
WINDING UP OF COMPANIES IN INDIA: LEGAL FRAMEWORK, PROCEDURE, AND TRIBUNAL JURISDICTION

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ABSTRACT

The winding up process is the last phase of a business's life cycle and the legal means by which a corporate entity dissolves following the settlement of its debts and the distribution of any remaining assets among its stakeholders. With the advent of the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016, which together create a structured mechanism for business closure, liquidation, and insolvency resolution, the framework governing winding up in India has undergone significant change. The involvement of the National Company Law Tribunal and the appellate oversight of the National Company Law Appellate Tribunal are specifically highlighted in this study, which looks at the institutional jurisdiction, procedural elements, and legal architecture involved in the winding-up process.

The definition and characteristics of winding up as a legal procedure that includes the realization of business assets, debt settlement, assessment of contributory and creditor claims, and final dissolution are examined in this study. It highlights the transition of voluntary liquidation procedures into the IBC regime while examining the two recognized forms of winding up in India: winding up by the Tribunal (compulsory winding up) and voluntary winding up. The statutory grounds under which the Tribunal may order winding up—fraudulent behavior, failure to comply with statutory obligations, management impasse, loss of substratum, and the "just and equitable" principle—are given special consideration.

Additionally, by identifying qualified petitioners like the corporation, contributories, the Registrar, and government-authorized individuals, the study assesses the procedural framework controlling winding up petitions. The study also goes into detail into the appointment, authority, and responsibilities of the corporate liquidator, including asset management, creditor settlement, reporting requirements, and tribunal oversight. To show how accountability and openness are maintained during liquidation, the function of advisory committees and supervision procedures is investigated.

The article also makes a distinction between winding up and dissolution, emphasizing that the former is a preliminary procedure that culminates in the termination of a company's existence. Additionally, it examines the effects of winding-up orders, such as limitations on court cases and safeguarding stakeholder interests. The report highlights how the current Indian framework aims to prohibit corporate structure abuse while facilitating effective departure mechanisms through statutory analysis and judicial precedents.

Overall, the study comes to the conclusion that the developing tribunal-centric winding up model strengthens India's corporate insolvency ecosystem and ensures orderly company closure by promoting procedural efficiency, creditor protection, and regulatory monitoring.

Keywords: Winding Up of Company, Companies Act, 2013, Insolvency and Bankruptcy Code, 2016, National Company Law Tribunal, & Corporate Liquidation.

INTRODUCTION

The legal procedure that formally terminates a company's existence is known as winding up. Prior to dissolution, it entails valuing the company's assets, paying off its debts and liabilities, and allocating any leftover surplus to its members. When a court or tribunal orders the dissolution of a company in response to a petition submitted to it, this is known as compulsory winding up or winding up by the Tribunal. This procedure is regulated in India under Chapter XIX of the Companies Act, 2013, which gives the National Company Law Tribunal (NCLT) the authority to make decisions and to appeal those decisions to higher courts and the National Company Law Appellate Tribunal (NCLAT). The goal is to guarantee a smooth closure that protects the public interest and the rights of creditors while avoiding abuse of the corporate structure. An integrated framework for corporate insolvency and dissolution in India is formed by these laws working in tandem with the Insolvency and Bankruptcy Code, 2016 (IBC).

MEANING OF WINDING UP OF A COMPANY

Winding up a company is the process of putting an end to a business by managing its assets for the benefit of its creditors and shareholders. A company is a corporate body, which is a group of individuals with the shared goal of operating a business and making money. The Companies Act of 2013 mandates that a business be formed and registered. A corporation, according to Chief Justice Marshall, is "an artificial being, invisible, intangible, and exists only in

contemplation of law." As a corporate entity, a corporation possesses the following traits:¹

- It is an independent legal entity.
- It is a synthetic individual.
- Its liability is restricted.
- It has the ability to possess distinct assets and properties.
- Its seal is common.
- Its succession is eternal.
- It has the ability to sue and be sued under its own name.
- Shares in a publicly traded corporation are easily transferable.

It is evident from the definition above that a corporation must be incorporated in accordance with the Act's provisions. Likewise, a correct process must be followed while closing a business. Winding up is the process of distributing excess among shareholders, paying creditors, and realizing assets in order to ultimately dissolve the business. Therefore, winding up can be defined as the ultimate phase that a business goes through before ceasing to exist and being dissolved.

MODES OF WINDING UP OF A COMPANY

According to Section 270 of the Act², a company can be wound up by either of the following two modes. These are:

- Winding up by the Tribunal (NCLT)/ Compulsory winding-up

¹ Winding up of a Company, *available at*: <https://blog.ipleaders.in/winding-up-of-a-company/> (last visited November 1, 2025).

