At the end of this Chapter, you will be able to understand:

- Introduction to Winding Up
- Winding up by the Tribunal
- Procedure for winding up to be monitored by the NCLT
- Official Liquidator
- Summary Procedure for Liquidation
1. INTRODUCTION

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

Chapter XX of the Companies Act, 2013 on Winding up is comprised of four parts.

Introductory (Section 270)

Part I: Winding up by the tribunal (Section 271-303),

Part II: Voluntary winding up (Section 304-323), Omitted

Part III: Provisions applicable to every mode of winding up (Section 324-358),

Part IV: Official Liquidators (Section 359-365),

Following are the important aspects of the chapter of winding up-

(i) This chapter contains provisions for winding up of companies registered under the Act and under the previous companies’ laws.

(ii) This chapter XX is broadly discussed here under four headings, Introductory section, Part I regulates the process of winding up by the tribunal, Part II directs the process for voluntary winding up, Part III contains provisions which are applicable to every mode of winding up and Part IV provides for a summary procedure for winding up for companies having assets of a book value not exceeding Rupees 1 crore.

(iii) This chapter also provides panel of professionals as company liquidators, who carry out the responsibilities of a liquidator in the winding up of company.

(iv) Part II of this chapter deals with the voluntary winding up of companies. This part had been omitted in the Companies Act, 2013 vide enforcement of the Insolvency and Bankruptcy
Code, 2016. So now this part regulating the voluntary winding up is regulated by the Insolvency and Bankruptcy Code, 2016.

2. MODES OF WINDING UP [SECTION 270]

The provisions of Part I 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,—

(a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;

(b) 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;

(c) 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.
4. PETITION FOR WINDING UP [SECTION 272]

(1) Petition may be presented by:

- The Company
- Any Contributory or Contributories
- All or any of the persons specified in clauses (a) and (b)
- The registrar
- Any person authorized by Central Government in that behalf
- In case affairs of the company conducted in a Fraudulent manner, by the CG/SG.
Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

(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; or
(f) in a case falling under clause (b) of section 271, by the Central Government or a State Government.

(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.

(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) or clause (e) of that sub-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 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 sixty days of receipt of such petition.
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 of 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), 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 shall not 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 precondition 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) **Officers to pay cost of the company, book of accounts 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) **Contravention of section:** 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) **Complaint to be presented before special court may be filed by:** 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 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 limit 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 or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—

(a) misconduct;
(b) fraud or misfeasance;
(c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
(d) inability to act as provisional liquidator or as the case may be, Company Liquidator;
(e) conflict of interest or lack of independence during the term of his appointment that would justify removal.

(2) **Transfer of work of liquidators:** 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) **Recover 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 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) **Intimation of an order of tribunal:** Where the Tribunal makes an order for-

- appointment of provisional liquidator or
- 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-
7.10 CORPORATE AND ECONOMIC LAWS

- Company Liquidator or provisional liquidator, as the case may be, and
- the Registrar.

(2) Registrar to intimate of an order:

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, Registrar shall

- **Listed Company**
  - Intimate about such appointment to the stock exchanges where the securities of the company are listed.

- **All Companies**
  - 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.

(3) Winding up order shall 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 three 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) Functions of winding up committee: 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 therefrom;

(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.

(6) **Submission of report & minutes of meetings of the committee before tribunal:** 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:** 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.
(2) **In case proceeding pending in appeal:** Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

### 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:—

<table>
<thead>
<tr>
<th>Contents of Liquidator’s Report</th>
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<tr>
<td>• 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. 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.</td>
</tr>
<tr>
<td>• Amount of capital issued, subscribed and paid-up</td>
</tr>
<tr>
<td>• Amount of capital issued, subscribed and paid-up</td>
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</tbody>
</table>
• 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

• 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 trade marks 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) **Duties of liquidator to give desirable information in the report:** 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 maximising the value of the assets of the company.

