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Striking Off, Winding Up, And Insolvency: Where Do Defunct Companies Really Go

ABSTRACT:

Based on the Indian Corporate laws there are different and distinct exit routes for cessation of status such as Insolvency, winding up, and striking off. However, the practical interface between these mechanisms reveals deep procedural ambiguities, jurisdictional overlaps, and regulatory inconsistencies practices. This paper will be critically analysing the legal structure governing corporate exits primarily under the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016. This Study further highlights how striking off is frequently used by promoters as a premature closure mechanism, sometimes bypassing insolvency obligations. The research also examines the role of the Registrar of Companies (“RoC”) in initiating strike-offs, the discretionary powers of the NCLT in winding up, and the challenges faced by creditors in initiating or continuing claims once a company is struck off. By observing various case laws, regulatory actions, and procedural delays, the paper identifies structural issues in the implementation of exit provisions and argues for a more coherent framework that clearly delineates when and how each exit route should operate. The aim is to ensure legal closure aligns with financial accountability and regulatory integrity. Ultimately, the research questions whether current legal pathways reflect an effective corporate death or merely an administrative closure, leaving behind unresolved liabilities and regulatory confusion.

Keywords: Company, Legal, Regulator, Corporate, Accountability.

1. INTRODUCTION:

The evolution and regulation of corporate entities in India are governed by a comprehensive statutory legal framework designed to uphold accountability, stakeholder protection, and market stability. Among the critical aspects of this framework are the mechanisms that facilitate the company’s exit from the corporate ecosystem. Namely, striking off, winding up, and insolvency procedures. These processes, outlined primarily under the [Companies Act, 2013](#)¹ and the [Insolvency and Bankruptcy Code \(IBC\), 2016](#)², are intended not merely as routes

¹ **The Companies Act, 2013, Act No. 18 of 2013** (India), published by Ministry of Corporate Affairs, archived July 19, 2025 (accessed July 19, 2025), <https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzU0OTk=&docCategory=Acts&type=open>.

² **The Insolvency and Bankruptcy Code, 2016, Act No. 31 of 2016** (India), enacted May 28, 2016; last updated June 1, 2020, published by IndiaCode, archived July 19, 2025 (accessed July 19, 2025), https://www.indiacode.nic.in/bitstream/123456789/15479/1/the_insolvency_and_bankruptcy_code%2C_2016.pdf.

to legal closure, but as safeguards to ensure the fair and orderly resolution of outstanding liabilities and interests.

However, in practice, the interface between these statutory exit routes has revealed procedural ambiguities and regulatory overlaps. For instance, the striking off of defunct companies by the Registrar of Companies (RoC) is often used as a quick administrative measure, occasionally circumventing the more rigorous requirements of winding up or insolvency proceedings before the National Company Law Tribunal (NCLT). This can leave creditors and other stakeholders in uncertainty regarding the recoverability of dues and the finality of legal claims.

Additionally, the overlapping jurisdictions and powers of various authorities namely RoC, NCLT, and others established under the IBC, and sometimes have at times resulted in conflicting decisions, regulatory delays, and challenges to effective enforcement. These issues have significant practical implications not just for company promoters and creditors, but for the integrity of the corporate regulatory regime as a whole.

This paper critically examines the legal framework governing corporate exit in India, with a particular focus on the definition and treatment of defunct companies and the interaction between striking off, winding up, and insolvency processes. Through a review of statutory provisions, judicial pronouncements, and current regulatory practices, the objective is to identify legislative and procedural gaps, and to assess whether these mechanisms ensure substantive “corporate death” or merely offer formal closure.

By addressing these questions, this research aims to inform ongoing policy discussions around corporate law reform and to advocate for a more coherent, transparent, and stakeholder-sensitive system of corporate exit in India.

2. CONCEPTUAL FRAMEWORK:

2.1 What is a Defunct Company?

1. Defining "Defunct Company":

The Companies Act, 2013 does not explicitly define “defunct company,” but the concept is widely acknowledged in the areas of corporate and regulatory practice. Broadly, a defunct company is an entity that has lost its commercial vitality and ceased to engage in any business or significant activity, often failing to fulfil its statutory responsibilities. In the Indian context, such companies are identified on the basis of various objective indicators, legal parameters, and regulatory interventions intended to maintain the integrity and transparency of the corporate ecosystem.

