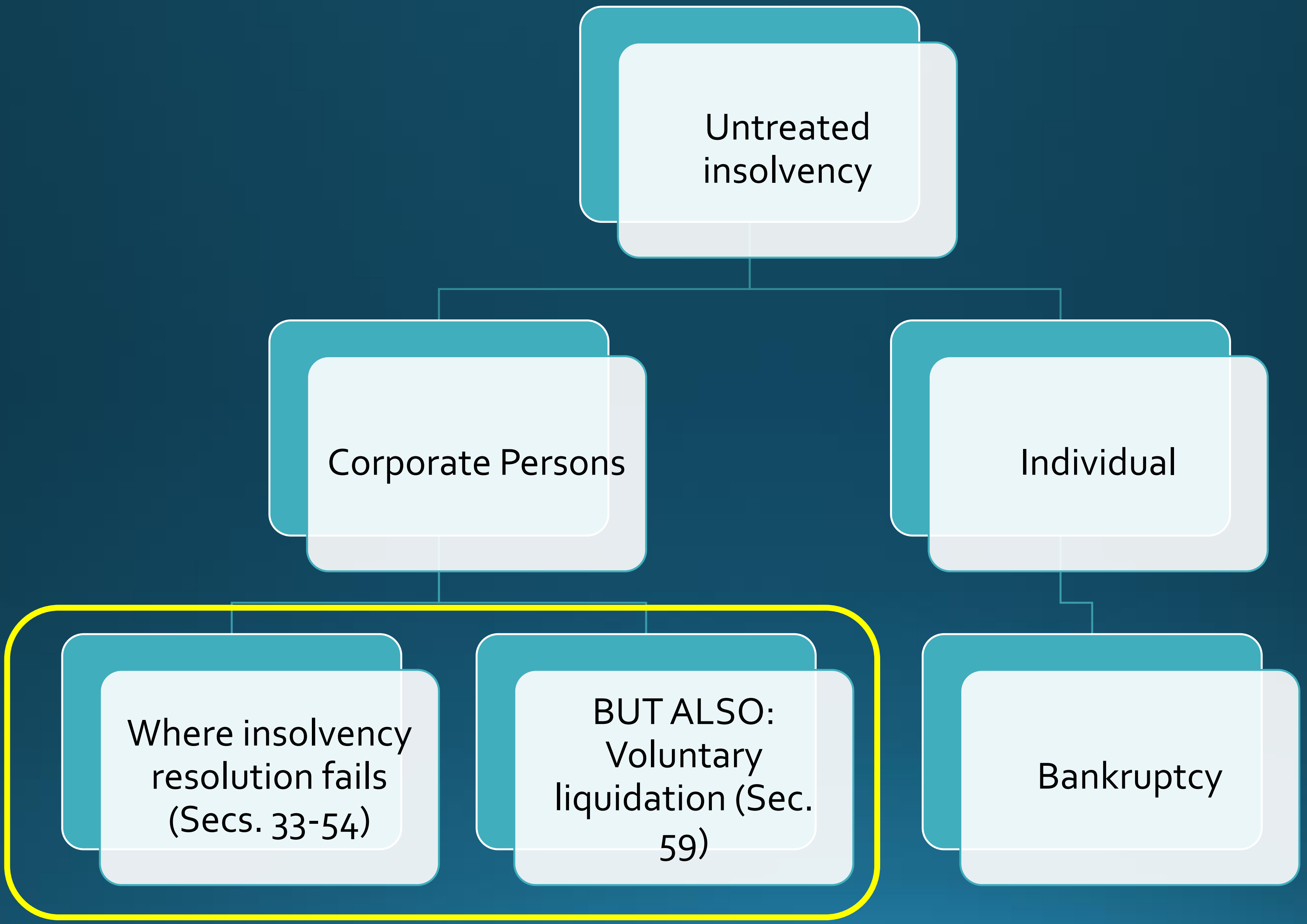
Dr. Sangeetha Sriraam

Liquidation of Companies


Untreated insolvency
Corporate Persons
Individual
Where insolvency resolution fails (Secs. 33-54)
BUT ALSO: Voluntary liquidation (Sec. 59)
Bankruptcy

Five Stages of CIRP

Stage 1

- Default
- Initiate CIRP (FCs, OCs, or Corporate Applicant)

Stage 2

- Admission of application by NCLT
- NCLT
  - Declare moratorium
  - Public Announcement of initiation of CIRP
  - Appointment of IRP

Stage 3

- IRP lists creditors, bifurcates them into FCs and Ocs
- IRP constitutes CoC
- CoC appoints RP

Stage 4

- RP prepares Information memorandum
- RP invites Resolution Plans from Resolution Applicants

Stage 5

- Liquidation

Liquidation

- The title does not mention "Liquidation"
- Even the Preamble does not mention liquidation (*Swiss Ribbon* v. *UoI)*
- Reason: IBC is a reorganisation legislation not a recovery legislation
  - Primary focus: ensure revival and continuation of the CD by protecting the CD from its own management and from a corporate death by liquidation
- Last Resort
  - The resolution plan fails and no other way can be adopted, then dissolution of the company is the only resort.
- Even at the stage of liquidation – the aim is to sell the business as a going concern

Preamble

- "An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto. "

Applicability of IBC – Sec. 2

a) Company u/Companies Act, 2013
b) Company under any other special Act
c) LLPs under Limited Liability Partnership Act, 2008
d) Such other body corporate

Part II

Regulatory Framework

Section 33 to 54 of the Insolvency and Bankruptcy Code, 2016 – Chapter III of Part II

