



CLOSURE OF COMPANIES, AVAILABLE EXIT MECHANISMS

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In recent years, the Government of India has undertaken significant reforms to simplify and streamline the closure of companies by introducing faster, efficient, and time-bound exit mechanisms. As part of its objective to promote ease of doing business, the regulatory framework now facilitates easier closure and dissolution of non-operational, defunct, solvent, and insolvent companies through transparent and structured procedures.

Depending upon the operational status, solvency, financial position and liabilities of a company, the following exit mechanisms are available under Indian law:

- A. Strike Off / Fast Track Exit under the Companies Act, 2013.
- B. Winding Up under the Companies Act, 2013, SECTION 271 and SECTION 361
- C. Voluntary Liquidation under the Insolvency and Bankruptcy Code, 2016 ("IBC")
- D. Insolvent / Compulsory Liquidation under the Insolvency and Bankruptcy Code, 2016

A. STRIKE OFF / FAST TRACK EXIT UNDER THE COMPANIES ACT, 2013

Sections 248 to 252 of the Companies Act, 2013 introduced a simplified and fast-track mechanism enabling non-operational or defunct companies to voluntarily seek removal of their names from the Register of Companies ("RoC"). The provisions also empower the RoC to strike off companies suo motu in specified circumstances.

Grounds for Strike Off:

A company may be struck off where:

- a) it has failed to commence business within one year of incorporation;
- b) it has not carried on any business or operation for two immediately preceding financial years and has not applied for dormant status under Section 455;
- c) subscribers have failed to pay subscription money within 180 days of incorporation and the declaration of commencement of business has not been filed; or
- d) physical verification of the registered office reveals that no business is being carried on.

Accordingly, strike off serves as a faster and cost-effective alternative to liquidation for inactive companies having nil or minimal liabilities.

Circumstances where a strike-off is not permitted:

A company is not eligible to apply for strike off if, during the preceding three months, it has:

- a) changed its name or shifted its registered office from one State to another;
- b) disposed of property or rights held by it outside the ordinary course of business;

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- c) engaged in activities other than those necessary for making the strike off application, concluding affairs, or complying with statutory requirements;
- d) applied to the Tribunal for compromise or arrangement which remains pending; or
- e) is being wound up under the Companies Act, 2013 or the IBC.

Effect of strike off:

Upon the publication of notice in Form STK-7 in the Official Gazette:

- a) the company stands dissolved, and its Certificate of Incorporation is deemed cancelled;
- b) the company ceases to exist as a legal entity; and
- c) it can no longer carry on business, hold assets, or initiate legal proceedings.

However, the liabilities of directors, officers, and members continue and may be enforced notwithstanding dissolution.

Further, the National Company Law Tribunal ("NCLT") may restore the name of a struck-off company within 20 years upon an application by creditors, members, or other aggrieved persons.

Accordingly, Section 248 provides an effective "ease of exit" mechanism enabling expeditious removal of defunct companies from the register.

B. WINDING UP UNDER THE COMPANIES ACT, 2013

Under Section 271 of the Companies Act, 2013 read with the Companies (Winding Up) Rules, 2020, a company may be wound up by the Tribunal (i.e.NCLT) in specified circumstances.

Grounds for Winding Up:

A company may be wound up where:

- a) the company passes a special resolution for winding up by the Tribunal;
- b) the company has acted against the sovereignty, integrity, security, or public interest of India;
- c) the affairs of the company are conducted fraudulently or for unlawful purposes;
- d) the company has defaulted in filing financial statements or annual returns for five consecutive financial years; or
- e) the Tribunal considers it just and equitable to wind up the company, including in cases of deadlock, loss of substratum, oppression, mismanagement, or continuous losses.

Persons Entitled to File Petition:

A winding up petition may be filed by:

- a) the company;
- b) contributories;
- c) the Registrar of Companies;
- d) any person authorised by the Central Government; or
- e) the Central or State Government in specified cases involving national interest.

