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Practice MCQs — In-Specie Distribution to Shareholders in Voluntary Liquidation under the IBC

Regulatory Mechanism • Valuation • Income-Tax Treatment • Case Law — 15 Questions with Answer Key

Jurisdiction: Delhi (default) | For information and educational purposes only

Questions

Q1. Distributing an asset to shareholders in specie in a Section 59 voluntary liquidation, instead of selling it, means:

- **a)** The Schedule I e-auction process must still be completed before the asset is handed over.
- **b)** The liquidator must obtain SEBI approval before the hand-over.
- **c)** The asset is handed to shareholders in its existing form, and the Schedule I e-auction machinery (a mode of sale) is not attracted.
- **d)** The distribution is automatically void for want of a public auction.

Q2. In a voluntary liquidation, the provision that permits the liquidator to distribute among the stakeholders an asset that cannot be readily or advantageously sold is:

- **a)** Regulation 35(3) of the IBBI (Voluntary Liquidation Process) Regulations, 2017.
- **b)** Regulation 32 of the Liquidation Process Regulations, 2016.
- **c)** Section 53 of the IBC.
- **d)** Regulation 14 of the IBBI (Voluntary Liquidation Process) Regulations, 2017.

Q3. The statutory test for taking the in-specie route under Regulation 35(3) is that the asset:

- **a)** Has a book value below Rs. 1 crore.
- **b)** Is fully depreciated in the books.
- **c)** Is situated outside India.
- **d)** Cannot be readily or advantageously sold due to its peculiar nature or other special circumstances.

Q4. Under Regulation 31 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the liquidator may value and sell the property of the corporate person:

- **a)** Only through an e-auction under Schedule I.
- **b)** In any manner and through any mode approved by the corporate person.
- **c)** Only with the prior approval of the IBBI.
- **d)** Only through a recognised stock exchange.

Q5. Whose approval is the primary trigger for an in-specie distribution in a voluntary liquidation, as distinct from a corporate/CIRP-origin liquidation?

- **a)** The corporate person (the members).
- **b)** The Adjudicating Authority, by prior permission in every case.
- **c)** The Reserve Bank of India.
- **d)** The Committee of Creditors.

Q6. In a corporate/CIRP-origin liquidation, the mirror provision — Regulation 37 of the IBBI (Liquidation Process) Regulations, 2016 — permits distribution of an un-saleable asset among stakeholders only:

- **a)** Without any approval whatsoever.
- **b)** With the approval of the Reserve Bank of India.
- **c)** With the permission of the Adjudicating Authority.
- **d)** After exactly three failed auctions in every case.

Q7. Can unlisted equity shares held by a company under voluntary liquidation be distributed to its shareholders in specie?

- **a)** No; shares must always be sold through e-auction.
- **b)** Only if the shares are listed on a recognised exchange.
- **c)** Only with a SEBI takeover exemption.

d) Yes; illiquid unlisted shares fit the “peculiar nature” test, subject to corporate-person approval and a registered-valuer fair value.

Q8. In an in-specie distribution, the fair value fixed by a registered valuer as on the date of distribution matters because it:

a) Only affects the liquidator’s remuneration.
b) Fixes the fairness of the pro-rata distribution and the “market value on the date of distribution” that drives the income-tax computation.
c) Is required only for listed securities.
d) Has no bearing on the tax position.

Q9. Where the assets of a company are distributed to its shareholders on its liquidation, under Section 46(1) of the Income-tax Act, 1961 such distribution:

a) Is not regarded as a transfer by the company; hence no capital gain arises to the company.
b) Is treated as a transfer by the company, attracting capital gains in the company’s hands.
c) Attracts GST in the company’s hands.
d) Is fully exempt in the shareholder’s hands as well.

Q10. On a company’s liquidation, the distribution to shareholders is treated as a deemed dividend under Section 2(22)(c):

a) On the entire amount distributed, irrespective of profits.
b) Only if the company was listed.
c) Never — liquidation distributions are always purely capital.
d) To the extent of the accumulated profits of the company (whether capitalised or not) immediately before liquidation.

Q11. Under Section 46(2), the “full value of consideration” for the shareholder’s capital-gains computation is:

a) The face value of the extinguished shares.
b) The money received plus the market value of other assets on the date of distribution, as reduced by the amount assessed as deemed dividend under Section 2(22)(c).
c) The book value of the assets received.
d) Nil in every case.