The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

1. Initiation of Liquidation

2. Appointment of Liquidator

3. Public Announcement by liquidator

4. Liquidation Estate

5. Consolidation of Claims

6. Verification of Claims

7. Admission or Rejection of Claims

8. Communication of Decision

9. Sale of Assets

10. Waterfall Mechanism

11. Completion of Liquidation

12. Dissolution of CD

When can liquidation be initiated

- Sec. 33
- Situation 1: If the AA:
  - Does not receive a resolution plan before the expiry of the CIRP or the maximum period permitted for its completion OR
  - Rejects the resolution plan for the non-compliance of the requirements
- AA SHALL
  - pass an order requiring the corporate debtor to be liquidated
  - issue a public announcement stating that the corporate debtor is in liquidation
  - Notify the RoC

- Situation 2:
  - Decision of the committee of creditors approved by not less than 66% of the voting share to liquidate the corporate debtor
    - Was 75% before – reduced u/ 2018 Amendment
  - When: From the constitution of CoC up until the confirmation of the resolution plan – even before the preparation of information memorandum
  - Intimate the AA – AA HAS to pass liquidation order

- Situation 3:
  - Resolution plan approved (u/Sec. 31)
  - But CD contravenes it
  - Any person other than the CD – whose interest has been prejudicially affected
  - Make an application to AA
- AA – on receipt of application – SHALL pass liquidation order

Effect of Liquidation Order

- Effect 1: Date of order/date mentioned in the order is the liquidation commencement date – Sec. 5(17)
- Effect 2: No suit or other legal proceeding shall be instituted by or against the corporate debtor
- But with the prior approval of AA – legal proceedings may be instituted by the liquidator
- Effect 3: LO is deemed to be a notice of discharge to all the officers, employees and workmen of the CD
  - EXCEPT: when the business of the corporate debtor is continued during the liquidation process by the liquidator.

Appointment of Liquidator

- Sec. 34
- Insolvency professional shall be eligible to be appointed as a liquidator (Reg. 3, LR) – as long as they are independent of the CD
- The RP for the CIRP shall act as the liquidator – subject to their written consent
- Section 34(4) - mandates the AA to replace the RP if:
  - If the resolution plan submitted by the RP is rejected due to non-compliance with mandatory requirements specified in Section 30(2) of the IBC.
  - If Board recommends to the AA, with reasons in writing
  - If the RP does not consent

- On the appointment of liquidator – powers of board of directors, KMP and the partners of the CD vests with liquidator
- Liquidator is a quasi-judicial authority – their decisions are open to challenge and must always give reasoned orders (*Swiss Ribbons, ndian Oil Corporation Ltd*. v. *Mr. Ashish Arjun Kumar Rathi, Liquidator of SBQ Steels Pvt. Ltd.*)

- A person shall be considered as independent of the corporate debtor if they are:
  - eligible to be appointed as an independent director on the board of the CD
  - not a related party of the corporate debtor; or
  - has not been an employee or proprietor or a partner in the last three financial years:
  - (i) of a firm of auditors or secretarial auditors or cost auditors of the corporate debtor; or
  - of a legal or a consulting firm, that has or had any transaction with the corporate debtor contributing 10% or more of the gross turnover of such firm.

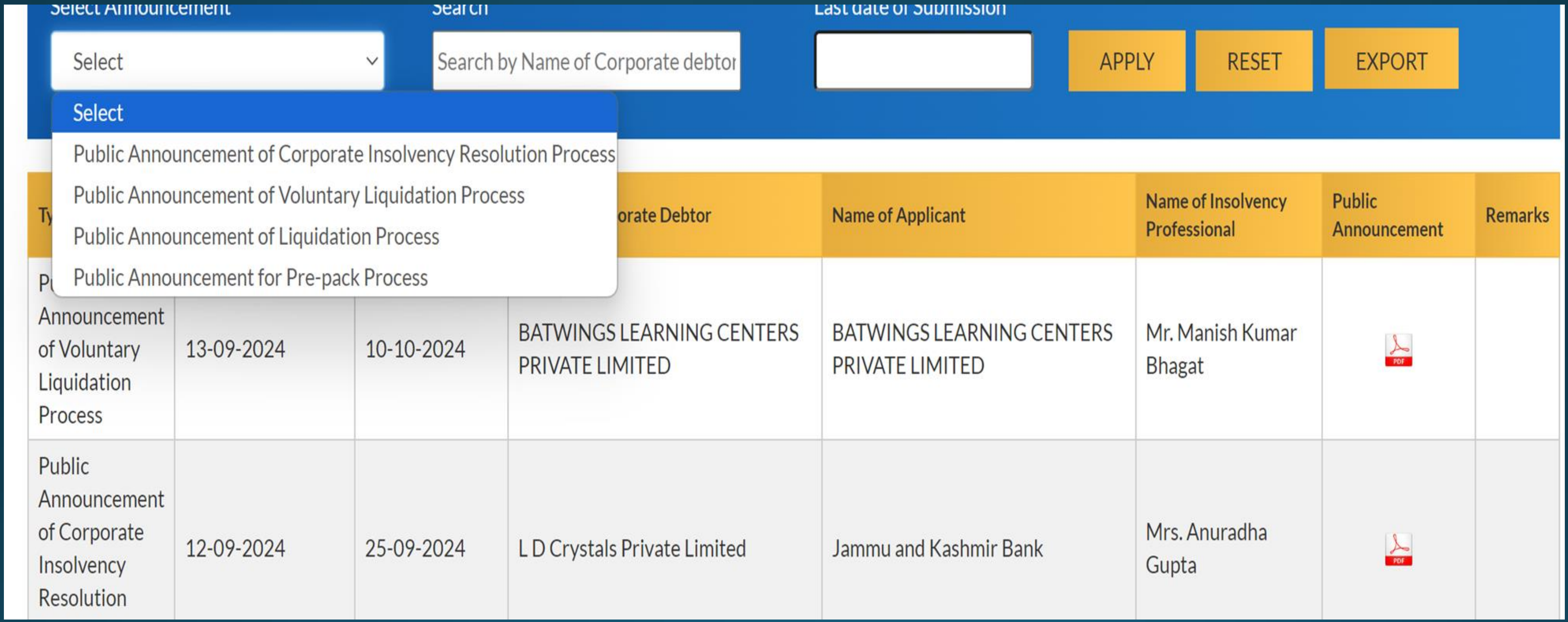
Can CoC challenge the appointment of the liquidator?

