

Dissolution of a Registered Society

Societies Registration Act, 1860

Under the Societies Registration Act 1860, Section 13 gives the provisions for the dissolution of the society and lays down the procedure for dissolving the society.

According to Section 13 (corresponding to Section 29 of the Literary and Scientific Institutions Act 1854) of the Societies Registration Act 1860:

" Provision for dissolution of societies and adjustment of their affairs : Any number not less than three-fifths of the members of any society may determine that it shall be dissolved and thereupon it shall be dissolved **forthwith**, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the **principal court of original civil jurisdiction** of the district in which the chief building of the society is situated and the Court shall make such order in the matter as it shall deem requisites..'

A society, which is generally formed for a specific purpose, may live to dissolve as soon as the purpose for which it was formed is fulfilled. Similarly a society may be dissolved by its members, registrar of societies or the court where the purpose of the formation of the society is not being fulfilled or for any other reason leading to the dissolution.

In cases like *Shanti Swarup vs Radhaswami Satsang Sabha*, Dayal Bagh AIR 1969, where the bye laws of the society state the terms for dissolution like 'the society shall stand dissolved in case no Satsang Guru reappeared within two years of the death of the last Satsang Guru', it was decided that such byelaws militates against the said provisions of Section 13 of the Societies Registration Act 1860 and therefore be deemed to be invalid and inoperative.

Certain specific terms like 'Forthwith' and 'Principal Court of Original Civil Jurisdiction' mentioned in Section 13 can be explained as:

'Forthwith' according to the dictionary means, 'immediately, at once, without delay or interval'. In *Bidya Deb Burma Vs District Magistrate Tripura*, Agartala AIR 1969, the court interpreted from the case of *Keshav Nilakanth Joglekar Vs Commissioner of Police Greater Bombay*, (the Constitution Bench of Supreme Court) that "When a Statute requires that something shall be done 'forthwith' or 'immediately' or even 'instantly', it should probably be understood as allowing a reasonable time for doing it".

Therefore 'Forthwith' does not mean a precise time but should be within a reasonable time without avoidable and unreasonable delay.

'Principal Court of Original Civil Jurisdiction' under Section 13 of the Act means the Principal Court of Civil Jurisdiction of the District where the Registered Office of the society is situated. In case of any dispute relating to adjustment of affairs of a society in case of dissolution, the matter has to be referred to the Principal Court of Civil Jurisdiction of the District where the Registered Office of the society is situated.

A Society can be dissolved by:

- * its members,
- * the Registrar,
- * the Court or
- * by the Government.

Dissolution by Members:

To dissolve a society, Section 13 says that 'Provided that no society shall be dissolved unless three- fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose.' Therefore the Dissolution of a society can take place at the time as agreed upon by the members of the society.

In a society, if Government is a member or contributes in the society funds or is otherwise interested in the society, Section 13 further says the following regarding the consent from the Government:

'Provided that whenever any Government is a member of or a contributor to, otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of the Government of the State of registration.'

Section 13A & 13 B have been inserted by the UP Societies Registration Act where Section 13A deals with the 'Power of Registrar to apply for dissolution' and Section 13 B deals with the 'Dissolution of Society by Court' and also the cancellation of registration of a society.

For the dissolution of a society the members should decide the time when the society may stand dissolved. To dissolve a society the members should pass a special resolution at a special general meeting and follow the following procedure for the dissolution:

- * The resolution for the dissolution should be passed with 3/5th majority.(3/4th under Karnataka Act, Travancore Cochin Act and 2/3rd under Rajasthan Act)
- * Decide whether the society should be dissolved ' forthwith' or at a later time agreed upon by them.

* The steps for the disposal of the property and settlement of all the claims and liabilities of the society

Adequate steps for the disposal and settlement of the Society property and adjustment of claims, liabilities of the society according to the rules of the society.

Section 24 of West Bengal Act and Section 41 of the Tamil Nadu Act gives the specific provisions for dissolution by resolution which states that a society may be dissolved by resolution by 3/4 members of the society in the special general meeting wherein the governing body shall take adequate steps for disposal and settlement of the property.

Thereafter, a report has to be sent to the Registrar if any surplus is left over. The registrar will then issue a notice in the official gazette to seek no objection from any claimant, creditor, and members within three months of the notice. In case no objection is raised during the 3 month period, the registrar shall record the order of dissolution in the register maintained in his office.

Dissolution by Registrar of Societies:

Under various circumstances, the registrar of societies (as per the respective state acts) can dissolve a society.

These circumstances may be:

* The society has done unlawful activities.