(4) **Any other necessitated report:** The Company Liquidator may also, if he thinks fit, make any further report or reports.
(5) **Inspection of reports:** 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) **Time limit for the proceeding shall be fixed:** 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]

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Provision</th>
<th>It states that-</th>
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</table>
| 1.     | Where a winding up order has been made or where a provisional liquidator has been appointed- | the liquidator, shall, on the order of the Tribunal immediately take into his or its custody or control –
  - all the property,
  - effects and
  - actionable claims 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. |
| 2.     | Computation of custody time period | 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. | 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,-
  - 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) 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) **On failure to discharge obligations:** Where any person, without reasonable cause, fails to discharge his obligations under sub-section (1), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

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

(1) **Tribunal to perform acts:** 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 on certain conditions:** 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:

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<tr>
<th>Sl. No.</th>
<th>Liabilities</th>
<th>Conditions describe the liabilities to contribute towards the assets</th>
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<tbody>
<tr>
<td>1.</td>
<td>a person who has been a member shall not be liable to contribute</td>
<td>if he has ceased to be a member for the preceding one year or more before the commencement of the winding up</td>
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<td>2.</td>
<td>a person who has been a member shall not be liable to contribute in</td>
<td>If such debt or liability contracted after he ceased to be a member</td>
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<tr>
<td>3.</td>
<td>a person who has been a member shall be liable to contribute</td>
<td>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</td>
</tr>
<tr>
<td>4.</td>
<td>in the case of a company limited by shares</td>
<td>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;</td>
</tr>
<tr>
<td>5.</td>
<td>in the case of a company limited by guarantee</td>
<td>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.</td>
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</table>

18. OBLIGATIONS OF DIRECTORS AND MANAGERS [SECTION 286]

Unlimited liability of a person in the case of a limited company: 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) **Person 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) **Persons 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) **Persons not liable unless tribunal deems it necessary to satisfy 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) **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:** 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) **Conduct of meeting:** 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 to inspection of documents:** 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) **Procedure for the conduct of meeting and business shall be as prescribed by rules:** 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 shall be chairperson:** The meeting of advisory committee shall be chaired by the Company Liquidator.

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

(1) **Periodical reports to the 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 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.

(2) Powers of Liquidator shall be under 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.

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

(1) Company liquidator to appoint one/more professionals: 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) Disclose 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) Administration & 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) **Direction given by creditors or contributories shall override:** 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—**

![Diagram of summoning meetings]

- Company liquidator may summon meetings of the creditors or contributories for the purpose of ascertaining their wishes.
- Shall summon such meetings at such times, as the creditors or contributories 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.

(4) **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 records of 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 such 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 an account of the 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 accounts with the tribunal and the 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) **Accounts related to a government companies:** 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:

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

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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:** The Tribunal, in making an order, may,—

<table>
<thead>
<tr>
<th>in the case of an unlimited company</th>
<th>allow to the contributory, by —</th>
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<td>• way of set-off, any money due to him, or</td>
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<td>• to the estate which he represents,</td>
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<td>from the company, on any independent dealing or contract with the company.</td>
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<td>But not any money due to him as a member of the company in respect of any dividend or profit;</td>
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<tr>
<td>in the case of a limited company</td>
<td>allow to any director or manager whose liability is unlimited, or to his estate, such set-off.</td>
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(3) **Payment of money due against any subsequent call:** 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 whatever to a contributory from the company 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]**

In case assets of a company being 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) **Summons:** 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:** 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) **Order:** 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) **Person summoned 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 before the tribunal:** 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 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;

(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) ** Appearing of company liquidator on hearing of an application applied by person being freed from 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 the examinations 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:** 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 tribunal powers 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]

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]

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<tr>
<th>S. No.</th>
<th>Condition</th>
<th>Effect</th>
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<tbody>
<tr>
<td>1.</td>
<td>When the affairs of a company have been completely wound up</td>
<td>the Company Liquidator shall make an application to the Tribunal for dissolution of such company</td>
</tr>
<tr>
<td>2.</td>
<td>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</td>
<td>Tribunal shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly</td>
</tr>
<tr>
<td>3.</td>
<td>Copy of the order shall, within thirty days from the date thereof, be forwarded by the Company Liquidator to the Registrar</td>
<td>Registrar shall record in the register relating to the company a minute of the dissolution of the company</td>
</tr>
<tr>
<td>4.</td>
<td>If the Company Liquidator makes a default in forwarding a copy of the order within the period specified</td>
<td>the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues</td>
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34. APPEALS FROM ORDERS MADE BEFORE COMMENCEMENT OF ACT [SECTION 303]

