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# **VOLUNTARY LIQUIDATION UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016**

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## **ABSTRACT**

The process of winding up one's own company has seemingly been expedited with the enactment of the The Insolvency and Bankruptcy Code in 2016. Where the process was initially governed by the Companies Act of 2013, the process was a rather lengthy one, owing to the process being governed by multiple sections of law. With the enactment of the IBC, companies can proceed towards winding up by referring to a single section.

This paper starts with a brief history of the evolution of winding up proceedings, stating the different types of winding up processes in detail, as provided under the old Companies Act of 1956. It also marks the difference in winding up proceedings and regulations under the Companies Act of 1956 and of 2013. It further goes on to explain how the provisions of voluntary liquidation came into existence, through the BLRC and the IBC. As per the terms of Section 59, the most relevant provision for voluntary liquidation, a company who intends to liquidate itself voluntarily and has not committed a default on any debt, may initiate voluntary liquidation proceedings. The paper analyses the scope of 'debt' here, whether it refers to present debt or past debt. The paper continues to explain the several underlying conditions which must be satisfied before applying to voluntary liquidation, the process to be followed before and during voluntary liquidation. While providing the author's analysis and recommendations, the paper ends on a comparative note with the process of voluntary liquidation in Australia.

## Research Question

Did the provision of Voluntary Liquidation under The Insolvency and Bankruptcy Code, 2016 expedite the whole process as compared to the older method under the Companies Act?

## Introduction

The provision of 'Voluntary Liquidation' has been removed from the purview of The Companies Act, 2013 and is now governed by The Insolvency and Bankruptcy Code, 2016 (hereinafter "**IBC**"). On March 30, 2017, the Ministry of Corporate Affairs (hereinafter "**MCA**") had notified Section 59 of the IBC, which lays out the provisions relating to voluntary liquidation of a corporate person.

The IBC was enacted with a primary goal to consolidate the insolvency process into a fast track for all companies, partnerships and individuals. It not only enables the insolvency proceedings of the insolvents but also contains provisions for solvent entities that themselves want to surrender their business and refrain from carrying it on, or give up their right to carry on the same. In cases where a company's purpose for formation has been fulfilled and the management feels that there is no point in continuing the business since it may involve a lot of cost, compliance and time, then, it is feasible for the company to voluntarily liquidate.<sup>1</sup>

Liquidation of corporate entities, voluntary as well as involuntary has ever since, been a subject matter prevalent under the Companies Act, evolving from time to time. The Companies Act, 1956 contained 38 sections regarding the process of voluntary liquidation; and the subsequent act: The Companies Act, 2013 contained 20 sections regarding the same. However, the IBC vide Chapter V of its Part II provides for the entire process under one section: Section 59, which reads as: -

*"Section 59: Voluntary Liquidation of Corporate Persons:*

*59. (1) A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter.*

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<sup>1</sup> CA Chetna Sutaria, *Voluntary Liquidation under Insolvency and Bankruptcy Code, 2016*, CA CLUB INDIA (July 27, 2018), <https://www.caclubindia.com/articles/voluntary-liquidation-under-insolvency-and-bankruptcy-code-2016-33899.asp>.

*(2) The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions and procedural requirements as may be specified by the Board. (3) Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:—*

*(a) a declaration from majority of the directors of the company verified by an affidavit stating that—*

*(i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and*

*(ii) the company is not being liquidated to defraud any person;*

*(b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely:—*

*(i) 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;*

*(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;*

*(c) within four weeks of a declaration under sub-clause (a), there shall be—*

*(i) a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or*

*(ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator:*

*Provided that the company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed under sub-clause (c) within seven days of such resolution.*

*(4) The company shall notify the Registrar of Companies and the Board about the resolution under sub-section (3) to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.*

*(5) Subject to approval of the creditors under sub-section (3), the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under sub-clause (c) of sub-section (3).*

*(6) The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.*

*(7) Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.*

*(8) The Adjudicating Authority shall on an application filed by the liquidator under sub-section (7), pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.*

*(9) A copy of an order under sub-section (8) shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.”<sup>2</sup>*

