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Study on Voluntary Winding Up Under the Insolvency and Bankruptcy Code, 2016

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ABSTRACT:

Deliberate winding up beneath the Bankruptcy and Liquidation Code, 2016, marks a noteworthy flight from conventional indebtedness hones in India. This paper investigates the system built up by the Code for deliberate winding up, analyzing its procedural complexities, suggestions for partners, and arrangement with worldwide best hones. By looking at the goals, methods, and challenges related to deliberate winding up beneath the Code, this ponder looks to shed light on its adequacy in advancing the effective closure of wiped-out substances and ensuring the interface of banks and shareholders.

Keywords: Voluntary winding up, Insolvency and Bankruptcy Code, 2016, Corporate entities, Financial distress, Stakeholder protection, Preservation of value, Timely dissolution Stakeholder interests, Transparency, Regulatory oversight

INTRODUCTION:

The Bankruptcy and Liquidation Code, 2016 (IBC), speaks to a worldview move in India's indebtedness scene, presenting an advanced and comprehensive system to address monetary trouble and bankruptcy. One of the key arrangements of the Code relates to intentional winding up, advertising a component for wiped-out substances to start the method of closure deliberately. Not at all like conventional strategies, deliberate winding up beneath the IBC gives an organized and time-bound approach, pointing to streamline the determination handle while defending the interface of banks and shareholders.

This presentation sets the arrangement for a point-by-point investigation of intentional winding up beneath the IBC. It starts by highlighting the method of reasoning behind the incorporation of deliberate winding up arrangements within the Code and the objectives they point to realize. Along these lines, it traces the procedural system set up by the Code for starting and conducting intentional winding up procedures, emphasizing key highlights such as bank endorsement and oversight by indebtedness experts.

Besides, this introduction addresses the centrality of intentional winding up within the setting of corporate bankruptcy determination, emphasizing its part in encouraging the proficient closure of bankrupt substances and maximizing esteem for partners. It moreover examines the broader suggestions of deliberate winding up beneath the IBC, counting its effect on leaser rights, corporate administration, and the general bankruptcy environment.

In light of these contemplations, this paper points to digging more profound into the subtleties of voluntary winding up beneath the IBC, analyzing its viable suggestions, challenges, and potential zones for enhancement. Through a comprehensive investigation, it looks to contribute to the continuous talk on indebtedness changes in India and upgrade understanding of the advancing bankruptcy scene beneath the IBC.

VOLUNTARY WINDING UP UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

Voluntary winding up under the Insolvency and Bankruptcy Code (IBC), 2016, refers to the process where a solvent company decides to close its operations and dissolve itself without any external compulsion. This process is initiated by the company itself, usually when the shareholders and management decide that continuing the business is not feasible or beneficial[1]. Here's an overview of how this process typically works under the IBC, 2016:

Initiation: The process begins with a decision by the company's Board of Directors, who must declare that the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the winding up.

The directors must also declare that the company is not being wound up to defraud anyone.

[1] In any case, the rights of Creditors in levying execution, etc are restricted by Ss 183 -184 in every type of Winding-Up.

Shareholder Approval:

Following the directors' declaration, the proposal for voluntary winding up must be approved by a special resolution passed by at least three-fourths of the company's shareholders.

Appointment of Liquidator: Once the resolution is passed, the company appoints a liquidator to oversee the process. The liquidator takes control of the company, its assets, and affairs.

The primary role of the liquidator is to collect and sell the company's assets, settle any debts, distribute the remaining assets to the shareholders, and finally, give a proper account of all these actions.

Public Announcement: The liquidator must make a public announcement inviting claims from creditors and other stakeholders within a specified period.

Settlement of Claims: The liquidator examines the claims and admits or rejects them. Rejected claimants can appeal to the National Company Law Tribunal (NCLT).

Distribution of Assets: Once debts have been settled, remaining assets are distributed to the shareholders of the company according to their rights and interests.

Dissolution of the Company: After the affairs of the company have been completely wound up, the liquidator prepares a final report and submits it to the NCLT.

If the NCLT finds the report satisfactory, it will pass an order dissolving the company.

Voluntary winding up is intended to provide a straightforward and efficient process for solvent companies to close down and liquidate their assets. This process respects the interests of the company's creditors, stakeholders, and shareholders while ensuring compliance with the law.

WINDING UP OF UNREGISTERED ORGANIZATIONS UNDER SECTION 375 TO 378 OF THE ACT, 2013

The sections 375 to 378 of the Companies Act, 2013 of India cover the winding up of unregistered companies. Unregistered companies, in this context, include any associations, partnerships, or bodies of individuals not registered as a company under the Act but operating as a joint business[2]. Here's a brief overview of these sections:

Section 375: This section defines what an unregistered company is and states that unregistered companies can be wound up if they are unable to pay their debts, if the court believes it is just and equitable to do so, or if the company has been dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs.

