

VOLUNTARY LIQUIDATION OF CORPORATE PERSON

A body-corporate incorporated under any act becomes a legal entity born. If such legal entity decides to end its legal existence, then the Companies Act and Insolvency and Bankruptcy Code, 2016 (IBC) provide a process for bringing an end to its legal existence. Liquidation or winding up of any legal entity is the process whereby its life is ended.

Any legal entity may initiate voluntary liquidation process, if it is unable to carry on its business, or if it was formed only for a limited purpose. It is a process of selling all of its assets, making payment of its debts and dues and distributes the remaining assets to the partners (for LLP)or shareholders (for Corporate Person) and then dissolving the business of the LLP or the Company, as the case may be.

Section 59 of IBC which was effective from April 01, 2017, gives right to any **Corporate Person*** which intends to liquidate itself voluntarily, which can do so if it has **not committed any default**. Section 3(12) of IBC defines '**default**' as non-payment of debt, when whole, any part or an installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.

***Corporate Person under IBC** means:

- (i) **a Company** incorporated under the Companies Act, 2013 or under any previous Company law,
- (ii) **a Limited Liability Partnership (LLP)** formed and registered under Limited Liability Partnership Act, 2008, or
- (iii) **any other person incorporated with limited liability** under any law for the time being in force but shall not include any financial service provider.

The Insolvency and Bankruptcy Board of India (“**IBBI**”) vide its notification dated **March 31, 2017** has notified the Regulation of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (“**The Regulation**”) which came into force on **April 01, 2017**. These Regulations shall apply to the Voluntary Liquidation of any solvent Corporate Person.

A. PROCESS FOR VOLUNTARY LIQUIDATION OF CORPORATE PERSON:

A.1 INITIATION OF LIQUIDATION BY A COMPANY:

As per Section 59(3) of IBC, for initiation of liquidation, the Company shall do the following:

1. A Registered Valuer shall prepare a report on valuation of assets of the Company
2. Convene a Board Meeting and at such meeting it shall take into account the audited financial statements of the Company for the previous two years or a period since the Company's incorporation; whichever is later.
3. Based on the valuation report, the Directors of the Company shall make a Declaration of Solvency which shall be verified by a affidavit primarily stating that full enquiry has been made into the affairs of the Company and the Board had formed an opinion that the Company has no debt or will be able to pay off its debts in full from realization of assets under voluntary liquidation and subsequently stating that the Company is not being liquidated to defraud any person.
4. The Company shall file such Declaration of Solvency given by the Board with the Registrar of Companies (RoC) in **Form GNL-2**.

A.2 INITIATION OF LIQUIDATION BY A CORPORATE PERSON OTHER THAN A COMPANY:

As per Section 59 (2) of IBC read with Regulation 3, for initiation of liquidation process, the Corporate Person other than a Company shall do the following :

1. A Registered Valuer shall prepare a report on valuation of assets of the Corporate Person;
2. Convene a meeting for initiation of liquidation of designated partners or individuals constituting a governing body and at such meeting they shall take into account the audited financial statements for the previous two years or a period since the incorporation of Corporate Person; whichever is later.

3. Based on the valuation report, the designated partners or individuals constituting a governing body shall make a Declaration of Solvency which shall be verified by an affidavit primarily stating that full enquiry has been made into the affairs of the Company and formed an opinion that the Corporate Person has no debt or will be able to pay off its debts in full from realization of assets under voluntary liquidation and subsequently stating that the Corporate Person is not being liquidated to defraud any person.

A.3 CONVENE MEMBERS MEETING IN CASE OF COMPANY:

As per section 59 (3)(c) of IBC, **within 4 weeks** of making a Declaration of Solvency, a **Special Resolution** shall be passed by the members in the general meeting requiring the Company to be liquidated voluntarily and appointing an Insolvency Professional as liquidator.

The members may pass an **Ordinary Resolution** to liquidate the Company after expiry of fixed duration specified in Article of Association (AoA) or occurrence of any event which AoA may provide, as the case may be, and appointing an Insolvency Professional as liquidator.

The resolution (special/ ordinary) passed by the members shall be filed with RoC in **Form MGT-14**.

