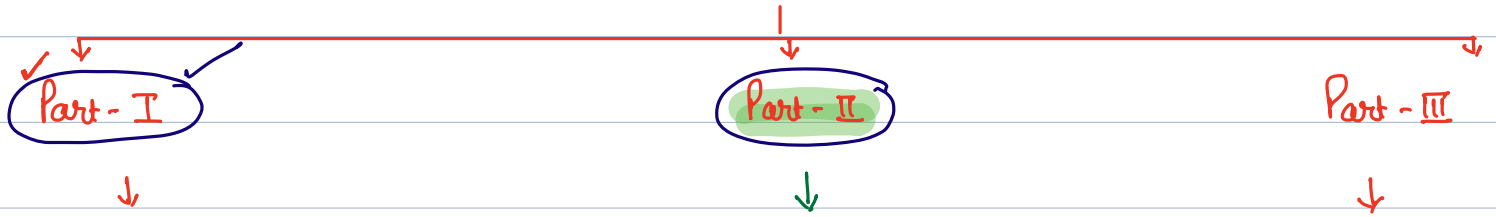


Liquidation Process and Dissolution

(Sec. 33 to 53)

(Sec. 54)



(i) Initiation of liquidation
(Sec. 33)

(ii) Appointment of liquidator
(Sec. 34)

(iii) Powers and duties of
liquidator (Sec. 35)

(iv) Liquidation Estate
(Sec. 36)

(v) Powers of liquidator
to access information
(Sec. 37)

(vi) Provisions w.r.t.
claims
(Sec. 38 to 42)

(i) Preferential drawings
(Sec. 43 and 44)

(ii) Undervalued drawings
(Sec. 45 to 49)

(iii) Exorbitant credit
drawings.
(Sec. 50 and 51)

(i) Secured creditors
(Sec. 52)

(ii) Distribution of
Assets (Sec. 53)

(iii) Dissolution of
corporate debtor
(Sec. 54)

(i) Initiation of liquidation: Sec. 33 of IBC, 2016

AA shall pass a liquidation order if

(a) Resolution plan not

recd. u/s 30 before

expiry of

- CIRP Period

or

- Max Period permitted

for completion of CIRP

u/s 12 or Fast track

CIRP u/s 56.

(b) AA rejects the resolution

plan u/s 31.

- Resolution Professional

at any time during

CIRP intimate to AA

↓

decision of CoC to

liquidate the corporate debtor.

($\geq 66\%$ of Voting power)

- Resolution plan

approved by AA

Contravened by

Corporate debtor

Note: On passing of liquidation order, AA shall make a public announcement stating that Corporate debtor is in liquidation.

AND

✓ Requires that liquidation Order to be sent to the authority with which the corporate debtor is registered.

Consequences of liquidation Order:

(i) No suit or other legal proceedings shall be instituted by or against the corporate debtor.

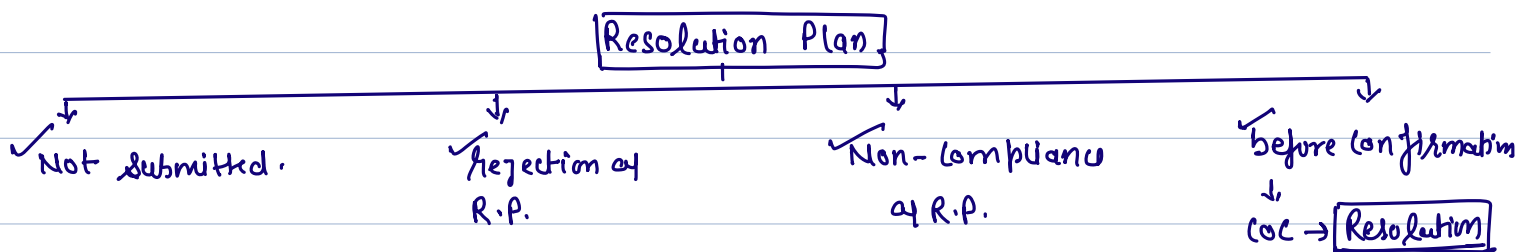
Exception: Suit or other legal proceedings may be initiated by liquidator, on behalf of corporate debtor, with the prior approval of AA.

