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Introduction

A Company is an artificial personality which comes into existence by Law. It is a creation of Law. Company does not have a physical existence, so it cannot be ended naturally. Day to day administration of a Company is done according to Law. The company can be ended only by due process of Law. For the winding up of a company, a dissolution process has to be carried out. If company is insolvent, it cannot be ended. A Liquidation process and legal procedure is to be followed only then the dissolution of company can be achieved. Thus winding up precedes dissolution.

7.1 Meaning and Definition of Winding up of a Company

7.1.1 Meaning : In general terms, winding up is the process of bringing to an end the life of a company. Winding up of a company means to end the legal entity of a company. Creation of Company and End of a company can be done only through a legal process.

When a company is in liquidation its corporate status and powers continue. A legal existence is there. Its assets are realized by a liquidator, and its debts are paid out of the

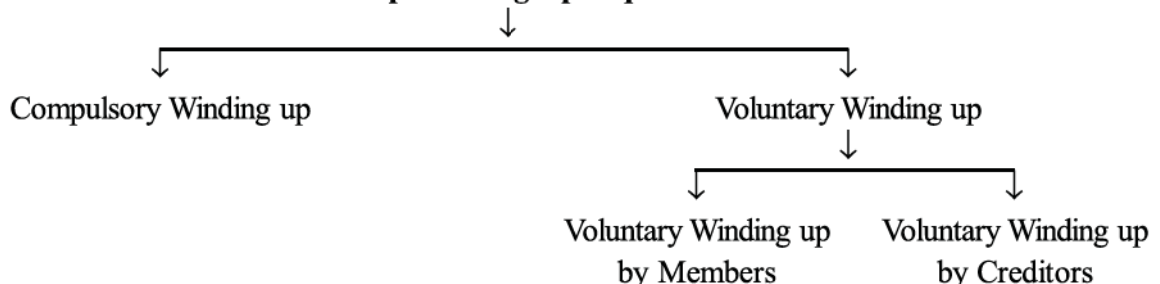
proceeds of this realization and any balance remaining, is returned to its members as per provisions of the Articles of Association.

7.1.2 Definition : As per Professor L.C.B.Gower “Winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members.”

Thus, dissolution means bringing to an end the legal personality of a company. In a company winding up precedes dissolution.

7.2 Modes of Dissolution/Liquidation/Winding up of a Company

To dissolve a company a winding up process is followed. Generally, the economic condition of a company is poor and it is not in a condition to pay its debt then it is decided to close down its business or wind up. A company may be wound up under any of the following :

Modes up Winding Up/Liquidation

7.2.1 Compulsory Winding up by Court/Tribunal :

7.2.1.1 Meaning : Winding up of a company under an order of the Court/Tribunal is known as compulsory winding up.

7.2.1.2 Grounds of Compulsory Winding up by the Tribunal : A court may order for compulsory winding up of a company on the following grounds :

(1) Company Unable to Pay its Debts : If a company is unable to pay its debt, the court may order the company to be wound up. If the economic condition of the company is poor but it has no debts, in that case, court will not order for winding up. In most of the cases when Company is not able to pay its debts, then an application is made in court for compulsory winding up.

(2) By Special Resolution : If by any reason a company passes a special resolution to Windup Company by court than company may go for liquidation. Members of the company may pass special resolution in General Meeting for liquidation of company. Directors of the company are authorized to apply in court with copy of the special resolution. The Court, however, will pass an order for winding up only after it justifies the need for it.

(3) Statutory Meeting and Report of Company : As per the Companies Act it is compulsory to call a statutory meeting of the company and a report is to be submitted to the Company Registrar. If company does not fulfil this condition, then the Company Registrar or Shareholders may apply in tribunal. Company Registrar has to seek permission with the Central Government before applying for winding up. If statutory meeting is not called on a specified date, then after 14 days, shareholders and other contributors may apply for winding up.

(4) Incorporation Certificate : If a company does not commence business within one year from its incorporation or suspends its business for one year, the tribunal may order the company to be wound up. If the tribunal finds satisfactory reason for suspension, it will not order for winding up.

Under following circumstances the tribunal may find satisfactory reason for suspension and will not order for winding up.

(i) If the company has specified in the Memorandum of Association that business will be carried out in India as well as outside of India and business is suspended in India then, it cannot be wound up.

(ii) If there is a possibility to carry out business in future then winding up order will not be forced.

(5) Reduction in Number of Members : If the number of members falls below the statutory minimum, i.e. 7 in case of public company and 2 in case of a private company, the tribunal may order the company to be wound up. Usually members initiate the winding up of the company. If the company continues business after the reduction in numbers of members, for up to six months, and existing members are aware of this fact they are responsible, personally, for all debts arise.

(6) The Sovereignty and Integrity of India : If a company has acted against the interest of the sovereignty and integrity of India, or acted against the security of state, or acted against the friendly relations with foreign states, the tribunal may order to wind up company.

