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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He

participated in several workshops on research methodology and teaching and learning.

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VOLUNTARY WINDING UP OF COMPANY

Authored By-Amresh Swarnkar

Co-Authored By- Sudhanshu Mishra

B.A. LLB (Hons.)

Maharashtra National Law University, Aurangabad

Abstract

This research work is based on the topic of ‘Voluntary Winding Up of Company’ and deals with all the aspects of this topic in detail.

The main body of the paper comprises of –

What is a company and what are the various characteristics of it.

What is the process of winding up of a company under the Companies Act, 2013, Insolvency and Bankruptcy Code, 2016.

What is the concept of voluntary winding up of company.

What is the process of the voluntary winding up of a company.

Case laws related to the winding up of a company.

This paper aims to make its readers understand about the whole concept of voluntary winding up of a company along with all the details related to this aspect.

The readers of this paper will also come to know along with it the concept of a company, its characteristics, etc.

The paper gives an overall detailed view of this concept closely as per the Companies Act, 2013 and Insolvency and Bankruptcy Code of 2016.

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Research Methodology

This paper is in the form of a doctrinal study i.e. done on the basis of various books and internet. The research is descriptive in nature with an analytical approach on the topic. The sources used primarily are secondary sources such as- the books and internet.

Statement Of Problem

The paper aims to deal with the discussion on the topic ‘Voluntary Winding up of a company’ under the ambit of Companies Act, 2013 and Insolvency and Bankruptcy Code, 2016 and what are the various elements related to this topic.

Research Questions

1. What is the concept of a Company ?
2. What is the concept of Liquidation of a Company?
3. What is voluntary winding up of a company?
4. What is the role of a liquidator in voluntary winding up of a company?

Literature Review

Regarding this topic various works have already been done in the past by many of the authors since this is quite a famous topic in the realm of company law and is also a well-researched one and in this research work as well this topic has been dealt in detail covering its various aspects with the aim to contribute to this well-researched topic.

Voluntary Winding Up Of Company

Introduction

Concept of Company:

In layman's language a company can be said to be an association of persons who are like-minded and have gathered to carry on business for gaining profits.

In the legal sense a company is an association incorporated under the corporate laws of a particular country and is registered under the same.

In the terms of Indian context the Companies Act of 2013 lays down the foundation and framework of laws to establish a company and also governs the various affairs and functioning of a company in India.

The definition of a 'Company' under the Companies Act, 2013 is-

“Company means a company incorporated under this Act or under any previous company law.”

(Previous company law here means the Companies Act of 1956)

In common law, a company is a 'legal person' or 'legal entity' which has a separate form and is capable of surviving even after the lives of its members.

Some Major Characteristics Of A Company Are-

- 1. Corporate personality:** A company incorporated under the Companies Act, 2013 is vested with a corporate personality i.e. it is an artificial person and has a separate legal entity i.e. it can sue as well as can be sued.

Due to this characteristic a company bears its own name, acts under its own name, has a seal of its own and the company's assets are separate and distinct from those of its members.

A company is a different 'legal person' and is distinct from those of its members, hence it is capable of:

- Owning a property.
- Borrowing money.
- Incurring debts on its own name.
- Having a separate bank account on its own name.
- Entering into contracts on its own name.
- Sue or being sued in its own name in the same manner as an individual.

2. **Company has nationality and residence:** Though it has been established that a company cannot be a citizen, yet it has nationality, domicile and residence.

3. **Limited Liability:** The privilege of limited liability for the debts of the business is one of the major advantages of doing a business under the corporate form of organization.

A company being a separate person, is an owner of its own assets and is bound by its own liabilities i.e. the liability of a member in the manner of a shareholder in a company extends only to the scope of his/her contribution in the capital of that company i.e. up to the nominal value of the shares of the company which are held by him/her. Therefore, the private assets of the investors and owners is not at a risk if the company incurs huge losses.

4. **Capacity to sue and be sued:** A company being a body corporate having a separate legal entity can sue and be sued in its own name.

5. **Termination of Existence of a company:** A company is an artificial juridical person hence it can never die a natural death whereas it is created by law, carries on its day-

to-day affairs as per the law throughout its existence and ultimately will also be effaced by law only. This term pertaining to the termination of existence of a company is known as 'winding up of a company.'

Voluntary Winding Up Of Company:

A voluntary liquidation or winding up of a company is a self-imposed winding-up and dissolution of a company which is approved by the shareholders of such a company.

