Unit - 5

Q 1. Define winding up? what are the various modes of winding up of a company. Discuss the consequences of winding up?

Introduction :-

Winding up of a company is a legal process through which life of the company comes to end. It involves realization of the company's assets, payment of its debts and liabilities and distribution of the remaining assets among its shareholders. After winding up, the company is formally dissolved and ceases to exist as a legal entity.

According to Section 270 of the company act 2013, The winding up of a company may be —

1. By the tribunal.
2. voluntary winding up.

Definition of a company

The term " winding up " has not been specifically defined in the company act 2013, but it generally means closing up a company's concerns, which may be by reason of insolvency, or otherwise. It is also termed as liquidation.

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modes of winding up

1. compulsory winding up by the tribunal (sec (see- 271-273):-

   - A company may be wound up by the National Company Law Tribunal (NCLT) on the following grounds -----

     1. inability to pay debt :- if a company is unable to pay its debt exceeding 1 lakh.

Within the period of 21 days on demands

② **Special Resolution:**

If the company has, by special resolution, resolved that it should be wound up by the Tribunal.

③ **Acts against national interest:**

If the company has acted against the interest of sovereignty and integrity of India, the security of the State, friendly relation with foreign State.

④ If the Tribunal has ordered the winding up of the company.

⑤ **Fraudulent conduct:**

If the company affairs have been conducted in a fraudulent manner.

⑥ Default in filing financial statement or annual returns for 5 consecutive years.

② voluntary winding up (sec - 304 - 323)

(i) meaning :

Voluntary winding up means the company itself decides to close its operations without the intervention of the Tribunal.

(ii) when it can be done :

- When the member passes a special resolution for winding up.
- Or when the company period of existence expires, it should be dissolved.

(iii) declaration of solvency :

In members, voluntary winding up directors must declare solvency.

(iv) dissolution :

After assets are realized and liabilities are paid the liquidator applies to the Tribunal for dissolution.

Consequence of winding up

(i) Cessation of Business :

The company ceases to carry on its business except for the beneficial winding up process.

(ii) Appointment of liquidator :

A company liquidator is appointed who takes control of all assets and liabilities of the company.

(iii) Powers of Board of directors ceases :

The powers of directors are suspended, and management transfers to the liquidator.

(iv) Asset of co. are collected and realized :

The liquidator realize the company's assets and distributes proceeds according to priority.

(v) Legal proceeding :

No new legal proceeding can be initiated against the company without the permission of the Tribunal.

(vi) debts and liabilities are settled &— The liquidators pays off creditors in orders of preference —

→ costs of liquidaton

→ Secured creditors

→ Unsecured creditors

→ Shareholders

(vii) Dissolution :— After completion of the winding up process, the company is dissolved, u/s- 302 and its name is struck off. from the registers of companies.

official Liquidator
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Dharti Dhawn 1977

In this case Supreme court held that after dissolution, the company cease to exist for all legal purposes.

conclusion :