

ch-9 winding up by Tribunal.

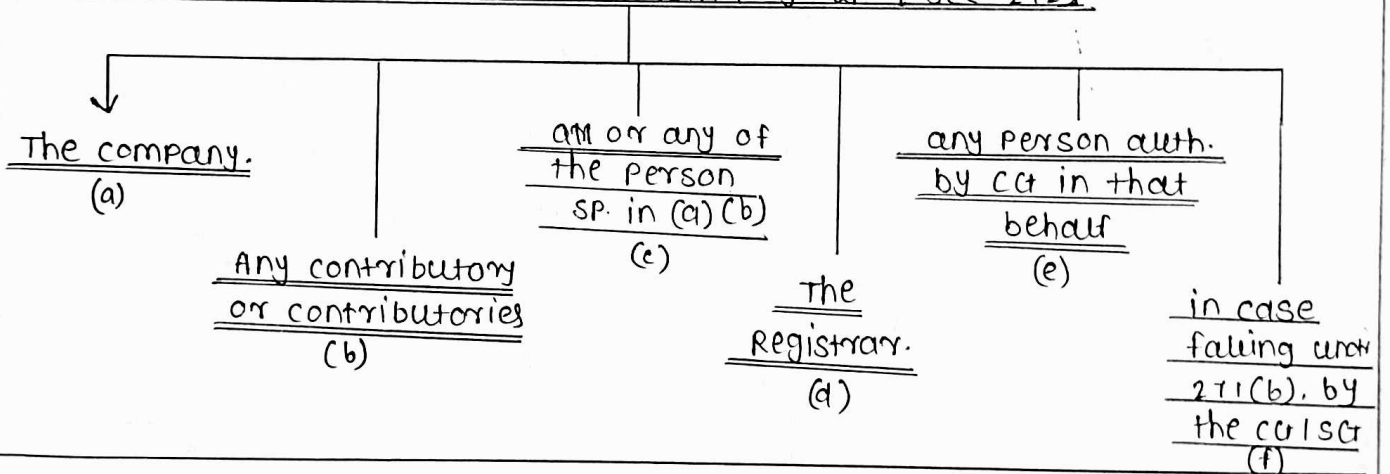
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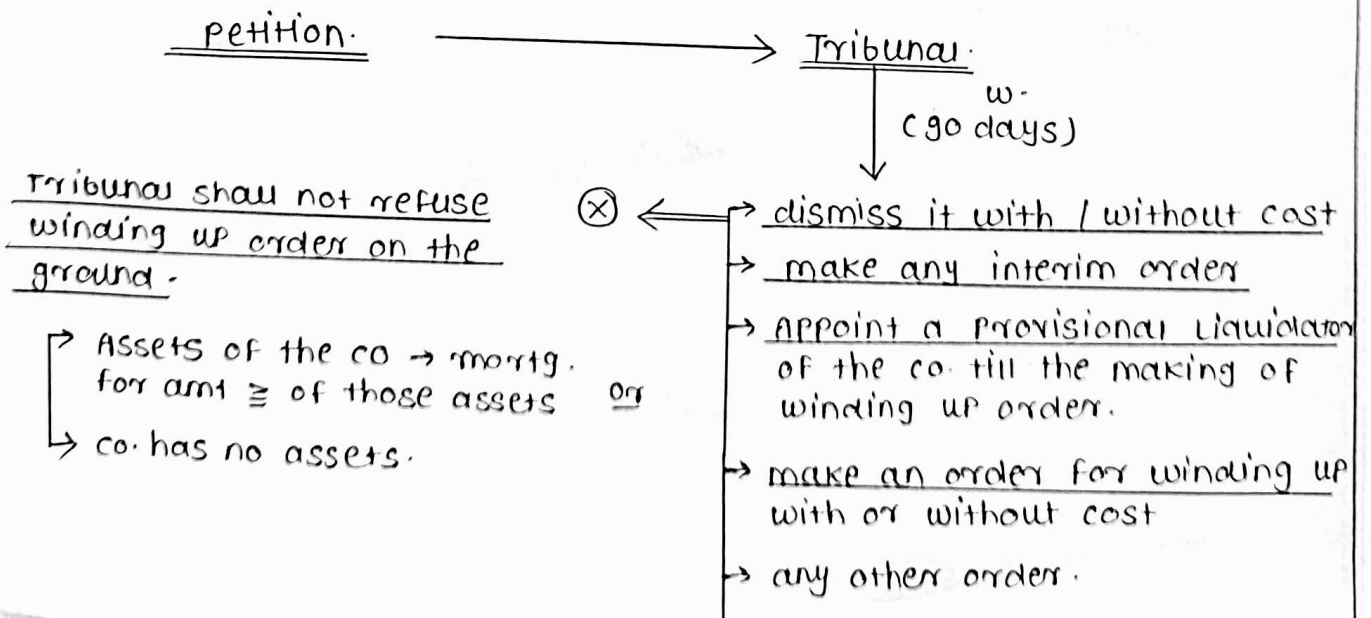
⇒ Grounds of winding up by Tribunal - [sec. 271]