2. Legal and Regulatory Indicators:

A company may be considered defunct upon demonstrating one or more of the following characteristics:

- **Absence of Business Operations:** No trading, manufacturing, or provision of services for a substantial period (usually two or more years).

- **Non-filing of Statutory Returns:** Persistent failure to file annual returns, financial statements, or other statutory documents as required under the Companies Act. This often triggers scrutiny and action by the Registrar of Companies (RoC).
- **Lack of Assets or Transactions:** The company's balance sheet and filings reveal negligible or zero assets, liabilities, and operational transactions, substantiating its inactive status.
- **Non-compliance with Regulatory Obligations:** The company neglects to fulfill legal requirements—such as holding Annual General Meetings or maintaining registered offices—indicating abandonment of corporate responsibilities.

3. Consequences of Defunct Status:

A defunct company risks being struck off the Register of Companies under Section 248 of the Companies Act, 2013, or subjected to other regulatory action. Importantly, a defunct status does not dissolve liabilities—directors or persons in charge may still be liable for past acts or statutory breaches.

Difference Between Dormant and Defunct Companies

Dormant Company:

The Companies Act, 2013, under Section 455, provides a formal mechanism for companies to obtain “dormant status.” This status is often chosen by:

- Companies formed for future projects.
- Those owning intellectual property or assets with no immediate revenue activity.
- Entities seeking temporary suspension of business for specific strategic reasons.

Dormant companies remain legally recognized, are expected to fulfill minimal compliance, and can reactivate operations upon due process.

Defunct Company:

In contrast, defunct companies have no intention or capacity to resume business. Their inactivity is involuntary, resulting from commercial adversity, abandonment, or persistent non-compliance. Such companies become candidates for regulatory removal and administrative closure.

2.2 Key Exit Routes for Companies in India

The law provides several mechanisms for dealing with inactive, insolvent, or unwanted companies to ensure an orderly exit from the market. The three principal mechanisms are:

1. Striking Off (Section 248, Companies Act, 2013)

The process of striking off is a streamlined administrative procedure invoked for companies that have become inactive or defunct. Key features include:

- **Initiated by RoC or Company:** The RoC may suo moto initiate striking off if certain conditions are met, or a company itself may apply, provided it has extinguished all liabilities.
- **Grounds:** Failure to commence business within a year of incorporation or non-operation for two consecutive financial years without dormant status.
- **Process:** Involves issuance of notice to the company and stakeholders, providing an opportunity to show cause before removal.
- **Legal Effect:** The company ceases to exist as a legal entity, but liabilities of directors/officers for offenses prior to striking off remain enforceable.

2. Winding Up (Sections 271–275, Companies Act, 2013; IBC, 2016)

Winding up is a formal legal process, judicial in character, that culminates in the dissolution of the corporate entity through settlement of assets and liabilities.

Types:

- **Voluntary Winding Up:** Rare under current law; can be initiated by members via a special resolution. Now largely subsumed by the IBC except for certain categories (Section 59, IBC).
- **Compulsory (Tribunal) Winding Up:** Can be ordered by NCLT on various grounds (inability to pay debts, acting against public interest, etc.).
- **Process:** Appointment of a liquidator, realization/distribution of assets, settlement of claims, and eventual court order for dissolution.

Significance:

Winding up aims at equitable treatment of creditors and stakeholders, and a transparent settlement of the company's affairs under judicial supervision.

3. Insolvency and Liquidation (Insolvency & Bankruptcy Code, 2016)

The IBC was enacted as a comprehensive statute for insolvency resolution of companies (and other entities), shifting focus from recovery to resolution and revival where possible.

- **Initiation:** Can be triggered by financial or operational creditors, or the concerned company itself, before the NCLT.
- **Corporate Insolvency Process:** Intended to maximize asset value and uphold interests of all stakeholders. Mandates time-bound resolution, failing which liquidation ensues.
- **Liquidation:** In the absence of resolution, the company's assets are liquidated for satisfaction of creditor claims per the waterfall mechanism described in Section 53, IBC.
- **Regulatory Supervision:** The process is supervised by Insolvency Professionals (IPs), committee of creditors, and the NCLT.

