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FINAL CA
MAY '19
REVISION NOTES
Corporate, Allied (Old)
& Economics (New) Laws

Part - VI

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PRODUCER COMPANY (PART TITLE IX A)

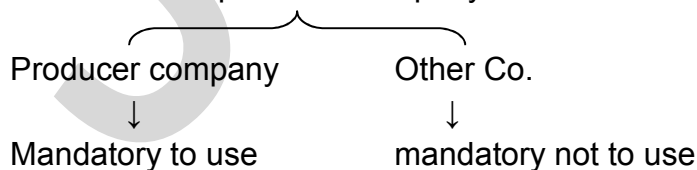
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Introduction

1. Producer ≠ Public Company

≠ Private Company
= Producer Company

- Name ends with “producer company ltd.”



Contravention – Max. Rs.10,000

2. Producer company Applicability

Part title IX A
(Overriding)

Companies Act

Memorandum

In memorandum of producer company, it shall be same provision as that of other company but its object clause should contain provision of section 581B

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Producer company shall exclusively engage in activities related to “primary produce” or “producer”	
Primary Produce	Producer (Any person engaged in primary produce activity)
<ul style="list-style-type: none"> - Agriculture - Floriculture - Horticulture - Animal husbandry - Bee farming - Handloom - Handicraft - Cottage industry 	

Activities related to primary produce

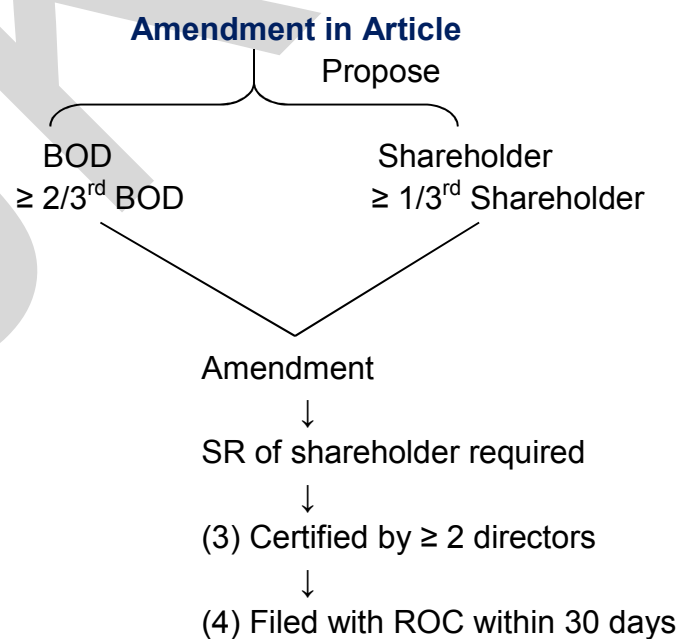
Harvesting, ploughing, brewing, drying, marketing etc.

Activity related to producer

Education, awareness finance power etc.

Article of Association

- AOA should contain principle of mutual assistance
- Membership in producer company should be voluntarily
- Producer company cannot make political contribution
- Producer company can make contribution to other co-operative society or producer company, maximum 3% of net profit of preceding F.Y.



Limited Return

Maximum rate of return of dividend as per AOA of company

Withheld price

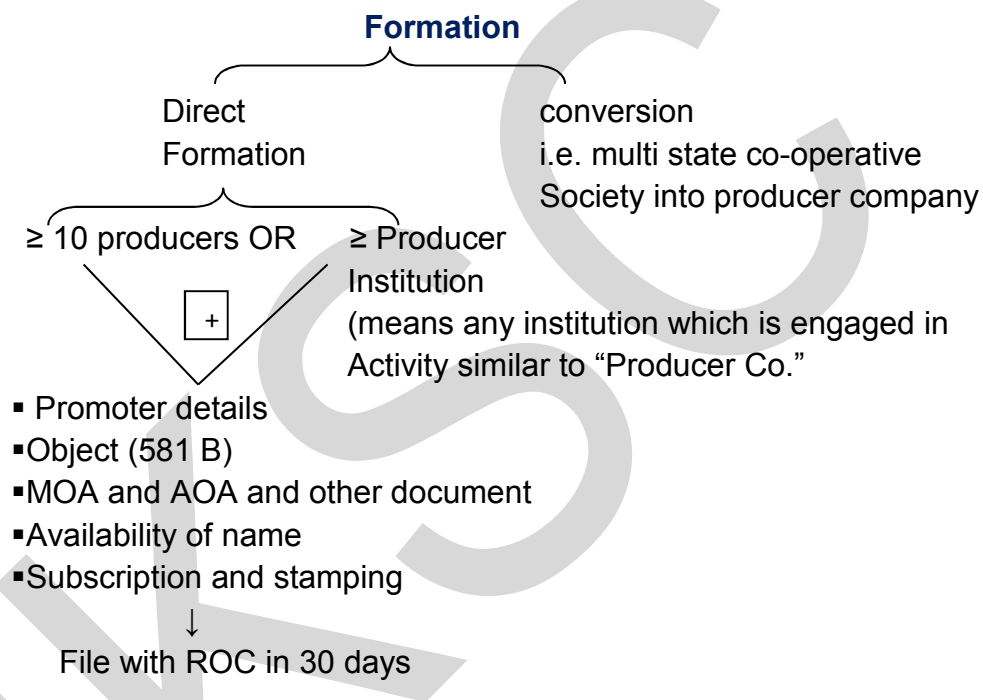
When producer company buy primary produce from producer then it may retain certain % of transaction as per article which is termed as withheld price. It is paid to produce either lump sum or in the form of shares after certain interval.

Patrons

When producer avails services from Producer Company then producer will be termed as patron

Patronage bonus

Apart from limited return, producer is eligible for additional benefit for being patron, this is called patronage bonus

**Conversion of MSCS into Producer Company**

1. Approval $\geq 2/3^{\text{rd}}$ of total members required for conversion
2. Copy of notice / minutes/ resolution by member
3. Details of embers / director / CEO
4. Document i.e. MOA, AOA and other document of producer company
5. Declaration that business activity of producer company shall be within the scope of section 581B

Note : after conversion

All assets, liabilities, receivables, payable, licence of MSCS shall vest in Producer Company
All employees of MSCS will become employers of Producer Company, however they can resign without compensation

Membership

- Nomination - within 3 months member should appoint nominee who will receive shares after death of producer. However at the time of nomination, nominee may not be producer. But after death when shares are getting transfer, such nominee must be producer otherwise nominal value of such shares shall be given (i.e. not admitted as member)

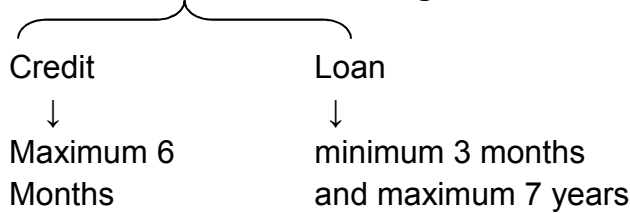
- Surrender – producer can surrender its shares at nominal value to producer company
- Transfer – producer can transfer its shares to producer at nominal value
- Expulsion – special resolution (SR) of shareholders required to expel producer