- By Special Resolution.
- Co. has acted against the interests of the sovereignty and integrity of India, sec. of the state, friendly relⁿ-Foreignst
- If the tribunal is of the opinion that a company's affairs were conducted fraudulently or for unlawful purpose or its formation / management involved fraud or misconduct it may order winding up on application by the Reg / auth^r / pers.
- default in filing financial statements and annual report returns for imm. Pre 5 consec. years.
- If the tribunal is of the opinion that it is just & equitable that the co. should be wound up.

⇒ who may file petition for winding up [sec. 272]

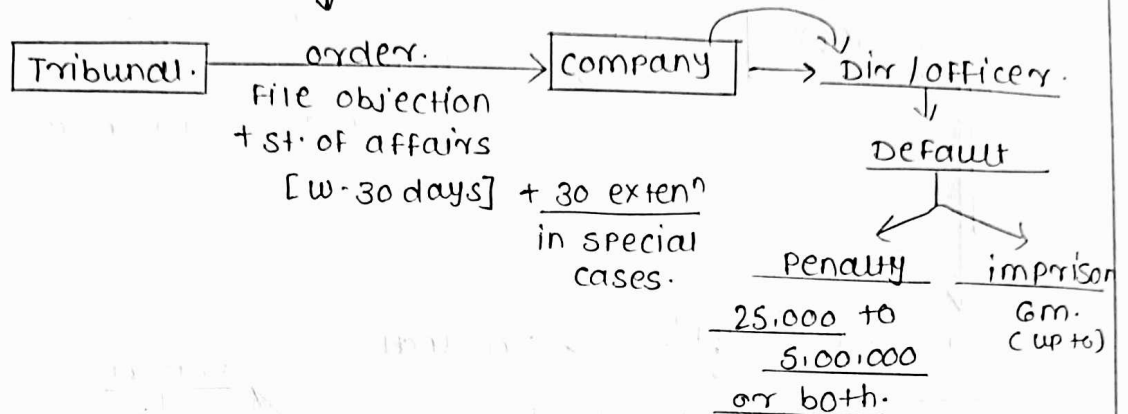


⇒ Powers of Tribunal [sec. 273]

