WINDING UP UNDER COMPANIES ACT 2013

INTRODUCTION

- Winding up is the process involving liquidation of Company's assets which are collected and sold so as to pay the debts incurred.
- Under the winding up process firstly the debts, expenses and costs are paid and any remaining amount is distributed among the shareholders.
- Once the corporate is liquidated it's formally dissolved and also the Company ceases to exists.
- Winding up is basically a legal mechanism to shut down a company and cease all the activities that re carried on.
- Once winding up process is initiated against a corporate entity, its assets are monitored in such a way, so that the stakeholder's interest does not get hampered.

3 WINDING UP AND DISSOLUTION – RELATED BUT DIFFERENT CONCEPTS!

Winding Up	Dissolution
1. Winding up is the first stage of dissolving the legal existence of an entity. In this stage, the assets of the entity are sold, its liabilities are paid off and surplus, if any, is distributed amongst the contributories. 2. The winding up process is controlled by a liquidator. 3. Creditors can prove their claims during winding up. 4. Winding up need not result in dissolution in all cases. A company which is in winding up can be taken over or amalgamated by any other entity or company which will result in the company coming out of winding up process and being handed over to the shareholders.	1. Dissolution is the final stage after completion of winding up process and the legal existence of the entity comes to an end. 2. The dissolution can happen only by way of an order passed by the adjudicating authority. 3. Creditor cannot prove their claim since the entity no longer exists.

WINDING UP AND INSOLVENCY – DIFFERENCES

Winding Up	Insolvency
1. It is a process by which company is dissolved. The assets are collected, liabilities are paid off out of assets or from contributions by members and if surplus left, it is distributed among members	1. It is inability of a debtor to pay debts as they fall due. A person is said to be insolvent when his liabilities exceeds his assets and against whom Court makes order of adjudication.
2. A company cannot be adjudged as insolvent	2. An individual can be adjudged as insolvent
3. A company can be wound up even if it financially sound.	3. A person can be adjudged as insolvent when he is unable to pay his liabilities.
4. During winding up proceeding, the property is vested in the Company.	4. In insolvency proceedings, the assets of person are vested in Official Receiver.
5. After completion of proceedings, the Company is dissolved.	5. After completion of proceedings, the insolvent person is discharged from liabilities.

MODES OF WINDING UP

- Earlier two modes of Winding Up was recognized by the Companies Act 2013 (S. 270)
  - VOLUNTARY – NOW DEALT UNDER IBC 2016
  - COMPULSORY BY THE TRIBUNAL – MODIFIED VERSION (*Inability to pay debt* as a ground now transferred under IBC 2016)
- Grounds for Compulsory Winding Up by the Tribunal (S. 271):-
  - Special resolution by the company (discretion of the tribunal)
  - Against the sovereign interests of the country
  - Fraud
  - Default in filing financial statement for 5 years consecutively
  - Just and equitable grounds

WHO CAN APPLY FOR WINDING UP?

- A petition for winding up may be presented by (S. 272):
  - Company
  - Contributory
  - Registrar of Companies (RoC)
  - State of Central Government
  - Any person authorized by the Central government


Can a petition be made for winding up by the workers/workers' union of a company?

PROCEDURE FOR WINDING UP

Petition before the Tribunal

Winding Up will commence once the petition is admitted by the Tribunal

Appointment of Provisional Liquidator by the Tribunal

Winding Up order by the Tribunal after opportunity to the Company to present its case

Appointment of Company Liquidator/Official Liquidator

Setting up of Winding Up committee

Advisory Committee for Winding Up

(S. 287+ Rules 36-43)

Tribunal to exercise its powers (S. 273)

Dissolution of the company

(S. 302)

- Arrest absconding persons (S. 301)
- Order Costs (S. 298)
- Make calls (S. 296)
- Adjust rights of contributories (S. 297)
- Set off Claims (S. 295)
- Deliver property to liquidator (S. 283)
- Settle List of contributories (S. 285)

SUMMARY PROCEDURE FOR LIQUIDATION

The summary procedure for liquidation is applicable for companies having asset book value of less than Rs. 1 crore. (S. 361)

Appointment of liquidator by the Central Government

Report by the Liquidator to the Central Government regarding any fraud (within 30 days)

realisation of assets and payment of liabilities by the official liquidator

creditors to prove their claims

dispose off the case within 60 days

dissolution of the company

LIQUIDATION AND POSITION OF LIQUIDATOR

- The powers and duties of the company liquidator has been provided under S. 290 of the Act 2013.
- The broad powers as provided u/s 290 (1) may be summarised as:
  - Investigating the company's affairs, including past transactions, to identify any fraudulent activities or misconduct
  - Verifying and consolidating claims from creditors
  - Taking custody of the company's assets, property, and claims
  - Evaluating the company's assets and property and preparing a report
  - Acting on behalf of the company to sell its assets or bring on and defend lawsuits
  - Paying off bills and debts
  - Finishing other corporate termination procedures
  - Acting in good faith and in the best interests of the creditors and shareholders

