

WINDING UP



LEARNING OUTCOMES

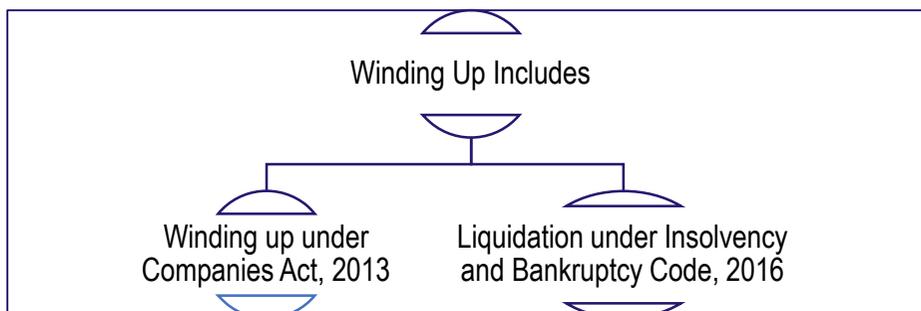
After end of this Chapter, you will be able to:

- Elucidate winding up process and its modes
- Brief on winding up of a company by the Tribunal
- Know the Persons who can make Petition for winding up
- List the Powers of Tribunal
- Explain the appointment of Company Liquidator
- Comprehend the procedure for winding up to be monitored by the Tribunal
- Know about the settlement of list of contributories and application of assets
- Explain the constitution of Advisory Committee
- List the powers and duties of Company Liquidator

1. INTRODUCTION

Companies Act, 2013 contains provisions relating to winding up of companies. However, Insolvency and Bankruptcy Code, 2016 which was enforced in 2016, has made substantial changes in these provisions. Provisions for application for winding up for “Inability to pay debts” has been omitted.

As per Section 2 (94A) of the Companies Act, 2013, the term “winding up” means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable.



2. MODES OF WINDING UP [SECTION 270]

The provisions of Part I of the Chapter XX of the Companies Act, 2013 shall apply to the winding up of a company by the Tribunal under this Act.

PART I: WINDING UP BY THE TRIBUNAL [SECTION 271 – 303]

3. CIRCUMSTANCES IN WHICH COMPANY MAY BE WOUND UP BY TRIBUNAL [SECTION 271]

A company may, on a petition under section 272, be wound up by the Tribunal—

- if the company has, **by special resolution**, resolved that the company be wound up by the Tribunal;
- if the company has acted **against the interests** of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
- if **on an application** made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

- (d) if the company has made a **default in filing** with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
- (e) if the Tribunal is of the opinion that it is **just and equitable** that the company should be wound up.



1. The Supreme Court of India in *Spicejet Ltd. v. Credit Suisse AG*, January 28, 2022 decided that High Court's order upholding admission of winding up petition against Spice Jet was to be stayed.

As per the facts, Appellant 'Spice Jet' was indebted to respondent (a global investment bank and financial services firm) for more than USD 24 million, non-payment of which had led to filing of and admission of winding up petition as ordered by single Judge. Appellant raised a defence that documents relied by respondent were not stamped and therefore, Courts in India would not take cognizance thereof. High Court by impugned order upheld admission of winding up petition on ground that such a defence could not be said to be a bona fide defence and at stage of admission of petition, it need not be gone into. It was decided by the Honourable Supreme Court that impugned order passed by High Court was to be stayed and appellant was to be granted three weeks' time to resolve its dispute with respondent.

2. The Supreme Court of India in *IDBI Bank Ltd. v. Official Liquidator* held that transfer or any other act done in relation to property of a company within a period of six months before commencement of its winding up shall be deemed to be a fraudulent preference of its creditors and accordingly be invalid.

3. The High Court of Karnataka in *Vardhman Yarns and Threads Ltd. v. Indus Garments (India) (P.) Ltd.* passed an order that where in e-mail respondent-company had acknowledged to pay outstanding dues to petitioner-company but had failed to pay same and respondent also admitted that its business operation had been stopped, it was just and equitable that respondent company be wound up.

In the said case, Petitioner company filed winding up petition against respondent-company for its failure to pay outstanding dues in respect of supply of threads and other materials. In the said case it was held

that since in e-mail respondent company had acknowledged to pay outstanding dues to petitioner company but had failed to pay same and also it was admitted that business operation of respondent company had been stopped, it was just and equitable ground on the basis of which the respondent company may be wound up.



4. PETITION FOR WINDING UP [SECTION 272]

- (1) **Persons who can present Petition for winding up:** Subject to the provisions of this section, petition before Tribunal may be presented by the following:
- (a) the company;
 - (b) any contributory or contributories;
 - (c) all or any of the persons specified in clauses (a) and (b);
 - (d) the Registrar;
 - (e) any person authorised by the Central Government in that behalf;
 - (f) in a case falling under clause (b) of Section 271, by the Central Government or a State Government.



- Company
- Any Contributory or Contributories
- All or any of the above mentioned persons
- Registrar
- Any person authorized by Central Government in that behalf
- In case affairs of the company are being conducted against the national interest, by the CG/SG.

- (2) **Petition by contributory:** A contributory shall be entitled to present a petition for the winding up of a company.

Shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

Contributory can file petition, though-

- He may be the holder of fully paid-up shares.
- The company may have no assets at all.
- The company may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities.

- (3) **Petition by Registrar:** The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) of that section.

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

- (4) **Petition presented by company:** A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.
- (5) **Copy of petition to be filed with Registrar:** A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within 60 days of receipt of such petition.

The National Company Law Tribunal, Bengaluru Bench in *Union of India v. Megacity (Bangalore) Developers & Builders Ltd.* held that pursuant to investigation by SFIO into affairs of respondent company, NCLT suspended its existing board of directors and directed Central Government to appoint nominee directors, but, nominee directors were unable to run affairs of respondent company, thus, they filed an application to wind up respondent company, since, passing of winding up order is civil death of company, in order to protect interest of shareholders of company, one more opportunity was to be given to respondent company to set things right in affairs of company.

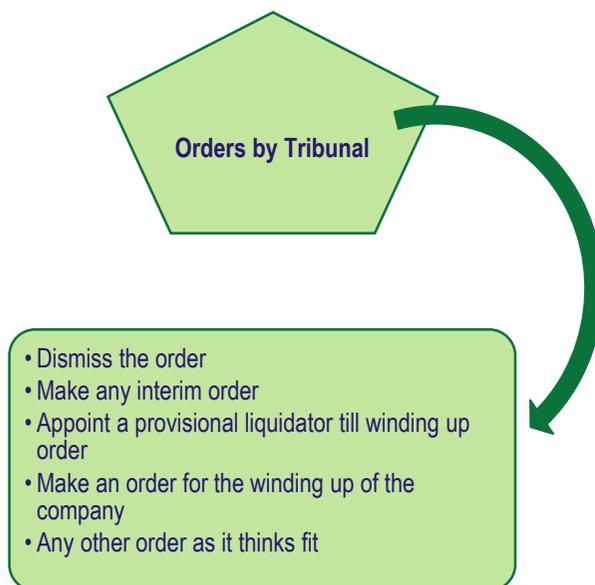
As per the facts laid down, Petitioner-Central Government directed Serious Fraud Investigation Officer (SFIO) to investigate in to affairs of respondent-real Estate Company. SFIO conducted investigation and submitted its report by pointing out various inconsistencies, frauds, illegality and stated that affairs of respondent were conducted adverse to interest of its creditors, investors, and consumers and against public interest. NCLT suspended existing Board of Directors of respondent as pleaded by SFIO and directed Central Government to appoint nominee directors. Central Government appointed three nominee directors. These appointed Nominee directors were unable to run affairs of respondent and expressed their difficulties to defend or prosecute cases filed by and against respondent. They thus, filed an application to wind up respondent real estate company. It was noted that passing of winding up order is civil death for company and, therefore, in order to protect interest of stakeholders of company, Courts/Tribunals, before passing such order, have to examine all issues concerning matter so as to see whether passing winding up order is only alternative or is there any possibility for revival of affairs of company. It was passed an order that one more opportunity was to be given to respondent to set things right in affairs of respondent . It

would, therefore, be just and proper to direct nominee directors to convene Extraordinary General Meeting (EGM) of shareholders of respondent so as to elect their proposed directors so that they could take all necessary actions to resolve all disputes, which lead to suspension of Board of Directors of respondent.



5. POWERS OF TRIBUNAL [SECTION 273]

- (1) **Order passed by Tribunal:** The Tribunal may, on receipt of a petition for winding up under section 272 pass any of the following orders, namely:—
- (a) dismiss it, with or without costs;
 - (b) make any interim order as it thinks fit;
 - (c) appoint a provisional liquidator of the company till the making of a winding up order;
 - (d) make an order for the winding up of the company with or without costs; or
 - (e) any other order as it thinks fit:



Time limit for passing an order: An order under this sub-section shall be made within **ninety days** from the date of presentation of the petition.

Notice to company on appointing of provisional liquidator: Before appointing a provisional liquidator under clause (c) [given above], the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice.

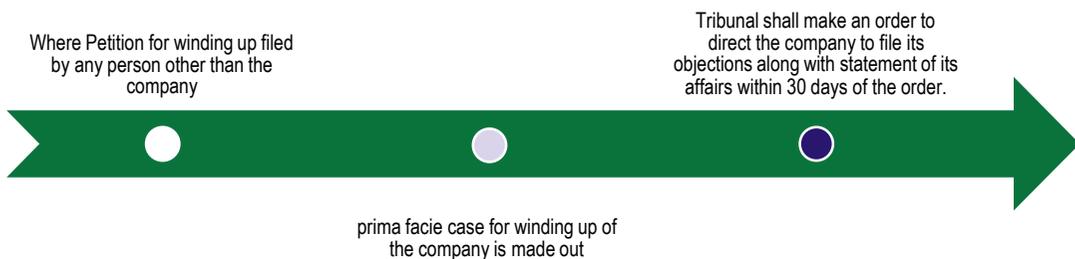
Tribunal not to refuse to make a winding up order: The Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.

- (2) **Tribunal make order for any other remedy on just and equitable ground:** Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing the other remedy.



6. DIRECTIONS FOR FILING STATEMENT OF AFFAIRS [SECTION 274]

- (1) **Tribunal may order company to file a statement of its affairs:** Where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a prima facie case for winding up of the company is made out, by an order direct the company to file its **objections along with a statement of its affairs** within thirty days of the order in such form and in such manner as may be prescribed.



Extension of time for filing: The Tribunal may allow a further period of **thirty days** in a situation of contingency or special circumstances.

Deposit of security: The Tribunal may direct the petitioner to deposit such security for costs as it may consider reasonable as a pre-condition to issue directions to the company.

- (2) **Punishment for not filing of the statement of affairs:** A company, which fails to file the statement of affairs as referred to in sub-section (1), shall forfeit the right to oppose the petition and such directors and officers of the company as found responsible for such non-compliance, shall be liable for punishment under sub-section (4).
- (3) **Directors and other officers to submit books of account completed and audited to the Liquidator:** The directors and other officers of the company, in respect of which an order for winding up is passed by the Tribunal under clause (d) of sub-section (1) of section 273, shall, within a period of **thirty days** of such order, submit, at the cost of the company, the books of

account of the company completed and audited up to the date of the order, to such liquidator and in the manner specified by the Tribunal.

- (4) **Penalty for Contravention:** If any director or officer of the company contravenes the provisions of this section, the director or the officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ₹ twenty-five thousand but which may extend to ₹ five lakh, or with both.
- (5) **Who may file Complaint before Special Court:** The complaint may be filed in this behalf before the Special Court by Registrar, provisional liquidator, Company Liquidator or any person authorised by the Tribunal.