A.4 CONVENE CONTRIBUTORY MEETING IN CASE OF CORPORATE PERSON OTHER THAN COMPANY:

As per Regulation 3(1)(c), **within 4 weeks** of making a Declaration of Solvency a **Special Resolution** shall be passed by the **contributories*** of the Corporate Person, requiring the Corporate Person to be liquidated and appointing an Insolvency Professional as liquidator.

The contributories may pass **Ordinary Resolution** to liquidate the Corporate Person after expiry of fixed duration specified in constitutional document or occurrence of any event which constitutional document provide, as the case may be, and appointment of Insolvency Professional as liquidator.

*As per Regulation **contributory** means a member of a company, partner of a limited liability partnership, and any other person liable to contribute towards the assets of the corporate person in the event of its liquidation.

A.5 CREDITORS MEETING:

Creditors representing 2/3rd in value of the debt of the Company/ Corporate Person shall approve the resolution (members/ contributories) within 7 days of passing of such resolution.

A.6 LIQUIDATION COMMENCEMENT DATE:

Subject to the approval of Creditors (if any), the voluntary liquidation proceedings in respect of a Company/ Corporate Person shall be deemed to have commenced from the date of passing of the members/ contributories resolution.(Liquidation Commencement Date)

A.7 INTIMATION TO ROC AND IBBI:

The Company/ Corporate Person shall notify the **RoC** and **IBBI** about the resolution to liquidate the Company/ Corporate Person **within 7 days of such resolution** or the subsequent approval by the creditors, as the case may be.

A.8 EFFECTS OF LIQUIDATION:

On and from the Liquidation Commencement Date, the Company/ Corporate Person shall cease to carry on its business, but shall carry on its functions which are beneficial for winding up and shall not act prejudicial to it. The physical existence of the Company/ Corporate Person shall continue exist unless it is dissolved by order of Adjudicating Authority.

A.9 APPOINTMENT AND REMUNERATION OF LIQUIDATOR:

The terms and conditions for appointment and remuneration of liquidator shall be discussed by resolution passed by members/ contributories of the Company/ Corporate Person as the case may be. The remuneration payable to the liquidator shall form part of the liquidation cost.

The Corporate Person shall appoint an insolvency professional liquidator if such insolvency professional, and every partner or director of the insolvency professional entity of which he is a partner or Director is independent of Corporate person.

The following persons shall be considered independent of the Corporate Person:

- i. Eligible to be appointed as an Independent Director on the Board of the Corporate Person under section 149 of Companies Act, 2013, if such Corporate Person is a Company ;
- ii. Such person is not a related party to the Corporate Person
- iii. Such person has not been an employee or proprietor or a partner:
 - of a firm of auditors or company secretaries or cost auditors of the Corporate Person; or
 - of a legal or a consulting firm, that has or had any transaction with the corporate person contributing 10 % or more of the gross turnover of such firm, at any time in the last three years.

A.10 ENGAGEMENT OF PROFESSIONALS:

A liquidator may enroll professionals, to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.

The liquidator shall not engage professional who is his relative, a related party of the Corporate Person or has served as an auditor to the Corporate Person at any time during the five years preceding the liquidation commencement date.

The professional enrolled or proposed to be enrolled, shall disclose the existence of any pecuniary or personal relationship with any stakeholder or Corporate Person forthwith to the liquidator.

A.11 PUBLIC ANNOUNCEMENT BY LIQUIDATOR:

The liquidator shall within 5 days of his appointment, make public announcement in **Form A of Schedule I** to call upon the claims from the stakeholders as on Liquidation Commencement Date. He will also mention in the announcement, the last date of making any claim, which shall be **30 days** from the Liquidation Commencement Date.

The public announcement shall be published in Official Gazette, in English and in a regional language newspaper having wide circulation at the location of registered office and principal office, on the website of the Corporate Person and on IBBI website.

