

Company Accounts

Chapter- Liquidation of Companies

B.Com.

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Liquidation of Company

Liquidation of company refers to a process in which a company's existence is brought to an end. On liquidation the affairs of a company are wound up and its name is struck off from the Register of the Registrar of Companies and this fact is published in the Official Gazette.

The word “liquidation” has been replaced by “Winding-up” resulted the term liquidation has not been used anywhere in the Companies Act, 2013. It is the word “winding-up” which has been used in this Act. It is worth mentioning that the process of liquidation is legally termed as “Winding-up” of companies.

Definition of Winding-up of a Company

As per Section 2 (94A) of the Companies Act 2013, Winding-up means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable.

Note: Winding-up of a company is different from its dissolution. Winding-up is the process of closing or finishing a company. During this process, the company legally exists. It means that after winding-up and before dissolution the legal entity or existence of the company remains as it is and therefore it can be sued in a court of law.

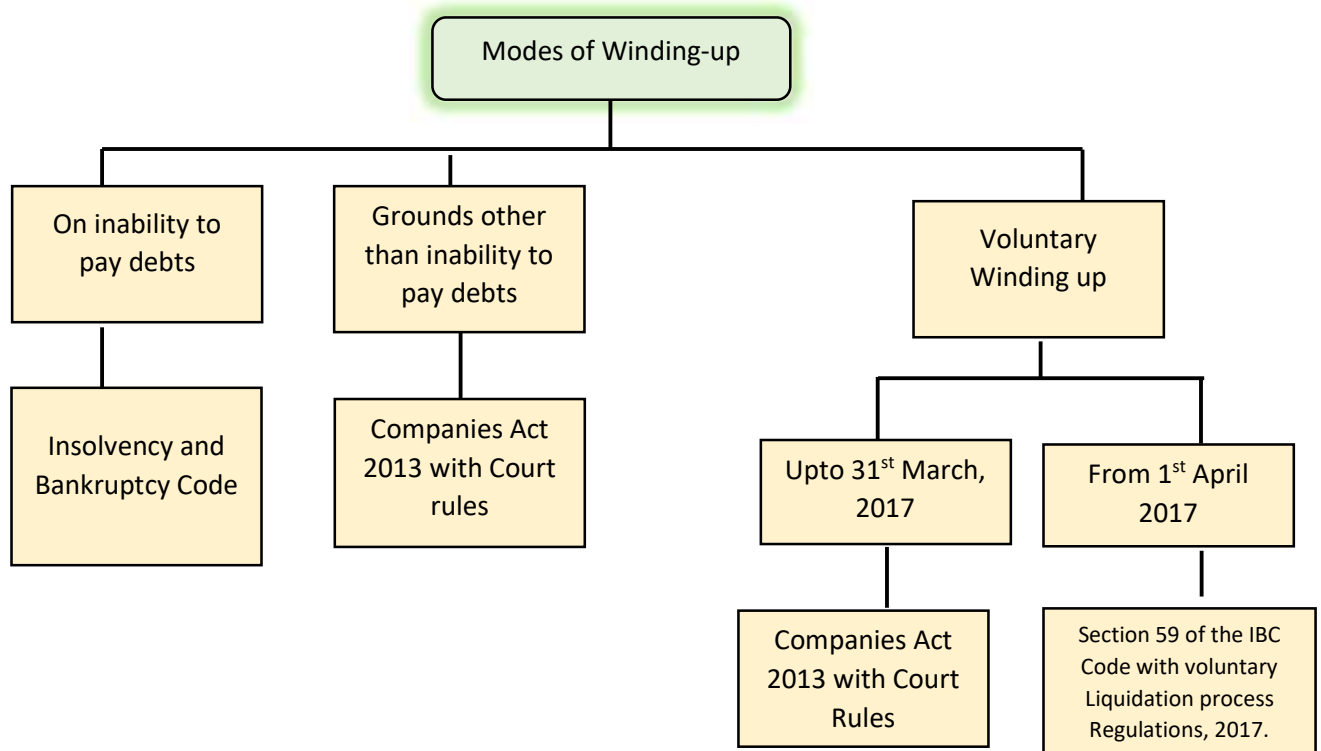
In case of winding-up of a company or bankruptcy of a company, the companies are not allowed to continue its business. But it is important to notice here the main distinction between these two issues is that for bankruptcy of the company or insolvency of the company its total liability should be greater than its total assets ($TL > TA$) while in case of liquidation it is not compulsory that its total liability should be greater than its total assets. It may happen in both the situation i.e., ($TL > / < TA$).

As per Section 270 of the Companies Act 2013, the procedure for winding up of a company can be initiated either:

- (a) By the tribunal or,
- (b) Voluntary.