² Companies Act, 2013, s. 270

- Voluntary winding up of a company

The winding up of a corporation is covered under Chapter XX of the Companies Act, 2013. While Part II contains rules for a company's voluntarily winding up, Part I covers winding up by the tribunal. However, the 2016 Insolvency and Bankruptcy Code does not include Part II.

- **Winding up by court/tribunal**

The winding up of a business by a court or tribunal is covered in Part I of Chapter XX of the Companies Act, 2013. The process by which a court or tribunal winds up a business is known as winding up by the court or tribunal. This method of winding up a business is also known as mandatory winding up. Who has the authority to petition for a company's winding up?

The following individuals may petition the Tribunal for the winding up of a company in accordance with Section 272 of the Companies Act, 2013:

1. Company

A firm itself may file a petition for winding up in accordance with Section 272(1)(a).³ However, the corporation must pass a special resolution in this regard before submitting a petition. The petition for winding up in the matter of BOC India Ltd. Zinc Products & Co. (P) Ltd.⁴ was deemed incompetent because it was submitted by an individual who was not authorized by the board of directors to do so.

2. Any Contributory

A contributory is a person who is obligated to contribute to the company's assets in the event that it is wound up, per Section 2(26)⁵ of the Act. Even though he owns fully paid-up shares or the firm has no excess assets left over after paying off all of its debts, a contributing may nonetheless file a petition for winding up under Section 272(2).⁶ One crucial prerequisite is that the shares for which a person is a contributing were either devolved to him by the former

³ Companies Act, 2013, s. 272(1)(a)

⁴ [1996] 86 COMP CAS 358 (PATNA)

⁵ Companies Act, 2013, s. 2(26)

⁶ Companies Act, 2013, s. 272(2)

holder's death or were granted to him or registered under him for at least six months during the 18 months prior to the start of winding up.

3. All or any persons mentioned above

The corporation and the contributories may also submit the winding up petition jointly or separately.

4. Registrar

The following situations allow the registrar to submit a petition for a company's winding up:

- The Company's actions went against the interests of national integrity and sovereignty, security of states, goodwill, morality, etc.
- If the tribunal determines that the company was established with an illegal and fraudulent intent, that its operations have been carried out dishonestly, or that the individuals who founded the firm have engaged in misconduct or fraud.
- The company's annual returns or financial statements were not filed with the Registrar on time.
- The tribunal's winding up of the business is fair and just.

However, if the business has approved a specific resolution to be wound up by the Tribunal, the Registrar cannot petition the Tribunal for winding up. Furthermore, before submitting such a petition, the Registrar needs to get permission from the Central Government, which is only given once the business has had a fair chance to argue its case. Furthermore, the Tribunal will only accept a petition for a company's own winding up if it is supported with a description of the company's affairs.⁷

5. Person authorised by Central Government

According to Section 272(1)(e),⁸ anyone who has been given permission by the Central

⁷ *Ibid.*

⁸ Companies Act, 2013, s. 272(1)(e)

Government to do so may also file a petition for winding up.

6. Central or State Government

If an organization's acts violate the nation's sovereignty and integrity, public order, morality, decency, foreign relations, etc., the federal or state governments may also file a petition to wind it up.

GROUNDS FOR WINDING UP BY COURT

Section 271⁹ deals with circumstances under which a tribunal can order for winding up of a company. These are:

1. Special resolution

The federal government or state governments may also file a petition to wind up an organization if its actions undermine the nation's integrity and sovereignty, public order, morality, decency, foreign relations, etc.

2. Sovereignty, integrity, and other factors

If a corporation violates India's sovereignty and integrity, state security, foreign relations, public order, morality, etc., a tribunal may wind it up. This is provided under the Act's Section 271(b).¹⁰

3. Fraudulent conduct of the company.

In accordance with Section 271(c),¹¹ the tribunal may order the winding up of the company if it determines that the registrar's application was filed with a fraudulent aim and unlawful purpose, that the company's affairs were conducted fraudulently, or that the individuals who formed the company committed fraud or misconduct.

4. Default in filing financial statements or audit returns

According to Section 271(d),¹² the tribunal may order the firm to be wound up if it fails to file

⁹ Companies Act, 2013, s. 271

¹⁰ Companies Act, 2013, s. 271(b)

¹¹ Companies Act, 2013, s. 271(c)

¹² Companies Act, 2013, s. 271(d)

its financial statements or audit returns with the registrar.

