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## **GROUNDS OF WINDING UP PETITION UNDER COMPANIES ACT 2013**

LEGAL

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This matter pertains to the grounds on which winding up petition can be filed in National Company Law Tribunal (NCLT). The facts of the case in brief are that the petitioner Company entered into a Joint Venture agreement with two Indian Companies, to form a new company in India i.e. the Respondent Company. The respondent company was doing fine since incorporation. However, due to change in the market scenario, the company lost its business and contracts. Since the Indian Promoters had agreed to bring new opportunities to the respondent company but they failed to generate other business interests for the respondent company and thus, the company was left with no business and thereupon went to loss. The employees also moved to another company and since, the bank accounts were also controlled by the Indian Promoters, they withheld the salaries of the employees of the respondent company.

In such a situation, the petitioner, being the contributor and also the creditor, holding debentures of the respondent company, wanted to either carry out the business of the respondent company independently by buying out the shares of the Indian promoters or leave the respondent company with the Indian promoters by selling their shares. However, the Indian promoters blatantly disagreed to both the options. Thus, without any other option left, the petitioner having exhausted all the alternative remedies, have now moved forward for the winding up of the respondent company. In case where there are two shareholders and two directors with an animosity between them which would come in the way of proper functioning of the Company and would also affect the smooth management of the affairs of the Company, it would be in the interest of the parties to resolve the impasse by either of the parties buying the shares of the other party upon a fair valuation of the shares to be done by an independent, neutral valuer. In case of the parties failing to abide by/ opting for such solutions it would be in the best interests of the Company to Wind Up as envisaged under Section 271(g) of the Companies Act, 2013<sup>1</sup>. Therefore, it is in the best interest of the petitioner to move forward with the winding up of the respondent company, wherein it has lost all the alternative remedies to resolve the dispute.

In such a scenario, wherein the respondent company has lost all its business, leading to losing its substratum and having complete deadlock in the affairs, such that it is just and equitable to be wound up, herein the winding up petition has to be filed under Section 271 (g) of the Companies Act, 2013. It is a settled principle of law that where there are two primary factions of shareholders, the same is in the nature of quasi partnerships and therefore, in case of either of the partners failing to perform its obligation as contemplated per the understanding between the partners, it is not possible for the business to run in an efficient manner<sup>2</sup>. In such a scenario, where there are instances of mismanagement and mishandlings in the affairs of the respondent company, i.e. if there are financial irregularities, no new business was being generated and the statutory records were not efficiently managed, leading to the respondent company losing all its contracts and left with no other business. Therefore, it is a case of loss of substratum of the respondent company, where there is no possibility of reviving the respondent company back into the business. Moreover, in view of the justifiable loss of confidence amongst the two factions of shareholders, existence of the lack of office property, deadlock in the affairs of the Company and the failure of substratum are reasonable grounds for the petitioner to seek winding up of the respondent company under the provision of section 271(g) of the Companies Act, 2013.

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<sup>1</sup> *MSDC Radha Ramanan v. MSD* (2008) 6 SCC 750

<sup>2</sup> *Hind Overseas Private Limited v. Raghunath Prasad Jhunjunwalla and Anr.* AIR 1976 SC 565