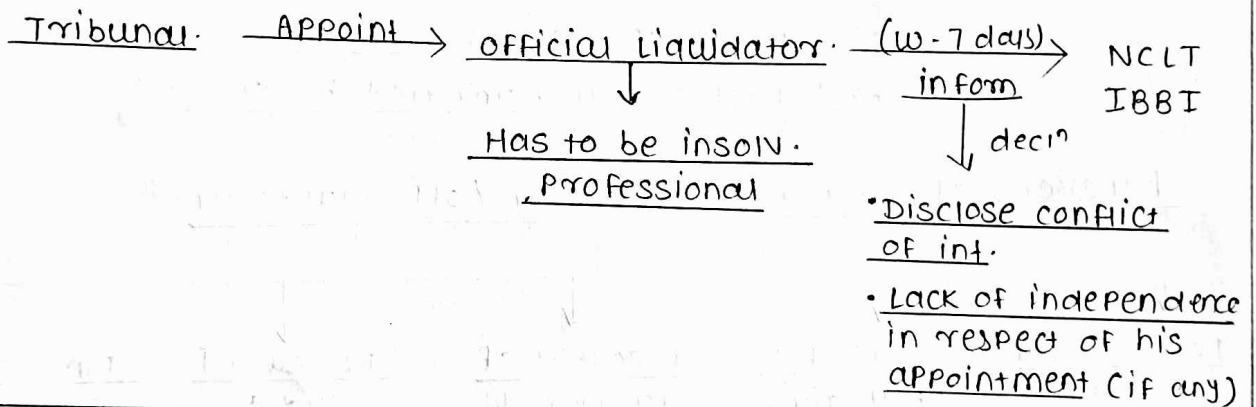


⇒ Filing statement of Affairs of the company. [sec. 274]

IF the tribunal is satisfied that, winding up is to be made



⇒ company Liquidators and their Appointments. [sec. 275]



⇒ Removal and Replacement of Liquidator. [sec. 276]

• Tribunal may remove Provisional liquidator or company liquidator on following grounds :-

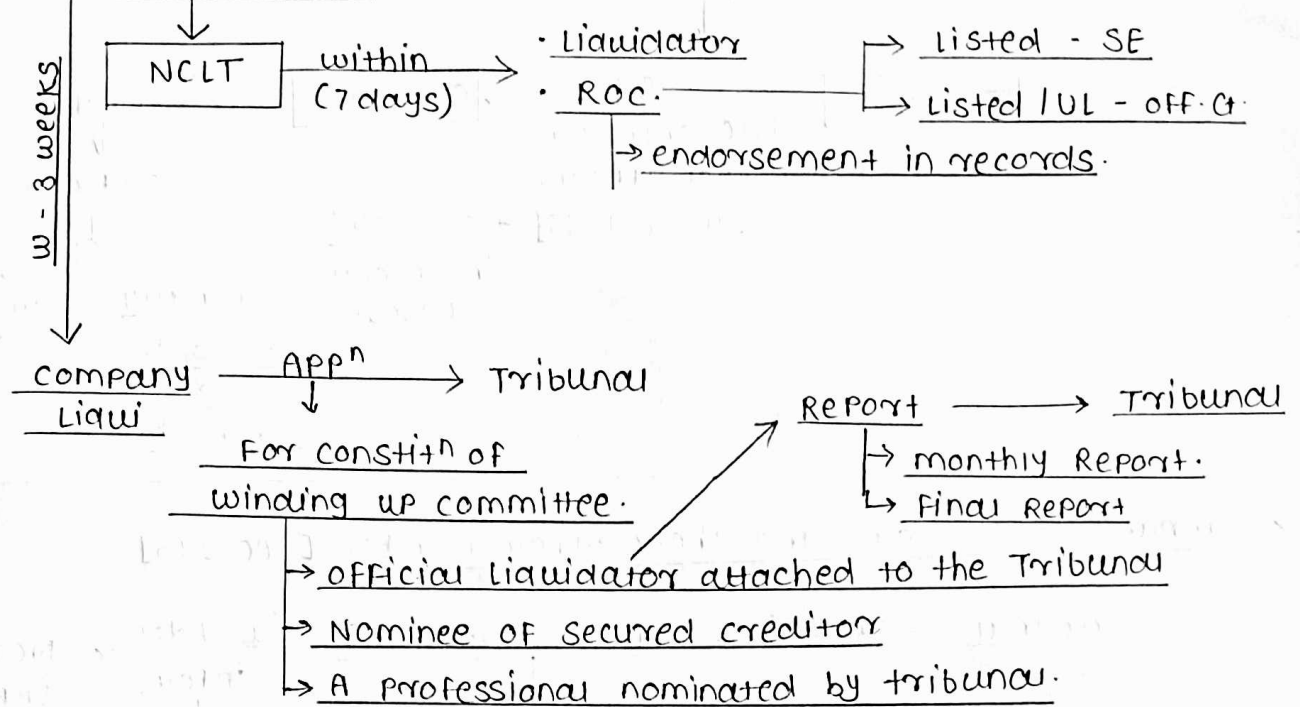
- Misconduct.
- Fraud or misfeasance.
- professional incompetence or failure to exercise due care and diligence in performance of the power and function.
- Inability to act as provisional liquidator
- conflict of int. or lack of independence during the term of his appointment that would justify removal

