

## **Winding up (Dissolution) of the Limited Liability Partnership (LLP) in India**

### **1. Introduction on Winding up of the LLP**

- (i) LLP is a hybrid form of company and partnership firm. LLP is covered under Limited Liability Partnership Act, 2008 and rules made there under
- (ii) Winding up is permitted under head.
  - (a) Voluntary winding up
  - (b) Compulsory winding up by the tribunal
  - (c) Defunct LLP
- (iii) Winding up of LLP under voluntary and compulsory are governed by Limited Liability Partnership (Winding up and Dissolution) Rules, 2010
- (iv) Winding up of defunct LLP is governed by Limited Liability Partnership (Amendments) Rules, 2017 through notified **Form-24**

### **2. Winding up of “non” functioning (defunct) LLP**

- (i) Pre-requisites Conditions for filing **Form-24**
  - (a) All commercial operations are ceased to be as revenue generating business.
  - (b) All payments from the debtors are to be recovered and all payments to the creditors are to be made.
  - (c) Bank account is to be closed
  - (d) LLP agreement is to be filed with the MCA where “not” already filed with the MCA.
  - (e) **Form No. 8** and **Form No. 11** “up to date” must be filed “before” filing of **Form No. 24**.
  - (f) All assets are to be disposed and all liabilities are to be paid off thereafter surplus of assets be distributed between the partners.

- (ii) Filing of the **Form No. 24** for winding up of “non” functioning (defunct) LLP
  - (a) Affidavit and Declaration are to be filed by the all designated partners declaring that:-
    - (aa) The LLP ceased to carry/has not commenced business activity.
    - (ab) The LLP has no liability and also Partners will indemnified the liability if any arising “after” striking off the name from the Register.
    - (ac) The LLP has not opened bank account on its name/it opened the same has been closed and copy of certificate is enclosed.
  - (b) The LLP has filed income tax return copy of acknowledgement is enclosed
  - (c) Deed of LLP
  - (d) Certificate from the Practicing Chartered Accountants as showing NIL Assets and NIL Liability of the LLP, the certificate is to be obtained not earlier than 30 days of filing **Form-24**.
  - (e) The **Form-24** is to be filed with MCA, form if accepted, the concerned Registrar of companies (ROC) will issue a notice has to be published on the MCA website announcing the striking off of the LLP.

### 3. Winding up of the functioning LLP

- Where LLP is functioning and partners want to wind up the LLP, the procedure is laid down under **Limited Liability Partnership (Winding up and Dissolution) Rules, 2010. Step by Step** procedures are as follows:-
  - (i) Pass a resolution for winding up by taking approval of 75% of total number of partners.
  - (ii) File copy of resolution to the ROC within 30 days in **Form No. 1**
  - (iii) Declaration of solvency is to be filed by “majority” of designated partners in **Form No. 2** duly verified by affidavit declaring that LLP is able to pay its debt or will be able to pay the debt within one year of commencement of winding up. The Declaration is needed to cover the followings.
    - (a) A statement that LLP not wound up to defraud any person or persons.
    - (b) A statement of Assets and Liabilities in **Form No. 4** for the period up to date of accounts are prepared latest “before” filing of declaration duly attested by two designated partners.
    - (c) A report of valuation of assets prepared by valuer.

- (iv) The declaration is to be filed with the ROC in **Form No. 3** within 15 days of passing of the resolution.
- (v) An approval from the creditors (Secured and Unsecured) for winding up and a copy of abovementioned declaration need to be sending them by speed post with amount due to each of creditor and offer for acceptance for them.
- (vi) Creditors shall give their consent or opinion within 30 days of receipt of the declaration where **Creditors two-third in value** give consent that –
  - (a) In interest of Creditors and Partners the LLP should be wound up by Partners, the LLP will be wound up by **Partners**.
  - (b) The LLP will not be able to pay its debt by selling its assets in winding and propose that the LLP should be wound up by Creditors the LLP will be wound up by Creditors.
  - (c) The LLP will not be able to pay its debt by selling its assets in winding and propose that the LLP should be wound up by Tribunal; the LLP will be wound up by Tribunal and application for the same need to file before **Tribunal** within fourteen days.
- (vii) The Declaration need to be filed with ROC in **Form No. 5** within 15 days of receipt of consent of creditors.
- (viii) After receiving consent of Creditors, within 14 days a notice of voluntary winding up need to be **publish in a Newspaper** circulating in the district where registered/ principle office of LLP is situated.
- (ix) The LLP **Liquidator** is to be appointed within 30 days of-
  - (a) Passing of resolution in case where no creditors.
  - (b) Receiving consent of creditors
    - The liquidator is appointed by partners but if consent of 2/3 creditors is not received the creditors may appoint the liquidator and fix the remuneration and liquidator appointed by the creditors will be the liquidator. But if creditors has neither given the consent nor appointed another liquidator the liquidator appointed by the partners will be considered as liquidator. The Tribunal may also appoint the liquidator and fix the remuneration. The authority to remove the liquidator is with tribunal after giving reasonable hearing opportunity.

- The Liquidator after his appointment is required to file **Form No. 6** disclosing conflict of interest and lack of independence if any to partners or creditors as the case may be.
- (x) The liquidator shall settle the list of creditors or partners, maintain books and record of accounts, pay the debts and adjust amongst the partners.
- (xi) The liquidator shall report the progress of winding up to the partners or creditors quarterly (31st March, 30th June, 30th September and 31st December) in **Form No. 8**.
- (xii) On disposal of all assets and affairs of LLP the liquidator shall give the report in **Form No.9** showing assets and debts which has been disposed off to the partners and creditors.
- (xiii) Two-third of total number of partners or value of creditors, as the case may be shall need to approve the winding up within 30 days of receipt of report by the liquidator.
- (xiv) The liquidator shall send the final copy of accounts and report in **Form No. 10** to the registrar and to the tribunal within 15 days of passing of resolution.
- (xv) The tribunal if satisfied shall pass the order of winding up within 60 days and it will be binding on all the parties.
- (xvi) The liquidator shall file order of tribunal in **Form No. 11** to the registrar within 30 days of receipt of order from tribunal.
- (xvii) The registrar, on receipt of the order of tribunal shall publish in official gazette that the LLP stands dissolved.
- (xviii) The cost, expenses and remuneration of liquidator for winding up is paid out of assets of LLP and will have priority over all other claims.
  - In a nutshell it can be said that if partners want to wind up their LLP voluntarily they may opt any of the above way as applicable. The legislature by laying down a specific procedure of winding up has provided an ease to the LLPs which has not commenced their business or become defunct.

#### 4. Conclusion

- (i) LLP is a hybrid form of company and partnership firm. LLP is covered under Limited Liability Partnership Act, 2008 and winding up is permitted under head:-
  - (a) Voluntary winding up
  - (b) Compulsory winding up by the tribunal
  - (c) Defunct LLP
  
- (ii) Processor for Winding up of 'non' functioning (defunct) LLP and Winding up of functioning LLP are different.

#### • Disclaimer

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