(7) Just and Equitable Reasons : The tribunal has wide powers on the ground of just and equitable reasons to winding up. The tribunal may order for winding up for the following reasons :

(i) If there is a total deadlock, and management of company is not possible;

- (ii) The substratum (main purpose) has been lost due to any reason;
- (iii) The company is making loss continuously;
- (iv) Where the company was formed to carry on a fraudulent or illegal business or the business of the company becomes illegal by a change in law.
- (v) If oppressions are done on minority in a company.

7.2.2 Voluntary Winding up : The Company, and the creditors or contributories, without going to the tribunal, may decide for winding up of a company. In voluntary winding up, the company and its creditors, company and its members, mutually decide on each other's rights.

7.2.2.1 Meaning : Voluntary winding up means winding up at the insistence of the members of the company, without any interference of the court.

7.2.2.2 Grounds of Voluntary Winding up/Dissolution/Liquidation :

(1) Duration of Company : A specific period has been ascribed in the Articles of Association for the formation of a company. A company may be wound up voluntarily by passing of a resolution in the General meeting on completion of this period.

(2) Occurrence : In the Articles of Association some events have been specified, on the occurrence, of such event by passing an ordinary resolution in general meeting, a company may be wound up.

(3) Special Resolution : A company can be wound up by passing a special resolution even if it is economically sound and capable of paying its debts.

7.2.3 Voluntary Winding up/Dissolution by Members :

7.2.3.1 Meaning : Where a company is solvent, it is able to pay its debts in full, the voluntary winding up takes the form of members' voluntary winding up. For this purpose 'Declaration of solvency' shall be made by Directors.

7.2.3.2 Procedure of Voluntary Winding up by Members :

(1) Declaration of Solvency : When a proposal of winding up is put forth by members, directors have to make declaration of solvency and it is to be registered with the Registrar. Majority of the directors have to make an affidavit for solvency. The declaration of solvency, not made in accordance with the law, will make all proceedings null and void.

(2) Resolution : Directors of the company calls a General Meeting to pass a resolution for winding up of a company.

(3) Announcement of Resolution : Where a company has passed a resolution for voluntary winding up, it shall, within fourteen days of the passing of the resolution, give a notice of the resolution by advertisement in the Official Gazette and also in a newspaper which is in circulation in the district where the registered office of the company is situated.

(4) Appointment of Liquidator : A liquidator is appointed to follow the whole process of liquidation. He administers the financial matters of the company.

(5) Cessation of Powers : On the appointment of Company Liquidator, all the powers of the Board of Directors, Managing Director and Managers shall cease.

(6) Notice to Registrar : The Company shall give notice to the Registrar of the appointment of a Company Liquidator with the name and other required particulars within a specified time.

(7) To Inform the Income Tax Officer : The Company shall inform the Income Tax Officer of the appointment of a company Liquidator within 30 days of appointment.

(8) Re-Appointment of Liquidator : If, due to any reason, the post of the appointed Liquidator is vacant then another person is appointed as Liquidator. Company Registrar shall be informed of new appointment.

(9) Sale of Assets : The Company Liquidator by virtue of authority vested in him, collects the assets and may sell them to facilitate smooth winding up.

(10) General Meeting of Members : Where the winding up proceedings continue for more than one year the liquidator shall call a General Meeting of the company every year.

(11) Winding up of a Company : The company Liquidator calls the General Meeting. He presents financial statements and reports of winding up. Report of the meeting is sent to the official liquidator. Official Liquidator gives report to Tribunal. The tribunal may then take proper decision for winding up.

7.2.4 Voluntary Winding Up by Creditors :

7.2.4.1 Meaning : When a company is insolvent and the directors are unable to make the declaration of solvency, voluntary winding up is carried out by the creditors. This is called Creditors' Voluntary Winding up.

7.2.4.2 Procedure of Voluntary Winding up / Dissolution by Creditors :

(1) Meeting of Members and Creditors : A company may be wound up voluntarily, the notice to the creditors and members shall be sent, at the same time by post.

(2) Appointment of Chairman : One of the directors shall be appointed as chairman to preside over the meeting of creditors.

(3) Resolution : A resolution shall be passed in the meeting of Creditors.

(4) Notice to Registrar : Notice of the resolution passed at the creditors' meeting shall be given by the company to the Registrar within a specific time.

(5) Appointment of Liquidator : The members and creditors may appoint liquidators in their meeting. The person appointed by the creditors shall carry out the winding up process. If no person is nominated by the creditors, the members' nominee shall be the Liquidator.

(6) Remuneration of Liquidator : Remuneration of the liquidator is decided by the tribunal or Committee of Inspection or in the meeting of creditors.

(7) Committee of Inspection : The creditors may appoint a committee of inspection to observe the procedure of liquidation.

(8) Cessation of Powers : On the appointment of the Company Liquidator, all the powers of the Board of Directors, Managing Director and Managers shall cease.

(9) Re-Appointment of Liquidator : If, due to any reason, post of the appointed Liquidator is vacant then another person is appointed as Liquidator. Company Registrar shall be informed of new appointment.

(10) Meeting of Creditors : Where the winding up proceedings continue for more than one year the liquidator shall call general meeting of the creditors.