Producers can be expelled on following ground

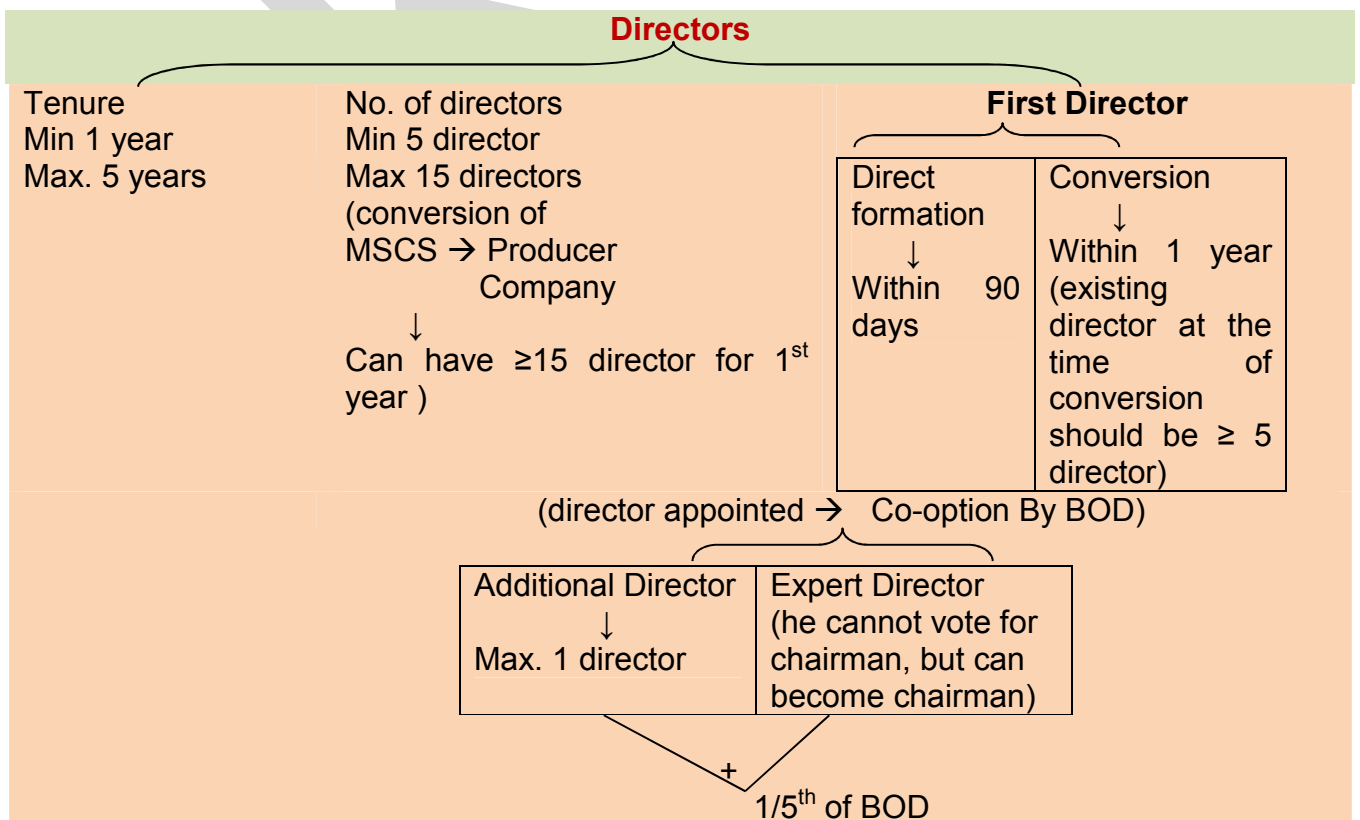
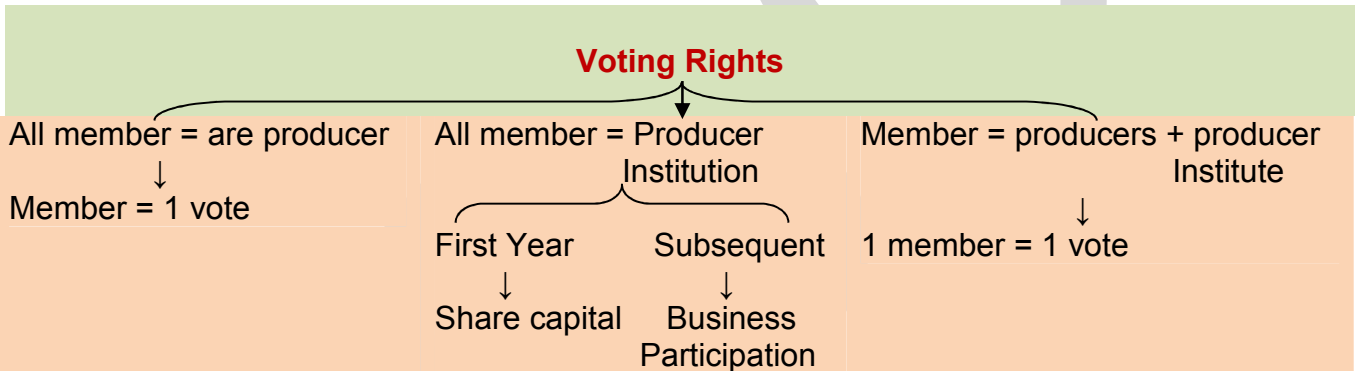
- Producer has entered into competing business
- Members ceases to be producers

Members will be expelled after receiving nominal value of shares

Benefits – members are eligible for credit and loans

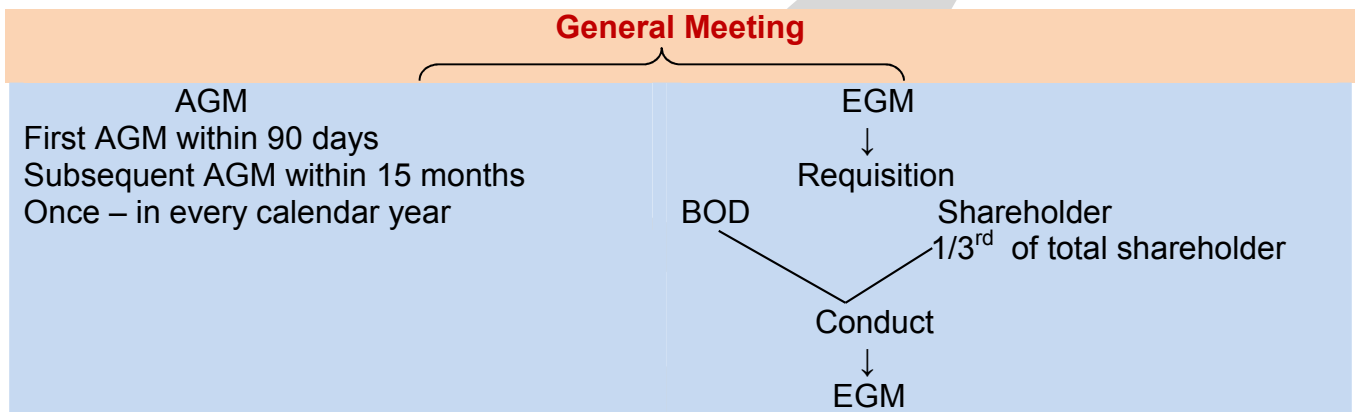


Note : credit and loan can be given to directors after PRIOR approval of shareholder



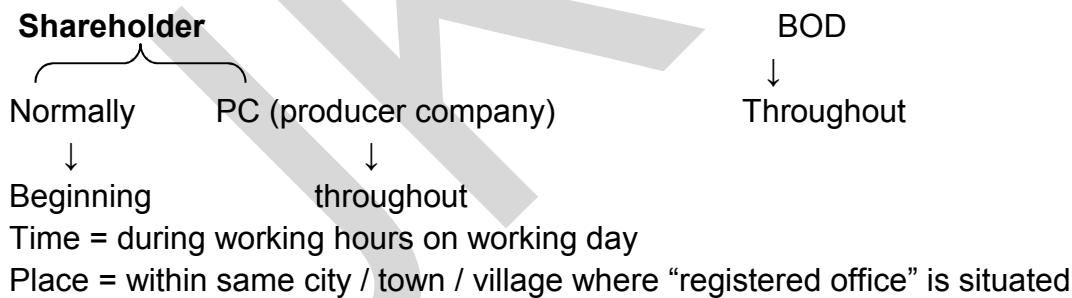
Board Meeting

	Companies Act	Producer Company										
1. No. of Board Meeting	≥ 4 BM in a year max. gap- 120 days	≥ 4 BM in a year, atleast 1 in a quarter <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>A</td> <td>J</td> <td>S</td> <td>D</td> <td>M</td> </tr> <tr> <td></td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> </table>	A	J	S	D	M		1	2	3	4
A	J	S	D	M								
	1	2	3	4								
2. Length of notice	Atleast 7 days short notice in case of short notice – attended / ratified by one independent director	Atleast 7 days Short notice – allowed in reasonable case										
3. Quorum	1/3 rd of total director or 2 directors which is higher	1/3 rd of total director or 3 directors which is higher										



General Meeting

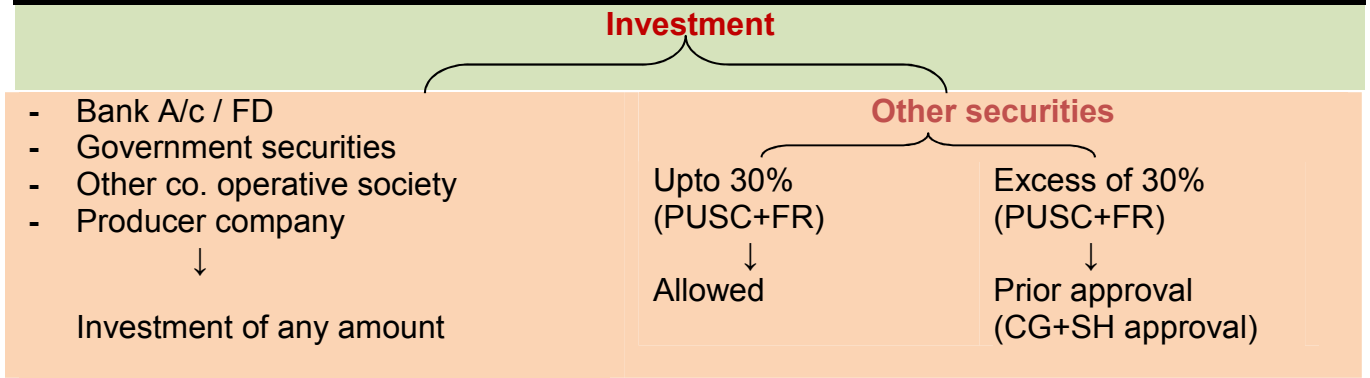
Length of notice = 14 days
 Quorum – 1/4th of total shareholders
 It should be present throughout shareholder meeting



Vacation

- 1) Convicted imprisonment ≥ 6 months on moral turpitude ground
- 2) Not filed – annual Account & annual return for continuous period of 3 years
- 3) Producer Company ← Loan any person
Default ≥ 90 days
- 4) Director ← Loan Producer Company
Default
- 5) Not conducting meeting for election of appointment of director
- 6) Not conducted AGM / EGM

Exception – not conducted due to natural calamity



Matter to be discussed at general meeting

1. Issue of bonus shares
2. Adoption of annual accounts
3. Issue of patronage bonus
4. Declaration of limited return and patronage
5. Approval (general approval) of any other matter which is to be discussed in general meeting
6. Approval of limit of loan to director

Company Secretary

Annual turnover ≥ 5 crore in all preceding 3 FY

↓
1 whole time CS

Bonus Shares

Recommend – BOD

Declare – shareholder

↓

Capitalization of reserve

COMPROMISE, ARRANGEMENT AND AMALGAMATION**Section 230 – 240****Section 230: Power to Compromise or Make Arrangements with Creditors and Members**
[Section 230]

Section 230 of the Companies Act, 2013 contains the powers of the Central Government on the filing of application for the compromise or arrangement.