4. STRIKING OFF: THE SIMPLIFIED CORPORATE DEATH?

Voluntary and Suo Motu Strike-Off by Registrar of Companies (RoC):

Striking off is a streamlined process under Section 248 of the Companies Act, 2013, allowing companies to be removed from the Register of Companies, effectively dissolving their legal existence. This process can be initiated in two primary ways:

- **Voluntary Strike-Off:** Companies may apply for their own removal if they have extinguished all liabilities. The application requires various documents, including an indemnity bond, affidavits from directors, a recent statement of accounts, board and special resolutions, and any necessary no objection certificates. A notice is then published in the Official Gazette, inviting objections, and if none are raised, the company is formally struck off

Suo Motu Strike-Off by RoC:

The RoC has the authority to strike off companies that fail to commence business within one year of incorporation or remain inactive for two consecutive financial years without applying for dormant status. Notices are issued to such companies, and if responses or objections are absent, the RoC proceeds with dissolution after public notification. Certain companies, such as those under investigation, with pending prosecutions, or listed companies, cannot be struck off by RoC's initiative³

Once struck off, the company ceases legal existence, though liabilities of directors and officers persist.

Recent MCA Campaigns (e.g., post-2017)

A watershed moment came in 2017 when the Ministry of Corporate Affairs (MCA) launched mass campaigns under “Operation Clean Money” to purge defunct, shell, and non-compliant companies, seen as vehicles for black money. Notices were issued starting April 2017, leading to the removal of nearly 290,000 companies by September 2017, and the disqualification of around 300,000 directors

These actions continued in subsequent years, including policy tools like the Condonation of Delay Scheme, 2018, aiding genuine companies in seeking relief or revival⁴

Abuse: Promoters Using Striking Off to Escape Liability

Despite its intended utility, striking off has sometimes been misused by promoters to evade liabilities and creditor claims. However, it is a legal misconception that striking off erases company debts: liabilities remain enforceable, and directors or officers can still be held responsible for past obligations, especially if evidence of fraud, mismanagement, or pending proceedings exists

³ *Strike Off Company – All You Need to Know*, IndiaFilings, updated Jan. 8, 2025, archived July 27, 2025 (accessed July 25, 2025), <https://www.indiafilings.com/learn/strike-off-company/>.

⁴ *Utsav Mitra, Analysis of the Strike-Off Provisions under the Companies Act, 2013*, IndiaCorpLaw (Feb. 12, 2018), archived July 27, 2025 (accessed July 27, 2025), <https://indiacorplaw.in/2018/02/12/analysis-strike-off-provisions-companies-act-2013/> taxguru.in+8

Creditors, regulators, and the Income Tax Department retain the right to recover outstanding dues from remaining assets or, in some circumstances, from responsible persons.

Procedural Safeguards and Challenges

The process incorporates several safeguards:

- **Notices** to the company and public, granting opportunities to object to the strike-off.
- Exclusion of certain company categories from suo motu strike-off (e.g., companies under investigation, with pending litigation, or with unsatisfied charges)
- **Continued liability** for directors and officers for offenses before dissolution
- Judicial scrutiny in case policy/process is bypassed, as seen in numerous court rulings mandating strict compliance with notice and publication requirements

However, challenges persist:

- Efficient notice delivery and stakeholder awareness.
- Timely handling of objections and ensuring employees'/creditors' interests are protected
- Detecting hostile use of the process to subvert pending legal actions or investigations.

Revival Under Section 252 – Rights of Creditors and Promoters

Section 252 of the Companies Act, 2013 is a crucial safety valve:

- **Who Can Apply:** Aggrieved parties including the company itself, its members, creditors, or other interested persons can appeal to the National Company Law Tribunal (NCLT) for revival and restoration of the company's name
- **Grounds and Timeline:** Petitions must be filed within three years of the strike-off, showing the company was active, had assets or pending liabilities, or the strike-off was unjustified. Even after three years, the NCLT has discretion if a strong case exists⁵
- **Procedure:** The petition must include facts, documents, financial details, and demonstrate a need for restoration. The Tribunal, after hearing the parties, may order restoration, whereupon the company regains legal existence, rights, and obligations dating back to the strike-off.

