Liquidation of Companies

Meaning of Liquidation

Liquidation or the winding up of the company means the termination of the legal existence of a company. Under such circumstance the assets of the company are disposed of and the debts re paid out of the amount realised from assets or from the contribution made by the members and the surplus. If any is distributed among members in proportion to their holding.

In other words, the legal process by which a joint stock company is brought to an end i.e., completely closed down.

Types of Liquidation or winding up

- **Compulsory winding up by the court.**
- **Voluntary winding up**
  - Members voluntary winding up
  - Creditors voluntary winding up
- **Voluntary winding under the super vision of court**

Compulsory winding up

It can take place when the company is directed to be wound up by an order of court.

Voluntary winding up

A company can be wound up voluntary under the following circumstances:

a) **By ordinary Resolution:** The duration of the company was fixed by the articles and the period has expired and the articles provided for winding up on the occurrence of any event and the specified event has occurred.
b) **By a Special Resolution:** When a resolution is passed by the members in all other cases for voluntary winding up, it must be notified to the public by an advertisement in the Official Gazette and in newspapers.

- **Types of Voluntary Winding Up**
  - **Members Voluntary Winding Up:** At the time of winding up if the company is a solvent company i.e., able to pay its debts and directors make a declaration to that effect.
  - **Creditors Voluntary Winding Up:** When the declaration of solvency is not made and field with the registrar, it may be presumed that the company is insolvent. In that case, the company must call a meeting of its creditors for passing the resolution for winding up.

Voluntary Winding Up under the supervision of the Court

At any time after a company has passed a resolution for voluntary winding up the court makes an order that the voluntary winding up shall continue, but subject to such supervision of the court and with such liberty for creditors, contributories and generally such terms and conditions as the court thinks just.

Contributory

It is every person liable to contribute to the assets of a company in the event of its being wound up and includes the holder of any shares which are fully paid up and also any person alleged to be contributory

Liquidator

When there is liquidation of a company one or more persons are required to be appointed specially for conducting the liquidation proceeding of the company such a person called liquidator.

- **Functions of Liquidator**
  - To realise the assets of the company.
  - To collect the money due from the contributories.
  - To distribute the amount realised from the sale of assets and amount received from contributories in the order.
  - To maintain and submit the record of receipts and payments of cash to the members in the winding up

- **Provisions**
  - **Calls in Arrears:** Calls made by the company, yet not paid by the shareholders.
  - **Calls on Shares:** Where the amount available is not sufficient to pay outside liabilities or preference shareholders, any uncalled amount on equity shares must be called to the extent required at the relevant stages of deficiency.
  - **Liquidators Remuneration:** A fixed amount is paid to liquidator or it is paid as a percentage on Assets realised by the liquidator or amount paid to unsecured creditors.
  - **Calls in Advance:** Calls paid in advance by the share holder must be paid immediately after paying unsecured creditors.
  - **Preferential Creditors:** Preferential Creditors is an individual or organization that has priority in being paid the money it is owned if the debtors declare bankruptcy.
  - **Unsecured Creditors:** Unsecured creditors is an individual or institution that lends money without obtaining specified assets as collateral. This poses a higher risk to the creditor because it will have nothing to fall back on should the borrower default on the loan. A Debenture holder is known as Unsecured Creditors