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**VOLUNTARY LIQUIDATION OF CORPORATE ENTITY**- Mayur Narang<sup>1</sup>**ABSTRACT**

Liquidation refers to the procedure of shutting down a business. Additionally, it indicates that the company has ceased operations. If the company has participated in illicit activities, liquidation may be necessary under certain circumstances. Insolvency, product obsolescence, persistent losses, and other compelling circumstances frequently contribute to the eventual liquidation of a company. The Companies Act of 1956 provides three methods for the dissolution of a corporation: court-supervised winding up, voluntary liquidation, and compelled liquidation. The appointed liquidator is responsible for overseeing the liquidation process with the best interests of the company, its members, and its creditors in mind. Typically, creditors will compel a business to liquidate. Important aspects of dissolving a business include preserving creditors and members from additional losses and dividing assets and liabilities equitably. When a corporation's directors determine that it is no longer viable, it is liquidated. This could be due to anything from insolvency to a lack of interest in continuing the business. In order to avoid bankruptcy and preserve their accumulated capital, the majority of enterprises undergo liquidation. The liquidation process is initiated only when it becomes evident that the company cannot continue operations as usual.

**INTRODUCTION**

The 2016 Insolvency and Bankruptcy Code was enacted by the Indian Parliament on May 11 and published in the Indian Official Gazette on May 28 after it was signed by the president. The

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purpose of the Insolvency and Bankruptcy Code of 2016<sup>2</sup> (commonly referred to as "The Code") is to streamline the legislative framework for insolvency and bankruptcy cases and improve business entity insolvency procedures. In both the Code and the 2013 Companies Act, "winding up" is not defined. To "wind up" or "go into liquidation" is to dissolve an organization or industry. This article examines the new changes to the Code and explains the differences between the voluntary liquidation system and the compulsory liquidation system.

### **II.1. What Is Voluntary Liquidation?**

The procedure through which a corporation's shareholders permit management to liquidate the firm voluntarily is referred to as voluntary liquidation. This decision will be made after higher management has determined that business as usual is no longer viable. It is not a court-issued order. In order to repay creditors in accordance with their given priority, a company's activities, financial affairs, and organizational structure must be ended in a timely manner.<sup>3</sup>

### **II.2. Understanding a Voluntary Liquidation**

The board of directors or ownership of the firm must make the decision to enter voluntary liquidation. The process begins after shareholders approve a resolution to close the company, supposing operations are already in motion. Assets may be sold to pay off debts with the consent of shareholders. A voluntary liquidation is carried out by the firm freely, as opposed to a forced liquidation, in which assets or securities are liquidated to raise money as a result of events beyond the company's control.

Various factors may lead to voluntary liquidation. Concerns about business strategy or negative external elements like losing money or a change in the market might both be important. The business's owners may opt to restructure the enterprise by transferring assets to a different company or they may look for some kind of tax relief in exchange for a sale of assets or an interest in a newly established company.

## **LAWS GOVERNING VOLUNTARY LIQUIDATION OF A COMPANY**

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<sup>2</sup> Insolvency and Bankruptcy Code of 2016.

<sup>3</sup> Voluntary liquidation Economy, <https://www.economy-ni.gov.uk/articles/voluntary-liquidation#:~:text=creditors%20voluntary%20liquidation.-,Creditors%20voluntary%20liquidation,to%20wind%20up%20is%20passed.> (last visited Jun 23, 2023)

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Schedule XI of the Insolvency and Bankruptcy Code, 2016, and Sections 304–325 of The Companies Act, 2013, are superfluous. Therefore, on April 1, 2017, the Insolvency and Bankruptcy Board of India released the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017<sup>4</sup>. Section 59 of Chapter V of the IBC addresses "Voluntary Liquidation procedures for Corporate Persons."

This method may be used by companies who want to liquidate but haven't yet defaulted. Quick, efficient, and time-bound, the Voluntary Liquidation method defined in the Insolvency and Bankruptcy Code, 2016 ensures the value of corporate persons' assets is preserved and results in speedy realization for stakeholders.

Voluntary liquidation, often called voluntary dissolution or winding-up, is the process by which a company voluntarily closes its doors and wraps up its affairs. The company's assets are liquidated, its debts are paid, and any remaining assets are distributed to the company's creditors or shareholders.

### **SECTION 59 OF CHAPTER V OF THE INSOLVENCY AND BANKRUPTCY CODE**

Section 59 of Chapter V of the Insolvency and Bankruptcy Code, 2016 addresses voluntary liquidation of corporate persons. The process of a corporation's voluntary liquidation is outlined in this chapter, along with its starting and end points, the liquidator's power and obligations, and the culmination of the procedure.

According to Section 59(1)<sup>5</sup> of the 2016 Insolvency and Bankruptcy Code, a corporate person who wishes to liquidate voluntarily and can show that he has not committed any defaults may initiate the voluntary liquidation process as specified in Chapter V of the code.

