

# CHAPTER 4

## *Liquidator's*

## *Accounts*

*(Voluntary Liquidation of a Company)*

# *INTRODUCTION*

- ▶ A company has no physical existence and cannot die a natural death. It is a creation of law and its corporate life comes to an end by process of law only. It can be wound up under the provisions of Companies Act. Liquidation of a company suggests winding up the business of the company, disposing off its assets, paying off all its liabilities and surplus, if any, being returned to its shareholders. It must be made clear at the outset that liquidation of company does not mean that the company is insolvent.
- ▶ Even financially sound and affluent company may be taken into liquidation. Secondly, when a company is taken into liquidation, it does not always mean that its business is closed down. It may be wound up for the purpose of reconstruction and amalgamation too.

# *INTRODUCTION*

- ▶ A company is taken into liquidation for the following reasons:
  - ❑ Due to insufficient capital, it may not be able to carry on business profitably and may want to sell business to another company,
  - ❑ When the period, if any, fixed for the duration of the company by the articles has expired.
  - ❑ When the objects for which the company was established have been fulfilled.
  - ❑ When due to inefficient management or due to some other reason, the financial position of the company has deteriorated to such an extent that it is not possible to continue the business.

### **3. CIRCUMSTANCES AND MODE OF VOLUNTARY WINDING UP BY TRIBUNAL :**

As per Section 271 of the Companies Act, 2013, a company may be wound up by the Tribunal under the following circumstances :

- (1) If the company has, by special resolution, resolved that the company be wound up by the Tribunal.
- (2) If the company has made a default in delivering the statutory report to the Registrar or in holding the statutory meeting.
- (3) If the company does not commence its business within a year from its incorporation, or closes its business for a whole year.
- (4) In the case of a public limited company, if the number of members is reduced to below 7 and in the case of private company below 2.
- (5) If the company is unable to pay its debts.

- (5) If the company is ...
- (6) If the Tribunal opines that it is just and equitable that the company should be wound up.
- (7) If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive years.
- (8) If the company has acted against the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, the tribunal may order the winding up of the company only on an application is filed by the Central Government or the State Government.
- (9) If the Tribunal has ordered the winding up of the company in case of Revival And Rehabilitation of sick company.

**Petition for Winding up :**

Subject to the provisions of Section 272 of the Companies Act, 2013, the petition for the winding up of a company can be made to the Tribunal by –

(1) The company, (2) Any creditor or creditors, (3) Any contributory or contributories, (4) All or any of the persons specified above, (5) The Registrar, any person authorised by the Central Government or a State Government.

#### **4. CIRCUMSTANCES AND MODE OF VOLUNTARY WINDING UP :**

A company may be wound up voluntarily under the following circumstances :

- (1) If the period has been fixed for the duration of the company by the articles and that period expires.
- (2) If the articles provide that the company is to be dissolved on the occurrence of an event and that event has occurred.

In the above two cases, the company must pass a resolution in the General Meeting requiring the company to be wound up voluntarily.

- (3) If the company passes a special resolution that the company be wound up voluntarily.

When a company has passed resolution for voluntary winding up, it shall give notice of the resolution within 14 days of the passing of resolution :

- (i) by advertisement in the official gazette and (ii) also in some newspaper circulating in the district where the registered office of the company is situated.

A voluntary winding up shall be deemed to commence at the time when the resolution for voluntary winding up is passed.

- Voluntary liquidation may be :
- (i) member's voluntary winding up; and
  - (ii) creditors' voluntary winding up.

## **5. LIQUIDATOR'S RECEIPTS AND PAYMENT ACCOUNT :**

When the company resolves for members' voluntary winding up, it will appoint one or more liquidators, in general meeting for the purpose of winding up the affairs and distribution of assets of the company. It shall also fix up the remuneration of the liquidator. This remuneration cannot be increased even with the sanction of the Tribunal.

When the liquidator is appointed, all the powers of the Board of Directors and the Managing Directors, shall cease.

### **Duties of the Liquidator :**

The duties of the liquidator can be summed up as under :

1. To dispose of the assets of the company and realise cash.
2. To pay the liabilities of the company in order of their priority rights under the law.
3. The surplus, if any, to be returned to the members pro-rata. He must adjust the rights of the contributories.
4. To prepare an account of the winding up and lay it before the meeting of contributories and of creditors, as also to file account before the Registrar also.

The liquidator is a paid agent of the company when he is appointed in voluntary liquidation. He cannot make any secret profit. He must keep all the funds of the company in a separate bank account. He cannot keep any such fund in his personal account. Similarly, he cannot retain more than Rs. 5,000 with him for more than 10 days as per section 350 of the Companies Act, 2013.



