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WINDING UP OF COMPANIES AND PROCEDURAL DELAYS: AN ANALYTICAL STUDY OF AMALGAMATION AS AN ALTERNATIVE MECHANISM

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ABSTRACT

The winding-up process under the Companies Act, 2013 is designed to ensure the lawful closure of companies that are unable to continue their business operations. It provides a structured legal framework for dissolving a company and distributing its assets among creditors and other stakeholders. However, procedural delays have become a significant concern in winding-up proceedings before the National Company Law Tribunal (NCLT).

These delays often arise due to heavy case backlogs, frequent adjournments, lengthy hearings, complex documentation requirements, and slow verification of claims. In addition, challenges in asset valuation, settlement of liabilities, and coordination between liquidators and regulatory authorities further extend the process. As a result, creditors, employees, and investors face prolonged uncertainty and financial hardship.

The role of the NCLT is crucial in ensuring timely resolution, but limited resources and increasing caseloads sometimes hinder efficiency. Procedural complexities and compliance requirements also add to the time taken to conclude proceedings.

Therefore, there is a need to streamline procedures, enforce strict timelines, adopt digital systems for case management, and strengthen institutional capacity. Reducing procedural delays will promote transparency, protect stakeholder interests, and enhance confidence in corporate regulatory mechanisms in India.

KEYWORDS: National Company Law Tribunal (NCLT), Business operations, Procedural complexities, Promote transparency, Corporate regulatory mechanisms in India.

CHAPTER – 1

INTRODUCTION

Winding-up of a company refers to the legal procedure in which a corporate entity is terminated. In this process the company meets all its financial and legal requirements before it gets finally dissolved. The assets of the company are gathered and auctioned and the result of such auction is used to pay off creditors, outstanding debts and other expenses. In case there is any balance left after all obligations have been settled, the balance that is remaining is shared among shareholders according to their legal rights and shareholdings. As soon as this is done, the firm is technically closed and fails to exist as a legal person.¹

The whole winding-up process is normally presided by a liquidator, who is designated to handle and administer the process. The liquidator takes over the assets of the company, assesses its financial status and makes sure that the sharing of funds is done in a way that is just and in accordance with the law. It is at this point that the business of the company is normally terminated except activities that are required to accomplish the winding-up in an orderly manner.

Winding up is a very important aspect in corporate law in that the interest of the creditors, investors, employees, and other stakeholders are safeguarded. It ensures that the debts and liabilities of the company are paid off adequately and that the rest of the assets are distributed fairly.² Besides, the process enhances transparency and accountability in the business operations.

Generally, the winding-up process consists of a number of steps: the resolution to wind up, the appointment of a liquidator, a statement of affairs, realization of assets of the company, payment to creditors, and dividend of share holders. At the completion of all legal formalities and regulations, the business is officially liquidated and the name of the business is canceled out of the register of companies.³

¹ Companies Act, 2013, No. 18 of 2013, Section 270-303 (India).

² K.K. Ramaiya, Guide to the Companies Act 3450-3465 (9th ed. 2021).

³ M.C. Kuchhal & Vivek Kuchhal, Corporate Laws 512-520 (9th ed. 2021).

CHAPTER – 2

WINDING UP AND PROCEDURAL DELAY FRAMEWORK

2.1 Significance of Winding up Process.

Winding - up process is necessary to the extent that it ensures that a company ends its affairs fairly and in accordance to the requirements of the law. It protects the creditors, shareholders, employees and governmental authorities in a way that the assets of the company are collected and allocated diligently. Furthermore, the process maintains trust in the corporate system and a company would not risk going out in business before paying its debts. A properly conducted winding-up counters the risk of asset misappropriation and enhances openness during the winding-up.

2.2 Role of Liquidator

Liquidator plays a central role in the process of winding-up. When the company goes into liquidation, the liquidator takes over ownership of the assets of the company and is in charge of the process of pay out the debts. The collection and sale of assets, credit checking, orderly payment of debts and distribution of any excess to shareholders are responsibilities. Besides, the liquidator is making the necessary reports as well as ensuring that all the legal matters are done before the company is finally dissolved.

2.3 The scope of the term Procedural Delay in Winding up is as follows.

Procedural delay in winding up Procedural delay in winding up is the excessive time taken to complete closure of the company due to legal or administrative barriers. These delays can be caused by protracted court hearings, wrangles with creditors, missing paperwork or inefficiency in handling the cases. In turn, the winding-up process, which should theoretically take rather a short time, can take several years.

