated by the asset.

(ii) Analyse the projections and its underlying assumptions to assess the reasonableness of the cash flows.

(iii) Choose the most appropriate type of cash flows for the asset, viz., pre-tax or post-tax cash flows, free cash flows to equity or free cash flows to firm.

(iv) Determine the discount rate and growth rate beyond explicit forecast period; and

(v) Apply the discount rate to arrive at the present value of the explicit period cash flows and for arriving at the terminal value.

Method 2: Relief from Royalty (RFR) Method

(a) Under a RFR approach, the value of the asset is estimated based on the present value of royalty payments saved by owning the asset instead of taking it on lease. It is generally adopted for valuing intangible assets that are subject to licensing, such as trademarks, patents, brands, etc.

(b) The fundamental assumption underlying this method is that if the intangible asset to be valued had to be licensed from a third-party owner there shall be a royalty charge for use of such asset. By owning the said intangible asset, royalty outgo is avoided. The value under this method is equal to the present value of the licence fees / royalty avoided by owning the asset over its remaining useful life.

(c) The following are the major steps in deriving a value using the RFR method:

(i) Obtain the projected income statement associated with the intangible asset to be valued over the remaining useful life of the said asset from the client or the target.

(ii) Analyse the projected income statement and its underlying assumptions to assess the reasonableness.

(iii) Select the appropriate royalty rate based on market-based royalty rates for similar intangible assets.

(iv) Deduct costs associated with maintaining licencing arrangements for the intangible asset from the resultant royalty savings.

(v) Apply the selected royalty rate to the future income attributable to the said asset.

(vi) Use the appropriate marginal tax rate or such other appropriate tax rate to arrive at an after-tax royalty savings.

(vii) Discount the after-tax royalty savings to arrive at the present value using an appropriate discount rate; and

(viii) Tax amortisation benefit, if appropriate, should be added to the overall value of the asset.

Method 3: Multi-Period Excess Earnings Method (MEEM)

(a) Multi-Period Excess Earnings Method is a valuation technique in which a stream of revenues and expenses are identified for a particular group of assets, and then the prospective earnings of a single subject asset are isolated from those of the group of assets by identifying and deducting portions of the projected economic benefits that are attributable to the contributory assets to estimate the remaining or excess earnings attributable to the subject asset. MEEM is usually adopted for valuation of the primary/ most important intangible assets in the business.

(b) The following are the major steps in deriving a value using the MEEM:

(i) Obtain the projections for the entity or the combined asset group over the remaining useful life of the said intangible asset to be valued from the client or the target to determine the future after tax cash flows expected to be generated.

(ii) Analyse the projections and its underlying assumptions to assess the reasonableness of the cash flows;

(iii) Contributory Asset Charges (CAC) or economic rents to be reduced from the total net after-tax cash flows projected for the entity/combined asset group to obtain the incremental after-tax cash flows attributable to the intangible asset to be valued.

(iv) the CAC represent the charges for the use of an asset or group of assets (e.g., working capital, fixed assets, assembled workforce, other intangibles) based on their respective fair values and should be considered for all assets, excluding goodwill, that contribute to the realisation of cash flows for the intangible asset to be valued.

(v) Discount the incremental after-tax cash flows attributable to the intangible asset to be valued to arrive at the present value using an appropriate discount rate; and

(vi) Tax amortisation benefit, if appropriate.

Method 4 - With and Without Method (WWM)

(a) Under a With and Without approach, the value of the asset is estimated by quantifying the loss of economic profits under a hypothetical scenario where the subject intangible asset does not exist relative to a scenario in which the intangible does exist.

(b) The following are the major steps in deriving a value using the WWM:

(i) Obtain cash flow projections for the business over the remaining useful life of the said asset to be valued under the following two scenarios:

a. business with all assets in place including the intangible asset to be valued; and

b. business with all assets in place except the intangible asset to be valued.

