



Valuation Required Under The Provisions of the Companies Act, 2013 & Insolvency and Bankruptcy Code, 2016 Along with Case Study for IBC

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Do You Want to Know??

Requirement of Valuation & Deal Cycle for Companies

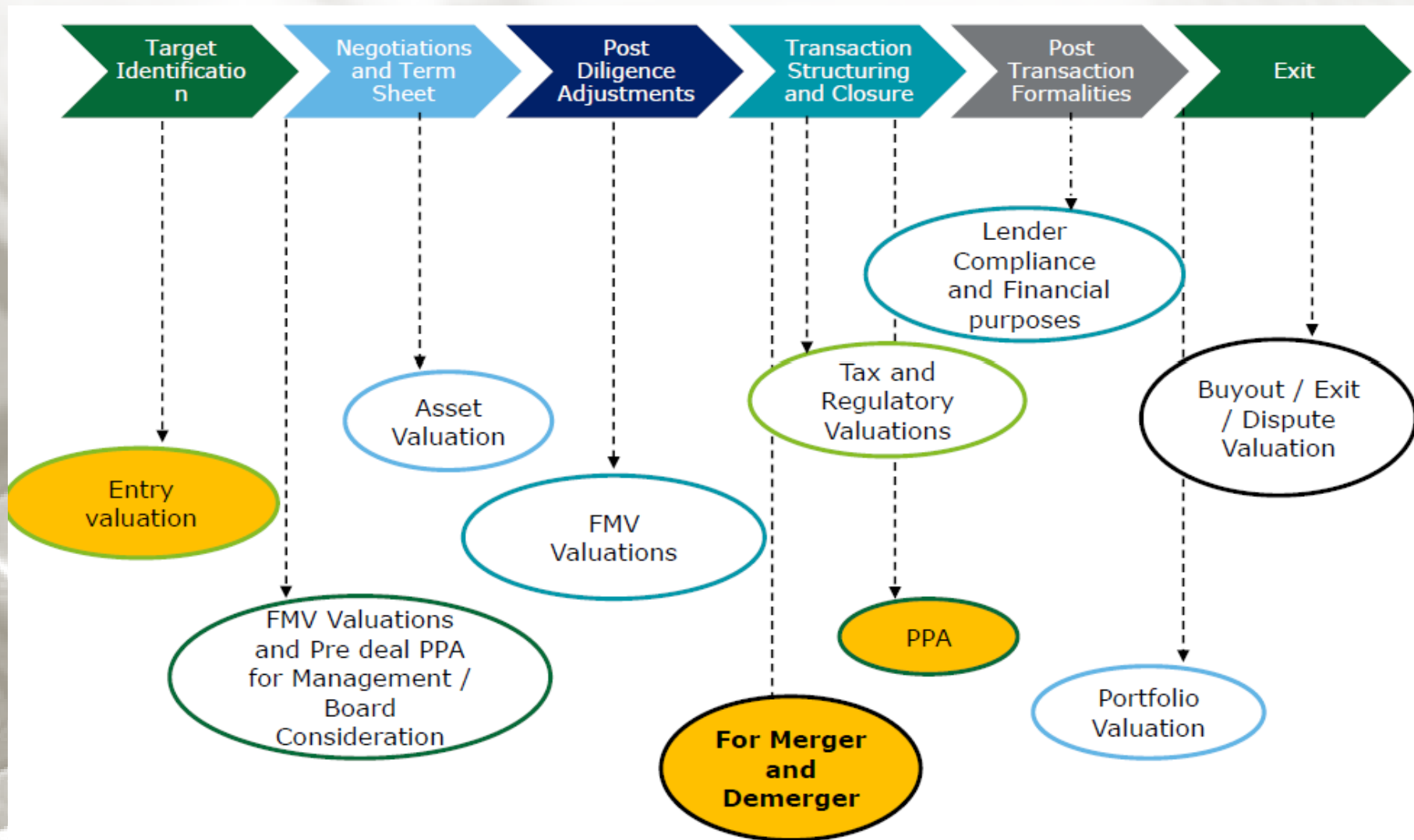
Where a valuer has Opportunities for his services under Companies Act, 2013 & IBC 2016 ?

Which section of Companies Act & IBC Code demands valuation reports by Registered Valuer?