7. COMPANY LIQUIDATORS AND THEIR APPOINTMENTS [SECTION 275]

- (1) **Appointment of official liquidator:** For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the **panel maintained** (i.e. under the Insolvency Professional registered under Insolvency and Bankruptcy Code, 2016) as the Company Liquidator.
- (2) **Appointment of Provisional Liquidator or the Company Liquidator by Tribunal:** The provisional liquidator or the Company Liquidator, as the case may, shall be appointed by the **Tribunal from amongst the insolvency professionals** registered under the Insolvency and Bankruptcy Code, 2016.
- (3) **Tribunal may restrict the powers of a Provisional Liquidator:** Where a provisional liquidator is appointed by the Tribunal, the Tribunal may **limit and restrict his powers by the order appointing him or it or by a subsequent order**, but otherwise he shall have the same powers as a liquidator.
- (4) **Tribunal to specify the terms and conditions of appointment of Provisional Liquidator:** The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be **specified by the Tribunal** on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.
- (5) **Filing of Declaration by Liquidator on Appointment:** On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall **file a declaration** within **seven days** from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.

- (6) **Appointment of Provisional Liquidator as the Company Liquidator:** While passing a winding up order, the Tribunal may **appoint a provisional liquidator**, if any, appointed under clause (c) of sub-section (1) of section 273, **as the Company Liquidator** for the conduct of the proceedings for the winding up of the company.



8. REMOVAL AND REPLACEMENT OF LIQUIDATOR [SECTION 276]

- (1) **Removal of Provisional Liquidator or the Company Liquidator:** The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator (PL) or the Company Liquidator (CL), as the case may be, as liquidator of the company on any of the following **grounds**, namely:—
- misconduct;
 - fraud or misfeasance;
 - professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
 - inability to act as provisional liquidator or as the case may be, Company Liquidator;
 - conflict of interest or lack of independence during the term of his appointment that would justify removal.

Grounds for removal of PL/CL

misconduct;	fraud / misfeasance;	professional incompetence / failure to exercise due care and diligence	inability to act as provisional liquidator / Company Liquidator;	conflict of interest / lack of independence during the term of his appointment
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- (2) **Transfer of work of Liquidator:** In the event of **death, resignation or removal** of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.
- (3) **Recovery of loss or damage from Liquidator:** Where the Tribunal is of the opinion that any liquidator is responsible for causing any **loss or damage** to the company due to **fraud or**

misfeasance or failure to exercise due care and diligence in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.

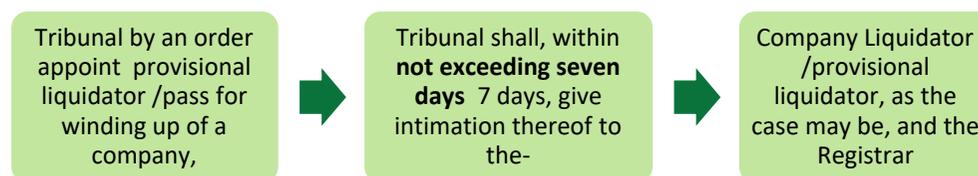
- (4) **Reasonable opportunity of being heard to be given the Provisional Liquidator:** The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.



9. INTIMATION TO COMPANY LIQUIDATOR, PROVISIONAL LIQUIDATOR AND REGISTRAR [SECTION 277]

- (1) **Tribunal to cause intimation of its order:**

Where the Tribunal makes an order for appointment of provisional liquidator or for the winding up of a company, it shall, within a period **not exceeding seven days** from the date of passing of the order, cause intimation thereof to be sent to the Company Liquidator or provisional liquidator, as the case may be, and the Registrar.



- (2) **Registrar to notify the order of Tribunal in Official Gazette:**

With respect to all companies - On receipt of the copy of order of appointment of provisional liquidator or winding up order, the **Registrar** shall make an endorsement to that effect in his records relating to the company and **notify in the Official Gazette** that such an order has been made, and

In the case of a listed company, the Registrar **shall intimate about such appointment or order**, as the case may be, **to the stock exchange or exchanges** where the securities of the company are listed.

On receipt of order of Appointment of PL/CL or winding up, Registrar shall

in case of Listed Company

in case of all Companies

Intimate the stock exchange/s where the securities of the company are listed.

Make an endorsement to that effect in his records and notify in the Official Gazette

- (3) **Winding up order to be deemed to be notice of discharge:** The winding up order shall be deemed to be a **notice of discharge to the officers, employees and workmen** of the company, except when the business of the company is continued.
- (4) **Constitution of winding up committee to monitor liquidation proceedings:** **Within 3 weeks** from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a **winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator** in carrying out the function as provided in sub-section (5) and such winding up committee shall comprise of the following persons, namely:—
- (i) Official Liquidator attached to the Tribunal;
 - (ii) nominee of secured creditors; and
 - (iii) a professional nominated by the Tribunal.
- (5) **Areas in which winding up committee to assist and monitor liquidation functions:** The **Company Liquidator** shall be the **convener** of the meetings of the **winding up committee** which shall **assist and monitor the liquidation proceedings** in following areas of liquidation functions, namely:—
- (i) taking over assets;
 - (ii) examination of the statement of affairs;
 - (iii) recovery of property, cash or any other assets of the company including benefits derived there from;
 - (iv) review of audit reports and accounts of the company;
 - (v) sale of assets;
 - (vi) finalisation of list of creditors and contributories;
 - (vii) compromise, abandonment and settlement of claims;

- (viii) payment of dividends, if any; and
- (ix) any other function, as the Tribunal may direct from time to time.

Winding up
Committee –
For assistance
and monitoring
of Liquidation

taking over assets;

examination

recovery of property

review of audit reports and accounts

sale of assets

finalisation of list of creditors & contributories;

compromise, abandonment and settlements

payment of dividends

any other function, as directed by Tribunal

- (6) **Submission of report and minutes of meetings of the committee before Tribunal on monthly basis:** The Company Liquidator shall place before the Tribunal a **report along with minutes of the meetings of the committee on monthly basis** duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.
- (7) **Company liquidator to prepare draft final report:** The Company Liquidator shall prepare the **draft final report** for consideration and **approval of the winding up committee**.
- (8) **Submission of approved final report before the Tribunal for passing of dissolution order:** The final report so approved by the winding up committee shall be **submitted** by the Company Liquidator **before the Tribunal** for passing of a dissolution order in respect of the company.



10. EFFECT OF WINDING UP ORDER [SECTION 278]

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



11. STAY OF SUITS, ETC. ON WINDING UP ORDER [SECTION 279]

- (1) **Suit or legal proceeding can be commenced after winding up order/appointment of liquidator only with permission of Tribunal:**



- (2) **What happens to proceeding pending in appeal before Supreme Court or a High Court:**
Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

Example 1: A provisional liquidator is appointed by the Tribunal for initiating the winding up process against TRS Ltd. An appeal against TRS Ltd. is pending before the High Court of Delhi on the date of appointment of the provisional liquidator. The management is of the opinion that since the provisional liquidator is appointed by the Tribunal, all the pending suits and actions can be proceeded with only after the permission of the Tribunal. The contention of TRS Ltd. does not hold good, in the light of section 279 (2). Accordingly, permission of Tribunal is not required in case of an appeal pending before High Court of Delhi.



12. JURISDICTION OF TRIBUNAL [SECTION 280]

The Tribunal shall have jurisdiction to **entertain**, or **dispose of**,—

- (a) any **suit or proceeding** by or against the company;
- (b) any **claim** made by or against the company, including claims by or against any of its branches in India;
- (c) any **application** made under section 233 [Fast track merger];
- (d) any **question of priorities** or any other question whatsoever, whether of **law or facts**, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company,

whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.



13. SUBMISSION OF REPORT BY COMPANY LIQUIDATOR [SECTION 281]

- (1) **Particulars to be mentioned in the Report of Company Liquidator:** Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within **sixty days from the order**, submit to the Tribunal, a **report** containing the following particulars, namely:—

Contents of Liquidator's Report

- The **nature and details of the assets of the company** including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company. The valuation of the assets shall be obtained from registered valuers for this purpose.
- **Amount of capital issued, subscribed and paid-up**
- The **existing and contingent liabilities** of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given.
- The **debts due to the company** and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof.

- **Guarantees**, if any, extended by the company
- **List of contributories and dues**, if any, payable by them and details of any unpaid call
- **Details of trademarks and intellectual properties**, if any, owned by the company
- **Details of subsisting contracts, joint ventures and collaborations**, if any
- **Details of holding and subsidiary companies**, if any
- **Details of legal cases** filed by or against the company
- **Any other information** which the Tribunal may direct or the Company Liquidator may consider necessary to include.

- (2) **Company Liquidator to include in his Report manner of formation of company and commission of any fraud in formation, etc.:** The Company Liquidator shall include in his report the manner in which the company was **promoted or formed** and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof and **any other matters** which, in his opinion, it is desirable **to bring to the notice of the Tribunal**.
- (3) **Report on viability of business of the company:** The Company Liquidator shall also make a report on the viability of the business of the company or the steps which, in his opinion, are necessary for maximizing the value of the assets of the company.
- (4) **Permission to make additional reports:** The Company Liquidator may also, if he thinks fit, make any **further report or reports**.
- (5) **Inspection of report by a creditor or contributory:** Any person describing himself in writing to be a creditor or a contributory of the company shall be **entitled by himself or by his agent** at all reasonable times to **inspect the report** submitted in accordance with this section and **take copies** thereof or extracts therefrom on **payment** of the prescribed fees.



14. DIRECTIONS OF TRIBUNAL ON REPORT OF COMPANY LIQUIDATOR [SECTION 282]

- (1) **Fixation of Time limit for completion of proceedings and dissolution:** The **Tribunal** shall, on consideration of the report of the Company Liquidator, **fix a time limit** within which the entire proceedings shall be completed and the company be dissolved.

Revision of time limit: The Tribunal may, if it is of the opinion, at any stage of the proceedings, or on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, that it will not be advantageous or economical to continue the proceedings, **revise**

the time limit within which the entire proceedings shall be completed and the company be dissolved.

- (2) **Order of Tribunal:** The Tribunal may, on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, **order sale of the company as a going concern or its assets** or part thereof.

The Tribunal may, where it considers fit, **appoint a sale committee** comprising such creditors, promoters and officers of the company as the Tribunal may decide to assist the Company Liquidator in sale under this sub-section.

- (3) **Tribunal may order for investigation against the company in respect of commission of fraud:** Where a **report is received** from the Company Liquidator or the Central Government or any person that a **fraud has been committed** in respect of the company, the Tribunal shall, without prejudice to the process of winding up, **order for investigation** under section 210, and on consideration of the report of such investigation it may pass order and give directions under sections 339 to 342 or direct the Company Liquidator to file a criminal complaint against persons who were involved in the commission of fraud.
- (4) **Tribunal to take measures to safeguard the assets of the company:** The Tribunal may order for taking such steps and measures, as may be necessary, to protect, preserve or enhance the value of the assets of the company.
- (5) **Tribunal may pass such other order / directions as it may consider fit:** The Tribunal may pass such other order or give such other directions as it considers fit.



15. CUSTODY OF COMPANY'S PROPERTIES [SECTION 283]

S. No.	Provision	It states that-
1.	Where a winding up order has been made or where a provisional liquidator has been appointed-	<p>The company liquidator or provisional liquidator, shall, on the order of the Tribunal immediately take into his or its custody or control –</p> <ul style="list-style-type: none"> • all the property, • effects and • actionable claims <p>to which the company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the company.</p>

2.	Custody of Tribunal to be deemed from the date of winding up order	All the property and effects of the company shall be deemed to be in the custody of the Tribunal from the date of the order for the winding up of the company.
3.	On an application by the Company Liquidator, the Tribunal may order to pay / deliver etc. any money, property etc. of the company to the Liquidator.	<p>The Tribunal may, at any time after the making of a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company,-</p> <ul style="list-style-type: none"> • to pay, • deliver, • surrender or • transfer forthwith, or • within such time as the Tribunal directs, • to the Company Liquidator, • any money, property or books and papers in his custody or under his control to which the company is or appears to be entitled.