(ii) Liquidation Order shall be deemed to be a notice of discharge to the officers, employees and workman of corporate debtor.

Exception: Business of corporate debtor is continued during the liquidation process.

(iii) Moratorium is imposed on pending legal proceedings against the corporate debtor.

(iv) Assets of corporate debtor vests in liquidation Estate.



(ii) Appointment of liquidator : Sec. 34

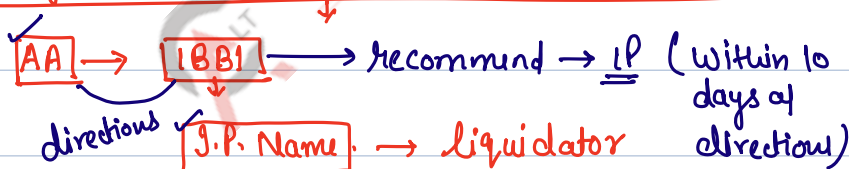
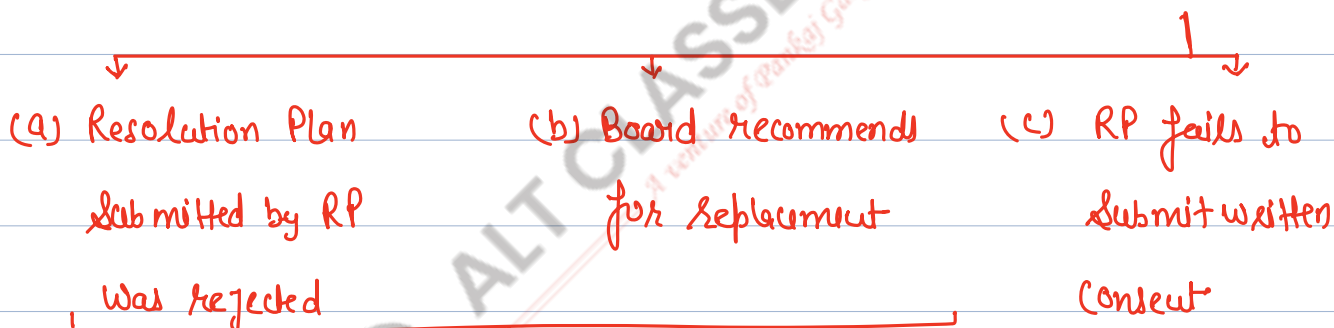
- RP appointed for CIRP act as liquidator if

(a) Written consent is submitted by RP; and

(b) RP not replaced by AA. *

- All Powers of BOD, KMP and Partners of Corporate debtors, shall vest in the liquidator.

* Replacement of RP: AA shall by Order replace the RP if



(iii) Powers and Duties of liquidator : (Sec. 35) : - heading from book -

(iv) Powers of liquidator to access the Info. Systems : (Sec. 37)

- heading from book -

(v) Liquidation Estate : (Sec. 36) → Inclusions
→ Exclusions] - learning from book -

Inclusions in Liquidation Estate:

- (i) Assets on which corporate debtor has ownership rights including shares held in sub. co.
- (ii) Assets that may or may not be in possession of CD. including but not limited to encumbered assets.
- (iii) Tangible as well as intangible assets.
- (iv) Assets the ownership of which is subject to determination by Court or Authority.
- (v) Assets or their value recovered through proceedings in undervalued transactions.
- (vi) Assets in respect of which secured creditor has relinquished the security interest.
- (vii) Property belonging to corporate debtor on insolvency commencement date
- (viii) Proceeds of liquidation.

Exclusions in Liquidation Estate:

- (i) Assets owned by a third party, possessed by corporate debtor.
 - (ii) Collateral security provided to financial services provider.
 - (iii) Personal assets of S/h and Partners of corporate debtors
- Exception: Avoidable transactions → Undervalued transactions.
- (iv) Assets of subsidiaries
 - (v) Other assets as specified by the Board.