Accordingly, the provisions states the following: [W.E.F. 13.06.17]

(1) Power of tribunal on an application filed for a compromise /arrangement: Where a compromise or arrangement is proposed between—

- (a) A company and its creditors or any class of them; or
- (b) A company and its members or any class of them, the Central Government [W.E.F. 13.06.17] may, on the application of the-
 - (i) Company, or
 - (ii) Of any creditor, or
 - (iii) Member of the company, or
 - (iv) of the liquidator (in the case of a company which is being wound up), appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, 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 Tribunal directs.

Explanation — For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(2) Disclosures by applicant: The company or any other person, shall disclose to the Central Government [W.E.F. 13.06.17] by affidavit-

- (a) 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 and the pendency of any investigation or proceedings against the company;
- (b) Reduction of share capital of the company, if any, included in the compromise or arrangement;
- (c) Any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—
 - (i) A creditor's responsibility statement in the prescribed form;
 - (ii) Safeguards for the protection of other secured and unsecured creditors;
 - (iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;
 - (iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and
 - (v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

- (3) **Notice of meeting conducted on order of CG:** Where a meeting is proposed to be called in pursuance of an order of the Central Government [W.E.F. 13.06.17], a notice of such meeting shall be sent to –
- all the creditors or class of creditors, and
 - to all the members or class of members,
 - and the debenture-holders of the company, individually at the address registered with the company.

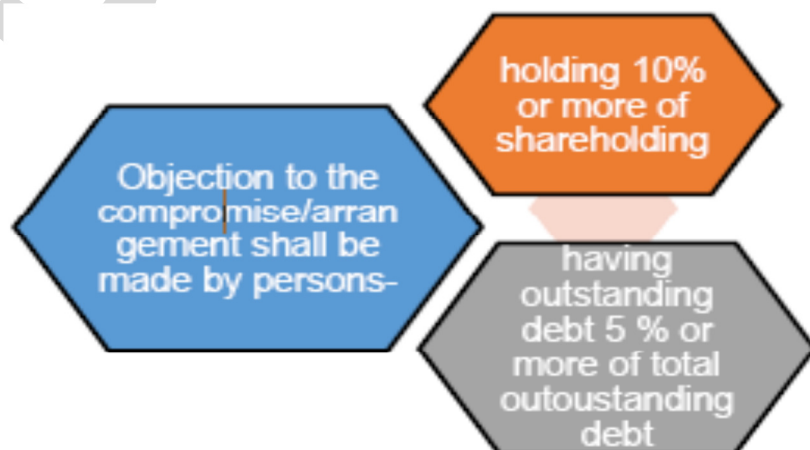
Annexure with Notice: Notice of meeting shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be as prescribed under Rule 6 of the Companies (Compromises, arrangements and amalgamations) Rules, 2016.

Advertisement of notice: Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as prescribed under Rule 7 of the Companies (Compromises, arrangements and amalgamations) Rules, 2016.

Time period for the receipt of the copies of the compromise or arrangement: **Provided further** that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

- (4) **Vote to the adoption of the compromise or arrangement:** A notice shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.



- (5) **Notices to sectoral regulators to make representation, if likely to be affected by the compromise or arrangement:** A notice along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under the Competition Act, 2002, if necessary, and such other sectorial regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.
- (6) **Binding order of CG:** Where, at a meeting held, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Central Government [W.E.F. 13.06.17] by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator, "appointed under this Act or under the IBC, 2016, as the case may be," and the contributories of the company.
- (7) **Particulars to be stated in the order: An order made by the CG, shall provide for all or any of the following matters,** namely:-
- where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;
 - the protection of any class of creditors;
 - if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;
 - if the compromise or arrangement is agreed to by the creditors under subsection (6), any proceedings pending before the Board for Industrial and Financial Reconstruction (BIFR) established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;
 - such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Central Government [W.E.F. 13.06.17] necessary to effectively implement the terms of the compromise or arrangement:
Provided that no compromise or arrangement shall be sanctioned by the Central Government [W.E.F. 13.06.17] unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.
- (8) **Filing of order of tribunal with registrar:** The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.
- (9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. Value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

(10) Exemption in relation to buy-back of securities: No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

Section 231: Powers of Tribunal for C&A

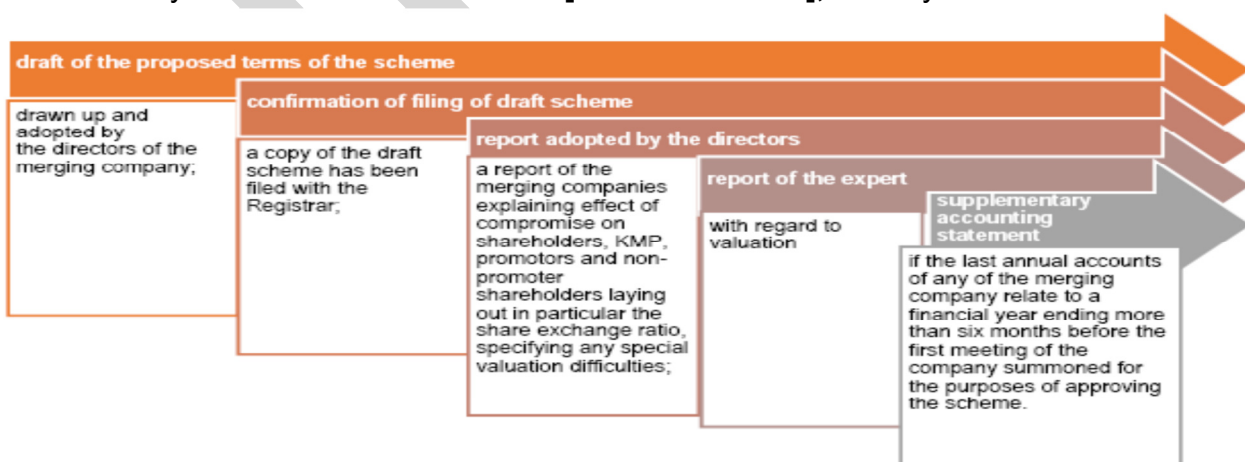
Tribunal has power to implement any plan or to supervise plan of compromise and arrangement. It can also make any modification if required. However, if scheme is not workable then it may order wind up.

Section 232: Merger and Amalgamation of Companies [Section 232]

(1) Filing of an application for purpose of reconstruction or companies involving merger/ amalgamation or transfer of undertaking, property etc.: Where an application is made to the CG under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the **Central Government [W.E.F. 13.06.17] —**

- (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger 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 (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the CG may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the CG may direct and the provisions of subsections (3) to (6) of section 230 shall apply mutatis mutandis.

(2) Circulation of information for the meeting by the merging companies / the companies in respect of which a division is proposed: Where an order has been made by the CG as above, merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the **Central Government [W.E.F. 13.06.17]**, namely:—



- (a) The draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;
- (b) Confirmation that a copy of the draft scheme has been filed with the Registrar;
- (c) A report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters

and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

- (d) The report of the expert with regard to valuation, if any;
- (e) A supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

(3) **Order of CG on the agreement of compromise or arrangement: The Central Government [W.E.F. 13.06.17]**, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

- (a) The transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;
- (b) The allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

- (c) The continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;
- (d) Dissolution, without winding-up, of any transferor company;
- (e) The provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;
- (f) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;
- (g) The transfer of the employees of the transferor company to the transferee company;
- (h) Where the transferor company is a listed company and the transferee company is an unlisted company,—
 - (A) The transferee company shall remain an unlisted company until it becomes a listed company;
 - (B) If shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal:

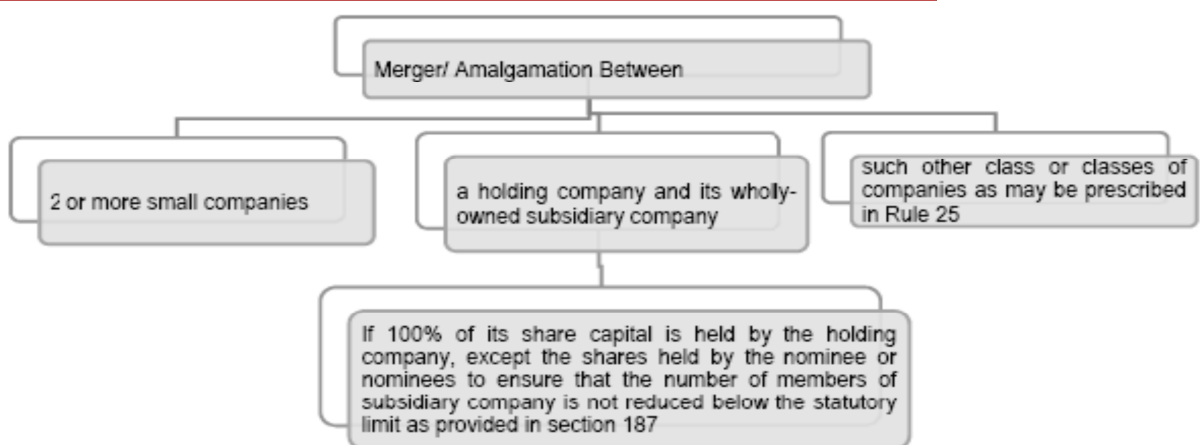
Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

