

## **FAQS ON SUBMISSION OF CLAIMS UNDER LIQUIDATION**

**Disclaimer:** The FAQs below and their responses are our attempt to help potential claimants and are purely for informal guidance. This is neither a legal nor a professional advice, nor are the responses any statutory/adjudicatory authority's views. Claimants may consult their respective advisers in case of any doubt.

Kindly refer to the FAQs below for any clarification with respect to your claims and submission thereof. Please note that claims which are not in accordance with the requirements of the Code and the Regulations are liable to be ignored/rejected.

### **1. I had already filed for my claim under the CIRP process. Do I have to file the same claim again under the Liquidation process?**

Yes, you will have to file your claim again during the liquidation process even if you have already filed your claim under the resolution process. You need to understand that the two stages are different and the claims submitted at the time of resolution process were with respect to determining the eligibility to be a member of Committee of Creditors; whereas under the liquidation process, claims are invited to determine the total amount of dues of the Corporate Debtor and the priority of payments out of the liquidation estate.

### **2. I did not file for my claim under the resolution process. Can I file for my claim now under the liquidation process? Would I require NCLT approval for the same?**

Yes, you may file your claim now during the liquidation process even though you did not file your claim during the resolution process. Approval of NCLT is not required for filing claim during liquidation in the instant case. NCLT approval is required in case of late submission of claims.

### **3. I am an Operational Creditor of the Corporate Debtor under liquidation. In which form should I file my claim? How should I submit my claim to the Liquidator?**

An operational Creditor, other than a workman or employee, may submit proof of claim to Liquidator in Form C along with the Affidavit and the Verification of Schedule II of IBBI (Liquidation Process) Regulations, 2016. The claims can be submitted either in person or by post or by electronic means.

### **4. Being an operational creditor, how can I prove my claim?**

The existence of debt due to an operational creditor may be proved on the basis of-

- (a) The records available with an information utility, or
- (b) Other relevant documents which adequately establish the debt, including any or all of the following-
  - (i) A contract for the supply of goods and services with corporate debtor;
  - (ii) An invoice demanding payment for the goods and services supplied to the corporate debtor;
  - (iii) An order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any;
  - (iv) Financial accounts.

**5. I am a financial Creditor of the Corporate Debtor under liquidation. In which form should I file my claim? Also, how should I submit the claim with the Liquidator?**

A financial creditor may submit proof of claim to Liquidator in Form D along with Affidavit and Verification under Schedule II of the IBBI (Liquidation Process) Regulations, 2016. The claim can be submitted by a financial creditor only by electronic means.

**6. Being a financial creditor, how should I prove my claim?**

The existence of debt due to the financial creditor may be proved on the basis of-

- (a) the records available in an information utility, if any; or
- (b) other relevant documents which adequately establish the debt, including any or all of the following-
  - (i) a financial contract supported by financial statements as evidence of the debt;
  - (ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;
  - (iii) financial statements showing that the debt has not been repaid; and
  - (iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

**7. I am a workman/employee of the Corporate Debtor and want to submit my claim. In which Form should I file my claim? Also, how should I submit my claim?**

You may submit your claim in Form E along with Affidavit and Verification under Schedule II of the IBBI (Liquidation Process) Regulations, 2016 to the Liquidator. The claim can be filed with the Liquidator either in person, or by post or by electronic means.

**8. I, Mr. X is authorized by workmen /employee to file a proof of claim on their behalf. How should I file the representative claim?**

You being an Authorized Representative shall submit one proof of claim for all the dues on their behalf in Form F along with Affidavit and Verification under Schedule II of IBBI (Liquidation Process) Regulations, 2016 to the Liquidator. The claims can be submitted to the Liquidator either in person, or by post or by electronic means.

