

Advanced Corporate Accounting

Liquidation of Companies

- Meaning of liquidation

Liquidation or the winding up of a company means the termination of the legal existence of a company. It is defined in the Companies Act 1956

“The process whereby its life is ended and its properties is administered for the benefit of its creditors and members.

- Meaning of liquidator

An administrator, called a liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights.

- Methods of winding up of company

Section 425(1) of the companies Act provides that a company can be liquidated in any of the following 3 ways

- i. Compulsory winding up by the court
- ii. Voluntary winding up by the members or creditors
- iii. Winding up under the supervision of the court

- Meaning of Voluntary liquidation of a company

- i) By ordinary resolution

Where duration of the company was fixed by articles and the period has expired

Where the articles provided for winding up on the occurrence of any event and the specified event has occurred

- ii) By a special resolution

- Meaning of secured creditors

Secured creditors are those the debts of whom are covered by an asset of the company in the form of security. If the amount due is less than the

value of security, the debt is said to be fully secured. If the value is lesser than the amount due, the debt is said to be partly secured

- Functions of a liquidator
 - a. To realize the assets of the company
 - b. To collect money due from the contributories
 - c. To distribute the amount realized from sale of assets
 - d. To maintain and submit the record of receipts and payments

- Meaning of Preferential Creditors

Preferential creditors are the ones who have priority of claims over the unsecured creditors not because of any security held by them but because of section 530 of the Companies Act

- Meaning of contributors

According to the section 428 of the Companies Act, a contributory is “every person liable to the assets of the company in the event of its being wound up, and includes holder of any shares which are fully paid up and also any person alleged to be contributory”

- Meaning of unsecured creditors

It includes trade creditors, bills payable, bank loan or overdraft which is unsecured, balance of partly secured creditors, balance of fixed charge in case of debentures and any other debt

- Meaning of liquidators remuneration

It is fixed by the party who appoints him

- i. by the court in case of compulsory liquidation,
- ii. by the members of the company in the case of members voluntary winding up and

iii. by the creditors of the company in case of creditors voluntary winding up

usually remuneration consists of commission on the assets realized and commission on payments made by the liquidator to unsecured creditors or to the contributories

- Meaning of legal charge or Legal expenses

Legal expenses includes registration expenses, stamp duty, litigation expenses etc., other expenses includes cost of liquidation like auctioneers and valuers charges, cost of possession and maintenance of estate, cost of notices in gazette and newspapers, establishment charges and other incidental expenses on liquidation

Meaning of preferential creditors

- all revenues, taxes, cesses and rates due from the company to the Central Government or a State Government or to a local authority at the relevant date, and having become due and payable within the twelve months immediately before that date;
- all wages or salary(**including wages payable for time or piece work and salary earned wholly or in part by way of commission**) of any employee in respect of services rendered to the company and due for a period not exceeding 4 months within the 12 months immediately before the relevant date, subject to the condition that the amount payable under to any workman shall not exceed such amount as may not exceed Rs. 20,000
- all accrued holiday remuneration becoming payable to any employee, or in the case of his death, to any other person claiming under him, on the termination of his employment before, or by the

winding up order, or, as the case may be, the dissolution of the company;

- unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, all amount due in respect of contributions payable during the period of twelve months immediately before the relevant date by the company as the employer of persons under the Employees' State Insurance Act, 1948 or any other law for the time being in force;
- all sums due to any employee from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the company; and
- The expenses of any investigation held in pursuance of sections 213 and 216, in so far as they are payable by the company.
 - i. Persons who advance money for the purpose of making preferential payments under (2) and (3) above will be treated as preferential creditors
 - ii. When amount available is not sufficient to pay the preferential creditors completely, the amount so available should be distributed in proportion of amount due of each item