Punjab National Bank* v. *Mr. Kiran Shah, Liquidator of ORG Informatics Ltd.

CoC has no role in the liquidation process – they are only claimants – cannot challenge the appointment

Public Announcement by Liquidator (Claim side)

- Reg. 12, LR
- Within five days of appointment:
- Liquidator shall make a public announcement calling upon stakeholders to submit their claims or update their claims submitted during the CIRP
- Where all:
  - English newspaper
  - Regional newspaper – where RO/principal office + any other location where in the opinion of the liquidator, the CD conducts material business operations;
  - CD website
  - IBBI website



https://ibbi.gov.in/public-announcement

Type of PA	Date of Announcement	Last date of Submission	Name of Corporate Debtor	Name of Applicant	Name of Insolvency Professional	Public Announcement	Remarks
Public Announcement of Liquidation Process	10-09-2024	05-10-2024	Ambey Vaishno Steels Private Limited	Manoj Kumar Mishra	Mr.Harish Kant Kaushik	PDF	
Public Announcement of Liquidation Process	10-09-2024	07-10-2024	Pik Resource India Private Limited	Bharat Gala	Mr. Krishna Chamadia	PDF	
Public Announcement of Liquidation Process	08-09-2024	04-10-2024	PHONIC ONLINE PRIVATE LIMITED	PHONIC ONLINE PRIVATE LIMITED	MUKESH CHAND JAIN	PDF	
Public Announcement of Liquidation Process	07-09-2024	26-09-2024	DHARITRIMAA URJA PRIVATE LIMITED	M/s.Ram Ratan Jagati	Mr. Sanjiv Kumar Arora	PDF	

FORM B
PUBLIC ANNOUNCEMENT

(Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016)

FOR THE ATTENTION OF THE STAKEHOLDERS OF PIK RESOURCE INDIA PRIVATE LIMITED

SL.NO.	PARTICULARS	DETAILS
1.	Name of Corporate Debtor	**Pik Resource India Private Limited**
2.	Date of Incorporation of Corporate Debtor	December 31, 1998
3.	Authority under which Corporate Debtor is incorporated/registered	ROC Mumbai
4.	Corporate Identity No. / Limited Liability Identification No. of corporate debtor	U74110MH1998PTC117707
5.	Address of the registered office and principal office (if any) of corporate debtor	**Regd. Office:** F 99, North Bombay CHS LTD, Juhu Tara Road, Vile-Parle (West), Mumbai 400049 **Factory:** Plot No. 402, GIDC, Dist. Valsad, Gujarat, 396171
6.	Date of closure of Insolvency Resolution Process	June 05, 2024
7.	Liquidation commencement date of Corporate Debtor	August 30, 2024 (Order received on 07 September 2024)
8.	Name and Registration number of the Insolvency Professional acting as liquidator	Krishna Chamadia IBBI/IPA-001/IP-P00694/2017-2018/11220
9.	Address and E-mail of the Liquidator, as registered with the Board	**Address:** B-13, Anjani Complex, Perara Hill Road, Andheri East, Mumbai - 400099 **Email:** krishna@sphereadvisory.com
10.	Address and E-mail to be used for correspondence with the Liquidator	**Address:** B-13, Anjani Complex, Perara Hill Road, Andheri East, Mumbai - 400099 **Process Email Id:** pripl.ibc@gmail.com
11.	Last date for submission of claims	**October 07, 2024**

Notice is hereby given that the National Company Law Tribunal, Mumbai Bench, has ordered the commencement of liquidation of the **Pik Resource India Private Limited** on August 30, 2024 under section 33 of the Insolvency and Bankruptcy Code, 2016.

The stakeholders of **Pik Resource India Private Limited,** are hereby called upon to submit their claims with proof on or before **October 07, 2024** to the liquidator at the address or email mentioned against Item No. 10.

The financial creditors shall submit their claims with proof by electronic means only. All other creditors may submit the claims with proof in person, by post or preferably by electronic means.

Submission of false or misleading proofs of claim shall attract penalties.

In case a stakeholder does not submit its claims during the liquidation process, the claims submitted by such a stakeholder during the corporate insolvency resolution process under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, shall be deemed to be submitted under section 38

Date: September 10, 2024
Place: Mumbai

Krishna Chamadia
(Liquidator)

KRISHNA CHAMADIA
IBBI/IPA-001/
IP-P00694/
2017-2018/11220
Insolvency Professional

Krish

- Submission of claim by financial creditor – from IU
  - If not recorded in IU – submit in the same manner as operational creditor
- Submission of claim by operational creditor
  - Such form and manner with supporting documents as specified by the Board
  - Code has separate forms for OC who is a workman/employee and OC who is not a workman/employee
- Submission of claim who claims to be both FC and OC
  - Extent the debt is a financial debt – claim as FC
  - Extent the debt is an operational debt – claim as OC
- Withdrawals or variation of claims – within 14 days

Powers and Duties of the Liquidator

- Really wide powers – but subject to orders and directions of the AA
- Sec. 35 – List of non-exhaustive powers
  - to verify claims of all the creditors;
  - to take into their custody/control all the assets, property, effects and actionable claims of the CD;
  - to evaluate the assets and property of the CD
  - to take such measures to protect and preserve the assets and properties as deemed necessary;
  - to carry on the business of the CD for its beneficial liquidation as they considers necessary;
  - subject to section 52, to sell the immovable and movable property and actionable claims of the CD in liquidation by <u>public auction</u> or <u>private contract</u>, or to <u>sell the same in parcels</u>
    - Cannot sell to anyone who is disqualified from acting as resolution applicant