16. PROMOTERS, DIRECTORS, ETC., TO COOPERATE WITH COMPANY LIQUIDATOR [SECTION 284]

- (1) **Various persons to extend full cooperation to the liquidators:** The promoters, directors, officers and employees, who are or have been in employment of the company or acting or associated with the company **shall extend full cooperation to the Company Liquidator** in discharge of his functions and duties.
- (2) **If a person does not cooperate, Company Liquidator may make application to Tribunal:** If any person required to assist or cooperate with the Company Liquidator **does not assist or cooperate**, the Company Liquidator may make an application to the Tribunal for necessary directions.
- (3) **Tribunal to direct non-cooperating person to comply with instructions of Company Liquidator:** On receiving an application, the Tribunal shall, by an order, direct the person required to assist or cooperate with the Company Liquidator to comply with the instructions of the Company Liquidator and to cooperate with him in discharging his functions and duties.



17. SETTLEMENT OF LIST OF CONTRIBUTORIES AND APPLICATION OF ASSETS [SECTION 285]

- (1) **Action to be taken by Tribunal after passing of winding up order:** As soon as may be after the passing of a winding up order by the Tribunal, the Tribunal shall -
- settle a **list of contributories**,
 - cause **rectification of register of members** in all cases where rectification is required in pursuance of this Act, and
 - shall cause the **assets of the company to be applied for the discharge** of its liability.

Provided that where it appears to the Tribunal that it would not be necessary to make calls on or adjust the rights of contributories, the Tribunal may dispense with the settlement of a list of contributories.

- (2) **Identifying contributories on the basis of nature of rights:** In settling the list of contributories, the Tribunal shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.
- (3) **Persons liable to contribute to the assets if certain conditions are fulfilled:** While settling the list of contributories, the Tribunal shall include every person, who is or has been a member, who shall be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following conditions, namely:—

Sl. No.	Liabilities	Conditions for the liabilities to contribute towards the assets
1.	a person who has been a member shall not be liable to contribute	If he has ceased to be a member for the preceding one year or more before the commencement of the winding up
2.	a person who has been a member shall not be liable to contribute in respect of any debt or liability of the company	If such debt or liability contracted after he ceased to be a member
3.	a person who has been a member shall be liable to contribute	When it appears to the Tribunal that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act
4.	in the case of a company limited by shares	no contribution shall be required from any person, who is or has been a member exceeding the amount, if any, unpaid on

		the shares in respect of which he is liable as such member;
5.	in the case of a company limited by guarantee	if the company has a share capital, such member shall be liable to contribute to the extent of any sum unpaid on any shares held by him as if the company were a company limited by shares.



18. OBLIGATIONS OF DIRECTORS AND MANAGERS [SECTION 286]

Contribution by a Director or Manager whose liability is unlimited: In the case of a limited company, any person who is or has been a director or manager, whose liability is unlimited under the provisions of this Act, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of winding up, a member of an unlimited company.

Provided that —

- (a) **A Director or Manager who ceased to hold office for a year or more:** A person who has been a director or manager shall not be liable to make such further contribution, if he has ceased to hold office for a year or upwards before the commencement of the winding up;
- (b) **A Director or Manager not liable to contribute any debt / liability of the company after he ceased to hold office:** A person who has been a director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
- (c) **A Director or Manager not liable make further contribution unless Tribunal deems it necessary for satisfying the debts and liabilities:** Subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Tribunal deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.



19. ADVISORY COMMITTEE [SECTION 287]

- (1) **Tribunal to direct for appointment of Advisory Committee:** The Tribunal may, while passing an order of winding up of a company, direct that there shall be, **an advisory committee to advise the Company Liquidator and to report to the Tribunal** on such matters as the Tribunal may direct.
- (2) **Composition of Advisory Committee:** The advisory committee appointed by the Tribunal shall consist of **not more than twelve members**, being-

- **creditors and contributories** of the company, or
- such **other persons** in such proportion

as the Tribunal may, keeping in view the circumstances of the company under liquidation, direct.

- (3) **Conducting of meeting for choosing members of Advisory Committee:** The Company Liquidator shall convene a meeting of creditors and contributories, as ascertained from the books and documents, of the company **within thirty days from the date of order of winding up** for enabling the Tribunal to determine the persons who may be members of the advisory committee.
- (4) **Right of Advisory Committee to inspect:** The advisory committee shall have **the right to inspect** the books of account and other documents, assets and properties of the company under liquidation at a reasonable time.
- (5) **Prescribing of Procedure for the conduct of meeting, etc.:** The provisions relating to the convening of the meetings, the procedure to be followed thereat and other matters relating to conduct of business by the advisory committee shall be such as may be prescribed.
- (6) **Company Liquidator to be Chairperson:** The meeting of advisory committee shall be **chaired by the Company Liquidator**.

Example 2: The winding up process is initiated against Premier Merchandise Ltd. An advisory committee is formed by the Tribunal consisting of thirteen members in order to advise the company liquidator and report to the Tribunal on the matters directed by the Tribunal. The composition of Advisory Committee includes seven creditors and six contributories. The said constitution of Advisory Committee is invalid. As per Section 287(2), an Advisory Committee cannot have more than twelve members.



20. SUBMISSION OF PERIODICAL REPORTS TO TRIBUNAL [SECTION 288]

- (1) **Periodical reports for submission to Tribunal:** The Company Liquidator shall make periodical reports to the Tribunal and in any case make a **report at the end of each quarter** with respect to the progress of the winding up of the company in such form and manner as may be prescribed.
- (2) **Review of its orders by Tribunal:** The Tribunal may, on an **application by the Company Liquidator**, review the orders made by it and make such modifications as it thinks fit.



21. POWERS AND DUTIES OF COMPANY LIQUIDATOR [SECTION 290]

- (1) **Powers of Company Liquidator:** Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up of a company by the Tribunal, shall have the power—
- (a) to **carry on the business** of the company so far as may be necessary for the beneficial winding up of the company;
 - (b) to **do all acts and to execute**, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose, to use, when necessary, the company's seal;
 - (c) to **sell the immovable and movable property and actionable claims** of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels;
 - (d) to **sell the whole of the undertaking** of the company as a going concern;
 - (e) to **raise any money** required on the security of the assets of the company;
 - (f) to **institute or defend any suit**, prosecution or other legal proceeding, civil or criminal, **in the name and on behalf of the company**;
 - (g) to **invite and settle claim of creditors, employees or any other claimant** and distribute sale proceeds in accordance with priorities established under this Act;
 - (h) to **inspect the records** and returns of the company on the files of the Registrar or any other authority;
 - (i) to **prove rank and claim in the insolvency** of any contributory for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;
 - (j) to **draw, accept, make and endorse any negotiable instruments** including cheque, bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if such instruments had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;
 - (k) to **take out, in his official name, letters of administration** to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the Company Liquidator to take out the letters of

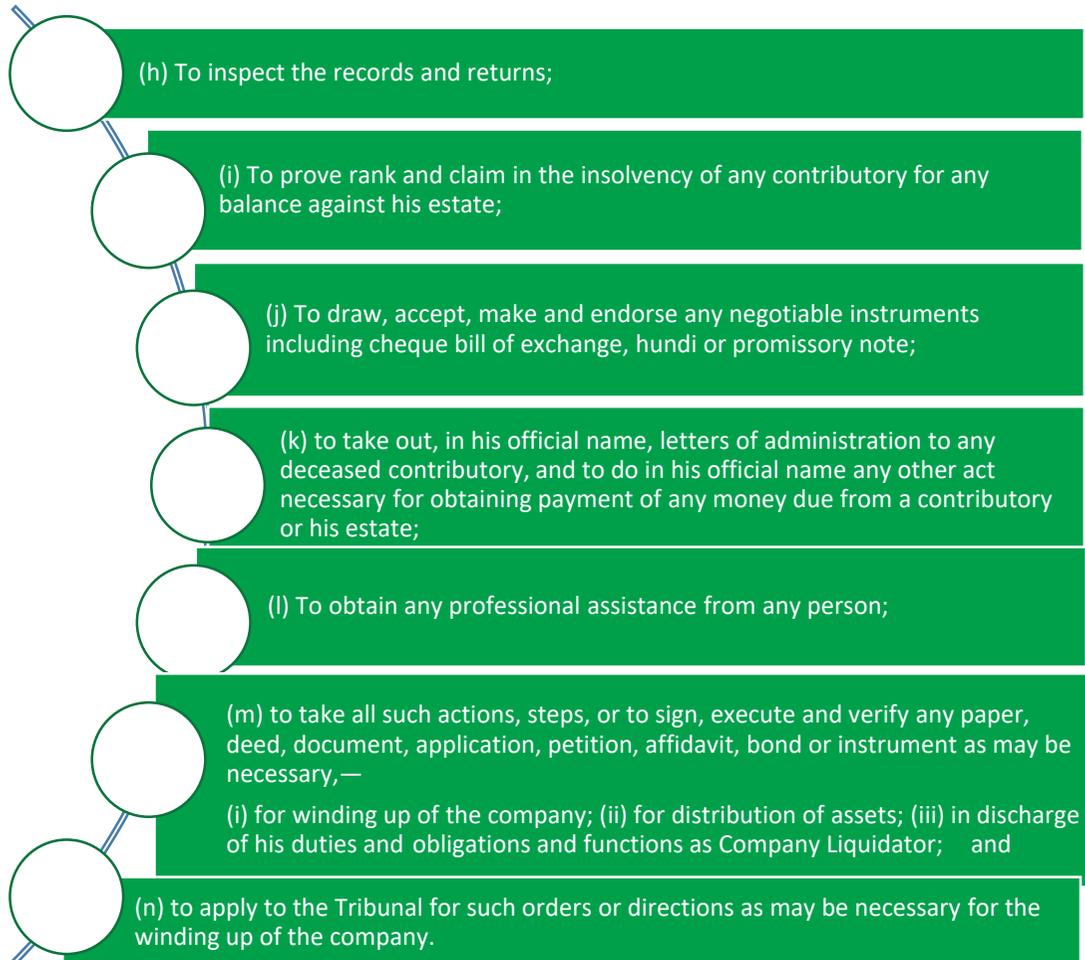
administration or recover the money, be deemed to be due to the Company Liquidator himself;

- (l) **to obtain any professional assistance** from any person or appoint any professional, in discharge of his duties, obligations and responsibilities and for protection of the assets of the company, appoint an agent to do any business which the Company Liquidator is unable to do himself;
- (m) **to take all such actions, steps, or to sign, execute and verify any paper, deed, document**, application, petition, affidavit, bond or instrument as may be necessary,—
 - (i) for winding up of the company;
 - (ii) for distribution of assets;
 - (iii) in discharge of his duties and obligations and functions as Company Liquidator; and
- (n) **to apply to the Tribunal for such orders or directions** as may be necessary for the winding up of the company.

POWERS OF COMPANY LIQUIDATOR

- (a) To carry on the business of the company;
- (b) To do all acts and to execute all deeds, receipts and other documents;
- (c) To sell the immovable and movable property and actionable claims of the company by public auction or private contract;
- (d) To sell the whole of the undertaking of the company as a going concern;
- (e) To raise any money;
- (f) To institute or defend any suit, prosecution or other legal proceeding;
- (g) To invite and settle claim of creditors, employees or any other claimant;

POWERS OF COMPANY LIQUIDATOR.....Contd.



- (2) **Powers of Liquidator under overall control of Tribunal:** The exercise of powers by the Company Liquidator shall be subject to the overall control of the Tribunal.
- (3) **Other duties:** The Company Liquidator shall perform such other duties as the Tribunal may specify in this behalf.