Modes of Winding-up

Any company may go for winding-up in the following pattern-



A. Winding up of a Company by a Tribunal (Compulsory Winding-up)

As per section 271 of the Companies Act 2013, a company can be wound up by a tribunal in the following circumstances:

1. If the company has by special resolution resolved that the company be wound up by the tribunal.
2. If the company has acted against the interest of the integrity or morality of India, security of the state, or has spoiled any kind of friendly relations with foreigner or neighbouring countries.
3. If the company has not filed its financial statements or annual returns for preceding 5 consecutive financial years.
4. If the tribunal by any means finds that it is just and equitable that the company should be wound up.
5. If the company in any way is indulged in fraudulent activities or any other unlawful business, or any person or management connected with the formation of company is found guilty of fraud, or any kind of misconduct.

Filing of Petition for Winding Up

Section 272 provides that a winding up petition is to be filed in the prescribed form in 3 sets. The petition for compulsory winding up can be presented by the following persons:

- The company; or
- The creditors; or
- Any contributory or contributories
- By the central or state govt.
- By the registrar of any person authorized by central govt., for that purpose

The winding up petition has to be accompanied with a Statement of Affairs. The tribunal after hearing the petition has the power to dismiss it or to make an interim order as it think appropriate or it can appoint the provisional liquidator of the company till the passing of winding up order.

B. Voluntary Winding Up of a Company

The company can be wound up voluntarily by the mutual agreement of members of the company, if:

1. The company passes a Special Resolution stating about the winding up of the company.
2. The company in its general meeting passes a resolution for winding up as a result of expiry of the period of its duration as fixed by its Articles of Association or at the occurrence of any such event where the articles provide for dissolution of company.

Member's Voluntary Winding Up under the Insolvency and Bankruptcy Code,2016

The Procedure of Voluntary Winding up of solvent company section 304 is now omitted from the Companies Act, 2013. Therefore, making section 59 of Insolvency and Bankruptcy Code, 2016 applicable from 1st April, 2017.

Some Key features of section 59 of Insolvency and Bankruptcy Code,2016 are as follows:

- Shifting of Powers from Official Liquidator to Insolvency Professional.
- Jurisdictional Authority has been shifted from High Court to National Company Law Tribunal (NCLT).
- Timeline for carrying out the Voluntary Winding up process under the Insolvency and Bankruptcy Code is of 12 months.
- The shifting of Jurisdictional Authority from High Court to NCLT will result into faster execution as Insolvency Professionals have been entrusted with powers of completing the winding up process and reporting to NCLT.
- With the passing of special resolution at the Members meeting and declaration of solvency, the company can commence with the winding up proceedings.

Steps for Voluntary Winding-up Process of Company as per Section 59 of the Insolvency and Bankruptcy Code, 2016

1. Declaration of Solvency duly verified by an Affidavit by Majority of Directors of the Company. Affidavit to be accompanied by:
 - (i) Audited Financial Statement of past two years/Since Incorporation whichever is later.
 - (ii) Records of Business Operations of past two year/Since Incorporation whichever is later.
 - (iii) Report by the Registered Valuer about the valuation of the assets of the Company.
 - (iv) Latest Financial Position of the Company, if any.
2. Within 4 weeks of Declaration of Solvency, Voluntary Winding up of the Company shall happen and there shall be an appointment of Insolvency Professional to act as Liquidator subject to the approval of the Members in General Meeting and creditors owing 2/3rd of the Value of the Debt of the Company through Special Resolution within

7 days of approval of liquidation of Company. Intimation of the same has to be made to the Registrar of Companies.

- 3.** Company has to intimate Insolvency and Bankruptcy Board of India (IBBI) regarding initiation of Voluntary Winding up within 7 days of approval of liquidation of Company/subsequent approval by the creditors.
- 4.** Within 5 days of Appointment of Insolvency Professional as Liquidator:
 - (i) A Public Announcement to be made in one English Newspaper and one Regional Language Newspaper having wide circulation where the registered office and the principal office if any, of the Company is situated.
 - (ii) Public Announcement to be updated on website of the Company, if any.
- 5.** Liquidator has to open a Bank Account in the Name of the Company followed by the words “in voluntary liquidation” in a scheduled bank within one month of passing of Special Resolution.
- 6.** Intimate the Income Tax Department within One month of passing resolution regarding Voluntary Winding up of the Company and to obtain NOC for the same.
- 7.** Prepare a Preliminary Report to be submitted within 45 days from the commencement of the liquidation process consisting details of:
 - (i) Capital Structure of the Company
 - (ii) Estimates of assets and liabilities as on the liquidation commencement
 - (iii) Any further inquiry relating to promotion/formation/conduct of the business
 - (iv) Proposed plan of action by liquidator including the timeline within which he proposes to carry it out and the estimated liquidation costs.
- 8.** The liquidator shall verify the claims submitted within 30 days from the last date for receipt of claims and may either admit or reject the claim.
- 9.** Liquidator has to prepare list of stakeholders within 45 days from the last date for receipt of claims and also has to maintain Particulars/Minutes about any consultation with Stakeholders.
- 10.** Liquidator has to value and sell the assets in the manner and mode approved by the Company and have to deposit proceeds of distribution in Bank Account.
- 11.** Liquidator has to distribute the Proceeds to the stakeholders within 6 months from the receipt of amount.
- 12.** Liquidator has to maintain accounts for liquidation period and conduct audit for the same
- 13.** The entire process to be completed within 12 months from the date of commencement of liquidation.
- 14.** If the liquidation process extends for more than 12 months, the liquidator shall – Within 15 days from the end of 12 months hold meeting of contributories and Present an Annual Report indicating:
 - (i) Settlement of List of Stakeholders
 - (ii) Details of Assets remaining to be realized
 - (iii) Distribution made to the stakeholders
- 15.** To prepare Final Report with details of Audited Accounts of Liquidation and send it to:
 - (i) The Registrar of Companies
 - (ii) The Insolvency and Bankruptcy Board of India