- to draw, accept, make and endorse any negotiable instruments in the name of the CD – as if done in the ordinary course of business
- to take out, in his official name, letter of administration to any deceased contributory
- to obtain any professional assistance from any person or appoint any professional, in discharge of their duties, obligations and responsibilities
  - Remunerations to them form a part of liquidation cost
  - Must not be related to liquidator, related party to CD or auditor of CD in the last five years (Reg. 7, LR)
- to invite and settle claims of creditors and claimants and distribute proceeds
- to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the CD;
  - Is a discretionary power [Reliance India Power v. Raj Kumar Ralhan]

- to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;
- to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if
- any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;
- to apply to the AA for such orders or directions as may be necessary and to report the progress of the liquidation process in a manner as may be specified by the Board; and
- to perform such other functions as may be specified by the Board

- May even remove nominee directors (*Rajive Kaul* v. *Vinod Kumar Kothari & Co.*)

Liquidation Estate (Asset Side)

- Sec. 36
  - Specifies assets that form a part and those that must be excluded
  - Liquidator holds the liquidation estate as a fiduciary for the benefit of all creditors
- Included assets:
  - Basically: Any asset owned by the CD including all the rights and interests therein – ascertained from Balance Sheet, IU, or records of registry, depository recording
  - Rest of the clauses clarify and explain Sec. 36(3)(a)

- Asset may or may not be in possession of the CD
  - May be encumbered
- Tangible assets – moveable or immovable
- Intangible assets including IP, securities, financial instruments, insurance policies etc.
- assets subject to the determination of ownership by the court or authority
- Asset recovered from proceedings for avoidance of transactions
- Asset of CD in which secured creditor has relinquished their secured interest
- Any other property belonging to or vested in CD
- all proceeds of liquidation as and when they are realised

Excluded Assets – Sec. 36(4)

- Assets owned by third party in the possession of the CD (bailment, trust, PF, pension fund, gratuity fund, other contractual arrangements that allow for use of assets but not its transfer etc.)
- Assets held as collateral by financial service provider subject to netting and set-off
- Personal assets of shareholders/partner EXCEPT avoidance transaction
- Assets of subsidiaries (foreign and Indian)
- Other assets that may be notified

- Precision Fasteners Ltd. v. Employees Provident Fund Organisation
  - Provident Fund not a part of liquidation estate
  - The liquidator must first pay PF, gratuity dues before even forming the liquidation estate
  - Further, as PF, gratuity, pension do not form part of liquidation state, Sec. 238 does not apply to them

Powers of liquidator to access information – sec. 37

- For the purpose of admission and proof o claims and identification of assets to form a part of the liquidation estate, the liquidator may access information from:
  - Information Utility
  - Any credit information system
  - Agencies of CG, SG, local government
  - Information systems for financial and non-financial liabilities regulated u/law
  - Information systems for securities and assets posted as security interest in law
  - Any database or source mentioned by the Board
- Allows for easier verification of claims and identification of assets and liabilities of the CD

- The creditors MAY require the liquidator to provide them any financial information relating to the corporate debtor
- If so required, liquidator SHALL provide the information within seven days or reasons for not providing the information
- Further, the officers of the CD, auditors, promoters, employees, partners of CD, IRP, RP, previous liquidators or anyone in possession of the properties of the CD must cooperate with the liquidator for collecting the information
- *Vijisan Jewels Pvt. Ltd.* v. *Cimme Jewels Ltd*. – non-cooperation of CD with liquidator may be construed as theft

Consolidation of Claims

- Sec. 38
- Within 30 days from the commencement of the liquidation process
- Receive and collect claims

Verification of Claims

- Sec. 39 r/w Reg. 30, LR
- Liquidator shall verify the claims within 30 days
- At this stage, liquidator - may require any creditor or the corporate debtor or any other person to produce any other document or evidence

Admission/Rejection of Claims

- Sec. 40
- After verification – either admit or reject the claim, in whole or part
  - Rejection – record reasons in writing
- Appeal from the decision (acceptance or rejection) – to AA – within 14 days
- Based on this exercise – Prepare a list of stakeholders along with
  - Amount of claim admitted
  - Extent it is secured/unsecured
  - Proofs

- File this list within 45 days of the receipt of the last claim with the AA
- The list may be modified from time to time
- Available for inspection by
  - Persons filing claims
  - Members, partners, directors, guarantors of CD
  - Displayed on the website of CD
  - Electronic dissemination on the electronic platform of the Board

1.Liquidator to receive claims within 30 days from liquidation commencement date

1.FC, Oc, partly FC-partly OC may submit their claims

1.Creditor may withdraw or vary its claim within 14 days of its submission

1.Liquidator to verify the claims received within 30 days from the last date of receipt of claims

1.The liquidator may, after verification of claims, either admit or reject the claim, in whole or in part

1.Liquidator shall communicate his decision of admission or rejection of claim within 7 days of such admission or rejection

1.Liquidator shall determine the value of claims admitted

1.Creditor may appeal to AA against the decision of the liquidator within 14 days of receipt of such decision

Stakeholder Consultative Committee

- Reg. 31A, LR – amended in the 2022 Second Amendment
- Liquidator – shall constitute a SCC within sixty days of liquidation commencement date
- Compromises of ALL creditors
  - Based on the list of stakeholders
- Each class of stakeholders – may nominate their representative
- If a class does not nominate – majority voting
- A secured creditor who has not relinquished his security interest under section 52 shall not be part of the consultation committee
- Promoters, directors, partners may attend the meeting of the consultation committee, but shall not have any right to vote.