1. The High Court of Gujarat, in *Mukund Chemicals (P.) Ltd. (In Liqu) vs. Darshan Health Care (P.) Ltd.* gave the decision as per Section 290 of the Companies Act, 2013. As per the facts, property of company-in-liquidation were sold to company 'NPL' for Rs. 5.05 crore. Later, 'NPL' nominated company 'D' for said property of Company in Liquidation. Whereby the Directors of 'NPL' also submitted declaration cum-affidavit whereby they declared on oath that they have no objection of

registered assignment and deed of conveyance be executed in favour of 'D'. It was also stated in said affidavit that sale consideration of Rs. 5.05 crore was paid by 'D' to 'NPL'. It was laid in the given case that Official Liquidator of company in liquidation was permitted to execute deed of assignment-cum-conveyance in favour of 'D' subject to payment of stamp duty, registration charges and all other expenses incidental to execution and registration thereof by 'D'.

2. As per the order passed by the High Court of Delhi in *Societe Generale vs. Daewoo Motors India Ltd.*, it was held that any claim with regard to Provident Fund dues can only lie before Commissioner, Provident Fund, under relevant statute and any claims raised directly to Official Liquidator for payment of Provident Fund dues are bound to be rejected as company was never obliged to pay workmen any such amounts in first place. There can be no reason in law to place an additional compulsion on Official Liquidator to either process or pursue claims of workmen with Commissioner, Provident Fund, which even company was not obliged to do the same.



22. PROVISION FOR PROFESSIONAL ASSISTANCE TO COMPANY LIQUIDATOR [SECTION 291]

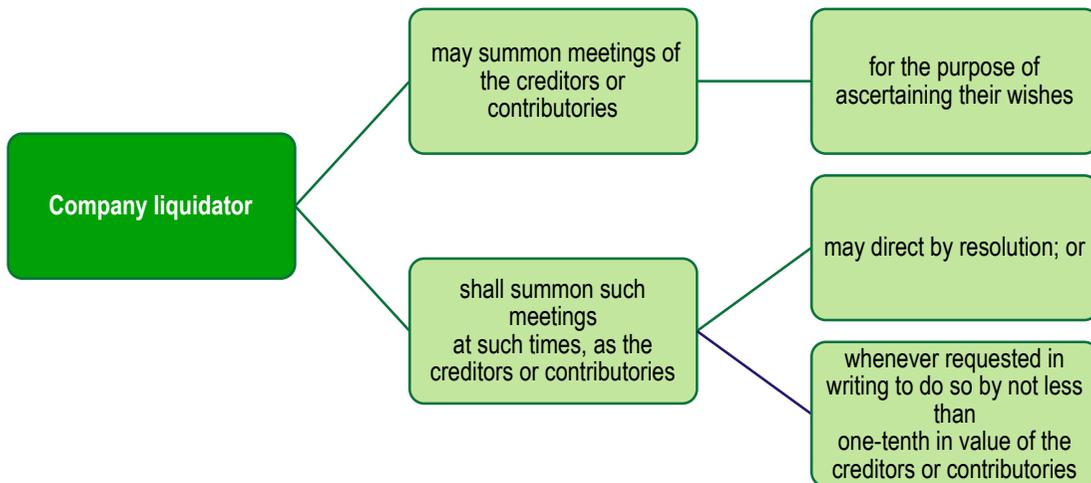
- (1) **Company liquidator may appoint one/more professionals, if permitted by Tribunal:** The Company Liquidator may, with the sanction of the Tribunal, appoint one or more **chartered accountants or company secretaries or cost accountants or legal practitioners or such other professionals** on such terms and conditions, as may be necessary, to assist him in the performance of his duties and functions under this Act.
- (2) **Disclosure of conflict of interest:** Any person appointed under this section shall disclose forthwith to the Tribunal in the prescribed form **any conflict of interest or lack of independence** in respect of his appointment.



23. EXERCISE AND CONTROL OF COMPANY LIQUIDATOR'S POWERS [SECTION 292]

- (1) **Company Liquidator to follow directions in administration and distribution of assets:** The Company Liquidator shall, in the administration of the assets of the company and the distribution thereof among its creditors, have regard to any directions which may be given by-
 - the resolution of the creditors or contributories at any general meeting, or
 - by the advisory committee.
- (2) **Directions given by creditors or contributories to override directions of Advisory Committee:** Any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the advisory committee.

- (3) **Summons from Company Liquidator:** The Company Liquidator—
- (a) may summon meetings of the creditors or contributories, whenever he thinks fit, for the purpose of ascertaining their wishes; and
 - (b) shall summon such meetings at such times, as the creditors or contributories, as the case may be, may, by resolution, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories, as the case may be.



- (4) **Aggrieved person to apply to Tribunal against the decision of Company Liquidator:** Any person aggrieved by any act or decision of the Company Liquidator may apply to the Tribunal, and the Tribunal may **confirm, reverse or modify the act or decision** complained of and **make such further order** as it thinks just and proper in the circumstances.

24. BOOKS TO BE KEPT BY COMPANY LIQUIDATOR [SECTION 293]

- (1) **Company liquidator to maintain proper books for recording entries or minutes:** The Company Liquidator shall keep proper books in such manner, as may be prescribed, in which he shall cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.
- (2) **Inspection of books:** Any creditor or contributory may, subject to the control of the Tribunal, inspect any such books, personally or through his agent.



25. AUDIT OF COMPANY LIQUIDATOR'S ACCOUNTS [SECTION 294]

- (1) **Maintenance of books of accounts:** The Company Liquidator shall **maintain proper and regular books of account** including accounts of receipts and payments made by him in such form and manner as may be prescribed.
- (2) **Presentation of account of receipts and payments to the Tribunal:** The Company Liquidator shall, at such times as may be prescribed but **not less than twice in each year** during his tenure of office, **present to the Tribunal** an account of the receipts and payments as such liquidator in the prescribed form in duplicate, which shall be verified by a declaration in such form and manner as may be prescribed.
- (3) **Audit of accounts:** The Tribunal shall cause the **accounts to be audited** in such manner as it thinks fit, and for the purpose of the audit, the Company Liquidator shall furnish to the Tribunal with such vouchers and information as the Tribunal may require, and the Tribunal may, at any time, require the production of, and inspect, any books of account kept by the Company Liquidator.
- (4) **Filing of copy of audited accounts with Tribunal and Registrar:** When the accounts of the company have been audited, **one copy thereof shall be filed by the Company Liquidator** with the Tribunal, and **the other copy shall be delivered to the Registrar** which shall be **open to inspection** by any creditor, contributory or person interested.
- (5) **Action to be taken when accounts relate to a Government Company:** Where an account referred to in sub-section (4) relates to a Government company, the **Company Liquidator shall forward a copy** thereof—
 - (a) **to the Central Government**, if that Government is a member of the Government company; or
 - (b) **to any State Government**, if that Government is a member of the Government company; or
 - (c) **to the Central Government** and any State Government, if both the Governments are members of the Government company.
- (6) **Summary of accounts to be communicated to every creditor and contributory:** The Company Liquidator shall cause the accounts when audited, or a **summary** thereof, to be **printed**, and shall send a printed copy of the accounts or summary thereof by post to **every creditor and every contributory**.

Note: The Tribunal may dispense with the compliance of the provisions of this sub-section in any case it deems fit.



26. PAYMENT OF DEBTS BY CONTRIBUTORY AND EXTENT OF SET-OFF [SECTION 295]

- (1) **Tribunal to pass an order to pay any money due:** The Tribunal may, at any time after passing of a winding up order, **pass an order** requiring any contributory for the time being on the list of contributories **to pay**, in the manner directed by the order, **any money due to the company**, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.
- (2) **Order of Tribunal may allow set off:** The Tribunal may while making the above order:—

in the case of an unlimited company	allow to the contributory, by – <ul style="list-style-type: none"> • way of set-off, any money due to him, or • to the estate which he represents, from the company, on any independent dealing or contract with the company. But not any money due to him as a member of the company in respect of any dividend or profit;
in the case of a limited company	allow to any director or manager whose liability is unlimited, or to his estate, such set-off.

- (3) **Payment of money due against any subsequent call may be allowed to be set off:** In the case of any company (whether limited or unlimited), when all the creditors have been paid in full, any money due on any account, from the company to a contributory, may be allowed to him by way of set-off against any subsequent call.



27. POWER OF TRIBUNAL TO MAKE CALLS [SECTION 296]

The Tribunal may, at any time after the passing of a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company—

- (a) **make calls on all or any of the contributories** for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Tribunal considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves; and
- (b) **make an order for payment of any calls**, so made.



28. ADJUSTMENT OF RIGHTS OF CONTRIBUTORIES [SECTION 297]

The Tribunal shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.



29. POWER TO ORDER COSTS [SECTION 298]

Where assets of a company are insufficient to satisfy its liabilities: The Tribunal may, in the event of the assets of a company being insufficient to satisfy its liabilities, **make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up**, in such order of priority inter se as the Tribunal thinks just and proper.



30. POWER TO SUMMON PERSONS SUSPECTED OF HAVING PROPERTY OF COMPANY, ETC. [SECTION 299]

(1) **Summon by Tribunal:** The Tribunal may,

- at any time **after the appointment** of a provisional liquidator, or
- the **passing of a winding up order**,

Summon before it –

- any officer of the company or
- person known or
- suspected to have in his possession any property or books or papers, of the company, or
- known or suspected to be indebted to the company, or
- any person whom the Tribunal thinks to be capable of giving information

concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.

(2) **Examination of any person by Tribunal:** The Tribunal may examine any officer or person so summoned on oath concerning the matters aforesaid, either by –

- word of mouth or
- on written interrogatories or
- on affidavit and

may, in the first case, reduce his answers to writing and require him to sign them.

- (3) **Production of books and papers:** The Tribunal may require any officer or person so summoned to produce any books and papers relating to the company in his custody or power, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to such lien, and the Tribunal shall have power to determine all questions relating to that lien.
- (4) **Liquidator to file a report in respect of debt or property of the company:** The Tribunal may direct the liquidator to file before it a report in respect of debt or property of the company in possession of other persons.
- (5) **Tribunal may order an indebted person to pay money or a person to deliver company's property if he possesses it:** If the Tribunal finds that—
- (a) a **person is indebted to the company**, the Tribunal may order him to pay to the provisional liquidator or, as the case may be, the liquidator at such time and in such manner as the Tribunal may consider just, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Tribunal thinks fit, with or without costs of the examination;
- (b) a **person is in possession of any property belonging to the company**, the Tribunal may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as the Tribunal may consider just.
- (6) **Imposition of cost if a summoned person fails to appear:** If any officer or person so summoned fails to appear before the Tribunal at the time appointed without a reasonable cause, the Tribunal may impose an appropriate cost.
- (7) **Execution of order:** Every order made under sub-section (5) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908.
- (8) **Discharge of liability:** Any person making any payment or delivery in pursuance of an order made under sub-section (5) shall by such payment or delivery be, unless otherwise directed by such order, discharged from all liability whatsoever in respect of such debt or property.