5. Just and equitable

If a tribunal determines that winding up a business is fair and just in the following situations, it may do so:

- **Deadlock:** Deadlock is the state in which two or more persons are unable to agree and come to a consensus. It is fair and appropriate for the tribunal to wind up the business when there is a standoff among the management. In the case of *Etisalat Mauritius Ltd. v. Etisalat DB Telecom (P) Ltd.*,¹³ the tribunal ordered the company to be wound up due to a deadlock and irretrievable breakdown between the company's major shareholders, which further hindered its performance and work and prevented the proposal of any scheme or solution.
- **Loss of Substratum:** Loss of substratum results when the company's goal fails. In the case of *Dunlop India Ltd.*,¹⁴ the company was forced to wind up since it was unable to demonstrate its short- or long-term business strategies and had been out of business for a while. The Supreme Court noted in the *Seth Mohan Lal v. Grain Chambers Ltd.*¹⁵ judgment that a firm loses its foundation when its primary goal is significantly undermined.
- **Losses:** It is fair and right to shut down a business if it is losing money and is unable to continue operating. In *Bachharaj Factories v. Hirjee Mills Ltd.*,¹⁶ a company was asked to wind up on this basis.
- **Oppression of minority:** The adoption of aggressive or oppressive policies by the leading owners toward the minority shareholders is another fair and just basis for a tribunal to order winding up.
- **Fraudulent purpose:** If a company was established for an illegitimate or unlawful

¹³ Company Petition No. 114 of 2012.

¹⁴ 2013 SCC ONLINE CAL 8195

¹⁵ AIR 1968 SUPREME COURT 772

¹⁶ 57 BOM LR 378

purpose, a tribunal may also order its wound up.

- **Public interest:** It is fair and just to wind up a business if doing so serves the public interest. Due to a number of unpleasant practices, including misleading billing, Millennium Advanced Technology Ltd.¹⁷ was ordered to wind up.
- **Company was a bubble:** It also qualifies as a just and equitable cause for winding up if the company was in a bubble, meaning it was never actually in operation.

APPOINTMENT OF OFFICIAL LIQUIDATOR

The winding-up procedure is carried out by an Official Liquidator, who is appointed in accordance with Section 275.¹⁸ A panel of qualified experts with at least ten years of experience, such as attorneys, chartered accountants, company secretaries, or cost accountants, is selected by the Tribunal to serve as the liquidator.

The Tribunal's order may also limit the authority of a provisional liquidator. After giving them a chance to be heard, the Central Government has the authority to remove someone from the panel for misbehavior, fraud, or incompetence. Any conflict of interest or lack of independence must be disclosed to the Tribunal by each appointed liquidator within seven days.

Section 276¹⁹ permits the tribunal to dismiss a company liquidation or a provisional liquidator it appoints for the following reasons:

- Misconduct;
- Fraud or misfeasance;
- Professional incompetence or failure to exercise due care and diligence;
- Inability to act as a liquidator;

¹⁷ [2004] EWHC 711 (Ch)

¹⁸ Companies Act, 2013, s. 275

¹⁹ Companies Act, 2013, s. 276

- Conflict of interest or lack of independence during the term of appointment²⁰

APPOINTMENT OF ADVISORY COMMITTEE

The Tribunal may order the formation of an Advisory Committee to support and counsel the Company Liquidator throughout the winding-up procedure in accordance with Section 287.²¹ The liquidator must call a meeting within 30 days of the winding-up order to select the committee's maximum of 12 members from among the contributories and creditors.

The committee has the authority to examine the company's assets, records, books, and liquidation properties. The Company Liquidator serves as its chair, and the applicable regulations specify how meetings are called, business is conducted, and decisions are made.

POWERS OF LIQUIDATOR

Section 277(5)²² states that a company liquidator will convene meetings of the winding up committee to support the liquidation process and related tasks such as:

- Take over the assets.
- Examination of statement of affairs.
- Recovery of property and other assets of the company.
- Review of audit reports and accounts.
- Sale of assets.
- Finalising the list of creditors and contributories.
- Compromise and settlement of claims.

²⁰ Winding up of a Company in India, *available at*: <https://blog.finology.in/Legal-news/winding-up-of-a-company> (last visited on November 2, 2025).

²¹ Companies Act, 2013, s. 287

²² Companies Act, 2013, s. 277(5)

- Payment of dividends.
- Any other function.

Before the tribunal, the company liquidator must also provide a report and the minutes of the committee's meetings. Until a report for the company's dissolution is submitted, the report will be submitted monthly and signed by all members in attendance (Section 277(6)).²³ Additionally, he will draft a final report for the winding up committee to approve (Section 277(7)).²⁴

According to Section 290,²⁵ the Company liquidator have the power to:

- Oversee the company's operations during the winding up process.
- Complete receipts, deeds, and other paperwork on the business's behalf, using its seal where required.
- Sell the company's movable and immovable assets as well as its actionable claims through a private contract or public auction.
- Offload the company's venture.
- Raise the funds needed to secure the company's assets.
- On behalf of the business, initiate or defend lawsuits or other legal actions, whether civil or criminal.
- Distribute the sale proceeds after resolving claims from creditors, workers, or other claimants.

