

LEGALFOXES LAW TIMES

WINDING - UP OF COMPANIES IN LIGHT OF COMPANIES (WINDING UP) RULES, 2020.

By Harpreet Singh Malhotra

ABSTRACT

Just as a company comes into existence only after fulfilling and complying with the provision of chapter II related to incorporation of company under Companies Act, 2013, a company come to an end after fulfilling and complying with the provision of chapter XX related to Winding Up of company under Companies Act, 2013. For the purpose of easement in the process or procedure of incorporation of company and winding up of company, the legislature provides rules. Rules help in governing law. They are secondary in nature. They are in place to make the parent Act work effectively.

The main aim of this research paper is to study the provisions of Companies Act, 2013 in way as to understand how company's existence comes to an end. In this research paper, provisions as well as procedure of winding up is also discussed in length. In the later part of this research paper, provisions of Companies (Winding up) Rules, 2020 are also discussed in length. Further the effect of winding up of a company. Furthermore, the research contains few landmark judgments for the better understanding of the topic.

KEY WORDS – Winding-Up, Compulsory winding up, Tribunal, Companies Act, 2013, Companies (Winding up) Rules, 2020, official liquidator.

INTRODUCTION

What is a company? A company as per **Section 2(20)** refers to a company incorporated under Companies Act, 2013 or under any previous company law.¹ In layman's term when the owner (promoter of the company) of the business registers its business under registrar of companies. Creation of a company is also called "Incorporation of company". A company can be incorporated for any purpose such as earning profit, providing service for profit or just for providing public welfare. However, one should always keep in mind that whatever is the purpose of company, it shall not be unlawful in purpose or it shall not provide unlawful consideration. Anything which is against public policy shall always be void or as in layman's term, "not valid" or "bad in law". To incorporate a company, one has to follow and comply the provisions of Chapter – II of Companies Act, 2013 and rules made there under. **Section 8** of Companies Act, 2013 talks about incorporation of company for charitable purposes. Then it is said that there exist a company.

What is winding up of company? According to **Section 2 (94A)**, it means winding up or liquidation.² In layman's term, when the company, no long can conduct the business activities or conduct the purpose for which it was incorporated due to any of the large number of reasons, then the company has to be put to an end. The process of putting the existence of the company to an end is called "winding up of company". Winding up is the permanent closing down of its business. It is similar to "Liquidation of company".

According to **Taxmann's**, winding up can be defined as follows –

“Winding up is a means by which the dissolution of a company is brought about and its assets are realised and applied in the payment of its debts. After satisfaction of the debts, the remaining

¹Section 2(20), Companies Act, 2013.

²Section 2(94A), Companies Act, 2013.

balance, if any, is paid back to the members in proportion to the contribution made by them to the capital of the company. The liquidation or winding up of a company is the process whereby its life is ended and its property is administered for the benefit of its creditors and members. An Administrator, called a liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights."³

Winding up of company is governed by Companies Act, 2013 and rules made there under as well as the Insolvency and Bankruptcy Code, 2016 as both provides methods of winding up of a company. Mainly there are two methods by which a company's existence can come to an end –

- (a) by winding up of company by Tribunal governed under Companies Act, 2013 under Chapter XX - Winding up; and
- (b) By voluntary winding up by corporate persons governed under Insolvency and Bankruptcy Code, 2016 under Chapter V - Voluntary liquidation of corporate persons.