Q12. When a shareholder subsequently sells an asset received in specie on liquidation, its cost of acquisition under Section 55(2)(b)(iii) is:

a) Nil.
b) The original cost in the hands of the liquidated company.
c) The market value of the asset on the date of distribution.
d) The face value of the extinguished shares.

Q13. On an in-specie distribution to shareholders in a voluntary liquidation, the position on GST and stamp duty is:

a) It is generally not a supply for consideration (no GST, unlike a sale), but an in-specie transfer of immovable property attracts stamp duty under the relevant State Stamp Act.
b) Both GST and stamp duty are wholly inapplicable.
c) GST applies but no stamp duty is payable in India.
d) Both apply exactly as on an ordinary third-party sale.

Q14. In which order did the NCLT permit distribution of immovable property to shareholders in specie in their shareholding ratio in a voluntary liquidation?

a) Swiss Ribbons Pvt. Ltd. v. Union of India.
b) Ghanashyam Mishra & Sons v. Edelweiss ARC.
c) Essar Steel India Ltd. (Committee of Creditors) v. Satish Kumar Gupta.
d) Nu-Foam Rubber Industries Pvt. Ltd., In re (NCLT, New Delhi) — two Gurgaon flats distributed to shareholders in the 56:44 ratio under Reg. 35(3).

Q15. On distribution of surplus/assets to shareholders in a voluntary liquidation, the correct position on Tax Deducted at Source (TDS) is:

a) TDS is mandatory under all circumstances on the entire distribution.

b) TDS may be attracted on the deemed-dividend component under Section 2(22)(c) — Section 194 for residents and Section 195 / DTAA for non-residents; the IBBI clarification removes only the NOC/NDC requirement, not TDS.

c) No TDS is ever required in a liquidation.

d) TDS applies only where the distribution is made in cash.

Answer Key & Rationale

Q	Ans	Anchor & rationale
1	c)	In-specie distribution is a distribution of the asset itself, not a sale; Schedule I governs the mode of sale and is therefore not triggered.
2	a)	Reg. 35(3), VL Regulations, 2017, expressly enables in-specie distribution of an un-saleable asset with the approval of the corporate person.
3	d)	The regulation uses the phrase “cannot be readily or advantageously sold due to its peculiar nature or other special circumstances.” Illiquid unlisted shares typically satisfy this.
4	b)	Reg. 31 confers wide latitude on the mode of realisation, subject to approval of the corporate person — read with Reg. 35(3) it supports the in-specie route.
5	a)	In voluntary liquidation the trigger is approval of the corporate person; the NCLT records/confirms it at the Section 59(7) dissolution stage. (Contrast Reg. 37 below.)
6	c)	Reg. 37 of the Liquidation Regulations, 2016 requires permission of the Adjudicating Authority — the key structural difference from the voluntary-liquidation route.
7	d)	Unlisted, closely-held shares generally have no ready market and fall within Reg. 35(3); the practice is confirmed by NCLT at dissolution.
8	b)	The date-of-distribution FMV anchors both distributional fairness and Sections 46(2) and 55(2)(b)(iii) of the Income-tax Act, 1961.
9	a)	Sec. 46(1) excludes the distribution from “transfer” for the company. Contrast: if the liquidator sells the asset and distributes cash, that sale IS a transfer and the company is taxed — the core reason in-specie is preferred.
10	d)	Sec. 2(22)(c) deems the distribution a dividend to the extent of accumulated profits. Post-DDT abolition (FA 2020) it is taxable in the shareholder’s hands.
11	b)	From this deemed full value of consideration, the cost of acquisition of the shares extinguished is deducted (Sec. 48) to arrive at the capital gain.
12	c)	The FMV taken under Sec. 46(2) becomes the cost under Sec. 55(2)(b)(iii); the holding period runs afresh from the date of distribution.
13	a)	In-specie distribution is not a taxable supply (prior GST dues must still be cleared); Indian stamp duty on immovable property (and share transfer/transmission) remains a real cost — unlike the UK SDLT position.
14	d)	NCLT, New Delhi, C.P.(IB)/469/ND/2023, order dated 02.07.2024 — the leading Indian authority on immovable-property in-specie distribution in a Section 59 process.
15	b)	Corrected version of the bank’s Q708. The IBBI Circular dated 15.11.2021 dispenses with the IT NOC in voluntary liquidation; it does not switch off TDS on the deemed-dividend portion.

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