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INTEGRATING WINDING UP AND INSOLVENCY: THE SUPREME COURT'S RULING IN KALÉDONIA JUTE

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Abstract

The process of adjusting the old practice of winding up proceedings with the new modern insolvency regime in Insolvency and Bankruptcy Code, 2016 (IBC) has turned out to be a paramount issue in Indian corporate law. The paper is a critical analysis of a decision of the Supreme Court on Kaledonia Jute & Fibres Pvt. Ltd. v. Axis Nirman & Industries Ltd. that discusses the tension of procedures and jurisdictions that transpires due to concurrent proceedings in the High Courts and the National Company Law Tribunal (NCLT). One of the major issues of the study is the issue on the transfer of pending winding-up proceedings, the interpretation of the term Party under Section 434(1)(c) of the Companies Act, 2013, and the degree to which a statutory more prevails over the restriction of the procedure according to the Companies Rules, 2016. Even though the investigation of the transition in the resolution and the liquidation has been discussed previously, few studies have focused on the right of non-petitioning creditors and how the insolvency proceedings can be transferred. The aim of this paper is to fill this gap by attempting to analyze the doctrines presented in statutory provisions and judicial precedents. It claims that the Supreme Court follows a purposive approach which appreciates winding-up to be a collective proceeding in rem, and thus extends the application of creditor participation. One of the major judicial innovations that have been noted to balance between procedural certainty and flexibilities is the introduction of the test of reversible versus irreversible stage. The results confirm the fact that the judgment enhances the primacy of the IBC due to the ability to access the insolvency system more broadly and ensure litigation fragmentation, as well as efficiency in the procedure. Nonetheless, the lack of statutory definition of irreversibility leaves room to such inconsistency in application. The paper concludes that although the ruling is the first step towards harmonisation of the law of corporate insolvency in India, specific legislative clarification needs so that there is uniformity and predictability in the application of the law.

Keywords: *Winding-up proceedings, Insolvency proceedings, IBC 2016, Companies Act 2013, NCLT, India.*

Introduction

The concept of winding up has been a part of corporate law for a long time, as it brings the end to a company while balancing the claims of creditors and stakeholders. Traditionally, a company governed Section 2(20) of the Companies Act, 2013 includes the provisions dealing with the process of winding-up of company under Chapter XX Sections 270–378, through voluntary medium or involuntary. However, the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) marked a shift in the winding-up approach. Rather than focusing solely on dissolution, the IBC prioritises revival and resolution of a company. While reflecting a more modern and economically efficient framework, this gives rise to significant caution concerning the overlap between the pending processes before the High Court and the National Company Law Tribunal.

An important case that kept these complexities is *M/S Kaledonia Jute & Fibres Pvt. Ltd. v M/S Axis Nirman & Industries Ltd.* In this case, the Axis (Respondent) had already been subjected to winding-up proceedings initiated by the Girdhar Trading Co, the Creditor, in the Allahabad High Court. Although the court passed an order for carrying out the winding up process, it was subsequently kept with the official liquidator retaining control of the company's assets. While this proceeding remains pending, Kaledonia (Appellant), another creditor with claims amounting to ₹32 lakhs, filed an Insolvency petition under the IBC before the National Company Law Tribunal and sought to have the High Court proceeding transferred.

Moreover, the High Court rejected this application and compelled the applicant to approach the apex court. The significance of this case was not only limited to the facts and the larger questions but it also raised a question that a creditor who was not a part of the original petition still seek to transfer and that procedure rule limit such transfers once a case has already been progressed and how should a court strike a balance between old laws and first intent of Insolvency Bankruptcy Code. In the Supreme Court verdict, while specific to the parties, it carried implications far beyond and shaped how India now uses the future of winding up proceedings under a modern regime.

