An Update on Voluntary Liquidation Regulations
written by Smita Paliwal | June 9, 2022

Voluntary Liquidation Amendment

The decision to close down a company is one made by a company's leadership and occurs in consensus with management and shareholders. A business normally resorts to winding up business operations when it is unable to discharge its liabilities, is insolvent or has fulfilled its objectives as mentioned in its AOA. Since this process essentially means cashing out the business, it is known as voluntary liquidation. Once the winding-up proposal gets a 75% majority from its board of directors and shareholders, a special resolution is passed, followed by a publication in the Official Gazette and the city's leading newspapers. This initiates the process of liquidation.

Procedure

Chapter XX of the Companies Act, 2013 lays down the procedure for winding up a company. However, the eleventh schedule of the Insolvency and Bankruptcy Act, 2016[1] omitted voluntary winding up, which was laid down under sec 304 to 325 of the 2013 act. As a substitute for the omitted provision, chapter V of IBC, 2016 offers most of the information on the regulatory compliances for winding up and liquidation. Other compliances include provisions under the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

Under Chapter V (section 59) of the code, the procedure is as follows:

1. Declaration: Since an entity cannot be liquidated without due consideration to its stakeholders, a declaration by the majority of the company's directors is mandated. The declaration shall be verified by an affidavit stating[2],
   - They have made sufficient inquiries into the company's affairs and have formed an opinion that either the company has no debt or will be able to pay its debts from the proceeds of assets that will be sold in the voluntary liquidation.
   - The company is not being liquidated to defraud any person.
2. The following documents shall accompany the declaration:
   - An audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
   - A report on the valuation of the assets of the company prepared by a registered valuer[3]. The declaration of solvency should be filed in Form GNL-2 with the Registrar of Companies.[4]

3. Board meeting of directors: For appointing the liquidator, the board has to identify an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI). Once the resolution is approved, the company shall notify the Registrar and IBBI[5] of all of its remaining debts, if any, and arrange a general company meeting for the next steps.
4. Meeting of shareholders: The code makes it compulsory to pass a general resolution (for voluntary liquidation) or special resolution (end of fixed duration of the entity) by members in a shareholder's meeting about commencing with the liquidation process before the appointment of the liquidator.[6] If the organisation is in debt, two-thirds of the creditors should also approve the resolution within seven days of passing the resolution. This should be done within four weeks of the Declaration of Solvency.
5. Duties of the liquidator: The liquidator has to file the resolutions to the Registrar of Companies and IBBI. Henceforth, all powers of the board of directors, key managerial personnel, and the corporate debtor's partners cease. Powers are instead vested in the liquidator who takes charge of the process from that point.

Recent Amendments In Voluntary Liquidation Processes

The IBBI regulations mostly pertain to the compliances a liquidator much adhere to when dissolving a company. Contrary to the act's objective, it was recently observed that certain compliances under the act were causing a delay in the process. IBBI recently amended the regulations to speed up the process of liquidation. Here is a look at the amendments passed in the last two years.

*IBBI (Voluntary Liquidation Process) (Amendment) Regulations, 2020*[7]

On 15th January 2020, the 2017 regulations were amended by the IBBI (Voluntary Liquidation Process) Regulations, 2020. The primary purpose behind this amendment was to include 'unclaimed dividends and undistributed proceeds' in the books of accounts and the procedure to be followed to balance the current liabilities and assets under it. As per the changes made under this amendment:

- The liquidator has to maintain the register of accounts.[8]
- The board shall maintain the Corporate Voluntary Liquidation Account in the Public Accounts of India. If the liquidator fails to deposit, it shall be paid with interest at the rate of 12% per annum from the due date of deposit until the date of deposit.
- New forms, namely FORM-G and FORM-I have been introduced to submit evidence of deposit and clarify the nature of deposit (FORM -G), and the withdrawal from the Corporate Voluntary Liquidation Account (FORM-I) through this amendment.[9]

*IBBI (Voluntary Liquidation Process) (Second Amendment) Regulations, 2020*[10]

On 5th August 2020, a second amendment was made to the voluntary liquidation process, regarding further regulations concerning the liquidator:

- The amendment assumes that the chosen liquidator is a corporate professional eligible to be appointed as an independent director as per the Companies Act[11].
- They must be free of all legal, personal, pecuniary, or professional relations or any other points that might serve as a conflict of interest to the liquidation process.
- The amended regulations allow the company to replace the existing liquidator

by appointing another insolvency professional as replacement liquidator by a resolution of members/partners.

*IBBI (Voluntary Liquidation Process) (Amendment) Regulations, 2022*[12]

On 5th April, 2022, IBBI notified the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2022 to further hasten the process of liquidation. It introduced the following changes:

- The liquidator shall prepare the list of stakeholders within 15 days from the last date for receipt of claims where no claim from creditors has been received till the last date. Earlier, the stipulated time was 45 days.
- The liquidator shall distribute proceeds from realization within 30 days from the receipt of the amount to the stakeholders. Earlier, the stipulated time limit was six months.
- As discussed earlier, the organisation passes a general or special resolution to announce the liquidation process, followed by a subsequent approval from the board and creditors if the entity owes a debt. In this case, the liquidator shall complete the liquidation process of the corporate person within 270 days from the liquidation commencement date. In all other cases, the limit is 90 days from the commencement. The previously stipulated time was 12 months in all cases.
- Since verifying documents in bulk causes unnecessary delay, the Amendment Regulations specify a compliance certificate that must be submitted, which summarizes the liquidator’s actions.

Analysis - Voluntary Liquidation Amendment 2020 - 2022

The IBC, 2016 had stated that, “The liquidator shall endeavour to complete the liquidation process of the corporate person within twelve months from the liquidation commencement date”[13]

Despite this, it was deduced from IBBI records that around 52%[14] of voluntary liquidation processes initiated in 2021 have not yet reached completion despite reaching the maximum stipulated time i.e., 12 months.

This data brings to light the major regulatory and practice-based hurdles prohibiting voluntary liquidation’s smooth functioning, resulting in unreasonable delays in the liquidation process. The recent amendments aim to bridge the time gap between compulsory and voluntary liquidation. The amendments in 2020 mostly focused on introducing regulations to address areas that had regulatory gaps, such as the appointment of a replacing liquidator, ensuring deposits in the Corporate Voluntary Liquidation Account, etc. The 2022 amendment, however, aims to directly resolve the delay in the process by regulations lessening the time limit for those steps in liquidation that stall the process the most.

Final Remarks

The recent amendments in the regulations indicate that the Insolvency and Bankruptcy Board of India continues to take cognizance of the procedural hurdles that cause a delay in voluntary liquidation and is well-equipped with regulatory changes to deal with them. The recent amendments will allow early release of corporate persons, faster distribution, and other benefits such as lesser liquidation costs. The reduction in time taken to deliver proceeds should guarantee an early pay-out to the stakeholders, promoting entrepreneurship and credit availability and also assist the Adjudicating Authority in processing dissolution applications at a swifter pace.

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