A Study on Compulsory Liquidation of a Company
and its Liability

1R. Aashish Jaangda and 2M. Kannappan

1Saveetha School of Law,
Saveetha Institute of Medical and Technical Sciences,
Saveetha University, Chennai.
advocateashjaangda@gmail.com

2Saveetha School of Law,
Saveetha Institute of Medical and Technical Sciences,
Saveetha University, Chennai.
kannappanm.ssl@saveetha.com

Abstract

Winding up is a process whereby the existing company’s affairs brought to an end. It is a very complex situation where the companies which came into existence in an seek to become higher with the entry of every day, in actuality each second, turn-off their entire business either voluntarily or by the Tribunal’s involvement. The statutory provisions of the winding up and its procedure are dealt under Chapter XX Sections 270 to 378 of the Companies Act, 2013. This paper has been set up with the aim of managing the concept of ‘winding up’ its need or grounds and effects. The paper will deal both the modes of winding up of the companies as well as the grounds or circumstances of winding up dealt in Sec. 271 and 304 of the Act. Moreover the paper will also focus on the effects of winding up order as given in Sec. 278 and 309 under the companies act 2013.

Key Words: Winding up, voluntary winding up, winding up by the tribunal, compulsory winding up, liquidation.
1. **Introduction**

If incorporation is the process of bringing the company into existence, then winding up is the process of bringing an end to the existence of that so called artificial person Company. A company cannot die a natural death. It has an indefinite life term in any case, if such reasons have occurred which make it necessary to come into conclusion to its corporate life, at that point then necessary legal mechanisms has to be put into operation to get it done. This mechanism is the process of winding up. It is a process by which the properties of the company are managed for the benefit of its members and creditors. The person how is appointed for managing the assets and liabilities of a company is called ‘Liquidator’. In case of compulsory winding up, the liquidator is appointed by the Tribunal under section 275 of the Act; or, in case of voluntary winding up, the liquidator is appointed by the company itself under section 310 of the Act. Winding up is also referred as ‘Liquidation’. On liquidation, the company’s name is deleted from the list of companies by the Registrar of companies and the same is published in the official gazette. The aim of the study to know the reason behind liquidation.

Prof. Gower’s definition of winding up:- “Winding up of a company is a process whereby its life is ended and its property administered for the benefit of its creditors and members. An administrator, called liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes the surplus among the members in accordance with their rights”.

2. **Research Question**

Whether the insolvency of a company is main reason behind its liquidation?