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A.12 CLAIMS AND VERIFICATION OF CLAIMS:

The stakeholders will have to prove their claims for the debts or dues to them including interest, if any as on Liquidation Commencement Date. The stakeholders include financial creditors, operational creditors, workmen and employees along with other stakeholders. The aforesaid claims by stakeholders shall submit the proof of claim in prescribed form as stated below:

Forms	Purpose	Responsibility
Form B	Proof of claim by Operational Creditors except Workmen and Employees	Operational Creditors
Form C	Proof of claim by Financial Creditors	Financial Creditors
Form D	Proof of claim by Workman or Employee	Workman or Employee
Form E	Proof of claim by Authorised Representative of Workmen or Employees	Authorised Representative of Workmen or Employees
Form F	Proof of claim by any other Stakeholder.	Stakeholder.

Debt payable at future time can also be claimed, however if debt has not fallen due as on the date of distribution of the claims, the claimant is entitled to reduced claim.

The liquidator shall verify the claims within **30 days** from the last date for receipt of claims. He may either admit or reject the claim in whole or in part.

The liquidator shall then prepare the list of stakeholders within **45 days** from the last date for receipt of claims

If the claim is rejected, the creditor can appeal to Adjudicating Authority (National Company Law Tribunal - NCLT) against the decision of liquidator within **14 days** of such decision.

A.13 REALISATION OF ASSETS:

The assets of the Corporate Person shall be valued and sold in the manner approved by such Corporate Person in compliance with the provisions of applicable law. The liquidator shall attempt to recover and realize all assets of and dues to the Corporate Person in a time bound manner for maximization of value for the stakeholders.

The liquidator shall realize any amount due from any contributory to the corporate person, irrespective of any encumbrance or charge on uncalled share capital of the Corporate Person. Liquidator shall be entitled to call and realize such uncalled capital of the Corporate Person, and to collect the calls in arrears made prior to liquidation by providing a notice to the contributory to make payment within **15 days** from the receipt of notice. Subject to rights of holder of any charges or encumbrances, the liquidator shall hold the money realized.

No distribution shall be made to a contributory, unless he makes his contribution to the uncalled or unpaid capital as required in the constitutional document of the corporate person.

A.14 PRELIMINARY REPORT:

The liquidator shall submit a Preliminary Report to the Corporate Person **within 45 days** from the Liquidation Commencement Date, detailing:

- a) the capital structure of the Corporate Person;
- b) the estimates of its assets and liabilities as on the Liquidation Commencement Date based on the books of the Corporate Person;
- c) whether he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the Corporate Person or the conduct of the business thereof; and
- d) the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

A.15 REGISTER AND BOOKS OF ACCOUNTS:

Where the Books of Accounts of the Corporate Person are incomplete on the Liquidation Commencement Date, the liquidator shall have them completed and brought up-to-date forthwith. The liquidator shall maintain all the registers and books, as may be applicable and specified in Regulation 10 of the Regulation, in relation to the liquidation of the Corporate Person.

List Of Registers And Books specified in Regulation 10			
1	Cash Book	10	Register of Claims and Dividends
2	Ledger	11	Contributories Ledger
3	Bank Ledger	12	Distribution Ledger
4	Register of Fixed Assets and Inventories	13	Fee Register
5	Securities and Investment Register	14	Suspense Register
6	Register of Book Debts and Outstanding Debts	15	Documents Register
7	Tenants Ledger	16	Books Register
8	Suits Register	17	Register of unclaimed dividends and undistributed properties deposited
9	Decree Register	18	such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor

A.16. RIGHT OF LIQUIDATOR TO SUSPEND THE PROCESS OF LIQUIDATION:

If the liquidator is of the opinion that (i) the liquidation is being done to defraud a person or (ii) the Corporate Person is unable to pay off its debts in full from the proceeds of realization from liquidation, then he shall make an application to NCLT to suspend the liquidation process and pass any such orders as it deems fit.

