

Winding up of Companies

Meaning of winding up

“Winding up is a means by which the dissolution of a company is brought about and its assets are realised and applied in the payment of its debts. After satisfaction of the debts, the remaining balance, if any, is paid back to the members in proportion to the contribution made by them to the capital of the company.”

1. “The liquidation or winding up of a company is the process whereby its life is ended and its property is administered for the benefit of its creditors and members. 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.”

2. As per Section 2(94A) of the Companies Act, 2013, “winding up” means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016.

Thus, winding up ultimately leads to the dissolution of the company. In between winding up and dissolution, the legal entity of the company remains and it can be sued in a Tribunal of law.

Meaning of Dissolution of a Company:

A company is said to be dissolved when it ceases to exist as a corporate entity. On dissolution, the company’s name shall be struck off by the Registrar from the

Register of Companies and he shall also get this fact published in the Official Gazette. The dissolution, thus puts an end to the existence of the company.

Difference between Dissolution & Winding Up of a Company:

S. No.	Winding Up	Dissolution
1.	Winding up is one of the methods by which dissolution of a company is brought about.	Dissolution is the end result of winding up.
2.	Legal entity of the company continues at the commencement of the winding up.	Dissolution brings about an end to the legal entity of the company
3.	A company may be allowed to continue its business as far it is necessary for the beneficial winding up of the company	Company ceases to exist on its dissolution.

Modes of Winding Up of a Company:

A company may be wound up in any of the following two ways:

1. Compulsory Winding Up of a Company:
2. Liquidation under Insolvency and Bankruptcy Code 2016:

1. Compulsory Winding Up of a Company:

Grounds of winding up

As per section 271, Tribunal may order for the winding up of a company on a petition submitted to it on any of the following grounds:

1. Passing of a special resolution for the winding up. When a company has by passing a special resolution resolved to be wound up by the Tribunal, winding up order may be made by the Tribunal. Tribunal may not order for the winding up winding up if it finds it to be opposed to public interest.
2. If the co has acted against the interest of sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality.
3. If on an application made by the registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of opinion that the affairs of the company have been conducted in fraudulent manner and unlawful purpose.
4. If the company has made default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years.
5. Just and equitable- The Tribunal may order for the winding up of a company if it thinks that there are just and equitable grounds for doing so. A few

examples of “just and equitable” grounds on the basis of which the Tribunal may order for the winding up of the company are given:

- i) Oppression of minority- In cases where those who control the company abuse their power to such an extent that it seriously prejudices the interests of minority shareholders, the Tribunal may order for the winding up of the company. The Tribunal will issue such an order when it is impossible for the business of the company to be carried on for the benefit of the company as a whole owing to the way in which voting power is held and used.
- ii) Deadlock in Management-this situation may arise when the voting power in a company is evenly divided between two diametrically opposed camps, and winding up the company is the only way to resolve the deadlock.
- iii) Loss of substratum-this occurs when the purpose for which a company was formed is no longer being pursued or where the company pursues a different venture to that originally envisaged. It is necessary in these applications for the applicant to show that the real purpose for which the company was formed has been lost. The abandonment of the main objects of the company must be total.
- iv) Losses- when the business of a company cannot be carried on except at a loss, the company may be wound up by an order of the Tribunal on just and equitable grounds. But mere apprehension on the part of some shareholders that the

company will not be able to earn profits cannot be just and equitable ground for the winding up order.

- v) Fraudulent object- if the business or the objects of the company are fraudulent or illegal, or have become illegal with the changes in the law, the Tribunal may order the company to be wound up on just and equitable grounds. It will not be a valid defence in such a case that the profits earned will be used for philanthropic purposes.
- vi) Bubble company- when a company is a bubble company i.e. it does not carry on any business in reality or does not own any property.

WHO MAY FILE A PETITION TO THE TRIBUNAL?

A petition for compulsory winding up of a company may be filed in the Tribunal by any of the following persons. (Sec. 272)

i. **Petition by the Company** - A company can file a petition to the Tribunal for its winding up when the members of the company have resolved by passing a Special Resolution to wind up the affairs of the company. Managing Director or the directors cannot file such a petition on their own account unless they do it on behalf of the company and with the proper authority of the members in the General Meeting.

ii. **Petition by the Contributories** - A contributory shall be entitled to present a petition for the winding up of the company, notwithstanding that he may be the holder of fully paid-up shares or that the company may have no assets at all, or may

have no surplus assets left for distribution among the holders after the satisfaction of its liabilities. It is no more required of a contributory making petition to have tangible interest in the assets of the company

iii. **Petition by the Registrar** - Registrar may with the previous sanction of the Central Government make petition to the Tribunal for the winding up the company only in the following cases:

(a) If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years;

(b) 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;

(c) If on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up.

iv. **Petition by the Central Government or a State Government** on the ground that 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.

v. Any person authorised by the Central Government in that behalf.

Consequences of the winding up order

In case the Tribunal issues a winding up order against the company, the following consequences will follow:

1. The Tribunal shall appoint an official liquidator or liquidator from the panel maintained by the Central Government as company liquidator.
2. The order for winding up shall operate in favour of all the creditors and contributories of the company as if it has been made out on the joint petition of creditors and contributories.
3. The winding up order shall be deemed to be notice of discharge to the officers and employees of the company except when the business of the company is continued.
4. The powers of the board of directors will terminate and they will now vest in the official liquidator, who shall by virtue of his office become the liquidator of the company.
5. No suit or other legal proceedings shall be commenced, or if pending at the date of the winding up order, shall be proceeded with or against the company, except by leave of the Tribunal and subject to such terms as the Tribunal and subject to such terms as the Tribunal may impose.