DE JURE NEXUS LAW JOURNAL

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DISSOLUTION OF A COMPANY

INTRODUCTION AND MEANING

When a corporation ceases to exist as a legal entity, it is said to be dissolved. The Registrar shall strike the company's name from the Register of Companies upon dissolution, and he shall also have the fact published in the Official Gazette. The company's existence is therefore brought to an end by the dissolution. In basic terms, after a company's dissolution, the company's label comes to an end. The corporation will no longer be able to operate when the dissolution procedure is completed. The director's management responsibilities will be taken away. After that, a liquidator is appointed as the administrator, and he assumes control of the entire firm.

The final stage of a company's dissolution is the liquidator's winding up procedure. The dissolution of a company results in the legal entity of the firm being terminated. It is the final stage of a company's closure. A corporation comes to an end during this procedure, and all of the company's assets and property are redistributed. Following the dissolution of a business, the company's affairs are likewise ended.

DISSOLUTION- ONLY A PART OF WINDING UP PROCEDURE

Winding up and dissolution are two steps in the process of a company ending operations and paying off its creditors. At its most basic level, winding up is the process of appointing a

liquidator to settle and distribute a company's assets to its creditors and shareholders prior to its eventual dissolution.

When a company is wound up, the authorities dissolve it and strike it from the Register of Companies, and the event is publicly reported in the Government Gazette. When a liquidator is appointed, all of the company's rights, including those of the board of directors and secretary, are revoked and transferred to the liquidator. The firm or its creditors can appoint the liquidator. If the creditors propose a different candidate, the appointment will be made at their discretion. If the creditors do not select a liquidator, the company's choice is appointed instead.

If the process of winding up takes more than a year, the liquidator must call a general meeting of the firm as well as a meeting of creditors. A description of all assets and the anticipated distribution to creditors, as well as an auditor's report, are included in the winding up procedure.

To guarantee fairness and transparency, the business's liabilities shall be satisfied by the distribution of corporate property and assets, following the pari passu (equal footing) norm. In addition, the liquidator's fee will be paid from the company's assets. After you've set out your whole strategy, it's time to dissolve the firm and strike it off the books.[1]

The striking off procedure can begin as soon as the Registrar of Companies gets a copy of the account of the winding up process, the manner in which the distribution will take place, and the auditor's report. The firm is legally stricken from the list and ceases to exist once the paperwork are registered. To put it another way, winding up and dissolution is the process of determining who is owed what and how the company's assets may be sold to satisfy its debts. The auditor's report supports this process by stating that everything was done fairly and in accordance with protocol.

The official dissolution of the company is the last step by the authorities that removes it off the list and proclaims it no longer exists. The procedure that leads to a company's dissolution is known as winding up.

IS DISSOLUTION SAME AS LIQUIDATION?

Dissolution and Liquidation are sometimes interchangeably used in the business world but Dissolution and Liquidation are two distinct procedures. In cases where there is no debt or if

[1] Available at- https://rajdhanicollege.ac.in/admin/ckeditor/ckfinder/userfiles/files/Winding%20up%20of%20the%20Company%20(1).pdf

any existing debt and other liabilities may be cleared in full within 12 months, dissolution is a viable option. Liquidation is a special situation. Liquidation is likely to be the best option for ones' firm if it is unable to pay off its debts. Liquidation is taking a company's assets, selling them to make as much money as feasible, and using the proceeds to pay off any remaining debts. Only a licenced insolvency practitioner may engage into a liquidation on one's behalf, who will monitor the whole process.

MODES OF DISSOLUTION OF A COMPANY

A company's dissolution can be accomplished in one of the following ways:

a) Merger, Reconstruction, Amalgamation

Under the strategy of reconstruction, combining with other businesses, and amalgamation, one's company's undertaking is transferred to another company. In this situation, a company's transfer will be terminated by a Tribunal ruling rather than being wound up.

b) Dissolving a company voluntarily

A company can be dissolved voluntarily by the desire of its shareholders during a General Meeting or shareholders meeting. The assets of a firm are realised and the obligations are paid off in the voluntary dissolution of a company. If there is any surplus after that, it is divided among the company's members in line with their rights.

c) Tribunal-ordered company dissolution

Section 302 of Companies Act, 2013 deals with Dissolution of a Company by Tribunal. The method for dissolving a company by the Tribunal, which is detailed here, is outlined in Dissolution of a Company by the Tribunal:

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ii) The Tribunal shall on an application filed by the Company Liquidator under sub-section (1) or when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

iii) A copy of the order shall, within thirty days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.

