Meaning of winding up

“Winding up is a means by which the dissolution of a company is brought about and its assets realised and applied in payment of its debts, and after satisfaction of the debts, the balance, if any, remaining is paid back to the members in proportion to the contribution made by them to the capital of the company.”¹ “The liquidation or winding up of a company is the process whereby its life is ended and its property is administered for the benefit of its creditors and members. 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.”²

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.

Thus, winding up ultimately leads to the dissolution of the company. In between winding up and dissolution the legal entity of the company remains and it can be sued in a Tribunal of law.

Meaning of dissolution

A company is said to be dissolved when it ceases to exist as a corporate entity. On dissolution, the company’s name shall be struck off by the

1. A Ramaiya A Guide to the Companies Act, 17th Ed.2010
Registrar from the Register of Companies and he shall also get this fact published in the Official Gazette. The dissolution, thus puts an end to the existence of the company.

**Modes of dissolution**

Dissolution of a company may be brought about in any of the following ways:

1. Through transfer of a company’s undertaking to another under a scheme of reconstruction or amalgamation. In such a case the transferor company will be dissolved by an order of the Tribunal without being wound up.

2. Through the winding up of the company, wherein assets of the company are realized and applied towards the payment of its liabilities. The surplus, if any is distributed to the members of the company, in accordance with their rights.

**Difference between dissolution and winding up**

<table>
<thead>
<tr>
<th>Winding up</th>
<th>Dissolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Winding up is one of the method by which dissolution of a company is brought about.</td>
<td>Dissolution is the end result of winding up.</td>
</tr>
<tr>
<td>2 Legal entity of the company continues at the commencement of the winding up.</td>
<td>Dissolution brings about an end to the legal entity of the company.</td>
</tr>
<tr>
<td>3 A company may be allowed to continue its business so far necessary for the beneficial winding up of the company.</td>
<td>Company ceases to exist on its dissolution.</td>
</tr>
</tbody>
</table>

**Modes of winding up**

A company may be wound up in any of the following two ways:

1. Compulsory winding up. (Sec. 272)

2. Liquidation under Insolvency and Bankruptcy Code, 2016.

**Compulsory Winding Up**

Winding up a company by an order of the Tribunal is known as compulsory winding up.
Grounds of Winding up

As per section 271, Tribunal may order for the winding up of a company on a petition submitted to it on any of the following grounds:

1. **Passing of special resolution for the winding-up.** When a company has by passing a special resolution resolved to be wound up by the Tribunal, winding up order may be made by the Tribunal. The resolution may be passed for any cause whatever. Tribunal may not order for the winding up if it finds it to be opposed to public interest or the interest of the company as a whole.

2. 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.

3. If on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up.

4. 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.

5. **Just and equitable** - The Tribunal may order for the winding up of a company if it thinks that there are just and equitable grounds for doing so. The Tribunal has very large discretionary power in this case. The term ‘just and equitable’ grounds may include any of the grounds for the winding up of the company. This power has been given to the Tribunal to safeguard the interests of the minority and the weaker group of members. Tribunal, before passing such an order, will take into account the interest of the shareholders, creditors, employees and also the general public. Tribunal may also refuse to grant an order for the compulsory winding up of the company if it is of the opinion that some other remedy is available to the petitioner to redress his grievances and that the demand for the winding up of the company is unreasonable. A few of the examples of ‘just and equitable’ grounds on the basis of which the Tribunal may order for the winding up of the company are given:

   (i) **Oppression of minority** - In cases where those who control the company abuse their power to such an extent that it seriously prejudices the interests of minority shareholders, the Tribunal
may order for the winding up of the company. The Tribunal will issue such an order only when it is impossible for the business of the company to be carried on for the benefit of the company as a whole owing to the way in which voting power is held and used.

(ii) **Deadlock in management** - Where there is a complete deadlock in the management of the company, the company may be ordered to be wound up. But mere incompatibility of good relations between the rival factions of the directorate *i.e.*, the majority group and minority group will not be sufficient for ordering winding up.

**Re. Yenidje Tobacco Ltd.** W and R were the only two shareholders as well as the directors of a private company. Subsequently some serious differences developed and they became hostile to each other. They stopped even talking to each other. It was held that there was complete deadlock in the management of the company and, therefore, it would be just and equitable to order for its winding up.

(iii) **Loss of substratum** - Where the objects for which a company was constituted have either failed or become substantially impossible to be carried out, *i.e.*, ‘substratum of the company’ is lost. However, a temporary difficulty which does not knock out the company objects and purposes may not be permitted to become a ground for liquidation. Loss of substratum is a question of fact depending on the circumstances of the case.

**Re. Steam Navigation Co.** A steamship was formed mainly with the object of acquiring the business of a firm engaged in plying steamers. The business was acquired, but later on due to serious differences between the two, seven out of nine steamers acquired were returned. A shareholder filed a petition to the Tribunal for the compulsory winding up of the company on the ground of loss of *substratum*. The petition was rejected since the company could purchase more steamers and carry out its original objects.

The *substratum* of a company is said to disappear when the objects have substantially failed or it is impossible to carry on business except at a loss or existing liabilities are far in excess of existing and possible assets. An illustration is: