

LIQUIDATION OF COMPANY

Prepared by

Gaikwad J.S.

Assistant Professor

Dept. of Commerce

Dvp College Nimgaon Sawa

INTRODUCTION TO LIQUIDATION OF COMPANY

- Liquidation or winding up is a legal term and refers to the procedure through which the affairs of a company are wound up by law. [?] A company is the creation of law, it cannot die itself as an natural death. So it comes to its end by law through the process of liquidation. [?] The Liquidation or winding up a company is a process through which life of company and it's all affairs are wound up and its property administered for benefits of its creditors and members.

PROCESS OF LIQUIDATION OF COMPANY

- Selling of the assets of the company . Paying off the liabilities of the company .
- If there is any deficiency to pay to the creditors and the shareholders are called upon to pay unpaid amount on their articles.
- In case of surplus, after paying off the liabilities, it may be distributed to the contributories according to their rights under the articles.
- At the end, the Registrar of Companies removes the name of the company from the Register of Companies which is maintained by his office.

Modes Of LIQUIDATION OF COMPANY

There are three modes of winding up of the company:

1. Compulsory winding up by the court

2. Voluntary winding up by members or creditors

3. Winding up under the supervision of the court

Types of Liquidation

- **Voluntary liquidation:** A liquidation that is not forced by the insolvency and this type of liquidation is solely decided voluntarily by the owner(s) or member(s) of the company. This clearly indicates that the company can be considered solvent and is in a position to make payments for the creditors.
- **Creditors' voluntary liquidation:** This type of liquidation is processed when the directors/shareholders of the company realize that it is going to default on creditor payments, and no involvement court is there in this case.

Types of Liquidation

- **Compulsory liquidation:** This is a clear order from the court of law or adjudicating authority that the business is declared to terminate its operations and the company closes down due to the inability to repay its liabilities.

Factors to consider before opting for liquidation

- **Financial viability of the company:** Does the company have a future? If the company is financially viable, it may be possible to restructure its operations and avoid liquidation.
- **Alternatives to liquidation:** It is important to consider alternatives to permanently closing the company, such as a company voluntary arrangement (CVA), administration, or a merger or acquisition. These alternatives may provide a better outcome for the company, its shareholders, and its creditors.
- **Legal implications of liquidation:** Liquidation has legal implications for the company and its directors, including the potential for personal liability for the directors and the potential for the liquidator to bring legal action against the directors for wrongful or fraudulent trading.

Directors Role in the Liquidation


- Directors have a legal duty to cooperate with the IP and provide them with any information or documentation that they need to perform their duties. This includes providing the IP with access to company records, bank statements, and financial documents.

FUNCTIONS OF LIQUIDATOR

- 1. The primary function of a liquidator is to realise the assets of the company.
- 2. He has to collect the money due from the contributories.
- 3. He has to distribute the amount realised from sale of assets and amount received from contributories in the order of preference as per Rule 329 of Companies Act.
- 4. He has to maintain and submit the record of receipts and payments of cash to the members in the case of voluntary winding-up and to the court in the case of compulsory winding up.

Liquidator's Final Statement of Account

- At the time of liquidation of a company, the liquidator realises all the assets and discharge the liabilities and capital. The statement prepared to record such receipts and payments is called 'Liquidator's Final Statement of Account.' This statement is prepared after the affairs of the company are fully wound-up. The liquidator must make payments in the following order:
 - 1. Secured Creditors.
 - 2. Legal expenses (including liquidation expenses and cost of winding up).
 - 3. Liquidator's remuneration.
 - 4. Payments to debenture holders and other creditors having floating charge on the assets of the company.

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- 5. Payments to Preferential Creditors.
 - 6. Payments to unsecured Creditors.
 - 7. Calls in advance, if any.
 - 8. Arrears of dividends on cumulative preference shares.
 - 9. Amount due to preference shareholders.
 - 10. Amount due to equity shareholders

PROVISIONS

- When a specific asset pledged as security is realised by the liquidator:
Where a specific asset is provided as security towards debentures or creditors, the amount realised on that should be used by liquidator for discharge of such debentures or creditors before making any other payment. That is, on the Receipts side, the amount realised from the assets pledged will be recorded and on the payments side, the amount payable towards secured creditors, will be recorded to the extent of amount due or amount realised whichever is less. Where the amount realised on the asset pledged is less than the amount due towards secured creditors, the difference will be treated as unsecured creditors and paid after making payment to preferential creditors

Calls in arrears:

- Calls in arrears given in the Balance Sheet must be recovered by the liquidator from the concerned shareholders without which repayment of capital on those shares cannot be made. If the amount is not realised, the liquidator can forfeit the shares.
- **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 stage of deficiency.

Legal charges and other expenses on liquidation:

- Legal expenses includes registration expenses, stamp duty, litigation expenses etc. The other expenses on liquidation includes cost of liquidation like auctioneers and valuers charges, cost of possession and maintenance of estate, cost of notices in Gazette and newspapers, establishment charges and other incidental expenses on liquidation. When “liquidation expenses” or “cost of winding up” is given, without mentioning the details, it can be shown before liquidator’s remuneration.



Thank You