iv) If the Company Liquidator makes a default in forwarding a copy of the order within the period specified in sub-section (3), the Company Liquidator shall be punishable with fine which may extend to ₹5000 for every day during which the default continues.[2]

d) Removal of the name of the company from the Register of Companies by the Registrar

Section 248 of Companies Act, 2013 gives the power to Registrar to strike off a company's name from the Register of Companies in the following cases where registrar has reasonable cause to believe that-

i) A company has failed to commence its business within one year of its incorporation.

ii) A company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455. He shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

iii) The subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A: This has been made available for the Companies incorporated after 2nd November, 2018. Companies incorporated

[2] Section 302, Companies Act, 2013

before this period are not required to comply with filing of Form INC-22A as per Section 10A(1), Companies Act, 2013.

iv) *The company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12, Companies Act, 2013.*[3]

REASONS OF DISSOLUTION OF A COMPANY

Running a business is not a simple undertaking because it entails several obstacles. When things in a business aren't going well, the proprietors of the firm may opt to close it down. The following are some of the reasons behind the company's dissolution:

1) Poor cash flow is one of the most prevalent reasons for a company's dissolution as money isn't flowing in fast enough to keep up with the expenditures.
2) Poor management: A few little errors or one major blunder might make it impossible to keep the doors open.
3) Competition: A rival introduces a new product or service that undercuts one's company without lowering prices below profit margins.
4) There is no such thing as an island business. If your consumers have to decrease their spending, your firm may not be able to stay afloat.
5) Product liability: If one has been selling defective items, one may be forced to dissolve if customers demand refunds or threaten litigation.
6) Bankruptcy: If a company has gone bankrupt and one needs to file for bankruptcy, one will probably need to dissolve it first.
7) Death or Disability: It is a famous saying that- "For men may come, men may go, But Company go on forever." While no one lives forever, a business can continue to operate eternally if proper preparations are in place. The business will have to be dissolved if no one is chosen to take over if the owner dies or becomes disabled.

[3] Section 248, Companies Act, 2013

PROCEDURE OF DISSOLUTION

The following steps should be followed when dissolving a company:

A. Approval of the owners of the company

The dissolution of a company requires the approval of the company's owners. When it comes to companies, the action must be approved by the shareholders. The board of directors shall write and adopt the resolution to dissolve in order to comply with corporate requirements. Shareholders then vote on the resolution that has been approved by the board of directors. Both acts should be documented and kept in the company's files.

B. Obtaining a state-issued Certificate of Dissolution

Following a vote by shareholders or members in favour of dissolution, documentation must be submitted with the state where the company is based. If the corporation is licenced to do business in other states, it must file papers in those states as well.

C. Forms for federal, state, and municipal taxation

Although a company's operations are coming to an end, its tax responsibilities do not. The closure of a business must be formalised with the relevant authorities, as well as state and municipal taxes bodies.

D. Bring everything to a close

The corporation must wind up its affairs when the dissolution is allowed. It is unable to do any business other than that which is required to close its books and dispose its assets. During this time, one can do the following actions:

i) Pay off the debts
ii) Customers, suppliers, landlords, insurance, and vendors should all be notified.
iii) Employees should be notified.

iv) Licenses, permits, and registrations should all be revoked.

v) Withdraw from states where foreign competent people are employed.

E. Notifying creditors that the company is closing and settle their claims

The company must inform the existing creditors about the closure of the company and settle their claims before dissolving. The firm has the option of accepting or rejecting creditor claims. Accepted claims must be paid or appropriate repayment agreements must be arranged with creditors. A creditor, for example, may agree to settle the claim for a lower sum (say 75%) than the initial amount. One must notify creditors in writing that their claims have been rejected by the firm.

EFFECTS OF DISSOLUTION

The following are the consequences of a company's dissolution:

- ✓ Business affairs cannot be carried on after a company has been dissolved.
- ✓ The legal entity or existence of a company ceases to exist when it is dissolved.
- ✓ It simply implies that after winding up but before dissolution, the company's legal entity or existence remains intact, allowing it to be sued in a court of law.
- ✓ The phrase dissolution refers to a company's legal existence or identity being terminated.
- ✓ A company cannot be sued after it has been dissolved since it is no longer in legal existence.
- ✓ The Registrar strikes the company's name from the Register of Companies upon dissolution, and this information is published in the Official Gazette.

CONCLUSION

Although dissolving the company appears to be a simple procedure, it should be done with prudence. The repercussions can be severe if one submits incorrect information in

the application, whether intentionally or unintentionally, or if one fails to tell an interested party. One may lose the directorship, pay a hefty fine, or even be imprisoned in severe circumstances. If one has any questions about whether they qualify for dissolution, how to fill out the form, or if it is the best option for the company, one should contact a professional who can walk through the process and help one decide what is best for the firm.