

M.COM. – FIRST YEAR

(II SEMESTER)

Paper: Corporate Laws And Governance

UNIT -I: The Insolvency and bankruptcy Code, 2016

Topic: Voluntary Liquidation of Corporate Persons

Lecture: 4

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Voluntary Liquidation of Corporate Persons

The provisions w.r.t. Voluntary Winding Up of Corporate persons became effective on notification by Central Government on 30 March 2017, inter alia, Section 59 of the Insolvency and Bankruptcy Code, 2016 (Code) which deals with voluntary liquidation of corporate entities which will come into effect from 1st April 2017. Parallely, on the very next day, the Insolvency and Bankruptcy Board of India IBBI, vide its notification dated 31 March 2017, notified the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (Regulations) which will come into effect from 1st April 2017.

The enforcement of the relevant provisions pertaining to Voluntary Winding Up of Corporate persons is a progressive step towards ease of Business and related activities for organisations.

It is aimed at speedy, standardised, flexible and exclusive mechanism for winding up of Corporate persons.

Unlike the erstwhile provisions governing the voluntary winding up of corporate persons for eg:- Companies Act, 1956 in case of Companies or Limited Liability Partnership Act, 2008 in case of limited liability partnerships the newly enforced Code as it's preamble quotes in true sense consolidates the laws inter alia relating to Voluntary winding up of Corporate persons.

WHO ARE INCLUDED IN THE DEFINITION OF CORPORATE PERSONS?

Ans: Section 3(7) of The Insolvency And Bankruptcy Code, 2016 defines and includes Corporate Persons as a Company Registered under the Companies Act, 2013 includes companies incorporated under previous company law and a Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008.

However, it excludes entities who are financial service provider.

WHAT ARE THE PRE-REQUISITE FOR VOLUNTARY LIQUIDATION AS STIPULATED BY THE CODE?

Ans: The following conditions are pre-requisites to be satisfied by a corporate person who wishes to opt for voluntary liquidation: –

- The Corporate person must be solvent.
- Preferably a letter by Creditors of the Corporate Person representing atleast 2/3rd in value out of the total debt to the effect stating that they do not object to the preposition of Voluntary Liquidation.
- A declaration by majority of directors/partners affirming that the Corporate Person is in position to pay all its debts and the Voluntary Liquidation is not undertaken to Defraud any person.

WHAT ARE THE STEPS INVOLVED IN THE PROCESS OF VOLUNTARY LIQUIDATION?

Ans: The steps involved in the Voluntary Liquidation are as follows: –

- Obtaining Declaration from majority of Directors (Within 4 weeks of such Declaration Special Resolution at the General shall be passed). In case of Limited Liability Partnership, a Declaration shall be obtained from majority of the Designated Partners shall be obtained.
- Conduct Board Meeting for voluntary liquidation, Recommendation of liquidator and convening General Meeting.
- A General Meeting of Shareholders of the Company for passing a special resolution approving voluntary liquidation and appointment of liquidator Within Four weeks of obtaining the abovementioned Declaration shall be conducted. In case of a Limited Liability partnership resolution passed by a special majority of the partners or contributories, as the case may be, for voluntary liquidation and appointing an insolvency professional to act as the liquidator within Four weeks of obtaining the Declaration.
- Creditors representing atleast 2/3rd of the total debt in value shall approve voluntary winding-up of the Corporate Person within 7 days of General Meeting.
- Informing the ROC and The Insolvency Board within 7 days about the said Resolution.
- Public Announcement by Liquidator within 5 days of his appointment calling for claims if any within 30 days from the date of resolution for liquidation at the General Meeting was passed shall be made.
- Collection of Claims by Liquidator
- Verification of the claims within 30 days by the Liquidator
- Communication by Liquidator of his acceptance or rejection of claims within 7 days
- Opening of separate account for liquidation
- The Liquidator shall pay off the corpus collected in the sequence as stipulated
- the liquidator shall file a report along with application to NCLT
- the liquidator shall also submit report to ROC and Insolvency Board
- The NCLT shall pass an order for Dissolution of the Company, however there is no provision which specifies the time limit within which the NCLT is obliged to pass such an order.
- The Order issued by the NCLT shall be filed with ROC within 14 days

WHAT IS THE ROLE OF NATIONAL COMPANY LAW TRIBUNAL (NCLT) AND THE STAGE IN WHICH STAGE DOES THE NATIONAL COMPANY LAW TRIBUNAL(NCLT) GETS INVOLVED?

Ans: The NCLT is the Adjudicating Authority who is Competent to Declare the Corporate Person as dissolved after due liquidation and distribution of its assets.

The NCLT comes into the picture only at the final stage of liquidation after application for Dissolution of Corporate Person is made by Liquidator duly appointed after distribution of Liquidation assets of the Corporate Person by following the procedure stipulated under the Code.

WHAT ARE THE TAX IMPLICATIONS OF SUCH VOLUNTARY LIQUIDATION OF CORPORATE PERSON?

- The company having accumulated profits
- The company having share premium
- The company having revaluation reserves or capital reserves arising out of earlier merger
- Difference between book value and market value of assets
- How market value to be ascertained of assets getting distributed

- Transfer of shares just before liquidations if it is sale than can the value which is given as part of liquidation and the price at which exchanged are different than consequences for the old shareholder and new shareholder?

Ans: Pursuant to the provisions of Income Tax Act 1961, on the voluntary liquidation of a corporate person is as follows:

1. Company

- To the extent company having accumulated profits tax is payable by the company pursuant to the provisions of Section 2(22)(d) of the Income Tax Act 1961 as 'Deemed dividend'.
- The amount received or market value of asset received as on date of distribution by shareholder pursuant to Voluntary Liquidation shall be chargeable to income-tax under the head "Capital gains" pursuant to provision of Section 46 of the Income Tax Act 1961 with deduction of deemed dividend as taxed above and cost of acquisition (indexation).

2. Limited Liability Partnership Firm:

Pursuant to clause 4 of section of 45 the profits arising on transfer of capital assets will be taxable as capital gains in the hands of Firm and Fair Market Value of the assets on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer.

Please Note: On Liquidation tax implication under section 115QA will not arise as it is not buy back as per provision of the Companies Act 2013