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# Opportunities & Challenges in Valuation Assignments under IBC

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# Registered Valuer – Transition to the regulated era

- Section 247 of The Companies Act, 2013 was put into force w.e.f. 18<sup>th</sup> October, 2017
- Companies (Registered Valuers and Valuation) Rules, 2017 were put in force on the same date but came with a transition provision
- Transition Arrangement ended on 31<sup>st</sup> January, 2019
- Updated Numbers: 2158 registered valuers as on 7<sup>th</sup> August, 2019
- 3 Registered Valuer Entities registered by IBBI

# IBC – Market Size

- Number of Public Announcements:
  - CIRP: 2225
  - Liquidation: 494
  - Voluntary Liquidations: 470
- To be Implemented:
  - Individual Bankruptcy
- Recent Changes
  - Expansion of NCLT
  - Training of DRT Judges

# Valuation Requirements under IBC

- For CIRP under Regulation 27 & 35 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
- For Liquidation under Regulation 35 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016
- For Fast Track CIRP under Regulation 26 & 34 of Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
- For Voluntary Liquidation under Sec 59(3)(b)(ii) of Insolvency and Bankruptcy Code, 2016



# Appointment of Valuer under CIRP Process

## **Appointment of registered valuers.**

*27. 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 accordance with regulation 35:*

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

- (a) a relative of the resolution professional;*
- (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 resolution professional is a partner or director.*

# Valuation under CIRP Process

**35. (1) Fair value and liquidation value shall be determined in the following manner:-**

- (a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;**
- (b) if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and**
- (c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.**

**(2) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29:**

**(3) The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.**

# Fair Value

2. (1) (hb) "fair value" means

the 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 knowledgably, prudently and without compulsion;



# Liquidation Value

2. (1) (k) "liquidation value" means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.



# Appointment of Valuer under Liquidation Process

**35. (1) 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.**

# Appointment of Valuer under Liquidation Process

**35. (2) 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.*

# Appointment of Valuer under Liquidation Process

**35. (3)** *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.*

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

# *Clauses (a) to (f) of regulation 32 of the corporate debtor*

*32. 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;*



# *Valuation for Voluntary Liquidation*

## **Voluntary Liquidation under Sec 59(3)(b)(ii) of Insolvency and Bankruptcy Code, 2016**

Sec 59(3) ..... voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:—

(b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely:—

(i).....

(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

# Valuation for Individual Bankruptcy

26<sup>th</sup> April, 2019: Public Comments Invited

35. Valuation of assets.

(1) The bankruptcy trustee shall appoint a registered valuer to value the assets which may or may not form part of the bankrupt's estate, when he is of the opinion that it is necessary or when a resolution to that effect has been passed by the committee.

(2) The provisions of regulation 11 (Appointment of Professionals) shall apply mutatis mutandis to RVs appointed under sub-regulation (1).

(3) The registered valuer appointed under sub-regulation (1) shall submit to the bankruptcy trustee the estimates of the realizable value of the asset(s) computed in accordance with internationally accepted valuation standards, after physical verification of the assets of the bankrupt.

(4) The bankruptcy trustee may appoint an additional registered valuer for valuing the assets of the bankrupt if required in the circumstances of the case, who shall independently submit his estimate as per sub-regulation (3).

(5) In the event an additional registered valuer is appointed under sub-regulation (4), the average of the estimates received from both valuers will be considered to be the value of the assets.

# Financial Assets frequently valued under IBC

- *Trade Receivables*
- *Inventories*
- *Investment in shares and securities of Subsidiaries*
- *Loans & Advances to Subsidiaries*
- *Advance to Suppliers / Capital Advances*
- *Cash In Hand & Bank Balances & Deposits*
- *Investment in equity shares of Listed companies*
- *Balance with Government Authorities*
- *Intangibles*

# Unique challenges under IBC

- *Limited or No Access to documents*
- *Limited Time*
- *Compromised or exited KMPs*
- *Limited or No Access to premises*
- *Limited or No Access to Recent Financial Statements and Books of accounts*
- *Challenges of a shut down unit*
- *CIRP is Public knowledge*
- *Limited practical exposure of CIRP*



# Information & Documents required – Trade Receivables

- Confirmations
- List of Debtors with their Names, address, Email ID and contact Details
- Ledger accounts (With Narration) of Debtors from the books of accounts of the Corporate Debtor
- Receivables Ageing Report
- Copies of Invoices, Purchase Orders, Proof of Delivery, etc
- Any documents with respect to legal means for recovery / Litigation records

# Trade Receivables – Alternative Checks/ Sources for information

- Independent Request for Balance Confirmation
- Bill by Bill settlement in Ledger?
- Service of Demand Notice under IBC
- Detailed chart of Related Parties
- Balance Confirmations in record of Statutory Auditor
- Recent Stock & Receivables Audit Report
- *MCA Database*

# Trade Receivables – Valuation – Common Mistakes

- Valuing Trade Receivables at a set percentage of the total value
- Confirmation is enough?
- Treating aged assets at zero value
- No Differentiation for Related Party Balances
- *No Due Dilligence of Credit worthiness*

# Trade Receivables – Valuation – Factor Based Approach

- Step 1: Identify important factors which influence valuation decision (Accuracy, Recoverability)
- Step 2: List out the evidences which should help you take a decision on the factors (Confirmation, Bill to Bill accounts, Debtor Ageing, etc)
- Step 3: Rate the factors
- Step 4: Assign a weight for various factors
- Step 5: Make adjustments and arrive at Fair Value and Liquidation Value



Microsoft Excel  
Worksheet



# Inventories – Valuation – Factor Based Approach

- Step 1: Identify important factors which influence valuation decision
- Step 2: List out the evidences which should help you take a decision on the factors (Physical Verification, Usability, Perishability, Marketability, Condition, Rework Required, etc)
- Step 3: Rate the factors
- Step 4: Assign a weight for various factors
- Step 5: Make adjustments and arrive at Fair Value and Liquidation Value

# Thank You! Questions?



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