Consequences of Winding up the Company

V. Lakshmi Priya and M. Kannappan
1Saveetha School of Law,
Saveetha Institute of Medical and Technical Sciences,
Saveetha University, Chennai.
ralslakshme@gmail.com

2Saveetha School of Law,
Saveetha Institute of Medical and Technical Sciences,
Saveetha University, Chennai.
kannapanm.ssl@saveetha.com

Abstract

The given research focuses on the consequences under which the company gets wind up. Winding up of the company is said as the process by which the life of the company is brought to the end and it also says about the persons involved during winding up ex: liquidator. The winding up may be done by the order of court or by the company which will be voluntarily winds up. Moreover it also says about the difference between winding up and dissolution of company, because winding up does not only mean that the company is insolvent. A perfectly solvent company can also be winded up. The papers also says about under what consequences the registered company can be winded up and non-registered company can be winded up.

Key Words: Consequences, company winding up, liquidator.
1. Introduction

Schedule XI Section 2(94A) of Companies Act¹ 2013 defines winding up. Winding up or liquidation is moreover the same which represents the last stage of the company it means the proceeding by which the company is dissolved. In simple words it can be said as winding up is the process where the life of the company is brought to the end and its corporate existence is vanished and it is there after the company is dissolved. It is said that winding up is different from dissolution of the company. Winding up² is the stage where the company’s assets and liabilities are released/paid off here the liquidator plays the main role appointed by the company or the court, until the company enters into the dissolution it is the liquidator who represents the company, secondly a company is said to be dissolved when it ceases to exist as a corporate entity, dissolution is the stage where the company ceases to exist here the order for dissolution can be only given by court; after dissolution the liquidator does not represent the company. Finally in the dissolution the name of the company will be struck off the register of companies and its legal personality as corporations comes to the end.

Objectives

To analyze the consequences of winding up.

To analyze about the winding up of register and unregistered company

Hypothesis

NULL : A company can not be wound up by the non payment of dividend and interest

ALTERNATE: A company can be wound up by the non payment of dividend and interest

Research Question

Whether default of the company is on repayment ?

2. Review of Literature

Procedure for obtaining a winding up order and law relating to applications to wind up companies. It applies to various classes of petitioner such as creditors, shareholders and public officials (Derek french 2015). The company in general meeting has passed a resolution requiring the company to be wound up and necessary for the beneficial winding up. The court is of opinion that it is just and equitable that the company should be wound up (Joseph smith Taylor, w.

¹http://ebook.mca.gov.in/default.aspx
²Company law Avtar Singh
Amer 1865). Contributions lodged matter meeting of creditors and committee of inspection. Registrar of companies and preferential creditor proceedings (C.S.Ola 1997). Formation and winding up of company, winding up voluntarily. Winding up under supervision of the court (Sir Francis Gore-Browne 1908). Procedure to be followed for the liquidation and procedure for the compulsory liquidation, order passed by the tribunal (Avatar Singh). Amendments contained in the companies bill 2012 such as transactions on a winding up, fraudulent preference, fraudulent disposition (Bloomsbury professional Maxwelton House). Court may have regard to the wishes of creditors and no provisions in that act requiring a meeting to be held in every case (Britain laws statutes etc, Fb & C Ltd 2018). The secretarial standards specified by the institute of the company and it has every aspect of the company law (Ratan Nolakha). Equitable grounds and equitable remedies, circumstances of common understanding companies act. Quasi-partnership relief and remedy (Frank Hortin Callaway 1978). The liquidators have no power to cancel such forfeiture and commencement of the winding up (Alfred Charles Richard Emden). Formation of companies, administration and management to their winding up and fundamental changes to Irish company law in two generations (Thomas B. Courtney, G. Brain Hutchinson 2016). Companies and parties contracting with them and they examine the relevant law, economic perspective examining the rules (Andrew Griffiths 2005). Late registration, provisions for public companies registered and insolvent liquidation interest (Stephen Judge 2008). Common understanding companies Act 1961 company be wound up and purpose of Quasi-partnership (Frank Hortin Callaway 1978). Logically structured and with a readable style, legal framework in which companies operate and comprehensive treatment of the companies Act (Janet Dine, Marios Koutsias 2009). Attended with fatal consequences and absolutely necessary for the prosperity, mode of conducting business (James Neill, Patrick Neill). Winding up and dissolution, consequences of winding up and voluntary winding up (RSN Pillai 2011). Registered office registrar remuneration share capital and shareholders, board of directors (Ratan Nolakha). Consequences of the making of a winding up, company should be wound up and the ground that it was just and equitable (Rambarran Mangal 1995). Limited liability company distribution, specified in an operating agreement and reducing or eliminating (Steven A. Frieze, Oyez Longman 1983).