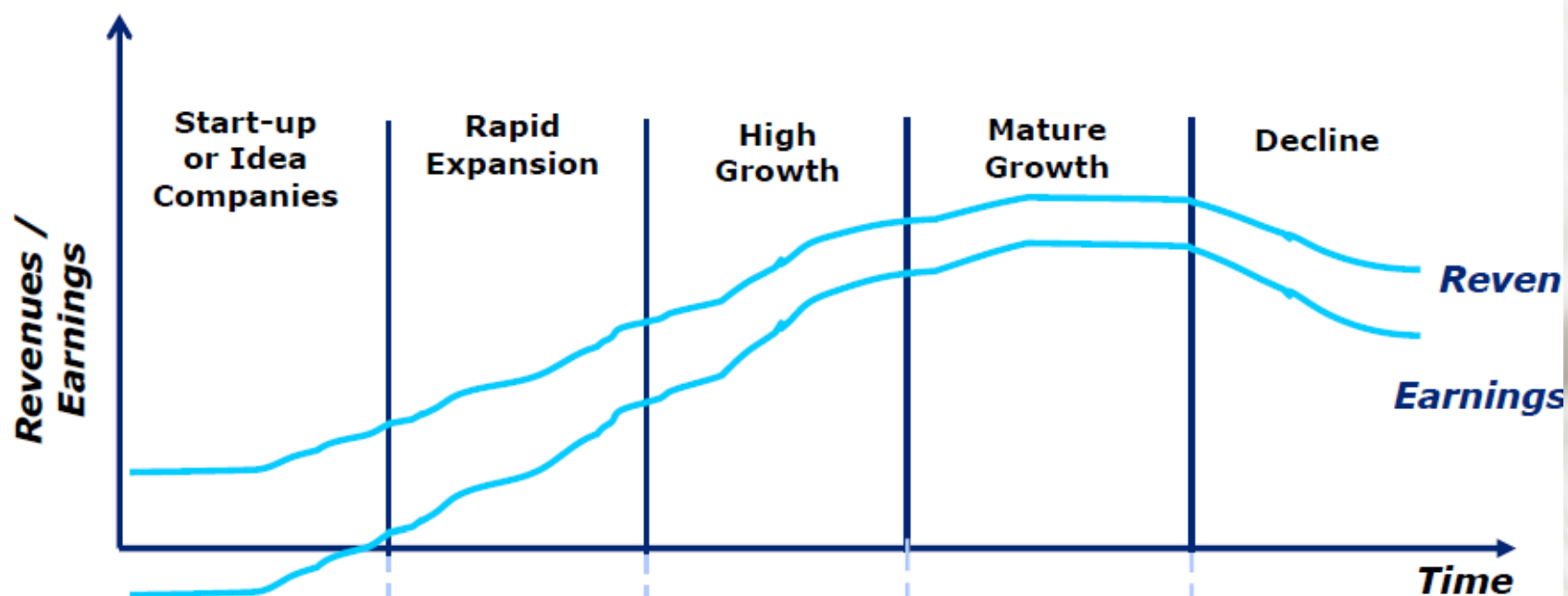
Importance of valuation opinions in Companies Act & Insolvency Process ?



REQUIREMENT OF VALUATION & DEAL CYCLE:



VALUATION IN REAL LIFE:



Revenue / Current Operations	Non-existent or low revenue /negative operating income	Revenue increasing/Income still low or negative	Revenue in high growth/Operating income also growing	Revenue growth slows/Operating income still growing	Revenue and operating income growth drop
Operating History	None	Very limited	Some operating history	Operating history can be used in valuation	Substantial operating history
Comparable Firms	None	Some, but in same stage of growth	More comparables, at different stages	Large number of comparables, at different stages	Declining number of comparables, mostly mature
Source of Value	Entirely future growth	Mostly future growth	Portion from existing assets/Growth still dominates	More from existing assets than growth	Entirely from existing assets

OVERVIEW OF SECTIONS IN COMPANIES ACT, 2013 DEMANDING FOR VALUATION REPORTS FROM REGISTERED VALUER :

1	Section 62(1)(c) of the Companies Act, 2013 read with Rule 13(1) of the Companies (Share Capital and Debentures) Rules, 2014	Further issue of share capital
2	Section 177(4)(vi) of the Companies Act, 2013	Terms of reference of Audit Committee
3	Section 192(1) and 192(2) of the Companies Act, 2013	Restriction on non-cash transactions involving directors
4	Section 230(2)(c)(v) and Section 230(3) of Companies Act, 2013	Power to compromise or make arrangements with creditors and members
5	Section 232 (2)(d) and Section 232 (3)(h)(B) of the Companies Act, 2013	Merger and amalgamation of companies
6	Section 236(2) of the Companies Act, 2013	Purchase of minority shareholding