2.4 Causes of Procedural Delay

There are many causes of the delays in the winding-up process. First and foremost is the complex nature of legal processes that are associated with the winding up of a company which more often than not requires court sanctions and careful compliance with various regulatory provisions. Conflict in the distribution of assets among creditors, shareholders, and other stakeholders may further slow down the pace. Other obstacles encompass poor record-keeping, the inability to trace corporate assets, systemic administrative inefficiencies and so on that extend the winding-up.

2.5 Effects of Procedural Delay

The winding-up process has procedural delays that have harmful impacts on every stakeholder. Creditors have to face long periods of time to be compensated and shareholders may discover that there is a delay in the availability of remaining cash. There is the uncertainty on remuneration and benefits to the employees. Additionally, prolonged delays increase legal and administrative expenses, which destroys the inherent worth of the assets of the company.⁴ The value of certain assets may erode with time and the net result will be reduced by the ultimate settlement.

2.6 Requirement of Effective Processes.

Effective procedures must also be implemented in order to reduce time wastes in the winding-up process. Clear laws, faster decision making by the authorities and good management of the liquidators well enable a faster exit of proceedings. Efficiency is further improved by the use of digital record systems, better coordination among parties and simplified legal procedures. These measures also make sure that the winding -up process is done in a just and timely manner among the involved parties.⁵

2.7 Role of Courts and Tribunals

The winding-up procedure places at the center of supervision the courts and tribunals. In India, the adjudication of the winding-up issues under the Companies Act, 2013, is vested in the National Company Law Tribunal (NCLT). The court considers dissolution applications, appoints liquidators and resolves disputes between creditors, shareholders and other interested parties. Through its supervision, the tribunal ensures that the process is conducted in a fair, legitimate and in a transparent manner.

2.8 The type of measures taken against procedural delay

The reduction of the duration of procedures is essential in the effective execution of the winding up process. The strategies involve streamlined legal frameworks, enhanced collaboration of the stakeholders and integration of digital record-keeping systems. Timely filing of necessary documents, responsible management of the liquidator, and quick adjudication by the liquidator through other bodies like the NCLT also help in fast-tracking the process. The steps would guarantee the payment of the creditors on time and provide an orderly and clear closure of the

⁴ Companies Act, 2013, Section 272 (India).

⁵ Official Liquidator v Dharti Dhan (P) Ltd., (1977) 2 SCC 166 (India).

company.⁶

CHAPTER – 3

CAUSES OF PROCEDURAL DELAY IN WINDING UP

Reasons of Procedural Delay in winding up.

Procedural delay in a company winding up refers to the time taken to complete the legal and administrative processes that are involved in winding up a corporate entity. This process may be protracted by a number of factors.

3.1 Institutional Delay

The institutional delay is considered to be the delay that can be ascribed to the authorities involved in the winding-up process, which may be the courts, regulatory authorities or the governmental regulations. This tardiness can be attributed to too much work per case worker, lack of personnel, or inadequate administrative facilities. An example of this is that a court can take a long duration to schedule hearings or authorize necessary procedure measures due to a large docket. These disruptions are usual and are usually beyond the control of the respective parties.⁷

3.2 Procedural Complexities

The winding-up process involves many legal procedures that have to be strictly followed. These include filing of documentation, appointment of a liquidator and informing creditors. Any failure or error during these stages may hinder development. Besides, organizations that have complex business structure (several shareholders, subsidiaries, or international business) might require more time to complete the dissolution. The general process, in turn, can be prolonged by the necessity to document the process in detail and comply with the legislation strictly.

3.3 Litigation and Abuse of Process.

The interest-bearing parties, such as creditors, shareholders or employees, can also lawsuit during the winding-up trajectory, which adds to the procedural delays. These wrangles may extend to longer durations, and hence the process of closing down the company can not be completed easily. In some cases, some individuals can abuse the law system, which means they

⁶ Vinod Kothari, Corporate Restructuring, Amalgamation & Takeovers 210-225 (3rd ed. 2019).

⁷ Companies Act, 2013, Section 281-290 (India).

present unnecessary or fake claims, and thus deliberately delay the process with an aim of reaping benefits. This will be categorized as abuse of process and this can significantly delay the winding-up process.