A.17 MONEY TO BE PAID INTO BANK ACCOUNT:

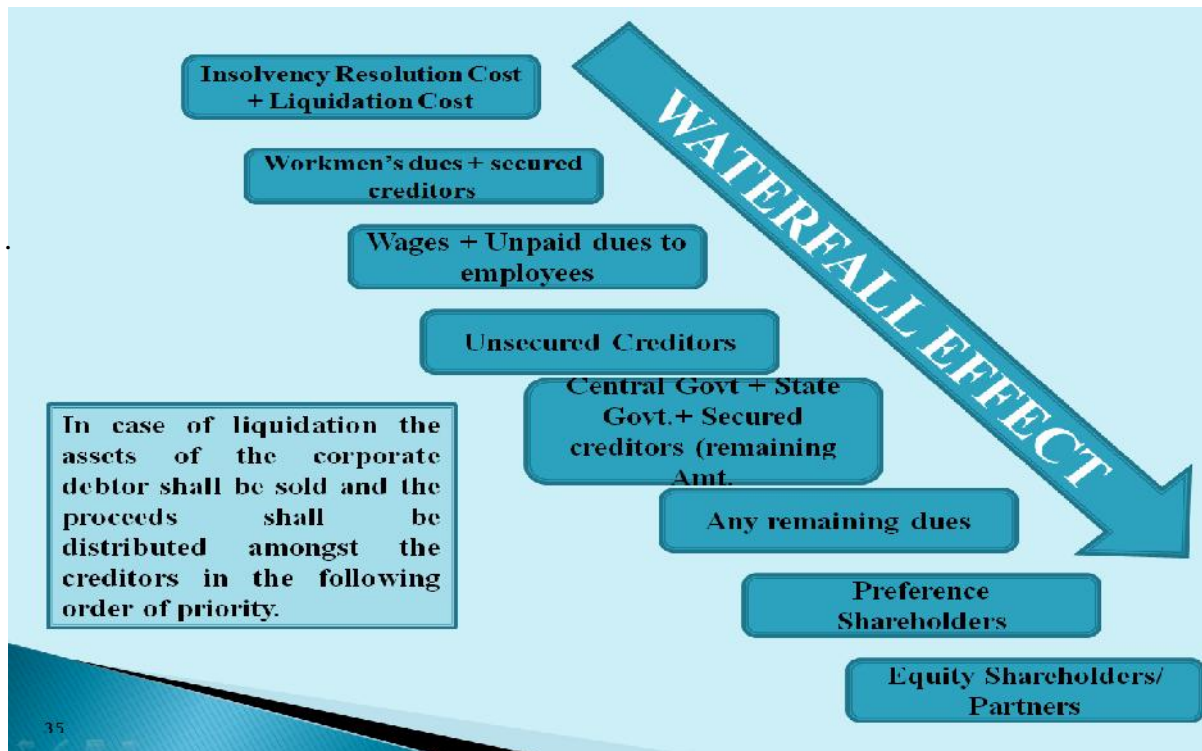
The liquidator shall open a **bank account** in the name of the Corporate Person followed by the words **in voluntary liquidation**, in a scheduled bank, for the receipt of all moneys due to the Corporate Person. All payments made out of voluntary liquidation account by the liquidator above **Rs. 5000/-** shall be made in cheque or by online banking transaction against the bank account.

A.18 DISTRIBUTION OF PROCEEDS:

- The liquidator shall distribute the proceeds from realization within 6 months from the receipt of amount to the stakeholders..
- The liquidation cost shall be primarily deducted before distribution of proceeds.

- Any asset of the Corporate Person which cannot be readily or advantageously sold due to peculiar or other special circumstances, then such asset shall be distributed among the stakeholder subject to approval of Corporate Person

The money in the credit of the bank account shall not be used except in accordance with section 53(1) of IBC i.e **Waterfall Effect**.



A.19 COMPLETION OF LIQUIDATION:

The liquidator shall attempt to complete liquidation process **within 12 months** from passing of resolution for winding up.

In case liquidation process continues for more than 12 months, the liquidator shall hold a meeting of the contributories of the Corporate Person within **15 fifteen days** from the end of the 12 months from the Liquidation Commencement Date and at the end every succeeding 12 months till dissolution of the Corporate Person.

The liquidator shall present an Annual Status Report indicating progress in liquidation, which shall include the following:

- i. settlement of list of stakeholders,
- ii. details of any assets that remains to be sold and realized,
- iii. distribution made to the stakeholders, and
- iv. distribution of unsold assets made to the stakeholders;
- v. developments in any material litigation, by or against the corporate person; and
- vi. filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of IBC.