(11) Winding up : When the affairs of a company are fully wound up, the liquidator shall call a meeting of the creditors and members. The liquidator shall present the report of the proceedings of winding up. Such a meeting is called by an advertisement in newspapers and Official Gazette. The liquidator shall send conclusion of the meeting to Official Liquidator. The Official Liquidator submits a report to the Court. The Court may order for dissolution from the date of report.

What you have learnt in this chapter ?

Company is an artificial personality come into existence by law. Company is created and ended only by law. To wind up company has to go through a process of winding up. In this process liquidator is appointed and management is assigned to him. The liquidation process and by the completion of procedures of law, a company is wound up.

Meaning and definition of liquidation process :

Meaning : With the completion of the Liquidation process in accordance with the procedures of law a company is wound up.

Definition : As per Professor L.C.B.Gower “Winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members.”

Thus dissolution means bringing to an end the legal personality of a company.

Modes of liquidation/ winding up of a company :

(A) Compulsory winding up by the Court/Tribunal :

Meaning : Winding up of a company under an order of the Court is known as compulsory winding up.

Grounds of compulsory winding up by the court : (1) Company unable to pay its debt (2) By special resolution (3) Statutory meeting and report of company. (4) Incorporation certificate (5) Reduction in number of members (6) The sovereignty and integrity of India is violated (7) Just and equitable reasons- (i) total deadlock (ii) Main purpose has lost (iii) Making loss continuously (iv) Illegal business. (v) oppressions are done on minority.

(B) Voluntary winding up by members :

Meaning : Voluntary winding up means winding up at the insistence of the members of the company, without any interference by the tribunal.

Grounds of voluntary winding up/liquidation : (1) Completion of duration of the Company (2) Untowards occurrences (3) Special resolution

(i) Voluntary winding up by members :

Meaning : Where a company is solvent, it is able to pay its debts in full, the voluntary winding up takes the form of members' voluntary winding up.

Procedure of voluntary winding up by members : (1) Declaration of solvency (2) Resolution (3) Announcement of Resolution (4) Appointment of liquidator (5) Cessation of powers (6) Notice to Registrar (7) To inform Income Tax Officer (8) Re-appointment of liquidator (9) Sale of assets (10) General meeting of members (11) Winding up of a company

(ii) Voluntary winding up by Creditors :

Meaning : Where a Company is insolvent and the declaration of solvency is not made by the directors the voluntary winding up is decided to be carry out by creditors, this is called as creditors' voluntary winding up.

Procedure of voluntary winding up by Creditors : (1) Meeting of members and creditors (2) Appointment of president (3) Resolution (4) Notice to Registrar (5) Appointment of Liquidator (6) Remuneration of liquidator (7) Committee of Inspection (8) Cessation of powers (9) Re-appointment of liquidator (10) Meeting of creditors (11) Winding up.

Exercise

1. Select a suitable option from the options given :

- (1) Process prior to winding up means...
(A) process of amalgamation of company. (B) process of liquidation of company.
(C) process of merger of company. (D) process of incorporation of company.
- (2) Who is authorized to apply for winding up of a company with a special resolution ?
(A) Creditors (B) Contributors (C) Directors (D) Members
- (3) Which meeting is mandatory to be called as per the Companies Act ?
(A) Annual general meeting (B) Statutory meeting
(C) Extra ordinary meeting (D) Board of directors' meeting
- (4) Within how many years does a company have to start business after getting incorporated ?
(A) 1 (B) 2 (C) 3 (D) 4
- (5) For winding up, what is the minimum number of members for public company ?
(A) Less than 7 (B) Less than 2 (C) Less than 4 (D) Less than 10
- (6) For winding up, what is the minimum number of members for private company ?
(A) Less than 7 (B) Less than 3 (C) Less than 2 (D) Less than 10
- (7) Where is it mentioned that a company is incorporated for a specific period ?
(A) Memorandum of Association (B) Prospectus
(C) Articles of Association (D) Share certificate
- (8) Who is prepares the declaration of insolvency ?
(A) Directors (B) Creditors (C) Member (D) Court
- (9) Within how may days should an advertisement be given after passing resolution for liquidation ?
(A) 7 days (B) 10 days (C) 15 days (D) 14 days
- (10) To whom does the official liquidator have to report ?
(A) Director (B) Tribunal (C) Members (D) Creditors
- (11) Within how many days should the appointment of a liquidator be informed to the Income Tax Officer ?
(A) 15 days (B) 30 days (C) 7 days (D) 14 days

2. Answer the following question in one sentence :

- (1) How is a company created and how does it come to an end ?
- (2) Give the meaning of compulsory liquidation by tribunal ?
- (3) When does a company decide to close business ?
- (4) Who has the right to apply for liquidation ?
- (5) When does the management of a company becomes difficult ?
- (6) What is voluntary liquidation ?
- (7) Give the meaning of voluntary liquidation by members.
- (8) How and where has the advertisement to be given for liquidation ?
- (9) Why is an investigation committee appointed ?
- (10) Whose power is ceased after appointment of liquidator ?