**Prospective 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.

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

Provisions under Companies Act, 2013 stands omitted due to section 255 of Insolvency & Bankruptcy Code, 2016 and section 59 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:
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, which are payable for a period of two 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 thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

(2) **Proviso mentioning the debts shall be paid in full:** The debts payable under the proviso to sub-section (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**

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.

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 twelve 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 four months within the twelve 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 twelve 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) **Payment in case of employee:** 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) **Payments of debts:** 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) **Discharged from payment of debts:** 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:** 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 of holiday/ of absence from work:** 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 six 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: 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.

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 under this Act.

Such transfer shall be void against the Company Liquidator.

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 if 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 to make payment: 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]

Where a company is being wound up,

- a floating charge on the undertaking or property of the company created within the twelve 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 five per cent. 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) Disclaim of property by company liquidator: Where any part of the property of a company which is being wound up consists of—

- land of any tenure, burdened with onerous covenants;
- shares or stocks in companies;
- 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
- 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 twelve 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 one 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) Application made in writing to disclaim/ not to disclaim: 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 twenty-eight 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) Application of person who is entitled to benefit of a contract made with a 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) Order of tribunal after hearing interested person on an application: 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) 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,

shall be void.

(2) 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 duties payable to the Government.
46. OFFENCES BY OFFICERS OF COMPANIES IN LIQUIDATION
[SECTION 336]

(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) **No disclosure of assets**: 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) **No deliver of property**: 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) **No deliver of books and papers**: 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) **No deliver of informations**: within the twelve 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 one thousand 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 one thousand 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) Material omissions: 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) Prevents the production of any book or paper: 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) Displays fictitious losses or expenses: 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) False representation: 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 three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three 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) -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 three years but which may extend to five years and with fine which shall not be less than three lakh rupees but which may extend to five 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. PENALTY FOR FRAUDS BY OFFICERS [SECTION 337]

If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Tribunal under this Act—

(a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company;

(b) with intent to defraud creditors of the company or any other person, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company or within two months before that date,

-he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

48. LIABILITY WHERE PROPER ACCOUNTS NOT KEPT [SECTION 338]

(1) Where a company is being wound up, if it is shown that-

proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or

the period between the incorporation of the company and the commencement of the winding up

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whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

(2) It shall be deemed that proper books of account have not been kept in the case of any company,—

(a) if such books of account as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day-to-day in sufficient detail of all cash received and all cash paid, have not been kept; and

(b) where the business of the company has involved dealings in goods, statements of the annual stock takings and, except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, showing the goods and the buyers and the sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified, have not been kept.

49. LIABILITY FOR FRAUDULENT CONDUCT OF BUSINESS [SECTION 339]

(1) Tribunal to declare the liability of the persons: If in the course of the winding up of a company, it appears that any business of the company has been carried on with—

- intent to defraud creditors of the company or
- any other persons or
- for any fraudulent purpose,

the Tribunal, on the application of the—

- Official Liquidator, or
- the Company Liquidator or
- any creditor or contributory of the company,

may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct:

On the hearing of an application under this sub-section, the Official Liquidator or the Company Liquidator, as the case may be, may himself give evidence or call witnesses.
(2) **Tribunal to give further directions to give effect to the declaration:** Where the Tribunal makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration and, in particular,—

(a) make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf;

(b) make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(3) **Liable for fraud:** Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable for action under section 447.

(4) **Over riding effect of this section:** This section shall apply, notwithstanding that the person concerned may be punishable under any other law for the time being in force in respect of the matters on the ground of which the declaration is to be made.

*Explanation.*—For the purposes of this section,—

(a) the expression “assignee” includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made;

(b) the expression “officer” includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

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This section shall apply, notwithstanding that the matter is one for which the person concerned may be criminally liable.

51. LIABILITY UNDER SECTIONS 339 AND 340 TO EXTEND TO PARTNERS OR DIRECTORS IN FIRMS OR COMPANIES [SECTION 341]

Where a declaration under section 339 or an order under section 340 is made in respect of a firm
or body corporate, the Tribunal shall also have power to make a declaration under section 339, or pass an order under section 340, as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate.

52. PROSECUTION OF DELINQUENT OFFICERS AND MEMBERS OF COMPANY [SECTION 342]

(1) **Tribunal to direct the liquidator to prosecute the offender:** If it appears to the Tribunal in the course of a winding up by the Tribunal, that any person, who is or has been -

- an officer, or
- any member, of the company

has been guilty of any offence in relation to the company, the Tribunal may, either-

- on the application of any person interested in the winding up, or
- suo motu,

-direct the liquidator to prosecute the offender or to refer the matter to the Registrar.

(2) **To give assistance in prosecution:** When any prosecution is instituted under this section, it shall be the duty of the liquidator and of every person, who is or has been an officer and agent of the company to give all assistance in connection with the prosecution which he is reasonably able to give.

*Explanation*—For the purposes of this sub-section, the expression “agent”, in relation to a company, shall include any banker or legal adviser of the company and any person employed by the company as auditor.

(3) **In case of failure:** If a person fails or neglects to give assistance, he shall be liable to pay fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

53. COMPANY LIQUIDATOR TO EXERCISE CERTAIN POWERS SUBJECT TO SANCTION [SECTION 343]

(1) **Order passed by the Company Liquidator with the sanction of the tribunal:** The Company Liquidator may, with the sanction of the Tribunal, when the company is being wound up by the Tribunal,—

(i) **pay any class of creditors** in full;

(ii) **make any compromise or arrangement with creditors or persons** claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, against the company, or whereby the company may be rendered liable; or
(iii) **compromise any call or liability to call, debt, and liability** capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) **Central Government to make rules to regulate powers of the Company Liquidator:** In the case of a winding up by the Tribunal, the Central Government may make rules to provide that the Company Liquidator may, under such circumstances, if any, and subject to such conditions, restrictions and limitations, if any, as may be prescribed, exercise any of the powers referred to in sub clause (ii) or sub-clause (iii) of clause (b) of sub-section (1) without the sanction of the Tribunal.

(3) **Right to apply to the tribunal on the exercise of powers of the Company Liquidator:** Any creditor or contributory may apply in the manner prescribed to the Tribunal with respect to any exercise or proposed exercise of powers by the Company Liquidator under this section, and the Tribunal shall after giving a reasonable opportunity to such applicant and the Company Liquidator, pass such orders as it may think fit.

### 54. STATEMENT THAT COMPANY IS IN LIQUIDATION [SECTION 344]

(1) **Statement of wound up:** 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 wilfully 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.
55. BOOKS AND PAPERS OF COMPANY TO BE EVIDENCE [SECTION 345]

Books and Papers shall be prima facie evidence of truth: 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.

56. 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 effect on the rights of the following 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.

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

(1) Disposal of books and papers: 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) Transfer of responsibility: 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.
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.

If any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

58. INFORMATION AS TO PENDING LIQUIDATIONS [SECTION 348]

(1) Conclusion of winding up process from its commencement: If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall (unless he is exempted from so doing), either-wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed,

file a statement in such form containing such particulars as may be prescribed,

duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation, with the Tribunal:

No such audit as is referred to in this sub-section shall be necessary where the provisions of section 294 apply;

Winding up of a company is not concluded within 1 year after its commencement

within two months of the expiry of such year and thereafter until the winding up is concluded

at intervals of not more than one year or at such shorter intervals

Central Government file a statement in such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company
(2) **Copy of statement to be filed with the registrar:** When the statement is filed with the Tribunal under clause (a) of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

(3) **Where the company in liquidation is a Government Company:**

(4) **Person entitled to inspect the statement, etc.:** Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement referred to in sub-section (1), and to receive a copy thereof or an extract therefrom.