Tribunal Powers:

Where grounds for winding up exist, the Tribunal may:

- a) appoint a Provisional Liquidator or Company Liquidator;
- b) pass interim orders; or
- c) order winding up of the company.

However, in “just and equitable” cases, the Tribunal may refuse winding up where an alternate remedy is available.

Role of the Liquidator:

Upon appointment, the Company Liquidator assumes custody and control of the company’s assets and affairs and conducts the winding-up process under supervision of the Tribunal, including:

- a) realisation of assets;
- b) settlement of claims and liabilities;
- c) distribution of proceeds; and
- d) compliance with statutory and procedural requirements.

Dissolution

Upon completion of winding up, the Liquidator applies to the NCLT under Section 302 for dissolution of the company. If satisfied that the process has been duly completed, the Tribunal passes an order dissolving the company, following which the Registrar of Companies strikes off the company’s name from the register.

Case laws:

In the matter of **Tactfull Investments Limited**³, the NCLT, New Delhi Bench, admitted a winding-up petition under Section 272 of the Companies Act, 2013, holding that pendency of income tax demands and penalty proceedings does not preclude winding up of a commercially insolvent company. The Tribunal observed that statutory authorities may submit their claims before the liquidator during liquidation proceedings and accordingly appointed a Provisional Liquidator while staying all proceedings against the company without leave of the Tribunal.

In **BWI Automotive Technologies Private Limited v. Registrar of Companies**⁴, (BWI Automotive Technologies Pvt. Ltd. v. Registrar of Companies, (2025) ibclaw.in 2950 NCLT, the NCLT, New Delhi Bench, allowed the company’s winding-up petition after noting that it had incurred continuous losses and ceased operations since 2014. Despite objections by the ROC regarding FEMA compliance, foreign liabilities, shareholder status, and the BEN-2 filing, the Tribunal accepted the company’s explanations and undertakings for rectifying pending compliances and appointed a Provisional Liquidator to oversee the liquidation process.

Summing up

Winding up on “just and equitable” grounds under Section 271 of the Companies Act, 2013 may be an appropriate remedy where a company has become commercially unviable, lost its substratum, and has no realistic prospect of revival. The mere pendency of income-tax demands, penalty

³ https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/0710102041672022/04/Order-Challenge/04_order-Challenge_004_1717994152392043308666682a88bf5b.pdf

⁴ (https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/0710102036082021/04/Order-Challenge/04_order-Challenge_004_167343419841112656663be945659562.pdf)

proceedings or other claims does not preclude the NCLT from ordering winding up, as such claims may be adjudicated and dealt with in the winding-up process in accordance with law.

C. SUMMARY PROCEDURE / FAST TRACK WINDING UP UNDER SECTION 361

Section 361 provides a simplified winding-up mechanism for specified classes of companies through the Central Government (Regional Director).

Eligibility

The procedure applies to companies with a book value of assets not exceeding INR 1 crore and that meet the prescribed thresholds for deposits, loans, turnover, or paid-up share capital.

Procedure

The Regional Director appoints an Official Liquidator who:

- a) takes custody of the company's assets;
- b) investigates the affairs of the company;
- c) reports fraud, if any;
- d) invites and settles creditors' claims; and
- e) submits a final report upon completion.

Thereafter, the Central Government or Tribunal passes an order of dissolution, and the Registrar strikes off the company's name.

D. VOLUNTARY LIQUIDATION UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016:

Section 59 of the IBC, read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, provides a structured, creditor-friendly, and time-bound mechanism for dissolution of solvent companies. The provisions relating to voluntary winding up under Sections 304 to 323 of the Companies Act, 2013 now stand omitted and consolidated under the IBC framework.

Eligibility and Preconditions

Voluntary liquidation may be initiated only where the corporate person has not committed any default and have the ability to pay its debts, if any.

The majority of directors must provide a declaration of solvency accompanied with prescribed documents, verified by affidavit, confirming that:

- a) the company is capable of paying its debts in full from proceeds of assets;
- b) the company has no intent to defraud any person; and
- c) adequate provision has been made for pending liabilities, litigations, and statutory dues.