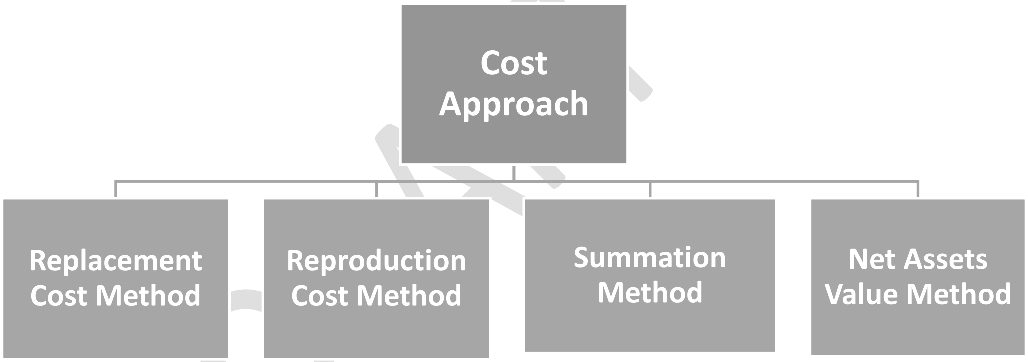
(ii)Analyse the projections and its underlying assumptions to assess the reasonableness of the cash flows.
(iii) Discount the difference between the projected cash flows under two scenarios to arrive at the present value using an appropriate discount rate; and
(iv) Tax amortisation benefit, if appropriate.

Approach 3: Cost Approach

(a) Cost approach is a valuation approach that reflects the amount that would be required currently to replace the service capacity of an asset (often referred to as current replacement cost).

(b) Examples of situations where a Registered Valuer applies the cost approach are:
   (i) An asset can be quickly recreated with substantially the same utility as the asset to be valued.
   (ii) in case where liquidation value is to be determined; or
   (iii) Income approach and/or Market approach cannot be used.

(c) In some instances, the Registered Valuer may consider using other valuation approaches in combination with cost approach, such as:
   (i) the asset has not yet started generating income / cash flows (directly or indirectly);
   (ii) an asset of substantially the same utility as the asset to be valued can be created but there are regulatory or legal restrictions and involves significant time for recreation; or
   (iii) the asset was recently created.



Method 1: Replacement Cost Method

(a) Replacement Cost Method, also known as 'Depreciated Replacement Cost Method' involves valuing an asset based on the cost that a market participant shall have to incur to recreate an asset with substantially the same utility (comparable utility) as that of the asset to be valued, adjusted for obsolescence.

(b) The following are the major steps in deriving a value using the Replacement Cost method:
   (i) Estimate the costs that will be incurred by a market participant for creating an asset with comparable utility as that of the asset to be valued.
   (ii) Assess whether there is any loss on account of physical, functional, or economic obsolescence in the asset to be valued; and
   (iii) Adjust the obsolescence value, if any as determined under (b) above from the total costs estimated under (a) above, to arrive at the value of the asset to be valued.

Method 2: Reproduction Cost Method

(a) Reproduction Cost Method involves valuing an asset based on the cost that a market participant shall have to incur to recreate a replica of the asset to be valued, adjusted for obsolescence.

(b) The following are the major steps in deriving a value using the Reproduction Cost method:

(i) Estimate the costs that will be incurred by a market participant for creating a replica of the asset to be valued.

(ii) Assess whether there is any loss of value on account of physical, functional, or economic obsolescence in the asset to be valued; and

(iii) Adjust the obsolescence value, if any as determined under (ii) above from the total costs estimated under (i) above, to arrive at the value of the asset to be valued.

Method 3: Summation Method

(a) The summation method, also referred to as the underlying asset method, is typically used for investment companies or other types of assets or entities for which value is primarily a factor of the values of their holdings.

(b) The key steps in the summation method are:

(i) value each of the component assets that are part of the subject asset using the appropriate valuation approaches and methods, and

(ii) add the value of the component assets together to reach the value of the subject asset.

Method 4: Net Assets Value method

(a) A net asset methodology is most applicable for businesses where the value lies in the underlying assets and not the ongoing operations of the business.

(b) As the value of the Company is highly dependent on future cash flows generating capacity by way of increasing the operational efficiency, which is not factored by Asset Approach, we have not considered this approach.

Cost Considerations

The cost approach should capture all of the costs that would be incurred by a typical participant.

