

## CHAPTER V

### ARBITRATION, COMPROMISES, ARRANGEMENTS AND RECONSTRUCTIONS

[389. Power for companies to refer matters to arbitration - Repealed by the Companies (Amendment) Act, 1960 (65 of 1960), section 150.]

390. Interpretation of sections 391 and 393

In sections 391 and 393, -

(a) the expression "company" means any company liable to be wound up under this Act;

(b) the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of different classes or, by both those methods; and

(c) unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

391. Power to compromise or make arrangements with creditors and members

(1) Where a compromise or arrangement is proposed -

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them;

the Court may, on the application of the company or of any creditor or member of the company, or, in the case of a company, which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members, as the case may be, present and voting either in person or, where proxies are allowed <sup>1</sup>[under the rules made under section 643], by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class as the case may be, and also on the company, or in the case of a company which is being wound up, on the liquidator and contributories of the company:

<sup>1</sup> Inserted by Act 65 of 1990, section 151.

<sup>1</sup>[Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.]

(3) An order made by the Court under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

(4) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ten rupees for each copy in respect of which default is made.

(6) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Court thinks fit, until the application is finally disposed of.

(7) An appeal shall lie from any order made by a Court exercising original jurisdiction under this section to the Court empowered to hear appeals from the decisions of that Court, or if more than one Court is so empowered, to the Court of inferior jurisdiction.

The provisions of sub-sections (3) to (6) shall apply in relation to the appellate order and the appeal as they apply in relation to the original order and the application.

392. Power of High Court to enforce compromises and arrangements

(1) Where a High Court makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company, it -

(a) shall have power to supervise the carrying out of the compromise or arrangement; and

1        Inserted by Act 31 of 1965, section 48, w.e.f. 15-10-1965.

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act under section 153 of the Indian Companies Act, 1913 (7 of 1913), sanctioning a compromise or an arrangement.

393        Information as to compromises or arrangements with creditors and members

(1) Where a meeting of creditors or any class of creditors, or of members or any class of members, is called under section 391, -

(a) with every notice calling the meeting which is sent to a creditor or member, there shall be sent also a statement setting forth the terms of the compromise or arrangement and explaining its effect; and in particular, stating any material interests of the directors, managing director, 1[\*\*\*] or manager of the company, whether in their capacity as such or as members or creditors of the company or otherwise, and the effect on those interests, of the compromise or arrangement, if, and in so far as, it is different from the effect on the like interests of other persons; and

(b) in every notice calling the meeting which is given by the advertisement, there shall be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like information and explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

1 Reference to managing agent, secretaries and treasurers after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

(3) Where a notice given by advertisement includes a notification that copies of a statement setting forth the terms of the compromise or arrangement proposed and explaining its effect can be obtained by creditors or members entitled to attend the meeting, every creditor or member so entitled shall, on making an application in the manner indicated by the notice, be furnished by the company, free of charge, with a copy of the statement.

(4) Where default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees; and for the purpose of this sub-section any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be punishable under this sub-section if he shows that the default was due to the refusal of any other person, being a director, managing director, 1<sup>\*\*\*</sup> managing or trustee for debenture holders, to supply the necessary particulars as to his material interest.

(5) Every director, managing director, 2<sup>\*\*\*</sup> or manager of the company, and every trustee for debenture holders of the company, shall give notice to the company of such matter relating to himself as may be necessary for the purposes of this section; and if he fails to do so, he shall be punishable with fine which may extend to five hundred rupees.

#### 394. Provisions for facilitating reconstruction and amalgamation of companies

(1) Where an application is made to the Court under section 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court,

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and

(b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as "the transferee company");

1      Ibid.

2      Ibid.

the Court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters: -

(i) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company;

(ii) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;

(iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(iv) the dissolution, without winding up, of any transferor company;

(v) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and

(vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:

1[Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the Court unless the Court has received a report from the Company Law Board or the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest:

Provided further that no order for the dissolution of any transferor company under clause (iv) shall be made by the Court unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.]

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1      Inserted by Act 31 of 1965, section 49, w.e.f. 15-10-1965.

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Within 1[thirty] days after the making of an order under this section every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

(4) In this section -

(a) "property" includes property, rights and powers of every description; and "liabilities" includes duties of every description; and

(b) "transferee company" does not include any company other than a company within the meaning of this Act; but "transferor company" includes any body corporate, whether a company within the meaning of this Act or not.

2[394A. Notice to be given to Central Government<sup>3</sup> for applications under sections 391 and 394

The Court shall give notice of every application made to it under section 391 or 394 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing any order under any of these sections.]

1 Substituted by Act 31 of 1965, section 62 and Schedule, for "§Fourteen" w.e.f. 15-10-1965.

2 Inserted by Act 31 of 1965, section 50, w.e.f. 15-10-1965.

3 Powers delegated to Regional Directors vide Notification No. GSR 288(E), dated 31-5-1991.

395. Power and duty to acquire shares of shareholders dissenting from scheme or contract approved by majority<sup>1</sup>

(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company (in this section referred to as "the transferee company"), has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner<sup>2</sup> to any dissenting shareholder, that it desires to acquire his shares; and when such a notice is given, the transferee company shall, unless, on an application made by the dissenting shareholder within one month from the date on which the notice was given, the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that where shares in the transferor company of the same class as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of the values of all the shares in the company of such class, the foregoing provisions of this sub-section shall not apply, unless -

(a) the transferee company offers the same terms to all holders of the shares of that class (other than those already held as aforesaid) whose transfer is involved; and

(b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares;

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares, or shares of any class, in a company are transferred to another company or its nominee, and those shares together with any other shares or any other shares of the same class, as the case may be, in the first-mentioned company held at the date of the transfer by, or by a nominee for, the transferee company or its subsidiary comprise nine-tenths in value of the shares, or the shares of that class, as the case may be, in the first-mentioned company, then, -

1 See rule 12, Companies (Central Government's) General Rules and Forms, 1956.

2 See Form 35, Companies (Central Government's) General Rules and Forms, 1956.

(a) the transferee company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

(b) any such holder may, within three months from the giving of the notice to him, require the transferee company to acquire the shares in question;

and where a shareholder gives notice under clause (b) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed, or as the Court on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under sub-section (1) and the Court has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire; and 1[the transferor company shall -

(a) thereupon register the transferee company as the holder of those shares, and

(b) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company:]

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

1 Substituted by Act 31 of 1965, section 51, for certain words, w.e.f. 15-10-1965.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

1[(4A) (a) The following provisions shall apply in relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company, namely: -

(i) every such offer or every circular containing such offer or every recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information as may be prescribed<sup>2</sup>;

(ii) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available;

(iii) every circular containing or recommending acceptance of, such offer shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered;

(iv) the Registrar may refuse to register any such circular which does not contain the information required to be given under sub-clause (i) or which sets out such information in a manner likely to give a false impression; and

(v) an appeal shall lie to the Court against an order of the Registrar refusing to register any such circular.

(b) Whoever issues a circular referred to in sub-clause (iii) of clause (a) which has not been registered, shall be punishable with fine which may extend to five hundred rupees.]

(5) In this section -

(a) "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract;

(b) "transferor company" and "transferee company" shall have the same meaning as in section 394.

1 Inserted by Act 31 of 1965, section 51, w.e.f. 15-10-1965.

2 See Form 35A, Companies (Central Government's) General Rules and Forms, 1956.

(6) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect -

(a) with the substitution, in sub-section (1), for the words "the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee

company or its subsidiary)," of the words "the shares affected" and with the omission of the proviso to that sub-section;

(b) with the omission of sub-section (2);

(c) with the omission in sub-section (3) of the words "together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company" and of the proviso to that sub-section; and

(d) with the omission of clause (b) of sub-section (5).

396. Power of Central Government to provide for amalgamation of companies in public interest

(1) Where the Central Government is satisfied that it is essential in the 1[public interest] that two or more companies should amalgamate, then, notwithstanding anything contained in sections 394 and 395 but subject to the provisions of this section, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution; with such property, powers, rights, interests, authorities and privileges; and with such liabilities, duties, and obligations; as may be specified in the order.

(2) 2[The order aforesaid may provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and may also] contain such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

1 Substituted by Act 65 of 1960, section 152 for "national interest".

2 Substituted by the Companies (Amendment) Act, 1985 (35 of 1985) for the words "The order aforesaid".

(3) Every member or creditor (including a debenture holder) of each of the companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the company resulting from the amalgamation as he had in the company of which he was originally a member or creditor; and to the extent to which the interest or rights of such member or creditor in or against the company resulting from the amalgamation are less than his interest in or rights against the original company, he shall be entitled to compensation which shall be assessed by such authority <sup>1</sup>[as may be prescribed<sup>2</sup> and every such assessment shall be published in the Official Gazette].

The compensation so assessed shall be paid to the member or creditor concerned by the company resulting from the amalgamation.

<sup>3</sup>[(3A) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Company Law Board and thereupon the assessment of the compensation shall be made by the Company Law Board]

(4) No order shall be made under this section, unless -

(a) a copy of the proposed order has been sent in draft to each of the companies concerned;  
4[\*\*\*]

5[(aa) the time for preferring an appeal under sub-section (3A) has expired, or where any such appeal has been preferred, the appeal has been finally disposed of; and]

(b) the Central Government has considered, and made such modifications, if any, in the draft order as may seem to it desirable in the light of any suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

(5) Copies of every order made under this section shall, as soon as may be after it has been made, be laid before both Houses of Parliament.

1 Ibid, for the words "as may be prescribed".

2 Joint Director (Accounts), Department of Company Affairs is the prescribed authority vide rule 12A, Companies (Central Government's) General Rules and Forms, 1956.

3 Inserted by the Companies (Amendment) Act, 1985 (35 of 1985).

4 The word "and" omitted, *ibid*.

5 Inserted, *ibid*.

1[396A.            Preservation of books and papers of amalgamated company

The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the first-mentioned company or its amalgamation or the acquisition of its shares.]

CHAPTER VI

PREVENTION OF OPPRESSION AND MISMANAGEMENT

A.        Powers of 2[Company Law Board]

397.        Application to Company Law Board for relief in cases of oppression

(1) Any members of a company who complain that the affairs of the company 4[are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members (including any one or more of themselves) may apply<sup>5</sup> to the 6[Company Law Board] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the 7[Company Law Board] is of opinion -

(a) that the company's affairs 8[are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up;

1        Inserted by Act 31 of 1965, section 52, w.e.f. 15-10-1965.

2        Substituted by the Companies (Amendment) Act, 1988 for the word "Court" w.e.f. 31-5-1991.

3        Ibid.

4        Substituted by Act 53 of 1963, section 10 for "are being conducted" w.e.f. 1-1-1964.

5        Fees prescribed is Rs. 500.

6        Substituted by the Companies (Amendment) Act, 1988 for the word "Court" w.e.f. 31-5-1991.

7        Ibid.

8        Substituted by Act 53 of 1963, section 10 for "are being conducted" w.e.f. 1-1-1964.

9        Substituted by the Companies (Amendment) Act, 1988 for the word "Court" w.e.f. 31-5-1991.

the [Company Law Board] may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

398. Application to 2[Company Law Board] for relief in cases of mismanagement

(1) Any members of a company who complain:

(a) that the affairs of the company 3[are being conducted in a manner prejudicial to public interest or] in a manner prejudicial to the interests of the company; or

(b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company has taken place in the management or control of the company, whether by an alteration in its Board of directors, 4[\*\*\*] 5[or manager], 6[\*\*\*] or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company 7[will be conducted in a manner prejudicial to public interest or] in a manner prejudicial to the interests of the company;

may apply<sup>8</sup> to the 9[Company Law Board] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the 10[Company Law Board] is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the 11[Company Law Board] may, with view to bringing to an end or preventing the matters complained or apprehended, make such order as it thinks fit.

1 Substituted by the Companies (Amendment) Act, 1988 for the word "Court" w.e.f. 31-5-1991.

2 Substituted by Act 53 of 1963, section 11, for "are being conducted", w.e.f. 1-1-1964.

3 Substituted by the Companies (Amendment) Act, 1988 for the word "Court" w.e.f. 31-5-1991.

4 Reference to managing agent, secretaries and treasurers redundant after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

5 Inserted by Act 65 of 1960, section 153.

6 Reference to managing agent, secretaries and treasurers redundant after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

7 Substituted by Act 53 of 1963, section 11, for "are being conducted", w.e.f. 1-1-1964.

8 Fees prescribed is Rs. 500.

9 Substituted by the Companies (Amendment) Act, 1988 for the word "Court" w.e.f. 31-5-1991.

10 Ibid.

11 Ibid.

399. Right to apply under section 397 and 398

(1) The following members of a company shall have the right to apply under section 397 or 398:

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(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(2) For the purposes of sub-section (1), where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(3) Where any members of a company are entitled to make an application in virtue of sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

1(4) The Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to, the 2[Company Law Board] under section 397 or 398, notwithstanding that the requirements of clause (a) or (b), as the case may be, of sub-section (1) are not fulfilled.

(5) The Central Government may, before authorising any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable, for the payment of any costs which the 3[Company Law Board] dealing with the application, may order such member or members to pay to any other person or persons who are parties to the application.

400. Notice to be given to Central Government of applications under sections 397 and 3984

The 5[Company Law Board] shall give notice of every application made to it under section 397 or 398 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing a final order under that section<sup>6</sup>.

1 See rule 13, Companies (Central Government) General Rules and Forms, 1956.

2 Substituted by the Companies (Amendment) Act, 1988 for the word "Court" w.e.f. 31-5-1991.

3 Ibid

4 Powers delegated to Regional Directors vide Notification No. GSR 288(E), dated 31-5-1991.

5 Substituted by the Companies (Amendment) Act, 1988 for the word "Court" w.e.f. 31-5-1991.

6 Fees prescribed is Rs. 500.

401. Right of Central Government to apply under sections 397 and 398

The Central Government may itself apply<sup>1</sup> to the 2[Company Law Board] for an order under section 397 or 398, or cause an application to be made to the 3[Company Law Board] for such an order by any person authorised by it in this behalf.

