A Study on Winding Up under Companies Act

1S. Keerthana and 2M. Kannappan

1Saveetha School of Law,
Saveetha Institute of Medical and Technical Sciences,
Saveetha University, Chennai. spkeerthana97@gmail.com

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

Abstract

Winding up of a company might be required because of various reasons including conclusion of business, misfortune, bankruptcy, passing endlessly of promoters, and so forth. The methodology for winding up of a company can be initiated intentionally by the shareholders or creditors or by a Tribunal. In this article, we take a gander at the methodology for winding up of a company deliberately. On introduction of the winding up application, the court in the wake of hearing the request of has the ability to either expel it or to make an interim request as it thinks suitable. It can even appoint the temporary liquidator of the company till the passing of winding up arrange. It can even appoint the temporary liquidator of the company till the passing of winding up arrange. It might even make a request for winding up with or without cost. It is a procedure by which the properties of the company are directed for the advantage of its members and creditors. The individual designated for directing the advantages and liabilities is called Liquidator. If there should be an occurrence of obligatory winding up, the outlet is delegated by the Tribunal under section 275 of the Act; or, if there should be an occurrence of voluntary winding up, the outlet is selected by the company itself under section 310 of the Act. Winding up is additionally alluded as Liquidation.

Key Words: Company, liquidation, winding up, court, voluntary, tribunal, Act.
1. Introduction

In this article as the name proposes the writer has managed a factual review about the winding up the affairs of the organizations. The investigation is finished with the assistance of factual information taken from different sources.

According to Halsbury's Laws of England, “Winding up is a proceeding by means of which the dissolution of a company is brought about & in the course of which its assets are collected and realised; and applied in payment of its debts; and when these are satisfied, the remaining amount is applied for returning to its members the sums which they have contributed to the company in accordance with Articles of the Company.” Winding up is a legal process. (Pradhan 2013; Palmer 1952)

Despite the fact that the arrangements of Companies Act, 2013 identifying with National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) has been told by the Ministry of Corporate Affairs (MCA) on first June, 2016, the tenets identifying with the methodology to be taken after for direct of procedures of NCLT and NCLAT are yet to be told by MCA. Winding up arrangements under the Companies Act, 2013 are still not advised by MCA so the winding up procedures keep on being administered by arrangements of Companies Act, 1956. Section 433 to 483 of the Companies Act, 1956 manages the arrangements identifying with winding up by court; voluntary winding up arrangements are expressed in section 484 to 520 of the Organizations Act, 1956 and arrangements pertinent to each method of winding up are administered by section 528 to 560 of the Companies Act, 1956. There are different manners by which Companies presence arrives at an end. One way is the liquidation and winding up of organizations. Another way is the striking off the name of the company from the enlist of organizations kept up by Registrar under the arrangement of section 560 of the Companies Act, 1956. Hardly any organizations progressed toward becoming vanishing organizations where either the executives of Company are not traceable or the company isn't directing any business at the enrolled office according to the records of the Registrar. In either case the company moves toward becoming vanishing company that at last outcomes in the conclusion of the organizations. What is imperative is that given the fact the quantity of organizations getting incorporated in the year and the quantity of organizations being brought to corporate demise, the speed at which the organizations are incorporated and the speed at which the organizations are closed down is exceptional. In spite of the fact that the approaches to corporate passing like voluntary winding up ought to be fast also, less tedious, in view of the information beneath we perceive how tedious it is to close down the affairs of a company willfully. The aim of the study is to find out different modes of winding up and the change brought in winding up by the new Insolvency and Bankruptcy Code, 2016.
RESEARCH PROBLEM: whether non payment of debts and non compliance to companies act leads to winding up?

2. Review of Literature

Winding up is a legal process Halsbury's Laws of England (Pradhan 2013; Palmer 1952) Prof. Gower's definition of winding up (Haniefuddin, Shaik, and Baba, n.d.; Vogelaar and Chester 1973)"A winding up petition is a perfectly proper remedy for enforcing payment of a just debt(Palmer's Company Precedents, Part 11, 1960 Edn., at p. 25). It is the mode of execution which the Court gives to a creditor against a company unable to pay its debts."(Palmer 1952) Inability to pay debts: Sub-section (2) of section 271 gives that the inability to pay debts essentially emerge under three conditions:(Vijaya Saradhi 1976) The conditions in which the courts have in the past broke down organizations on this ground are as per the following:(McPherson 1964) Deadlock: When there is a gridlock in the administration of a company, it is just and equitable to arrange winding up.(McPherson 1964) Oppression of Minority: It is just and equitable to wind up a company where the principle shareholders have received an forceful or severe or squeezing strategy towards the minority.(Chandratre 2016) On a similar ground, a request of winding up go by the Tribunal can be renounced moreover. The Insolvency and Bankruptcy Code, 2016(Jain 2017) if the tribunal is of opinion that acts of the company are fraudulent ((Lawyer) and Shriram 2017) members' voluntary winding up and creditors' voluntary winding up has been eliminated.((Lawyer) and Shriram 2017)