- Role is entirely advisory (contrast with CoC) – not binding on liquidator – but record reasons if advice not acted on
- Advice the liquidator on:
  - remuneration of professionals appointed by the Liquidator;
  - manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process;
  - fees of the liquidator;
  - valuation;
  - manner in which proceedings in respect of preferential transactions, undervalued transaction,
  - extortionate credit transaction or fraudulent or wrongful trading, if any, shall be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from these proceedings shall be distributed (because liquidation is also a time-bound process)

- Voting – in proportion of admitted claim
- Till the SCC is constituted – CoC may act as the SCC – same powers and functions
- First meeting – within sixty days of liquidation commencement date
- More meeting if necessary or if requested by the members with 33% voting share (individually or collectively)
- Liquidator chairs the meetings
- Only actual power: 66% of the SCC may in writing apply for replacement of liquidator (along with the written consent of the proposed liquidator) to AA

Secured Creditors – Options (Sec. 52(1)

Secured Creditors

- May realise their security interest
- Relinquish their security interest

[Section 3(31)] – Secured Interest

- "Security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:

Provided that security interest shall not include a performance guarantee.

- If the SC chooses to realise the security interest – inform the liquidator and identify the asset (Sec. 52(2))
- The liquidator will verify the security interest and permit the secured creditor to realise only the secured interest IF
  - The security interest is maintained by an information utility or
  - Other means specified by the Board
- The secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest

- The secured creditor may apply the proceeds to recover the debts due to them
- If surplus – account the same to liquidator
- If insufficient – Join the waterfall in Sec. 53

Manner and mode of sale

- Reg. 32 and 33 of LR
- Either in a public auction or private sale
- Assets may be sold
  - On a standalone basis
  - Slump sale
  - Set of assets collectively
  - In parcels
- Sale of CD as a going concern
- Sale of business of CD as a going concern

- Private Sale
  - When assets are perishable
  - Likely to deteriorate in value significantly if not sold immediately
  - At a price higher than the reserve price of a failed auction
  - With the prior permission of AA
- Liquidator shall not sell the assets by way of private sale without prior permission of the AA to a related party of the corporate debtor; his related party; or any professional appointed by him.
- Cannot sell assets that are subject to security interest unless the security interest has been relinquished

Waterfall Mechanism - Sec. 53

Insolvency Resolution Cost and Liquidation Cost

Secured Creditors who have relinquished their security interest AND workmen dues up to 24 months

Other employees dues up to 12 months

Financial Creditors (Unsecured Creditors)

Government dues up to 2 years AND Unpaid secured creditors

Any remaining debts and dues

Preference shareholders

Equity shareholders

Liquidation Costs

- First in priority
- Includes:
  - Fee payable to the liquidator;
  - Remuneration payable by the liquidator;
  - All costs incurred by the liquidator including cost for preserving and protecting the assets etc.;
  - Costs incurred by the liquidator in carrying on the business of the corporate debtor as a going concern;
  - Interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower;
  - Any other cost incurred by the liquidator which is essential for completing the liquidation process:

- Amongst equal ranking – paid in full OR pro-rata basis
- Any contractual arrangements between recipients with equal ranking, if disrupting the order of priority shall be disregarded by the liquidator (Sec. 53(2))
- If the funds are not sufficient to pay every debt in full - The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients and the proceeds to the relevant recipient shall be distributed after such deduction (Sec. 53(3))

Completion of Liquidation

- Time-bound process
- Reg. 44, LR
- Required to liquidate within a year from liquidation commencement date
- Regardless of the status of avoidance transaction applications
- If liquidator is unable to complete within one year – apply to AA – seek permission to continue along with reasons and new timeline

Dissolution of CD

- Sec. 54
- After the affairs of the corporate debtor have been wound up and its assets are completely liquidated, the liquidator shall make an application to the AA for the dissolution of the CD
- Date of dissolution – Date of the AA order

Sale of CD as a going concern

- Liquidation is always a last resort – When there are no viable resolution plans *[Swiss Ribbons]*
- Even during liquidation – priority is to sell the CD/CD's business as a going concern
- As-is-where-is basis sale
- Not just assets but also liabilities
- Therefore, should be based on recommendation of CoC or SCC
- When: when CoC or liquidator believe such a sale would maximise value
  - First attempt to sell as going concern

- Not every liability can be sold such
  - So identify and group assets and liabilities (Reg. 39C)
- The sale profits will be used to pay off CD’s debts
- If unable to sell within 90 days, then proceed as per other clauses of Reg. 32