The IBC via this section also, impliedly, lays down certain necessary conditions for the ‘corporate person’ to satisfy, before moving towards voluntary liquidation. It also specifies the processes to be followed pre-liquidation as well as during liquidation: like filing of certain mandatory documents, time limitations, et cetera. With the enactment of IBC and the provision of this Section under it, even though there is no substantial change in the procedure, it seems like it has become simpler for companies to wind up voluntarily; since reference has to be made only to a single section instead of a plethora of sections under the previous scenario. The IBC thus seems to have expedited the process for companies and other corporate persons seeking to wind up their business. This paper aims to look into the journey of voluntary liquidation from the Companies Act to the IBC, list down the procedure to be followed by companies for voluntary liquidation and also highlight the changes it underwent, due to that journey.

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<sup>2</sup> The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

## Voluntary Liquidation and Winding Up

‘Winding up of a company’ is the process by which the life of the company is brought to an end and the properties (assets) of the company are administered for the benefit of its creditors and members. Its main purpose is to realise the assets and make the payments of company’s debts fairly. “Winding up is the process by which management of a company’s affairs is taken out of its directors, its assets are realized by a liquidator and its debts are discharged out of proceeds of realization.”<sup>3</sup> Even though it is the last stage, putting an end to the life of the company, the company does not cease to exist as such, only except when it is dissolved. The company’s administrative machinery simply changes hands from its members to the **liquidator**. The company ceases to exist as a separate legal personality and entity only on dissolution, thus the legal status of the company goes on to exist between the period of winding up and dissolution. The Supreme Court has also opined that winding up precedes dissolution.<sup>4</sup>

Now, winding up can either be due to intervention of Court or voluntarily. A company was usually wound up by the court when it failed to pay its dues, however the other circumstances were provided for in Section 433 of the Companies Act, 1956. Further, Sections 433 to 483 of the Act dealt with winding up by Court.<sup>5</sup> On the other hand, voluntary winding up or voluntary liquidation was dealt with under Sections 484 to 521 of the Act. There was a distinction drawn up between the two kinds of voluntary winding up:

- i. Member’s Voluntary Winding Up – The Board of Directors make a ‘Declaration of Solvency’ stating that the company would be able to pay off its debts within three years from the date of commencement. This declaration must be delivered to the RoC and must be accompanied with auditor’s report on the financial statements of the company.
- ii. Creditor’s Voluntary Winding Up – The pre-condition remains the same that the company should be solvent, however no Declaration of Solvency has to be made, instead a meeting of creditors has to be called. The dominant control remains in the

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<sup>3</sup> Anubhav Pandey, *A comparative analysis of winding up of a company – Companies Act, 1956, Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016*, IPLEADERS (Oct. 23, 2017), <https://blog.ipleaders.in/comparative-analysis-winding-company-companies-act-1956-companies-act-2013-insolvency-bankruptcy-code-2016/>.

<sup>4</sup> *Pierce Leslie & Co. Ltd. v Violet Ouchterlony*, (1969) AIR 843 (India).

<sup>5</sup> Whereas in the new Companies Act of 2013, it has been dealt with under Section 271; which was also later amended and substituted by the IBC in 2016.

hands of the creditors, and they are the one appointing a liquidator, instead of the shareholders.

On the contrary, under The Companies Act, 2013, a company may be wound up by the NCLT under the circumstances provided in Section 271. Some of the grounds on which a company may be wound up by the Tribunal are: if the company is unable to pay off its debts; if the company had resolved so by a special resolution; if the NCLT is of the opinion that it is just and equitable for the company to be wound up. With respect to Voluntary Winding up under the Act, it is dealt with under Section 304 which says that a company has to pass a resolution in its general meeting if it intends to be wound up and subsequently dissolved.

### **Journey of Voluntary Liquidation from the Companies Act to the IBC**

With the enactment of IBC, all these aforementioned provisions relating to winding up have either been amended or repealed. The old Companies Act of 1956 had been repealed as per Section 465 of the new Companies Act of 2013 and replaced with the same. This Act merged the dichotomous provisions of member's and creditor's voluntary winding up under the option of voluntary winding up; wherein both a 'Declaration of Solvency' as well as a 'creditor's resolution' were made mandatory. As a consequence of this, companies which were finding it difficult to make a declaration of solvency (like insolvent companies) were only left with the option of compulsory winding up, since creditor's voluntary winding up ceased to be an option.

