

## **New rules for fast-track winding up of firms may lighten NCLT's burden**

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### **Centre can now okay dissolution of firms falling within specified thresholds.**

The Corporate Affairs Ministry (MCA) has come up with the long awaited 'Winding-up Rules', which among other things provides for summary/curtailed procedure for winding up of companies of specified thresholds (certain small companies).

The winding up of those falling within the specified thresholds will henceforth require the approval of the Central government instead of the National Company Law Tribunal (NCLT), according to the new rules.

This MCA move, which will come into effect from April 1, is expected to reduce the burden at the level of NCLT as summary procedure for liquidation can now be filed with the Central government, say experts.

In order to be treated as small-sized companies, for availing the benefit of such summary procedure, the companies concerned should meet the prescribed criteria.

Currently, the proceedings pertaining to voluntary winding up and winding up on the grounds of inability to pay debts are within the realm of the newly enacted Insolvency and Bankruptcy Code 2016, which provides for time-bound speedy dissolution of a company.

However, the winding up proceedings on the ground other than inability to pay debts continued to be governed by the Court Rules which were notified nearly 60 years ago by the Supreme Court and required suitable amendments.

### **Specified companies**

Specified companies that could avail themselves of the curtailed procedure for winding up are those accepting deposit, provided their total outstanding deposits do not exceed Rs 25 lakh; or companies having outstanding loan not exceeding Rs 50 lakh; or companies having a turnover not exceeding Rs 50 crore; or companies with paid-up capital not exceeding Rs 1 crore

### **Experts' take**

Commenting on the MCA move, Harish Kumar, Partner, L&L Partners, said that the summary procedure for prescribed companies will accelerate the process and result in fast disposal of matters pertaining to liquidation and ultimate winding-up.

Akila Agrawal, Partner & Head – M&A, Cyril Amarchand Mangaldas & Co, a law firm, said that the rules for winding up of companies on grounds other than inability to pay debts have been long pending.

The Companies (Winding Up) Rules, 2020, seek to reduce the burden of the NCLTs by enabling summary procedures for liquidation to be filed with the Central Government, she said.

Though the draft rules had made this available only for small companies, the final rules make it available to companies that have assets of book value not exceeding Rs 1 crore and have not taken deposits beyond Rs 25 lakh or have no secured loans beyond Rs 50 lakh or turnover beyond Rs 50 crore or paid-up capital beyond Rs 1 crore, she added.

“A large part of the procedure applicable to regular companies continues to be applicable to the companies that can opt for the summary procedure. It is, therefore, unclear if the process will be fast-tracked merely by shifting the jurisdiction to the Central government,” Agrawal added.

Atul Pandey, Partner, Khaitan & Co, a law firm, said: “A striking feature of the new rules notified by the MCA is the summary procedure for liquidation introduced through Part V of the Winding-up Rules.”

An important factor for such summary winding up is that the Central government (through the regional director) will provide required approvals to such companies for the normal winding up process which is undertaken through the jurisdictional NCLT, thereby greatly shortening the overall winding up timelines, Pandey said..