The cost elements may differ depending on the type of the asset and should include the direct and indirect costs that would be required to replace/ recreate the asset as of the valuation date. Some common items to consider include:

(a) direct costs:
- *(i) materials, and*
- *(ii) labour.*

(b) indirect costs:
- *(i) transport costs,*
- *(ii) installation costs,*
- *(iii) professional fees (design, permit, architectural, legal, etc),*

(iv) other fees (commissions, etc),
(v) overheads,
(vi) taxes,
(vii) finance costs (e.g., interest on debt financing), and
(viii) profit margin/entrepreneurial profit to the creator of the asset (e.g., return to investors).

Depreciation/ Obsolescence

Obsolescence: *Under the Replacement Cost Method or the Reproduction Cost Method, the estimated cost of creating an asset is required to be adjusted for depreciation on account of obsolescence in the asset to be valued. The following are common types of obsolescence:*
(a) Physical obsolescence represents the loss in value on account of decreased usefulness of the asset as the useful life expires.
(b) Functional (technological) obsolescence represents the loss in value on account of new technological developments; whereby the asset to be valued becomes inefficient due to availability of more efficient replacement assets.
(c) Economic (external) obsolescence represents the loss in value on account of decreased usefulness of the asset caused by external economic factors such as change in environmental or other regulations, excess supply, high interest rates, etc.

Depreciation/obsolescence should consider the physical and economic lives of the asset:
(a) The physical life is how long the asset could be used before it would be worn out or beyond economic repair, assuming routine maintenance but disregarding any potential for refurbishment or reconstruction.
(b) The economic life is how long it is anticipated that the asset could generate financial returns or provide a non-financial benefit in its current use. It will be influenced by the degree of functional or economic obsolescence to which the asset is exposed.
Except for some types of economic or external obsolescence, most types of obsolescence are measured by making comparisons between the subject asset and the hypothetical asset on which the estimated replacement or reproduction cost is based. However, when market evidence of the effect of obsolescence on value is available, that evidence should be considered.

Physical obsolescence can be measured in two different ways:
(a) curable physical obsolescence, i.e., the cost to fix/cure the obsolescence, or
(b) incurable physical obsolescence which considers the asset's age, expected total and remaining life where the adjustment for physical obsolescence is equivalent to the proportion of the expected total life consumed. Total expected life may be expressed in any reasonable way, including expected life in years, mileage, units produced, etc

There are two forms of functional obsolescence:
(a) ***excess capital cost****, which can be caused by changes in design, materials of construction, technology or manufacturing techniques resulting in the availability of modern equivalent assets with lower capital costs than the subject asset, and*
(b) ***excess operating cost****, which can be caused by improvements in design or excess capacity resulting in the availability of modern equivalent assets with lower operating costs than the subject asset.*

Economic obsolescence *may arise when external factors affect an individual asset or all the assets employed in a business and should be deducted after physical deterioration and functional obsolescence. For real estate, examples of economic obsolescence include:*
(a) adverse changes to demand for the products or services produced by the asset,
(b) oversupply in the market for the asset,
(c) a disruption or loss of a supply of labour or raw material, or
(d) the asset being used by a business that cannot afford to pay a market rent for the assets and still generate a market rate of return.

Note: *Cash or cash equivalents do not suffer obsolescence and are not adjusted. Marketable assets are not adjusted below their market value determined using the market approach.*

To understand each methodology/ approach in detail, readers are requested to refer the ICAI Valuation Standard 103, "Valuation Approaches and Methods" for valuing an asset.

ANNEXURE - C

Caveats, Limitations and Disclaimers

Meaning

A. ***Caveats*** are warnings or cautions to the client/user of services.
B. ***Limitation*** is a restriction on the scope of the RV's work including inspection or investigation of the data available for analysis that may be present and known to the RV at the outset of the valuation engagement or that may arise during the course of a valuation assignment.
C. ***Disclaimer*** is a statement intended to specify or delimit the scope of rights and obligations that may be exercised and enforced by parties in a legally recognized relationship. It is a statement denying responsibility intended to prevent civil liability arising for particular acts or omissions.