• In the event of death, Resign or removal of the liquidator

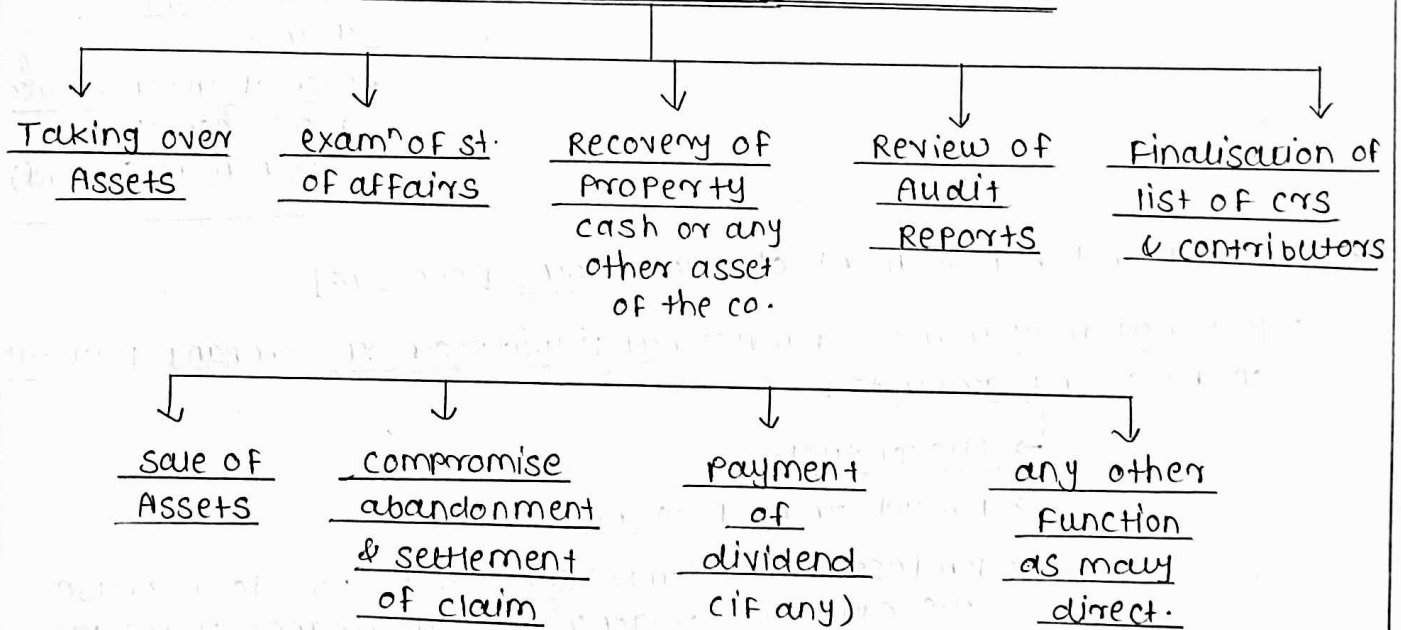
→ Tribunal may transfer the work assigned to him to another co. liquidator for reasons to be recorded in writing

→ Intimation For winding up :- [sec. 277]

• winding up order.



Functions of company liquidator./off. liquidator.