402. Powers of 4[Company Law Board] on application under section 397 or 398<sup>5</sup>

Without prejudice to the generality of the powers of the 6[Company Law Board] under section 397 or 398, any order under either section may provide for -

(a) the regulation of the conduct of the company's affairs in future;

(b) the purchase of the shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely:

-

(i) the managing director,

(ii) any other director,

(iii) 7[\*\*\*],

(iv) 8[\*\*\*] and

(v) the manager,

upon such terms and conditions as may, in the opinion of the 9[Company Law Board] be just and equitable in all the circumstances of the case;

(e) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;

1 Ibid.

2 Substituted by the Companies (Amendment) Act, 1988 for the word "Court" w.e.f. 31-5-1991.

3 Ibid.

4 Ibid.

5 Fees prescribed is Rs. 500.

6 Substituted by the Companies (Amendment) Act, 1988 for the word "Court" w.e.f. 31-5-1991.

7 Redundant after abolition of the system of managing agent, secretaries and treasurers by Act 17 of 1969, w.e.f. 3-4-1970.

8 Ibid.

9 Substituted by the Companies (Amendment) Act, 1988 for the word "Court" w.e.f. 31-5-1991.

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(g) any other matter for which in the opinion of the 1[Company Law Board] it is just and equitable that provision should be made.

403. Interim order by 2[Company Law Board3]

Pending the making by it of a final order under section 397 or 398, as the case may be, the 4[Company Law Board] may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable.

404. Effect of alteration of memorandum or articles of company by order under section 397 or 3985

(1) Where an order under section 397 or 398 makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make without the leave of the 6[Company Law Board] any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(2) Subject to the provisions of sub-section (1), the alterations made by the order shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act; and the said provisions shall apply accordingly to the memorandum or articles as so altered.

(3) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within 7[thirty] days after the making thereof, be filed by the company with the Registrar who shall register the same.

(4) If default is made in complying with the provisions of sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

1      Ibid.

2      Ibid.

3      Fees Prescribed is Rs. 500.

4      Substituted by the Companies (Amendment) Act, 1988 for the word "Court" w.e.f. 31-5-1991.

5      Fees prescribed is Rs. 500.

6      Substituted by the Companies (Amendment) Act, 1988 for the word "Court" w.e.f. 31-5-1991.

7      Substituted by Act 31 of 1965, section 62 and Schedules, for "fifteen" w.e.f. 15-10-1965.

405.      Addition of respondents to application under section 397 or 3981

If the managing director or any other director 2[\*\*\*] or the manager, of a company, or any other person, who has not been impleaded as a respondent to any application under section 397 or 398 applies to be added as a respondent thereto, the 3[Company Law Board] shall, if it is satisfied that there is sufficient cause for doing so, direct that he may be added as a respondent accordingly.

406.      Application of sections 539 to 544 to proceedings under sections 397 or 398

In relation to an application under section 397 or 398, sections 539 to 544, both inclusive, shall apply in the form set forth in Schedule XI.

407. Consequences of termination or modification of certain agreements

(1) Where an order 4<sup>[\*\*]</sup> made under section 397 or 398 terminates, sets aside, or modifies an agreement such as is referred to in clause (d) or (e) of section 402, -

(a) the order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect, either in pursuance of the agreement or otherwise;

(b) no managing or other director, 5<sup>[\*\*]</sup> or manager whose agreement is so terminated or set aside 6<sup>[\*\*]</sup> shall, for a period of five years from the date of 7[the order terminating or setting aside the agreement, without the leave of the 8[Company Law Board], be appointed or act, as the managing or other director, managing agent, secretaries and treasurers, or manager of the company<sup>9</sup>.

(2) (a) Any person who knowingly acts as a managing or other director, 10<sup>[\*\*]</sup> or manager of a company in contravention of clause (b) of sub-section (1);

1 Fees prescribed is Rs. 500.

2 Reference to managing agent, secretaries and treasurers redundant after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

3 Substituted by the Companies (Amendment) Act, 1988, section 66, for the word "Court"  
w.e.f. 31-5-1991.

4 The word "of a Court" omitted by the Companies (Amendment) Act, 1988, section 66,  
w.e.f. 31-5-1991.

5 Reference to managing agent, secretaries and treasurers redundant after abolition of the  
system by Act 17 of 1969, w.e.f. 3-4-1970.

6 Ibid.

7 Substituted by Act 65 of 1960, section 154, for "the order terminating the agreement".

8 Substituted by the Companies (Amendment) Act, 1988, section 66, for the word "Court"  
w.e.f. 3-5-1991.

9 Fees prescribed is Rs. 500.

10 Reference to managing agent, secretaries and treasurers redundant after abolition of the  
system by Act 17 of 1969, w.e.f. 3-4-1970.

(b) 1[\*\*\*]; and

(c) every other director or every director, as the case may be, of the company, who is knowingly  
a party to such contravention;

shall be punishable with imprisonment for a term which may extend to one year, or with fine  
which may extend to five thousand rupees, or with both.

(3) 2[No leave shall be granted] under clause (b) of sub-section (1) unless notice of the intention  
to apply for leave has been served on the Central Government and that Government has been  
given an opportunity of being heard in the matter.

## B. Powers of Central Government

### 408. Powers of Government to prevent oppression or mismanagement<sup>3</sup>

4[(1) Notwithstanding anything contained in this Act, the Central Government, may appoint such number of persons as the Company Law Board may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interests to hold office as directors thereof for such period, not exceeding three years on any one occasion, as it may think fit, if the Company Law Board, on a reference made to it by the Central Government or on an application of not less than one hundred members of the company or of the members of the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest:

1 Redundant after abolition of the system of managing agent, secretaries and treasurers by Act 17 of 1969, w.e.f. 31-4-1970.

2 Substituted by the Companies (Amendment) Act, 1988, for the word "No Court shall grant leave" w.e.f. 31-5-1991.

3 Fees prescribed is Rs. 500.

4 Substituted by the Companies (Amendment) Act, 1988, Section 53, w.e.f. 15-6-1988 for sub-sections (1) and (2) which read as under:

§(1) Notwithstanding anything contained in this Act, the Central Government may appoint such number of persons as the Central Government may, by order in writing, specify as

being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest to hold office as directors thereof for such period, not exceeding three years on any one occasion, as it may think fit, if the Central Government of its own motion or, on the application of not less than one hundred members of the company or of members of the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest.]”

1[Provided that in lieu of passing an order as aforesaid, the Company Law Board may, if the company has not availed itself of the option given to it under section 265, direct the company to amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the Company Law Board.]

2[(2) In case the Company Law Board passes an order under the proviso to sub-section (1), it may, if it thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, such number of persons as the Company Law Board may, by order specify as being necessary to effectively safeguard the interests, of the company, or its shareholders or the public interest, shall hold office as additional directors of the company and on such directions, the Central Government shall appoint such additional directors.]

(3) For the purpose of reckoning two-thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Central Government under sub-section (1) or (2) shall not be taken into account.

3[(4) A person appointed under sub-section (1) to hold office as a director or a person directed under sub-section (2) to hold office as an additional director, shall not be required to hold any qualification shares nor his period of office shall be liable to determination by retirement of directors by rotation; but any such director or additional director may be removed by the Central

Government from his office at any time and another person may be appointed by that Government in his place to hold office as a director or, as the case may be, an additional director.

(5) No change in the Board of directors made after a person is appointed or directed to hold office as a director or additional director under this section shall, so long as such director or additional director holds office, have effect unless confirmed by the 4[Company Law Board].

1 Provided that in lieu of passing an order as aforesaid, the Central Government may, if the company has not availed itself of the option given to it under section 265, direct the company to amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the Central Government.

2 (2) In case the Central Government passes an order under the proviso to sub-section (1), it may, if it thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, such number of persons as the Central Government may, by order in writing, specify as being necessary to effectively safeguard the interest of the company, or its shareholders or the public interest specified by the Central Government shall hold office as additional directors of the company.

3 Inserted by Act 65 of 1960, Section 155.

4 Substituted by the Companies (Amendment) Act, 1988, section 53, for the words "Central Government" w.e.f. 15-6-1988.

1[(6) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any person is appointed by the Central Government to hold office as director or additional director of a company in pursuance of sub-section (1) or sub-section (2), the Central Government may issue such directions to the company as it may consider necessary or appropriate in regard to its affairs 2[and such directions may include directions to remove an

auditor already appointed and to appoint another auditor in his place or to alter the articles of the company, and upon such directions being given, the appointment, removal or alteration, as the case may be, shall be deemed to have come into effect as if the provisions of this Act in this behalf have been complied with without requiring any further act or thing to be done.]

(7) The Central Government may require the persons appointed as directors or additional directors in pursuance of sub-section (1) or sub-section (2) to report to the Central Government from time to time with regard to the affairs of the company.]

409. Power of 3[Company Law Board] to prevent change in Board of directors likely to affect company prejudicially<sup>4</sup>

(1) Where a complaint<sup>5</sup> is made to the 6[Company Law Board], by the managing director or any other director, 7[\*\*\*] 8[or the manager], of a company that as a result of a change which has taken place or is likely to take place in the ownership of any shares held in the company, a change in the Board of directors is likely to take place which (if allowed) would affect prejudicially the affairs of the company, the 9[Company Law Board] may, if satisfied, after such inquiry as it thinks fit to make that it is just and proper so to do, by order, direct that 10[no resolution passed or that may be passed or no action taken or that may be taken] to effect a change in the Board of directors after the date of the complaint shall have effect unless confirmed by the 11[Company Law Board]; and any such order shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in the memorandum or articles of the company, or in any agreement with, or any resolution passed in general meeting by, or by the Board of directors of, the company.

1        Inserted by Act 41 of 1974, section 31, w.e.f. 1-2-1975.

2        Inserted by the Companies (Amendment) Act, 1988, section 53 w.e.f. 15-6-1988.

3        Substituted by the Companies (Amendment) Act, 1988 for the words "Central Government" w.e.f. 31-5-1991.

4 Fees prescribed is Rs. 500.

5 See Form 35B, Companies (Central Government's) General Rules and Forms, 1956.

6 Substituted by the Companies (Amendment) Act, 1988 for the words "Central Government" w.e.f. 31-5-1991.

7 Reference to managing agent, secretaries and treasurers redundant after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

8 Substituted by Act 65 of 1960, section 156, for "or the secretaries and treasurers".

9 Substituted by the Companies (Amendment) Act, 1988, section 66 w.e.f. 31-5-1991, for the words "Central Government".

10 Substituted by Act 65 of 1960, section 156 w.e.f. 31-5-1991, for "no resolution passed or action taken".

11 Substituted by the Companies (Amendment) Act, 1988, section 66 w.e.f. 31-5-1991, for the words "Central Government".

(2) The 1[Company Law Board] shall have power when any such complaint is received by it, to make an interim order to the effect set out in sub-section (1), before making or completing the inquiry aforesaid.

(3) Nothing contained in sub-sections (1) and (2) shall apply to a private company, unless it is a subsidiary of a public company.

## CHAPTER VII

## CONSTITUTION AND POWERS OF 2[ADVISORY COMMITTEE]

### 3[410. Appointment of Advisory Committee

For the purpose of advising the Central Government and the Company Law Board on such matters arising out of the administration of this Act as may be referred to it by that Government or Board, the Central Government may constitute an Advisory Committee consisting of not more than five persons with suitable qualifications.]

[Sections 411 to 415 omitted by Act 31 of 1965, w.e.f. 15-10-1965.]

## CHAPTER VIII

### MISCELLANEOUS PROVISIONS

Contracts where company is undisclosed principal

#### 416. Contracts by agents of company in which company is undisclosed principal

(1) Every person, being the 4[\*\*\*] manager or other agent of a public company or of a private company which is a subsidiary of a public company, who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of

entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it is entered into.

(2) Every such person who enters into a contract as aforesaid shall forthwith deliver the memorandum to the company and send copies thereof to each of the directors; and such memorandum shall be filed in the office of the company and laid before the Board of directors at its next meeting.

1 Ibid.

2 Substituted by Act 31 of 1965, section 53, for "§Advisory Commission" w.e.f. 15-10-1965.

3 Substituted by section 53, *ibid*, for sections 410 to 415, w.e.f. 15-10-1965.

4 Reference to managing agent, secretaries and treasurers redundant after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

(3) If default is made in complying with the requirements of this section, -

(a) the contract shall, at the option of the company, be voidable as against the company; and

(b) the person who enters into the contract, or every officer of the company who is in default, as the case may be, shall be punishable with fine which may extend to two hundred rupees.

## Employees' securities and provident funds

417. Employees' securities to be deposited in post office savings bank or Scheduled Bank

1[(1) Any money or security deposited with a company by any of its employee in pursuance of his contract of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit -

(a) in a post office savings bank account, or

(b) in a special account to be opened by the company for the purpose in the State Bank of India or in a Scheduled Bank, or

(c) where the company itself is a Scheduled Bank, in a special account to be opened by the company for the purpose either in itself or in the State Bank of India or in any other Scheduled Bank.]

(2) No portion of such moneys or securities shall be utilised by the company except for the purposes agreed to in the contracts of service.

(3) A receipt for moneys deposited with a company by its employee shall not be deemed to be a security within the meaning of this section; and the moneys themselves shall accordingly be deposited 2[\*\*\*] as provided in sub-section (1).

418. Provisions applicable to provident funds of employees

3[(1) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or received or accruing by way of interest or otherwise to such fund shall, within fifteen days from the date of contribution, receipt or accrual, as the case may be, either -

1 Substituted by Act 65 of 1960, section 153, for sub-section (1).

2 The words "with a Scheduled Bank" omitted by section 153, for sub-section (1).

3 Substituted by section 159, *ibid.*, for sub-section (1).

(a) be deposited -

(i) in a post office savings bank account, or

(ii) in a special account to be opened by the company for the purpose in the State Bank of India or in a Scheduled Bank, or

(iii) where the company itself is a Scheduled Bank, in a special account to be opened by the company for the purpose either in itself or in the State Bank of India or in any other Scheduled Bank; or

(b) be invested in the securities mentioned or referred to in clauses (a) to (e) of section 20 of the Indian Trusts Act, 1882 (2 of 1882).]

(2) Notwithstanding anything to the contrary in the rules of any provident fund to which sub-section (1) applies or in any contract between a company and its employees, no employee shall be entitled to receive, in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (1), interest at a rate exceeding the rate of interest yielded by such investment.

(3) Nothing in sub-section (1) shall affect any rights of an employee under the rules of a provident fund to obtain advances from or to withdraw money standing to his credit in the fund, where the fund is a recognised provident fund within the meaning of clause (a) of section 58A of the Indian Income-tax Act, 19221, or where the rules of the fund contain provisions corresponding to rules 4, 5, 6, 7, 8, and 9, of the Indian Income-tax (Provident Funds Relief) Rules.