7	Section 247(1) of the Companies Act, 2013	Valuation by Registered Valuers
8	Section 281(1)(a) of the Companies Act, 2013	Submission of report by Company Liquidator
9	Rule 2(c)(ix) of the Companies (Acceptance of Deposit) Rules, 2014	Exclusions from deposits.
10	Rule 6(1) of the Companies (Acceptance of Deposit) Rules, 2014	Creation of security
11	Rule 8(6), (7), (9) and (12) of the Companies (Share Capital and Debentures) Rules, 2014	Issue of sweat equity shares
12	Rule 16(1)(c) of the Companies (Share Capital and Debentures) Rules, 2014	Provision of money by company for purchase of its own shares by employees or by trustees, for the benefit of employees
13	Rule 12(5) of the Companies (Prospectus and Allotment of Securities) Rules, 2014	Return of allotment

1. SECTION 62(1)(C) OF THE COMPANIES ACT, 2013 READ WITH RULE 13(1) OF THE COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014

Section 62: Further Issues of Share Capital

(1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered...

(C) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is **determined by the valuation report** ¹[of a registered valuer subject to.....

RULE 13 OF COMPANIES (SHARE CAPITAL & DEBENTURES) RULES 2014

13. Issue of shares on preferential basis

*(1) For the purposes of clause (c) of sub-section (1) of section 62, If authorized by a special resolution passed in a general meeting, shares may be issued by any company in any manner whatsoever including by way of a preferential offer, to any persons whether or not those persons include the persons referred to in clause (a) or clause (b) of sub-section (1) of section 62 and such issue on preferential basis should also comply with conditions laid down in section 42 of the Act: **Provided that the price of shares to be issued on a preferential basis by a listed company shall not be required to be determined by the valuation report of a registered valuer.***

2. SECTION 177(4)(VI) OF THE COMPANIES ACT, 2013

Section 177: Audit Committee

(4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,--

(vi) **valuation of undertakings or assets of the company, wherever it is necessary;.....**

3. SECTION 192(1) AND 192(2) OF THE COMPANIES ACT, 2013

Section 192: Restriction on non-cash transactions involving directors

(1) No company shall enter into an arrangement by which--

- a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
- (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected,

(2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the **particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.**

4. SECTION 230(2)(C)(V) AND SECTION 230(3) OF COMPANIES ACT, 2013

Section 230: Power to compromise or make arrangements with creditors and members

(2) The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit—

(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—

(v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

Section 230: Power to compromise or make arrangements with creditors and members

(3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under subsection (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, **a copy of the valuation report**, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:

5. SECTION 232 (2)(D) AND SECTION 232 (3)(H)(B) OF THE COMPANIES ACT, 2013

- **Mergers:** a combination of two things, especially companies, into one
- **Amalgamation:** the action, process, or result of combining or uniting
- **Difference:** A **merger** is where two or more business entities combine to create a new entity or company. An **amalgamation** is where one business entity acquires one or more business entities.

Section 232:

Merger and amalgamation of companies

(2) Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:--

(a) ..(b) ..(c) ..

(d) the report of the expert with regard to valuation, if any;

Section 232: Merger and amalgamation of companies

(3) The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:--

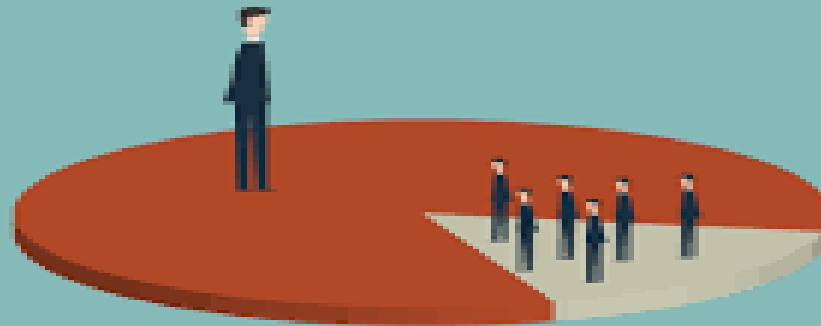
(h) where the transferor company is a listed company and the transferee company is an unlisted company,--

(b) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or **after a valuation is made**, and the arrangements under this provision may be made by the Tribunal:

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it.

6. SECTION 236(2) OF THE COMPANIES ACT, 2013

- What is a minority shareholding?
- A **minority shareholder** is defined as a **shareholder** who does not exert control over a company.