1.1 REVIEW OF LITERATURE –

1. ***Palmer's Company Precedents, Part 11, Edition 1960*** – "A winding up petition is a perfectly proper remedy for enforcing payment of a just debt."
2. ***Arshit Thakur*** – Liquidation of a company deals with the Section 271 of the Companies Act, 2013 and the compulsory winding up will be dealt by the tribunal and voluntary will be by passing a resolution and realizes of all company assets

³<https://www.taxmann.com/blogpost/2000000260/winding-up-of-a-company.aspx> (last visited 4th, May 2020)

3. **Lorraine Conway** – Compulsory liquidation of a company arises when the company fails or unable to pay its debts to the creditors at that situation the company falls into the liquidation, the company will be wound up according to the Companies Act, 2013.
4. **Sharon Sheehan** – A company takes many difficulties to wind up or to continue trending but the decision lies in the hand of directors, but when a suit is filed before the Court then the court has the discretion for the grant for the compulsory liquidation.
5. **Avtar Singh** – Once the court grants the order for the compulsory liquidation. The liquidator will be appointed for the further proceedings of the company and only the official liquidator will distribute the assets of the company to the creditor and the members of the company.
6. **Shriram** – As per the Insolvency and Bankruptcy Code, 2016, if the tribunal is of opinion that acts of the company are fraudulent, the company is compulsorily liquidated.
7. **Jonathan Munnery** – The procedure to be followed at the time of liquidation company is solvent falls under the voluntary winding up by its members and when company falls under insolvent the compulsory liquidation arises
8. **K. S. Anantharaman** – The procedure should be followed as per the court orders. If the court has mentioned the time of liquidation then the duty of the liquidator he should be liquidating on that time.
9. **Halsburry** – Winding up is an essential legal process to end the existence of the company.

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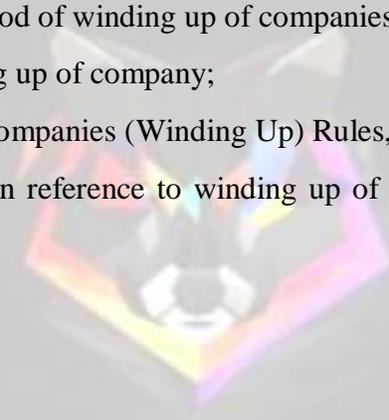
1.2 METHODOLOGY OF RESEARCH –

The study is essentially of “Doctrinal Research Methodology” including primary and secondary sources. The primary sources include *Companies Act, 2013* and *Companies (Winding up) Rules, 2020*, and subsequent amendments in Company law. The study explains the change prospect of winding up of the Company in India without comparing with other countries. The secondary

sources include available books, research articles, and paper, briefs and opinion published in various journals and magazine. Its scope is very narrow and thus, there is no such need of field work.

1.3 OBJECTIVE OF RESEARCH –

- Discuss provisions and procedure for winding up of companies under Companies Act, 2013;
- Discuss methods of winding up of company;
- Discuss in detail the method of winding up of companies by tribunal;
- Discuss effects of winding up of company;
- Discuss key features of Companies (Winding Up) Rules, 2020;
- Discuss landmark cases in reference to winding up of companies under the Companies Act, 2013.



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ESSENTIAL LEGAL PROVISIONS UNDER COMPANIES ACT, 2013

For the purpose of understanding the concept and procedure of winding up of company, under Companies Act, 2013, in my opinion, the following sections of Companies Act, 2013 shall be taken into consideration – Section 270 to Section 273, Section 275, Section 280 and Section 290.

2.1 PROVISIONS ESSENTIAL FOR WINDING UP

SECTION 270 – WINDING OF COMPANIES BY TRIBUNAL.

The first thing one should know about winding up of companies is that by what method a company can be wound up under Companies Act, 2013. Provision of Section 270 talks in this regard. Section 270 states the following –

“The provision of Part I shall apply to the winding up of a company by the Tribunal under this Act.”⁴

Thus, as per section 270, the only method, under Companies Act, 2013, by which a company existence can come to an end is by ‘*Winding up by Tribunal*’.

Earlier before 15th November 2016, the provision of Section 270 provided an additional method of winding up which was “*Voluntary winding up*”. Voluntary winding up is in itself of two kinds namely – (a) members voluntary winding up, and (b) creditors voluntary winding up.⁵ These two types of winding up is no longer available under Companies Act, 2013.

⁴Section 270, Companies Act, 2013.

⁵ The Company law, Avatar Singh (17th edition) (pg. 647) (last viewed 10th June, 2020)

SECTION 271 – CIRCUMSTANCES IN WHICH COMPANY MAY BE WOUND UP BY TRIBUNAL.

Section 271 provides the grounds in which company may be wound up by Tribunal. Section 271 states the following in this regard –

- 1) “A company may, on a petition under Section 272, be wound up by the Tribunal –
 - (a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;
 - (b) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
 - (c) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;
 - (d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
 - (e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.”⁶

In simple language there are 5 grounds under which a company maybe wound-up by the National Company Law Tribunal (Hereinafter referred to as ‘**Tribunal**’). These 5 grounds are –

⁶Section 271, Companies Act, 2013.

First ground is that, if company in its Annual General Meetings comes up to a resolution by means of special resolution about winding up of company by the Tribunal.

Second ground is that, if the company works against public policies in reference to the following –

- (a) act against ‘Sovereignty and integrity of India’; or
- (b) act against ‘the security of the State’; or
- (c) act against the ‘friendly relations with foreign States’; or
- (d) act against ‘public order,decency or morality’.

Third ground itself includes three different acts and if any of these three acts are done it shall constitute a ground for winding up of the company:

- (a) the company’s affairs have been conducted in a fraudulent manner; or
- (b) the company was formed for fraudulent and unlawful purpose; or
- (c) the persons concerned in the management of its affairs have been guilty of fraud, misfeasance or misconduct.

To enable this ground, the tribunal should be of the opinion that the company should be wound up.

Fourth ground is that if the company fails to file financial returns to the registrar of the company. The failure should be for 5 consecutive financial years. Anything less than 5 years doesn’t enable this ground for winding up of the company.

Fifth ground is that when the Nation Company Law Tribunal is of the opinion that the company should be wound up as it will be just.

SECTION 272 – PETITION FOR WINDING UP

Section 272 talks in depth about who can file petition for winding up. Sub-section (1) of section 272 provides in brief the names of personnel eligible for filing the winding up petition. Sub-section (1) of Section 272 states the following –

- 1) “Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—
 - a) The company;
 - b) Any contributory or contributories;
 - c) All or any of the persons specified in clauses (a) and (b) together;
 - d) The Registrar;
 - e) Any person authorised by the Central Government in that behalf; or
 - f) In a case falling under clause (b) of sub-section (1) of section 271, by the Central Government or a State Government.”⁷

Sub-section (2) mainly talks the contributory’s position of filing the petition. Section 2 (26) defines the term ‘*Contributory*’. Contributory refers to a person who is liable to contribute towards the assets of the company in the event of its being wound up.⁸ Sub-section (2) provides two conditions out of which one should be fulfilled then only the contributor can file winding up petition. The conditions are – (a) that the contributor was originally allotted share of the company (this means that the contributor is primary holder) or (b) that the contributor have held share and are registered in his name, for minimum 6 months during the 18 months immediately before the commencement of the winding up. Sub-section (2) of Section 272 states the following –

- 2) “A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by

⁷Section 272(1), Companies Act, 2013.

⁸Section 2(26), Companies Act, 2013.

him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.”⁹

Sub-section (3) talks about the right of the Registrar of companies to file petition for winding up of Companies. The registrar has to acquire previous sanction from the central government for presenting a petition for winding up of a company. Sub-section (3) of Section 272 states the following –

- 3) “The Registrar shall be entitled to present a petition for winding up under Section 271, except on the grounds specified in clause (a) of that Section:
Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:
Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.”¹⁰

Sub-section (4) provides that the company can file petition of winding up of the company if at the time of filing the petition, a statement of affairs of the company is also filed along with the petition. Sub-section (4) of Section 272 states the following –

- 4) “A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.”¹¹

Sub-section (5) of Section 272 states the following –

- 5) “A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.”¹²

⁹Section 272(2), Companies Act, 2013.

¹⁰Section 272(3), Companies Act, 2013.

¹¹Section 272(4), Companies Act, 2013.