5. WINDING UP UNDER THE COMPANIES ACT, 2013:

Voluntary vs. Compulsory Winding Up

Voluntary Winding Up:

Historically, voluntary winding up allowed a company, through its members, to decide

⁵ G. Durgasree, *Revival of a Stricken-Off Company: Complete Guide*, Kanakkupillai.com (May 24, 2023), archived July 27, 2025 (accessed July 27, 2025), <https://www.kanakkupillai.com/learn/revival-of-a-stricken-off-company-complete-guide/> (kanakkupillai.com).

on dissolution without direct court/tribunal intervention. Members' voluntary winding up was initiated when the company was solvent, with directors making a declaration of solvency; creditors' voluntary winding up applied when insolvency was suspected, involving close supervision by creditors. With the enactment of the Insolvency and Bankruptcy Code (IBC), 2016, true voluntary winding up under the Companies Act has become rare, as companies now usually opt for voluntary liquidation under the IBC for a quicker, less cumbersome process. The removal of many voluntary winding up provisions in the Companies Act, 2013 has made tribunal (compulsory) jurisdiction the principal route for winding up

Compulsory Winding Up:

Compulsory winding up is ordered by the National Company Law Tribunal (NCLT) on various statutory grounds. This process is generally initiated by court order, often upon a petition by creditors, the company, or other eligible stakeholders. The Tribunal appoints an official liquidator to oversee the process⁶.

Grounds for Winding Up (Section 271)⁷:

[Section 271 of the Companies Act, 2013](#) sets out the circumstances when a company may be wound up by the Tribunal:

- **Special Resolution:** If the company has passed a special resolution for winding up by the Tribunal.
- **Inability to Pay Debts:** If the company is unable to pay its debts.
- **Acts Against National Interest:** If company acts against the sovereignty and integrity of India, or affects the security of the state, foreign relations, public order, decency, or morality.
- **Financial Reporting Defaults:** If it has defaulted in filing financial statements or annual returns.
- **Fraudulent or Unlawful Conduct:** If the company is conducting affairs fraudulently or for unlawful purposes.
- **Just and Equitable⁸:** If the Tribunal forms the opinion that it is just and equitable for the company to be wound up. This “just and equitable” ground grants wide discretion to the Tribunal, weighing the interests of shareholders, creditors, and the public

Role of NCLT and Official Liquidator

- **NCLT (National Company Law Tribunal):**

⁶ “Winding Up,” ACCA Technical Articles (F4 Corporate & Business Law) (last updated by ACCA), archived July 27, 2025 (accessed July 27, 2025),

<https://www.accaglobal.com/in/en/student/exam-support-resources/fundamentals-exams-study-resources/f4/technical-articles/winding-up.html>.

⁷ The Companies Act, 2013, § 271, India Code (effective Dec. 15, 2016; last visited July 27, 2025),

<https://www.indiacode.nic.in/show-data?>

[actid=AC_CEN_22_29_00008_201318_1517807327856§ionId=49197§ionno=271&orderno=275](https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00008_201318_1517807327856§ionId=49197§ionno=271&orderno=275)

⁸ Puneet Chumber, *Critical Analysis of Just and Equitable Ground for Winding Up under the Companies Act, 2013*, Mondaq (Feb. 9, 2024), archived July 27, 2025 (accessed July 27, 2025),

<https://www.mondaq.com/india/shareholders/1422156/critical-analysis-of-just-and-equitable-ground-for-winding-up>

The NCLT is the central adjudicating authority for all winding up matters under the Companies Act. It receives petitions for winding up, determines whether statutory grounds are met, and issues the order for liquidation. NCLT also ensures due process for stakeholders and supervises the overall proceedings

- **Official Liquidator:**

Appointed by the Central Government and under the Tribunal's supervision, the [Official Liquidator](#)⁹ takes custody and control of the company's assets, conducts investigations into company affairs if needed, settles claims of creditors after verification, realizes and distributes assets, ensures legal compliance, and files final dissolution documents with authorities. The liquidator plays a crucial role in asset preservation, stakeholder communication, and ensuring equitable treatment in the winding up process.

Delay and Costs Involved – Is It Becoming Redundant?

