

REFRAMING LIQUIDATION UNDER IBC: TRANSITIONING FROM SALE AS A GOING CONCERN TO ASSET BASED REALISATION

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ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC) aimed to balance value maximisation with timely resolution of distressed assets. A key feature facilitating business revival was the option of liquidation 'sale as a going concern'. The recent omission of this provision under the IBBI (Liquidation Process) Regulations, 2016, however, signals a shift from business continuity to asset realisation. This article analyses the legal and policy rationale behind this change and its implications for stakeholders. It traces the evolution of 'going concern' sales, evaluates their impact on creditor recoveries and employment, and examines the alignment of the amendment with the IBC's objectives and judicial interpretations. The article argues that while the reform enhances liquidation efficiency, it may also dilute the Code's rehabilitative ethos. It concludes by suggesting a calibrated approach to reconcile value preservation with procedural finality in liquidation.

Keywords: Insolvency and Bankruptcy Code (IBC); Sale as a Going Concern; IBBI (Liquidation Process) Regulations; Asset Realisation; Business Continuity; Value Maximisation; Insolvency Framework.

INTRODUCTION

The IBC was enacted to consolidate and amend India's insolvency laws, establishing a unified mechanism for time bound resolution of corporate debtor while ensuring maximisation for stakeholders.¹ A key innovation under the IBC framework was allowing for Liquidation as a going concern, a mechanism that enabled sale of the corporate debtor's business as an operating entity even in Liquidation, thereby

preserving business value, employment and stakeholder confidence. However, through a notification dated 14th October, 2025, the Insolvency and Bankruptcy Board of India (IBBI), through its recent amendment to the IBBI (Liquidation Process) Regulations, 2016, omitted 'sale of corporate debtor as a going concern as a permissible mode of liquidation. This development marks a significant shift in the liquidation regime under the IBC, from prioritising continuity of business operations to focusing purely on asset realisation.

RATIONALE BEHIND 'SALE AS A GOING CONCERN'

The concept of 'sale as a going concern' was introduced by the IBBI through the Liquidation Process (Amendment) Regulations, 2018², allowing the Liquidator to sell the corporate debtor's business or assets in such a way that its operations continue seamlessly. This provision emerged as a pragmatic middle ground, enabling recovery of higher value for creditors while protecting jobs and preserving economic activity.

Under *Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016*³, provided a set of modes of sale of assets in liquidation which included sale of an asset on a standalone basis, sale by slump sale, sale of a set of assets collectively, sale of assets in parcels, sale of the corporate debtor as a going concern and sale of the business of the corporate debtor as a going concern. Liquidators were permitted to sell the

¹Insolvency and Bankruptcy Code, No. 31 of 2016, Statement of Objects and Reasons, § 5, Acts of Parliament, 2016 (India).

²Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2018, Gazette Notification No. IBBI/2018-19/GN/REG040 (Mar. 27, 2018).

³Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025, at reg. 32.

corporate debtor or its business as a 'going concern,' in order to align with the broader objectives of the IBC, emphasizing value maximisation over mere liquidation. It also offered a chance for revival when resolution under CIRP had failed. **Regulation 32A⁴ of the IBBI (Liquidation Process) Regulations, 2016**, introduced a specific mechanism: if the Committee of Creditors recommended or the liquidator opined that such a sale would maximise value, the liquidator must first endeavour to sell the corporate debtor or its business as a going concern. This preserved employment and business relationships, reinforcing the economic and social objectives of the IBC.

In *Swiss Ribbons Pvt. Ltd. v. Union of India*,⁵ the Supreme Court acknowledged the IBC's fundamental emphasis on resolution over Liquidation. Similarly, in *S.C. Sekaran v. Amit Gupta*⁶ and *Y. Shivram Prasad v. S. Dhanpal*,⁷ the NCLAT endorsed the sale of the corporate debtor as a going concern during Liquidation as consistent with the objectives of the IBC.