3. Object

- To study the meaning of winding up of a company.
- To study the need for winding up of company.
- To analyse the mode of winding up by tribunal
- To find out provisions regarding the voluntary winding up
- To find out the impact of insolvency & bankruptcy code 2016 on winding up

4. Hypothesis

HO: Non compliance to the provisions under companies act is the reason for winding up.

Ha: compliance to the provisions under companies act is the reason for winding up.

5. Methodology

The methodology used in this study is Doctrinal. It is based on the information and data collected from secondary source. They include publication research,
surveys, Journals, historical information of both past and present. When a research is concerned with some legal problem, issue or question, it is referred to as doctrinal, theoretical or pure legal research. Doctrinal research is a theoretical study where mostly secondary source of data are used to seek to answer one or two legal propositions or questions or doctrines. Its scope is very narrow and there is no such need of field work.

6. **Chapter-I**

**Analysis on Winding Up of Company**

Winding up is the strategy for consummation, or dissolving, a business. The winding up action incorporates offering all advantages, paying off creditors, and dispersing remaining resources for the accomplished partners or shareholders. Winding up can allude to dissolving either a company or an organization.¹

On the off chance that fuse is the way toward bringing the company into reality, at that point winding up is the way toward conveying a conclusion to the presence of that supposed simulated individual viz. Company. A company can't bite the dust a characteristic demise. It has an inconclusive life expectancy, yet in the event that such reasons have risen which make it attractive to convey a conclusion to its corporate life, at that point important legitimate components must be put into activity to complete it. This component is the way toward winding up. It is a procedure by which the properties of the company are directed for the advantage of its members and creditors. The individual designated for directing the advantages and liabilities is called Liquidator. If there should be an occurrence of obligatory winding up, the outlet is delegated by the Tribunal under section 275 of the Act; or, if there should be an occurrence of voluntary winding up, the outlet is selected by the company itself under section 310 of the Act. Winding up is additionally alluded as Liquidation. On liquidation, the company name is erased from the rundown of organizations by the Registrar of organizations and the same is distributed in the official gazette.

*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 To discuss in detail the various modes of winding up of the companies; To discuss the grounds which throw a company in the pit of winding up situation; and To discuss about the effects of winding up of a company assets, pays its debts and finally distributes the surplus among the members in accordance with their rights.”(Haniefuddin, Shaik, and Baba, n.d.; Vogelaar and Chester 1973)

¹[https://www.investopedia.com/terms/w/windingup.asp](https://www.investopedia.com/terms/w/windingup.asp)
As of now the arrangements of winding up are represented under section 433 to 560 of the Act, 1956. The arrangements with connection to strike off of organizations are administered by section 560 of the Act, 1956 and that of plan of courses of action, i.e. mergers, demergers is represented under section 391-394 of the Companies Act, 1956. The above discover puts in section 270 to 365 of the Act, 2013. Regarding mergers section 230 to 240 of the Act, 2013 administer the same. Be that as it may, the arrangements of Act, 2013 with deference to the above are yet to be upheld. Further, under the Act, 2013 such procedures are to be held before the NCLT/NCLAT, which has been constituted yet the principles relating to making of application before it stay pending. Once the standards are in drive along with the applicable sections of the Act, 2013 such arrangements move to NCLT. Further, the arrangements of voluntary winding up under the ACT, 2013 have moved under the Insolvency and Bankruptcy Code, 2016 which has come into statutory power on 28th day of May, 2016. In like manner, after the authorization of Bankruptcy Code, disintegration of organizations should be possible utilizing the accompanying modes:

- Compulsory winding up under the Insolvency and Bankruptcy Code, 2016
- Compulsory winding up under section 271 of the Companies Act, 2013
- Voluntary winding up under the Insolvency and Bankruptcy Code, 2016
- Voluntary winding up of organizations not secured by the Insolvency and Bankruptcy Code, 2016
- dissolution in a plan of merger under section 230 to 240 of the Act, 2013
- dissolution by striking off name of an old company under section of the Act, 2013
- Winding up of small companies
- Winding up of unregistered organizations under section 375 to 378 of the Act, 2013
- Winding up of Indian business of remote organizations under section 270 to 303 of the Act, 2013

**Winding up by the Court**

Winding up by the court or obligatory winding up is initiated by application by method for request of to fitting Court for a winding up arrange. Section 10 of the Companies Act, 1956 manages the purview of for entertaining winding up request. The High court has locale in connection to the place at which the enrolled office of the company is arranged, or The District Court in which locale has been vested either by the Act or by warning of Central Government.

GTC Industries Ltd v. Parasrampuria Trading it was held that exclusive High Court where the enrolled office is arranged has ward in winding up, regardless of whether there was assention between gatherings will be settled under the

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2 Trupti Upadhyay, Winding up of company-A statistical overview, 2016
3 2001 104 CompCas 368 All
watchful eye of High Court where enlisted office isn't arranged.

**Voluntary Winding Up (Section 488 of Companies Act, 1956)**

The company and its creditors may apply to court for bearings or requests yet generally they are left to settle their affairs within themselves. There are two kinds of voluntary winding up, Member's Voluntary winding up and Creditor's voluntary winding up.

**Resolution for Voluntary Winding Up**

Voluntary winding up can be passed with an Ordinary Resolution (When the time traverse settled in the AoA has lapsed) else with a Special Resolution (In every single other case). Within 14 days of passing the resolution, whether ordinary or special, it must be advertised in the Official Gazette and also in some important newspaper circulating in the district of the registered office of the company. It was held in Neptune Assurance Co. Ltd. vs Union Of India, that in the Companies Act the expression "voluntary winding up", 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 S. 433 of the Companies Act.

**Members' Voluntary Winding Up**

At the point when the company can pay its debts, its Board of Directors makes a Declaration of dissolvability stating that company would have the capacity to pay debts within three years from the date of initiation. Any false assertion made by director will be culpable up to a half year or fine up to Rs. 50000 or both. In Shri Raja Mohan Manucha v. Lakshminath Saigal, it was held that where the announcement of dissolvability isn't made the resolution for winding up and every single consequent proceeding will be invalid and void. Such an announcement must be made within five weeks promptly preceding the date of passing of resolution for winding up of company and be conveyed to Registrar before that date. The revelation must be went with auditor's provide details regarding monetary record and profit and misfortune account as at most recent practicable date.

** Creditors' Voluntary Winding up**

At the point when announcement of dissolvability isn't made and conveyed to the Registrar, it is instance of creditors' voluntary winding up. Date of initiation of winding up—Section 441 of the Companies Act, 1956 lays the arrangement for the date of beginning of winding up. The winding up of a company by a court is regarded to begin at the season of the introduction of request of for winding up. Where a resolution has been passed by the company, for voluntary winding up, the winding up might be esteemed to have started at the season of passing of the resolution.

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4 1973 SCR (2) 940  
5 (1963) 33 Comp. Cas. 719
"A winding up petition is a perfectly proper remedy for enforcing payment of a just debt. It is the mode of execution which the Court gives to a creditor against a company unable to pay its debts." (Palmer 1952)

It is conceivable for the situation of insolvent organizations. It requires the holding of meetings of creditors other than those of the members ideal from the earliest starting point of the procedure of voluntary winding up. The creditors get the privilege to appoint liquidator and consequently, the winding up proceedings are dominated by the creditors. In Pankaj Mehra v. Province Of Maharashtra, it was set out that once a request of for winding up is exhibited it's anything but a vital associative that the winding up would take after. This position is clarified in Section 440(2) of old act which says that "the court might not make a winding up arrange on an appeal to displayed to it under Sub-section (1), unless it is fulfilled that the voluntary winding up or winding up subject to the supervision of the Court can't be continued with due respect to the interests of the creditors or contributories or both." So a legal exercise is called for to achieve the satisfaction of the court that winding up must be continued with due respect to the interest of the creditors or the contributors. Rishabh Agro Industries Ltd. V. PNB Capital, it was held that intention of the lawmaking body that in spite of the fact that the winding up of company does not in fact start at time of introduction itself, yet it might be attempted to begin from that stage.