According to the Memorandum of Association governing the society:

* Society's object clause has not been fulfilled

* Office of the society has ceased to be in state of registration

* Members of the society are below the required number of seven

* Society has ceased to function for a particular period of time

* Society has been declared insolvent(not able to pay its liabilities)

* Society's activities are against the Governmental or the state policy

* Society has become insolvent

* Society has contravened any law or the provisions of the Societies Registration Act 1860

To dissolve the society, the registrar inquires into the activities of the society and calls for show cause for no dissolution from the society. Thereafter the registrar may move the court for making an order for dissolution in case the registrar is not satisfied with the show cause of the society.

Specifically certain State Acts have certain specific provisions regarding dissolution by the registrar like:

Section 25 of West Bengal Act gives the provisions for dissolution by Registrar wherein if the registrar is of the opinion and has reasonable grounds to believe that a society is not managing its affairs properly or is not functioning, he shall send to the society at its registered office, a notice by registered post calling upon it to show cause within such time as may be specified in the notice why the society shall not be dissolved.

If no cause is shown or if the cause shown be considered by the registrar as unsatisfactory, the registrar may move the court under Section 25 for making an order for the dissolution of the society.

Similarly under Section 27 of Karnataka Societies Act the registrar may dissolve a society if the registrar is satisfied that a society is carrying on any unlawful activities and the dissolution is done in accordance to provisions of Section 22 of the Act.

Section 37 of the Tamil Nadu Act states that the registration of a society can be cancelled by the Registrar of the Society when he is satisfied that the society has contravened any of the provisions of the act or is insolvent or the business of the society is being carried out fraudulently and not in accordance to the bye laws or objects as per the memorandum. Section 38 of the Act deals with the cancellation of registration where the society is carrying on unlawful activities.

Dissolution by Court:

In the principal Societies Registration Act, 1860 there are no specific mention for the dissolution of a society by the order of the court. However there are a few states who have inserted certain sections related to dissolution of society by court.

Section 25 of West Bengal Act gives the provisions for dissolution by Court where the court may, on an application of the registrar or on the application of not less than one tenth of the members, make an order for the dissolution of a society in the following cases:

- * If there is a contravention of the provisions of the Societies Act by the society.
- * If the number of members are below seven.
- * If the society has ceased to function for more than three years.

- * Society is unable to pay its debts or meet its liabilities.
- * If it is proper that the society should be dissolved.

Section 25 of Travancore Cochin Act gives the provisions for Application to court for dissolution, framing a scheme etc. Wherein it says that an application can be made by the State Government or one tenth of the members of the society to the district court in which the society is registered with a fees of Rs.100 as security for costs. Thereafter the court may after enquiry pass the following orders:

- * Removing the existing governing body and appointing a fresh governing body;
- * Framing a scheme for the better and efficient management of the society;
- * Dissolving the society.

Section 13 B of the UP (Amendment) Act says that a court may dissolve a society on application made by the District magistrate that the activities of society are opposed to the public policy.

Dissolution by Government

The Central or the State Government may also dissolve a society if it finds adequate reasons for doing so.

Members not to receive profits- On Dissolution of a society, the activities of the society cease to exist. Thereafter the property and settlement of all the claims and liabilities of the society have to be done.

However, it is specifically stated under Section 14 of the Societies Registration Act (corresponding to the Section 30 of the Literary and Scientific Institutions Act 1854 (English)) that members are not to receive profit .In case of surplus remaining after satisfaction of all the debts and liabilities Section 14 states that 'If upon the dissolution of any society registered under this Act there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or, in default thereof, by such court as aforesaid.

Provided, however, that this clause shall not apply to any society which shall have been funded or established by the contributions of shareholders in the nature of a joint stock company.'

The decision making votes of the members under Section 14 may vary accordingly as per the respective State Acts.

Section 14 shows that the properties of the society, whether movable or immovable, belongs to the society registered under the Act. Therefore the provisions under Section 14 of the Societies Registration Act are mandatory. Any surplus with the society after the debts and liabilities are paid of should be transferred to any society with kindred object even if the rules and regulations of the society contains provisions for division of property of the society upon dissolution among its members.(Re Bristol Athenaeum(1889)).

The Bihar and Uttar Pradesh Societies Registration Act have inserted Section 14A which says that it shall be lawful for the members of the society to determine by a majority present personally or by proxy at the time of dissolution of such society that any property remaining after the debts and liabilities are paid off, shall be given to Government for utilization of any purpose referred under Section 1 of the Act.

(To be continued..)

Pooja Bagga, FMSF