Rationale of the Study

This research paper examines the development of winding-up law in India within the larger framework of Insolvency Reforms. The IBC, 2016, shifts focus from Liquidation to Resolution. The handling of pending winding-up proceedings has become an important issue. The

judgment gives a clear perspective on section 434(1)(c)¹, expands creditor rights, and introduces the test of reversible and irreversible stages. By addressing these questions the judgement emphasised that winding up is a collective process best harmonised under the IBC. The paper highlights how judicial interpretation is aligning older provisions with modern objectives and while ensuring consistency and efficiency in corporate law.

Research Questions

- Whether transferring pending winding up matters to the NCLT enhances procedural clarity and reduces the conflict of jurisdiction?
- Whether the non-petitioning creditors qualify as "parties" under Section 434 (1)(c).
- Does the 5th proviso to section 434(1)(c)² override the restriction under the Companies Rules 2016.

Research Objectives

- To examine the scope and interpretation of Section 434(1)(c) of the Companies Act and in relation to the transfer of winding up proceedings.
- To evaluate the legal status of the non-petitioning creditors in initiating the transfer of pending winding-up cases to the NCLT.
- How has the Insolvency and Bankruptcy Code 2016 impacted the process of winding up.

Research Hypotheses

The central hypotheses concerns the interpretation of the term "party" under Section 434(1)(c)³ of the Companies Act 2013, and the null hypothesis suggests that the non-petitioning creditor does not qualify as a "party" which therefore lacks the right to seek transfer of winding up proceedings to the NCLT. whereas the alternative hypotheses posit that a non-petitioning creditor is a party for the purpose of Section 434(1)(c) and can apply for the transfer.

¹ Companies Act, 2013, § 434(1)(c), No. 18, Acts of Parliament, 2013(India).

² *ibid.*

³ *ibid.*

Research Methodology

The paper adopts a doctrinal approach relying primarily on statutory interpretation, judicial precedents, and articles while providing an in-depth analysis of Section 434(1)(c)⁴ of the Companies Act 2013 and the 5th proviso with judicial interpretation. It examines relevant precedents, statutory provisions and principles of the Insolvency law, highlighting the winding up. The research emphasises analytical reasoning over empirical data, making doctrinal research the most suitable method for evaluating the alignment of winding up provisions with Insolvency objectives.

Literature Review

1. In a Journal article titled "A Study on Winding Up under Companies Act," the author discusses the winding up of a company. This article examines how companies are wound up by the Tribunal. Readers will gain a clear understanding of the impact of the Insolvency and Bankruptcy Code, 2016, on winding up. The author thoroughly discusses and analyses Sections 488⁵ and 271⁶ of the Companies Act, 1956. Relevant case laws on the topic are also highlighted for a better understanding.⁷
2. In "Companies Under Insolvency And Bankruptcy Code" R., Darshan and Madhankumar, 2021, the authors emphasise the distinctions in the procedural elements of company liquidation as governed by the Companies Act versus the Insolvency and Bankruptcy Act of 2016. This analysis contrasts companies undergoing liquidation under the Companies Act with those that have been liquidated following the IBC. It investigates multiple case studies of companies that are currently in the liquidation process under the Companies Act and compares them to instances of companies that have already been liquidated under the Insolvency and Bankruptcy Code 2016.⁸
3. In the winding up of a Company under the Companies Act 2013 and the IBC, 2016, Goswami and Rai (2018) of this study analyse the regulations concerning the

⁴ Companies Act, 2013, § 434(1)(c), No. 18, Acts of Parliament, 2013(India).

⁵ Companies Act, 2013, § 488, No. 18, Acts of Parliament, 2013(India).

⁶ Companies Act, 2013, § 271, No. 18, Acts of Parliament, 2013(India).

⁷ S. Keerthana and M. Kannappan, A Study on Winding Up under Companies Act, International Journal of Pure and Applied Mathematics, 19, 783-797, (2018).