The Annual Status Report shall be accompanied with the audited accounts which shall disclose the receipt and payment in relation to liquidation the liquidation commencement date.

A.20 FINAL REPORT:

On completion of liquidation, the liquidator shall prepare a Final Report which shall be accompanied with

- Audited accounts which shall disclose the receipt and payment in relation to liquidation the Liquidation Commencement Date ;
- A statement demonstrating that the assets of the Corporate Person has been disposed off, the debt of Corporate Person has been discharged to the satisfaction of the creditors, there are no pending litigation or necessary provisions are made for obligations arising from pending litigation.
- A detailed sale statement in respect to realization of assets of Corporate Person.

A.21 UNCLAIMED PROCEEDS OF LIQUIDATION OR UNDISTRIBUTED ASSETS:

Before the order of dissolution is passed, the liquidator shall apply to NCLT for an order to pay any unclaimed proceeds of liquidation or undistributed assets or any other balance payable to the stakeholders in his hands on the date of order of dissolution into the Company Liquidation Account (CLA) which is a Public Account of India.

If the liquidator retains any unclaimed proceeds which should have been paid into CLA, then such liquidator shall pay interest of 12% p.a. on the retained unclaimed proceeds and also pay such other penalty prescribed by IBBI. On payment of aforesaid interest and penalty by the

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liquidator the RBI shall provide a receipt, and such receipt would be sufficient evidence for effectual discharge of liquidator.

Liquidator on making payment in the CLA, shall furnish to RoC and IBBI, a statement containing:

- the nature of sum included
- the names and last known address of stakeholders entitled to participate therein
- amount entitled to each stakeholders
- nature of the claims

If a person claiming his entitlement to any money paid into CLA can make application to IBBI to seek order for payment of the money claimed. If IBBI is satisfied with the person's entitlement whether in whole or in part, shall make an order to make payment to that person of the sum due to him, after taking such security from him as it may think fit.

Any amount paid into CLA, which remains unclaimed for a period of **15 years** will be transferred to general revenue account of Central Government.

A.22 DISSOLUTION:

The liquidator shall send the Final Report to RoC, IBBI. Further when affairs of the Corporate Person a completely wound up and all its assets are realized, the liquidator shall make an application to Adjudicating Authority (NCLT) for dissolution of such Corporate Person.

The Adjudicating Authority (NCLT) shall pass an order that the Corporate Person shall be dissolved from the date of such Order.

A copy of such order of Adjudicating Authority (NCLT) shall be filed in **14 days** from the date of such order, with authority, with which the Corporate Person is registered .

A.23 PRESERVATION OF RECORDS:

The liquidator shall preserve a physical or an electronic copy of the reports, registers and books of account as for **at least 8 years** after the dissolution of the corporate person, either with himself or with an information utility.

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B. TIME LINE:

Tentative Timeline	Particulars for Voluntary Winding Up (VWU) under Insolvency & Bankruptcy Code
Day 1	<p>Convene the Board Meeting to transact the following Business:</p> <p>i. Approve the resolution of Voluntary Winding Up of the Company ;</p> <p>ii. Appoint of Insolvency Professional as the Liquidator of the Company subject to the approval of member.</p> <p>iii. Fix the date and time for holding of General Meeting of Member.</p>
Day 1	<p><u>DECLARATION OF SOLVENCY</u></p> <p>Duly verified through an affidavit by majority of Directors, stating that:</p> <p>i. They Company has no debt or it will able pay its debt fully; and</p> <p>ii. not to defraud any person</p> <p>Declaration shall be accompanied by :</p> <p>i. Audited Financial Statements and record of Business operations of corporate person for previous two years or for period since incorporation.</p> <p>ii. A report of the valuation of the Assets of the Corporate Person, if any, prepared by a registered valuer.</p>
Day 1	Send of Notice of General Meeting to all the Members.
Day (1+28) i.e. Day 29	<p>Convene the General Meeting and pass the Ordinary Resolution / Special Resolution for:</p> <p>i. Voluntary Liquidation of the Company;</p> <p>ii. Appointment of Liquidator and fixation of Remuneration.</p>
Day (29+7) i.e. 36	Provided that, if the Corporate Persons owes any debt to any person creditors representing two thirds (2/3rd) in value of Debt shall approve the same resolution.
Day (29+7) i.e. 36	Filing of Special Resolution passed for voluntary Liquidation with ROC and with the IBBC, under the code.
Day 1	Filing of declaration of Solvency with RoC.
Day (29+5) i.e. Day 34	<p><u>Liquidator shall make public announcement</u></p> <p>i. Inviting stakeholders to submit their claims within 30 days from the Liquidation commencement date.</p>
Day (29+30) i.e. Day 59	Claims by operational creditor