2.2 PROVISIONS ESSENTIAL IN REALTION TO TRIBUNAL

SECTION 273 – POWERS OF TRIBUNAL.

Section 273 provides that the Tribunal has the power to order for the petition of winding up. Section 273 comprises of two sub-section and three provisos. In sub-section (1) of Section 273, the Tribunal has been provided with the decretory power to orders the following in reference to winding up petition – ¹³

- (a) To dismiss the order of winding up by imposing cost or without imposing cost.
- (b) To make any interim order as the Tribunal may think fit.
- (c) The tribunal may appoint a provisional liquidator of the company till the making of a winding up order. A pointed to be noted - Tribunal has to give notice to the company and provide a reasonable opportunity to it to make its representations before passing the order.
- (d) Make an order for the winding up of the company by imposing cost or without cost.
- (e) The tribunal can also pass another order as it thinks fit.

Point to be noted -Any of the above-mentioned order shall be made within 90 days from the date of presentation of the petition of winding up of the company. Furthermore, the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal or excess or no assets.

The Tribunal may refuse to make order of winding up if the petition of winding up is made on the ground that it is just and equitable. Provided that the Tribunal is of the opinion that there is other remedy available but the petitioners are being unreasonably and thus not pursuing the other remedy as provided under sub-section (2).

Section 273 states the following –

¹²Section 272(5), Companies Act, 2013.

¹³Section 273(1), Companies Act, 2013.

- (1) “The Tribunal may, on receipt of a petition for winding up under section 272 pass any of the following orders, namely:
- a. dismiss it, with or without costs;
 - b. make any interim order as it thinks fit;
 - c. appoint a provisional liquidator of the company till the making of a winding up order;
 - d. make an order for the winding up of the company with or without costs; or
 - e. any other order as it thinks fit:”

“Provided that an order under this sub-section shall be made within ninety days from the date of presentation of the petition:”

“Provided further that before appointing a provisional liquidator under clause (c), the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice:”

“Provided also that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.”

- (2) “Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing the other remedy.”¹⁴

¹⁴Section 273, Companies Act, 2013.

SECTION 280 – JURISDICTION OF TRIBUNAL.

Section 280 deals with the jurisdiction of Tribunal. The tribunal has the power to entertain the following –¹⁵

- Any suit or proceeding by the company;
- Any suit or proceeding against the company;
- Any claim made by the company including its branches in India;
- Any claim made against the company including its branches in India;
- Any application of merger or amalgamation of companies under section 233 of the Act;
- A question of law or fact including those related to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company.

Such action can be taken before or after winding up order of the company. Section 280 states the following —

The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of —

- (a) any suit or proceeding by or against the company;
- (b) any claim made by or against the company, including claims by or against any of its branches in India;
- (c) any application made under section 233;
- (d) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company,

¹⁵Section 280, Companies Act, 2013.

Whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.¹⁶

2.3 PROVISIONS ESSENTIAL IN REALTION TO LIQUIDATOR

SECTION 275 – COMPANY LIQUIDATORS AND THEIR APPOINTMENTS.

Section 275 deals with appointment of Company Liquidators. The tribunal appoints the official liquidator for the purpose of winding of a company at the time of passing of the winding up order. The official liquidator can be selected from the panel of company liquidator registered under the Insolvency and Bankruptcy Code, 2016 (Hereinafter referred to as '*IBC, 2016*'). The Tribunal may also appoint a provisional liquidator as the Company Liquidator for the conduct of the proceedings for the winding up of the company. The fees paid to the official liquidator or provisional liquidator shall be determined by the Tribunal on the basis of various factors mentioned below. Section 275 states the following —

- (1) “For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or liquidator from the panel maintained under sub-section (2) as the Company Liquidator.
- (2) The provisional liquidator or the Company Liquidator, as the case may, shall be appointed by the Tribunal from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016 (31 of 2016);

¹⁶Section 280, Companies Act, 2013.