[sec - 278]

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

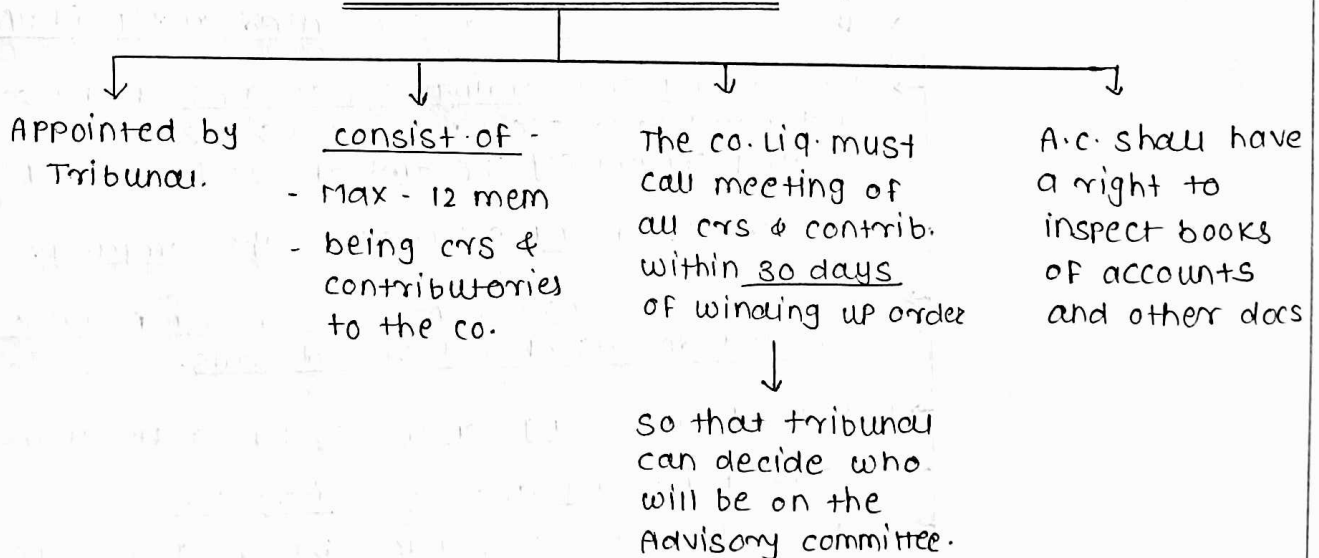
⇒ Direction of Tribunal on Report of co. Liquidator - [sec. 282]

- Tribunal shall fix a time for completing the entire winding-up proceeding on considⁿ of Report submitted by co. Lid.
- Tribunal will decide based on the liquidator's report, whether continuing the winding up proceeding is beneficial if not it can revise the time limit within which entire procee. shall be completed and the company be dissolved.
- Tribunal can after hearing creditors, contributors etc order the sale of the co. or its assets as a going concern.
- IF Fraud is Found, Tribunal can direct the liquidator to file a criminal complaint against those involved.

⇒ Custody of company's properties - [sec. 283]

- when a winding up order is passed, the co. liquidator or pro. Lid. must take custody and control of all company's Assets incl. Property, actionable claims, to protect and preserves the properties of the co. which shall be in the custody of the tribunal.

⇒ Advisory committee - [sec. 287]

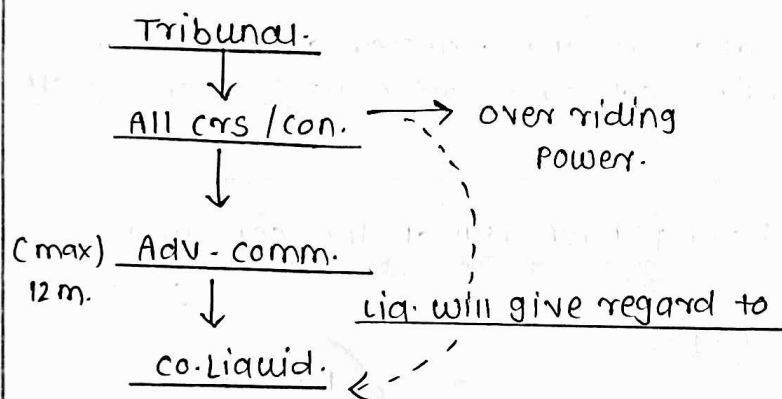


→ The meeting of Advisory committee shall be chaired by the company liquidator.