3. **Research Methodology**

The data used in the doctrine study is the secondary data for analysis and the information was collected through online articles, journals, government reports, and various websites.

4. **Limitations**

- This paper is mainly based on only desk research and does not involve any field work.
- This paper is confined only to the statutes and enactments of India alone.
Thus, winding up process involves:
- Taking out the management of a company’s affairs from directors hands;
- Appointment of a liquidator;
- Realization of assets;
- Payment of debts out of proceeds of realization; and
- Distribution of surplus, if any, amongst the members of the company.

5. **Consequences of Winding up Subject to Supervision of Court**

- Winding up subject to supervision of court has a huge difference from ‘winding up a company by court’
- Here the court has right only to supervise the procedure of winding up. Because the special resolution for winding up will be passed by members in the general meeting. It takes place only for some specific reasons, that the court may supervise the winding up proceedings. Here the court is also given the rights to put some special terms and conditions for that particular company
- However, creditors has granted the liberty, contributories or others to apply to court for some relief in the case the company is being wound up compulsory
- The petitioner should anyhow how prove that voluntary winding up cannot be continued with fairness to all the concerned parties
- The court has the rights to appoint an additional liquidator or continue with its existing liquidator to provide security
- The liquidator should file the report of the progress of liquidation with in the registrar every three months - The court may also appoint a additional liquidator, in addition to already appointed, or remove any of the liquidator. The court can also appoint an official liquidator, as to fill up the vacancy.
- Liquidator is entitled to do all such acts which he thinks best in the interest of the company. He shall enjoy the same powers, even if the company is wound up voluntarily.
- The court can also exercise some powers to enforce calls by the liquidators, and other such powers, as making the call or order for the winding up the company altogether by court

---

4 https://www.insolvencydirect.bis.gov.uk/technicalmanual/Ch37-48/chapter45/part5/part_5.htm
6. Winding up of Registered Company and Unregistered Company

The procedure of winding up in registered company is different from as that of the unregistered company. A company which is formed and registered under Companies Act 2013 is said to be as registered company. It also includes the existing company, which has been formed earlier and registered under Companies Act 1954 or under any of the earlier Companies Acts.

Grounds of compulsory winding up by the tribunal (section 271 of Companies Act 2013)

Winding up of a company under the order of a tribunal is also known as compulsory winding up. The following are the circumstances in which a company may be wound up by the tribunal:

- **Special resolution**: special resolution for winding up by the tribunal is passed by the members in a general meeting. But winding up under this mode is not common because the members would prefer to wind up the company voluntarily, being the cheaper and speedier mode than a winding up by the tribunal.

- **Inability to pay its debts**: A company may be ordered to be wound up if it is unable to pay its debts or honor its monetary commitments. According to Section 271(2), a company is deemed unable to pay its debts in the following three cases:
  1. Failure of the company to pay its debts its exceeding one lakh rupees within 21 days of the formed deemed made by its creditors.
  2. Failure to satisfy a court decree or order in favor of a creditor either in whole or in part.
  3. If it is proved to the satisfaction of the tribunal that the company is unable to pay its debts.