Voluntary Liquidation

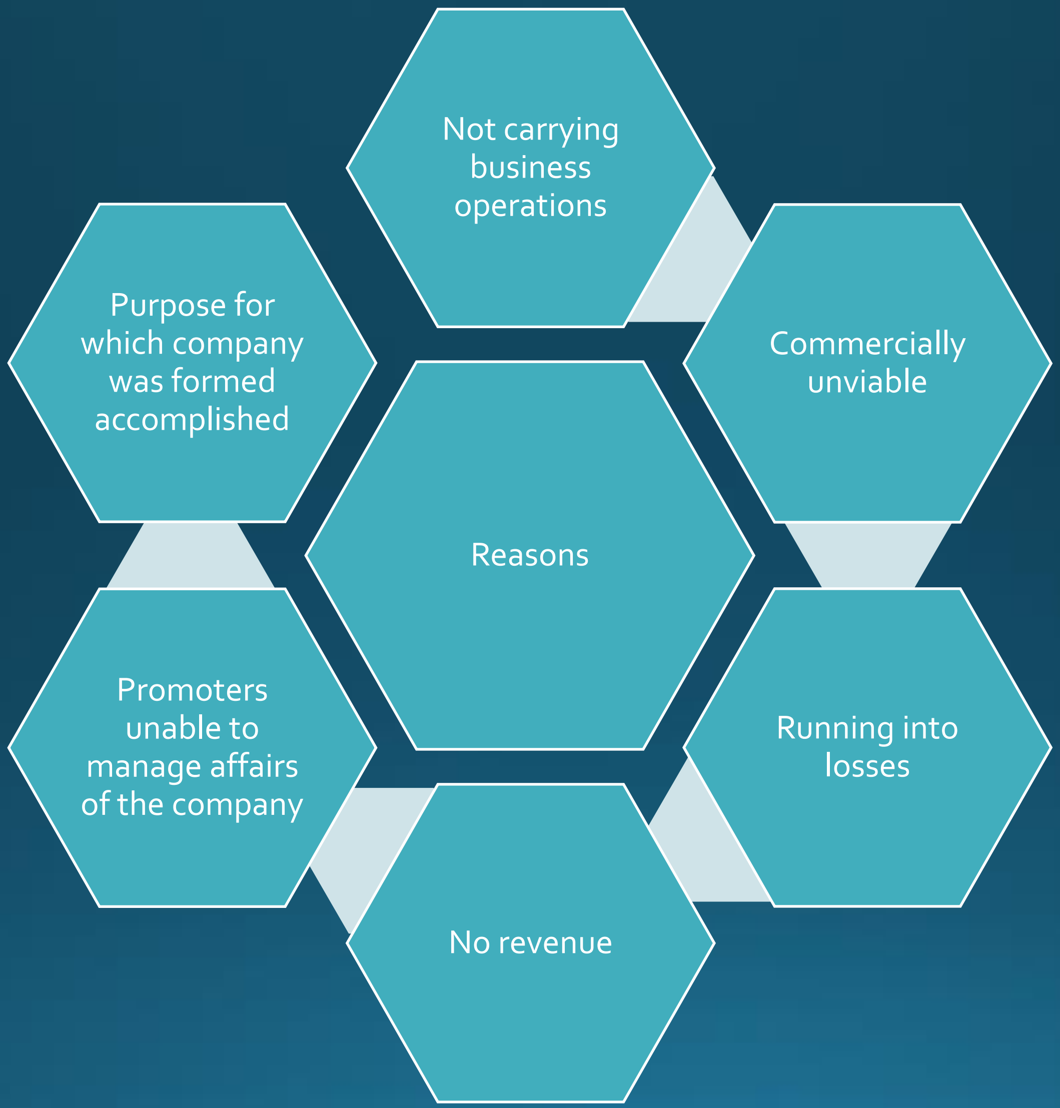
Regulatory Framework

Section 59 of the Insolvency and Bankruptcy Code, 2016 – Chapter V of Part II

The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

- For solvent entities as well
- Previously with Companies Act – now those provisions repealed
- Simplified, reduced intervention from authorities – fastened the process
- No official liquidator
  - Entire process is carried out by company liquidator
- In line with global practices

- Therefore – if a solvent entity wants to surrender their business – may apply for voluntary liquidation IF
  - Has not defaulted in any debt
  - No pending litigation against CD (In re, Central Inland Water Transport Corporation Ltd.)
  - No debt OR
  - Can pay off all debts AND
  - Not intended to defraud creditors
- If there are existing debts – approval of creditors is mandatory – 2/3rd in value – within seven days


Not carrying business operations
Commercially unviable
Purpose for which company was formed accomplished
Reasons
Promoters unable to manage affairs of the company
Running into losses
No revenue

Steps:

- 1. Convening a Board Meeting
  - To approve Voluntary Liquidation.
  - To approve declaration of Solvency.
  - For appointment of Liquidator and registered valuer
  - To approve notice of EGM considering voluntary liquidation.
- Declaration of Solvency
  - Majority of directors – file affidavit
  - they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
  - the company is not being liquidated to defraud any person;

Sample

Declaration of Solvency

We, Mr. X and Mr. P , only directors of ABC Private Limited do solemnly affirm and declare that we have made a full enquiry into the affairs of this company, and that having done so, we have formed the opinion that this Company has no debts or if claimed during the liquidation process, the company will be able to pay its debts/ claims in full from the proceeds of assets to be sold in liquidation within a period of six months from the date of commencement of liquidation, and we append a statement of the Company's assets and liabilities as at .... being the latest practicable date before the making of this declaration. We also solemnly affirm and declared that no business and no transaction of any kind has been carried for the period from .... till the date of the Board Meeting to be held on xx.xx.xx21 in which declaration of solvency has been placed, and we make this solemn declaration believing the same to be true.

The declaration of solvency has been submitted to the Board Meeting not to defraud the Creditors, Government, any other company, firm and other person.

Solemnly affirmed and declare at (PLACE) on (DATE), before me. Mr. X

DIN: xxxxx Address: Mr. Y

DIN: xxxxx Address:

- 2. Filing declaration of solvency with RoC (T) along with
  - To be accompanied by latest two years audited financial statements or for a period since incorporation as the case may be.
  - Report of valuation of the company if any by registered valuer.
- 3. Sending notice of EGM (to be held within 4 weeks of filing declaration of solvency)
- 4. Convening EGM (T+28) To approve voluntary liquidation.
  - To appoint liquidator and fix his remuneration.
  - Special resolution required UNLESS
  - Time duration OR event mentioned in AoA has occurred – then ordinary resolution

T + 28 = Voluntary liquidation commencement date

- 5. Approval from creditors representing 2/3rd of value of debt (T+28+7)
- 6. To make a public announcement (T+28+5)
  - Within 5 days of appointment
  - English
  - Regional newspaper
  - Website of CD
  - IBBI website
  - specify the last date of claim which shall be 30 days from liquidation commencement date.

