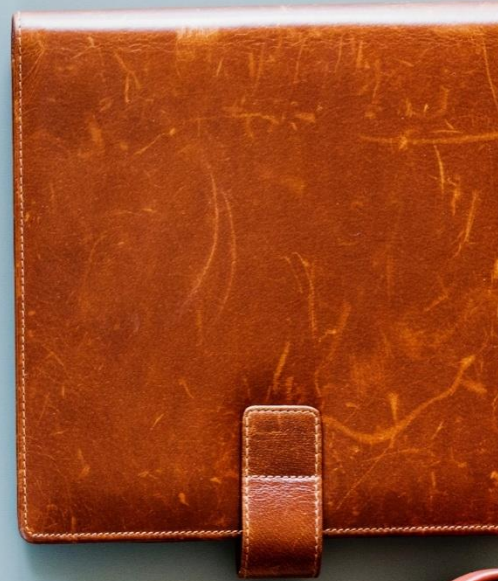


Spotted & Reported

Companies (Winding Up) Rules, 2020

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FOREWORD

The Ministry of Corporate Affairs (MCA) on 24th January, 2020 notified rules for winding up of companies, making it easier for smaller companies to wind up businesses without taking NCLT's approval. The current notification replaces Companies (Court) Rules 1959 of the erstwhile Companies Act, 1956 and introduces summary proceedings to eligible small companies without NCLT approval.

The notification on the aforesaid date has been issued by the Ministry ("MCA") on its official website which take effect from 1st April, 2020

"Spotted & Reported" is one of the many other initiatives undertaken by SURESH & CO., Chartered Accountants, to enable its members, articled assistants, associates, clients, business partners, professionals and other trade/industry practitioners to be informed and updated about the new developments in the industry. Seven reports on:

1. "CBDT Amends the Tax Audit Report (Form 3CD)"
2. "Business Valuation"
3. "GST Audit"
4. "Companies (Amendment) Ordinance, 2018"
5. "Companies (Incorporation) Amendment Rules, 2019"
6. "Major changes in Income Tax Return (ITR) Forms"
7. "Companies (Amendment) Act, 2019"

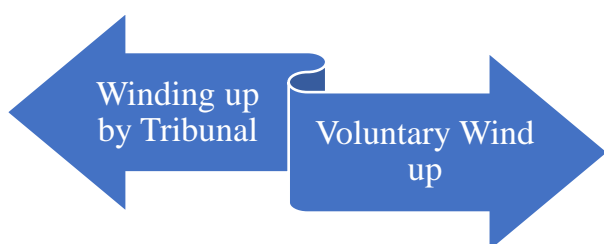
This 8th issue of Spotted & Reported is drafted with a view of giving its readers a quick understanding on the notification released by MCA dated 24th January, 2020.

The report does not deal with legal interpretations and rulings. This report is only meant for general awareness and should not be used as a basis for any decision-making.

Winding-up of Company

Winding up is a means by which the dissolution of a company is brought about, and its assets are realised and applied in the payment of its debts. After satisfaction of the debts, the remaining balance, if any, is paid back to the members in proportion to the contribution made by them to the capital of the company.

Winding Up Under Companies Act, 2013



1) Winding up by Tribunal

Following are the conditions:

- a) Company is unable to pay the debts;
- b) If the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- c) If the company has acted against the interests of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order;
- d) If the Tribunal has ordered the winding up of the company under Chapter XIX;
- e) If on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the tribunal is of opinion that affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent or unlawful purpose or the

- persons concerned in formation misfeasance or misconduct in connection therewith and that it is proper that company be wound up;
- f) If the company has made default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years. (Section 271)
 - g) If the tribunal is of the opinion that it is just and equitable that the company should be wound up.

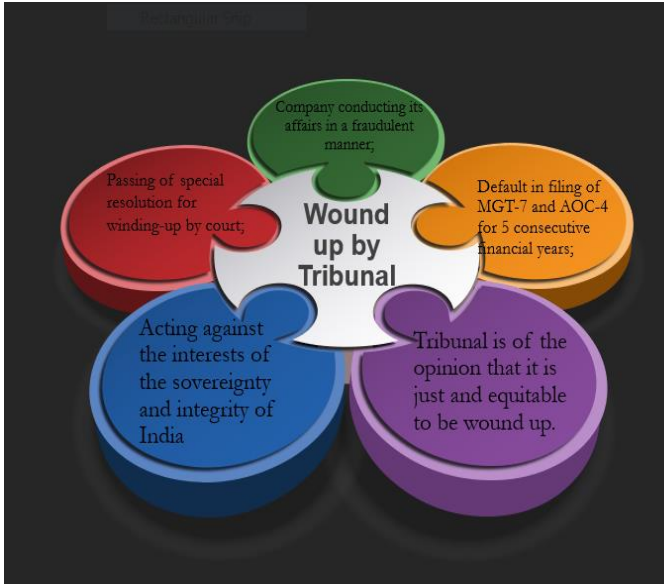
2) Voluntary Wind up

- a) If a Company in General meeting passes a resolution for voluntary wound up due to expiry of the period fixed by its articles of association or
- b) On occurrence of any event in respect of which the articles provide that the Company should be dissolved
- c) If the Company passes Special Resolution that the company is wound up voluntarily

