

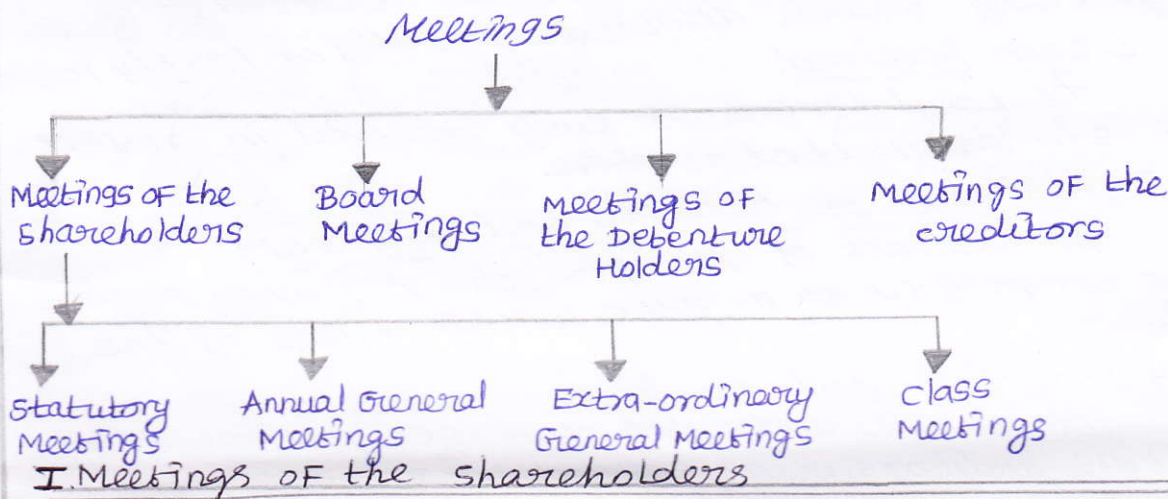
UNIT - IV
COMPANY MEETINGS

★ Meaning of company meeting

A company meeting is defined as an assembly of persons who are connected with the company for discussing the matters relating to different activities of the company.

★ Kinds of company Meetings

The meetings of a company can be broadly classified into four kinds



★ 1. Statutory Meeting [sec. 165]

This is the first meeting of the shareholders conducted after the commencement of the business of a public company. Sec. 165 of the companies Act provides that every public company limited by shares or limited by guarantee and having a share capital should hold a meeting of the shareholders within 6 months but not earlier than one month from the date of commencement of business of the company.

Usually, the statutory meeting is the first general meeting of the company. It is conducted only once in the life of the company.

A private company or a public company having no share capital need not conduct a statutory meeting.

★ Legal provisions regarding the statutory Meeting.

The legal provisions relating to the statutory meeting are contained in sec. 165 of the companies Act. They are explained below.

1. Notice of the Meeting.

The directors should send a notice of the meeting at least 21 days before the date of the meeting, to all the members eligible to attend and vote at the meeting.

2. Sending of the Statutory Report.

Along with the notice, a report known as statutory report should also be sent to all the members to whom the notice is sent.

3. Contents of the Statutory Report [sec 165(3)]

1. Total shares which are Allotted:

The total number of shares allotted, distinguishing shares allotted as fully or partly paid up.

2. Cash Received.

The total amount of cash received in respect of the shares allotted as above.

3. Abstract of Receipts and payments.

An abstract of receipts and payments made by the company up to a date within 7 days of the report.

4. Directors and Auditors

The names, addresses and occupations of the directors, auditors, managers and secretary.

5. Arrears on calls.

The arrears, if any, on calls due from the directors and the manager.

6. Commission and Brokerage:

Particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director or manager.

4. Certification of the Report.

The statutory report must be certified as correct as to the matters given above by two directors. If there is a Managing Director, he must also sign the report.

5. Filing of the Report.

A copy of the statutory report certified as above must be delivered by the Board of Directors to the Registrar for registration after the copies have been sent to the members (sec 165(5))

6. Procedure at the Meeting.

The directors must at the outset of the meeting, keep open for inspection of the members.

a list showing the particulars relating to: (a) the names of the members, (b) their addresses and occupation, (c) the number and classes of shares held by them.