FORM A
PUBLIC ANNOUNCEMENT
(Regulation 14 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)

FOR THE ATTENTION OF THE STAKEHOLDERS OF BATWINGS LEARNING CENTERS PRIVATE LIMITED

1.	Name of Corporate Person	Batwings Learning Centers Private Limited
2.	Date of Incorporation of Corporate Person	18th February, 2015
3.	Authority under which Corporate Person is incorporated/ registered	Registrar of Companies, Kolkata
4.	Corporate Identity Number / Limited Liability Identity Number of Corporate Person	U80901WB2015PTC205334
5.	Address of the registered office and principal office (If Any) of Corporate Person	Purbayan Co-Op 1569, Madurdaha, Kolkata, West Bengal-700107, India
6.	Liquidation Commencement Date of Corporate Person	10th September, 2024
7.	Name, Address, Email Address, Telephone Number and the registration number of the Liquidator	**Name:** Mr. Manish Kumar Bhagat **Address:** B-1204, Shilp Corporate Park, Rajpath Rangoli Road, Bodakdev, Ahmedabad-380054 **Email Id:** mbhagat2003@gmail.com **Mobile Number:** +91 98790 61500 **IBBI Registration No.** - IBBI/IPA-001 / IP-P00856/2017-18/11438 **AFA Valid up to:** 24/10/2024
8.	Last date for submission of claims	10th October, 2024

Notice is hereby given that the **Batwings Learning Centers Private Limited** has commenced voluntary liquidation on **10th September, 2024**.

The stakeholders of Batwings Learning Centers Private Limited are hereby called upon to submit a proof of their claims, on or before **10th October, 2024**, to the liquidator at the address mentioned against item 7.

The financial creditors shall submit their proof of claims by electronic means only. All other stakeholders may submit the proof of claims in person, by post or by electronic means. The relevant forms can be obtained from the website of IBBI i.e. https://ibbi.gov.in/home/downloads

Submission of false or misleading proofs of claim shall attract penalties.

MANISH BHAGAT
IP Regd No. IBBI/IP/001/ IP-P00856/ 2017-2018/11438
INSOLVENCY PROFESSIONAL

MBhagat

MANISH KUMAR BHAGAT
Voluntary Liquidator – Batwings Learning Centers Private Limited
IBBI Registration No. - IBBI/IPA-001 / IP-P00856/2017-18/11438
AFA Valid up to: 24/10/2024

Date: 13.09.2024
Place: Ahmedabad

- 7. Intimation of resolution to IBBI and ROC (T+28+7)
- 8. Open Bank Account in the name of CD followed by “in voluntary liquidation”
  - For receiving realization amount to pay liquidation cost
- 9. Receipt of claims and preparing a list of stakeholders (by the end of the 30 days)
- 10. Submission of Preliminary Report (T+45)
- 11. Distribution the proceeds from realization of assets
  - Within six months from the receipt of amount
  - To stakeholders.

- 12. Completion of liquidation
  - Within 270 days if there are existing debts and creditors have to approve
  - In all other cases, 90 days
- 12. Unclaimed proceeds
  - Apply to AA and transfer the unclaimed amount into Board maintained "Corporate Voluntary Liquidation Account in the Public Accounts of India"
- 13. Submission of final report to ROC, IBBI and NCLT by liquidator
- 14. Application to NCLT for dissolution of corporate person
- 15. Copy of order to be submitted to the authority with which the corporate person is registered
  - Within 14 days from the date of such order.

Effect of Liquidation

- Reg. 4, VL Reg
- The corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business.
- The corporate person shall continue to exist until it is dissolved under section 59(8).

What if fraud is detected

- Reg. 40, VL Reg
- Liquidator detects – make an application to AA – suspend VL process and pass other orders as necessary
- IF liquidator opines that debt cannot be paid in full – apply to AA – suspend the VL process and pass other orders

Avoidance Transactions

- CD and their related party would be able to predict that the financial affairs of the CD is not good and may decide to make the best out of the situation [twilight period]
- During this period – essential that the priority of creditors is preserved, otherwise:
  - Asset dilution: Buy the assets of the CD at a lower rate
  - Get their debts paid off first etc.
- This would be disadvantageously to other creditors
- And the party so benefited would be in a better position
- Law must prevent/ “avoid” this – based on doctrine of restitution and avoidance of unjust enrichment
- Avoidance provisions are a key tool to maximise asset value and prevent opportunistic actions by CD or creditors

