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"Winding Up of a Company: Legal Framework and Contemporary Issues in India" – ASEEM SRIVASTAVA

ABSTRACT

Winding up or liquidation process is an indication of legal ending of a company. It includes realisation of assets and settling liabilities and distribution of the surplus as it may be between the shareholders before dissolution. The process of winding up is a part and parcel of corporate law, which secures the proper exit of an organisation of the market without prejudice to the interests of the creditors, employees and investors. The law, further elaborated below, that regulates winding up in India is the Companies Act, 2013, the Companies (Winding Up) Rules, 2020, with some additions of the Insolvency and Bankruptcy Code, 2016 (IBC). The merging of insolvency and liquidation proceedings by the IBC has created a transformation of the totally judicial process into a rather time limited, creditor-provided process.The paper examines the development, legislative structure and process of winding up of companies in the Indian corporate legislation. It looks at the jurisdiction of the National Company

Law Tribunal (NCLT), the position of the liquidator and the inter-relations between winding- up process and the insolvency resolution process under the IBC. It makes use of a doctrinal and analytical approach whereby crucial court decisions are reviewed, and the practical issues that arise including delay in the process, overlapping jurisdictions, and stakeholder protection. The paper ends with suggestions of reforms which could make Indian corporate liquidation regime efficient, transparent and creditor friendly.

Keywords: Winding up, liquidation, Companies Act 2013, Insolvency and Bankruptcy Code 2016, NCLT, liquidation proceedings, creditor protection.

1.INTRODUCTION

The corporate law governs the establishment of the companies, their functioning as well as the termination. Any business organisation regardless of its size or economic significance can eventually come to a point when it is either needful or efficient to end its existence. The procedure through the law that achieves this goal is referred to as winding up or liquidation. The term suggests transferring the business of a company to a dead end, collecting its assets, paying off its debts and distributing the remaining property to shareholders in a manner that promotes fairness to all interested parties and prevents any favoritism or treatment of a certain group of creditors.

The significance of the effective system of winding up cannot be over-emphasized. It is necessary to keep the confidence of the investor and creditors, predictability ensures the stability of the capital

markets and promotes responsible corporate behaviour when the process is transparent.

The Indian winding up legal regime is based on the colonial Indian company law. It was previously regulated under the Companies Act, 1956, which introduced both voluntary and compulsory winding up, but there was a lot of criticism since delays and multiple authorities took place in 1956.[3] The Companies Act, 2013 brought about radical changes and one of them was the creation of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) which unified company jurisdiction hitherto in widely-spread locations of High Courts,Company Law Boards, and the Board of Industrial and Financial Reconstruction.

Another change-making event was the introduction of the Insolvency and Bankruptcy Code, 2016. As a result, corporate insolvency and liquidation were streamlined in a single creditor-focused process, and some winding up activities

were moved out of the Companies Act to the IBC. This two-fold system is designed to provide equilibrium between effective exit schemes and legal protection.

Objectives of the Research

This paper seeks to—

1. Define winding up in legal terms;
2. Examine the legal requirements and the framework of proceedings of the Companies Act, 2013 and the IBC;
3. Test the functions of the Tribunal, the liquidator, the creditors and the contributories;
4. Consider material judicial decisions; and
5. Recommend the reform of the effective and clear winding-up.

Research Methodology

The approach chosen by the study is the doctrinal approach, which is founded on the statutes, rules,

judicial precedents, and secondary literature, including commentaries, journals, and government reports. The interpretation of statutory provisions and judicial trends is carried out by the qualitative analysis. Its scope is confined to the Indian law, but the occasional comparative reference is drawn to the English and international practice.

Significance of the Study:

A good winding-up regime helps achieve corporate accountability and ensure that creditors are well convinced. The Indian experience, with the transformation of jurisprudence and legislative reform, provides some very valuable lessons to the developing economies in the quest to modernise their corporate exit structures.

2. HISTORICAL BACKGROUND

2.1 Colonial Origins

The idea of winding in India was the creation of the English company law. Early company acts in

India, including the Joint Stock Companies Act, 1850 and the Indian Companies Act, 1913 were based on the British models with compulsory and voluntary winding up having most of the provisions of the English Companies (Consolidation) Act, 1908. The system was highly judicial where the courts had powers to preside over the liquidation process through the higher courts.