31. POWER TO ORDER EXAMINATION OF PROMOTERS, DIRECTORS, ETC. [SECTION 300]

- (1) **Power of Tribunal to order the person to attend and be examined:** Where an order has been made for the winding up of a company by the Tribunal, and the Company Liquidator has made a report to the Tribunal under this Act, stating that in his opinion a fraud has been committed by any person in the promotion, formation, business or conduct of affairs of the company since its formation, the Tribunal may, after considering the report, direct that-

- **such person or officer shall attend** before the Tribunal on a day appointed by it for that purpose, and
 - **be examined** as to the promotion or formation or the conduct of the business of the company or as to his conduct, and
 - **dealings** as an officer thereof.
- (2) **Participation of Company Liquidator in the examination:** The Company Liquidator shall take part in the examination, and for that purpose he or it may, if specially authorised by the Tribunal in that behalf, employ such legal assistance as may be sanctioned by the Tribunal.
- (3) **Examination on oath:** The person shall be examined on oath and shall answer all such questions as the Tribunal may put, or allow to be put, to him.
- (4) **Rights available to the person who is to be examined:** A person ordered to be examined under this section—
- (a) shall, before his examination, **be furnished at his own cost with a copy of the report** of the Company Liquidator; and
 - (b) **may at his own cost employ chartered accountants or company secretaries or cost accountants or legal practitioners** entitled to appear before the Tribunal under section 432, who shall be at liberty to put to him such questions as the Tribunal may consider just for the purpose of enabling him to explain or qualify any answers given by him.
- (5) **Appearance of Company Liquidator on hearing of an application made by person to be exculpated from any charges:** If any such person applies to the Tribunal to be exculpated from any charges made or suggested against him, it shall be the duty of the Company Liquidator to appear on the hearing of such application and call the attention of the Tribunal to any matters which appear to the Company Liquidator to be relevant.
- (6) **Order for payment of costs:** If the Tribunal, after considering any evidence given or hearing witnesses called by the Company Liquidator, allows the application made under sub-section (5), the Tribunal may order payment to the applicant of such costs as it may think fit.
- (7) **Records of examination in writing:** Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, a copy be supplied to him and may thereafter be used in evidence against him, and shall be open to inspection by any creditor or contributory at all reasonable times.
- (8) **Adjournment:** The Tribunal may, if it thinks fit, adjourn the examination from time to time.
- (9) **Examination can be before any person / authority if the Tribunal so directs:** An examination under this section may, if the Tribunal so directs, be held before any person or authority authorised by the Tribunal.

- (10) **Exercise of powers of Tribunal by the concerned person / authority:** The powers of the Tribunal under this section as to the conduct of the examination, but not as to costs, may be exercised by the person or authority before whom the examination is held in pursuance of sub-section (9).



32. ARREST OF PERSON TRYING TO LEAVE INDIA OR ABSCOND [SECTION 301]

At any time either before or after passing a winding up order, if the Tribunal is satisfied that a contributory or a person having property, accounts or papers of the company in his possession is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, the Tribunal may cause—

- (a) the contributory to be detained until such time as the Tribunal may order; and
- (b) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.

Any time either before or after passing a winding up order, if the Tribunal is satisfied that -

- a contributory, or
- a person having property, accounts or papers of the company in his possession

is about-

- to leave India or
- otherwise to abscond, or
- is about to remove or conceal any of his property, for evading payment of calls, or
- of avoiding examination respecting the affairs of the company,

the Tribunal may cause—

- the contributory to be detained until such time as the Tribunal may order; and
- his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.



33. DISSOLUTION OF COMPANY BY TRIBUNAL [SECTION 302]

S. No.	Conditions	Rights consequent to prevailing conditions
1.	When the affairs of a company have been completely wound up	the Company Liquidator shall make an application to the Tribunal for dissolution of such company.
2.	The Tribunal shall on an application filed by the Company Liquidator, or when the Tribunal is of the opinion that it is just and reasonable in the circumstances that an order for the dissolution of the company should be made	The Tribunal shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.
3.	Tribunal shall, within thirty days from the date of order forward the copy of order to Registrar.	Registrar shall record in the register relating to the company a minute of the dissolution of the company, and direct the Company Liquidator to forward a copy of the order to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.

The High Court of Madhya Pradesh in *Alpine Biotech Ltd., In Re*, in the light of Section 302 of the Companies Act, 2013 gave the decision on the Dissolution of company. As per the fact, on the basis of reference received from BIFR, winding up order of applicant company was passed. Official Liquidator (OL) was appointed. In pursuance to order of court, assets of company in liquidation were sold by secured creditor under provisions of the SARFAESI Act, 2002 in association with OL in auction and possession of assets was handed over to successful auction purchaser. Since all assets of company in liquidation were sold, OL called meetings of secured creditors to ascertain assets/properties of company in liquidation if any left. However, no secured creditor attended said meeting. In such circumstances, Official Liquidator filed instant application for purpose of passing of final order in respect of dissolution of company in liquidation. Court laid down that since all assets of company in liquidation had already been sold and no assets were left, it was just and appropriate to dissolve company.



34. APPEALS FROM ORDERS MADE BEFORE COMMENCEMENT OF ACT [SECTION 303]

Retrospective effect: Nothing in this Chapter shall affect the operation or enforcement of any order made by any Court in any proceedings for the winding up of a company immediately before the commencement of this Act and an appeal against such order shall be filed before such authority competent to hear such appeals before such commencement.

The High Court of Delhi in *R.K. Aggarwal V. Official Liquidator* came out with a decision on appeals from orders made before commencement of Act. It held that though an erstwhile shareholder of a company in liquidation is entitled to appeal but not ex-director. Even where appellant in affidavit had described himself as ex-director, even though appeal contained an averment that he held 75 % of shares of company in liquidation, appeal would not be maintainable.

(PART II- VOLUNTARY WINDING UP) SECTIONS 304- 323 (OMITTED)

Provisions dealing with voluntary winding up under the Companies Act, 2013 stand omitted due to Section 255 of Insolvency and Bankruptcy Code, 2016 and section 59 which deals with voluntary winding up covered under Chapter V of Insolvency & Bankruptcy Code, 2016 has been notified on 01.04.2017.

PART III—PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP



35. DEBTS OF ALL DESCRIPTIONS TO BE ADMITTED TO PROOF [SECTION 324]

In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act or of the law of insolvency), -

- **all debts** payable on a contingency, and
- **all claims** against the company, present or future, certain or contingent, ascertained or sounding only in damages,

shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.



36. OVERRIDING PREFERENTIAL PAYMENTS [SECTION 326]

(1) **Debts to be paid in priority:** In the winding up of a company under this Act, the following debts shall be paid in priority to all other debts:—

- (a) **workmen's dues;** and
- (b) where a **secured creditor** has realised a secured asset, so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen's portion in his security (if payable under the law), **whichever is less**, *pari passu* with the workmen's dues.

Provided that in case of the winding up of a company, the sums referred to in sub-clauses (i) and (ii) of clause (b) of the *Explanation* (given below), which are payable for a period of 2 years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of 30 days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

(2) **Debts mentioned in Proviso to be paid in full:** The debts payable under the proviso to subsection (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that subsection shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

Example 3: The value of the security of a secured creditor of a company is ₹ 1,00,000. The total amount of the workmen's dues is ₹ 1,00,000. The amount of the debts due from the company to its secured creditors is ₹ 3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is ₹ 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is ₹ 25,000.

Explanation—For the purposes of this section, and section 327—

- (a) **"workmen"**, in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947;
- (b) **"workmen's dues"**, in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—
 - (i) all **wages or salary** including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947.
 - (ii) all accrued **holiday remuneration** becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;

- (iii) unless the **company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company** or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (19 of 1923), rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;
 - (iv) all **sums due to any workman** from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;
- (c) **"workmen's portion"**, in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors.

The High Court of Bombay, *Kamani Employee's Union V. Official Liquidator and Liquidator of Kma Ltd. (In Liquidation)* gave a decision in the light of the sections Section 326 of the Companies Act, 2013.

In the given case, Kamani Employees Union(Appellant) was a registered trade union of the employees of the company-in-liquidation. KMA Workers and Staff Union (respondent No.2) was a rival trade union.

As the business of the company became unviable, the company was referred to the Board for Industrial and Financial Reconstruction (BIFR) in a *suo motu* reference. By an order dated 6-9-2000, BIFR recommended winding up of the company.

Later, a consent order was passed for sale of assets of company and sale proceeds were deposited in no lien account. Industrial Court and DRT adjudicated claims of workmen, banks and financial institutions. Appellant-employees union challenged order passed by Industrial Court and DRT.

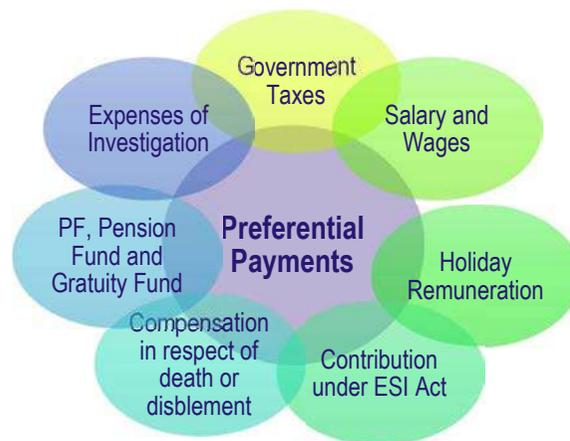
Pursuant to negotiations, consent terms were executed between Union and banks some workmen did not join in consent terms. Company Court ordered winding up of company on 24-10-2008. By a further order dated 13-3-2019, Company Court accepted consent terms and authorized payments to be made in accordance with consent terms. Appellant filed application seeking a direction against Official Liquidator for adjudication of claims of workmen and secured creditors of company in accordance with sections 326. Company Judge by impugned order held that dissenting workmen were not bound by consent terms dated 8-7-2008 and that dissenting workmen were entitled to wages up to date of winding up order, i.e., 24-10-2008. It was held that dissenting workmen could not be deprived of their statutory and legitimate right to participate in product of their labour and effort, which became disbursable, in wake of winding up, on basis of such submissions of tacit consent or waiver and, therefore, finding recorded by Company Judge that consent terms did not bind dissenting workmen.



37. PREFERENTIAL PAYMENTS [SECTION 327]

- (1) In a winding up, subject to the provisions of section 326, there shall be paid in priority to all other debts,—
- (a) all **revenues, taxes, cesses and rates** due from the company to the Central Government or a State Government or to a local authority at the relevant date, and having become due and payable within the 12 months immediately before that date;
 - (b) all **wages or salary** including wages payable for time or piece work and salary earned wholly or in part by way of commission of any employee in respect of services rendered to the company and due for a period not exceeding 4 months within the 12 months immediately before the relevant date, subject to the condition that the amount payable under this clause to any workman shall not exceed such amount as may be notified;
 - (c) all **accrued holiday remuneration** becoming payable to any employee, or in the case of his death, to any other person claiming under him, on the termination of his employment before, or by the winding up order, or, as the case may be, the dissolution of the company;
 - (d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, **all amount due in respect of contributions** payable during the period of 12 months immediately before the relevant date by the company as the employer of persons under the Employees' State Insurance Act, 1948 or any other law for the time being in force;
 - (e) unless the company has, at the commencement of winding up, under such a contract with any insurer as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, **all amount due in respect of any compensation or liability for compensation** under the said Act in respect of the death or disablement of any employee of the company;

Provided that where any compensation under the said Act is a weekly payment, the amount payable under this clause shall be taken to be the amount of the lump sum for which such weekly payment could, if redeemable, be redeemed, if the employer has made an application under that Act;
 - (f) **all sums due to any employee from the provident fund, the pension fund, the gratuity fund or any other fund** for the welfare of the employees, maintained by the company; and
 - (g) the **expenses of any investigation** held in pursuance of sections 213 and 216, in so far as they are payable by the company.



(2) **Right of person advancing money for making certain payments:** Where any payment has been made to any employee of a company on account of -

- **wages or salary**, or
- **accrued holiday remuneration**, himself or,
- in the case of his **death**, to **any other person claiming** through him,

out of **money advanced** by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid-up to the amount by which the sum in respect of which the employee or other person in his right would have been entitled to priority in the winding up has been reduced by reason of the payment having been made.