In the early 2015, the Bankruptcy Law Reforms Committee (hereinafter "**BLRC**") stated in its Interim Report:

“Reforming the insolvency system will have some benefits for liquidation of solvent companies as well...The ability of shareholders to cause the liquidation of a company in the event of breach of obligations by the other shareholders can serve as a disciplining mechanism for all the shareholders (and the management).”<sup>6</sup>

The BLRC in its final report recommended that the proposed IBC will also make provision for voluntary liquidation of corporate persons who have not defaulted on any debt; where a company has no debt or has not defaulted on any debt, it may apply for voluntary liquidation

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<sup>6</sup> Paragraph F, *Interim Report*, The Bankruptcy Law Reform Committee (Feb. 2015), [https://www.finmin.nic.in/sites/default/files/Interim\\_Report\\_BLR0\\_0.pdf](https://www.finmin.nic.in/sites/default/files/Interim_Report_BLR0_0.pdf).

under the IBC and get liquidated in the manner specified by the Board.

Finally, the IBC was enacted in 2016 and it provides a rescue mechanism not only to the insolvent corporate persons, but also to the solvent corporate persons, via voluntary liquidation. Section 255 of the IBC amended a few provisions of the Companies Act, 2013, after the MCA's notification no. S.O. 3453 E of November 15<sup>th</sup>, 2016. Interestingly, what was previously contained in tens of sections has now been merged into one single section under the IBC. Section 59 of the IBC wraps up the provisions of voluntary liquidation of corporate persons, partnership firms, individuals and other bodies corporate.

### **Brief Explanation of the Section**

As per the terms of Section 59, a company who intends to liquidate itself voluntarily and has not committed a default on any debt, may initiate voluntary liquidation proceedings. More specifically, a corporate person who has not committed any default is eligible to be voluntarily liquidated. Looking at it with a critical lens, it raises the question: whether the term 'default' is limited to defaults of the company in the present or includes past default as well? Looking at the definition of 'default' under the IBC, it suggests that the default, either past or present, must be existing in nature and should not have already been paid off, to be included under the scope of Section 59.

As per sub-section (5) of Section 59 read with Regulations 5 and 6 of IBBI (Voluntary Liquidation) Regulations, 2017, the "Liquidation Commencement Date" shall be deemed to be the date of passing of the Contributories' Resolution. On and from this date, the corporate person shall cease to carry on its business, except as much as required for the voluntary liquidation process.

### **Conditions for Voluntary Liquidation**

There are certain underlying conditions which have to be satisfied before applying for voluntary liquidation under Section 59: -

- (i) As per this Section, the voluntary liquidation process can only be initiated by a 'corporate person' which has not committed any default. Default includes all the unpaid debts that have become due and payable.

- (ii) A 'Declaration of Solvency', verified by an affidavit, made by the majority of the directors that the specific corporate person is not being wound up to defraud any person. This declaration is also to be supplemented with audited financial statements.
- (iii) The corporate person has to appoint a liquidator, who can be an insolvency professional, but should match the criteria under the regulations by IBBI.
- (iv) The affairs of the corporate person have to be wound up within 12 months from the commencement of the voluntary winding up process.
- (v) The reports prepared by the appointed liquidator, have to be submitted to the corporate person, RoC and the IBBI.

### **Process to be followed Pre-Liquidation**

The following are the steps to be taken before initiation of liquidation process:

- 1. Declaration of Solvency** - As per clause (2)(a) of Section 59, the Board of Directors of the company have to submit a declaration of solvency to the RoC stating that (i) either the company has no debt or that if it has, it will be able to pay it off in full from the proceeds of assets to be sold in the voluntary liquidation process; and (ii) the company is not being liquidated with the intent to defraud any person.

In furtherance of the same, as per clause (2)(b), this declaration has to be accompanied with audited financial statements and valuation report by a registered valuer.