After 1947, the new Companies Act, 1956 especially replaced the Act of 1913 in the company law and it was the law that governed the company law over a period of more than 50 years. The 1956 regime was however criticised to be tedious and ineffective. Cases on liquidation used to take years to conclude, further affecting the credibility of creditors and did not help clear the courts of judicial resources. It was noted by the Eradi Committee Report (2000) that the process of liquidation by the 1956 Act was now time-

consuming, costly and unproductive to a large extent.

2.2 Transition to the Companies Act 2013

On appreciating the necessity of a change, an act was enacted by the Parliament the Companies Act, 2013, which updated the sphere of corporate governance and introduced the clause of speedy winding up. The 2013 Act (ss. 270-365) foundry procedures of both voluntary and compulsory winding up, and established the so-called NCLT, where company affairs were centred against the jurisdiction of the High Courts. This replacement of a court-centered system with tribunal-based one was meant to streamline the procedures and decrease the complexity involved in the procedures.

The 2013 Act has categorized winding up as:

(a) winding up by the Tribunal (compulsory winding up), and

(b) voluntary winding up.

But this scheme was later amended in the Insolvency and Bankruptcy Code, 2016 through which voluntary liquidation of insolvent companies was transferred to the IBC scheme. only certain categories as companies that operated contrary to the national interest, defaults in the filing of financial statements, or instances of fraud continue to be subject to winding up through the Companies Act, 2013.

2.3 Impact of the Insolvency and Bankruptcy Code 2016

The IBC Act marked a shift where there was a debtor-in-possession to the creditor-in-control, wherein there were strong schedules and regulations under the guardianship of the Insolvency and Bankruptcy Board of India (IBBI). Insolvency and winding up are mostly used interchangeably because they do not have all the same goals: insolvency is the first step that seeks resuscitation and wind up is the ultimate outcome that results in the total dissolution. However, they

are concepts that cannot be used interchangeably as missing a single concept would endanger the survival of the other.

These reforms were aimed at enabling India to increase its ease of doing business rating and expedite stressed asset turnover. The IBC has placed a strong focus on professional management and creditor empowerment which has diminished the use of a court in the routine liquidation issues putting the Companies Act apart to cases that involve the public interest or default in the process.

3. LEGAL FRAMEWORK IN INDIA

3.1 Statutory Provisions

The law governing winding-up of companies in India is primarily found in Chapter XX (Sections 270 to 365) of the *Companies Act, 2013* together with the *Companies (Winding Up) Rules, 2020* framed thereunder. The relevant provisions are

supplemented by the *Insolvency and Bankruptcy Code, 2016* (IBC) which deals with liquidation of insolvent corporate persons.

Section 270 distinguishes between two major modes of winding-up:

1. **Winding up by the Tribunal**, and
2. **Voluntary winding up.**

However, after the introduction of the IBC, voluntary liquidation of solvent entities remains under the Companies Act while liquidation of insolvent companies is handled under the Code.

The *Companies (Winding Up) Rules, 2020* prescribe detailed procedural aspects such as filing of petitions, appointment and powers of liquidators, maintenance of registers, and submission of accounts to the Tribunal. The Rules were notified to make winding-up more efficient by providing summary procedures for small companies with lesser outstanding liabilities.

Section 271 enumerates specific grounds on which a company may be wound up by the Tribunal:

- The company has, by special resolution, resolved that it be wound up by the Tribunal;
- The company has acted against the sovereignty and integrity of India, the security of the State, or public order;
- The company has made a default in filing financial statements or annual returns for five consecutive years;
- The Tribunal is of the opinion that it is just and equitable to wind up the company; and
- The company has conducted affairs in a fraudulent manner.

Section 272 lays down who may file a petition for winding up—such as the company itself, any contributory, the Registrar, any person authorised by the Central Government, or the Central Government in case of companies acting against national interest.

3.2 Role of the National Company Law Tribunal

The establishment of the *National Company Law Tribunal (NCLT)* under Sections 408–434 of the *Companies Act, 2013* revolutionised the administration of corporate justice. The NCLT possesses exclusive jurisdiction to order winding-up and to supervise liquidators. It exercises powers earlier vested in the High Courts under the 1956 Act. Appeals lie before the *National Company Law Appellate Tribunal (NCLAT)* and, subsequently, to the Supreme Court on questions of law.

The NCLT may make interim orders to preserve assets, appoint a provisional liquidator, or restrain directors from disposing of property. Once a winding-up order is passed, the liquidator assumes control of the company's affairs under the supervision of the Tribunal.