(4) Where a 2[\*\*\*] trust has been created by a company with respect to any provident fund referred to in sub-section (1), the company shall be bound to collect the contributions of the employees concerned and pay such contributions as well as its own contributions, if any, to the trustees 3[within fifteen days from the date of collection]; but in other respects, the obligations laid on the company by this section shall devolve on the trustees and shall be discharged by them instead of by the company.

419. Right of employee to see bank's receipt for moneys or securities referred to in section 417 or 418

An employee shall be entitled, on request made in this behalf to the company, or to the trustees referred to in sub-section (4) of section 418, as the case may be, to see the bank's receipt for any money or security such as is referred to in sections 417 and 418.

- 1 See now Income-tax Act, 1961, section 2(38).
- 2 The word "separate" omitted by Act 65 of 1960, section 159.
- 3 Inserted, *ibid*.

#### 420. Penalty for contravention of sections 417, 418 and 419

Any officer of a company, or any such trustee of a provident fund as is referred to in sub-section (4) of section 418 who, knowingly, contravenes, or authorises or permits the contravention of, the provisions of section 417, 418 or 419, shall be punishable with 1[imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees].

#### Receivers and Managers

#### 421. Filing of accounts of receivers

Every receiver of the property of a company who has been appointed under a power conferred by any instrument and who has taken possession, shall once in every half year while he remains in possession, and also on ceasing to act as receiver, file with the Registrar an abstract in the prescribed form<sup>2</sup> of his receipts and payments during the period to which the abstract relates.

#### 422. Invoices, etc., to refer to receiver where there is one

Where a receiver of the property of a company has been appointed, every invoice, order for goods, or business letter issued by or on behalf of the company, or the receiver of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.

423. Penalty for non-compliance with sections 421 and 422

If default is made in complying with the requirements of section 421 or 422, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to two hundred rupees.

For the purposes of this section, the receiver shall be deemed to be an officer of the company.

424. Application of sections 421 to 423 to receivers and managers appointed by Court and managers appointed in pursuance of an instrument<sup>3</sup>

The provisions of sections 421, 422 and 423 shall apply to the receiver of, or any person appointed to manage, the property of a company, appointed by a Court or to any person appointed to manage the property of a company under any powers contained in an instrument, in like manner as they apply to a receiver appointed under any powers contained in an instrument.

1 Substituted by Act 65 of 1960, section 160, for "fine which may extend to five hundred rupees".

2 See Form 36, Companies (Central Government's) General Rules and Forms, 1956.

3 See Form 36, Companies (Central Government's) General Rules and Forms, 1956.

## PART VII

### WINDING UP

#### CHAPTER I

##### PRELIMINARY

##### Modes of Winding Up

#### 425. Modes of winding up

(1) The winding up of a company may be either -

(a) by the Court; or

(b) voluntary; or

(c) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

## Contributories

### 426. Liability as contributories of present and past members

(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of section 427 and subject also to the following qualifications, namely: -

(a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) no past member shall be liable to contribute unless it appears to the Court that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution shall be required from any past or present member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member;

(e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of sub-section (2), be required from any past or present member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(g) a sum due to any past or present member of the company in his character as such, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member, in a case of competition between himself and 1[any creditor claiming otherwise than in the character of a past or present member of the company]; but any such sum shall be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him as if the company were a company limited by shares.

427. Obligations of directors, 2[\*\*\*] and managers whose liability is unlimited

In the winding up of a limited company, any director 3[\*\*\*] or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited, 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 the winding up, a member of an unlimited company:

Provided that -

(a) a past director 4<sup>[\*\*\*]</sup> 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;

1 Substituted by Act 65 of 1960, section 161, for certain words.

2 Reference to managing agent, secretaries and treasurers redundant after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

3 Ibid.

4 Ibid.

(b) a past director 1<sup>[\*\*\*]</sup> 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) subject to the articles of the company, a director, 2<sup>[\*\*\*]</sup> or manager shall not be liable to make such further contribution, unless the Court 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.

428. Definition of "contributory"

The term "contributory" means, every person liable to contribute to the assets of a company in the event of its being wound up, and includes the holder of any shares which are fully paid up; and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

#### 429. Nature of liability of contributory

(1) The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times specified in calls made on him for enforcing the liability.

(2) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes sitting outside the presidency towns.

#### 430. Contributories in case of death of member

(1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives shall be liable in a due course of administration, to contribute to the assets of the company in discharge of his liability, and shall be contributories accordingly.

(2) If the legal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and compelling payment thereof of the money due.

(3) For the purposes of this section, where the deceased contributory was a member of a Hindu joint family governed by the Mitakshara School of Hindu Law, his legal representatives shall be deemed to include the surviving coparceners.

1      Ibid.

2      Ibid.

431.            Contributories in case of insolvency of member

If a contributory is adjudged insolvent, either before or after he has been placed on the list of contributories, -

(a) his assignees in insolvency shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company; and

(b) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

432.            Contributories in case of winding up of a body corporate which is a member

If a body corporate which is a contributory is ordered to be wound up, either before or after it has been placed on the list of contributor, -

(a) the liquidator of the body corporate shall represent it for all the purposes of the winding up of the company and shall be a contributory accordingly, and may be called on to admit to proof against the assets of the body corporate, or otherwise to allow to be paid out of its assets in due course of law, any money due from the body corporate in respect of its liability to contribute to the assets of the company; and

(b) there may be proved against the assets of the body corporate the estimated value of its liability to future calls as well as calls already made.

## CHAPTER II

### WINDING UP BY THE COURT

Cases in which company may be wound up by the Court

433. Circumstances in which company may be wound up by Court

A company may be wound up by the Court, -

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

(b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(d) if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two;

(e) if the company is unable to pay its debts;

(f) if the Court is of opinion that it is just and equitable that the company should be wound up.

#### 434. Company when deemed unable to pay its debts

(1) A company shall be deemed to be unable to pay its debts -

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

(2) The demand referred to in clause (a) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm.

#### Transfer of Proceedings

##### 435. Transfer of winding up proceedings to District Court

Where a High Court Makes an order for winding up a company under this Act, the High Court may, if it thinks fit, direct all subsequent proceedings to be had in a District Court subordinate thereto or, with the consent of any other High Court, in such High Court or in a District Court subordinate thereto; and thereupon for the purposes of winding up the company, the Court in respect of which such direction is given shall be deemed to be "the Court" within the meaning of this Act, and shall have all the jurisdiction and powers of a High Court under this Act.

##### 436. Withdrawal and transfer of winding up from one District Court to another

If during the progress of a winding up in a District Court, it appears to the High Court that the same could be more conveniently proceeded with in the High Court or in any other District Court, the High Court may, as the case may require, -

(a) withdraw the case and proceed with the winding up itself; or

(b) transfer the case to such other District Court, whereupon the winding up shall proceed in that District Court.

437. Power of High Court to retain winding up proceedings in District Court

The High Court may direct that a District Court in which proceedings for winding up a company have been commenced, shall retain and continue the proceedings, although it may not be the Court in which they ought to have been commenced.

438. Jurisdiction of High Court under sections 435, 436 and 437 to be exercised at any time and at any stage

The High Court shall have jurisdiction to pass orders under section 435, 436 or 437 at any time and at any stage and either on the application of or without application from, any of the parties to the proceedings.

Petition for Winding Up

439. Provisions as to applications for winding up

(1) An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, -

(a) by the company; or

(b) by any creditor or creditors, including any contingent or prospective creditor or creditors; or

(c) by any contributory or contributories; or

(d) by all or any of the parties specified in clauses (a), (b) and (c), whether together or separately; or

(e) by the Registrar; or

(f) in a case falling under section 243, by any person authorised by the Central Government in that behalf.

(2) A secured creditor, the holder of any debentures (including debenture stock), whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and the trustee for the holders of debentures, shall be deemed to be creditors within the meaning of clause (b) of sub-section (1).

(3) A contributory shall be entitled to present a petition for winding up a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all, or may have, no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities.

(4) A contributory shall not be entitled to present a petition for winding up a company unless -

(a) either the number of members is reduced, in the case of a public company, below seven, and, in the case of a private company, below two; or

(b) the shares in respect of which he is a contributory, or some of them, either were 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.

(5) Except, in the case where he is authorised in pursuance of clause (f) of sub-section (1), the Registrar shall be entitled to present a petition for winding up a company only on the grounds specified in 1[clauses (b), (c), (d), (e) and (f) of section 433;

Provided that the Registrar shall not present a petition on the ground specified in clause (e) aforesaid, unless it appears to him either from the financial condition of the company as disclosed in its balance sheet or from the report of 2[a special auditor appointed under section 233A or an inspector] appointed under section 235 or 237, that the company is unable to pay its debts;

Provided further that the Registrar shall obtain the previous sanction of the Central Government to the presentation of the petition on any of the grounds aforesaid.

- 1 Substituted by Act 65 of 1960, section 162, for "clauses (b), (c) and (e)".
- 2 Substituted by section 162, *ibid*, for "an inspector".
- 3 Powers delegated to Regional Directors vide Notification No. GSR 288(E), dated 31-5-1991.

(6) The Central Government<sup>1</sup> shall not accord its sanction in pursuance of the foregoing proviso, unless the company has first been afforded an opportunity of making its representations, if any.

(7) A petition for winding up a company on the ground specified in clause (b) of section 433 shall not be presented -

(a) except by the Registrar or by a contributory; or

(b) before the expiration of fourteen days after the last day on which the statutory meeting referred to in clause (b) aforesaid ought to have been held.

(8) Before a petition for winding up a company presented by a contingent or prospective creditor is admitted, the leave of the Court shall be obtained for the admission of the petition and such leave shall not be granted -

(a) unless, in the opinion of the Court there is a prima facie case for winding up the company;  
and

(b) until such security for costs has been given as the court thinks reasonable.

440. Right to present winding up petition where company is being wound up voluntarily or subject to Court's supervision

(1) Where a company is being wound up voluntarily or subject to the supervision of the Court, a petition for its winding up by the Court may be presented by -

(a) any person authorised to do so under section 439, and subject to the provisions of that section; or

(b) the Official Liquidator.

(2) The Court shall not make a winding up order on a petition presented to it under sub-section (1), unless it is satisfied that the voluntary winding up or winding up subject to the supervision of the Court cannot be continued with due regard to the interests of the creditors or contributories or both.

## Commencement of Winding Up

1 Powers delegated to Regional Directors vide Notification No. GSR 288(E), dated 31-5-1991.

### 441. Commencement of winding up by Court

(1) Where, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

### Powers of Court

### 442. Power of Court to stay or restrain proceedings against Company

At any time after the presentation of a winding up petition and before a winding up order has been made, the company, or any creditor or contributory, may -

(a) where any suit or proceeding against the company is pending in the Supreme Court or in any High Court, apply to the Court in which the suit or proceeding is pending for a stay of proceedings therein; and

(b) where any suit or proceeding is pending against the company in any other Court, apply to the Court having jurisdiction to wind-up the company, to restrain further proceedings in the suit or proceeding;

and the Court to which application is so made may stay or restrain the proceedings accordingly, on such terms as it thinks fit.

#### 443. Powers of Court on hearing petition

(1) On hearing a winding up petition, the Court may -

(a) dismiss it, with or without costs; or

(b) adjourn the hearing conditionally or unconditionally; or

(c) make any interim order that it thinks fit; or

(d) make an order for winding up the company with or without costs, or any other order that it thinks fit:

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

(2) Where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Court may refuse to make an order of winding up, if it is of 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 that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar, or in holding the statutory meeting, the Court may -

(a) instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(b) order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

#### Consequences of Winding up Order

444. Order for winding up to be communicated to Official Liquidator and Registrar

Where the Court makes an order for the winding up of a company, the Court shall forthwith cause intimation thereof to be sent to the 1[Official Liquidator and the Registrar].

445. Copy of winding up order to be filed with Registrar

(1) On the making of a winding up order, it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the Registrar a certified copy of the order, within 2[thirty days] from the date of the making of the order.

If default is made in complying with the foregoing provision, the petitioner, or as the case may require, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for each day during which the default continues.

3[(1A) In computing the period of 4[thirty days] from the date of the making of a winding up order under sub-section (1), the time requisite for obtaining a certified copy of the order shall be excluded.]

(2) On the filing of a certified copy of the winding up order, the Registrar shall make a minute thereof in his books relating to the company, and shall notify in the Official Gazette that such an order has been made.

1 Substituted by Act 65 of 1960, section 163, for "Official Liquidator".

2 Substituted by Act 31 of 1965, section 62 and Schedule for "§one month;" w.e.f. 15-10-1965.

3      Inserted by Act 65 of 1960, section 164.

4      Substituted by Act 31 of 1965, section 62 and Schedule for "§one month" w.e.f. 15-10-1965.

(3) Such order shall be deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued.

446.   Suits stayed on winding up order

(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose.

1[(2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being, in force, 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 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the 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 before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960.)

(3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that Court.

2[(4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.]

1 Substituted by Act 65 of 1960, section 165, for sub-section (2).

2 Inserted by Act 65 of 1960, section 165.

447. Effect of winding up order

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

## Official Liquidators

### 448. Appointment of Official Liquidator

(1) For the purposes of this Act, so far as it relates to the winding up of companies by the Court,

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(a) there shall be attached to each High Court, an Official Liquidator appointed by the Central Government, who shall be a whole-time officer, unless the Central Government considers that there will not be sufficient work for a whole-time officer in which case a part-time officer may be appointed; and

(b) the Official Receiver attached to a District Court for insolvency purposes, or if there is no such Official Receiver, then, such person as the Central Government may, by notification in the Official Gazette appoint for the purpose, shall be the Official Liquidator attached to the District Court.

1[(1A) The Central Government may appoint one or more Deputy or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions.]

(2) All references to the "Official Liquidator" in this Act shall be construed as references to the Official Liquidator referred to in clause (a) or clause (b), as the case may be, of sub-section (1) 2[and as including references to Deputy or Assistant Official Liquidators appointed under sub-section (1A)].

449. Official Liquidator to be liquidator

On a winding up order being made in respect of a company, the Official Liquidator shall, by virtue of his office, become the liquidator of the company.

450. Appointment and powers of provisional liquidator

(1) At any time after the presentation of a winding up petition and before the making of a winding up order, the Court may appoint the Official Liquidator to be liquidator provisionally.