²³ Companies Act, 2013, s. 277(6)

²⁴ Companies Act, 2013, s. 277(7)

²⁵ Companies Act, 2013, s. 290

- Examine the company's records and returns.
- On behalf of the business, draft, accept, create, and sign any negotiable document, such as a promissory note, bill of exchange, check, or hundi.
- Seek expert advice from others or designate a specialist to safeguard the company's assets.
- Take action, sign, execute, and verify documents, deeds, applications, and other paperwork related to the company's winding up, asset distribution, and the liquidator's duties and obligations.

DUTIES OF COMPANY LIQUIDATOR

The corporate liquidator is required by Section 288²⁶ to report to the Tribunal on a regular basis and at the conclusion of each quarter on the status of the firm's winding up. The execution and management of corporate liquidators' authority is covered in Section 292.²⁷ The liquidator of the company must take into consideration the instructions provided by the advisory committee or by the creditors or contributories in a resolution at any public meeting. In the event of a conflict, the directors of contributories and creditors will take precedence over those provided by the advisory committee.

The liquidator of the business may also:

- Summon the meetings of creditors or contributories.
- Summon meetings as and when directed or requested by the contributories and creditors in writing by not less than one-tenth.

A person may petition the tribunal to further affirm, reverse, or alter the decision if he feels wronged by the corporate liquidator's decision or any of its actions. The company liquidator is also required by Section 294²⁸ of the Act to keep accurate and consistent books of accounts,

²⁶ Companies Act, 2013, s. 288

²⁷ Companies Act, 2013, s. 292

²⁸ Companies Act, 2013, s. 294

receipts, and payments, which he will submit to the tribunal twice a year while in office. The corporate liquidator must provide the tribunal with the necessary vouchers and information, and the tribunal may order an audit of the accounts. The registrar will receive one copy of the audited accounts, while the other will be submitted to the tribunal. In the event that the account pertains to a government agency, a copy will be provided to the:

- Central Government if it is a member of the government company.
- State government if it is a member of the company
- Both the governments if they are members of the company.

SUBMISSION OF REPORTS BY THE LIQUIDATOR

In accordance with Section 281,²⁹ a liquidator appointed by the tribunal to wind up a firm or make an order in this regard must provide the tribunal with a report within sixty days that includes the following details:³⁰

- The nature and specifics of the company's assets, including their worth and a separate statement of the cash balance. The registered valuers must, however, provide the valuation.
- The total amount of capital issued, paid, and subscribed.
- The company's current and potential liabilities, including the names, addresses, and occupations of its debtors. It is also necessary to list the amounts of secured and unsecured obligations individually. Details about the securities, their value, and the dates they were issued must also be included for secured loans.
- All of the company's outstanding obligations, along with the relevant information, such as the names, addresses, and professions of the individuals to whom they are owed, as

²⁹ Companies Act, 2013, s. 281

³⁰ Sunaina Mondal, "Voluntary vs Compulsory Winding Up: A Comparative Study under the Companies Act, 2013" (2023) 3 *International Journal of Legal Studies and Social Sciences* 23.

well as the total amount owed.

- Promises made by the business.
- A list of contributors, the amounts owed to them, and information about overdue calls.
- Information on a company's intellectual property and trademarks.
- Details of any legal actions brought against or by the business.
- Any additional data that the company liquidator or tribunal deems required.

The report must include information about how the company was created or promoted, as well as any instances of fraud by any of its officers. Additionally, he will report on the company's business viability or strategies for increasing the value of its assets. A company liquidator may also provide further reports in accordance with Section 281(4).³¹ A person who identifies as a creditor or contributing may also view the report filed under the Section and take copies or extracts, according to subsection 5.³²

Section 282³³ of the Act addresses the tribunal's directives about the report provided by the company liquidator. It stipulates that the tribunal will establish a deadline for finishing the procedures and may amend it based on the report provided by the liquidator. After reviewing the report, it will also order the sale of the firm or its assets as a going concern. It can also designate a committee of creditors, promoters, and company officers to help the liquidator sell the company. The tribunal will order an investigation or instruct the company liquidator to file a criminal complaint if the report reveals that fraud has been committed within the company. The tribunal will also take the required actions to safeguard, maintain, or increase the value of the company's assets.

CONSEQUENCES OF WINDING UP

Section 278³⁴ of the Act states that the winding up order would be enforceable against all

³¹ Companies Act, 2013, s. 281(4)

³² Companies Act, 2013, s. 281(5)

³³ Companies Act, 2013, s. 282

³⁴ Companies Act, 2013, s. 278

contributories and creditors as though it had been issued in response to their joint petition. Furthermore, Section 279³⁵ stipulates that a firm against which a winding up order has been issued cannot be the subject of a lawsuit or other legal action without the tribunal's consent. A decision on an application in this area will be made in sixty days.