⇒ Powers and Duties of company Liquidator. - [sec. 290]

- To carry on the business of the company.
- To sell the whole of the undertaking of the co. as a going concern
- To raise any money required on the sec. of the asset of the co.
- To inspect records and returns of the co.
- To institute or defend any suit, prosecution or other legal proceeding, civil or criminal in the name or on behalf of co.
- To sell the immovable and movable property & actionable claims of the co by public auction or private contract.
- To do all acts and to execute, in the name and on behalf of the co. all deed receipts and other docs.

⇒ Exercise and control of company Liquidator's power. [sec. 292]



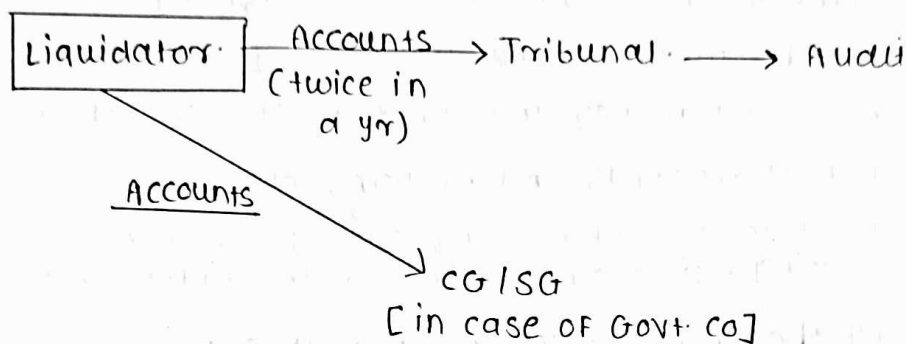
⇒ professional assistance to company liquidator.

• liquidator with the sanction of the tribunal, appoint one or more CA or CS or CMA or legal practitioners to assist him in the perform. of his duties and functions under this Act.

• The co. liquidator. -

- | | |
|----------------------------------|--|
| Suo moto | → may summon meeting of crs / contributories whenever <u>he thinks fit.</u> |
| on req.
(1/10 th) | → at such times as the crs or contributories as the case may be by resolution, direct or whatever request in writing by do so by not less <u>than 1/10th in value of crs.</u> |

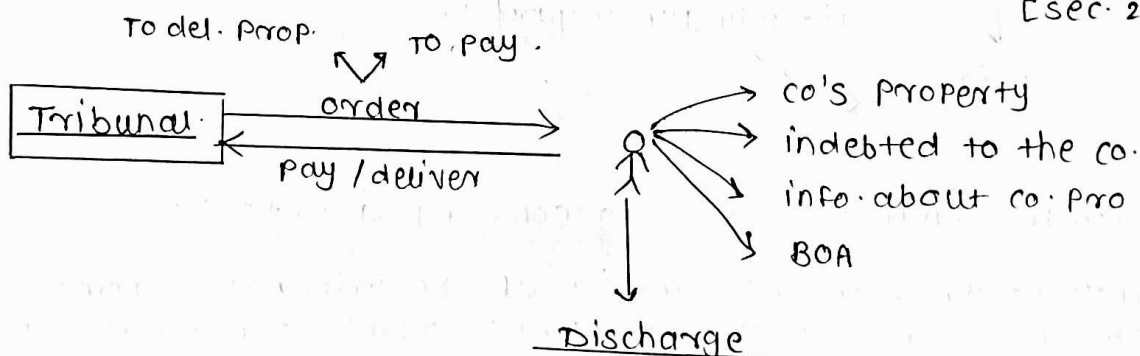
⇒ Audit of company liquidator's Account - [sec. 294]