1 Inserted by Act 65 of 1960, section 166.

2 Ibid.

(2) Before appointing a provisional liquidator, the Court shall give notice to the company and give a reasonable opportunity to it to make its representations, if any, unless, for special reasons to be recorded in writing, the Court thinks fit to dispense with such notice.

(3) Where a provisional liquidator is appointed by the Court, the Court may limit and restrict his powers by the order appointing him or by a subsequent order; but otherwise he shall have the same powers as a liquidator.

(4) The Official Liquidator shall cease to hold office as provisional liquidator, and shall become the liquidator, of the company, on a winding up order being made.

#### 451. General provisions as to liquidators

(1) The liquidator shall conduct the proceedings in winding up the company and perform such duties in reference thereto as the Court may impose.

(2) Where the Official liquidator becomes or acts as liquidator, there shall be paid to the Central Government out of the assets of the company such fees as may be prescribed.

(3) The acts of a liquidator shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification;

Provided that nothing in his sub-section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

#### 452. Style, etc., of liquidator

A liquidator shall be described by the style of "The Official Liquidator" of the particular company in respect of which he acts, and not by his individual name.

453. Receiver not to be appointed of assets with liquidator

A receiver shall not be appointed of assets in the hands of a liquidator except by, or with the leave of, the Court.

454. Statement of affairs to be made to Official Liquidator

(1) Where the Court has made a winding up order or appointed the Official Liquidator as provisional liquidator, unless the Court in its discretion otherwise orders, there shall be made out and submitted to the Official Liquidator a statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely: -

(a) the assets of the company, stating separately the cash balance in hand and at the bank, if any, and the negotiable securities, if any, held by the company;

(b) its debts and liabilities;

(c) the names, residences 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;

(d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;

(e) such further or other information as may be prescribed, or as the Official Liquidator may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the manager, secretary or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned, as the Official Liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons -

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are, in the opinion of the Official Liquidator, capable of giving the information required;

(d) who are or have been within the said year officers of, or in the employment of, a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within twenty-one days from the relevant date, or within such extended time not exceeding three months from that date as the Official Liquidator or the Court may, for special reasons, appoint.

(4) Any person making, or concurring in making, the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Liquidator may consider reasonable, subject to an appeal to the Court.

1[(5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one hundred rupees for every day during which the default continues, or with both.

(5A) The Court by which the winding up order is made or the provisional liquidator is appointed, may take cognizance of an offence under sub-section (5) upon receiving a complaint of facts constituting such an offence and trying the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure 18982, for the trial of summons cases by magistrates.]

(6) 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 submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code; (45 of 1860); and shall, on the application of the Official Liquidator, be punishable accordingly.

(8) In this section, the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding up order.

455. Report by Official Liquidator

(1) In a case where a winding up order is made, the Official Liquidator shall, as soon as practicable after receipt of the statement to be submitted under section 454 and not later than six months from the date of the order, 3[or such extended period as may be allowed by the Court], or in a case where the Court orders that no statement need be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court -

(a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, giving separately, under the heading of assets, particulars of (i) cash and negotiable securities; (ii) debts due from contributories; (iii) debts due to the company and securities, if any, available in respect thereof; (iv) movable and immovable properties belonging to the company; and (v) unpaid calls;

1 Substituted by Act 65 of 1960, section 167, for sub-section (5).

2 See now the Code of Criminal Procedure, 1973 (1 of 1974).

3 Inserted by Act 65 of 1960, section 168.

(b) if the company has failed, as to the causes of the failure; and

(c) whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The Official Liquidator may also, if he thinks fit, make a further report, or further reports, stating 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 Court.

(3) If the Official Liquidator states in any such further report that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in section 478.

#### 456. Custody of company's property

(1) Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator <sup>1</sup>[or the provisional liquidator, as the case may be,] shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

2[(1A) For the purpose of enabling the liquidator or the provisional liquidator, as the case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator or the provisional liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may thereupon, after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the liquidator or the provisional liquidator.

(1B) For the purpose of securing compliance with the provisions of sub-section (1A), the Chief Presidency Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may in his opinion be necessary.]

(2) All the property and effects of the company shall be deemed to be in the custody of the court as from the date of the order for the winding up of the company.

1      Inserted by Act 65 of 1960, section 169.

2      Ibid.

#### 457. Powers of liquidator

(1) The liquidator in a winding up by the Court shall have power, with the sanction of the Court, -

(a) to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;

(c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels;

(d) to raise on the security of the assets of the company any money requisite;

(e) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(2) The liquidator in a winding up by the Court shall have power -

(i) 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;

1[(ia) to inspect the records and returns of the company on the files of the Registrar without payment of any fee;]

(ii) 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;

(iii) to draw, accept, make and endorse any 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 the bill, hundi, or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

1      Inserted by Act 65 of 1960, section 170.

(iv) 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 liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:

Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator-General.

(v) to appoint an agent to do any business which the liquidator is unable to do himself.

(3) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court; and any creditor or contributory may apply to the Court with respect to the exercise or proposed exercise of any of the powers conferred by this section.

458.      Discretion of liquidator

The Court may, by order, provide that the liquidator may exercise any of the powers referred to in sub-section (1) of section 457 without the sanction or intervention of the Court:

Provided always that the exercise by the liquidator of such powers shall be subject to the control of the Court.

1[458A. Exclusion of certain time in computing periods of limitation

Notwithstanding anything in the Indian Limitation Act, 1908 (9 of 1908) or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on behalf of a company which is being wound up by the Court, the period from the date of commencement of the winding up of the company to the date on which the winding up order is made (both inclusive) and a period of one year immediately following the date of the winding up order shall be excluded.]

459. Provision for legal assistance to liquidator

The liquidator may, with the sanction of the Court, appoint an advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his duties.

1 Inserted by section 171, *ibid.*

460. Exercise and control of liquidator's powers

(1) Subject to the provisions of this Act, the 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 resolution of the creditors or contributories at any general meeting or by the committee of inspection.

(2) 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 committee of inspection.

(3) The liquidator -

(a) may summon general meetings of the creditors or contributories, whenever he thinks fit, for the purpose of ascertaining their wishes;

(b) shall summon such meetings at such times, as the creditors or contributories, as the case may be, may, by resolution, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories, as the case may be.

(4) The liquidator may apply to the Court in the manner prescribed, if any, for directions in relation to any particular matter arising in the winding up.

(5) Subject to the provisions of this Act, the liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(6) Any person aggrieved by any act or decision of the liquidator may apply to the Court; and the Court may confirm, reverse or modify the act or decision complained of, and make such further order as it thinks just in the circumstances.

461. Books to be kept by liquidator

(1) The liquidator shall keep, in the manner prescribed, proper books 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) Any creditor or contributory may, subject to the control of the Court, inspect any such books, personally or by his agent.

462. Audit of liquidator's accounts

(1) The 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 Court an account of his receipts and payments as liquidator.

(2) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.

(3) The Court shall cause the account to be audited in such manner as it thinks fit; and for the purpose of the audit, the liquidator shall furnish the Court with such vouchers and information as the Court may require, and the Court may, at any time, require the production of, and inspect, any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Court, and the other copy shall be delivered to the Registrar for filing; and each copy shall be open to the inspection of any creditor, contributory or person interested.

1[(4A) Where an account referred to in sub-section (4) relates to a Government company in liquidation, the 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.

(5) The liquidator shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and to every contributory:

Provided that the Court may in any case dispense with compliance with this sub-section.

#### 463. Control of Central Government over liquidators

(1) The Central Government shall take cognizance of the conduct of liquidators of companies which are being wound up by the Court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by this Act 2[or by the Indian Companies Act, 1913 (7 of 1913)], the rules thereunder, or otherwise, with respect to the performance of his duties, or if any complaint is made to the Central Government by any creditor, or contributory in regard thereto, the Central Government shall inquire into the matter, and take such action thereon as it may think expedient:

1 Inserted by the Companies (Amendment) Act, 1988, section 54, w.e.f. 15-6-1988.

2 Inserted by Act 65 of 1960, s.172.

1[Provided that where the winding up of a company has commenced before the commencement of this Act, the Court may, on the application of the Central Government, appoint in place of such liquidator the Official Liquidator as the liquidator in such winding up.]

(2) The Central Government may at any time require any liquidator of a company which is being wound-up by the Court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Central Government thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up.

(3) The Central Government may also direct a local investigation to be made of the books and vouchers of the liquidators.

Committee of inspection

464. Appointment and Composition of committee of inspection

2[(1) (a) The Court may, at the time of making an order for the winding up of a company or at any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator.

(b) Where a direction is given by the Court as aforesaid, the liquidator shall, within two months from the date of such direction, convene a meeting of the creditors of the company (as ascertained from its books and documents) for the purpose of determining who are to be members of the committee;

3[(2) The liquidator shall, within fourteen days from the date of the creditors' meeting or such further time as the Court in its discretion may grant for the purpose, convene a meeting of the contributories to consider the decision of the creditors' meeting with respect to the membership of the committee; and it shall be open to the meeting of the contributories to accept the decision of the creditors' meeting with or without modifications or to reject it.]

(3) Except in the case where the meeting of the contributories accepts the decision of the creditors' meeting in its entirety, it shall be the duty of the liquidator to apply to the Court for directions as to 4[\*\*\*] what the composition of the committee shall be, and who shall be members thereof.

1 Ibid.

2 Substituted by section 173, *ibid*, for sub-section (1).

3 Substituted by section 173, *ibid*, for sub-section (2).

4 The words "whether there shall be a committee of inspection; and, if so "omitted by Act 65 of 1960, section 173.

465. Constitution and proceedings of committee of inspection<sup>1</sup>

(1) A committee of inspection appointed in pursuance of section 464 shall consist of not more than twelve members, being creditors and contributories of the company or persons holding general or special powers of attorney from creditors or contributories, in such proportions as may be agreed on by the meetings of creditors and contributories, or in case of difference of opinion between the meetings, as may be determined by the Court.

(2) The committee of inspection shall have the right to inspect the accounts of the liquidator at all reasonable times.

(3) The committee shall meet at such times as it may from time to time appoint, 2[\*\*\*] and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(4) The quorum for a meeting of the committee shall be one-third of the total number of the members, or two, whichever is higher.

(5) The committee may act by a majority of its members present at a meeting, but shall not act unless a quorum is present.

(6) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(7) If a member of the committee is adjudged an insolvent, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who, together with himself, represent the creditors or contributories, as the case may be, his office shall become vacant.

(8) A member of the committee may be removed at a meeting of creditors if he represents creditors, or at a meeting of contributories if he represents contributories, by an ordinary resolution of which seven days' notice has been given, stating the object of the meeting.

(9) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy; and the meeting may, by resolution, re-appoint the same, or appoint another, creditor or contributory to fill the vacancy:

1 See rule 14, companies (Central Government) General Rules and Forms, 1956 for applicability of section 465 to section 503.

2 The word "and, failing such appointment, at least once a month," omitted by section 174, *ibid*.

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled, he may apply to the Court and the Court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(10) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

## General powers of Court in case of winding up by Court

### 466. Power of Court to stay winding up

(1) The Court may at any time after making a winding up order, on the application either of the Official Liquidator or of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) On any application under this section, the Court may, before making an order, require the Official Liquidator to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

### 467. Settlement of list of contributories and application of assets

(1) As soon as may be after making a winding up order, the Court shall settle a list of contributories, with power to rectify the 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 collected and applied in discharge of its liabilities:

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

(2) In settling the list of contributories, the Court 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.

468. Delivery of property to liquidator

The Court may, at any time after making a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, 1[officer or other employee] of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the liquidator, any money, property or books and papers 2[in his custody or under his control] to which the company is prima facie entitled.

469. Payment of debts due by contributory and extent of set-off

(1) The Court may, at any time after making a winding up order, make an order on 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) The Court, in making such an order, may -

(a) in the case of an unlimited company, allow to the contributory, by way of set-off, any money due to him or to the estate which he represents, from the company, on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director 3[\*\*\*] or manager whose liability is unlimited, or to his estate, the like allowance.

(3) 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.

#### 470. Power of Court to make calls

(1) The Court may, at any time after making a winding up order and either before or after it has ascertained the sufficiency of the assets of the company,-

1 Substituted by Act 65 of 1960, section 175, for "§or officer".

2 Substituted by section 175, *ibid*, for "§in his hands".

3 Reference to managing agent, secretaries and treasurers redundant after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

(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 Court 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.

(2) In making a call, the Court may take into consideration the probability that some of the contributories may, partly or wholly, fail to pay the call.

471. Payment into bank of moneys due to company

(1) The Court may order any contributory, purchaser or other person from whom any money is due to the company to pay the money into the public account of India in the Reserve Bank of India instead of to the liquidator.

(2) Any such order may be enforced in the same manner as if the Court had directed payment to the liquidator.

472. Moneys and securities paid into Bank to be subject to order of Court

All moneys, bills, hundis, notes and other securities paid or delivered into the Reserve Bank of India in the course of the winding up of a company by the Court, shall be subject in all respects to the orders of the Court.

473. Order on contributory to be conclusive evidence

(1) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

474. Power to exclude creditors not proving in time

The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts or claims are proved.

475. Adjustment or rights of contributories

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

476. Power to order costs

The Court may, in the event of the assets being insufficient to satisfy the 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 Court thinks just.

477. Power to summon persons suspected of having property of company, etc.

(1) The Court may, at any time after the appointment of a provisional liquidator or the making 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 Court deems capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.

(2) The Court may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories; and may, in the former case, reduce his answers to writing and require him to sign them.

(3) The Court may require any officer or person so summoned to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any officer or person so summoned, after being paid or tendered a reasonable sum for his expenses, fails to appear before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

1[(5) If, on his examination, any officer or person so summoned admits that he is indebted to the company, the Court 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 to the Court may seem just, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(6) If, on his examination, any such officer or person admits that he has in his possession any property belonging to the company, the Court 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 to the Court may seem just.

1     Inserted by Act 65 of 1960, section 176.

(7) Orders made under sub-sections (5) and (6) 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 (5 of 1908), respectively.

(8) Any person making any payment or delivery in pursuance of an order made under sub-section (5) or sub-section (6) 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.]

478.     Power to order public examination of promoters, directors, etc.

(1) When an order has been made for winding up a company by the Court, and the Official Liquidator has made a report to the Court under this Act, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any officer of the company in relation to the company since its formation, the Court may, after considering

the report, direct that that person or officer shall attend before the Court on a day appointed by it for that purpose, and be publicly 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) The Official Liquidator shall take part in the examination, and for that purpose may, if specially authorized by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(3) Any creditor or contributory may also take part in the examination either personally or by any advocate, attorney or pleader entitled to appear before the Court.