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Day (29+30) i.e. Day 59	Claims by financial creditor
Day (29+30) i.e. Day 59	Claims by workmen and employees and if dues are pending with numerous workmen or employees by Authorized representative.
Day (29+30) i.e. Day 59	Claims by other stakeholders by giving Affidavit along with Documentary evidence and Bank statement
Day (29+45) i.e. Day 74	<u>Liquidator shall submit Preliminary report detailing:</u> i. capital structure of corporate person; ii. estimates of its assets and liabilities on liquidation commencement date based on books of accounts of corporate person iii. Further inquiry if he intends in any matter (s) relating to corporate person. iv. proposed plan of action carrying out liquidation
Day 29+ ASAP	The Liquidator shall have the books of accounts completed and brought up to date, if incomplete.
Day 29+ ASAP	The Liquidator shall maintain certain books and registers. The Liquidator shall also maintain receipts of all payments and expenses made.
Day (29+30+30) i.e. Day 89	The Liquidator shall verify claims submitted for receipt of claims submitted for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be.
Day (59+45) i.e. Day 104	The Liquidator shall prepare a list of creditors based on the proof of claims submitted by the creditors
Within requisite time	The Liquidator shall open bank account in name of corporate person followed by words ' in voluntary liquidation ', in scheduled bank
Day (29+30+180)	Liquidators to realize all assets and deduct the liquidation cost from the said realization and after deducting the liquidation cost, shall distribute the realization among the stakeholders
Day 29+365 or requisite time	Liquidator shall endeavor to complete the process within 12 months from the date of commencement of Liquidation process
Indispensable time	Upon Completion of Liquidation Process, the Liquidator shall prepare Final Report consisting of- i. Audited accounts of Liquidation showing receipts and payments, ii. Statements demonstrating that assets are sold, debts are satisfied and no Litigation is pending iii. Sale statement w.r.t. all assets realized.
Indispensable time	The Liquidator shall i. send the Final Report to RoC and IBBI ii. submit the final Report to NCLT with application for Dissolution.

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Indispensable time	Where the Liquidator is of the opinion that i. Liquidation is done to Defraud a Person, ii. the Corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the liquidation , shall make the application to NCLT to suspend the process of liquidation and pass any such orders as it deems fit.
NA	The Liquidator to preserve copy of the reports, registers and books of account for at least 8 years after dissolution, either with himself or with an information utility.
Indispensable time	Upon receipt of application, NCLT shall pass an order for dissolution of Corporate person.
Within 14 days from the date of NCLT order	Copy of order shall be forwarded to RoC and / or any other authority with which the corporate person is registered.

C. CONCLUSION:

By virtue of section 255 of Insolvency and Bankruptcy Code, 2016, provisions for voluntary winding up under section 304 to 323 of the Companies Act, 2013 were omitted. Due to which, the Companies were required to file application for winding up under Companies Act, 1956 to High Court. The High Court advised to file such application to NCLT under Companies (Transfer of Pending Proceedings) Rules, 2016 since all the powers of High Court were transferred to NCLT after the enforcement of the said rule. The Companies were under a dilemma regarding where to file fresh application for voluntary winding up.

However now since Section 59 of IBC is notified which is relating to voluntary liquidation of corporate person, now the companies are not required to comply with the provisions of the Companies Act, 1956. A transparent provision for filing the application for voluntary application with NCLT has got enforced from April 01, 2017.

Liquidator has been given wide powers to liquidate the Company by selling all its assets and paying of all its debts. The complete process should be done in 12 months time. The success of dissolution of any Corporate Person will largely depends on liquidator

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