RECENT IBBI CIRCULAR: A PARADIGM SHIFT

On 14 October 2025, the IBBI notified a Circular/ amendment which is the **IBBI (Liquidation Process) (Second Amendment) Regulations, 2025⁸**, omitting the 'sale as a going concern' under **Regulation 32A⁹ of the Liquidation Process Regulations** and omitted corresponding **clauses (e) and (f) of**

Regulation 32¹⁰. For liquidation cases where the sale-as-going-concern has not yet begun, the new regime applies. Going forward, under the liquidation process, the only sales envisaged would appear to be asset-based (standalone assets, parcels, slump sale) but not the corporate debtor as an entire going concern.

The permissible modes of sale are now limited to:

- Sale of Assets on a standalone basis
- Sale of assets in a slump sale
- Sale of assets in parcels, and
- Sale of the business of the corporate debtor as a going concern

According to the IBBI, the move was intended to streamline liquidation, reduce ambiguity about post-sale liabilities, and ensure that liquidation served its intended purpose which is asset realisation rather than corporate revival. The IBBI has cited several reasons prompting the amendment:

- a. **Complexity and delay**: The going-concern sale framework in liquidation was leading to elongated processes, protracted litigation, and increased cost of liquidation.
- b. **Value erosion risk**: Concerns about poor outcomes, increased costs and delays when opting for going concern sales in liquidation.
- c. **Streamlining of liquidation framework**: By removing a route that was under-utilised and often contested, the regulator aims to simplify the liquidation process and make asset realisation more predictable.
- d. **Policy emphasis shift**: Though the concept of going concern sale is well-recognised in global insolvency law, in the IBC world there were practical hurdles, especially around transfer of liabilities, employee rights, security interests, and the regulatory approvals required. The policy is now more oriented towards timely liquidation and asset-realisation rather than business-continuation in the liquidation stage.

The Amendment is prospective in nature; it shall apply to the cases where liquidation by

⁴Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025, at reg. 32A.

⁵*Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 (India).

⁶*S.C. Sekaran v. Amit Gupta*, Company Appeal (AT) (Insolvency) Nos. 495–496 of 2018 (NCLAT Aug. 27, 2018).

⁷*Y. Shivram Prasad v. S. Dhanpal*, Company Appeal (AT) (Insolvency) No. 224 of 2018 (NCLAT Jan. 8, 2019).

⁸ Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025, Gazette Notification No. IBBI/2025-26/GN/REG106 (Oct. 14, 2025).

⁹Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025, at reg. 32A.

¹⁰Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025, at reg. 32.

sale as going concern has not commenced. The notification is effective from the date of publication which is 14th October, 2025. In effect, this regulatory change removes the mandatory-first-attempt route of sale as a going concern in the liquidation process under IBC, defaulting instead to the other asset-sale modes (standalone assets, slump sale, assets in parcels). This deletion marks a decisive policy departure. The liquidation process will now focus on asset-by-asset realisation rather than continuity of the debtor's business. The change may prompt stakeholders to prefer earlier resolution rather than wait for liquidation; perhaps emphasising the importance of earlier invocation of resolution (CIRP) rather than liquidation.

POLICY RATIONALE AND CONCERNS

1. **ADMINISTRATIVE AND LEGAL AMBIGUITIES-** While conceptually sound, going-concern sales posed practical challenges. Liquidators encountered uncertainty regarding transfer of licenses, statutory dues, and treatment of employees.⁹ Ambiguities also persisted over whether the buyer inherited contingent liabilities and pending litigations associated with the corporate debtor.
2. **REASSERTION OF LIQUIDATION'S PURPOSE-** The amendment underscores a policy distinction between resolution and liquidation. The earlier overlap allowed quasi-revival during liquidation. The omission redefines liquidation strictly as a process of asset monetisation and distribution under Section 53 of the IBC.¹¹
3. **STAKEHOLDER IMPACT-** Critics argue that this approach undermines value maximisation, particularly where a business retains going-concern value despite insolvency.¹² It may also reduce employment preservation and discourage investors seeking acquisition of operational entities.

IMPACT ON STAKEHOLDERS

CREDITORS

The new framework may expedite liquidation and improve predictability in recoveries. Yet, empirical data suggests that sales as going concerns historically yielded higher recoveries than asset-wise disposals¹³. The amendment could therefore reduce overall creditor value.