**Winding up by Tribunal**

National Company Law Tribunal can be initiated by an application by method for request of for winding up arrange. It ought to be depended on just when different methods for healing an ailing company are of positively no profit. Cures are given by the statute on issues concerning the administration and running of the company. It is fundamentally the NCLT which has locale to wind up organizations under the Companies Act, 2013. There must be solid motivations to arrange winding up as it is a final depend on be embraced.

**Winding up a Registered Company and an Unregistered Company**

Winding up of a company is defined as a procedure by which the life of a company is conveyed to an end and its property administered for the advantage of its members and creditors. An administrator, called the liquidator, is appointed and he takes control of the company, gathers its benefits, pays debts and finally conveys any surplus among the members in agreement with their rights. Toward the finish of winding up, the company will have no benefits or liabilities. At the point when the affairs of a company are totally twisted up, the dissolution of the company happens. On dissolution, the company's name is struck off the enlist of the organizations and its legitimate identity as an enterprise arrives at an end.

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6 Palmer's Company Precedents, Part 11, 1960 Edn., at p. 25
7 2000 100 CompCas 417 SC
8 2000 101 CompCas 245 P H
The methodology for winding up contrasts depending upon whether the company is enrolled or unregistered. A company shaped by enlistment under the Companies Act, 1956 is known as an enrolled company. It likewise includes an existing company, which had been shaped and enrolled under any of the prior Companies Acts.

In Pierce Leslie and Co. Ltd v. Violet Ouchterlony, the Hon'ble supreme court held that winding up goes before the dissolution. There is no statutory arrangement vesting the properties of a broke down company in a trustee or having the impact of abrogating; the law of escheat. The shareholders or creditors of a disintegrated company can't be viewed as its beneficiaries and successors. On dissolution of a company, its properties, assuming any, vest in the legislature.

7. Chapter-II

Grounds

Section 271 of the Companies Act, 2013 gives different grounds based on which a request of can be filled in the Tribunal for the winding up of the company:

- **Inability to pay debts:** Sub-section (2) of section 271 gives that the inability to pay debts essentially emerge under three conditions:
  - Where the company neglects to clear the obligation of the creditor within three weeks instantly preceding the date of demand for payment being made;
  - Where execution or different process issued on an announcement or request of any court for the company is returned unsatisfied in entire or part; and
  - Where it is demonstrated to the satisfaction of the court that the company is unfit to pay its debts.

A request of for winding up on the ground of inability to pay debts must contain all the significant information about the obligation. The request of must unveil the resources of the company and whether they are adequate to meet the liabilities including contingent and forthcoming liabilities. Further, the request of must additionally uncover the situation of settled resources and additionally valuation of plant and machinery of the company. Where an obligation is true blue debated by the company and the court is fulfilled with the company's resistance a winding up request won't be made. In K. Appa rao v. Sarkar Chemicals (P) Ltd, the Andhra Pradesh High Court held that where a company has an at first sight sustainable safeguard or a true blue question of its commitments to release the asserted debts or liabilities, the court may not entertain proceedings for the winding up, considerably less request winding up.

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9 1969 SCR (3) 203.
10 1995 84 CompCas 670 AP
Once there is an affirmation on part of the respondent company of risk of levy payable, at that point a request of under Section 273 can't be expelled on specialized grounds. Company courts can practice their optional forces of dismissing the request of even before issuing a show cause see regarding affirmation. Regardless of rehashed demands if a company fails to pay its debts, it will be considered as an inability of the company to pay its debts and a request of winding up can be passed by the court. By non-payment of the undisputed obligation within the time of statutory demand, the company is esteemed unfit to pay its debts and where the company can't pay its debts, winding up should for the most part to follow in broad daylight interest.

- **Special Resolution:** The Company may by special resolution settle that it be ended up by the Tribunal. The resolution might be passed for any reason at all. Be that as it may, the Tribunal must see that the winding up isn't contradicted to open interest or the interest of the company all in all. In New Kerala Chits and Traders (P.) Ltd. versus Official Liquidator [1981]11, it has been seen in this issue the Tribunal has attentiveness in the issue and is under no commitment to arrange winding-up simply on the grounds that the company has so settled.

- **Against National interest:** If the company has acted against the interest of power and integrity of India, the security of the State, neighborly relations with outside States, open request, goodness or profound quality.

