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For students of B.Com (Hons) Part - I

Subject : Financial Accounting

Topic : Dissolution of Partnership Firm in case of

Insolvency of a Partner/Partners.

Sub Topic : Garner Vs Murray Decision

Dear Students,

We all know that a partnership firm is created under The Indian Partnership Act 1932. Section 4(b) of the act provides that, "Partnership is an agreement between two or more persons, who have agreed to share the profits of the business carried on by all or any of them acting for all. persons who are in agreement with one another are called individually Partners and collectively a firm."

The Act also provides, that, this agreement may be verbal or in written form. When it is written then, it is called Partnership Deed.

So, it is clear that, the business of a partnership firm carried on with the mutual consent of the partners. Similarly the dissolution of a partnership firm may be done, either -

i) By Mutual Consent. or,

ii) Due to death of a partner or

iii) Due to insolvency of a partner/partners or firm.

What is Insolvency?

In a very simple word when the liabilities of a person become more than his/her assets, he/she can be adjudged insolvent by the Court, with the completion of due process prescribed by the law. So to be insolvent person must be in Deficiency. Means -

Deficiency = Liabilities - Assets.

The effect of insolvency is that the Judgment Debtor will pay only that amount to his/her creditors

which is decided by the court. But it is clear that Creditors will not get their full money, rather they will get nothing or part payment, which is called dividend, depending upon the situation and the order of the Court. So either a partner or partners or Firm become insolvent, Firm is going to be dissolved. Then question arise how to deal such situation? Law is very clear, that if there is an agreement between partners to deal such situation, then the same will be followed to complete the process of Dissolution. But in absence of any agreement what to do?

The alternative is that firm can follow the judgement given by the British Court in the Case of Garner Vs Murray in the year 1903.

For the better understanding of the judgement you should first know the Dispute and the History of the Case.

History of the Case and Dispute

There was a partnership firm in England, in which Garner, Murray and wilkinson were partners. wilkinson was declared insolvent by the British Court. On the insolvency (Bankruptcy) of the wilkinson, the firm went for the process of dissolution and dispute arised between the solvent partners Garner and Murray with regard to sharing of deficiency of the insolvent partner wilkinson in between them. Ultimately matter ~~was~~ ~~referred~~ went to the Court and a detailed judgement was given by Justice Joyce, which become ~~very~~ very famous as 'Garner Vs Murray' decision.

Even to day when such disputes arise between the partners, this landmark judgement is being referred to settle the dispute.

The Judgement

Justice Joyce delivered this judgement in the year 1903 and clearly stated, that, this Judgement will be applicable only when partners have no agreement to deal the situation of Insolvency. The features of the Judgement can be divided as under :-

- 1) The deficiency of the insolvent partner/partners will be borne by solvent partners in their Capital Ratio - where Capital may be fixed or fluctuating.
- 2) The solvent partners will bring their share of Realisation losses in Cash immediately after its computation.

Dear students please keep in mind that one will follow Garner vs Murray decision, when there is absence of agreement in between the partners, with regard to sharing of deficiency of insolvent partners. Because all of you know that Partnership is being created with the mutual consent of the Partners.

In the next e-content I will solve a practical problem related to this very topic for your better understanding. Thanks.