



*Lex Favios*  
*Advocates & Solicitors*

**04<sup>th</sup> November 2023 – Issue 419**

***Ministry of Corporate Affairs vide notification dated October 27, 2023, has issued Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023***

- MCA vide notification dated October 27, 2023, has issued Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023.
- Where In the Companies (Prospectus and Allotment of Securities) Rules, 2014 (hereinafter referred to as the said rules) rule 9 shall be numbered as sub-rule (1) thereof, and after sub-rule (1) as so numbered, the following sub-rules shall be inserted, namely: -
  - i. Every public company which issued share warrants prior to commencement of the Companies Act, 2013 (18 of 2013) and not converted into shares shall, -
    - (a) within a period of three months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 inform the Registrar about the details of such share warrants in Form PAS-7.
- The complete notification is herein attached.

[Click Here](#)

***Ministry of Corporate Affairs vide notification dated October 27, 2023, has issued Limited Liability Partnership (Third Amendment) Rules, 2023***

- MCA vide notification dated October 27, 2023, has issued Limited Liability Partnership (Third Amendment) Rules, 2023.
- The following Rule shall be inserted:

*“Every limited liability partnership shall, from the date of its incorporation, maintain a register of its partners in Form 4A which shall be kept at the registered office of the limited liability partnership.”*



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- The complete notification is herein attached.

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***Ministry of Corporate Affairs vide notification dated October 27, 2023, has issued Companies (Management and Administration) Second Amendment Rules, 2023***

- MCA vide notification dated October 27, 2023, has issued Companies (Management and Administration) Second Amendment Rules, 2023.
- In the Companies (Management and Administration) Rules, 2014, in rule 9, after sub-rule (3), the following subrules shall be inserted, namely:-

*“Every company shall designate a person who shall be responsible for furnishing, and extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company  
The complete notification is herein attached.”*

- The complete notification is herein attached.

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**Insolvency and Bankruptcy Board of India issued a discussion paper on 20<sup>th</sup> October 2023 on the liquidation process under IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations). The IBBI has proposed changes to address various issues related to the sale of assets and the liquidator’s accountability to stakeholders as factors causing delay, uncertainty, and information asymmetry. The paper also aims to respond to the emerging needs of the liquidation process and strengthen the regulatory framework.**

These are the following amendments proposed by IBBI:



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### **1. Amendment to Schedule 1**

The eligibility requirement is to be provided in the auction notice issued under Section 29A of the Insolvency and Bankruptcy Code, 2016 to participate in the auction process. If it is discovered at any stage that the bidder is ineligible, the earnest money deposit (EMD) will stand forfeited by the liquidator. To ensure confidentiality, the names of the prospective bidders, and the manner in which earnest money is to be deposited will be notified through Circular by the Board. The liquidator within three days has to declare the highest bidder and conduct verification and due diligence. The liquidator is then required to submit the result of the auction, the details of the highest bidder, due diligence conducted by him on its eligibility and the result of its due diligence before the Stakeholders' Consultation Committee (CCC) for its consideration under regulation 31A and in the event the highest bid above the reserve price is not accepted, consultation with the SCC becomes necessary.

### **2. Reduction in Reserve Price**

In order to maintain the value of assets, it has been proposed to remove Clause (4A) from Schedule 1 of the Liquidation Regulations. As a result, the reserve price could be lowered by a maximum of 10% for subsequent auction notices in case of failure of previous auctions.

### **3. Stakeholders Consultation Committee**

It is proposed that a mandatory requirement for prior consultation with the SCC in instances of private sale be introduced. This consultation should confirm the successful buyer post-sale. This proposal also aims to eliminate the condition of private sale, which requires 'the asset to be sold at a price higher than the reserve price of a failed auction.'



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#### **4. Listing of all assets on the listing platform**

The liquidator is responsible for listing all the assets of the corporate debtor based on the asset memorandum on a platform specified by the IBBI. It is suggested that the assets be listed in an auction beforehand to prevent information asymmetry and provide more detailed information for a better valuation of the asset and to maximize its value.

#### **5. Progress Report to the SCC**

In addition to the IBBI and Adjudicating Authority, it is proposed that the progress report should be shared with the SCC under Regulation 15 to keep them apprised of the development that are imperative to their interest.

#### **6. Liquidator's fees as a percentage**

To synchronize the timelines for liquidator fees and progress reports with the realizations made that liquidator fees should be applicable for the first six months from the end of the quarter in which the liquidation began. There will be no exclusion of any time period due to the inability to sell assets because of litigation. However, the liquidator can renegotiate the fees with the SCC if the fees are found unviable due to assets being under litigation.

#### **7. Consultation with SCC**

For effective communication, it is proposed that meetings be held by the Liquidator with the SCC, in a span of 30 days.

#### **8. Preliminary Report**

The preliminary report should include suggestions/ observations/ sought from the SCC, and be submitted to the adjudicating authority, IBBI, and members of the SCC.



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### **9. Liquidation Cost**

If the liquidation cost exceeds the estimated costs as mentioned in the preliminary report or 10% of the liquidation value of the corporate debtor, the liquidator should place reasons and ways to rationalize the same by presenting cost and benefit analysis before the SCC.

### **10. Fresh Valuations**

The liquidator has to organize a meeting between the registered valuers and the SCC, during events that require fresh valuation, to understand the methodology used for such valuation before finalizing it and also share the valuation report with SCC members.

### **11. Litigations**

If any litigation is to be continued or initiated concerning the corporate debtor, advice of the SCC should be sought after submitting the economic rationale for such litigation and a consolidated status of all legal proceedings should be placed at every SCC meeting.

### **12. Continued operations of Corporate Debtor as going concern.**

The SCC should be consulted, if it becomes economically unviable to keep the corporate debtor running, and the liquidator should act as per the decision of SCC. However, upon failure to sell corporate debtors as a going concern, SCC must be informed of the same to seek advice and amend its marketing strategy to attract prospective buyers in future auctions.

### **13. Changes to FORM H**

It will now include details pertaining to realisation and distributions made during the process.



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#### **14. Assignment of not readily realisable assets**

It is proposed that the liquidator should have the authority to transfer the underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions even before any adjudications made by the Adjudicate Authority, to prevent any cost increments that may occur during the period when final determinations are made on the matter.

#### **15. Early Dissolution**

The SCC needs to be mandatorily consulted prior to applying to the adjudicating authority for early dissolution and views of the SCC will form part of the application.

#### **16. Withdrawal from corporate liquidation account prior to dissolution order.**

The Liquidator is required to verify the claim and submit its findings and opinion to IBBI to allow for withdrawal before dissolution when a request of withdrawal from the claimant is made where a dissolution order has not been passed.

In case you have suggestions or do not wish to receive our newsletter,  
please email us at [info@lexfavios.com](mailto:info@lexfavios.com)

#### **Contact details**

**Sumes Dewan**

*Managing Partner*

*Lex Favios*

Email: [sumes.dewan@lexfavios.com](mailto:sumes.dewan@lexfavios.com)

Tel: 91-11-32084941 (D) 91-11-41435188/45264524