Things to be kept in mind

A. Any caveats, limitations or other disclaimers to the report must be clearly stated with appropriate specificity.
B. In the preparation of a valuation report, the RV shall not disclaim liability for his expertise or deny his duty of "due care". However, it is recognized that a RV, shall prepare the valuation report of the company based on information and records concerned as provided by the management. The management remains liable for the correctness and veracity thereof.
C. A RV has the right to demand relevant information and basis of the projections before commenting thereon. It is the duty of the entity being valued to be fair and to provide accurate information about the subject asset.
D. In a valuation report, the RV can state that the assumptions are statements of fact provided by the company and not generated by the RV. This warning statement is necessary as data provided by the company is often construed be a part of the valuation report. Notwithstanding this, the RV has to carry out sufficient inspection, enquiry, computations and analysis to ensure that valuation is properly supported.
E. All valuations are to be carried out in sufficient detail to comply with the requirements of "due care". However, it can be reasonably expected that circumstances may place certain limitations regarding access to information or the time available. Hence, one has to recognize limitations of time and context in valuations, as it cannot constrain business need and flexibility.
F. The effort, diligence and level of expertise applied by the relevant Registered Valuer, need to be stated in the valuation report.

Illustrative Caveats, Limitations and Disclaimers in a Valuation Report

An illustrative list, which is common for all types of assets, is provided below:

A. Restriction on use of Valuation Report.
B. Responsibility of RV.
C. Accuracy of Information.
D. Achievability of the forecast results.
E. Post Valuation Date Events (This should be disclosed while defining valuation date).

F. Range of Value Estimate.
G. No Responsibility to the Actual Price of the subject asset if sold or transferred/ exchanged.
H. Reliance on the representations of the owners/ clients, their management and other third parties.
I. No procedure performed to corroborate information taken from reliable external sources.
J. Compliance with relevant laws.
K. Multiple factors affecting the Valuation Report.
L. Future services including but not limited to Testimony or attendance in courts/ tribunals/ authorities for the opinion of value in the Valuation Report.
M. Unavailability of information as on Valuation Date.

Asset-class wise sample of Caveats, Limitations, and Disclaimers

A few samples of Caveats, Limitations, and Disclaimers have been provided for each asset class.

A. Land and Building

(a) I/We have not verified the title deeds of the properties with the records of registrar's office as this is beyond the agreed scope of our services stated in our engagement letter.
(b) I/We assume no responsibility for the legal matters including, but not limited to, legal or title concerns. The assets and interests therein have been valued free and clear of any liens or encumbrances unless stated otherwise. No hidden or apparent conditions regarding the subject assets or their ownership are assumed to exist. No opinion of title is rendered by this report and a good title is assumed.
(c) The RV has endeavoured to visually identify the land boundaries and dimensions; however, he is not a surveyor. So, where there is a doubt about the precise position of the structures, it is recommended that a Licensed Surveyor be contacted.
(d) The physical condition of the improvements was based on visual inspection. No liability is assumed for the soundness of the structure since no engineering tests were made at the site. Any unknown conditions existing at the time of inspection could alter the value. No responsibility is assumed for latent defects of any nature whatsoever, which may affect value, nor for any expertise required to disclose such conditions.
(e) Where a sketched plan is attached to this report, it does not purport to represent accurate architectural plans. Sketch plans and photographs are provided as general illustrations only.
(f) Unless otherwise stated as part of the terms of engagement, the RV has not made a specific compliance survey or analysis of the various permits and licenses under central, state and local laws / regulations applicable to the operation and use of the subject property, and this valuation does not consider the effect, if any, of non-compliance.
(g) The sale of the subject property is assumed to be on an all-cash basis. Financial arrangements would affect the price at which the property may sell for if placed on the market.
(h) Value varies with the purpose and date. This report is not to be referred if the purpose is different other than mentioned.
(i) The actual realizable value that is likely to be fetched upon sale of the property under consideration shall entirely depend on the demand and supply of the same in the market at the time of sale.
(j) In the course of the valuation, we were provided with both written and verbal information. We have however, evaluated the information provided to us by the Company through broad inquiry, analysis and review but have not carried out a due diligence or audit of the

information provided for the purpose of this engagement. Our conclusions are based on the assumptions, forecasts and other information given by/on behalf of the Company.

(k) We are independent of the client/company and have no current or expected interest in the Company or its assets. The fee paid for our services in no way influenced the results of our analysis.

