Assignment

Company Law Winding up and Liquidation

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A compulsory company winding up refers to when a corporation is dissolved, and its assets are distributed among its shareholders and creditors—the liquidation process. It is often initiated when the company can no longer meet its financial obligations (Kenton et al., 2022). A court order follows the assessment of several grounds indicating the company is no longer viable. While the liquidation of companies is a common phenomenon in the business world, understanding the legal grounds behind the process is crucial in law.

Insolvency is cited as one of the primary grounds for the compulsory winding up of a company. It refers to a scenario where a corporation cannot pay its debts as they become due or when its liabilities exceed its assets (Linna, 2019). In court, insolvency is determined by a winding-up petition or statutory demand. In addition, the failure to commence a business for over 12 months is used to justify compulsory winding up (Deb & Dube, 2021). The company must start operating within a reasonable time after its incorporation while maintaining a continuous flow of activities. The failure to do so is deemed inactive or dormant, triggering the winding-up order.

A company may be opened but struggle to perform business due to various factors. For instance, a lack of management personnel, financial difficulties, and insufficient resources may hinder production. Such a scenario can be used to justify the compulsory winding up of a company. The rationale behind this factor is that the company cannot finance its operations when production activities have stopped (Agrawal, 2020). On the other hand, the company might not be insolvent or broke but dissolved on just and equitable grounds. This ground is used when the company has severe internal conflicts between vital stakeholders. Sometimes, it is invoked when the business works contrary to stakeholder interest. Under this ground, the court examines additional factors, including the nature of the business, stakeholders' conduct, and the interest of the conflicting parties.

While most grounds involve in-house factors affecting management and finance, a company may be dissolved based on public interest. The court will establish whether the company's operations serve the interest of the public. If not, the last resort would be to order the winding up of the company to protect the public interest (Agrawal, 2020). Public interest factors are usually considered when the corporation engages in unethical or illegal activities. Ethical issues include environmental pollution that threatens the health and safety of the public. In addition to the specific grounds discussed above, the court may also consider other general grounds to order a compulsory winding-up of a company. For instance, the company might be engaging in fraudulent or dishonest operations. It also ensures the company's affairs are being conducted in a manner that is prejudicial to the interests of its stakeholders. These general factors may often not have a clear cut between protecting the stakeholder or the public and mainly involve both.

While companies can be dissolved for various reasons, determining the grounds is vital when ordering compulsory winding up. In-house factors such as lack of operating finance, management, and internal stakeholder conflicts are often grounds for dissolution. Additionally, the legal system is sworn to ensure greedy and unethical business persons do not exploit the public. Companies that work contrary to the interest of the public and stakeholders face dissolution. Therefore, companies must ensure they comply with their legal and financial obligations. Ultimately, they should conduct their operations responsibly and ethically to avoid the risk of a compulsory winding-up order.

References

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