- **Tribunal order to wind up**: in case of sick companies, if it is not possible to revive and rehabilitate them, the tribunal shall order for winding up.

- **Default in filing financial statements**: if the company has made a default in filing with the registrar its financial statements or annual returns for immediately preceding five consecutive financial years, the tribunal may order for its winding up.

---

6 https://www.caclubindia.com/articles/winding-up-companies-8246.asp
8 https://taxguru.in/company-law/winding-company-ca-2013.html
- Opinion of the tribunal: if the tribunal is of the opinion that, the working process or affairs of the company have been conducted in a fraudulent manner; or the company was formed for unlawful or fraudulent purpose; Orlando
- The persons concerned in the formation or management of its affairs have been guilty of fraud, misconduct in connection there with; it is proper that the company may be wound up.
- Reduction of members: if the number of members in the company is reduced below the statutory minimum i.e. below 2 in case of private company and 7 in case of public company.

7. **Winding up an Unregistered Company**

According to the Companies Act, an unregistered company includes any association, partnership or this company will not have the certificate of incorporation. This is won’t cover the following:
- A company registered under the Companies Act 2013\(^9\);
- A company registered under any previous company laws.

Moreover, any foreign company carrying its business in India can be wound up as an unregistered company even if the company has been dissolved or ceased to exist under the law of the country of its incorporation. Some of the circumstances relating to the winding up of an unregistered company:
- If the company has been dissolved or has ceased to carry on business or the company is carrying on its business only for the purpose of winding up its affairs.
- If the company is unable to pay the debts.
- If the tribunal regards it as just impartial or equitable to wind up the company.

8. **Winding up Petition Consequences**

The consequences of a concluding petition area unit varied however listed out below area unit a number of the areas a individual should take into consideration once served with a concluding order.\(^{10}\)

Disposition of company property being void. In layman’s terms, this covers a scenario whereby marketing of assets, disbursal of company cash, charging assets etc when the date a petition has been given are often nullified by the court if the corporate is later aroused. This is often consistent to Sections 127(1) and 129(3) of the economic condition Act 1986. Disposition of property when the date of a concluding petition will even have serious effects on the administrators.

---


\(^{10}\) [https://www.franciswilkandjones.co.uk/site/our_services/debt_claims/winding_up_petitions/further_information_winders/winding-up-petition-consequences.html](https://www.franciswilkandjones.co.uk/site/our_services/debt_claims/winding_up_petitions/further_information_winders/winding-up-petition-consequences.html)
of the corporate if a concluding order is granted by the concluding petition court. Indeed, a Liquidator might look for to recover assets or property from administrators by approach of separate legal court action once a concluding order is created.

There is the simplest way around these difficulties which is to hunt what's referred to as a Validation Order below Section 127 of the economic condition Act. we will assist on this space.

The bank might freeze the checking account. “Winding up petition checking account frozen” are some things that ordinarily happens when the presentation of a concluding order. this is often as a result of the bank doesn't wish to be control accountable for monies dealt the checking account when the date the concluding petition was issued. usually this solely happens when concluding order promotion within the London Gazette however it will happen beforehand if it becomes knowledge in different ways that. It will have a dramatic result on the power of an organization to then pay its debts. Damage to business name. The existence of a concluding petition will have nice ramifications for an organization and its business name. If it becomes known to suppliers of the corporate, they will stop to produce the corporate or evoke money on delivery. it should conjointly have an effect on the bank’s ability to boost finance and/or impact greatly on its existing finance facility. different corporations can also look for to recover their debts from the corporate faster than they antecedently have.

Lost management time, managing a concluding petition will involve respectable management time. while there's clearly a price attached taking skilled legal recommendation, it will facilitate save valuable management time and permit the administrators of an organization to target running the business instead of managing associate unfamiliar with and probably dangerous space of the law. If you apprehend wrong, a concluding order may follow which means that the

**Can A Winding Up Order be Stopped or Reversed?**

Although it's uncommon, it's attainable for a polishing off order to be reversed during a range of how. However, this can beyond question be a rich method as you may ought to instruct each solicitors and alternative professionals to help during this method.

i. Recession Order

Once your company has been aroused you may be sent a replica of the winding up order to the registered workplace address. One will apply to cancel (‘rescind’) the winding up order, if your company is in a position to pay the debts owed or instead if you'll not attend the first hearing.

---

11 [https://www.aabrs.com/services/winding-up-orders/]
You will ought to completed type seven.1A and supply a witness statement that explicate of the company’s assets and liabilities. Clearly, your argument is also that the court didn’t have all the relevant data once creating the choice of the winding order and you may ought to persuade a choose to reverse the choice.

You will ought to apply to court at intervals five business days of the order and can ought to file the documentation within the same court that the winding up order was created and there’s a court fee of £155.

Once you file the witness statement you may get a court hearing date (normally in 1-2 weeks’ time) and you may ought to serve the copy of the appliance with each the Official Receiver and therefore the petitioning human.

At the hearing you may ought to indicate to the choose why you concentrate on that the order ought to be rescinded and either the winding up are going to be allowed to continue or instead a rescindment order are going to be created.

ii. Keep of Proceedings

Another attainable route to reverse a winding up petition would be for associate application for a ‘stay of proceedings’. this is often associate order by the court to prevent the financial condition from continuing any more. This application is created at any time and therefore the court could order that the winding up be keep either for good or for a selected amount of your time.

In these cases, the Official Receiver, a Liquidator, a human or share owner of the corporate could build this application for a keep of proceedings.

iii. Administration

A Liquidator is in a position to form associate application for associate Administration Order which can have the impact of rescinding the winding up order and can permit associate Administrator to be appointed over the corporate provided what one among the needs of Administration is achieved.

iv. Company Voluntary Arrangement

A Liquidator will propose an organization Voluntary Arrangement associated if the requisite majority of seventy fifth of a lot of select favor of the Proposal then the court can build an order to remain all proceedings in reference to the winding up.

http://epgp.infubnet.ac.in/epgpdata/uploads/epgp_content/law/04._corporate_law/22._winding_up_its_need, _grounds_and_effect_on_shareholders,_creditors_and_other_stakeholders_/et/5680_et_22_et.pdf


It is so imperative that you just act quick and as shortly as you receive a statutory demand or a polishing off petition that you just take immediate action and speak to U.S. at AABRS for skilled recommendation. the probabilities of rescuing your business are unit redoubled if you're taking matters into your own hands at the earliest stage.

9. Conclusion

The company is usually form for the purpose of earning profit by its course of action and there is no specific time length of the company. But, at times the situation arises where the company is said to shut by way of winding up. The situation may include attainment of the objective, or by order of the court. Therefore, when the company is said to wind up, then it has to follow certain steps as explained in Companies Act 2013 and it also has to face certain consequences as stated in this paper. Thus, the winding up of a company is not a easy process as at this point of time, the company has to stop its functioning and has to set all its member and creditors free by giving their share or debt owed by the company.

References

[1] Derek French, Applications to wind up companies, Oxford University press 2015.
[4] Sir Francis Gore-Browne, William Jordan, Management and winding up of a companies,
[7] Court application under the companies Act, Bloomsbury professional Maxwellton House.
[20] https://www.franciswilksandjones.co.uk/site/our_services/debt_claims/winding_up_petitions/further_information_winders/winding-up-petition-consequences.html
[23] https://www.aabrs.com/services/winding-up-orders/
[24] Company law_Avtar Singh
[25] https://www.slideshare.net/mobile/AnuragBhatt1/winding-up-of-company
[26] https://www.caclubindia.com/articles/winding-up-of-companies-8246.asp
[27] https://taxguru.in/company-law/winding-company-ca-2013.html
[29] https://www.lakshmisri.com/News-and-Publications/Publications/articles/Corporate/winding-uplegal-