⇒ Payment of Debt by contributory and extent of set off - [sec. 295]

- The tribunal may in case of an unlimited co. allow contributory by way of set off money owed to them by the co. from any independent dealing or contract but not amt. due as dividend or profits.
- In case of limited co. allow to any director or manager whose liability is unlimited, or to his estate, such set off

⇒ Power to summon person having property of the company - [sec. 299]



⇒ Examination of Promoters, Directors etc. [sec. 300]

- Upon the report of co. liq. tribunal stating that in his opinion a fraud has been committed by any person, the tribunal may after considering the report, direct that such person or officer shall attend before the tribunal.
- A person ordered to be examined under this sec.
 - shall before his examinⁿ furnished at his own cost with a copy of the report of the co. liq. and
 - may at his own cost employ representatives (ca/acs/lcm)

⇒ Dissolution of company by Tribunal. - [sec. 302]

↓
when the affairs of the co. completely wound up

↓
co. liquidator → dissolⁿ appⁿ → Tribunal

↓
opinion → order of the dissolⁿ of the co. should be made acc. to circumst.

↓
Roc. ← pass (w-30 D) Make an order of dissolution

↓
3 contingencies for dissolⁿ of co.

- when co. has been completely wound up.
- Lid. cannot proceed with the winding up of the co. for want of fund & asset.
- Lid. cannot proceed with the winding up of the co. for any other reason

⇒ Arrest of person trying to leave India or abscond. [sec. 301]

- The tribunal if satisfied that a contributory or a person having property is about to leave India or otherwise to abscond or is about to remove or conceal any of his property.

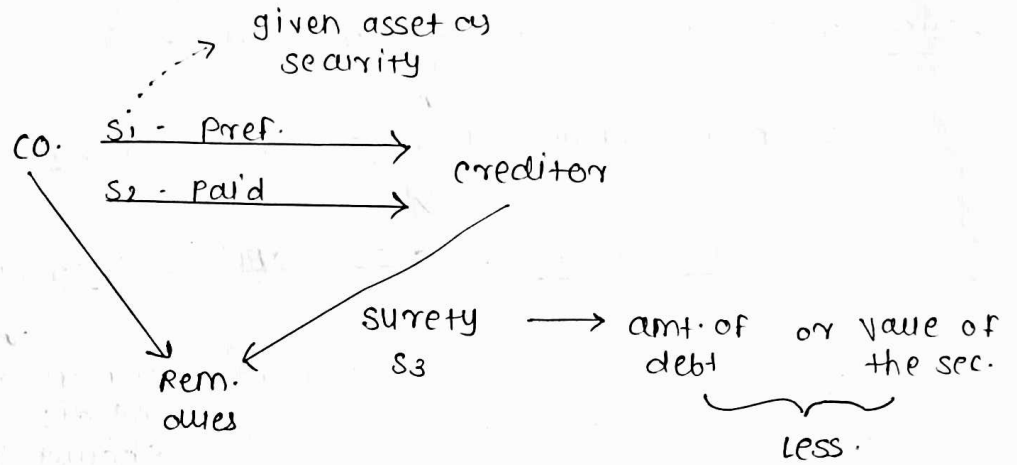
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The tribunal may cause -

- The contributory to be detained and
- his books / papers / movable property to be seized

⇒ Fraudulent preference. - [sec. 328]

- within 6m preceding winding up application
- any unsecured creditor → converted → sec. cr.
- NCLT will pass the order to restore back the position

[sec - 331]



⇒

co. winding up Rules, 2020

271 (5 cases)

winding up by tribunal

summary winding up

→ winding up CG without involving NCLT
for co's smaller in size.

→ which co. are eligible for summary winding up?

• Book value of the assets → up to 1 cr.

and

- outstanding deposit up to 25 L
- ols loans up to 50 L
- Turnover up to 50 L
- paid up cap - up to 1 cr.