

WINDING UP OF A COMPANY

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WHAT IS WINDING UP

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.

Winding up of a company can be due to a number of reasons such as hardship, bankruptcy etc. The winding up of a company can be initiated intentionally by the shareholders or creditors or by a Tribunal. The court on hearing the winding up application can either expel it or to make an interim request as it thinks suitable. It may even appoint a liquidator for the company till the application has been passed. Winding up order may be given by the court with or without cost. Thus, it a mechanism whereby the assets of the company are utilised for the advantage of its shareholders and creditors. The person who manages the entire assets of the company when it is in winding up position is called as called Liquidator.

REASONS FOR WINDING UP OF A COMPANY

- The company's objective for its establishment has been fulfilled.
- The company is incapable to carry business.
- Death of promoters.
- Bankruptcy.
- The company is unable to pay its creditors.
- The company disposes of its business to another company or an individual.

MODES OF THE WINDING UP A COMPANY

- Compulsory winding up by Tribunal
 - Voluntary winding up.

1. COMPULSORY WINDING UP BY TRIBUNAL:

Sec-271 of the Companies Act provides that, a Tribunal may pass an order to wind up a Company under the following cases, as explained under Section 271(1) of the Companies Act, 2013,

- i. Sick Company:
- ii. Special Resolution:
- iii. Acts against State:
- iv. Fraudulent Conduct of Affairs
- v. Default in filing financial statements with Registrar
- vi. Just and Equitable to Wound up;

1.SICK COMPANY:

If the company is in position; where creditors hold a dominant position, with the debt dues to be collected, the Committee of Creditors shall appoint an administrator to hold up with the winding up of the Company, with the order of the Tribunal. This happens, when the company is in a sick position, i.e. the company is unable to pay its debts and is not possible to revive and rehabilitate such opinion and order that the proceedings for the winding up of the Company.

2..SPECIAL RESOLUTION:

If the Company has resolved, a special resolution that it would be wound up by the Tribunal, then, the said winding up is up to the discretion of the Tribunal, in winding up the company. This exempts, the power of the Tribunal in winding up a company, which is opposed to the Public Interest or company's interest.

3. Acts against the State:

If the Company commits an act that is detrimental to India's sovereignty and integrity, the security of the State, cordial relations with other states, public order, decency, or morals, the Tribunal may ask company to wind up the company

4. Fraudulent Conduct of Business:

If the Tribunal believes that the Company's affairs have taken place by way of fraud or that the reason for forming the company is for fraudulent or unlawful purpose, the Tribunal has the ultimate discretion to wind up the company only after receiving an application from the Registrar of Companies or any other person authorised by the Central Government.

5. Failure to file financial statements with the Registrar:

If the Company has failed to file its financial statements or annual reports with the Registrar for the last five consecutive fiscal years, as required by Section 271(1) (f) of the Act.

6. It is just and equitable to wind up:

Section 271(1) (g) of the Act states that if the Tribunal believes that it is just and equitable that the company be wind up, it must consider the interests of the company, its employees, creditors, shareholders, and the general public interest, as well as all other remedies to resolve the circumstance that led to the Tribunal's decision to wind up. Under this premise, winding up the firm necessitates a strong ground to liquidate that company.

Voluntary winding up.

- If the company's general meeting approves a resolution requiring the company to be wind up voluntarily as a consequence of the expiration of the time for its duration, if any, as per its articles, or the occurrence of any event for which the articles prescribe that the company may be dissolve; or
- If the board of directors approves a special resolution requesting that the firm is wind up voluntarily.