Section 376: This section outlines the circumstances under which proceedings to wind up unregistered companies can be initiated, primarily focusing on companies unable to pay debts.

Section 377: This section addresses the powers of the court in winding up unregistered companies. It specifies that the court has the same powers in respect of unregistered companies as it does in respect of registered companies under the Act.

Section 378: This section deals with provisions applicable to a foreign company that has been dissolved in its country of origin but has assets or has carried out business in India. It provides a mechanism for dealing with the assets of such a company in India post-dissolution.

The winding up of unregistered companies under these sections is subject to the same rules that apply to the winding up of registered companies, except as provided otherwise. The intention behind these provisions is to ensure that even organizations that haven't formally registered as companies under the Act are still subject to certain regulatory oversight when they wind up operations, particularly in the interest of creditors and other stakeholders.

PEOCEDURE OF VOLUNTARLY WINDING UP

The process of voluntarily winding up a company can be broadly categorized into two types: Members' Voluntary Winding Up (for solvent companies) and Creditors' Voluntary Winding Up (for insolvent companies)[3]. Each type follows a specific procedure, involving several statutory steps and involving different stakeholders, including shareholders, directors, creditors, and a liquidator. Here's a detailed step-by-step guide for each:

Members' Voluntary Winding Up (Solvent Companies)

Declaration of Solvency: Before proceeding, the directors must make a declaration of solvency, indicating that the company can pay its debts in full within a specified period, typically 12 months from the commencement of winding up. This declaration is supported by a statement of assets and liabilities.

Shareholders' Meeting: The company calls a general meeting of shareholders to pass a resolution for winding up. A special resolution (requiring a 75% majority) is typically needed to approve the voluntary winding up.

[2] The effect of insolvency on pre-liquidation Transactions in Company Law in Change (1987) p. 69
[3] Re Patrick & Lyon Ltd. (1963) Ch. 786

Appointment of Liquidator: During the same or subsequent meeting, the shareholders appoint a liquidator to oversee the winding up process, including settling debts and distributing assets.

Notification: The resolution to wind up and the appointment of the liquidator must be published in a gazette and possibly also in local newspapers, and it must be notified to the registrar of companies[4].

Liquidation Process: The liquidator collects all the company’s assets, pays off creditors, and distributes the remaining assets among the shareholders according to their rights.

Final Meeting and Dissolution: After the affairs are fully wound up, the liquidator calls a final general meeting of the company. A report of the winding up is presented to the shareholders. Within a short period after the meeting, a copy of the report and a return of the meeting are filed with the registrar, after which the company is usually dissolved.

Creditors' Voluntary Winding Up (Insolvent Companies)

Directors' Meeting: The directors convene a meeting to conclude that the company cannot continue due to its liabilities and decide to call a meeting of creditors.

Shareholders' Meeting: Similar to a solvent winding up, the shareholders must pass a resolution for voluntary winding up in a general meeting.

Creditors’ Meeting: This meeting usually occurs on the same day or the day after the shareholders' meeting. Here, the directors present a full statement of the company's financial position and a list of creditors and their claims. The creditors may appoint a liquidator, who may be the same or different from the one appointed by the shareholders, and may also appoint a committee of inspection.

Appointment of Liquidator: If different liquidators are appointed, the choice of the creditors prevails. The primary role of the liquidator is to liquidate the company's assets to repay the creditors.

Notification and Public Announcement: The resolution to wind up and the details of the liquidator must be advertised in the gazette and possibly also in a local newspaper, and it must be notified to the registrar of companies.

Liquidation and Debt Settlement: The liquidator takes control of the company, disposes of assets, pays creditors, and handles the legal closure of the company.

Final Meetings and Dissolution: After the liquidation is complete, the liquidator convenes final meetings of both the company and the creditors, presents the account of how the winding up was conducted and how the property of the company has been disposed of. Reports of these meetings are then filed with the registrar. Following this, the company is usually dissolved.

MODES OF WINDING UP

1) COMPULSORY WINDING UP BY TRIBUNAL

Filing a Petition: The process begins when an eligible party, such as a creditor, files a petition in court asking for the company to be wound up.

Court Hearing: The court will set a date for a hearing to consider the petition. Notices are sent to the company and any interested parties.

Company’s Response: The company has an opportunity to oppose the petition if it wishes. If the company can prove its solvency or negotiate a settlement with the creditors, the petition might be dismissed[5].

Winding Up Order: If the court is convinced that the company cannot continue its business due to insolvency or other reasons, it will issue a winding up order.

Appointment of a Liquidator: Once the winding up order is issued, a liquidator is appointed to oversee the process of selling the company’s assets, settling debts, and distributing any remaining funds among shareholders.

