

If the liquidation process is ongoing but the actual sale transaction as a going concern had not commenced before the amendment dated Oct 14, 2025, the omission of Regulations 32(e), 32(f) and 32A of the IBBI (Liquidation Process) Regulations, 2016 applies prospectively to such case, and the NCLT cannot approve sale of Corporate Debtor as a going concern

The **Kolkata National Company Law Tribunal (NCLT)** in the case of **Goutam Kumar Roy vs Dooteriah & Kalej Valley Tea Pvt Ltd [I.A. (IB) NO. 27/KB/2026]** dated **June 10, 2026**, has held that, where the liquidation process is ongoing but the actual sale transaction as a going concern had not commenced before the amendment dated Oct 14, 2025, the omission of Regulations 32(e), 32(f) and 32A of the IBBI (Liquidation Process) Regulations, 2016 applies prospectively to such case, and the Adjudicating Authority cannot permit or approve sale of the Corporate Debtor as a going concern or as a continuing juristic entity, whether directly or indirectly through an alternative prayer framed in substance to achieve the same result.

However, the Liquidator may proceed to sell the assets and rights of the Corporate Debtor only in the modes presently permissible under Regulation 32, including slump sale under Regulation 32(b), subject to transferability in law and necessary statutory approvals. The NCLT also held that from a diligence perspective, bidders must therefore assess transferability of rights separately and structure bids as asset/package or slump sale transactions rather than acquisition of the Corporate Debtor as a legal entity.

The Tribunal observed that prior to the amendment dated Oct 14, 2025, Regulation 32(e) permitted sale of the Corporate Debtor as a going concern, Regulation 31A(1)(f) required consultation with the Stakeholders' Consultation Committee for such sale, and Regulation 32A provided for such sale exclusively at the first auction. It further observed that the notification dated Oct 14, 2025 omitted clause (f) of sub-regulation (1) of Regulation 31A and omitted clauses (e) and (f) of Regulation 32 as well as Regulation 32A, leaving only the modes of sale under Regulation 32(a) to (d).

The Tribunal found that the liquidation process commenced on Oct 17, 2025, the Stakeholders' Consultation Committee meeting held on Dec 03, 2025 directed the Liquidator to file an application for sale as a going concern, and the application was filed on Jan 06, 2026; however, no e-auction under Regulation 32(e) had been notified or conducted and no sale deed had been executed. It interpreted the phrase "liquidation by sale as going concern has not commenced" to mean the stage when the actual sale transaction is initiated, such as issuance of auction notice and declaration of a successful bidder, and therefore held that the Oct 14, 2025 amendments applied to the present case.

The Tribunal observed that, after omission of Regulation 32(e), it could not approve a sale under a provision that stood omitted, and therefore the prayer for confirmation of sale as a going concern was not maintainable. It further held that the approval of the Stakeholders' Consultation Committee under the omitted Regulation did not bind the Adjudicating Authority, and that the alternative prayer seeking permission to sell all assets, rights and privileges together with the juristic and legal entity of the Corporate Debtor could not be

granted because that would, in substance, amount to sale of the Corporate Debtor as a going concern or transfer of the Corporate Debtor as a continuing juristic entity, thereby indirectly restoring a mode of sale consciously omitted by the IBBI with effect from Oct 14, 2025.

At the same time, the Tribunal clarified that the Liquidator remained empowered under Section 35 of the Code read with Regulation 32 to realise and sell the assets of the Corporate Debtor in the legally prescribed manner, including by way of slump sale under Regulation 32(b). It further clarified that any purchaser would acquire only such assets, rights and interests as were legally vested in the Corporate Debtor and capable of transfer in accordance with law, and that any statutory licence, approval, leasehold right, concession or permission would remain subject to the applicable statutory framework and approval of the competent authority, without any automatic right of renewal, extension or continuation.