## **[A] DISBURSEMENTS BY THE LIQUIDATOR :**

The liquidator is appointed to dispose of the assets of the company and to pay off its debts. The disbursements are to be made by the liquidator in the following order :

1. The full amount to fully secured creditors. Also the partly secured creditors to the extent of their securities. The balance of partly secured creditors to the extent not paid off will be added to the unsecured creditors.
2. Liquidation expenses which include.  
(i) Legal charges; and (ii) Liquidator's remuneration.
3. Preferential creditors.
4. Debentureholders or other creditors who have a floating charge over the assets of the company.
5. Unsecured creditors.
6. Preference shareholders.
7. Equity shareholders.

The following dues of the workers are covered under this provision :

- (i) All wages or salary, including wages payable for time or piece work or salary earned by way of commission.
- (ii) Any compensation payable to workmen under Industrial Disputes Act, 1947.
- (iii) All accrued holiday remuneration.
- (iv) All amounts due as compensation under Workmen's Compensation Act.
- (v) Provident fund, pension, gratuity or payment from any other fund maintained by co. for welfare of workers.

## Preferential Creditors

- (1) Amount payable to Government payable within last 12 months.
- (2) Salary of an employee – 4 months' or Actual or Rs. 20,000 whichever is less.
- (3) Accrued holiday remuneration to employees
- (4) Contribution to employees' State insurance (for last 12 months only)
- (5) Provident Fund, Pension, Gratuity etc.

## Receipts of Liquidator :

Generally, the receipts of a liquidator consist of following items :

- (i) Amount realised from sale of assets.
- (ii) Amount of compensation recovered from officers of company for misfeasance or breach of duty.
- (iii) Amount of calls received from contributories.
- (iv) Surplus received from fully secured creditors.

## Liquidator's Final Statement of Receipts and Payments

Receipts	Rs.	Payments	Rs.
(1) Cash Bank balance	...	(1) Secured Creditors	...
(2) Surplus from Secured creditors	...	and dues of workers	...
(3) Assets Realised	...	(2) Liquidator's expenses and Liq. Remuneration	...
(4) Calls on partly paid shares	...	(3) Pref. Creditors	...
		(4) Creditors having floating charge; Debentures	...
		Outstanding	
		Deb. Interest	...
		+ Additional Interest	...
		(5) Unsecured creditors	...
		(6) Pref. Shareholders	...
		- Unpaid pref. dividend	...
		(7) Equity Shareholders	...
		(Remaining amount)	...
	...		...
	...		...

## (D) PRACTICAL

**1.** A Co. Ltd. resolved to wind up voluntarily on 31-12-2019. From the following information, find out the preferential creditors and unsecured creditors of the company:

- (i) Municipal taxes due and payable : 2019 Rs. 700 and 2018 Rs. 350.
- (ii) Unpaid salary of two clerks for 1-1-2019 to 31-12-2019 at Rs. 1,400 per month
- (iii) Unpaid salary of a clerk for the November, 2018 of Rs. 1,400.
- (iv) Employees' Provident Fund Rs. 4,000 and Employees' Welfare Fund Rs. 3,000.
- (v) Bills Payable Rs. 4,000 and Unsecured Creditors Rs. 34,000.

► **Solution:**

Particulars	Preferential Creditors	Unsecured Creditors
(1) Municipal tax	700 (Year 2019)	350 (Year 2018)
(2) Unpaid Salary of two clerks	11,200 ( $\text{₹ } 1,400 \times 4 \text{ months} \times 2$ )	22,400 ( $\text{₹ } 1,400 \times 8 \text{ months} \times 2$ )
(3) Unpaid salary of clerk	----	1,400 (Nov. 2018)
(4) Employees' Provident Fund	4,000	----
(5) Employees' Welfare Fund	3,000	----
(6) Bills Payable	----	4,000
(7) Unsecured Creditors	----	34,000
<b>Total</b>	<b>18,900</b>	<b>62,150</b>

**2.** There were unsecured liabilities of Rs. 50,000 in the books of company, when it was resolved to wind it up. Besides, the following were also payable :

	Rs.
(i) Municipal taxes for the last financial year	1,000
(ii) Sales-tax payable before two years	2,000
(iii) Directors' fees outstanding	1,500
(iv) Leave wage of last three years of employees who are relieved	3,000
(v) Amount payable for last two years under ESIC (Rs. 1,000 for previous year + Rs. 600 for year before P.Y.)	1,600
(vi) Two clerks' salaries for last 3 months	20,000

Find out (i) Preferential creditors and (ii) Unsecured creditors.