Such a decision related to a corporate happens once the leadership of such corporate decides that this specific company has no substantial reason to continue its operations.

The aim of such a liquidation is to terminate the company's operations, dismantle the corporate structure in an orderly fashion, end its financial affairs along with paying back the company's creditors according to their priorities.

Understanding The Concept Of Voluntary Liquidations

The company's voluntary liquidation resolution is started by that company's board of directors. A voluntary liquidation is enacted when a resolution to cease its operations is approved by the shareholders of that company.

A voluntary liquidations is in contrast to an involuntary liquidation. A shareholder's vote allows the company to liquidate the assets of that company in order to generate funds to pay the debts. Voluntary liquidation as such can happen because of poor operating conditions i.e. when a company is operating at a loss since a reasonable time.

A voluntary liquidation may also happen in a case when a company which is liquidating was only meant to exist for a specific period of time or for a particular purpose which has been fulfilled now so the company is now being liquidated by its board.

Another scenario can be where a key member of the company has left the organization and the shareholders have decided not to continue operations thereon.

The Process Of Voluntary Liquidation:

A voluntary liquidation can be done by the members of the company when

*A special resolution is passed by the company for winding up.

*A company passes a resolution in its general meeting which requires the voluntary winding up of that company as a result of the expiry of that company's duration or on the occurrence of a particular event in relation to which the Articles of Association of that company provide that the company should be dissolved in such a case.

The Following Steps Are Involved In The Voluntary Liquidation Of A Company

1. A company which intends to liquidate itself voluntarily may initiate the voluntary liquidation proceedings under the provisions of Insolvency and Bankruptcy Code, 2016 namely- Section 59 of Chapter V of Part II of the code.
2. The company which is voluntarily liquidating itself should not have committed any default.
3. A declaration along with an affidavit from the majority of the directors of that company is required stating that a complete inquiry has been made by them in the various affairs of the said corporate that the corporate will clearly be able to pay its various debts completely and the said liquidation is not to defraud anyone.

(The declaration which is made shall be accompanied with the audited financial statements of the said corporate for the two previous years along with a valuation report of the various assets of the said corporate, if any prepared by the registered valuer).

4. A special resolution for the voluntary liquidation of the corporate and appointment of an insolvency professional as the liquidator is to be passed by the company within four weeks of giving the declaration mentioned above.

5. Where a company owes any debt to any person, such resolution should be approved by its creditors being two-third in value within seven days of passing such a resolution.
6. The passed resolution should be notified to the Registrar of Companies and also to the Insolvency and Bankruptcy Board within seven days. The voluntary liquidation process is deemed to be commenced from the date of passing such resolution.
7. In case where the affairs of the company have been completely wound up and its assets are also completely liquidated already, the liquidator shall make an application to the Adjudicating Authority for the dissolution and the Adjudicating Authority shall pass an order for the dissolution of the said corporate.

The term 'Adjudicating Authority' defined under Section 5 of Chapter I of Part II of the Code shall mean the National Company Law Tribunal.

8. The order of the National Company Law Tribunal shall be forwarded to the authority with which the company is registered within 14 days from the date of the said order.

In the liquidation of a company a liquidator plays a key role so now we will discuss some important points with regards to a liquidator:

Who Should Be Appointed As A Liquidator?

An insolvency professional will play the key role of being a liquidator and he shall be eligible to do so if he along with every partner or director of the insolvency professional entity of which he himself is a partner or director is independent of the company which is winding up.

An 'insolvency professional' means a person who is enrolled under Section 206 as a member with an insolvency professional agency and also is registered with the Board as an insolvency professional under Section 207.

A person will be considered independent of the company which is winding up, if he:

*is eligible to be appointed as an independent director in the company.

*is not a related party of the company.

*has not been an employee or proprietor or partner of an auditing firm/ company secretaries firm/ cost auditors firm of the company or of a legal or a consulting firm having transactions with the company contributing 10 percent or more of the gross turnover of such firm at any point of time in the preceding three years.

*An insolvency professional will not be appointed as a liquidator if he is under a restraint order of the Board or is representing any other stakeholder in the same liquidation.

Powers And Functions Of The Liquidator:

The liquidator has to verify the claims of all the creditors.

*The liquidator has to take into custody or control all the assets, property, effects and actionable claims of the company and has to take such measures to protect and preserve the assets and properties of the company.

*The liquidator can obtain any professional assistance from any person or can appoint any professional, in discharging his duties, obligations and responsibilities.