3. **Review of Literature**

Compulsory liquidation of a company arises when the company fails or unable to pay its debts to the creditors at that situation the company fall into the liquidation the company will be winding up according to the companies act 2013 (Lorraine conway). A company's takes many difficulties to wind up or to continue trending but the decision lies in the hand of directors but when a suit is filed before the court of law that time the court have the discretion the court might either grant for the compulsory liquidation or not that's in the hand of courts Sharon sheehan. Once the court grant the order for the compulsory liquidation the liquidator will be appointed for the further proceedings of the company and only the official liquidator will distribute the assets of the company to the creditor and the members of the company (Avtar singh 2016) The procedure should be followed as per the court orders if the court has mentioned the time of liquidation than the duty of the liquidator he should be liquidating on that time and the related sections in the companies act 2013 for the winding up the distribution of the liability of the company and the role...
played by the court to grant compulsory liquidation of a company K.S. Anantharaman. Reference to the liquidation and when the court can grant the order for the compulsory liquidation the reason behind the compulsory liquidation and the role played by judicial in the matters of winding up of a company N.D. Kapoor. Types of liquidation of a companies and when the compulsory liquidation of a company arises and the distribution of the companies liability during the time of liquidation under the companies act 2013 Avtar Singh (2009). Role played by the director during the time of liquidation of a company under the companies act 2013 and the reasons behind the liquidation of a company Paul L. Davies & Sarah Worthing. Powers of directors during the time of liquidation and the liabilities of a company during the time of compulsory liquidation and its distribution of liability of a company N.D. Kapoor. The law was established to govern the companies established in India and to safeguard the rights of the creditors and their members and to protect the public interest the procedure and the remedies given by the court to the creditors during the time of liquidation Avtar Singh 2018. Facts and associated case law failure and liquidation of a company compulsory liquidation role of the tribunal order of the tribunal for the compulsory liquidation of a company Ann Ridley. Role played by the liquidator at the time of liquidation powers and duties with relationships of creditors the liquidation should be made successful by liquidator during the time of liquidation of a company Peter Loose & Michael Griffiths. Authorities and current information during the time of winding up division of the companies assets during liquidation with an interest in liquidation Andrew R. Keay. Reason for liquidation and the procedure should be followed during the time of liquidation and the distribution of the assets liability of a company and their distribution by the liquidator C.R. Datta. Procedure for obtaining a winding up and the law relating to liquidation of a company various classes of petitions can be filed by the creditors and shareholders court can grant for the compulsory winding up of a company or might not that’s courts discretion Sanjay Sharma. A compulsory liquidation one instated by court the petitions filed to the court by affected parties company unable to pay its debts to the creditors realise the company’s assets to pay its debts to the creditors MCTEAR WILLIAM WOOD. Process and procedure to be followed during the time of liquidation company is solvent falls under the voluntary winding up by its members and when company falls under insolvent the compulsory liquidation arises Jonathan Munnery. Voluntary liquidation by shareholders & compulsory liquidation can take place only by the court order and that too only when a petition is filled by the creditors for the unpaid debts by the company order passed by the court for the appointment of liquidator and the distribution of the companies assets Vishal Kumar. Liquidation and a winding up the process of winding up modes and the liquidator pay to the creditors according to the priorities basis and then distribution of the companies assets Balbharati. Company financials partition at that stage director call creditors for meetings choice for liquidation if a suit is filed in court that its compulsory liquidation of a company and the distribution of assets and liability of a company CSB. Liquidation of a company deals with the section 271 of the
companies act 2013 the compulsory winding up will be dealt by the tribunal and voluntary will be by passing a resolution and realises of all company assets Arshit Thakur.

4. Objectives

- To study about the compulsory liquidation
- To find out the reason behind liquidation of a company
- To know the liability of company during the liquidation

5. Hypothesis

Null

Insolvency is not the main reason for the compulsory liquidation

6. Research Methodology

In this work, the researcher has opted “Doctrinal Research Methodology” The researcher has referred online sources, books, journal, articles and materials related to this topic.

7. Liquidation of a Company in India

Meaning

Winding up of a company is defined as a process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors. An administrator, called the liquidator, is appointed and he takes control of the company, collects its assets, pays debts and finally distributes any surplus among the members in accordance with their rights. At the end of winding up, the company will have no assets or liabilities. When the affairs of a company are completely wound up, the dissolution of the company takes place. On dissolution, the company's name is struck off the register of the companies and its legal personality as a corporation comes to an end. (Lorraine conway) The Companies Act, 2013 lays down the provisions and the procedures for winding up operations leading to the dissolution of the company. Winding-up is different from insolvency and dissolution.

Section 270-365 of the companies act 2013 deals with the winding up procedure of a company. In 2015, the Supreme Court upheld the constitutional validity of the NCLT and NCALT. Therefore, the establishment of NCLT and NCALT might result in an efficient implementation of the winding up provisions. This will definitely reduce the multiplicity in the number of cases in multiple forums. These institutions will work as specialised quasi-judicial bodies and will reduce the pendency of winding-up cases, shorten the winding-up process, and avoid multiplicity and levels of litigation before high courts, the Company Law Board.

1 https://uk.practicallaw.thomsonreuters.com/
and the Board for Industrial and Financial Reconstruction Arshit Thakur.

There are two modes of winding up under the Companies Act, 2013 provides for the provisions relating to commencement of winding up\(^2\).

Compulsory winding up

Voluntary winding up

The voluntary winding up is again divided into two stage they are

Members voluntary winding up

Creditors voluntary winding up

**Compulsory Winding Up**

Compulsory winding up arises only when the Company is unable to pay its debts or acted against the law or special resolution passed stating that the company should be wound by the court and there are many other circumstances in which a company might fall in compulsory winding up

Winding up by Tribunal:- National Company Law Tribunal can be initiated by an application by way of petition for winding up order\(^3\).