► **Solution:**

Particulars	Preferential Creditors	Unsecured Creditors
(1) Unsecured Liabilities	----	50,000
(2) Municipal tax for last year	1,000	----
(3) Sales-tax payable	----	2,000
(4) Director's Fees	----	1,500
(5) Leave wage of employees	3,000	----
(6) Amount payable for ESIC	1,000 (for previous year)	600 (for before P.Y.)
(7) Two clerk's Salaries	20,000 (for last 3 months)	----
<b>Total</b>	<b>25,000</b>	<b>54,100</b>

<p><b>3.</b> At the time of liquidation of Upset Ltd., the total liabilities of the company was Rs. 5,00,000, which include following items :</p>	
	Rs.
(a) Provident fund of employees	1,00,000
(b) Outstanding directors' fees	7,500
(c) Outstanding salary of two clerks for five months	75,000
(d) Outstanding income tax before two years	65,000
(e) Outstanding wages of workers	25,000
(f) Outstanding Salary of one cashier of last three months	60,000
(g) Outstanding municipal tax of last year	5,000
(h) Remaining amount of Sundry creditors	?

From the above information, classify the fully secured creditors, preferential creditors and unsecured creditors.

► **Solution:**

Particulars	Fully Secured Creditors	Preferential Creditors	Unsecured Creditors
(a) Provident Fund of employees	----	1,00,000	----
(b) O/s Directors' Fees	----	----	7,500
(c) O/s Salary of two clerks	----	40,000	35,000
		(4 months or 20,000 w.e. is less)	
(d) O/s income tax before 2 years	----	----	65,000
(e) O/s wages of workers	25,000	----	----
(f) O/s salary of cashier	----	20,000	40,000
(g) O/s municipal tax of last year	----	5,000	----
(h) Remaining amount of creditors	----	----	1,62,500
<b>Total</b>	<b>25,000</b>	<b>1,65,000</b>	<b>3,10,000</b>

4. Maya Ltd. went into a voluntary liquidation on 31-12-2016. The Balance Sheet as on that date was as under :

Particulars	Note	Rs.
<b>I. EQUITY AND LIABILITIES :</b>		
<b>(1) Shareholders' Funds :</b>		
(a) Share Capital :		
6,000 Equity Shares of Rs. 100 each		6,00,000
<b>(2) Non-Current Liabilities :</b>		
(a) Long Term Borrowings :		
12% Debentures		1,00,000
Loan Secured by charge on Investments		50,000
(b) Long Term Provisions : Provident Fund		18,000
<b>(3) Current Liabilities :</b>		
(a) Trade Payables : Sundry Creditors		1,37,500
(b) Other Current Liabilities :		
Outstanding interest on debentures		12,000
5 months' salaries (of 5 clerks)		7,500
Income-tax and Local taxes (Income-tax included Rs. 5,000 assessed on 31-8-2018)		35,000
Total		9,60,000
<b>II. ASSETS :</b>		
<b>(1) Non-Current Assets :</b>		
(a) Fixed Assets :		
(i) Tangible Assets :		
Land & Building		3,50,000
Machinery		1,55,000
(ii) Intangible Assets : Goodwill		65,000
(b) Non-Current Investment		70,000
(c) Other Non-Current Assets :		
Advertisement Suspense A/c		12,900
Profit & Loss A/c		1,48,000

**(2) Current Assets :**

(a) Inventories : Stock

75,000

(b) Trade Receivables : Debtors

72,000

(c) Cash and Cash Equivalents :  
Cash and Bank balance

12,100

Total

9,60,000

Considering the following information, prepare Liquidator's Final Statement of Receipts and Payments :

(1) Assets realised : Land & Building Rs. 4,20,000; Machinery Rs. 1,10,000; Stock Rs. 55,000 and Debtors Rs. 45,000. Creditors of the Loan have sold the Investments for Rs. 75,000 and the additional amount was returned to the liquidator.

- (2) The Debentureholders were paid off on 31-3-2020.
- (3) Liquidation expenses amounted to Rs. 10,000.
- (4) The liquidator is entitled to a remuneration at 2% on the amount of assets realised by him (including surplus received from secured creditors) and 2% on amount distributed to shareholders.