VOLUNTARY WINDING UP OF A COMPANY

A corporate debtor's corporate insolvency can be resolved through the Corporate Insolvency Resolution Process (CIRP). It can be initiated by filing an application to the Adjudicating Authority under Chapter II of Part II of the Code. The business starts the liquidation process if this procedure doesn't work. A corporate debtor, financial creditor, or operational creditor may initiate the voluntary winding up process under the IBC.

This Act is known as voluntarily winding up of a firm when a business chooses to wind up its affairs and continue with the necessary procedures on its own. The voluntarily winding up of the firms is covered in Part II of Chapter XX of the Act.

Circumstances in which a company can be wound up voluntarily

The following conditions are listed in Section 304³⁶ for a firm to be wound up voluntarily:

- In a general meeting, the company adopts a resolution pertaining to voluntarily winding up because its articles specify a certain length or because an event occurs that calls for the firm's dissolution;
- A special resolution pertaining to voluntarily winding up is passed by the company.

However, in 2016, this section and the clauses pertaining to a company's voluntary winding up were left out. The voluntary winding up procedure is now covered by the Insolvency and Bankruptcy Code, 2016.

MEETING OF CREDITORS

Notifying the company's creditors is essential, and this can be accomplished by mail. They are

³⁵ Companies Act, 2013, s. 279

³⁶ Companies Act, 2013, s. 304

informed of the total amount owed to each creditor during a meeting. After the board of directors presents the statement of affairs, the procedure is started if the majority believes the company should be wound up voluntarily. However, an application for mandatory winding up of the company or winding up by a tribunal must be sent to the tribunal within 14 days, and the registrar must be informed within 10 days if the majority chooses this option. According to the Insolvency and Bankruptcy Code of 2016, a corporate liquidator is designated to continue the voluntary winding up procedure. The liquidator ultimately assesses the company's assets and provides the tribunal with a report.

PROCEDURE OF VOLUNTARY WINDING UP

Furthermore, the voluntary liquidation of corporate persons is covered by Section 59³⁷ of the Insolvency and Bankruptcy Code, 2016. It stipulates that a corporate entity may start the liquidation process under the Act if it wishes to do so willingly and has not committed any default. Nonetheless, the following requirements must be met by a registered business entity's operations::

- The majority of the company's directors must make a declaration, which must be confirmed by an affidavit, stating:
 - The company's affairs have been thoroughly investigated, and it has been determined that it is either debt-free or will be able to pay off its debts in full through the voluntary liquidation of its assets.
 - No one is being defrauded by the company's liquidation.
- The following paperwork needs to be included with the declaration:
 - The company's financial records and statements for the last two years or since it was incorporated.
 - A valuation report provided by a registered valuer that details the company's assets.

³⁷ Companies Act, 2013, s. 59

- Within four weeks of the company's declaration, a special resolution pertaining to its voluntary winding up must be passed, or a general resolution pertaining to voluntary winding up must be passed at a general meeting when the company's articles' specified duration has passed or an event occurs for which the articles stipulate that the company should be dissolved.

Additionally, the Section stipulates that within seven days of the resolution's approval by the creditors, the firm shall notify the Registrar and Board of the resolution being passed for the company's liquidation. The company's liquidation procedures will be considered to have started on the day such a resolution is passed, with the consent of creditors. The liquidator will submit an application to the adjudicating authority for the dissolution of the firm once all of its affairs have been concluded and its assets have been fully liquidated. The company shall be dissolved in accordance with the Authority's order, and a copy of the order must be delivered within fourteen days to the appropriate authority where the company is registered.

POWERS AND DUTIES OF COMPANY LIQUIDATOR UNDER THE CODE

Section 35³⁸ of the IBC states that a liquidator will carry out the following tasks:

- Confirm the company's creditors' claims.
- Take into custody all of the company's properties, assets, and actionable claims.
- Assess the company's property and assets and write a report on the results.
- Take action to safeguard and maintain the company's assets and properties.
- Continue operating the company for a profitable liquidation.
- He is also able to sell the company's moveable or immovable assets.
- On behalf of the business, draft, accept, create, and sign any negotiable document, such

³⁸ The Insolvency and Bankruptcy Act, 2016, s. 59

as a promissory note, hundi, or bill of exchange.

- He can also get whatever expert help he needs to carry out his responsibilities.
- File lawsuits against the firm or defend them. Examine a company's financial situation.

DUTIES RELATED TO DISSOLUTION OF A COMPANY UNDER THE COMPANIES ACT, 2013 PRIOR TO 2016

Prior to 2016, Section 318³⁹ of the Companies Act of 2013 mandated that the liquidator of a company must prepare a report demonstrating that the company's assets and debts have been sold and that a general meeting of the company must be called to finalize the accounting. A resolution for the company's dissolution may be passed if the majority of members vote to wind up the business after seeing the liquidator's report.