(4) The Court may put such questions to the person examined as it thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put, or allow to be put, to him.

(6) 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 Official Liquidator's report; and

(b) may at his own cost employ an advocate, attorney or pleader entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him.

(7) (a) If any such person applies to the Court to be exculpated from any charges made or suggested against him, it shall be the duty of the Official Liquidator to appear on the hearing of the application and call the attention of the Court to any matters which appear to the Official Liquidator to be relevant.

(b) If the Court, after hearing any evidence given or witnesses called by the Official Liquidator, grants the application, the Court may allow the applicant such costs as it may think fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined; and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) The Court may, if it thinks fit, adjourn the examination from time to time.

(10) An examination under this section may, if the Court so directs and subject to any rules made in this behalf, be held before any District Judge, or before any officer of the High Court, being an Official Referee, Master, Registrar or Deputy Registrar.

(11) The powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the Judge or officer before whom the examination is held in pursuance of sub-section (10).

479. Power to arrest absconding contributory

At any time either before or after making a winding up order, the Court may, on proof of probable cause for believing that a contributory is about to quit India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, cause -

(a) the contributory to be arrested and safely kept until such time as the Court may order; and

(b) his books and papers and movable property to be seized and safely kept until such time as the Court may order.

#### 480. Saving of existing powers of Court

Any powers conferred on the Court by this Act shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

#### 481. Dissolution of company

(1) When the affairs of a company have been completely wound up 1[or when the Court is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made], the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall, within 2[thirty] days from the date thereof, be forwarded by the liquidator the Registrar who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in forwarding a copy as aforesaid, he shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

#### Enforcement of and appeal from orders

#### 482. Order made to any Court to be enforced by other Courts

Any order made by a Court for, or in the course of, winding up a company shall be enforceable at any place in India, other than that over which such Court has jurisdiction, by the Court which would have had jurisdiction in respect of the company if its registered office had been situate at such other place, and in the same manner in all respects as if the order had been made by that Court.

#### 483. Appeals from orders

Appeals from any order made, or decision given, in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction.

1        Inserted by Act 65 of 1960, section 177.

2        Substituted by Act 31 of 1965, section 62 and Schedule for “§fourteen” w.e.f. 15-10-1965.

## CHAPTER III

### VOLUNTARY WINDING UP

Resolutions for, and commencement of, voluntary winding up

484.        Circumstances in which company may be wound-up voluntarily

(1)        A company may be wound up voluntarily -

(a) when the period, if any, fixed for the duration of the company by the articles has expired, or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting passes a resolution requiring the company to be wound up voluntarily;

(b) if the company passes a special resolution that the company be wound up voluntarily.

(2) In this Act, the expression "a resolution for voluntary winding up" means a resolution passed under clause (a) or (b) of sub-section (1).

485. Publication of resolution to wind up voluntarily

(1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days of the passing of the resolution, give notice of the resolution by advertisement in the Official Gazette, and also in some newspaper circulating in the district where the registered office of the company is situate.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

For the purposes of this sub-section, a liquidator of the company shall be deemed to be an officer of the company.

486. Commencement of voluntary winding up

A voluntary winding up shall be deemed to commence at the time when the resolution for voluntary winding up is passed.

Consequences of voluntary winding up

487. Effect of voluntary winding up on status of company

In the case of a voluntary winding up, the company shall from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up of such business:

Provided that the corporate state and corporate powers of the company shall continue until it is dissolved.

Declaration of Solvency

488. Declaration of solvency in case of proposal to wind-up voluntarily

(1) Where it is proposed to wind-up a company voluntarily, its directors, or in case the company has more than two directors, the majority of the directors, may, at a meeting of the Board, make a declaration verified by an affidavit, to the effect that they have made a full inquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company has no debts, or that it will be able to pay its debts in full within such period not exceeding three years from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act, unless -

(a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the Registrar for registration before that date; and

1[(b) it is accompanied by a copy of the report of the auditors of the company (prepared, as far as circumstances admit, in accordance with the provisions of this Act) on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on the last-mentioned date and also embodies a statement of the company's assets and liabilities as at that date.]

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(4) If the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period specified in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

1        Substituted by Act 65 of 1960, section 178, for clause (b).

(5) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a members' voluntary winding up"; and a winding

up in the case of which a declaration has not been so made and delivered is in this Act referred to as "a creditors' voluntary winding up".

#### Provisions applicable to a Members' Voluntary Winding Up

#### 489. Provisions applicable to a members' voluntary winding up

The provisions contained in sections 490 to 498, both inclusive, shall subject to the provisions of section 498, apply in relation to a members' voluntary winding up.

#### 490. Power of company to appoint and fix remuneration of liquidators

(1) The company in general meeting shall -

(a) appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company; and

(b) fix the remuneration, if any, to be paid to the liquidator or liquidators.

(2) Any remuneration so fixed shall not be increased in any circumstances whatever, whether with or without the sanction of the Court.

(3) Before the remuneration of the liquidator or liquidators is fixed as aforesaid, the liquidator, or any of the liquidators, as the case may be, shall not take charge of his office.

491. Board's powers to cease on appointment of a liquidator

On the appointment of a liquidator, all the powers of the Board of directors and of the managing or whole-time directors, 1[\*\*\*] and manager, if there be any of these, shall cease, except for the purpose of giving notice of such appointment to the Registrar in pursuance of section 493 or in so far as the company in general meeting or the liquidator may sanction the continuance thereof.

492. Power to fill vacancy in office of liquidator

(1) If a vacancy occurs by death, resignation or otherwise in the office of any liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

1 Reference to managing agent, secretaries and treasurers redundant after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

(2) For that purpose, a general meeting may be convened by any contributory, or by the continuing liquidator or liquidators, if any.

(3) The meeting shall be held in the manner provided by this Act or by the articles, or in such other manner as the Court may, on application by any contributory or by the continuing liquidator or liquidators, determine.

493. Notice of appointment of liquidator to be given to Registrar

(1) The company shall give notice to the Registrar of the appointment of a liquidator or liquidators made by it under section 490, of every vacancy occurring in the office of liquidator, and of the name of the liquidator or liquidators appointed to fill every such vacancy under section 492.

(2) The notice aforesaid shall be given by the company within ten days of the event to which it relates.

(3) If default is made in complying with sub-section (1) or (2), the company, and every officer of the company (including every liquidator or continuing liquidator) who is in default, shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

494. Power of liquidator to accept shares, etc., as consideration for sale of property of company

(1) Where -

(a) a company (in this section called "the transferor company") is proposed to be, or is in course of being, wound-up altogether voluntarily; and

(b) the whole or any part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company");

the liquidator of the transferor company may, with the sanction of a special resolution of that company conferring on the liquidator either a general authority or an authority in respect of any particular arrangement, -

(i) receive, by way of compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company; or

(ii) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either -

(a) to abstain from carrying the resolution into effect; or

(b) to purchase his interest at a price to be determined by agreement, or by arbitration in the manner provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason only that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless it is sanctioned by the Court.

(6) The provisions of the Arbitration Act, 1940 (10 of 1940), other than those restricting the application of that Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

#### 495. Duty of liquidator to call creditors' meeting in case of insolvency

(1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 488, or that period has expired without the debts having been paid in full, he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable with fine which may extend to five hundred rupees.

#### 496. Duty of liquidator to call general meeting at end of each year

(1) Subject to the provisions of section 498, in the event of the winding up continuing for more than one year, the liquidator shall -

(a) call a general meeting of the company at the end of the first year from the commencement of the winding up, and at the end of each succeeding year, or as soon thereafter as may be convenient within three months from the end of the year or such longer period as the Central Government<sup>1</sup> may allow; and

(b) lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year, together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable, in respect of each failure, with fine which may extend to one hundred rupees.

#### 497. Final meeting and dissolution

(1) Subject to the provisions of section 498, as soon as the and affairs of the company are fully wound up, the liquidator shall -

(a) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and

(b) call a general meeting of the company for the purpose of laying the account before it, and giving any explanation thereof.

(2) The meeting shall be called by advertisement -

(a) specifying the time, place and object of the meeting; and

(b) published not less than one month before the meeting in the Official Gazette, and also in some newspaper circulating in the district where the registered office of the company is situate.

(3) Within one week after the meeting, the liquidator shall send to the 2[Registrar and the Official liquidator a copy each of the account and shall make a return to each of them] of the holding of the meeting and of the date thereof.

1 Powers delegated to Regional Directors vide Notification No. GSR 288(E), dated 31-5-1991.

2 Substituted by Act 31 of 1965, section 54, for certain words, w.e.f. 15-10-1965.

If the copy is not so sent or the return is not so made, the liquidator shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(4) If a quorum is not present at the meeting aforesaid, the liquidator shall, in lieu of the return referred to in sub-section (3), make a return that the meeting was duly called and that no quorum was present thereat.

Upon such a return being made within one week after the date fixed for the meeting, the provisions of sub-section (3) as to the making of the return shall be deemed to have been complied with.

1[(5) The Registrar, on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them.

(6) The Official Liquidator, on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall, as soon as may be, make, and the liquidator and all officers, past or present, of the company shall give the Official Liquidator all reasonable facilities to make, a scrutiny of the books and papers of the company and if on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest, then, from the date of the submission of the report to the Court the company shall be deemed to be dissolved.

(6A) If on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have been conducted in a manner prejudicial as aforesaid, the Court shall by order direct the Official Liquidator to make a further investigation of the affairs of the company and for that purpose shall invest him with all such powers as the Court may deem fit.

(6B) On the receipt of the report of the Official Liquidator on such further investigation the Court may either make an order that the company shall stand dissolved with effect from the date to be specified by the Court therein or make such other order as the circumstances of the case brought out in the report permit.]

(7) If the liquidator fails to call a general meeting of the company as required by this section, he shall be punishable with fine which may extend to five hundred rupees.

1 Substituted by section 54, *ibid*, for sub-sections (5) and (6), w.e.f. 15-10-1965.

498. Alternative provisions as to annual and final meetings in case of insolvency

Where section 495 has effect, sections 508 and 509 shall apply to the winding up, to the exclusion of sections 496 and 497, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up:

Provided that the liquidator shall not be required to call a meeting of creditors under section 508 at the end of the first year from the commencement of the winding up, unless the meeting held under section 495 has been held more than three months before the end of that year.

Provisions applicable to a Creditors' Voluntary Winding Up

499. Provisions applicable to a creditor's voluntary winding up

The provisions contained in sections 500 to 509, both inclusive, shall apply in relation to a creditors' voluntary winding up.

500. Meeting of creditors

(1) The company shall cause a meeting of the creditors of the company to be called for the day, or the day next following the day, on which there is to be held the general meeting of the company at which the resolution for voluntary winding up is to be proposed, and shall cause notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once at least in the Official Gazette and once at least in two newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The Board of directors of the company shall -

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of sub-section (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made-

(a) by the company, in complying with sub-sections (1) and (2);

(b) by its Board of directors, in complying with sub-section (3);

(c) by any director of the company, in complying with sub-section (4);

the company, each of the directors, or the director, as the case may be, shall be punishable with fine which may extend to one thousand rupees and, in the case of default by the company, every officer of the company who is in default, shall be liable to the like punishment.

501. Notice of resolutions passed by creditors' meeting to be given to Registrar

(1) Notice of any resolution passed at a creditors' meeting in pursuance of section 500 shall be given by the company to the Registrar within ten days of the passing thereof.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

For the purposes of this section, a liquidator of the company shall be deemed to be an officer of the company.

#### 502. Appointment of liquidator

(1) The creditors and the company at their respective meetings mentioned in section 500 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company.

(2) If the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator:

Provided that any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing the Official Liquidator or some other person to be liquidator instead of the person appointed by the creditors.

(3) If no person is nominated by the creditors, the person, if any, nominated by the company shall be liquidator.

(4) If no person is nominated by the company, the person, if any, nominated by the creditors shall be liquidator.

503. Appointment of committee of inspection<sup>1</sup>

(1) The creditors at the meeting to be held in pursuance of section 500 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons.

(2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any subsequent general meeting, appoint such number of persons (not exceeding five) as they think fit to act as members of the committee:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection.

(3) If the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee.

(4) On any application to the Court for a direction under sub-section (3), the Court may, if it thinks fit, appoint other persons to act as members of the committee of inspection in the place of the persons mentioned in the creditors' resolution.

(5) Subject to the provisions of sub-sections (1) to (4) and to such rules as may be made by the Central Government, the provisions of section 465 [except sub-section (1) thereof] shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Court.

#### 504. Fixing of liquidators' remuneration

(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) Where the remuneration is not so fixed, it shall be determined by the Court.

1 See rule 14, Companies (Central Government's) General Rules and Forms, 1956.

(3) Any remuneration fixed under sub-section (1) or (2) shall not be increased in any circumstances whatever, whether with or without the sanction of the Court.

#### 505. Board's powers to cease on appointment of liquidator

On the appointment of a liquidator, all the powers of the Board of directors shall cease, except in so far as the committee of inspection, or if there is no such committee, the creditors in general meeting, may sanction the continuance thereof.

506. Power to fill vacancy in office of liquidator

If a vacancy occurs by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of the Court), the creditors in general meeting may fill the vacancy.

507. Application of section 494 to a creditors' voluntary winding up

The provisions of section 494 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

508. Duty of liquidator to call meetings of company and of creditors at end of each year

(1) In the event of the winding up continuing for more than one year, the liquidator shall -

(a) call a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up and at the end of each succeeding year, or as soon thereafter as may be convenient within three months from the end of the year or such longer period as the Central Government<sup>1</sup> may allow; and

(b) lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year, together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the winding up.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable, in respect of each failure, with fine which may extend to one hundred rupees.

1 Powers delegated to Regional Directors vide Notification No. GSR 288(E), dated 31-5-1991.

#### 509. Final meeting and dissolution

(1) As soon as the affairs of the company are fully wound-up, the liquidator shall -

(a) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and

(b) call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement -

(a) specifying the time, place and object thereof; and

(b) published not less than one month before the meeting in the Official Gazette and also in some newspaper circulating in the district where the registered office of the company is situate.

(3) Within one week after the date of the meetings, or if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the 1[Registrar and the Official Liquidator a copy each of the account and shall make a return to each of them] of the holding of the meetings and of the date or dates on which they were held.

