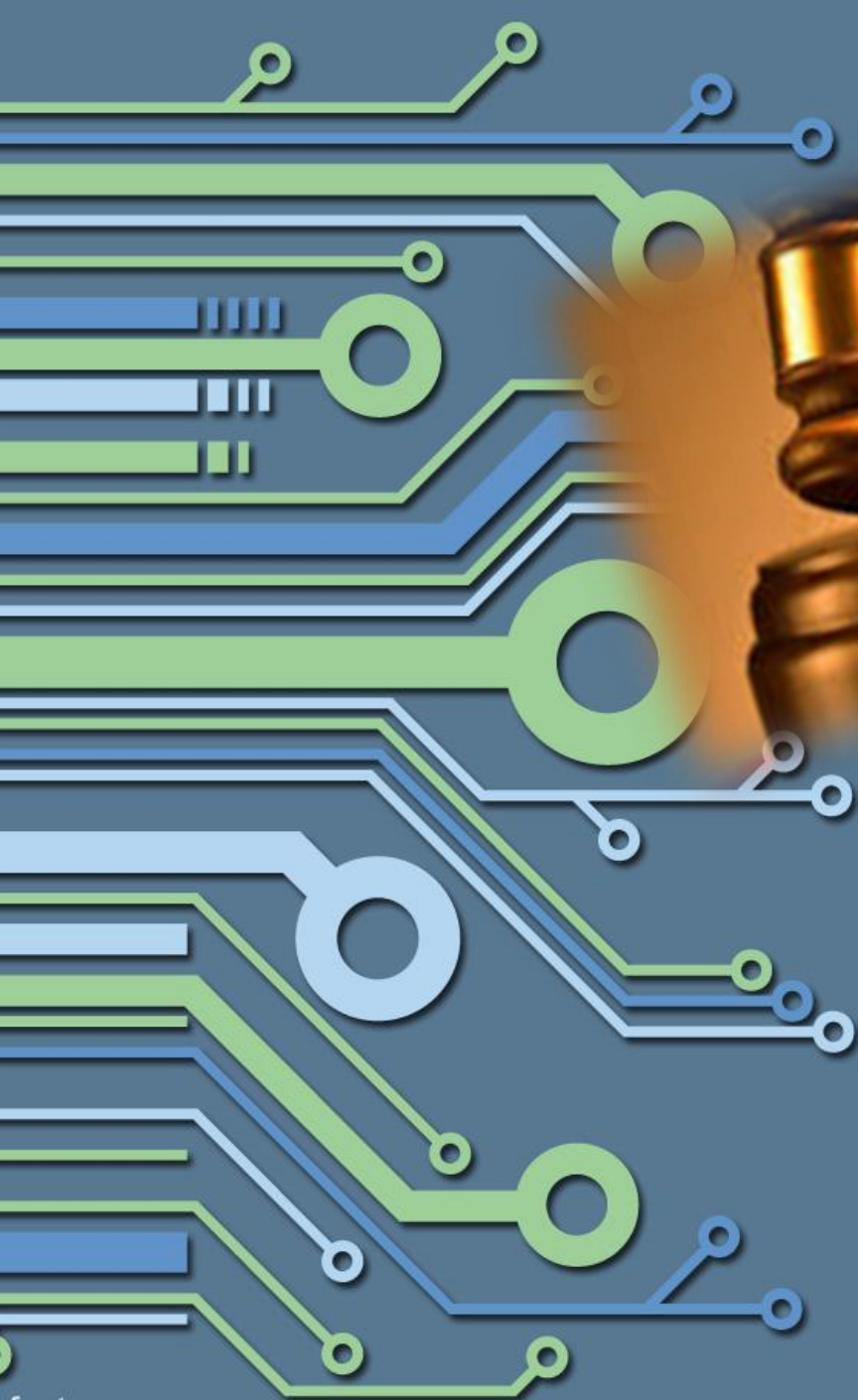


WINDING UP OF A COMPANY





What is 'Winding Up'....

The process of selling all the assets of a business, paying off creditors, distributing any remaining assets to the principals or parent company, and then dissolving the business.

Various Methods by Which the Company Could be Wound Up

- Winding up can be done via the following methods
 1. By the court (compulsory winding up)
 2. Voluntary
 - a) Members voluntary winding up
 - b) Creditors voluntary winding up



1. Compulsory Winding Up -

- **Company may be wound up according to Sec 255 if –**
 - a. Where default in delivery in statutory report or holding of the statutory meeting.
 - b. Company doesn't commence business within 1 year of incorporation or suspended business for more than 1 year.
 - c. Number of members less than minimum number.
 - d. Company Unable to pay its debts.

Company Unable to Pay Debt –

- This occurs where a Claim for 500/= or more delivered by the creditors at registered office is not paid for 3 weeks.
- If court believes there is No dispute to the debt, a creditor is entitled to a winding up order as of right
- Court must listen to the view of the majority of creditors. If majority are against winding up, court cannot order winding up.
- If company shows a substantial defence to the creditor's claim, then courts cannot order winding up even if the company is in fact insolvent.

Eg - Re Lympe Inverstments

- **Held -** court must not be used as a debt-collecting agent or as a means of asserting improper pressure on companies.

PROCEDURE.

- **Petition must be presented by company / a creditor / any contributory / Registrar of company in the course of investigations. [Section 257]**
- **After winding up application is made to District Courts, the company / creditor / contributory can stay or pause proceedings. (anytime before winding up order is made). [Section 259]**
- **After a winding up Order has been made, all actions can be continued against the company with the leave of the court issuing the winding up order.**
 - so that assets of the company are brought under the court issuing winding up order & disputes which can be expeditiously concluded can be dealt with by the issuing court.

Appointment & Powers of

Appointment –

- **After Winding up order is made, court appoints a court official as Official Receiver. Official Receiver becomes the Provisional Liquidator.**
- **Official Receiver determines wishes of creditors & contributors & appoints Liquidator.**
- **Creditors & contributors can appoint a Committee of Inspection comprising of creditors & contributors to give directions to liquidator.**



2. Voluntary Winding Up -

Members of company can resolve to wind up a company if;

1. Company has been formed for a particular period / until a particular event occurs & that period had lapsed / the event has occurred & in a general meeting members by ordinary resolution decide to wind up.
2. Members resolve to wind up by Special Resolution.
3. Members decide that company cannot continue business because it



Effects of Voluntary Winding Up -

- From time of resolution to wind up, company ceases business (unless it is necessary for the beneficial winding up of company).
- Transfer of shares / alteration in the status of members is Void (unless Liquidator consents)
- Court actions by / against a company will Not be stayed.



Procedure –

- The membership of the company instead of sending a petition to court for the winding up off the company may pass resolution in a general meeting that company be wound up.
- This allows the company and its creditors settle their affairs without coming to court.
- Winding up commences at the time when the resolution for winding up is passed.
- From time of resolution company ceases to carry on its business except as necessary for the winding up.
- Transfer of shares/ alteration of status of membership without consent of liquidator is void.
- Members will appoint a liquidator.

3. Winding Up Under the Supervision of Court -

- **Section 340 - where resolution for voluntary winding up is passed, court may order such winding up to continue subject to**
 - Court supervision; &
 - With liberty for creditors/ contributors to apply to court; &
 - On condition court considers just
- **Application maybe made by person entitled to make a petition to court for compulsory winding up.**
- **Petition must prove that voluntary liquidator can't continue with fairness to all concerned for court to intervene.**
- **This winding up is treated like a compulsory winding up for certain purposes.**