- 2. Member's approval** – Within 4 weeks from the date of declaration of solvency, the company's shareholders have to pass a 'special resolution' in a general meeting of the company. The special resolution should state that the company is to be liquidated and shall appoint an insolvency professional as a liquidator for the same.
- 3. Creditors' approval** – In case the company owes debts, creditors representing 2/3<sup>rd</sup> of the value of the total debt of the company, must approve the winding up resolution passed by the shareholders of the company. This approval must be given within 7 days of passing of the resolution.

- 4. Intimation to RoC & IBBI** – As per Section 59(4), the company has to notify the RoC in Form No. MGT-14 and the IBBI about the member's special resolution within 7 days of its passing or the subsequent creditor's approval, as the case may be.

### **Process to be followed for Voluntary Liquidation**

The voluntary liquidation proceedings in respect of a company shall be deemed to have **commenced** from the date of passing of the special resolution, subject to the approval of the creditors. Once the special resolution has been passed, accepted by the creditors and intimation has been made to the RoC and IBBI, the liquidation process begins. The following are the steps required to be taken for the same:

- 1. Public Announcement** – Within 5 days of the liquidator's appointment, he is required to make a public announcement via Form A in at least one English newspaper and one regional language newspaper of the place wherein the registered office of the company is located; on the company's official website and on the IBBI's website. Since this publication is primarily to bring the company's impending liquidation to the public's notice, it must contain the liquidation commencement date; name, address, contact number, registration number of liquidators; mode of submission of claim; and the last day of submission of claims. The liquidator must submit claims within 30 days of such announcement.
- 2. Separate Bank Account** – The liquidator should open a new bank account for the liquidation process with the words '*in voluntary liquidation*' added at the end of the name of the company. During the course of liquidation, each and every financial settlement and/or transaction is to be made exclusively through this account.

**Liquidation Proceedings by the Liquidator** – Once the shareholders have appointed a liquidator, he shall take over the control of the company and initiate the further process of liquidation:

- 3. Collection of claims<sup>7</sup>** must be done within 30 days of public announcement and the

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<sup>7</sup> **Claims** mean any right of payment which is possessed by any person against the company irrespective of the fact whether it is due to a judgement, fixed dispute, secured or unsecured debt, etc. A person claiming to be a creditor, employee or other stakeholder of the company has to submit proof to the liquidator via their respective forms in Schedule 1 of IBBI Regulations, 2017.

liquidator must ascertain and verify the correctness of each claim received from the stakeholders.

4. **Submission of preliminary report** within 45 days from the liquidation commencement date, containing capital structure, assets and liabilities, claims received, et cetera.
5. The liquidator must sell off all the assets of the company, either by auction or direct party; realize amount from creditors and then finally **distribute proceedings** among all the stakeholders. The proceeds shall be distributed within 6 months from the receipt of amount.
6. **Submission of final report** – Upon completion of the abovementioned proceedings, the liquidator shall prepare a final report in compliance with Regulation 38 of IBBI Regulations 2017, and submit it to the corporate person itself, RoC, IBBI and the NCLT. The report should mention all the important facts of the liquidation proceedings of the company like details of the disposed assets, manner and mode of sale, details of the person to whom the sale is made, statements that all debt has been discharged.
7. **Application to the Tribunal** – Once the affairs of the company have been wound up, the assets of the company have been fully liquidated and the final report has been submitted, an application under Section 59(7) of the IBC has to be made to the NCLT, by the liquidator, for dissolution of the company.

Pursuant to this application, the Tribunal shall pass an order for dissolution as per Section 59(8) of the IBC and the company shall stand dissolved from the date of this order. Within 14 days from the date of this order, a copy of the same has to be submitted to the RoC.

