LIQUIDATION - MEANING

Liquidation or winding up is a process, by which a company is dissolved and its assets realised and applied in paying off the liabilities of the company. If there is any surplus after closing off the liabilities, it is distributed to its contributories according to their rights.

LIQUIDATION - DEFINITION

"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".

– ***Companies Act, 1956***

REASONS FOR WINDING UP

A company may be wound up because of any one or more of the following reasons :

i) The main objects of the company for which it was established have been accomplished.
ii) If it has become impossible to carry out the main objects of the company.
iii) If the company has sold the business or the undertaking to another company or an individual.
iv) If the company is not in a position to pay its debts in full or if it has become insolvent.

MODE OF WINDING UP

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

I. Compulsory Winding up - By the Court - Sections 433 to 483 of Companies Act.
II. Voluntary Winding up which may be sub-divided into :
   a) Members'Voluntary Winding up
   b) Creditors'Voluntary Winding up
III. Winding up under the Supervision of the Court (Secs. 522 to 527)

I. COMPULSORY WINDING UP BY COURT

A company can be compulsorily wound up through the court for the following reasons :

i) If the company itself has passed a special resolution for the winding up by the court.

ii) If a default is made in filing the statutory report with the Registrar or the statutory meeting has not been held within the prescribed time.

iii) If the company has not commenced its business for one year after the date of its incorporation or if it has suspended its business for one year.

iv) If the number of members of the company has fallen below two in the case of a private company and seven in the case of a public company.

v) If the company is unable to pay the debts in full.

Petition for Compulsory Winding Up

The following persons may file a petition in the court for the winding up of a company :

i) A shareholder or a contributory.

ii) The company itself when it passes a special resolution for the winding up of the company.

iii) One or more creditors including any contingent or perspective creditors.

iv) The Registrar of Companies.

v) Any person authorised by the Central Government.

II. VOLUNTARY WINDING UP

When a company is wound up at the instance of either the members or the creditors, the winding up is termed as voluntary winding up.

Circumstances under which a company may be woundup voluntarily :

i) When the period, if any, fixed for the duration of the company by the articles has expired.

ii) The event, if any, on the occurrence of which the company is to be wound up according to the articles, has occurred.

iii) If the company passes a special resolution to wind up the company voluntarily.

Commencement of Voluntary Winding up :

Voluntary winding up commences from the date on which the resolution is passed.

TYPES OF VOLUNTARY WINDING UP

Members' Voluntary Winding up :

When the company is wound up at the instance of the members of the company, it is called Members' voluntary winding up.

Creditors' Voluntary Winding Up:

When the company is wound up at the instance of the creditors' of the company it is termed as Creditors voluntary winding up.

III. WINDING UP UNDER THE SUPERVISION OF THE COURT

When a company is being wound up voluntarily, the court may order for the winding up under its supervision though the voluntary winding up continues. This type of winding up is sometimes called Supervisory winding up.

Objectives of Winding up under Supervision of Court :

The objectives of this mode of winding up is to safeguard the interests of the company, shareholders and creditors.

Ground on Which Winding up Under Supervision of Court is Ordered

Application for the supervision of the court may be made by :

a) a contributory, or

b) a creditor, or

c) the company itself, or

d) the liquidator.

LIQUIDATOR

Liquidator is a person appointed by the court or by the members in general meeting or by the creditors for the purpose of liquidation.

LIQUIDATOR'S FINAL STATEMENT OF ACCOUNT

A liquidator is appointed to liquidate a company. It is the duty of the liquidator to realise the assets and settle the accounts of third parties. After the completion of liquidation process, the liquidator has to