(l) Our report is meant for the purpose mentioned above and should not be used for any purpose other than the purpose mentioned therein. The Report should not be copied or reproduced without obtaining our prior written approval for any purpose other than the purpose for which it is prepared.

B. Plant and Machinery

(a) The client/owner and its management/representatives warranted to us that the information they supplied was complete, accurate and true and correct to the best of their knowledge. We have relied upon the representations of the owners/clients, their management and other third parties concerning the financial data, operational data and maintenance schedule of all plant- machinery-equipment-tools-vehicles, real estate investments and any other investments in tangible assets except as specifically stated to the contrary in the report. In no event shall we be liable for any loss, damages, cost or expenses arising any way from fraudulent acts, misrepresentations, or wilful default on part of the companies, their directors, employee or agents.

(b) Definition and Premise of Value: It should be noted that Liquidation Value could be significantly different from Fair Value or fair market value. Further, Liquidation Value in an orderly sale can be very different from Liquidation Value in a fire sale transaction and Liquidation Value of a single machine or any individual asset on a standalone basis could be very different from Liquidation Value of a single machine or any individual asset as part of the entire plant and machinery. As such, the premise of Liquidation Value for the said purpose in this report is Liquidation Value of the assets on a standalone basis (in most cases) or in some cases group of assets in an orderly sale.

(c) I/We have examined the assets described herein exclusively for the purposes of identification and description of the property. The RV's observations and reporting of the subject improvements are for the valuation process and purposes only, and should not be considered as a warranty of any component of the property. This valuation assumes (unless otherwise specifically stated) that the subject is structurally sound and all components are in working condition.

(d) In the absence of a statement to the contrary, we have assumed that no hazardous conditions or materials exist which could affect the subject business or the assets. We are not qualified to establish the absence of such conditions or materials, nor do we assume the responsibility for discovering the same. Our valuation takes no such liabilities into account, except as they have been reported to the RV by the client or by an environmental consultant of the client. To the extent such information has been reported to us, the RV has relied on it without verification and offers no warranty or representation as to its accuracy or completeness.

(e) I/We express no opinion as to how closely the actual results will correspond to those projected/forecast because budgets/projections/forecasts relate to future events and are based on assumptions which may not remain valid for the whole of the relevant period.

(f) The sale of the subject assets is assumed to be on an all- cash basis. Financial arrangements would affect the price at which the property may sell for if placed on the market.

(g) Value is an estimated worth equivalent of an asset on a particular date based on certain facts and findings varies with its purpose. The value that is likely to be realised upon sale shall entirely depend on the demand and supply of the same at the time of sale. The report is not to be referred if the purpose is different other than the mentioned one.

(h) In the course of the valuation, we were provided with both written and verbal information. We have however, evaluated the information provided to us by the Company through broad inquiry, analysis and review but have not carried out a due diligence or audit of the information provided for the purpose of this engagement. Our conclusions are based on the assumptions, forecasts and other information given by/on behalf of the Company.

(i) We are independent of the client/company and have no current or expected interest in the Company or its assets. The fee paid for our services in no way influenced the results of our analysis.

(j) Our report is meant for the purpose mentioned above and should not be used for any purpose other than the purpose mentioned therein. The Report should not be copied or reproduced without obtaining our prior written approval for any purpose other than the purpose for which it is prepared.

C. Securities or Financial Assets

(a) While our work has involved an analysis of financial information and accounting records, our engagement does not include an audit in accordance with generally accepted auditing standards of the client existing business records. Accordingly, we assume no responsibility and make no representations with respect to the accuracy or completeness of any information provided by and on behalf of you and the client. Our report is subject to the scope and limitations detailed hereinafter. As such the report is to be read in totality, and not in parts, in conjunction with the relevant documents referred to herein and in the context of the purpose for which it is made.

(b) The valuation of companies and businesses is not a precise science and the conclusions arrived at in many cases will be subjective and dependent on the exercise of individual judgment. There is, therefore, no indisputable single value and we normally express our opinion on the value as falling within a likely range. However, as purpose requires the expression of a single value, we have adopted a value at the mid-point of our valuation range. Whilst we consider our value/range of values to be both reasonable and defensible based on the information available to us, others may place a different value on the company/business.