- **Failure of Scheme:** If the scheme of recovery and restoration isn't endorsed by the creditors, at that point the company administrator might present an answer to the Tribunal within 15 days and the Tribunal should arrange for the winding up of the debilitated company. The Tribunal, on passing the request of winding up, might lead the proceedings for winding up in understanding with the arrangements of Section XX12

- **Fraudulent and unlawful affairs:** If on an application made by the Registrar or on the other hand some other individual approved by the Central Government by warning under this Act, the Tribunal is of the opinion that the affairs of the company have been directed in a fraudulent way or the company was framed for fraudulent and unlawful purposes or the people worried in the arrangement or then again administration of its affairs have been blameworthy of misrepresentation, misfeasance or unfortunate behavior in association therewith and that it is appropriate that the company be ended up; at that point in such a circumstance, the Tribunal may, on an appeal to recorded by any approved individual, pass a request for the winding up of the company13

- **Default in filling financial statements:** If the company has made a default in filling with the Registrar its financial statements or yearly return for quickly preceding five back to back financial years14

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11 [1981] 51 Comp Cas 601 (Ker)
12 [Sec. 271(1) (d)].
13 [Sec. 271(1) (e)].
14 [Sec. 271(1) (f)].
• **Just and Equitable:** When the Tribunal is of the opinion that it is just and equitable that the company ought to be ended up; at that point the Tribunal may arrange the winding up of a company. The conditions in which the courts have in the past broke down organizations on this ground are as per the following:

(McPherson 1964)

- **Deadlock:** When there is a gridlock in the administration of a company, it is just and equitable to arrange winding up. (McPherson 1964)

- **Loss of Substratum:** When the company has neglected to emerge the main objects of the company. The imperative outline here is the instance of German Date Coffee Co, Re\(^{15}\), where a company was framed to manufacture coffee from dates under a patent which was to be allowed by the Government of Germany and additionally to work different licenses of comparative kind. The German patent was never allowed and the company set out upon different licenses. In any case, on the appeal to of an investor, it was held that the substratum of the company had fizzled, and it was difficult to complete the articles for which it was framed; and, along these lines, it was just and equitable that the company ought to be twisted up.

(McPherson 1964)

- **Losses:** When a company can't convey forward its business with the exception of bearing the weight of misfortunes, at that point it is just and equitable for the company to be twisted up. The Bombay High Court saw in the instance of Shah Steamship Navigation Co, Re\(^{16}\) that the Court won't be justified in making a winding up arrange just on the ground that the company has made misfortunes; and is likely to make assist misfortunes.

- **Oppression of Minority:** It is just and equitable to wind up a company where the principle shareholders have received an forceful or severe or squeezing strategy towards the minority. It has been seen in Tivoli Free, Re\(^{17}\) that where in excess of seventy for each penny of a company stores were being utilized for protests completely expelled from anything within the memorandum and ninety-three for each penny of the shareholders wished to separate themselves from the new protests, the company was requested to be twisted up. (Chandratre 2016)

(McPherson 1964)

- **Fraudulent Purpose:** If the company has been imagined and brought forward in misrepresentation or for unlawful purposes, at that point it is just and equitable to wind up the company. In Universal Mutual Aid and Poor Houses Assn versus A.D. Thoppa Naidu\(^{18}\) the Madras High Court watched, where the main protest of a company is the direct of a lottery, the negligible fact that a portion of its articles were humanitarian won't keep the company from being requested to be ended up as being one shaped for an unlawful reason.

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15 [(1882) 20 Ch D 169]
16 [AIR 1933 Mad 16]
17 [(1972) VR 445]
18 [(1901) 10 Bom LR 107]
Open interest is likewise another vital ground, based on which the court can arrange the winding up of the company. On a similar ground, a request of winding up go by the Tribunal can be renounced moreover.

8. Chapter-III
Impact of Insolvency and Bankruptcy Code, 2016 on Winding Up

The Insolvency and Bankruptcy Code, 2016 merge and change the laws relating to insolvency of organizations, association firms, constrained obligation organization into a single enactment. It intends to give time bound resolution and enabled the creditors to initiate the insolvency resolution process if default happens. After the MCA wide warning no. S.O. 3453 E of November fifteenth, 2016, section 255 of Insolvency and Bankruptcy Code, 2016 changed following sections of the Companies Act, 2013 In the definition of Winding up, new insertion was made which makes it as winding up implies winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016 as pertinent. Section 270 of the Companies Act, 2013 regarding the Modes of winding up, has been erased after the requirement of this Code. It has been substituted by Winding up by Tribunal(Jain 2017)

