CHAPTER - 11

LIQUIDATION OF A COMPANY

(1)

A company being an artificial person is created by law, and it can come to an end only through the process of law. The legal process of winding up a company is designated as liquidation. It is not necessary that only an insolvent company should be liquidated. Sometimes, it becomes necessary to liquidate even a prosperous and solvent company. The Companies Act, 2013 has laid down the procedure by which the companies can be wound up.

When liquidation takes place the assets of the company are sold and out of the proceeds, the claims of creditors are settled. If any surplus is left, it is distributed among the shareholders according to the provisions of Articles of Association of the company. If the amount realised on sale of assets is inadequate to meet the claims of creditors in full, and if the shares of the company are partly paid, calls are made on them to pay off the creditors. A person is appointed to conduct the winding up proceeds, and he is known as the liquidator.

Methods of Liquidation

As per Section 270 of the Companies Act, 2013, the liquidation or ~~liquida~~ winding-up can take place in any of the following two ways:

(A) Winding up by the Tribunal; and

(B) Voluntary Winding-up (under Section 59 of the Insolvency and Bankruptcy Code, 2016).

(2)

(A) Winding up by the Tribunal (also known as Winding up by the Court)

The Tribunal may order the winding up of a company in the following circumstances (Section 271):

(i) When the company is unable to pay its debts;

(ii) When the company has, by special resolution, resolved to be wound up by the Tribunal;

(iii) If the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company has been formed for fraudulent and unlawful purposes;

(iv) When default is made in filing financial statements or annual returns to the Registrar for the immediately preceding 5 consecutive financial years; or

(v) When the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

It may be noted that in the case of winding up by the Tribunal, the liquidator is appointed by the Tribunal.

(B) Voluntary winding up

In this situation, it may be noted that —

(i) A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of Section 59 of the Insolvency and Bankruptcy Code, 2016 (applicable from 1st April, 2017).

(ii) The voluntary of a corporate person shall meet such conditions and procedural requirements as may be specified by the Board.

Liquidator's Final Statement of Account

The Liquidator's task is to realise the assets and disburse the amounts among the various claimants who are entitled to receive the same. It must be noted that disbursements to the claimants have to be made strictly in a prescribed order of payment. When the winding-up is completed the liquidator has to prepare a final statement showing how much he realised and how the amount was distributed. This final statement of receipts and payments or final cash book is termed as 'Liquidator's Final Statement of Account'.

It must be pointed out that although the above statement is prepared in the form of an account,

it is ... i.e. an abstract of cash book and not an account and hence, no double entry principles are followed in the preparation of this statement.

LIQUIDATOR'S FINAL STATEMENT OF ACCOUNT

Receipts	Amount	Payments	Amount
	Rs		Rs
To Cash in hand or Cash at bank	----	By Legal charges	----
To Assets realised:		By Liquidator's remuneration:	
Land & Building ----		(i) % on amount realised from assets ----	
Plant and Machinery ----		(ii) % on amount paid to Creditors ----	
Furniture ----		(iii) % on amount paid to Shareholders ----	----
Inventory ----			
Trade receivables etc. ----	----		
To Surplus amount received from Secured Creditors	----	By Liquidator's expenses or cost of winding up	----
To Calls from Shareholders	----	By Debentureholders or other Creditors having a floating charge on the assets of the company	----
		By Preferential Creditors	----
		By Other Unsecured Creditors	----
		By Preference Shareholders (Refund of capital)	----
		By Equity Shareholders (Refund of capital)	----

ILLUSTRATION 1.

X Ltd. went into voluntary liquidation on 31st March, 2015. The Assets realised the following sums

	₹
Plant and Machinery	80,000
Furniture	25,000
Investments	25,000
Inventory	72,000
Trade Receivables	28,000
Its liabilities were as under :	
Secured Creditors (Secured on Plant and Machinery)	50,000
12% Debentures (Interest paid upto 30th September 2014)	40,000
Unsecured Creditors	60,000
Preferential Creditors	15,000
Share Capital :—	
20,000 Equity Shares of ₹10 each	2,00,000

Expenses of liquidation amounted to ₹700. The liquidator's remuneration was agreed at 4% on assets realised and 2% on the amount distributed to unsecured Creditors. Debentures were repaid on 30th June, 2015. Prepare the Liquidator's Final Statement of Account.

ILLUSTRATION 3.

Bombay Co. Ltd. went into liquidation on 31st March, 2019. Its Capital is divided into 50,000 shares of ₹10 each. Its assets and liabilities at this date were as follows :—

Cash in hand ₹750; Realised from Inventory ₹29,600; from Trade Receivables ₹49,200; from furniture ₹1,050; investments with bank for overdraft ₹4,900.

Unsecured creditors ₹53,775; Preferential creditors ₹5,295; Bank overdraft ₹4,000; 6% Debentures having a floating charge and on which interest has been paid upto 30th September, 2018, ₹44,000.

Bank, after deducting its amount from investments of ₹4,900, gave the surplus to the liquidator. Debentures were paid on 30th September, 2019.

Remuneration of liquidator :— 3% on net amount realised (excluding the amount given to secured creditors but including cash in hand); 2% on the amount paid to unsecured creditors (excluding preferential creditors)

Cost of liquidation amount to ₹1,015. Prepare liquidator's final statement of account and find out the amount paid to unsecured creditors.