### **ESSENTIAL PRE-CONDITIONS FOR VOLUNTARY LIQUIDATION**

In order for a corporate person to voluntarily liquidate their assets, the Insolvency and Bankruptcy Board must first establish certain conditions or critical prerequisites under Section 59(3)<sup>6</sup>.

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<sup>4</sup> Voluntary Liquidation Process) Regulations, 2017.

<sup>5</sup> Insolvency and Bankruptcy Code 2016, s. 59, cl. 1.

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Only companies that are in good standing with their creditors, have never been late on payments, and have sufficient assets to settle their debts are eligible to file for voluntary liquidation under the Insolvency and Bankruptcy Code.

### **VOLUNTARY LIQUIDATION PROCESS**

- Public announcement from the liquidator calling claims by Corporate Persons' creditors.
- Liquidator collects claims, verifies claims, and compiles a list of stakeholders for purposes of valuing and selling corporate persons' assets.
- Opening a Bank Account in the Name of the Corporation by using uncalled capital or unpaid capital contribution from any contributory to the liquidator of a corporation.
- The liquidator is obligated to disperse the proceeds to the interested parties within 30 days of receiving the funds. However, the liquidator must first deduct the expenditures associated with the liquidation process.
- Stakeholders will be allocated a portion of an uncommon or otherwise unmarketable asset.
- In compliance with the Liquidation Regulations, the Liquidator is required to file many reports with the National Company Law Tribunal: -
  - a. Submission of a Report
  - b. Participants' Roster Report on the Annual Status
  - c. Documentation of meetings with relevant parties
  - d. Maintenance of Accounting Records
  - e. Payment and Receipt Record-Keepingthe Closing Statement
- The liquidator will make every effort to close the case within 270 days of the liquidation's commencement date.

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<sup>6</sup>Insolvency and Bankruptcy Code 2016, s. 59, cl. 3.

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- After the Corporate Person's affairs have been properly wound up and its assets have been fully liquidated, the Liquidator is to file an application for dissolution of the Corporate Person to the National Company Law Tribunal together with the Final Report.<sup>7</sup>
- The Corporate person shall stand dissolved after an order for dissolution has been passed by the Hon'ble NCLT.

## ANALYSIS OF FOREIGN COUNTRIES

- **In the United States of America.**

The services provided in the United States are fundamentally comparable to those provided in India. The procedure of liquidation is outlined in Chapter 7 of the United States Bankruptcy Code. A person, business, LLP, trust, nonprofit, or unincorporated association may initiate it, and the board of directors can join in when a trigger event has occurred. The next step is to appoint a liquidator who will answer to the company's creditors and shareholders. If a corporation has no debt, it still has to be solvent, but the process may be managed by only the shareholders and the liquidator. If it has any debts, the shareholders and creditors will have to vote as a bloc to settle the matter. However, banks, insurance companies, and railways are not considered "debtors" under Chapter 7.

- **In the United Kingdom-**

The process in this nation is quite different from the one in India. The 1986 Bankruptcy Act regulates this situation. It has two subsections. One is a creditor-initiated liquidation proceeding in the event of financial distress. Two, a bankruptcy filing by the company is not required for the members to voluntarily liquidate their shares. The corporate person is, without a shadow of a doubt, solvent; it only seeks to liquidate itself in order to meet its future obligations. The resolution needs the backing of three-quarters of the voters, just as in India.

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<sup>7</sup> Voluntary liquidation under IBC 2016 InCorp Advisory, <https://incorpadvisory.in/blog/voluntary-liquidation-under-ibc-2016/> (last visited Jun 23, 2023).

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## CONCLUSION

The Code's implementation resulted in a more streamlined, systematic, and efficient process. Making the most of available resources simplifies financial viability evaluations and protects organizational objectives. It was solely to facilitate the faster procedure that the voluntary winding-up process was eliminated and incorporated into the law. Corporate entities saw the preceding events as "burdensome" and "complex," leading to investor mistrust.

At the time of its enactment in 2016, the Code did not include a liquidation procedure, and India lacked a mechanism on par with the United Kingdom and the United States until the IBBI announced Section 59 of the Code and the IBBI (Voluntary Liquidation) Regulations, 2017 in 2017. In the past, when companies chose to dissolve on their own accord, the process may take up to 15 years. The change that the legal profession has embraced is the strict 2-year time restriction. According to the new rules, the parties involved have 90 days and one year to come to an agreement. If the company lacked capital, financial creditors would chip in, with the expectation of being reimbursed.

Therefore, legal voluntary liquidation has provided a less difficult exit and a time-bound process for willing corporate individuals who are in a solvent stage or at least competent to fulfill their obligations. The creditor's ability to file an appeal against a liquidator's rejection of a claim is another noteworthy component of the Act since it strikes a balance between the debtor and the creditor.

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