Section 271, organizations Act, 2013 which manages Circumstances in which company might be ended up by Tribunal has been substituted to be specific A company might be ended up by the Tribunal, on appeal to under Section 272, if the company has settled by special resolution that company be ended up by the Tribunal; if the company has acted against sway, integrity, security of India inviting relations with outside states, open request, tolerability, profound quality; ((Lawyer) and Shriram 2017)if the tribunal is of opinion that acts of the company are fraudulent or the question for which it was framed was fraudulent or unlawful or people worried in development and administration have been held blameworthy of misrepresentation, unfortunate behavior and it would be legitimate for it to be twisted up; if the company defaulted in filing financial explanation for the promptly preceding last financial years with the Registrar; if Tribunal is of opinion that company ought to be ended 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 manages Company Liquidators and their appointment according to which Tribunal should appoint the temporary or the Company Liquidator from among the insolvency professionals enrolled under the Insolvency and Bankruptcy Code, 2016. Section 304 of the Companies Act, 2013 that arrangements with the conditions in which company might be twisted up intentionally has been excluded by the Insolvency and Bankruptcy Code, 2016 alongside different sections relating to willfully winding up under the Act On December seventh, 2016, the MCA issued Companies (Transfer of Pending Proceedings) Rules, 2016 for exchange of pending lawful proceedings from High Court to National Company Law Tribunal seat On March 31st, 2017 the
Insolvency and Bankruptcy Board of India has informed the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. The voluntary winding up of organizations was represented by Companies Act, 1956 as the said arrangements in Companies Act, 2013 had never been told. Presently the Voluntary Liquidation in both the Companies Act 1956 and Companies Act, 2013 has been revoked by Government. Section V of Part II of the Insolvency and Bankruptcy Code contains Section 59 that arrangements with voluntary liquidation. In addition, the distinction between members’ voluntary winding up and creditors’ voluntary winding up has been eliminated. ((Lawyer) and Shriram 2017)

According to Section 59 of the Code, the voluntary liquidation process must be initiated by a corporate individual, which has not submitted any default. Default here includes those debts that are not reimbursed and has turned out to be expected and payable.

The compliances of a few prerequisites are essential.
- Revelation by directors that winding up isn’t to swindle any individual;
- Liquidator can be insolvency professional who satisfies criteria under the controls;
- Registers to be maintained and protected in recommended way;
- Liquidators to get cases of partners just in determined structures;
- Within a year from beginning of voluntary winding up, the affairs of corporate individual to be twisted up;
- Reports by Liquidator to be submitted to corporate individual, Registrar of Companies and Insolvency and Bankruptcy Board of India.

9. Conclusion

The Code and Regulations provide a favourable framework for companies and limited liability partnerships. Though the process remains almost similar to previous regime, but the major change has taken place in initiation of winding up process. Earlier, company or any of its creditors could file a voluntary winding up petition but now company, directors, designated partners or persons responsible for exercising its corporate powers can initiate the winding up process. Moreover, approval of creditors representing two thirds of corporate debt is mandatory under the Code for initiating voluntary winding up proceeding. To sum it up, 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.
10. Suggestion

Mounting cases in the court of law is a consequence of moderate development of legal framework in the nation. Not at all like, different nations the advantage of liquidation and winding up was not found in India. The ruin don being the moderate development of winding up continuing which result in delay in the disintegration of the organizations. We are cheerful to see the change which will be purchased by the constitution of NCLT and NCLAT. This ought to decrease the pending cases identifying with winding up and liquidation of the company. The move of the Government of the presentation of the Insolvency and Bankruptcy code, 2016 is additionally ideal in diminishing the time taken in winding up procedures. The forces to pass request of disintegration will be moved from courts to NCLT. In this way, the procedures of winding up are relied upon to get quickened. It is cheerful to state that India could witness development in tackling the winding up cases at a quick pace. In this way, the notorious winding up procedures can get some force in India.

References


[2] German Date Coffee Co, Re

[3] GTC Industries Ltd v Paras rampuria Trading


[15] Neptune Assurance Co. Ltd. vs Union Of India

[16] New Kerala Chits and Traders (P.) Ltd. versus Official Liquidator


[18] Pankaj Mehra v. Province Of Maharashtra

[19] Pierce Leslie and Co.Ltd v. Violet Ouchterlony


[21] Rishabh Agro Industries Ltd. V. PNB Capital

[22] Shah Steamship Navigation Co, Re

[23] Shri Raja Mohan Manucha v. Lakshminath Saigal


[26] Universal Mutual Aid and Poor Houses Assn versus A.D. Thoppa Naidu