⁸ Saminathan R et al., A Study On Liquidation Of Companies Under Companies Act Compared With Liquidation Of

Companies Under Insolvency And Bankruptcy Code, RESEARCHGATE (2021),

<https://www.researchgate.net/publication>

349807377_A_Study_On_Liquidation_Of_Companies_Under_Companies_Act_Compared_With_Liquidation_Of_Companies_Under_Insolvency_And_Bankruptcy_Code.

liquidation of a company as outlined in the Companies Act of 2013 in relation to the winding up procedures specified in the IBC of 2016. This work is doctrinal and relies on existing literature along with a variety of judicial rulings from Tribunals and courts. The authors have clearly differentiated and compared the winding-up regulations under the current Company laws with those in the new framework established by the IBC, 2016.⁹

Case Analysis

The Supreme Court delivered a landmark ruling that harmonises the Companies Act winding provisions with the Insolvency and Bankruptcy Code (IBC). The court adopted an interpretation of Section 434(1)(c)¹⁰ and its 5th proviso, the court also mentioned that the winding up proceedings are *in rem* and it also affects the entire number of the creditors. Therefore, the expression "any party or parties" was broadly interpreted to include all the creditors of the company. This approach was crucial to prevent proceedings before the High Court and National Company Law Tribunal to uphold the IBC as the dominant framework for corporate Insolvency resolution. Moreover, the court clarified that the 5th provision overrides the limitations set by the Companies Rules, 2016, which previously barred the transfer of the petition once it had been completed. By holding that the provision operates independently, the court ensured that the right to seek transfer remains intact even after the procedural. Significantly, the court introduced the test of reversible versus irreversible stages of winding up represents the central essence of the Jute ruling. By holding that transfers are permissible unless proceedings have progressed to an irreversible stage. In *Official Liquidator v. Swadeshi Polytex Ltd*¹¹, "the court explained winding up as the process of closing the company's affairs, selling its assets, paying its debts, and distributing any remaining surplus among its members based on their rights." Winding up may be complicated, time-consuming, and critical, but ensure that all legal obligations are met in a careful way.

In the instant case, because no irreversible actions had been completed, transfer to the NCLT was directed. But the winding up is not an isolated creditor-driven process, but a collective proceeding best harmonised under the IBC. In another case of *Forech India Ltd. v Edelweiss*

⁹ Akрати Goswami & Sarika Rai, Winding up of a Company under the Insolvency and Bankruptcy Code, 2016: A Comparative Analysis, HEINONLINE (2018), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/supami5&div=6&id=&page=>

¹⁰ Companies Act, 2013, § 434(1)(c), No. 18, Acts of Parliament, 2013(India).

¹¹ Official Liquidator v. Swadeshi Polytex Ltd, 2007 (5) Bom CR 429.

*Asset Reconstruction Ltd*¹², where the case arose a conflict between the companies act and Insolvency and Bankruptcy Code where the company filed a winding up petition in 2014 but it was stalled because the legal issue was that if the petition would proceed independently or if the IBC application will be supported and would take a precedence but the court held both of the act will proceed simultaneously. Moreover, this case of Kaledonia Jute presents how to prevent multiplicity of litigation across courts and Tribunals. At the same time, the judgment exposes an area of ambiguity in that the absence of a precise legislative definition of what is "irreversibility" requires statutory refinement.

Mainly, the decision reinforces the idea that Indian law must evolve towards efficiency and inclusivity, as this case points out to the jurist food of winding up. It also applies that corporate Insolvency must be approached in a different and holistic way to avoid fragmented remedies by emphasising the collective nature of proceedings, the court ensures that creditors are not coerced to pursue separate remedies which can lead to duplication of litigation and erosion of value through their recognition of NCLT. Another significant aspect revealed that the decision is three affirmations of the legislative intent behind the IBC, which was designed to resolve any situation of corporate distress in a timely manner and streamlining pending winding up matters into the IBC process wherever possible. Moreover, the judgement reflects that the apex court's effort to bring clarity and fairness into the landscape of law in India. By recognising that all creditors, not just petitioning creditors, have a stake in the winding up process and by the test of irreversible and reversible stake the court action to struck a balance between the certainty of the case. The case also highlights the nature of Insolvency and strengthens the IBC as the central framework and reminds us that law must evolve to ensure the efficiency and justice in the situation of corporate distress.