6. Shital Ltd. went into liquidation on 31st March, 2020. The balance sheet as on that date was as follows :

Particulars	Note	Rs.
<b>I. EQUITY AND LIABILITIES :</b>		
<b>(1) Shareholders' Funds :</b>		
<b>(a) Share Capital :</b>		
1,000 'A' Equity Shares of Rs. 100 each fully paid		1,00,000
2,500 'B' Equity Shares of Rs. 100 each Rs. 40 paid up		1,00,000
4,000 'C' Equity Shares of Rs. 100 each Rs. 35 paid up		1,40,000
Less : Calls-in-arrears Rs. 10 per share		40,000
3,000 12% Pref. Shares of Rs. 100 each		3,00,000
<b>(2) Non-Current Liabilities :</b>		
(a) Long Term Borrowings : 10% Debentures		1,50,000
(b) Long Term Provisions : Provident Fund		17,000
<b>(3) Current Liabilities :</b>		
<b>(a) Trade Payables :</b>		
Creditors		30,000
Bills Payables		20,000
<b>(b) Other Current Liabilities :</b>		
Interest due on debentures		7,500
4 months' salary of 2 clerks		3,000
Unpaid income tax :		
2019-'20	3,000	
2018-'19	4,000	
	<u>7,000</u>	
	<b>Total</b>	<b><u>8,34,500</u></b>

**II. ASSETS :****(1) Non-Current Assets :****(a) Fixed Assets :****(i) Tangible Assets :**

Land &amp; Building

2,80,000

Plant &amp; Machinery

3,10,000

**(b) Non-Current Investments**

90,000

**(c) Other Non-Current Assets :**

Profit &amp; Loss A/c

12,000

Preliminary Expenses

17,000

**(2) Current Assets :****(a) Inventories : Stock**

45,000

**(b) Trade Receivables : Debtors**

60,500

**(c) Cash and Cash Equivalents : Cash balance**

20,000

**Total****8,34,500****Additional Information :**

(1) Assets realised : Land and Building Rs. 2,45,000, Plant and machinery Rs. 1,85,000, Investments Rs. 70,000, Stock Rs. 36,000, Debtors Rs. 44,000.

(2) 'C' equity share holders paid up their calls in arrears.

(3) Liquidation expenses amounted to Rs. 12,810.

(4) The liquidator is entitled to a remuneration at 3% on the amount realised on assets and at 2% on the amount paid to unsecured creditors.

(5) Debenture holders were paid on 30-6-2020.

Prepare liquidators final statement of Receipt and Payment. Show necessary calculations.

50. Devang Ltd. liquidated voluntarily on 31-3-2020. The Balance Sheet of the company on that day disclosed as under :

Particulars	Note	Rs.
<b>I. EQUITY AND LIABILITIES :</b>		
<b>(1) Shareholders' Funds :</b>		
<b>(a) Share Capital :</b>		
1,00,000 'A' Equity Shares of Rs. 10 each, Rs. 8 paid up		8,00,000
80,000 'B' Equity Shares of Rs. 10 each, Rs. 5 paid up		4,00,000
10% Pref. Shares of Rs. 10 each, fully paid up		4,00,000
<b>(2) Non-Current Liabilities :</b>		
<b>(a) Long Term Borrowings :</b>		
12% Debentures		3,00,000
Mortgage Loan (against investments)		1,00,000
<b>(3) Current Liabilities :</b>		
<b>(a) Trade Payables : Sundry Creditors</b>		
		5,40,000
<b>(b) Other Current Liabilities :</b>		
Outstanding Interest on Debentures		20,000
Preferential Creditors		60,000
<b>Total</b>		<b>26,20,000</b>
<b>II. ASSETS :</b>		
<b>(1) Non-Current Assets :</b>		
<b>(a) Fixed Assets</b>		
(i) Tangible Assets		23,00,000
(b) Non-Current Investments		1,70,000
<b>(2) Current Assets :</b>		
<b>(a) Cash and Cash Equivalents : Bank balance</b>		
		1,50,000
<b>Total</b>		<b>26,20,000</b>



## **Other Informations :**

- (1) Preference Dividend is in arrears for one year.
- (2) Creditor for Loan sold the investments for Rs. 2,00,000 and the additional amount was returned to the liquidator.
- (3) Sundry Assets realised Rs. 14,00,000.
- (4) The liquidator is entitled to a remuneration of 5% on the asset realised by him and 3% on surplus received from fully secured creditors.
- (5) Liquidation expenses amounted to Rs. 52,000.
- (6) The Debenture holders were paid on 30-6-20.

**Prepare Liquidator's Final Statement of Receipts and Payments.**

*[Guj. Uni., S.Y., Nov. 2019]*