**9. Being a workman/employee, how should I prove my claim?**

The existence of dues to workmen or employees may be proved by them, individually or collectively, on the basis of-

- (a) records available in an information utility, if any; or
- (b) other relevant documents which adequately establish the dues, including any or all of the following -
  - (i) a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;
  - (ii) evidence of notice demanding payment of unpaid amount and any documentary or other proof that payment has not been made; and
  - (iii) an order of a court or tribunal that has adjudicated upon the non-payment of dues, if any.

The liquidator may admit the claims of a workman or an employee on the basis of the books of account of the corporate debtor if such workman or employee has not made a claim.

**10. What is the format of the Affidavit and Verification required to be filed along with proof of claim?**

The format for the Affidavit and the Verification to be filed along with the proof of claim is attached to the Forms applicable for each category of creditors.

**11. I am a creditor of the Corporate Debtor who does not fall under any of the categories of Financial Creditor/Operational Creditor/Workman/Employee. In which Form should I file my proof of claim? Also, how should I prove the existence of my claim?**

A creditor who is neither a financial nor an operational creditor nor a workman/employee shall submit his proof of claim to Liquidator in person, by post or by electronic means in Form G of Schedule II.

The existence of the claim of the stakeholder may be proved on the basis of -

- (a) the records available in an information utility, if any, or
- (b) other relevant documents which adequately establish the claim, including any or all of the following-
  - (i) documentary evidence of notice demanding payment of unpaid amount or bank statements of the claimant showing that the claim has not been paid and an affidavit that the documentary evidence and bank statements are true, valid and genuine;
  - (ii) documentary or electronic evidence of his shareholding; and
  - (iii) an order of a court, tribunal or other authority that has adjudicated upon the non-payment of a claim, if any.

**12. I am a secured creditor of the Corporate Debtor. How should I prove the existence of my security interest?**

The existence of a security interest may be proved by a secured creditor on the basis of-

- (a) the records available in an information utility, if any;
- (b) certificate of registration of charge issued by the Registrar of Companies; or
- (c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India.

**13. Each Form for submission of proof of claim by a creditor requires particulars of mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim made by the creditor. What is meant by such particulars?**

There might be instances where debt may also be owed by the creditor towards the Corporate Debtor. Such debts may be referred to as mutual debts/credits between the Corporate Debtor and creditor, which may be set off against the debt/claim of the creditor. In such case, the creditor shall mention the particulars of such mutual debt in the specified space provided in the respective Form for filing proof of claim. (Refer Regulation 29 of IBBI (Liquidation Process) Regulations, 2016)

*For example: A Ltd. is a Corporate Debtor owing debt amounting to INR 1000 to OC Ltd., an Operational Creditor for goods supplied by OC Ltd. A Ltd. is in the business of providing HR consultancy services. In its course of business, A Ltd. provided services to OC Ltd., consideration for which amounting to INR 500 is yet to be paid by OC Ltd. Such INR 500 shall be referred to as mutual debt between A Ltd. and OC Ltd. which may be set off against the claim of OC Ltd. amounting to INR 500. Particulars of such mutual debt have to be mentioned against the item no.7 in the table of details of Form C for submission of proof of claim by an Operational Creditor.*

**14. I have money to receive from the Corporate Debtor, and I have money to pay. Can I set off the two, and therefore, file a claim only for the net amount, or not file a claim if the net amount is negative?**

No. You cannot by yourself do any such set off. The set off will be based on set-off rules, and therefore, is subject to evaluation and determination by the Liquidator.

**15. I am a supplier of goods to the Corporate Debtor, which category of creditors will I fall in?**

A supplier of goods and/services to the Corporate Debtor will be an Operational Creditor. Refer Section 5(20) and Section 5(21) of the Code.

**16. I have lent money to the Corporate Debtor at specified interest rate, which category of creditors will I fall in?**

Money disbursed against time value of money shall be a financial debt as per the Code and a person to whom such financial debt is owed will be a Financial Creditor. Therefore, you having lent money to the Corporate Debtor against payment of interest will fall under the category of Financial Creditors. Refer to Section 5(7) and Section 5(8) of the Code.