(3) **Debts to rank equally among themselves keeping in view the available assets:** The debts enumerated in this section shall—

- (a) **rank equally among themselves and be paid in full**, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) so far as the assets of the company available for payment to general creditors are insufficient to meet them, have **priority over the claims of holders of debentures** under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(4) **Debts to be discharged forthwith if assets are sufficient to meet them:** Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts under this section shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given under clause (d) of sub-

section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

- (5) **Debts to which priority is given shall be a first charge on the goods or effects distrained on:** In the event of a landlord or other person distraining or having distrained on any goods or effects of the company **within three months** immediately before the date of a winding up order, the debts to which priority is given under this section **shall be a first charge on the goods or effects** so distrained on or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

- (6) **Remuneration for holiday / absence from work to be deemed to be wages:** Any remuneration in respect of a period of holiday or of absence from work on medical grounds through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.
- (7) **Non-applicability of sections 326 & 327:** Sections 326 and 327 shall not be applicable in the event of liquidation under the Insolvency and Bankruptcy Code, 2016.

Explanation—For the purposes of this section,—

- (a) the expression “**accrued holiday remuneration**” includes, in relation to any person,
- all sums which, by virtue either of his contract of employment or of any enactment including any order made or direction given thereunder,
 - are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday;
- (b) the expression “**employee**” does not include a workman; and
- (c) the expression “**relevant date**” means in the case of a company being wound up by the Tribunal-
- the date of appointment or first appointment of a provisional liquidator, or
 - if no such appointment was made, the date of the winding up order,
- unless, in either case, the company had commenced to be wound up voluntarily before that date under the Insolvency and Bankruptcy Code, 2016;



38. FRAUDULENT PREFERENCE [SECTION 328]

- (1) **When any transaction may be treated as fraudulent preference:** Where a company has given preference to a person who is-

- **one of the creditors** of the company, or
- **a surety or guarantor** for any of the debts or other liabilities of the company,

and the company does anything or suffers anything done which has the effect of putting that person into a position which, in the event of the company going into liquidation, will be better than the position he would have been in if that thing had not been done prior to 6 months of making winding up application, the Tribunal, if satisfied that, such transaction is a fraudulent preference may order as it may think fit for restoring the position to what it would have been if the company had not given that preference.

(2) **Order of Tribunal may declare a transaction as invalid in case of fraudulent preference:**

If the Tribunal is satisfied that there is a-

- preference transfer of property, movable or immovable, or
- any delivery of goods,
- payment,
- execution made, taken or done by or against a company within 6 months before making winding up application,

the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

The Supreme Court of India in *IDBI Bank Ltd. v. Official Liquidator*, held that a transfer or any other act done in relation to property of a company within a period of six months before commencement of its winding up, shall be deemed to be a fraudulent preference of its creditors and accordingly be held invalid,



39. TRANSFERS NOT IN GOOD FAITH TO BE VOID [SECTION 329]

Any **transfer of property**, movable or immovable, or **any delivery of goods**, made by a company, not being –

- a transfer or delivery made **in the ordinary course of its business**, or
- in **favour of a purchaser** or **encumbrancer in good faith** and for **valuable consideration**,

if made within a period of **one year before the presentation** of a petition for winding up by the Tribunal, shall be **void against the Company Liquidator**.

The High Court of Delhi in *Reserve Bank of India v. JVG Finance Ltd.* passed an order under section 329 of the Companies Act, 2013. In the given case, applicant purchased certain lands from five companies of JVG Group through a authorised signatory and ex-director of JVG Group of companies during period from May 2002 to July 2002.

Entire consideration had been paid in cash allegedly to 'authorized signatory' and agreement to sell was duly registered with appropriate authorities during that period. Thereafter seller companies had gone into liquidation and on 3-9-2002, court directed that prior to affecting any sale, alienation, transfer or creation of any third party interest in any assets of said companies, permission of court should be obtained.

Hence, applicant filed application for grant of permission to complete process of registration/execution of sale deeds.

Court appointed a one man committee (Thareja Committee) for verifying claim of applicant. Thareja committee report concluded that relevant documents, namely, cash book, ledger, etc., had not been placed on record and transaction lacked *bona-fidely*. Further, SFIO also investigated into matter and found that 'authorised signatory' was never authorised to effect said transaction on behalf of five companies and secondly, he had acted in a fraudulent manner and had sought to siphon off funds of said companies by indulging in those transactions. It was held by the court that said transaction was carried out only to whisk away valuable assets of JVG Group of companies which at that time were likely to go under winding up proceedings, hence application filed by applicant was liable to be dismissed and could not be granted permission to complete process of registration/execution of sale deeds of land.



40. CERTAIN TRANSFERS TO BE VOID [SECTION 330]

Any **transfer or assignment** by a company of all its **properties or assets** to **trustees** for the benefit of all its creditors shall be **void**.



41. LIABILITIES AND RIGHTS OF CERTAIN PERSONS FRAUDULENTLY PREFERRED [SECTION 331]

(1) **Determination of rights and liabilities of fraudulently preferred persons:** Where a company is being wound up and anything made, taken or done after the commencement of this Act is invalid under section 328 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then, without prejudice to any rights or liabilities arising, apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as a surety for the debt,-

- to the extent of the mortgage or charge on the property,
- or
- the value of his interest,

} Whichever is less

- (2) **Value of interest shall be determined as at the date of the transaction constituting the fraudulent preference:** The value of the interest of the person preferred under sub-section (1) shall be determined as at the date of the transaction constituting the fraudulent preference, as if the interest were free of all encumbrances other than those to which the mortgage or charge for the debt of the company was then subject.
- (3) **Application to Tribunal:** On an application made to the Tribunal with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Tribunal shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose, may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.
- (4) The provisions of sub-section (3) shall apply *mutatis mutandis* in relation to transactions other than payment of money.



42. EFFECT OF FLOATING CHARGE [SECTION 332]

The provisions of section 332 of the Companies Act, 2013 stop an **insolvent company** from creating floating charge on its assets. Accordingly:

Where a company is being wound up,

- a **floating charge** on the undertaking or property of the company created within the 12 months immediately preceding the commencement of the winding up,

shall, unless it is proved that the company immediately after the creation of the charge was solvent, **be invalid**, except for the amount of any cash paid to the company at the time of, or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of 5% per annum or such other rate as may be notified by the Central Government in this behalf.



43. DISCLAIMER OF ONEROUS PROPERTY [SECTION 333]

- (1) **Disclaiming of certain property by Company Liquidator:** Where any part of the property of a company which is being wound up consists of—

(a) land of any tenure, burdened with onerous covenants;
(b) shares or stocks in companies;
(c) any other property which is not saleable or is not readily saleable by reason of the possessor thereof being bound either to the performance of any onerous act or to the payment of any sum of money; or
(d) unprofitable contracts,

the Company Liquidator may, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto or done anything in pursuance of the contract, with the leave of the Tribunal and subject to the provisions of this section, -

- by writing signed by him, at any time within 12 months after the commencement of the winding up or such extended period as may be allowed by the Tribunal, disclaim the property.

Where the Company Liquidator had not become aware of the existence of any such property within 1 month from the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Tribunal.

- (2) **Determination of rights, interest and liabilities in respect of the property disclaimed:** The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights, interest or liabilities of any other person.
- (3) **Notices to be given to the interested persons:** The Tribunal, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Tribunal considers just and proper.
- (4) **Circumstances in which Company Liquidator is not entitled to disclaim any property:** The Company Liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim and the Company Liquidator has not, within

a period of 28 days after the receipt of the application or such extended period as may be allowed by the Tribunal, give notice to the applicant that he intends to apply to the Tribunal for leave to disclaim, and in case the property is under a contract, if the Company Liquidator after such an application as aforesaid does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) **Power of Tribunal to make order on an application of person who is entitled to benefit of a contract made with company:** The Tribunal may, on the application of any person who is, as against the Company Liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order-

- rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or
- otherwise as the Tribunal considers just and proper, and
- any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) **Power of Tribunal to make order on an application made by any person in certain circumstances:** The Tribunal may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged under this Act in respect of any disclaimed property, and after hearing any such persons as it thinks fit, make an order for the –

- vesting of the property in, or
- the delivery of the property to,
- any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid,
- or a trustee for him, and

on such terms as the Tribunal considers just and proper, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person named therein in that behalf without any conveyance or assignment for the purpose:

Where the property disclaimed is of a **leasehold nature-**

the Tribunal shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee or holder of a charge by way of demise, except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the Tribunal thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in, and security upon the property, and,

If there is no person claiming under the company who is willing to accept an order upon such terms, the Tribunal shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the covenants of the lessee in the lease, free and discharged from all estates, encumbrances and interests created therein by the company.

- (7) **Affected person shall be deemed creditor of company:** Any person affected by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of such effect, and may accordingly prove the amount as a debt in the winding up.



44. TRANSFERS, ETC., AFTER COMMENCEMENT OF WINDING UP TO BE VOID [SECTION 334]

In the case of a winding up by the Tribunal, any disposition of the property including actionable claims, of the company and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up shall, unless the Tribunal otherwise orders, be void.



45. CERTAIN ATTACHMENTS, EXECUTIONS, ETC., IN WINDING UP BY TRIBUNAL TO BE VOID [SECTION 335]

- (1) **Certain attachments, distress, executions or sale put in force to be void:** Where any company is being wound up by the Tribunal,—
- (a) **any attachment, distress or execution** put in force, without leave of the Tribunal **against the estate or effects of the company**, after the commencement of the winding up; or
 - (b) **any sale held**, without leave of the Tribunal of **any of the properties or effects of the company**, after such commencement of the winding up, shall be void.
- (2) **Section not applicable to proceedings for the recovery of any tax/dues:** Nothing in this section shall apply to any proceedings for the **recovery of any tax or impost or any dues** payable to the Government.

The High Court of Madras in *Zylog Systems Ltd. v. Brainhunter Systems Ltd.* passed an order with respect to section 335 of the Companies Act, 2013. Facts states that applicant company 'Zylog' had

several subsidiaries. A Canadian company 'B' was a wholly owned subsidiary of applicant. Applicant was stated to have invested about Canadian Dollars (CDN) 35 million by way of equity and loan in 'B'.

Some time in the year 2010, 'B' approached ICICI Bank, Canada for a term loan and working capital loan. Based on the request by 'B', loans were sanctioned by ICICI Bank, Canada. In relation thereto, ICICI Bank Canada required standby letters of credit (SBLCs) from ICICI Bank India. For purposes of providing such SBLCs, ICICI Bank India required that applicant be involved in the transaction. Therefore, applicant applied for credit facilities and such facilities were sanctioned by ICICI Bank India on the security of a pledge of its 100 per cent shareholding in 'B'.



46. OFFENCES BY OFFICERS OF COMPANIES IN LIQUIDATION [SECTION 336]

Said offences committed by Officers of Companies

- Non disclosure of assets
- Non delivery of property
- Non delivery of books and papers
- Non delivery of information
- Material omissions
- Prevents the production of any book or paper
- Displays fictitious losses or expenses
- False representation

- (1) **If any person, who is or has been an officer of a company which, at the time of the commission of the alleged offence, is being wound up**, by the Tribunal under this Act or which is subsequently **ordered to be wound up** by the Tribunal under this Act—
- (a) does not, to the best of his knowledge and belief, fully and truly **disclose to the Company Liquidator all the property**, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;
 - (b) does not **deliver up to the Company Liquidator**, or as he directs, all such part of the **movable and immovable property** of the company as is in his custody or under his control and which he is required by law to deliver up;
 - (c) does not **deliver up to the Company Liquidator**, or as he directs, all such **books and papers** of the company as are in his custody or under his control and which he is required by law to deliver up;
 - (d) within the 12 months immediately before the commencement of the winding up or at any time thereafter,—

- (i) **conceals any part of the property** of the company to the value of 1,000 rupees or more, or conceals any debt due to or from the company;
- (ii) **fraudulently removes any part of the property** of the company to the value of 1,000 rupees or more;
- (iii) **conceals, destroys, mutilates or falsifies**, or is privy to the concealment, destruction, mutilation or falsification of, **any book or paper** affecting or relating to, the property or affairs of the company;
- (iv) **makes, or is privy to the making of, any false entry** in any book or paper affecting or relating to, the property or affairs of the company;
- (v) **fraudulently parts with, alters or makes any omission in**, or is privy to the fraudulent parting with, altering or making of any omission in, **any book or paper** affecting or relating to the property or affairs of the company;
- (vi) by any **false representation or other fraud, obtains on credit**, for or on behalf of the company, any property which the company does not subsequently pay for;
- (vii) under the **false pretence that the company is carrying on its business, obtains on credit**, for or on behalf of the company, any property which the company does not subsequently pay for; or
- (viii) **pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid** for, unless such pawning, pledging or disposing of the property is in the ordinary course of business of the company;
- (e) makes any **material omission in any statement** relating to the affairs of the company;
- (f) knowing or believing that a **false debt** has been proved by any person under the winding up, fails for a period of one month to **inform** the Company Liquidator thereof;
- (g) after the **commencement of the winding up, prevents the production of any book or paper** affecting or relating to the property or affairs of the company;
- (h) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up, **attempts to account for any part of the property of the company by fictitious losses** or expenses; or
- (i) is **guilty of any false representation or fraud** for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up,

he shall be punishable with **imprisonment** for a term which shall **not be less than 3 years** but which may **extend to 5 years** and with fine which shall **not be less than 1 lakh rupees** but which may **extend to 3 lakh rupees**.