### **Current Scenario with respect to Petitions for Voluntary Liquidation**

There exists two scenarios with respect to petitions for voluntary liquidation:

1. Fresh proceedings – As per Section 59 of the IBC read with Section 431(1)(c) and 465 of the Companies Act 2013, all fresh proceedings for voluntary liquidation that came up on or after 1<sup>st</sup> of April 2017 shall be instituted before the NCLT and be governed by the provisions of the IBC and its Regulations.
2. Pending proceedings – All applications and petitions relating to voluntary winding up of companies pending before a High Court prior to 1<sup>st</sup> of April 2017 shall continue to

be dealt in accordance with the provisions of the Companies Act, 1956.<sup>8</sup>

### **Analysis and Recommendations**

In the author's hypothesis, it is for the better that the process of voluntary liquidation is now governed by the IBC. It has now become much simpler for solvent companies seeking to dissolve their business as they only have to adhere to one legislative section in mind, as compared to a vast set of sections under both, the old and new Companies Act of 1956 and 2013. Furthermore, the regulations published by the IBBI is a step forward as it not only provides the entire procedure in detail but also provides which forms are to be submitted at what stage, to whom and by whom. Additionally, the regulations can be much easily amended as compared to earlier, which is needed in today's dynamic commercial sector.

Furthermore, since the adjudicating authority for hearing matters relating to voluntary liquidation had been shifted to the NCLT, the burden is reduced from an already overburdened High Court.

However, the author's viewpoint is also that the law may change anytime; because multiple cases challenging the validity of the IBC in entirety, have been brought before the Supreme Court. Should the honourable apex court rule that the IBC is unconstitutional and consequentially strike it down, there would not exist any law regarding voluntary liquidation; and the MCA will have to notify the sections in the new Companies Act of 2013 which shall apply.

According to the author, currently there is not a lot of scope for improving the law of the land as the statute and the regulations are well-drafted, protecting the interests of all the stakeholders; however, many processes and steps could be further streamlined to improve the efficiency of the whole process; and it would also be optimum if the various departments and the NCLT itself adheres to the IBC stipulated timelines.

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<sup>8</sup> As per Rule 4 of the Companies (Transfer of Pending Proceedings) Rules of 2016 which reads: "All applications and petitions relating to voluntary winding up of companies pending before a High Court on the date of commencement of this rule, shall continue with and dealt with by the High Court in accordance with provisions of the Act".

## **Role of Directors**

Until the liquidation takes place, the director thinks from the point of view of the shareholders; and keeps their best interest in his mind. However, when the liquidation process takes place, the director has to think from the point of view of the creditors since now the company's objective is to pay off its debts, and not to maximise its profits.

The directors essentially have two kinds of liabilities:

“Punitive liability” which extends to their actions of defrauding and falsifying books of accounts; and “Disgorgement based liability” which comes into existence only when they did not exercise due diligence while trying to reduce the loss for the creditors of the company, and acted opportunistically.

If the NCLT finds the directors had taken decisions with the intent of defrauding the creditor, then as per Section 339 of the Companies Act, 2013, they may be held personally responsible with an unlimited liability for paying off the debts of the company.

## **Role of Creditors**

A set hierarchy of creditors exist when a company enters into liquidation process (or more specifically, insolvency). The secured creditors occupy the top position in this hierarchy. Secured creditors are those that hold a fixed or floating charge over an asset of the business; and when the company becomes insolvent, sale of that specific asset provides repayment towards the dues of these creditors. On the below, are unsecured creditors, ranked just above the shareholders, thus being one of the last groups to be paid.

During liquidation proceedings, unsecured creditors may form a creditor's liquidation committee, consisting of three to five members. The committee's role would be to oversee the liquidation process on behalf of all the unsecured creditors as a group.<sup>9</sup> Secured and unsecured creditors both have the right to challenge the duly appointed liquidator's remuneration if they feel it is too high and can do so by applying to the court. Yet, the most crucial role of creditors is the approval of the winding up resolution passed by the shareholders of the company; wherein the creditors representing two-thirds of the value of the company's debt have to give

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<sup>9</sup> *What are creditors' rights in a liquidation process*, REAL BUSINESS RESCUE (Apr. 30, 2020), <https://www.realbusinessrescue.co.uk/articles/business-insolvency/what-are-creditors-rights-in-a-liquidation-process>.

their explicit approval, within a week.

### **Foreign Jurisdiction**

In Australia<sup>10</sup>, just like India, the concept of winding up does not exclusively apply to insolvent companies, a solvent company can be wound up as well. The procedure is primarily regulated by the Corporations Act 2001. There are two key procedures to effect the dissolution of a solvent company: (i) MVL (ii) Deregistration.

