

Financial accounting

Topic 5: **Liquidation of companies**

LIQUIDATION

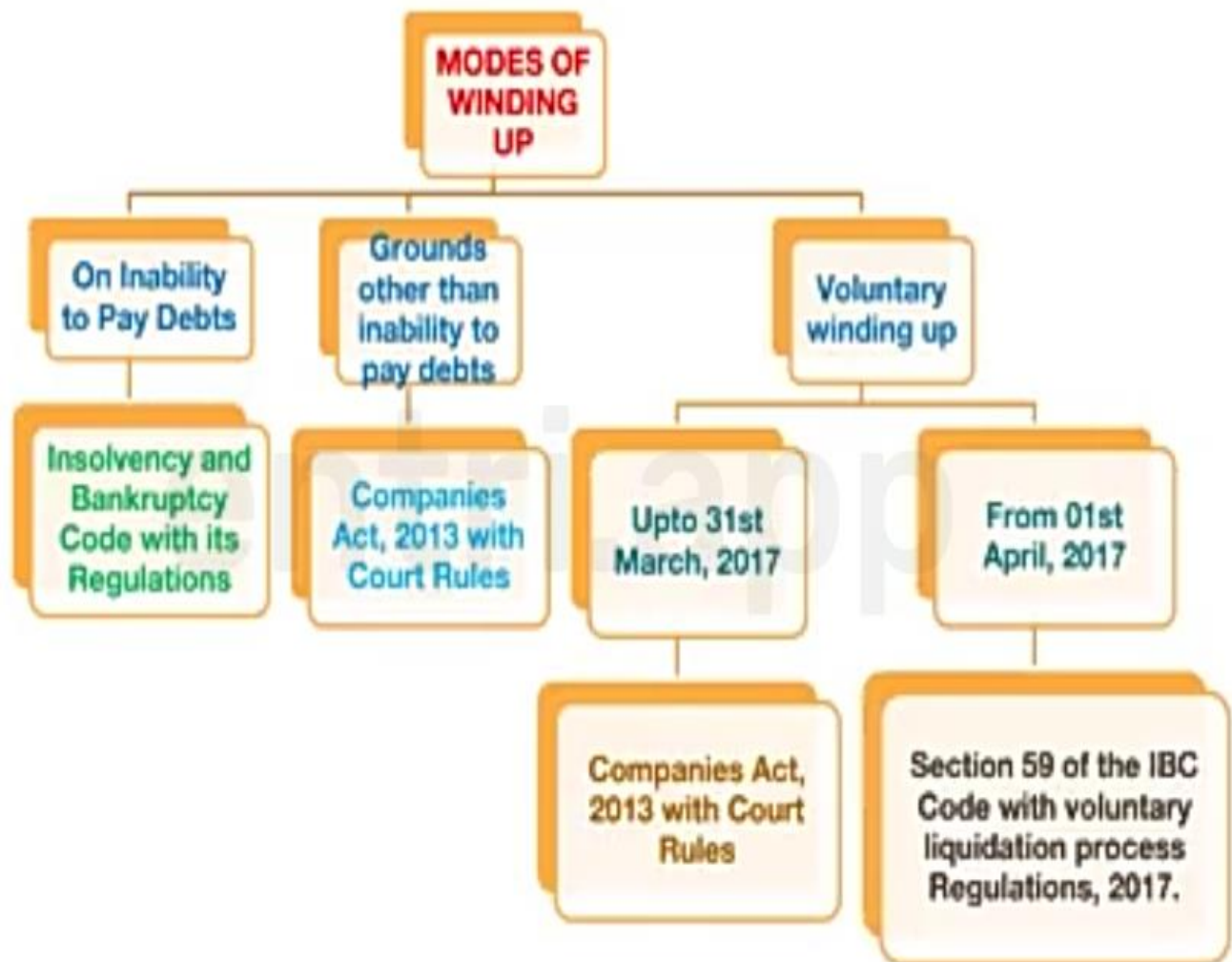
A company comes into being through a legal process and also comes to an end by law. Liquidation is the legal procedure by which the company comes to an end. Thus a company being a creation of law cannot die a natural death. A company, when found necessary, can be liquidated.

DEFINITION OF WINDING UP

As per Section 2 (94A) of the Companies Act, 2013, winding up means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable.