It shall be a good defence if the accused proves that he had no intent to defraud or to conceal the true state of affairs of the company or to defeat the law.

- (2) **Person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in circumstances under sub-clause (viii) of clause (d) of sub-section (1) shall be punishable:** Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-clause (viii) of clause (d) of sub-section (1), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which shall not be less than 3 years but which may extend to 5 years and with fine which shall not be less than 3 lakh rupees but which may extend to 5 lakh rupees.

Explanation-For the purposes of this section, the expression “**officer**” includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.



47. STATEMENT THAT COMPANY IS IN LIQUIDATION [SECTION 344]

- (1) **Statement that company is being of wound up to be disclosed:** Where a company is being wound up, whether by
- the Tribunal or
 - voluntarily,
- every invoice, order for goods or business letter issued-
- by or on behalf of the company or
 - a Company Liquidator of the company, or
 - a receiver or
 - manager of the property of the company,
- being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.
- (2) **If a company contravenes the above provisions,** the company, and every officer of the company, the Company Liquidator and any receiver or manager, who willfully authorises or permits the non-compliance, shall be punishable with fine which shall **not be less than fifty thousand rupees** but which may **extend to three lakh rupees**.

Example 4: The Tribunal has initiated the process of winding up against RSJ Ltd. The goods in stock of RSJ Ltd are sold in the normal course of business to PQT Ltd. The liquidator appointed for carrying out the process of winding up compels the management of RSJ Ltd to write ‘The company is being wound up’ on the sales invoice issued by RSJ Ltd. The management opposes the same as

the transaction is in normal course of business. As per the terms of the Section 344 of the Companies Act, 2013, the statement suggested by liquidator is mandatory and must be given due effect otherwise it shall be considered as violation.



48. BOOKS AND PAPERS OF COMPANY TO BE EVIDENCE [SECTION 345]

Books and Papers to be *prima facie* evidence of truth of all matters: Where a company is being wound up, all books and papers of the company and of the Company Liquidator shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be recorded therein.



49. INSPECTION OF BOOKS AND PAPERS BY CREDITORS AND CONTRIBUTORIES [SECTION 346]

- (1) **Inspection of Books and Papers:** At any time after the making of an order for the winding up of a company by the Tribunal, any creditor or contributory of the company may inspect the books and papers of the company only in accordance with, and subject to such rules as may be prescribed.
- (2) **No restrictions on the rights of certain persons:** Nothing contained in sub-section (1) shall exclude or restrict any rights conferred by any law for the time being in force—
 - (a) on the Central Government or a State Government;
 - (b) on any authority or officer thereof; or
 - (c) on any person acting under the authority of any such Government or of any such authority or officer.



50. DISPOSAL OF BOOKS AND PAPERS OF COMPANY [SECTION 347]

- (1) **Disposal of books and papers as per the directions of Tribunal:** When the affairs of a company have been completely wound up and it is about to be dissolved, the books and papers of such company and those of the Company Liquidator may be disposed of in such manner as the Tribunal directs.
- (2) **No responsibility to devolve after expiry of five years:** After the expiry of five years from the dissolution of the company, no responsibility shall devolve-
 - on the company,
 - the Company Liquidator, or
 - any person

to whom the custody of the books and papers has been entrusted, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

- (3) The Central Government may, by rules,—
- (a) **prevent for such period** as it thinks proper **the destruction of the books and papers** of a company which has been wound up and of its Company Liquidator; and
 - (b) **enable any creditor or contributory of the company to make representations** to the Central Government in respect of the matters specified in clause (a) and **to appeal to the Tribunal** from any order which may be made by the Central Government in the matter.
- (4) **Punishment for contravention:** If any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable with fine which may extend to 50,000 rupees.



51. COMPANY LIQUIDATION DIVIDEND AND UNDISTRIBUTED ASSETS ACCOUNT [SECTION 352]

- (1) **Unpaid money in the hands of liquidator to be deposited forthwith into a separate special account:** Where any company is being wound up and the liquidator has in his hands or under his control any money representing—
- (a) **dividends payable to any creditor** but which had remained unpaid for 6 months after the date on which they were declared; or
 - (b) **assets refundable to any contributory** which have remained undistributed for 6 months after the date on which they become refundable,
- the liquidator shall forthwith deposit the said money into a separate special account to be known as the Company Liquidation Dividend and Undistributed Assets Account maintained in a scheduled bank.
- (2) **Transfer of money into the Company Liquidation Dividend and Undistributed Assets Account:** The liquidator shall, on the dissolution of the company, pay into the Company Liquidation Dividend and Undistributed Assets Account any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution.
- (3) **Furnishing of statement of all sums to Registrar with full particulars:** The liquidator shall, when making any payment referred to in sub-sections (1) and (2), furnish to the Registrar, a statement in the prescribed form, setting forth, in respect of all sums included in such payment,
- the nature of the sums,
 - the names and last known addresses of the persons entitled to participate therein,

- the amount to which each is entitled,
 - the nature of his claim thereto, and
 - such other particulars as may be prescribed.
- (4) **Entitlement of Liquidator to secure receipt from scheduled bank for any money paid:** The liquidator shall be entitled to a receipt from the scheduled bank for any money paid to it, and such receipt shall be an effectual discharge of the Company Liquidator in respect thereof.
- (5) **Procedure to be followed In case of voluntary winding up of company:** Where a company is being wound up voluntarily, the Company Liquidator shall, when filing a statement as per section 348,
- indicate the sum of money which is payable, during the six months preceding the date on which the said statement is prepared, and shall, within 14 days of the date of filing the said statement;
 - pay that sum into the Company Liquidation Dividend and Undistributed Assets Account.
- (6) **Application to Registrar by a person claiming to be entitled to any money paid into Company Liquidation Dividend and Undistributed Assets Account:** Any person claiming to be entitled to any money paid into the Company Liquidation Dividend and Undistributed Assets Account, whether paid in pursuance of this section or under the provisions of any previous company law
- may apply to the Registrar for payment thereof, and
 - the Registrar, if satisfied that the person claiming is entitled, may make the payment to that person of the sum due.
- Period of settlement of claim:** Provided that the Registrar shall settle the claim of such person within a period of 60 days from the date of receipt of such claim, failing which the Registrar shall make a report to the Regional Director giving reasons of such failure.
- (7) **Transfer of unclaimed money paid into company Liquidation Dividend and Undistributed Assets Account to General Revenue account of CG:** Any money paid into the Company Liquidation Dividend and Undistributed Assets Account in pursuance of this section, which remains unclaimed thereafter -
- for a period of 15 years,
 - shall be transferred to the General Revenue Account of the Central Government,
 - but a claim to any money so transferred may be preferred under sub-section (6) and shall be dealt with as if such transfer had not been made and the order, if any, for payment on the claim will be treated as an order for refund of revenue.

(8) **Contravention by Liquidator:** Any liquidator retaining any money which should have been paid by him into the Company Liquidation Dividend and Undistributed Assets Account under this section shall—

- (a) **pay interest on the amount so retained at the rate of 12% per annum** and also pay such penalty as may be determined by the Registrar:

Provided that the Central Government may in any proper case remit either in part or in whole the amount of interest which the liquidator is required to pay under this clause;

- (b) **be liable to pay any expenses** occasioned by reason of his default; and
- (c) **where the winding up is by the Tribunal**, also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, to be disallowed, and to be removed from his office by the Tribunal.

Example 5: A Ltd is getting wound up by the Tribunal u/s 271 of the Companies Act, 2013. Mr. P (Liquidator) had a sum of ₹ 45,00,000 which was deposited in Company Liquidation Dividend and Undistributed Assets Account. Mr. P was given a receipt of the same. Mr. X applied to the Registrar on 1st October, 2022 claiming ₹ 12,00,000 out of such amount. After verifying the correctness of the claim, the same was settled on 11th November, 2022. Balance amount remained unclaimed for a period of 15 years and hence was transferred to the General Revenue Account of the Central Government. It was noted that a sum of ₹ 6,00,000 was retained by Mr. P which should have been deposited by him into Company Liquidation Dividend and Undistributed Assets Account. Hence interest @ 15% p.a. was levied on Mr. P.

In the given case, Mr. X has made an application to the registrar for claiming ₹ 12,00,000 which is in accordance with the law. There is no need to submit any application to the Tribunal. The claim has been settled on 11th November, 2022 which is within 60 days from the date of receipt of the application (*i.e.* 1st October, 2022). The unclaimed amount has been transferred to the General Reserve Account of the Central Government after the amount has remained unclaimed for a period of 15 years which is also in accordance with the law. Interest levied @ 15% p.a. is in contravention of Section 352. Here interest @ 12% p.a. should be levied on Mr. P for his failure to deposit ₹ 6,00,000 into the Company Liquidation Dividend and Undistributed Assets Account.

Example 6: Mr. T is appointed as the Official Liquidator for carrying out the winding up process of FSM Ltd. The company has been declared wound up as on 01.06.2022. Rupees Two lakhs fifty thousand representing the amount unpaid to the creditors were not deposited into Company Liquidation Dividend and Undistributed Assets Account until 30.09.2022 by Mr. T. As per Section 352, the amount can be retained up to the period of six months. And since, six months had not elapsed in the above situation; no contravention is committed by Mr. T and so no action can be taken against him.



52. LIQUIDATOR TO MAKE RETURNS, ETC. [SECTION 353]

- (1) **Company Liquidator to make good the default within the specified time:** If any Company Liquidator who has made any default-
- in filing, delivering or making any return, account or other document, or
 - in giving any notice which he is by law required to file, deliver, make or give,
- fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Tribunal may, on an application made to it by any contributory or creditor of the company or by the Registrar, make an order directing the Company Liquidator to make good the default within such time as may be specified in the order.
- (2) **Cost to be borne by Company Liquidator:** Any order under sub-section (1) may provide that all costs of, and incidental to, the application shall be borne by the Company Liquidator.
- (3) **This section not to prejudice any other enactment imposing penalty on Company Liquidator:** Nothing in this section shall prejudice the operation of any enactment imposing penalties on a Company Liquidator in respect of any such default as aforesaid.



53. MEETINGS TO ASCERTAIN WISHES OF CREDITORS OR CONTRIBUTORIES [SECTION 354]

- (1) **Ascertainment of wishes of Creditors or Contributories:** In all matters relating to the winding up of a company, the Tribunal may—
- (a) **have regard to the wishes of creditors or contributories** of the company, as proved to it by any sufficient evidence;
 - (b) if it thinks fit for the purpose of ascertaining those wishes, **direct meetings of the creditors or contributories** to be called, held and conducted in such manner as the Tribunal may direct; and
 - (c) **appoint a person** to act as Chairman of any such meeting, and
 - (d) **to report the result** thereof to the Tribunal.
- (2) **While ascertaining the wishes of creditors,** regard shall be had to the value of each debt of the creditor.
- (3) **While ascertaining the wishes of contributories,** regard shall be had to the number of votes which may be cast by each contributory.