In order for the tribunal to issue an order for the company's dissolution, the company liquidator must submit the following paperwork to the registrar and submit an application and report regarding the business's winding up to the tribunal within two weeks of this meeting:

- A copy of the final financial statements pertaining to the company's winding up, along with a report on each meeting.
- A duplicate of resolutions adopted throughout these sessions.

POWER TO ACCEPT SHARES

According to Section 319,⁴⁰ if a business is liquidated voluntarily and all or a portion of its operations are to be sold or transferred to another firm, the liquidator of the transfer or business may, with the approval of a special resolution that grants him general authority:

- As payment, acquire shares, insurance, or other interests in the transferee business.
- Sign any other agreement that allows the members of the transferor company to partake

³⁹ Companies Act, 2013, s. 381

⁴⁰ Companies Act, 2013, s. 319

in the profits or obtain any other benefit from the transferee company, such cash, shares, insurance, or other benefits like interest.

These agreements must be made with the secured creditors' full cooperation, though. The Section further stated that any agreement, sale, or transfer will be legally binding on the transferor company's members. If a member of the transferor company did not vote in favor of the special resolution and voiced his disagreement in writing to the company liquidator within seven days of the resolution's passage, the liquidation may be required to:

- Refrain from implementing the resolution or
- Acquire his interest at a price decided by the registered valuer or the agreement.

Additionally, if the liquidator chooses to purchase a member's interest, the funds he raises will be decided by a special resolution and paid prior to the company's dissolution. However, in 2016, the clause was left out.

WINDING UP OF UNREGISTERED COMPANIES

Chapter XXI, Part II, addresses the winding up of unregistered businesses. An unregistered corporation cannot be wound up voluntarily under the Act, according to Section 375⁴¹ of the Act. It stipulates that the following situations will result in the winding up of such a company:

- The business is either dissolved, stops operating, or is merely operating for winding up purposes.
- The business cannot afford to pay its debts.
- The panel believes that closing the business is fair and just.

Additionally, the section states that any partnership firm, limited liability partnership, society, cooperative society, association, etc. shall be considered an unregistered corporation; however, the following will not be:

⁴¹ Companies Act, 2013, s. 375

- A railway corporation established in accordance with an Act of Parliament or another Indian law.
- Any business that has an Act registration.
- Any business that had an office in Burma, Aden, or Pakistan but was registered under the former company law.

A foreign corporation that was incorporated outside of India but conducts business there may be wound up as an unregistered company under Section 376⁴² if it stops conducting business there.

OFFICIAL LIQUIDATORS UNDER THE COMPANIES ACT

According to Section 359,⁴³ the tribunal may designate official liquidators to wind up businesses. It stipulates that in order to carry out the duties of an official liquidator, the Central Government may designate official liquidators, joint liquidators, and deputy or assistant official liquidators. Additionally, Section 360⁴⁴ stipulates that the official liquidator would perform the responsibilities and use the authority designated by the Central Government. As instructed by the Central Government or the tribunal, it may also carry out inquiries or investigations.

SUMMARY PROCEDURE FOR WINDING UP OF A COMPANY

According to Section 361,⁴⁵ the central government may order the winding up of a company that falls under one of the specified types of corporations and has assets with a book value of no more than one crore rupees. The central government will designate an official liquidator in this regard following the issuance of the order. Additionally, he will assume custody of all the company's assets, effects, and actionable claims. Within 30 days of his employment, he will also report to the central government on this matter and whether any fraud has occurred in the organization.

⁴² Companies Act, 2013, s. 376

⁴³ Companies Act, 2013, s. 359

⁴⁴ Companies Act, 2013, s. 360

⁴⁵ Companies Act, 2013, s. 361

In the event that fraud has been perpetrated, the central government may, upon receiving the report, order an investigation into the company's operations. In accordance with section I of Chapter XX, the government may ultimately order the winding up of the business after reviewing the investigation report.

POWERS OF TRIBUNAL WITH RESPECT TO WINDING UP OF A COMPANY

In accordance with Section 273,⁴⁶ the tribunal may issue the following rulings in response to a petition for a company's winding: • Deny the petition, whether or not there are fees involved; • Any temporary directives;

- Dismiss the petition with or without costs;
- Any interim order;
- Appointment of provisional liquidator till the order of winding up is made;
- Order of winding up of a company either with or without costs;
- Any other order.

Within ninety days of the petition being submitted to the tribunal, any such order must be issued. Additionally, the Section stipulates that the tribunal will offer notice and a reasonable opportunity for the corporation to state its case before designating a provisional liquidator. Additionally, it states that if a petition is filed arguing that winding up the corporation is fair and just, the tribunal may decline to issue an order for winding up if there is another remedy available and the petitioners are not acting fairly.