3.4 Delay in Asset Realisation

One of the most common obstacles to winding-up is the problem of liquidation of corporate assets. Unsold assets can also occur because of the unfavourable market conditions, the uncertainty about the valuation, or the engagement in the legal proceedings, and thus making them to be less identifiable and evaluated. These barriers are detrimental to the liquidator in terms of his ability to turn over assets into cash thus causing delay in repaying the creditors and finalizing the winding-up process.⁸

3.6 Administrative Bottlenecks.

Administrative bottlenecks are identified as the delay in filling necessary documents or even in the coordination of various authorities involved in the process. The winding-up process requires a coordinated cooperation of liquidators, courts and regulatory authorities. Any of these entities can slack down the whole process in case they do not report their duties effectively or promptly.⁹

CHAPTER – 4

PROCESS OF AMALGAMATION

Process of Amalgamation

4.1 The reason why winding-up procedures are so lengthy.

The winding-up (liquidation) of a company involves a process which includes a number of formal procedures including:

- i. Appointment of a liquidator,
- ii. checking and settlement of the claims of the creditor,
- iii. Disposal of company assets,
- iv. Distribution of the resultant proceeds,
- v. Numerous filings and court or National Company Law Tribunal (NCLT) sanctions.

All these consecutive actions lead to a lengthy dissolution process that may take many years.

⁸ Meghal Homes (P) Ltd. v. Shree Niwas Girni K.K. Samiti, (2007) 7 SCC 753 (India).

⁹ ICSI, Corporate Restructuring, Insolvency, Liquidation & Winding-Up 8.3-8.10 (2022).

4.2 The way Amalgamation Minimizes Delay.

Amalgamation refers to the integration of a transferor company in a transferee company and as such, the former is not fully liquidated.

The main processes according to which amalgamation reduces delays during the procedures:

a) evasion of the entire liquidation process.

Rather than having assets and liabilities liquidated separately by a liquidator, each and every asset and liability is automatically vested in the transferee company.¹⁰

- i. No necessity of prolonged sale of assets,
- ii. No liquidation proceedings necessity.

b) Rapid payment of liabilities.

Creditors do not receive payment through liquidation proceeds but instead their claims are appropriated by the transferee business.

- i. This does away with the long creditor-settlement process of liquidation.

c) Automatic choice to break the Transferor Company.

When the amalgamation scheme is approved by the NCLT under the Companies Act, 2013, the transferor company is not wound-up, and dissolved.

- i. This eliminates many procedural steps that are normally accompanied with liquidation.

d) Key business value protection.

In the liquidation, there can be a degradation in the asset values.

As compared to amalgamation, it permits:

- i. Continuation of business as a going concern,
- ii. Long term employment, contract, and continuity of operations.¹¹

4.3 Legal Mechanism

As stated in the Companies Act, 2013 (Sections 230-232) the following order is followed:

- i. Proposal of a Scheme of Amalgamation,
- ii. approved by shareholders and creditors,
- iii. Sanctioning by the NCLT,
- iv. Conveyance of assets and liabilities to the transferee company,

The transferor company may be dissolved without winding-up.¹²

¹⁰ Companies Act, 2013, Section 230-232 (India).

¹¹ Miheer H. Mafatlal v. Mafatla Industries Ltd., (1997) 1 SCC 579 (India).

¹² S.N. Maheshwari, Corporate Restructuring and Insolvency 145-160 (2020).

CHAPTER – 5

LEGAL FRAMEWORK

Legal framework [Section 230-240]

Section 230 -Power to Compromise or to make arrangements with creditors and members.

This is a statutory provision that gives power to a corporation to negotiate and formalise a compromise or arrangement with its creditors or its members. It facilitates the reorganization of debts, share capital or even the implementation of mergers hence being a feasible alternative to liquidation. Any such scheme can only be successfully implemented after receiving the National Company Law Tribunal (NCLT) approval and the majority of the concerned parties.

Section 231 -Authority of the Tribunal to enforce Compromise or Arrangement.

The National Company Law Tribunal (NCLT) is granted the supervisory power under this provision to control the execution of a compromise or arrangement approved under the provision of Section 230. In the unfeasibility of the scheme or in case of its poor performance, the Tribunal may still tweak the scheme or may wind up the company, thus protecting the interests of the stakeholders.

Section 232 -Merger and Amalgamation of Companies.

This part outlines the procedural plan on mergers and amalgamations among corporations. It allows an assignment of assets, liabilities, as well as undertakings between one entity and another in the event that a scheme is developed and approved by creditors, shareholders and approved by the NCLT. As a result, the transferor company can either be restructured or dissolved without formal liquidation.¹³

Section 233 – Fast Track Merger.

The clause creates a simplified merger procedure that can be used in specific types of firms such as small businesses and wholly owned subsidiary firms. The consent of shareholders, creditors and Central Government is also mandatory, thus making the merger process a fast track process to an extent that NCLT intervention is mostly avoided.