If the copy is not so sent or the return is not so made, the liquidator shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(4) If a quorum (which for the purposes of this section shall be two persons) is not present at either of such meetings, the liquidator shall, in lieu of the return referred to in sub-section (3), make a return that the meeting was duly called and that no quorum was present thereat.

Upon such a return being made within one week after the date fixed for the meeting, the provisions of sub-section (3) as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

2[(5) The Registrar, on receiving the account and also, in respect of each such meeting, either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them.

1 Substituted by Act 31 of 1965, section 55, for certain words, w.e.f. 15-10-1965.

2 Substituted by section 55, *ibid*, for sub-sections (5) and (6), w.e.f. 15-10-1965.

(6) The Official Liquidator, on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall, as soon as may be, make, and the liquidator and all officers, past or present, of the company shall give the Official Liquidator all reasonable facilities to make, a scrutiny of the books and papers of the company and if on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest, then, from the date of the submission of the report to the Court the company shall be deemed to be dissolved.

(6A) If on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have been conducted in a manner prejudicial as aforesaid, the Court shall by order direct the Official Liquidator to make a further investigation of the affairs of the company and for that purpose shall invest him with all such powers as the Court may deem fit.

(6B) On the receipt of the report of the Official Liquidator on such further investigation the Court may either make an order that the company shall stand dissolved with effect from the date to be specified by the Court therein or make such other order as the circumstances of the case brought out in the report permit.]

(7) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be punishable, in respect of each such failure, with fine which may extend to five hundred rupees.

Provisions applicable to every voluntary winding up

510. Provisions applicable to every voluntary winding up

The provisions contained in sections 511 to 521, both inclusive, shall apply to every voluntary winding up, whether a members' or a creditors' winding up.

511. Distribution of property of company

Subject to the provisions of this Act as to preferential payments, the assets of a company, shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

1[511A. Application of section 454 to voluntary winding up

The provisions of section 454 shall, so far as may be, apply to every voluntary winding up as they apply to the winding up by the Court except that references to -

1 Inserted by Act 31 of 1965, section 56, w.e.f. 15-10-1965.

(a) the Court shall be omitted;

(b) the Official Liquidator or the provisional liquidator shall be construed as references to the liquidator; and

(c) the "relevant date" shall be construed as references to the date of commencement of the winding up.]

## 512. Powers and duties of liquidator in voluntary winding up

(1) The liquidator may, -

(a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of the Court or, the committee of inspection or, if there is no such committee, of a meeting of the creditors, exercise any of the powers given by 1[clauses (a) to (d) of sub-section (1)] of section 457 to a liquidator in a winding up by the Court;

(b) without the sanction referred to in clause (a), exercise any of the other powers given by this Act to the liquidator in a winding up by the Court;

(c) exercise the power of the Court under this Act of settling a list of contributories (which shall be prima facie evidence of the liability of the persons named therein to be contributories);

(d) exercise the power of the Court of making calls;

(e) call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, as the case may require, or for any other purpose he may think fit.

(2) The exercise by the liquidator of the powers given by clause (a) of sub-section (1) shall be subject to the control of the Court; and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of the powers conferred by this section.

(3) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(4) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number of them not being less than two.

1 Substituted by Act 65 of 1960, section 179, for "§clauses (i) to (iv) of sub-section (2)".

#### 513. Body corporate not to be appointed as liquidator

(1) A body corporate shall not be qualified for appointment as liquidator of a company in a voluntary winding up.

(2) Any appointment made in contravention of sub-section (1) shall be void.

(3) Any body corporate which acts as liquidator of a company, and every director 1[\*\*\*] or a manager thereof, shall be punishable with fine which may extend to one thousand rupees.

514. Corrupt inducement affecting appointment as liquidator

Any person who gives, or agrees or offers to give, to any member or creditor of a company any gratification whatever with a view to -

(a) securing his own appointment or nomination as the company's liquidator; or

(b) securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator; shall be punishable with fine which may extend to one thousand rupees.

515. Power of Court to appoint and remove liquidator in voluntary winding up

(1) If from any cause whatever, there is no liquidator acting, 2[the Court may appoint the Official Liquidator or any other person as a liquidator].

3[(2) The Court may, on cause shown remove a liquidator and appoint the Official Liquidator or any other person as a liquidator in place of the removed liquidator.

(3) The Court may also appoint or remove a liquidator on the application made by the Registrar in this behalf.

(4) If the Official Liquidator is appointed as liquidator under the proviso to sub-section (2) of section 502 or under this section, the remuneration to be paid to him shall be fixed by the Court and shall be credited to the Central Government.]

1 Reference to managing agent, secretaries and treasurers redundant after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

2 Substituted by Act 65 of 1960, section 180, for “the Court may appoint a liquidator”.

3 Substituted by section 180, *ibid*, for sub-section (2).

#### 516. Notice by liquidator of his appointment

(1) The liquidator shall, within 1[thirty] days after his appointment, publish in the Official Gazette, and deliver to the Registrar for registration a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

#### 517. Arrangement when binding on company and creditors

(1) Any arrangement entered into between a company about to be, or in the course of being, wound-up and its creditors shall, subject to the right of appeal under this section, be binding on the company and on the creditors if it is sanctioned by a special resolution of the company and acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it and the Court may thereupon, as it thinks just, amend, vary, confirm or set aside the arrangement.

518. Power to apply to Court to have questions determined or powers exercised

(1) The liquidator or any contributory or creditor may apply to the Court -

(a) to determine any question arising in the winding up of a company; or

(b) to exercise, as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound-up by the Court.

(2) The liquidator or any creditor or contributory may apply to the Court specified in sub-section

(3) for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

(3) An application under sub-section (2) shall be made -

(a) if the attachment, distress or execution is levied or put into force by a High Court, to such High Court; and

1 Substituted by Act 31 of 1965, section 62 and Schedule, for "§twenty-one;" w.e.f. 15-10-1965.

(b) if the attachment, distress or execution is levied or put into force by any other Court, to the Court having jurisdiction to wind-up the company.

(4) The Court, if satisfied on an application under sub-section (1) or (2) that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(5) A copy of an order staying the proceedings in the winding up, made by virtue of this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

519. Application of liquidator to Court for public examination of promoters, directors, etc.

(1) The liquidator may make a report to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation; and the Court may, after considering the report, direct that that person or officer shall attend before the Court on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.

(2) The provisions of sub-sections (2) to (11) of section 478 shall apply in relation to any examination directed under sub-section (1) as they apply in relation to an examination directed under sub-section (1) of section 478 with references to the liquidator being substituted for references to the Official Liquidator in those provisions.

#### 520. Costs of voluntary winding up

All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

521. [Saving of right of creditors and contributories to apply for winding up.]

Repealed by the Companies (Amendment) Act, 1960 (65 of 1960), section 181.

## CHAPTER IV

## WINDING UP SUBJECT TO SUPERVISION OF COURT

### 522. Power to order winding up subject to supervision

At any time after a company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions, as the Court thinks just.

### 523. Effect of petition for winding up subject to supervision

A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits and legal proceedings, be deemed to be a petition for winding up by the Court.

### 524. Power of Court to appoint or remove liquidators

(1) Where an order is made for a winding up subject to supervision, the Court may, by that or any subsequent order, appoint an additional liquidator or liquidators.

(2) The Court may remove any liquidator so appointed or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation.

1[(3) The Court may appoint the Official Liquidator as a liquidator under sub-section (1) or to fill any vacancy occasioned under sub-section (2).

(4) The Court may also appoint or remove a liquidator on an application made by the Registrar in this behalf.]

#### 525. Powers and obligations of liquidator appointed by Court

A liquidator appointed by the Court under section 524 shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

#### 526. Effect of supervision order

(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

1      Inserted by Act 65 of 1960, section 182.

(2) Except as provided in sub-section (1), any order made by the Court for a winding up subject to the supervision of the Court, shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the

liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the liquidator, the expression "liquidator" shall be deemed to mean the liquidator conducting the winding up, subject to the supervision of the Court.

#### 527. Appointment in certain cases of voluntary liquidators to office of liquidators

Where an order has been made for winding up a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last-mentioned or any subsequent order, appoint any person or persons who are then liquidators, either provisionally or permanently, to be liquidator or liquidators in the winding up by the Court in addition to, and subject to the control of, the Official Liquidator.

## CHAPTER V

### PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

#### Proof and ranking of claims

#### 528. Debts of all descriptions to be admitted to proof

In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act 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.

529. Application of insolvency rules in winding up of insolvent companies

(1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to -

(a) debts provable;

(b) the valuation of annuities and future and contingent liabilities; and

(c) the respective rights of secured and unsecured creditors; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent:

1[Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt opts to realise his security, -

(a) the liquidator shall be entitled to represent the workmen and enforce such charge;

(b) any amount realised by the liquidator by way of enforcement of such charge shall be applied ratably for the discharge of workmen's dues; and

(c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank pari passu with the workmen's dues for the purposes of section 529A.]

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section:

2[Provided that if a secured creditor instead of relinquishing his security and proving for his debt proceeds to realise his security, he shall be liable to 3[pay his portion of the expenses] incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realization by the secured creditor.]

4[Explanation - For the purposes of this proviso, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security;

1 Inserted by the Companies (Amendment) Act, 1985 (35 of 1985).

2 Inserted by Act 65 of 1960, section 183.

3 Substituted by the Companies (Amendment) Act, 1985 (35 of 1985) for the words "pay the expenses".

4 Inserted by the Companies (Amendment) Act, 1985 (35 of 1985).

(3) For the purposes of this section, section 529A and section 530, -

(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 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 (14 of 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 of 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 the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and

vested in the workman, all amounts 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 a provident fund, a pension fund, a 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 -

(i) the amount of workmen's dues; and

(ii) the amounts of the debts due to the secured creditors.

#### Illustration

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

1[529A.           Overriding preferential payment

(1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force in the winding up of a company, -

(a) workmen's dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues,

shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.]

#### 530. Preferential payments

(1) In a winding up, 2[subject to the provisions of section 529A, there shall be paid] in priority to all other debts -

(a) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months next 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 next before the relevant date 3<sup>[\*\*]</sup>, subject to the limit specified in sub-section (2);

1 Inserted by the Companies (Amendment) Act, 1985 (35 of 1985).

2 Substituted, *ibid*, for the words "there shall be paid".

3 The words "and any compensation payable to any workman under any of the provisions of Chapter VA of the Industrial Disputes Act, 1947 (14 of 1947)" omitted by the Companies (Amendment) Act, 1985 (35 of 1985). They were inserted by Act 65 of 1960.

(c) all accrued holiday remuneration becoming payable to any employee, 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;

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act, 1948 (34 of 1948), or any other law for the time being in force;

(e) unless the company is being wound-up voluntarily merely for the purposes of reconstruction or of 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 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts 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;

(f) all sums due to any employee from a provident fund, a pension fund a 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 section 235 or 237, in so far as they are payable by the company.

(2) The sum to which priority is to be given under clause (b) of sub-section (1), shall not, in the case of any one claimant, exceed such sum as may be notified by the Central Government in the Official Gazette<sup>2</sup>.

<sup>3</sup>[\*\*\*]

(3) Where any compensation under the Workmen's Compensation Act, 1923 (8 of 1923) is a weekly payment, the amount due in respect thereof shall, for the purposes of clause (e) of sub-section (1), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

<sup>1</sup> Substituted by the Companies (Amendment) Act, 1996, w.e.f. 1-3-1997, for the words "exceed one thousand rupees".

<sup>2</sup> Rs. 20,000, is the sum notified vide Notification GSR 80(E), dated 17-2-1997.

<sup>3</sup> Omitted by the Companies (Amendment) Act, 1985 (35 of 1985). Prior to the omission, the proviso read as follows: "Provided that where a claimant is a labourer in husbandry who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the relevant date."

(4) Where any payment has been made to any employee of a company, -

(i) on account of wages or salary; or

(ii) to him, or in the case of his death, to any other person in his right, on account of accrued holiday remuneration,

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 diminished by reason of the payment having been made.

(5) The foregoing debts 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 of 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.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts 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 by clause (d) of

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

(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by 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.

(8) For the purposes of this section -

(a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;

(b) 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 under any enactment), 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; 1[\*\*\*].

2[(bb) the expression "employee" does not include a workman; and

(c) the expression "the relevant date" means -

(i) in the case of a company ordered to be wound-up compulsorily, the date of the 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; and

(ii) in any case where sub-clause (i) does not apply, the date of the passing of the resolution for the voluntary winding up of the company.

(9) This section shall not apply in the case of a winding up where the date referred to in sub-section (5) of section 230 of the Indian Companies Act, 1913 (7 of 1913), occurred before the commencement of this Act, and in such a case, the provisions relating to preferential payments which would have applied if this Act had not been passed, shall be deemed to remain in full force.

Effect of winding up on antecedent and other transactions

531.           Fraudulent preference

(1) Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or against a company within six months before the commencement of its winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound-up, be deemed a fraudulent preference of its creditors and be invalid accordingly:

- 1 The word "and" omitted by the Companies (Amendment) Act, 1985 (35 of 1985).
- 2 Inserted by the Companies (Amendment) Act, 1985 (35 of 1985).

Provided that, in relation to things made, taken or done before the commencement of this Act, this sub-section shall have effect with the substitution, for the reference to six months, of a reference to three months.

(2) For the purposes of sub-section (1), the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and the passing of a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond to the act of insolvency in the case of an individual.

#### 1[531A. Avoidance of voluntary transfer

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 or subject to the supervision of the Court or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.]

#### 532. Transfer for benefit of all creditors to be void

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

533. Liabilities and rights of certain fraudulently preferred persons

(1) Where, in the case of a company which is being wound up, anything made, taken or done after the commencement of this Act is invalid under section 531 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 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) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the mortgage or charge for the company's debt was then subject.

1      Inserted by Act 65 of 1960, section 185.

(3) On any application made to the Court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court 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.

This sub-section shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments of money.

#### 534. Effect of floating charge

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 to the amount of any cash paid to the company at the time of, or subsequently 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 for the time being be notified by the Central Government in this behalf in the Official Gazette:

Provided that in relation to a charge created more than three months before the commencement of this Act, this section shall have effect with the substitution, for references to twelve months of references to three months.