The winding up process under the Companies Act and NCLT is often criticized for delays and high costs:

- **Causes of Delay:**

Heavy caseloads at NCLT, complex legal procedures, lengthy documentation, disputes among creditors and shareholders over claims or asset distribution, and difficulties in asset realization often extend the process¹⁰. Delays also occur in obtaining necessary clearances from tax and other statutory departments.

Financial Costs:

Stakeholders may face significant financial burdens, including liquidator and professional fees, publication costs, court fees, asset valuation and realization expenses, and legal costs associated with disputes.

Redundancy:

With the advent of the IBC, 2016, most solvent companies now prefer voluntary liquidation under the IBC, which is designed to be faster and more efficient. This has rendered traditional winding up under the Companies Act less attractive and arguably redundant for most practical purposes.

For example, a 2021 case study reveals that only 20% of voluntary liquidations concluded within a year, while a large portion of cases remained pending for over a

⁹ **Companies Act Section 2(61): Official Liquidator**, CredenceCorp Solutions Blog (Nov. 4, 2024), archived July 27, 2025 (accessed July 27, 2025), <https://www.credencecorpsolutions.com/blog/companies-act-section-2-61-official-liquidator-bg1349>.

¹⁰ **Sanjeev Sanyal & Aakanksha Arora, How to Do Process Reforms?: Case Study of Voluntary Liquidation in India**, EAC-PM Working Paper Series EAC-PM/WP/39/2025 (Apr. 2025), archived July 27, 2025 (accessed July 27, 2025), <https://eacpm.gov.in/wp-content/uploads/2025/04/Case-study-on-Voluntary-Liquidation-11th-April.pdf>.

year, with some even exceeding 1,000 days. Delays, coupled with costs and the complexity of the process, have shifted preference toward the IBC route.

6. INSOLVENCY RESOLUTION AND LIQUIDATION UNDER THE IBC

Threshold for Initiating CIRP (Sections 7, 9, 10):

The Insolvency and Bankruptcy Code (IBC), 2016 outlines three primary routes for commencing a Corporate Insolvency Resolution Process (CIRP):

- **Section 7:** Financial creditors (such as banks and institutional lenders) can initiate CIRP if a default of at least **Rs. 1 crore** occurs. They must furnish evidence of default and credit relationship to the National Company Law Tribunal (NCLT).
- **Section 9:** Operational creditors—suppliers, service providers, or vendors—may file for CIRP after giving a demand notice and waiting ten days for payment or dispute resolution. The threshold for default is also **Rs. 1 crore**.
- **Section 10:** Companies themselves (corporate applicants) can voluntarily enter CIRP if they acknowledge their own default above Rs. 1 crore, subject to approval by shareholders or the board, as per their internal governance.

These thresholds ensure that only significant defaults trigger the CIRP mechanism, prioritizing efficient and meaningful insolvency resolution.

Liquidation Route for Small and Defunct Companies

The IBC's liquidation process applies when CIRP fails—typically, if no resolution plan is approved within the prescribed timeframe or when resolution is not feasible. For small and defunct companies, alternatives include:

- **Voluntary Liquidation (Section 59, IBC):** Companies that have not defaulted may dissolve through a board/shareholder resolution, with creditor approval where relevant. This path is suited for solvent, inactive, or non-operational entities and is governed by dedicated regulations to minimize procedural hurdles¹¹
- **Summary Liquidation (Companies (Winding Up) Rules, 2020):** “Small companies” fitting specific financial criteria can access a streamlined process outside the NCLT. This includes entities with assets below Rs. 1 crore, turnover under Rs. 50 crores, and limited outstanding loans¹².

¹¹ Insolvency & Bankruptcy Board of India, *Simplifying Voluntary Liquidation Process: Improving Ease of Corporate Exit*, IBBI/IES Working Paper (Apr. 2025), archived July 27, 2025 (accessed July 27, 2025), <https://www.ies.gov.in/pdfs/IBBI-publication-SA.pdf>

¹² Adv. Gurkamal Hora Arora & Tanya Aggarwal, *Winding Up of Small Insolvent Companies Without Reference to the NCLT*, *IBCLaw* (June 1, 2020), archived July 27, 2025 (accessed July 27, 2025), <https://ibclaw.in/winding-up-of-small-insolvent-companies-without-reference-to-the-nclt-by-advocate-gurkamal-hora-arora-tanya-aggarwal/>.