54. COURT, TRIBUNAL OR PERSON, ETC., BEFORE WHOM AFFIDAVIT MAY BE SWORN [SECTION 355]

- (1) **Court, Tribunal or Person before whom Affidavit may be sworn:** Any affidavit required to be sworn under the provisions, or for the purposes, of this Chapter may be sworn—
- in India before any court, Tribunal, judge or person lawfully authorised to take and receive affidavits; and
 - in any other country before any court, judge or person lawfully authorised to take and receive affidavits in that country or before an Indian diplomatic or consular officer.

Any affidavit required to be sworn under Chapter XX, may be sworn

in India, before

- any Court
- Tribunal
- Judge, or
- person lawfully authorised to take and receive affidavits;

in any other country, before

- any Court
- Judge or
- person lawfully authorised to take and receive affidavits
 - in that country or
 - before an Indian Diplomatic or Consular Officer

- (2) **Judicial notice of the seal, stamp or signature:** All Tribunals, Judges, Justices, Commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any such Court, Tribunal, Judge, person, Diplomatic or Consular Officer, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Chapter.



55. POWERS OF TRIBUNAL TO DECLARE DISSOLUTION OF COMPANY VOID [SECTION 356]

- (1) **Power of Tribunal to declare dissolution to be void at any time within two years:** Where a company has been dissolved, the Tribunal may -
- at any time within two years of the date of the dissolution,

- on application by the Company Liquidator of the company or
- by any other person who appears to the Tribunal to be interested,

make an order, upon such terms as the Tribunal thinks fit, declaring the dissolution to be void, and thereupon such proceedings may be taken as if the company had not been dissolved.

- (2) **Forwarding of certified copy of order of Tribunal with Registrar:** The Tribunal shall—
- (a) forward a copy of the order, within thirty days from the date thereof, to the Registrar who shall record the same; and
 - (b) direct the Company Liquidator or the person on whose application the order was made, to file a certified copy of the order, within thirty days from the date thereof or such further period as allowed by the Tribunal, with the Registrar who shall record the same.



56. COMMENCEMENT OF WINDING UP BY TRIBUNAL [SECTION 357]

The winding up of a company by the Tribunal under this Act shall be deemed to commence at the time of the presentation of the petition for the winding up.



57. EXCLUSION OF CERTAIN TIME IN COMPUTING PERIOD OF LIMITATION [SECTION 358]

Notwithstanding anything in the Limitation Act, 1963, or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a company which is being wound up by the Tribunal, the period from the date of commencement of the winding up of the company to a period of one year immediately following the date of the winding up order shall be excluded.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. A petition of winding up was filed against Raman Technology Ltd. under section 272 of the Companies Act, 2013. The Tribunal appointed a Company Liquidator and passed a winding up order on 20th of January 2023. As per the requirement of the Companies Act, 2013, state the correct statement with respect to submission of the Liquidator's report to the Tribunal:
 - (a) Liquidator shall submit its report to Tribunal within 30 days of its appointment by Tribunal.
 - (b) Liquidator shall submit its report to Tribunal within 45 days from winding up order.
 - (c) Liquidator shall submit its report to Tribunal within 60 days from winding up order.
 - (c) Liquidator shall submit its report to Tribunal within 90 days of its appointment by Tribunal.
2. The order for the winding up of a company shall operate in favour of:
 - (a) All contributories of the company
 - (b) All the creditors of the company
 - (c) All the contributories and the creditors of the company
 - (d) The Central/State Government
3. Mr. Raghav was appointed as Provisional Liquidator for X Ltd. against which an application for winding up was filed before the Tribunal. It is noteworthy that Mr. Raghav was having a shareholding in the same company. Enumerate the legal position of Mr. Raghav in the said condition in the light of the provisions related to its appointment in X Ltd. as per the Companies Act, 2013:
 - (a) Mr. Raghav cannot be appointed in X Ltd. because of having a shareholding in the same company.
 - (b) Mr. Raghav can be appointed in X Ltd. irrespective of his interest in the company because of his prior shareholding in the company before appointment.
 - (c) Mr. Raghav can be appointed in X Ltd. with the prior intimation to the Tribunal.
 - (d) Mr. Raghav can be appointed in X Ltd. by disclosing his shareholding by filing of declaration within 7 days from the date of his appointment by the Tribunal.
4. State, which amongst the following grounds, is incorrect for removal of the Provisional Liquidator or the Company Liquidator, as liquidator of the company:
 - (a) Independent working having no conflict of interest.

- (b) *Professional incompetence or failure to exercise due care and diligence in performance of the powers and functions*
- (c) *Misconduct*
- (d) *Fraud or misfeasance*
5. *The Periodical reports made by the Company Liquidator to the Tribunal with respect to the progress of the winding up, to be submitted at the end of each, may be reviewed by on an application by*
- (a) *Quarter, Tribunal, Central Government*
- (b) *Half Year, Tribunal, Company Liquidator*
- (c) *Financial Year, Advisory Committee, Tribunal*
- (d) *Quarter, Tribunal, Company Liquidator*

Descriptive Questions

1. *Info-tech Overtrading Ltd. was ordered to be wound up compulsory by an order dated 10th March, 2022 by the Tribunal. The official liquidator who had taken control of the assets and other records of the company had noticed the following:*

The Managing Director of the company had sold certain properties belonging to the company to a private company in which his son was interested causing loss to the company to the extent of INR 50 lakhs. The sale took place on 15th October, 2021.

Examine what action the official liquidator can take in this matter, having regard to the provisions of the Companies Act, 2013.

2. *XYZ Limited is being wound up by the Tribunal. All the assets of the company have been charged to the company's bankers to whom the company owes ₹ 5 crores. The company owes following amounts to others:*

- *Dues to workers – ₹ 1,25,00,000*
- *Taxes Payable to Government – ₹ 30,00,000*
- *Unsecured Creditors – ₹ 60,00,000*

You are required to compute with the reference to the provisions of the Companies Act, 2013 the amount each kind of creditors is likely to get if the amount realized by the official liquidator from the sale of secured assets and available for distribution among creditors is only ₹ 4,00,00,000/-.

3. *Suman Info-tech Ltd. was ordered to be compulsory wound up by an order dated 10th March, 2022 by the Tribunal. The official liquidator who had taken control of the assets and other records of the company had noticed that:*

- (i) *One of the contributories whose calls were pending to be paid is about to leave India to evade payment of calls and;*
- (ii) *A person having books of accounts of the company in his possession might abscond to avoid examination of books of account in respect of the affairs of the company.*

Apprehending such possibilities, Tribunal detained such contributory for next 6 months disallowing him to leave India as well as arrested and seized books of account from the person who might possibly abscond to avoid examination of the affairs of the company.

Referring to the provisions of Companies Act, 2013, answer the following in the current scenario:

- (i) *What is the validity of Tribunal's order for detention of contributory disallowing him to leave India?*
 - (ii) *Is it correct on Tribunal's part to arrest and seize books of accounts from the person planning to abscond to avoid examination of books of accounts in respect of the affairs of the company?*
4. *Due to an unprecedented flood, all the fixed assets of a Company were damaged extensively beyond renovation or repair. The costs of replacement of assets were huge and the sum insured on the fixed assets did not cover all the assets. Therefore, the operations of the Company were permanently discontinued. Meanwhile, based on a winding-up petition filed by the secured creditors, the High Court passed a winding-up order. The workers of the Company opposed the winding-up petition and also filed an appeal against the winding-up order. The workers were not sure whether their appeal would be heard in the winding-up proceedings. Examine, under the provisions of the Companies Act, 2013, whether the appeal filed by the workers would succeed and their dues / interest will be protected in priority?*
5. *Clarks Clocks Limited, has made default in filing financial statements and annual returns for a continuous period of four financial years ending on 31st March, 2022. The Registrar of Companies having jurisdiction approached the Central Government to accord sanction to present a petition to Tribunal (NCLT) for the winding up of the company in accordance with the above ground under Section 272 of the Companies Act, 2013.*
- Examine the validity of the action of ROC, keeping in view the relevant provisions of the Companies Act, 2013. State the time limit for passing an order by the Tribunal under Section 273 of the Companies Act, 2013?*

ANSWERS

Answer to Multiple Choice Questions

1.	c	2.	c	3.	d	4.	a	5.	d
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Answer to Descriptive Questions

1. The official liquidator can invoke the provisions contained in Section 328 of the Companies Act, 2013 to recover the assets of the company so sold. According to Section 328, if the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

Since in the present case, the sale of immovable property took place on 15th October, 2021 and the company went into liquidation on 10th March, 2022 *i.e.*, within 6 months before the winding up of the company and since the sale has resulted in a loss of INR 50 lakhs to the company.

The official liquidator will be able to succeed in proving the case under Section 328 by way of fraudulent preference as the property was sold to a private company in which the son of the Managing Director was interested.

Hence, the transaction made will be regarded as invalid and the position will be restored as if no transfer of immovable property had been made.

2. Section 326 of the Companies Act, 2013 talks about the overriding preferential payments to be made from the amount realized from the assets to be distributed to various kind of creditors. According to the proviso given in section 326 the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen to the extent of their portion.

$$\text{Workmen's Share to Secured Assets} = \frac{\text{Amount Realized} * \text{Workmen's Dues}}{\text{Workmen's Dues} + \text{Secured Loan}}$$

$$\text{Workmen's Share to Secured Assets} = \frac{4,00,00,000 * 1,25,00,000}{1,25,00,000 + 5,00,00,000}$$

$$4,00,00,000 * \frac{1}{5}$$

$$\text{Workmen's Share to Secured Assets} = 80,00,000$$

Amount available to secured creditor is ₹ 400 Lakhs – 80 Lakhs = 320 Lakhs

Hence, no amount is available for payment of government dues and unsecured creditors.

3. According to Section 301 of the Companies Act, 2013, at any time either before or after passing a winding up order, if the Tribunal is satisfied that

- a contributory or
- a person having property, accounts or papers of the company in his possession

is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company,

the Tribunal may cause—

- (a) the contributory to be detained until such time as the Tribunal may order; and
- (b) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.

In the instant case, by considering the above provisions:

- (i) The Tribunal's order for detention of contributory for next 6 months disallowing him to leave India, is valid.
- (ii) It is correct on the part of Tribunal to arrest and seize books of accounts from the person planning to abscond to avoid examination of books of accounts in respect of the affairs of the company.

4. According to section 279 of the Companies Act, 2013, when a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose.

It is further provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

However, the above provision shall not apply to any proceeding pending in appeal before the Supreme Court or a High Court.

According to section 325/326/327 of the Companies Act, 2013, in the winding up of a company under this Act, the workmen's dues shall be paid in priority to all other debts ranking *pari passu* with secured creditors.

As per the facts of the case, the High Court has already passed a winding up order of the company. Hence, the workmen can appeal against the winding up order but only with the leave of the Tribunal and subject to such terms as the Tribunal may impose. Further, the dues/ interest of the workmen will be protected in priority as workmen's dues shall be paid in priority to all other debts ranking *pari passu* with secured creditors.

5. **Validity of ROC's action:** According to Section 271(d) of the Companies Act, 2013, a Company may, on a petition under Section 272, be wound up by the Tribunal, if the Company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years.

In the instant case, the move by RoC to present a petition to Tribunal for the winding up of Clarks Clocks Limited is not valid as the Company has made default in filing financial statements and annual returns for a continuous period of four financial years ending on 31st March, 2022.

Time limit for passing of an Order under section 273: An order under section 273 of the Act shall be made within ninety days from the date of presentation of the petition.