¹³ Companies Act, 2013, Section 230-240 (India).

Section 234 -Merger or Amalgamation of Foreign Company.

The provision gives the Indian corporations the right to merge with foreign companies that are located in specific jurisdictions. These cross-border mergers need to obtain the NCLT sanction and be operational in accordance with the regulations published under the Companies Act and the Reserve Bank of India, and provide the regulatory control of the international transactions.

Section 235 - Power of Acquisition of Shares of Schemes or Contracts Dissenting Shareholders.

This act enables a company having bought 90 percent or above of its stock in a merger or a take-over plan to forcefully buy out the shares of noncompliant stockholders. This process makes the acquisition process work and supports a smooth process of implementing the adopted scheme.

Section 236 Purchase of Minority Shareholding.

The clause protects minority shareholders under the situation when an acquirer or the majority shareholder controls 90.00 percent or above of the company stock. The majority shareholder has the duty of providing to purchase other shares at a fair value as will be determined by a registered valuation and so minority interests are safeguarded.¹⁴

Section 237 -Power of Central Government to Provide Amalgamation of Public interest.

The clause permits the Central Government of India to require merging of two or more companies which are considered necessary in the best interest of the people. The order may include a transfer of assets, liabilities and compensation by the Government to the affected members.

Section 238 -Registration of Offer of Schemes Involving Transfer of Shares.

It requires that an offer, which involves transfer or acquisition of shares in a scheme, should be registered and disclosed accordingly. This will enhance transparency and protect the shareholders against unfair takeover procedures.

¹⁴ Avtar Singh, Company Law 780-805(17th ed. 2022).

Section 239- Preservation of Books and Papers of Amalgamated Companies.

The provision compels book maintaining, papers and records of a company taking part in amalgamation. Such records cannot be destroyed without Central Government authorization so that they can be inspected in court either by the law or financial audit.

Section 240 - Liability of Officers of Respect of Pre-merger or amalgamation offences.

This law explains that a merger or amalgamation does not exempt the officers of any liability of an offence committed prior to the transaction. Even after the amalgamation, the officers can be held responsible and prosecuted on any violations before the amalgamation.

CHAPTER – 6

STEPS FOR AMALGAMATION

Steps for Amalgamation

The minimization of procedural delay in the winding-up of a company is a pertinent issue under the corporate law. The traditional winding-up process has often been lengthy and complicated, and involves a series of steps including, appointment of a liquidator, clearing a claim of creditors, disposing of assets and assigning the remaining proceeds to shareholders. The operations can be of a number of years, which will lead to the decline in the overall value of the business. As a way of reducing such delays, corporations can resort to amalgamation, whereby one party takes over another one, but the assets and liabilities are transferred without the company being fully liquidated. This mechanism will save time as well as preserving the business due to its economical value and continuity.

The scheme of amalgamation is one of the initial steps towards reducing delay by amalgamation. In this phase, the management teams of the parties come together to come up with an extensive plan outlining the mechanics of the merger. The scheme clearly states how assets and liabilities would be transferred between the two companies, the share-exchange rate which would be used on the shareholders and how the employees and creditors would be treated after the merger. It is quite important to draft this scheme because this will create transparency and ensure every stakeholder such as shareholders, creditors and employees have an understanding of what to expect with regard to the merger. The main aim is to make the overall process smooth and fair to everyone.¹⁵

¹⁵ Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, r. 3-25 (India).

The second move that follows is to seek the endorsement of the Board of Directors of the participating companies. The board would undertake a thorough analysis of the scheme proposed in order to determine its usefulness and rationality to the corporation and the stakeholders. When the board is satisfied, a resolution is taken by the board approving the amalgamation. After the board ratification, the entities request the National Company Law Tribunal (NCLT) to be given the go-ahead. The Tribunal has the key role of making sure that the arrangement is fair and is not biased towards the interests of creditors, shareholders, and the public.

Once the Tribunal allows the process to proceed, shareholders and creditors meetings are organized.¹⁶ During such meetings, the parties explain the details of the offered scheme so that everyone participating in it should properly comprehend how the merger will work and how it may affect it. The shareholders and creditors are given a chance to ask questions and express their views. The scheme has to pass the affirmative vote of majority representing at least three quarters in value among the shareholder or creditors present and voting to endorse the scheme. This level will ensure that the decision is based on the mutual agreement of the concerned stakeholders.