Winding Up Includes

- ▶ Winding up under Companies Act, 2013
- ▶ Liquidation under Insolvency and Bankruptcy Code, 2016



MODES OF WINDING UP

As per section 270 of the Companies Act 2013, the procedure for winding up of a company can be initiated either:

(a) By the tribunal or,

(b) Voluntary. (However section 304 of companies act has been omitted, therefore section 59 of the Insolvency and Bankruptcy code 2016 is applicable from 1/4/2017)

I-Winding up of a Company by a Tribunal

- 1) A company needs to pass a special resolution and also court orders for winding up on the basis of some specific grounds
- 2) When company is unable to pay its debts
- 3) If company is carrying any illegal business
- 4) In case of non maintenance of accounts
- 5) When the statutory meaning is not conducted then the Court may give orders to wind up the company
- 6) In case of non submission of Statutory Report to the Registrar

- 7) if company unable to start its business within a year after incorporation
- 8) If company is not having minimum number of members In case of public: minimum 7 members In case of private: minimum 2 members
- 9) If company doesn't follow the directions of the court or registrar or commission etc.

II- Voluntary Winding Up of a Company

The company can be wound up voluntarily by the mutual agreement of members of the company, if:

- (i) The company passes a Special Resolution stating about the winding up of the company.
- (ii) The company in its general meeting passes a resolution for winding up as a result of expiry of the period of its duration as fixed by its Articles of Association or at the occurrence of any such event where the articles provide for dissolution of company.

LIQUIDATOR

The person appointed for conducting the liquidation proceedings of the company is called 'Liquidator'. (In case of Voluntary winding up an Insolvency Professional).

The company must submit a statement of affairs to the liquidator. The general duties of the liquidator are to take into his custody all the property of the company and actionable claims and make the payments as per the order laid down in the Companies Act.

Who are Contributories?

Contributories are all the present and past members of the company who are liable to jointly contribute to the assets of the company an amount sufficient for payment of its debts and liabilities, to meet the cost of liquidation and adjust the rights of contributories among themselves, in the event of liquidation of a company.

List 'A' contributories is the list of the present members of the company. They are liable to contribute the amount remaining unpaid on the shares held by them if the amount is needed to make payment to legal claimants.

List 'B' contributories: This list consists of those persons who were the members of the company during the 12 months preceding the date of winding up. In case the assets of the company are not sufficient to pay the liabilities of the company in the event of company's winding up liquidator can ask List 'B' contributories to contribute towards the assets of the company, subject to certain conditions.

FUNCTIONS OF LIQUIDATORS

- To realise the assets of the company. To collect money due from the contributories.
- To distribute the amount realised from the sale of assets and amount received from contributories in the order of preference as per Rule 329 of Companies Act.
- To maintain and submit the record of receipts and payments of cash to the members in the case of voluntary winding up and to the court in the case of compulsory winding up.

LIQUIDATORS' STATEMENT OF ACCOUNT

At the time of Liquidation of a company, the liquidator realises all the assets and discharge the liabilities and capital. The statement prepared to record to such receipts

and payments is called Liquidator's Final Statement of Account. This statement is prepared after the affairs of the company are fully wound-up.

In case of Compulsory wound-up, the Company Liquidator should keep proper books in such manner, as may be prescribed, in which he should cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed. Any creditor or contributory may, subject to the control of the Tribunal, inspect any such books, personally or through his agent

STATEMENT OF AFFAIRS

In case of winding up by Tribunal, Section 272(5) of the Companies Act, 2013 provides that a petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

In accordance with Section 274(1), where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a prima facie case for winding up of the company is made out, by an order direct the company to file its objections along with a statement of its affairs within thirty days of the order in such form and in such manner as may be prescribed.

Statement of affairs should accompany eight lists:

List A Full particulars of every description of property not specifically pledged and included in any other list are to be set forth in this list.

List B Assets specifically pledged and creditors fully or partly secured.

List C Preferential creditors for rates, taxes, salaries, wages and otherwise.

List D List of debenture holders secured by a floating charge.

List E Unsecured creditors.

List F List of preference shareholders.

List G List of equity shareholders.

List H Deficiency or surplus account.

Procedure of Preparation of Statement of Affairs

1. Take all assets which are **not specifically pledged**. These assets are taken at their **realisable values**.
2. Add any **surplus** from assets **specifically pledged**
3. From the total as obtained by adding (1) and (2) first deduct the amount of preferential creditors, then the amount of creditors having a floating charge (e.g., debentures)
4. Deduct the amount of unsecured creditors from the figure as obtained in (3) above

5. Deduct the amount of paid-up share capital to the figure as obtained in (4) above
6. Any unrecorded assets or liability should be shown both in the Statement of Affairs and the Deficiency or Surplus Account to make double entry complete

PREFERENTIAL CREDITORS

In a winding up there should be paid in priority to all other debts subject to the provisions of section 326

Government Taxes

Salary and Wages

Contribution under ESI Act

Holiday Remuneration

Compensation in respect of death or disablement

PF, Pension Fund or Gratuity Fund

Expenses of Investigation