7. Matters that can be discussed:

1. Any matter relating to the formation of the company.

2. Any matter arising out of the statutory reports.

8. Consequences of Default.

1) Fine to the Directors

Every director or other officer of the company who is in default in complying with the provisions of sec. 165 of the Act shall be punishable with a fine which may be extended up to Rs. 5,000.

2) Order for winding up.

The Registrar or any other contributory can apply to the National Company Law Tribunal for the winding up of the company.

★ 2. Annual General Meeting [AGM]

The Annual General Meeting is one of the important meetings of a company. It is usually held once in a year. This meeting is to be conducted by every company whether public or private; limited by shares or by guarantee; having or not having a share capital.

★ Legal Provisions regarding the Annual General Meetings.

1. Time Gap between two Meetings:

As per sec. 166(1), every company must hold in each calendar year an Annual General Meeting and the interval between two of such meetings should not exceed fifteen months.

2. Special provisions relating to the First Annual General Meeting.

The first Annual General Meeting can be held within 18 months from the date of incorporation of the company. The Registrar has no power to extend the time limit to hold the first Annual General Meeting.

Dalmia cement (Bharat) Co Ltd v. Registrar of Companies.

3. Place, Day and Time of the Meeting:

The provisions of the Act as to the place, day and time of the meeting are as follows:

(1) Place of the Meeting:

A company is to hold its Annual General Meeting either at its Registered office or at a place within the same city, town or village.

(2) Day for the Meeting:

Regarding the day of the meeting, the meeting should be conducted only on a day which is not a Public Holiday.

(3) Time for the Meeting:

The general rule is that the Annual General Meeting must be held during business hours. It should be noted that the Annual General Meeting must start during business hours but there is no bar if it continues even after business hours.

(4) Notice of the Meeting:

According to sec. 171(1) of the Act, a 21 clear days notice is necessary to hold an Annual General Meeting. However, a shorter notice is sufficient if all the members give their consent. The notice should specifically state that it is the notice of the Annual General Meeting.

contents of the Notice:

1. The place where it is to be held.
2. The Date and Hour of the meeting.
3. A statement of the business to be transacted.
4. Any special Business to be transacted.

(5) Annual Accounts:

The Balance sheet and the profit and Loss Account and the Report of the Directors must accompany the notice of the Annual General Meeting.

(6) To whom the Notice should be sent:

- 1) Every member of the company
- 2) Auditors of the company.

(7) Business transacted at the Annual General Meeting:

sec. 173 of the Act, has classified the business to be transacted at an Annual General Meeting into two kinds namely,

1. ordinary Business, and
2. special Business.

The ordinary business to be transacted at an Annual General Meeting may relate to the following matters:

- 1) Declaration of dividend

2. Appointment of directors in the place of those retiring.

3. Appointment of auditors and fixing remuneration to them.

8) Consequences of Default

1. Any member can apply to the central government for calling the meeting

2. The company and every officer who is in default shall be punishable with a fine up to Rs. 50,000 [sec. 167(D)] and in case of continuing default with a further fine of Rs. 2,500 per day during which the default continues (sec. 168).

★ 3. Extra-ordinary General Meetings (EOGM)

Statutory Meeting and Annual General Meetings are called the ordinary meetings of a company. All other general meetings other than these two are called Extra-ordinary General Meeting.

These meetings are generally called for transacting some urgent or special business, which cannot be postponed till the next Annual General Meeting.

★ Persons Authorised to convene the Meeting.

1. The Board of Directors
2. The Requisitionists (or) Members of the company
3. The National Company Law Tribunal.

1. Meeting convened by the Board

The directors, on their own, can call for an extra-ordinary meeting whenever circumstances demand so the Articles of the company may also specify the circumstances in which an extra-ordinary meeting is to be conducted.

Some of the examples of such a business are: 1. Issue of right shares 2. Increase in the remuneration of managing director, whole time director etc.

The Board of directors may call an extraordinary general meeting under any of the following circumstances.

1) on its own: The Board of directors may call an extraordinary general meeting whenever some special business is to be transacted, which in the opinion of Board of directors cannot be postponed till the next annual general meeting.

Some of the examples of such a business are: 1. Issue of right share, and 2. Increase in the remuneration of managing director, whole time director, etc.

2. on Requisition of the Members:

The requisite number of members of a company may also ask for an extra-ordinary general meeting to be held.

The requisition for such a meeting by the members shall be signed:

(i) In the case of a company having a share capital, by holders of not less than 1/10th of the total voting power in regard to the matter of requisition.

2. Meeting convened by the Requisitionists [sec. 169]:

An extra-ordinary meeting can also be convened on the requisition of the members of the company.

In the case of a company having a share capital, the holders of not less than one-tenth of the paid-up capital having voting right.

If the directors fail to call the meeting within 3 months of the requisition, then the requisitionists themselves may call for the meeting within three months from the date of deposit of the requisition. The meeting so conducted by the requisitionists is a valid meeting.

The company must compensate the requisitionists for any reasonable expenses incurred in calling and holding the meeting. However, the sum so paid by the company can be recovered from the directors who are responsible for the default.

3. Meeting convened by the National Company Law Tribunal [sec. 186].

There is another authority which is in a position to convene the extra-ordinary general meeting is the National Company Law Tribunal. If it is not possible even for the members to convene an extra-ordinary meeting, the National Company Law Tribunal either on its own motion or on the application of any director or member call for a meeting.

4. Meeting convened by any Director or any two members

Regulation 48(2) of Table A provides that if at any time the directors capable of acting and forming sufficient quorum, may call for an extra-ordinary general meeting. Such meeting is also deemed as a meeting conducted by the Board of Directors.

★4 class Meetings

class meetings are those meetings which are held by the shareholders of a particular class of shares. e.g. preference shareholders or debenture holders.

★II. Meetings of the directors (a) Board Meetings

Meetings of directors are called Board Meetings. These are the most important as well as the most frequently held meetings of the company. It is only at these meetings that all important matters relating to the company and its policies are discussed and decided upon.

Since the administration of the company lies in the hands of the Board, they should meet frequently for the proper conduct of the business of the company.

★III Meetings of Debenture holders

These meetings are conducted by the debenture holders of a particular class. They are generally conducted when the company wants to modify their rights or to vary the rate of interest payable etc.

Rules and Regulations regarding the holding of the meetings of the debenture holders are either entered in the Trust Deed or endorsed on the Debenture Bond. So, that they are binding upon the holders of debentures and upon the company.

★IV Meetings of the creditors.

These are not meetings of a company. They are held when the company proposes to make a scheme of arrangements with its creditors. Companies like individuals may sometimes find it necessary to compromise or make some arrangements with their creditors. In these circumstances, a meeting of the creditors is necessary.

★ Resolutions

A resolution is the final form of a decision taken at a meeting by voting on a motion, with or without amendment.

* Types of Resolution

I. Ordinary Resolution. [sec. 114(1)]

According to sec. 189(1), an ordinary resolution is that which can be passed at a general meeting by simple majority votes being cast by the members present either in person or by proxy and either by show of hands or by poll.

An ordinary resolution is passed for the ordinary business transacted at the Annual General Meeting.
e.g.

1) Consideration of financial statements and the reports of the Board of directors and auditors;

2. The declaration of dividends.

3. The appointment of directors in place of those retiring; and 4. the appointments of auditors and fixation of their remuneration.

There are certain items of special business which require an ordinary resolution e.g.

1) Alteration of the share capital [section 61(1)]

2. Issue of bonus shares [section 63(2)]

3. Alteration of the name of the company at the direction of the Central Government [section 16(1)]

* Special Resolution. [sec 114(2)]

A special resolution is one which is required in transacting special business and it is required to be passed by a three fourth majority.

sec 114(2) of the companies Act provides that a resolution shall be special resolution when:

1) the intention to propose it as a special resolution has been duly specified in the notice calling the general meeting;

2) the notice required under the companies Act, has been duly given of the GM;

3) and the votes cast in favour of the resolution by the members present, in person or by proxy

special resolution is needed for the purposes such as:

1) change in the objects clauses of Memorandum of Association.

2) change in Memorandum of Association as regards 'Registered office' of a company from one state to another.

- 3) Alteration of the Articles of Association.
- 4) Reduction of share capital.
- 5) changing shareholders' rights.
- 6) Removal of an auditor & etc.,

(*)

2 MARKS

1. What are the meaning of company meeting?
2. What is Annual General Meeting?
3. What is Statutory Meeting?
4. What is resolution?
5. What is ordinary resolution?
6. What is special resolution?

5 MARKS

1. What are the legal provisions regarding the statutory meeting?
2. What are the legal provisions regarding the Annual General Meeting?
3. Explain about ordinary resolution.

10 MARKS

1. What are the kinds of company meetings?
2. What are the types of Resolution?

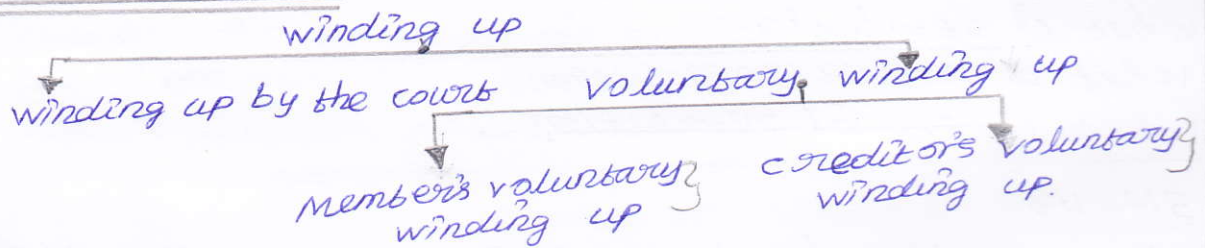
UNIT-V

Winding up of a companies

* Meaning of winding up

winding up is the method of ending, or dissolving, a business. The winding up activity includes selling all assets, paying off creditors, and distributing remaining assets to the partners or shareholders.

* Modes of winding up.



* Winding up by the court

Winding up of a company under the order of the National Company Law Tribunal is also known as compulsory winding up.

* causes for compulsory winding up.

1) Special Resolution of the company [sec. 433(a)]:
If the company by a special resolution, resolved that the company be wound up by the National company law tribunal. However, winding up of this type is not common because members prefer voluntary winding up rather than winding up by the NCLT. Moreover, voluntary winding up is comparatively cheaper and speedier than the former.

2) Failure to hold statutory Meeting [sec. 433(b)]:
If the company fails to hold the statutory Meeting and fails to file the statutory Report, the Registrar can present a petition for an order of winding up. A petition on this ground can also be made by a member or a creditor.

3) Failure to commence Business [sec. 433(c)]:
If the company does not commence its business within a year from the date of its incorporation, or suspended the business for the whole year.

However, if the suspension of business is due to some unavoidable causes, the NCLT will not order for a winding up.

4) Reduction in Membership [sec. 433(d)]:

The minimum number of members for a private

company is two and for a public company is seven. If the no. of members is reduced below the statutory is seven. If the no. of members is reduced below the statutory minimum, the NCLT may order for a winding up.

★ When is a company unable to pay its debts?

According to sec. 434, a company shall be deemed to be unable to pay its debts in the following cases:

1) Demand for payment neglected:

If a creditor to whom the company is indebted for a sum exceeding Rs. 1,00,000 has served a demand for payment on the company, at its registered office, and the company has for 3 weeks thereafter neglected to pay or otherwise satisfy him, that the company is unable to pay its debts.

2. Commercial Insolvency.

A company is deemed to be unable to pay its debts, if it is proved to the satisfaction of the NCLT that the company is unable to pay its debts.

5) Inability to pay the Debts [sec. 433(e)]:

This is the usual ground for a petition for winding up. If the company is unable to pay its debts or fails to meet its liabilities, the NCLT may order for a winding up.

6) Failure to file Returns with Registrar [sec. 433(g)]:

If the company has made a default in filing with the Registrar its balance sheet and Profit and Loss account or annual return for any five consecutive financial years.

★ Procedure after an order of winding up.

1) Order for winding up to be communicated to Registrar [sec. 444]:

Where the NCLT makes an order for the winding up of the company, the NCLT, shall within a period not exceeding two weeks from the date of passing of the order, cause intimation thereof to be sent to the official Liquidator and the Registrar.

2) Commencement of winding up:

The winding up commences not from the date of the order of the NCLT but it shall be deemed to have commenced from the date of presentation of the petition.

3) Filing with the Registrar [sec. 445(1)]: Within 30 days from the date of the order, the petitioner and the company must file a certified copy of the order of the NCLT with the Registrar. Failure to file a copy of the order shall make the person in default liable for a fine up to Rs. 1,000 per day.

4) Notification in the Gazette [sec. 445(2)]:

The Registrar should make a minute of the

order in his books relating to the company. He should also make a notification in the official Gazette that such an order has been passed.

5) Report by the official Liquidator [sec. 455]:
The official liquidator as soon as practicable, after the receipt of the statement of affairs of the company, but not later than 6 months from the date of the order should submit a report showing:

- 1) The amount of issued, subscribed and paid-up capital
- 2) Estimated amount of assets and liabilities.
- 3) If the company has failed, the reasons for the failure.

6) Order of Dissolution [sec. 481]:

When the affairs of the company are completely wound up, the National Company Law Tribunal shall pass an order of dissolution. The company stands dissolved from the date of the order of dissolution. A copy of the order should be filed with the Registrar within 30 days from the date of the order. The Registrar, then, should make a minute of the dissolution of the company in his books. Thereafter, the company ceased to exist.

* Consequences of winding up order

1) Intimation to official Liquidator and Registrar [sec. 444]:

Where the National Company Law Tribunal makes an order for the winding up of a company, it shall, within a period not exceeding two weeks from the date of passing of the order, cause intimation to be sent to the official liquidator and the Registrar of the order of winding up.

2) Copy of winding up order to be filed with the Registrar [sec. 445(1), (1-A) and (2)]:

On the making of the winding up order it shall be the duty of the petitioner and of the company to file with the Registrar within 30 days a certified copy of the order.

On the filing of a certified copy of the winding up order, the Registrar shall make a minute thereof in his books relating to the company, shall make a minute thereof in his books relating to the company, and shall notify in the official Gazette that such an order has been made.

3) Order for winding up Deemed to be Notice of Discharge [sec. 445 (3)]:

The order for winding up shall be deemed to be notice of discharge to the officers and employees of the company.

4) suits stayed on winding up order [sec. 446]:
 When a winding up order has been made or the official Liquidator has been appointed as Provisional Liquidator, no suit or other legal proceedings shall be commenced, only the company.

5) Powers of the NCLT (sec. 446(2)):

- (a) any suit or proceeding by or against the company;
- (b) any claim made by or against the company;
- (c) any application made under sec. 39 for compromise with creditors and/or members;

6) submission of Audited Books and Accounts to the NCLT (sec. 446 A) as inserted by the companies (2nd Amendment) Act, 2002:

The directors and other officers of every company shall ensure that audited books of account of company are completed and audited up to date of winding up order by the NCLT.

7) Effect of winding up order [sec. 447]:

An order for winding up a company shall operate in favour of all the creditors and of all the contributors of the company as if it had been made on their joint petition.

8) official Liquidator to be Liquidator [sec. 449]:
 on a winding up order being made in respect of a company, the official liquidator shall, by virtue of his office, become the liquidator of the company.

II Voluntary winding up of the company

A voluntary winding up is vastly different from a compulsory winding up. In voluntary winding up, the members and the creditors are left to settle their affairs without going to the NCLT. However, they may apply to the NCLT for directions or order if and when necessary.

* Kinds of voluntary winding up.

1. Members Voluntary winding up.
2. Creditors' voluntary winding up.

1) Members voluntary winding up.