- (i) Where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and
- (ii) Such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out:

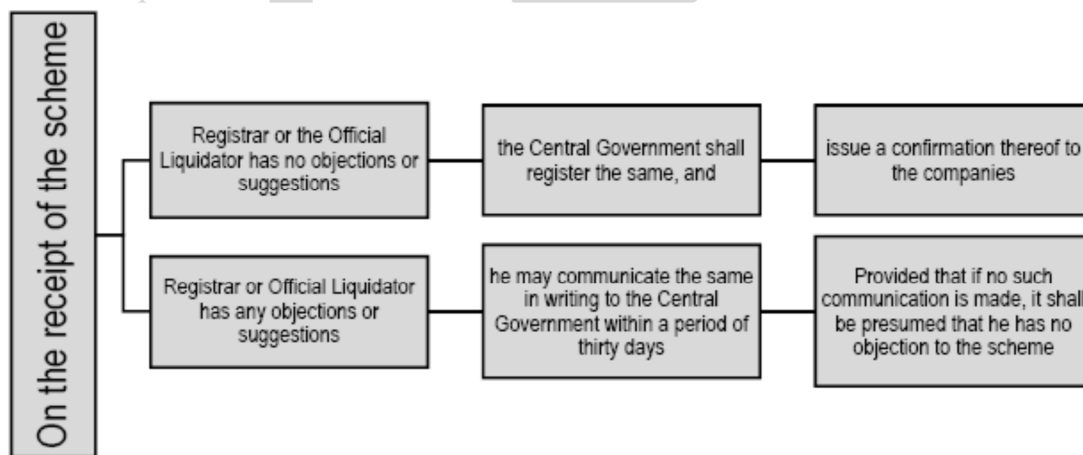
Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

- (4) **Effect of an order of CG:** 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 the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.
- (5) **Filing of certified copy of order with registrar:** Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.
- (6) **Effective date specified in scheme:** The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.
- (7) **Filing of duly certified statement of compliance of scheme with registrar:** Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.
- (8) **In case of contravention:** If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than

Section 233 : Merger and Amalgamation of certain companies



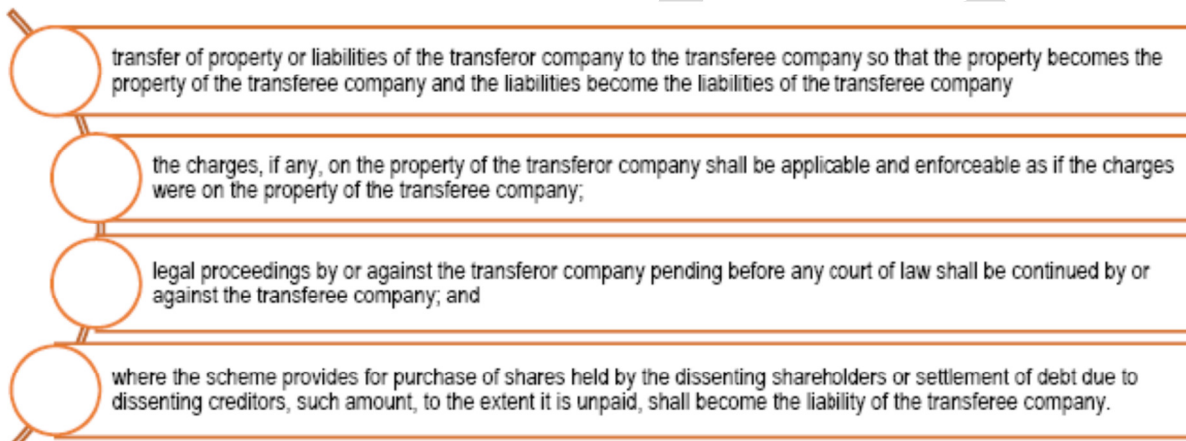
- (1) **Companies who may enter into scheme of merger or amalgamation:** A scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as given in Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, subject to the following, namely:—
- (a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;
 - (b) The objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent of the total number of shares;
 - (c) Each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and
 - (d) The scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.
- (2) **Filing of copy of scheme with the Central Government, Registrar and the Official Liquidator :** The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.
- (3) **On the receipt of the scheme, objections and suggestions:**



- (4) **Filing of application by Central government with Tribunal:** If the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of sixty days of the receipt of the scheme, stating its objections and requesting that the Tribunal may consider the scheme under section 232
- (5) **Passing of an order of Tribunal:** On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 232, Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit:

Provided that if the Central Government does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme.

- (6) **Communication of an order to registrar:** A copy of the order confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.
- (7) The registration of the scheme shall be deemed to have the effect of dissolution of the transferor company without process of winding-up.
- (8) **Effect of Registration of Scheme:** The registration of the scheme shall have the following effects, namely:—



- (9) **Effect of merger and amalgamation on transferee:** A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation.
- (10) **Filing of an application by transferee company with the Registrar:** The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fees due on revised capital:
 Provided that the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation.
- (11) **Applicability of the provisions:** The provisions of this section shall mutatis mutandis apply to transfer
- A company or companies specified in sub-section (1) in respect of a scheme of
 - Compromise or arrangement referred to in section 230, or
 - Division or transfer of a company referred to clause (b) of subsection (1) of section 232.

- (12) The Central Government may provide for the merger or amalgamation of companies in such manner as may be prescribed.
- (13) A company covered under this section may use the provisions of section 232 for the approval of any scheme for merger or amalgamation.

Section 234 : Merger or amalgamation of company with foreign co.

1. If Indian company is into merger or amalgamation with company incorporated outside India, then all provisions of section 230 and 232 shall be applicable.
2. Provisions of amalgamation may be framed by CG in consultation with RBI
3. Purchase consideration can be paid in cash or in depository receipt (refer SEBI regulation)

Section 235 : Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

Power to Acquire Shares of Shareholders Dissenting from Scheme or Contract Approved by Majority [Section 235]

(1) Basic requirements as to acquisition of shares:

- The scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has been approved by the holders of not less than 9/10th in value of the shares whose transfer is involved.
- The approval from 9/10th shareholders in value shall be received within four months after making of an offer in that behalf by the transferee company.
- The shares already held at the date of the offer by Transferee Company, or by a nominee of the transferee company or its subsidiary companies shall not be counted for this purpose.
- The transferee company shall express his desire to acquire the remaining shares of dissenting shareholders within two months after the expiry of the said four months and shall give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares

(2) Order of Tribunal to acquire shares of dissenting shareholders: Where a notice under sub-section (1) is given, the transferee company shall, unless on an application made by the dissenting shareholder to the Tribunal, within one month from the date on which the notice was given and the Tribunal thinks fit to order otherwise, be entitled to 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.

(3) Application by dissenting shareholders:

- (i) Where a notice has been given by the transferee company on an application made by the dissenting shareholder and the Tribunal has not, made an order to the contrary i.e. order made in favour of the company- the transferee company shall, on the expiry of one month from the date on which the notice has been given, or,
- (ii) If an application to the Tribunal by the dissenting shareholder is then pending, - Nothing is required to be done.
- (iii) after that application has been disposed of shall send a copy of the notice to the transferor company together with an instrument of transfer, to be executed on

behalf of the shareholder by any person appointed by the transferor 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 that company is entitled to acquire,.

(iv) 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.

(4) **Separate Bank account for disbursement to entitled shareholders:** Any sum received by the transferor company under this section shall be paid into a separate bank account, and any such sum 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 sum or other consideration were respectively received and shall be disbursed to the entitled shareholders within sixty days.

(5) **Scheme/contract made before the commencement of Act:** In relation to an offer made by a transferee company to shareholders of a transferor company before the commencement of this Act, this section shall have effect with the following modifications, namely:—

- (a) 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 of, the transferee company or its subsidiaries,”, the words “the shares affected” shall be substituted; and
- (b) In sub-section (3), the words “together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferor company” shall be omitted.

Explanation — For the purposes of this section, “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.

Section 236 : Acquisition of shares by majority shareholders of minority shareholders

1. 90% or more majorities may acquire shares of minority at a price determined by registered values.
2. Majority shareholders should transfer such payment in a separate bank account from which the payment will be made to minority shareholder.
3. This separate bank account shall be maintained for period of 1 year by the company, whose shares are being acquired payment shall be disbursed to entitled shareholder within 60 days and if they fail to receive within 60 days due to any reason, than it may be disbursed within 1 year.
4. In case the transmission is by way of assigning, legal heir, or administrator then payment can be made within 3 years.