#### 535. Disclaimer of onerous property in case of a company which is being wound-up

(1) Where any part of the property of a company which is being wound-up consists of -

(a) land of any tenure, burdened with onerous covenants;

(b) shares or stock in companies;

(c) any other property which is unsaleable or is not readily saleable, by reason of its binding the possessor thereof either to the performance of any onerous act or to the payment of any sum of money; or

(d) unprofitable contracts;

the liquidator of the company, 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, may, with the leave of the Court 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 Court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after 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 Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property 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 or liabilities of any other person.

(3) The Court, 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 Court thinks just.

(4) The 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 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 Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim; and in case the property is a contract, if the 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) The Court may, on the application of any person who is, as against the 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 Court thinks just; and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

1       Substituted by Act 65 of 1960, section 186, for “the company shall be deemed to have adopted it”.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by 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 Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the Court 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 Court 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 (if the case so requires) 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 Court 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 lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(7) Any person injured 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 the injury, and may accordingly prove the amount as a debt in the winding up.

536. Avoidance of transfers, etc., after commencement of winding up

(1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by or subject to the supervision of the Court, 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 Court otherwise orders, be void.

537. Avoidance of certain attachments, executions, etc., in winding up by or subject to supervision of Court

(1) Where any company is being wound up by or subject to the supervision of the Court -

(a) any attachment, distress or execution put in force, without leave of the Court, against the estate or effects of the company, after the commencement of the winding up; or

(b) any sale held, without leave of the Court, of any of the properties or effects of the company after such commencement; shall be void.

1[(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.]

Offences antecedent to or in course of winding up

538. Offences by officers of companies in liquidation

(1) If any person, being a past or present officer of a company, which, at the time of the commission of the alleged offence, is being wound up, whether by or subject to the supervision of the Court or voluntarily, or which is subsequently ordered to be wound-up by the Court or which subsequently passes a resolution for voluntary winding up, -

(a) does not, to the best of his knowledge and belief, fully and truly discover to the liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;

(b) does not deliver up to the 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;

1 Substituted by Act 65 of 1960, section 187, for sub-section (2).

(c) does not deliver up to the liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up;

(d) within the twelve months next before the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of one hundred rupees or upwards, or conceals any debt due to or from the company;

(e) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards;

(f) makes any material omission in any statement relating to the affairs of the company;

(g) 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 liquidator thereof;

(h) 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;

(i) within the twelve months next before the commencement of the winding up or at any time thereafter, 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;

(j) within the twelve months next before the commencement of the winding up or at any time thereafter 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;

(k) within the twelve months next before the commencement of the winding up or at any time thereafter, 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;

(l) 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;

(m) within the twelve months next before the commencement of the winding up or at any time thereafter, 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;

(n) within the twelve months next before the commencement of the winding up or at any time thereafter, 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;

(o) within the twelve months next before the commencement of the winding up or at any time thereafter, 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 is in the ordinary course of the business of the company; or

(p) is guilty of any false representation or other 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, in the case of any of the offences mentioned in clauses (m), (n) and (o), with imprisonment for a term which may extend to five years, or with fine, or with both, and, in the case of any other offence, with imprisonment for a term which may extend to two years, or with fine, or with both:

Provided that it shall be a good defence -

(i) to a charge under any of the clauses, (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud; and

(ii) to a charge under any of the clauses, (a), (h), (i) and (j), if he proves that he had no intent to conceal the true state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (o) 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 may extend to three years, or with fine, or with both.

(3) For the purposes of this section, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

539. Penalty for falsification of books

If with intent to defraud or deceive any person, any officer or contributory of a company which is being wound-up -

(a) destroys, mutilates, alters, falsifies or secretes, or is privy to the destruction, mutilation, alteration, falsification or secreting of, any books, papers or securities; or

(b) makes, or is privy to the making of, any false or fraudulent entry in any register, book of account or document belonging to the company;

he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

540. Penalty for frauds by officers

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 Court or which subsequently passes a resolution for voluntary winding up, -

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

(b) with intent to defraud creditors of the company, 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 may extend to two years and shall also be liable to fine.

541. Liability where proper accounts not kept

(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, 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 may extend to one year.

(2) For the purposes of sub-section (1), it shall be deemed that proper books of account have not been kept in the case of any company, if there have not been kept --

(a) such books or accounts 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; 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 sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

542. Liability for fraudulent conduct of business

(1) 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 Court, on the application of the Official Liquidator, or the liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that 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 Court may direct.

On the hearing of an application under this sub-section, the Official Liquidator or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) (a) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

(b) In particular, the Court may 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.

(c) The Court may, from time to time, make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(d) For the purpose of this sub-section, 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.

(3) 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 punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

(4) This section shall apply, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

543. Power of Court to assess damages against delinquent directors, etc.

(1) If in the course of winding up a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, 1[\*\*\*] manager, liquidator or officer of the company -

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company;

the Court may, on the application of the Official Liquidator, of the liquidator, or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of the person, director, 2[\*\*\*], manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Court thinks just.

1 Reference to managing agent, secretaries and treasurers redundant after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

2 Ibid.

(2) An application under sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.

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

544. Liability under sections 542 and 543 to extend to partners or directors in firm or company

Where a declaration under section 542 or an order under section 543 is or may be made in respect of a firm or body corporate, the Court shall also have power to make a declaration under section 542, or pass an order under section 543, 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.

545. Prosecution of delinquent officers and members of company

(1) If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Registrar.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the liquidator and relating to the matter in question, as the Registrar may require.

(3) Where any report is made under sub-section (2) to the Registrar, he may, if he thinks fit, refer the matter to the Central Government for further inquiry.

The Central Government shall thereupon investigate the matter and may, if it thinks it expedient, apply to the Court for an order conferring on any person designated by the Central Government

for the purpose, with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.

(4) If on any report to the Registrar under sub-section (2), it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the Court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Registrar under sub-section (2), the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2).

(6) If, where any matter is reported or referred to the Registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government; and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute proceedings:

Provided that no report shall be made by the Registrar under this sub-section without first giving the accused person an opportunity of making a statement in writing to the Registrar and of being heard thereon.

(7) When any proceedings are instituted under this section, it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this sub-section, the expression "agent", in relation to a company, shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor.

(8) If any person fails or neglects to give assistance in the manner required by sub-section (7), the Court may, on the application of the Registrar, direct that person to comply with the requirements of that sub-section.

(9) Where any such application is made with respect to a liquidator, the Court may, unless it appears that the failure or neglect was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

#### Miscellaneous Provisions

546. Liquidator to exercise certain powers subject to sanction

(1) The liquidator may -

(a) with the sanction of the Court, when the company is being wound-up by or subject to the supervision of the Court; and

(b) with the sanction of a special resolution of the company, in the case of a voluntary winding up, -

(i) pay any classes 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, ascertained or sounding only in damages, 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.

1[(1A) Notwithstanding anything contained in sub-section (1), in the case of a winding up by the Court, the Supreme Court may make rules under section 643 providing that the liquidator may, under such circumstances, if any, and subject to such conditions, restrictions and limitations, if any, as may be specified in the rules, exercise any of the powers referred to in sub-clause (ii) or sub-clause (iii) of sub-section (1) without the sanction of the Court.]

(2) In the case of a voluntary winding up, the exercise by the liquidator of the powers conferred by sub-section (1) shall be subject to the control of the Court.

1     Inserted by Act 65 of 1960, section 188.

(3) Any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any such power.

547.           Notification that a company is in liquidation

(1) Where a company is being wound-up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a 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 default is made in complying with this section, the company, and every one of the following persons who wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be punishable with fine which may extend to five hundred rupees.

548.           Books and papers of company to be evidence

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

549.           Inspection of books and papers by creditors and contributories<sup>1</sup>

(1) At any time after the making of an order for the winding up of a company by or subject to the supervision of the Court, any creditor or contributory of the company may, if 2[the Supreme Court], by rules prescribed so permit and in accordance with and subject to such rules but not further or otherwise, inspect the books and papers of the company.

(2) Nothing in sub-section (1) shall be taken as excluding or restricting any rights conferred by any law for the time being in force -

(a) on the Central or a State Government; or

(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.

1 See rule 14A, Companies (Central Government;|s) General Rules and Forms, 1956.

2 Substituted by Act 65 of 1960, section 189, for ;§the Central Government;".

550. Disposal of books and papers of company

(1) When the affairs of a company have been completely wound-up and it is about to be dissolved, its books and papers and those of the liquidator may be disposed of as follows, that is to say: -

(a) in the case of a winding up by or subject to the supervision of the Court, in such manner as the Court directs;

(b) in the case of a members' voluntary winding up, in such manner as the company by special resolution directs; and

(c) in the case of a creditors' voluntary winding up, in such manner as the committee of inspection or, if there is no such committee, as the creditors of the company may direct.

(2) After the expiry of five years from the dissolution of the company, no responsibility shall rest on the company, the liquidator, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) The Central Government may, by rules,<sup>1</sup> -

(a) prevent for such period (not exceeding five years from the dissolution of the company) as the Central Government thinks proper, the destruction of the books and papers of a company which has been wound-up and of its 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 Court from any direction which may be given by the Central Government in the matter.

(4) If any person acts in contravention of any such rules or of any direction of the Central Government thereunder, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

1 See rule 15, Companies (Central Government's) General Rules and Forms, 1956.

551. Information as to pending liquidations

1[(1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government<sup>2</sup>, 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 the prescribed form and containing the prescribed particulars duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation, -

(a) in the case of a winding up by or subject to the supervision of the Court, in Court; and

(b) in the case of a voluntary winding up, with the Registrar:

Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 462 apply.]

(2) When the statement is filed in Court 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[(2A) Where a statement referred to in sub-section (2) relates to a Government company in liquidation, the 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.]

(3) 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, and to receive a copy thereof or an extract therefrom.

- 1 Substituted by Act 65 of 1960, section 190, for sub-section (1).
- 2 Powers delegated to Regional Directors vide notification No. GSR 288(E), dated 31-5-1991.
- 3 Inserted by the Companies (Amendment) Act, 1988, section 54, w.e.f. 15-6-1988.

(4) Any person untruthfully stating himself to be a creditor or contributory for the above purpose shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code (45 of 1860) and shall, on the application of the liquidator, be punishable accordingly.

(5) If a liquidator fails to comply with any of requirements of this section, he shall be punishable with fine which may extend to five hundred rupees for every day during which the failure continues:

1[Provided that if the liquidator makes wilful default in causing the statement referred to in sub-section (1) to be audited by a person qualified to act as auditor of the company, the liquidator shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

552. Official Liquidator to make payments into the public account of India

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

553. Voluntary liquidator to make payments into Scheduled Bank

(1) Every liquidator of a company, not being an Official Liquidator, shall, in such manner and at such times as may be prescribed, pay the moneys received by him in his capacity as such into a Scheduled Bank to the credit of a special banking account opened by him in that behalf, and called

Company Limited;"

"the Liquidation Account of K K K K K Company Private Limited;"

Company":

Provided that if the Court is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason, it is to the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Court may authorise the liquidator to make his payments into or out of such other bank as the Court may select; and thereupon those payments shall be made in the prescribed manner and at the prescribed times into or out of such other bank.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the Court may, on the application of the liquidator, authorise him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall -

1      Inserted by Act 65 of 1960, section 190.

2      See Companies (Official Liquidator's Accounts) Rules, 1965.

(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 Registrar;

(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 Court may think just disallowed, and to be removed from his office by the Court.

554.      Liquidator not to pay moneys into private banking account

Neither the Official Liquidator nor any other liquidator of a company shall pay any moneys received by him in his capacity as such into any private banking account.

555.      Unpaid dividends and undistributed assets to be paid into the Companies Liquidation Account

1[(1) Where any company is being wound-up, if the liquidator has in his hands or under his control any money representing -

(a) dividends payable to any creditor 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 became refundable,

the liquidator shall forthwith pay the said money into the public account of India in the Reserve Bank of India in a separate account to be known as the Company's Liquidation Account.]

(2) The liquidator shall, on the dissolution of the company, similarly pay into the said account any money representing 2[unpaid] dividends or undistributed assets in his hands at the date of dissolution.

(3) The liquidator shall, when making any payment referred to in sub-sections (1) and (2), furnish to such officer as the Central Government may appoint in this behalf, 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.

1 substituted by Act 65 of 1960, section 191, for sub-section (1).

2 Substituted by Act 65 of 1960, section 191, for "§unclaimed".

(4) The liquidator shall be entitled to a receipt from the Reserve Bank of India for any money paid to it under sub-sections (1) and (2); and such receipt shall be an effectual discharge of the liquidator in respect thereof.

(5) Where the company is being wound up by the Court, the liquidator shall make the payments referred to in sub-sections (1) and (2) by transfer from the account referred to in section 552.

(6) Where the company is being wound up voluntarily or subject to the supervision of the Court, the liquidator shall, when filing a statement in pursuance of sub-section (1) of section 551, indicate the sum of money which is payable to the Reserve Bank of India under sub-sections (1) and (2) of this section which he has had in his hands or under his control during the six months preceding the date to which the said statement is brought down, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Companies Liquidation Account.

(7) (a) Any person claiming to be entitled to any money paid into the Companies Liquidation Account (whether paid in pursuance of this section or under the provisions of any previous companies law) may apply to the Court for an order for payment thereof, and the Court, if satisfied that the person claiming is entitled, may make an order for the payment to that person of the sum due:

Provided that before making such an order, the Court shall cause notice to be served on such officer as the Central Government may appoint in this behalf, calling on the officer to show cause within one month from the date of the service of the notice why the order should not be made.

(b) Any person claiming as aforesaid may, instead of applying to the Court, apply<sup>1</sup> to the Central Government<sup>2</sup> for an order for payment of the money claimed; and the Central Government may, if satisfied whether on a certificate by the liquidator or the Official Liquidator or otherwise, that such person is entitled to the whole or any part of the money claimed and that no application made in pursuance of clause (a) is pending in the Court, make an order for the

payment to that person of the sum due to him, after taking such security from him as it may think fit.

1 Every application under clause (b) of sub-section (7) of section 555 shall be accompanied by appropriate fees as under:

Rs.

- (a) When the amount of claim does not exceed Rs. 250 Nil
- (b) When the amount of claim exceeds Rs. 250 but does not exceed Rs. 500 30
- (c) When the amount of claim exceeds Rs. 500 but does not exceed Rs. 1,000 60
- (d) When the amount of claim exceeds Rs. 1,000 but does not exceed Rs. 5,000 150
- (e) When the amount of claim exceeds Rs. 5,000 200

[Rule 2(3), Companies (Fees on Applications) Rules, 1968].