Section 236: Purchase of minority shareholding

(2) The acquirer, person or group of persons under sub-section (1) shall offer to the minority shareholders of the company for buying the **equity shares held by such shareholders at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.**

7. SECTION 247(1) OF THE COMPANIES ACT, 2013

Section 247: Valuation by Registered Valuer

(1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall ***be valued by***¹***[a person having such qualifications and experience, registered as a valuer*** and being a member of an organisation recognised, in such manner, on such terms and conditions as may be prescribed] and appointed by the audit committee or in its absence by the Board of Directors of that company..

8. SECTION 281(1)(A) OF THE COMPANIES ACT, 2013

Section 281:

Submission of report by Company Liquidator

(1) Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within sixty days from the order, submit to the Tribunal, a report containing the following particulars, namely:--

(a) the nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company..

Provided that the valuation of the assets shall be obtained from registered valuers for this purpose.

9. RULE 2(C)(IX) OF THE COMPANIES (ACCEPTANCE OF DEPOSIT) RULES, 2014

Rule 2: Definitions

(c) “deposit” includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include –

(ix) any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within five years:

Provided that if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding intangible assets, the amount of such bonds or **debentures shall not exceed the market value of such assets as assessed by a registered valuer.**

10. RULE 6(1) OF THE COMPANIES (ACCEPTANCE OF DEPOSIT) RULES, 2014

Rule 6: Creation Of Security

(1) For the purposes of providing security, every company referred to in sub-section (2) of section 73 and every eligible company inviting secured deposits shall provide for security by way of a charge on its assets as referred to in Schedule III of the Act excluding intangible assets of the company for the due repayment of the amount of deposit and interest thereon for an amount which shall not be less than the amount remaining unsecured by the deposit insurance:

Provided that in the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by a registered valuer.

11. RULE 8(6), (7), (9) AND (12) OF THE COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014

Rule 8: Issue of sweat equity shares

(6) The sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation

(7) The **valuation of intellectual property rights** or of know how or value additions for which sweat equity shares are to be issued, **shall be carried out by a registered valuer**, who shall provide a proper report addressed to the Board of directors with justification for such valuation.

(9) Where sweat equity shares are issued for a non-cash consideration on the basis of a valuation report in respect thereof obtained from the registered valuer, such non-cash consideration shall be treated in the following manner in the books of account of the company— (a) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or (b) where clause (a) is not applicable, it shall be expensed as provided in the accounting standards.

(12) If the shares are issued pursuant to acquisition of an asset, the value of the asset, as determined by the valuation report, shall be carried in the balance sheet as per the Accounting Standards and such amount of the accounting value of the sweat equity shares that is in excess of the value of the asset acquired, as per the valuation report, shall be treated as a form of compensation to the employee or the director in the financial statements of the company.

12. RULE 16(1)(C) OF THE COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014

Rule 16: Provision of money by company for purchase of its own shares by employees or by trustees, for the benefit of employees

(1) The company shall not make a provision of money for the purchase of, or subscription for, shares in the company or its holding company, if the purchase of, or the subscription for, the shares by trustees is for the shares to be held by or for the benefit of the employees of the company, unless it complies with the following conditions, namely:—

(c) where shares of a company are not listed on a recognized stock exchange, the valuation at which shares are to be purchased shall be made by a registered valuer;

13. RULE 12(5) OF THE COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) RULES, 2014

Rule 12: Return of allotment

(5) A report of a registered valuer in respect of valuation of the consideration shall also be attached along with the contract as mentioned in sub-rule (3) and sub-rule (4).

VALUATION-ISSUES & CHALLENGES:

- **Accounting** –Different GAAPs
- **Jurisdiction**- Different Regulations & Settlement Mechanism
- **Multiple Currencies, Valuation Impact of Volatility**
- **Inter Holdings in Merging Companies**
- **Deal Structure**- Merger/Demerger/ Slump Sale/ Intangible
- **Structuring a Deal**- Emerging Sectors- Healthcare, Education- Unorganized Sectors etc.
- **Exotic Instruments**- Optionally Convertible/Different Voting Rights - DVRs
- **SEBI Guidelines**- Takeover/Preferential Pricing, Takeover- Direct/Indirect, Delisting/Open Offer/ Reserve Book Building
- **Synergies**
- **Premium/Discounts**