It ought to be depended on just when different methods for remedies are absolutely no avail.

Remedies are given by the statute on issues concerning the management and running of the company.

It is primarily the NCLT which has jurisdiction to wind up companies under the Companies Act, 2013.

There must be strong reasons to grant the order to winding up of a company.(Paul.L.Davies & Sarah Worthing)

Grounds on which a Company may be wound up by the Tribunal:- Company fails to pay its debts

When a special resolution is passed stating that the company should be wound only by court

If the company is acted against the sovereignty’s of a country or integrity of the nation or affected the public interest in such cases the company may face compulsory winding up\(^4\)

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\(^2\) https://www.economy-ni.gov.uk/articles/compulsory-liquidation

\(^3\) https://www.realbusinessrescue.co.uk/articles/...liquidation.../compulsory-liquidation

\(^4\) https://www.companydebt.com › Liquidation
If the company has made default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years;

If the tribunal is of the opinion that it is just and equitable that the company should be wound up.

**Inability to pay debts** – A company is deemed to be unable to pay the debts under Section 271 (2) of the Companies Act, 2013 if a creditor to whom company has to pay an amount exceeding Rs. 1 lakh has served a notice at the registered office of the company which requires the company to pay the due amount and the company has failed to pay the sum within 21 days or If other process issued by decree of court or order in creditor’s favour is returned unsatisfied in whole or in part in all this circumstance the company falls under the compulsory winding up.

How are all eligible to file a petition in tribunal for winding up:

A petition for winding up may be presented by any of the following persons under Section 272 of The Companies Act, 2013 they are :

The company; or

Any creditor or creditors or

Any contributory; or

All or any of the above three specified parties; or

The Registrar⁵; or

Central Government in this behalf if the public interest is affected ;

By the Central Government or State Government in case of Company acting against the interest of sovereignty and integrity of India.

As per Section 272 of the Companies Act, 2013, within the meaning of creditor comes a secured creditor, holder of debentures, trustee for holder of debentures Sharon sheehan⁶.

**Powers & Functions of the Tribunal**

As per Section 274 of the Companies Act, 2013 on the filing of petition for winding up by any person other than the company, if the tribunal is satisfied, it shall direct the company by an order to file objections along with statement of affairs within 30 days, which could get extended by another 30 days in special circumstances.

As per Section 275 of the Companies Act, 2013 an official liquidator or a liquidator from panel shall be appointed by the Tribunal at the time of passing

⁵ [https://www.mw-w.com/a-guide-to-compulsory-liquidations](https://www.mw-w.com/a-guide-to-compulsory-liquidations)

⁶ [https://www.mw-w.com/a-guide-to-compulsory-liquidations](https://www.mw-w.com/a-guide-to-compulsory-liquidations)
of winding up order. A panel consisting of notified professionals with at least 10 years experience in company matters is maintained by the Central Government. As per Section 281 of the Companies Act, 2013, a report shall be submitted by Liquidator within 60 days to the Tribunal, containing details such as: Nature and details of assets of company with their location and value; amount of capital issued, subscribed & paid up; the existing liabilities of the company including names and other details; the debts due to company and names, address; details of contracts, details of holding and subsidiary company\(^7\); details of legal cases filed by or against the company; any information which the tribunal may direct or liquidator may consider necessary.

On consideration of the report submitted by the Liquidator, The Tribunal shall fix the time limit within which entire proceedings shall be completed and company be dissolved. The Tribunal may also order a sale of Company as a going concern or its assets. After passing of winding up order by the Tribunal assets of the company to be applied to discharge its liability.

**Voluntary Winding Up**

In voluntary winding up, Company and its creditors settle their affairs without going to Court. One or more liquidators are appointed by company and by its members in general meeting for purpose of winding up. A voluntary winding up commences from date of passing of resolution for voluntary winding up. Section 304 deals with the circumstances in which a company may be wound up voluntarily. The first circumstance is that If a company in a general meeting passes a resolution stating that the company should be wound up voluntarily as a result of expiry of the period for its duration if any fixed by its article of association provided that the company should be dissolved.

