UNIT – 5

Reconstruction Amalgamation and Winding Up

Reconstruction • Amalgamation • NCLT • Takeover • Modes of Winding Up • Procedure

Company Law – Course I

SYNOPSIS

Unit Overview

This unit covers reconstruction, rehabilitation and amalgamation of companies, the jurisdiction and powers of courts and NCLT, vesting of rights and transfer of obligations, takeover and acquisition of minority interest, and the complete law of winding up – concepts, modes, who can apply and procedure under different modes.

LEARNING OBJECTIVES

What You Will Learn

01 Reconstruction

Explain the concept of reconstruction and rehabilitation

02 Amalgamation

Understand amalgamation and powers of NCLT

03 Takeover

Describe takeover and acquisition of minority interest

04 Winding Up

State the different modes of winding up

05 Who can Apply

Identify persons entitled to apply for winding up

06 Procedure

Outline the procedure under different modes of winding up

Reconstruction and Rehabilitation – Concept

Reconstruction	Reorganisation of the share capital or structure of the company
Rehabilitation	Process of reviving a financially sick company
Purpose	To enable the company to continue as a going concern or to restructure for efficiency
Legal Framework	Companies Act 2013 and Insolvency and Bankruptcy Code (in certain cases)

Amalgamation – Meaning and Types

Meaning	Combination of two or more companies into one
Merger	One company absorbs another
Amalgamation	Two or more companies merge to form a new company
Purpose	Synergy, expansion, tax benefits, elimination of competition

NCLT POWERS

Jurisdiction and Powers of NCLT / Courts

NCLT	National Company Law Tribunal has primary jurisdiction under Companies Act 2013
Powers	Sanction schemes of arrangement, amalgamation, reconstruction
Approval	Scheme must be approved by requisite majority of members/creditors and sanctioned by NCLT
NCLAT	Appeals from NCLT orders lie to NCLAT

VESTING

Vesting of Rights and Transfer of Obligations

Effect of Order	On sanction, property, rights and liabilities of transferor company vest in transferee company
Automatic Transfer	No need for separate conveyance in many cases
Employees	Terms of employment are protected as per the scheme
Creditors	Rights of creditors are safeguarded through the approval process

TAKEOVER

Takeover and Acquisition of Minority Interest

Takeover	Acquisition of control of a company by another
SEBI Regulations	Takeover Code regulates substantial acquisition of shares and control in listed companies
Minority Interest	Compulsory acquisition of shares of dissenting minority under the scheme
Fair Value	Minority shareholders are entitled to fair value of their shares

Winding Up – Concept and Modes

Winding up is the process by which the life of a company is ended and its property administered for the benefit of creditors and members.

Modes under 2013 Act	(1) By the Tribunal (2) Voluntary winding up
IBC Impact	Many insolvency-related cases now proceed under the Insolvency and Bankruptcy Code
Purpose	Realise assets, pay creditors, distribute surplus to members

Who can Apply for Winding Up

Company	By special resolution
Creditors	Including contingent and prospective creditors
Contributories	Persons liable to contribute to the assets
Registrar / Central Government	In certain circumstances
Tribunal	On grounds specified in the Act

GROUNDS

Grounds for Winding Up by Tribunal

Special Resolution	Company has resolved to be wound up by Tribunal
Inability to Pay Debts	Company is unable to pay its debts
Just and Equitable	It is just and equitable that the company be wound up
Other Grounds	Fraudulent conduct, acts against sovereignty, etc.

PROCEDURE

Procedure of Winding Up – Broad Steps

Petition	Filed before the Tribunal by entitled person
Hearing	Tribunal hears the petition and may pass winding-up order
Liquidator	Official Liquidator or Company Liquidator is appointed
Realisation	Assets are realised and liabilities are paid
Dissolution	After final accounts, company is dissolved

VOLUNTARY

Voluntary Winding Up

Members' Voluntary	When company is solvent; declaration of solvency required
Creditors' Voluntary	When company is insolvent; creditors play a major role
Procedure	Special resolution, appointment of liquidator, realisation and distribution
Oversight	Tribunal retains supervisory jurisdiction

Consequences of Winding-Up Order

Cessation of Business	Company must cease to carry on business except for beneficial winding up
Board Powers	Powers of Board cease except as permitted by liquidator / Tribunal
Limitation	Limitation period stops running in favour of the company
Employees	Contracts of employment may be terminated; preferential payments apply

SUMMARY POINTS

Must-Remember Points

- Reconstruction and amalgamation are tools for corporate restructuring sanctioned by NCLT.
- On sanction, rights and liabilities vest in the transferee company.
- Takeover of listed companies is regulated by SEBI Takeover Code; minority interests are protected.
- Winding up may be by Tribunal or voluntary; grounds and procedure are prescribed.
- Liquidator realises assets, pays creditors according to priority, and distributes surplus to members.
- Understanding these processes is essential for advising on corporate restructuring and exit.