OVERVIEW OF PROVISIONS UNDER THE INSOLVENCY AND BANKRUPTCY, 2016 DEMANDING FOR VALUATION REPORTS FROM REGISTERED VALUERS

1	Section 59(3)(b)(ii) of the Insolvency and Bankruptcy Code, 2016	Voluntary liquidation of corporate persons
2	Section 46(2) of the Insolvency and Bankruptcy Code, 2016	Relevant period for avoidable transactions
3	Regulation 27 read with regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	1) Appointment of registered valuers; 2) Fair value and liquidation value
4	Regulation 35 of the IBBI (Liquidation Process) Regulations, 2016	Valuation of assets intended to be sold
5	Regulation 3(1)(b)(ii) of the IBBI (Voluntary Liquidation Process) Regulations, 2017	Initiation of liquidation
6	Regulation 26 of the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017	Appointment of registered valuer
7	Regulation 34 of the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017	Fair value and liquidation value

1. SECTION 59(3)(B)(II) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

Rule 59: Voluntary liquidation of corporate persons

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

(i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

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

2. SECTION 46(2) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

Rule 46: Relevant period for avoidable transactions

(2) The Adjudicating Authority may require an independent expert to assess evidence **relating to the value of the transactions** mentioned in this section.

3. REGULATION 27 READ WITH REGULATION 35 OF THE IBBI(INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016

Regulation 27: Appointment of registered valuers.

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:

Regulation 35: Fair value and Liquidation value.

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.

4. REGULATION 35 OF THE IBBI(LIQUIDATION PROCESS) REGULATIONS, 2016

Regulation 35: Valuation of assets intended to be sold

(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.

(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

Regulation 32: Sell of Asset.etc.

Regulation: 32. Sale of Assets, etc.

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.

5. REGULATION 3(1)(B)(II) OF THE IBBI (VOLUNTARY LIQUIDATION PROCESS) REGULATIONS, 2017

Regulation 3: Initiation of Liquidation

(1) Without prejudice to section 59(2), liquidation proceedings of a corporate person shall meet the following conditions, namely: —

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

(i) audited financial statements and record of business operations of the corporate person for the previous two years or for the period since its incorporation, whichever is later;

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

6. REGULATION 26 OF THE IBBI(FAST TRACK INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2017

Regulation 26: Appointment of Valuers

(1) 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: 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.

8. REGULATION 34 OF THE IBBI (FAST TRACK INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2017

Regulation 34: Fair value and liquidation value

(1) The registered valuer appointed under regulation 26 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.

(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 the section 29.

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

CASE STUDY

ON THE JUDGMENT PASSED BY HON'BLE SUPREME COURT FOR THE CORPORATE DEBTOR

– UNITED SEAMLESS TUBULAR PVT. LTD

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4242 OF 2019
WITH
CIVIL APPEAL NO 4967-4968 OF 2019

MAHARASTHRA SEAMLESS LIMITED.....Appellant

V/s

PADMANABHAN VENKATESH & ORS.....Respondent

Source : A Bulletin Landmark Judgments under IBC-2016
published by : IPA ICAI

FACT MENTIONED IN THE ORDER

- Name of Corporate Debtor : United Seamless Tubular Private Limited
- Name of Resolution Applicant : Maharashtra Seamless Limited
- Application under section 7 was filed in 12.06.2017
- Committee was constituted by the IRP on 18.08.2017
- EOI Were called on 10.01.2018 by RP
- The total debt of the corporate debtor was Rs. 1897 crores
- FCs were : (1) Deutsche Bank AG & (2) Indian Bank
- Indian Bank had applied to initiate CIRP under Section 7- as a Financial Creditor
- 21.01.2019 – Hon'ble NCLT-Hyderabad Bench passed a Resolution Plan included upfront payment of 477 Crore.

SUMMARY OF AMOUNTS & DEBTS:

Particulars	Amount	Remarks
Debt in Crore	1897 Cr	Out of which a. Rs. 1652 Cr as term Loan from two entities of Deutsche Bank b. Rs. 245 Cr from Indian Bank (Initiator of CIRP)
Valuer A's Liquidation Value:	Rs. 681 Cr	Average of LV for Valuer A&B= Rs. 597.54 Cr Average of LV for Valuer B&C= Rs. 432.5 Cr
Valuer B's Liquidation Value:	Rs. 513 Cr	
Valuer C's Liquidation Value:	Rs. 352 Cr	

BRIEF NOTES ABOUT THE FACT IN THE MATTER

- United Seamless Tubulaar Private Limited (“Corporate Debtor”) went into corporate insolvency resolution process in **July 2017** under Section 7 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”).

