COMPANY LAW

CHAPTER 7: WINDING UP

(1) Definition of Winding Up [Section 2(94A)]



*In most of the cases, liquidation (winding up) of companies are through the Insolvency Code only. Direct winding up process under Companies Act, 2013 are used very rarely.

(2) Circumstances in which Company may be Wound Up by Tribunal [Section 271]

Company may, wound up by Tribunal on petition filed u/s 272-

- by SR resolved that company be wound up
- If acted against the national interest (soveriegnity & integrity, security etc.)
- Tribunal on an application, is of opinion that affairs of the company have been conducted in a fraudulent manner, or formed for fraudulent and unlawful purpose or the persons concerned in the formation /management of its affairs have been guilty of fraud, misfeasance or misconduct
- Co. has defaulted in filing financial statements/ annual returns for immediately preceding 5 consecutive FY
- On just and equitable ground

(3) Petition for Winding up [Section 272 (1)]

(i) Presentation of Petition



- The Company
- Any Contributory / Contributories
- All or any of the persons specified above
- The registrar
- Any person authorized by Central Government in that behalf
- the CG/SG , in case falling u/s 271(b) i.e., if Co. acted against the national interest etc.

Copy of petition shall also be filed with the registrar

Registrar submit his views to Tribunal within 60 days of receipt of petition.

i (ii) Petition filed by contributory [Section 272(2)]

■ He may be the holder of fully paid-up shares. ■ The company may have no assets at all. ■ The company may have no surplus assets left for distribution among the Contributory shareholders after the satisfaction of its can file liabilities. petition, ■ Shares in respect of which he is a though contributory/alloted to him/held by him & regsitered in his name for atleast 6 months during 18 months immediately before commencement of Winding up ■ have devolved on him through the death of a former holder

(iii) Petition filed by Registrar [Section 272(3)]



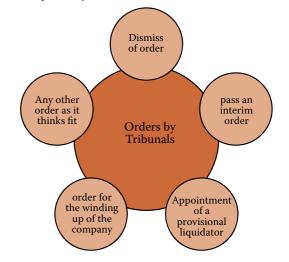
*Registrar cannot file petition for winding up on the grounds given u/s 271(a) & 271(e) i.e. where the petition is made by the company/person authorised by the CG.

(iv) Petition presented by Co. for winding up

shall be presented before the Tribunal admitted only if accompanied by a statement of affairs

(4) Powers of Tribunal [Section 273]

(i) Order passed by Tribunal



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(ii) Time period for passing of an order

Order u/s 273 shall be made

within 90 days from the date of presentation of petition.

(5)Tribunal may order company to file a statement of its affairs [Section 274(1)]

where petition for winding up filed by any person (except the company)

on *prima facie* satisfaction, Tribunal by an order direct the company to file its objections + statement of its affairs within 30 days of the order.

further extend time period by 30 days under special circumstances

in case of failure in filing of S.O.A, Tribunal shall forfeit right to oppose the petition

Director/any officer in default for such non-compliance shall be liable for punishment u/s 274(4)

(6) Company Liquidator (CL) & their appointment [Section 275]

Tribunal, at the time of passing of order of winding up

shall appoint an Official Liquidator or a liquidator (from the panel maintained as the Company Liquidator)

The provisional liquidator /the Company Liquidator

shall be appointed by the Tribunal from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016;

Powers, terms and conditions of appointment of a provisional liquidator / Company Liquidator, and their removal and replacement

shall be regulated by Tribunal as per section 275 & 276

On appointment as provisional liquidator / Company Liquidator

such liquidator shall file a declaration within 7 days from the date of appointment disclosing conflict of interest / lack of independence in respect of his appointment with the Tribunal.

(7) Intimation of appointment to CL, PL & Registrar [Section 277(1)]

(i) Intimation of order of Tribunal of an appointment of provisional liquidator (PL) /winding up of a company

Within 7 days from the date of passing of an order



intimate to company liquidator/ provisional liquidator + registrar

(ii) On receipt of order of appointment /winding up [Section 277(2)]

Registrar shall

Listed Company

All Companies

Intimate about such appointment/order to the stock exchanges where the securities of the company are listed. Make an endorsement to that effect in his records relating to the company and notify in the Official Gazette that such an order has been made.

(iii) In case of winding up order by the Tribunal [Section 277(4)]

On passing and intimation of WU order by tribunal

- CL shall make an application
- Within three weeks from the date of passing of WU order

for constitution of a winding up committee

 to assist and monitor the progress of liquidation proceedings by the Company Liquidator

winding up committee shall comprise of

- Official Liquidator attached to the Tribunal;
- nominee of secured creditors; and
- a professional nominated by the Tribunal.

CL shall place report of the committee to Tribunal

- · on monthly basis
- duly signed by the members till the submission of final report for dissolution of the company

The Company Liquidator shall prepare the draft final report

- for consideration and approval of the winding up committee
- shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company