**17. Will I be reimbursed of the cost incurred by me for proving the claim?**

No, the cost incurred for proving the claim shall be borne by the claimant and not by the Corporate Debtor. However, the cost incurred for the verification and the determination of the claim by the Liquidator shall form part of liquidation expenses.

Further, if any part or whole of the claim of the creditor is found to be false, the cost of Verification and Determination of claim would also be borne by the claimant.

**18. What is the last date for filing/submitting my claim to the Liquidator?**

Public announcement as available on the website of IBBI and the Corporate Debtor, mentions the last date of submission of claims. Any claimant must refer the same, for the purpose of timely submission of their claims. You can access the public announcement by clicking on the website of IBBI.

In case of Liquidation Process, the Creditors are required to submit their claims within the time period stipulated in the Public Announcement, which shall be thirty days from the liquidation commencement date.

**19. What will happen if I don't file the claim by the last date of submission as mentioned in the public announcement?**

Claims received post the last date for submission of claims as mentioned in the public announcement will not be entertained by the Liquidator.

**20. I am a creditor who could not file my claim before the last date for submission of claims. Is there any procedure through which I can file my claim now?**

In such cases, the only option available is to file an appeal under Section 42 of the Act to the Adjudicating Authority i.e., the NCLT for accepting the late submission of claim. Therefore, a delayed submission of claim can be admitted by the Liquidator only when directed to do so by the Adjudicating Authority on appeal under Section 42. However, even claims that are submitted late must be submitted before the distribution of assets. Any claim submitted after the distribution of assets will not be entertained even by NCLT as per its recent rulings.

**21. Once I file my claim is the Liquidator bound to admit it?**

No, the Liquidator has the right to reject or partially admit the claim. As per Regulation 12 of Liquidation Process Regulations Liquidator is responsible for verification of claims in

Liquidation Process. Claim will not be disqualified just because it has been filed in an incorrect form.

As per regulation 30 of Liquidation Process Regulations, liquidator shall verify the claims submitted within 30 days from the last date of receipt of claims.

**22. Does filing of claim means that the Corporate Debtor or the Liquidator is going to pay me money?**

A successful submission of claim by a creditor is not a confirmation/assurance of receipt of debt due. It is merely a representation that a debt is due of respective amount and nature. Acceptance of such claim is subject to the discretion of the Liquidator, who may admit or reject the claim, in whole or in part as the case may be.

Furthermore, the claims are subject to evaluation by the Liquidator. The payment, if any to the creditor will be subject to the order of priority of distribution of the liquidation assets provided under Section 53 of the Code.

**23. Having filed the claim, when can I expect the payment to be credited or made?**

As provided by law, liquidation shall be completed within 2 years from its commencement; however, the same may be extended by filing an application for extension. Payment to stakeholders is subject to the process of liquidation. Following are the broad steps involved with respect to claims:

- Receipt of all the claims
- Verification of all the claims
- Admission/rejection of claims
- Valuation of claims
- Examination of records for the purpose of specific transactions
- Proceedings with respect to security interest of a secured creditor
- Distribution of assets

In light of the above, filing of claim doesn't assure payment of debt due. Exact time period to be involved until the debt is repaid cannot be predefined and is subject to the procedure under law.

**24. My claim has been rejected by the Liquidator. What remedy do I have?**

You may appeal to the NCLT of appropriate jurisdiction against the decision of the Liquidator within a period of 14 days of receipt of such decision. However, making an appeal does not guarantee admission of claim. (Refer Section 42 of the Code).

**25. Can I modify/ withdraw a claim already filed by me?**

Yes, a claim already filed may be withdrawn or modified within 14 days of its submission as per Section 38(5) of the IBC, 2016.