*The liquidator has to invite and settle claims of creditors and claimants and distribute the proceeds in accordance with the provisions of the Code.

*The liquidator has to take such actions, steps or to sign, execute and verify any paper, deed, application, affidavit or instrument for liquidation, distribution of assets and in discharge of his duties as a liquidator.

*The liquidator has to make an application before the National Company Law Tribunal for such orders for liquidation of the company and also has to report the progress of the liquidation process.

*To perform any other functions which may be specified by the Board.

Reporting By The Liquidator

A Preliminary Report is to be prepared and submitted by the liquidator along with the Annual Status Report, Minutes of consultations with the stakeholders and a Final Report in the manner which is specified under the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

***Preliminary Report-**

It should be submitted to the corporate entity within 45 days from the date of commencement of the date of liquidation, this should give detailing of the capital structure of the corporate entity and the estimates of its assets and liabilities as on the date of the commencement of the liquidation.

***Final Report-**

It is to be submitted to the National Company Law Tribunal along with the application under Section 59(7) and it is also to be sent to the Registrar and to the Board on the completion of the process of the liquidation.

The Final Report shall consist of:

- a. audited accounts of the liquidation.
- b. a statement which demonstrates that the assets of the corporate entity have been disposed of, the debt of the corporate have been discharged and there is no litigation which is pending against that corporate entity.
- c. a sale statement relating to all assets comprising the realized value, the cost of the realization, mode and manner of the sale, the person to whom such sale is made, and other relevant details of the sale if any.

Public Announcement By The Liquidator

The liquidator shall make a public announcement in the Form A of Schedule I of the aforesaid Regulations, and such announcement should be made within five days from the date of his appointment in an English and a regional language newspaper and also on the website of the corporate entity, if any.

Such announcement shall call upon the stakeholders in order to submit their claims as on the date of commencement of the liquidation and also provide the last date for the submission of the claims which shall be thirty days from the date of commencement of the liquidation.

Claims By The Stakeholders:

Claims by Operational Creditors-

A person who is claiming to be an operational creditor of the corporate entity shall submit the proof of such claim to the liquidator in **Form B of Schedule I**.

Claims by Financial Creditors-

A person who is claiming to be a financial creditor of the corporate entity shall submit the proof of such claim to the liquidator in **Form C of Schedule I**.

Claims by Workmen and Employees-

A person who is claiming to be a workman or an employee of the corporate entity shall submit the proof of such claim to the liquidator in **Form D (for individual claimant) / Form E (for a group of the claimants) of Schedule I**.

Claims by other Stakeholders-

A person who is claiming to be a stakeholder other than the persons mentioned above, of the corporate entity shall submit the proof of their claim to the liquidator in **Form F of Schedule I**.

The liquidator shall verify the claims which have been submitted within 30 days from the date for receipt of the claims and may either reject or admit the claims, in whole or in part as the case may be.

The liquidator shall prepare the list of the various stakeholders on the basis of the claims submitted within 45 days from the last date for receipt of the claims.

Distribution Of The Proceeds And Unclaimed Proceeds Of

Liquidation:

*The liquidator shall open an account in a scheduled bank in the name of the corporate entity followed by the words '**in voluntary liquidation**' for the receipts and payments of all the money involved.

*The liquidator shall distribute the proceeds from the realization within **six months from the receipt of the amount to the other stakeholders and the claimants.**

*If there are any unclaimed proceeds of the liquidation or undistributed assets, the liquidator shall make an application before the National Company Law Tribunal for passing an order to pay such proceeds into the Companies Liquidation Account in the Public Account of India before the order of the dissolution is passed under Section 59(8) and necessary intimation of such a payment is to be given to the Registrar.

Completion Of Liquidation:

The liquidation shall be completed by the liquidator within 12 months from the date of commencement of the liquidation. If the process of liquidation continues for more than 12 months, a meeting of the contributories is to be held by the liquidator within 15 days from the end of 12 months from the date of commencement of the liquidation and at the end of every succeeding 12 months till the dissolution of the corporate entity.

The Annual Status Report is to be presented by the liquidator which indicates the progress in the liquidation including the settlement of the list of stakeholders, details of the assets which are remaining to be sold and realized, distribution which has been made to the stakeholders, etc.

Preservation of the Records of the liquidation:

A physical or an electronic copy of the reports, registers and books of account for at least 8 years after the dissolution of the corporate entity shall be preserved by the liquidator with himself or with an information utility.