Section 237: Amalgamation by Central Government

1. If it is in public interest, CG may order two or more companies to amalgamate.
2. Rights of all members, creditors in the new company should be same as that of old company. However, in case of vary of rights of any member or creditor, CG may declare compensation and if they are not satisfied with compensation, they may appeal to NCLT within 30 days.
3. Order of amalgamation can be passed only after giving an opportunity of objection to amalgamating company for atleast 2 months
4. After amalgamation ordered by CG it should be (placed) laid in both houses of parliament
5. Cases against old company shall be continued in name of new company

Section 238 : Registration of offer of scheme involving transfer of shares

1. Any offer or scheme which involves transfer of shares u/s 235 require registration of circular with ROC before transfer of shares. ROC may reject such registration which should be communicated within 30 days.
2. Appeal can be filed against such rejection with NCLT
3. what is circular – it is a statement which contains relevant information and recommendation made by directors to SH of transferor company

Section 239

Books and papers of amalgamated companies books and papers of amalgamating company shall be maintained by amalgamated company; however it can be disposed with prior approval of CG. CG can make such order only after investigation of such books and papers.

Section 240

Liabilities of officer in respect of offences committed prior to merger / amalgamation shall be continued after amalgamation.

FOREIGN COMPANY

Section 2(42) : Foreign Company

Company incorporated outside India

And

Place of business in India

(directly / agent / physical / electronic)

Section 379

Foreign company (in which ≥ 50% share capital) is held by	Indian citizen	Indian business
	Or	Deemed Indian company
	Company / Body corporate required in India	Chapter XXII (foreign company) + Such other provisions as may be prescribed

Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies:

Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such order shall, as soon as may be after it is made, be laid before both Houses of Parliament.

Section 380 : Documents required to be filed with ROC (within 30 days)

1. Documents defining constitution / charter / statute /MOA
2. Address of registered office (i.e. principal office outside India)
3. Name and particulars of secretary and director
4. Name and address of one or more person to whom notice can be served on behalf of company (i.e. Indian representative)
5. Address of place of business in India
6. Whether office is opened or closed before in India
7. Whether any director / Indian representative is debarred to incorporate company anywhere
8. Any other information

Section 382

DISPLAY OF NAME ETC. BY FOREIGN COMPANY

Place of business in India	Business letter, letter head etc. (i.e. communication letter)	Prospectus
↓	↓	↓
1. Name of company	1. Name of company	Limited liability (if any)
2. Name of country where company incorporated	2. Name of country where Co. incorporated	
3. Limited liability (if any – specified)	3. Limited liability (if any)	

Section 383 : Serving notice to the foreign company

Any notice to foreign company which is to be served to foreign company can be send to any person (i.e. Indian representative) or place of business in India which is supplied to ROC by foreign company.

If notice is served to any person or place of business in India, then it will be deemed to be served to foreign co.

Section 384

Section 71(debentures), 92(annual return), 128(books of accounts), chapter VI (Registration of charge) , Chapter XIV (inspection) and section 135 (corporate social responsibility) shall be applicable in the same way as it is applicable to Indian company i.e. mutatis mutandis

Section 385

Fees required to be paid for registering document as may be prescribed.

Section 387**DISCLOSURE REQUIREMENT IN PROSPECTUS****Normal disclosure**

1. Disclosure u/s 26 (prospectus)
2. Dated
3. Signed

ADDITIONAL DISCLOSURE

Enactment under which company is formed	Address place business India	of of in	Name of it is registered	of where	Date of incorporation	of Document defining constitution of company	Place where documents can be inspected
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Section 388 : Expert's Consent

Any statement used in prospectus issued, circulated or distributed by company incorporated outside India by way of reference or report or direct statement, then approval of such statement is required by written consent.

Note : company cannot use such statement if consent is withdrawn by expert before registration of prospectus. However expert is not permitted to withdraw such statement after registration of prospectus.

Section 389 : Registration of prospectus

If company incorporated outside India wants to issue, circulate or distribute any prospectus then it should be registered.

However following conditions is to be satisfied :

- a. Signed by atleast two directors and chairperson
- b. Following document shall be enclosed / annexed –
 - i) Expert's consent
 - ii) Copy of contract or agreement with MD / Manager of agreement
 - iii) Any other contract material in nature
 - iv) Underwriting agreement
 - v) Copy of power of attorney
 - vi) if prospectus is signed by agent instead of director

Section 390 : Indian Depository Receipt

CG can make rules for issue of IDR by company incorporated outside India on the following matters –

1. Offer of IDR
2. Disclosure required in prospectus for issue of IDR
3. Manner in which depository should deal with IDR
4. Manner of transfer / transmission of IDR

Section 391 : Application of Section 34 – 36

Section 34 – 36 shall be applicable mutatis mutandis to company incorporated outside India as if applicable

34 – criminal liability for misstatement in prospectus

35 – civil liability

36 – fraudulently inducing someone to invest in company

Subject to the provisions of section 376, the provisions of Chapter XX shall apply mutatis mutandis for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed.

Section 392**PUNISHMENT OF CONTRAVENTION**

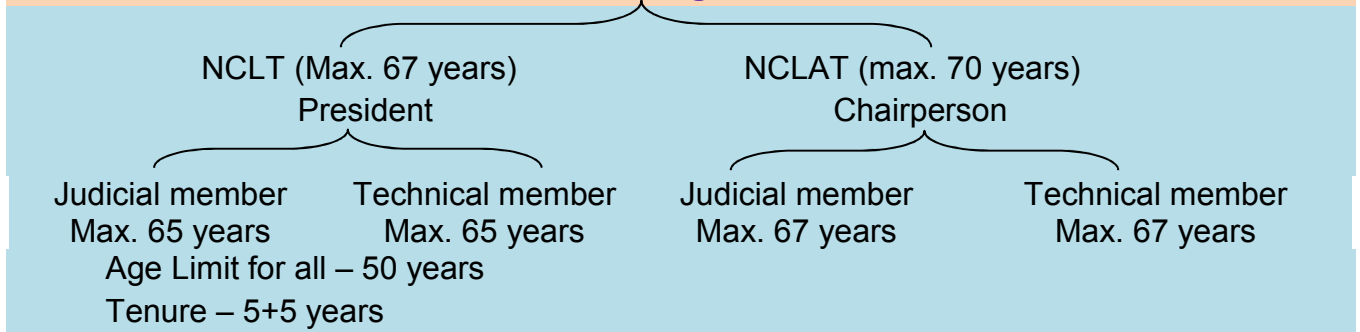
Foreign Company	Officer
Min – Rs.1,00,000, Max. – 3,00,000	Imprisonment upto 6 months
+	Or
50,000 per day (continuing offence)	Fine – min 25,000
	Max. 5 lakhs

Section 393 : Company's failure to comply with provisions of this Act

Foreign Company cannot sue but can be sued and foreign company is not eligible for counter claim

NATIONAL COMPANY LAW TRIBUNAL

CG has established two judiciary Bodies by notification in official gazette on 1 June 16



➤ **Eligibility for appointment**

NCLT	
<ul style="list-style-type: none"> - President → H.C. judge (≥ 5 years) - Judicial Member → H.C. judge D.C judge (≥ 5 years) Court advocate (≥ 10 years) - Technical Member → Indian legal service Indian co. law service* 	CA CS CWA } in practice ≥ 15 years
Standing / integrity **→ ≥ 15 years Presiding officer of labour court ≥ 5 years	
NCLAT	
<ul style="list-style-type: none"> - Chairperson → SC judge or H.C chief justice - Judicial Member → HC judge → NCLT Judicial Member ≥ 5 years Technical Member → A/S/I ≥ 25 years of age 	

- *has, for at least fifteen years been a member of the Indian Corporate Law Service or Indian Legal Service and has been holding the rank of Secretary or Additional Secretary to the Government of India
- **A technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of not less than fifteen years / twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy.