Dissolution of the Company: After all debts and obligations have been settled, the company is formally dissolved, ceasing to exist legally.

VOLUNTARLY WINDING UP WITHOUT INTERVENTION OF TRIBUNAL BY ORDINARY RESOLUTION

Voluntarily winding up a company without the intervention of a tribunal by ordinary resolution involves a process where the shareholders of the company decide to close down the business on their own accord, typically when the company is still solvent. This method of dissolution is used when the

[4] Re Produce Marketing Consortium Ltd. (No 2) (1989) BCLC 520 (Chancy division)
[5] Re Batey, Ex-parte Emmanual (1881) 17 Ch. D. 35

shareholders believe that the company has no future prospects, or it has achieved its objectives and needs to be closed in an orderly manner[6]. Here's a basic outline of how this process typically works:

Proposal for Winding Up: The idea of winding up the company voluntarily is usually proposed by the directors or by a group of shareholders. This proposal is then discussed in a general meeting.

Ordinary Resolution: If the proposal is accepted, the shareholders must pass an ordinary resolution for voluntary winding up. An ordinary resolution requires a simple majority (over 50%) of votes from those present and voting at the meeting.

Appointment of a Liquidator: Once the resolution is passed, the company will appoint a liquidator. The liquidator's role is to oversee the winding-up process, which includes settling debts, selling company assets, and distributing the remaining assets to shareholders.

Notification: After the resolution is passed and a liquidator is appointed, the company must notify the relevant registrar (such as Companies House in the UK) about the voluntary winding up. This notification includes submitting the resolution and details of the liquidator.

Final Accounts and Meeting: The liquidator prepares the final accounts showing how the winding up was conducted and how the assets of the company were disposed of. A final general meeting of the company is called to present these accounts to the shareholders.

Dissolution: After the final meeting, the liquidator sends a copy of the accounts to the registrar and applies for the company to be dissolved. The company ceases to exist once it is officially dissolved by the registrar.

VOLUNTARLY WINDING UP WITHOUT INTERVENTION OF TRIBUNAL BY SPECIAL RESOLUTION

Voluntary winding up of a company without the intervention of a tribunal by a special resolution is a method of company dissolution initiated by its shareholders. Here's an overview of the process:

Special Resolution: The process begins with the company's shareholders passing a special resolution stating that the company will be wound up voluntarily due to reasons specified in the resolution. This typically requires a 75% majority of votes in favor, as per the company's articles of association and local legal requirements.

Declaration of Solvency: In cases where the winding up is proposed under the premise of solvency, the directors must make a declaration of solvency. This declaration, generally made before passing the resolution, affirms that the company can pay its debts in full within a specified period, usually not exceeding twelve months.

Appointment of Liquidator: The shareholders appoint a liquidator whose job is to settle the accounts, collect and liquidate the company's assets, pay off creditors, and distribute the remaining assets to the shareholders according to their rights.

Cessation of Company Business: Upon the appointment of the liquidator, the control of the company passes from the directors to the liquidator[7]. The company ceases its business activities, except insofar as beneficial for the winding up process.

Distribution of Assets: After paying off the debts, the liquidator distributes the remaining assets to the shareholders.

Final Meeting and Dissolution: After the affairs of the company have been wound up, the liquidator calls a final general meeting of the shareholders. The liquidator presents a final account of the winding up, detailing how it has been conducted and how the company's property has been disposed of. The company is dissolved following this final meeting, typically three months after a notice of the meeting is filed with the registrar.

Notification to Registrar: The liquidator must notify the relevant registrar of companies about the winding up and the subsequent dissolution of the company. This notification must include the minutes of the final general meeting.

COMPARISON BETWEEN WINDING UP AND DESELECTION OF A COMPANY

Members' Voluntary Winding Up

Initiation: Initiated by the company's shareholders when the company is solvent and can pay its debts in full. The decision is typically made during a general meeting where a resolution[8] is passed.

Declaration of Solvency: Before the process begins, the directors must make a statutory declaration of solvency, showing that the company can pay off its debts within a specified period not exceeding twelve months from the commencement of winding up.

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[6] Palmer's Company Precedents, Part II, 17Ih Ed. 256; Re Great Eastern Electric Co. Ltd; [1941) 1 All E.R. 409; Panchmahals Steels Ltd. v. Universal Steel Traders (1976) 46 Comp. Cases 706: 1976 Tax L.R. 1666 (Guj); Indian Oil and Produce Exporters Association v. Valji Shanhji and Co. (1977) 47 Comp. Cases 833 (DB) (Guj)

[7] Re Bately Ex-parte Emmanuel, (1881) 17 Ch. D. (C.A.)