The second circumstance is that if the company passes special resolution that the company is wound up voluntarily Balbharat. The voluntarily winding up can be initiated only either by the creditors or by the shareholders of the company if they want to wound up the company or by the company if they have entered any clause in article of association\(^8\).

**Winding Up of Companies after the Insolvency and Bankruptcy Code 2016**

The Insolvency & Bankruptcy Code, 2016 consolidate and amend the laws relating to insolvency of companies, partnership firms, limited liability partnership into a single legislation. It aims to provide time bound resolution and empowered the creditors to initiate the insolvency resolution process if default occurs. After the ministry of corporate affairs wide notification no. S.O. 3453 E of November 15th, 2016, section 255 of Insolvency & Bankruptcy Code, 2016 amended following sections of the Companies Act, 2013.

\(^7\) https://www.begbies-traynorgroup.com/.../compulsory-liquidation/difference-between-compulsory-and voluntary

\(^8\) https://www.begbies-traynorgroup.com/.../compulsory-liquidation/
In the definition of Winding up, new insertion was made which makes it as winding up means winding up under this Act or liquidation under the Insolvency & Bankruptcy Code, 2016 as applicable. Section 270 of the Companies Act, 2013 regarding the Modes of winding up, has been deleted after the enforcement of this Code. It has been substituted by Winding up by Tribunal Section 271, companies Act, 2013 which deals with Circumstances in which company may be wound up by Tribunal has been substituted namely. A company may be wound up by the Tribunal, on petition under Section 272, if the company has resolved by special resolution that company be wound up by the Tribunal; if the company has acted against sovereignty, integrity, security of India friendly relations with foreign states, public order, decency, morality; if Tribunal is of opinion that company should be wound up on just and equitable grounds.

The sub-section has been substituted in Section 275 of the Companies Act, 2013 as Section 275(2) which deals with Company Liquidators and their appointment as per which Tribunal (Lorraine conway) shall appoint the provisional or the Company Liquidator from amongst the insolvency professionals registered under the Insolvency & Bankruptcy Code, 2016.

Section 304 of the Companies Act, 2013 that deals with the circumstances in which company may be wound up voluntarily has been omitted by the Insolvency & Bankruptcy Code, 2016 along with other sections relating to voluntarily winding up under the Act

Transfer of proceedings – On December 7th, 2016, the Ministry Of Corporate Affairs issued Companies (Transfer of Pending Proceedings) Rules, 2016 for transfer of pending legal proceedings from High Court to National Company Law Tribunal bench. Subject Matters Transferred To NCLT Retained With High Court

<table>
<thead>
<tr>
<th>Subject Matters</th>
<th>Transferred To NCLT</th>
<th>Retained With High Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Winding up under supervision of court</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Voluntary winding up</td>
<td>New cases should be filed with NCLT with effect of 1st April 2017 provision relating to voluntary winding up under companies act 2013 has been omitted for cases filed up to 31st March 2017</td>
<td></td>
</tr>
<tr>
<td>Winding up for inability to pay</td>
<td>Where petition has not been served it has to be treated as an application under Insolvency And Bankruptcy Code 2016 where petition has been served on the respondent</td>
<td></td>
</tr>
<tr>
<td>Winding up by court</td>
<td>Only those cases where petition has not been served on respondent where petition has been served under respondent</td>
<td></td>
</tr>
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On March 31st, 2017 the Insolvency and Bankruptcy Board of India has notified the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. The voluntary winding up of companies was governed by Companies Act, 1956 as the mentioned provisions in Companies Act, 2013 had never been notified. Now the Voluntary Liquidation in both the Companies Act 1956 and Companies Act, 2013 has been repealed by Government.