Note: The circumstances in which company may be wound up voluntarily has been omitted in companies act with introduction of the Insolvency & Bankruptcy Code, 2016

AS PER THE NOTIFICATION OF MCA DATED 24TH JANUARY, 2020

A) CIRCUMSTANCES FOR WINDING UP BY TRIBUNAL



RULES FOR WINDING UP BY TRIBUNAL (OTHER THAN SMALL COMPANIES)

Petition for winding up along with statement of affairs shall be posted before the Tribunal for admission of the petition and fixing a date for the hearing.

1. Petition shall be presented in Form WIN 1 or Form WIN 2 (based on circumstances) in triplicates+ affidavit.
2. St. of affairs shall contain information up to the date which **shall not be more than thirty days** prior to the date of filling the petition and shall be presented in WIN-4 (Duplicate)+Affidavit.
3. Copy of the petition to be furnished to every contributory within twenty-four hours of his requiring the same on payment of five rupees per page.
4. Advertisement of petition shall be made before 14 days in any daily newspaper in English and vernacular language widely circulated in the State or Union territory in which the registered office of the company is situated.
5. The Tribunal, upon proof by affidavit of sufficient ground and if it thinks fit, may appoint a provisional liquidator of the company. The Tribunal shall within seven days from the date of passing of the order (of appointment of provisional Liquidator or Company Liquidator), send intimation to the Company Liquidator or provisional liquidator of his appointment.
6. Winding up order shall be sent by the Tribunal after it is signed and sealed within seven days from the date of receipt of the order by the Tribunal, to the Company Liquidator and the Registrar of Companies (in form INC-28).
7. The order for the winding up of a company by the Tribunal shall, within fourteen days of the date of the order, be advertised by the petitioner in a English language and vernacular language newspaper which is widely circulated in the State or the Union territory where the registered office of the company is situated.
8. After a winding up order is made or a provisional liquidator is appointed, every subsequent proceeding in the winding up shall bear the original number of the winding up petition besides its own distinctive number, but against the name of the company in the cause-title, the words 'in liquidation' or 'in provisional liquidation' as the case may be, shall be written in brackets.
9. The Company Liquidator submits a report within 60 days from the date of order of Tribunal containing-

- a. The particulars of the nature and details of assets, liabilities debt etc.
 - b. The issued, subscribed and paid-up capital of the Company
 - c. If any fraud was committed in promotion or formation of the Company
10. The Tribunal upon receiving the report revise the time limit within which the proceedings of winding-up shall be completed.
11. The tribunal may constitute an Advisory committee to advise the Company liquidator and to report tribunal. The no. of members of the Committee shall not exceed 12 (creditors and contributories).

5. Also, audited accounts shall be filed with ROC and Tribunal and shall be sent to every Creditors and contributories.
- a. He, in a winding up by the Tribunal shall, within thirty days from the date of order of winding up, give a notice of fourteen days to the creditors of the Company to prove their debts or claims.

B) SUMMARY PROCEEDINGS FOR SMALL COMPANIES:

Every small company shall first follow the procedure as given for other than small company (i.e., Form WIN-1 and WIN-2 etc.), then proceed to wind-up as the summary proceedings.

This summary procedure entails the appointment of the Official Liquidator as the liquidator of the company by the Central Government. Thereafter, the Official Liquidator is required to immediately take into his custody or control all assets, effects and actionable claims to which the company is or appears to be entitled and submit his report to the Central Government within 30 (thirty) days of his appointment.

The Central Government may order the winding-up of the company in view of the aforesaid report.

It is pertinent to note that the Central Government has delegated its authority under this provision to the respective offices of the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong.

RESPONSIBILITIES OF COMPANY LIQUIDATOR

1. He must keep the books, make necessary entries and prepare the minutes of the meetings. These books may be inspected by any creditor or contributory.
2. He shall deposit all moneys including cheques and demand drafts received by him as the Company Liquidator of the company into a special bank account in his official name opened in any scheduled bank or any other bank as may be permitted by the Tribunal.
3. He shall also open a separate dividend account for the company in any scheduled bank, under the name 'the Dividend Account of (name of the company) in liquidation'.
4. He shall present a receipt and payment account (in duplicate and verified by a declaration) twice every year to the Tribunal, during his tenure of office.