Selection of President / Chairperson / Member

Central government on consultation with
Chief Justice of India
↓ They will appoint
- Chairperson
- President
- JM of NCLAT

Central government on recommendation of selection committee
↓ consists of
1. CJI / representation of CJI
2. Senior SC judge or HC chief justice
3. Secretary of MCA
4. Secretary of ministry of law of justice
↓
These will appoint
- TM of NCLAT
- JM and TM of NCLT

Acting president of chairperson of NCLT or NCLAT

In case of absence of president or chairperson, senior most member of NCLT / NCLAT shall be working as acting P/C till the appointment of president / chairperson

Resignation of president / chairperson / member

1. 3 months from the date of receipt of notice by CG
2. Successor appointed (i.e. then resignation)
3. Tenure is completed whichever is earlier

Removal of president / chairperson / member

Ground for removal

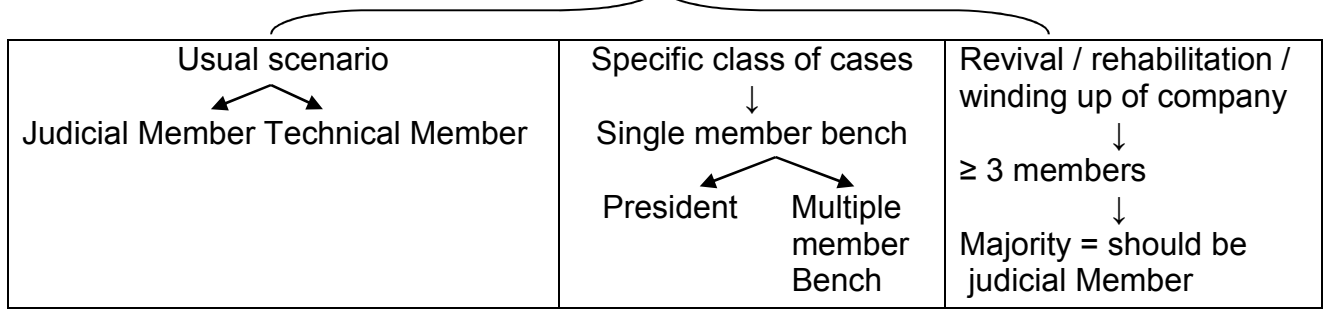
1. Declared insolvent
2. Convicted for moral turpitude
3. Developed financial interest
4. Physically or mentally
5. Abused his position

➤ Central government shall refer the matter to supreme court and supreme court shall conduct an inquiry

↓
SC may pass → interim order
↓
Suspend → P/C/M
↓
After inquiry of SC
↓
SC will pass order
↓

Benches of NCLT

- Principle branch → New Delhi
- There are many NCLT across India
- NCLT can have as many benches as they want



Appeal from orders of Tribunal [Section 421]

- (1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.
- (2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.
- (3) Every appeal under sub-section (1) shall be filed within a period of 45 days From the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:
 Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding 45 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.
- (4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

Expeditious disposal by Tribunal and Appellate Tribunal [Section 422]

- (1) Every Endeavour shall be made by the NCLT or the NCLAT, as the case may be, for the disposal of such application or petition or appeal within 3 months from the date of its presentation before the NCLT or the filing of the appeal before the NCLAT
- (2) Where any application or petition or appeal is not disposed off within the period specified in subsection (1), the Tribunal or, as the case may be the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (1) by such period not exceeding 90 days as he may consider necessary.

Appeal to Supreme Court [Section 423]

Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Section 414

Salary etc. of P/C/M should not be at their disadvantage and it will be as may be prescribed

Section 418

Staff of NCLT or NCLAT shall be appointed by CG in consultation with NCLT and NCLAT

Section 420

NCLT can rectify its mistake done in any order within 2 year, if it is apparent (evident) (mistake on face) in nature. Any matter which is under appeal cannot be rectified

Section 424

Procedure of NCLT and NCLAT shall be found by code of civil procedure

Section 426

NCLT and NCLAT may delegate its power by general or special order, subject to any condition

Section 427

P/C/M shall be treated as public servant under meaning of IPC (Indian Penal Code)

Section 431

Any defeat in contribution of NCLT and NCLAT or defect in appointment of their power shall not invalidate the decision already passed by them.

MISCELLANEOUS

Section 435 of the Companies Act deals with the establishment of the Special Court. The provisions state the number of special court that may be established with the required number of judges for the working.

[Companies Amendment Act, 2017]

Establishment of Special Courts [Section 435]

- (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.
- (2) A Special Court shall consist of—
 - (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and
 - (b) A Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences,

Who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

OFFENCES TRIABLE BY SPECIAL COURTS [SECTION 436]

- (1) **Powers of special courts with respect to trial of offences:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

Powers of the special courts	Provisions
Offences triable by the special court	All offences specified under section 435 (1) shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed.
In the case of more than one Special Courts	Where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.
Where a person accused of, or suspected of the commission of, an offence under this Act	Such person is forwarded to a Magistrate under section 167 of the Code of Criminal Procedure, 1973. <ul style="list-style-type: none"> (i) Such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate, (ii) and seven days in the whole where such Magistrate is an Executive Magistrate: Provided that where such Magistrate considers that the detention of such person (upon or before the expiry of the period of detention) is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;
Vested with same power as provided under the Cr. P.C.	The Special Court may exercise the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section;

- (2) **Special Court to try an offence other than an offence under this Act:** When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.
- (3) **Summary Trial:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973,

Power of special court on summary trail of an offence	Nature of summary trail
The Special Court may, if it thinks fit, try in a summary way any offence under this Act	Which is punishable with imprisonment for a term not exceeding three years.
In the case of conviction in a summary trail	No sentence of imprisonment for a term exceeding one year shall be passed
When at the commencement of , or in the course of a summary trail, it appears to the Special court that- <ul style="list-style-type: none"> - The nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passes, or - That it is, for any other reason, undesirable to try the case summarily 	The special Court shall, after heading the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trail.

APPEAL AND REVISION [SECTION 437]

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX which deals with appeals, Reference and Revision of the Code of Criminal Procedure, 1973 on a High Court-

As if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

APPLICATION OF CODE TO PROCEEDINGS BEFORE SPECIAL COURT [SECTION 438]

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be **deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be,** and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

[Companies Amendment Act, 2017]

OFFENCES TO BE NON-COGNIZABLE [SECTION 439]

This sections provides of the offences that are non-cognizable. According to this section:

Offence	Nature of offence
every offence under the Companies Act, 2013 except the offences referred to section 212(6)	shall be deemed to be non-cognizable within the meaning of the Cr.P.C
Court shall take cognizance of any offence under the Companies Act which is alleged to have been committed by any company or any officer thereof	Only on the written complaint of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf.
Cognizance of offences relating to issue and transfer of securities and non-payment of Dividend	The court may take cognizance on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.
Non-application of section 439(2)	To a prosecution by a company of any of its officers
Where the complainant is the Registrar or a person authorised by the Central Government	The presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial
Non-application of section 439(2)	To any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX (Winding up) or in any other provision of this Act relating to winding up of companies The liquidator of a company shall not be deemed to be an officer of the company.

TRANSITIONAL PROVISIONS [SECTION 440]

According to the section, any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a **Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be** exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a **Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be** under this section.

[Companies Amendment Act, 2017]

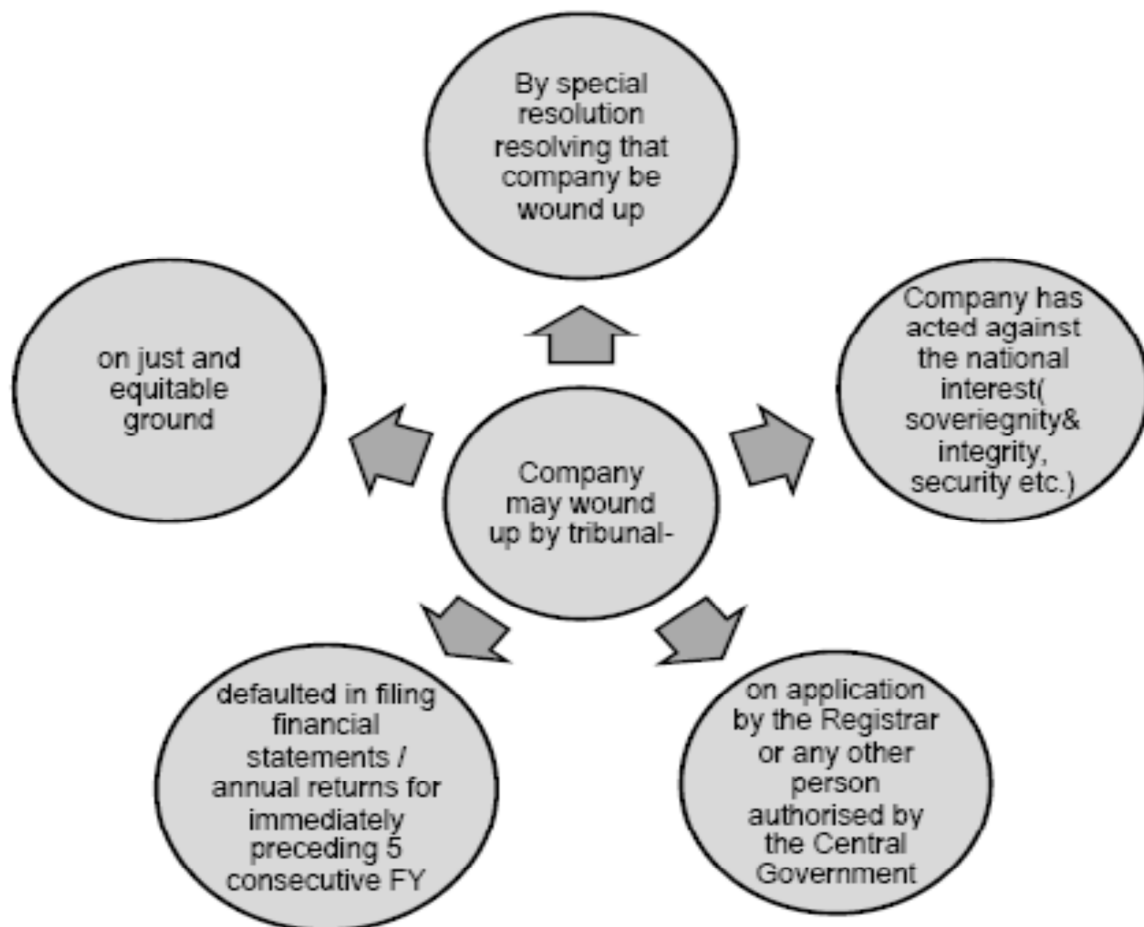
WINDING UP

PART – I : Winding up by the Tribunal [Section 271 – 303]