3.3 Interface between the Companies Act and the IBC

Although the Companies Act continues to regulate winding-up of solvent or defunct companies, the IBC governs insolvency resolution and liquidation

of financially distressed entities. The Supreme Court has clarified that the two statutes operate in separate fields but must be harmoniously construed.[11] The *Insolvency and Bankruptcy Code (Amendment) Act, 2018* transferred several sections relating to voluntary winding-up (ss. 304 – 323) from the Companies Act to the IBC.

Under Section 59 of the IBC, a company may undergo voluntary liquidation if it has no debt or can pay its debts in full. The process is initiated by a declaration of solvency by directors, followed by a special resolution of members. The IBC thus ensures time-bound dissolution within one year, compared to earlier indefinite timelines under the Companies Act.

The coordination between the Registrar of Companies and the IBBI further enhances oversight and transparency in winding-up matters.

4. MODES OF WINDING UP

4.1 Winding Up by the Tribunal (Compulsory Winding Up)

Winding up by the Tribunal is initiated through a petition filed under Section 272. After verifying that a ground under Section 271 exists, the NCLT may order winding – up. The *Official Liquidator* appointed by the Central Government or a professional liquidator takes charge of the company's assets. The liquidator's primary duties include taking custody of property, realising assets, settling the list of creditors and contributories, and distributing proceeds.

The Tribunal may also order *provisional liquidation* pending final hearing if immediate action is necessary to preserve assets. Once winding-up is complete, the liquidator files the final account with the NCLT and seeks dissolution under Section 302. The "just and equitable" clause under Section 271(1)(e) is of particular importance. Courts have invoked it in diverse situations—deadlock in

management, loss of substratum, or oppression of minority shareholders. The Supreme Court in *Madhusudan Gordhandas & Co. v. Madhu Woollen Industries Pvt. Ltd.* held that the clause should be exercised with caution and only when no alternative remedy is available.

4.2 Voluntary Winding Up

Before the enactment of the IBC, voluntary winding-up could be undertaken either by members or creditors. The 2013 Act required a declaration of solvency and a special resolution of members. Under the post-IBC regime, solvent companies may still apply for voluntary dissolution under Section 59 IBC or strike-off under Section 248 Companies Act.

Voluntary winding-up promotes corporate discipline by allowing companies that have served their business purpose to exit lawfully. It reduces administrative burden and litigation for regulators while ensuring that outstanding liabilities are cleared.

4.3 Summary Procedure for Liquidation

An expedited process applied to small businesses, startups, and businesses with paid up capital not exceeding 1 crore, and total outstanding liabilities less than 1 crore was introduced by the Companies (Winding Up) Rules, 2020 which is the summary procedure, which does not require an extensive use of the Tribunal but instead uses the Official Liquidator to facilitate faster resolution. The streamlined version eliminates procedural expenses, it also makes it easy to close down any dormant entity hence enhancing the business climatic conditions in India.

4.4 Comparative Perspective

The Insolvency Act 1986 in the United Kingdom categorizes the winding-up into compulsory liquidation and voluntary liquidation (members or creditors). The Indian scheme is based on this model but provides an adjustment to the local realities into the NCLT and IBC scheme. The focus on time-restricted solution under the IBC is

consistent with the best practice of the rest of the world, inclusive of Singapore and the EU Insolvency Regulation.

5.PROCEDURE FOR WINDING UP

The winding-up process under Indian law is procedural, systematic, and designed to safeguard all stakeholders. Although the Companies Act and the IBC share similar objectives, procedural differences exist, particularly in timelines, tribunal involvement, and creditor control.

5.1 Winding Up by the Tribunal (Compulsory Winding Up)

The steps in compulsory winding-up are generally as follows:

- **Filing of Petition:**

  Under Section 272 of the *Companies Act, 2013*, a petition may be filed by the company, contributories, creditors, or the Central

Government. The petition must state the grounds and furnish supporting documents. The NCLT may issue a notice to all stakeholders before admitting the petition.

- **Interim Orders:**

Pending hearing, the Tribunal may appoint a provisional liquidator, freeze assets, or restrain the company's directors from alienating property.

- **Admission and Public Notice:**

Upon admission, the NCLT issues a winding-up order and directs the liquidator to publish a public notice in the *Official Gazette* and local newspapers to invite claims from creditors and contributories.

- **Appointment of Liquidator:**

Section 275 authorises the NCLT to appoint an official or professional liquidator. The liquidator assumes control over all assets,

books, and records. Powers include selling assets, settling liabilities, initiating or defending litigation, and maintaining statutory accounts.

