



WINDING-UP

Once incorporated under the Companies Act, a company may cease to exist either through the machinery or winding-up or when its name is removed from the register of the Registrar of Companies as a defunct company. There are three modes of winding-up of a company:

- a. winding-up by the Court;
- b. voluntary winding-up;
- c. winding-up subject to the supervision of the court (section 425 of the Act).

Winding-up by the Court

The court may wind up a Company:

- a. if the company has, by special resolution, resolved that the company should be wound up by the court;
- b. if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;
- c. if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- d. if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two;
- e. if the company is unable to pay its debts;
- f. if the court is of the opinion that it is just and equitable that the company should be wound up.

The 'just and equitable' clause effectively makes the powers of the court unlimited. In a normal situation, the court might order the winding-up of a company in situations such as a deadlock in the business or continuous losses eroding the capital.

Voluntary Winding-up

A voluntary winding-up may be made on any one of the following grounds:

- (a) when the period, if any, fixed for the duration of company by its articles, has expired;
- (b) an event has taken place, on the occurrence of which the articles provide that the company is to be dissolved;
- (c) if the company passes a special resolution that the company should be wound up voluntarily (section 484(1) of the Act).

In circumstances (a) and (b), an ordinary resolution passed in a general meeting for winding-up is sufficient.

A voluntary winding-up may be (a) a members' voluntary winding-up, or (b) a creditors' voluntary winding-up. The members' voluntary winding-up may be resorted to only when the directors or the majority of the directors, are able, at a meeting of the board, to make a declaration verified by an affidavit, to the effect that they have made a full inquiry into the affairs of the company, and that, having done so, they are of the opinion that the company has no debts, or that it will be able to pay its debts in full within such period (not exceeding three years) from the commencement of the winding-up as may be specified in the declaration (section 488 of the Act). In circumstances where the company is not solvent, it cannot be wound up by way of members' voluntary winding-up and it must resort to a creditors' voluntary winding-up. The procedure for a creditors' voluntary winding-up is that the company causes a meeting of the creditors' voluntary winding-up is that the company causes a meeting of the creditors of the company to be called for the day, or the next following day, on which the general meeting of the company is to be held at which the resolution for winding-up is to be proposed, and causes notices of the meeting of creditors to be sent to the creditors by post, simultaneously with the sending of the notices of the general meeting of the company (section 500 of the Act). The creditors and the company at their respective meetings may nominate a person to be the liquidator for the purpose of winding up the affairs and distributing the assets of the company.

Winding-up subject to the Supervision of the Court

After the company has passed a resolution for voluntary winding-up, the court may make an order that the voluntary winding-up shall continue, but subject to the supervision of the court and with such liberty for creditors, contributories or others to apply to the court, and generally on such terms and conditions as the court thinks just (section 533 of the Act). Thus, a voluntary winding-up can be converted into a winding-up subject to the supervision of the court, on terms and conditions imposed by the court.