2 Powers delegated to Regional Directors vide Notification No. GSR 288(E), dated 31-5-1991.

(8) Any money paid into the Companies Liquidation 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 (7) and shall be dealt with as if such transfer had not been made, the order, if any, for payment on the claim being treated as an order for refund of revenue.

(9) Any liquidator retaining any money which should have been paid by him into the Companies Liquidation Account under this section shall -

(a) pay interest on the amount retained at the rate of twelve per cent per annum, and also pay such penalty as may be determined by the Registrar:

1[Provided that the Central Government<sup>2</sup> 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 or under the supervision of the Court, also be liable to have all or such part of his remuneration as the Court may think just to be disallowed, and to be removed from his office by the Court.

556. Enforcement of duty of liquidator to make returns, etc.

(1) If any 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 Court may, on an application made to the Court by any contributory or creditor of the company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

1        Inserted by Act 65 of 1960, section 191.

2        Powers delegated to Regional Directors vide Notification No. GSR 288(E), dated 31-5-1991.

### Supplementary Powers of Court

557.        Meetings to ascertain wishes of creditors or contributories

(1) In all matters relating to the winding up of a company, the Court 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 Court directs; and

(c) appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) When ascertaining the wishes of creditors, regard shall be had to the value of each creditor's debt.

(3) When ascertaining the wishes of contributories, regard shall be had to the number of votes which may be cast by each contributory.

558. Court or person before whom affidavit may be sworn

(1) Any affidavit required to be sworn under the provisions, or for the purposes, of this Part may be sworn -

(a) in India, before any Court, Judge or person lawfully authorised to take and receive affidavits; and

(b) in any other country, either before any Court, Judge or person lawfully authorised to take and receive affidavits in that country or before an Indian Consul or Vice Consul.

1[\*\*\*]

(2) All Courts, 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, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

1 Explanation omitted by Act 62 of 1956, section 2 and Schedule, w.e.f. 1-11-1956.

### Provisions as to Dissolution

#### 559. Power of Court to declare dissolution of company void

(1) Where a company has been dissolved, whether in pursuance of this Part or of section 394 or otherwise, the Court may at any time within two years of the date of the dissolution, on application by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void; and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within 1[thirty] days after the making of the order or such further time as the Court may allow, to file a certified copy of the order with the Registrar who shall register the same; and if such person fails so to do, he shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

#### 560. Power of Registrar to strike defunct company off register

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

1 Substituted by Act 31 of 1965, section 62 and Schedule for "§twenty-one;" w.e.f. 15-10-1965.

(4) If, in any case where a company is being wound-up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company have been

completely wound-up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) At the expiry of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette; and on the publication in the Official Gazette of this notice, the company shall stand dissolved:

Provided that-

(a) the liability, if any, of every director 1[\*\*\*] manager or other officer who was exercising any power of management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this sub-section shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Court, on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register; and the Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) Upon a certified copy of the order under sub-section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

1 Reference to managing agent, secretaries and treasurers redundant after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, 1[\*\*\*] manager or other officer of the company, or if there is no director, 2[\*\*\*] manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(9) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business.

## PART VIII

### APPLICATION OF ACT TO COMPANIES FORMED OR REGISTERED UNDER REVIOUS COMPANIES LAWS

561. Application of Act to companies formed and registered under previous companies laws

This Act shall apply to existing companies as follows: -

(a) in the case of a limited company other than a company limited by guarantee, this Act shall apply in the same manner as if the company had been formed and registered under this Act as a company limited by shares;

(b) in the case of a company limited by guarantee, this Act shall apply in the same manner as if the company had been formed and registered under this Act as a company limited by guarantee; and

(c) in the case of a company other than a limited company, this Act shall apply in the same manner as if the company had been formed and registered under this Act as an unlimited company:

Provided that -

(i) nothing in Table A in Schedule I shall apply to a company formed and registered under Act 19 of 1857 and Act 7 of 1860 or either of them, or under the Indian Companies Act, 1866 (10 of 1866.) or the Indian Companies Act, 1882 (6 of 1882);

(ii) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous companies law concerned.

1      Ibid.

2      Ibid.

562.      Application of Act to companies registered but not formed under previous companies laws

This Act shall apply to every company registered but not formed under any previous companies law in the same manner as it is in Part IX of this Act declared to apply to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous companies law concerned.

563.      Application of Act to unlimited companies re-registered under previous companies laws

This Act shall apply to every unlimited company registered as a limited company in pursuance of any previous companies law, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the previous companies law concerned.

564. Mode of transferring shares in the case of companies registered under Acts 19 of 1857 and 7 of 1860

A company registered under Act 19 of 1857 and Act 7 of 1860 or either of them may cause its shares to be transferred in the manner hitherto in use, or in such other manner as the company may direct.

## PART IX

### COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT

565. Companies capable of being registered<sup>1</sup>

(1) With the exceptions and subject to the provisions contained in this section -

(a) any company consisting of seven or more members, which was in existence on the first day of May, 1882, including any company registered under Act No. 19 of 1857 and Act No. 7 of 1860 or either of them or under any laws or law in force in a Part B State, corresponding to those Acts or either of them; and

1 See Forms 37, 38 and 41, Companies (Central Government's) General Rules and Forms, 1956.

(b) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other Indian Law (including a law in force in a Part B State), or of any Act of Parliament of the United Kingdom or Letters Patent in force in India, or being otherwise duly constituted according to law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound-up:

Provided that -

(i) a company registered under the Indian Companies Act, 1882 (6 of 1882) or under the Indian Companies Act, 1913 (7 of 1913) shall not register in pursuance of this section;

(ii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State), or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, and not being a joint stock company as defined in section 566, shall not register in pursuance of this section;

(iii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State), or any Act of Parliament of the United Kingdom or Letters Patent in force in India, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(iv) a company that is not a joint stock company as defined in section 566 shall not register in pursuance of this section as a company limited by shares;

(v) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;

(vi) where a company not having the liability of its members limited by any Act of Parliament or any other Indian law (including a law in force in a Part B State) or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;

(vii) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound-up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) In computing any majority required for the purposes of sub-section (1) when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

(3) Nothing in this section shall be deemed to apply to any company the registered office whereof at the commencement of this Act is in Burma, Aden or Pakistan 1[\*\*\*].

566. Definition of "joint-stock company"<sup>2</sup>

(1) For the purposes of this Part, so far as it relates to the registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons.

(2) Such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

567. Requirements for registration of joint-stock companies<sup>3</sup>

Before the registration in pursuance of this Part of a joint stock company, there shall be delivered to the Registrar the following documents: -

(a) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

1 The words "in the State of Jammu and Kashmir" omitted by Act 62 of 1956, section 2 and Schedule, w.e.f. 1-11-1956.

2 See Form 37, Companies (Central Government's) General Rules and Forms, 1956.

3 See Forms 37, 39 and 40, *ibid*.

(b) a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Royal Charter, Letters Patent, deed of settlement, deed of partnership or other instrument constituting or regulating the company; and

(c) if the company is intended to be registered as a limited company, a statement specifying the following particulars: -

(i) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists;

(ii) the number of shares taken and the amount paid on each share;

(iii) the name of the company, with the addition of the word "Limited" or "Private Limited" as the case may require, as the last word or words thereof; and

(iv) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

568. Requirements for registration of companies not being joint-stock companies<sup>1</sup>

Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the Registrar the following documents.

(a) a list showing the names, addresses and occupations of the directors, 2[\*\*\*] and the manager, if any, of the company;

(b) a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Letters Patent, deed of settlement, deed of partnership or other instrument constituting or regulating the company; and

(c) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

569. Authentication of statements of existing companies

The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company.

1 See Forms 38 and 42, *ibid.*

2 Reference to managing agent, secretaries and treasurers after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

570. Power of Registrar to require evidence as to nature of company

The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as defined in section 566.

571. Notice to customers on registration of banking company with limited liability

(1) Where a banking company which was in existence on the first day of May, 1882, proposes to register as a limited company under this Part, it shall, at least thirty days before so registering, give notice of its intention so to register, to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the banking company omits to give the notice required by sub-section (1), then, as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

572. Change of name for purposes of registration

Where the name of a company seeking registration under this Part is one which in the opinion of the Central Government<sup>1</sup> is undesirable, the company may, with the approval of the Central Government signified in writing, change its name with effect from the date of its registration under this Part:

Provided that the like assent of the members of the company shall be required to the change of name as is required by section 565 to the registration of the company under this Part.

573. Addition "Limited" or "Private Limited" to name

When a company registers in pursuance of this Part with limited liability, the word "Limited" or the words "Private Limited" as the case may be, shall form, and be registered as, the last word or words of its name:

Provided that this section shall not be deemed to exclude the operation of section 25.

<sup>1</sup> The power under this section has been delegated to the Registrars of Companies vide Notification No. GSR 281(E), dated 21-3-1995.

574. Certificate of registration of existing companies

On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Schedule X, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

575. Vesting of property on registration

All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act, for all the estate and interest of the company therein.

576. Saving for existing liabilities

The registration of a company in pursuance of this Part shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

577. Continuation of pending legal proceedings

All suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place:

Provided that execution shall not issue against the property or person of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

578. Effect of registration under Part

(1) When a company is registered in pursuance of this Part, sub-sections (2) to (7) shall apply.

(2) All provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows: -

(a) Table A in Schedule I shall not apply unless and except in so far as it is adopted by special resolution;

(b) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered;

(c) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or other Indian law relating to the company;

(d) subject to the provisions of this section, the company shall not have power, without the sanction of the Central Government, to alter any provision contained in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, relating to the company;

(e) the company shall not have power to alter any provision contained in any Act of Parliament or other Indian law or in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, with respect to the objects of the company;

(f) in the event of the company being wound-up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

(g) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

(4) The provisions of this Act with respect to -

(a) the registration of an unlimited as a limited company;

(b) the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply, notwithstanding any provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) None of the provisions of this Act (apart from those of section 404) shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.

(7) In this section, the expression "instrument" includes deed of settlement, deed of partnership, Act of Parliament of the United Kingdom, Royal Charter and Letters Patent.

579. Power to substitute memorandum and articles for deed of settlement

(1) Subject to the provisions of this section, a company registered in pursuance of this Part may, by special resolution, alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of sections 17 and 19 with respect to an alteration of the objects of a company shall, so far as applicable, apply to any alteration under this section with the following modifications: -

(a) there shall be substituted for the printed copy of the altered memorandum required to be filed with the Registrar a printed copy of the substituted memorandum and articles; and

(b) on the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section, the expression "deed of settlement" includes any deed of partnership, Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, or other instrument constituting or regulating the company, not being an Act of Parliament or other Indian law.

#### 580. Power of Court to stay or restrain proceedings

The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

#### 581. Suits stayed on winding up order

Where an order has been made for winding up, or a provisional liquidator has been appointed for, a company registered in pursuance of this Part, no suit or other legal proceeding shall be proceeded with or commenced against the Company or any contributory of the company in respect of any debt of the company, except by leave of the Court and except on such terms as the Court may impose.

### PART X

#### WINDING UP OF UNREGISTERED COMPANIES

#### 582. Managing of "unregistered company"

For the purposes of this Part, the expression "unregistered company" -

(a) shall not include -

(i) a railway company incorporated by any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom;

(ii) a company registered under this Act; or

(iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden or Pakistan immediately before the separation of that country from India 1[\*\*\*]; and

1 Certain words omitted by Act 62 of 1956, section 2 and Schedule, w.e.f. 1-11-1956.

(b) save as aforesaid, shall include any partnership, association or company consisting of more than seven members 1[at the time when the petition for winding up the partnership, association or company, as the case may be, is presented before the Court].

583. Winding up of unregistered companies

(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in sub-sections (2) to (5).

(2) For the purpose of determining the Court having Jurisdiction in the matter of the winding up, an unregistered company shall be deemed to be registered in the State where its principal place of business is situate or, if it has a principal place of business situate in more than one State, then, in each State where it has a principal place of business; and the principal place of business situate in that State in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company.

(3) No unregistered company shall be wound up under this Act voluntarily or subject to the supervision of the Court.

(4) The circumstances in which an unregistered company may be wound up are as follows: -

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) if the company is unable to pay its debts;

(c) if the Court is of opinion that it is just and equitable that the company should be wound up.

(5) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts -

1        Inserted by Act 65 of 1960, section 192.

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, 1[\*\*\*] manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, 2[\*\*\*] manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not, within ten days after service of the notice, -

(i) paid, secured or compounded for the debt or demand; or

(ii) procured the suit or other legal proceeding to be stayed; or

(iii) indemnified the defendant to his satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(c) if execution or other process issued on a decree or order of any Court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part;

(d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

584. Power to wind up foreign companies, although dissolved

Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

1 Reference to managing agent, secretaries and treasurers redundant after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

2 Ibid.

585. Contributories in winding up of unregistered company

(1) In the event of an unregistered company being wound-up, every person shall be deemed to be a contributory, who is liable to pay, or contribute to the payment of, -

(a) any debt or liability of the company; or

(b) any sum for the adjustment of the rights of the members among themselves; or

(c) the costs, charges and expenses of winding up the company.

(2) Every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any liability to pay or contribute as aforesaid.

(3) In the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

#### 586. Power to stay or restrain proceedings

The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

587. Suits, etc., stayed or winding up order

Where an order has been made for winding up an unregistered company, no suit or other legal proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court and except on such terms as the Court may impose.

588. Directions as to property in certain cases

(1) If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order or by any subsequent order, direct that all or any part of the property, movable or immovable (including actionable claims), belonging to the company or held by trustees on its behalf, shall vest in the Official Liquidator by his official name; and thereupon the property or the part thereof specified in the order shall vest accordingly.

(2) The Official Liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any suit or legal proceeding relating to that property, or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

589. Provisions of Part cumulative

(1) The provisions of this Part with respect to unregistered companies shall be in addition to and not in derogation of, any provisions hereinbefore in this Act contained with respect to the winding up of companies by the Court.

(2) The Court or Official Liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by the Court or Official Liquidator in winding up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound-up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

590. Saving and construction of enactments conferring power to wind-up partnership, association or company in certain cases

Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound-up, or being wound-up as a company or as an unregistered company, under the Indian Companies Act, 1913 (7 of 1913), or any Act repealed by that Act:

Provided that references in any such enactment to any provision contained in the Indian Companies Act, 1913 (7 of 1913) or in any Act repealed by that Act shall be read as references to the corresponding provision, if any, contained in this Act.

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