When a petition for winding up is filed, Section 274⁴⁷ states that the tribunal is satisfied if it can force the firm to submit its objections and statement of affairs within 30 days. Before giving instructions to the corporation, the tribunal may also order the petitioner to provide security for expenses. A company's right to contest the petition will be lost if it does not submit the

⁴⁶ Companies Act, 2013, s. 273

⁴⁷ Companies Act, 2013, s. 274

statement of affairs, and its officers and directors who are found to be at fault would face consequences. Any director or official of the company who violates the terms of this section faces a minimum fine of twenty-five thousand rupees, a maximum fine of five lakh rupees, or imprisonment for up to six months.

Section 282⁴⁸ further stipulates that the tribunal may, following consideration of the liquidator's report, establish a deadline for the completion of the winding up process and the dissolution of the business. It may, however, also change the deadline if it is not cost-effective or profitable to carry on with the procedures. In the event that the tribunal receives a report about fraud, it will order an investigation, issue any additional orders, and provide any required guidance. It may also instruct the liquidator of the company to bring criminal charges against those responsible for fraud.

In accordance with Section 285,⁴⁹ the tribunal will also settle a list of contributories, correct the necessary member registration, and seek for the discharge of the company's assets following the issuance of the winding up order. Additionally, it will distinguish between individuals who are liable for the obligations of others and those who are contributors in their own right. Every person who is or has been a member must be included in the tribunal's list of people who are responsible to contribute enough to the company's assets to cover its debts and liabilities after meeting the following requirements:

- If a member stops participating for a year prior to the winding up process starting, they will not be required to make contributions.
- If an individual stops being a member, they will not be held accountable for any debt or liability of the firm.
- If a person won't be held accountable until the current members are unable to make the necessary payments.
- A person will not be held accountable for more than the sum of the shares that he is

⁴⁸ Companies Act, 2013, s. 282

⁴⁹ Companies Act, 2013, s. 285

liable for if the firm is share restricted.

- If a company is limited by guarantee, no member will be required to give more than what he would have contributed to the firm's assets if it were being wound up. However, if the business has a share capital, the member must contribute the amount that is still owed on the shares that he owns, if the business is share restricted.

DIFFERENCE BETWEEN WINDING UP AND DISSOLUTION OF A COMPANY

Dissolution means that something ceases to exist. Therefore, the dissolution of the firm signifies the end of its existence. The Act's Section 302⁵⁰ addresses the tribunal's authority to dissolve a company. According to this provision, the liquidator of a company may petition the tribunal for the firm's liquidation once all of its affairs have been resolved. If the tribunal is satisfied, it may order a company's dissolution. The registrar must receive a copy of the order within 30 days. The liquidator of the company will handle this; but, he will face consequences if he does not.

However, dissolution and winding up are two distinct concepts with different meanings. A winding up does not imply that the business has gone out of business. It only sets the stage for the company's dissolution, which implies that it is no longer in operation. The two differ in the following ways:

Basis of difference	Winding up	Dissolution of company
Meaning	It is the procedure used to start a company's dissolution	When a firm dissolves, it indicates that it no longer exists.
Existence of company	A company's legal entity survives winding up and is still subject to lawsuits	Dissolution signifies the end of a company's legal existence as well.

⁵⁰ Companies Act, 2013, s. 302

Business of company	For the purpose of winding up, a company is permitted to carry on with its operations.	Ceases on dissolution.
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PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

All types of winding up are covered by Part III of Chapter XX of the Companies Act of 2013.⁵¹

All debts and claims, whether current, future, certain, or contingent, are admissible as evidence against the firm under Section 324.⁵² Workmen's dues, government taxes, and employee funds are among the overriding and preferential contributions that are given priority under Sections 326⁵³ and 327.⁵⁴

Unless authorized by the Tribunal, transfers not made in good faith, assignments to trustees, and any property disposition or share transfer following winding up are all null and void under Sections 329,⁵⁵ 330,⁵⁶ and 334.⁵⁷

Officers of the corporation who commit fraudulent conduct, such as hiding assets or fabricating records while winding up, are subject to fines under Section 337.⁵⁸

Making false claims or pressuring someone to offer the business credit.

- With the intent to cheat the creditors, made any gifts, transfers, or charges on the property, or caused or assisted in the levying of any execution against the property.
- With the goal to cheat the company's creditors, any portion of the property that has been hidden or removed since the date of the unfulfilled judgment or order for payment of money against the company.

⁵¹ Winding up of a Company in India, *available at*: <https://blog.finology.in/Legal-news/winding-up-of-a-company> (last visited on November 2, 2025).