- (3) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same powers as a liquidator.
- (4) ~~x-----x----- x-----x-----x----- Repealed -----x-----x-----x-----x-----x-----x~~
- (5) The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.
- (6) On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.
- (7) While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (c) of sub-section (1) of section 273, as the Company Liquidator for the conduct of the proceedings for the winding up of the company”.¹⁷

SECTION 290 – POWERS AND DUTIES OF COMPANY LIQUIDATOR.

Section 290 provides the powers and duties of the company liquidator. The exercise of powers by the Company Liquidator powers are fully controlled by the Tribunal. The following are the rights and duties of the company liquidator¹⁸ –

- to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;
- to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose, to use, when necessary, the company's seal;

¹⁷Section 275, Companies Act, 2013.

¹⁸Section 290, Companies Act, 2013.

- to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels;
- to realise any money required on the security of the assets of the company;
- to institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;
- to invite and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act;
- to inspect the records and returns of the company on the files of the Registrar or any other authority;
- to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities and for protection of the assets of the company, appoint an agent to do any business which the Company Liquidator is unable to do himself;
- to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary,—
(i) for winding up of the company; (ii) for distribution of assets; (iii) in discharge of his duties and obligations and functions as Company Liquidator; and
- to apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.

KEY FEATURES OF COMPANIES (WINDING UP) RULES, 2020

The **Companies (Winding-Up) Rules 2020** were implemented from the **1st April 2020**. The Ministry of Corporate Affairs (Also referred to as 'MCA') has notified the new rules regarding the winding up of companies and these rules applicable under Companies Act 2013.

The new rules will reduce the burden of the National Company Law Tribunals (Also referred as 'NCLT') by enabling summary procedures for liquidation.

The following are the keys features of Companies (Winding Up) Rules, 2020 in reference to Part II – Procedure for winding up by Tribunal.¹⁹

Rule 3 - Under Section 272 (1), a petition for winding up of a company is made in Form WIN 1 or Form WIN 2. The petition has to be verified by an affidavit by all petitioners in Form WIN 3.²⁰

Rule 4 - Under Section 272 (4), the statement of affairs is required to be filed in Form WIN 4 with information of last 30 days prior to the date of filing the petition. It is duly verified by an affidavit made in Form WIN 5.²¹

Rule 5 - The tribunal gives the company an opportunity of being heard when the filing of the petition for winding up is made by a person. Afterwards provides direction to publish an advertisement and provide copies to the concerned persons of winding up.²²

Rule 6 - The petitioner has to furnish the copies to every contributory of the company within 24 hours and made payment of five rupees per page for the same.²³

¹⁹<https://corpbiz.io/learning/winding-up-companies-rules-2020-under-companies-act-2013/> (last viewed 10th June, 2020)

²⁰ Rule 3, Companies (Winding-Up) Rules 2020.

²¹ Rule 4, Companies (Winding-Up) Rules 2020.

²² Rule 5, Companies (Winding-Up) Rules 2020.

Rule 7 - The notice of the petition has to be published in the newspaper before 14 days of the date fixed for the hearing. The advertisement shall be made in Form WIN 6.²⁴

Rule 8 - The permission by the tribunal is required for the withdrawal of the petition of winding up.²⁵

Rule 9 - The substitution of the petitioner in the case where he is not entitled to present the petition for winding up or if the petitioner fails to advertise the petition or consent to withdraw the petition or where Tribunal opines to substitute the petitioner.²⁶

Rule 10 - When tribunal substitutes a petitioner in a winding-up petition then directs for the amendment in the petition. After within 7 days of the order of amendment, two fresh copies require to be furnished with an affidavit attached and now treated as a new petition for winding up of the company.²⁷

Rule 11 - Any objections raised in the affidavit filed by the petitioner shall be filed within 30 days from the date of the order and require to make payment of five rupees per page within three working days.²⁸

Rule 12 - Affidavit in reply must be filed within 7 days from the date of hearing against the affidavit in objection.²⁹



²³Rule 6, Companies (Winding-Up) Rules 2020.

²⁴Rule 7, Companies (Winding-Up) Rules 2020.