(i) MVL: The directors meet and by majority, make a Declaration of Solvency, attaching with it a current statement of affairs of the company. Next, they resolve to convene a meeting of the shareholders, regarding which, a notice of at least 21 days must be given. According to the Act, the declaration is ineffectual unless it is made at a meeting of the directors, it is lodged with the ASIC prior to the issue of notice calling the shareholder's meeting to consider the winding up proposal, and it is followed by a resolution to wind up the company, passed by the shareholders, within a period of 5 weeks.

As per Section 494(1), the declaration is to the effect that the company will be able to pay its debts in full within a period of 12 months after the commencement of winding up. On the contrary, the Indian provision, Section 59 does not specify a time period with respect to the same. Another noticeable difference is that, where India includes only the debts in past and present, Australia also makes it necessary to take into account the liabilities and claims which will fall due in the future if certain events or contingencies occur.

In the event, a director makes a false declaration, i.e., in the absence of any reasonable grounds for his opinion that the company will be able to pay its debt in full, he can be held guilty of an offence; and the duly appointed liquidator may proceed to take steps to turn the MVL into an insolvent liquidation.

Broadly, the role and functions of the liquidator are same under both the jurisdictions. The ASIC is somewhat like the RoC; which is supposed to deregister the company within 3 months of the conclusion of the liquidation process.

In Australia, the liquidation process usually takes up 6-12 months, whereas in India, the law

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<sup>10</sup> Baker McKenzie, *Overview of Members' Voluntary Liquidation and Deregistration of an Australian company*, BAKER & MCKENZIE (May 18, 2020), [https://www.bakermckenzie.com/-/media/files/insight/publications/2020/05/overview\\_of\\_members\\_voluntary\\_wind\\_up\\_\\_may\\_2020.pdf](https://www.bakermckenzie.com/-/media/files/insight/publications/2020/05/overview_of_members_voluntary_wind_up__may_2020.pdf).

states that an “endeavour” shall be made to complete it within 12 months. Clearly, the process is comparatively more time-efficient in the Australian jurisdiction.

(ii) Deregistration: it is an alternative to MVL, but a difficult option with a higher threshold criteria. According to Section 601AA(2), in order to qualify for deregistration, all the shareholders of the company must agree, the company must not be carrying on business, its assets must be less than \$1000, it must have paid all fees and penalties and should not have any outstanding liabilities, and it should not be a party to any legal proceedings. On deregistration, any remaining assets of the company will vest in ASIC.

## **Conclusion**

Section 59 of the IBC is a much appreciated step as the earlier law was too old and had too many sections. It precisely lays down what the law is; through a clear timeline of events and series of steps, which makes it easier to adhere to for the company seeking to voluntarily liquidate itself.

The time period provided to comply with the requirements has also been reduced in the IBC to expedite the process as a whole. According to the Department of Financial Services, in 2015, there were 1479 winding up cases pending for than 20 years. In 2016, IBC was enacted with the motive to ensure time bound settlement of insolvency, thus solving India’s bad debts problem. The process is simple as compared to earlier, however since it is a relatively new legislation, understanding and practically implementing it might seem time consuming and complicated to some companies; but the IBC as well as the IBBI Regulations provide a favourable framework to help combat any issue of this kind.

Now, given the whole pre-liquidation and liquidation process listed in Section 59, it may take more or less 12 months to completely dissolve a company. However, in case the time period extends beyond a period of 12 months, the appointed liquidator has to present the ‘status report’ showing the receipts and payments pertaining to liquidation since the liquidation commencement date.<sup>11</sup>

Earlier, since the adjudicating authority lied with the High Court, they were overburdened with other matters and could not dispose of the winding up cases, however since now with the

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<sup>11</sup> Regulation 37 (2)(b), IBBI (Voluntary Liquidation) Regulations, 2017 (India).

enactment of the IBC, the authority has shifted to the NCLT, the time taken for winding up has reduced substantially from the tens of years to a few years.

Section 59 has clearly expedited the whole process by removing the ambiguities and bringing a timeline to the whole process. Now, every company who seeks to wind up is required to follow the IBC, which is quite comprehensive as compared to the Companies Act.