(vi) Provisions w.r.t. claims: (Sec. 38 to Sec. 42)

Sec. 38 → Receive / collect the claims → 30 days from the
from financial / operational creditors. Commencement of
liquidation.
↓ (Alteration allowed)

Sec. 39 → Verify the claims within → within 30 days from the
specified time. last date of receipt of
claim.
↓

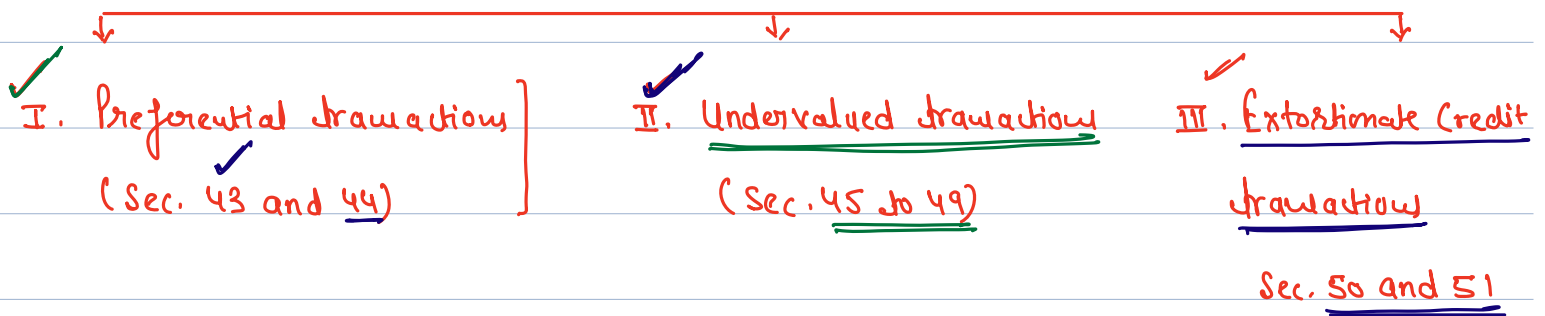
Sec. 40. → Admit / reject the claim
in whole or in part
↓
Communicate to creditor and → within 7 days of such
corporate debtor. admission / rejection.
↓

Sec. 41 → Determine the value of claims
admitted u/s 40
↓

Sec. 42. → Creditors may prefer appeal to → 14 days of receipt
AA against decision of liquidator of such decisions
accepting / rejecting the claim.

* within 14 days of submission

Part II of Liquidation Process : Avoidable Drawation



(i) Preferential Drawations: Sec. 43

Sec. 43(1): RP/Liquidator shall apply to AA

↓
If he is of the Opinion that

↓
Corporate debtor has at a

↓
Relevant time [Sec. 43(4)]

↓
given a preference in such drawations
in the manner laid down U/s 43(2)

↓
to any person referred U/s 43(4)

↓
for avoidance of
such drawation

and

One or more

Orders referred

U/s 44

Sec. 43(4):

Persons

(i) Related Party

— 2 years preceding the Insolvency
Commencement date

(ii) Other than related party

— 1 year preceding the Insolvency
Commencement date

Sec. 43(2): A Corporate debtor shall be deemed to have given a preference, if there is a transfer of property or security interest

↓
for the benefit of
Creditors, surety or
guarantors

↓
for antecedent financial
or operational debt

↓
which has the effect of putting
such creditor, surety or
guarantor in a beneficial
position in the event of
distribution of assets u/s 53.

Sec. 43(3): Exceptions to Sec. 43(2):

Followings will not be considered as preferences:

- (a) transfer made in Ordinary Course of business
- (b) transfer creating a security interest in property acquired by Corporate debtor to the extent such security interest

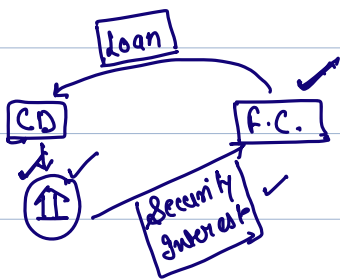
(i) secures new value (e.g. new credit)

(ii) was given at the time of or after signing the security agreement and security agreement contained a description of such property as security interest

(iii) was used to acquire such property.

AND

transfer regd. with information utility on or before
30 days of receiving possession of the property.

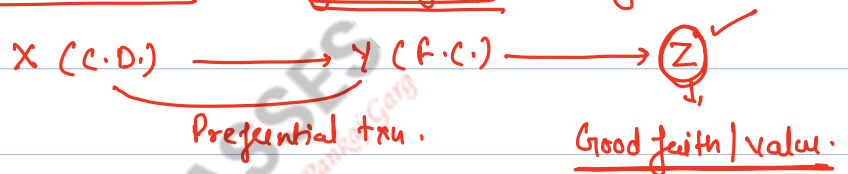


(ii) Orders in case of Preferential transaction: Sec. 44

(a) To require any property transferred in connection with giving of the preference to be vested in the corporate debtor.

(b) To release or discharge of any security interest created by Corporate debtor.

Exception: Security interest acquired from a person other than corporate debtor in good faith and for value.



(c) To require any person to pay such sums in respect of benefits received by him from corporate debtor, to the liquidator.

Exception: Benefit received in good faith and for a value.

Note: It shall be presumed that the interest acquired or benefit was received otherwise than in good faith, if another person:

(a) had sufficient information* of commencement of CIRP of Corporate debtor;

(b) is a related party.

* It will be deemed that a person is having sufficient information if a public announcement regarding the CIRP has been made u/s 13.

(iii) Undervalued Drawactions : Sec. 45 to 49

- Sec. 45 : Avoidance of undervalued drawactions (Griff. M.P. ↓)
- Sec. 46 : Relevant Period for undervalued drawactions.
- Sec. 47 : Application by Creditors in case of undervalued drawaction
- Sec. 48 : Orders in case of undervalued drawaction
- Sec. 49 : Drawactions defrauding Creditors

————— Do Practice - Questions - April 18 (MTP) —————

————— Jan. 21 (Exam) —————

(iv) Extortionate Credit Drawactions! Sec. 50 and Sec. 51

(a) Sec. 50 : Extortionate Credit Drawactions

(b) Sec. 51 : Orders of AA in respect of extortionate Credit Drawactions.

Part III of Liquidation Process:

(i) Secured Creditor in Liquidation Proceedings: Sec. 52

- (a) Secured creditor may
- (i) Relinquish its security interest to liquidation estate and receive the proceeds from sale of assets by liquidator in manner specified uls 53.
 - (ii) Realise the security interest in manner specified uls 52.

(b) Manner for Realisation of security interest:

Secured creditor shall inform the liquidator of security interest and identify the assets subject to security interest, to be realised.

⇓

Liquidator shall verify the security interest and permit the secured creditor to realise the security interest.

⇓

Secured creditor may enforce, realise, settle, compromise or deal with the secured assets as per the applicable laws and apply the proceeds to recover the debts.

↓

↓

Surplus Proceeds ↓

Handed to the liquidator, surplus funds received from enforcement of secured assets

Deficit Proceeds ↓

Unpaid debts shall be paid by liquidator in the manner specified uls 53.

(ii) Dissolution of corporate debtor: - Sec. 54 of IBC, 2016

- Reg. 44 of IBB (Liquidation Process) Regulation, 2016.

Liquidator shall liquidate the corporate debtor within One year from liquidation commencement date. (Reg. 44)

Liquidation not completed (Reg. 44)



Liquidator shall make an application
to AA



to continue the liquidation



along with a report explaining
why the liquidation has not
been completed

and

specifying the additional time
required for completion.

Liquidation completed (Sec. 54)



Liquidator shall make an
application to AA



for dissolution of corporate debtor



AA shall pass an order for dissolution
of corporate debtor from date of that
order.



Copy of such order shall be forwarded
to the authority with whom corporate
debtor is registered.

(within 7 days of date of order)