²⁵Rule 8, Companies (Winding-Up) Rules 2020.

²⁶Rule 9, Companies (Winding-Up) Rules 2020.

²⁷Rule 10, Companies (Winding-Up) Rules 2020.

²⁸Rule 11, Companies (Winding-Up) Rules 2020.

²⁹Rule 12, Companies (Winding-Up) Rules 2020.

EFFECTS OF WINDING UP OF COMPANY

Section 278 talks about the effect of winding up order made by the tribunal. Section 278 states the following —

“The order for the winding up of a company shall operate in favour of all the creditors and all contributories of the company as if it had been made out on the joint petition of creditors and contributories.”³⁰

In my opinion the following points shall highlight the effects of winding up –

1. Management loses control of the company.

The first and foremost effect is that as soon as the petition for winding is filed and the Tribunal after hearing the parties concerned issues an order for the winding up, an official liquidator is at the same time appointed for the purposes mentioned under Section 290 of Companies Act, 2013 as well as for fulfilling the duties mentioned under Companies (winding up) Rules, 2020.

Once the official liquidator is appointed, the management of the company becomes puppet in the hand of official liquidator. The work of management is assisting the official liquidator by providing all the documentation of the company and other relevant documentation. In case the official liquidator doesn't require the help of management of the company, then the management shall not intervene the work of official liquidator. Therefore, it is possible to say that the management loses its power over the company as soon as an official liquidator is appointed by the Tribunal.

2. Liquidation of assets to pay off the liabilities.

As soon as the petition for winding is filed and the Tribunal after hearing the parties concerned issues an order for the winding up, an official liquidator is appointed whose

³⁰Section 287, Companies Act, 2013.

responsibility is to sell off the assets of the company and pay off all the liabilities of the company and whatever is left are distributed amongst the shareholders of the company. The remaining cash and assets are totaled and then divided by the number of shares owned by shareholders.

3. Bank accounts of every personnel concerned maybe frozen.

In case the company is winding up because of fraudulent activities of the company, the first thing that the tribunal orders are to freeze all the bank accounts of the company and may also order to freeze bank accounts of some other concerned personnel of the company.³¹

4. Director maybe held liable to pay off the liabilities.

If a director or someone else at the company has personally guaranteed any of the debts incurred by the business, that money still has to be paid back. The bankruptcy of a company won't wipe out the debt that was personally guaranteed.

5. Banned from practicing that profession under certain cases.

Sometimes when a company is being wound up due to any unlawful activities of the company then it is possible that the concerned personnel might not be allowed to practice the same trade or profession for a particular period of time. This restriction is subject to judicial pronouncement. A hypothetical example of this can be - If your company has gone bankrupt in certain trades like the building industry then the concerned personnel are banned from being able to operate in that industry for three years.

6. Employee loses their jobs under the company.

As soon as the petition for winding is filed and the Tribunal after hearing the parties concerned issues an order for the winding up, every employee of the company will

³¹<https://businesslegallifecycle.com/5-consequences-winding-up-company/>(last viewed 10th June, 2020)

automatically lose their jobs. Since winding results into striking off the name of the company for the registrar of companies and its business activities comes to an end.³²

CONCLUSION

In my opinion there was a need to reduce the burden of the National Company Law Tribunals and the new rules namely Companies (winding up) Rules, 2020 will effectively reduce the burden of the National Company Law Tribunals by enabling summary procedures for liquidation. Further filing of petitions for winding up of companies are eased by the Companies (winding up) Rules, 2020 and are subject to various conditions which including thresholds on turnover and paid-up capital. Furthermore, Part II of Companies (Winding up) Rules have eased the procedure for winding up by Tribunal. Earlier it was very complex and time consuming. The rules also define in detail the provisions of Section 361 of the Companies Act and which include and allowed options for liquidating small firms with assets up to ₹1 crore.



³²<https://www.companydebt.com/liquidation/compulsory-liquidation/> (last viewed 5th May, 2020)