(5) **Fraudulently representing himself creditor or contributory:** Any person fraudulently stating himself to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code, and shall, on the application of the Company Liquidator, be punishable accordingly.

(6) **Contravention of provisions by Company Liquidator:** If a Company Liquidator contravenes the provisions of this section, the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.
In case of wilful default: If a Company Liquidator makes wilful default in causing the statement referred to in sub-section (1) audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both.

59. OFFICIAL LIQUIDATOR TO MAKE PAYMENTS INTO PUBLIC ACCOUNT OF INDIA [SECTION 349]

Every Official Liquidator shall, in such manner and at such times as may be prescribed, pay the monies received by him as Official Liquidator of any company, into the public account of India in the Reserve Bank of India.

60. COMPANY LIQUIDATOR TO DEPOSIT MONIES INTO SCHEDULED BANK [SECTION 350]

(1) Deposit of monies in a scheduled bank: Every Company Liquidator of a company shall, in such manner and at such times as may be prescribed, deposit the monies received by him in his capacity as such in a scheduled bank to the credit of a special bank account opened by him in that behalf.

If the Tribunal considers that it is advantageous for the creditors or contributories or the company, it may permit the account to be opened in such other bank specified by it.

(2) Retention of amount after the prescribed period: If any Company Liquidator at any time retains for more than ten days a sum exceeding five thousand rupees or such other amount as the Tribunal may, on the application of the Company Liquidator, authorise him to retain, then, unless he explains the retention to the satisfaction of the Tribunal, he shall—

(a) pay interest on the amount so retained in excess, at the rate of twelve per cent. per annum and also pay such penalty as may be determined by the Tribunal;

(b) be liable to pay any expenses occasioned by reason of his default; and

(c) also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, disallowed, or may also be removed from his office.

61. LIQUIDATOR NOT TO DEPOSIT MONIES INTO PRIVATE BANKING ACCOUNT [SECTION 351]

Neither the Official Liquidator nor the Company Liquidator of a company shall deposit any monies received by him in his capacity as such into any private banking account.
62. COMPANY LIQUIDATION DIVIDEND AND UNDISTRIBUTED ASSETS ACCOUNT [SECTION 352]

(1) **Money in the hands of the liquidator:** 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 six months after the date on which they were declared; or

(b) *assets refundable to any contributory* which have remained undistributed for six 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 all sums to registrar:** 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 and the nature of his claim thereto, and such other particulars as may be prescribed.

(4) **Receivable of receipt of money payment from scheduled bank:** 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) **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 fourteen 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 the entitled person to any money paid:** 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 sixty 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) Unclaimed money in Company Liquidation Dividend and Undistributed Assets
Account: 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 fifteen 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) In contravention: 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 twelve per cent 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.

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

(1) Company liquidator makes default in filing, delivering of documents etc.: 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 fourteen 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 bear 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 is not effecting on the 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.

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

(1) **Ascertain the wishes:** 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.
65. COURT, TRIBUNAL OR PERSON, ETC., BEFORE WHOM AFFIDAVIT MAY BE SWORN [SECTION 355]

(1) Affidavit:

Any affidavit required to be sworn under chapter, 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 affidavit and other related documents: 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.

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

(1) Power of tribunal to declare dissolution to be void: 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) Failure in filing of a certified copy of order of tribunal with registrar: It shall be the duty of the Company Liquidator or the person on whose application the order was made, within thirty days after the making of the order or such further time as the Tribunal may allow, to file a certified copy of the order with the Registrar who shall register the same, and if the Company Liquidator or the person fails so to do, the Company Liquidator or the person shall be punishable with fine which may extend to ten thousand rupees for every day during which the default continues.

67. 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.

68. 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.