(iii) The Adjudicating Authority, i.e., NCLT (National Company Law Tribunal)

Contributory

According to the Companies Act a contributory is “every person liable to contribute to the assets of a company in event of its being wound up, and includes a holder of fully paid-up shares and also any person alleged to be contributory”. In the event of liquidation of a company, the liquidator prepares two lists of contributories:

List ‘A’: This list consists of those persons who are members of the company on the date of the winding up. In simple, List ‘A’ contributories is the list of the present members of the company. They are liable to contribute the amount remaining unpaid on the shares held by them if the amount is needed to make payment to legal claimants.

The holders of fully paid-up shares are also treated as contributories even though they are not required to contribute anything to the company. This is necessary because in such a case, the court will know, not only those who will contribute but also who will share the surplus, if any.

List ‘B’: This list consists of those persons who were the members of the company during the 12 months preceding the date of winding up. In case the assets of the company are not sufficient to pay the liabilities of the company in the event of company’s winding up liquidator can ask List ‘B’ contributories to contribute towards the assets of the company, subject to certain conditions. However, their liability is restricted to the amount not called up when the shares were transferred.

Liquidator

The person appointed for conducting the liquidation proceedings of the company is called ‘Liquidator’. (In case of Voluntary winding up an Insolvency Professional). The company must submit a statement of affairs to the liquidator. The general duties of the liquidator are to take into his custody all the property of the company and actionable claims and make the payments as per the order laid down in the Companies Act.

Preferential payments:

Preferential creditors are those creditors who are paid in priority to creditors having a floating charge and other (non-preferential) unsecured creditors. As per Sec. 326 of the Companies Act, 2013, preferential creditors include the following:

1. All revenues, taxes, cesses and rates due to the Central, State Government or to a local authority which have become due and payable within twelve months before the date of winding up order.
2. All wages or salaries of any employee not exceeding ` 20,000 per claimant, in respect of services rendered to the company and due for a period not exceeding four months within the said twelve months before the date of winding up order.
3. All amounts due in respect of contribution payable during the twelve months under the Employees’ State Insurance Act, 1948 or any other law.
4. Compensation due under Workmen’s Compensation Act, 1923 in respect of death or disablement of any employee of the company.
5. Any amount due to any employee from provident fund, pension fund, gratuity fund for the welfare of the employees maintained by the company.

6. Accrued holiday remuneration becoming payable to the employee or in case of his death, to any other person in his right, on termination of his employment before, or by the effect of the winding up.
7. The expenses of any investigation held in pursuance of Sec. 213 or 216 in so far as they are payable by the company.

Overriding Preferential Payments (Section 326)

Overriding preferential payments are to be paid in priority to all other debts as per the said Act. They include:

- (a) Dues to workmen, and
- (b) where a secured creditor has realized a secured asset, so much of the debts due to such secured creditor as could not be realized by him or the amount of the workman's portion in his security (if payable under the law), whichever is less, paripassu with the workmen's dues.

Liquidator's Final Statement of Account

The statement prepared by the liquidator showing receipt and payments of cash in case of voluntary winding-up is called "Liquidator's Statement of Account". Following is the proforma of Liquidator's Final Statement of Account-

| Liquidation Final Statement of Account | | |
|---|---------------|---|
| <i>Receipts</i> | <i>Amount</i> | <i>Payments</i> |
| Cash in hand | ₹ | Legal charges |
| Cash at Bank | | Liquidator's Remuneration : |
| Amount realised from the Sale of Assets : | | (i) Fixed Amount (if any) |
| Land & Building | ----- | (ii) % on amount realised |
| Plant & Machinery | ----- | from Assets |
| Furniture | ----- | (iii) % on amount paid to |
| Inventories | ----- | trade payables |
| Trade Receivbles | ----- | (iv) % on amount paid to |
| Surplus amount received from Secured | | Shareholders |
| Creditors Calls from shareholders | | Liquidation Expenses |
| @ ₹ on shares | | or Cost of winding-up |
| | | Debentureholders or other Creditors |
| | | having a floating charge on the |
| | | assets of the company |
| | | Preferential Creditors |
| | | Unsecured Creditors |
| | | Preferential Shareholders (Refund of Capital) |
| | | Equity Shareholders (Refund of Capital) |