- **Realisation of Assets:**

  The liquidator identifies company assets, evaluates them, and converts them into cash. The aim is to maximise returns for creditors while ensuring fairness.

- **Verification of Claims:**

  Creditors submit claims, which are verified and classified as secured, unsecured, or preferential. Disputed claims are adjudicated either by the liquidator or the Tribunal.

- **Distribution of Assets:**

  Section 326 specifies the order of payment: costs of winding up, secured creditors, preferential debts (like employee wages),

unsecured creditors, and finally, surplus to members.

- **Final Report and Dissolution:**

  After settling liabilities and distributing assets, the liquidator submits a final report to the NCLT. Upon satisfaction, the Tribunal orders the company's dissolution under Section 302.

Timeframe:

Compulsory winding-up can take several months to years depending on complexity, asset disputes, and litigation. The IBC seeks to streamline insolvency liquidation to **one year** for corporate debtors, subject to extensions.

5.2 Voluntary Winding Up Procedure

5.2.1 Pre-IBC Regime (Companies Act, 2013)

For solvent companies under Section 304:

- **Board Resolution:** The directors pass a resolution recommending voluntary winding-up.
- **Declaration of Solvency:** Directors submit a declaration stating the company can pay debts in full within 12 months.
- **Special Resolution:** Members approve winding-up via a special resolution at a general meeting.
- **Appointment of Liquidator:** Members appoint a liquidator to realise assets and discharge liabilities.
- **Final Accounts and Dissolution:** After liquidation, the liquidator submits final accounts, and the company is formally dissolved.

5.2.2 Post-IBC Regime

Under Section 59 IBC:

- Companies declare solvency and file a special resolution.

- The appointed insolvency professional acts as liquidator.
- The IBBI regulates the procedure to ensure creditor oversight, compliance with statutory obligations, and timely dissolution.

5.3 Summary Procedure for Small Companies

For small or dormant companies, Rule 191 of the *Winding Up Rules, 2020* permits simplified liquidation. The Official Liquidator takes charge directly, and Tribunal approval is minimal. This reduces costs, administrative delays, and procedural formalities.

6.RIGHTS AND LIABILITIES OF STAKEHOLDERS

Winding up affects several classes of stakeholders, including creditors, contributories, directors,

employees, and liquidators. Protection of their rights is a central tenet of the process.

6.1 Creditors

Creditors' rights are central to both compulsory and voluntary winding-up.

- **Secured creditors** may realise security and claim any deficiency from the company.
- **Unsecured creditors** receive payment from the residual assets.
- **Preferential debts**, such as employee wages and government dues, are settled prior to unsecured claims.

Creditors may challenge liquidation orders if they believe the company has sufficient funds to continue business or if procedural irregularities exist. The IBC gives creditors significant control through the Committee of Creditors, which approves liquidation plans and oversees asset realisation.

6.2 Contributories (Shareholders)

Shareholders or members have residual rights. Surplus proceeds after payment of liabilities are distributed pro-rata. Shareholders are also liable to contribute to the company's debts if called upon, particularly in cases of winding-up for mismanagement or fraudulent conduct.

6.3 Directors

Directors' powers cease upon appointment of a liquidator. They must assist the liquidator, provide company records, and may be liable for fraudulent or wrongful trading. Courts may hold directors accountable under Sections 339 and 340 for mismanagement leading to losses.

6.4 Liquidator

The liquidator acts as an officer of the Tribunal. Duties include asset realisation, creditor verification, litigation management, and submission of reports. Failure to perform duties with diligence may result in removal or penalties.

6.5 Employees

Employees enjoy statutory protection. Wages and retrenchment dues up to six months are preferential debts under Section 326 (1). Pension or provident fund contributions are also safeguarded during liquidation.

7.JUDICIAL PERSPECTIVES

Indian courts have clarified multiple aspects of winding-up:

- **Fraudulent or oppressive conduct:** In *Subrata Roy Sahara v. Union of India*, the Supreme Court emphasised winding-up as a remedy to protect public interest.
- **Just and equitable principle:** In *Ebrahimi v. Westbourne Galleries Ltd.*, the House of Lords laid down that winding-up may be justified when personal relationships and mutual confidence between members break down.
- **Role of Tribunal:** In *Swiss Ribbons Pvt. Ltd. v. Union of India*, the Supreme Court highlighted that the IBC process is a complete code and

NCLT oversight ensures fairness and efficiency.

Judicial guidance ensures a balance between expeditious liquidation and safeguarding rights of all stakeholders.

