

Companies (Second Amendment) Act, 2002

Section 56 - Substitution of New Sections for Sections 440 and 441

For sections 440 and 441 of the principal Act, the following sections shall be substituted, namely:--

440. Right to present winding up petition where company is being wound up voluntarily.-- (1) Where a company is being wound up voluntarily, a petition for its winding up by the Tribunal may be presented by --

- (a) any person authorised to do so under section 439; or
- (b) the Official Liquidator.

(2) The Tribunal shall not make a winding up order on a petition presented to it under sub-section (1), unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories or both.

441. Commencement of winding up by Tribunal.-- (1) Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up."