Stakeholders' Approval:

- a) Where the company has no debt, shareholders must approve voluntary liquidation by special resolution.
- b) Where debt exists, approval of creditors representing two-thirds in value of debt is additionally required.

Process

The Insolvency Professional appointed as Liquidator undertakes:

- a) public announcement and invitation of claims;
- b) verification and settlement of claims;
- c) realisation of assets; and
- d) distribution of proceeds.

The liquidation process is ordinarily required to be completed within:

- a) 270 days where creditors' approval is involved; and
- b) 90 days in other cases.

Upon completion, the Liquidator applies to the NCLT for dissolution of the company.

Effect

From the liquidation commencement date, the corporate person ceases to carry on business except to the extent necessary for beneficial winding up.

E. INSOLVENT / COMPULSORY LIQUIDATION UNDER THE IBC, 2016

Compulsory liquidation under Section 33 of the IBC arises where the Corporate Insolvency Resolution Process ("CIRP") fails or no viable resolution plan is approved.

Circumstances Triggering Liquidation

Liquidation may be ordered where:

- a) no resolution plan is received within the prescribed CIRP period;
- b) the NCLT rejects the resolution plan;
- c) the Committee of Creditors ("CoC") resolves to liquidate the corporate debtor with 66% voting share; or
- d) an approved resolution plan is breached.

Consequences of Liquidation

Upon appointment of the Liquidator:

- a) powers of the Board of Directors and management cease;
- b) custody and control of assets vest in the Liquidator;
- c) the CoC stands dissolved; and
- d) legal proceedings may only continue in accordance with the IBC framework.

The Liquidator:

- a) invites and verifies claims;
- b) sells assets through auction, private sale, slump sale, or going concern sale; and
- c) distributes proceeds in accordance with the waterfall mechanism under Section 53 of the IBC.

Upon completion, the Liquidator applies to the NCLT for dissolution of the corporate debtor.

Case Laws

***In Edelweiss Asset Reconstruction Co. Ltd. Vs. Shri Shyam Sundar Rathi & Anr⁵,** it was held by NCLAT that once the application under Section 33 of the 'I&B Code' was moved before the Adjudicating Authority, in the given circumstances, it was left with no option but to order the liquidation of the Corporate Debtor and cannot delay the process by seeking additional valuation reports or asset details.*

***In Dr. Siva Rama Krishna Prasad Vs. Krishna Industrial Corporation Ltd. & Ors⁶,** The NCLAT held that where no viable resolution plan is received and the Committee of Creditors resolves to liquidate the corporate debtor, the Adjudicating Authority must order liquidation under Section 33(2) of the IBC. The Tribunal further held that settlement proposals of promoters cannot override the commercial wisdom of the Committee of Creditors.*

ANALYSIS

Where a company has assets or liabilities to be settled but remains solvent and capable of paying its debts, voluntary liquidation under the IBC is generally the most appropriate mechanism for closure and dissolution.

Where a company is inactive, has no assets or liabilities, and is not involved in litigation or regulatory proceedings, striking off under Section 248 of the Companies Act, 2013, is usually the most efficient exit route.

Fast-track winding up under Section 361 may be considered for eligible small companies meeting the prescribed thresholds.

Winding up by the Tribunal is generally resorted to where other exit mechanisms are unavailable or unsuitable, particularly in cases involving disputes, fraud, regulatory complications, or judicial intervention. However, compared to strike-off and voluntary liquidation, winding up is relatively more time-consuming and procedurally intensive.

Disclaimer:

This is only for informational purposes and does not constitute legal advice or solicitation. Readers should seek professional advice before acting on any information contained herein.

⁵ (<https://ibclawreporter.in/wp-content/uploads/2020/04/1.-NCLAT-Order-dated-14.08.2020.pdf>)

⁶ (<https://ibclawreporter.in/wp-content/uploads/2020/04/2.-NCLAT-Order-dated-04.09.2020-1.pdf>)