MANNER OF SETTLEMENT OF CLAIMS DURING LIQUIDATION

- The manner of settlement of claims has been dealt with under S. 326 and 327 of Act 2013:
  - All revenues, taxes, cesses and rates due to Central or a State Government or to a local authority. The amount to have become due and payable within 12 months before the winding up order.
  - Workmen's dues and debts due to secured creditors
  - Costs and expenses of winding up
  - Preferential debts
  - Floating charge
  - Unsecured creditors

REMOVAL OF NAME OF COMPANY FROM REGISTER OF COMPANIES

- The Ministry of Corporate Affairs introduced Sections 248-252 of the Companies Act 2013 on December 26, 2016.
- These sections outline **removing or striking a company's name from the Register of Companies**.
- Section 248 grants authority to the Registrar of Companies (ROC) to remove a company's name from the register if it meets specific criteria.
- Section 248 also allows a company to voluntarily apply for the removal of its name based on the same grounds mentioned above.
- To support Section 248, the Ministry also notified the Companies (Removal of Names of Companies from Register of Companies) Rules, 2016, on the same day, i.e., December 26, 2016. These rules provide detailed guidelines and procedures for removing company names from the register.

REMOVAL OF NAME OF COMPANY FROM REGISTER OF COMPANIES

- Removal of names of companies may happen in the following ways:
  - *Voluntarily Removing Company Name using Form Form STK-2*
    - A company can choose to remove its name from the register of companies voluntarily by submitting Form STK-2.
  - *Removal of Company Name from Register of Companies by Registrar*
    - According to Sections 248 to 252, the Registrar of Companies possesses the authority to remove a company's name from the Register of Companies. The Registrar can exercise this power if there is reasonable cause to believe that:
      - One year after incorporation, the company has not begun doing business.
      - For two consecutive financial years, the company has not engaged in any business or operation and has not applied for dormancy status

REMOVAL OF NAME OF COMPANY FROM REGISTER OF COMPANIES

- **Procedure for Voluntarily Removing Company Name using Form STK-2**
  - By filing Form STK-2, the company can initiate the process of removing its name from the register of companies. Following the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2023, the application must be submitted in Form STK-2 along with a fee of INR 10,000.
  - The procedure followed by the company for removal is as follows:
  - **Board Approval:** The board of directors must approve the name in a board meeting to remove it. The company also approves the notice for an Extraordinary General Meeting (EGM).
  - **Shareholder Approval:** The shareholders pass A special resolution at the general meeting to remove the name.
  - **Authority Approval:** If any other authority regulates the company, approval from such authority is also required.

14 REMOVAL OF NAME OF COMPANY FROM REGISTER OF COMPANIES

- **Filing of Application:** After obtaining the necessary approvals, the company applies Form STK-2 and the relevant documents to the Registrar, Centre for Processing Accelerated Corporate Exit (C-PACE).
- **Note:** A company name removed from the Companies Register of Companies is governed by the Amendment Rules for Companies, 2022. The Registrar will notify the applicant within 15 days of any deficiencies or incompleteness in the application or documents. The Registrar will inform the applicant of the invalidity of the form if the applicant does not comply with this request.
- **Public Notice:** Upon receiving the application, the Registrar publishes a public notice (STK-6). If there are any objections to the removal, they must be raised within 30 days from the date of publication.
- **Name Removal:** After completing all the necessary processes, the Registrar removes the company's name from the register. Notice of such removal will be sent to the official gazette in Form STK-7.

REMOVAL OF NAME OF COMPANY FROM REGISTER OF COMPANIES

- The Ministry of Corporate Affairs has introduced significant amendments to the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, via the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2023, which came into effect on May 1, 2023.
  - Revision of Rule 4 (1) Regarding Application for Company Name Removal: Rule 4 (1) has undergone revision, specifying that companies seeking to remove their names under Section 248 (2) must now apply to the Registrar, Centre for Processing Accelerated Corporate Exit. This application is to be made in Form No. STK-2 requires a fee of Rs. 10,000.
  - Insertion of Rule 4 (3-A) for Application Submission: A new provision, Rule 4 (3-A), has been inserted, addressing the application process for company name removal.
  - Establishment of Registrar for Processing and Disposal: The Registrar, Centre for Processing Accelerated Corporate Exit, will be established under Section 396 (1) and will hold jurisdiction over the processing and disposal of applications made in Form No. STK-2, as well as all matters related to Section 248, across India.

REMOVAL OF NAME OF COMPANY FROM REGISTER OF COMPANIES

- Revised Form STK-2 for Company Name Removal Application: Form No. STK-2, which pertains to the "Application by the company to Registrars of Companies (ROC) for removing its name from the register of companies," has been revised to align with the updated requirements.
- Revisions Made to Form STK-6 for Public Notice: Form No. STK-6, used for publishing public notices regarding company name removal, has been updated to reflect the recent changes.
- Amendments to Form STK-7 for Notice of Striking Off and Dissolution: Form No. STK-7, which deals with the issuance of notices for striking off and dissolution, has been revised to accommodate the revised rules and procedures