When the scheme is sanctioned during such meetings, it is reverted back to the National Company Law Tribunal to have it sanctioned. The Tribunal makes a close re-examination of the whole proposal to ensure that all legal conditions are met as well as ensuring that the scheme is fair and reasonable to all the parties involved. Meeting the requirements of the Tribunal will result in an order that will authorise the amalgamation. When this approval is made, the scheme gains a legal standing and the parties would be allowed to effect the merger.

The other process involved in the transfer of assets and liabilities is the transfer of the company assets and liabilities between the transferor and the transferee companies. Instead of separating all assets that are to be disposed of through a long and elaborate liquidation procedure, all assets, properties, rights, and obligations of the transferor are simply transferred to the transferee pursuant to the scheme of amalgamation. At the same time, the claims of creditors are also passed, thus making the entity surviving to pay up the claims. This method avoids the lengthy processes that are normally involved in the process of winding up a company.

¹⁶ Re: ARVIND Mills Ltd., (2002) 111 Comp Cas 118 (Guj) (India).

Lastly, the transferor company is liquidated rather than subjected to the normal winding-up. When the scheme of amalgamation is effective and filled with the Registrar of Companies, the merged company then stops being a separate legal entity. This is done to minimize the delay in the procedures involved since the long formalities used in liquidation are not followed and yet the liabilities are well dealt with.¹⁷

CHAPTER – 7

CRITICAL ANALYSIS AND CONCLUSION

Critical Analysis

Amalgamation is often considered as a practical alternative in cases when companies want to avoid the long and complex process of traditional liquidation. Normally, liquidation processes require a lot of time in terms of time resources since they require a series of statutory processes, including appointing a liquidator, settling claims of creditors, and selling off company assets. Such process steps can stretch during several years and can also devalue the total worth of the business. Conversely, amalgamation is a simplified process where an acquirer company takes over the assets and liabilities of a transferred company thus allowing the business to continue under a different legal name other than failing to operate altogether.

Such corporate restructuring will be pursued through the statutory provisions of the Companies Act, 2013, specifically in Section 230 to 232 and will have to have the approval of the National Company Law Tribunal (NCLT). During the amalgamation of a transferor company the entire liquidation regime does not apply and thus time is saved and the strategic value and stakeholder interests of the business is preserved.

Regardless of its effectiveness, amalgamation, however, is not without procedural snags. The deal is subject to approval by the shareholders, creditors and other regulatory authorities. Obtaining such approvals may take very long whereby some groups make objection or seek amendments on the scheme that has been proposed. Another issue is the minority shareholders and debtors protection; their interests should be properly protected not to be unfairly treated in the course of amalgamation. The inability to structure the amalgamation scheme carefully can trigger the lack of inter-party relations and eventually lead to a lawsuit. Therefore, although amalgamation will quicken the process of avoiding longer liquidation, it requires proper

¹⁷ Taxmann, Companies Act with Rules 1020-1045 (2023 ed.).

planning, transparency, and procedural protection to ensure all the stakeholders are safeguarded.

Further, amalgamation might not be applicable universally especially among those entities with huge debts or those caught in major litigations. In this case, potential acquirers might not wish to take control of the problem-laden business and liquidation is the only option. The success of an amalgamation is also determined by the truthfulness of the financial disclosures and the objectivity of the asset-liability valuations. Untransparent financial reports or biased valuation reports may jeopardize the fairness of the whole process. Thus, to avoid the use of the amalgamation mechanism to avoid liabilities instead of meaningful restructuring, tight control over regulatory bodies and the NCLT will be necessary.

Nonetheless, amalgamation is associated with the benefits that can be distinguished compared to the traditional liquidation. It will save jobs by ensuring that the livelihoods of the employees are not disrupted since the enterprise will be allowed to operate in a different corporate structure, thus ensuring that the employees will not be rendered redundant as they would have been in the liquidation process. It also makes sure that the assets of the company are used more productively and with reduced chances of being sold at undervalue such as those found in a fast liquidation. In addition, the amalgamation reduces the pressure on the courts and regulatory authorities as it eliminates most of the tedious and complicated mechanisms of liquidation.

Conclusion

To conclude, amalgamation is a viable solution to the delays that are normally experienced during the winding up of the companies. The transfer of assets, liabilities and the current business operations to a new company allow the organisation to carry on with its operations and avoid liquidation process that might take long. The strategy, however, can still introduce technical and procedural issues; thus, close regulatory oversight and open implementation of the scheme are inevitable. When such conditions are carefully fulfilled, amalgamation can provide significant rewards to creditors, shareholders, employees and the enterprise overall thus giving a useful means of streamlining the process of restructuring corporate structure, as well as making liquidation delays a part of history.