PART IV- OFFICIAL LIQUIDATOR

69. APPOINTMENT OF OFFICIAL LIQUIDATOR [SECTION 359]

(1) For the purposes of this Act, so far as it relates to the winding up of companies by the Tribunal, the Central Government may appoint as many-

- Official Liquidators, Joint, Deputy or Assistant Official Liquidators as it may consider necessary to discharge the functions of the Official Liquidator.

(2) The liquidators so appointed, shall be whole-time officers of the Central Government.

(3) The salary and other allowances of the Official Liquidator, Joint Official Liquidator, Deputy Official Liquidator and Assistant Official Liquidator shall be paid by the Central Government.

70. POWERS AND FUNCTIONS OF OFFICIAL LIQUIDATOR [SECTION 360]

(1) Such powers as prescribed by the Central Government: The Official Liquidator shall exercise such powers and perform such duties as the Central Government may prescribe.
(2) **Others powers**: Without prejudice to the provisions of sub-section (1), the Official Liquidator may—

(a) exercise all or any of the powers as may be exercised by a Company Liquidator under the provisions of this Act; and

(b) Conduct inquiries or investigations, if directed by the Tribunal or the Central Government, in respect of matters arising out of winding up proceedings.

71. **SUMMARY PROCEDURE FOR LIQUIDATION [SECTION 361]**

(1) **Central Government may order for summary procedure**: Where the company to be wound up under this Chapter, —

(i) has assets of book value not exceeding one crore rupees; and

(ii) belongs to such class or classes of companies as may be prescribed, the Central Government may order it to be wound up by summary procedure provided under this Part.

(2) **Appointment of official liquidator**: Where an order under sub-section (1) is made, the Central Government shall appoint the Official Liquidator as the liquidator of the company.

(3) **Duties of official liquidator**: The Official Liquidator shall forthwith take into his custody or control all assets, effects and actionable claims to which the company is or appears to be entitled.

(4) **Submission of report to Central Government**: The Official Liquidator shall, within thirty days of his appointment, submit a report to the Central Government in such manner and form, as may be prescribed, including a report whether in his opinion, any fraud has been committed in promotion, formation or management of the affairs of the company or not.

(5) **Central Government may direct for investigation**: On receipt of the report, if the Central Government is satisfied that any fraud has been committed by the promoters, directors or any other officer of the company, it may direct further investigation into the affairs of the company and that a report shall be submitted within such time as may be specified.

(6) **Order of Central Government for the winding up**: After considering the investigation report under sub-section (5), the Central Government may order that winding up may be proceeded under Part I of this Chapter or under the provision of this Part.

72. **SALE OF ASSETS AND RECOVERY OF DEBTS DUE TO COMPANY [SECTION 362]**

(1) **Disposal of assets**: The Official Liquidator shall expeditiously dispose of all the assets whether movable or immovable within sixty days of his appointment.
(2) **Serving of notice to deposit payable amount:** The Official Liquidator shall serve a notice within thirty days of his appointment calling upon the debtors of the company or the contributories, as the case may be, to deposit within thirty days with him the amount payable to the company.

(3) **Order passed by Central Government:** Where any debtor does not deposit the amount under sub-section (2), the Central Government may, on an application made to it by the Official Liquidator, pass such orders as it thinks fit.

(4) **Deposition of recovered amount:** The amount recovered under this section by the Official Liquidator shall be deposited in accordance with the provisions of section 349.

### 73. SETTLEMENT OF CLAIMS OF CREDITORS BY OFFICIAL LIQUIDATOR [SECTION 363]

(1) The Official Liquidator within thirty days of his appointment shall call upon the creditors of the company to prove their claims in such manner as may be prescribed, within thirty days of the receipt of such call.

(2) The Official Liquidator shall prepare a list of claims of creditors in such manner as may be prescribed and each creditor shall be communicated of the claims accepted or rejected along with reasons to be recorded in writing.

### 74. APPEAL BY CREDITOR [SECTION 364]

(1) **Appeal against the decision of official liquidator before central government:** Any creditor aggrieved by the decision of the Official Liquidator under section 363 may file an appeal before the Central Government within thirty days of such decision.

