

The Companies (Winding Up) Rules, 2020 – Summary procedure of liquidation for smaller companies



Smaller companies can now opt for a summary procedure of liquidation under the Companies (Winding Up) Rules, 2020 (“**Rules**”) which are effective from 1 April 2020. When the Companies Act 2013 (“**Act**”) was enacted, Section 271⁽¹⁾ included the ground of “inability to pay debts” and the procedure for voluntary winding up of a company was laid down under Part II of Chapter XX of the Act. Since then, both the aforesaid have been omitted vide Section 255 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”). The same are now being governed by the relevant regulations of the Code.

These Rules read with the provisions of the Act *inter alia* provides for the grounds for winding up, the methodology required to be followed by the National Company Law Tribunal (“**Tribunal**”), appointment of provisional liquidator or Company Liquidator, procedure for opening of bank accounts, matters relating to investment of surplus funds, settlement of contributories, formation of advisory committee, debts and claims against a company, winding up order etc.

Summary procedure for liquidation

A detailed procedure has been provided for the winding up of a company but the most striking part of these Rules is the chapter dealing with summary procedure for liquidation wherein certain types of companies have been classified into one group who can opt for this procedure.

Persons who can file a petition for winding up

A company, a contributory^[2], the Registrar of Companies, persons authorized by the Central Government, in a case falling under Section 271(b)^[3] by the Central Government or a State Government, can file a petition for winding up under the said Rules before the Tribunal. A company can file a petition for winding up before the Tribunal for any reason whatsoever and the company must pass a special resolution to wind up to that effect. The Central and State government can *suo moto* file a petition for winding up before the Tribunal on grounds mentioned under the Act.

Smaller companies can opt for summary procedure

The companies who can opt for such summary procedure under these Rules and the provisions of the Act are: the companies having assets of book value not exceeding Rs. 1,00,00,000/- (Rupees One Crore only), company having: (a) deposits not exceeding Rs. 25,00,000/- (Rupees Twenty Five Lakhs only); (b) total outstanding loan of not exceeding Rs. 50,00,000/ (Rupees Fifty Lakhs only); (c) turnover of up to Rs. 50,00,00,000/- (Rupees Fifty Crores only); and (d) the company's paid up capital does not exceed Rs. 1,00,00,000/- (Rupees One Crore only).

The smaller companies can file a petition before the Tribunal for winding up and the procedure involved is similar to that to be followed by other companies. However, at the time of admission of the petition such companies can opt for a summary procedure of liquidation. This could fast track the winding up procedure for such companies and further eases the burden of the Tribunal.

Basic feature

Some of the approvals and/or compliances, as the case may be, which had to be taken and/or complied with by the company in liquidation with the Tribunal under the said Rules, will now be taken and/or complied with by the Company with the Central Government. Hence, in other words the procedure for winding up under the summary procedure for liquidation remains the same save and except for certain approvals and / or compliances, as the case may be, which have now been shifted from the purview of the Tribunal to the Central Government.

Approvals and compliances

The approvals and/or compliances which will now be dealt by the Central Government are rules relating to the (a) procedure for filing and audit of Company Liquidators' account, (b) creditors of the company to prove

their claim; and (c) rules relating to the Company Liquidator to dispose of all the assets, with further directions to be complied with, so issued by the Central Government, as may be necessary, from time to time.

Conclusion

The companies opting for voluntary winding up can opt for winding up under these Rules, especially if they are smaller companies and take advantage of the summary procedure for liquidation. It is to be noted that the powers with the Central Government, so provided for under the summary procedure for liquidation will either be delegated to the Regional Directors or the concerned Registrar of Companies of the State or Union Territory, which has not been notified yet. The actual implementation of this procedure will therefore depend on how soon the Central Government delegates the powers to these authorities. Pending the delegation of its powers to the said authorities, the chapter relating to summary procedure for liquidation would remain infructuous as the smaller companies would not be able to take advantage of the same even though the Rules have been notified to that effect.

Although, for certain compliances (for e.g. for filing of the affidavit in objection, affidavit in reply, advertisements to be given under the Rules, etc.) timelines have been provided for in the Rules, however, overall the Rules are silent on the actual timelines within which the Tribunal has to conclude the proceedings of winding up, hence it remains to be seen how effective the said Rules would be in terms of actually disposing off the said winding up proceedings initiated under these Rules.

A substantial part of the procedure for winding up applicable to regular companies is also applicable to smaller companies who can opt for a summary procedure of liquidation As stated above there are no specific timelines for the Tribunal to complete the winding up process. In this scenario, one will need to wait and watch to know whether the summary procedure for liquidation would actually fast track the winding up for the smaller companies as also ease the burden of the Tribunal.

Apoorva Chandra (Senior Associate)

Editor: Trupti Daphtary (Knowledge Management)

[2]. Section 2(26) of the Act defines a contributory as “person liable to contribute towards the assets of the company in the event of its being wound up.

Explanation.—For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory.”

[3]. 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.

DISCLAIMER

This newsletter is for informational purposes only, and not intended to be an advertisement or solicitation. This newsletter is not a substitute for professional advice. Hariani & Co. disclaim all responsibility and accept no liability for consequences of any person acting or refraining from acting on the basis of any information contained herein.

Copyright © : Hariani & Co. All rights reserved. Reproduction of this newsletter in whole or in part is allowed with proper reference to Hariani & Co.