**26. What if I submit a wrong claim or inflate the claim amount, or write wrong particulars?**

The submission of a claim is supported by your Affidavit, wherein you are swearing on oath that the particulars are true and correct. Please evaluate the serious implications of doing so.

Your claim forms the basis of the Liquidator computing the liquidation value of the assets and liabilities of the Corporate Debtor. Therefore, you must ensure that the particulars submitted by you are true and correct.

Also, as mentioned above, if any part of the claim is found to be false the cost of Verification and Determination is also to be borne by you.

**27. My claim was disputed by the Corporate Debtor. Can I still submit the claim?**

Yes, but then you must make it clear in your submission, that the Corporate Debtor has disputed the claim. You must mention it in the space provided for the same in your respective Form.

**28. I have a contingent claim. Can I submit such claim?**

Yes, but then you must make it clear that the claim is contingent and also clarify the contingency. Where the amount claimed by a creditor is not precise due to any contingency or other reasons, the Liquidator shall make the best estimate of the amount of the claims based on the available information. He will revise the claims as soon as practicable, when he comes across additional information.

**29. I am holding some securities/assets of the Corporate Debtor against my claim. Should I still submit the claim?**

Yes. The assets of the Corporate Debtor form part of its liquidation estate, and your claim ranks as per priority order. Therefore, you must submit the claim and disclose the particulars of the assets/securities you are holding.

**30. I am a creditor whose debt is not yet due as on the liquidation commencement date but will be due at a future date. Can I file for my claim against the Corporate Debtor?**

Yes, you may file for your claim which will be due at a later date. If the debt claimed for doesn't fall due before distribution, then you would be entitled to distribution of admitted claim reduced as follows:

$$X/(1+r)^n$$

where—

(a) "X" is the value of the admitted claim;

(b) "r" is the closing yield rate (%) of government securities of the maturity of "n" on the date of distribution as published by the Reserve Bank of India; and

(c) "n" is the period beginning with the date of distribution and ending with the date on which the payment of the debt would otherwise be due, expressed in years and months in a decimalized form.

**31. How will claim amount be determined if debts are in foreign currency?**

The claims denominated in foreign currency shall be valued in Indian currency at the exchange rate as on liquidation commencement date, as the case may be.

**32. I am a creditor who is partly a financial creditor and partly an operational creditor. How should I submit my proof of claim?**

A creditor who is partly a financial creditor and partly an operational creditor, will have to submit claims to the Liquidator to the extent of his operational debt in Form C and to the extent of his financial debt in Form D.

*For Example:*

*OC Ltd. is a supplier of goods to the Corporate Debtor and is therefore an Operational Creditor. FC Ltd. has lent money to the Corporate Debtor and is therefore a Financial Creditor. FC Ltd. assigns its debt to OC Ltd., on account of which OC Ltd. becomes the Financial Creditor of the Corporate Debtor in addition to being an Operational Creditor. Now OC Ltd. wants to file its claim. How should it proceed?*

*In this case, OC Ltd. is partly an Operational Creditor and partly a Financial Creditor shall submit its claim to the Liquidator in Form C to the extent the debt is Operational Debt and Form D to the extent the same is Financial Debt.*

**33. If I am not satisfied with the decision of the Liquidator of accepting/rejecting a claim, how can I appeal against the decision?**

A creditor can file an appeal to the Adjudicating Authority against the decision of the Liquidator within 14 days of receipt of such decision.

**34. How do I submit the claims to the Liquidator of the Corporate Debtor?**

Please send claims by email to [ip.coxandkings@excedor.com](mailto:ip.coxandkings@excedor.com) or you can send it to the address of the Registered office of Cox & Kings Limited which is as follows -

**Cox & Kings Limited**

Unit no. 313, 3<sup>rd</sup> Floor, Turf Estate, Mahalaxmi, Mumbai - 400011

For any enquiries related to claims, you may contact +91 9892527194, +91 7678050713

**35. Can I call the Liquidator?**

Communication through emails would be preferred.