⁵² Companies Act, 2013, s. 324

⁵³ Companies Act, 2013, s. 326

⁵⁴ Companies Act, 2013, s. 327

⁵⁵ Companies Act, 2013, s. 329

⁵⁶ Companies Act, 2013, s. 330

⁵⁷ Companies Act, 2013, s. 334

⁵⁸ Companies Act, 2013, s. 337

Aspects of the winding-up process are covered in Part III of Chapter XX of the Companies Act of 2013. Liability for improper accounting and dishonest business practices is imposed under Sections 338⁵⁹ and 339.⁶⁰ After a winding-up order is issued, Section 346⁶¹ gives contributories and creditors the opportunity to view the firm's records, and Section 351⁶² forbids the liquidator from transferring business funds into personal bank accounts. On the request of the liquidator or any other interested party, the Tribunal may also declare a company's dissolution void under Section 356⁶³ within two years of the company's dissolution. A certified copy of this ruling must be sent to the Registrar within 30 days.

CASE LAWS SURROUNDING WINDING UP OF A COMPANY

IL & FS Engineering and Construction Company Ltd. v. Government of Karnataka⁶⁴

Facts of the case

In this case, the Bangalore Development Authority (BDA) and the petitioner, an infrastructure development business established under the Companies Act of 1956, signed a contract for specific construction projects. Arbitration was used to settle disagreements that developed between the parties during the implementation process. The petitioner was granted an arbitral award, but the BDA did not uphold the ruling or provide the necessary funds. As a result, the petitioner filed the current winding-up petition, asking the Karnataka government to order the BDA to be wound up for its noncompliance with the arbitral ruling and to designate an official liquidator to oversee its operations and finish the winding-up procedure.

Issues involved in the case

1. Whether Bangalore Development Authority is a company?
2. Whether winding up has to be ordered against the authority?

Judgment of the court

The respondent contended that the winding-up rules did not apply to the Bangalore

⁵⁹ Companies Act, 2013, s. 338

⁶⁰ Companies Act, 2013, s. 339

⁶¹ Companies Act, 2013, s. 346

⁶² Companies Act, 2013, s. 351

⁶³ Companies Act, 2013, s. 356

⁶⁴ (2019) 09 KAR CK 0001

Development Authority (BDA) because it was a municipal authority, but the petitioner maintained that the BDA may be wound up under the Companies Act since it was a government corporation.

According to the Karnataka High Court, a winding-up order is not always necessary and should only be used as a last resort because it causes businesses to close, jobs to be lost, and the state to lose money. The court stressed that winding up must take into account the company's overall financial situation and cannot be utilized only for debt recovery.

In the end, the court determined that the BDA was not eligible for a winding-up order under the Companies Act since it was a local body rather than a government corporation.

M/S Kaledonia Jute and Fibres Pvt. Ltd. v. M/S Axis Nirman and Industries Ltd. & Ors.⁶⁵

Facts of the case

The respondent contended that the winding-up rules did not apply to the Bangalore Development Authority (BDA) because it was a municipal authority, but the petitioner maintained that the BDA may be wound up under the Companies Act since it was a government corporation.

In order to recall the winding up order, the first respondent then filed an application and paid the second respondent, the creditor, the amount that was owed. On the grounds that money was owed to numerous creditors, the official liquidator opposed this application. The appellant filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) before the National Company Law Tribunal, claiming to be the company's creditor. The High Court also received an application to transfer the winding up petition to the NCLT, Allahabad. However, because the winding up order had already passed, the application was denied. The Supreme Court received a civil appeal from someone who was upset that the application had been denied.

Issues involved in the case

1. Under what circumstances, a winding up proceeding which is pending in the High

⁶⁵ 2020 SCC OnLine SC 943

Court be transferred to the NCLT?

Judgment of the court

The Honorable Supreme Court noted that the winding up procedures' transfer is contingent upon their current status in the company court. The party may choose to request a transfer of winding up proceedings to the NCLT under the fifth proviso of Section 434 of the Act. Three categories have been established to classify the ongoing winding up proceedings:

- The voluntarily winding up process.
- Being wound up because of debt inability.
- Reasons besides not being able to pay bills.

The court further noted that if the High Court of Allahabad is permitted to continue with the winding up process and the NCLT is permitted to continue with the investigation into an application submitted under Section 7 of the Code, the purpose of the IBC will be defeated. Therefore, it was decided to move the winding up procedures that were still ongoing before the Allahabad High Court to the NCLT.

CONCLUSION

Winding up can be seen of as the final phase of a company's existence, following its dissolution. As previously mentioned, the current Companies Act of 2013 offers two methods. In order to address winding up difficulties, the National Company Law Tribunal (NCLT) was created. In addition, the National Company Law Appellate Tribunal (NCLAT) was created to handle appeals resulting from NCLT rulings.

Furthermore, it can be said that NCLT is crucial to a company's winding up. In addition to providing definitive guidelines to ensure a fast and efficient winding up procedure, it takes all necessary steps to safeguard the interests of creditors and debenture holders while also attempting to be incredibly transparent and simple.

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