A members voluntary winding up is possible only when the company is solvent and is able to pay its debts in full. In this case, it is not necessary for the members to consult the creditors or to call their meeting. A declaration of solvency should be made by the directors.

Declaration of solvency:

The declaration of solvency is an important document in the process of voluntary winding up.

sec. 488 of the Act lays down the provisions relating to the declaration of solvency.

1) The declaration must be made in the meeting of the Board of Directors.

2) The declaration must be accompanied by a statement of assets and liabilities upto the date of declaration.

3) The declaration should be made and filed with the Registrar.

★ Procedure for Member's voluntary winding up:

The following procedure should be adopted in case of Member's voluntary winding up.

1) Holding of the General Meeting: After filing the declaration of solvency, the Directors should arrange to convene a meeting of the company and a resolution should be passed to this effect.

2) Appointment of Liquidators:

A resolution should also be passed in the same meeting appointing one or more liquidator. The liquidator should not take charge unless his remuneration is fixed by the members, [sec 490].

3) Notice to the Registrar:

The company should give a notice of appointment of the liquidator to the Registrar within 10 days from the date of appointment (sec. 493).

4) Powers of the Board etc: As soon as the liquidator is appointed, all the powers of the Board of Directors or Managing Directors, or whole time Directors or Manager shall come to an end.

5) Holding of the General Meeting at the end of the First year:

where the process of liquidation continues for more than one year, the liquidator or must call for a general meeting at the end of the 1st year and also at the end of each subsequent years.

6) Final Meeting of the Members:

As soon as the affairs of the company are fully wound up, the liquidator should call for a meeting of the members [sec 497(1)].

7) Notice of the Registrar.

The liquidator, within one week after the date of the meeting, should send a copy of the final account.

8) Duty to call for the creditors Meeting:

If, in the opinion of the liquidator, the company will not be able to pay its debts in full, within the period specified in the declaration of solvency, the liquidator should immediately call for a meeting of the

III Creditors' voluntary winding up (Sec. 500 to 509)

Creditors' voluntary winding up takes place only when the company is in an insolvent condition and so it is unable to discharge its liabilities in full. If they are unable to make a Declaration of solvency within the time, the winding up shall be a creditors' voluntary winding up and the winding up proceedings should be conducted according to the provisions laid down for that purpose.

* Procedure for creditors' voluntary winding up:

1) Holding of the Meeting of the Members and Creditors:

A meeting of the members should be held and a special resolution to wind up should be passed in the meeting. A meeting of creditors should also be conducted either on the same day fixed for the G.M. or on the next day of the G.M. (Sec. 500(1)).

2) Provisions Regarding the Creditors' Meeting:

1) The notice of the meeting should be sent by post to each creditor simultaneously with the sending of the notice for the general meeting (Sec. 500(1)).

2) It should also be published in the official Gazette and in two newspapers circulating in the district in which the Registered office is situated (Sec. 500(2)).

3) A statement of affairs and a list of creditors and the amount due to them should be filed with the Registrar within 10 days from the date of passing the resolution (Sec. 501(1)).

4) If any resolution is passed in the creditors' meeting, a copy of the resolution should be filed with the Registrar within 10 days from the date of passing the resolution (Sec. 501(1)).

3) Appointment of Liquidators [Sec. 502]:

The members and the creditors at their respective meetings should appoint one or more persons as liquidators. If they appoint the same person or persons as liquidators, no complication will arise. If they appoint different persons, the person nominated by the creditors alone is entitled to act as the liquidator. If no liquidator is appointed by the creditors in their meeting, the person appointed by the members shall be the liquidator, and vice versa.

4) Appointment of the committee of inspection:
 The creditors may appoint a committee of inspection at their meeting. The committee may consist of a maximum of 5 members.

The members can also appoint 5 more members to the committee appointed by the creditors.

(X) 2 MARKS

- 1) Meaning of winding up
- 2) What is compulsory winding up?
- 3) What is voluntary winding up?
- 4) What is member's voluntary winding up?

5 MARKS

- 1) What are the causes for compulsory winding up?
- 2) What are the procedure for creditor's voluntary winding up?

10 MARKS

- 1) What are the modes of winding up?