1. **EMPLOYEES**

A major collateral impact will be on the workforce. Sale as a going concern allowed retention of employment through continuity of business. The omission of this could lead to immediate cessation of operations, adversely affecting employment and supply chains.¹⁴

2. **BUYERS AND INVESTORS**

Potential buyers who look for acquiring a distressed business as a going concern may now face reduced regulatory clarity or possibility in liquidation settings under IBC. Investors may prefer resolution-stage acquisitions, reducing participation in liquidation auctions. This narrows the market and could depress asset prices.

3. **LIQUIDATORS**

Liquidators will have clearer but less operational discretion. The omission will most likely mean more focus on sale of assets. The simplification of sale methods may expedite liquidation timelines but at the cost of reduced flexibility to maximise value.

CRITIQUE AND CONSIDERATIONS

One of the key benefits of going concern sales under distress is value-preservation: transferring intangible assets, contracts, branding, operating workforce, etc. By eliminating that route, there is a risk of value being destroyed through piecemeal asset sales. On the other hand, the practical difficulties of going concern sales, complex liability transfers,

¹¹Insolvency and Bankruptcy Code, No. 31 of 2016, § 53 (India).

¹²See *Rajesh Singh v. Official Liquidator of M/s. Emporis Projects Ltd.*, Company Appeal (AT) (Insolvency) No. 334 of 2020 (NCLAT Aug. 24, 2020).

¹³Insolvency and Bankruptcy Board of India, Annual Report 2022–23, at 112 (showing higher average recoveries in going-concern sales).

¹⁴Id.

employee issues, regulatory approvals, and timing delays were real and may have prevented it from being used efficiently.

The amendment says “where sale as going concern has not commenced” but the boundary of “commenced” may raise disputes. It remains to be seen whether the IBBI will provide further guidance (or carve-out) for complex businesses which may still be viable and would realise higher value if transferred intact, rather than broken up. There may be a future need for legislative amendment (rather than regulatory) if the policy aim is to continue going concern transfers but with safeguards because many of the foundational issues (liabilities, employee rights, security interests) point to statutory rather than purely regulatory solutions.

JUDICIAL PERSPECTIVES

Indian courts have repeatedly underscored that liquidation should be the last resort. In *Arun Kumar Jagatramka v. Jindal Steel and Power Ltd.*,¹⁵ the Supreme Court reiterated that the IBC’s design is resolution-oriented. Earlier, in *S.C. Sekaran v. Amit Gupta*¹⁶, the NCLAT directed liquidators to explore sale of the corporate debtor as a going concern before resorting to asset breakup. Nevertheless, judicial discourse also recognises the need for finality in liquidation. Prolonged processes frustrate the Code’s time-bound mandate under Section 33¹⁷. The IBBI’s amendment, therefore, aligns with the judiciary’s growing emphasis on procedural efficiency.

CONCLUSION

The IBBI’s amendment to omit “sale as a going concern” provisions under the liquidation framework reflects a shift in emphasis from trying to rescue or carry forward distressed businesses under liquidation, to more direct asset realisation. While this may streamline the

process and reduce legal and procedural complexity, it leaves open risks relating to value destruction, job losses, and piecemeal disposal outcomes. Stakeholders will need to adapt their strategies accordingly, and for cases where business continuity is desirable, emphasis on early resolution (CIRP) remains critical. It will also be interesting to see if further refinements or policy tweaks follow, especially to deal with the tension between liquidation efficiency and business value preservation.

To balance efficiency with value preservation, regulatory reforms could consider:

- a. Reintroducing limited going-concern sales with clear liability demarcation;
- b. Establishing safe-harbour provisions for buyers to avoid inherited liabilities; and
- c. Facilitating hybrid sales models combining asset transfer with continued business operation.

Such measures would harmonise liquidation finality with the IBC’s founding ethos of maximising value of assets of the corporate debtor.

¹⁵ *Arun Kumar Jagatramka v. Jindal Steel & Power Ltd.*, (2021) 7 SCC 474 (India).

¹⁶ *S.C. Sekaran v. Amit Gupta*, Company Appeal (AT) (Insolvency) Nos. 495–496 of 2018 (NCLAT Aug. 27, 2018).

¹⁷ Insolvency and Bankruptcy Code, No. 31 of 2016, § 33 (India).