8.CHALLENGES IN WINDING UP OF COMPANIES

Although India has definite statutory provisions, there are a number of practical and legal issues with winding-up. These are issues that impact on efficiency, recovery of creditors and the general corporate governance.

8.1 Procedural Delays

After the introduction of the NCLT, it may take years to wind-up under the Companies Act based on:

- Several bouts of creditors or contributory litigation;
- Authentication of claims and assets disputes;

- Inadequate manpower at the NCLT offices and the offices of the Official Liquidators.
- It has been shown that the mean amount of time to wind-up compulsory before the IBC usually took over 3-5 years, causing value destruction of assets and stakeholder dissatisfaction.

8.2 Fraudulent or Wrongful Trading

Cheating can be in the form of fraud, asset stripping or fraudulent assertion of insolvency by directors. Section 339-340 and 271 of the Companies Act authorize liquidators as well as tribunals to exercise their power, but the enforcement is cumbersome. *Subrata Roy Sahara v. Union of India* noted that it is challenging to trace lost assets especially when the business is located across various jurisdictions.

8.3 Overlapping Jurisdictions

The IBC and the Companies Act have been known to overlap jurisdiction. To take an example, creditors may desire IBC protections of creditors

with perceived insolvency against solvent companies winding-up when solvent under the Companies Act. These overlaps have been softened, however they have not been completely removed by harmonization via regulatory circulars and judicial clarification.

8.4 Lack of Awareness among Small Businesses

The IBC and the Companies Act have been known to overlap jurisdiction. To take an example, creditors may desire IBC protections of creditors with perceived insolvency against solvent companies winding-up when solvent under the Companies Act. These overlaps have been softened, however they have not been completely removed by harmonisation via regulatory circulars and judicial clarification.

8.5 Limited Professional Expertise

The liquidators and the insolvency professionals play the main role. The lack of trained professionals especially in Tier-2 and Tier-3 cities, however, the lack of professionals to serve the

winding-up cases in a timely and transparent manner.

9.REFORMS AND RECOMMENDATIONS

India has undertaken significant reforms to streamline winding-up processes. Key measures and recommendations include:

9.1 Insolvency and Bankruptcy Code (IBC), 2016

Timelines to liquidate corporate debtors have greatly been cut to one year (subject to extensions) with IBC[7] and transparency practitioners Committee of Creditors (CoC) and the IBBI overseers professionals to maintain accountability.

9.2 Summary Procedures for Small Companies

The Companies (Winding Up) Rules 2020, rule 191 enables small companies to have a simplified liquidation procedure, which will cost less and less time will be spent during its procedure.

9.3 Strengthening Tribunal Infrastructure

The backlog problems can be solved by increasing NCLT benches and developing capacity building programmes to the judicial officers and liquidators.

9.4 Digitalization and E-Filing

The processing of petitions, claims and liquidation reports is made transparent and fast through e-filing. Online submissions on winding-up petitions, claims by creditors and regulatory filing can now be covered by MCA portals.

9.5 Public Awareness and Advisory Services

Government campaign can be directed at educational work with SMEs on the voluntary winding-up procedures, solvency declarations, and statutory duties. Legal aid cell and the web-based tutorials can minimize the cases of informal closure and conflicts.

9.6 Comparative Reforms

Some countries such as Singapore and the UK have embraced time-delimited and corporate insolvency, along with professional regulation.

India could also follow suit through incorporation of ready-made liquidation systems, simplified cross-border liquidation of assets and maximized creditor committees.

CONCLUSION

Liquidation of businesses is an indispensable tool of corporate law and prevents impolite business closure, safeguards of interests of the stakeholders, and market confidence. Although the Companies Act, 2013 offers a systematic approach, the Insolvency and Bankruptcy Code, 2016 has brought a new twist to the way during which the insolvent companies are dealt with and has transformed it to be more time-bound, transparent, and creditor-oriented.

Examples of the challenges include the issue of delays in the process, fraud, overlapping jurisdictions, and low levels of awareness. Efficiency has been introduced through reforms such as: summary procedures, digitalization, better infrastructure and professional regulation of tribunals. Nevertheless, further refinements in legislation, capacity-building, as well as education to the stakeholders is important.

Reforms in the future might involve pre-prepared liquidation, better cross-border collaboration and more SME-oriented systems. An effective winding-up regime does not only promise equity in the way creditors and shareholders are treated but also improves the business climates and culture of fostering corporate governance in India.