Cross-Usage: Can Promoters Use IBC as an Alternative to Winding Up?

Promoters sometimes seek to leverage the IBC process to expedite exit—most commonly through voluntary liquidation if the company is solvent and wishes to avoid lengthy winding-up procedures. Under Section 10, however, companies with default can initiate CIRP, but the process is subject to NCLT scrutiny and stakeholder objections, especially to deter misuse for escaping liabilities or creditor claims.

While the IBC allows faster and more transparent closure than traditional winding up, **abuse is limited** by creditor veto rights and regulatory safeguards. Section 29A of the IBC debars defaulting promoters from regaining control via the resolution process—a measure explicitly crafted to prevent such misuse.

Data Insights: % of Companies Liquidated Without Resolution

Recent data highlights a significant trend: **most companies admitted into CIRP ultimately end in liquidation** rather than successful resolution. As of December 2021:

- Of 4,541 CIRP cases admitted since the Code's enactment, only about **16% had approved resolution plans**.
- Approximately **1,338 companies (29%)** underwent liquidation due to non-receipt of viable plans.
- For voluntary liquidations, the process remains slow, with only around a quarter finalized within a year and a substantial number taking over two years to conclude. As of late 2021, **over 35% of voluntary liquidation cases were pending for more than two years**, reflecting ongoing procedural bottlenecks.¹³

This pattern underscores that, for many defunct or distressed companies, liquidation (rather than restructuring or revival) is the de facto outcome under IBC—particularly for smaller companies where revival prospects are minimal.

7. CONCLUSION:

The legal architecture governing the exit of companies in India comprising striking off, winding up, and insolvency resolution was envisioned as a multi-layered regime to ensure market discipline, regulatory integrity, and the protection of stakeholder interests. However, as demonstrated in this research, the practical interface between these mechanisms often results in procedural ambiguities, overlaps in jurisdiction, and regulatory uncertainties that undermine the clarity and effectiveness of corporate closure.

The striking off process, while administratively efficient for removing defunct companies from the registrar's records, is frequently exploited by promoters as a shortcut, allowing them to evade more stringent insolvency or winding up procedures. This misuse can leave creditors, employees, and other stakeholders in a precarious position, with unresolved

¹³ Sanjeev Sanyal & Aakanksha Arora, *How to Do Process Reforms?: Case Study of Voluntary Liquidation in India*, EAC-PM Working Paper Series EAC-PM/WP/39/2025 (Apr. 2025), archived July 27, 2025 (accessed July 27, 2025), <https://eacpm.gov.in/wp-content/uploads/2025/04/Case-study-on-Voluntary-Liquidation-11th-April.pdf>.

claims and limited remedies, unless proactive recourse is taken under Section 252 of the Companies Act.

The winding up regime under the Companies Act, 2013, once the principal corporate death route, has become increasingly redundant due to delays, high costs, and the ascendancy of the Insolvency and Bankruptcy Code (IBC), which offers a more structured, time-bound, and creditor-driven process. Yet, even the IBC is not without challenges: data reveals that liquidation, rather than revival, is the most common outcome for distressed or defunct companies, especially those lacking real assets or viable business prospects.

Crucially, these exit routes do not always bring about a “true” corporate death in the substantive sense. Often, legal dissolution is achieved without holistic closure for outstanding liabilities or regulatory claims, perpetuating legal ambiguities and jeopardizing market trust. Moreover, the existence of multiple routes, each with different procedural checkpoints and responsible forums (RoC, NCLT, liquidators, insolvency professionals), can create confusion and opportunities for forum shopping or regulatory arbitrage.

An effective regime for corporate exit must therefore go beyond mere administrative removal: it must ensure that financial accountability, stakeholder protection, and regulatory objectives are fully realized. A more coherent alignment of statutory provisions, with an emphasis on robust procedural safeguards, increased coordination among regulatory authorities, and greater clarity in delineating the roles of striking off, winding up, and insolvency, is urgently needed. Strengthening safeguards—such as clear creditor notification, enhanced scrutiny of voluntary strike-offs, and expedited revival processes could possibly help achieve this.