Circumstances in Which Company May be Wound Up by Tribunal [Section 271]

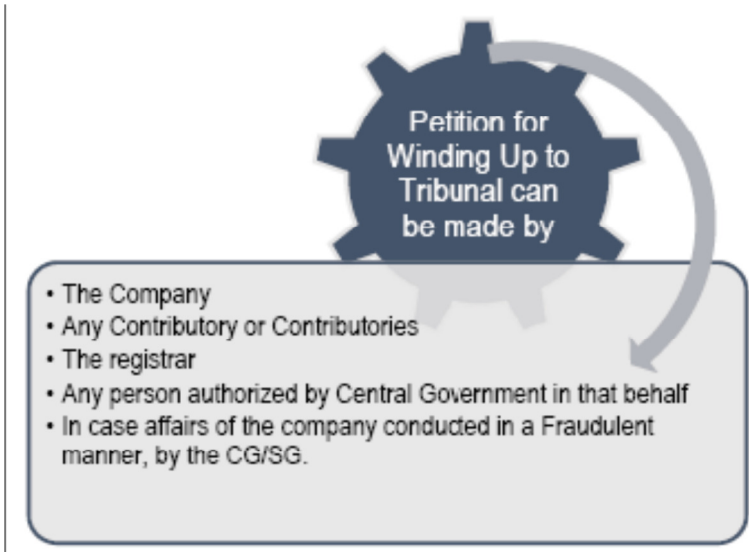
A company may, on a petition under section 272, be wound up by the Tribunal,—

- (a) If the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- (b) If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
- (c) If on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;
- (d) If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
- (e) If the Tribunal is of the opinion that it is just and equitable that the company should be wound up.



Petition for Winding up [Section 272]

(1) Petition may be presented by :



Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

- (a) The company;
- (b) Any contributory or contributories;
- (c) All or any of the persons specified in clauses (a) and (b);
- (d) The Registrar;
- (e) Any person authorised by the Central Government in that behalf; or
- (f) In a case falling under clause (b) of section 271, by the Central Government or a State Government.

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

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

Contributory can file petition ignoring the following points

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

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

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

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

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

Powers of Tribunal [Section 273]

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

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

Notice to company on appointing of provisional liquidator: Provided further that before appointing a provisional liquidator, the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice:

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

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

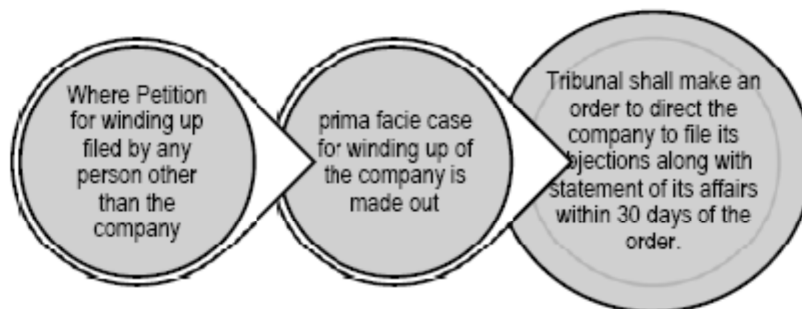
Directions for Filing Statement of Affairs [Section 274]

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

Extension of time for filing: Provided that the Tribunal may allow a further period of thirty days in a situation of contingency or special circumstances:

Deposit of security: Provided further that the Tribunal may direct the petitioner to deposit such security for costs as it may consider reasonable as a precondition to issue directions to the company.

- (2) **Punishment for not filing of the statement of affairs:** A company, which fails to file the statement of affairs as referred to in sub-section (1), shall forfeit the right to oppose the petition and such directors and officers of the company as found responsible for such non-compliance, shall be liable for punishment under subsection (4).
- (3) **Officers to pay cost of the company, book of accounts completed and audited to the Liquidator :** The directors and other officers of the company, in respect of which an order for winding up is passed by the Tribunal under clause (d) of subsection (1) of section 273, shall, within a period of thirty days of such order, submit, at the cost of the company, the books of account of the company completed and audited up to the date of the order, to such liquidator and in the manner specified by the Tribunal.
- (4) **Contravention of section:** If any director or officer of the company contravenes the provisions of this section, the director or the officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.
- (5) **Complaint to be presented before special court may be filed by:** The complaint may be filed in this behalf before the Special Court by Registrar, provisional liquidator, Company Liquidator or any person authorised by the Tribunal.



Company Liquidators and their appointments [Section 275]

- (1) **Appointment of official liquidator:** For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the panel maintained as the Company Liquidator.
- (2) **Appointment of provisional liquidator or the Company Liquidator by tribunal:** The provisional liquidator or the Company Liquidator, as the case may, shall be appointed by the Tribunal from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016;
- (3) **Tribunal may limit the powers of a provisional liquidator:** Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same powers as a liquidator.

- (4) **Tribunal to specify the terms and conditions of appointment of provisional liquidator:** The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.
- (5) **Filing of declaration by liquidator on appointment:** On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.
- (6) **Appointment of provisional liquidator as the company liquidator:** While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (c) of sub-section (1) of section 273, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.

Removal and Replacement of Liquidator [Section 276]

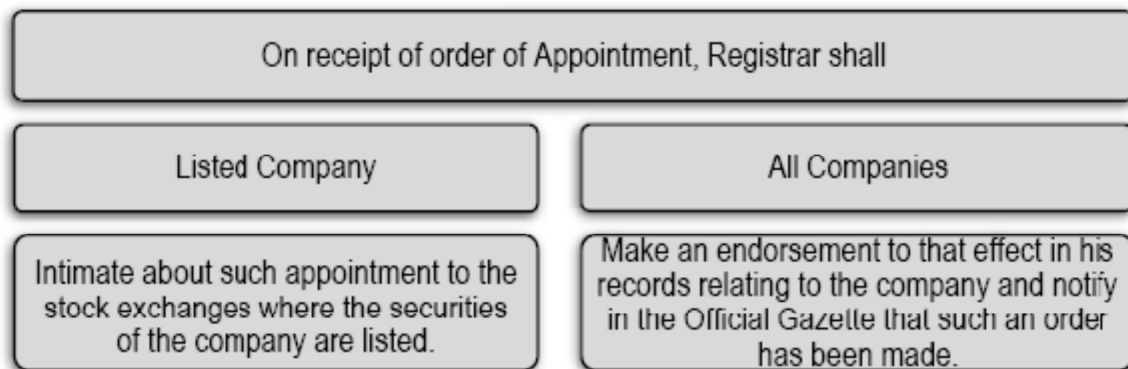
- (1) **Removal of provisional liquidator or the Company Liquidator:** The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—
- (a) misconduct;
 - (b) fraud or misfeasance;
 - (c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
 - (d) inability to act as provisional liquidator or as the case may be, Company Liquidator;
 - (e) conflict of interest or lack of independence during the term of his appointment that would justify removal.
- (2) **Transfer of work of liquidators:** In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.
- (3) **Recover of loss or damage from liquidator:** Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.
- (4) **Reasonable opportunity of being heard to the provisional liquidator:** The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.

Intimation to Company Liquidator, Provisional Liquidator and Registrar [Section 277]

- (1) **Intimation of an order of tribunal:** Where the Tribunal makes an order for- □
 appointment of provisional liquidator or
- The winding up of a company,
 - It shall, within a period not exceeding seven days from the date of passing of the order, cause intimation thereof to be sent to the-
 - Company Liquidator or provisional liquidator, as the case may be, and
 - The Registrar.

(2) **Registrar to intimate of an order:**

With respect to all companies- On receipt of the copy of order of appointment of provisional liquidator or winding up order, the Registrar shall make an endorsement to that effect in his records relating to the company and notify in the Official Gazette that such an order has been made, and In the case of a listed company, the Registrar shall intimate about such appointment or order, as the case may be, to the stock exchange or exchanges where the securities of the company are listed.



- (3) **Winding up order shall be deemed to be notice of discharge:** The winding up order shall be deemed to be a notice of discharge to the officers, employees and workmen of the company, except when the business of the company is continued.
- (4) **Constitution of winding up committee to monitor liquidation proceedings:** Within three weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function as provided in sub-section (5) and such winding up committee shall comprise of the following persons, namely:—
- (i) Official Liquidator attached to the Tribunal;
 - (ii) Nominee of secured creditors; and
 - (iii) A professional nominated by the Tribunal.
- (5) **Functions of winding up committee:** The Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in following areas of liquidation functions, namely:—
- (i) Taking over assets;
 - (ii) Examination of the statement of affairs;
 - (iii) Recovery of property, cash or any other assets of the company including benefits derived therefrom;

- (iv) Review of audit reports and accounts of the company;
 - (v) Sale of assets;
 - (vi) Finalisation of list of creditors and contributories;
 - (vii) Compromise, abandonment and settlement of claims;
 - (viii) Payment of dividends, if any; and
 - (ix) Any other function, as the Tribunal may direct from time to time.
- (6) **Submission of report & minutes of meetings of the committee before tribunal:** The Company Liquidator shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.
- (7) **Company liquidator to prepare draft final report:** The Company Liquidator shall prepare the draft final report for consideration and approval of the winding up committee.
- (8) **Submission of approved final report before the tribunal for passing of dissolution order:** The final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

Effect of Winding up order [Section 278]

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

Stay of Suits, etc., on Winding up Order [Section 279]

- (1) **Suit or legal proceeding can be commenced after winding up order/appointment of liquidator only with permission of tribunal:** When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose: Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.
- (2) **In case proceeding pending in appeal:** Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

Jurisdiction of Tribunal [Section 280]

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

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

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

Submission of Report by Company Liquidator [Section 281]

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

Contents of Liquidator's Report

The nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company.

