

Vth unit

B.com 1st year 2nd semester honours A&B, general.

Q) explain the legal provisions of voluntary winding up and Insolvency and bankruptcy code 2016?

Ans.

Insolvency : if a person's realizable value of assets are less than the liabilities payable by him- called insolvent trader -however a court of law only has to declare him as an insolvent.

after passing insolvency and bankruptcy code 2016 the insolvency proceedings of sole traders, partnership firms, H.U.F business houses and 'solvent joint stock company' are placed under the control of the code.

Application to voluntary liquidation or winding up of companies: companies act 2013 rules were omitted after passing this code from 15 .11. 2016 with regard to members or creditors voluntary winding up .The companies under this winding up are referred as 'corporate persons' or 'corporate debtors'- this code deals with voluntary liquidation of corporate persons -section 59 to 77-all provisions are made applicable to voluntary liquidation of solvent companies from 1 .4. 2017 only a solvent company can be wound up voluntarily-but an insolvent company which is not able to pay its debts should be wound up by tribunal that is NCLT.

Rules applicable under insolvency bankruptcy code 2016 to voluntary winding up of solvent companies section 59.

- 1) majority directors after enquiry have to come to conclusion that company will be able to pay its debts in full from the proceeds of the assets.
- 2)a declaration with audited financial statements and business operations of the company previous 2 years- registered valuer certificate shall be obtained.
- 3) Special resolution to appoint an insolvency professional liquidator within prescribed time.
- 4) notice to registrar of companies and insolvency and bankruptcy board of India IBBI with in 7 days.
- 5) from the date of passing resolution it is decided as voluntary liquidation proceedings are started.
- 6)after completing the process the liquidator should apply to NCLT for dissolution of company.
- 7)A copy of dissolution order of NCLT should be forwarded to ROC within 14 days.

Offences and penalties under this code:

- a) concealment of property of company-willfully or fraudulently -concealment of activities etc- imprisonment from 3 -5 years and fine rupees 1 lakh to 1 crore or both.
- b) Defrauding creditors of the company-imprisonment from 1-5 years-fine of Rs. 1 lakh to 1 crore or both .
- c) misconduct of insolvency process: not disclosing transactions, property, fictitious losses etc – 3-5 years imprisonment rupees 1 lakh to 5 crore s fine or both.

similarly action will be taken for falsification of books of corporate debtors, wilful and material omission in the statements, false representations to creditors etc.

Note: students are advised to follow textbook to have good understanding off the subject .- Amareshwara rao.

Vth unit

B.com 1st year 2nd semester honours A&B, general.

Note: students are advised to follow textbook to have good understanding off the subject .-
Amareshwara rao.