- Two registered valuers were appointed by the Resolution Professional ("RP") for the purpose of valuation of the assets of the Corporate Debtor. As per the result of two valuations, the liquidation value of the Corporate Debtor were valued at **INR 681 Crores** and **INR 513 Crores** respectively

- On account of substantial difference in the aforesaid valuation, a third valuer was appointed which provided valuation of INR 352 Crores. Accordingly, the average of the two closest estimates of valuation of liquidation value arrived to be INR 432.92 Crores.
- Maharashtra Seamless Limited ("MSL") comes out to be a successful resolution applicant for Corporate Debtor.

- The application by RP before the NCLT Bench of Hyderabad for the approval of the resolution plan of MSL was disposed- off and further directing RP to **re-determine the liquidation value of the Corporate Debtor by taking into consideration the result of first and second valuation and consequently the valuation was revised from INR 432.92 Crores to INR 597.54 Crores.**

- The aforesaid order of the NCLT Bench of Hyderabad was challenged before the National Company Law Appellate Tribunal ("NCLAT"), which was disposed of with directions to the NCLT Bench of Hyderabad to pass orders on the Resolution Plan under Section 31 of the IBC, 2016

- Hon'ble NCLT Bench of Hyderabad approved the resolution plan proposed by MSL which involves an upfront payment of Rs. 477 Crore and additional fund infusion on the takeover of Corporate Debtor.

- The said order was further challenged before Hon'ble NCLAT by one of the promoters of the Corporate Debtor ("Promoter's Appeal") and Indian Bank ("Financial Creditor's Appeal") on the ground that the approval of MSL's Resolution Plan was giving windfall to the Resolution Applicant as **they would get assets valued at INR 597.54 Crore for a much lower price. i.e INR 477 Cr.**

- Hon'ble NCLAT further ordered that MSL should increase the upfront payment from INR 477 Crores to **INR 597.54 Crores to bring it at par with the average liquidation value of INR 597.54 Crores and MSL to deposit additional INR 120.54 Crores (difference amount)** within 30 days from the date of the order failing which the order of NCLT Bench of Hyderabad dated 21 January 2019 approving MSL Resolution Plan will be treated as set aside.

- Following this, MSL preferred an appeal before Hon'ble Supreme Court for withdrawal of the resolution plan because in order to take over the corporate debtor, they availed a substantial term loan facility and **deposited the sum of Rs.477 crores for resolution of the corporate debtor** in a designated escrow account and on account of delay in implementation of the resolution plan, MSL is liable to bear the interest burden.

DECISION BY SC :

- Hon'ble Supreme Court held that there is no provision in the Code or Regulations thereunder, that has been brought to their notice, under which the bid of any Resolution Applicant has to match liquidation value in order to arrive in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- Hon'ble Supreme Court further held that the object behind prescribing such valuation process is to assist the Committee of Creditors ("CoC") to take decision on a resolution plan properly. Once a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of IBC,2016 is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 of IBC,2016.

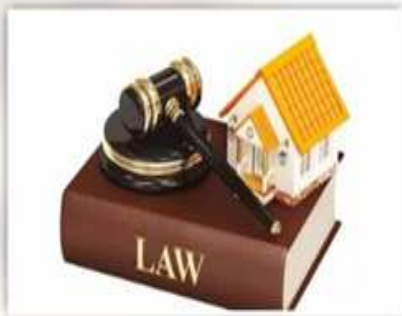
- Hon'ble Supreme Court did not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan. It was further held that the exit route prescribed under Section 12A of IBC,2016 is not applicable to a Resolution Applicant. The procedure envisaged in the said provision only applies to applicants invoking Sections 7, 9 and 10 of the Code.

- The Supreme Court, after taking into consideration the facts of the case as well as the view taken in the Committee of Creditors of Essar Steel India Limited and Swiss Ribbons Pvt. Ltd, reiterated that the commercial wisdom of CoC in approving the resolution plan cannot be questioned and hence, **set aside the order of Hon'ble NCLAT dated 8 April, 2019 and upheld the order of the Adjudicating Authority dated 21 January , 2019** approving the resolution plan by MSL @ INR 477 Cr.

LINK & REFERENCES:

- <https://ibbi.gov.in/uploads/order/55e89c436edcc6a95f8fe35cd9d28197.pdf>
- **Source** : A Bulletin Landmark Judgments under IBC-2016 published by : IPA ICAI

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