Case laws on voluntary winding up of a company-

1. Neptune Assurance Co. Ltd. v. Union of India¹ :

It was held in this case that the expression “voluntary winding up” in the Companies Act means a winding up by a special resolution of a company to that effect.

Similarly, the expression “winding up by the court” means winding up by an order of the court in accordance with Section 433 of the Companies Act.

2. Pankaj Mehra v. State of Maharashtra² :

It was laid down in this case that once a petition for winding up is presented it is not a necessary concomitant that the winding up would follow. This position was made clear in Section 440(2) which says that “the court shall not make a winding up order on a petition presented to it under Sub-section (1), unless it is satisfied that the voluntary winding up or winding up subject to the supervision of the court cannot be continued with due regard to the interests of the creditors or contributories or both.” So a judicial exercise is called for to reach the satisfaction of the court that winding up has to be continued with due regard to the interest of the creditors or the contributors. Section 443 of the Companies Act is important in this context.

¹ 1973 SCR (2) 940

² 2000 100 Comp Cas 417 SC

3. National Textile Workers' Union v. PR Ramakrishnan³ :

The decision was given by the Supreme Court in order to avoid undue hardship on the part of the company, had held that the trade union could not present a petition for winding up. It also can't represent workers for this purpose, as they have an alternative remedy under the Industrial Disputes Act, 1947.

4. Pierce Leslie and Co. Ltd. v. Violet Ouchterlony⁴ :

The Honorable Supreme Court in this case held that winding up precedes the dissolution. There 'is no statutory provision vesting the properties of a dissolved company in a trustee or having the effect of abrogating the law of escheat. The shareholders or creditors of a dissolved company cannot be regarded as its heirs and successors. On dissolution of a company, its properties, if any vest in the government.

5. IBA Health v. Info- Drive Systems⁵ :

It was held that the Company Court is not required in a winding-up proceeding to examine complex issues of law and fact, or resolve serious dispute between parties. The Supreme Court held that a Company Court cannot proceed with a winding-up petition if the respondent raises a 'substantial' or 'bona-fide' dispute as to the existence of the debt.

6. Amalgamated Commercial Traders Pvt. Ltd. v. A.C.K. Krishnaswami⁶ :

It was held in this case that 'it is well-settled that a winding up petition is not a legitimate means of seeking to enforce payment of the debt which is bona fide disputed by the company.

³ 1983 AIR 750, 1983 SCR (3) 12

⁴ 1969 SCR (3) 203

⁵ CA No. 8230/2010

⁶ (1965) 35 Company Cases 456 (SC)

A petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatized as a scandalous abuse of the Court process.’

Conclusion

The research done in this paper comprises of a well-detailed study on the topic of – Voluntary winding up of a Company and in this paper this concept has been dealt with in detail along with the related concepts related to it.

The paper focuses on telling its readers that what is the concept of a company, what is liquidation of a company, what is the voluntary winding up of a company, what is the role of a liquidator in this winding up process and this paper also covers the various case laws related to the research topic.

In this paper after a well detailed research we can conclude to say that the process of voluntary winding up of a company is safe to go for and can be chosen by the promoters/ directors of a company by following the procedure as mentioned in detail in this paper when they feel like that the main purpose of the company has been fulfilled or there is no use of the company to function any more or the owners wish to divest the money and assets of the company in some other business or interest.

REFERENCES

1. Company Law by Avtar Singh
2. Company Law and Practice by A K Majumdar
3. Company Law by Brenda Hannigan
4. <https://www.mca.gov.in/MinistryV2/closecompany.html>
5. <https://cleartax.in/s/winding-up-private-limited-company>
6. <https://hamiltonmurphy.com.au/corporate-insolvency/members-voluntary-winding-up-mvl/>
7. <https://blog.ipleaders.in/winding-up-of-a-company-2/>
8. <https://www.yourarticlelibrary.com/accounting/liquidation-of-companies/modes-of-winding-up-of-a-company-2-methods/58505>
9. <https://www.mondaq.com/india/shareholders/956228/modes-of-closing-a-business-series-iv-voluntary-winding-up>
10. https://edurev.in/studytube/Concept--Modes-Winding-Up--Company-Law/45b4ae56-ce77-4c1b-90b9-af82de81da96_t
11. <https://www.legalwindow.in/modes-of-winding-up-of-a-company-as-per-companies-act/>
12. <https://ebizfiling.com/blog/winding-up-of-a-company/>
13. <https://www.upcounsel.com/modes-of-liquidation-of-company>