[8] H.Rangarajula Naidu v. Madura Srinivasa Mills Ltd. (1963) 33 Comp. Cases 453: MR 1963 Mad 409 (DB) 1963 1 Comp. L.J. 221

Appointment of Liquidator: The shareholders appoint a liquidator to oversee the process. The liquidator's role is to wind up the company's affairs and distribute the assets.

Distribution of Assets: After paying off debts, any surplus assets are distributed among the shareholders according to their shareholding rights.

Company Status: The company remains under the control of the directors and shareholders until the liquidator assumes control.

Creditors' Voluntary Winding Up

Initiation: Initiated by the shareholders, but used when the company is insolvent and unable to pay its debts. This method is chosen when the company has more liabilities than assets.

Meeting of Creditors: Shortly after the resolution for winding up is passed, a meeting with the creditors is held to present them the company's financial situation. Creditors can appoint a different liquidator than the one chosen by the shareholders.

Appointment of Liquidator: The creditors may appoint a liquidator or affirm the company's choice. The liquidator's task is to liquidate the company's assets to pay off creditors[9].

Distribution of Assets: The liquidator pays the company's debts to the creditors in a fixed order of priority. If any assets remain after settling all claims, they may be distributed to the shareholders.

Company Status: The control of the company shifts from its directors to the liquidator, who manages all affairs of the company.

Key Differences

Purpose: Members' voluntary winding up occurs in solvent companies deciding to cease operations for strategic reasons, whereas creditors' voluntary winding up is a recourse for insolvent companies to address creditor demands.

Control and Appointment: In members' winding up, control initially remains with the directors and shareholders, and the shareholders appoint the liquidator. In creditors' winding up, creditors play a significant role in appointing the liquidator and directing the winding up process.

Declaration of Solvency: Required only in members' voluntary winding up as a declaration that the company can pay its debts.

Priority of Payments: In members' winding up, debts are usually already covered, and funds are directly returned to shareholders. In creditors' winding up, debt repayment to creditors takes precedence, and shareholders only receive something if funds remain.

Both processes are governed by the company's jurisdictional corporate law, which dictates specific procedures and legal requirements.

Conclusion:

The intentional winding up arrangements beneath the Indebtedness and Liquidation Code, 2016 check a critical flight from conventional bankruptcy systems. This instrument enables corporate substances to proactively start the winding up preparation, giving an organized and productive implies to address monetary trouble.

In conclusion, intentional winding up offers a few benefits. Firstly, it permits bankrupt companies to require control of their budgetary issues and start the liquidation process in a way that's opportune and conducive to protecting the esteem of partners. Furthermore, it gives a component for deliberate disintegration, which can relieve the negative effect on lenders and other influenced parties. Also, deliberate winding up fosters straightforwardness and responsibility by subjecting the method to administrative oversight.

In any case, challenges stay, especially concerning the ampleness of safeguards to anticipate mishandling and guarantee even handed dissemination of resources. Besides, there's a requirement for vigorous instruments to address potential clashes of intrigue and ensure the rights of lenders, workers, and other partners all through the winding up handle.

In exploring these complexities, continuous assessment and refinement of the intentional winding-up arrangements will be vital. By striking an adjustment between adaptability and responsibility, the Indebtedness and Insolvency Code can proceed to advance as an energetic system for settling budgetary trouble and advancing financial soundness.

References:

i. In any case, the rights of Creditors in levying execution, etc are restricted by Ss 183 -184 in every type of Winding-Up.

ii. The effect of insolvency on pre-liquidation Transactions in Company Law in Change (1987) p. 69

iii. Re Patrick & Lyon Ltd. (1963) Ch. 786

[9] Gopichand Rohra- Company Liquidations (Procedure & Precedents) 2005 p. 3

iv. Re Produce Marketing Consortium Ltd. (No 2) (1989) BCLC 520 (Chancy division)

v. Re Batey, Ex-parte Emmanual (1881) 17 Ch. D. 35

vi. Palmer's Company Precedents, Part II, 17Ih Ed. 256; Re Great Eastern Electric Co. Ltd; [1941) 1 All E.R. 409; Panchmahals Steels Ltd. v. Universal Steel Traders (1976) 46 Comp. Cases 706: 1976 Tax L.R. 1666 (Guj); Indian Oil and Produce Exporters Association v. Valji Shanhji and Co. (1977) 47 Comp. Cases 833 (DB) (Guj)

vii. Re Bately Ex-parte Emmanuel, (1881) 17 Ch. D. (C.A.)

viii. H.Rangarajula Naidu v. Madura Srinivasa Mills Ltd. (1963) 33 Comp. Cases 453: MR 1963 Mad 409 (DB) 1963 1 Comp. L.J. 221

ix. Gopichand Rohra- Company Liquidations (Procedure & Precedents) 2005 p. 3