Findings

The case of Kaledonia Jute, the Supreme Court played a major role in clarifying the ambit of section 434(1)(c)¹³ of the Companies Act 2013. The Act provisions on winding up are comprehensive, but often conflict with the objectives of the IBC. Judicial decisions show that the winding up is treated as a proceeding in rem, giving all the creditors, not just petitioning creditors, but also the right to participate and seek transfer to the National Company Tribunal.

¹² Forech (India) Ltd. v. Edelweiss Assets Reconstruction Co. Ltd., (2019) 18 SCC 549.

¹³ Companies Act, 2013, § 434(1)(c), No. 18, Acts of Parliament, 2013(India).

It also reveals that while the IBC promotes resolution over liquidation, the winding up remains relevant in cases of irreversible financial distress. Moreover, the uncertainty process regarding what constitutes an irreversible stage of winding up can create delays.

The study revealed that creditor communication, judicial discretion and institution coordination always remain decisive in determining the efficient success of winding up process. Further, the study also reveals that statutory provisions are not sufficient, and the success of winding up proceedings depends on communication among the creditors, institutional coordination between the courts and NCLT. The stronger the statutory guidance, the clearer the procedure, and the litigation is reduced while ensuring smoother integration of pending cases related to the winding up into the Insolvency Bankruptcy Code framework. Lastly, the findings reveals that winding up law is moving away from the liquidation and moving forward to resolution. Courts are increasingly prioritising stakeholderer protection so that evolving judicial approach signals not on the legislative policy but also commitment aligning with the Insolvency practice and Bankruptcy Code over objectives.

Conclusion and Suggestions

The judgment marks a significant milestone in reconciling India older winding-up framework under the Companies Act with the modern Insolvency resolution regime under the IBC. Though the need for certain improvements can make the Insolvency framework more flexible to expedite the liquidation process, for which the legislature should mention the "party" under the section, which should include all creditors and stakeholders affected by the winding up proceeding. While the SC has clarified this, improving the codification of the definition can reduce litigation. Furthermore, Parliament should establish the concrete parameters for what constitutes an irreversible stage of winding up, and the current open-ended formulation leaves the matter to judicial discretion, which risks inconsistency.

Third is that the Companies Rules 2016 should be amended to reflect the supremacy of the 5th pro,viso to section 434¹⁴, and currently the rules appear to be in conflict with the intent which was clarified by the Supreme Court. And lastly, the awareness among the creditors and particularly non-petitioning creditors. These measures would collectively in his procedural clarity and safeguard creditor rights while strengthening the course of winding up with IBC.

¹⁴ Companies Act, 2013, § 434(1)(c), No. 18, Acts of Parliament, 2013(India).

To conclude, by recognising that winding up is a proceeding in rem and extending the right of transfers to non-petitioning creditors, the Supreme Court though in force the collective nature of Insolvency law but the ruling also confirmed that the fifth proviso to section 434(1)(c) prevails over the restrictive language of the company rules 2016 and ensure that creditors are not deprived of the benefits of the Insolvency and Bankruptcy Code merely due to the procedural technicalities. The important thing is that the court distinction between reversible and irreversible stages of winding up and striking a balance between flexibility and uncertainty, while the concept of irreversibility may invite interpretations, but it reflects that the court has an effort to prevent disruption. The proceedings have progressed way too far while still prioritising the transfer of cases. The decision first strength in the primary of the Insolvency Bankruptcy Code, the Companies Act 2013 and the Companies Rules 2016 enhance creditors' participation and reduce the risk of fragmented or duplicative proceedings. It also highlights areas where legislative and procedure refinement are necessary. Overall, the key reforms are the judiciary's role in aligning the Companies Act, the Insolvency & Bankruptcy Code, while maintaining the objective of efficiency, creditor protection and timely resolution in the situation of corporate distress.