(2) **Central government either dismiss or modify the decision:** The Central Government may after calling the report from the Official Liquidator either dismiss the appeal or modify the decision of the Official Liquidator.

(3) **Payment to the accepted claims:** The Official Liquidator shall make payment to the creditors whose claims have been accepted.

(4) **Referring of matter to tribunal:** The Central Government may, at any stage during settlement of claims, if considers necessary, refer the matter to the Tribunal for necessary orders.

### 75. ORDER OF DISSOLUTION OF COMPANY [SECTION 365]

(1) **Submission of final report of wound up:** The Official Liquidator shall, if he is satisfied that the company is finally wound up, submit a final report to—
(2) **Order of dissolution:** The Central Government, or as the case may be, the Tribunal on receipt of such report shall order that the company be dissolved.

(3) **Consequences of order:** Where an order is made, the Registrar shall strike off the name of the company from the register of companies and publish a notification to this effect.
Question 1

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 provision 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 secured assets and available for distribution among creditors is only ₹ 4,00,00,000/-

Answer

Section 326 of the Companies Act, 2013 is 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 the section 326 the security of every secured creditor shall be deemed to be subject to a pari passu change in favor of the workman to the extent of their portion.

\[
\text{Workman’s Share to Secured Asset} = \frac{\text{Amount Realised} \times \text{Workman’s Dues}}{\text{Workman’s Dues} + \text{Secured Loan}}
\]

\[
\text{Workman’s Share to Secured Asset} = \frac{4,00,00,000 \times 1,25,00,000}{1,25,00,000 + 5,00,00,000}
\]

\[
= \frac{4,00,00,000 \times \frac{1}{5}}{6,25,00,000}
\]

\[
\text{Workman’s Share to Secured Assets} = 80,00,000
\]

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.

Question 2

Info-tech Overtrading Ltd. was ordered to be wound up compulsory by an order dated 10th March, 2017 by the Tribunal. The official liquidator who has taken control for the assets and other records of the company has noticed the following:

The Managing Director of the company has 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, 2016.

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

Answer

The official liquidator can invoke the provisions contained in Section 328 of the Companies Act, 2013 to recover the sale of assets of the company. 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, 2016 and the company went into liquidation on 10th March, 2017 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 ex-managing was interested.

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

Question 3

Winding up proceedings has been commenced by the tribunal against DEF Limited, a government company (Central Government is a member). Even after completion of one year from the date of commencement of winding up proceedings, it has not possible to conclude the same. The liquidator is of the opinion that the statement shall be filled with tribunal and registrar only.

- Validate the opinion made by the liquidator and penalty can be imposed on the liquidator for contravention of the provision as per companies act, 2013.

- What will be your answer if the DEF Limited is a non-government company?

Answer

Section 348 of the Companies Act, 2013 states that, if the winding up of a company is not concluded within one year after its commencement then the Company Liquidator shall file a statement in such form containing such particulars as may be prescribed. Such statement shall be filled within two months of the expiry of such year and it shall be filled continuously thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals as may be prescribed. The statement shall be duly audited, by a person qualified to act as auditor of the company and position of with respect to the proceedings in the liquidation,
The statement shall be filled with the tribunal in the case of a winding up by the Tribunal. A copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

Where a statement relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof,

- to the Central Government, if that Government is a member of the Government company;
- to any State Government, if that Government is a member of the Government company; or
- to the Central Government and any State Government, if both the Governments are members of the Government company.

**DEF Limited is a Government Company**

In the current scenario, we can understand that the DEF Limited is a government company in which Central Government is a member and hence statement is also required to file to the Central Government along with the Tribunal and Registrar. So, the opinion by the Company Liquidator is not tenable in the eyes of the law and he is liable for penal action under the act.

The company liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

**DEF Limited is a Non-Government Company**

In the current scenario, the DEF Limited is a non-government company hence statement is only required to file with the Tribunal and Registrar only. So, the opinion by the Company Liquidator is tenable in the eyes of the law and he is not liable for any penal action under the act.