



FACULTY OF JURIDICAL SCIENCES

Course : B.A.LL.B./BBALL.B IInd Semester

SUBJECT: COMPANY LAW
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FACULTY OF JURIDICAL SCIENCES



LECTURE-37

Winding up of a Company

Winding up of a company is defined as a process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors. In words of Professor Gower,

“Winding up of a company is the process whereby its life is ended and its Property is administered for the benefit of its members & creditors. An Administrator, called a liquidator is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among

the members in accordance with their rights."

According to **Halsbury's Laws of England**,

"Winding up is a proceeding by means of which the dissolution of a company is brought about & in the course of which its assets are collected and realised; and applied in payment of its debts; and when these are satisfied, the remaining amount is applied for returning to its members the sums which they have contributed to the company in accordance with Articles of the Company." Winding up is a legal process.

Under the process, the life of the company is ended & its property is administered for the benefits of the members & creditors. A liquidator is appointed to realise the assets & properties of the company. After payments of the debts, if any surplus of assets is left out they will be distributed among the members according to their rights. Winding up does not

necessarily mean that the company is insolvent. A perfectly solvent company may be wound up by the approval of members in a general meeting.

There are differences between winding up and dissolution. At the end of winding up, the company will have no assets or liabilities. When the affairs of a company are completely wound up, the dissolution of the company takes place. On dissolution, the company's name is struck off the register of the companies and its legal personality as a corporation comes to an end.

WINDING UP A REGISTERED COMPANY AND AN UNREGISTERED COMPANY

Winding up of a company is defined as a process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors. An administrator, called the liquidator, is appointed and he takes control of the

company, collects its assets, pays debts and finally distributes any surplus among the members in accordance with their rights. At the end of winding up, the company will have no assets or liabilities. When the affairs of a company are completely wound up, the dissolution of the company takes place. On dissolution, the company's name is struck off the register of the companies and its legal personality as a corporation comes to an end.

The procedure for winding up differs depending upon whether the company is registered or unregistered. A company formed by registration under the Companies Act, 1956 is known as a registered company. It also includes an existing company, which had been formed and registered under any of the earlier Companies Acts.

In *Pierce Leslie & Co. Ltd v. Violet Ouchterlony*, 1969 SCR (3) 203 the Hon' ble supreme court held that

winding up precedes the dissolution. There 'is no statutory provision vesting the properties of a dissolved company in a trustee or having the effect of abrogating; the law of escheat. The shareholders or creditors of a dissolved company cannot be regarded as its heirs and successors. On dissolution of a company, its properties, if any, vest in the government.

WINDING UP A REGISTERED COMPANY

The Companies Act provides for two modes of winding up a registered company.

Grounds for Compulsory Winding Up or Winding up by the Tribunal:

1. If the company has, by a Special Resolution, resolved that the company be wound up by the Tribunal.
2. If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting. A petition on this ground may be filed by the Registrar

or a contributory before the expiry of 14 days after the last day on which the meeting ought to have been held. The Tribunal may instead of winding up, order the holding of statutory meeting or the delivery of statutory report.

3. If the company fails to commence its business within one year of its incorporation, or suspends its business for a whole year. The winding up on this ground is ordered only if there is no intention to carry on the business and the Tribunal's power in this situation is discretionary.

4. If the number of members is reduced below the statutory minimum i.e. below seven in case of a public company and two in the case of a private company.

5. If the company is unable to pay its debts.

6. If the tribunal is of the opinion that it is just and equitable that the company should be wound up.

7. Tribunal may inquire into the revival and rehabilitation of sick units. If its revival is unlikely, the

tribunal can order its winding up.

8. If the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years.

9. If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

IBA Health v. Info-Drive Systems (CA No. 8230/2010) - Kapadia C.J. begins his analysis by noting that the Company Court is not required in a winding-up proceeding to examine complex issues of law and fact, or resolve serious disputes between parties. The Supreme Court held that a Company Court cannot proceed with a winding-up petition if the respondent raises a "substantial" or "bona fide" dispute as to the existence of the debt.

MCQs

1. The Companies Act provides for three modes of winding up a registered company.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

2. If the company has, by a Special Resolution, resolved that the company be wound up by the Tribunal.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

3. The Supreme Court held that a Company Court can proceed with a winding-up petition if the respondent raises a “substantial” or “bona fide” dispute as to the existence of the debt.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

4.If the company fails to commence its business within one year of its incorporation, or suspends its business for a whole year. The winding up on this ground is ordered only if there is no intention to carry on the business and the Tribunal's power in this situation is discretionary.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

5.If the company fails to commence its business within one year of its incorporation, or suspends its business for five years. The winding up on this ground is ordered only if there is no intention to carry on the business and the Tribunal's power in this situation is discretionary.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