(c) The actual market price achieved may be higher or lower than our estimate of value/value range depending upon the circumstances of the transaction (for example the competitive bidding environment), the nature of the business (for example the purchaser's perception of potential synergies). The knowledge, negotiating ability and motivation of the buyers and sellers and the applicability of a discount or premium for control will also affect actual market price achieved. Accordingly, our valuation conclusion will not necessarily be the price at which any agreement proceeds. The final transaction price is something on which the parties themselves have to agree.

We also emphasize that our opinion is not the only factor that should be considered by the parties in agreeing the transaction price.

(d) An analysis of such nature is necessarily based on the prevailing stock market, financial, economic and other conditions in general and industry trends in particular as in effect on, and the information made available to us as of, the date hereof. Events occurring after the date hereof may affect this report and the assumptions used in preparing it, and we do not assume any obligation to update, revise or reaffirm this Report.

(e) The ultimate analysis will have to be tempered by the exercise of judicious discretion by the RV and judgment taking into account the relevant factors. There will always be several factors, e.g. management capability, present and prospective competition, yield on comparable securities, market sentiment, etc. which may not be apparent from the face of the Balance Sheet but could strongly influence the value.

(f) Unavailability of information as of valuation date: Please note that the Liquidation Value and Fair Value of assets of the company have been performed as of an earlier date based on the provisional unaudited standalone balance sheet of [company] provided by management (the RP) as of the valuation date. On the other hand, no financial information as of the valuation date was available for subsidiaries and associates; hence we have relied on the latest available financial statements. The management / RP has also confirmed that there has not been any material change in the financials of subsidiaries and associates since the last available financial statements. Hence, due to the lack of financials as of the valuation date and based on representation given by the RP, I /we have considered financials as of XXX as the proxy for the financial position as of the valuation date, valuation report may change post availability of such information.

(g) In the course of the valuation, we were provided with both written and verbal information. We have however, evaluated the information provided to us by the Company through broad inquiry, analysis and review but have not carried out a due diligence or audit of the information provided for the purpose of this engagement. Our conclusions are based on the assumptions, forecasts and other information given by/on behalf of the Company.

(h) We are independent of the client/company and have no current or expected interest in the Company or its assets. The fee paid for our services in no way influenced the results of our analysis.

(i) Our report is meant for the purpose mentioned above and should not be used for any purpose other than the purpose mentioned therein. The Report should not be copied or reproduced without obtaining our prior written approval for any purpose other than the purpose for which it is prepared.

Illustrative Caveats, Limitations, and Disclaimers in a Valuation Report NOT TO BE used

A. Business Plan/forecasts received from client: RV giving a disclaimer for the business plan/forecasts received from client without applying test of reasonability and due diligence.
B. Physical Verification: RV giving a disclaimer that he has not physically verified the tangible assets in case where engagement is for providing liquidation value.
C. Market related data: RV giving disclaimer for the market related data employed in his reports e.g., beta, discounting factor, comparable companies, comparable transactions, valuation metrices without testing appropriateness of the same.

D. Historical analysis: RV giving disclaimer that he has not done any historical analysis while conducting valuation exercise of listed/unlisted entities although the historical data could have been arranged with reasonable effort.
E. One approach: RV giving valuation conclusion based on only one approach without giving any reasoning as to why the other two approaches were not considered in his valuation.
F. Another expert: RV giving disclaimer for work done by any other expert and the findings of the same does not form part of report of RV.

ABBREVIATIONS

CIRP Regulations	=	Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016
COC	=	Committee of Creditors
Fast Track Regulations	=	Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
IBC/ Code	=	Insolvency and Bankruptcy Code, 2016
ICAI	=	The Institute of Chartered Accountants of India
IP	=	Insolvency Professional
IRP	=	Interim Resolution Professional
Liquidation Regulations	=	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016
NCLAT	=	National Company Law Appellate Tribunal
NCLT	=	National Company Law Tribunal
RP	=	Resolution Professional
RV/ Valuer	=	Registered Valuer
SCC	=	Stakeholders' Consultation Committee
Voluntary Liquidation Regulations	=	Insolvency and Bankruptcy Board of India (Voluntary Liquidation) Regulations, 2017