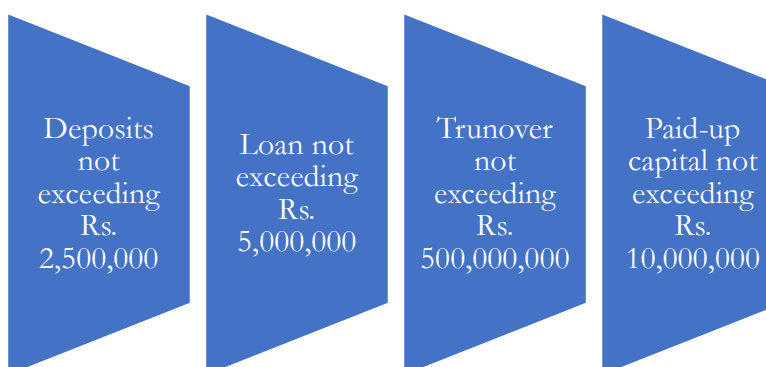
ELIGIBILITY OF SUMMARY PROCEEDINGS FOR SMALL COMPANIES:

Prior to notification of these Rules, the aforesaid summary procedure for winding-up of a company was only available to companies which had assets of book value not exceeding ₹ 10,000,000 (Rupees Ten Million). However, with the notification of these Rules, the summary procedure has now been further extended to below companies:



ELIGIBILITY

1. Accepting deposit with total outstanding deposits not exceeding ₹ 2,500,000 (Rupees Two Million and Five Hundred Thousand);
2. Having outstanding loan (including secured loans) not exceeding ₹ 5,000,000 (Rupees Five Million);
3. Having a turnover not exceeding ₹ 500,000,000 (Rupees Five Hundred Million);
4. With paid-up capital not exceeding ₹ 10,000,000 (Rupees Ten Million).



The Central Government can wind up the Company by Summary Procedure.

Where an order is made, the Central Government shall appoint the Official Liquidator as the liquidator of the company.

RULES REGARDING SUMMARY PROCEDURE

- 1) Official Liquidator shall maintain the Registers and books of accounts as per rules 79 and 80.
- 2) For filing and audit of the Official Liquidator's accounts- rules 91 to 99 shall be followed
- 3) Official Liquidator shall dispose of all the assets - rules 165 to 167
- 4) The monies received by the Official Liquidator as referred to in section 349 shall be paid by him into the public account of India in the Reserve Bank of India as mentioned in that section not later than the next working day of the said Bank.
- 5) For the purposes of section 363, the creditors of the company shall prove their claim - rules 100 to 125,

NOTE:

In the absence of any rules under this Part, on any subject for conduct of liquidation proceeding by the Official Liquidator, the relevant rules in the other Parts of these rules shall be followed with necessary modifications as directed by the Central Government. The Word tribunal shall be replaced with Central Government.

ADVANTAGE OF SUMMARY PROCEEDINGS:

The key advantage of the expansion of the scope of coverage of these summary proceedings is that going forward these matters would be adjudicated by the Central Government and not by the overburdened Tribunal, which is reeling under the heavy burden of cases since the advent of the IBC. While this shift certainly looks promising on paper, however, it remains to be seen how the offices of the respective Regional Directors would cope with this newfound responsibility come April 1, 2020.

Conclusion

In the year 1999, as per Justice Eradi Committee Report, 473 winding up cases were pending for more than 25 years and in 2015, there were 1479 winding up cases pending for more than 20 years, as per data furnished by the Department of Financial Services. 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.

To expedite the process of voluntary winding up, Government had introduced New Regulations as the procedure of voluntary winding up under Companies Act, 1956 was time consuming and there was no prescribed qualification for liquidator. The Code mandates that insolvency professionals are to be appointed as Liquidators, such a move is welcome by corporates and professionals.

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 reduce the burden on courts as all the litigation will be filed under the Code. However, the results of this new channel for winding up of small Companies by summary proceedings are yet to be seen.

Basis of Differentiation	Companies (Court) Rules, 1959	New Rules of Wining up wide notification 24.01.2020
Filing Authority	District Court and High Court are the authority to addressed	Tribunal and Central Government (Regional Director) has been conferred the authority to file the petitions with
Complexity	This procedure was more complex where the drafting of petition and documents were to be in court language only	There are no such requirements in new rules
Copy of Petition	Copy shall be served to every respondent mentioned in the petition and to the people as the Judge and registrar direct	Every contributory of the company is entitled to receive a copy of the petition within twenty four hours of his requiring the same on payment of five rupees per page,(by the petitioner or his representative)
Provisional Liquidator	There is no mention regarding the qualification of Provisional Liquidators. Official Liquidator is only appointed as a Provisional Liquidator	The Provisional Liquidator are amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code 2016
Procedure of Winding up	Same procedure is followed by all level of Companies	Separate procedure is been introduced for small Companies as: Accepting deposit with total outstanding deposits not exceeding ₹ 2,500,000 Having outstanding loan (including secured loans) not exceeding ₹ 5,000,000 Having a turnover not exceeding ₹ 500,000,000 With paid-up capital not exceeding ₹ 10,000,000

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