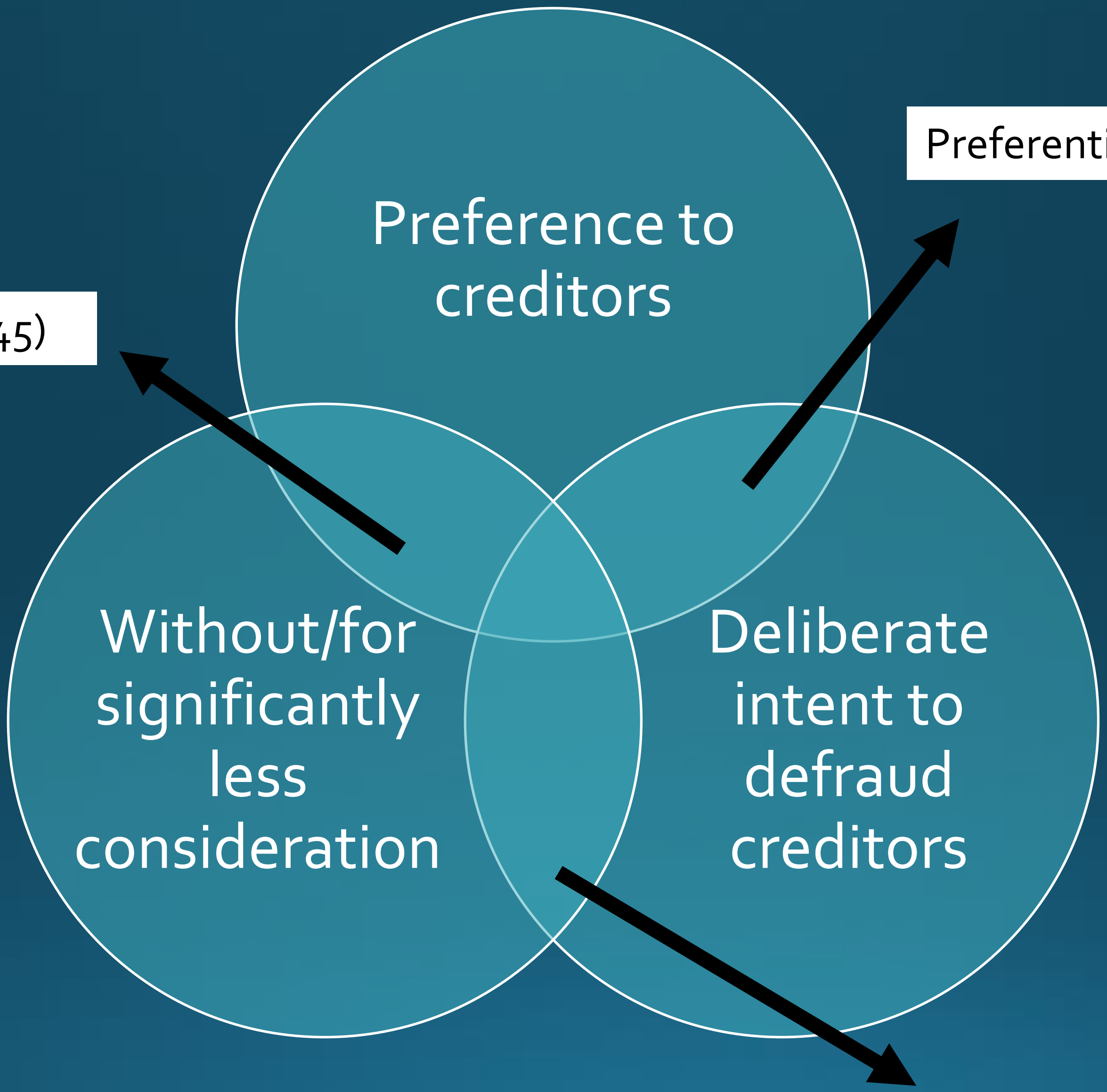
UNCITRAL Legislative Guide on Insolvency Law

- Avoidance provisions is defined as “provisions of the insolvency law that permit transactions for the transfer of assets or the undertaking of obligations prior to insolvency proceedings to be cancelled or otherwise rendered ineffective and any assets transferred, or their value, to be recovered in the collective interest of creditors

- IBC allows for reversal of the effects and the value recovered from avoidance proceedings form a part of liquidation estate (Sec. 36(3)(f)
- Power and duty of liquidator to look into the financial affairs of CD and detect undervalued and preferential transactions

Preferential transactions (Sec. 43)

Undervalued transaction (Sec. 45)



Extortionate Credit transactions (Sec. 50)

Fraudulent transactions (Sec. 66)

Sec. 43 – Preferential Transactions

- Two conditions:
  - Invalidates transfer of property or an interest thereof given during the relevant time to a person for the benefit of a creditor, surety or guarantor on account of antecedent debt or other liabilities
  - Has the effect of putting such creditor, surety or guarantor in a better position than the position which he would have been in if such transfer had not been made.
- Eg: Creating a security interest for an unsecured creditor
- Liquidator or RP – apply to AA for avoidance of preferential transactions u/Sec. 44
- AA would reverse the effects and require the person to whom the preference is granted to pay back any gains he may have made as a result of such preference

- Relevant period – look back period
  - Related party – two years before insolvency commencement date (ICD)
  - Other cases – one year before ICD
- Exceptions:
  - Preference transaction shall not include
    - transfer made in the ordinary course of the business
    - creating a security interest in property acquired by the corporate debtor if it creates new value AND it is registered with IU

- Transactions in good faith and for value
  - AA order u/Sec. 44 shall not affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value
  - require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional.
- Presumption – If you had sufficient information OR if you are related party – presumption that the transaction is not in good faith
- Public Announcement is construed as "sufficient information"

Avoidance of Undervalued Transactions

- Sec. 45
  - Liquidator or RP – determine during the relevant period if it is undervalued
  - To declare the transaction as void and reverse the effect
- Done to diminish the net asset value
- What constitutes an undervalued transaction
  - Gift
  - Consideration is significantly lesser
- Relevant period
  - Related party – two years before ICD
  - Other persons – one year before ICD
- Exception – ordinary course of business

Orders by AA

- Sec. 48: AA can by order:
  - vesting of the property transferred back in the CD
  - release or discharge (in whole or in part) of any security interest granted by the CD;
  - payment of such sums by a person, in respect of benefits received by such person, to the liquidator
  - payment of such consideration for the transaction as may be determined
- Sec. 47: If the liquidator fails to report the undervalued transaction – creditor/members/partners of CD may report it to AA
- In such cases AA can require Board to initiate disciplinary proceedings against liquidator

Transactions Defrauding Creditors

- Add-on to undervalued transaction
- Sec. 49 – deliberately enter into undervalued transaction
  - for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or
  - in order to adversely affect the interests of such a person in relation to the claim.
- Transactions in good faith and for value won't fall into this category

Extortionate Credit Transactions

- CIRP Regulation
- Two years prior to ICD
- Transaction shall be considered as an extortionate credit transaction where the terms:
  - require the corporate debtor to make exorbitant payments in respect of the credit provided; or
  - are unconscionable under the principles of law relating to contracts.
- Exception: Any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction

Orders of AA

- Sec. 51:
- Restore the position as it existed prior to such transaction.
- Set aside the whole or part of the debt created on account of the extortionate credit transaction.
- Modify the terms of the transaction.
- Require any person who is, or was, a party to the transaction to repay any amount received by such person.
- Require any security interest that was created as part of the extortionate credit transaction to be relinquished in favor of the liquidator