The valuation of the assets shall be obtained from registered valuers for this purpose.

Amount of capital issued, subscribed and paid-up.

The existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts, and

In the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given.

The debts due to the company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof

Guarantees, if any, extended by the company

List of contributories and dues, if any, payable by them and details of any unpaid call

Details of trademarks and intellectual properties, if any, owned by the company
Details of subsisting contracts, joint ventures and collaborations, if any

Details of holding and subsidiary companies, if any
Details of legal cases filed by or against the company

Any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include

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

Directions of Tribunal on Report of Company Liquidator [Section 282]

- (1) **Time limit for the preceeding shall be fixed:** The Tribunal shall, on consideration of the report of the Company Liquidator, fix a time limit within which the entire proceedings shall be completed and the company be dissolved:
Revision of time limit: Provided that the Tribunal may, if it is of the opinion, at any stage of the proceedings, or on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, that it will not be advantageous or economical to continue the proceedings, revise the time limit within which the entire proceedings shall be completed and the company be dissolved.

- (2) **Order of tribunal:** The Tribunal may, on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, order sale of the company as a going concern or its assets or part thereof:
Provided that the Tribunal may, where it considers fit, appoint a sale committee comprising such creditors, promoters and officers of the company as the Tribunal may decide to assist the Company Liquidator in sale under this sub-section.

- (3) **Tribunal may order for investigation against the company in respect of commission of fraud :** Where a report is received from the Company Liquidator or the Central Government or any person that a fraud has been committed in respect of the company, the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 210, and on consideration of the report of such investigation it may pass order and give directions under sections 339 to 342 or direct the Company Liquidator to file a criminal complaint against persons who were involved in the commission of fraud.

- (4) **Tribunal to take measures to safe guard the assets of the company:** The Tribunal may order for taking such steps and measures, as may be necessary, to protect, preserve or enhance the value of the assets of the company.

- (5) **Tribunal may pass such other order /directions as it may consider fit:** The Tribunal may pass such other order or give such other directions as it considers fit.

Custody of Company's Properties [Section 283]

Sl.No.	Provisions	Provisions
1.	Where a winding up order has been made or where a provisional liquidator has been appointed	The liquidator, shall, on the order of the Tribunal immediately take into his or its custody or control – <ul style="list-style-type: none"> • all the property, • effects and • actionable claims to which the company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the company.
2.	Computation of custody time period	all the property and effects of the company shall be deemed to be in the custody of the Tribunal from the date of the order for the winding up of the company

<p>3.</p>	<p>On an application by the Company Liquidator, the tribunal may order to pay /deliver etc. any money, property etc. of the company to the Liquidator.</p>	<p>The Tribunal may, at any time after the making of a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company,-</p> <ul style="list-style-type: none"> • to pay, • deliver, • surrender or • transfer forthwith, or • within such time as the Tribunal directs, - to the Company Liquidator, • any money, property or books and papers in his custody or under his control to which the company is or appears to be entitled.
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Promoters, Directors, etc., to cooperate with Company Liquidator [Section 284]

- (1) Persons to extend full cooperation to the liquidators: The promoters, directors, officers and employees, who are or have been in employment of the company or acting or associated with the company shall extend full cooperation to the Company Liquidator in discharge of his functions and duties.
- (2) On failure to discharge obligations: Where any person, without reasonable cause, fails to discharge his obligations under sub-section (1), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

Settlement of List of Contributories and Application of Assets [Sec 285]

- (1) **Tribunal to perform acts:** As soon as may be after the passing of a winding up order by the Tribunal, the Tribunal shall -
 - Settle a list of contributories,
 - Cause rectification of register of members in all cases where rectification is required in pursuance of this Act, and
 - Shall cause the assets of the company to be applied for the discharge of its liability. Provided that where it appears to the Tribunal that it would not be necessary to make calls on or adjust the rights of contributories, the Tribunal may dispense with the settlement of a list of contributories.
- (2) **Identifying contributories on the basis of nature of rights:** In settling the list of contributories, the Tribunal shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.
- (3) **Persons liable to contribute to the assets on certain conditions:** While settling the list of contributories, the Tribunal shall include every person, who is or has been a member, who shall be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following conditions, namely:—

SL.NO.	LIABILITIES	CONDITIONS DESCRIBE THE LIABILITIES TO CONTRIBUTE TOWARDS THE ASSETS
1.	a person who has been a member shall not be liable to contribute	if he has ceased to be a member for the preceding one year or more before the commencement of the winding up
2.	a person who has been a member shall not be liable to contribute in respect of any debt or liability of the company	If such debt or liability contracted after he ceased to be a member
3.	a person who has been a member shall be liable to contribute	When it appears to the Tribunal that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act
4.	in the case of a company limited by shares	no contribution shall be required from any person, who is or has been a member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member;
5.	in the case of a company limited by guarantee	If the company has a share capital, such member shall be liable to contribute to the extent of any sum unpaid on any shares held by him as if the company were a company limited by shares.

Obligations of Directors and Managers [Section 286]

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

Provided that —

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

Advisory Committee [Section 287]

- (1) **Appointment of advisory committee:** The Tribunal may, while passing an order of winding up of a company, direct that there shall be, an advisory committee to advise the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may direct.
- (2) **Composition:** The advisory committee appointed by the Tribunal shall consist of not more than twelve members, being-
 - Creditors and contributories of the company, or
 - Such other persons in such proportion as the Tribunal may, keeping in view the circumstances of the company under liquidation, direct.
- (3) **Conduct of meeting:** The Company Liquidator shall convene a meeting of creditors and contributories, as ascertained from the books and documents, of the company within thirty days from the date of order of winding up for enabling the Tribunal to determine the persons who may be members of the advisory committee.
- (4) **Right to inspection of documents:** The advisory committee shall have the right to inspect the books of account and other documents, assets and properties of the company under liquidation at a reasonable time.
- (5) **Procedure for the conduct of meeting and business shall be as prescribed by rules:** The provisions relating to the convening of the meetings, the procedure to be followed thereat and other matters relating to conduct of business by the advisory committee shall be such as may be prescribed.
- (6) **Company liquidator shall be chairperson:** The meeting of advisory committee shall be chaired by the Company Liquidator.

Submission of Periodical Reports to Tribunal [Section 288]

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

Appeals from Orders Made Before Commencement of Act [Section 303]

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

(Part II- Voluntary winding up) Sections 304- 323- Omitted

Provisions under Companies Act, 2013 stands omitted due to section 255 of Insolvency & Bankruptcy Code, 2016 and section 59 covered under Chapter V of Insolvency & Bankruptcy Code, 2016 has been notified on 01.04.2017. For reference of the stated section see the reading material "An overview of Insolvency & Bankruptcy Code, 2016".

Part III—Provisions Applicable to Every Mode of Winding Up**Debts of all Descriptions to be Admitted to Proof [Section 324]**

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

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

Section 325- omitted**Overriding Preferential Payments [Section 326]**

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

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

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

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

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

- (a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947;
- (b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—

- (i) All wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947
 - (ii) All accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;
 - (iii) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (19 of 1923), rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;
 - (iv) All sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;
- (c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors.

Preferential Payments [Section 327]

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

workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company:

Provided that where any compensation under the said Act is a weekly payment, the amount payable under this clause shall be taken to be the amount of the lump sum for which such weekly payment could, if redeemable, be redeemed, if the employer has made an application under that Act;

- (f) all sums due to any employee from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the company; and
- (g) the expenses of any investigation held in pursuance of sections 213 and 216, in so far as they are payable by the company.



- (2) **Payment in case of employee:** Where any payment has been made to any employee of a company on account of -
 - wages or salary, or
 - accrued holiday remuneration, himself or,
 - in the case of his death, to any other person claiming through him,
 - out of money advanced by some person for that purpose, the person by whom the money was advanced
 - shall, in a winding up, have a right of priority in respect of the money so advanced and paid-up to the amount by which the sum in respect of which the employee or other person in his right would have been entitled to priority in the winding up has been reduced by reason of the payment having been made.

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

- (4) **Discharged from payment of debts:** Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts under this section shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given under clause (d) of sub-section(1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.
- (5) **Debts to which priority is given, shall be a first charge on the goods:** In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months immediately before the date of a winding up order, the debts to which priority is given under this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof:
- Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.
- (6) **Remuneration of holiday/ of absence from work:** Any remuneration in respect of a period of holiday or of absence from work on medical grounds through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.
- (7) **Non-applicability of sections 326 & 327:** Sections 326 and 327 shall not be applicable in the event of liquidation under the Insolvency and Bankruptcy Code, 2016.

Explanation—For the purposes of this section,—

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