

Class: B.Com (Prog) Semester III

Subject : BCP 3.3 CORPORATE ACCOUNTING

Topic: Steps for Voluntary Winding up Process of Company as per Section 59 of the Insolvency and Bankruptcy Code, 2016

2.1: A Company is an artificial person and it is created by law therefore the law alone can close it. Liquidation of company refers to a process in which a company's existence is brought to an end. On liquidation the affairs of a company are wound up and its name is struck off from the Register of the Registrar of Companies and this fact is published in the Official Gazette.

As per section 270 of the Companies Act 2013, the procedure for winding up of a company can be initiated either:

- (a) **By the tribunal or,**
- (b) **Voluntary.** (However section 304 of companies act has been omitted, therefore section 59 of the Insolvency and Bankruptcy code 2016 is applicable from 1/4/2017)

2.2: Voluntary Winding Up of a Company

The company can be wound up voluntarily by the mutual agreement of members of the company, if:

- (i) The company passes a Special Resolution stating about the winding up of the company.
- (ii) The company in its general meeting passes a resolution for winding up as a result of expiry of the period of its duration as fixed by its Articles of Association or at the occurrence of any such event where the articles provide for dissolution of company.

Member's Voluntary Winding Up under the Insolvency and Bankruptcy Code, 2016

The Procedure of Voluntary Winding up of solvent company section 304 is now omitted from the Companies Act, 2013. ***Therefore making section 59 of Insolvency and Bankruptcy Code, 2016 applicable from 1st April, 2017.***

Some of Key features of section 59 of Insolvency and Bankruptcy Code, 2016 are as follows:

- (a) Shifting of Powers from Official Liquidator to Insolvency Professional.
- (b) Jurisdictional Authority has been shifted from High Court to National Company Law Tribunal (NCLT).
- (c) Timeline for carrying out the Voluntary Winding up process under the Insolvency and Bankruptcy Code is of 12 months.
- (d) The shifting of Jurisdictional Authority from High Court to NCLT will result into faster execution as Insolvency Professionals have been entrusted with powers of completing the winding up process and reporting to NCLT.
- (e) With the passing of special resolution at the Members meeting and declaration of solvency, the company can commence with the winding up proceedings.

2.3: Steps for Voluntary Winding up Process of Company as per Section 59 of the Insolvency and Bankruptcy Code, 2016

1. Declaration of Solvency duly verified by an Affidavit by Majority of Directors of the Company Affidavit to be accompanied by:
 - (i) Audited Financial Statement of past two years/Since Incorporation whichever is later.
 - (ii) Records of Business Operations of past two year/Since Incorporation whichever is later.
 - (iii) Report by the Registered Valuer about the valuation of the assets of

the Company.

- (iv) Latest Financial Position of the Company, if any.
2. Within 4 weeks of Declaration of Solvency, Voluntary Winding up of the Company shall happen and there shall be an appointment of Insolvency Professional to act as Liquidator subject to the approval of the Members in General Meeting and creditors owing 2/3rd of the Value of the Debt of the Company through Special Resolution within 7 days of approval of liquidation of Company. Intimation of the same has to be made to the Registrar of Companies.
 3. Company has to intimate Insolvency and Bankruptcy Board of India (IBBI) regarding initiation of Voluntary Winding up within 7 days of approval of liquidation of Company/subsequent approval by the creditors.
 4. Within 5 days of Appointment of Insolvency Professional as Liquidator:
 - (i) A Public Announcement to be made in one English Newspaper and one Regional Language Newspaper having wide circulation where the registered office and the principal office if any, of the Company is situated.
 - (ii) Public Announcement to be updated on website of the Company, if any.
 5. Liquidator has to open a Bank Account in the Name of the Company followed by the words “in voluntary liquidation” in a scheduled bank within one month of passing of Special Resolution.
 6. Intimate the Income Tax Department within One month of passing resolution regarding Voluntary Winding up of the Company and to obtain NOC for the same.
 7. Prepare a Preliminary Report to be submitted within 45 days from the commencement of the liquidation process consisting details of:
 - (i) Capital Structure of the Company

- (ii) Estimates of assets and liabilities as on the liquidation commencement
 - (iii) Any further inquiry relating to promotion/formation/conduct of the business
 - (iv) Proposed plan of action by liquidator including the timeline within in which he proposes to carry it out and the estimated liquidation costs.
8. The liquidator shall verify the claims submitted within 30 days from the last date for receipt of claims and may either admit or reject the claim.
 9. Liquidator has to prepare list of stakeholders within 45 days from the last date for receipt of claims and also has to maintain Particulars/Minutes about any consultation with Stakeholders.
 10. Liquidator has to value and sell the assets in the manner and mode approved by the Company and have to deposit proceeds of distribution in Bank Account
 11. Liquidator has to distribute the Proceeds to the stakeholders within 6 months from the receipt of amount.
 12. Liquidator has to maintain accounts for liquidation period and conduct audit for the same.
 13. The entire process to be completed within 12 months from the date of commencement of liquidation.
 14. If the liquidation process extends for more than 12 months, the liquidator shall – Within 15 days from the end of 12 months hold meeting of contributories and Present a Annual Report indicating:
 - (i) Settlement of List of Stakeholders
 - (ii) Details of Assets remaining to be sold
 - (iii) Distribution made to the stakeholders

15. To prepare Final Report with details of Audited Accounts of Liquidation and send it to:

- (i) The Registrar of Companies
- (ii) The Insolvency and Bankruptcy Board of India
- (iii) The Adjudicating Authority, i.e., NCLT (National Company Law Tribunal)