9 http://researchbriefings.files.parliament.uk/documents/SN04937/SN04937.pdf
10 http://researchbriefings.files.parliament.uk/documents/
Chapter V of Part II of the Insolvency and Bankruptcy Code contains Section 59 that deals with voluntary liquidation. Moreover, the distinction between members voluntary winding up and creditors voluntary winding up has been eliminated. As per Section 59 of the Code, the voluntary liquidation process can only be initiated by a corporate person, which has not committed any default. Default here includes those debts that are not repaid and has become due and payable. The compliances of some requirements are necessary.

- Declaration by directors that winding up is not to defraud any person;
- Liquidator can be insolvency professional who fulfils criteria under the regulations;
- Registers to be maintained in prescribed manner under the IBC;
- Liquidators to receive claims of stakeholders only in specified forms;
- Within twelve months from commencement of voluntary winding up, the affairs of corporate person to be wound up;
- Reports by Liquidator to be submitted to corporate person, Registrar of Companies and Insolvency and Bankruptcy Board of India.
- The time period to comply the requirements has also been reduced to expedite the process.


The new procedure for winding up was established to reduce the time bound in 90s there were many cases which were running for years and years. The Insolvency and Bankruptcy Code, 2016 was passed to ensure time bound settlement of insolvency which would in turn help in solving India’s bad debt problem.

STEP 1: One has to submit a declaration to Registrar of Companies, stating that company will pay its dues and liquidation is not to defraud any person;\(^{11}\)

STEP 2: Within 4 weeks of such declaration, special resolution has to be passed for approval of proposal of voluntary liquidation and appointment of liquidator;

STEP 3: Within 5 days of such approval, public announcement in newspaper and website of company has to be made for inviting claims of stakeholders;

STEP 4: Within 7 days of such approval, intimation should be given to ROC and Board;

STEP 5: Submission of preliminary report containing capital structure, estimates of assets and liabilities, proposed plan of action within 45 days to a

\(^{11}\) https://www.mw-w.com/uploads/.../c68f69d5f3ea49edf05827aee206980cb2ebdf7
\(^{12}\) https://www.mw-w.com/uploads/...
corporate person;

STEP 6: Verification of claims within 30 days and preparation of list of stakeholders within 45 days from the last date of receipt of claims;

STEP 7: For receipt of money due to corporate person, bank account needs to be open in name of corporate person having words ‘in voluntary liquidation’ after its name.

STEP 8: Sale of assets and recovery of due money, uncalled capital is realised;

STEP 9: The proceeds from realization to be distributed within 6 months from receipt of amount to the stakeholders;

STEP 10: The final report by the liquidator has to be submitted to corporate person, ROC, the Board and application to NCLT.

STEP 11: The order of NCLT regarding dissolution to be submitted within 14 days of receipt of order.

After the enactment of this new code now every company who proposes to wind up is required to follow Insolvency and Bankruptcy Code, 2016. The Code is quite comprehensive and wider as against Companies Act, 1956. It is expected that Code would help in overcoming delays and complexities involved in the process due to presence of four adjudicating authorities, High Court, Company Law Board, Board for Industrial and Financial Reconstruction and Debt Recovery Tribunal. It would also lessen the burden on courts as all the litigation will be filed under the Code. Arshit Thakur.\(^\text{13}\)

9. Conclusion

A company can’t come into existence by simple means before getting incorporated the company has to faces many thing after that only the company gets commenced but after been the artificial person for a long term or period due to some wrongful act the company might falls into winding up procedure either through the voluntary winding up or by the compulsory winding up when the company faces the process of dissolution there are many procedure the company has to be followed as stated in the companies act 2013 even though the act govern them there are few folks in that also because of that the common public get cheated to cover that folks the legislature has enacted a new code called as Insolvency And Bankruptcy code by which when a company declared themselves as a insolvent they have under go through the newly enacted law and the legislature confirms the safety of the common public and safeguard there interest

\(^{13}\)https://edurev.in/studytube/Liquidation-of-Company,-Advanced-Corporate-Accounting/f0f6a282-46f6-491f-a185-03758fba07bd_t
So we can’t say that insolvency is only the main reason for the liquidation a company may come into liquidation in many forms.

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